THE FIRST PART { Though last publiſh't }

OF THE

REPORTS

OF

Sr George Croke Kt.

Late one of the Juſtices of the Court

OF

KINGS-BENCH,

And formerly one of the Juſtices of the Court of

COMMON-BENCH;

OF SUCH

SELECT CASES as were Adjudged in the ſaid Courts, from the 24th to the 44th/45 of the late Queen ELIZABETH.

Collected and Written in French *by Himſelf; Reviſed and Publiſhed in* Engliſh

By Sir HARBOTTLE GRIMSTON Baronet, Maſter of the *ROLLS.*

The Third Impreſſion, carefully Corrected, with the Addition of many Thouſand of References never before Printed.

LONDON,

Printed by *W. Rawlins, S. Roycroft,* and *H. Sawbridge,* Aſſigns of *Richard* and *Edward Atkins* Eſquires;

And are to be Sold by *H. Twyford, F. Tyton, H. Herringman, J. Starkey, T. Baſſet, S. Heyrick, J. Wright, M. Pitt, C. Wilkinſon, T. Dring, C. Harper, T. Sawbridge, J. Place,* and *G. Collins.* 1683.

WE all knowing the great Learning, Wiſdom and Integrity of the Author, Do (for the Common good) Allow and Approve the Publiſhing of this Book, in the ſame Letter and Dialect as now is Printed.

Robert Foſter
Orl: Bridgeman
Matthew Hale
Thomas Malet
Robert Hyde
Edward Atkins
Thomas Twiſden
Thomas Tyrrill
Chr: Turner
Samuel Browne
Wad. Wyndham.

The Table.

A.

Abraham *verſus* Twigg, Page 478
Action *verſus* Barham, p. 600 & 620
Action *v.* Hill, p. 253
Adams *verſus* Albone, p.422
Agnes Fowler *v.* Dale, p. 362
Agard *v.* Candiſh, p. 326
Agard *v.* King, p.775
Albany *v.* Sir Anthony Sturline, p.92
Albany *v.* Biſhop of St. Aſaph, p.119
Aldworth *v.* Peel, p. 530
Alexander *v.* Dyer, p. 169
Alford *v.* Lee, p. 54
Allen's Caſe, p. 325
Allen *v.* York, p. 50
Allen *v.* Andrews, p.73,283
Allen *v.* Hill, p. 238
Allen *v.* Hollowell, p. 374
Allen *v.* Steer, p.645
Allen *v.* Sir Robert Salisbury, p. 667
The Warden of All-Souls Colledge in Oxon *v.* Tanworth, p. 232
Alſop *v.* Cleydon, p. 465
Alſton *v.* Pamphyn, p.466
Alyſon *v.* Byſton, p.738
Andrews caſe, p. 214
Andrews *v.* Kirk, p. 260
Andrews *v.* Needham, p.656
Andrews *v.* the Lord Cromwel, p.891
Dr. Andrews *v.* Wood, p. 332
Anneſly *v.* Johnſon, p. 162
Anneſly *v.* Stoaks, p. 333
Annonimus, Page 7, 13, 19, 21, 22, ibid. 23, 31, 41, 46, 49, 51, 61, 62, 68, 142, 200, 394, 428, 431, (472) 471, 484, 563, 576, 609, 611, 643, 645, 646, 652, 672, 685, ibid. 752, 753, 771.
Appleton *v.* Burr, p. 158, 289
Applethwait *v.* Notley, p. 229
Archer's Caſe, p. 579
Archer *v.* Green, p. 361
Archdeacon *v.* Jenner, p. 604
Ards *v.* Simpſon, p. 72
Ards *v.* Watkins, p. 637, & 651
Arderne *v.* Darcy, p. 393
Argenton *v.* Weſtover & Lucas, p. 275
Armiger *v.* Holland, p. 542, & 601
Armiger *v.* the Biſhop of Norwich & Holland, p. 690
Arundel *v.* Short, p. 133
Arundel *v.* Arundel, p. 677
Aſcue *v.* Fuliambe, p. 233
Aſcue *v.* Sanderſon, p. 433
Aſcue *v.* Hollingworth, p. (461) 494, & 544
Aſh *v.* Wood, p. 59
Aſhboroughs Caſe, p. 17
Aſhbrook *v.* Snape, p. 240
Sir Walter Aſhton *v.* Whetnal, p. 57
Atkinſon *v.* Atkinſon, p. 390
Atkinſon *v.* Atkinſon, p. 234
Atkins *v.* Atkins, p. 248
Atterton *v.* Harward, p. 349
Atwaters *v.* Birt, p. 856
Atwood v. Ballard, p. 426
St. Auby's caſe, p. 183
The Lord Audler v. Pollard, p. 561
Audeley v. Lutterel, p. 23
Audeley v. Frank, p. 648
Auſtin & Steer v. Courtney, p. 116
Auſtin v. White, p. 214
Auſtin v. Twyne, p. 500
Auſtin v. Lucas, p. 609
Auſtin v. Pigot, p. 736
Auſtin v. Milward, &c. p. 860

Page.

Auſty *v.* Fawkener, 445
Auſty *v.* Maſon, 554
Ayloff *v.* Archdale, 920

B.

Babington *v.* Babington, 157
Bach *v.* Oneſly. 354
Sir Nicholas Bacons Caſe, 475
Bacon *v.* Hill, 497
Badcock *v.* Atkins, 416
Bade *v.* Starkey, 541
Bagnal *v.* Stoaks, 88
Bagnal *v.* Sacheverel, 292
Bagſhaw *v.* Playn, 536
Bake *v.* Starkey, 541
Baker *v.* Brent & Robinſon, 679
Baker *v.* Rogers, 788
Baldwin *v.* Smith, 453
Baldwin *v.* Wiſeman, 376
Baldry *v.* Johnſon, 743
Ball *v.* Bridges, 746
Ball *v.* Roan; 308,342
Balſton *v.* Baxter, 304
Banks *v.* Whetſton, 457
Banks *v.* Stacy, 348
Banniſter *v.* Truſſel, 516
Baptiſt *v.* MichelBourn, 502
Barber *v.* Haliſax, 741
Barrham *v.* Dennis, 769
Bartholomew *v.* Dighton, 424
Barker *v.* Bourn, 692
Barns *v.* May, 240
Barns *v.* Greenwel, 858
Barley's Caſe, 296
The Lord Barkly *v.* Counteſs of Warwick, 635
Barkly & Giles *v.* Kempton, 123
Barret *v.* Heveſet, 242
Barry *v.* Staunton, 330
Doctor Barrow *v.* Andrew Gray, 551
Baron *v.* Sleigh, 628
Barnaby *v.* Goodale, 737
Barſedale *v.* Smith, 633
Bartlet. *v.* Wright, 299
Barton *v.* Lever, &c. 388
Barton *v.* Aldeworth, 624
Baſſet *v.* Maynard, 819
Sir Robert Baſſet *v.* Gee, 790
Baſpole *v.* Long, 879
Bate *v.* Rookwood, 572

Page.

Bateman *v.* Spring, 407
Bateman *v.* Allen, 437
Bateman *v.* Elman, 886
Doctor Bavoy *v.* Haſſal, 132
Baily *v.* Charington, 279
Baily *v.* Taylor, 898
Baxter *v.* Munting, 290
Baxter *v.* Shade, 342
Beadle *v.* Sherman, 608,613
Beal *v.* Charter, 287
Beal *v.* Web, 819
Beaſe *v.* Drayton, 143
Beauchamp *v.* Dale, 20
Beauchamp *v.* Neggin, 282
Beckford *v.* Parnecot, 493
Becknam *v.* Rye, 587
Bedel *v.* Stanborough, 538
Bedel *verſus* Sir Edward Wingfield, 466
The Earl of Bedfords Caſe, 14
Bedingfields Caſe, 895
Bedingfield *v.* Aſhley. 741
Bedingfield *v.* Feak, 467
Belfore *v.* Foord, 447
Bellew *v.* Langdon, 876
Bellicote *v.* Tayleboys, 107
Bellingham *v.* Mynors, 153
Bennets caſe, 9
Bennet *v.* the Biſhop of Norwich, 609
Bennet *v.* Shortwright, 206
Bendloes *v.* Philips, 895
Bennington *v.* Bennington, 157
Bennion *v.* Watſon and Elwick, 625
Berkenhead *v.* Nuttal, 198
Berry *v.* Taunton, 331
Berry *v.* Green, 349
Berry *v.* Lane, 618
Bearblock *v.* Read, 734, 822
Beſome *v.* Crook, 152
Beſwick *v.* Cumbden, 402,520
Betford *v.* Ford, 472
Bethel *verſus* Sir Edward Stanhope, 810
Beverley *v.* Cornewal, 44
Beverley *v.* Beverley, 648
Beveriege *v.* Coney, 116
Bighton *v.* Saul, 235
Bilford *v.* Fox & Uxorem, 118
Bingham *v.* Smethwick, 455
Binde *v.* Plain. 218, 301
Bird v. VVilford, 464
Biſcope *v.* VVhite, 759
Biſhop *v.* Grant. 324

	Page.
Biſhe *v.* Walford,	818
Biſhop *v.* Harecourt,	210
Biſhop *verſus* Viſcounteſs Montague,	824
Blaby *v.* Eaſtwick,	202
Blackbourn *v.* Laſſels,	800
Blackbourn *v.* Michelbourn,	852
Robert Blackwel *v.* Eyre,	337
Blackwels caſe,	843
Blake *v.* Stanley,	629
Bland *v.* Madox,	79
Blandford *v.* Andrews,	694
Bleverhaſſet *v.* Baſpole,	313
Blinco *v.* Marſton,	479
Blinco *v.* Barkſdale,	578
Blitheman *v.* Blitheman,	279
Eleanor Bliſſet *v.* Johnſon,	503
Block. *v* Palgrave,	532,797
Blodwel *v.* Edwards,	509
Bloefield's caſe,	478
Bloefield *v.* Grimes,	890
Blomfield *v.* Roſwick,	555,573
Blunden's caſe,	565
Body *v.* Hargrave,	711
Anne Booker *verſus* Auncel Samford,	113
Bold *v.* Bacon,	346
Bold *v.* Steers,	697
Bolls *v.* Hewet,	776
Bolls *v.* Laſſels,	852
Bolſton *v.* Hardy,	547
Bond *v.* Richardſon,	142
Bond *v.* Tricket,	853
Bonifaut *v.* Sir Richard Greenfield,	80
Bonn *v.* Smith,	532
Bonner *v.* Stoaky,	652
Bonner *v.* Walker,	524
Boraſton *v.* Hay,	415
Botham & Cooper *v.* Lady Greſham,	136
Bothwrite *v.* Harvy,	369
Bouches caſe,	200
Boucher *v.* Wiſeman,	440
Bowes *v.* Paulet,	653
Boyer *v.* Jennings,	284
Boyton *v.* Andrews, &c.	136
Bowyers Caſe,	468
Bowyer *v.* Garland,	600
Boxes caſe,	2
Braban *v.* Bacon,	916
Brable *v.* Holliwell,	249
Bracebridge *v.* Vaughan,	66

	Page
Bradbourn *v.* Bradbourne,	149
Bradbury *v.* Reynel,	565
Bradſhip *v.* Biſhop,	260
Bradly *v.* Whorewood,	204
Bradſhaw *v.* Eyre,	570
Brag *v.* Banning,	427
Brawne *v.* Michael,	374
Bray *v.* Parteridege,	836
Bret *v.* J. S. and his Wife,	755
Bretton *v.* Prat,	758
Bretton & Uxor *v.* Bolton,	246
Brent *v.* Ingram,	343
Brereton *v.* Evans,	700
Brewſter *v.* Sir Jo. Parret,	264
Brickets caſe,	108
Bridget *v.* Forth,	442
Briggs *v.* Sheriff,	507
Bright *v.* Metcalfe,	256
Bright *v.* Hubbard,	68
Brightman *v.* Keighly,	43
Brock *v.* Phillips,	683
Brograve *v.* Wats,	651
Brooker *v.* Charter,	92
Brook *v.* Doughty,	135
Brook *v.* Watſon,	403
Brook *v* Wheeler,	726
Brook *v.* Wiſe,	878
Brook *v.* Clerk,	328
Brooksbies caſe,	173
Broom *v.* Hore,	633
Broom *v.* Carr,	863
Broughton *v.* Randall,	502
Broughton *v.* Goveſly,	663
Brown *v.* Dawxs,	11
Brown *v.* Garbrough,	63
Thomas Brown *v.* Robert Mordant,	112
Brown *v.* Worſley,	282
Brown *v.* Pendlebury,	268
Brown *v.* Peys,	357
Brown *v.* Michel,	500
Brown *v.* Foſter	392
Brown *v.* Terry,	523
Brown *v.* Adams,	745
Brown *v.* St. John,	889
Brown *v.* Holland,	840
Brown *v.* Street,	848
Brownlow *v.* Lambert,	716
Brownlow *v.* Farr,	632
Bruerton *v.* Rainsford,	15
Brunkhorns caſe,	223
Buckland *v.* Brook,	315

page.

Buckhurſt v. Newnton, 347
Sir Richard *Buckley* v. VVood, 230 & 247
Buckley v. VVilliamſon, 325
Buckler v. Hardy, 450, & 585
Bugberd v. Dominam Reginam, 162
Bugberds caſe, 180
Bug v. Nelſon & VVoodward, 188
Bullen v. Grant, 148
Bullock v. Sir John Smith, 174
Burper v. *Baker*, 854
Burrough v. Taylor, 462
Buſtry v. Challenor, 854
Burton & Eſtove v. Gowell, 306
Burton's Caſe, 148
Burdet's Caſe, 48
Bury v. Pope, 118
Buſh v. Ridgeley, 264
Buſhe's Caſe, 188
Buſhrod v. Pond, 722
Buſkin v. Edmunds, 415, 535, & 636
Buſtard v. Coulter, 902 & 917
Butcher & Aldworth's Caſe, 821
Butler v. Delt, 844
Butler v. Paynter, 297
Butler v. Wallis, 463
Button v. Long, 584
Button v. VVightman, 338
Button v. Downham, 642
Byron v. *Byron*, (472)

C.

Page.

CÆſar v. Stone, 104
Dr. Cæſar v. Curſeny, 305
Cadee v. Oliver, 152
Cadagon v. Powel, 559
Cage v. Paynton & alios, 125
Callard v. Callard, 344
Calthorp v. VVoodward, 257
Archbiſhop of Canterbury v. Kemp, 539
Cantrel v. Church, 845
Cap v. Lanceſter, 544
Carden v. Tuck, 89
Cardinal v. Husket, 723
Carew v. Merles 820
Carrel v. Read, 374
Carter v. Ringſtead, 208
Carter v. Godhard, 79

Page

Gary v. Dancy, 471
Caſtlemaine v. Hobbs, 428
Sir Tho. Cecil v. Harris, 140
Chadwick v. Sprite, 821
Chamberlain's Caſe, 24
Chamberlaine v. Nicholas, 455
Chamberlaine v. Staunton, 122
Magdalen Chamberlaine *verſus* Thorp, 186
Chambers *verſus* Hobbard, 882
Chambers v. Johns, 231
Chambers v. Leverſage, 643
Chambers v. Taylor, 900
Cham v. Matthew, 581
Chapman v. Thimblethorp, 329
Chantflower v. Prieſtly, &c. 914
Chard v. Bird, 838
Charnock & Uxor v. VVorſley, 129
Chernock v. Sharington, 289
Charnock *verſus* Sir Thomas Garrard, 364
Charnel's Caſe, 279
Charter v. Hunter, 424
Charter v. Peter, 597 & 602
Charter v. Friend, 323
Cherbury v. Rye, 341
Alderman of Cheſterfield's Caſe, 35
Chichely v. *Barker*, 883
Child's Caſe, 606
Childe v. Towers, 311
Childe v. Low, 808
Childes v. VVeſtcot, 470 & 481
Cholmley v. Humble 378
Sir Chriſtopher Hilliard v. Conſtable, 306, & 433
Sir Chriſtopher *Blunt's* Caſe, 413
Chriſtopher *Baker* v. Searls, 407
Clamp v. Clamp, 29
Clare v. Pepys, 40.
Clarenceaux alias *Brooke* v. Dethicke, 542
Clavel v. Mallory, 208
Clay's Caſe, 9
Clecot v. Dennis, 67
Clerk v. Hopkins, 254
Clerk v. Day, 313
Clerk v. Clerk, 622
Clerk v. Penruddocke, 234
Clerk v. Penkeven, 899
Sir VVilliam Clerk's Caſe, 873
Clerk v. James, 870
Clerk v. Pallady, 859
Sir Edward Clere v. Parker, 877.

Clery-

	Page
Clerywalke v. Conſtable,	110
Sir Jervis Clifton v. Webb,	808
Clifton v. Gibbon,	465
Clever v. Giles,	300
Clincards Caſe,	654
Clunn v. Peaſe & Turner,	391
Cockaine & J.S. v. DameHawkins,	730
Sir Thomas Cockain & Uxor v. Whetnam,	49
Codwell v. Parker,	319
Coke v. Barrows,	98
William Cokes Caſe,	182
Coke *verſus* Brainforth,	830
Tho. Cookſon & Uxor v. Caſtline,	96
Colchin v. Colchin,	662
Coles Caſe,	97
Cole v. Wall & *Burnell*,	224
Cole v. Haveland,	250
Colbrook v. Foſter,	884
Colgate v. Batcheler,	872
Collet v. Marſh,	371, 397
Collings v. Harding,	606, & 622
Collini v. Wills, & Uxorem,	774
William Collins v. Ed. Vaughan,	100
Colliers Caſe,	675
Colſton v. Roſs & Levet,	893
William Colſton v. Ed. Car.	847
Colſton v. Harris,	904
Colt v. Howe,	348
Comb v. Carew & Day,	866
Commins v. *Boyer*,	485
Coniers Caſe,	576
Conesby v. Rusky,	459
Cooper v. Gooderich,	862
Copſey v. Turner,	800
Corbet v. Cook,	466
Corbet v. Hill,	609
Corbyn v. *Brown*,	470
Corbyſon v. Pearſon,	458
Cordals Caſe	315
Corn v. Paſlow,	894
Corns Caſe,	544
Coſtard v. Winegett,	755
Jo. Coſton v. Tho. Coſton,	752
Cottingham v. the Sheriffs of *Briſtol*,	258
Cottington v. Hulet,	59
Cottisford v. Peaſe,	136
Richard Cottons Caſe,	188
Cottons Caſe,	258, & 738
Cotton v. Wale,	862
Cotton v. Sir Jervis Clifton,	755
Coverts Caſe,	754
Courtier v *Barret* & Simpſon,	412
Cowley v. Edwards,	184
Cowper v. Langworth,	608
Cowper v. Temple,	795
Coward v. Marſhal,	721
Cox v. Crapnes, and his Wife	883
Cox v. Humfries,	877, & 889
Cranmers Caſe,	69
Crawleys Caſe,	721
Crews v. *Bayles*,	216
Crickmere v. Peterſon,	146
Criſpes Caſe,	163
Criſpe v. Verral,	910
Criſpe v. Frier,	505
Criſpe v. Golding,	50
Croker v. Trevethin,	35
Lord Cromwell v. Andrews,	15
Cropp v. Hambledon,	48
Cropwel v. Peachy,	691
Croſs v. Tyrer,	665
Croſs v. Powell,	483
Croſs v. Andrews,	612
Croſſman v. Read,	114
Crouch v. Givers,	307
Crouches Caſe,	704
Crouch v. Frier,	784
Crows Caſe,	84
Crowthers Caſe,	654
Cubit v. Harriſon,	820
Cullier v. Cullier,	201
Curtis v. Savil,	460
Cutler v. *Brewſter*,	830

D

	Page.
DAbridgecourt v. Smalbrook,	178
Lord Dacres Caſe,	148
Dagg v. Penkeven,	906
Dales Caſe,	44, 182
Dalton v. Selby,	184
Dalton v. Sheffington,	248
Dalton v. Hammond,	779
Dalſton v. Thorpe,	767
Damport v. Thatcher,	145, 215
Damport v. Sympſon,	520
Lord Darcies Caſe,	512
Darrel v. Middleton,	606
Darrel v. Wilſon,	644
Davies v. Taylor,	648
Davies v. Matthew,	649
Davies v. Thomas,	156
Jo. Davies & Uxor, v. Selby,	825
Dawbridge v. Cocks,	361

	Page.
Dawes caſe,	611
Dawes v. *Bolton*,	888
Day v. *Besbitch*,	374
Day v. Auſtin,	398
Dean v. Executors of Sir Fra. Hynd,	797
Deans caſe,	189
Dearings caſe,	193
Dee v. *Bacon*,	435
Dell v. *Babthorpe*,	300
Dell v. Higden,	372
Dell v. Fereby,	868
Denner v. Shacroft,	258
Walter Dennys v. Wells,	344
Dennyſon v. *Burgh*,	459
Dering v. More,	554
Dethicks caſe,	224
Devenly v. Ann Welbore,	85
Devent v. Ratcliffe,	185
Devent v. Popham,	884
Deux v. Jefferies,	352
Dickens v. Marſhall,	330
Dighton v. *Bartholomew*,	778, 853, & 881
Dingley v. More,	750
Dinham v. *Beckett*,	76
Dinſlows caſe,	105
Diotto v. Curredale,	379
Diſplyn v. Spratt,	57
Dixon v. Adams,	538
Dobbins Caſe,	151
Dobſon v. Crew,	705
Docton v. Prieſt,	95
Docket v. Voyel,	885
Dodd v. Coke,	170
Dorringtons Caſe,	545
Donnes Caſe,	62
Dormer v. Smith,	835
Dorrell v. Collins,	6
Dotter v. Ford,	794
Dove v. Williot,	160
Dowdency v. Oland,	768
Dowglaſs v. Shanke,	766
Downs v. Savage,	240
Downs v. Hopkins,	323
Downing v. Baynard,	844
Downing v. Seymour,	912
Dowſes caſe,	25
Doyly v. Wood,	431
Draycott v. Sprat,	818
Sir William Druries caſe,	14
Drury v. Dominam Reginam,	839
Dudley v. Kington,	382
Duncomb v. Reeve & Green,	783
Dullingham v. Kiffeley,	251
Dumper v. Symms,	815
Durming v. Kettle,	543

E

	Page.
East v. Wilſon,	106
East v. Harding,	292, & 498
East v. Thoroughgood,	834
Eaſon v. Newman,	495
Eaton & Monox v. Laughter,	398
Eaton v. Ap. Harry,	882
Eaton v. Allen,	684
Eccleſtade v. Maliard,	4
Edens caſe,	697
Eden v. Lloyd,	877
Edwards caſe,	6
Edwards caſe,	285
Sir Edw. Cleer v. Peacock, and others,	359
Edwards v. Stapleton,	551
Sir Edward Deny v. Eakenſtal,	430
Edwards v. Ebſworth,	117
Edwards v. Watkins.	185
Edwards v. Peek,	594
Edmunds v. Marſh,	594
Elizab. Counteſs of Rutland v. Iſabel Counteſs of Rutland.	377
Elmer & Uxor v. Thatcher.	263
Elſden v. Page,	240
Elmin v. Montford,	894
Elmors caſe,	184
Elred v. Waſs,	104
Emery v. Emery,	726
Emitt v. Cole,	255
Eugurſt v. *Brown*,	99
Engliſh v. Pellitory & alios,	139
Eriſh v. Rives,	717
Eſton v. Wood,	27
Etnam v. Tottam,	157
Everard v. Green,	121
Evington v Brimſton,	414
Ewer v. Haydon,	476, & 658
Ewer v. Moyl.	771
Eyre v. Woodfine,	278

F.

	Page.
John Fabian *v.* Winſtan,	209
Farr *v.* Eaſt,	186
Farrar *v.* Johnſon,	284
Fawkner *v.* Powel,	798
Field *v.* Windlow,	897
Fenner *v.* Plasket & Green,	459
Juſtice Fenner *v.* Fiſher,	288
Fereby *v.* Lurkyn,	565
Sir Geo. Fermer *v.* Brook.	203
Fermer *v.* Dorrington,	222
Ferrer *v.* Johnſon,	335
Ferrers *v.* Baroughs,	665
Sir Humfry Ferrers *v.* Arden,	667
Fetherſtone *v.* Hutchinſon,	199
Fetherſton *v.* Allybone,	503
Sir Moyle Finch *verſ.* Throckmorton,	220
Fineux *v.* Hovenden,	664
Finnimore *v.* Sandby,	133
Fiſher *v.* Banks,	25
Fiſh *v.* Thorogood,	623
Fitz-Williams caſe,	915
Fitton & alii *v.* Hall,	518
Fitz caſe,	12
Flower *v.* Rigden,	284
Fludd *v.* Pennington,	872
Foliambs caſe,	12
Foliott *v.* Ridge,	333
Ford *v.* Rolls,	69
Ford *v.* Brooke,	261
Dr. Ford *v.* Hollingborough,	313
Ford *v.* Ryder,	758
Foreſt *v.* Ballard,	809
William Forth *v.* Th. Harriſon,	732
Forteſcue *v.* Hext,	312
Foſter & Peacock *v.* Lennard,	1
Foſter *v.* Pitfall,	2
Foſter *v.* Spooner,	17
Foſter *v.* Scarlet,	70
Foſter *v.* Walter,	106
Foſter & Wilſon *v.* Mapes,	212
Foſter *v.* Fountain,	218
Foſter *v.* Taylor,	776
Fountain *v.* Rogers,	878
Fowler *v.* Aſton,	268
Foxes caſe,	41
Fox *v.* Lee,	281
Fox *v.* Wright,	613
Fox *v.* Goodſon,	276
Fox *v.* Curlyne,	454
Foxly *v.* Anneſly,	693
Frampton *v.* Stiles	472
Framſon *v.* Delamere,	458
Freeſton *v.* Stanford, *&c.*	355
Freeſton *v.* Gouch	492
Frederick *v.* Frederick,	334
Friths caſe,	68
Frith *v.* Hokely,	441
Fuller *v.* Spakeman,	66
Fuller *v.* Fuller,	422
Fulſhaw *v.* Aſcue,	319
Further *v.* Further,	471
Fohn Fuſſe's caſe,	583
Foxal *v.* Venables,	180

G.

	Page.
Gadly *v.* Whitecott,	544
Gage's caſe,	845
Gage *v.* Shurland,	837
Gallis *v.* Budbury,	62
Gaulyn *v.* Simonds,	842
Gardiners caſe,	821
Gardford & Uxor *v.* Clerk, & Uxorem,	857
Garnons *v.* Sir Hen. Weſton,	226
Garnons *v.* Hodges,	906
Garret *v.* Fulwood,	144
Gaſcoigne *v.* Longvile,	895
Gaſtrell *v.* Townſend,	239
Gawen *v.* Ludlow,	468
Gawen *v.* Rants,	804
Gay *v.* Kay,	661
Kath Geanes *v.* Portman,	314
Geeve *v.* Copſhil,	854
Germin *v.* Rolls,	425
Gerry *v.* Holford,	615
Gervis *v.* Hollowell,	571
Gervis *v.* Pead,	615
Gibbons caſe,	646
Gibbon *v.* Cordal,	25
Gibbon *v.* Whitecroft,	800
Gibſon *v.* Brook,	859
Giblon v. G. Brook,	886
Gibſon v. Garbin,	480
Giles v. Ferrars,	59
Gillams caſe,	164
Cippin *v.* Bunny,	504
Girland *v.* Sharpe	382
Glaſcock *v.* Duffeild,	747

	Page.
The Biſhop of Gloceſter *v.* Veal,	678
The Sheriffs of Gloceſter caſe,	65, 263
Gobourne *v.* Wright,	740
Godfry *v.* More,	317
Godfry *v.* Woodward, &c.	858
Goodale *v.* Wyat,	383
Goodale *v.* Caſtle,	554
Goodale *v.* Butler,	590
Goodwin *v.* Grudge,	416
Goodwin *v.* Cornelious Montenaigh,	818, & 841
Goodwin *v.* Longhurſt,	535
Gooday *v.* Michel,	441
Goodman *v.* Fountain,	861
Goodericks caſe,	919
Goffe *v.* Biby & alios,	540
Gomerſal *v.* Biſhop,	136
Gorges caſe,	95
Gorges *v.* Stanfeild,	593
Gore *v.* Parkehouſe,	223
Gore & Uxor *v.* Pardue,	308
Gore *v.* Mooreton,	905
Goſlens caſe,	137
Goſling *v.* Warburton,	128
Goſnal *v.* Kindlemarſh,	88
Goſtwicks caſe,	163
Gower *v.* Capper,	543
Gramvel *v.* Robotham,	865
Grave *v.* Grave,	33
Graves caſe,	289
Graves *v.* Short,	616
Gravener *v.* Rake,	307
Gravener *v.* Mete,	884
Gray *v.* Jefferies,	55
Gray v. Fletcher,	405
Gray *v.* Chapman,	822
Gregory *v.* Nevill,	292
Gregory *v.* Hill,	531
Gregory *v.* Booker,	586
Gremingham *v.* Ewer,	396, & 539
Greens caſe,	3
Greens caſe,	142
Green *v.* Arderne,	42
Green *v.* Edwards,	216
Green *v.* Penelden,	228
Green *v.* Piper,	276
Green *v.* Dancy,	296
Green *v.* Wilcocks,	462
Green *v.* Hun,	702
Green *v.* Charnock, & Starnel,	762
Green *v.* Roſs	818
Greenfield *v.* Walter Dennis,	712
Greenhill *v.* Walter Dennis, and his wife,	844
Greenliffe *v.* Jo. Barker,	193
Lady Greſham *v.* Banning,	506
Greſwold *v.* Holms, & Uxorem,	826
Grice v. Chambers,	894
Griffin *v.* Bover,	257
Griffin *v.* Spencer,	320
Griffith *v.* Moriſon,	26
Griffith *v.* Williams,	340
Griffith's caſe,	780
William Griffith *v.* Ro. ap-Price,	104
Griggs *v.* Moyſes.	764
Grills *v.* Ridgeway,	318
Grimes *v.* Bloefield,	541
Grindſton *v.* Reyner,	537
Grifling *v.* Wood,	85
Griſman *v.* Lewis,	446
Groudy *v.* Iſeham,	592
Grute *v.* Locroft,	287
Guerdon *v.* Winterfludd,	308
Guildeſſew *v.* Warde,	225
Gumbleton *v.* Grafton,	781
Gunnel *v.* Bradiſh,	203
Gurny & Uxor *v.* Sir Ed. Clere,	259
Gurny & Soames, *&c.* caſe,	335
Gurny *v.* Sanderſon,	907
Guy *v.* Rand,	13

H.

HAdman, *&c.* *v.* Ringwood,	145, 179
Haddon *v.* Arrowſmith,	461
Hall *v.* Turbett,	241
Hall *v.* Combes,	368
Hall *v.* Henneſly,	486
Hall *v.* Granfeild,	645
Hall *v.* Matthew Denbige, and others,	773
Hall *v.* Dean, Wood and his Wife	841
Halland *v.* Mabbs,	470
Hall & Graven & alii,	307
Hallings *v.* Connard,	517
Hambledon *v.* Hambledon,	163
Hamond *v.* dominam Reginam,	751
Hamond *v.* Barker,	88
Hammon *v.* Griffeth,	583
Hampton *v.* Boyer,	557
Hampton *v.* Bartholomew,	728
Hanger *v.* Frye,	310
Hardy *v.* Seyer,	414
Harding *v.* Shereman,	510

Hard-

	Page.
Hardman v. John Hardman,	886
Hare v. George,	66
Hare, &c. v. Cely,	143
Harecourt v. Biſhop,	497
Hargrave v. Ardene,	543
Harleſton's caſe,	371
Harrington v. Wyſe,	486
Harepool v. Miller,	731
Harris caſe,	32
Harris Caſe,	180
Harris & Hayes v. Nichols,	18
Harris v. Jayes,	699
Harriſon's caſe,	583
Harriſon v. Nowel,	781
John Harris v. Nicholas Bowden,	90
Hart v. Brewer,	449
Hartford v. Gray,	368
Elizabeth Hartop's caſe,	243
Harvy v. Thomas,	216
Harvy v. Oſweld,	553,572
Harvy v. Wroth,	331, 638
Harvy v. Newlin,	859
Harward v. Furburne,	96
Haſeley v. Chaplen,	257,329
Haſſell v. Juxon,	283
Haſſet v. Payne,	256
Havithbury v. Harvy,	130
Haws v. Coney,	159
Hawkins v. Mildmay,	729
Hawkſland v. Gatchell,	835
Hawley v. Simſon,	14
Hayes v. Allen,	234
Hainſworth v. Pretty,	833, 919
Hayford v. Andrews,	697
Sir Rowland Harwards caſe,	148
Heath v. Pole,	783
Hedd v. Chaloner,	149, 176
Heddy v. Wheelehouſe,	558,591
Heliar v. Withier,	650
Sir Henry Kennet v. Pool, Hawkins, & two others,	464
Hemſey v. Brice,	639
The Biſhop of Hereford's caſe,	27
The Biſhop of Hereford v. Scory,	874
Dean & Chapter of Hereford v. the Biſhop of Hereford,	440
Doctor Herbert v. Munday,	587
Herd v. Burſtrow,	177
Hering v. Blacklow,	30
Hertford v. Gernon,	767
Hewer v. Bartholomew,	614
Sir Chriſtopher Heydon's caſe	896
Heyward v. Liplan,	896

	Page.
Valentine Hide v. Hill,	3
Hide v. Morley,	40
Hide v. the Dean & Chapter of Windſor,	457,552
Higham v. Baker,	15
Higham v. Beſt,	462
Higham v. Reynolds,	87
Higgins v. Grant,	18
Higgs & Hixe v. Holiday,	746
Higgins v. Mills,	143
Highgate v. Diggs,	286
Hills caſe,	32
Hill v. Prideaux	384
Hill v. Pilkington,	244
Hill v. Tempeſt,	145
Hill v. Hart,	357
Hill v. Langley,	749
Hill v. Giles,	818
Hitchcock & Uxor v. Skinner, &c.	326
Hobbs v. Tedcaſtle,	597
Hodges v. Smith,	623
Hodges v. Cox,	843
Hoe v. Taylor,	413
Hoe v. Felix Marſhall,	131,579
Hogobert v. Hokely and Spike,	707
Hogg v. Croſs,	254
Holcombe v. Rawlyns,	540
Holdringſhaw v. Rag,	879
Holland's caſe,	605
Holland v. Dantſey and others,	736, 774
Hollingworth v. Aſcue,	355, 532
Holman v. Collins,	489
Holt v. Lyſter,	757
Holwood v. Hopkins,	787
Holiday v. Hicks,	638,661
Honywood v. Husband,	153
Hopkins v. Staper,	229
Hopton & Uxor v. Johns,	323
Hooper v. Gomerſall,	127
John Hoopers caſe,	198
Hore v. Broome,	369
Horſeman v. Johnſon,	260
Howell v. Williams,	400
Howell v. Johns,	773
Howlet v. Osborne,	380
Howiſe v. Laxton	890
Hubbard's Caſe,	78
Hubert's caſe,	531
Hughs v. Robotham,	302
Hughſon v. Anne Webb,	121

Page.

Huiſh v. Phillip,, 754
Huit v. Cog an 482
Humble v. Glover, 328
Katherine Hume v. Luke Ogle, 196
Humphrey's Caſe, 458
Sir Humphry Ferrers, and others a-
gainſt Wignall, 400
Humfry v. Harneage, 756
Humfry v. Barnes, 691
Huntgate v. Hamond, 188
Huntgate v. Meaſe & Smith, 885
Sir William Hungerford v. Veiſy, 433
Lord Hunſdon v. Baker, 663
Earl of Huntington v, Hall, 823
Hunts caſe 262,297
Hunt v. Soane, 118
Hunt v. Singleton, 473,564
Hunt & Uxor v. Gilbourne, 121
Hunt v. King, 589, 610
Hutchin v. Martin, 605
Hutchinſon v. Lewſon, 393
Hutton v. Hum. 849

I

Page.

JAckman v. Hoddeſden, 351
Jackſon v. Neal, 394
Jackſon v. Robert Mordant, 112
James v. London, 36
James Apharry v. Roger Bodingham,
and the petty Jury, 350
James Cogan v. Katherine Cogan, 360
Jeffery v. Coite, 252
Agnes Jennings v. Gower, 219
Jennings v. Bragg, 446
Jennings v. Hatley, 909
Jenkinſon v. Mayne, 384
Jeremy v. Goochman, 442
Jeremy v. Lowgar, 461
Jernegan v. Cornwallis, 286
Jerome & Uxor v. Pheare, 93
Jeſop v. Payne, &c 363
Inglebatch v. Johns, 99
Inglesby v. Johnſon, 786
Jobſon's Caſe, 576
Owen Johns v. Elizabeth Howell, 235
Johns v. Gittins, 239
Johns v. Phillips, 270
Johns v. Daux, 496
Johns v. Carn, 621
Johnſon v. Gabriel, 122
Johnſon v. Tuck. 171
Johnſon v. Payes, 434

Page.

Johnſon v. Aubry, 660
Johnſon v. Morgan, 758
John Vita v. James Vita, 435
Johnſon v. Burton, 860
Johnſon v. Barley, 861
Jordan v. Lyſter, 273
Jordan v. Cleabourne, 339
Jordan v. Jordan, 369
Ireland v. Higgins, 125
Irelands caſe, 339
Ireland v. Cutler, 630
Ireland v. Goodale, 730
Iſam & Paget v. Hitchcock, 202
Ive v. Aubry, 368
Ive v. Sams. 521

K.

Page.

KEble v. Brown, 660
Keen v. Cox, 602
Kelly v. Walker, 655
Kelſock v. Nicholſon, 478,496
Kenſoy v. Richardſon, 728
Kenſon v. Reading, 244
Kent v. Sponder, 330
Kent v. Wallinger, 838
Kerry v. Bowyer, 186
Kerchever Wood, 804
Kettle v. Puddington, 842
The Lady Killigrews caſe, 46
Kilbourn v. Trot, 855
Kindler v. Leverſage, 241
Kings caſe, 26
King v. Robinſon, 79
Robert King v. Mary King, 776
King v. Hobbs, 913
King v. Shores, 914
Kingdon v. Bourne, 117
Kingwell v. Knapman, 10
Kinnerſly v. Bernard, 554
Kennerſly v. Cooper, 168
Kinnerſly v. Smart, 195
Kirby v. Coles, 137
Kirton v. Williams, 495
Knavesboroughs caſe, 96
Knight v. Mory, 60
Knight v. German, 70
Knight v. Jermin, 134
Knight v. Fortipan, 90
Knight v. Bourne, 116
Knight v. Ruſhworth, 469

Page.

Knight v. Lodge, 671
Knot & alii v. Barlow, 671
Knowles v. Palmer, 160

L.

Page.

LAcy v. Reynolds, 214
Lacy v. Lady, 102,249
Lecy v. Whetſtone, 343
Lambe, v. Brownwent, 716
Lambert v. Auſtin, 332
Lanes caſe, 148
Lanes caſe, 754
Lane v. Milward, 170
Lane v. Coleman, 727
Lane v. Hodges, 833
Lancaſter v. Lowther, 116
Langdale v. Cheyney, 157
Langton v. Gardiner, 460
Lanning v. Lovering, 916
Anne Laſingtons caſe, 750
Latham v. Humfries, 890
Laughter v. Humphries, 524
Launcelot v. Johns, 50
Law v. Thomas Landers, 913
The Mayor of Lawnſons caſe, 75
Lawnd v. Tucker, 254
Lawrence v. Nertherſole, 13
Lea v. Exelby, 888
Sir Francis Leake v. the Biſhop of Coventry, &c. 811
John Leak v. Jo. Howell, 533
Leakes caſe, 249
Leate v. Jennings, 105
Ledeſham v. Labram, 870
Lee v. Vincent, 26
Lee v. Curveton, 153
Lee v. Secombe, 297
Lee v. Morris, 331
Lee & Uxor v. Coleſhill, 529
Leech v. Cole, 670
Leeds v. Shakerley, 751
Leigh v. Shaw, 372
Leigh v. Wood, 607
Leighton v. Garnon, 706
Lembro v. Hamper, 147
Lenthals caſe, 137
Leonard v. Bacon, 233
Levermore v. Martin, 297
Leverſage v. Smith, 710
Levets caſe, 289
Levet v. Farrar, 294
Levet v. Haw, 619,652

Page.

Leveret v. Townſend, 198
Lewkner v. Huntly, 293,712
Lewellin v. Watkins, 85
Lewen v. Dodd, 443
Lewen v. Cox, 695
Lewes v. Bucknal, 799
Lewes v. Ridges, 863
Lewes v. Hay, 299
Sir Rich. Lewſon v. Riddleſton, 677, 709
Robert Limmer v. Emery, 211
The Earl of Lincoln v. Hoskins, 490
The Earl of Lincon v. Flower, 503
The Earl of Lincoln v. Fiſher, 581
The Earl of Lincoln v. Topcliff, 644
Linch v. Spencer, 513
Sir Henry Linſey's Caſe, 814
Littleton v. Hibbins, 793
Loftus caſe, 278
William Longs caſe, 33,489
Long v. Woodliff, 144
Giles Long v. Heming, 209
Long v. Michell, 340
Love v. Wotton, 245
Love v. Prynne, 753
Love v. Pigot, 55
George Lovegrove v. Procke, 105
Lovelace v. Lovelace, 40
Lovelace v. Reynolds, 546,563
Lovelace v. Grimſdel, 227
Lovet v Hawthorn, 834
Lowe v. Lowe, 128
Lower & Terries caſe, 655
Lucas v. Donne, 185
Lucy v. Fiſher, 146
Ludlowes caſe, 738
Luffer v. Lidger, 699
Luſhford v. Sanders 690
Lutwith v. Huffey, 19
Lyne v. Backhouſe, 351
Lyſs v. Wats, 277

M.

Page.

MAddox caſe, 63
Maddox v. Dawſon, 677
Makareth v. Batchelor, 583
Maldon's caſe, 533
Mallet v. Mallet, 524, 707
Mallory v. Marriot, 666
Malyns v. Sir Jo. Hawkins, 634
Manhood v. Crick, 716
Mans caſe, 228

Mannings

	Page.
Mannings *v.* Townſend,	161
Thomas Mantell *v.* Matthew Mantell,	28
Marriot *v.* Smith,	603
Markham *v.* Gonaſton,	626
Marler *v.* Wright,	141
Marrow *v.* Turpin,	715
Marſh *v.* Cavinford,	59
Marſh and his Wifes Caſe,	225
Marſh *v.* Vaughan and Veal,	701
Marſh *v.* Aſtye,	175
Marſh *v.* Curtis,	528
Margaret Marſhal's Caſe,	4
Marſhal *v.* Hobſon,	101
Marſhal *v.* Dean,	720
Marſhes caſe,	273
Mattidale *v.* Martin,	288
Martin *v.* Alexander Whipper,	114
Martin *v.* Burlings,	589
Martin *v.* Maynard,	419
Maſon *v.* Nevill,	277
Matthew's caſe,	565
Matthew *v.* Haſſell.	144
Matthewſon *v.* *Lydiate*,	408,470 & 546
Matures *v.* Weſtwood,	599,617
Matures *v.* Weſt,	665
May & Banniſter *v.* Street,	120
May *v.* Middleton,	342
May *v.* Alvares,	387
Sir Anthony Mayne *v.* Scot,	479
Mayne *v.* Beak,	515
Mead *v.* Cheyney.	216
Mead *v.* Piggot,	230
Meggs *v.* Griffith,	400
Meggot *v.* Broughton,	105
Mellow *v.* May,	873
Melwich *v.* *Luther*,	102
Mercer *v.* Charter,	376
Merril *v.* Robins,	557
Merrywether *v.* Stanton,	657
Metcalf *v.* Dean,	189
Michael *v.* Stockmarſh,	120
Michael *v.* Woodroff	850
Middleton *v.* Baker,	751
Middleton *v.* Hall,	588
Middleton *v.* Trot,	837
Milbourne *v.* Daſhbury,	323
Anthony Mildmay *v.* Standiſh,	34
Miles *v.* Willoughby,	547
Miller *v.* Eaſtcrow,	750
Mills *v.* Snowball	142
Mills *v.* Wood,	718
Milward, &c. caſe,	93
Milward *v.* Clerke,	190
Ming *v.* Earle,	212
Mints *v.* Bethell,	749
Moltons caſe,	151
Elizabeth Monington *v.* Trye,	111
Monox *v.* Thomas,	860
Lord Montague *v.* Sheppard,	5
Moody *v.* *Lewen*,	127
Mores caſe,	22
Moore *v.* Vaughan,	430
More *v.* More,	296
Sir William Mores caſe	126
More *v.* Roſwell,	297
Sir George More, &c. *v.* Onſlow,	759
More & Baker *v.* Morecomb,	864
Sir *Lewis* Mordans caſe,	12
Lord Mordant *v.* Bridges,	67
Morgans caſe,	100
Morgan *v.* Kiff,	52
Morgan *v.* Johnſon,	561
Morgan *v.* Williams,	431
Morgan *v.* Wye,	574
Morning *v.* Knop,	700
Morris *v.* Smith & Paget,	38
Morris *v.* Thomas,	257
Morris *v.* Kirke,	73
Morris *v.* *Lutterell*,	672
Mortons caſe,	30
Mott *v.* Hales,	123
Mountney *v.* Andrews,	235
Moyles caſe,	174
Moyl *v.* Ewer,	905
Mulgrave *v.* Ogden,	219
Munday *v.* Cordale,	296
Munday *v.* Martin,	660
Murrel *v.* Smith,	252
Musket *v.* Cole,	133
Muſtard *v.* Hopper,	149

N.

	Page.
Naſh *v.* Edmunds,	100
Naſh *v.* Molyns,	206
Necton & Sharpe *v.* Gennet,	466
Nedham *v.* Corſellis,	293
Nelſon & Bugg *v.* Woodward,	249
Neve *v.* *Lyne*,	460
Nevill *v.* Seagrave,	332
Nevill *v.* Payne,	304
Nevill *v.* Sydenham,	468
Newes caſe,	105
Nicholſon *v.* *Lyne*,	95
Nichols *v.* Badger,	348

Page.

Noke v. Awder, 373,436
Nokes v. James, 674
Lord Norris v. Marqueſs of Wincheſter, 2
Norton v. Riſhden, 458
Norton v. Palmer 829
The Biſhop of Norwich v. Pricket, 1
Sheriff of Norwich v. Bradſhaw, 53
Norwoods caſe, 684
Norwood v. Gripe, 727
Noſe v. Bacon, 798
Sir Andrew Nowell v. Smith, 709
Nuby v. Sabb, 809
Doctor *Hector* Nunn v. Gee. 77

O.

Page.

ODiham v. Smith, 589
Offley v. Batt, 264
Oeglethorpe v. *Hyde*, 232
Ognells caſe, 270
George Ognell v. Paſton, 164
Okes v. Kirby, 299
Oland v. Burdwick, 460
Ordeway v. Parret, 132
Ordeway v. Godfrey, 575
Osbaſton v. Garton, 91
Osborn v. Eden, 960
Overton v. Siddall, 555

P.

Pape.

PAge v. Faucett, 227
Paget v. Crump, 659
Payn v. Mallory, 805,832
Payn v. Rocheſter and Whitefield, 871
Margaret Palmes v. the Biſhop of Peterborough, 241
Palmer v. Wolley, 454
Palmer v. Thorpe, 152
Palmer v. *Humfry*, 584
Palmer v. Porter, 512
Peter Palmer v. Boyer, 342
Pannel v. Fenn, 347
Paramour v. Payne, 598
Paramour v. Varrold, 418
Parcells caſe, 195
Parham v. Norton, 885
Park v. *Moſs*, 181
Park v. Jackſon, 767

Page.

Parker v. Parker, 448
Parker v. Cumberford, 725
Parman v. Bowyer, 668
Sir Jo. Parrots caſe, 63
Parrat v. Carpenter, 502
Parſon *alias* Fludd v. Parſon, &c. 211
Parſlow v. Corn, 855
Partlet & Bartholomew v. Gray, 372
Paſly v. *Munford*, 747
Patridges caſe, 125
Patridge v. Nayler, 331,480
Pawlet v. Chriſtmas, 586
Pay's caſe, 878
Pay v. Brown, 582
Peacock v. Peacock, 705
Peak v. Pollard, 214
Pearce v. Bacon, 390
Pearl v. Unger, 94
Peck v. Wyrrall, 60
Peck v. Loveden, 804
Peck v. Channel 827
Pell v. Pell, 101
Earl of Pembroke v. Sir *Henry* Barkley, 384,560
Earl of Pembroke v. Symms. 781
Pemberton v. Coney, 164
Penn v. Glover, 421
Pendlebury v. Elmott, 268
Penhalloes caſe, 231
Pennyman v. Rabankes, 427
Penniſton v. Lyſter, 896
Penrin v. Corbet, 464
Penruddock v. Erington, 587
Penruddock v. Clerk, 659
Penred v. Chambers, 256
Penſon v. *Hickbed*, 170
Penſon v. Hodges, 737
Perſay v Bardolf, 381
Perkins v. *Hinde*, 161
Perkins v. Clerk & Cleydon, 435
Perkins v. Perkins, 269
Perkinſon v. Bowman, 853
Perren v. Bud, 793
Perrot v. Auſtin, 232
Perry v. Soam, 139
Perſon v. *Hickled*, 155
Sir Jo. Peter v. Knoll, 32
Pett v. Baſeden, 274
Pethouſe v. Crane, &c. 355
Pettywood v. Coke, 52
Peter Careys caſe, 405
Phillips v. Sackford, 455
Phillips v. Turner, 807
Philpot & Uxor, &c. 370

Pier-

	Page.
Pierpoints caſe,	308
Piers v. Hoe,	131
Piers v. Turner,	283
Pigot v. Ruſſel,	115,124
Pigot v. Hearn,	599
Pigot v. Gaſcoign,	602
Pigot v. Garniſh,	678,734
Pigot v. Simpſon,	763
Pike v. Cottington,	117
Pilkington v. Dalton,	575
Pilkington v. Haſtings & Meacock,	813
Pill v. Towers,	791
Pinners caſe,	31
Pipe v. Dominam Reginam,	324
Pipes caſe,	352
Piper v. Windham,	689
Plaines caſe,	46
Chriſtian Plain v. Howe,	185
Pledgard v. Lake,	718
Plowmans caſe,	752
Poe v. Montford,	620
Pollard v. Scoby,	20
Pollard v. Jo. Locke,	267
Pollard & Uxor v. Armeſhaw,	582
Pomfret v. Brownſal,	735
Porro v. Allen,	173
Porter v. Gray,	245,300
Portman v. Willis,	386
Portman v. Morgan,	465
Sir Hugh Portman v. Sir Gervaſe Clifton,	851
Poulter v. Cornhill,	361
Poultney v. Wilkinſon	907
Powell v. Braſen-Noſe Colledge,	644
Prat v, Tayler	61
Prat v. Stocke,	314
Preſton v. Tooley,	74
Preſton v. Pindar,	308
Preſton v. Perton,	817
Price v. Price,	733
Price v. Simpſon,	718
Prices caſe,	731
Price v. Williams,	180
Price v. Jenkins,	865
Price v. Allington,	918
Prittyman v. Lawrence,	812
Proctor v. Tayler,	158
Procter v. Johnſon,	809
Proctor v. Fitz-Williams,	906
Proude v. Hawes,	171
Prowſe v. Carey,	93
Purſell's caſe,	179
Purſet v. Hutchins,	842
Purſand v. White,	857

Q.

		Page
Quarles v. Fairechilde		653
	v. Blancher,	80
	v. Drury,	723
	v. Fairclough,	265
	v. Harris,	261
	v. Huſſey,	519
	v. Ingerſall,	309
The Queen	v. the Biſhop of Lincoln,	119
	v. Archbiſhop of York,	240
	v. Page & the Biſhp of London,	719
	v. Vaughan,	507
	v. Wall and Green,	265

R.

	Page.
Rainsford & Tempeſt v. Mallet	153
Ragſters caſe,	472
Rainſcroft v. Lawny,	59
Ramm v. Patenſon,	477
Ramſey v. Bird,	258
Rants v. Cock,	864
Raſtal v. Turnor,	598
The Lady Ratcliffe v. Shubby,	224
Rawſon v. Maynard,	286
Raine v. Orton,	305
Razing & alii v. Ruddock,	648
Reads caſe,	644
Read v. Johnſon,	242
Read v. Burley,	549,596
Read v. Morpeth,	321
Redſerne v. Todd,	589
Redſton v. Eliot,	638
Rerſley v. Wentworth,	642
Reſton v. Pomfreict,	639
Reynolds caſe,	44
Reynolds v. Kingman & Browne,	115
Reynolds v. Pinhow,	429
Real v. Peckham,	786
The Lady Rich v. the Lord Rich,	43
Riches v. Bridges,	883
Richbell v. Goddard,	271
Richmond v. Butcher,	217
Richmond v. Webb,	114
Richardſon v. Pricket,	95

Page.

Ridley *v.* Punter, 291
Riddleſden *v.* Cecily Wogan, 857
Ridgly *v.* Hundred of Warington, 270
Rigg *v.* Clerke, 194
Riggs *v.* Bullingham, 715
Rippon *v.* John Norton, 849,881
Riſden *v.* Inglet, 838
Rithers Caſe, 148
Rivers *v.* Godskirt, 568
Robinſon *v.* May, 588
Robinſon *v.* Mellor, 843
Robinſon *v.* Bedell, 873
Robbins *v.* Franckins, 857
Arthur Robſert, &c. *v.* Andrews, 82
Rockwood *v.* Feaſor, 262
Roe *v.* Hartly, 26
John Rogers *v.* Grakat, 571
Rogers *v.* Bird, 572
Rook *v.* Wilmot, 208
Rookbies caſe, 119
Rookwoods Caſe, 163
Rolls *v.* Germine, 459
Peter Roos v. Aldwick, 491
Roſs *v.* Morris, 108,436
Rols *v.* Moſs, 561
Rotheram *v.* Crawley, 370
Rotheram *v.* Green, 593
Rowleſton *v.* Alman, 748
Rowland Hargthorp *v.* Margery Milforth & Anthony Miltforth 318
Royl *v.* Bagſhaw, 149
Rudd *v.* Tucker, 737,802
The Lady Ruſſel *v.* Gulwell, 657
The Lady Ruſſel & woods Caſe, 780
Tho. Ruſſel *v.* John Grange, 904
Ryles Caſe, 171,920

S.

Page.

SAcheverell *v.* Bagnall, 359
The Lord Saint-John *v.* Bandring, 883
Sale *v.* Marſh, 178
Sal *v.* Barrington, 417
Salter *v.* Butler, 901
Salteſton & Offley, &c. *v.* Payne, 235
Sams *v.* Foſter, 352
Samon *v.* Pit, 432
The Lord Sands v. Pinder, 898
Sir Walter Sands *v.* Lane, 667
Sands *v.* Drury, 814
Sanders *v.* Norwood, 683

Page.

Savil *v.* Roads, 867
Savil v. Wood, 71
Saveray *v.* Tay, 257
Sawyer *v.* Wilkinſon, 627
Scambler v. Waters, 636
Scarlets Caſe, 151
Scavage v. Freeman, 69
Scavage v. Beauchampe, 293
Scavage v. Tatham, 829
Scory v. Barber, 276
Scot v. Maynie, 450
Scot v. Scot, 73
Scovell v. Jo. Cavill, 89
Scovell v. Cabell, 107
Scriven v. Prince, 265
Scriven v. Dither, 672
Scroggs v. the Lord Mordant, 294
Scroggs v. Griffin, 205
Scroggs v. Sir John Spencer, 703
Sedburrow v. Rant, 569
Searle v. Roſſe, 459
Seaman v. Greſham, 908
Seyman v. Okeley, 268
Seymour v. Sir Jo. Clifton. 97
The Lady Shandois v. Simpſon, 880
Sharp v. Sharp, 482
Sharplus v. Hankinſon, 420
Shailard v. Baker and his Wife, 744
Sharrock v. Hannemer, 375
Shaw v. Thompſon, 426,609
Shaw v. Barber, 830
Shaw v. Sherewood, 729
Shaw v. Cutteris, 850
Sheldon v. Hodges, 471
Shelbury v. Buſſard, 172
Sheltons Caſe, 7
Sheppard v. Kearne, 119
Sherers v. Dikenſon, 553
Shereward v. Woodward, 700
Sherwood v. Winchcombe, 293
Sherington v. Fleetwood, 475
Sherington v. Ward, 724
Laurence Shirley v. Richardſon, 291
Shirley v. Sackvile, 465
Short v. Helyar, 183
The Earl of Shrewsbury v. Sir Walter Lewſon, 592
Counteſs of Shrewsbury v. Crompton, 777,784
Phillida Shackborough v. Biggins, 632,682
Sherburnes Caſe, 306
Sir Anthony Shurleyn v. Albany, 150
Shyfield v. Barnfield, 790

	Page.
Sibley v. Crawley,	736
Sicklemore v. Simonds,	797
Sidnam v. Worthington,	42
Siddenham v. Robins,	619
Silbury v. Bird,	158
Syms v. Weſtcot,	147
Simons v. Wenlock,	799
Simons v. Swet,	78
Simons v. Lawnd,	239
Simſon v. Titterell,	242
Sockbridges caſe,	24
George Skarning v. Elias Shortwell,	609
Skidmore v. Wynſton,	879
Skidmore and Foame v. Vaudſtevan,	56
Skelhorn v. Harriſon,	714
Skipwith v. William Steed,	769
Slade v. Allen,	672
Sleigh v. Bateman,	487
Smalwood & alii v. the Biſhop of Lincoln & Marſh,	141,207
Smalbrooke v. Dabridgecourt,	271
Smalpeace v. Smalpeace	746
Smiths caſe,	31
Smiths caſe,	87
Smith v. Heliar & Clerke,	167
Smith v. Hitchcocke,	201
Smith v. Haws,	96
Smith v. Bernard,	203
Smith v. Clerke,	252
Smith v. Belay,	630
Smith v. Sheppard,	710
Smith v. Shelburn,	685
Smith v. Colins, &c.	151
Smith v. Arden,	826
Smith v. Warren,	688
Smith v. Vangor Colgy,	384
Smith v. Smith,	741
Smith v. Freeman,	462
Smith v. Havens,	252
Smye v. June & alios,	219
Snelling v. Norton,	409
Some v. Taylor,	665
Sommerſet v. Markeham,	595
Somerſet v. Doctor Cotton,	587
Sonham v. Trundle,	919
Soul v. Gerrard,	525
Sir John Souches Caſe,	22
Southcote v. Manory,	744
Southcote v. Bennet,	815
Southwell v. Brown,	571
Sower v. Bradfield,	422
Spark v. Spark,	658,666,840
Sparks Caſe,	676
Speccot v. Sheres,	828
Spencer v. Shory,	709
Spire v. Roſs,	177
Lord Stafford v. Thynne,	158, 170
Stafford v. Bottome,	298
Stafford v. Pooler,	536
Stafford v. Bateman,	431
Stanfield & Uxor v. Viſcount Bindon,	364
Stamp v. Elizabeth Hutchins,	120
Stanbies Caſe,	754
Stanton v. Barnes,	373
Stanton v. Suliard,	644
Stanley v. Osbaſton,	268
Stanley v. Boſſwell,	602
Stainer v. James,	310
Stapleton's Caſe,	471
Stapleton v. Nurſe,	798
Stapleton v. Fryer,	251
Staughton v. Newcomb,	434
Stebbing v. Goſnall.	629
Stebs v. Bennet,	897
Stedmans Caſe,	137
Stepney v. Lloyd,	646
Stevens v. Lawſon,	121
Stevens v. Eliot,	483
Stevens v. Francis Totty,	908
Stevens v. Lewis,	673
Stevenſons Caſe,	843
Steventon v. Scroggs,	698
Stile v. But,	434
Stich v. Wiſdome,	348
Stokes v. Anneſly,	367
Stone v. Withypole,	126
Stone v. Radiſh,	253
Stoner v. Audeley,	250
Stranſham's Caſe	97
Stranſham v. Cullingham,	228
Stratfield v. Dover,	595,612
Stretton v. Taylor,	138
Stretton v. Browne,	204
Stringar v. Stanlacke,	440
Stroud v. Willis,	362
Stroud v. Marſhall,	398
Stubbs v. Rightwiſe,	102
Sir Anthony Sturlyn v. Albany,	67
Stutfield v. Somerſet,	825
Subbings v. Rotheram,	454
Counteſs of Suſſex v. Wroth,	5
Suttons Caſe,	140
Swans Caſe,	3
Swan v. Gateland,	825
Sweeper v. Randoll,	156

Page.

Simcock v. Payne, 786
Syms caſe, 33

T.

Page.

Talbot's Caſe, 335,823
Tanfield's caſe, 3
Tanfield v. Finch, 27
Lawrence Tanfield v. Rogers, 340
Lawrence Tanfield v. Shane, 193
Taverner v. the Lord Cromwell, 353
Tayler v. Beale, 222
Tayler v. Vale, 166
Tayler v. Fiſher, 245
Taylor & Uxor v. George Sayer, 742
Taylor v. Foſter, 807
Tayler v. How, 861
Tayler v. Wilbore, 768
Teat's caſe, 7
Tedcaſtle v. Holliwell, 234
Temple v. Temple, 791
Tenancy v. Browne, 272
Thaxby v. Smith, 787
Anthony Theobald v. Brooke, 618
Thynne v. Chomley, 383
Jo. Thirkettle, &c. v. Reeve, &c. 110
Richard Thomas his caſe, 137
Thomas v. Ward, 202
Thompſon v. Clerk, 504
Thompſon v. Butler, 321
Thorneigh v. Diſney, 312
Thornborough v. Mountpeſſon, 370
Thorehill & Adams v. King & Uxorem, 757
Thornton v. Kemp, 477
Thorowgood v. Scrogs, 582
Francis Throckmortons caſe, 563
Tibbot v. Haynes, 191
Tiblethorp v. Hunt, 309
Tilley v. Wye, 175
Tirrel v. Baſh, 639
Tiſdales caſe, 758
Tiſdale v. Bedington, 594
Tooley v. Windham, 206
Topliff v. Wilſon, 72
Toſt v. Tomkins, 135
Townſend v. Wales, 524
Tranſam's caſe, 178
Sir Thomas Treſham v. Ford, 830
Trivilian v. Lane, 56
Trewinian v. Howell, 91
Trinity Colledge in Cambridge v. Tunſtall, 810

Page.

Trop v. Bedingfield, 277
Troſs v. Michel, 172
Truſlow v. Yewre, 223
Truſſel's caſe, 213
Truſſell v. Aſhton, 108
Tryar v. Beſtney Betts, 317
Tuke, &c. v. Cheek, 897
Tunbridge's caſe, 7
Tytherly v. Welſh, 154

V.

Page.

Vanderplunken v. Griffith, 234
Vanſpike v. Cleyſon, 541
Vautry v. Aplon, 217
Lewis Vanvive v. Michael Vanvive, 177
Vaſt v. Gawdy, 5
Vaughan v. Comitem Bedford, the Biſhop of London, and Gainsford, 351
Vaughan v. Beale, 393
The Lord Vaux his caſe, 269
Veal & alii v. Roads, 671
Veal v. Roberts, 199
Vennard v. Wotton, 166
Vicary v. Farthing, 411
Underhay v. Underhay, 269
Umhle v. Fiſher, 702
Underhill v. Brook & Uxorem, 352
Upton v. Baſſet, 444

W.

Page.

Wade v. Buſſard, 607
Wade & Uxor v. Smith, 611
Wakefield v. Hodgeſon, 692
Walford v. Hundred of Bernes, 618
Sir William Walgrave v. Agas, 191
Walker v. Collier, 378
Walker v. Nicholſon, 652
Walker v. Hancock, 844
Waller v. Croot, 870
Waller v. Champion, 905
Waldo v. Lambert, 868
Walmſly v. Havard, 618
Walth v. Collinger, 320
Sir Walter Hungerford v. Veiſey, 433
Walter v. Pigot, 896
Walter v. Dawes, 465

	Page.
Edward VValwyn's caſe,	198
Warcop *v.* Morſe,	138
VVard *v.* Blunt,	146
Ward v. Knight,	227
Ward v. Thorne,	171
Ward v. Lambert,	394
Ward v. Lavile,	896
Warner v. Winch,	416
Warner v. Young,	200
VVarner and Collins caſe	461
VVarring v. VVhale,	314
VVarneford v. Haddock,	290
Warter v. Sperry & Spring,	199
The Counteſs of VVarwick v. the Lord Barkley,	643
The Counteſs of Warwick v. the Biſhop of Coventry, &c.	549
VVaſſal v. Heath,	656
Waſhington v. Murden,	681
Watts v. Hagden,	372
Watts v. Braines,	694, 778
Waterhouſe v. Woodſtreet,	592
VVatſon v. Smith,	723
Watkins v. Johns,	187
Watkins v. Aſhwick,	132
Watkinſon v. Man,	350
The Weavers of London v. Brown,	803
VVaver v. Garden,	371
VVeare v. Woodliff,	466
Web v. Nect,	21
Web v. Poor,	569
Week's Caſe,	349
Weeks v. Holmes & Uxorem,	161
Welcome v. Grill,	400
Welden v. Bridgewater,	421
Wellocke v. Hamond,	204
Wells v. Fenton,	826
Wells v. Patridge,	469
Wells v. Hemmerſet,	621
Welſh v. Upton,	259
VVentworth v. VVentworth,	451
VVentworth v. VVright,	526
VVencomb's caſe,	32
VVeſt v. Mounſon,	480
VVeſt v. Laſſels,	851
VVeſtbrown v. Mordant,	191
Weſtby v. Skinner & Catcher, &c.	365
VVharton v. Morley,	24
VVheatley v. Chriſtopher Beſt,	564
VVheeler v. Thorogood,	127
VVheeler v. Collier,	406
VVhetſtone v. Higford,	424
VVhites caſe,	151
VVhite v. Ewer,	823
VVhite v. Geriſh,	727, 768
VVhite v. VVeſt,	792
Whitebye v. Marſhal,	429
Whitenel v. Cook,	812
Wychall v. Johns,	703
Whydon's caſe,	520
Wickham, Biſhop of Lincoln v. Cooper	316
Gabriel Widow v. Peter Clerke,	76
Wigford v. Gill,	269
Wiggly v. Bradſhaw,	151
Wiggly v. Blackwall,	780
Wikes v. Morefoots,	86
Wilcocks v. Watſon	405
Wilford's caſe,	682
Wilkinſon's caſe,	465
VVilkinſon v. Netherſole,	530
VVills v. Fletcher,	ibid.
VVillis v. Stroud,	574
VVills v. Jermin,	167
VVilliams v. Aſh & Aſh,	181
VVilliams v. VVilliams,	557, 567
VVilliams v. VVhite,	806
VVilliams v. VVhitney,	701
VVilliams v. the Biſhop of Lincoln, &c.	790
VVilliams v. Green,	884
Sir Francis VVilloughby v. Scheverell,	182
Percival VVilloughby v. Egerton,	853
VVilloughby v. Gray,	567
VVilloughby's caſe,	90, 566
VVilloughby v. Brook,	756
VVilmot v. Carn,	918
VVilmot v. Knowles,	917
VVillimot v. Wetton,	904
Wilſon v. Pakeman,	459
Wilſon v. Jefferies,	195
VVilſon's caſe,	601
Roger Windham v. Edward Clere,	130
Wing v. Harris,	231
Wing v. Earle,	267
Wingfield's caſe,	739
Wingate v. Monck,	275
Winchcombe v Shepheard,	476
Winchcomb v. Goddard,	836
Windſor v. the Archbiſhop of Canterbury, Loveday, &c.	686
Major & Burgeſſes of *Windſors* caſe,	26
Winſmore v. Hubbard,	57
Wiſeman v. Crow,	562
Wiſeman v. Jennings,	570
Witham v. Waterhouſe,	466

	Page.
Withers v. Drew,	676
Withrington v. Delabere,	223
Wood v. Payne,	186
Wood v. Hamſtead,	262
Wood v. Reynolds,	764,854
Wood v. Butts,	260
Wood v. Smith,	817
Woodcock v. Woodcock,	795
Wooden v. Osborn,	674
Woodliff v. Drury,	439
Woodroff v. Greenwood,	517
Woodroff v. Vaughan,	429
Woodward v. Parry,	537
Woodward v. Thompſon,	907
Woodyard v. Dimmock & Trundle,	761
Jo. Morgan Wolfe v. Stepney,	864
Wolfe v. Meggs,	544
Wolley v. Bradwell,	575
Wolley v. Robinſon,	200
Wolley v. Moſeley,	760
Wolman v. Tye,	179
Wolverſton v. Mere,	911
The Earle of Wor. v. Paddon,	605
Worceſter v. Stone,	63
Worledge v. Kingſwel,	794
Wormleighton v. Burton,	448
Worſely and his ſon v. Charnocke,	448, 472
Wortely v. Herpingham,	766
Wotton v. Shirt,	742
Wrenford v. Giles,	643
Wrenches caſe,	13
Wright v. Morehouſe,	358
Wright v. Penry,	484
Wright v. Wheatly,	854
Wright v. Wright,	475, 511, 866
Wright v. Major and Commonalty of Wickham,	468
Wroth v. Wiggs,	276
Wykes v. Tillerd,	595
Wilde v. Cookman,	492
Wyſon v. Fenton,	788
Withers v. Kooks,	574

Y.

	Page.
YAtes v. Windham, &c.	64, 281
Yates v. Clincard,	704
Yates v. Virdman,	155
Yelverton v. Yelverton,	401
Yielding v. Fay,	569
Yeoman v. Stenlacke,	201
Young v. Watſon,	308
Yorke v. Allen,	72, 371
Archbiſhop of York v. Sir Henry Barkley,	198

Termino

Termino Hillarii, viceſimo quarto
ELIZABETHÆ,
In Banco Reginæ.

Foſter and Peacock *verſus* Jo. Leonard, Int' Hill. 23. rot. 393.

(1) A Tatchment upon Prohibition againſt the Defendant fermor of the Parſonage of Sevennoke in Kent, for ſuing for Tithes of great Wood, by the name of Silva cædua, againſt the Statute of 45 Ed. 3. the Defendant pleaded that for 300 loads of the ſaid Trees, they were of Birch, of which by the Law he ought to have Tithes as Silva cædua; and as to the reſt, which were of Oak and Elm, they were under the growth of twenty years; and upon the firſt it was demurred in Law, and upon the ſecond Plea they were at iſſue. And after argument upon the firſt point by Clerk and Weeks of the one ſide, and by Fuller and Tanfeild of the other, it was adjudged for the Defendant, that he ſhall have Tythes of Birch, for Birch is not ſuch Wood as the Statute intends by the name of groſs boys, for it is intended of ſuch Wood as ſerveth for building, and other uſes of a high nature, and not only for fuel, as the nature of Birch is; and of Oak and Elm cut down before the age of twenty years, Tythes ſhall be paid; for until that age they are not of ſuch value as the Law regardeth for the purpoſes aforeſaid; and therefore as to the Birch it was awarded he ſhould have a conſultation, he having entred a non vult ulterius proſequi for the reſidue, &c.

Moor 907. 1 Rol. 640. St. 45. E. 3. c. 3. 2 Cr. 199. 1 Rol. 640. 2 Inſt. 643. Poſt. 55.

The Biſhop of Norwich *verſus* Pricket.

(2) Action de ſcandalis magnatum, brought by the Plaintiff for theſe falſe and ſcandalous words, viz. You (prædictum Epiſcopum innuendo) have writ a letter to me which I have to ſhew, which is againſt the word of God, againſt the Queens authority, and to the maintenance of ſuperſtition, and that I will ſtand to prove againſt you. And they were at iſſue; and at the trial at the Niſi prius the Defendant confeſſed he ſpoke the words, where-

whereupon a Writ was Awarded to enquire of damages, which were found to 500. marks, and at the day in Banke the Court was not adviſed to give judgment, and the parties were adjourned; and afterward, upon good deliberation, it was Awarded that the Biſhop ſhould recover the 500. marks, and eight pound for coſts; and afterwards the Biſhop releaſed part of the Coſts: Nota, this Caſe was taken out of the Record which was entred, Hill. 24. rot. 39.

Boxes Caſe.

(3) ACtion for theſe words, Thou art burnt and haſt the Pox, and after Verdict, was alledged that the Action doth not lye, for it is not ſaid he had the French Pox, but it may be he intended the Small Poſt. 214. Pox; and for ſaying he had the Pox generally, no Action lieth. But Wray ſaid the Action lieth, for when it is ſaid, Thou art burnt and haſt the Pox, it ſhall be intended the French Pox, which uſually cometh of burning, and it was adjuged for the Plaintiff.

Foſter *verſus* Pitfall.

(4) EJectione firmæ, The Caſe was, that one Brook deviſed Land to St. 11. H. 7. 20. his Wife in Tail, the remainder over to another, and dieth; the wife with her ſecond Husband aliens this Land by Fine and dieth; the queſtion was, if the ſon of the Feme may enter upon this alienation, by the Statute of 11 H. 7. And all the Juſtices held that it is directly within the words of the Statute, for that goeth to all Eſtates, in Tail, or for Life, of the Lands of the Husband, or given by the Anceſtor of the Husband, But Wray, Clench, and Gaudy held, that this Caſe is not within the intent of the Statute, for the Statute is only intended of Lands given by the Husband, or his Anceſtor, for the advancement of the Wife; and although this Caſe is within the words of the Statute, yet it not being within the intent of the Statute, the Statue doth not extend to it; and vouched Eaſton and Studdes Caſe in the Comment, and Co. Lit. 366. a. the remainder of this Land is limited to a Stranger, and ſo ſhall Co. 4. 4. a. not be intended to be for a Joynture, where no inheritance is re- Poſt. 24. ſerved to the Baron or his Heirs: and the meaning of the Statute is, that ſhe ſhall not prejudice the Heirs of the Baron, that the Land ſhall not deſcend to them; but here, upon her alienation nothing reverteth or deſcendeth to the Heir of the Husband, and ſo is clearly out of the Statute: Nota, that 21 Eliz. It was adjudged that if the Baron be ſeiſed of land in right of his Wife, and they levy a Fine, and the Conuſee grants a Rent to them in Tail, the Baron having iſſue, dieth, the Feme alieneth the Rent, this is out of the Statute of 11. H. 7. for the Rent cometh in lieu of the Land.

The Lord Norrice *verſus* the Marqueſs of Wincheſter.

(5) ERror to Reverſe a common Recovery had by the Anceſtor of the Lord Marqueſs againſt Lionell Norrice, who was Tenant in Tail, the remainder to the Plaintiff. The Defendant pleads a Releaſe of all Errors by Tho. Chapipan the laſt Vouchee, and the common Vouchee, and demands Judgment, &c. Plowden for the Defendant argued that all the burthen lieth upon the laſt Vouchee,

Vouchee, for he is to make recompence to all, and therefore he is to bring Error, and so he may releas Errors, and bar all others; and so it is adjudged 17 Ed. 2. Error 90. But all the Justices resolved the contrary, for the common Vouchee is put in only for form, and in truth he renders nothing; and therefore it is against reason that his Release should bar others that have the loss, and are entituled to have remedy by the reversal of the Judgment. Gaudy, If Execution be Sued against the common Vouchee, so that he renders in value, then upon such an Averment, the loss lying upon him, his release shall bar the others, quod Wray concessit; but here he renders nothing, and therefore shall release nothing; and they all agreed that the Case of 17 Ed. 2. was not Law, and it was adjudged that the release was no bar. 17 Ed. 2.

Greens Case.

EJectione firmæ. The Case was, a Prebend let Land to Green for years rendring Rent, and a re-entry for non-payment; the Rent was demanded and was not paid, and two days after the Lessor receiveth the Rent of him, and maketh him an Acquittance by the name of his Fermor, and if this Receipt doth bar him of his re-entry, was the question; and it was clearly resolved that the bare receipt of the Rent after the day was no bar, for it was a duty due to him; but a Distress for the Rent, or a receipt of the Rent due at another day, was a bar, for those Acts do affirm the Lessee to have lawful possession; so if he maketh him an Acquittance with a recital he is his Tenant; and in this Case by calling him his Fermor, this is a full Declaration of his meaning to continue him his Tenant, and it was adjudged that the entry was not lawful. (6) 1 Leon. Co. 3. 64. b. Co. Lit. 211. b.

Tanfeilds Case.

IT was agreed by all the Justices in the Common Place, that the Grantee of an Annuity for years cannot have an Action of Debt for the Arrerages during the term in the Annuity. (7) Post. 268. com. Yelv. 208.

Swanns Case.

IT was said to be adjudged, that in Covenants perpetual, if they be once broken, and an Action of Covenant brought, and a Recovery upon it, if they be afterward broken, a Scire fac. shall be had upon the Judgment, and need not bring a new Writ of Covenant.

Valentine Hyde *versus* Hill.

EJectione Firmæ. It was held upon evidence, that if Baron and Feme English, go beyond Sea without licence, or tarry there after the time limited by the licence, and have issue, that the issue is an alien and not inheritable, contrary to the opinion of Hussey 1 R. 3, 4. (8) 1 Cr. 602. 1 R. 3.

Termino Paſchæ, viceſimo quarto
ELIZABETHÆ, in Banco Reginæ.

Eccleſtade *verſus* Maliard.

(1) Co. 10. 131. b. DEbt. Upon an obligation to ſtand to the award of J.S. who awarded that one of the parties ſhould pay to the ſon of the other party 5 l. which was bequeathed to him, and for not payment, Action was brought, and adjudged that the Action did not lie, for he was not bound to pay or tender the money, being to a ſtranger to the award. And Mich 18 & 19 Eliz. it was adjudged between Henry Norwich and Simon Norwich, that where they were mutually bound to ſtand to the award of Sir Edward Montague of all demands, &c. who awarded that Simon Norwich with three Sureties ſhould be obliged to Henry Norwich for the payment of a certain ſum, it was adjudged a void award; for the Arbitrator had no authority to award any thing concerning a third perſon; but in that caſe it was ſaid, if the award had been to pay 10 l. to J. S. or that the party ſhall be non-ſuited, or diſcontinue an Action, it had been a good award, for they are acts to be done by the party himſelf; and if he tenders the 10 l. to J. S. and he refuſeth, or offers to be non-ſuite, or diſcontinue the Action, and the Court refuſeth, the obligation is ſaved, but he ought to plead tender of payment, and offer to be nonſuited, &c. V. 22 H. 6. 46. 17 Ed. 4, 5. 18 Ed. 4. 22. & 19 Ed. 4. 1.

Poſt. 432. Poſt. 70.

Margaret Marſhalls Caſe.

(2) ERror. To reverſe an Outlary in petty treaſon, and alledgeth, that whereas the offence was committed in the Reign of Queen Mary, that 1 Eliz. a general pardon was made of all treaſons and felonies, that notwithſtanding 3 Eliz. ſhe was waived for this treaſon; and the Court ſaid that the pardon was not general, and that they were not to take notice of it, if the party doth not take advantage of it; but it was held that ſhe may have a Writ of Error upon this matter, becauſe ſhe had no day in Court before to plead this matter, but always made default; as if one hath a Releaſe to plead, and upon a Scire facias he is returned nihil, ſo as he never had day to plead it, if Judgment be given upon his default, he ſhall have an Audita querela; but if he had been returned, warned, and appeared, and did not plead it, and Judgment is given, he hath no remedy upon the releaſe.

Poſt. 25.

Hob. 283.

The

The Lord Montague *verſus* Sheppard.

TReſpaſs. It was held by the Court, that Tenant by Copy of Court Roll cannot by the Common Law take Trees for Houſe-boot, Hedge-boot, and Cart-boot, &c. as Tenant for life or years may do which have an eſtate certain; but a Copyholder hath not this liberty, except by ſpecial cuſtom, and ſuch cuſtoms are in many Mannors, and are good. (3) Poſt. 292. 361.

Vaſt *verſus* Gaudy.

DEbt. Upon an eſcape againſt the Defendant Guardian of the Marſhalſea, for ſuffering T. B which was in Execution at the Plaintiffs ſuit, to eſcape: The Defendant pleads, that he did not ſuffer him to eſcape; and gave in evidence, that the ſaid T. B. bought an Attaint to Reverſe the Judgment; and upon his prayer, the Court did bail him, that he might proſecute his Attaint Cum effectu: But this bail was not entred upon Record. And it was held by Wray, and the other Juſtices, that the Evidence was good, and that the Juſtices by their Authority, may diſcharge the party of the Execution, and do it upon good conſideration; and the Juſtices uſe to command the Marſhal to bring the priſoner before them to their Chambers, and it is a good diſcharge for him: For the Marſhal, of himſelf, cannot ſuffer the priſoner to go out of his houſe by Baſton or otherwiſe; but by the command of the Juſtices he may remove him, although it be to another County; and it is no eſcape, and the eſcape ſuppoſed here, is for letting him to go by bail; which is the act of the Court, and not of the Marſhal, and may well be given in evidence. And Wray ſaid, that upon Execution ſued after Verdict, although the party ſues an Attaint, the Court uſually doth not bail him, for the Verdict is intended true, till reverſed; but ſometimes the Juſtices upon good conſideration will bail him: And here although the bail be not entred, yet the Plaintiff for his benefit may cauſe it to be entred, and then he may have a Scire facias upon the bail, and ſo is not at any miſchief; and afterwards the Plaintiff was non-ſuited. (4) 1 Cr. 14. Co. 344. a.

The Counteſs of Suſſex *verſus* Wroth.

THe Caſe was, Land was aſſured by the Earl of Suſſex, by Act of Parliament, to his Wife for her Joynture, the Reverſion in Fee to the Earl, of the Mannor of Burnham, with a Proviſo for the Earl to make Leaſes for One and twenty years, rendering the ancient Rent; the Earl makes a Leaſe for One and twenty years, rendering, &c. and before the end of it makes another Leaſe by Indenture to the Leſſee for One and twenty years, bearing date 30 Martii, to commence at Michaelmas following; and it was adjuged a void Leaſe, becauſe for the time it is a Leaſe in Reverſion; and if he might make a Leaſe to commence at Michaelmas following, he might make it to commence Twenty years after, and the Statute intended not to give him that liberty; and it being a liberty and power, it muſt be ſtrictly purſued, and the Land was aſſured to the Counteſs for her Joynture, which is favoured in Law: And if the Earl might make Leaſes one after the other, ſhe ſhould never have benefit of her Joynture; which the Statute did not intend, V. 6 Co. 33. (5)

Termino

Termino Trinitatis, Viceſimo quarto ELIZABETHÆ, in Banco Reginæ.

Edward's Caſe.

(1) Poſt. 250. Poſt. 191. 308. 349. 569. 618. 888. Yelv. 58. 2 Rol 454.

ACtion for theſe words, Jo. Edwards did wrap Gunpowder in a piece of Tow, and laid it under my Window, and put fire to it, minding to burn my houſe. Wray held that the words are actionable; for by ſuch Speech the Plaintiffs good name is impaired: ſo to ſay, He lay in wait in the High-way intending to murder me. And the Plaintiff had Judgment.

Dorrell *verſus* Collins.

(2) Hob. 170.

EJectione Firmæ. Upon not guilty, the Jury found that the Maſter and Schollers of the Colledge of Sinkford, were ſeiſed in the time of H.8. of the Mannor of Hodley, of which the place, &c. is parcel, and let all their Lands in Lambehurſt (except the Mannor of Hodley in Kent and Suſſex) to J. S. for years: And they further find, that the Maſter and Schollers had no other Land in Lambehurſt than the ſaid Mannor. The queſtion was, if the Mannor paſſeth by the Leaſe? And all the Court held, That it being found they had no other Land than the Mannor, the Exception is void, becauſe it goeth to the whole thing demiſed; otherwiſe of an Exception of part. But an Exception was taken to the Declaration, becauſe the Plaintiff conveyed his intereſt by an Adminiſtrator, to whom the Archbiſhop of Canterbury did grant Adminiſtration of all the Goods of the Leſſee in Kent and Suſſex: but doth not ſhew how the Archbiſhop granted it, either as Ordinary, or by his Prerogative; and this was held by all the Court, a material Exception. But it was afterwards alledged, That all the Preſidents in this Court, and in the common place, were ſo in general, without ſpecial ſhewing how; and for that they would not change the Preſidents, they diſallowed the Exception. And in this caſe it was held, That if an Adminiſtrator doth grant Omnia bona & catalla tua, a term which he hath as Adminiſtrator, doth not paſs, for it is not ſuum, but he hath it in right of the Inteſtate: But if one hath a Leaſe as Executor or Adminiſtrator of the Mannor of D. and he granteth all his right and intereſt in the Mannor, the term which he hath as Executor, &c. doth paſs; for he had no other right in it, and his intent is to paſs it; but by general words it ſhall not paſs.

Poſt. 244. Poſt. 102. Poſt. 456. 2 Cr. 556. Poſt. 164. 2 Cr. 318.

Teat's

Teat's Caſe.

(3) DEbt upon an Obligation. The Condition of the Obligation was, That if the Obligor deliver to the Plaintiff an Obligation, in which he was obliged to the Defendant, before ſuch a day, that then, &c. the Defendant ſueth the Plaintiff upon that Obligation, and recovereth, and afterward, and before the day, he delivereth the Obligation to him: The queſtion was, if this were a performance of the condition? Wray, and the other Juſtices held it was not; although the words were performed, yet the intent was not performed: For the intent was, he ſhould have the obligation for his diſcharge; which is not by the delivery of it at the day, for it is transferred in rem judicatam: And notwithſtanding the delivery of the Bond, yet he may have benefit of the Judgment. Poſt. 384.

Shelton's Caſe.

(4) THe Caſe was: Leſſee for years grants his term by Deed, and ſealeth it in the preſence of divers, and of the Grantee himſelf; and the Deed at the ſame time was read, but not delivered, nor the Grantee did not take it, but left it behind them in the ſame place: Yet the opinion of all the Juſtices was, That it was a good grant; for the parties came for that purpoſe, and performed all that was requiſite for the perfecting it, except an actual Delivery: But it being left behind them, and not countermanded, it ſhall be ſaid a Delivery in Law. Poſt. 122. Co. 37. a. Co. Lit. 36. a. Poſt. 356.

Anonymus.

(5) A Copyholder in Fee, marrieth a Woman-Seigniorels of the Mannor, and after they ſuffer a common Recovery, which was to the uſe of themſelves for life, Remainder over: And it was held by Anderſon, Meade, and Periam, that the Copyhold was extinct: for by the recovery the Baron had gained an eſtate of Freehold, but they all held that by the inter-marriage it was only ſuſpended: And Meade ſaid it was adjudged in Newports Caſe, That if a Copyholder takes a Leaſe of the Mannor, his Copyhold is extinct. Moor. 185. 2 Cr. 84. Co. 4. 31. b.

Tunbridge's Caſe.

(6) TRespaſs for taking his Horſes; the Defendant juſtifieth for Damage-Feaſant; the Plaintiff replieth, That before the Treſpaſs ſuppoſed, &c. he yoked the Horſes, and tied them to the Plough, and the Defendant untied them, and took them, &c. And the opinion of the Court was clearly, That he may well ſever them for Damage-Feaſant: For although they are an entire Diſtreſs

Diſtreſs when annexed to the Plough, and as Anderſon ſaid, If the Plough or Cart by chance fall upon a man, and kill him, as well the Horſes as the Cart, &c. are forfeited; yet in this caſe they may be ſevered. And Manwood ſaid, There is a difference in the Books; when the Diſtreſs is for Rent-ſervice, there they cannot be ſevered; for they are an intire Diſtreſs, and he claimeth no intereſt in the Land, but only a Rent or Service, with which the Land is charged. But in a Diſtreſs for Damage-Feaſant the party doth claim the Land it ſelf, and he may have ſeveral Actions for Treſpaſs for every Horſe; for every one of them doth Treſpaſs: and the Plaintiff had day to amend his Replication.

Termino

Termino Michaelis,
Viceſimo quarto & quinto ELIZABETHÆ,
in Communi Banco.

Bennet's Caſe.

(1) COvenant. The Caſe was, A. did covenant with B. to make ſuch Aſſurance as his Councel ſhould adviſe; the queſtions were two: Firſt, If B. muſt give notice; ſecondly, What notice was ſufficient? And the Court held clearly, that B. muſt give notice of the Aſſurance, for otherwiſe A. doth not know his Councel, or their adviſe; and B. is not only to ſhew him the aſſurance that he is to make, but is to permit him to read it, and to go to his own Councel to conſider it; and A. is to have convenient time after the Aſſurance ſhewn to him, to perfect it. And the Lord Anderſon ſaid, That if B. himſelf doth deviſe the Aſſurance, and make it, A. is not bound to perform it; for he is only to make the Aſſurance, that the Councel of B. ſhall adviſe, and not that which B. himſelf ſhall deviſe; and it is a good plea, that concilium non dedit adviſamentum, 6 H. 7.

Poſt. 97 298. Lib. 5. 20. a. Moor. 143. Co. 2. 3. b. Poſt. 404. Moor. 183. Lib. 5. 19. b.

(2) Nota, Anderſon ſaid, That if one deviſe Land to J. S. in Fee, and after by the ſame Will deviſe that Land to J. D. for life, both parts of the Will ſhall ſtand; and in conſtruction of Law, the deviſe to J. D. ſhall be firſt. So if a deviſe be to J. S. in Fee, and afterward in the ſame Will, the Land be deviſed to J. D. in Fee, they are Joyntenants. And Meade ſaid, That Caſe had been often moved, and always ruled; that the deviſe is good to them both, and they ſhall take as Tenants in Common, or at leaſt as Joyntenants. And Anderſon ſaid, and it was agreed by the whole Court, That if a Termor deviſeth to J. S. ſo much of his term as ſhall be arrear at the time of his death; this is a good deviſe for ſo much of the term as remaineth at his death; and the Caſe in Brooke is good Law.

Poſt. 330. 431. 2 Cr. 49. Yelv. 210. Pl. C. 541. Co. Lit. 112. b. Co. 8. 95. a. b. Poſt. 217.

Clays Caſe.

(3) A Writ of Partition being awarded, the Court was informed that at the time of the Partition made, the Sheriff was not upon the Land in perſon, as he is to be; and it was prayed, That the Writ ſhould not be received, but a new Writ awarded. And the opinion of Meade, Windham, and Periam was clear (Anderſon being abſent) that they may well examine this matter before the return and fileing of the Writ; and thereupon they examined the

Under-Sheriff, and he confeſſed, that he was there, but not the Sheriff himſelf; and thereupon the Writ was ſtayed, and a new Writ awarded: And they held the ſame Law was in all caſes where the words of the Writ are, That the Sheriff ſhall go in his own perſon, as in an Accedas ad curiam, Waſte, Rediſſeiſin, if Exception be taken at Bar before the return of them be received: But if the Sheriff in ſuch Writs returneth, That he was there in proper perſon, and this return be received, and the Writ filed; then the Court cannot examine it, for the return is good, and the party can have no Averment againſt the Return, nor can have Error. And Meade ſaid, he had ſeen it ſo ruled as here.

F.N.Br. 188.c.

(4) Nota, Snagg Serjeant, moved this Caſe, An Abbot and Covent by Deed indented under their Common Seal, granted to Baron and Feme, being Tenants for years in poſſeſsion, that they ſhall have the Lands for their lives; and granted further by the ſame Deed, That after their deaths, their children ſhould have the Land for forty years; the queſtion was, if the children take any benefit of this Grant, not being parties to the Deed; and by the opinion of Meade, Windham, and Periam, clearly, they ſhall take by way of Remainder, although there be no word of Remainder in the Deed; and as a Remainder they may take, though they be not parties to the Deed.

Co. 6. 16. b. Poſt. 121.

(5) Nota. Snagg moved this Caſe, and demanded the opinion of the Juſtices in it. J. S. with a Gun at the door of his houſe, ſhoots at a Fowl, and by this fireth his own houſe, and the houſe of his Neighbor; upon which he brings an Action of the Caſe generally, and doth not declare upon the Cuſtom of the Realm, as 2 H. 4. viz. for negligently keeping his fire: the queſtion was, if this Action doth lie? and all the Court held it did; for the injury is the ſame, although this miſchance was not by a common negligence, but by miſadventure; and if he had counted upon the cuſtom of the Realm, as 2 H. 4. the Action had not been well brought; yet Conſuetudo Regni eſt Communis Lex.

Kinguel *verſus* Jo. Knapman.

(6) Debt upon a Bond: The Condition was, that whereas there were divers controverſies between the Plaintiff and Jo. Knapman (a ſtranger,) and the Plaintiff and the ſaid J. K. ſubmitted themſelves to the Award of John Coxſin, the Defendant bound himſelf in Two hundred pound to the Plaintiff, that Jo. Knapman ſhould perform the award on his part, &c. The Arbitrator Awarded, that the ſaid Jo. Knapman ſhould pay to the Plaintiff Thirty pound, viz. Twenty pound at Eaſter, and Ten pound at Michaelmas next: The Defendant pleads payment of the Twenty pound at Eaſter; and as to the Ten pound, that the ſaid Jo. Knapman died before Michaelmas: And upon this it was demurred. The queſtion was, if by the death of Jo. Knapman, the Obligation was diſcharged? And it was argued by Beaumont that it was not, for the Ten pound was a duty to the Plaintiff which was to be paid, and the Executor may perform it, and the Executor is to pay it, although not named; as he ſhall take advantage of a thing done unto, or by the Teſtator, Bar. 216. 45 Edw. 7. Daltons Caſe in the Comment. 10 H. 7. 18. But if it

Poſt. 277. 2 Cr. 300.

it be a thing which is not in their power, it is otherwise: as to make a Feoffment, 14 Ed. 3, 4. Heal contra. For the performance of the Award was a thing collateral, as 19 H.8.17. 17 Edw. 4. And here the Defendant that is obliged, is a ſtranger; and it is not material, though it be in the power of the Executor to perform it, Poſt. 277. c. 38 H. 6. 2. 27 H. 8. 16. But all the Juſtices held the Obligation was forfeited; but they would not give judgment, becauſe the penalty was great for ſuch a ſmall duty.

Browne *verſus* Dauks.

ACtion for words. Tho art a Pillory Knave; remember Brown thou ſhouldſt have been ſet on the Pillory. And the Plaintiff had judgment, though it was not ſaid, he was ſet upon the Pillory. (7) Poſt. 31. c.

Termino Hillarii.
Viceſimo quinto ELIZABETHÆ,
in Communi Banco.

Foliamb's Caſe.

(1) AN Aſſiſe being arraigned before Juſtice Meade in his circuit, and being adjourned to the ſecond Saturday in Michaelmas Term to Serjeants-Inn in Fleetſtreet; and day being then given to anſwer, that Term was kept at Hartford, a day was given to the party to anſwer the ſecond Saturday in Hillary Term; and being now moved, it was held clearly, That the Aſſize was diſcontinued by the not coming of the Juſtices the firſt day; and the party is put to a Re-ſummons againſt the Jurors, and a new Attachment againſt the Defendant, and to begin of new to arraign his Aſſiſe.

Fitz Caſe.

(2) DEbt againſt him as Sheriff of Devon. Gaudy Serjeant ſhewed the truth of the Caſe to be, That upon a Recovery in Debt againſt A. a Cap' ad Satisfaciendum was awarded to Sir Jo. Clifton then Sheriff, and after a new Patent was made to Mr. Kircombe; and afterwards, and before notice, Sir Jo Clifton arreſted A. and left him in Execution, Kircombe dieth, and Mr. Fitz was made Sheriff, and let A. go at large. The queſtion was, if it were a good arreſt by Sir Jo. Clifton; for if it were not, it was no eſcape? And the Court held clearly, that the arreſt was good, and it was an eſcape; for Sir Jo. Clifton remained Sheriff, and is not diſcharged of his Office, until the new Patent is ſhewn to him, ſo as he may have notice of his diſcharge: And if in the mean time between the ſealing of the new Patent, and the ſhewing of it to him, he keeps a County Court, it is good.

Moor. 186.
Poſt. 366. 440.

Sir Lewis Mordants Caſe.

(3) MEmorandum, He was Sheriff of the Counties of Bucks and Bedford. The Lord Mordant his Father died, 20 April, tempore Parliamenti, it was held by all the Juſtices, and the Attorney and Solicitor of the Queen, that his Office by this matter is not determined;

mined; although he be now a Baron of Parliament, and that he yet remaineth Sheriff, Ad voluntatem Reginæ, Dyers Manuſcript. 13 Eliz. Poſt. 366.

Guy *verſus* Rand.

(4) EJectione firmæ: The Plaintiff declared of an Ejectment of One hundred Acres of Land, and ſhewed his Leaſe in evidence only of Forty Acres; and it was ſaid he had failed of his Leaſe, for there was no ſuch Leaſe, as that of which he did count. But it was ruled, to be good for ſo much as was compriſed in his Leaſe; and for the reſidue, the Jury may find the Defendant not guilty. Yelv. 166.

Wrenches Caſe.

(5) DEbt upon an Obligation: The Condition was to ſtand to the arbitrement of J. S. of all Cauſes then depending, ſo as the Award be made before, &c. in writing. The Defendant pleads no Arbitrement: The Plaintiff ſhewed, that J. S. did Award, &c. that the Plaintiff ſhould releaſe to the Defendant an Action of Account, then depending, and for that the Defendant ſhould pay to the Plaintiff Ten pound; and this was delivered in writing, &c. And the Defendant had not paid, &c. Iſſue was taken upon the Arbitrement, and found for the Plaintiff: And Plowden moved in Arreſt of Judgment, that the Submiſſion was of all Actions then depending between them, and the Award was, That the Plaintiff ſhould releaſe an Account, then depending; which is to be intended at the making of the Award, and not at the time of the Submiſſion, and ſo plainly out of the Submiſſion; and ſo no good Arbitrement. And the Court commanded Judgment ſhould be ſtaid, till the other party anſwer it. Poſt. 861.

(6) Flowerdew Serjeant moved this caſe. A Proceſs iſſued againſt J. S. to arreſt him, he keeps his houſe to ſave himſelf from arreſt, and afterwards goeth out to the Market, and to other places; and when he heareth again of a new Proces out againſt him, he keeps his houſe, and afterwards goeth at large; the queſtion was, if he were within the Statute of Bankrupts. And all the Court held he was not, becauſe he uſe to go at large; and it might be, that his policy would not prevent the ſerving of the Proces; for he might be met withal unwittingly. 13 El. c. 7. 1 Jac. c. 15.

Lawrence *verſus* Netherſale.

(7) TReſpaſs. The Sheriff returned in Common Bank, that the Defendant was attached Per Catalla ad valentiam Ten pound; and it was adjudged a void Return: For he ought to return, that he was attached by one Beaſt or Chattel certain, and name them, ſo that they may be forfeited; for upon ſuch general Return, none of them can be forfeited.

Anonymus.

(8) IF one taketh Trop petit Diſtreſs for Rent; and after taketh another Diſtreſs for the ſame Rent; this not good: For he cannot avow two Diſtreſſes for the ſame Rent, for it was his folly that he took not a better Diſtreſs at the firſt: But Nota, in the Abridgment of the Aſſiſes, it is ſaid, That if there be not ſufficient Diſtreſs when he Diſtrained, he may diſtrain again. Moor 7.

Termino

Termino Paſchæ,
Viceſimo quinto ELIZABETHÆ,
in Communi Banco.

Hawley *verſus* Simpſon.

(1) Moor 122. Poſt. 73. Co. 10. 129. a.

DEbt upon an Obligation; the Condition was to pay at or before the 29 of September next, at ſuch a place, Ten pound to the Obligee. It was held by the Court, That if the Obligor tender the money the 28 day of September, at the place, and the Obligee is not there to receive it, it is a void tender; for the tender is to be the laſt day: But if the Obligor meet the Obligee at the place, before the day, and he then tenders it; this is ſufficient, and the Obligee ought to receive it.

Co. Lit. 211. a.

Sir William Drury's Caſe.

(2) J. S. makes an Obligation, dated and delivered the firſt of May; and upon the firſt of June following, the Obligee maketh a Releaſe to the Obligor, bearing date the firſt of March, and delivered the firſt of June; by which he releaſeth all Actions Ab origine mundi until the date of the Releaſe: And all the Juſtices were of opinion, that the Obligation was not releaſed.

2 Cr. 264.

The Earl of Bedfords Caſe.

(3) REplevin, The Defendant made Cogniſance as Bailiff to the Earl of Bedford; whereas, in truth, he was not his Bailiff, but took the Diſtreſs againſt his will. It was held, That the Plaintiff cannot traverſe, that he was not his Bailiff, for it is not iſſuable; nor can the Earl diſavow it, for he is not party; nor can the Earl have an Action upon the Caſe, becauſe he is not damnified: But the party whoſe Cattel are taken, may bring an Action of Treſpaſs for taking his Cattel; and if the Defendant juſtifieth as Bailiff, he may ſay De ſon tort demeſne, & ſans tiel cauſe, and ſo puniſh him.

Co. 8. 67. a. Poſt. 540.

Bruerton *verſus* Rainsford.

J. S. maketh a Leaſe for years, to commence after the death of a Tenant for life, or after the end of a Leaſe for years in being; an Eſtranger after the death of the Tenant for life, or the end of the Leaſe, enters by Tort. It was agreed by the Court, That notwithſtanding the Entry, the Leſſee may grant over his Term: But if he had entred, and been afterward put out, he cannot grant his Term till he re-entreth. (4) Poſt. 127. Poſt. 275.

The Lord Cromwel *verſus* Andrews.

ATtaint. It was agreed by the Juſtices, That if there be Leſſee for years rendering Rent, and for not payment a re-entry, and he payeth the Rent before the day to the Leſſor, and hath his Acquittance; and at the day when the Rent is due, the Leſſor demands it, and none is there to pay it, the Condition is broken; for the payment before the day, is not a payment of the Rent, but of a ſum in groſs: Secondly, It was ruled, That where a Leaſe is made rendering Rent at Michelmas, between the hours of one and five in the Afternoon, and a Re-entry, &c. The Leſſor cometh at the day at two of the Clock, and continueth demanding till Five, and the Rent is not paid; he may re-enter, although he was not at one of the Clock, when peradventure the Leſſee was there, and tendereth it. (5) Co. 10. 127. b. Co. Lit. 202. a. Poſt. 48. 63.

Nota, It was held per curiam, That if one lets a houſe rendering rent, and for not payment, &c. it is not ſufficient to demand the rent at the door of the houſe, if it be open; but the Leſſor muſt enter into the houſe, and there demand it: So if a Leaſe be made of Land, the Leſſor muſt enter into the moſt notorious place of the Land, and there demand it, Ex relatione Fountaine, incerti temporis. (6) Co. Lit. 201 b. c. Co. Lit. 201. b. 2. a.

Ro. Higham *verſus* Baker, Int' Trin' 22. Rot. 640.

REplevin. The Defendant avows for Damage-feaſant: Upon a ſpecial Verdict, the caſe was, Thomas Higham, the Father of the Plaintiff, was ſeiſed of a Meſſuage called Maſcals, to which no Land did appertain; and being poſſeſſed of a Ferme called Jaques, to which a hundred Acres of Land did appertain, purchaſeth the Feeſimple of Jaques, and let the ſaid Ferme called Jaques, and ſixty Acres to it belonging, to Wakefield; and occupieth the other forty Acres with Maſcals, by the ſpace of ten years; and by his Will deviſeth all his Ferme, called Jaques, and the Land to the ſame belonging, then in the tenure of Wakefield, to his wife for life. And deviſeth further by theſe words, Item, I will, that it, and all the reſt of my Lands thereunto belonging, whereſoever they lie, ſhall remain to my youngeſt ſon Robert, and to the Heirs of his Body, after the death of my Wife. And deviſeth further his Ferme, called Maſcals, and the Lands to the ſame (7) Godb. 16. 3 Leon. 130. 2 Leon. 226. Moor. 123.

ſame belonging to Alice his Wife, and the ſaid Robert, for payment of his Debts, and performance of his Legacies; and that after the death of his wife, all the ſaid Ferme called Maſcals, with the Lands to the ſame belonging, ſhall remain to Robert in Fee. And it was averred, that the Debts and Legacies were paid, and the taking was in the forty Acres, which were occupied with Maſcals: And the Juſtices held clearly, that by the firſt part of the Will, the Wife had nothing in the forty Acres; for the deviſe to her was of the Ferme of Jaques, and the Land to it belonging, then in the tenure of Wakefield; although he ſaith afterwards, That it, and the reſt of the Land thereunto belonging, whereſoever they lie, ſhall be to Robert my ſon, &c. after the death of my Wife. Admit that the forty Acres ſhall be ſaid to pertain to Jaques, yet the Wife ſhall take nothing in them by implication, and Robert ſhall have nothing in them, during the life of the Wife; but the eldeſt ſon ſhall have them by deſcent, during her life; and what ſhe ſhall have, was expreſly deviſed to her before, and ſo ſhall not have any more by implication: And Meade ſaid it was adjudged in Glover and Clatches caſe, upon that reaſon, That where a Deviſe was to one, and the Heirs-males of his body; and if he died without Iſſue of his body, Remainder over: If he died without Iſſue-male, having Iſſue-female, ſhe ſhall not take by implication. And Anderſon ſaid, he heard Sir Anthony Browne rule this caſe, That where a man deviſed Lands to his Wife, and deviſed other Lands to a ſtranger after the death of his Wife, ſhe ſhall not have thoſe Lands by implication: For when any thing was given by expreſs words, it ſhall not be intended, that the Deviſor intended the other Land by implication: for it is to be ſuppoſed, if he had ſo intended, he would have given it before expreſly. And Anderſon ſaid, the forty Acres cannot paſs by the firſt part of the Will to Robert, for the forty Acres were ſevered from Jaques, and conjoyned and occupied with Maſcals. And at this day nothing was ſpoken to the ſecond part of the Will, for the Serjeants only recited the firſt part: But at another day the Record was read before them, and all the matter then appeared as it is at firſt recited. All the Juſtices held, That it appeareth by the latter part of the Will, that the Teſtator did never intend to paſs theſe forty Acres, as parcel of Jaques, but he reputed them parcel of Maſcals. And Anderſon ſaid, That Land ſhall paſs as pertaining to a houſe which hath been occupied with it, by the ſpace of ten or twelve years, for by that time it hath gained the name of parcel or belonging, and ſhall paſs with the houſe by that name in a Will or Leaſes, &c. And here by this ſecond part of the Will, the Wife and Robert have a Joynt-eſtate till all the Debts and Legacies are paid; which being averred to be paid, that eſtate doth ceaſe, as it was lately adjudged in the Queens Bench: And when it is limited over, that Robert ſhall have it after the death of the Wife, the Wife ſhall have the entire eſtate for her life; and after her deceaſe, Robert ſhall have it in Fee, and afterwards Judgment was commanded to be entred for Baker, the Avowant, (who had married the Wife) to have Return; for the Feme by the ſecond limitation, had the entire eſtate; and in the forty Acres, the taking was ſuppoſed.

Poſt. 300. 474.

2 Cr. 75. Moor. 7. Moor. 124.

1 Cr. 308. Poſt. 704.

Aſhboroughs

Aſhboroughs Caſe.

FEnner ſaid it was adjudged in that Caſe 10 Eliz. that if the Sheriff Aſſign Dower by Writ to him directed, and doth not return the Writ, yet ſhe is lawfully ſeized in Dower, but it is otherwiſe in a partition by Writ, for there a ſecond Judgment ought to be given. And Periam ſaid it was adjudged in Cliptons Caſe after he came to the Bench, that if the Sheriff take one by Capias ad ſatisfaciendum in Debt, if he after permitteth him to go at large, and returneth not the Writ, yet Debt lieth upon this eſcape againſt him, for there is a Record of which the party ſhall take advantage, though the Writ be not returned. (8) Co. 4. 67. a. Moor. 209.

FRancis Gaudy did move this Caſe. A Fine was levied with a Render, and the Render was with Warranty, and the Officers of the Fine refuſed to take it by reaſon of the Warranty annered, which had not been known before time; but all the Juſtices conceived it was good; for although it was not uſual that he which Renders ſhould Warrant the Land, becauſe he taketh no benefit, yet if he will Warrant it, it is not to be doubted, but it is good enough, and the Officers were commanded to receive the Fine. (9) Poſt. 690.

Thomas Foſter and others *verſus* Spooner and Aford.

WAſte. The place where, was Wallinford Park; Spooner one of the Defendants made default at the Grand Diſtreſs, and thereupon againſt him the Enqueſt was Awarded to enquire of the Waſte and Damages; Aford pleads he had nothing in the trees in which the Waſte was ſuppoſed, and upon this they were at Iſſue; and upon evidence the Caſe appeared to be, that Shelly being Leſſee for years of the Park, grants all his intereſt and title in the ſaid Leaſe to Aford, ſaving and accepting all the Wood and underwood growing upon the Land, and if upon this matter Shelley ſhall be ſaid to be Leſſee of the Wood, againſt whom the Action of Waſte ſhall be brought, or Aford, was the queſtion. And the Serjeants of the Plaintiffs part ſaid, notwithſtanding this exception, it is a good grant of Shelley to Aford of the Wood, for he that made the exception had no intereſt in the Trees, being only Leſſee for years, and ſo the exception void; and in this Action the Land is to be recovered as well as Damages; and if Aford be not the Leſſee, the Plaintiffs cannot know againſt whom to bring the Action, for Shelly hath only the Trees and not the Land, and ſo no Action againſt him; Anderſon and Meade held that the Action ſhall be brought againſt Shelly, for the Trees paſſed not to Aford, for the intereſt in them that Shelly had he hath reſerved, ſo as he ſhall have all the profits of them, as if Hernes, &c. need in them, &c. Anderſon ſaid as to that which was ſaid, that Shelly had no property in the Trees, by the Common Law, the Leſſee had intereſt in the Trees, and the Statute doth not take it away, but prohibits him that he ſhall do no Waſte, and makes him puniſhable for it: and as to the objection, that they can recover no Land, and ſo no Action of Waſte lieth; Anderſon ſaid, if a man lets the Trees of his Park, Waſte lieth againſt the Leſſee for cutting of them; and if an Action of Waſte doth not lie, yet he may have an Action upon (10) Co. 11. 48. b.

his Caſe, and to this opinion Windham ſeemed to agree. Periam held ſtrongly the contrary, that the exception was void by a Leſſee for years, for he hath no intereſt in the Trees, and neither at common Law or ſince the Statute, is the property of the Trees in the Leſſee; and although before the Statute there was no Law to puniſh him, yet that doth not prove he might lawfully cut them: and at this day if the Leſſor cuts down the Trees and takes them away, the Leſſee ſhall not recover according to the value of the Trees, but for the entry, &c. which Caſe Meede agreed; and becauſe the Court was divided, they commanded the Jury to find the ſpecial matter, and to leave it to the diſcretion of the Court. And in in this caſe it was affirmed by them all, that if a man maketh a
Co. 11. 52. a. Leaſe reſerving the Wood, &c. he may juſtifie the entry to cut them and carry them away. And it was held by all the Prothonotaries in this Caſe, that if the Defendant in a Writ of waſte, loſeth by default at the grand Diſtreſs, enquiry ſhall be made of the waſte,
Poſt. 263. and to what damages; but if he loſeth by confeſſion or nient dedire, or by pleading non ſum informatus, &c. the waſte ſhall not be enquired, but only the damages, and ſo it was done in this Caſe; for as to Spooner they were commanded to enquire of the waſt and damages, and as to Aford of the damages only. Nota Cooke l. 5. f. 12. citeth it to be adjudged, that the exception was void, and that waſte lay
2 Cr. 296. againſt the Aſſignee, v. Cokes Entries 695. the whole Record of the Caſe, but no Judgment.

Higgins *verſus* Grant.

(5) EJectione firmæ. Upon evidence to the Jury, the Juſtices ſaid, if one doth Demiſe a Manor to which an advowſon is appen-
Co. Lit. 307. a. dant, and ſaith not cum pertinentiis, the advowſon doth not paſs. And
Co. Lit. 77. a. in this Caſe the Plaintiff claimed under a Leaſe made by R. Stake
Co. 10. 64. a. Parſon of Shenly, 11 Eliz. and that Mi. Poultney being Patron in reverſion in Fee confirmed the Leaſe, and after the Statute of 13 Eliz. viz. in 14 Eliz. the Ordinary confirmed it, and 23 Eliz. he which had the Patronage in right of his Wife, together with his
13 El. cap. Wife confirmed the Leaſe, and all theſe confirmations were ſhewn,
2 Cr. 53. and it was averred, that the Patroneſs for life was living; and
Co. 5. 15. a. the Juſtices held that the confirmation by the Ordinary and Pa-
Poſt. 430. trons were good, for the Statute doth ſpeak of alienations, &c. by Incumbents to be void after the Statute, but doth not make void, confirmations made of a Leaſe before the Statute; and the Plaintiff did declare of a Leaſe by the Parſon, but doth not aver his life, and by his death the Leaſe is void, and no acceptance can
Co. 3. 65. a. make it good; and the Plaintiff pleaded a confirmation by the Patron for life, and ſheweth not how the Patron came to this particular eſtate; and the Juſtices held, that he needed not ſhew what
1 Cr. 571. eſtate the Patron had, but when he did ſhew he hath but an eſtate
Poſt. 154. 5. for life, he ought to ſhew how he came to it.

Harris and Haies *verſus* Nichols.

(6) QUare Impedit. It was held by Meade, Windham, and Periam, that if two Co-partners be of an advowſon, and they ſeverally grant their

their parts to two ſeveral men, the advantage that was between the partners doth hold place between the Grantees, as the firſt preſentment ſhall go to the Grantee of the eldeſt, and ſo of the others, and an uſurpation of one ſhall not put the others out of poſſeſſion, 22 Ed. 4. but they ſaid peradventure it ſhall be otherwiſe, if they were meer Tenants in Common, and did not derive their eſtates from Co-partners, and yet the Book in 22 Ed. 3. 9. that between ſtrangers in blood, or where two make compoſition to preſent by turn; if one uſurpe upon the turn of the other, this ſhall not put him out of poſſeſſion. Anderſon doubted, but he agreed that Tenant by the Courteſie ſhall have the ſame advantage that his Wife ſhould have had; and it was held by Meade and Wyndham, that if a man hath a Manor which doth extend into two Towns, and he grants the Demeſns and Services in one Town, the Grantee hath a Manor in that Town, and he may keep Court, and ſo hath the Grantor a Manor in the other Town, and may keep Court there. Co. Lit. 186 b. Co. Lit. 186. b. Poſt. 39.

Anonymus.

(6)

ACcompt. The Defendant was ajudged to Accompt, and a Capias ad computandum iſſued againſt him to Accompt, before Auditors at a certain day, at which day he appeared and entred into accompt, and the Auditors aſſigned them to appear before them at another day certain, at which day the Plaintiff did not proceed. Fenner moved what ſhall be done in this caſe, if he ſhall be non-ſuited or barred of Accompt, or if the Action be diſcontinued; and the Court demanded of the Protonotaries, who ſaid, there can be no non-ſuite, becauſe it is after judgment, but that a diſcontinuance ſhall be entred, and the Defendant and his Sureties put without day; and if the Plaintiff will after proceed upon this Accompt, he ſhall have a Scire facias upon this Record ad computandum, and ſo the Juſtices did award in this Caſe. Co. Lit. 139. b. Co. 11. 38. a.

Lutwich *verſus* Huſſey.

(7)

ASſumpſit. The Plaintiff declared, that whereas the Defendant was indebted to the Plaintiff, and the Father of the Defendant was alſo indebted to the Plaintiff in another ſum, he did aſſume that if the Plaintiff Paululum ceſſaret to demand the Debt which he did owe to him, that he would pay both the Debts, and ſhewed that upon this promiſe he did forbear the demand of his money for half a year, and for not payment of the Debt of the father, the Action was brought, and it was upon iſſue found for the Plaintiff. And it was alledged in Arreſt of Judgment, that there was no conſideration of the promiſe, for it is not ſaid for how long he ſhould forbear, for if he did forbear for a quarter of an hour or leſs, he hath performed the word, quod paululum ceſſaret; and although the Plaintiff doth alledge he did forbear for half a year, this will not help the Caſe. And of that opinion were the Juſtices, and commanded if no other matter be ſhewn before the end of the Term, quod nihil capiat per breve. Poſt. 455, 759. Poſt. 665. 2 Cr. 250. 1 Cr. 241. 2.

Pollard *verſus* Scoly.

(5) 13 El. cap. 8. DEbt. The Caſe was: Pollard ſold to the Defendant two Oxen, 22 Junii, 22 Eliz. for ſix pounds ſix ſhillings eight pence to be paid at All Sains next; and at the ſame day Scoly required of him a longer day for payment, &c. and Pollard gave him day till the firſt of May next, paying to him for the forbearance of his money three quarters of Wheat, which was above the value of ten pound per annum for a hundred pound, according to the Statute of 13 Eliz. and the Defendant in Debt for the ſix pound ſix ſhillings and eight pence doth plead this, and would avoid the contract. And the opinion of the Juſtices was, that the Statute doth not make the contract void, which was duely made, but doth only avoid all contracts for Uſury; and this laſt contract is void being againſt, the Statute, but the firſt was good, being made bona fide. Nota. Hill. 20 Eliz. in Banco Reginæ, in an information by Mallory *verſus* Bird. If one contracts to have twenty pounds for the loan of an hundred pounds, if he taketh nothing of the twenty pounds, he is not puniſhable by the Statute; but if he taketh any thing, if but one ſhilling, this is an affirmance of the contract, and he ſhall render for the whole contract.

Moor. 398. 2 Cr. 508.

Beauchampe *verſus* Dale.

(6) Co. Lit. Sect. 693. QUo minus. It was adjudged after argument and deliberation, That where a Diſſeiſor letteth the Land to the Diſſeiſee for life by Indenture, that this is a remitter to him, for by this he confeſſeth the Deed; but by his Entry to take livery, the Law hath its operation, and doth remit him againſt his own acceptance Ex Relatione Johannis Heale who argued this Caſe, and it was adjudged upon conference between the Barons and all the Juſtices.

Termino Trinitatis,
Viceſimo quinto ELIZABETHÆ,
in Communi Banco.

Webb *verſus* Nect' Hill. 24. Rot. 410.

(1) THe Caſe was: Hugh Bury ſeiſed of divers Mannors in the County of Devon by his Deed Indented and Enrolled between him of the one part, Robert Kempe and Nicholas Adams of the other part, in conſideration of twenty pounds paid by the ſaid Robert and Nicholas, bargained and ſold the ſaid Mannors to the ſaid Robert and his Heirs, to the intent that the ſaid Robert ſhould ſuffer the ſaid Nicholas and H. Gifford to recover the ſaid Mannors againſt him, which ſhould be to the uſe of the ſaid Hugh Bury for life, remainder to his ſon in Tail, with divers remainders over, which recovery was accordingly ſuffered. Haward and Brook being then Tenants of the Freehold of the ſaid Mannors, the reverſion to him againſt whom the recovery was, afterwards Haward and Brook dye, Hugh Bury enters, and let to the Plaintiff, &c. Two points were moved. 1. If the uſes expreſſed in the Indent' of Bargain and Sale were good? 2. If the Recovery ſuffered againſt him in the reverſion where the freehold was in a ſtranger, ſhall bind the Reverſioner and his Heirs? And the Court held clearly as to the firſt point, that the limitation to the uſes as this caſe is, was good. 2. That the recovery is good againſt him in the Reverſion and his Heirs, and they commanded Judgment to be entred accordingly. Poſt. 670. c. Co. 3 6. b.

Anonymus.

(2) THe Caſe was: The Lord granted the Freehold of a Copyhold to a ſtranger, the Copyholder being in poſſeſſion releaſeth to the Grantee all his right in the Land; the queſtion was, if this doth extinguiſh the Copyhold? Anderſon held it did not, and ſaid, it was adjudged that if Tenant for life releaſeth to him in the reverſion, this is void, for it cannot inure as a releaſe, for he is in poſſeſſion, nor can it inure as a ſurrender, for want of fit words; ſo of Leſſee for years, Dy. 251. and it is ſo in this Caſe. But Snagg ſaid, he knew it to be ruled in a Caſe of great importance, that notwithſtanding the words will not amount to a ſurrender, yet the conſent and agreement of the Leſſee, which is proved by the Deed, will amount to a ſurrender. 2 Cr. 169.

Anonymus.

(3) A Man condemned in Debt, renders himſelf to the Court, and prayeth his Sureties may be diſcharged, and the Plaintiff was demanded, for the Court ſaid he may elect either his body, or to take his goods in Execution, but by this offer the Sureties were diſcharged.

Sir John Souch his Caſe.

(4) HE made a Leaſe for years, rendring Rent, and a re-entry for not payment, and at the day a ſtranger came to demand the Rent; the Leſſee demanded of him what Authority he had of the
Moor. 141. Leſſor to demand it; and becauſe he was a cozening fellow, and one that was notoriouſly infamous, and would not ſhew any authority, the Leſſee would not pay the Rent, and thereupon the Leſſor entred, and his entry adjudged lawful, for a command to receive Rent may be per parols.

Anonymus.

(5) Audita querela. The queſtion was if the Conuſor ſhall be compelled to make mention of all the mean aſſignments of the Conuſee, &c. And the Court doubted. Anderſon ſaid that in the time of the Lord Dyer, the Caſe was, that Leſſee for years aſſigned over his term, and there were divers mean aſſignments. In Debt for the Rent, he ought to make mention of all the mean aſſignments; and becauſe the Plaintiff could not do it, he was compelled to Diſtrain and avow for the Rent, for he cannot ſay he let the Land
Co Lit. 121. a. to one whoſe eſtate the Defendant hath: ſo it is in Waſte.

Mores Caſe.

(6) DEbt. And declared that the Defendant had bargained with him to give him for the Paſturing of every Horſe by the night two pence, and of every Oxe one penny half penny, and ſheweth that he had Paſtured ſeventy Horſes and three hundred Oxen, Et ideo actio accrevit to demand, &c. and he demanded more then upon his own ſhewing it appeared he ſhould have, for the number of the Horſes and Oxen did not amount to the ſum of which he had counted; and this was alledged in Arreſt of Judgment, after Verdict found for the Plaintiff. And notwithſtanding Judgment
2 Cr. 569. was given for the Plaintiff, but Fenner ſaid that in Anſlows Caſe, he brought a Writ of Annuity, and demanded twenty Nobles, and it appeared by his own ſhewing, he was to have but nineteen Nobles, and the Writ was abated by award of the Court.

Audley

Audley *verſus* Suttrel.

EJectione firmæ. The Defendant Challenged the Array, becauſe the Sheriff was Couſin to the Plaintiff, which was confeſſed; but it was ſaid that the Sheriff is as neer of kin to the Defendant, and upon this it was Demurred, and by adviſe the Array was quaſhed. (7) Co. Lit. 156. a. Poſt. 663.

Anonymus.

DEbt againſt an Executor, who pleaded he had riens in ſes maines, but certain goods, diſtrained and impounded, it was adjudged to be no Aſſets to charge him. (8)

Termino

Termino Hillarii.
Viceſimo ſexto ELIZABETHÆ,
in Communi Banco.

Chamberlaines Caſe.

(1) AVowry for Rent, and made title to it, as Couſin and Heir to Ro. Chamberlaine, that is to ſay, ſon of Anne, daughter of Ro. and for Rent arrear for ſixteen years after the death of Anne he avowed; and becauſe he made title to it immediately as Heir of Rob. and after avoweth for Rent after the death of Anne, which cannot be, for it ſhall be intended that ſhe died in the life of Rob. and iſſue being joyned upon another matter, they were awarded to re-plead.

Wharton *verſus* Morley.

(2) NOta. Coke ſhewed to me a Report, which he ſaid he had from Edmund Plowden, of a Judgment in the Exchequer 7 Eliz. between the ſaid parties, that whereas a Prebend did give and grant his Land to King Ed. 6. and this deed was not enrolled, yet the grant was good and veſted the Land in the King, by the proviſo in the end of the Statute of 1 E. 6. for although it was not good at St. 1. E. 6. c. 14. Common Law, yet the Statute doth make it good, or elſe the Statute were in vain.

Stockbridges Caſe.

(3) THe Caſe was: Baron and Feme Copyholders, to them and St. 11. H. 7. c. 20. their Heirs, and the Baron in conſideration of money paid by him to the Lord, obtaineth an eſtate of the Freehold to him and his Wife, and to the Heirs of their bodies; the Baron dieth, having iſſue, the Feme enters, and ſuffers a Common Recovery, and his Heir enters by the Statute of 11 H. 7. and agreed the entry was Ant. 2. lawful, for the Copyhold by the acceptance of the new eſtate, was extinguiſhed.

Termino Paſchæ,
Viceſimo ſexto ELIZABETHÆ,
In Banco Reginæ.

Gibbon *verſus* Cordell.

(1) EJectione Firmæ. The Caſe upon ſpecial Verdict was, Heydon was ſeized of the Houſe and Land in queſtion, and came to Cordell to borrow 20 l. of him, and for aſſurance of the money, offer'd him the Houſe and Land in queſtion; and thereupon they agreed and went to the Houſe, and Heydon called the Tenants of the Houſe, which were Tenants at Will, and ſaid, Sirs, I have ſold my Houſe and Land to Cordell for Twenty pound, if I pay him not the money at ſuch a day; and if I pay him the money, I ſhall have the Land; and if I pay it not, then I cleerly bargain and ſell them to him; and puts Cordell into the Houſe, and locks the doors; and delivereth him the Keys, and ſaid to the Tenants, Take him for your Maſter. And it was argued by Godfrey and Snagg; and afterward adjudged it was a good Livery, and an Eſtate for life, at the leaſt, paſſed: But if a Fee paſſed, it was not queſtioned, becauſe Cordell was alive. 1 Leon. 18. Moor. 144. Co. Lit. 48. b.

Dowſes Caſe.

(2) A Leaſe was made to A.B. and C. for their lives, Habendum to A. for life, the Remainder to B. for life, the Remainder to C. for life. It was adjudged a good limitation, and they ſhall take according to the Habendum; for in the premiſes a Joynt-Eſtate is given only by Implication, which is controlled by the expreſs limitation in the Habendum. Co. Lit. 183. b. Poſt. 89.

Fiſher *verſus* Banks.

(3) AUdita Querela: For that the Plaintiff was in Execution in Debt upon an Obligation, and alledgeth it was made for Uſury money, contrary to the Statute of 13 Eliz. And becauſe it did appear to the Court, that he was condemned upon a Nihil dicit after he had made an Attorney and appeared; ſo that he might have pleaded this Plea in Avoidance of the Obligation, and then did not plead it: The Audita querela was diſallowed by the whole Court; for an Audita querela doth not lie after Judgment, upon a thing he might have pleaded before; but when he is condemned by default, and had no day in Court to plead it, there it lieth: And they ſaid, upon this reaſon they had over-ruled a like Caſe this Term. Ante 4.

Sir William More's Caſe.

(4) A Leaſe is made for years upon condition, that the Leſſee his Executors or Aſſignees ſhall not alien without aſſent of the Leſſor. The Leſſee dieth Inteſtate, and the Ordinary grants Adminiſtration to J. S. who aſſigneth without Licenſe: It was adjudged, Co.Lit. 210. a. that the condition was broken, for he is an Aſſignee in Law.

Lee *verſus* Vincent, Paſch. 26. Rot. 371.

(5) The Caſe was. John Lee deviſed his Land to Willam his Son in tail, and if he depart without Iſſue, that his Sons in Law ſhall 1 Leon. 285. 3 Leon. 10. 6. 1 Anderſ. 145. 1 Rol. 328. Moor 147. Co.Lit. 113. a. Poſt. 80. ſell it (having then five Sons in Law) and dieth, and after one of his Sons in Law dieth, then William dieth, having iſſue a Daughter, and afterward the daughter dieth without iſſue, the four Sons in Law that ſurvive ſell it; the queſtion was, if this ſale were good. Geo. Wyat argued for the Plaintiff, and Godfrey for the Defendant; the points were two. Firſt, for that the Son died, having iſſue, although the iſſue died without iſſue, if the ſale be good. Secondly, One of the Sons in Law was dead, and being an authority, it cannot ſurvive: But it was adjudged a good ſale, becauſe he named 1 Cr. 382. Co.Lit. 113. a. Poſt. 856. them not by their proper names. Godfrey ſaid it was adjudged 4 Eliz. where one deviſed his Land to his Wife for life, the Remainder to his Son in Tail; and if his Son dieth without iſſue, that his Executors ſhall ſell the Land by the adviſe of A. and B. and A. dieth in the life of the Son, the ſale after the death of A. is not Poſt. 525. 6. good; but if A. had aſſented in his life time, it had been good.

Roe *verſus* Hartly.

(6) It was held by all the Juſtices, that a Writ of Error doth not lie in the Common Place, upon an erroneous judgment given in any inferior Court of Record. And this was, as they ſaid, upMoor 78. on great advice. Fitz. N. B. Cont. 20. D. v. 8 Eliz. Dyer. 250.

Griffith *verſus* Moriſon.

(7) Action for theſe words, Where is that Bankrupt Knave, where is that Pillory Knave? (Innuendo the Plaintiff) and averred he was a Merchant; and the words were adjudged actionable.

Major and Burgeſſes of Windſors Caſe.

(8) A Capias ad Satisfaciendum was awarded to the Sheriff of Berks to Arreſt J. S. who was then in cuſtody of the Major and Burgeſſes of W. And thereupon the Sheriff awarded a Warrant to the Major, &c. to take him, and afterward they let him eſcape; and it was held clearly, that Debt upon the eſcape lieth againſt them, Poſt. 158. 743. and not againſt the Sheriff: So it is of a Bailiff of a Franchiſe.

Eſſon

Eſton *verſus* Wood.

(9) The Caſe was, The Defendant covenanted by Indenture with the Plaintiff, that whereas he intended to marry Elizabeth Smalwell a Widow, that he would pay all the Legacies which ſhe by her laſt will in writing, bearing date 1 May, 20 Eliz. did give and bequeath, and was bound by Obligation to perform the Covenants in the Indenture. In Debt upon the Obligation, the Defendant pleaded, that after the making of the Will and the Obligation, he inter-married with the ſaid Eliz. Smalwell; which marriage continued till her death, So the Will and Deviſe of Elizabeth was void, and demanded Judgment, &c. And it was adjudged, that the Plaintiff ſhall recover. For notwithſtanding it was not a Will to all intents and purpoſes, yet the Indenture referreth to that which did bear the name of a Will; and although it was not a Will indeed, it is not material. 1 Cr. fol. 22.

The Biſhop of Herefods Caſe.

(10) QUare Impedit, the Caſe was, The Patron preſenteh J. S. to the Biſhop, who gave notice to the Patron, that the Clerk was inſufficient; and thereupon the Patron preſenteth another Clerk, and the Biſhop admits the firſt that was preſented by the Patron, and withing the ſix months: And the Court held clearly, that the Biſhop was a diſturber; for he having once refuſed him for inſufficiency, cannot afterwards accept him.

Tanfield *verſus* Finch.

(11) INformation upon the Statute of 13 Eliz. for Uſury, It was held by all the Juſtices upon evidence to the Jury. Finch gave to Tanfield Five hundred ſixty and ſix pounds for an Annuity of One hundred and twenty pounds per annum, during Twenty three years; this is clearly no Uſury, when there was no communication before between them; to have any conſideration for the loan of the Five hundred ſixty and ſix pounds; for this Annuity was purchaſed Bona fide without any corrupt intent, or bargain: And if it had been Forty pound per ann. for Forty years for One hundred pound, it had been no Uſury, no more then if one for a hundred pound purchaſe Lands worth Forty pound per ann. Another matter was in this Caſe, That after the Grant of the ſaid Annuity of One hundred and twenty pound for Twenty three years for the ſaid Five hundred ſixty and ſix pounds in hand paid, Tanfield for the aſſurance of the ſaid Annuity Infeoffed Finch of Land worth One hundred pound per annum to the uſe of Tanfield and his Heirs; upon condition, that if the money were not paid, it ſhould be to the uſe of Finch in Fee: And all the Juſtices held it was no Uſury; for the Mortgage was only for the aſſurance of the Annuity. Nota, In Doctor Goads Caſe, Trin. 19 Eliz. in the Exchequer in an Information for Uſury, Popham and Plowden held, That if a man giveth One hundred pound for an Annuity of Twenty pound per annum; this is not Uſury, for he ſhall never have his ſtock of One hundred pound again: But Bell Chief Baron held clearly, if two men ſpeak together, and one of them deſireth the other to lend him One hundred pound, and for Co. 5. 69. b.

the loan of it, he will give him above ten pound per annum; and for an evaſion out of the Statute, they invent this practiſe, That he ſhall grant to the other thirty pound per annum, out of his Land for ten years; or he ſhall make a Leaſe for one hundred years to him, and the Leſſee ſhall regrant it to him, upon condition he ſhall pay thirty pound yearly; and every year during the ten years: In this caſe, the firſt Contract being corrupt in fraud of the Statute; this is Uſury, although he never hath his one hundred pound again. But if Bona fide one buyeth an Annuity of forty pound for ten years for one hundred pound; this is no Uſury, if the firſt Communication was not corrupt, Ex Relatione Edward Coke.

In Camera Scaccarii.

Thomas Mantell *verſus* Matth. Mantell.

(12) The Caſe was long debated in the Common-Bench, and afterwards brought into the Exchequer-Chamber by Engliſh Bill. Oliver Wood being Ceſtuy a que Uſe in Fee of the Mannors of Milton and Collingtree, in the County of Northampton, 13 H. 8. by his laſt Will deviſed, that his Feoffees after his death, ſhould ſtand ſeiſed of the Mannors, to the uſe of Sir Walter Mantell and Margaret his Wife, the Daughter and Heir Apparent of the ſaid Oliver, for term of their lives; and after their deceaſe, to the uſe of John Mantell their Son, and of the Heirs of his body; and for want of ſuch iſſue, to the uſe of the Heirs-males of the body of the ſaid Sir Walter and Margaret, which they ſhall afterwards lawfully have, with diverſ Remainders over. Oliver dieth, 13 H. 8. and afterwards Sir Walter and Margaret have iſſue Walter and Thomas: Sir Walter dieth 21 H. 8. afterward Jo. Mantell dieth without Iſſue, Margaret his mother living: And afterward, the ſaid Walter, the ſecond Son of Sir Walter and Margaret, (having iſſue the Defendant Matthew) was attainted of High-Treaſon, and executed 1 Mariæ; and 9 Eliz. Dame Margaret Mantell dieth, having no other iſſue, and the Plaintiff ſuppoſing the Land was forfeited by the Attainder of Walter the Son, obtaineth a grant of the ſame from the Queen by her Letters Patents; and ſued the ſaid Matthew for entring and claiming the Mannors, as to him deſcended as Coſin and Heir of the ſaid Sir Walter and Margaret, that is to ſay, Son of the ſaid Walter, Son of the ſaid Sir Walter and Margaret; and upon the whole matter diſcloſed, it was 27 May, in the ſaid Term, decreed by the Lord Treaſurer and all the Barons, that the Title of the ſaid Matthew was good, and the Land was not forfeited by the Attainder of Walter, he being executed in the life of Margaret, who only as long as ſhe lived, was Tenant in Tail; and this Land did deſcend to Matthew as Coſin and Heir of the body of Margaret, &c. V. 3. Co. 10. The Lord Lumley's Caſe.

Co. Lit. 392. a.

Termino Trinitatis,
Viceſimo ſexto ELIZABETHÆ,
in Banco Reginæ.

Rice Clampe *verſus* Edmund Clampe.

REplevin. The Defendant avowed for Damage-Feſant in the Land, which is parcel of the Manno of C. And that this Land was Copy-hold, parcel of the ſaid Manno, and of the nature of Borough English, and demiſed to Jo. Boreman and Margaret his Wife, and their Heirs, by copy of Court Rolls by the name of a Meſe, containing Twelve Acres of Land, and that Jo. Boreman died, and Margaret him ſurvived, and tooke to Husband Jo. Clampe, and had iſſue the Plaintiff, their eldeſt Son, and the Avowant their youngeſt ſon, and afterward M. died ſeiſed, and the Land deſcended to the Avowant, as youngeſt Son and Heir, by the cuſtom, &c. who entred and took the Cattel Damnage-Feſant. The Plaintiff by Replication, confeſſes the Grant to Jo. Boreman and Margaret, and that J. B. died, and Margaret ſurvived, &c. and took to Husband the ſaid Jo. Clampe, and had iſſue the Plaintiff and Defendant; but ſaid, That the ſaid Jo. Clampe and Margaret ſurrendred the ſaid Land per nomen of the Reverſion, after the death of the ſaid Jo. Clampe and Margaret, to the uſe of the Plaintiff and his Heirs, who was admitted accordingly; and afterward the ſaid Margaret died, and Jo. Clampe did ſurvive; and afterwards the ſaid Jo. Clampe died, the Plaintiff entred Abſque hoc, That the ſaid Land did deſcend to the Defendant, as puiſne Son, &c. And upon this Replication, it was demurred in Law. Coke for the Avowant prayed Judgment. First, For the matter in Law, the Plaintiffs Plea is not ſufficent; for he pleaded a Surrender of the Land by the name of a Reverſion, after the death of the Baron and Feme; and by that pretence, there ſhall be a particular eſtate left in the Feme, and alſo in the Baron; whereas the Baron had nothing before, which cannot be; for the Surrender is void. For when one is ſeiſed in Fee, he cannot by any matter in fact give away the Inheritance after his death, and ſo leave a particular eſtate in himſelf; but peradventure it may be done by matter of Record, and of that opinion was the Court, 38 H. 6. 8 H. 7. And it is abſurd, that by a meer Grant the Baron ſhould have an Eſtate for life, who had nothing before. Secondly, He ſaid there was an apparent fault in the pleading, for the Avowant pleads, That Margaret died ſeiſed, and the Land deſcended to him; and the Plaintiff in his Replication traverſeth the Deſcent, and not the dying ſeiſed, 14 H. 8. 23. And the Avowant had Judgment at the end of the Term. Nota, It was moved

(1)

Hob. 171.
2 Cr. 376.
Poſt. 255.

Co. l. 1. 10. a.

moved, that the Twelve Acres could not paſs by the name of a
Poſt. 89. Meſe; but the Court gave no regard to it.

Hering *verſus* Blacklow, Paſch. 26. Rot. 441.

(2) REplevin. The Defendant avows the taking of the Cattel Dammage-Feſant in a certain parcel of Land, parcel of the Manor of S. and ſheweth that Dame Frances Jerningham and Henry Jerningham were ſeiſed of the ſaid Manor in Fee, and let the Land in which, &c. to him for One and twenty years, and ſo avowed the taking, &c. The Plaintiff in Bar to the Avowry ſaith, That long time before the ſaid Frances and Henry were ſeiſed of the ſaid Manor, King Henry the Eighth was thereof ſeiſed in Fee, and that this Land was demiſed and demiſable by Copy of Court Roll, &c. And that King Henry the Eighth did demiſe this Land to the Plaintiff by Copy of Court Roll in Fee; which matter he was ready to aver, &c. And upon this it was demurred. Godfrey alledged the cauſe of the Demurrer; for that the Plaintiff in his Replication ſaid, that King Henry the Eighth was ſeiſed, &c. and demiſed to him, &c. and doth not traverſe the Seiſin in Fee in Frances Jerningham and Henry Jerningham: And it may be they came to the Land by good Title of Puiſne temps, as the Land might be forfeited unto the Kings hands, &c. And in Carews Caſe 5 H. 7. one pleaded in Bar a Feoffment of J. S. and gave colour to the Plaintiff; the Plaintiff replieth, That long time before J.S. infeoffed the Defendant, he infeoffed him; ſo he was ſeiſed until diſſeiſed by the Defendant: This is ruled no good Plea, without a Traverſe or Confeſſion how J.S. came to the Land afterward. Coke contra: The Replication is good enough; for he hath by Nient dedire confeſſed, that Frances and Henry were ſeiſed; and he had a good Title by the Copy, before their Title: And ſuch
Co. Lit. 303. a. 304. a confeſſion by Nient dedire, is good, 4 Ed. 3. Replication accordingly. But the Juſtices ſaid, that in the time of Ed. 3. the Judges had no great regard to pleading. And Wray ſaid, that ſince that Book the Law hath been taken otherwiſe; and there is no queſtion, but where the Defendant doth alledge Seiſin in one from whom he claimeth, the Plaintiff cannot alledge Seiſin in another from whom
Poſt. 278. 359. 384. 651. 754. he claimeth, before the Seiſin of, &c. without traverſing, confeſſing, or avoiding the Seiſin alledged by the Defendant; and Judgment was commanded to be entred for the Avowant.

Morton's Caſe.

(3) TReſpaſs againſt M. for entring into his houſe, and taking away his goods. The Defendant pleadeth, that the Treſpaſs was done by him and J. S. and the Plaintiff had brought Treſpaſs againſt J.S. and recovered againſt him, and had Execution, and is ſatisfied, and demands Judgment if he might impeach him, &c. And upon this it was demurred. Plowden moved, that this was a good Plea; for when a Treſpas is done by two, this is Joynt, and it is alſo ſeveral: So that if the party be ſatisfied by one, this is a diſcharge againſt the other, and the Treſpaſs is ſo Joynt,
Co. 11. 5. b. Hob. 164. that if the Plaintiff doth confeſs that the Defendant and another did the Treſpaſs, the Writ ſhall abate; for it ought to be brought againſt both, 8 Hen. 5. 9. 2 Hen. 7. 16. Foſters Caſe, 21 Edw. 4. 22 Ed. 4.

and

and in 2 Rich. 3. A difference is taken between a Treſpaſs by two, and a Felony by two: For a Felony by two, is always ſeveral; and a Pardon of one, is no diſcharge of the other. Wray conceived it reaſonable, that the Execution and Satisfaction by one ſhould diſcharge the other. Gaudy Contra: For the Treſpaſs is always in it ſelf ſeveral, and when the Plaintiff hath recovered againſt one, and is ſatisfied for the damages he hath done to him; this is nothing to the Treſpaſs done by the other: But a releaſe to one, is available to the other; for by the releaſe he acknowledgeth himſelf ſatisfied. Clench, If one command three to do a Treſpaſs, and they do it, and a recovery is had againſt him, and he being in Execution doth ſatisfie the Plaintiff; this is a good diſcharge of the others: For the commander was the principal Treſpaſſer, and the others did it but as his ſervants; which Gawdy ſeemed to agree, Et Adjournatur. Hob. 66. Lit. Sect. 376.

Pinner's Caſe.

(4) HE was indicted, that being Coronor of Ludlow only, Cepit Inquiſitionem ſuper viſum corporis infra metas & hundredas Comitat' Hereford. And becauſe it was not alledged where the Inquiſition was taken, nor by what perſons, nor their names, nor that they were ſworn, The Inquiſition was held to be void, and the party diſcharged.

Anonymus.

(5) J. S. was indicted for entring upon a Copyholder with force againſt the Statute of 8 H. 6. And the force was removed, and he was reſtored to the poſſeſſion by the Juſtices of the Peace; and afterward this Indictment was removed into the Queens Bench by Certiorari; and the party traverſed it, and it was found for him: And in the mean time a ſtranger recovered the Land by a Claim in nature of a Writ of Droit Cloſe, in the Court of the Lord of the Manor, and was put in poſſeſſion. And the queſtion was, If the party for whom the Traverſe of the Indictment was found ſhall be reſtored to his poſſeſſion, againſt him that had recovered in the Lords Court. And it was adjudged, that he ſhall be reſtored, for otherwiſe he ſhall not have the effect of his ſuit; and this Court ſhall take no regard of the Recovery in the Lords Court, De puiſne temps, of which they have no matter of Record before them. 8 H. 6. c. 9.

Smith's Caſe.

(6) ACtion for words. For that when as R. Smith was attainted of Felony, and ſhewed that the Defendant ſaid, You (Innuendo the Plaintiff) have done as ill, and worſe; and it will coſt you as much to be quit as it coſt him. Gawdy ſaid, the Action lieth not, for the words are incertain; for it may be when he ſaid, You have done as ill, or worſe, He intended he had done ſome great offence before God; and for uncertain words, an Action lieth not; but the other Juſtices doubted; Et Adjournatur. And in this term, Rhodes Serjeant, moved if theſe words, Thou art a Knave, and a Pillory Knave, are actionable, and the Court conceived they were not. Ant. 11. c.

Wencomb's

Wencomb's Caſe.

(7) A Maketh a Feoffment to B. of Lands, and it was covenanted by Indenture between them, That if A. doth pay to B. at the Feaſt of St. John Baptiſt Forty ſeven pounds, that the Feoffment ſhall be to the uſe of A. and his Heirs, and if he faileth of payment, and B. doth not pay Twenty pounds at Michaelmas, that then alſo the Feoffment ſhall be to the uſe of A. and his Heirs, and covenanted to make further aſſurance; and afterward both A. and B. fail of payment at the days: And afterward in Hillary term next following both the Feaſts, a Fine is levied to the Feoffee, and no uſe expreſſed; and all this was found by ſpecial Verdict, and that the Fine was only to the uſes of the Indenture. The queſtion was, whether the Conuſee of the Fine, or the Heirs of the Feoffor would have the Land? and it was adjudged for the Heir of the Feoffor.

Sir John Peter *verſus* Knoll.

(8) TReſpaſs. For taking an Ox, May the firſt, and ſelling it, and converting the money to his own uſe: Upon not guilty pleaded the Jury found, that the Plaintiff ſeized the Ox as a Heriot-ſervice long time before the Treſpaſs; and afterward, and before the Treſpaſs ſuppoſed, the Defendant as Executor of J. S. (whoſe the Ox was) took it, and ſold it, &c. And as to that, that it was found that the Treſpaſs was done before the day, which the Plaintiff ſuppoſed, the Court held it not material; For being once a Treſpaſs, it is always a Treſpaſs. And to the other matter, whether the Lord may ſeiſe a Heriot-ſervice? Wray ſaid he might; for this is a
Hoſt. 590. ſervice which lieth not in render; but in prender; and the Lord is to have the beſt Beaſt, and it is at his election, which he will take for the beſt; and it is inconvenient, to put him to diſtrain, when he may ſeize: And ſaid, it hath been ſo adjudged.

Harris's Caſe.

(9) HE was indicted upon the Statute of 8 H. 6. and the Indictment was removed by Certiorari; and becauſe the Indictment was thus, He made Entry with force, and doth not allege of what Will, or County the party was; the Indictment was abated, for Proces of Utlary lieth upon it.

Hill's Caſe.

(10) EJectione Firmæ. And declared of a Leaſe made to him by J. S. the Defendant conveyeth to himſelf a Title by Leaſe, before that Leaſe; and it was held no Plea, for it mounts but to a General Iſſue.

(11) Error upon a Judgment given againſt the Father; the Defendant alledged, that the Plaintiff had an elder brother in full life at ſuch a place, viz. in M. in the County of Stafford. And upon this they were at Iſſue, and the Ven' fac' was of Viceneto de M. and the Sheriff
Poſt. 201. returned, there was no ſuch Will'; and the Court held clearly it
Co. 6. 14. b. was no good return, for he ought to make the Pannel De corpore Comitatus 37 H. 6. 11. Accord.

Grave

Grave *verſus* Grave.

IF an infant brings treſpaſs by Guardian, and afterwards he was non-ſuit, he ſhall render no coſts; per curiam, abſente Wray. (12)

Long's Caſe.

A Niſi prius was granted after iſſue, and afterward a Superſedeas was awarded, and notwithſtanding the party proceeds with the niſi prius the Juſtices not knowing of the ſuperſedeas, and the Iſſue was tryed for the Defendant, and now this Term the Plaintiff prayeth a new Niſi prius and upon the ſame ven' fac' that the former was, for the trial upon the firſt was void, and coram non judice, for the Juſtices had not power to proceed by reaſon of the ſuperſedeas. And a Niſi prius de novo was granted; but the Juſtices ſaid that the Plaintiff is to take good heed, that he hath none of the principal pannel which paſſed in the firſt Trial, for it is a principal challenge that he was in the firſt Trial. (13) 2 Cr. 43.

PEriam Juſtice ſaid, he had ſeen a preſident in the time of King H. 8. that where a Citizen of London ſued another Citizen in the Common Bench; and the Major and Aldermen of London would have him put the matter to compromiſe, which he refuſed, whereupon they did Diſfranchiſe him, and he ſhewed this matter to the Court, and thereupon they directed their Writ to the Major, &c. to reſtore him to his Franchiſe, they aſſeſſed a Fine of an hundred Marks upon every of them that were parties to the Diſfranchiſement, which they payed, as appeareth by the Record, and the Citizen was reſtored to his Franchiſe. (14) Co. 11. 98. a.

Nota, The laſt day of this term a preſident was ſhewn to the Court, which was Mich. 5. H. 5. rot. 484. An Audita querela was brought in this Court, and becauſe the Record was not brought into Court, ſo as the party might have execution if the matter was found for him, for this cauſe the judgment was that querens nihil capiat per breve. (15)

Syms Caſe.

NOta. It was held by the Juſtices, that if two joyntenants be of a Term, and the one grants parcel of the term to a ſtranger, by this the joynture of all is ſevered; yet Manwood agreed that if a man be poſſeſſed of a term in the right of his Wife, and grants parcel of it to another, yet after the death of the Baron, the Feme ſhall have the reſidue of the Term that was not granted, and it ſhall be only an alteration of what was granted. (16) Co. Lit. 46. b. Poſt. 279.

Maldon's Caſe.

NOta. If one ſaith to me, You ſhall have a Leaſe of my Lands in D. for twenty one years, paying therefore ten ſhillings per annum; make a Leaſe in writing, and I will ſeal it; this was agreed to be a good Leaſe by Parol, although no writing be made of it, for the intent of the Leſſor is ſufficiently expreſſed, and the making of it in writing is but for further aſſurance. Ex relatione Lewis. (17) Moor 8. Poſt. 486.

Termino Michaelis,
Viceſſimo ſexto & ſeptimo ELIZABETHÆ,
In Banco Reginæ.

Anthony Mildmay and Grace Uxor ejus *verſus* Standiſh.

(1) Moor 144. Co. 1. 175. 177. Co. Ent. 30.

ACtion ſur le Caſe. The Plaintiffs declared that they were ſeized of the Mannor of Sacoke, &c. and had ſpeech with I.S. concerning the making of a Leaſe to him for twenty one years, for which he was to give an hundred pound for a Fine, that the defendant knowing of it, ſaid to I.S. That one Jo. Talbot and Oliffe his wife had a Leaſe of it not expired for a thouſand years, & theſe words were ſpoken by the Defendant to the intent to take from the Plaintiff the Fine agreed upon, and that by reaſon of theſe words I. S. would not accept of the Leaſe. The Defendant pleads in bar that Sir Hen. Sherington was ſeized of the Land in Fee, and by Indenture covenanted with, &c. V. 1. Co. 175. and Cokes Entries 30. the whole pleading of the Caſe. And Paſ. 26 Eliz. it was argued by Fenner and Gawdy Serjeants for the Plaintiff, and by Walmſley and Puckering Serjeants for the Defendant, and afterwards, Trin. 26 Eliz. Gawdy prayed Judgment for the Plaintiff. And the Lord Anderſon ſaid they were all agreed that Judgment ſhall be given for the Plaintiff, and ſhewed briefly that the cauſe of their Judgment was, that this is an unreaſonable Leaſe and not Warranted by the proviſo, and it was adjudged accordingly; and afterwards Mich. 26 & 27 Eliz. A Writ of Error was brought in the Queens Bench, and after argument by the Council, Wray ſaid, that they were agreed to affirm the judgment; and that the reaſons that moved them, were principally three. Firſt, by the Indenture there are equality of eſtates in the Land, and equal parts conveyed to the three daughters, with a proviſo by his will in writing to limit any part for payment of his Debts and Legacies, preferment of his ſervants, or other reaſonable conſiderations as to him ſhall ſeem good; and this demiſe for a thouſand years is not reaſonable, for the Intent of the Indenture was the advancement of his blood, &c. and for the advancement of Grace and Oliffe his daughters, and this Leaſe for a thouſand years can be no advancement to the blood of Sir Henry Sherington, for it ſhall go to the Husband of Oliffe if he ſurvive; and if he doth not it ſhall go to the Executor, &c. of Oliffe after her death, and by no poſſibility can this Chattel go to the heirs or blood of Sir H. Sh. but ſhall go to ſtrangers. Secondly, Grace the wife of the Plaintiff is to have a third part by the firſt part of the Indenture, and by this Leaſe all her intereſt in effect is taken away, which is againſt the intent of the Indenture, and the conſideration was the preferment of

Poſt. 197.

Co. 1. 177. b.

Grace

Grace that was married to the Plaintiff, which was a great advancement to her, and for the preferment of the Heirs males, and heirs generals, and by this Leaſe it is wholly taken away, as if one giveth Land in Tail, provided he ſhall take the profits of parcel of the Land for a thouſand years, this is a void proviſo, for by common preſumption it taketh away the benefit and intereſt of the Grantee in that parcel. And thirdly, this word (reaſonable) is greatly to be conſidered, and ſhall be expounded ſtrictly, eſpecially in a proviſo; for if by this proviſo Sir H. Sh. had given to a ſervant being his Yeoman, Ten pound per annum for life, this had been reaſonable; yet if he had given him an hundred pound per annum, it had been unreaſonable; for in the firſt Caſe, although Ten pound per annum be a great ſum, yet it may be the ſervant was ſo faithful and honeſt as he might deſerve it. Alſo every grant ſhall be expounded as the intent was at the time of the grant; as if I grant an Annuity to I. S. until he be promoted to a competent Benefice, and at the time of the grant he was but a mean perſon, and afterward is made an Arch Deacon, yet if I offer him a competent Benefice, according to his eſtate at the time of the grant, the Annuity doth ceaſe; And for theſe reaſons and others known to them, the judgment was affirmed. Co. 1. 177. 2.

Croker *verſus* Trevithin.

(2)

The Caſe was: Lands were given in Tail, upon condition if the Donee or his heirs diſcontinue the Land, the Donor ſhall re-enter: the Donee hath iſſe two daughters and dieth; the daughters have iſſue two ſons, and die; one of the ſons diſcontinues the Land to another; and it was held by the Court to be a breach of the condition. Lit. Sect. 362. Poſt. 163.

The Aldermen of Cheſterfield's Caſe.

(3)

The Queen maketh a Leaſe for years of Land to the men of Cheſterfield, rendring Rent, and the grant was to them by the name of the Aldermen of Cheſterfield; and they by the name of Aldermen of Ch. grant all their intereſt to Clarke in the ſaid Land; and it was agreed by the Court that the grant by them was void, for they by the grant of the Queen have capacity to take, but not to grant the Land to another. Poſt. 363. Co. Lit. 3. a.

Termino Hillarii.
Viceſimo ſeptimo ELIZABETHÆ,
in Communi Banco.

Thomas James *verſus* Landon, Intr' Tr. 24. Rot. 1232.

(1) Moor 181. Co. 4. 54. a. Co. Lit. 47. b.

SEcond Deliverance. The parties were at Iſſue, if it were the Freehold of the Plaintiff or of the Defendant. The Jury found a ſpecial Verdict, That I. S. was ſeized of the Land and Infeoffed George James in Fee, who died ſeiſed, and the ſame deſcended to the Plaintiff, and that afterwards the Defendant let the Land to the Plaintiff by Indenture for twenty one years, and that the twenty one years are expired, and prayed the diſcretion of the Court, &c. And the Juſtices ſhewed their Opinion briefly. Periam puiſne Juſtice, this Eſtoppel ſhall endure no longer than the Leaſe, for after the term expired the Indenture is but an Eſcrow and a piece of Parchment or Paper (quære de hoc, for Covenants or Debt may be brought upon the Indenture after the term expired, &c.) And he ſaid the Difference hath always been between an Eſtoppel by Record and by Indenture, for if one brings an Action of Waſte againſt a Tenant in Fee-ſimple, and ſuppoſeth he held of him for years, &c. and the Tenant pleads null waſte fait; this Eſtoppel remaineth after the years expired; Windham accorded, for it is not reaſonable that by this negligence, another ſhould have his Land for ever. Meade accordant, and ſaid it was Ruled in Brights Caſe, that the Jury are not bound to find an Eſtoppel. Anderſon, after the Term expired the Plaintiff may confeſs and avoid the Leaſe, and afterwards the Plaintiff had Judgment. V. 4. Coke 54. Nota Mich. 9. & 10. Eliz. Pleadals Caſe in Banco Reginæ. The Caſe was, a Leaſe was made to Father and Son for eighty years, and afterward the Father let the Land to the Son for fifty years by Indenture, upon condition that if the Father paid Twenty pound at ſuch a day, &c. the Leaſe ſhould be void, as if it were never made; the condition was performed, the Father enters, and Deviſeth the Land to two other of his Sons, and dieth; they enter upon the Son who

Co. Lit. 47. b.

Moor 96. 2 Leon. 159.

who took the Leaſe, and he reoueſteth them, and they bring an Ejectione firmæ. And this matter was given in evidence at the nili prius in the County, and the Jury found againſt the Plaintiff; upon which they brought an Attaint, and Aſſigned the Faux Serement in this, that they found againſt them, whereas they ought to find for them. And the Opinion of the Juſtices was, that the Son who took the Leaſe was Eſtopped to claim any other Eſtate than for fifty years, and the Eſtoppel continued after the fifty years expired, and thereupon the Grand Jury found for the Plaintiffs, and they recovered their Term and Damages, Ex relatione Lewis. Nota. If one taketh a Leaſe of his own Land of an Infant or Feme covert by Indenture, this is no Eſtoppel, for in Eſtoppels both parties are to be Eſtopped, which the Infant and Feme covert are not.

Co. 4. 53. b. Co. Lit. 227. a. Poſt. 140. Co. Lit. 352. a.

Termino

Termino Paſchæ,
Viceſimo ſeptimo ELIZABETHÆ,
in Communi Banco.

Morris *verſus* Smith & Paget, Intratur Trin. 25. rot. 731.

(1) LIncoln Replevin. A ſpecial Verdict was given, that Sir Francis Aſcough was ſeiſed in Fee of the Mannor of Caſtor, which did extend into the Towns of North-Kelſey, South-Kelſey, Holton and Grisby, and that in every of the ſaid Towns he had demeſne Land, and ſeveral Freeholders which held of him as of the ſaid Mannor, and that Morris the Plaintiff was ſeiſed of the Lands in which, &c. and they did lie only in the Town of North-Kelſey, and held them of the ſaid Sir Francis, as of his Mannor of North-Kelſey by fealty, &c. and ſuit at Court de tribus ſeptimanis in tres ſeptimanas yearly; That Sir Francis being ſo ſeiſed, &c. by his Deed indented and Enrolled, &c. bargained and ſold to Ralph Bard, Eſquire in Fee, Totum illud ſuum manerium ſive dominium de North-Kelſey in North-Kelſey, and all his Lands, Tenements, Rents, Reverſions, Services, Wards, Eſcheats, &c. Et omnia alia ſua, regalitates, conſuetudines, & hæreditamenta quæcunque ſituat' & exiſtent' in North-Kelſey; and that Jo. Morris being the Tenant of the Land in which, &c. Th. Smith and others Freeholders in the ſaid Town of North-Kelſey atturned to the ſaid Ralph Bard; and if R. Bard had a Mannor in North-Kelſey to hold a Court, they prayed the diſcretion of the Court, &c. (Nota, the diſtreſs was for not doing ſuite at Court.) Periam Juſtice, held that Bard had no Mannor in North-Kelſey, for Sir Francis Aſcough had no ſuch Mannor, but his Mannor was the Mannor of Caſtor. And if I have a Mannor in two Counties, and have Demeſnes and ſervices in both, and I grant my Mannor in one County, the Grantee hath no Mannor, for I had no ſuch Mannor; and in conveyances things muſt paſs by their proper names, and a Mannor cannot be made at this day, neither by a common perſon or by the Queen. And he ſaid, a Caſe was adjudged in the time of Queen Mary to this purpoſe. The Statute of 1 Ed. 3. Ordained that the Kings eldeſt ſon ſhall be Duke of Cornwal, afterwards the King by his Letters Patents did annex the Mannor of M. in the County of Wilts to the ſaid Dutchy. King H. 8. (there being then no Prince) had the Dutchy in his own hand, and let the ſaid Mannor of M. to I S. for twenty one years, and afterward Prince Edward was born, and Duke of Cornwal by birth; it was adjudged the Leaſe was good: for King Edward could not by his Letters Patents make

make the Mannor parcel of the Duchy, for that muſt be by preſcription. And if the Queen granteth Land to hold of the Mannor of Greenwich by certain Services, theſe Services are not parcel of the Mannor but by reputation; and a Mannor is a thing entire which cannot be divided, but by Act in Law, as between Partners, 26 H. 8. 4. but if two joyntenants make partition at this day of a Mannor, and each of them hath Demeſne and Services, yet each of them hath not a Mannor, nor can keep ſeveral Courts, but muſt both keep one Court. And in the Caſe at Bar, there never was a Court kept for the Mannor of North-Kelſey. And if I have a Mannor which doth extend into A. B. and C. and Demeſnes and Services in all the Towns, and I grant all the Mannor in A. the Grantee hath a Mannor, but I have none in the other Towns, but have the Services in groſs, 9 Ed. 4. but if the Mannor of D. extend into A. B. and C. and in each of them there be Demeſnes and Services, and I grant all my Mannor in B. the Feoffee hath no Mannor, but the Mannor remaineth with me. Poſt. 239.

Wyndham contra. Though a Mannor cannot be made at this day yet a Mannor may be divided; and although it was objected, that the Grant is totum ſuum manerium de North-K. and ſo the ſentence is falſe, for he had no ſuch Mannor, yet he ſaid the grant was good, for the word ſuum was ſuperfluous; as if an Executor hath power to ſell the Mannor of D. and he ſells it by the name of all his Mannor of D. yet the ſale is good; ſo if ceſty que uſe before the Statute, had ſold totum ſuum manerium de D. and here is no creation of a Mannor, but a dividing of it; and although a Seigniory or Appendancy cannot be made at this day, yet if an Advouſon be appendant to a Mannor, and the Lord grants part of the Mannor with the advowſon to I. S. it is now appendant to that part, 43. Ed. 3. 12. and the Caſe of 9 Ed. 4. is that by the grant or recovery of a Mannor in one Town, the Feoffee or recoverer of the Mannor in one Town, hath a Mannor there, and the grantor, &c. hath a Mannor in the other, and the grant of the Mannor of North-K. and of the Mannor in North-K. is all of one effect; and a Court Baron is not tied to any particular place, but may be held ſometimes in one place, and ſometimes in another. And as to the objection, that if I may make of one Mannor two Mannors, by the ſame reaſon I may make twenty; he ſaid ſo I may, and it is no michief, and it is better for the Tenants and Suitors the nearer the Court is to them; and Anderſon accords. He conceived the conveyance in ſubſtance was good enough, yet the form of it might have been better and more conſonant to the Law, if the grant had been, totum manerium ſuum de Caſtor in North-Kel. and the Mannor had more aptly paſſed; and here the grant is of the Mannor, and of all his Hereditaments in North-K. and by this word (hereditament) the Mannor will paſs. And he agreed that a Mannor cannot be made at this day, and that the Queen cannot make a thing parcel of a Mannor at this day; as if ſhe grants Lands to hold of her as of her Mannor of Green. by a certain Rent, this Rent is not parcel of the Mannor. Nota, Mr. Bard ſaid his conveyance was made by Wray and Manwood, and that their opinion, and the opinion of Carell of the Inner-Temple was clear that the grant was good to convey a Mannor in North-K. and that Carell held, that by force of this grant he might keep a Court-Leet in North-K. for there was a Leet within the Mannor of Caſtor, and this might be well divided. Ante 19. Poſt. 210. Poſt. 103. Co. 4. 26. b.

Termino

Termino Trinitatis, Viceſſimo ſeptimo ELIZABETHÆ, in Communi Banco.

Lovelace *verſus* Lovelace.

(1) Moor 371. 2 Leon. 35. 1 Anderſ. 132. Co. Lit. 27. b. Co. 7. 41. b. Poſt. 478.

WAſte. The Caſe was: I.S. being ſeiſed in Fee of Land, deviſed it to I.D. and to his eldeſt iſſue male (he having no ſon at that time) it was adjudged no eſtate tayle, but for life only; and if he then had a ſon, it was all one: but a deviſe to one and his iſſue-male, is an eſtate tail; but here the word Eldeſt will not permit that conſtruction.

Edward Hyde *verſus* Morley, Intrat. Mich. 26. & 27. rot. 1602.

(2) 2 Cr. 449.

AUdita querela againſt the Defendant for ſuing Execution againſt the Plaintiff of the Manor of Wakeley in the County of Hertford upon a Statute Merchant of a thouſand pounds, which one Edward Halſide did acknowledge to him, and ſhews that the ſaid Halſide was at the time of the Statute ſeiſed of the ſaid Manor, and afterwards ſold it to the Plaintiff, and the Plaintiff being thereof ſeiſed, the Defendant by his Deed, &c. remiſit & relaxavit to the Plaintiff totum & quodlibet jus titulum, intereſſe, & demanda quæcunque the ſaid Morley habuit, habet, vel habere debuit, vel debet, de & in manerium prædictum, &c. Necnon omnes & omnimodas actiones, ſectas, executiones, & demanda quæ ipſe, vel hæredes, executores, &c. tunc habuere, vel habere poſſint, de aut verſus præmiſſa, vel verſus prædict. Ed. Hyde, &c. pro vel concernent' aliquam materiam ratione præmiſſor, &c. And upon this it was demurred, and the Caſe was argued by Fenner for the Plaintiff, and Walmſly for the Defendant; and it was adjudged that this releaſe was a good bar of the Execution upon the Statute. V. Paſ. 39. B. R. Plac. 2 contra adjudged.

2 Cr. 449. Co. 8. 154. a. 2 Rol. 470. Poſt. 552.

Clare *verſus* Pepys.

(3)

WAſte. and declared that P. was ſeiſed in Fee of the Land, and made a Feoffement to the uſe of himſelf for life, the remainder to the uſe of A. the mother of the Plaintiff in Fee, that A. died, and the remainder deſcended to the Plaintiff; and for waſte done after her death, the Action was brought; the Defendant pleaded that he was ſeized in Fee absque hoc that he made a Feoffement, &c. And the Jury found that he made a Feoffement, and that it was to the uſe of himſelf for life without impeachment of Waſte, the remainder Ut ſupra. And it was moved, that this Verdict was for the Defendant, and although it was not found that he was

was ſeiſed in Fee; yet it being found, that he held for life without Impeachment of Waſte, it appeareth to the Court, that the Plaintiff hath no cauſe of Action: and of that opinion was Windham, but the other Juſtices contra; for they ſaid, the Jury have found more then they needed, and compared it to the caſe of 8. 1. where the Defendant hath matter of Juſtification, and doth not plead it: And the Plaintiff had Judgment. Co. Lit. 282. a. 12 H. Poſt. 69. 79. 140. 283. 431. 481. 506. 634.

Foxes Caſe.

NOta, Juſtice Rodes ſaid, That in that caſe it was adjudged, where a Miniſter was deprived for an offence Tempore Parliamenti, and the offence was afterwards pardoned by Parliament, and then the Parliament ended; the Deprivation was utterly void: for the pardon relateth to the firſt day, and the party need not ſue to Reverſe the Deprivation. (4) Poſt. 789. Co. 6. 14. a.

Anonymus.

DEbt was brought againſt I. S. as Executor, and pending this Action, J.D. brought Debt againſt him as Adminiſtrator, for a true Debt, (whereas in truth he was Executor) J. S. confeſſed the latter Action, and pleads this Recovery in bar of the firſt action: And it was reſolved to be no good Plea. 1. Becauſe the Recovery was had againſt him as Adminiſtrator, and ſo is void, although this had been only a Plea to the Writ: and a ſtranger ſhall not falſifie that which is only to the Writ. 2. He that firſt ſueth ſhall firſt be ſerved, and the Executor might have pleaded the firſt Action againſt him that brought the ſecond. (5) Poſt. 471. Dr. & St. 77 a.

Termino Michaelis,

Viceſſimo ſeptimo & octavo ELIZABETHÆ,

in Communi Banco.

Sidnam *verſus* Worthington

(1) Poſt. 59. ASſumpſit, And declares, that whereas one Hulledge was ſued in the Queens Bench by Cheeke, and the Plaintiff at the inſtance of the Defendant became ſurety for him, that Cheeke recovered, and had execution againſt the Plaintiff; the Defendant afterwards promiſed the Plaintiff, that if Hulledge did not pay the money which the plaintiff had paid to Cheeke, that the Defendant would pay it; and avers that H. did not pay it, nor the Defendant upon requeſt, &c. And upon the firſt motion, Wyndham and Anderſon held the action did not lie; becauſe Poſt. 138. the promiſe was not made at the time of the requeſt: Anderſon ſaid That if I promiſe one that hath ſerved me, I will give him ten pound, it is Nudum pactum. Periam and Rhodes, contra. And Rhodes ſaid in the Caſe put by Anderſon, if I require one to ſerve me, and he doth ſo for one year, and after the year, I promiſe him in conſideration he hath ſerved me, to give him ten pound, an Action lieth. Poſt. 94. But if one agreeth to ſerve me for a year for twenty ſhillings for his wages, and after the year, I pay him the twenty ſhillings; and in conſideration of his ſervice, do promiſe to give him twenty ſhillings more; this is no conſideration, And the principal caſe being moved again, at another day, all the Court held it a good conſideration, by reaſon of the requeſt precedent; and the Plaintiff had Judgment. Yelv. 41. 2 Cr. 19. Poſt. 1. 194. 282.

Greene *verſus* Ardene.

(2) DIſceit for not Summons in a Formedon in Remainder. The Summoners and Ueyors were examined by the Court, as it was held they ought to be, and not by the Clerks, whether they ſpake the words, or the Bailiff, and at what time; and it appeared they did it after Sun-ſet: And by all the Court, the Summons was not well made. But they ſaid, that an Arbitrement made in the night, was good, Nota. It was ſo adjudged between Franklin and Davies, Intratur Mich. 12 & 13 Eliz. Rot. 1330. in this Court, where in

Debt

Debt upon an Obligation, conditioned to ſtand to the Award of Serjeant Lovelace and Manwood; ſo as the ſaid Award be made before the ninth day of October, &c. and it was made the eighth day of Octob. at ten of the Clock in the night, and ruled good, for dies naturalis comprehends the day and night, And Paſch. 26 Eliz. in this Court, between Samms and others, where the condition of the Obligation was to ſtand to the Award of Mr. Lewknor: So as the ſaid Award be made before the 21 day of July, &c. ready to be delivered to the parties requiring the ſame; and he made the Award upon the 20 of July, at ten of the Clock in the night; and the making of the Award in the night, was ruled good; but the doubt was, Becauſe the Condition was ready to be delivered to the parties requiring the ſame; and it was not a ſeaſonable time to require it in the night. And Fleetwood ſaid in the principal Caſe, That it hath been adjudged, that a Letter of Attorney being to deliver Seiſin, and he doth it in the night, that it was good. Poſt. 676.

Brightman *verſus* Keighly.

(3)

DEbt againſt the Defendant, as Executor to J. S. he pleaded fully adminiſtred, &c. And upon a ſpecial Verdict, it was found that J. S. made the Defendant his Executor, being then within age; and thereupon the Ordinary committed Adminiſtration to A. and B. who Adminiſtred; and that they had in their hands, when the Defendant came to his full age, of the Goods of the Teſtator, Six hundred pounds; and the Defendant at his age proved the Will, and then releaſed to A. and B. all Actions. And it was adjudged, it was Aſſets. Anderſon ſaid, the doubt was, becauſe it was incertain what he releaſed, and for that only an Account lieth: But here the certainty appeareth by the Verdict, And Periam ſaid, If an Executor doth releaſe an Account, and it is not certain what he ſhall recover, it is not Aſſets; but if it can appear, or be proved that ſo much was due, it is Aſſets. For the Law preſumeth, he hath received ſo much as he doth releaſe, and the Plaintiff had Judgment. Poſt. 264. 671. Co. 5. 27. b.

Nota, Rhodes ſaid, That in 17 Eliz. it was ruled, that where one made his laſt Will, and by it did Will, that none ſhall have any dealing with his Goods, until his ſon came to the age of eighteen years, except J. S. That by this J. S. was Executor, during the minority of the ſon: And that it hath been adjudged, that when as one upon his death-bed ſaid to his Wife, That ſhe ſhall pay all, and take all; by this ſhe was Executrix. Poſt. 164.

The Lady Rich *verſus* the Lord Rich.

(4)

COvenant. The Caſe was, the Lord Rich did Covenant that certain Lands conveyed to the Plaintiff for her Joynture, are of the value of One thouſand pounds per annum, and ſo ſhall continue, notwithſtanding any act done, or to be done by him; and the Action was brought, for that the Lands were not of the yearly value of One thouſand pounds: And it was adjudged

Poſt. 615. 1 Cr. 107. 496. 2 Cr. 644. Poſt. 762.

againſt the Plaintiff; for the words (notwithſtanding any Act) extends as well to the time of the Covenant made, as to the time future: And though they were not then of that value, the Covenant was not broken, except ſome act done by him were the cauſe of it.

Dales Caſe.

(5)

Diſceit. For that the Defendant ſold to the Plaintiff certain goods as his own goods, Ubi revera they were the goods of a ſtranger; and it was alledged, that the Action did not lie, becauſe it was not alledged, that the Defendant Sciens that they were the goods of a ſtranger. And for that reaſon Periam and Windham held, the Action did not lie; but if it had been ſo alledged, the Action did lie: For it may be, the Defendant did know no otherwiſe, but that they were his own goods; but if he had affirmed they were his own Goods, then the Action would lie. Anderſon contra, for it ſhall be intended, that he that ſold had knowledge, whether they were his Goods, or not, 42 Aſſiſar. 8. And it was afterwards adjudged againſt the Plaintiff.

2 Cr. 474.

Reynold's Caſe.

(6)

3 Co. 52. b. Poſt. 439.

Audita querela. For that he being in execution, was ſuffered to go at large, and was afterwards taken again; and the Court would not allow it: But then Puckering alledged, That the Plaintiff had witneſſes to prove, that he paid the money when he he was at large. And the witneſſes being ſworn, and the truth appearing to be ſo, the Audita querela was allowed.

Beverley *verſus* Cornewall.

(7)

Owen 2. 1 Anderſ. 148. Moor 224. 269. 241. Gouldb. 44. Co. 7. 28. a.

Quare Impedit. Upon Demurrer, the Caſe was, Simon Kelham being Parſon of the Rectory of Somerly, of the value of Ten pound, took the Church of Rappeſly without any Diſpenſation, and was inſtituted and inducted, and ſo continued for twelve years; and afterwards by reaſon of this Plurality, Beverley preſented Berry, who was inſtituted and inducted, and ſo continued for divers years, and died; and afterwards the Queen preſents the Defendant Ratione lapſus in the time of Kelham, who was inſtituted and inducted, and the Plaintiff brought the Quare Impedit againſt the Archbiſhop of Canterbury and Cornewall; and it was adjudged, that the Quare impedit did lie; for in this Caſe, Tempus Occurrit Reginæ. And Judgment was given, That the Defendant ſhould be removed. Nota, afterward Mich. 30 & 31 Eliz. which was entred, Trin. 30. Rot. 1306. Another queſtion did ariſe between the ſame parties; Beverley pending the Quare Impedit was outlawed at the ſuit of Bawdes; and he being ſo outlawed, and Judgment given for him in the Quare Impedit, the Defendant Cornewall reſigned, and took a new Preſentation from the Queen, by reaſon of this outlary

Co. 7. 28. a. 2 Cr. 54. Poſt. 119. c. Poſt. 790. 2 Cr. 216.

in

in Beverley, and he was inſtituted and inducted, and afterwards he reverſeth the Outlary, and brings Scire facias to have Execution of the Judgment. Cornewall pleads this Preſentation, by reaſon of the Outlary, and demands Judgment, &c. For the Preſentation was veſted in the Queen, and executed before the Outlary was reverſed; and by the Reverſal it ſhall not be diveſted: But afterward it was adjuged, that the Plaintiff ſhall have execution; For upon a Recovery in a Quare Impedit, any Incumbent that cometh in pendente Placito, ſhall be removed, 7 Co. 28. Moor 269.

Termino

Termino Paſchæ,

Viceſſimo octavo ELIZABETHÆ,

in Communi Banco.

Dame Killigrews Caſe.

(1) DOwer. The Tenant vouched the Heir, and prayed he might be ſummoned in the ſame County, and he was ſummoned and entred into the Warranty, and confeſſed the Dower: It was moved againſt whom the Judgment ſhould be. And the Court was in great doubt; for it did not appear, that the Heir had ſufficient to render Dower; for it would be in vain, and a great miſchief to the Demandant, if they give Judgment for her, when peradventure the Heir had nothing, or not ſufficient to render Dower; and they commanded Preſidents in this Caſe to be ſearched.

Anonymus.

(2) DEbt upon an Obligation to pay Forty pound at Michaelmas Eve, the Defendant pleaded a Concord between the Plaintiff and him; that if he gave him a Hawk, and twenty pound at Michaelmas day, the Obligation ſhould be void, and ſaid, That he gave the Hawk and twenty pound at the day; and the Plaintiff accepted it. And this was held no Plea; for it appeareth, that for not payment at the day, the Bond was forfeited, and ſo became ſingle; which cannot be diſcharged by ſuch a naked Averment in fait of ſuch an acceptance, although the agreement was before the day; but Acceptance before the day was a good diſcharge.

Co. 5. 117. a. Lib. 9. 79. a. Poſt. 304. Nota, That Ceſtuy a que uſe at this day, is immediately and actually ſeiſed and in poſſeſſion of the Land; ſo as he may have an Aſſiſe or Treſpaſs before Entry againſt any ſtranger who enters without Title; and this by the words of the Statute of 27 H. 8. viz. that Ceſtuy a que uſe ſhall ſtand and be ſeiſed, &c. And this was the opinion of divers Juſtices.

Playne's Caſe.

(3) A Leſſee for years was obliged to pay his Rent, in debt upon it, he pleaded, that the Leſſor was bound in a Statute; and upon that an Extendi facias was awarded to ſeiſe the Lands and Tenements of the Leſſor into the Queens hands, which was executed accordingly, and upon that a Liberate was awarded, and

mean

mean between the Extendi facias, returned, and the Liberate awarded, the Rent was incurred; for which he is chargeable to the Queen, and demands judgment. And the opinion of the whole Court was clear to the contrary; for before the Liberate awarded, Nihil operatur, for he remains always Tenant to the Lessor, and chargeable to him for the Rent: and the Writ before is but of form, when it ſpeaks of the ſeiſing into the Queens hands; for it was never ſeen, that Lands were ſeiſed upon that Writ. 1 Cr. 149.

Terminō

Termino Trinitatis,

Viceſimo octavo ELIZABETHÆ,

in Banco Reginæ.

Cropp *verſus* Hambleton.

(1) Godb. 38. Moor 223.

TRepaſs upon ſpecial Verdict; the Caſe was, Cropp let to the the Defendant Land for years, rendring Rent at Michaelmas, with a Re-entry for default of payment at Michaelmas, or twenty days after. The Leſſee for two years uſed to pay the Rent to Mary Briggs ſervant of the Leſſor, and he accepted it at her hands; and in the third year he paid the Rent to the Leſſor, and in the fourth year paid it within the twenty days to the ſaid Mary Briggs, and prayed her to pay it to the Leſſor; who within the twenty days tendred it to Cropp who refuſed to receive it, and blamed her for taking it; and at the laſt day of the twenty days Cropp demanded the Rent, and it was not paid; and thereupon he entred: The queſtion was, if his entry were lawful? And after Argument, it was adjudged for the Defendant, for the Condition was not broken: And the Court held, that the tender of the Rent to the Leſſor himſelf at any day within the twenty days, although it be out of the Land, is good, and he ought to receive it: And when he paid it to Mary Briggs, and ſhe tendred it to the Leſſor, this ſhe did as ſervant to the Leſſee for that time, and is as good as if the Leſſee had tendred it, Ex relatione Coventry.

Ant. 15. Co. 10. 129. a. Co. Lit. 202. a.

Burdet's Caſe.

(2) THe Caſe was. The Dean and Chapter of Ely were ſeiſed of a Manor, in which the cuſtom was, That the Copyholders may Surrender out of Court, to the uſe of a ſtranger in Fee; they make J. S. their Steward Ad exequendum per ſe vel ſufficientem deputatum ſuum. J. S. maketh A his Deputy Hac vice, to take a Surrender of Baron and Feme to the uſe of the Baron and Feme for their lives, Remainder over in Fee; and the words were further in the Deputation Et ulterius ad faciendum & exequendum quantum in me eſt. The ſaid A. by force of that Deputation, takes a Surrender from the Baron and Feme, upon condition, that the Lord ſhall grant it to them for their lives, Remainder over in Fee, the Surrender was executed accordingly; the Baron and Feme die, he in the Remainder enters, the Heir of the Feme ouſts him, and he brings Treſpaſs. 1. It was agreed, that this Deputation Hac vice, was good: 2. That although the authority to take the Surrender was

was abſolute, and A. took the ſurrender upon condition, yet it was good, by reaſon of thoſe words, Et ulterius ad faciendum, &c.

Anonymus.

ERror: The Error aſſigned was, that the Defendant in the original Action of Debt, was named nuper de London, and in the exigent de London. And all the Court held it to be an Error, for the original was the foundation of the Suit, and the exigent is to purſue it without variance, and the word (nuper) being omitted out of the exigent, it was erroneous. (3) Poſt. 50.

Sir Thomas Cockaine and his Wife *verſus* Witnam.

ACtion for words: At the Niſi prius the Defendant pleaded concord puis le darraine continuance, judgment ſi al enqueſt, &c. And by all the Juſtices it was no Plea, but he ought to conclude, Judgment ſi actio, &c. and ſo in all Pleas pleaded ſince the laſt continuance; then it was moved, if Judgment ſhall be given upon this, or a new Niſi prius granted, and upon good advice judgment was given for the Plaintiff, for it was a confeſſion of the matter in iſſue: And the words were, My Lady Cockaine did offer two ſhillings to a woman with child to get her a drink to kill her child, becauſe it was gotten by J. S. Sir Tho. Cockaines Butler; And it was moved the Action did not lie for theſe words, but it was adjudged for the Plaintiff, for by them the Ladies credit is impaired; and if true, there was cauſe to bind her to her good behaviour, although it was not ſaid ſhe did give money, or any hurt was done, but that ſhe offered, &c. this Caſe was adjudged, Hill. 19 Eliz. Intratur, Mich. 17 & 18 Eliz. Rot. 183. Ex relatione Chamberlaine. V. 4. Co. 16. b. (4) Poſt. 747.

Termino Michaelis,

Viceſſimo octavo & nono ELIZABETHÆ, in Banco Reginæ.

Criſpe *verſus* Golding.

(1) A Sumpſit: upon iſſue joyned that non aſſumpſit, it was found for the Plaintiff. Walmſly Serjeant moved in Arreſt of Judgment, that the conſideration upon which the Action was brought, was not well alledged, for the Plaintiff declared that I. S. was ſeiſed in Fee, and made a Leaſe to him for years, 24 Eliz. by vertue whereof he entred and was poſſeſſed; and being ſo poſſeſſed, the Defendant upon communication between him and the Plaintiff aſſumed that if the Plaintiff would ſeal and deliver to him a Deed of Aſſignment of his Leaſe and Intereſt in the Land, that he would pay to him a hundred pound, and alledged that he did ſeal and deliver a Deed of grant, &c. but doth not ſay he was then poſſeſſed; and if he were not, the grant was void; and ſo no conſideration. 2. He doth not alledge, that he did grant his Leaſe and Intereſt, but that he ſealed and delivered a Deed of grant, which is not a grant. Curia contra, for when it was alledged that the Plaintiff was once in poſſeſſion, it ſhall be intended he did ſo continue till the grant, and it ſhall be intended a good grant, and the Leaſe and intereſt paſſed by it; and it was ſo adjudged.

Lancelot *verſus* Johns.

(2) Error upon a Recovery in Debt and Outlary upon it. 1. Error; the Defendant brought Debt againſt Lancelot and I. S. and the Sheriff returned, quod non habent bona aut catalla quod ſummoniri poſſint, whereas it ought to be per quod ſummoniri, &c. 2. It ought to be, neque eorum aliquis habet. 3. It is returned quinto exacti fuere per quod utlagati exiſtunt, whereas it ought to be per judicium Coronatorum utlagati, for they are Judges, and the certificate is to be by them. 4. In the Original he was named Launcelot, and in the Exigent Lancelot. 5. He was outlawed in Huſtingis, and doth not ſay in Huſtingis de Communibus placitis; and for theſe Errors the Judgment was reverſed. V. 2 R. 3. 13. 14 Ed. 4. 6.

Co. Lit. 288. b.

Ante 49. Poſt 104. 116. 240. 592.

Allen *verſus* Yorke.

(3) The Caſe was; Allen was condemned at the Suit of Yorke in the Queens Bench in Action upon the Caſe, and damages aſſeſſed to 4000 l. Yorke dieth, being ſatisfied of 1000 l. parcel of the 4000 l. and his Wife being Executrix, brings a Scire facias for the 3000 l. reſidue, and the Court doubted. V. 4 & 5 Mar. Dyer 165. 19 R. 2. Execution.

Ano-

Anonymus.

ERror. Upon a judgment given in a Formedon, the Error aſſigned was, that the Action was brought againſt three, whereof one was within age, and Judgment was given by default, whereas Judgment is not to be given againſt an Infant by default, and upon this it was demurred in Law (the Infant was brought into Court to be ſeen, and he was of the age of ſeven years:) the Court doubted after argument by Andrews, and would adviſe. V. Dyer 104. (4) 2 Cr. 465. Poſt. 309.

Termino Hillarii,

Viceſſimo nono ELIZABETHÆ,

in Banco Reginæ.

Morgan *verſus* Kiffe.

(1) ACtion for words, that the Plaintiff maintained, victualled, and helpt to let go certain Pyrates, contrary to the Law of the Realm and the Proclamations made. Upon not guilty it was found for the Plaintiff, damages ſixty pound. And it was moved in arreſt of Judgment, that the words were not actionable, for it is not alledged that he knew them to be Pyrates, or maintained them in their Pyracy. Coke contra, for when it was alledged he maintained Pyrates, &c. it ſhall be intended in malam partem, and that he ſpoke them maliciouſly, and that he maintained them knowing them to be Pyrates. And it was adjudged in Sir Henry Leas Caſe againſt Penniſton, where P. ſaid to Sir Henry, he maintained Thieves, that an Action did lie; and afterwards the Plaintiff had Judgment: for when it is ſaid he maintained them againſt the Law and Proclamations, it ſhall be intended in the worſe ſenſe; and although Pyracy is tryable by the Civil Law, yet by the Statute of 33 H. 8. our Law taketh notice of it.

2 Cr. 59. Co. 4. 13. a. Poſt. 251. 487. 746.

Pettywood *verſus* Cooke, Paſchæ 28. Rot. 374.

(2) EJectione firmæ. The Caſe was, Hawkins was ſeiſed in Fee of three Houſes in Bury, and deviſed them to his Wife for life, the remainder of one of the Meſſuages to Robert his ſon and his heirs, the remainder of one other of the Meſſuages to Chriſtian his daughter and her heirs, and of the third Meſſuage to Joan his daughter and her heirs, having only theſe three Children. And did further will, that if any of them died without iſſue, that then the Survivors ſhall enjoy totam illam partem equally divided between them; Chriſtian taketh Husband, and hath iſſue the Leſſor of the Plaintiff, and dieth; after Ro. dieth without iſſue, then the Feme of the Teſtator

Poſt. 695.

for dieth; Joan being the Survivor, enters into all the part of Robert, and taketh Husband, and hath iſſue the Defendant, and dieth. And the queſtion was, if the iſſue of Joan ſhall have all the part of Robert, as a devile to his Mother and her heirs, or if the iſſue of Chriſtian ſhall have a moity with her as Co-partner. And the Caſe was argued by Golding for the Plaintiff, and Coke for the Defendant; and all the Juſtices held, that by the Devile only an eſtate for life is limited to the Survivor, and the Fee doth deſcend by courſe of Law aſwell to the iſſue of Chriſtian which firſt died, as to the Survivor; and though the words are, that the Survivor ſhall enjoy totam illam partem, that is, all the Meſſuage, and not according to all the eſtate the party dying had in the Meſſuage; for no eſtate being limited, it ſhall be intended but an eſtate for life, and the Plaintiff had judgment. Poſt. 696. 743.

The Sheriffs of Norwich *verſus* Bradſhaw.

(3)

ACtion upon the Caſe upon an eſcape: The Plaintiffs declared that whereas J. S. recovered againſt the Defendant in Debt nine pounds and ten ſhillings, and a capias was awarded to take him in Execution, by force whereof they made their Warrant to the three Serjeants, &c. there to Arreſt him, who did Arreſt him, 25. Feb. &c. he eſcaped from them, and afterwards was not found in the ſaid Country, per quod they were bound by reaſon of the eſcape to anſwer the Debt, necnon to expend money for the ſearch of him, to their Damages twenty pounds. Upon not guilty, the Jury found he was arreſted circa the 26. of Febr. and then and there ſeipſum reſcuſſit. And it was alledged in Arreſt of Judgment, that the Declaration was not good, for two cauſes. 1. That they alledge that they made a certain Warrant, and ſay not ſub ſigillo ſigillat' and a Warrant without Seal is not ſufficient. 2. They alledge that they were chargeable with the Debt, but ſay not they were charged, nor ſhew not that they were otherwiſe damnified; and if they be not damnified, they have no cauſe of Action, for it may be the party will never Sue them, or they may die before Suit, and then the Suit is gone: and an exception was taken to the Verdict; for the Arreſt and Reſcue is ſuppoſed to be 26. Feb. and the Jury find it was circa 26. Feb. which is uncertain whether it were before or after that day; and if it were after the day, it will not maintain the Declaration, for then it cannot be a reſcue the 26. day; but if it were before the day, then it continueth a reſcue at that day. Curia contra in omnibus. As to the firſt, it is uſual form, when the Sheriffs Warrant is pleaded to Arreſt one, to ſay that they made a Warrant, &c. but do not ſay ſub ſigillo, &c. 2. An Action lieth by the Sheriffs upon this eſcape before the party Sue them, for the party arreſted did wrong to them by the eſcape and reſcous, and they are always chargeable to the other party; and if they ſtay till they are ſued, perhaps the party that eſcaped may die in the interim, or will fly the Country, that they cannot hear of him; and in Holt and Hills Caſe in this Court, it hath been adjudged that an Action lieth for this eſcape, and the party ſhall not take advantage of his own tort. And as to the exception to the Verdict, it is good enough, be the reſcous before the day or after the day ſuppoſed in the Declaration, ſo as it be before the Suit commenced. And ſo Clench ſaid it hath been adjudged upon great Poſt. 124. Poſt. 124. Poſt. 264. Co. 5. 24. a. Poſt. 237. 293. 349. Co. 3. fol. 52. b. F. N. Br. 130. b.

advile,

adviſe, where a Treſpaſs was found to be done after the day alledged, for the day is not material. And the Plaintiff had judgment.

Alford *verſus* Lee. Hill. 29. Rot. 556.

(4) DEbt upon an Obligation: the Caſe upon Demurrer was, the Plaintiff and Defendant ſubmitted themſelves to the Award of certain perſons, of all matters, &c. and were obliged each to other to ſtand to the Award: they made an Award that they ſhould releaſe each to other all Actions before the Feaſt of St. Peter then next enſuing; the Defendant in the Eve of the ſaid Feaſt makes a Releaſe to the Plaintiff, and delivers it to one Primme to the uſe of the Plaintiff, without his aſſent or knowledge, and when the Plaintiff heard of it, he diſagreed to it; and if this were a performance of the award was the queſtion. Cooper argued it was not, for it taketh no effect as a releaſe till the agreement of the party; and it is delivered to a ſtranger who will peradventure not deliver it without Suit, and perhaps will never deliver it. And relied upon 20 Ed. 3. Account 70. Atkinſon contra, for it is immediately a releaſe, and he cannot plead againſt it, non eſt factum, nor can countermand it, and the Plaintiff may agree to it when he pleaſeth, and cited Tawes Caſe, 2 Eliz. Dyer. And afterwards in Trin. 29 Eliz. it was adjudged a good performance of the condition, becauſe no place was appointed by the Arbitrators where the releaſe ſhould be delivered, and it may be the Plaintiff will abſent himſelf out of the County, that the Defendant cannot find him, and they relied upon Tawe's Caſe.

Co. 5. 119. b. Poſt. 627.

Poſt. 143.

Termino

Termino Paſchæ,

Viceſſimo nono ELIZABETHÆ,

in Banco Reginæ.

Gray *verſus* Jefferies.

TRespaſs upon the Caſe: and ſuppoſeth that he in 24 Eliz. put Th. Gray his ſon and heir apparent to the Defendant, to be his Apprentice in the Art of a Taylor for ſeven years, and that the Plaintiff was ſeized of Lands in the County of B. in Fee of the value of twenty pounds, which Lands after his deceaſe are to deſcend to the ſaid Th. Gray; the Defendant the firſt of May 28 Eliz. vi & armis did aſſault the ſaid Th. and ſtrook him with a Spade upon his back, by which he became lame and decrepit, by reaſon whereof he loſt his marriage, and could not marry him as before, to his damages two hundred pounds; and upon this Declaration the Defendant did Demur in Law; and it was argued by Tanfield of the one part, and Halton of the other; and the ſame day without any further argument it was adjudged for the Defendant, for the Juſtices ſaid it doth not appear by any Book that the Father ſhould have an Action for the loſs of the marriage of his ſon and heir, except when a Stranger takes him by force and marrieth him; but if the ſon marry himſelf, or a Stranger procureth him to marry one, the father hath no remedy; and treſpaſs for beating or battery of the ſon, lieth not for the father, but the ſon only ſhall have the Action; alſo in this Caſe he is bound Apprentice for ſeven years, and ſo till the ſeven years are paſt, the father hath nothing to do with him, and cannot marry him during that time, and ſo cannot have an Action for loſs of his marriage, which perhaps will never come to him. (1) Poſt. 770.

Nota, It was held by Wray and Clench, if one cut Trees which are or may be Timber-Trees, as Oaks, Elms, &c. although they be under the age of twenty years, no tithes are due; And ſo if Trees of that age be cut, and new Germins grow, no tithe due, though they be cut under that age. (2) Ante 1. Co. 11. 48. b.

Love *verſus* Pigott.

IT was ſaid there are divers Preſidents, that if a Leſſee for years be ſued in Court-Chriſtian for Tythes, he in the Reverſion may have a Prohibition. (3)

Tre-

Trevilian *verſus* Lane.

(4) EJectione firmæ. The caſe was, Avice Trevilian Tenant for life, remainder in tail to Thomas her ſon, remainder in Fee to the heirs of Avice. Avice and Thomas make a Leaſe for three lives by Indenture; Avice dieth, Thomas grants the Reverſion to B. in Fee to the uſe of his laſt Will; and afterwards deviſeth the Reverſion for years and dieth; the three Leſſees for life die, the Diviſee for years enters, the heir of the body of Thomas ouſts him, and he brings Ejectione firmæ. The queſtion was, if the Leaſe for three lives be a diſcontinuance to toll the entry of the iſſue. Drew argued that the entry of the iſſue was lawful, for the Leaſe for three lives being made by Deed, was the Leaſe of the Tenant for life, and the confirmation of Thomas, and ſo no diſcontinuance, 13 H. 7. 14. Comment' 140. 13 Ed. 4. 4. but if it had been without Deed, then it had been the ſurrender of Tenant for life, and the Leaſe of him in the remainder, for otherwiſe nothing would paſs from him. Coke contra, that it was a diſcontinuance, for a Leaſe for three lives was more then they both could make, and ſo is a Tort, and the Reverſion was gained by Tort, but in whom the Reverſion was, it may be doubted. * But it was adjudged that it was no diſcontinuance. Ex relatione Johannis Walter.

Poſt. 253.

Co. 1. 77. a. acc.

* Co. 1. 76. a. Poſt. 252. 3.

East Skidmore & Foame *verſus* Vaudſtevan.

Co. 2 Inſt. 673. 2 Roll. 22.

(5) COvenant: For not performing certain Covenants in an Indenture between the Plaintiffs Maſter of the good ſhip of A. of which Robert Pitman was owner of the one part, and the Defendant of the other part; and the concluſion of the Indenture was, In cujas rei teſtimonium, the parties aforeſaid to theſe preſents have ſet their Hands and Seals, and all the Plaintiffs and the ſaid Rob. Pitman ſet their Seals to one part, and the Defendant to the other part; and in the Indenture there were divers Covenants to be performed by the Plaintiffs and by the ſaid Ro. Pitman to the Defendant; and è converſo, and there was a clauſe in the Indenture, that the Plaintiffs and the ſaid Ro. P. bound themſelves to the Defendant to perform the Covenants; the Defendant pleads that the Indenture was delivered to the Plaintiffs, and to the ſaid Tho. Pitman (and ſo miſtakes Thomas) for (Robert) pleads the releaſe of the ſaid Tho. of all Covenants; and thereupon the Plaintiffs Demurred, for two cauſes: 1. The releaſe was pleaded by T. P. whereas no ſuch man was named in the Indenture, and this was held a great miſtake and without defence, and the Roll was commanded to be ſearched. 2. And the chief matter was, admitting the name had been right pleaded, and that R. P. had releaſed, if this releaſe was good. Coke argued that foraſmuch that only the Plaintiffs in the premiſſes of the Indenture were parties of the one part, and the Defendant of the other, although R. P. is afterwards named in the Deed, it is a void Deed as to him, and no Covenant made to him or by him is good, for he is a ſtranger to it, and his ſealing and delivery is not material, as if I. S. by Indenture between him of the one part, and I. D. of the other, demiſeth Lands to I. D. and A. B. it is void to A. B. And he anſwered the caſes put by Godfrey of the other ſide, 4 Ed. 2. Obligation, where

2 Inſt. 673. 2 Rol. 22. Poſt. 58. 115.

an

an Obligation was made by I.S. & ad majorem rei ſecuritatem inveni J.D. Fide-Juſſorem, and I.D. put his Seal to it; this was his deed: Which Caſe he agreed; for it is not mentioned whoſe Deed it is; and ſo is the Deed of both which are named, and put their Seals, &c. So when an Incumbent grants a Rent, by the aſſent of Patron and Ordinary, and they put their Seals to it: this is not their Deed, but only their Agreement to it: And the caſe of 39 Ed. 3. 9. is upon the ſame reaſon of 4 Ed. 2. And in Mich. 29 & 30. it was adjudged for the Plaintiffs, and the principal cauſe was the Miſnomer, which the Court held could not be amended: And Wray ſaid, they conceived the matter in Law to be alſo for the Plaintiffs.

Sir Walter Aſton *verſus* Whetenall.

(6)

WAſte. Error was brought of a Judgment, in an Action of Waſte, and the Error aſſigned, that the Plaintiff in the Action did count, Quod cum fuiſſet ſeiſitus of the Land, he did demiſe the ſame to the Defendant for years, and he had done Waſte. The Defendant pleaded Nul Waſte fait, and found againſt him, and Judgment given: And the Error aſſigned was, That he ſaith Quod ſeiſitus &c. but ſaid not of what eſtate; and ſo may be intended but an eſtate for life. And Godfry and Beaumont ſaid, That the Declaration ought to comprehend certainty, and ſhall not be good by intendment: And although the Declaration had been good, if he had not mentioned any Seiſin; yet when he alledges Seiſin, and that inſufficiently, the Declaration is not good, as Partridges Caſe, Coment. reciting a Statute, &c. but Shute and Clench, Juſtices, held the Declaration to be good; for the allegation of Seiſin is not material, when it might have been left out; and it is helped by the words ſubſequent, viz. Ad exhæreditationem, which explain how he was ſeiſed; and it being but matter of Form, it is helped by the Statute of Jeofail's after Verdict. Gawdy doubted, Et Adjournatur.

Co. 9. 27. a. Poſt. 65. 87. Poſt. 236.

Diſply *verſus* Sprat.

(7)

EJectione firmæ. They were at iſſue, and in the Venire facias one of the Pannel was named Tho. Barker of D. And in the Diſtringas jurat' he was left out, and Tho. Carter de D. put in his place; and at the niſi prius, Tho. Carter was ſworn, and with others tried the Iſſue. Coke alledged this in Arreſt of Judgment; for now there were but eleven of the Pannel, Tho. Carter being miſtaken, and falſly named for Tho. Baker, as in a Ven. fac. a Juror was returned by the name of George Tompſon, and in the Diſtringas jurat' he was named Gregory Tompſon, and ſworn at the Niſi prius; and this was held a void Verdict. But the Court ſaid, there is a great difference between a miſtake in the name of Baptiſm, and in the ſirname; for a man can have but one name of Baptiſm, but may have two ſirnames.

Co. 5. 42. b. Poſt. 319. Co. 5. 43. a. Poſt. 222. 328. 258. 866.

Windſmore *verſus* Hubbard, Int. Trin. 27. Rot. 850.

(8)

EJectione firmæ. The Caſe was, the Lord Sturton by Indenture between him and J.S. let certain Land to J. S. for life, Habendum

Owen. 138. Godb. 51.

Hob. 313. Hutt. 87. Poſt. 89. 121. to him and A. B. and C. his three ſons Succeſſive. The firſt queſtion was, If they all took an Eſtate, becauſe the ſons were not named in the premiſes of the Deed? Secondly, the queſtion was, If they take, whether they take joyntly, or not? And thirdly, if they take no way, whether there ſhall be an Occupant for the life of the three others; ſo as it ſhall be a Leaſe to J. S. for his own life, and for the life of the three ſons. And after Argument by Coke and others, the clear opinion of the Court was, that the ſons ſhall not take in poſſeſſion, becauſe they are not named in the premiſſes of the Deed, nor ſhall they take by way of Remainder; for the intent was, to give the Land to them in poſſeſſion, 18 Ed. 3. 59. Broke Leaſes 54. The only doubt was, If there ſhall be an Occupant; but Wray ſaid, There can be no Occupant; for it being limited to the Father for his life, this is a greater eſtate then for the lives of others, (V. 5. Co. Roſſes Caſe) And the three ſons are named as perſons to have an eſtate, and not to make a limitation of an Eſtate. And Trin. 29. it was adjudged, That there was no Remainder, and that there ſhall be no Occupant, Ex Relatione Walter. Nota, Delapers caſe, 17 Eliz. Tenant by the Courteſie, grants over his Eſtate; the Grantee deviſeth it, and dieth: This was held a void Deviſe, and out of the Statute of Wills; and it was held, That although the Deviſee doth firſt enter after the death of the Deviſor; yet he ſhall not have the Land as an Occupant, for there ſhall be no Occupant of an Eſtate of Tenant by Courteſie, or Tenant in Dower, which are Eſtates created by Law. Ex Relatione Edward Coke.

Hob. 313. 2 Cr. 564. Ante 56.

Poſt. 491.

1 Inſt. 41. b.

Termino

Termino Trinitatis,

Viceſimo nono ELIZABETHÆ,

In Banco Reginæ.

Marſh *verſus* Kavenford.

(1) ASſumpſit. And did count that whereas at the requeſt of the Defendant, there was a Communication of a Marriage between the Plaintiff, and the Daughter of the Defendant; and that afterwards he Married her, that afterwards the Defendant promiſed to pay him one hundred pound. Egerton and Foſter argued, that this was no conſideration; for it is paſt, and had no reference to any act before: But if the Marriage had been at the requeſt of the Defendant, and after the Marriage he promiſed, &c. This had been good. Popham, Daniel, and Coke contra. For the Fathers natural affection doth continue, and her advancement is ſufficient cauſe of the promiſe. And they ſaid it was adjudged in the Exchequer, that a promiſe of ten pound in conſideration of councel given to one; this was good, though the councel was given before; and it was here adjudged for the Plaintiff. Ante 42. 1 Cr. 409. Poſt. 715.

Rainſcroft *verſus* Lawney, Paſch. 27. Rot. 167.

(2) ERror of a Judgment in the Common Bench; for that the Record was, that the Defendant obtulit ſe per Cutting Attornatum ſuum, and left out his Chriſtian name, and the Judgment was reverſed. Poſt. 75. 328.

Cottington *verſus* Hulett, Paſch. 29. Rot. 186.

(3) ASſumpſit againſt an Executor upon the promiſe of the Teſtator; and in the Declaration it was not averred, that he had Aſſets to pay Debts, &c. but Mich. 29 & 30 Eliz. it was adjudged, that the Declaration was good, and the Plaintiff recovered. Co. 9. 90. b. 2 Cr. 294. 1 Rol. 921.

Aſh *verſus* Wood.

(4) ERror. The Plaintiff counts in Replevin Quod adhuc detinet, and the Jury aſſeſſed the value of the Beaſts, and damages entirely, whereas they ought to ſever them; for he may have the one, and not the other; and the Judgment for this cauſe was reverſed.

Giles *verſus* Ferrers.

(5) THe Aſſiſe of Nuſance, the Plaintiff counts that exaltavit domum, the Jury find that erexit, and Exception taken to it; but the Court was informed by the Grammarians, that the words were of one ſence. Poſt. 176.

Termino Michaelis,

Viceſſimo nono & triceſſimo ELIZABETHÆ,

in Banco Reginæ.

Peeke *verſus* Wyrrall.

(1) REplevin. The Defendant made Cogniſance as Bayliff of Tho. Pigott, Eſq; for Damage-feſant. The Plaintiff replied, That Sir John Goodwin was ſeiſed, &c. And that he and all his Anceſtors, &c. had uſed to have for him, and all his Tenants for years, and at will, &c. Common in the place where, &c. For all their Horſes and Colts, and he put in the Horſes, &c. The Defendant rejoyned, that in the place where, &c. it was uſed time out of mind, &c. That if the Horſes of Sir John or of his Anceſtors, &c. did come there by Eſcape, and were not put in; that it ſhould not be lawful for the ſaid Tho Pigott, &c. to diſtrain them Damage-feſant, but to put them out peaceably, and ſaid, That the place, &c. was incloſed, and that the Plaintiff broke down the incloſure, and put in his Cattle, for which he diſtrained, &c. Abſque hoc, That Sir Jo. Goodwin, &c. had Common in the place where, aliter, &c. Walmſly moved this was no good Traverſe; for he did not confeſs that Sir Jo. Goodwin had any Common, and therefore he ought to Traverſe Abſque hoc, that Sir John had any Common there. Curia; That pleading had been better; for in truth he hath not confeſſed any Common, &c. but it ſeemeth good enough as it is: For this liberty that his Cattle ſhall be there without being diſtrained, is in nature of Common; and therefore he might plead as he did: But they ruled, that the Defendant ſhould mend his Plea, or that a Demurrer be joyned.

Knight *verſus* Mory.

(2) REplevin. The Caſe was, Shelley makes a Leaſe for years, Proviſo quod non licebit, to the Leſſee, to alien his term without the aſſent of the Leſſor; the Leſſee deviſeth the term to his ſon, the Leſſor aſſenting to it. Three points reſolved, 1. This is a con-
Poſt. 330. 331. dition: 2. A deviſe in general, is a breach of the condition: 3. As this caſe it is no breach; for nothing paſſed till the Leſſor his aſſent was obtained; for it was a condition precedent: And though in the principal caſe the Deviſee did enter by the conſent of the Executor, and had not licence of the Leſſor, yet it is not material.

Anonymus

Anonymus.

NOta. Coke moved this Caſe to the Juſtices, to know their opinion, he being (as he told me) to make his Award in it. Tenant in Fee-ſimple, ſoweth the Land, and before the Corn was ſevered, deviſed the Land to A. for life, Remainder to B. for life, and dieth. A. dieth before the Emblements were ſevered; the queſtion was, whether the Executor of the Tenant for life, or he in the Remainder, ſhould have the Emblements; for he ſaid clearly, That the Executor of the Deviſor had no colour to have them. Wray and Shute held, That he in the Remainder ſhould have them, for by the Deviſe of the Land they paſs with it; and when they paſs by reaſon of the Land, and come not by the Manurance of the firſt Tenant for life, they ſhall go with the Land: But if the firſt Tenant for life here granted them to another, it had been otherwiſe; for by the Grant they are quaſi Chattels ſevered from the Land. And Wray ſaid, it hath been adjudged in this Court, that where Baron and Feme are Joyntenants of Land, and the Baron ſoweth the Land, and dieth before Severance of the Corn, the Feme ſhall have it. Clench doubted in the principal caſe; for he conceived that the Executor of the firſt Tenant for life ſhall have them, as Chattels veſted in him: And he ſaid, if Land be ſown, and then the Land is deviſed to J. S. for life only, and before Severance the Deviſee dieth, his Executor ſhall have the Corn, and not the Reverſioner: Which caſe Wray and Shute denied, but ſaid if it were ſo, it is not like the caſe a Remainder. And Popham Attorney being demanded his opinion, agreed with Wray in the principal caſe, but doubted of the caſe of Baron and Feme. (3)

Hob. 132. Poſt. 464. 1 Rol. 727.

Co. Lit. 55. b. 1 Rol. 727.

Prat & Uxor *verſus* Taylor.

ASumpſit. That whereas the Wife of the Plaintiff in conſideration that the Defendant ſhould Marry her Daughter, had given to him ten pound; he promiſed to the Wife, that if he did not Marry her daughter, he would repay the ten pound, and avers he did not Marry her, &c. Upon Non Aſſumpſit pleaded, and found for the Plaintiffs, it was alledged in Arreſt of Judgment, that the Delivery of the money by the Feme was void, and then the promiſe made to her is alſo void. And although the Baron agreeth afterward to the Delivery and Promiſe (as it appeareth by his bringing the Action) yet this cannot make the Promiſe which was void, to be good; for there was no conſideration at the time of the Promiſe. Another matter was moved, That the Baron and Feme did joyn in the Action, where it ought to be brought by the Baron only; for it is void to the Feme being during Coverture, and it is as a Promiſe made to the Baron only: But it was adjudged, that the Action was well brought; for the agreement of the Baron maketh the promiſe good ab initio to the Husband, and it being made to the Wife, they may joyn in the Action. (4)

Anonymus

Anonymus.

(3) ACtion for theſe words, Thou haſt ſitten upon the Pillory; but ſaith not in what manner. Harris moved, that the words are not actionable; and ſo it was the opinion of the Juſtices, who ſaid he might well demur upon them.

Donnes Caſe.

(4) ACtion for theſe words, If you had had your deſerts, you had been hanged before now. Coke moved, that the Action did not lie; for that he did not ſhew any cauſe why he ſhould be hanged, and deſerts might be in his mind concerning God; Curia contra. For it ſhall be intended, he had committed an offence, for which, the penalty of death was due to him. Wray ſaid it hath been adjudged, that where one writ the name of another upon a Wall, writ alſo, That if this man had his deſerts, he ſhould have been hanged on theſe Gallows; and drew a pair of Gallows on the Wall; and it was adjudged, that an Action did lie for this.

Moor 243.

Poſt. 384.

Poſt. 470.

Gallies *verſus* Budbery.

(5) DEbt upon an Obligation. The Caſe upon Demurrer was, the Plaintiff being poſſeſſed of a term for ſix years of a Tavern in Gracious-Street, let the ſame by Indenture, with Plate, and divers Utenſils in the Houſe, to the Defendant for three years. The Defendant in conſideration thereof, did covenant with him and his Aſſignees, that De menſe in menſem menſatim, he would upon requeſt render to him and his Aſſignees an account for every Tun of Wine he did ſell there, and pay him for every Tun ſold thirty ſhillings; and there were divers other Covenants on his part (ſome in the Affirmative, and ſome in the Negative) he pleaded Covenants performed (which was ill in that,) the Plaintiff replieth, That upon the laſt day of July, he required the Defendant to give him an account of a Tun of Wine ſold at ſuch a time, which he refuſed to do; the Defendant rejoyned, that before that time, the Plaintiff being poſſeſſed of a term in the Tavern for divers years, part whereof were yet to come (but doth not ſhew what time in certain, nor the Commencement of it; and therefore it was agreed by all, it was ill in that) granted the reſidue of the ſaid term then to come to B. to which grant he Attorned; after which time he did not refuſe, and upon this the Plaintiff demurred. Drew for the Plaintiff argued, that notwithſtanding the reſidue of the term was granted over; yet the Account was to be made to the Plaintiff, and not to the Aſſignee, for it is a thing collateral; and the Aſſignee is to have only that which goeth with the houſe, and Aſſignee is in Deed and Law, as an Executor; Coke contra: For this is as a Rent reſerved, and in nature, and lieu of the Rent: But he ſaid, that the requeſt of an Account was to be within the month. And this requeſt, as appeareth by computation, was the day after the month; which being referred to Kempe, he certified the ſame accordingly; and for that cauſe, Judgment was given againſt the Plaintiff.

Co. Lit. 303. b.

Co. 8. 120. b.

Poſt. 284. 318.

Worceſter

Worceſter *verſus* Stone, Trin. 27. Rot. 453.

(6) The Caſe upon ſpecial Verdict was. The Plaintiff made a Leaſe to the Defendant for years rendring Rent, upon condition, That if the Rent were behind at the day, and ten days after (being in the mean while demanded) and no Diſtreſs to be found upon the Land, that the Plaintiff might re-enter: And the Jury found, that the Rent was behind at the day, and ten days after, and that a ſufficient Diſtreſs was upon the Land till three of the Clock in the Afternoon of the tenth day; at which hour the Leſſee drove out his Cattle, and at the laſt hour of the tenth day, the Leſſor came and demanded the Rent, and it was not paid, nor any diſtreſs upon the Land; The queſtion was, If the condition was broken? Daniel for the Plaintiff argued, that the condition was broken, for there was no Diſtreſs at the time of the demand, and the words are, If it be lawfully demanded, and no diſtreſs found, &c. And it is not ſufficient to have it at any time of the ten days, but at the proper time for the demand, which is the laſt inſtant of the tenth day: For otherwiſe, if there be a Diſtreſs at any time within the ten days, though but for a quarter of an hour, it would diſpence with the condition; and then the Leſſor muſt attend all the ten days, which would be inconvenient. Wray and Shute, The condition is not broken; for the intent of the words is, If no Diſtreſs be found at any time within the ten days, then a Re-entry; and therefore, if a Diſtreſs be found there at any time within the ten days, this is ſufficient. Clench doubted; but it was afterwards adjudged againſt the Plaintiff, becauſe he made no demand in the mean time. Ant. 15.

Sir John Parrot's Caſe.

(7) COke ſaid, It was adjudged in that Caſe, That a Debt upon Record by Recovery, or otherwiſe, cannot be attached by the Cuſtom of the City of London. 1 Rol. 552. Poſt. 886.

Madox's Caſe.

(8) AN Indictment againſt him was reverſed, becauſe the Indictment was of a Nuſance to a Horſeway, whereas it ought to be the Queens High-way, or the High-way. Co. Lit. 56. a.

Robert Browne & Uxor *verſus* Garborough.

(9) ASſumpſit, and declareth of a promiſe made to the Feme dum ſola fuit, and alledgeth, That whereas a communication was between Jo. Browne Father of the Plaintiff Robert, and the Defendant, Couſin of the ſaid Robert Browne, and the ſaid Feme, when ſhe was ſole, of a marriage to be had between the ſaid Plaintiffs; and the ſaid Jo. Browne promiſed to the Feme, that if the marriage did take effect; that he would aſſure to them ſuch Land, &c. And the Poſt. 619.

Defendant

Defendant did then promiſe to her, that if J. Browne did not per-
2 Cr. 228. form his promiſe, that the Defendant would give her one hundred pounds, and alledges, That the marriage did take effect, and the Lands were not aſſured, &c. Upon non aſſumpſit it was found for the Plaintiff. Shuttleworth Serjeant moved in Arreſt of Judgment, That there was no ſufficient conſideration to ground the promiſe; for the Feme was a meer ſtranger to the Defendant; and there was no reaſon for him to give her one hundred pounds in Marriage. Gawdy and Shute conceived it a good conſideration, for it was alledged, That the Defendant was Kinſman to Ro. Browne the Plaintiff; and it is to be intended, that by reaſon of theſe words ſhe was induced to marry R. Browne, which otherwiſe ſhe would not have done, and they commanded Judgment to be entred for the Plaintiffs: And upon a Writ of Error brought, the Judgment in Trin. 30 Eliz. was affirmed; for peradventure ſhe truſted the Defendant, rather then Jo. Browne, and the Defendant was Couſin to the ſaid R. Browne Plaintiff.

Yate, Brooke, Clement, & duo alii *verſus* Windnam.

(10) Poſt. 155. ERror upon a Judgment given in a Writ of Partition againſt the now Plaintiffs, at the ſuit of the now Defendant. And divers Errors were aſſigned, the Defendant Pleads a Releaſe of all Errors made to him by the ſaid Brook and Clement, who were ſummoned and ſevered, and concluded upon it againſt them all, and demanded Judgment Si actio. And upon this it was demurred in Law. And now Tanfield for the Plaintiffs argued, That the Judgment ſhall be reverſed: The firſt Error was, that the ſaid Windnam Plaintiff in the Writ of Partition demanded Partition, according to the Statute of 22 H. 8. and declared, That whereas he and the others held four hundred Acres of Land in Common, in ſix parts to be divided, viz. The Plaintiff W. two parts; the ſaid Brooke one part; the ſaid Clement one other part; and the other two, each of them a moyety of the other ſixth part, &c. but ſhewed not their ſeveral titles to the ſaid ſix parts; nor any manner of title, how the Lands ought to be divided in that manner: And therefore the Declaration is not good, for the Writ and Decla-
Poſt. 288. ration ought always to comprehend their title; and therefore in a common Writ of Partition between coparceners, it comprehends the title, that it was the inheritance of their Anceſtor, and deſcended to them, a Fortiori in this caſe where their parts are ſo unequal. And although in a Writ of Partition, no Land is demanded, yet it ought to comprehend their title, 36 H. 6. in a Quem reddidum reddit, which demands no Rent or Land, yet he ought to make a title; for he demands an Attornment upon a Grant of a Rent, which is againſt common right. So 11 H. 4. in waſte brought by two, ſuppoſing it to the diſ-inheritance of one, they ought to ſhew how their title came to the Land, in this manner to have an Action which is ſo againſt common right: So in every Writ of Waſte, he ought to make title, viz. That he demiſed the Land, or that he had the Reverſion Ex aſſignatione; and he cited a Judgment in a Writ of Error between Hide and Unton, That in a Writ of Partition, the Title muſt be comprehended in the Writ or Declaration, ſpecially between Joyntenants, or Tenants in Common.

2. Error,

2. Error that the Defendants in the Writ of Error did come and confeſs the partitions, yet it was Awarded that the Defendants ſhould be in miſericordia, which is not to be in this Action, where there is no tort objected againſt them, and when they confeſs the Action. 3. Error for that upon the Judgment after the Writ of Partition was returned, ſerved in all points by the Sheriff, the words of the Judgment are that Particio prædicta inter partes prædict' ſtabilis & firma teneat, whereas it ſhould be teneatur; but upon the view of the Record, it was teneatur. 4. As to the matter of the Demurrer, if this releaſe (admitting the judgment to be erroneous) doth bar them all of a Writ of Error, and he conceived it did not, for it is meerly real, to which all the parties have intereſt, and though the judgment be intire, yet this releaſe is no bar, but the judgment ſhall be intirely reverſed, as 45 Ed. 3. 10. two coparceners have title to a Writ of Ward of the body; one releaſeth, this doth not bar the other, but he ſhall recover the entire for both, ſo 30 H. 6. in an Aſſiſe by two, one releaſeth, this doth not bar the other, it being a thing of inheritance; ſo in this Caſe; but afterwards Gawdy Serjeant which argued for the Plaintiff, did agree that this releaſe can be no bar to the other. And Hill. 30 Eliz. the Caſe was argued at large by Gawdy and Coke, that the Declaration need not comprehend the title, for it ſhall be intended that they have the Fee-ſimple, till the contrary doth appear; and by intendment he that bringeth the Action cannot have conuſans of the title of the others, for every of them cometh in by a ſeveral title; and they ſhewed divers Writs and Declarations of Partition, and one in Michaelmas 26 & 27 Eliz. between Cheney and Berry, that in a Writ of Partition between Tenants in Common, title needed not be ſhewn. And of that opinion was the whole Court, and ſaid they would not reverſe the Judgment contrary to ſo many preſidents. And as to the ſecond Error, that the Judgment was Idem in miſericordia, they ſaid if the Defendant came in upon the firſt ſummons, and ſuch Judgment be given, it is erroneous; but it was alledged they came in upon the Pone, and then it is good. And the Court moved the parties to agree, but afterwards the Plaintiffs cauſed the Writ to be diſcontinued.

Co. Lit. 168 a.

Co. 5. 97. b.

Ante 57.

Co. 5. 49. a.

The Biſhop of Gloceſter and Savacres Caſe.

(11)

ERror upon a Judgment given againſt them in a Q. Impedit brought by the Queen, in which the Biſhop pleaded that he claimed nothing but as Ordinary, &c. The queſtion was, if the Writ lieth in both their names, or ought to be brought only in the name of Savacre. Coke argued, that the Biſhop ought not to joyn in the Writ, for he had no loſs, and relied upon the Caſe 29 Aſſ. 14. Attaint, and 6 Ed. 3. 7. Mallory and Winter contra, for the Biſhop is party to the Record, and relied upon 3 Ed. 3. & 2 Ed. 3. and they ſaid a Writ of Error in this Caſe is but as a Commiſſion to examine Errors as 10 H. 4. 4. is, and if more be named in a Commiſſion then needeth, it is not material; and afterward it was awarded the Writ was well brought, for Wray ſaid the Biſhop hath loſs, for by this

2 Cr. 94.

Judgment, the Writ ſhall be to the Arch-biſhop for admiſſion and inſtitution, and ſo he hath loſs, and therefore may joyn.

Bracebridge *verſus* Vaughan.

(12) DEbt upon an Obligation: it was agreed by the Court that where the Marſhal of Queens Bench taketh Bond for the eaſement or deliver of a priſoner in Execution, this is void by the Statute of 23 H. 6. although he be not named in the Statute: for
23 H. 6. c. 10. Co. 10. 101. b. Wray ſaid divers perſons are intended in the purview of the Statute which are not mentioned in the Statute.

Hare *verſus* Gorge.

(13) TReſpaſs: The Defendant pleads an Arbitrement in bar, that the Defendant ſhould pay to the Plaintiff twenty ſhillings, upon which the Plaintiff Demurs, becauſe he doth not alledge a place where the ſubmiſſion was 9 H. 6. 5. and doth not alledge performance of the Arbitrement, and doth not anſwer to the vi & armis; and for theſe cauſes it was adjudged for the Plaintiff.

John Fuller *verſus* Robert Spackman.

(14) DEbt upon an Obligation: The condition to ſtand to the Arbitrement of Tho. Coleſhil of all matters, Suits, Quarrels, Actions, and Debates whatſoever now depending between them, and being at Suit of Law, or otherwiſe in controverſie between them, ſo as the Award be made before ſuch a day, &c. in writing, the Defendant pleads the Arbitrement in writing made ſuch a day in this manner, that the Plaintiff ſhall enjoy quietly certain Tythes in D. without interruption of the Defendant, &c. and that he had ſuffered him to enjoy them, &c. which is all contained in the Arbitrement, and demands judgment, &c. the Plaintiff replieth, that beſides that the ſaid T. Co. did by the ſaid writing Award that the Defendat at a day, &c. ſhould pay to the Plaintiff five pounds in full ſatisfaction of all Accounts, Suits at Law, Arrearages of Tithes, and Tithes unjuſtly taken at any time from the beginning of the world to the day of the Obligation, &c. and alledges that the Defendant did not pay the five pound, and ſo aſſigned the breach, &c. and upon this it was demurred, and the cauſe was, becauſe the Plaintiff did not aver that there was any Suit depending, &c. at the time of the ſubmiſſion: for if there was not, the Award was void and out of the ſubmiſſion; but without any great Argument it was adjudged by Shute and Gawdy (being only preſent) for the Plaintiff, and their reaſon was, that it ſhall be intended to be awarded for matters in Suit, and an Averment needs not, for otherwiſe every Award may be avoided by ſuch nude ſurmiſe.

Clecot

Clecott *verſus* Dennys, Int. p. 29. rot. 144.

ACtion upon the Caſe: And alledgeth that he had Sued a Latitat againſt J.S. directed to the Sheriff of Devon, intending to Declare againſt him in Debt, and J. S. was Arreſted, and in priſon at his Suite; the Defendant pretending to be Deputy to the Sheriff, took bond of him, and let him at large, by which he had loſt his Suit, &c. the Defendant pleads that the Sheriff made him his Deputy to Bail all Priſoners Bailable in the ſaid County, and thereupon he took Bond of J. S. and delivered it to the Sheriff, and let him at large, &c. And upon this it was demurred, becauſe he doth juſtifie as Deputy, and ſheweth no Deed of Deputation, 28 H. 8. Br. Deputy 17. Wyat argued that a Deputation is good without Deed, for a Deputy doth things only as a ſervant, and in right of his Maſter, and ſo may be made without Deed; otherwiſe of an Aſſignee, 11 Ed. 4. 1. 12 Ed. 3. Monſtrans de faite 65. And of that opinion was Gawdy, V. 23. Ed. 3. Barr. 259. 8. R. 2. Avowry 260. (15) Co. 10. 92. a.

Sir Anthony Sturlyn *verſus* Albany.

ASſumpſit: The Caſe was, The Plaintiff had made a Leaſe to J.S. of Land for life rendring rent: J.S. grants all his Eſtate to the Defendant, the rent was behind for divers years; the Plaintiff demands the rent of the Defendant, who aſſumed that if the Plaintiff could ſhew to him a Deed that the rent was due, that he would pay to him the rent and the arrearages; the Plaintiff alledgeth that upon ſuch a day of, &c. at Warwick he ſhewed unto him the Indenture of Leaſe, by which the rent was due, and notwithſtanding he had not paid him the rent and the arrerages due for four years; upon non aſſumpſit pleaded it was found for the Plaintiff, and damages aſſeſſed to ſo much as the rent and arrerages did amount unto: And it was moved in Arreſt of Judgment, that there was no conſideration to ground an Action, for it is but the ſhewing of the Deed, which is no conſideration. 2. The damages ought only to be aſſeſſed for the time the rent was behind, and not for the rent and the arrerages, for he hath other remedy for the rent; and a recovery in this Action ſhall be no bar in another action; but it was adjudged for the Plaintiff: for when a thing is to be done by the Plaintiff, be it never ſo ſmall, this is a ſufficient conſideration to ground an Action; and here the ſhewing of the Deed is a cauſe to avoid Suit; and the rent and arreages may be aſſeſſed all in Damages; but they took order that the Plaintiff ſhould releaſe to the Defendant all the arrerages of rent before execution ſhould be awarded. Nota, in this caſe it was alledged that it hath been adjudged, when one aſſumeth to another, that if he can ſhew him an obligation in which he was bound to him, that he would pay him, and he did ſhew the obligation, &c. that no Action lieth upon this Aſſumpſit, which was affirmed by the Juſtices. (16) Poſt. 150. 1 Cr. 343. Poſt. 644. 1 Cr. 343. Poſt. 70. 150. 75. 470.

The Lord Mordant *verſus* Bridges.

ACtion de ſcandalis magnatum, for theſe words, My Lord Mordant did know that Prude robbed Shotbolt, and bid me compound with Shotbolt (17) Moor 686.

for the ſame, and ſaid he would ſee me ſatisfied for the ſame, though it coſt him an hundred pounds; which I did for him, being my Maſter, otherwiſe the evidence I could have given, would have hanged Prude. (Nota, in truth he ſpake thoſe words before Juſtice Shute in an evidence in conſpiracy by Prude againſt Shotbolt; but it was not ſo alledged now.) Upon not guilty pleaded, it was found for the Plaintiff, damages a thouſand pounds. And by Popham and Egerton it was alledged that the Action did not lie; for the words he knew, &c. are not actionable; for a man that knoweth another hath committed Felony, is not bound to purſue him. And as to the other words he commanded him to compound, &c. he might lawfully compound with the party robbed to ſtop his appeal, and to the intent he might get his pardon in the mean time. But it was adjudged for the Plaintiff, for the words ſhall be taken as ſpoken in the worſe ſenſe, and to the diſgrace of the ſaid Plaintiff, &c. and a Writ of Error was brought in the Exchequer-Chamber, and Error aſſigned in the point adjudged.

Poſt. 537.

Bright *verſus* Hubbard, Hill. 27. Rot. 128.

(18) I.S. ſeiſed in Fee of Copy-hold Land, deviſed it to his Wife for life, and that ſhe ſhould ſell the reverſion for payment of his Debts; and after in Court did ſurrender the Land to the uſe of his Wife for life according to his Will and Deed; the queſtion was, if the Wife could ſell the Reverſion, and adjudged ſhe might; for he having made his Will before, and deviſing it in ſuch manner as aforementioned, and after ſurrendring it, &c. and referring it to his Will; this is to be intended according to the intent there limited and appointed, and ſhe ſurrendring it upon condition to pay twelve pounds; this was held a good ſale according to the Will.

Anonymus.

(19) DEbt upon a Bond: The Caſe was, the Defendant did owe to the Plaintiff certain mony upon a Bond, and certain mony for Wares ſold, as it appeared by his Book; at the day of payment upon the Bond, he tendred the mony according to the Bond; the Plaintiff did accept it, and ſaid it ſhould be for the Debt due by his Book, and not for the other Debt; but the Defendant ſaid he paid it upon his Bond and not otherwiſe, and the Plaintiff croſſed his Book, pretending the Book-debt to be diſcharged, and brought Debt upon the Bond; and it was adjudged againſt him, for the payment is to be in that manner that the Defendant would pay it, and not according to the words of the Plaintiff how he would accept it.

Frith's Caſe.

(20) DEbt upon two Obligations, of which one was not then forfeited, for the day of payment was not come; the Defendant pleads to that a releaſe, and took no advantage of it, that it appeared it was not forfeit, and to the other he pleaded another plea; and upon

on both they were at Iſſue, and found for the Plaintiff. And this matter was alledged in Arreſt of Judgment, that it did appear upon the Obligation ſhewn, that the day of payment was not yet come, and ſo the Plaintiff is not to have judgment upon it. But it was adjudged for the Plaintiff for both; becauſe the Defendant might have taken advantage of it, but did not, but waved it, and pleaded a Collateral matter, which was found againſt him. 9 Ed. 4. the Defendant pleads that the Plaintiff had a Co-Executor who was in life, which had releaſed to him; and upon this they were at Iſſue, and found for the Plaintiff, and awarded he ſhall recover, becauſe the Defendant might have abated the Action being brought by the Plaintiff alone, and had waved it. Bartlet of Council with the Plaintiff. Ant. 41. Poſt. 111.

Forde *verſus* Rolls.

(21)

ASſumpſit by the Plaintiff as Adminiſtrator of J. S. againſt the Defendant, upon a promiſe made to the Teſtator, after Iſſue the Plaintiff was non-ſuited; Golding for the Defendant prayed Coſts upon the Statute of 8 Eliz. which giveth Coſts againſt him that ſueth maliciouſly; but if the Suit had been upon a Bond or Record, or Shop-book, and the mony had been paid, yet no Coſts, for he had a ground and colour of Suite; but the Court denied to give Coſts, for it cannot be ſaid to be ſued maliciouſly, being for another; neither can it be known but the Plaintiff had colour to ſue. St. 8 El. cap. 2. 1 Cr. 229.

Scavage *verſus* Freeman, &c.

(22)

APpeal by the Plaintiff againſt Freeman and four others as principals, and againſt More as Acceſſory; the Plaintiffs after the parties which were Appelled, did appear, declared againſt all the principals together in French, and after againſt the Acceſſory in French, and after the four principals ſeverally by himſelf made their defence in French, which was, Vous aves ceſty I. Fr. in proper perſon que defend' le tort & force & touts felonies & murders & ceo que eſt encounter le corone & dignity de noſtre ſeigniores le Roigne & tout ceo que le defend' doit & demand oyer de breief & returne de ceo, which was read, and then he pleaded in bar in French, que de ceo felony in ceo manner que il eſt appell in neſt culpable & ceo il eſt priſt de prover per ſon corps, and ſo waged battel, and in the ſame manner it was done by the three other principals, and the fifth principal, and the Acceſſory pleaded ſeverally not Guilty, and put himſelf upon the Country.

Cranmers Caſe.

(23)

NOta: Walmſly Serjeant ſaid it was adjudged in that Caſe, that whereas the Queen had granted Lands, reſerving a Fee-Farm Rent, with a condition of re-entry for not payment, and afterward the Queen grants the Fee-Farm Rent to J. S. in Fee, and then the Rent was behind, that the Queen ſhall not re-enter, for by that means ſhe ſhould defeat her own grant, which would be a tort to the Grantee of the Rent.

Foſter

Foſter *verſus* Scarlett.

(24) ASſumpſit: The Plaintiff declareth, that whereas he and one Willington did ſubmit themſelves to the Abitrement of A. and B. of all matters, &c. the ſaid A. and B. awarded that the Plaintiff ſhould releaſe to the ſaid Willington all Debts which he owed him; and that Willington ſhould aſſure to the Plaintiff certain Lands which he held for life, the reverſion to the Plaintiff; and that the Defendant and one Putter which did pretend to have a Leaſe in the ſaid Lands
Ant. 4. ſhould ſeal a Deed to the Plaintiff that they ſhould aſſure to the Plaintiff their Leaſe and Intereſt in the ſaid Land; and further alledgeth that after the ſaid Arbitrement, in conſideration that the Plaintiff did aſſume to the ſaid Willington to ſtand to and perform the ſaid Arbitrement, the Defendant did aſſume that he and the ſaid Putter upon a requeſt made Sibi would convey the ſaid Land to the Plaintiff; and further alledgeth that he had performed the ſaid award on his part, and that he had requeſted the Defendant, that he and Putter would convey the ſaid Land, &c. which they had not done. Upon non aſſumpſit it was found for the Plaintiff; and it was alledged in Arreſt of Judgment, that here is no conſideration to bind the Defendant, for he took no benefit thereby. But the Court held clearly the contrary, that it was a good conſideration, for by
Ant. 67. reaſon of the promiſe the Plaintiff was drawn to make the releaſe;
Poſt. 75. and it is not material, that the Defendant took no benefit by it. Secondly, it was alledged, the Defendant did aſſume that he and Putter upon requeſt made Sibi would convey, and no requeſt is made to Putter, but only to the Defendant, and it ought to be made to both, for Sibi is the plural number, and ſo ſhall be intended, upon a requeſt made to both. But Coke and Godfrey argued that the word Sibi may be referred to the Defendant only, for this word comprehends the ſingular number, aſwell as the plural, and ſo may be referred to the Defendant that is firſt named; and the requeſt is to be made to him that did promiſe, which is the Defendant; and relied upon 22 Ed. 3, 4. But the Juſtices ſaid that the word Sibi is to be referred to both, for both are to do the act; and it was afterwards adjudged that the Plaintiff nihil capiat per billam.

Knight *verſus* German, Trin. 29. rot. 669.

(25) ERror upon a Judgment in an Action upon the Caſe: Two Er-
Poſt. Paſc. 31. rors were aſſigned. 1. Error, for that in the ſaid Action the
El. pl. 12. then Plaintiff declared, that whereas he was of good name and fame, the now Plaintiff intending to detract from his name and fame, and put his life in jeopardy, did maliciouſly cauſe a Bill of Indictment of Felony to be written, and the ſame being ſo written, at ſuch a Seſſions of the Peace at Newgate, exhibited the ſame to the Grand Jury, Et falſo depoſuit omnia in ea contenta fore vera; whereupon he was Endicted of the ſame Felony, and after arraingned, and found not Guilty, and thereupon brought the Action, and upon not Guilty pleaded, found for him; for which he had Judgment to recover ſeventy two pounds for Damages and Coſts; ubi revera upon this matter ſhewn, no Action doth lie.

2. Er-

2. Error that the exigent upon the judgment, ſuppoſeth only ſeventy pound was recovered and not more. As to the firſt matter the Court was in doubt; but Wray ſaid that this Endictment being written and preferred maliciouſly, it is not reaſon but an Action ſhould lie to puniſh it; and if two conſpire maliciouſly to exhibt an Endictment, and the party be acquitted, he ſhall have a conſpiracy: ſo when one doth it, this Action upon the Caſe lieth. But Shute and Gawdy contra that the Action doth not lie, for then every Felon that is acquitted will ſue an Action againſt the party; but for the ſecond Error, they held clearly it was well aſſigned, for there was no ſuch Judgment for ſeventy pound, and though it was the default of the Clerk, yet it cannot be amended to make the Outlary good. And it being moved at another day, the opinion of all the Court was that the Action lieth not when the Endictment is preferred by the party grieved, and he purſueth it according to the Law: and the Statute of Weſt. 2 cap. which doth give damages where the party is acquitted, doth prove this, and this Caſe remaineth at Common Law, V. 27 H. 8. 27 Aſſ. 12. and 7 H. 6. 14. Poſt. 564.

Savel *verſus* Wood.

PRohibition againſt a Parſon who Sued for Tithes in the Spiritual Court: and ſurmiſed that the Clerk of the ſaid Pariſh, and all his predeceſſors aſſiſtants to the Miniſter there Divina Celebranti, had uſed to have five ſhillings of him, &c. for the Tithes of the place, where, &c. Coke ſaid this preſcription is void, for it is in one perſon only that hath no perpetuity, but is dative and removeable, 32 H. 6. 5. And if it be a good ſurmiſe, yet there is no cauſe but a conſultation ſhall be Awarded, for it is to come in queſtion in the Spiritual Court, whether the Parſon or the Clerk hath right to the Tithe. And he ſaid it was lately adjudged in Buſh and Hunts Caſe, where the Vicar ſued for Tithes, and a prohibition prayed upon ſurmiſe that he had uſed time out of mind to pay the Tithes to the Parſon, that it was not a ſufficient ſurmiſe for a prohibition to entitle another to the Tithes, for that ſhall come in queſtion in the Court-Chriſtian. Nota, afterwards, Hill. 30 Eliz. it was moved again by Gawdy and Fleetwood Serjeants for the Plaintiff, that it was a good preſcription, becauſe the Parſonage was a Parſonage Impropriate, and by intendment it commenced by the act of the Parſon, viz. that he made a compoſition that the Tithe of that Land ſhould be paid to the Clerk in diſcharge of himſelf, & that he had uſed time out of mind, &c. to pay to the Clerk five ſhillings in diſcharge of all Tithes, &c. And the Court ſaid, if this ſpecial matter be ſhewn in the ſurmiſe, perhaps it might be good by reaſon of the continuance, and that by this the Parſon is diſcharged from finding the Clerk, with which peradventure he ſhall be charged, and ſo is as a payment of Tithes to the Parſon himſelf; but ſuch matter is not ſhewn, and by common intendment Tithes are not to be paid to the Pariſh Clerk, and he is no party in whom a preſcription can be alledged, and thereupon they Awarded a conſultation. (26) Moor 908. Poſt. 276. Poſt. 136. Poſt. 251. 307. 317.

Topliffe

Topliffe *verſus* Wilſon.

(27) ACtion for theſe words: Mr. Topliffe hath forged and counterfeited a Certificate to a Commiſſion out of the Exchequer, and hath forged and counterfeited Mr. Birckets and Mr. Savels hands the Commiſſioners, and hath put their hands to it, by reaſon whereof he got a Verdict in the Exchequer, whereas otherwiſe he muſt needs have had the foil. Upon not guilty, it was found for the Plaintiff, damages ten pound. And it was alledged in Arreſt of Judgment that the Action doth not lye, becauſe it was not ſhewn what Commiſſion it was, nor in what Suite, ſo as the Defendant might give anſwer to it, but Judgment was given for the Plaintiff.

Ards *verſus* Simpſon.

(28) EJectione firmæ: Upon ſpecial Verdict, the Caſe was, the Father was Tenant for life, the remainder to his daughter and heir apparent (being a Feme covert) in Fee; the father makes a Feoffment to divers uſes with Warranty, and after levieth a Fine with Warranty and dieth; the daughter for her ſelf, and in the name of her Baron, and by his conſent, enters within the year after the Fine, claiming the Land as her inheritance, and afterwards they let the Land to the Plaintiff. 2. queſtions, firſt if this entry by the Co. Lit. 366.a. Feme only be good; 2. if this warranty deſcending upon her during the coverture ſhall bind her. And it was held by the Juſtices that this entry by her ſelf alone (the Baron agreeing to it) is good. 2. That the Warranty deſcending upon her during the coverture, where her entry is congeable, doth not bind her. And at another day Fuller and Gray moved that although the Warranty doth not bind the Feme after the death of the Baron, yet it ſhall bind the husband, for he might have entred before the deſcent of the Warranty, which he not doing, is bound as a deſcent during the coverture; but is was adjudged for the Plaintiff, for the Warranty doth not deſcend upon the Baron but upon the Feme only, and being void to bind her, ſhall not bind him.

Mary York *verſus* Allen.

(29) SCire facias upon a Recogniſance: The Caſe was, One was quarto exactus in an Action againſt him, and afterwards was quinto exactus 23 Nov. 27 Eliz. and afterwards the pardon came which had relation to all offences before the firſt of November; if by this the Outlary be diſcharged was the queſtion, for the Outlary was after the time unto which the Pardon had relation; and prima facie the Juſtices held that it was diſcharged, but they would adviſe, V. 36. H. 6. 25. & 37. H. 6. Quatermains Caſe. And the next day it was moved again, and it was then adjudged that the Outlary was diſ-Co. 5. 49. a. b. charged and void, for the contempt and offence was pardoned, and then the Outlary after is void.

Scot

Scot *verſus* Scot.

THe Caſe was, Recoverers to an Uſe before the Statute of 27 H.8. make a Leaſe for 99 years by indenture, rendring 10 l. per annum; the Leſſee by the ſame Indenture covenanted with the Recoverers, that he will pay the Rent to ceſty a que uſe his Heirs and Aſſignees, proviſo ſemper that if the ſaid ceſty a que uſe doth not make his Heir-male his Aſſignee, that then he ſhall pay the Rent to the Recoverers, their Heirs and Aſſignees; and afterwards ceſty a que uſe dieth, and doth not make his Heir-male his Aſſignee, the Leſſee doth not pay the Rent to the Recoverors; the queſtion was if his Eſtate was forfeited, and that this proviſo makes his Eſtate conditional; and after argument, it was adjudged that it was no condition, that went to the Eſtate, but only abridged the covenant: Then was another queſtion, if the Rent be reſerved at two Feaſts, viz. Michaelmas and our Lady day, and it is Arrere at our Lady day, and not demanded at that day, if he may demand all at Michaelmas day, and it was held he cannot, and a demand in that manner is void for all. (30) Co. 2. 72. a. Poſt. 242.

Allen *verſus* Andrews de Graies Inn, Trin. 29. Rot. 1003.

DEBT upon an Obligation of 300 l. which was conditioned to pay 14 l. yearly to the party, during the life of the Wife of the Defendant; at Michaelmas or within one month after at D. the Defendant pleads that two days before the end of the month he came to D. and there tendred the 14 l. and none was there to receive it; which matter, &c. and concluded not, that he was tout temps priſt, and upon this it was demurred in Law, if this tender were good. And the Juſtices held, that if the tender had been to the Plaintiff himſelf in perſon, within the month, if he had come thither, this peradventure had been good; but it ſeemeth hard to tender it when the Plaintiff was abſent; and to compel him to attend all the month was not reaſonable: but by Wray, it is more reaſonable that the laſt day ſhall be for one to tender, and the other to receive; but they were in doubt of this caſe. But Clench ſaid, if one be obliged to pay another 10 l. at Michaelmas, or within ten days after, and no place is limited for payment, then if the Obligor meet the Obligee within the ten days, and doth tender the 10 l. the Obligation is ſaved; for perhaps at the laſt day he cannot find him. And the Juſtices held, in this caſe, the Defendant need not plead, tout temps priſt, for this ſum cannot be intended parcel of the ſum contained in the Obligation; for peradventure more ſhall be paid during the life of the Feme, then the ſum in the Obligation doth amount unto. But afterward it was adjudged for the Plaintiff. (31) Ante 14. Ante 14.

Morris *verſus* Kirke.

ASſumpſit, and declares that whereas he had expended divers ſums of mony for the Defendant, amounting to 25 l. the Defendant promiſed to pay him all the ſums of money which he (32)

had expended for him, and alledgeth that licet ſæpius requiſitus, the Defendant had not paid, &c. upon non aſſumpſit, it was found for the Plaintiff. And it was now alledged in Arreſt of Judgment, that the Plaintiff ought to have alledged the day and place of the requeſt, for it is iſſuable, and it is not like to a common action upon the Caſe where a duty is due, for there it it is payable without requeſt, and it is in nature of an action of Debt; but here an action is only maintainable upon the promiſe, and is not payable without an expreſs requeſt, and ſhewing what is due. And ſo it was adjudged.

Poſt. 78. Poſt. 85. 91. 132. 179. 229.

Preſton *verſus* Tooley, Trin. 29. Rot. 768.

(33) ERror upon a judgment in an Aſſumpſit, brought in the Common Bench, Paſ. 28. Rot. 927. The Caſe upon the Record was, Tooley brought an Aſſumpſit againſt Preſton, and declared that whereas John Gibbons by his writing Obligatory ſealed with his Seal, 26 Eliz. in forma & natura ſcripti Obligator' ſive recognitionis ſecundum formam ſtatuti ſtapulæ apud Weſtmonaſterium, de debitis pro merchandiſis in eadem emptis recuperand' ordinat' & provis' debito modo confect' coram Chriſtophero Wray Capit' Juſticiario, &c. recognovit & conceſſit ſe teneri in mille libris, &c. juxta formam dicti Statuti, &c. And that afterwards upon the Twenty eighth day of March. 27 Eliz. at London, at the requeſt and inſtance of the Defendant, he had delivered the ſaid writing Obligatory to him, ad inſpiciendum, and ſafely to keep and redeliver to the Plaintiff within ſix days after, and that the Defendant in conſideration thereof, did then aſſume to him, that if he did not redeliver it within the ſaid time, that he would pay him, when required, 1000 l. and alledgeth that licet the Defendant had not redelivered the ſaid writing Obligatory, within the ſaid ſix days after the ſaid delivery, and licet the ſaid Plaintiff after the ſaid ſix days paſſed, viz. at ſuch a day and place required the ſaid Preſton to pay the ſaid 1000 l. according to his promiſe; he had not paid, and refuſed to pay, to his damages of 1000 l. upon which the Defendant did demur in law, and for cauſe ſhewed that there was no ſufficient conſideration to charge him. But after divers arguments it was adjudged a good conſideration to charge him, and thereupon a Writ of Inquiry of damages was awarded, upon which it was found that by the not performance of the promiſe the Plaintiff ſuſtained damages 200 l. and for coſts of ſuit 53 s. 4 d. which were accordingly adjudged to him; and 17 l. 6 s. and 8 d. more for coſts. And upon all this matter a Writ of Error was brought. 1. Error aſſigned was, that the ſaid Statute was meerly void, for it is alledged to be a Statute Staple, according to the Statute for the Recovery of Debts, made at Weſtminſter, &c. Whereas it is a meer Statute Staple which is to be acknowledged before the Mayor, &c. According to the Statute of 27 Ed. 3. and not before any other; and this is acknowledged before Wray Chief Juſtice, Sed non allocatur, for it was held clearly to be well enough alledged, for it is a Statute Staple acknowledged according to the Statute of 23 H. 8. and it is pleaded according to the uſual courſe of pleading ſuch Statutes. 2. Error, That there was no time certain alledged, when he delivered the Statute to the Defendant, but only it is alledged, that at ſuch a day he was poſſeſſed of the Statute,

23 H. 8. c. 6.

Statute, and delivered it to the Defendant at his inſtance and requeſt, ſed non allocatur, but I did not hear their reaſon. 3. Error out of the Record, that the Plaintiff quarto die obtulit ſe againſt the Defendant per Atturnatum ſuum, but ſhewed not who was his Attorney, and if he had no Attorney, it was Error. Curia Contra, because it is not the Courſe of the Common Bench, to enter the name of the Attorney, till after the Declaration; and in the Declaration it is ſaid that he appeared per Tho. Warren Atturnatum ſuum. But Egerton ſhewed a preſident where the Entry was, that one appeared by Cutting, Atturnatum ſuum, and ſhewed not his Chriſtian name; and this being alledged in Error, the Judgment was reverſed, which the Court here did agree; for where he medleth with his name, he ought to name him truly by both names. 4. Error, which was not put in the Record, that it was alledged licet he had not delivered it within ſix days, &c. ſo he doth not preciſely affirm it. Curia contra; for it is a good affirmation, as Buckleys Caſe in the Comment. 5. Error, that the conſideration was not ſufficient, for it appeareth not that the Defendant had any benefit by the ſhewing it to him, but rather charge and trouble to keep it, and to look on it. But as to this the Court would hear no argument, for they held it clearly a good conſideration; and this was the point diſputed in the common Bench, and therefore they commanded the Judgment ſhould be affirmed. But Egerton Sollicitor moved that the Judgment might be ſtayed for another day, and then moved another Error, that upon the Writ to enquire of Damages, the Plaintiff had no day given him in Court, and no day was given to the Defendant then to appear, and vouched 8 H. 7. Rot. 29. in the Book of Entries, fol. 273. where the Error was aſſigned, and admitted good; and this he ſaid was a manifeſt Error, and the Court ſaid, they would adviſe of it; but afterward the next day it was moved again, and this Error over-ruled; for they ſaid the courſe of the Common Bench was to give no day. But all the preſidents in this Court are otherwiſe, and the death of the party Plaintiff abateth the Writ. And the Judgment was affirmed.

Poſt. 545.

Ante 59. Poſt. 153.

Ant. 67. 70.

Yelv. 97. Poſt. 144.

Co. 11. 6. b.

The Maior of Lawnſons Caſe.

(34)

TReſpaſs againſt him for taking a quarter of Corn; he juſtified for that it was within the Town of L. and it was Damage Feaſant in his Freehold; the Defendant pleads that they were by Charter in the time of Queen Mary Incorporate, &c. and a market was granted to them, and the place where, &c. was appointed for the Market place, and he brought his Corn on the Market day, and ſet it there, and the Defendant took it; and upon Demurrer, it was adjudged without argument; that upon this matter the Mayor could not juſtifie the taking.

Co. 10. 94. b.

Poſt. 117.

Dinham *verſus* Beckett.

(35) TRrepaſs for breaking his Cloſe. Defendant pleads that I.S. was ſeiſed of the Land, and let it to I. D. and he as his ſervant entred, and gave no colour to the Plaintiff; and for that cauſe the Plaintiff demurred. And it was argued by Griffith of the one part, and by Shirly on the other part. And Griffith ſaid that when the Defendant doth make a ſpecial title to himſelf or to any other, he ought of neceſſity to give colour to the Plaintiff; but when he pleads a general plea, or that it is his freehold, it is otherwiſe. 2 Ed. 4. 8. Shirley contra, becauſe the Defendant doth make no title to himſelf, but doth juſtifie as a ſervant, 18 Ed. 4. 3. Wray ſaid he ought to give colour, though he juſtifieth as a ſervant, but moved the parties to relinquiſh their demurrer, and plead to iſſue, which they did.

Co. 10. 89. b. 90. a. Co. 10. 89. b.

Gabriel Widow *verſus* Peter Clerke.

(36) BILL of Debt for 40 l. upon the Statute of 23 H. 6. brought by the Plaintiff, tam pro ſe, quam pro Domina Regina. And declared that whereas Anthoney Wolley. 27 Eliz. had ſued in the Court of Nottingham, before the ſaid Defendant then Mayor, and I. S. and I. D. Sheriffs there, according to the cuſtom of the ſaid Town, a plaint of Treſpaſs ſur caſe againſt A. the Plaintiff, upon which a Capias was awarded by them, to O. B. Serjeant and Officer of the ſaid Court, to take the ſaid Plaintiff, and have his body before them at the next Court, viz. 1. Septembris, to anſwer, &c. and that afterward, viz. 23 Auguſt, 27 Eliz. the ſaid O.B. arreſted him, and that he committed him to the priſon of Nottingham, under the cuſtody of the ſaid P. Clerke, Mayor of the ſaid Town, and keeper of the Queens Goal there; and alledged further, that he being then in priſon, 28 Auguſt, 27 Eliz. did offer to the ſaid Mayor, Keeper of the ſaid Goal, ſureties, &c. to appear at the next Court, to anſwer to the ſaid Anthony Wolley in the ſaid action, which ſureties he then refuſed, and kept him in priſon until, &c. againſt the form of the ſaid Statute, per quod actio accrevit: the Defendant pleads nihil debet, and found againſt him; and this Term it was moved in Arreſt of Judgment, that the Action lieth not againſt the Mayor, for the ſureties were not to be offered unto him, but to the Serjeant, for the Mayor was the Judge to award the proceſs, and cannot be an Officer to himſelf to take the bail. Alſo the Warrant is, that he ſhall take his body and keep him till the next Court, viz. 1 Septemb. and ſo till that day is come he is in the cuſtody of the Serjeant, in whatſoever priſon he is committed. Alſo the ſurety offered is not according to the Statute, for it is that he ſhall appear ad reſpondendum, whereas it is to be only for his appearance, and not for his anſwer; Sed non allocantur, for it was held clearly that the Plaintiff is to recover, for the Serjeant is but the inferior Officer; and although the Mayor is Judge in ſome reſpects, yet he may be an Officer for keeping the Gaol; and here he is not only the Judge, but the Sheriffs alſo, and the Plaintiff being in priſon under him, it is proper to offer ſureties to him; and ſo is the

3 Inſt. 194. 1 Rol. 537. 7. Moor 247.

Poſt. 168. 1 Cr. 138.

the common course in London, upon plaint before the Sheriffs, and a precept to the Serjeants to Arrest one, the sureties shall be found and offered to the Sheriffs. 9 H. 6. 19. And when the party is brought to the Gaol he is under the Mayors custody, and not of the Serjeants. And they held clearly that the surety offered was according to the Statute, and commanded judgment to be entred accordingly, but it was stayed till the next day, and then Walmsly Serjeant said, that the Action is not well brought, for the Statute of 18 Eliz. cap. 5. is, that no Action shall be brought but by information or original Action, and not otherwise, and this is by Bill of Debt. Coke; this Action in this Court is the proper original action that is sued in this Court, and so is within the intent of the Statute, 2 R. 3. 17. 27 H. 6. 5. Also the said Statute of 18 Eliz. is to redress disorders in common informers, but here he that sueth is the party grieved. But the Court held it will be hard to maintain this Action to be sued here, for the Statute is in the negative, that it shall not be sued otherwise, which doth not refer to any person, but they would advise. Daniel said he was of Councel with the Gaoler of Boſtin in a Bill brought against him in this Court, and it was abated for this cause, that it was not by information. And afterward, Ter. Pasch. it was for this cause only adjudged for the Defendant; and it cannot be helpt by the Statute of 18 Eliz. for Jeofaile, for this is not matter of form but substance, by misconceiving the Action.

1 Cr. 196. 2 Cr. 94. 5. Co. 10. 101. b.

18 El. cap. 5. Co. 6. 19. b. 1 Rol. 537. 3 Inſt. 194. Moor 412. Poſt. 544.

Hector Nunns Doctor of Physick *versus* Gee, Pasch. 29. Rot. 498.

COvenant, and declareth that whereas the Queen by her Letters Patents granted License to him, his Deputies and Assignees, to buy Spanish Wool, and to transport it hither, &c. he by this Indenture bearing date, &c. granted to the Defendant, and to Roger Norwood, the said License for eight years, with divers Covenants to enjoy it, in consideration whereof the said Defendant did Covenant and grant to him, to pay to him one hundred pound every year at two Feasts, viz. the Annunciation and Michaelmas, and further that every year at the Feast of the Annunciation, or within Twenty days after he would make a new Obligation of one hundred and fifty pound, for the payment of the said one hundred pound the next year, and alledges in facto that the Defendant had not paid him the fifty pound due to him at Michaelmas, 28 Eliz. and that he did not make an Obligation at the Annunciation, &c. and for those Covenants broken he brought the Action; the Defendant pleaded that in the Indenture there is contained proviso semper, that if the Defendant doth not every year make the Obligation at the Feast of the Annunciation, or failed of payment of the money at the day, that then and from thenceforth the said Indenture and every Clause, Article, and sentence therein should be void, and of none effect; and shewed that he failed in making the Obligation at the first day, and so the Indenture is void, and demands Judgment, si actio. And upon this it was demurred in Law, Owen and Wood argued that the Action did lie, for this Covenant broken before the Indenture became void, and therefore it is not reason

(37)

Poſt. 916.

reaſon but the action ſhould well lie; but they agreed that for the Covenant for payment of the money no action did lie, becauſe the Indenture was void half a year before, by not making the Obligation; and the Indenture is, that then and thenceforth the Indenture ſhould be void, and ſo for all the time before he remaineth chargeable, as in caſe of Leaſe for years, and for rendring Rent, and for not payment the Leaſe to be void; although the Leaſe becomes void, yet for Rent due before Debt lyeth, ſo upon the Statute of 13 Eliz. of Leaſes made by Parſons, that upon non reſidency for eighty days, the Leaſe ſhall be void, and that all Obligations, Covenants, &c. for enjoyment of it ſhall be void, yet it was adPoſt. 245. judged 26 Eliz. inter Walls & Cox, that where a Parſon made ſuch a Leaſe by Indenture, in which were divers Covenants on the Leſſees part, and after the Leaſe, &c. became void by non-reſidency, &c. that for a Covenant broke before, an Action of Covenant did lie. But Wray ſaid, the caſes are not alike; for in that caſe the Covenant was plainly broken, and the Leaſe and Covenants after became void; but here the thing that makes the Indenture void, is Poſt. 600. the breaking of the Covenant, ſo they are both at one time, and ſo he hath loſt all his bargain, and all his benefit of the Indenture, and the other party is at large, and ſo no priority here. But they would adviſe. But in Trinity Term following, it was adjudged for the Plaintiff; but I heard not their reaſons; but it was ſaid that the reaſon was, that the intent of the party was, that it ſhould be void only to have benefit of Covenants broken in futuro, but for the Covenants broken before it was never their intent, but that the party ſhould have advantage of them.

Simons *verſus* Sweete.

(38)

Moor. 247. FAux impriſonment. The Defendant juſtified, becauſe the Plaintiff ſaid to J. S. that the Mayor of Barſtable was a fool, which the Mayor hearing of, commanded the Defendant being an Officer, &c. to impriſon him, and upon Demurrer it was adjudged no Plea, Co. 11. 98. a. b. but for ſuch words he might have bound him to his good behaviour, but was not to impriſon him; yet if the Mayor had been in publick Poſt. 689. place of Juſtice, and he had called him by ſuch opprobrious words, he might impriſon him.

Hubbards Caſe.

(39)

Ant. 74. Poſt. 98. ACtion for Trover and Converſion, and doth not alledge a place of Converſion, which is a thing material and being alledged in arreſt of Judgment, the Bill was abated.

Bland *verſus* Maddox.

PRohibition, It was agreed clearly that a Layman may be preſented to a Prebend, for non habet curam animarum; and Coke ſaid, all the poſſeſſions of Prebends were at firſt the Biſhops. 7 Ed. 3. 5. 30 Ed. 3. 26. and de mero jure do pertain to the Biſhops. (40) Co. 3. 75. b. Mo. 261.

Carter *verſus* Goddard.

ERror. The Caſe was; Goddard bought an Aſſumpſit, and his Writ was in conſideration, that he would procure J. S. to aſſign to Carter ſuch a term in certain Lands, that he would pay him 40 l. and alledged that he at his procurement had aſſigned, &c. but in the Declaration it was not alledged that he had aſſigned the term, &c. and ſo no conſideration; and this was aſſigned for Error. Coke prayed it might be amended; for when the Clerk had the Writ before him, which was good, and would not purſue it, but leave out a thing compriſed in the Writ, which he had before him for his information, this is amendable, 13 H. 7. 21. 11 Ed. 4. 2. And the opinion of the Court was, that it ſhould be amended for that cauſe; and they ſaid, ſo was the opinion of the Juſtices of the Common Bench. (41) Lib. 8. 159. a. Poſt. 119. 170. 435.

King *verſus* Robinſon. Paſc. 29. Rot. 90.

ASſumpſit: The Plaintiff declared that the Defendant did aſſume to do ſuch a thing, &c. and upon non Aſſumpſit it was found he did aſſume to do that and another, which he had not performed, and it was reſolved againſt the Plaintiff; for the Juſtices ſaid, where the Plaintiff declareth that in conſideration of one thing, the Defendant aſſumed, &c. and the Jury find in conſideration of that and another thing he aſſumed, he hath failed of his Aſſumpſit, and the Juſtices denied the Caſe of 32 H. 8. Bro. Verdit. Nota, it was ſaid that Paſ. 14 Eliz. Catlin did cauſe a Record of Paſ. 21 H. 7. to be read in the Queens Bench, of a Judgment given before Fineux Chief Juſtice, and the Caſe was, A Woman in London had given to the Plaintiff flattering words æquipollentia to a promiſe of Marriage, and by that means he delivered to her money and other things, and ſhe had cauſed the Plaintiff to retain Counſel for her, and to travel about her Suits in Chancery, and afterwards the Woman refuſed to Marry him, and Married another, in diſceit and fraud of the Plaintiff; the Woman traverſed all the matters alledged againſt her, and part was found for the Plaintiff, and part againſt him; and this was one matter found for him, that the woman had given unto him blanda verba matrimonio æquipollentia, and the Plaintiff had Judgment for thoſe particulars that were found for him, and he was amerced for the other; and this was an Action upon the Caſe, for the diſceit in not Marrying him; for he did not declare of any promiſe of Marriage in facto. And Catlin ſaid it was to be noted, that (42) Ant. 41. Poſt. 149. 66 c. 2 Cr. 504. Poſt. 147.

that the Plaintiff had judgment, although but part found for him, and part againſt him, which is contrary to that (as he ſaid) that hath been ruled here twice or thrice, that if an aſſumpſit be brought upon ſeveral things, and part only is found for him, the Plaintiff ſhall have no judgment for any part. But Southcote ſaid that the Record ſhewn was an Action for divers diſceits; which being traverſed, and part found for the Plaintiff, and part againſt him, yet judgment may be given for the Plaintiff, for the part, &c. but of an entire promiſe, it is otherwiſe; for there failing in part, he fails in all.

Boniſaut *verſus* Sir Richard Greenfield.

(43) Ant. 26. THe Caſe was; Tremaine ſeiſed of the manner of D. deviſed the ſame to I. S. and three others, and to their Heirs, to the intent and purpoſe, that the Deviſees ſhould ſet it for the beſt profit, and convert the money thereof coming, to the performance of his Will; and in the concluſion of the Will, he maketh them four his Executors, and dieth. One of the four refuſes to meddle with the Will or ſale, and the other three ſell the land in the life of the fourth; the queſtion was, if the ſale was good. The caſe was argued by Co. Lit. 113.a. Popham and Egerton; and it was adjudged that the ſale was good by the three, either by the Common-Law, or by the Statute of 21 H. 8. for when he deviſeth the Land to four to ſell, &c. and afterwards maketh them his Executors, this doth tant' amount as if at the firſt he had deviſed that ſuch his Executors ſhould ſell; and in ſuch a caſe at the Common-Law, the ſale by three, the fourth refuſing, was good, for they three may perform the Will without the fourth, but Co. Lit. 113.a. the Statute maketh it clear.

The Queen *verſus* Blaucher.

(44) Moor 541. 26 H. 8. cap. 3. THe Queſtion was, if that upon a traverſe to the certificate of the Biſhop of Lincoln for not payment of tenths upon demand, nor within forty days after, whether the benefice be void by the Statute of 26 H. 8. cap. 3. that enacts that after ſuch default, and certificate thereof made to the Court under the Seal of the Biſhop, that it ſhall be void. Manwood chief Baron ſaid, it hath been a great queſtion if this certificate of the Biſhop be peremptory, or that the party ſhall be admitted to his traverſe of it. And upon great deliberation between the Barons, and by the adviſe Poſt. 397. of the other Juſtices, it hath been clearly held that the certificate is not peremptory, for the Biſhop doth it only as an Officer, ſcilicet, as Collector of the Tenths, and not as a Judge, as in the caſe of Baſtardy. And here is to be a default in the Parſon, viz. not payment, which is triable per pais, for otherwiſe all the Parſons of England may be put out of their Parſonages by ſuch nude ſurmiſe and bare certificate without any anſwer; and the Law never intended to make the certificate ſo peremptory. And Baron Gent ſaid, he had known it ſo ruled in his experience upon an iſſue, upon avoidance, or not avoidance, upon

upon that Statute in a Quare Impedit. And all the Barons held in the principal Case, That the Officer of the Bishop, which is to demand the Tenths, ought also to be authorized to receive them: for he cannot appoint them to be paid at another place, or to another person; for the Parson is to pay them at his own house, and to the person that demands them in the name of the Bishop: And they said it had been so formerly ruled.

M Termino

Termino Hillarii,

Triceſſimo ELIZABETHÆ,

in Banco Reginæ.

Arthur Robſert *verſus* Andrews & Ann. Uxor' ejus, & Cocket. Intrat. Trin. 22. Rot. 583.

(1) ERror of Judgment in the Common-Bench, in an account which is entered there; Term. Paſch. Rot. 940. where Andrews and his wife, and Cocket declared againſt the ſaid Arthur Robſert; That he the 20 of Auguſt, 10 Eliz. Apud Filly in Com. Norf. was the Receiver of the money of the ſaid Cocket and Ann. Dum ſola fuit, viz. by the hands of Jo. Waſe, one hundred pound to render an account, when he ſhould be required; yet the Defendant being required to do it, had refuſed, to their damages two hundred pound: The Defendant pleads, that he was never their Receivor of the ſaid one hundred pound, or of any parcel of it, by the hands of the ſaid Jo. Waſe, to render an account, &c. And upon this they were at iſſue; and it was found by ſpecial Verdict, that the 10 Auguſt, 10 Eliz. one Osbert Muntford gave the ſaid one hundred pound for the relief of ſaid Cocket and Ann, and delivered the ſame to the ſaid Jo. Waſe, then his ſervant, to the intent he ſhould deliver it to the ſaid Arthur Robſert, for the relief of the ſaid Ann and Cocket; and that he the ſaid 20 Auguſt, 10 El. did deliver it to the ſaid Arthur Robſert, for the relief of the ſaid Ann and Cocket, according to the ſaid intent; and if upon the whole matter Arthur Robſert ſhall be ſaid to be the Receiver of their money, by the hand of the ſaid Jo. Waſe, Prout, &c. They prayed the diſcretion of the Court; and it was adjudged, he ſhall be ſaid to be their Receivor Prout, &c. and that he ſhall account with the ſaid then Plaintiffs, for the ſaid one hundred pound. And afterwards by vertue of a Writ of Capias ad computandum directed to the Sheriffs of London, the ſaid Arthur Robſert was taken, and brought to the Bar, and committed to the Fleet, Quouſque, &c. And afterwards Auditors were aſſigned to him by the Court to hear his account, and he found Mainpernors in two hundred pound

pound, to enter into account before them, and to finish it, &c. and to appear in Court De die in diem, until Judgment was given thereupon, and to satisfie all the arrearages, which by the Court he should be adjudged to satisfie, or to render his body to prison, until he had satisfied. And hereupon he entred into account, and alledges, That he had maintained the said Ann dum sola fuit, (who afterwards intermarried with Andrews) and the said Cocket by the space of eight years, at D. in the County of M. and had expended the said One hundred pound for the relief of the said Ann and Cocket; and so prayed to be discharged: And upon this they were at issue, that he had not expended the said One hundred pound for the Relief, &c. And it was found for the Plaintiffs, and damages assessed above the said One hundred pound, Ratione interplacitationis compoti prædict' twenty pound, and costs ten pound. And upon this Verdict, Judgment was given for the then Plaintiffs, and the costs were increased by the Court; and upon this Judgment, Arthur Robsert brought a Writ of Error. Fenner Serjeant for the Plaintiff, assigned divers Errors. 1. The matter in Law, which was adjudged in the Common Bench, viz. That they declared he was their Receiver, to render an account of the One hundred pound; whereas it was found he received the money for their relief, and not to account. But the Court held clearly, That when he received the money in that manner, he received it to their use, and is accountable if he did not expend it; and it is as if he had received it to their use by express words. 2. Error, That they declared that he was their Receiver Ad computandum; and he is not accountable, unless he did not expend it in their maintenance, and so ought to have a special Writ, and declare specially, Sed non allocatur; for they to whose use the Bailment was made, can have no other Writ; for they cannot suppose he received it Ad Merchandisandum, for that is false, and he had no such authority; and in that case his costs were to be allowed him. 3. Error, That in the Writ and Count, he is supposed to be Receiver of their money, by the hands of Jo. Wase, whereas it ought to be by the hands of Osbert Munford; for Wase delivered it as his servant, and it may be said the delivery of the Master; and by the hand of the Master, the Receipt ought to be supposed. Coke answered, That whereas the servant doth contract; this shall be said to be the contract of the Master, and he only charged for it, 11 Ed. 4. 6. But here they convey only a possession by the hands of Wase, but conveyed no interest by him; and therefore may count, that he received it by his hands. 4. Error, For that the Writ was, and they accounted that he was their Receiver, to render an account when required; which is false, for no request was mentioned upon the delivery. Coke, The Law implieth it, 21 Ed. 4. 42. 5. Error, The Writ of Account was brought in Norfolk, and the Cap' ad computandum was awarded to London; whereas it ought to have been to the Sheriff of the County where the Action was brought. Coke said it was helped by the Statute of Jeofails, and he appeared upon this Proces, and so had made it good; and Error in Proces cannot be alledged after In nullo est erratum pleaded; for if it had been alledged, the other party might have alledged Diminution. 6. Error, for that before the Auditors the Defendant alledged, That he had expended the One hundred pound for the relief of the Plaintiffs;

and they replied, That he had not expended the One hundred pound, but ſaid not, nor any part; for if he had expended any part, it is not reaſon he ſhould give an account of that part; and Judgment given upon an ill iſſue, is erroneous. Coke, that inaſmuch as it is a Collateral-iſſue, he is only to joyn with his adverſary, and is to add nothing to it; but in a General-iſſue it is otherwiſe: As in an Action of Waſte for cutting twenty Oaks, the Defendant ought to plead, That he did not cut the ſaid twenty, or any of them; but in Debt upon an Obligation, that he ſhall do no Waſte: And the
Co. Lit. 282. a. breach is aſſigned, That he cut twenty Oaks, it is ſufficient to plead he did not cut the ſaid twenty Oaks, Modo & forma, &c. 2 Mar. Dyer 115. 7. Error, it doth not appear to the Court, that there was an original Writ, for it is not certified, and the Defendant hath pleaded in Nullo eſt Erratum; and therefore cannot alledge Diminution, 20 Edw. 3. Error 2. 9 Edw. 4. 32. and Judgment given where there is no Original, is erroneous. Coke, If the Plaintiff aſſigneth for Error, that there is no Original, and the Defendant pleads in
Poſt. 155. 281. Nullo eſt Erratum, he cannot after alledge Diminution; but this error being aſſigned Hors de Record, the Court here may write to the Common Bench to certifie it; for by the Writ of Error, all is certified which is with the Chief Juſtice there, which is only the body of the Record; but the original and judicial Writs remain with the Cu-
Poſt. 153. 271. ſtos Brevium; and other Officers, which are never certified but where
837. Error is aſſigned for want of them. 8. Error, That the Plaintiff had Judgment to recover Damages and Coſts, and it is a Poſitive Law, he ſhall have none in a Writ of Account; as 2 Rich. 2. & 14 E. 3. Damages. And although there is a Preſident in the Book Of Entries, where in an account, damages were given, the reaſon is, becauſe the goods were delivered Ad Merchandiſandum; and to have increaſe; but it is not ſo in this caſe. But it was anſwered, That in the firſt Judgment to have an account, damages ſhall not be recovered; but here damages are not given Ratione detentionis compoti, but Ratione interplacitationis compoti, where the Plaintiffs are delayed by the Defendants Plea: And although goods are given to merchandiſe, yet he ſhall not recover damages for the detainer, but all ſhall be put in the arrears of the account. And in the Old Magna Charta it is ſhewn in what Writs damages ſhall be adjudged, and a Writ of Account is one of them: And in the Book of Entries, fol. 17. Damages are given in account. And afterward, notwithſtanding theſe Errors, the Judgment was affirmed.

Crow's Caſe.

(2) ERror of a Judgment in Treſpaſs of Aſſault and Battery, becauſe the Judgment was Quod ſit in miſericordia, whereas it
Poſt. 107. ſhould be Quod capiatur. Tanfield moved, That this is for the Plaintiffs benefit, and is the default of the Clerk, and ſo ſhall not be aſſigned for Error; but the Judgment for that cauſe was reverſed.
Co. 8. 59. a. 29 Edw. 3. 29. 14 Eliz. Dyer 315.

Levellin *verſus* Watkins.

ERror to Reverſe an Utlary, becauſe the original was againſt Levellin, with a ſingle L. and all the mean Proces was verſus Llevellin, with a double LL. and the Proces was againſt two, and the Sheriff returned Quod non ſunt inventi, and doth not ſay, Nec eorum aliquis: And the Judgment was for theſe Cauſes Reverſed. (3) Poſt. 104, 198. 248.

Griſling *verſus* Wood.

ERror for that in an Action in an inferiour Court; the Declaration was in Engliſh, whereas by the Statute of 36 E. 3. c. 15. all Entries are to be in Latin: And although it was ſaid the cuſtom there was ſo uſed, yet this cannot be good againſt a Statute, and the Judgment was reverſed. And Evens ſaid, That divers Indictments had been diſcharged for this cauſe. (4) Poſt. 185.

Devenly *verſus* Ann Welbore.

ASſumpſit againſt the Defendant as Executrix of George Welbourne, and declareth, That in conſideration that the Plaintiff would aſſure certain Lands to Tho. Percy at the inſtance of the ſaid George; he aſſumed, That if Tho. Percy did not pay him yearly upon requeſt ten pounds, and ten Load of Faggots, that he would pay them; and alledgeth in facto, That he did aſſure the Land, &c. to the ſaid Tho. Percy; and that the ſaid Tho. Percy Licet ſæpius requiſitus did not pay the ſaid ten pound, and ten Loads of Faggots: nor the ſaid George in his life, nor the Defendant ſince his death: Upon Non Aſſumpſit, it was found for the Plaintiff. Coke moved in Arreſt of Judgment, that the Declaration was not good; for the payment of the ten pound, &c. was to be upon requeſt, and a requeſt is material, for otherwiſe, the Defendant is not chargeable: And therefore the requeſt, and the time and place where to be expreſly alledged; and of that opinion was the Court, and Judgment given, that the Plaintiff Nihil cap' per billam. (5) Ante 74.

Wikes

Wikes *verſus* Morefoots.

(6) TReſpaſs. It was held Per curiam; That if one takes my Horſe, and ſells it in a Market, Overt and Toll paid for it, but he enters his name falſly in the Toll-Booth; yet the ſale is clearly good, and the property altered, if there was no Covin in the Vendee: For the Miſnoſmer of the party is nothing to him, when he buys it Bona fide; and is not Coniſant of the Tortious taking; and they adviſed the Plaintiff to diſcontinue his Suit, and ordered that ſmall coſts ſhould be aſſeſſed; and it was ſo done.

Mo. fo. 485.

King's Caſe.

Moor 249.
4 Inſt. 180. 1.

(7) KIng was indicted; for that whereas he was bound by Recogniſance to be of Good Behaviour, he had ſaid to one Kirton, That he was a Pelter, and a teller of lies, and a Drunkard; and that he would make him a poor Kirton; and that he had entred and broke the Cloſe of Kirton: For which, an Action of Treſpaſs vi & armis lieth; and the queſtion was moved by Coke, If theſe be cauſes of the breach of his Recogniſance? For it is a common courſe in ſuch caſes to indict men, which will be evidence in a Scire facias upon the Recogniſance. Wray and Gawdy conceived at firſt, That they are no cauſes of the breach of the Recogniſance; for the party doth not break his Good Behaviour, except he doth ſomething in act or ſhew, which tends to the breach of the Peace: As if he goeth in warlike manner with weapons, or is in company of riotous Malefactors, although nothing be done, or threatens another to beat him, or to fight with him. Theſe (although nothing be done) are breaches of the Good behaviour: But when he ſpeaks only words of reproach, which may procure another to break the Peace; this is no breach of the Good behaviour. And they held clearly, that the entry into the Cloſe was no breach, being done peaceably, and he might pretend title to it; although in an Action, it is ſuppoſed to be Vi & armis, and Contra pacem. And Wray ſaid, That nothing ſhall be ſaid a breach of the Recogniſance, but that which ſounds to the hurt of another, and by Intendment may be a breach of the Peace; as Aſſault, Menace, &c. And he ſaid, If one be leading of his Horſe; and he that is bound to his Good behaviour, doth take it from him: This peradventure may be a breach of the Good behaviour; for it is an aſſault upon his perſon, although he take it peaceably. Clench contra: For the words being ſpoken in diſdain and reproach, ſhall be ſaid a breach of the Recogniſance: for it may be cauſe of the breach of the Peace, as well as carrying of weapons, or having a great company following him, as 2 Hen. 7. is; and the words being malicious and opprobrious, give occaſion of blows; but the entry into the Cloſe is no breach. Shute doubted of the words, becauſe they were opprobrious and ſpoke in malice, and do provoke another to break the Peace. And the Court ſaid they would adviſe. V. 4 Inſtit. 180. & 181.

Mo. 249.

Smith's Caſe.

HE was indicted at the Seſſions of the Peace in the County of Oxon. for forging a falſe Deed, againſt the Statute of 5 Eliz. And now Tanfield moved, that this Indictment was not well taken before the Juſtices of the Peace, for they have no power to take it; for the Statute is, that Juſtices of Oyer and Terminer, and the Juſtices of Aſſiſe in their publick and open Seſſions, ſhall have power to inquire of ſuch offences, and giveth no authority to Juſtices of the Peace in their Seſſions to inquire of it. And of that opinion were all the Juſtices, that the Indictment taken before them was void; for they have ſeveral and diſtinct Authorities and Commiſſions, one to hear and determine, which is to be kept in a place, and at a time certain, and is to be adjourned to a certain time, and a Commiſſion of the Peace, by vertue whereof they are to keep their Ordinary Seſſions; and this Indictment was taken before them Ad Seſſionem Pacis: And Ewens ſaid to them; ſo it hath been ruled within theſe two years. But Popham Attorney ſaid, that he had known divers ſuch Indictments taken, and never contradicted, and the parties had ſuffered the puniſhment of the Statute: And thereupon the Court ſaid, they would adviſe; but in this Term the Indictment was diſcharged. (8) Co. 9. 118. a. b. Poſt. 697. 601.

Higham *verſus* Reynolds, Mich. 29 & 30. Rot. 562.

TReſpaſs for entring and breaking his Houſe, and cutting ſix poſts of it, 1 May, 28 Eliz. The Defendant pleads, that as to the breaking of the Houſe, and all the Treſpaſs except the cutting of the three poſts of the Houſe, not guilty. And as to the cutting of the ſaid three poſts, he ſaid, that upon the ſaid firſt of May 27 Eliz. it was the Free-hold of one Anthony May, and he by his command entred and cut the ſaid poſts, which is the ſame Treſpaſs, &c. Abſque hoc, that he was guilty of any Treſpaſs before the ſaid ſeven and twenty years, &c. but doth not traverſe the time after, &c. And upon this Plea it was demurred; and it was argued by Brecknam of the one part, and by Altham of the other part. And firſt, Exception was taken; for that the Defendant pleads as to all the Houſe, not guilty, and after juſtifieth as to the three poſts; and ſo pleads not guilty to one thing, and juſtifieth for the ſame thing, which is no good pleading; as 21 Henry 7. 31. The ſecond Exception and Cauſe of the Demurrer principally was, for that he ſaith it was the Free-hold of Anthony May, and juſtifieth by his command, 27 Eliz. which was a year before the Treſpas ſuppoſed, and traverſeth the time before 27 Eliz. but ſaith nothing to the time after 27 Eliz. and relied upon 5 Edw. 4. and other Books, that he ought to traverſe the time after, as well as the time before. Third Exception, that he ſaith it was the Freehold of Anthony May, and doth not aver his life; but that Exception was overruled, that it ſhall be intended he had the Fee, when he pleads generally it was his Free-hold. Altham anſwered as to the two other Exceptions, and ſaid as to the firſt, That although the Defendant pleads not guilty generally to the whole Houſe, yet he may after juſtifie as to parcel; for he hath pleaded not guilty to all, except this ſpecial parcel, and ſo is 35 H. 6. And as to the (9) V. ant. 57. Co. 9. 27. a.

ſecond

ſecond Exception, he ſaid the Plea was good, although he doth not traverſe the time after: For when he pleads his Freehold, or the Freehold of another, it ſhall be intended ſo to continue, except the contrary be ſhewn, and therefore need not traverſe the time after; and ſo is 5 Edw. 4. 15. And to this opinion the Court inclined, but they would adviſe of it; but afterwards it was adjudged for the Plaintiff.

Goſnal *verſus* Kindlemarſh.

(10) DEbt upon an Obligation, dated 25 March, &c. The Condition was, That the Defendant be not abſent from his Benefice by the ſpace of eighty days, nor permute or reſign without the aſſent of the Patron, That then, &c. the Defendant pleads the Statute of 13 Eliz. By which, all Leaſes of Parſons made of their Benefices where they are abſent, by eighty days Et ultra; and all Obligations for enjoying them ſhall be void; and alledgeth, That he was abſent by the ſpace of eighty days, but ſaith not Et ultra. Upon which Plea it was demurred; and it was moved by Coke, That this was an incurable fault in the Plea; for he ought to have ſaid he was abſent eighty days Et ultra; for he may be abſent for eighty days, and come again in the night of the eightieth day; and
Poſt. 262. this muſt be expreſly alledged, and not by Implication. Coment. 143. And of that opinion was the whole Court, but they moved the parties to agree, and in the mean time they would ſtay judgment.

Bagnall *verſus* Stokes.

(11) PRohibition, and ſurmiſed, That the Defendant ſued him, being an Executor in the Spiritual Court for a Legacy; whereas the Plaintiff had a Releaſe, but had only one witneſs to prove it; but a conſultation was granted: But if he had ſurmiſed, that he
Poſt. 666. had pleaded this Releaſe in that Court, and produced his Witneſs; and that they would not allow it, becauſe it had not two Witneſſes: This had been a good Surmiſe. And it was ſaid the Plaintiff is at no miſchief; for he may have a Prohibition after Sentence given
Poſt. 595. in that Court.

Hamond *verſus* Barker.

(12) TReſpaſs. Upon evidence the Caſe was. J. S. by Deed inrolled in Chancery, bargained and ſold a Houſe and certain goods to the Plaintiff, and after took the goods again, and would avoid this bargain and ſale inrolled, by Dureſs of Impriſonment. Godfrey ſaid it cannot be avoided by ſuch nude matter in fact. 7 Edw. 4. 5. 39 Hen. 6. 32. 13 Ed. Eſtoppel 18. 48 Edw. 3. 33. For being inrolled, it is a thing of Record. Morgan contra; and he ſaid, A Deed inrolled is no Record, but a thing recorded, 16 Henry 7. 5. and cited Browne and Weſton's Opinion in one Morley's Caſe accordingly: The Court ſaid, the caſe was doubtful, and they would adviſe: but afterward they conceived it would be hard to avoid the Deed by Dureſs, but no Judgment was given, becauſe the parties agreed.

Richard

Richard Scovel *verſus* Jo. Cabel, Trin. 29. Rot. 193.

1 Leon. 317. Moor 267.

EJectione firmæ, The Caſe was, Leverſage made a Leaſe to Stephen Cabell, Jo. Cabell, and William Paine by Indenture, To have and to hold to them for term of their lives. Proviſo, and it is covenanted and granted between them, that the ſecond ſhall not occupy the Land during the life of the firſt; and the third ſhall not occupy during the life of the ſecond; and afterward the firſt occupieth all and dieth, and then the third enters, and made a Leaſe to the Plaintiff who was put out by the Defendant; and all this matter was found by ſpecial Verdict. And the queſtion was, if this Proviſo be a Limitation of the firſt eſtate, and ſevereth the eſtate which was given to the three jointly, and makes each of them in Remainder one after the other? or it be only a nude Covenant. Harris for the Plaintiff, that there is a joynt Eſtate given to them expreſly by the Premiſſes of the Deed; and the words after in the Proviſo cannot ſever the eſtate, and divide it ſo, that one ſhall take after the other; and the Proviſo is void and repugnant to the Premiſſes, and cited a Caſe in Bendloe's Reports to be ſo ruled, 4 Edw. 6. Heale contra: The Proviſo is an Explanation of the Premiſſes of the Deed, and may ſtand with it, and is a Limitation of their eſtates, how each of them ſhall take, and cited 8 Edw. 3. a Leaſe unto two; Habendum to one for life, Remainder to the other. And he ſaid he had known it reſolved in this Court, where a Leaſe was made to three, Habendum to them for their lives, Succeſſive prout nominantur in the Deed; this made each of them in Remainder after the other: And in the Common Bench it was ruled, that whereas a Leaſe was made to three for their lives, Habendum to them, to the uſe of the firſt for life, and after to the uſe of the ſecond for his life, and ſo to the third, they were ſeveral eſtates one after another, ſo here; their intent appearing to be ſo. Gawdy held ſtrongly, That the Proviſo ſhall not controul the expreſs Limitation before. Shute and Clench contra: becauſe their intent appeareth; and one cannot have Covenant againſt the other, if they occupy not according to the Limitation of their Eſtates. V. Reſiduum, Mich. 30 & 31 Eliz. in Banco Reginæ Placito 1.

(13)

Ante 25.

Ante 58.

Carden *verſus* Tuck.

EJectione firmæ. Upon ſpecial Verdict it was found, that J. S. being ſeiſed of a Meſſuage, to which a Garden and Curtilage did belong, joyned together and incloſed with a Wall, and there was no way to the Garden, but through the Meſſuage; he deviſed the Meſſuage to his ſecond ſon, in Fee, and mentioneth not the Garden or Curtilage, nor ſaith Cum pertinentiis; if the Garden and Curtilage paſſes, was the queſtion. And after argument by Heale of the Plaintiffs part, and Drew for the Defendant, it was adjudged, that the Garden and Curtilage did paſs; for they agreed clearly, That a Curtilage is as parcel of a houſe, and ſhall paſs in caſe of a Feoffment, without ſaying Cum pertinentiis, as a Stable or Dovehouſe: But they doubted of a Garden, becauſe it is but a place of pleaſure, but afterwards they reſolved the Garden did paſs; for it is as well for neceſſity, as pleaſure.

(14)

Ante 30. Co. Lit. 56. b.

John Harris *verſus* Nicholas Bowden.

(15) F.N.Br.95.D. 2 Cr. 234. ACtion upon the Caſe, becauſe the Defendant at D. enticed the Plaintiff to play at Dice at a ſport called Five or nine, intending to deceive him, and get his money; and he by the Defendants perſwaſion did play with him at the ſaid ſport; and the Defendant in playing at the ſaid ſport, delivered to the Plaintiff Quoſdom talos veraciter titulatos, to play with; and when the Dice came to the hands of the Defendant, he by practice, falſly and fraudulently, Quoſdam alios talos falſo & ſubdole titulatos, quos numeros quinque vel novem, aliquo jactu unquam attingere ſciviſſet, adtunc & ibidem projecit, and then played with the ſaid falſe Dice; by which, the Plaintiff loſt to the Defendant divers ſums of money, amounting to Forty one pound ſix ſhillings eight pence: And the Defendant falſly and fraudulently, under the colour of getting, took and carried away the ſaid money, to his damages two hundred marks; The Defendant pleaded not guilty, and it was found againſt him; and it was alledged in Arreſt of Judgment. 1. Exception, that the word talos was no word for Dice, Sed non allocatur; for it is a proper word for Dice. 2. Exception, that the word luciſſet was written with a c, which is for ſhining; but the Record was viewed, and it was written with an ſ, and the Plaintiff had Judgment.

William Willoughby's Caſe.

(16) HE was indicted before the Juſtices of Aſſiſe, for that he Vi & armis had incloſed certain Land, in which Williams and others had common, time out of mind, &c. And Exception was now taken to the Indictment, becauſe it concerneth only the intereſt of particular perſons, and was no common Nuſance to the Queens people; and it concerning a private commodity of certain perſons, and not of the Queen, or her people in general, the parties grieved are to have their Action upon the Caſe, 27 Aſſ. 10. And Madox caſe was adjudged the laſt Term, That for a private commodity, remedy ſhall not be by Indictment. 2. Exception, That it was Vi & armis, and a man cannot incloſe his own ground, Vi & armis. 3. Exception, That the Teſte of the Indictment was at the Gaol-delivery, in the County of Nottingham, before Robert Shute, Francis Gawdy, and other Juſtices of the Peace of the Queen, &c. in the ſaid County; and for this cauſe it was alledged to be void, for at a Gaol-delivery they have no authority to take ſuch Indictments. And this was held a material Exception; but the Juſtices ſaid they would adviſe, &c.

Poſt. 664.

Knight *verſus* Fortipan, Mich. 29 & 30. Rot. 265.

(17) TReſpaſs. The Caſe was, a Copyhold was granted to one for life, Remainder to an Infant in Fee, they joyn in a Surrender to A.B. who was admitted Tenant for life, and he in the Remainder dies, and the Heir of him in the Remainder enters; and if he may enter, or ſhall be put to his Dum fuit infra ætatem, was the queſtion. And it was argued by Tanfield and Atkinſon, and the Entry was adjudged lawful: For a Surrender is but a Conveyance by matter of Fact, and no higher, and the Heir may enter, and bring Treſpaſs before Admittance.

Co. 4. 22. b. Poſt. 148. 662.

Trewinian

Trewinian *verſus* Howell.

ERror of a Judgment in Aſſumpſit againſt the now Plaintiff, as Executor to T. Trewinian his Brother, in which Howel declared, That whereas the Teſtator was indebted to him in a certain ſum; the ſaid Trewinian, the then Defendant, did aſſume, That if he had goods ſufficient, that he would pay him; and alledged, that he had goods ſufficient. And upon Non Aſſumpſit, it was found for the then Plaintiff, who had Judgment; and upon this, Error was brought; and the principal Error aſſigned was, That there is no ſufficient conſideration alledged; for the having of goods was no conſideration, but in conſideration he would forbear to ſue, &c. this had been a good conſideration. But it was ſaid of the other party, that he being Executor, his promiſe (he having Aſſets) doth bind him, for he is in duty to pay it: And Daniel ſaid, It was adjudged in one Hudſon's caſe, that a promiſe of the Executor to pay a debt, is binding, if he hath Aſſets, otherwiſe not. And ſo Coke ſaid, it was adjudged in Sir William Cook's Caſe, that ſuch a promiſe is good without any other conſideration, if he hath Aſſets of the Teſtator in his hands, otherwiſe not; for the conſideration is only by reaſon of the act and debt of the Teſtator: And therefore ſhall bind me no further, then the goods of the Teſtator amount. 2. Error, That the Judgment was general, and not De bonis Teſtatoris as it ought to be; for by ſuch a General Judgment he ſhall be charged of his own good; and the Court ſaid, they would adviſe. But at another day (Abſente Wray) it was adjudged, the Judgment ſhould be affirmed; for it was a good Aſſumpſit, and he ſhall be charged De bonis propriis, being of his own promiſe. (18) Co. 9. 94. a. Poſt. 406.

Osbaſton *verſus* Garton.

ERror of a Judgment in an Aſſumpſit, where Garton declared, that Osbaſton did aſſume to pay to him for every ſtone of Wooll he delivered to him, ſix ſhillings ten pence, and ſaith, that he delivered to him ſo many ſtone of Wooll as amounted to thirty nine pound ten ſhillings; and alledged further, that Licet ſæpius requiſitus, to pay the ſaid thirty nine pound ten ſhillings he had not paid; the Defendant pleaded Non Aſſumpſit to pay the ſaid thirty nine pound ten ſhillings, Nec aliquam inde parcellam, and found againſt him, and Judgment: Two Errors aſſigned, 1. That he ſaith Licet ſæpius requiſitus, but ſheweth not the day and place of the requeſt; and this is not properly a debt, but riſeth by reaſon of the delivery of the ſtones of Wooll; and therefore ought to expreſly alledge a requeſt, being a duty that accrueth with the Commencement of the promiſe, and not before: And of that opinion was the whole Court. 2. Error, For that the Iſſue was, that he did not aſſume to pay the thirty nine pound ten ſhillings, &c. which is not alledged in the Declaration; but that he aſſumed to pay for every ſtone of Wooll ſix ſhillings ten pence, which amounted, &c. and ſo no Iſſue was joyned: And of that opinion was the Court, and the Judgment was reverſed. (19) Ante 74.

Albany *verſus* Sir Anthony Sturline.

(20) ERror in the Exchequer Chamber upon a Judgment in Banco Regis in an Aſſumpſit; the Writ of Error ſuppoſed, that the Recovery in the Action was of two hundred two and twenty pound damages, whereas in truth the damages and coſts aſſeſſed by the Jury did amount to ſo much; but the Court did adjudge to the Plaintiff De incremento twelve pound; ſo as all the damages did amount to Two hundred thirty four pound; and it was ſaid now in Court, that there is no Recovery of Two hundred twenty two pound only. So the Writ was no Warrant to remove the Record, 9 Hen. 6. But Popham moved, That the Writ of Error was well brought; for it needed not to have mentioned all the damages, but only what was found by Verdict, and might leave out the other. Curia contra; For when the damages are aſſeſſed, they are entire, and cannot be divided; and thereupon awarded, that the Writ of Error was not well brought.

Broker *verſus* Charter, Mich. 29 & 30 Eliz. 2116. in Communi Banco.

Ow. 44.
Moor 272.
1 Leon. 135.

(21) TRespaſs. It was found by Verdict, that Sir Ralph Rowlet being poſſeſſed of a Term, did make his laſt Will, and thereof did make the Lord-Keeper Bacon, Catlin Chief Juſtice, and others, his Executors, and deviſed the Term to the Lord Catlin, and died. All the Executors writ a Letter to Dr. Dale, Judge of the Prerogative Court, that they could not intend the execution of the Will, and deſired him to commit the Adminiſtration to Henry Goodyer the next of kin to the Teſtator; and the Adminiſtration was accordingly granted; but the Regiſter entred the cauſe, for that the Executors did defer Suſcipere onus Teſtamenti. After this, Catlin entred upon the Land deviſed to him, and granted it over; the doubt was, if this grant was good. Firſt, If the Letter be a ſufficient renunciation? Secondly, If they once refuſe? if they after Adminiſtration granted, may adminiſter at their pleaſure? Dr. Ford declared to the Juſtices, that by the Civil Law, a renouncing may be as well by matter in fact, as by a judicial act, and they may refuſe by Parol, and cited a Rule in the Civil Law, Non vult eſſe hæres, qui ad alium vult transferre hæreditatem; and Hæreditas eſt totum jus quod defunctus habuit. And to the ſecond matter he ſaid, Qui ſemel repudiaverit hæreditatem, amplius hæreditatem petere non poteſt; and qui ſemel repudiaverit ſhall not after be Executor Quia tranſit in contractum: And that Executors cannot refuſe for one time, but for ever; but they may pray time to adviſe of taking upon them the Executorſhip, and it ought to be granted; and in that caſe the Ordinary is to grant in the mean time Letters Ad colligendum, &c. but is not to grant Adminiſtration. And for theſe reaſons there being a refuſal, the Grant made after Adminiſtration committed, was void; and ſo was the opinion of the Court.

Co. 9. 37. a.b.

Termino

Termino Paſchæ,

Triceſſimo ELIZABETHÆ,

in Banco Reginæ.

Prowſe *verſus* Cary.

(1) ACtion for words, Thou haſt procured falſe witneſſes to ſwear in ſuch an Action: Upon not guilty, it was found for the Plaintiff. Glanvile moved an Arreſt of Judgment, that the words are not actionable; for it is not alledged, that he ſuborned or procured them to ſwear falſly; or that he knew they would ſwear falſly. Curia contra: For when it was ſaid, he procured falſe Witneſſes, it is intended in Malam partem, That he procured them to ſwear for him, which would ſwear falſly: But if the words had been, You brought in falſe Witneſſes, Action did not lie for them. Poſt. 99.

Mildward & alii.

(2) AN Indictment upon the Statute of 8 H. 6. againſt them was diſcharged; for the Statute was recited, That if any be of his Lands and Tenements expulſed or diſſeiſed, or be held out with force, and faith not Manu forti; for the words are Manu forti expulſed or diſſeiſed: Secondly, the Statute is recited, That the party grieved may have his recovery Per aſſiſam novæ aſſiſæ, whereas it is to be Diſſeiſinæ: And the parties had reſtitution. Nota, The Record of the Indictment was removed in Michaelmas Term laſt. Poſt. 461.

Jerome & Avicia Uxor' *verſus* Phear & Neale, Hill. 29. Rot. 515.

(3) TReſpaſs, of Aſſault and Battery, and wounding of the Feme Plaintiff; the Defendant pleaded, That the Village of New Sarum was an ancient City, and that time out of mind it had been uſed there: That upon complaint to the Major of a Battery and Affray, that he as a Juſtice of Peace ſhall ſend his Serjeant at Mace, or an Officer Conus, for the party to come before him and anſwer, &c. And alledgeth in facto, That Jerome the Plaintiff had made a Battery; and thereupon complaint was made to the Major; he ſent the Defendants (being Conſtables there) to attach him, and to bring him before the Major to anſwer, &c. whereupon they came to him to attach him, and the Feme Plaintiff eos impedivit; whereupon they laid their hands upon her Molliter, to cauſe her to deſiſt, that they might attach him, which is the ſame Treſpaſs, &c. and demand Judgment Si actio, &c. And upon this

Plea,

Plea, it was demurred in Law. Coke argued for the Plaintiff, and alledged, That the Plea was inſufficient for four cauſes. 1. That the preſcription was void, and againſt Law. 2. That they came to attach him, but ſaith not within the City; and it may be intended in another place out of the City. 3. The Defendants alledge, that they did Moliter lay their hands on her; which is the ſame Treſpaſs, but anſwer not to the battery and wounding, nor traverſe it. 4. They juſtified at New Sarum, but do not traverſe the Treſpaſs which was ſuppoſed in Middleſex: And for the firſt point, Coke ſaid it is againſt Magna Charta, and 25 Ed. 3. 4. 42 E. 3. 3. that none ſhall be impriſoned, but by reaſon of Indictment, or due Proceſs of Law, and not upon complaint; and a preſcription to be a Juſtice of Peace cannot be, for the authority of a Juſtice of Peace commenced by the Statute of 1 Edw. 3. and before that time they were only Conſervators of the Peace: And the other matters are apparantly vitious, and no defence can be made of them; and the Court commanded that Judgment ſhould be given for the Plaintiffs, and principally for the two latter points; for they would not ſpeak to the firſt, becauſe it touched the authority of Majors, &c. But the next day they commanded Judgment to be ſtaid, and that the Plaintiffs ſhould come before them; by which it ſeemeth, they intended to make a compoſition.

Poſt. 268. 384.

Nicholſon *verſus* Lyne.

(4) ACtion for words, that the Plaintiff being a Miniſter, the Defendant ſaid of him, That he had two Wives, to cauſe him to be deprived: Upon not guilty, it was found for the Plaintiff. Coke moved in Arreſt of Judgment, that the words were not actionable, for it is a Spiritual fault; as to call one Heretick, &c. But it was anſwered, that foraſmuch as the Plaintiff was a Miniſter, This is a Defamation, and cauſe of Deprivation, if true; yet Judgment was given againſt the Plaintiff.

Poſt. 502.

Pearle *verſus* Unger.

(5) ASſumpſit, and declares, That he was poſſeſſed of certain Land for years, the Defendant in conſideration he had occupied the Land, and had paid the Rent to the Defendant, viz. Thirty pound per annum all the time he had occupied it; he aſſumed to ſave him harmleſs for the occupation of the Land always, during the term, as well for the years paſſed, as to come; and alledges, that before the time of the promiſe, viz. Such a day, &c. his Beaſts were taken Damage-feſant, &c. and that the Defendant had not ſaved him harmleſs of it; and upon not guilty, it was found for the Plaintiff, and damages aſſeſſed. Golding moved in Arreſt of Judgment, That here is no conſideration to maintain the Action; for the conſideration and cauſe of the promiſe was a thing done before, viz. The occupation and payment of the Rent; which being paſt, are no conſiderations for a thing future, to be done: But it was adjudged for the Plaintiff; for the conſideration, that he was in poſſeſſion, and had paid his Rent, and was to pay his Rent, is ſufficient to cauſe the other to defend his poſſeſſion for the time paſt, and to come.

Ant. 42. Poſt. 138.

Richardſon

Richardſon *verſus* Pricket.

FAux Impriſonment. The Plaintiff ſuppoſed the Treſpaſs and falſe impriſonment to be 10 Dec. 29 Eliz. the Defendant pleads, That he by vertue of a Warrant of the Sheriff, &c. did arreſt and impriſon him, 2 & 3 die Decemb. before. Abſque hoc, That he was guilty before or after, &c. The Plaintiff ſaid he was guilty of the Treſpaſs, &c. after the third day of December, Prout in Narratione ſua ſpecificatur. And upon this they were at iſſue, and it was found for the Plaintiff. And it was ſaid, that the iſſue was not well joyned; for it is, That he was guilty, &c. after the third day, &c. but ſaith not, and before the Action brought. But it was ruled to be well joyned; for when it is ſaid, he was guilty after the third day, &c. Prout, &c. it is to be intended between the third day, and the day of the which he counted. And the Plaintiff had Judgment. (6)

George's Caſe.

Moor 261.
1 Cr. 417.

ACtion for theſe words, Thou art a couzening Knave; thou haſt couzened me of Twenty pound at ſuch a place, and ſuch a man of Twenty pound, and there is never a George in England, but he is a couzening Fellow. Upon not guilty it was found for the Plaintiff: And it was ruled, That the Action lieth not, for Wray ſaid they are too general to bear an Action; and a man is to ſuffer no pain or loſs for thoſe words, if they were true. And one Egletons Caſe was cited to be adjudged, Thou art a couzening Coroner, for thou haſt couzened J. S. of his Lands; no Action lieth. And Wray ſaid, That in a Court of Error between Warker and Middlemore, which doth depend in the Exchequer Chamber, Action for theſe words, Thou art a couzener, for thou hadſt me to Coventry, and didſt couzen me of eighty pound: Judgment was given for the Plaintiff in the Queens Bench; but it was never moved in that Court; for if it had, they would not have given Judgment. Nota, Trin. 30. That Judgment was reverſed in the Exchequer-Chamber. (7)

Poſt. 99. 171.
2 Cr. 427.
2 Cr. 427.

Docton *verſus* Prieſt.

EJectione firmæ. Upon ſpecial Verdict it was found, That two Tenants in Common of a Houſe and Land, made partition within the Houſe, of the Houſe and Land, by Parol without Deed; the queſtion was, if it were a good partition? And the opinion of the Court was, That a partition between Tenants in Common upon the Land, is good without Deed; for it amounts to a Livery in Law; but it is not ſo between Joyntenants, for they cannot make Livery one to the other: But Wray ſaid, That a partition made by Parol of a thing that may paſs without Livery, as a Leaſe for years, is good. But in this caſe the partition was in the Houſe, and not on the Land, and it was not found the Land was within view; and ſo it cannot amount to a Livery in Law: And for that cauſe it was adjudged for the Defendant, that the partition was not good for the Land, for which only the Action was brought. (8)

Co. Lit. 169. a. 200. b.

Poſt. 142.

Knavesburgh's Caſe.

(9) HE was indicted upon the Statute of 8 Hen. 6. which recited the Statute to be, If any be of Land or Tenements Manu forti expulſe & diſſeiſed in the conjunctive, whereas it ought to be in the disjunctive; and for this miſrecital of the Statute, the Indictment was diſcharged, and a preſident was cited in Michaelmas Term laſt, of the like judgment for the ſame.

Tho. Cookſon & Anna Uxor' *verſus* Jo. Caſtline.

(10) TReſpaſs for entring upon their Land, Et Herbam ipſorum Tho. & Annæ adtunc & ibidem creſcentem meſſuit & ſuccidit, & in fœnum compoſuit & viginti carucatas fœni inde provenient' cæpit & aſportavit. Upon not guilty, pleaded, and found for the Plaintiffs. It was alledged in Arreſt of Judgment, that the Action doth not lie for Baron & Feme
Poſt. 133. of the twenty Loads of Hay taken, &c. for it is a Chattel ſevered from the Inheritance and veſted in the Baron; for which the Feme ſhall not joyn with him in the Action. But the clear opinion of the
Poſt. 133. Court was, That they may well joyn; for as they may joyn in Treſpaſs De clauſo fracto, and cutting their Graſs; ſo they may joyn for the Hay coming of it: And it was ſo adjudged; and the like Judgment was given this Term, between Wilkes and his Wife, againſt Derby. But Wray ſaid, If it were for taking twenty Loads of Hay, but ſay not Inde provenient', it is otherwiſe, for it may be intended of Hay lying upon the Land before, for which they cannot joyn.

Harward *verſus* Furborne.

(11) DEBT brought here for ſixteen ſhillings given for coſts of Suit in an inferior Court, upon a nonſuit by the Statute of 23 H. 8. And after Verdict Godfrey and Houghton moved in Arreſt of Judgment; for ſuch a petit ſum, Action lieth not in this Court againſt the Statute of Glouceſter; that no Action ſhall be brought here for any ſum under forty ſhillings: But the Court held clearly, That forasmuch as the coſts are given by a latter Statute, they are recoverable by an Action of Debt in this Court; and they gave Judgment for the Plaintiff.

Smith *verſus* Haws.

(12) COvenant. The Caſe upon Demurrer was, William Redman Grandfather, Father and Son; the Grandfather was ſeiſed of Land in Fee, and deviſed it to the Father for life, the Remainder to the Son, and the Heirs males of his body, Remainder to the right Heirs of the Deviſor, and the Heirs males of his body begotten; the Grandfather and Father die; the Son dieth without iſſue-male, having iſſue Anne; the ſaid Anne takes Huſband, and the Husband and Anne ſell the Land to J. S. in Fee, and did Covenant, That they were ſeiſed of a ſufficient and lawful Eſtate in Fee-ſimple. And if this was an Eſtate in Tail, or a Fee-ſimple in Anne who was the Heir of the Deviſor, was the queſtion. Godfrey argued it was an Eſtate-tail, for his intent was apparent,

apparent that his right Heir ſhould have an eſtate tail; and it is here as fully limited as if he had expreſly limited and appointed that he ſhould have an eſtate tail; and his intent being ſo, the Law will conſtrue an eſtate tail, his intent not being againſt Law, and cited Huſſeys Caſe, 37 H. 8. Bro. and 9 H. 6. 25. by Paſton. Coke contra; that it is a Fee-ſimple, for immediately by the death of the Grandfather, the remainder doth veſt in the father, as his right heir, and veſteth in him as Fee-ſimple, and cannot by matter ſubſequent be converted into an eſtate in tail, and ſo it was adjudged. 1 Cr. 24.

Termino Paſchæ 30 Eliz. in Communi Banco.

Cole's Caſe.

(13) ASſumpſit: And declared that whereas the Defendant was indebted to J. S. in twenty pound, in conſideration that the Plaintiff at the Defendants requeſt agreed to give his Bond to J. S. for the ſaid Debt, the Defendant did aſſume to ſave him harmleſs, and alledgeth in facto, that he did give his Bond, &c. and he was ſued upon it, &c. upon non aſſumpſit, it was found for the Plaintiff; Shuttleworth moved that the Plaintiff had not well declared, for that it is not alledged that he gave notice that he had made the Bond, and was ſued upon it; but it was adjudged for the Plaintiff, for the Defendant at his peril ought to take notice of the Obligation, &c. as in a Bond to ſtand to Award, he is to take notice of it. Anderſon ſaid, if one be obliged to make ſuch aſſurance as J. S. ſhall adviſe, he ought to take notice of the aſſurance deviſed at his peril, becauſe a certain perſon is appointed to do it. But if it be ſuch aſſurance as my Council ſhall adviſe, I ought to give notice of the aſſurance, for he cannot take notice who is my Council. And for the other point, he ought to ſave him harmleſs without requeſt, viz. by payment of the money or, &c. Ante 9.

Termino Paſchæ 30 Eliz. in Camera Scaccarii.

Edward Seymor *verſus* Sir Jo. Clifton.

(14) ERror: The Error aſſigned was, for that the iſſue was joyned, that Jo. Clifton hoc petit quod inquiratur per patriam, & Edwardus Seymor ſimiliter, but ſaith not prædictus; but inaſmuch as there was no other Edward named in the Record but the Defendant, and ſo cannot be intended another perſon, and the word prædictus is but of form, and not of ſubſtance, it is aided by the Statute, and may be amended, and the word prædict' was put in, and the judgment was affirmed.

Stranſham's Caſe.

(15) COke ſaid, it was adjudged in Action of Trover and Converſion, the converſion is traverſable, for it is the ſubſtance of the Action, and the tort ſuppoſed in him, and ſo may well be traverſed; for if one finds goods, but doth not convert them, no Action lieth, as the Caſe was in a Trover and Converſion of Goods, the Defendant ſaith he took them damage feſant and impounded them, abſque hoc that he converted them to his uſe. And in Leaks Caſe it was adjudged Co. 10. 56. b. Yelv. 166. Poſt. 377.

1 Cr. 262. Ante 78. judged that the place and time of the converſion are to be alledged, for they are material, and for that they were not alledged, the Bill was abated after Verdict.

Coke *verſus* Barrows.

(3) ERror: For that the Plaintiff in Aſſumpſit, declared that whereas he was indebted to J. S. in forty ſhillings, the Defendant in conſideration he had delivered forty ſhillings to him, did aſſume to pay it, and to diſcharge him againſt J. S. and alledgeth that he had not diſcharged him, but ſuffered him to be ſued for the forty ſhillings by H. C. Executor of J. S. but doth not alledge that J. S. was dead, but the Court held it good enough, for the Plaintiff had directly alledged that he had not diſcharged him, and the other matter is but circumſtance, and the judgment was affirmed.

Termino

Termino Trinitatis,

Triceſſimo ELIZABETHÆ

in Banco Reginæ.

Inglebath *verſus* Johnes, Int. Hill. 30. Rot. 500.

Co. Lit. 282. b. Moor 429.

(1) ACtion for words: Thou art a Bankrupt Knave, and a Pocky Knave, and let them bear witneſs that ſtand by, and I will prove it. The Defendant pleaded that he ſpake the words at D. in Eſſex, and that at ſuch a place, &c. he had made an accord with the Plaintiff for all Treſpaſſes, Actions and Debates in every place (except in London) and had given him ſatisfaction for them, abſque hoc that he ſpoke theſe words in London; the Plaintiff replied that he ſpake the words in London prout, &c. abſque hoc that he made ſuch an accord prout, &c. and upon this it was demurred in Law, for it was ſaid the Plaintiff muſt maintain his Declaration, and is not to traverſe that which was but an inducement to the traverſe. Glanvile, the traverſe taken in the replication is good, for the place where the words are ſpoken is not material; but when the Defendant by his plea hath made the place of ſpeaking material, there the Plaintiff hath election to maintain his Declaration, and that the words were ſpoken there, and joyn Iſſue upon it, or may by general words maintain his Declaration, and traverſe that which is falſly alledged to take from him his Action, and he is to be received to which of the pleas he pleaſeth, and cited 32 Ed. 3. 23. 46 Ed. 3. 30. 10 Ed. 4. 2. and afterwards it was adjudged for the Plaintiff. V. Coke 1 Inſtitutes 282. b.

Poſt. 153. Co. Lit. 282. b. Poſt. 418. 667. Poſt. 407. 716. 842. 868.

Engurſt *verſus* Browne.

(2) ACtion for theſe words, viz. Thou wert a Suitor to a woman in Southwark, and didſt couſen her of her goods, and procured certain falſe witneſſes to be forged. And after Verdict it was alledged by Daniel in Arreſt of Judgment, that the words are not actionable; for the firſt words, Thou didſt couſen, &c. have been lately adjudged not actionable. And for the laſt words there is leſs doubt; for it appeareth not what their teſtimony doth concern, nor that the forgery of it is to any purpoſe, for it may be of ſome ſmall matter; and the Court commanded Judgment to be ſtayed, for Wray ſaid they are petit parols to maintain an Action.

Ante 95. Ante 93.

Naſh *verſus* Edmunds, Mich. 29 & 30. Rot. 261.

(3) EJectione firmæ. And declared upon a Leaſe made to him by five women Daughters and heirs of Jo. Dover. Upon not guilty, the Jury gave a ſpecial Verdict. The ſaid Dover was ſeiſed in Fee of the Land held in Soccage, and that he declared to William North and others, his Will to be that J. C. Leſſor of the Defendant ſhould have his Land, and the ſaid William North recited the words to him, and asked him if this was and ſhould be his Will, and he anſwered, that it was. And they further find that the ſaid North in the life of Dover, and for his own remembrance, and without the appointment of Dover writ the ſaid Will, and afterwards Dover died; and if this were a good Will, being ſpoken with ſuch direct words, and being writ in his life by the witneſs for his own remembrance, and without the appointment of Dover, was the queſtion; and all the Juſtices (who ſhewed their opinions ſeriatim) held it to be a void Deviſe, becauſe the Will was not writ by the commandment of the Deviſor, or by his conſent, but of the perſon preſent, of his own head; but if he had writ it without the Deviſors conſent, and afterwards had read it to him, and he had agreed to it, this had been as good as if written by his appointment, as Brownes Caſe, Dy. 72. And if in the principal Caſe it ſhould be a good Will, it would be a great miſchief; for then if one ſhould ſay to another when he is in health, I deviſe ſuch Land to J. S. and he afterwards writeth it in the life of the party, but he never hears of it afterwards nor agreeth to it; if this ſhould be a good Will, it were not reaſonable; for perhaps he had afterwards altered his intention: and judgment was given accordingly. Nota, Ro. Snagg who argued in this Caſe, ſaid it was ruled in Chancery in Sir Richard Pexalls Caſe, when he deviſed certain Land to his wife for life, and commanded it to be written, and it was written, and a proviſo added by the writer, that if ſhe married, that the Deviſe ſhould be void; and this being read to him, he ſaid the proviſo was no part of his Will, but for the reſidue it ſhould ſtand, and he died before the Will was altered, and the proviſo was adjudged to be void, and the reſt of his Will did ſtand good.

William Collins *verſus* Edward Vaughan.

(4) 21 H. 8. cap. 13. INformation for the Queen and himſelf againſt the Defendant, Vicar of the Church of Engliſcombe in Com' Somerſet, for that abſentavit ſe, and had not been reſident by the ſpace of a whole month together; and after Verdict Walmſly moved in Arreſt of Judgment, that the Information was inſufficient, for the Statute is, if he abſents himſelf voluntariè, which is not alledged, for if he be abſent by compulſion or reſtraint, it is out of the Statute; and of that opinion was the whole Court, that the word Voluntariè is of force, and muſt be in of neceſſity.

Morgan's Caſe.

(5) ERror to reverſe an Outlary upon an Attainder of Tho. Morgan his father, whoſe ſon and heir he is, who was attainted and hang'd for the murther of one Turbervile, Coke aſſigned the Error in the Endictment,

dictment, for that the ſaid T. M. was Endicted in the County of Somerſet, that whereas the ſaid Th. Morgan nuper de D. in Com. Dorſet gen. apud W. in comitat' prædict' ſuch a day did ſtrike and killed the ſaid Turbervile; and the exception was, the ſtroak and death was at W. in Com. prædict', and that ſhall be intended in Com' Dorſet which was laſt mentioned, and then the Endictment in Com' Somerſet is meerly void, for Somerſet is not named in the body of the Endictment, but in the Margent; and of that opinion was the Court, but they would reſpite the giving of judgment, until the Attorney-General was acquainted with it. V. 18 Ed. 2. brief 828. Co. Lit. 22. b. Poſt. 333. 606. 184. 656. 658. 739.

Marſhal *verſus* Hobſon.

(6) ERror of Judgment after Verdict in the City of York: two Errors aſſigned. 1. The Plaintiff brought a Formedon by Bill, and declared there according to the cuſtom, and for that the Land was Freehold, which is not recoverable but by Writ in any Court, therefore being by Bill, it was erroneous; and Godfrey ſaid, in any Court where Land is to be recovered, he ſhall have a Writ Cloſe or any other Writ, and ſhall declare according to his Caſe and the nature of the Suit, Fitz. Nat. Br. f. 26 H. 6. Error 28. 14 H. 4. 34. Second Error, the judgment was that the Defendant eat ſine die, whereas it ought to be that the Plaintiff ſhall take nothing by his Bill; and it was held an apparent Error, for ſuch judgment ſhall not be given but where the Queen is Plaintiff, againſt whom no judgment ſhall be given; or where the judgment is final, that the Defendant ſhall hold it a touts jours. Co. Lit. 363. a.

Pell *verſus* Pell.

(7) DEbt upon an Obligation of an hundred Marks: The condition was, if he pay fifty pound the Bond ſhall be void; the Defendant pleads tender at the day, and none was there to receive it, and upon this they were at Iſſue; and afterward the Defendant pleads that puis le darraine continuance, this hundred Marks were attached in his hands in London, at the Suit of, &c. Gawdy Serjeant ſaid the plea was not good; for an Attachment cannot be pending a Suit in this Court; alſo he pleads, the fifty pound was tendred, and ſo the hundred Marks were not due, and the Attachment cannot be of the hundred Marks; and this is no ſuch plea as can be pleaded puis le darraine continuance, for this ariſeth by the Defendants own act, and may be intended to be by covin; and the Court was in doubt for the firſt point, and commanded that the preſidents be ſearched, if any ſuch Attachment had been allowed pending a Suit here, or in the Common Bench; but they held that the Attachment of the hundred Marks (if Attachable) was well enough, for it is always to be demanded in that manner, and it is according to the Obligation. And to the third, they held it may be well pleaded puis le darraine continuance, for it goeth in bar at another day; Dalton ſhewed a preſident in the Common Bench, Mich. 12 & 13 Eliz. 164. Such attachment was made pending the Suit and after the laſt continuance, but afterwards the parties compounded. Poſt. 157.

Lacy

Lacy *verſus* Smith.

(8) ACtion ſur trover: and declareth as Adminiſtrator to J. S. and that Adminiſtration was granted to him by A. B. official to the Biſhop of Peterburgh, and ſheweth not that he was Ordinary of the place, or that the granting of Adminiſtration did belong to him; and this matter after Verdict was alledged in Arreſt of Judgment; but becauſe divers preſidents were ſo, and that ſuch Declarations had been allowed, the Court did give Judgment for the Plaintiff.

Ante 6. Poſt. 431.

Stubbs *verſus* Rightwiſe, Trin. 28. Rot. 407.

(9) DEbt againſt the Defendant as Executor of J. S. he pleads that he had taken Letters of Adminiſtration, Judgment of the Writ, &c. the Plaintiff replieth that the Defendant adminiſtred de ſon tort, and after took Letters of Adminiſtration, Judgment, &c. and upon this it was demurred. Godfrey for the Defendant argued, that now the name of Executor is lawfully changed before the Action brought, and therefore is to be ſued by his new name as Adminiſtrator, 9 Ed. 4. 33. 21 H. 6. 5. 18 H. 6. 29. 13 H. 4. Executors 118. Coke contra, for when by his tortious Adminiſtration he hath given advantage to be ſued as Executor, he cannot by his own act purge this tort and cauſe the Plaintiff to ſue him by another name, but the Plaintiff hath election to ſue him one way or other, for he ſhall take no advantage of his own tort. As if one in Execution Eſcapes, and is taken again by the Gaoler, he ſhall not have an audita querela; and it will be a miſchief if the Plaintiff ſhall be compelled to ſue him as Adminiſtrator, for it may be that whilſt he adminiſtred of his own wrong, he waſted the goods; and if he be only ſued as Adminiſtrator, he ſhall only be charged of the goods that came to his hands ſince Adminiſtration, 12 R. 2. Adminiſtrators 21. and it was afterwards adjudged that the Writ was good, and that the Defendant reſpondra ouſter: Nota, if Judgment be given againſt an Executor upon demurrer, and Execution be awarded, the Sheriff cannot return nulla habet bona teſtatoris, but is to return a devaſtavit, as if it had been found againſt the Executor by Verdict; for per Curiam he hath charged himſelf by his own Plea.

Poſt. 565. 810. Co. 3. 52. b. Poſt. 439. 555. Poſt. 406.

Melwich *verſus* Luther & Uxorem, Hill. 30. Rot. 344.

Co. 4. 26. a.

(10) EJectione firmæ: And declareth of a Leaſe made to him by Jo. Melwich for twenty one years of three Meſſuages and one Cottage in Eaſtworth, and upon not Guilty pleaded, a ſpecial Verdict was given, that the Tenements of which the Ejectment was ſuppoſed, and divers other Tenements in Eaſtworth aforeſaid, were time out of mind, &c. until the firſt day of January 37 H. 8. parcel of the Mannor of Boveridge in the County of Dorſet, of which Mannor King H. 8. was ſeiſed in Fee; and that the Tenements of which, &c. and the other Tenements in Eaſtworth were parcel of the cuſtomary Tenements of the ſaid Mannor, and demiſed and demiſable by Copy of Court-Roll, by the Lord or his Steward, to any perſon for life or lives, in poſſeſſion or reverſion, at the will of the Lord, according to the cuſtom of the ſaid Mannor; and at the ſame time one Alice

Co. 4. 26. a.

Mel-

Melwich widow was a Copyholder of the Tenements of which, &c. for her life; and that upon the ſaid firſt day of January 37 H.8. the ſaid King by his Letters Patents did grant to Jo. Ogden Eſq; the Tenements of which, &c. and the other Tenements in Eaſtworth; and find further that the ſaid Jo. Ogden at the ſame time was ſeiſed of a Manor called Harbridge in the County of Southampton; and being ſo ſeiſed of the ſaid Manor of Harb. and of the Tenements of which, &c. and of the other Tenements in Eaſtw. at the Court of his Manor of Har. held 12 Junii 7 Ed. 6. did grant by Copy the Tenements of which, &c. to one Ro. Melwich, and to the ſaid Jo. Melwich, to have for their lives ſucceſſive after the death of the ſaid Alice, according to the cuſtom, &c. and that this grant was upon the ſurrender of Henry Dowling and Ri. Dowling of a Copy in reverſion of the ſaid Tenements, and they were admitted Tenants in reverſion, and find that Alice died, and after Ro. Melwich entred and died, and that the ſaid Jo. Ogden enfeoffed of the ſaid Tenements of which, &c. one Morgan Polden, who thereof enfeoffed William Conſtantine, and after the ſaid Jo. Melwich entred and made a Leaſe to the Plaintiff, and the Defendants as ſervants to the ſaid William Conſtantine, and by his command ejected him; and ſi ſuper totam materiam, &c. and the caſe was argued this Term by Harris for the Plaintiff, and by Ewens for the Defendant; and it was afterward adjudged for the Plaintiff; for the Juſtices ſaid, although the Tenements are divided from the reſidue of the Manor, yet the cuſtom remaineth, and they continue Copyholders paying their ſervices and duties, &c. And he which hath the Freehold of them may keep a Court in any place, and it is not properly a Court Baron, but as a Court of Survey, at which Copyholds may be well granted, and the Lord or his Steward may grant Copies out of Court aſwell as in Court, 2 Ed. 6. Brooks. And a ſurrender being taken, and a new Copy granted, is good in whatſoever place it be done; and it was ſaid, if the Copyholders die, yet he which hath the Freehold may grant them by Copy again; and that it was ſo held in the Lord Chancellor Hattons Caſe; and if they be Copyholders of Inheritance, they may compel him that hath the Freehold to accept ſurrenders and make new admittances, &c. Nota, here nothing was ſpoken of the Leaſe for years, if it were a forfeiture or not, no cuſtom being found to maintain it. Nota, A Writ of Error was brought of this judgment in the Exchequer-Chamber, and the Error aſſigned in the matter of Law, but no judgment given, for the Parties compounded and agreed with the Plaintiff in the Writ of Error, and he had the Land, as Ewens who was of his Councel told me; for he ſaid that all the Juſtices and Barons in the Exchequer-Chamber did hold clearly that it was a void Grant by Copy; for being divided from the Manor, the cuſtom to demiſe them is altogether gone and deſtroyed, ſo as the eſtates for life which were in eſſe at the time of the alienation of the Freehold of them and ſeverance of them, being now determined by ſurrender, or otherwiſe, no new Copy can be made; yet the alienation of the Freehold of them doth not deſtroy the Eſtates of the Copyholders then in eſſe, but they ſhall hold them during their eſtates paying their Services, but no new eſtates may be afterward granted by Copy. V. 4 Co. 26. this Caſe V. Mich. 37, & 38. Placito 6.

Co. 4. 26. a.

Co. 4. 26. b.

Co. 4. 26. b. Ante 39.

Co. 4. 26. b.

Poſt. 443.

Poſt. 395. 443. 662.

Co. 4 26. a.

Poſt. 443.

Cæſar

Cæſar *verſus* Stone.

(11) ERror to reverſe an Outlary: the Error aſſigned was, that in the Writ of Exigent no place was mentioned where the Sheriff was to have the body; ſo that the Sheriff cannot know into what Court to bring the body; and for this cauſe the Judgment was reverſed, 33 E. 3. Brief 918. 27 H. 6. 2.

Peterſon's Caſe.

(12) DEbt upon a Bond: The Defendant pleaded the Statute of Uſury in bar, that there was an agreement between the Plaintiff and him, that the Plaintiff ſhould deliver to him Wares of the value of twenty pounds, and that the Defendant ſhould pay for the ſame within ſix months thirty four pounds; upon which they were at Iſſue, and found againſt the Defendant; Daniel moved in Arreſt of Judgment, that it not being alledged that the Obligation was made for the payment of this money, it was no Plea or Iſſue. Sed non allocatur, for he ſhall not take advantage of his own miſpleading, and judgment was given for the Plaintiff.

William Griffith *verſus* Ro. Apprice.

Mo. 248.

(13) ERror of a Judgment in Ejectione firmæ in the County of Denbigh before the Juſtices there; and the Error was apparent: for the Writ did bear date 16 April 28 Eliz. and the Ejectment was ſuppoſed 27 Aprilis 28 Eliz. and ſo cannot be defended: but Winter ſaid that by the Statute of 35 H. 8. judgments given in perſonal action in Wales ſhall be reverſed there, and this is a perſonal action; Egerton Sollicitor contra: for this Action doth ſound in the realty, and the Statute did not intend that Titles ſhould come in queſtion before the Councel of the Marches, and the Statute is in the affirmative, and therefore doth not take away the power at the Common Law; and although he may ſue there by the Statute, yet he may ſue here if he will, as he might before; and afterwards it was adjudged that this Court had Juriſdiction, and the Judgment was reverſed.

34, 35 H. 8. c. 26.

Co. 5. 105. a. b. Poſt. 826.

Elred *verſus* Waſs.

(14) ERror to reverſe an Outlary in Debt: Coke aſſigned the Errors. 1. The Defendant in the original was named Elred according to his true name, and in the mean proceſs, viz. the Capias, he was named Eldred, and ſo is erroneous, for if there be any difference by omiſſion, addition, or interpoſition of any letter between the original and judicial proceſs, it is erroneous, Tr. 26 Eliz. Outlary reverſed upon a difference, viz. Walwyn & Walweyn. 2 R. 3. 13. Sein-John & Saint-John; ſo in Fiſhers Caſe York for Yerk. 2. Error, which was Error in fait, that the alias capias was returned by one Felton, whereas he was then removed from his office, and Townſend was Sheriff; to which they had pleaded in nullo eſt erratum, and ſo the Court ſhall intend it to be true; and this he ſaid was a dead fault, and for theſe Errors the Judgment was reverſed.

Ante 50. 85. Poſt. 105. Poſt. 257.

News

New's Caſe.

ERror upon a Judgment given in Debt upon an Obligation, in the Court of Havering in Eſſex. The condition of the Obligation was, for the payment of twenty pound to the Plaintiff at his houſe at S. in Kent; the Defendant pleaded payment at the day, &c. Secundum formam & effectum indorſamenti prædict'. Error aſſigned was, That the iſſue was tried at Havering, and not at S. in Kent; but it was ſaid, that this is no Error; for when a thing iſſuable is alledged, and no place, this ſhall be tried where the action is brought; and the words Secundum formam, &c. refer only to the time, and not to the place; for the place is not material, payment being made to the Obligee himſelf: And it doth not appear, but S. in Kent may be within the juriſdiction of Havering; for it is not ſaid in the County of Kent, but at S. in Kent; and there may be ſuch a place called Kent in Havering, and afterward Mich. 30. & 31. the judgment was affirmed. (15)

Leat *verſus* Jenning.

ERror of a Judgment in an inferior Court, and the Error aſſigned was, that the Diſtreſs was awarded returnable at the next Court, after the ſerving of the Proces; and every return is to be at a day certain; and it may be the Proces ſhall not be ſerved within a year, and the Defendant is to have day at every Court, otherwiſe the Proces is diſcontinued, 9 Eliz. Dyer 262. And afterwards for this cauſe the Judgment was reverſed. (16)

Dinſlow's Caſe.

HE was indicted upon the Statute of 5 Eliz. for Perjury, and the Indictment was, that Tacto per ſe ſacro Evangelio falſo depoſuit, but it was not directly alledged, that he was ſworn, and the Indictment was diſcharged; for the Juſtices ſaid, When ſuch heinous Crime is objected againſt one, it ought to be fully alledged, otherwiſe it is not good. (17) 5 El. cap. 9.

George Lovegrove *verſus* Inocke.

PRohibition. The Suit in the Spiritual Court was againſt the Plaintiff, by the name of Gregory Lovegrove, as appeareth by the Libel (which in truth) was a wrong name; yet for this variance between the Prohibition and the Libel, the Prohibition was abated. (18) Ante 104.

Meggot *verſus* Broughton.

ERror upon a Judgment given in this Court this Term; and the Error aſſigned was, that in an Aſſumpſit againſt two, mean between the Verdict and the Judgment, one of them dies, and notwithſtanding Judgment was given; and upon this it was demurred, If Error lieth here; for it was ſaid, That this Court cannot reverſe their own judgment, except it be for Error in Proces, (19)

and not for Error in fait: But it was ſaid on the other part, that in Gourney's Caſe, where an Infant appeared by Attorney, whereas he was to appear by Guardian, and Recovery was had, and Error brought here, and for this Error in fait, Judgment was reverſed. And it was afterwards adjudged, That the Writ of Error was well brought here; for the death, &c. was by the act of God, and a thing that did not lie in their Cogniſance: And it was clearly agreed, that the death of one of the parties did abate the Writ, and the Judgment was reverſed.

Foſter *verſus* Walter.

(20) EJectione firmæ. The Caſe was, Richard Wager, 6 Edw. 6. did Deviſe a Meſſuage to A. his Wife for life, Remaindet to his ſon in tail; and if he dieth without iſſue, or be unthrifty, that it ſhall remain to the Maſter and Wardens of the Myſtery of Cordwayners, London; whereas they were incorporated by the name of Maſter, Warden, and Commonalty, &c. The queſtion was, if by reaſon of this Miſnomer of the Corporation, the Deviſe was void. And it was
Co. 10. 125. a. argued by Daniel, that it was, and by Cooper contra: But the Juſtices held the Deviſe good; for by Intendment the Deviſor had not counſel there, nor had Cogniſance of their name; and being known uſually by that name, there is a ſufficient Intendment what Corporation he doth intend ſhall have it.

Eaſt *and* Wilſon.

(21) THey were indicted upon the Statute of 8 H. 6. for forcible Entries, and the Statute was recited to be made at Weſtminſter, but ſhewed not in what County, and the Indictment was diſcharged.

Termino Michaelis,

Triceſſimo & triceſs' primo ELIZABETHÆ, in Banco Reginæ.

Scovel *verſus* Cabell. Cujus principium antea. Hill. 31. Plac. 13.

Ante 89.

(1) THe Caſe was argued by Coke for the Plaintiff, and Gawdy Serjeant for the Defendant. Coke argued, That by the premiſſes the parties to whom, and the Land demiſed, being expreſſed; and in the Habendum the eſtate being limited, as the office of the Habendum is, the Proviſo that cometh afterwards ſhall not avoid it; for it is repugnant and void, as 21 H. 7. Leaſe for two years, Proviſo, he ſhall not occupy it for one year, is void, 6 Rich. 2. Q. Juris Clamat. 20. Leaſe for years, Proviſo, he ſhall not take the profits: And in this caſe, the Leſſor was Tenant in tail, and he maketh this Leaſe, as by Law he may; and Co. Lit. 44. b. he cannot make it to have to one for life, the Remainder to another for life, &c. And to make Conſtruction that it ſhall be to one for life, the Remainder to another for life, will deſtroy the Leaſe. And afterwards it was adjudged for the Plaintiff, that it is a Joint Moor 267. 8. eſtate, and the Proviſo ſhall not ſever it.

Bellicote *verſus* Taylboys.

(2) ERror of a Judgment in the Court of Barnſtable. The Error aſſigned was, That the Plaintiff counts that he and the Defendant did account together of divers Reckonings, and he was found in Arrearages ten pound two ſhillings three pence, which he aſſumed to pay. And upon Non Aſſumpſit it was found, that he aſſumed to pay ſo much as he was found in Arrearages of account, which was ſeven pound two ſhillings three pence, and that he aſſumed to pay ſo much as was contained in ſuch a Bill, in which he was indebted to him, which did amount to three pounds, ſo all that he aſſumed to pay, was ten pound two ſhillings three pence: And the the Plaintiff had Judgment. Error brought, and this Error was aſſigned, but the Court delivered no opinion; but for another manifeſt Error in the Record, viz. The Judgment was Capiatur, where it ought to have been in Miſericordia; the Judgment was Ante 84. reverſed.

Bricket & alii.

(3) THe Indictment was, that R. B. and the other, &c. Coram J. S. & J. D. duo Juſticiariis Dominæ Reginæ, &c. And that the Exception was, That it ſhould be duobus, and as it is, it is falſe Latin, and without ſenſe; and if it be not falſe Latin, this cannot be referred to thoſe named before, which are named in the Ablative caſe. But the Court held it well enough; for the Indictment ſhall not be overthrown for falſe Latin, if by any intendment it can be good: And although here is falſe Latin, yet it may be well enough intended in the meaning. 2. Exception, Bricket and the others are named of Nuneaton in the County of W. and the Indictment being for Riot, that they aſſembled themſelves at Artelborough in the Pariſh of Nuneaton aforeſaid, and ſaith not in what County Artelborough is; for it was ſaid, that Artelborough may be in the Pariſh of N. and yet in another County, but the Court held it well enough: For
Poſt. 117. it appeareth not, that Artelborough is a Town, but it may be a place known by ſuch a name in the Pariſh of Nuneaton, and being named in the Pariſh of N. it ſhall be intended to be in the ſame County.

Truſſel *verſus* Aſton.

(4) DEBT upon Obligation; the Defendant pleaded the Statute of 23 H. 6. and would avoid the Obligation, that he being in Execution, and the Plaintiff being under-Sheriff, he took this Bond, and let him at large; and it was demurred in Law, becauſe the Defendant did miſrecite the Statute, in that he did recite, That if any Sheriff aut ejus Officiarii, where it ſhould be alii Officiarii: And the Statute ſpeaketh not only of the Sheriff and his Miniſters, but of other Officers. And Coke ſaid, ſo is the Parliament Roll; and ſo it was adjudged in one Herris caſe. And of this opinion was the Court; but they gave day to the parties to compound, and in the mean time ſhould ſtay Judgment.

Roſs *verſus* Morris, Paſ. 30 Eliz. Rot. 196.

(5) REplevin. The Defendant avows as ſervant to Jerome Weſton Eſquire: The caſe upon Demurrer was, One Gomerly was ſeiſed of the Manor of Nayland, and by Deed 25 Ed. 3. gave it to the Lord Henry Scrope, and to the heirs of his body, who died ſeiſed, and ſo continued by divers diſcents, until 4 H. 7. and then Thomas Lord Scrope ſuffered a Common Recovery, which was to the uſe of him and his heirs; and retakes an eſtate of the Feoffees to him and his heirs; and having iſſue Ralph and Jeffery, and three Daughters, dieth. Ralph maketh a Feoffment to the uſe of himſelf and his heirs, and 7 Hen. 8. deviſeth it to Jeffery for life, and after Ad uſum Rectorum hæredum in perpetuum, ſecundum antiquas evidentias inde factas, and dieth ſeiſed of this uſe, and of the uſe in divers other Manors in Fee. Sir William Danby marrieth with one of the Daughters, and afterward Jeffery dieth without iſſue: Sir William Danby and his Wife, and the other ſiſters (being alſo married) being ſeiſed of theſe uſes, make partition, and allot the uſe of this Manor to Sir William Danby and his Wife, and the heirs of the

the Wife; and the other uſes of the other Mannors to the other two Daughters: And afterward Sir William Danby and his Wife die, Sir Thomas Danby their heir enters, and infeoffed Weſton. Upon this caſe the points were two. 1. If it was an Eſtate in Tail, or Fee in the daughters, which where ſiſters to the Deviſor, and iſſues of the body of Thomas, the Father of the Deviſor. 2. If this Partition be void or voidable. Godfrey, Coke, and Cooper, argued for the Plaintiff, That it was an Eſtate in Fee in Jeffery, and ſo in the daughters; for the words of the Will being Ad uſum Rectorum hæredum ſecundum antiquas evidentias inde præantea fait, it is incertain what evidences he intends; for three evidences were mentioned, viz. The Eſtate in Tail, 25 Edw. 3. 2. The Recovery. 3. The Deed of Feoffment; and it appeareth not, which of them he intendeth; alſo it appeareth not, whether he intended the heirs of the Lord Scrope, or the heirs of Gomerly; for by the firſt evidence, the Remainder is limited to the right heirs of Gomerly; and for this incertainty all was void: But admitting it ſhall be conſtrued an Eſtate in Tail, according to the evidence of 25 Edw. 3. yet it is only an Eſtate in Tail in Jeffery, for he is the firſt perſon that takes it, and hath it as a purchaſer; and when he dieth without iſſue, the Eſtate Tail is ſpent, and none can have it as heir to him. The ſecond point, They held the Partition utterly void; for it being of one uſe in Tail, and another uſe in Fee, and ſo not equal; and being made between Husbands and Wives, is void, Johnſon, Atkinſon, and Egerton Sollicitor, contra. That the Will is certain enough, and the ancient evidence can be conſtrued only of that of 25 Edw. 3. For the other are but new evidences; and it is helped by the Averment, That the Lord Scrope had no other ancient evidences of this Land; and therefore the Will ſhall refer to it, and ſhall not be expounded to another ſenſe, then as the eſtate is there limited: And then, though the firſt effect and eſſence veſteth in Jeffery, yet he taking it by limitation, he taketh it as heir of the body of the Lord Scrope, and this per formam doni, and then the daughters ſhall have it ſo likewiſe; for they all claim by one gift. 2. They held the Partition good; for there was Quid pro quo, and ſo only voidable. But all the Juſtices reſolved to give Judgment for the Plaintiff (Leſſee of Weſton) that this is no Eſtate tail, but a Fee-ſimple in the daughters; for no eſtate is created by the Will, for the incertainty of the perſons and evidences alſo, and the intent is to be taken in a Will; and the Court held, that his intent was, That it ſhould go to his heirs generally, according to the courſe of the Common Law; for divers evidences are ſhewn in the pleading; And it is hard for a man in extremity to remember them, eſpecially that which was made 25 Edw. 3. But for the ſecond matter, if it be an Eſtate tail, if it ſhall inure to the daughters, as 2 Ed. 3. 1. or be extinct upon the death of Jeffery without iſſue, who was the firſt Purchaſer, according to the opinion in Griſwolds Caſe, Dyer fol. They ſaid they were of divers opinions, but for the principal matter they gave Judgment for the Plaintiff.

Clearwalks

Clearywalk *verſus* Conſtable.

(6) TRespaſs: For taking of Twenty ſeven pound of white Wooll at his houſe in St. Johns-Green in Colcheſter. The Defendant pleaded, That the Town of Colcheſter is an ancient Borough, and within the ſaid Borough there is, and time out of mind, &c. there hath been a cuſtom, That it ſhall be lawful to any Burgeſs of the ſaid Borough, to ſeiſe all goods bought and ſold within the ſaid Borough, to any alien, by an alien, to the uſe of the Queen; and ſuch Burgeſs that finds and ſeiſeth them, and alledgeth, that at the time, &c. he was a Burgeſs there, &c. and that before the time of taking, &c. the Plaintiff being an alien, bought the ſaid Twenty ſeven pound of Wooll of J. L. another alien; and the Plaintiff being then a Burgeſs, ſeiſed the ſaid Wooll, as things forfeited to the uſe of the Queen, and to his own uſe, and demands Judgment Si actio, &c. And upon this a Demurrer in Law. White for the Plaintiff, That the Plea was not good; for the preſcription was not well alledged, That it ſhould be lawful; and doth not alledge a uſe in facto, to ſeiſe; for there can be no preſcription or uſe, except ſometimes it is put in ure, 38 H. 6. 16. b. 34 H. 6. 15. 4 & 5 Phil. & Mar. Dyer 152. Hunt's Caſe. 2. He preſcribeth to ſeiſe the goods, &c. but alledgeth not to what uſe or purpoſe; as for Forfeiture, Toll, or Cuſtom, or ſome other intent, 37 H. 6. 7. 21 Hen. 7. 16. 8 Rich. 2. Grants 105. The cauſe ought always to be ſhewn of the Seiſure. And for this cauſe principally the Court was clearly of opinion, That the Plea was ill; and if no cauſe be ſhewn in four days to the contrary, Judgment ſhall be entred for the Plaintiff.

Jo. Thirkettle *verſus* Reeve and Edward Tye, and Mary his Wife, Trin. 29 Eliz. Rot.

(7) DEbt upon two Obligations, each of them of twenty pound againſt Reeve, Executor of Rob. Thirkettle, and Edward Tye and Mary his Wife, Executors of the ſaid Rob. Thirkettle, and declared upon two ſeveral Obligations, made 14 July, 23 Eliz. The Defendant Reeve pleads, Nunques Executor ne unques adminiſter come Executor: And upon this they were at iſſue; the other Defendants, Ed. Tye and Mary his Wife, demand Oyer of the Obligations, and of the conditions: The condition of one was, That whereas Agnes the Mother of the Teſtator had deviſed to the Plaintiff forty pound, upon condition to be performed by the Plaintiff, if the ſaid Robert pay it to him after the performance of the condition, and within one year after the death of Agnes; that then, &c. and the condition of the other Obligation was, if he pay ten pound after the performance of the condition, and within two years after the death of Agnes, that then, &c. the Defendants plead, that the ſaid Agnes, 13 July, 23 Eliz. made her Will, and deviſed the ſaid forty pound to the Plaintiff, upon condition in the ſaid Will, that he ſhall releaſe to the ſaid R. T. all Actions, &c. except the ſaid forty pound deviſed to him: And they alledge in facto, that the ſaid R. T. required him to make the ſaid Releaſe, and that he refuſed to make it, &c. and alledges the death of the ſaid Agnes, 1 Aug. 27 Eliz. (Nota, the Declaration in this action, was Mich. 27 & 28 Eliz. ſo within

within two years after the death of Agnes) The Plaintiff said, he was not required to make the Releale; and upon this they were at iſſue; and alſo being at iſſue, if Reeve were Executor; it was found that Reeve was not Executor, and that the Plaintiff was not required to make a Releale. And it was afterwards alledged in Arreſt of Judgment, that the Plaintiff had brought his action upon two Obligations, whereas one was not due; for it was brought within two years after the death of Agnes, and damages being given for both intirely, and he had no cauſe to recover upon one; he can recover no part; But the Court held, that this is but the Allegation of the Defendant; and it appeareth not, if Agnes then died or not, and the Defendant hath not reſted upon it, but pleaded another Plea, viz. A requeſt to make a Releale, which is a collateral matter: and iſſue taken upon it, and ſo had relinquiſhed the other matter: and Judgment was given for the Plaintiff. Nota, That afterwards the Defendant upon this, brought a Writ of Error in the Exechequer-Chamber; and this was aſſigned for Error: And another Error was aſſigned, that the Plaintiff had ſued one as Executor joyntly with the true Executor, which was not Executor, and ſo had failed in his ſuit: But all the Juſtices held neither of them to be Errors. For to the naming one Executor which was not, this is not in abatement of the Bill or Writ, but only that he ſhall be barred againſt him: And it will be a great miſchief when divers are made Executors, and one refuſeth, if the naming of him ſhould abate the Writ. And to the other matter, they held it no Error; for it was only a matter alledged by the Defendants, and it appeareth not, whether it be true or falſe; and it is waved by the iſſue. And thereupon they all reſolved the Judgment to be affirmed. Ante 68. 9.

Elizabeth Mornington *verſus* Try & alios.

EJectione firmæ. Upon not guilty pleaded, it was found, that (8) the Abbot of St. Peter of Gloceſter, 15 Hen. 8. being ſeiſed of the Barn and Tythes in queſtion, let them by Deed under the Covent Seals to three for ſixty years; afterwards the Abbey was diſſolved, and their poſſeſſions, Et inter alia, the Barn and Tythes were given by Statute to the Biſhop of Gloceſter; and afterward, 15 Eliz. John Wakeman, Biſhop of Gloceſter, let them to three Cheynies by Indenture, rendring the ancient Rent, for three lives; and the Indenture was found in hæc verba: And in the end of it, the confirmation of the Dean and Chapter was recited, which was of a Leaſe made by Rich. Wakeman; but the Jury did not in facto find that the Dean and Chapter did confirm it; nor found their Deed in hæc verba as they ſhould have done, but only recited it as a thing annexed to the Indenture; and found expreſſly the Leaſe made to the husband of the Plaintiff, by the now Biſhop. Tanfield prayed Judgment for the Plaintiff; for the Leaſe by John Wakeman was meerly void; for there were twelve years to come of the ancient Leaſe: So it muſt paſs by grant of Reverſion, and no Attornment is found; and the Jury do not find a confirmation by the Dean and Chapter, and the confirmation reciteth a Leaſe by Robert Wakeman, when it was by John Wakeman: And theſe laſt faults were held to be incurable. Coke moved, that the Verdict ſhould Co. Lit. 3. a. Co. 11. 21. a.

ſhould be amended; for the note given to the Clerk of the Aſſizes was, That they intended to find the confirmation expreſly, and of a Leaſe made by J. W. And for the other point, Tithes paſs without Attornment: But the Court held clearly, That after Verdict
Poſt. 150. returned in Court, this cannot be amended by any ſuch ſuggeſtion; for then all Verdicts may be prayed to be amended: But if any miſpriſion was, ſuggeſtion ought to be made of it before the Verdict returned; but now it was too late, wherefore Judgment was given for the Plaintiff.

Richard Jackſon *verſus* Robert Mordant, Mich. 29 & 30 Eliz. Rot.

(9) ACtion upon the Caſe: The Plaintiff declareth, that where Thomas Style and Margaret his Wife were ſeiſed to them, and the Heirs of Thomas, of five acres of Meadow lying near a River called Weſtbury River; and being ſo ſeiſed by Indenture, let them to the Plaintiff for one and twenty years, by force whereof he was poſſeſſed: The Defendant ſuch a day, &c. erected a Water-Mill Super & trans the ſaid River; by reaſon whereof Obſtupavit the Water running in the ſaid River with his Mill: So that the Water from time to time yearly after the erecting of the ſaid Mill, overflowed the Banks of the River in the ſaid five acres of Meadow, and them inundavit; by which they became barren & ſcirpoſæ, to his damage One hundred pound: And upon this Declaration it was demurred in Law, and argued this Term. The firſt Exception was, becauſe he counts that the Baron and Feme were ſeiſed to them, and the Heirs of the Baron, and ſheweth not how the eſtate began; for it was ſaid, it being a ſpecial eſtate, and but a particular eſtate in the Feme, the Commencement of it ought
Poſt. 154. to have been ſhewn; but the Juſtices held it well enough, being an Action of the Caſe by their Leſſee: So that it is but a Conveyance to the Action, and the Inheritance is in the Baron. 2. Exception,
Poſt. 181. becauſe he declares of a Leaſe by Huſband and Wife by Indenture, and ſheweth not, that a Rent was reſerved, and then it cannot be the Leaſe of the Feme; but the Court held it clearly to be good: For it is the Leaſe of the Feme, till ſhe diſagree, and the Inheritance being in the Baron, it ſhall be good againſt him and his Heirs. 3. Exception, That the life of the Baron was not averred; Sed non allocatur, for the reaſon aforeſaid; And the ſame Term, Judgment was given for the Plaintiff; And I was of counſel with the Plaintiff.

Thomas Broome *verſus* Robert Mordant, Int. Trin. 30 Eliz. Rot. 813.

(10) ACtion upon the Caſe. The Plaintiff declares, That Thomas Slye and Margaret his wife, were ſeiſed of a Water-Mill, called Webſtury-Mill, viz. The ſaid Thomas in his Demeſn, as of Fee, and the ſaid Margaret, ut de libero Tenemento; and being ſo ſeiſed, they and all

all thoſe whoſe eſtate they had in the ſaid Mill, have had time out of mind, &c. a Water courſe running in the River of Weſtbury, to a Mill called Innelly Mill in the County of N. to the ſaid Weſtbury Mill, and from thence ſuper & trans an Acre of Land of the Defendant, to a Mill called Mixbury Mill in the County of Oxon, and this without any erecting of any Mill, and had time out of mind, &c. the multure of divers Inhabitants there of their Corn, &c. And they being ſo ſeiſed, let the ſaid Mill to the Plaintiff, &c. by Indenture by which he was poſſeſſed, until the Defendant erected a new Mill upon the ſaid Acre of Land, per quod obſtupavit aquam prædict' ita quod molendinum prædict' ſuffocatum fuit, ſo that the Plaintiff loſt the profit of his Mill from the firſt day of July, &c. until, &c. to his damage, &c. And hereupon it was demurred in Law, and the ſame Exceptions taken as in the Caſe before, and ruled as before. And another Exception was taken, for it is ſaid, the Baron was ſeized in Fee, and the Feme in her Demeſne as Free-hold, but ſaith not of what Eſtate, for her life, or for anothers life. 2. Exception, becauſe the preſcription is alledged in the Baron and Feme, and the Feme had only an Eſtate for life, and ſo cannot preſcribe, ſed non allocantur. For to the firſt, the Plaintiffs needed not ſhew what Eſtate they had, it being by way of Conveyance: and to the ſecond, when the Feme is joyntly ſeized with her Baron which had the Fee, the preſcription may be alledged in both: & ſic adjudicatur.

Ann Boocher *verſus* Ancel Samford, Hillarii, 50 Eliz. Rot. 188.

EJectione firmæ, upon a ſpecial Verdict, the Caſe was this. William Samford was Lord of the Manor of Stone-houſe, within which (11) Manor there is a place known by the name of Ebley, in which is a Houſe and ſix Acres of Land, to which Tenement divers other Lands throughout the whole Manor were pertaining, and had been uſed with it by the ſpace of Sixty years, and had always paſſed by one Grant, and under one Rent (which was now in the hands of one H. B. Copyholder of it) And the ſaid W. S. being ſo ſeized, deviſed that his Brother Tho. S after the death of the ſaid H. B. ſhould have the Tenement with the Appurtenances in which H. B. dwelleth in Ebley for Sixty years, rendring 4 l. per annum (the ancient Rent being 45 s.) but the Houſe and the ſix Acres was worth 5 l. and if upon all this matter, the other Lands which were uſed with the Houſe, and are out of Ebley, paſs, or not, was the queſtion. Coke argued that all paſſed, for they were always paſſed by one Grant, and under one Rent, and they are here granted per nomen tenement'. And it is to be firſt conſidered how thoſe words (wherein he 1 Cr. 130. dwelleth in Ebley) ſhall refer, to the dwelling, or to the Tenement. And as to that he ſaid the words ſhall be referred, ut verba accipiantur apte & in proprio ſenſu, then (dwelleth) ſhall not be referred to Land, but to the Tenement, for a man cannot dwell in Land; and Relation ſhall always be ut ſententia non impediatur, and not to the laſt Antecedent. And here he deviſeth the Tenement with the Appurtenances, which is all things belonging to it; and the Lands out of Ebley were belonging to it. And it was adjudged in one Batrees caſe, where one being ſick ſent for Scrivener, and gave him inſtructions,

Moor 222. 1 Cr. 57.

that he deviſed his Houſe and the Land belonging to it, the Scrivener drawes a deviſe of the Houſe, cum pertinentiis, and it was adjudged that the Land paſſed; alſo the Rent is increaſed, and therefore his intent was to give all the Land, and it was to his brother for his advancement. Atkinſon contra, he agreed that by a deviſe of the Tenements, all paſſed; but when he ſaith, in which H. B. dwelleth in Ebley, this sheweth his intent that nothing ſhall paſs but what is in Ebley. A man granteth his Manor in D. nothing paſſeth but what is in D. And it was adjudged in the Exchequer, where the King granted the Commandry of Slevidge in the County of Radnor, that if no part of it be in Radnor, yet it ſhall paſs; but if part be in the County of Radnor, and part in another County, nothing ſhall paſs, but what is in Radnor. But it was adjudged for the Plaintiff, that the Lands out of Ebley ſhall paſs; but that the Plaintiff ſhould recover but two parts, the deviſe being void for the third part, the Land being held in Capite.

Croſſman *verſus* Reade.

(12) Co. 8. 136. a. Moor 236. 1 Leon. 230. 1 Cr. 373. Co. Lit. 264. b.

DEbt. The caſe upon ſpecial Verdict was, A Woman Executrix marrieth with a Debtor of the Teſtator, the Husband dieth, and Debt was brought againſt the Woman, who pleaded Riens inter manes, and all this was found; and if this was Aſſetts, it was the queſtion. And it was adjudged that this Debt was not Aſſetts in her hands, for by the intermarriage the Debt which the Executrix had in auter droit, was not extinct but ſuſpended; and the Action was revived againſt the Executors of the Baron; and compared it to Darcies caſe in the Commentaries.

Richmond *verſus* Webb.

(13) 2 Cr. 86. Hob. 37. Poſt. 146. 171.

ACtion upon the Caſe, and counts that he was ſeiſed of a Meſſuage and certain Lands in Blankeworth, to which Land, time out of mind, &c. he had common appendant in 400 Acres of Land in Lydcotts Milliſen, that the Defendant had incloſed it, and ſo diſturbed him of his Common. The Defendant pleads that he had ſet up a Vaccary upon parcel of it neceſſary, &c. abſq; hoc that the Plaintiff had Common. And upon this iſſue was joyned and tried for the Plaintiff. And now Tanfield moved in Arreſt of Judgment, that the venire facias and Trial was de Lydcotts Milliſen only, where it ought to be alſo of Blanke: where the Land was; 49 Ed. 3. 20. 30 Aſſ. 42. 10 Ed. 4. 10. and this miſ-trial is out of all the Statutes of Jeofailes; and for this cauſe it was adjudged that the Plaintiff, nihil capiat per billam; and he could not have a venire facias de novo, for he had a Verdict given, which was certified.

Martin *verſus* Allice Whipper.

(14)

DEbt againſt the Defendant as Executrix of J. S. upon plene adminiſtravit pleaded, it was found by Verdict, that the Teſtator at the time of his death had Goods to the value of one hundred pound, and was bound to another by Obligation in one hundred pound, and

and that the Defendant had taken in this Obligation, and made another in her own name with ſureties to the Obligor. And upon the motion of Heale, the Court held this was an Adminiſtration, and it is in the nature of a payment, and ſo much of the Teſtators Debt is by this diſcharged, and ſo it was ſaid to be adjudged in Woods Caſe. Nota, ſuit ruled accordingly, Paſch. 30. in Communi Banco; which was entred, Mich. 28 & 29 Eliz. Rot. 2625. Inter Stampe & Hutchins. Poſt. 120.

Pigott *verſus* Ruſſel, Hill. 30 Eliz. Rot. 164.

(15)

PIgott ſued two Writs of Error, one to reverſe a Fine, the other to reverſe a Common Recovery, by reaſon of his Nonage. Tanfield moved that the Writ to reverſe the Fine was not well brought. The Caſe was, Engliſh was Tenant for life in right of his Wife, the remainder to the Plaintiff in Fee, and they joyned in a Fine to Ruſſel, ſo they all ought to joyn in the Writ, and there ought to be ſummons and ſeverance, and he cannot bring it alone. Coke and Atkinſon contra; this Writ is well brought by the Plaintiff alone, for it is brought for an error in fait, viz. his non-age, and of his non-age the other can take no advantage; ſo the cauſe of the Action being ſeveral and not joynt, they cannot joyn in the Action, 34 H. 6. in the caſe of attaint, 7 H. 4. 44. and they relied upon the caſe. 29 Aſſ. 14. The Court held the Writ was well brought, becauſe it is no error in the Record, but an error in fait; and if two Infants bring a Writ of error, they muſt aſſign the errors ſeverally; and therefore if one be within Age, he muſt bring the Writ alone, videa poſtea, Hil. 31. pl. 3. Poſt. 129. Poſt. 124. Co. 1. 76. b.

Reynold *verſus* Kingman and Brown, Int. Hil. 30. Rot. 343.

(16)

EJectione firmæ. The caſe was, H. Creeke was ſeiſed of certain Lands held by Knights ſervice, let the ſame to J. Creek, Habendum to him and one Jo. Downeman, for their lives, rendring Rent. And afterwards deviſed the Land to Alice his Wife for life, the Remainder over in Fee, which was void for a third part, and died. J. Creek the Leſſee died; Jo. Downeman pretending to be in as Leſſee, continueth in poſſeſſion, and payes the Rent to Alice. Afterwards one Edward Creeke Son and Heir of the Deviſor makes a Letter of Attorney to J. S. to enter into all the Land, and to enfeoffe the ſaid Jo. Downeman who maketh a Feoffment accordingly. J. D. dieth ſeiſed; the queſtion was, if this diſcent takes away the entry of Alice. Harris argued that it did not, for when he enters and pays the Rent to the Deviſee, he doth it as Tenant at Will, for he had color to enter. And it was adjudged in this Court in a caſe between Goos and others, that where J. S. giveth an Authority to J. D. to make Leaſes of certain Land to certain perſons in the name of J. S. and J. D. maketh Leaſes in his own name, which was void, yet although the Leſſees enter and die ſeiſed, this taketh not away the entry of J. S. for they enter by colour of title, and in the mean time are as Tenants at Will; Poſt. 615. 641. Ante 56. 8. Poſt. 323.

Will; and when the Attorney of E.C. enters to make a Feoffment, the other was in poſſeſſion for his Leſſor, 38 H. 6. and then cannot take livery from him that had no poſſeſſion. But Wray ſaid he could not be Tenant at Will; for he had no colour to enter his name in the Habendum, being void; but if he were Tenant at Will, by his taking a Feoffment of a ſtranger his Will is determined; and ſo his entry cannot reduce the poſſeſſion to Alice, quacunque via, this is a deſcent and tolls the entry; and it was adjuged accordingly.

Poſt. 323.

Knight *verſus* Bourne.

(17) ACtion upon Trover of a Horſe, Judgment was, quod recuperet equum vel damna, whereas it ſhould be Damna only, and the Judgment was reverſed.

2 Cr. 681.

Beveridge *verſus* Cony, Paſch. 30 Eliz. 285. vel 485.

(18) ERror of a Judgment in the Common Pleas; the matter was, a Leaſe was made at Northampton of Land in Cambridgeſhire, the Leſſee was obliged to perform the Covenants contained in the Indenture of Leaſe, Debt brought upon the Obligation, and the breach aſſigned in not paying the Rent, the Defendant rejoyneth that he hath paid it; and upon this they were at iſſue; and found for the Plaintiff by an Enqueſt of the County of N. where the Leaſe was made. And it was ſaid in Arreſt of Judgment that it was no good iſſue, becauſe no place is alledged of payment, and the iſſue was miſ-tried by a viſne of the County of N. where it ought to be of the County of C. where the Land was, for by intendment the payment was there, and ſo was the opinion of Anderſon, but Windham, Periam, and Rodes cont', for although the Bar was ill, becauſe no place of payment was alledged, yet by the verdict it is made good, for a payment in one place is payment in all places, and it was adjudged there for the Plaintiff; and upon the Writ of Error brought, theſe two matters were aſſigned for Error. 45 Ed. 3. 5. but afterward the Judgment was affirmed.

Co. 7. 2. a.
Poſt. 259.

Lancaſter *verſus* Lowther, Trin. 30 Eliz. Rot. 346.

(19) ERror to reverſe a Judgment in Outlary. 1. Error aſſigned, that the Original was againſt Brian Lancaſter de Huton Walmſly in the County of Y. the Proclamations were againſt Brian L. de Hutton, leaving out Walmſly. 2. There be in the Proclamations two Letters of T. and in the Original but one, viz. Huton, and the Judgment was reverſed.

Ant. 50.

Auſten & Steene *verſus* Courtney.

(20) ERror to reverſe a Fine, levied in Exceter upon a plaint in nature of a Writ of Covenant. 1. Error aſſigned, that the plaint was quod teneat conventionem de Duobus tenementis in Exceter (and abutted them on every ſide) which is incertain, for Tenement contains divers things, as Rent, Land, Meadow, &c. as an ejectione firmæ, of a Tenement, and an Indictment that one entred in tenementum with

Co. 11. 55. a.
Poſt 458.
Poſt. 314.

with force are not good, and this Error was assigned in the plaint; for the Fine relates to the Covenant, and is levied de tenementis prædict. 2. Error, the Fine levied in Exceter is void, for they cannot prescribe to levy Fines, for then the Queen should lose her Fine pro licentia concordandi, 50 Ass. 9. 44 Ed. 3. 29. & in 22 Eliz. it was ruled in a Chester case, that a Fine levied there was void; and the judgment was reversed; but the Justices delivered no opinion whether a Fine levied in Exceter was good or not. Post. 314.

Edwards *versus* Ebsworth.

(21)

INformation: Upon the Statute 35 H. 8. pro not fencing of Copices. 1. Exception, because it is not alledged that the Defendant had lawful interest in them, as the words of the Statute are. 2. Because, it is shewn that certain Copices were cut, but shews not what Copices they were. 3. Because it is recited that he shall forfeit for every rood 3 s. 4 d. where it should be for every rod of Land; but it was said, the Parliament Roll, is rood of Land, and so was the last impressions; but for the two first exceptions the party was discharged. 35. H. 8. c. 17.

Ter. Michaelis, 30 & 31 Eliz. in Camera Scaccarii.

Pike *versus* Cottington.

(1)

ERror of a Judgment in the Queens Bench, in Debt upon an Obligation, the Error assigned was, the Defendant in the Writ of Error brought Debt upon an Obligation of a 100 l. the Condition was, that if he pay 50 l. at his House at Lockington in the Parish of Kilmerston, that then, &c. Defendant pleaded payment, and the venire facias issued of the visne of Lock. and this was assigned for Error, for it ought to be de visneto de Kilm. for Lock. shall not be intended to be a Village, but a place known in K. 6 H. 7. 3. 11 H. 7. 22. But all the Justices held it no Error for Lock. shall be intended to be a Village in the Parish of K. for divers Villages may be in one Parish, but if it had been at his House in Lock. in Kilmerston, then Lock. shall not be intended a Village, but a place known in Kilmerston, and the Judgment was affirmed. Ante. 108. Co. 11. 25. b.

Kingdon *versus* Barne.

(2)

ERror of a Judgment in the Queens Bench, in Trespass for taking of certain Corn, the Defendant justifieth the taking as his proper Goods; and pleads a special justification. The Plaintiff makes title to them by seisure: for that King Philip and Queen Mary by their Letters Patents enrolled in Chancery, dederunt & concesserunt villæ de Launceston liberty of a market, &c. and shews a special cause of seisure, as an Officer there: upon which it was demurred in Law, and Judgment for the Plaintiff. And the Error assigned was, that he pleaded that the King and Queen by Letters Patents, grant, &c. but saith not sub magno sigillo confectas; and this was clearly held an Error: for if the grant was not under the Great Seal, it is not good; and though he saith enrolled in Chancery, it is not good, for any Patent may be enrolled there; and therefore the Judgment was reversed. Ant. 75. Co. 10. 94. b.

Bury

Bury *verſus* Pope.

(3) CAſe for ſtopping of his light: It was agreed by all the Juſtices, that if two men be owners of two parcels of Land adjoyning, and one of them doth build an Houſe upon his Land, and makes Windows and Lights looking into the others Lands, and this Houſe and the Lights have continued by the ſpace of thirty or forty years, yet the other may upon his own Land and ſoyle lawfully erect an Houſe or other thing, againſt the ſaid Lights and Windows, and the other can have no Action; for it was his folly to build his Houſe ſo neer to the others Land; and it was adjudged accordingly. Nota, cujus eſt ſolum, ejus eſt ſummitas uſque ad cœlum. Temp. Ed. 1.

Poſt. 269.

Bilford *verſus* Fox and his Wife.

(4) DEbt upon an Obligation againſt the Defendant and his Wife Executrix of her former Husband; the Baron appeared upon the exigent, and would have put in a ſuperſedeas for himſelf alone, without any appearance or ſuperſedeas for his Wife; and ſo at the firſt the Juſtices thought he might, as 18 Ed. 4. & 14 H. 6. are. But Antropos the Attorney ſaid it was a practiſe to defeat the Plaintiff of his Debt, and ſhewed a Preſident of 18 Eliz. that in the like Action brought againſt Sommers and his Wife, Sommers would have put in a ſuperſedeas for himſelf only, but he was not ſuffered, but ſhall be compelled to put in an appearance, Attorney, and ſuperſedeas for his Wife alſo, and ſo all the Juſtices did now hold; otherwiſe an exigent de novo ſhall iſſue out againſt him.

Hunt *verſus* Sone, Hill. 30 Eliz. Rot. 1732.

(5) AN Aſſumpſit, and declared that in conſideration he promiſed the Defendant that he ſhould have and occupy ſuch Lands from ſuch a day for five years, the Defendant promiſed to pay him 20 l. for every year, at two Feaſts, &c. and averrs that the Defendant had occupied the Land for one year and a half, and for 30 l. due for that time he brought Action, and after Verdict it was moved in Arreſt of Judgment, that this promiſe and conſideration was a thing entire and not ſeverable, and therefore ought to have averred that the Defendant had enjoyed the Lands for five years, otherwiſe the Action lieth not; but it was adjudged for the Plaintiff, for all the Court held, that if the promiſe had been that he ſhould enjoy the Land for five years, and in conſideration thereof he ſhall pay him a 100 l. in five years, viz. 20 l. per annum, there the Action lieth not for part till all the Term be expired; but the promiſe and agreement being that 20 l. ſhall be paid for every year, it is otherwiſe; and ſeveral Actions lye for every day of payment. And Rhodes Juſtice ſaid, ſo it was lately adjudged in Sir Thomas Joſcelynes Caſe, that in conſideration one would marry his Daughter, that he will pay to him 300 l. ſcilicet, Fifty pound

2 Cr. 598.

1 Cr. 241. Co Lit. 292. b. Poſt. 776. 807.

pound by the year during ſix years, there at the end of every year a ſeveral Action lieth for Fifty pound.

Rookesby's Caſe.

(4)

QUare Impedit, The Original Writ wanted this Word (ad): for whereas the Writ ſhould be, quæ ad donationem ſuam ſpectat, the Writ was, quæ donationem ſuam ſpectat, and after divers motions for amending of it, the Writ by award was amended, and (ad) put in, and the principal reaſon was, that the ſix months were paſſed, and if the Writ ſhould abate which was purchaſed within the ſix months, the Plaintiff ſhould be remedileſs to recover his preſentation. Poſt. 286. 462. 644. Ant. 79. Co. 8. 159. a. 160. a.

Albany *verſus* the Biſhop of St. Aſaph. Trin. 27. Eliz. Rot.

(5)

QUare Impedit, for the Church of Whitington. The Biſhop pleaded that the Service there was in the Welſh Tongue, and that the Pariſhioners underſtood not the Engliſh, and that the Preſentee could not ſpeak Welſh, and therefore he refuſed him; And all the Juſtices held this a good cauſe of refuſal, for he cannot inſtruct his flock according to his Duty and Charge: but in this caſe the Plaintiff had preſented ſixteen days within the ſix months, and the Biſhop gave no notice of the inability of the Clerk, till three days after the ſix months expired. And the Court held that notice ought to be given to the Patron himſelf, if he be reſident in the County, and if not, a publick intimation ought to be on the Church door, and notice of this matter ought to have been given immediately when he was preſented and examined, or within ſuch convenient ſpeed as might be; but when the Biſhop is to enquire of the behavior of the Clerk, he ſhall have longer time; and for this cauſe Judgment was given for the Plaintiff.

Shepard *verſus* Kearne.

(6)

DEbt upon an Obligation. The Condition was that if one pay to the Plaintiff within one Month after the death of the Lady Learne 30 l. or Twenty Kine, at the Election of the Obligee, that then, &c. and the Defendant pleads that the Plaintiff had made no Election; the Plaintiff demurred, and it was adjudged that the barr was good, and Judgment againſt the Plaintiff. Moor 241. 1 Leon. 69.

The Queen againſt the Biſhop of Lincoln, and Ligh the Incumbent.

(7)

QUare Impedit, The Caſe was, After Lapſe incurred to the Queen, the Biſhop being Patron doth preſent, and afterwards the Succeſſor of the Biſhop certifieth againſt this Incumbent, Owen 5. 89. Gould. 78. 83. 86. Moor 259.

bent, that he had refuſed to pay the Tenths, and then the Biſhop collateth the Defendant, who was inducted; the Queen brings Quare impedit, And it was adjudged that the Queen hath not loſt her preſentation, but if the Incumbent had died it were otherwiſe; for here the Church became void by the Incumbents own Act; ſo if he had reſigned or been deprived; and it would be inconvenient if the Queen ſhould loſe her preſentment by the Incumbents own Act.

Ante 44. Co. 7. 28. a. Poſt. 790. 811.

Michael *verſus* Scockwith.

(8) DEbt upon an Obligation, the Iſſue was non eſt factum. The Jury found that the Defendant did ſeal and deliver it as his Deed, but that after the day of the Iſſue joyned, the Seal was pulled off from the Obligation; and the Plaintiff had Judgment, for it was the Defendants Deed at the time when the Iſſue was joyned, and the Trial ſhall relate to it, although the Deed was cancelled afterwards. v. 36 H. 8.

Co. 5. 119. b.

May & Banniſter *verſus* Street.

(9) EJectione firmæ. It was found by Verdict, that the Prior of Merton was ſeiſed of a Houſe in Southwark, held of the Archbiſhop of Canterbury, as of his Borough in Southwark, and 30 H. 8. Surrenders it to the King, H. 8. who granted the ſaid Meſſuage and divers other Lands in London, Middleſex, and Eſſex, to J. S. and his Heirs, to hold of him in libero Burgagio by fealty for all ſervices and demands, and not in Capite. Queen Mary grants the Manor and Borough of Southwark to the Mayor and Commonalty of London, and the Tenant of the ſaid Meſſuage died without Heir; and the queſtion was, whether the now Queen or the Patentees of the Borough ſhould have the Eſcheate, And it was adjudged for the Queen: for the Firſt Patentee of the Meſſuage held it of the Queen in Soccage in Capite, as of a Seigniory in groſs, and the Words in libero burgagio are meerly void, for the Land out of the Borough cannot be holden in libero burgagio, and there ſhall not be ſeveral Tenures, for one Tenure was reſerved by the King for all, and therefore of neceſſity it ſhall be a Tenure in Soccage of the King.

Moor. 257. Lit. Sect. 162. 3.

Stampe *verſus* Hutchins Intr. Mich. 28 & 29. Rot. 2625.

(10) DEbt againſt the Defendant as Adminiſtratrix; ſhe pleaded plene adminiſtravit. The Jury found that the Inteſtate was indebted to divers by Obligations, and that after his death the Defendant had taken in the Obligations, and had obliged her ſelf to pay the greater part of the ſums contained in the Obligations, at certain days to come, and for the reſidue had promiſed to the parties that in conſideration of delivery in of the ſaid Obligations, that ſhe would pay, &c. And by the Opinion of Anderſon, Windham, and Periam, it was held clearly a good Adminiſtration, ſo that the Property of the goods of the Inteſtate to that value were altered and changed in the Defendant.

1 Leon. 111. Moor 260. Ante 115.

Hunt

Hunt and his Wife *verſus* Gilburne.

(11) DOwer: And demanded the third part of the Lands of Auguſtine her former Husband, of Lands in Kent; the Defendant pleaded that the cuſtom there is, that the Wives ſhall have the moiety of the Lands of their Husbands for their Dower, and ſhall hold them ſo long as they live chaſte and unmarried, Et non ſecundum curſum communis legis, and that the Feme demanded ſince the death of her former Husband had taken the demandant Hunt to Husband, and ſo demanded judgment, if ſhe ſhall have Dower; and the opinion of the Court was, that the preſcription in the bar was good being in the negative, and ſo it was adjudged. And Periam ſaid, if he had not pleaded in the negative, yet the demandant ſhall not have Dower, for the cuſtom that Wives ſhall have the moiety is the Common Law in Kent, and no other Law runs there.

Gould. 108. 1 Leon 133. Moor 260. Poſt. 825. Moor 260.

Hughſon *verſus* Ann Web, Paſch. 30. Rot. 420.

(12) DEbt againſt the Defendant as Adminiſtratrix upon a contract of the inteſtate; the Defendant pleads fully Adminiſtred, and found againſt her; and it was moved in Arreſt of Judgment, that Debt upon a contract lieth not againſt an Adminiſtrator; And it was reſolved by all the Juſtices, that the Plaintiff ſhall not have judgment; for although the Defendant by her plea admitted that the Action lay againſt her, yet when the matter at the beginning is not ſufficient to charge her, the Court ex officio ought to abate the Writ without exception of the party, 15 Ed. 4. 25. and the Defendants plea takes not away the Authority of the Court, but they may abate the Writ at any time after.

Poſt. 426. 454.

Everard *verſus* Greene.

(13) TReſpaſs: The Writ ſuppoſed the treſpaſs to be done apud Heniſale, and the Declaration ſuppoſed the treſpaſs to be apud Bayskett in Heniſale, and after Verdict this variance was alledged in Arreſt of judgment. Snagg for the Plaintiff, Gawdy for the Defendant. And the Court held that for this variance judgment ſhould be ſtaid; and the difference is, where there is no original, it is aided by the Statute of 18 Eliz. for Jeofails; but where there is an original, and this varies from the Declaration; it is otherwiſe, and a preſident in the Queens Bench was ſhewn to be adjudged accordingly.

Stevens *verſus* Lawton and his Wife, Mich. 29 & 30. Eliz. rot. 2578.

(14) EJectione firmæ: Upon ſpecial Verdict the Caſe was, Sampſon Bell let Land to W. his ſon, and P. his Wife, & eorum primogentiæ proli ſucceſſive; they had then no iſſue, but afterwards they had iſſue; the queſtion was, if after the death of W. and P. the iſſue ſhall take by way of remainder or otherwiſe. And the Court held, he ſhall take nothing, for he was not in eſſe at the time of the grant, and by the grant he is to take joyntly; and ſo it was adjudged.

Ant. 10. 58. Co. 6. 17. a. Poſt. 334.

Chamberlain *verſus* Stanton, Mich. 30 & 31. Rot. 656.

(15) DEbt upon an obligation: the Defendant pleaded non eſt factum; the Jury find that the Defendant cauſed the obligation to be written and ſigned and ſealed it, and then laid it upon a table, and the Plaintiff came and took it; the queſtion, if this was the Defendants Deed; and the opinion of all the Juſtices was, that it was not, without other circumſtances found by the Jury.

Co. Lit. 36. a. Ant. 7.

Johnſon *verſus* Gabriel and Bellamy, Trin. 29. Rot. 334.

(16) EJectione Firmæ: The caſe upon ſpecial Verdict was, Grant was ſeiſed in Fee of the Land, and deviſed it to his Wife for life; and when John G. the ſon of his brother, came to his age of twenty five years, then he ſhall have it in Fee. Jo. before his age of twenty five years levieth a Fine to A. B. and after his ſaid age of twenty five died, and it was ajudged that his heir ſhall be barred by this Fine levied by him, and ſo it ſhall be if the Land had been given to him in Tail, and there ſhall be no Averment, that partes ad finem nihil habuere, &c. and this being found by Verdict, ſhall bar as well as if it had been pleaded, as an Eſtoppel.

Co. 10. 50. a. 1 Cr. 435. Poſt. 142. Co. 10. 50. a. Poſt. 610. 11. Poſt. 362.

Termino

Termino Hillarii,

Triceſſimo primo ELIZABETHÆ,

in Banco Reginæ.

Mott *verſus* Hales, Int. Mic. 30 & 31 Eliz.

(1) DEbt upon Leaſe for years: The caſe was, a Parſon maketh a Leaſe to the Plaintiff for twenty one years after the Statute of 13 Eliz. of Lands uſually let, rendring the ancient Rent, the Patron and Ordinary confirm the Leaſe, the Leſſee lets part of the term to the Defendant, the Parſon dieth, the Succeſſor enters, and lets it to the Defendant, againſt whom the firſt Leſſee brought Debt upon the former Leaſe, who pleads the Statute of 13 Eliz. that makes all Leaſes void where the Parſon is non reſident or abſent for eighty days, &c. and that the ſucceſſor hath entred, &c. upon this Plea the Plaintiff demurred; and it was argued by Coke and Godfrey that the Statute extends not, but to the Parſons that make the Leaſes and are non-reſident or abſent, &c. and extends not to Leaſes of Parſons which afterwards die; for ſuch perſons cannot be ſaid to be abſent which are not in eſſe, eſpecially the Statute giving liberty to let Land uſually let, which ſhall be vain, being confirmed by the Patron and Ordinary, if they continue no longer than the Parſons life; but it was adjudged that this Leaſe is void by the death of the Incumbent, for the Juſtices ſaid that the Statute doth provide againſt dilapidations, and for maintainance of Hoſpitality, and therefore provideth not only that Leaſes ſhall be void for non-reſidency, &c. but by death or reſignation, for otherwiſe dilapidations ſhall be in the time of the ſucceſſor, and he cannot maintain Hoſpitality, and ſo it was adjudged.

Moor 270. R. 754. 13 El. cap. 20.

Poſt. 490.

Barkly and Gibbs *verſus* Kempſtow, Int. Trin. 30. Eliz. Rot. 64.

(2) ASſumpſit: Plaintiffs declare, that Civitas Worceſter fuit antiqua civitas and that all Pleas determinable there were uſed to be by ſuit before the Bailiffs, Chamberlain, and Aldermen there determined, and the Bailiffs, &c. had uſe to have their ſervientem ad clavam, to make Arreſts; and that there they had a Priſon, and that the Bailiffs time out of mind were Keepers of the Priſon, and of all the Priſoners there, and that whereas the Defendant had a

houſe adjoyning to the Priſon, in which the Bailiffs had uſe to commit their Priſoners to be ſafely kept; and whereas one M. had affirmed a plaint of 18 l. againſt Worſley in the ſame Court before the Bailiffs, &c. which was a Plea there determinable by Cuſtom, per quod they mandaverunt quoddam warrantum to the ſaid Serjeant to Arreſt him, by force whereof he Arreſted him and brought him to the next Court, and the Plaintiffs being Bailiffs committed him to Priſon; and the Defendant having the ſaid houſe adjoyning to the Priſon, in conſideration that the Plaintiffs committed the Priſoner to him to keep, by which he might make his commodity by uttering his meat and drink, and might have as great benefit as he uſed to have, promiſed to keep him ſafely, and ſave the Plaintiffs harmleſs of all eſcapes; whereupon they committed the Priſoner to his houſe to keep, &c. he ſuch a day had ſuffered him to eſcape, by which they were damnified; upon non aſſumpſit pleaded, it was found for the Plaintiffs, and divers matters alledged in Arreſt of Judgment. 1. Becauſe it is alledged that mandaverunt warrantum, &c. but ſhew not that it was in writing under Seal, as it ought to be. Sed not allocatur, for it ſhall be ſo intended. 2. It was not alledged how they were damnified, viz. that they were ſued for this eſcape, or otherwiſe moleſted. Sed non allocatur, for immediately upon the eſcape they were damnified and in danger to be ſued, and might ſue the Defendant preſently and not tarry till they were ſued. 3. It was held upon good adviſement, that this was a good conſideration to make an Aſſumpſit, viz. the uttering of his meat, &c.

Hob. 14.

Ante 53.

Ante 53. Poſt. 625.

Pigot *verſus* Ruſſel, vide Antea Mich. 31 caſus 15.

(3) IT was moved by Tanfeild that the Writs of Errors were not good, for the Writ of Error upon the recovery made only mention of one Voucher, when it was a double Voucher, ſo the Juſtices had no Warrant to examine it. 2. The Writ of Error upon the Fine was ill, for the Writ makes mention of an hundred and five Acres, and the Fine certified is an hundred and fifty Acres, and for this variance it is not good. Atkinſon & Coke contra. 1. The Writ of Error upon the Recovery was well enough, for ſo are all the preſidents to make mention of one Voucher being betwixt the Demandant and Tenant; but if it had been between the firſt and ſecond Vouchee, then both ought to be mentioned. And as to the Fine, it agreeth with the Record, which is with the Cuſtos Brevium, but Wray ſaid the principal part of the Fine is with the Chirographer, and it ought to agree with it, elſe is not good; and here it was held that if Leſſee for life, and he in the reverſion joyn in a Fine to a Stranger, and the reverſioner reverſeth the Fine for nonage, yet he ſhall not enter for forfeiture, becauſe he joned in the Fine and conſented to it; and afterward the Fine was reverſed quoad the infant only.

Co. 1. 76. b. Poſt. 129. 290. Ante 115.

Patridges Caſe.

QUo Warranto: A Demurrer to the bar: it was held by all the Juſtices in ſpeaking to it, that a man may preſcribe to hold a Leet oftner and at other times than are mentioned in the Statute Magna Charta cap. 11. for it is in the affirmative; and Popham ſaid that want of a Pillory or Tumbrel is cauſe of forfeiture of a Leet, 13 Ed. 1 Leet. 12. Cook contra. And Popham ſaid that a general Pardon being with divers exceptions, he that will take advantage of it muſt plead it, and that he is not a perſon excepted, otherwiſe of a general pardon except I. S. for there the Court may take conuſance that he is not I.S. 8 Ed.4.7. And the Court held that it is not ſufficient in a Quo warranto of liberties to derive an intereſt to a ſtranger in them from the Queen without making title to himſelf, for the Writ is Quo Warranto, he himſelf uſeth them. (4) 2 Inſt. 72. Poſt. 245.

Cage *verſus* Payton & Everet, Intr. Trin. 30 Eliz. rot. 349.

TRespaſs quare clauſum boſci ſui vocat' Frith fregit & forty Loads of the Wood did take and carry away. The Defendant pleaded that the place where, &c. was parcel of the Manor of great Hornebey, which Manor the Earl of Oxford let to Heywood for years Exceptis boſcis, arboribus mahermiis, groſſis arboribus, & ſubboſcis, but did covenant and agree that the Leſſee and his Aſſignees might take reaſonable Fireboot and Hedgeboot ſuper præmiſſa prædicta during the term; and the Earl afterwards conveyed the reverſion to the Plaintiff, and they as ſervants of the Leſſee juſtifie for reaſonable Fireboot, &c. the queſtion was, if in the place where, &c. being parcel of the Wood which is excepted out of the Leaſe, if by reaſon of theſe words Super præmiſſa prædict. they might take Trees, or if it ſhall be only referred to the Land demiſed. Godfry and Egerton for the Plaintiff, that the Fireboot is to be taken only upon the Land let, for that which is excepted is not let; and præmiſſa ſhall be taken for prædimiſſa. Snagg contra. Wray ſaid that the agreement he ſhall take Fireboot, &c. ſuper præmiſſa ſhall only extend to the Land let; but if he had averred that there was not ſufficient upon the Land let, that might peradventure alter the caſe; and ſo was the opinion of the other Juſtices, and judgment given for the Plaintiff. (5) Poſt. 782.

Ireland *verſus* Higgins, Int. Trin. 30 Eliz. rot. 403.

ASſumpſit: The Plaintiff declareth, that whereas he was poſſeſt of a Grey-hound, which came to the Defendants hands by Trover, that he promiſed to deliver it upon requeſt, and the Defendant did demur upon the Declaration; Lee argued, the Action did not lie, for being out of the Plaintiffs poſſeſſion, he had no property in it, being feræ naturæ, 14 Eliz. Dy. 306. 12 H. 8. and by a grant of omnia bona & catalla, a Dog paſſeth not. Tanfeild contra: he agreed that if it were feræ naturæ there was no conſideration of the promiſe, but a Dog is a thing that is tame by induſtry of man, and the Law regardeth it as any other beaſt, and is of as good uſe; and there be four kind of Dogs which the Law regards, viz. a Maſtiff, a Hound which comprehends a Grey-hound, a Spaniel and (6) Co. 7. 17. b. Hob. 283.

and Tumbler, and he had ſeen a preſident in 13 H. 7. rot. 35. where in treſpaſs of aſſault and battery, the Defendant juſtified that I.S. was poſſeſſed of a Dog ut de bonis propriis, and delivered it to him to keep, and that the Plaintiff would have taken it from him, in which he reſiſted him, and in defence and cuſtody of his Dog he beat him, and the hurt which he had was de ſon tort demeſne, &c. and to this the Plaintiff was put to anſwer, and ſaid de ſon tort, &c. which proveth a property in the Dog when he juſtifieth the beating of one in defence of it 2 Ed. 2. Avoury. A Replevin lieth of a Ferret, which is of a more baſe nature, and 23 Eliz. I.S. brought treſpaſs for taking of a Blood-hound, and found for him, and he recovered 10 l. damages. And the Plaintiff need not in this caſe aver the Dog was tame, for the Law intends it, as of a Horſe; and it was adjudged for the Plaintiff.

Stone *verſus* Wythipol, Executor P. Wythipoll, Int. Tr. 30 Eliz. rot. 777. vel 771.

(7) Aſſumpſit: and declares that where the Teſtator was indebted to him for certain pieces of Velvet, and for 5 l. of mony lent, & pro diverſis aliis mercimoniis, bonis & catallis, and promiſed to pay him at ſuch a day, and died before the day, and the Plaintiff having an intent to ſue the Defendants he required him to ſtay his ſuit till ſuch a day, and he would pay him or give him ſecurity, whereupon he ſtaid, &c. The Defendant ſhewed that at the time of the delivery of the Goods to the Teſtator, he was within age, and thereupon it was demurred. Egerton for the Plaintiff, that the conſideration here is good, and conſiſts of divers parts, the Debt precedent, the Teſtators promiſe though within age, and the Defendants promiſe; and the promiſe of the infant is not void, but for his non-age he may help himſelf by plea; but if Debt had been brought againſt him, and he pleads nihil debet, it ſhall be found againſt him; and if at his full age he had promiſed payment, it had been good, and in foro conſcientiæ the promiſe of the infant had been good; and 9 Eliz. the Caſe was, the Lord Gray was indebted to divers, and after his death the Lord Gray his ſon, who was not his Executor nor chargeable with the Debts, when the creditors complained and demanded their debts of him, told them that if his Father was indebted to them he would pay them; and upon this it was held an Action lay, and the promiſe of the Executor is upon good conſideration; for the Plaintiff ſurceaſed his ſuit, and the Executor was freed of trouble, and this matter will maintain Suit in Chancery. Coke contra, that it is no conſideration, for every conſideration that doth charge the Defendant in an Aſſumpſit, muſt be to the benefit of the Defendant, or charge of the Plaintiff, and no caſe can be put out of this rule; and this contract by the infant was void, and ſtaying of ſuit is no benefit to the Defendant, nor any charge to the Plaintiff more then was before; and this is no conſideration to ſue in Chancery, for no ſuit there againſt an expreſs rule of Common-Law, and denied the Caſe of the Lord Gray, and the Defendant being not chargeable to pay the mony, the ſtaying of ſuit was no benefit to him; and afterwards the Court was clear of opinion the Action did not lie, for the contract of the infant was meerly void, and in Debt againſt him he might plead nihil debet. Egerton ſaid it was adjudged in this Court between Edmunds

2 Cr. 561.

Poſt. 700.

Poſt. 700.

and

and Burton, that where an infant was bound in an obligation, and at his full age he promiſed payment: an Action was maintainable againſt his Executor upon this promiſe, to which the Court agreed; for the Bond which was the ground of it was not void, but voidable, and he could not plead non eſt factum, or nihil debet, to a Bond; and if at his full age he had accepted a deſeſans of the Bond, this had made it good; and in the caſe cited the promiſe was by the infant himſelf, which in conſcience he ought to pay; but the Defendant is in a remote degree, and it was adjudged againſt the Plaintiff.

Wheeler *verſus* Thorogood.

EJectione firmæ: It was held clearly by the Court, that if I. S. maketh a Leaſe to B. to commence two years after, that after the two years are expired, B. before any entry may grant his term, although the Leſſor doth continue in poſſeſſion. (8) Ante 15. Co. 5. 124. b.

Termino Hillarii 31 Eliz. in Communi Banco.

Moody *verſus* Lewen, Int. Mich. 29 & 30 Eliz. rot. 2529.

REplevin: Upon a ſpecial Verdict it was found that Trin. 14 Eliz. a Fine was levied between Lovelace and Rutland Plaintiffs, and Fooke and ſeven others Deforceants of the Manor of D. &c. by which Fooke and the others did acknowledge the Manor, &c. to the Plaintiffs come ceo, &c. and they granted it to them, &c. rendering Rent with a nomine pœnæ, and clauſe of Diſtreſs to Fooke in Fee, who granted it to Horden, which conveyed it to the Avowant; the Plaintiff traverſed the grant to Horden modo & forma, &c. and it was found that Fooke in his grant did recite that the Fine was levied inter Fooke and ſeven others Plaintiffs, and L. and R. Deforceants of the Manor, and that the ſaid L. and R. granted by it the Rent, &c. to F. in Fee, and he granted it to Horden; and if this Rent by reaſon of this miſrecital was well granted, they prayed the diſcretion, &c. And it was argued by Shuttleworth for the Plaintiff, and by Walmſly for the Defendant; and it was adjudged a good grant, for there is ſufficient certainty of the thing granted, and of the intention of the parties to grant it, and nothing is miſtaken but the Deforceants and Plaintiffs in the Fine, which is not material; and it was adjudged for the Defendant, that he ſhould have return. (1)

Hooper *verſus* Gomerſal and his Wife, Int. Trin. 30. rot. 2403.

DEbt againſt the Defendant G. and his wife Executrix of Henry Woodlade of London Taylor: the Defendants plead a recovery againſt them by I.S. by the names of I. Gomerſal and Elizab. his Wife Executrix of H.W. of London, Barber-Chyrurgeon, and that ultra the ſum recovered they had nothing, &c. and upon this it was demurred, and adjudged no good plea, becauſe they took no averment that H. W. Taylor, and H.W. Barber-Chyrurgeon were the ſame perſon. (2) Poſt. 267.

Goſling

Goſling *verſus* Warburton and Criſpe, Intrat. Mich. 29 & 30 Eliz. rot. 334.

(3) EJectione firmæ: The Caſe was, Frencham deviſed his Land to M. his Wife till P. his daughter came to the age of nineteen years, and afterwards to P. entail, remainder over in Fee, and deviſed further that P. ſhould pay after her age of nineteen years to his Wife twelve pound per annum in recompence of her dower, and if ſhe failed of payment that M. ſhould have the Land for her life, Mar. before P. came to the age of nineteen years, brought a Writ of dower and recovered a third part, and after P. came to her age of nineteen years for non-payment of the twelve pound M. entred, and the queſtion was if her entry were lawful. Shuttleworth argued that it was, and that ſhe had not waived the benefit to have the Lands by the deviſe, by bringing her Writ of dower, for then ſhe had no title to it, but her title accrued by the not payment of the twelve pound; Walmſley contra. And afterwards it was adjudged, that ſhe having recovered a third part in dower, ſhe ſhall not have the rent by the Will; and it is againſt the intention of the Will, ſhe ſhall have both, and the acceptance of one is a waiver of the other. And Mich. 31 & 32 Eliz. Error was brought, and the judgment was affirmed. The Record of which is P. 31 Eliz. rot. 247.

Co. 4. 4. b.

Termino Hillarii 31 Eliz. in Scaccario.

Lowe *verſus* Lowe.

(1) EJectione firmæ. Upon ſpecial Verdict the caſe was, I. S. had iſſue, three ſons, and deviſed his Lands to his ſecond ſon for thirty years to perform his Will and pay his debts, and made him his Executor, and if he dieth within the thirty years, that then his third ſon ſhall have ſuch term as ſhall be arere of the thirty years, and dieth: the eldeſt ſon dieth without iſſue, and the inheritance deſcends to the ſecond ſon, he dieth within the thirty years, having iſſue; the queſtion was between the Uncle and the Nephew, if the third ſon ſhall have the Land during the reſidue of the thirty years. And it was argued by Pigott for the Plaintiff, and Beamont for the defendant, and adjudged for the Uncle Plaintiff; for although the term was extinct in the ſecond ſon, yet this is a new deviſe to the third ſon, for the words are, that he ſhall have ſuch a term, &c.

3 Leon. 110. Moor 268.

Termino Paſchæ,

Triceſſimo primo ELIZABETHÆ,

in Banco Reginæ.

Charnocke and his Wife *verſus* Worſley, Intrat. Trin. 30 Eliz. Rot. 833.

ERror. The Caſe was: Baron and Feme levied a Fine, the Feme being within age, the Baron and Feme brought a Writ of Error, and ſhe was adjudged within age; and if the Judgment ſhall be, that the Fine ſhall be reverſed generally or quoad the Feme only, was the queſtion; And of the Plaintiffs part, two preſidents were ſhewn, Trin. 2 H.4. Rot.49. & Paſ. 6 H.8 Rot.26. That the Fine ſhall be reverſed generally; and for the Defendant a preſident was ſhewn in 7 Eliz. That it ſhall be reverſed quoad the Feme only: But there the Caſe was, That the Baron and Feme levied a Fine, the Feme being within age, and the Baron died, and ſhe took a ſecond husband; and they brought a Writ of Error, and the Fine was reverſed quoad the Feme only, and her heirs. And now it was argued by Egerton and Golding of Grays-Inn, That the Fine ſhall be only reverſed quoad the Feme and her heirs, and ſhall ſtand good againſt the Baron; for it may be that the Land was the inheritance of the Baron, which he might lawfully convey; and that the Feme was joyned only to bar her Dower, or that they were Joyntenants before marriage; ſo he might well give his part: And if it were the inheritance of the Wife, yet he might diſpoſe of it, during his life; and it ſhall not be reduced to him againſt his own act. Coke and Atkinſon contra: It ſhall be intended the inheritance of the Wife, if the contrary be not ſhewn, as in Pigotts Caſe, Antea. Wray, When Baron and Feme joyn in a Fine, it ſhall be intended the inheritance of the Wife, and not that they are Joyntenants or Tenants in common: And if the Fine ſhall be reverſed only as to the Inheritance, where ſhall the Freehold be, and to whom ſhall the Conuſee be attendant? Gawdy, This matter being dubious, the Court ſhall intend it to be rather the Inheritance of the Wife, then otherwiſe: And the Fine being the foundation of the Conveyance, it being reverſed all ſhall be reſtored; as the caſe in Littleton, Plac': the Baron diſcontinues the Land of the Feme, and takes an eſtate to him and his Wife; the Wife is remitted, and ſo is the Husband, though he cannot ſay ſo: For ſhe cannot be remitted, but the Husband muſt be alſo remitted, for they are one perſon; and this Fine ſhall be reverſed in all: For it is

(1) 1 Rol. 748. Co. 2. 77. b. Ante 115. Ante 124. Ante 115. 124. 2 Cr. 482. Lit. Sect. 666. 7.

Erroꝛ in Law of the Court; and the Baron by the Fine giveth nothing divided from the Feme: And all that paſſeth from the Wife ſhall be reverſed in all, foꝛ the Conveyance is in Law erroneous. As if a man confeſs an action which is erroneous, yet againſt his own act he ſhall avoid it by Erroꝛ: And if it ſhall be reverſed quoad the Feme only, then it ſhall be a Fine levied by the husband only; and ſo it will be a diſcontinuance at the Common Law againſt the Wife, which is not reaſon: And by the Reverſal of the Fine, a particular intereſt cannot be given to the Coniſee. And if this Fine ſhall ſtand to bind the Baron, then the Baron cannot joyn in the Writ of Erroꝛ; foꝛ a man cannot bring an action to reverſe that which binds him, but all the Books are, they ſhall joyn in a Writ of Erroꝛ. Wray, The Baron giveth no moꝛe then the Wife giveth with him; and this was Erroꝛ in Court, to receive the Fine; and if the Fine ſhall be reverſed, but Ceſſabit executio, during the life of the Baron, then the Wife ſhall not be reſtoꝛed to her Inheritance living the Baron, which is not reaſon; and here is no miſchief to any: Foꝛ if the Coniſee had made a Feoffment, Scire facias ſhall iſſue againſt him, in which he may ſhew and plead, That it was the Inheritance of the Baron, and the Coniſee might have pleaded it; and if he doth not, the Court will not help him. And it was afterwards adjudged, That the Fine ſhall be reverſed in toto. And Wray ſaid, he had conferred with divers other Juſtices, and they were of the ſame opinion.

Poſt. 216.

1 Rol. 748.

Co. 2. 77. b.

Co. 2. 57. b.

Roger Windham *verſus* Ed. Clere.

(2) ACtion upon the caſe, and declares, That the Defendant was a Juſtice of Peace in the County of N. And whereas the Plaintiff was a loyal Subject, &c. The Defendant maliciouſly intending to depꝛive him of his good name and fame, did direct his Warrant, and ſhews it in certainty, &c. to divers Conſtables to attach him; alledging he was accuſed of the ſtealing of the Hoꝛſe of A. B. by reaſon whereof he was arreſted, till he put in bond to appear, &c. ubi revera he was never accuſed, noꝛ did ſteal the Hoꝛſe, and the Defendant did know him to be guiltleſs; by reaſon whereof he was greatly diſcredited: Upon Non Culp' pleaded, it was found foꝛ the Plaintiff; and it was held by Clench and Gawdy, the action was maintainable: If a man be accuſed to a Juſtice of Peace foꝛ an offence, foꝛ which he cauſeth him to be arreſted by his Warrant; Although the accuſation be falſe, yet he is excuſable; but if the party be never accuſed, but the Juſtice of his malice and own head cauſe him to be arreſted, it is otherwiſe: And they commanded Judgment to be given foꝛ the Plaintiff, 14 Hen. 8.

Havithbury *verſus* Harvy and his Wife.

(3) DEbt upon the Statute of 5 Eliz. 9. and demands ten pound, foꝛ that he ſerved a Pꝛoces upon the Feme as a Witneſs, and tendered to her ſufficient charges, &c. and ſhe appeared not, &c. And upon iſſue joyned, it was found foꝛ the Plaintiff. And it was alledged in Arreſt of Judgment, that he doth declare, that the not appearance was to his damages, and ſheweth not what damages:

5 El. cap. 9.

damages: Alſo that a Feme Covert is not within the Statute, and the charges ought to be tendered to the Baron; for the charge lieth upon him. Lewis, The Action is not brought for the damages which he had by her not appearance, but for the ten pound given by the Statute. Secondly, A Feme Covert is within the Statute; for ſhe may be the ſole witneſs. Thirdly, She is the perſon puniſhable for not coming, and the tender therefore is to be to her; and the Plaintiff had Judgment.

Hoe *verſus* Marſhal, Int. Hill. 30 Eliz. Rot. 788.

DEbt upon an Obligation: The Condition was, That if Osbert Fuller ſhall not appear at the next Court in Thetford to anſwer to the Plaintiff, &c. If then the ſaid Osbert before the firſt day of October, found ſurety to anſwer; that then, &c. the Defendant pleads, that the ſaid O. did appear at the next Court; the Plaintiff replieth, That he did not appear Et de hoc ponit ſe ſuper patriam. And upon this, iſſue was joyned and found for the Plaintiff. And it was alledged in Arreſt of Judgment, That this was miſ-tried, for it ſhall be tried by the Record, and not per Patriam, for every Appearance is upon Record. But the Court held the trial good; for it appeareth not that he appeared, and that his appearance was upon Record; but his Plea is, that he appeared at ſuch a day in the Court, which may be, and his appearance not entred; and yet by it his Bond is ſaved, and he himſelf doth not conclude, Prout apparet de recordo. And Wray ſaid, That appearance at ſuch a day may be tried per Pais: But Appearances generally ſhall be tried by the Record. And Gawdy ſaid, If it be miſ-tried, it is aided by the Statute, 32 H. 8. And it being the next Term moved again, and a Rule given if the cauſe be not ſhewn the next day, that Judgment be for the Plaintiff. (4) Poſt. 575.

Piers *verſus* Hoe.

TReſpaſs. The Caſe was upon ſpecial Verdict: A woman that was Tenant for life as a Joyntureſs takes a ſecond husband, and they by Deed convey the Land to Clerke and his Heirs, Habendum to him and his Heirs, to the uſe of him and his Heirs for the life of his wife only: And the queſtion was, If this were a Forfeiture. And it was argued by Popham for the Plaintiff, and Coke for the Defendant; and Gawdy held it no Forfeiture, and that the words (for the life of the Wife) ſhall refer to both: For in conſtruction of Deed, where the words are doubtful, reaſonable conſtruction ſhall be made; and when words are in a Deed to expreſs the parties intent, they ſhall not be taken as void: And here the words (for the life of the Wife) are put in to exclude the Forfeiture, and to ſave the Eſtate: And of this opinion were Wray and Shute upon the firſt motion, but Clench contra. But at another day it being moved again, Gawdy held his former opinion; but Wray and the other Juſtices held it a Forfeiture; for Wray ſaid, by the Deed at firſt a Fee-ſimple did paſs, and that to the uſe of the Feoffee, then the eſtate and the uſe are ſeveral things, (5) 1 Rol. 854. Poſt. 407.

and cannot be coupled to the words (for the life of the Wife.) And Wray ſaid, he had demanded the opinion of the Juſtices of his houſe, and they held it clearly a Forfeiture in the words, and that the words (for life, &c.) ſhall refer only to the uſe; and it was ſo adjudged.

Ordeway *verſus* Parret and Halſey.

(6) SCire facias brought againſt the Defendants who were bail upon a Bill of Debt brought againſt Bennet, who pleads, That the principal had payed the money in which he was condemned to the Plaintiff, according to the condition of the Recogniſance; and per Curiam it was ruled no Plea without pleading payment of Record: For it was ſaid, that the condition is, That the Defendant ſhall ſatisfie the debt, otherwiſe the Sureties would do it: And this is to be underſtood of the moſt ſufficient ſatisfaction, which is of Record; and therefore they diſallowed the Plea, and would not ſuffer it to be entred, or to be demurred upon; and did command Gerard, who pleaded the Plea, to plead another Plea; otherwiſe a Nihil dicit ſhall be entred. V. Poſtea, Paſchæ, 33 Eliz.

Poſt. 233.

Watkins *verſus* Aſhwicke.

(7) NOta by Coke, that it was adjudged, Trin. 27 Eliz. between the ſaid parties, that where one tendered money upon a Mortgage for an Infant, who was not Guardian, nor was to have any intereſt in the Land, that it was adjudged a void tender.

1 Leon. 34. Ow. 137. Moor 222. Co. Lit 206. b. Co. 9. 106. a.

De Bavoy *verſus* Haſſal.

(8) ASſumpſit. The Plaintiff declared, that in conſideration the Defendant had retained him to go from London to Paris in France, upon his occaſions, he aſſumed to give him ſo much as would content him; and alledgeth that he went thither, and was content to take Five and twenty pound for his labour; and at ſuch a place he requeſted the Defendant to pay it, which he refuſed. Coke moved in Arreſt of Judgment, that he ſhewed no time or place, when he gave notice of his contentment; and therefore was not good; for it hath been adjudged, that where one doth promiſe to give another twenty pound upon requeſt, and becauſe no place was alledged of the requeſt, the Judgment after Verdict was ſtaid. Gawdy Juſtice, the ground of this action is the Aſſumpſit, but this cannot be certain without the parties Declaration: So the notice is to make the certainty of the duty, but not to inforce or impeach the promiſe; and in the caſe alledged, the Aſſumpſit is nothing without requeſt. But here being only a Conveyance, the certainty of the time and place is not neceſſary; but this general form will ſerve, for it is but inducement; for the Contentation is not the cauſe of the Action; as the caſe in 39 Hen. 6. in debt againſt a Succeſſor of a Parſon for an Annuity granted by his Predeceſſor, Pro conſilio impenſo & impendendo, and declares, that he gave counſel as he ought (otherwiſe the action lay not) but ſhewed no place where, yet good. Wray accords: For the place where

Ante 74.

where he was content, is not material, nor iſſuable; for none can try it but himſelf: Alſo it is remedied after Verdict; and it was adjudged for the Plaintiff.

Finymore *verſus* Sanky. Int. Mich. 30 & 31 Eliz. Rot. 174.

DEbt for Seven pound thirteen ſhillings and four pence; upon Nihil debet, the Jury found that the Defendant did owe Six pound thirteen ſhillings four pence, but ſpoke not of the other twenty ſhillings. And this was aſſigned for Error, that the Verdict was ill, and not remedied by the Statute of 32 Hen. 8. And for this cauſe it was reverſed. (9) Poſt. 292.

Arundel *verſus* Short and his Wife, Mich. 30. & 31. Rot. 434.

ERror, Upon a Judgment given in Treſpaſs by Baron and Feme of their Cloſe broken, and Corn carried away. Error aſſigned, that Feme ought not to joyn, for ſhe can have no property in the Corn, 48 Ed. 3. 18. 9 Ed. 4. 52. In perſonal actions they cannot joyn. Godfrey and Coke contra: It is in the election of the Baron to joyn his wife in perſonal actions; and it may be intended that they were Joyntenants of the Corn before Coverture, or that the Feme had it as Executrix: And if the Writ by any Intendment may be good, it ſhall not abate. Gawdy, The Books agree, that for perſonal things they cannot joyn; but for perſonal things in action, it is in the election of the Husband to joyn his wife, or not. And Trin. 31. the Judgment was reverſed. V. 21 Hen. 6. 30. 14 Eliz. Dyer 305. 7 Hen. 7. 2. (10) Ante 96. Ante 96.

Musket *verſus* Cole.

ASſumpſit. And declareth, that in conſideration the Plaintiff had paid to the Defendant Forty pound for the debt of J. Musket his ſon; the Defendant aſſumed to deliver to him all the Bills and Obligations in which the ſaid J. Musket was bound to him; and alledgeth, in facto, a requeſt, and denial to deliver, &c. And upon Non Aſſumpſit, it was found for the Plaintiff. And it was moved in Arreſt of Judgment, that the Plaintiff had not averred, that the Defendant had any Bills or Obligations of the ſaid J. Musket in his hands; and if he had none, the Plaintiff was not damnified, 37 Hen. 6. 29. 19 Eliz. Dyer 356. & 297. But Godfrey for the Plaintiff ſaid, That when it is alledged, that he required the Defendant to deliver them; in this it is implied, that he had ſome Bills, &c. and the Plaintiff need not ſhew them ſpecially. Gawdy Juſtice ſaid, the Plaintiff is not to recover the Bills, &c. but only damages, and ſo need not alledge what the Deeds were; as the caſes in 47 Ed. 3. 3. and 46 Ed. 3. 4. The difference taken where he is to recover damages, and where the Land: And here it may be given in evidence what Bills, &c. he had; and the Plaintiff had Judgment. (11)

Knight

Knight *verſus* Jermin, Antea Mich. 29. & 30. Caſe 25.

(12) IT was now moved again by Coke, and he ſaid, this Malicious intention and endeavour before the Bill exhibited, is to be puniſhed, although the Indictment was lawful to be preferred by any one for the Queen; and the words here, and in a conſpiracy, are all one; and as a Writ of Conſpiracy lieth againſt two, ſo here againſt one; and it is here alledged to be done maliciouſly: And here he cauſed the Indictment to be written before he came into the Court, which is not the office of witneſs: And where malice is, his Oath doth not excuſe him; but if he had done it by the command of the Court, it had been otherwiſe, 21 Edw. 3. 17. 7 Aſſ. 12. 20 Hen. 6. 5. Gawdy Juſtice, If the Defendant did it upon good preſumptions, he ought to plead them; as that he found him in the Houſe, &c. or the like cauſe of ſuſpicion; but no ſuch thing is pleaded, otherwiſe every one ſhall be in danger of his life, by ſuch malicious practices. Wray agreed.

F. N. B. 114. D.

2 Cr. 131.

Termino.

Termino Trinitatis,

Triceſſimo primo ELIZABETHÆ,

in Banco Reginæ.

Brooke *verſus* Doughty, Int. Hill. 31 Eliz. Rot. 798.

ACtion for words: For calling him A perjured perſon, and that he was forſworn in the Court of Requeſts, And that he ſhall ſtand upon the ſtage. The Defendant pleads not guilty; and it was found, that he ſpoke none of the words, but that he was forſworn in the Court of Requeſts; and the queſtion was, if theſe words were actionable. Coke moved, That for ſaying a man is forſworn, no action lieth. And in Trin. 28 Eliz. between Herne and Haxe, for ſaying, he was forſworn in the Court of Whitechurch, no action lieth. And in this Term in the Common Pleas, between Samms and Cowbolt, which is entred, Trin. 28 Eliz. Rot. 636. for ſaying, he had proved him forſworn in the Queens Bench, no action lay. But the Juſtices (Wray being abſent) held the action lay: And for the Caſe of Whitechurch, Gawdy ſaid, The reaſon was, becauſe it is a baſe Court; of which, this Court ſhall not take Cogniſance: But the Court of Requeſts is a Court, of which this Court ſhall take Cogniſance. And in Mich. 31 & 32 Eliz. the Caſe was moved again; and by conſent of Wray, Judgment was given for the Plaintiff, but the damages were abridged. Nota, Daniel ſhewed a preſident, which was Trin. 23 Eliz. Rot. 882. between Foſter and Thorne, That for theſe words, Thou wert falſly forſworn in the Star-Chamber, an action did lie. (1) Poſt. 394. Poſt. 573. 788. Poſt. 609. 2 Cr. 190. Poſt. 297. 492. 905.

Toſt *verſus* Tomkins, Int. Trin. 30 Eliz. Rot. 528.

THe Caſe upon ſpecial Verdict was, There was Grand-father, Father, and Son; the Grand-father Tenant for life, the Remainder to the Father in tail; the Grand-father maketh a Feoffment to the uſe of himſelf for life, Remainder to the Father in Fee; then the Grand-father and Father Infeoff the Defendant: The queſtion was, If this were a diſcontinuance? Coke for the Plaintiff, and Godfrey for the Defendant. Gawdy and Shute held it clearly a diſcontinuance; for when the Father in Remainder enters to make a Feoffment, he is remitted by reaſon of the forfeiture committed before; and by this had gained the poſſeſſion, and it is only his Feoffment, and ſo a Diſcontinuance; for both cannot have poſſeſſion. Clench, contra: for the intent of his Entry was to joyn with the other; and his intent appears, that his and the Grandfathers eſtate ſhall paſs together; And this explaineth it, (2) Co. Lit. 49. b.

it, that he will not enter for forfeiture, and ſo is no Diſcontinuance, Et adjournat' abſente Wray.

Boyton *verſus* Andrews and Simpſon, Int. Hill. 30 Eliz. Rot. 156.

(3) DEbt upon an Obligation. The condition was to make an aſſurance to the Obligee of certain Land before the tenth of March, 17 Eliz. And if it fortune that the Obligee refuſe to accept the aſſurance, and ſhall make requeſt to have One hundred pound in ſatisfaction of it: Then if upon ſuch requeſt within five months after, he pay the One hundred pound, that then, &c. and at the day he refuſed the aſſurance; and afterward, 27 Eliz. he maketh requeſt to have the One hundred pound. And if this requeſt were ſufficient for the time, was the queſtion upon Demurrer: And upon motion without argument, the opinion of the Juſtices was, that a requeſt at any time, during his life, was good, and he is not reſtrained to make it, at, or before the day the aſſurance was to be made: And Judgment was for the Plaintiff.

Coteford *verſus* Peaſe.

(4) PRohibition. The Plaintiff ſueth the Defendant for Tithes in Specie of certain Paſtures in N. where he was Parſon: The Defendant to have a Prohibition, ſurmiſeth, That he was an Inhabitant in S. and that time out of mind every Inhabitant there that had Paſtures in N. had paid Tithes for them to the Vicar of S. and that the Vicar of S. had paid to the Parſon of N. two pence for every acre; and the Court held the Prohibition did lie, and that the Plaintiff ſhall declare, and the Defendant may demur to it if he will, for it is as if he had preſcribed to pay two pence for every acre.

Botham & Cooper *verſus* the Lady Greſham.

(5) PRohibition. That ſhe ſued them in Court Chriſtian for Tithe Hay, and ſurmiſed, that time out of mind they had paid to the Vicar there four pence for the Tithe-Hay of every acre. Coke moved, this was not good, for here modus decimandi ſhall not come in queſtion; but he ought to plead it in the Spiritual Court, that it appertains to the Vicar, and not to the Parſon: And if the Vicar ſue for Tithes, there modus decimandi ſhall come in queſtion; and a Conſultation was granted. V. Caſum præcedent.

Ante 71. Poſt. 306.

Gomerſal *verſus* Biſhop, Hill. 31 Eliz. Rot. 751.

(6) PRohibition. The Plaintiff ſurmiſed that he ſued him for Tithe of Hay, whereas there was an agreement between them, that for the ſum of ſeven ſhillings per annum he promiſed him, that he ſhould have the Tithes of this Land for his life: And in his Declaration he ſaid, that for this ſum the Defendant let him his Tithes for life; and for this variance the Court held all to be ill, for the Surmiſe is as the Writ; and if there be variance between the Surmiſe and Declaration, all is ill: But Godfrey ſaid, it had been ruled between Pendleton and Hunt, That an agreement between

Poſt. 188.

tween the Parſon, and the Pariſhoners, was a good cauſe to grant a Prohibition, for the Spiritual Court cannot try it; and they will not allow the Plea.

Stedman's Caſe.

(7) STedman was indicted upon the Statute of 5 Eliz. for Perjury, and the Indictment was, That he was examined upon certain Articles in the Star-Chamber, and that Falſo & voluntariè depoſuit; and ſhews not in what matter he ſwore falſly, nor in what action; and the Oath was in the Star-Chamber in Middleſex, and the Indictment in Stafford, and he was diſcharged. Poſt. 148. Poſt. 148.

Richard Thomas Caſe.

(8) HE was indicted upon the Statute of 5 Eliz. for Perjury, and recited the Statute, That if any be ſworn, &c. in any Court of Record, whereas the Statute doth mention them ſpecially, &c. Alſo that Apud Caſtrum Lincolne falſo depoſuit, and ſhews not in what County the Caſtle was, &c. And it wanted the concluſion, Et ſic falſo & voluntariè perjurium commiſit, &c. And he was diſcharged.

Lenthal's Caſe.

(9) LEnthal was indicted of the murder of Coke, and the words were, Inquiſitio capta apud Hereford, &c. but ſhewed not in what County Hereford was, which ſhould be of neceſſity; for the Coroner or Juſtice of the Peace cannot take an Inquiſition out of their Juriſdiction, and ſhewed not the place where the ſtroke was given: And for theſe cauſes, the Indictment was held to be void.

Goſlen's Caſe.

(10) GWas indicted of the murder of Marſum, and the Indictment was, that percuſſit in brachia ſua dextra. Coke moved, That this was falſe Latin, and without ſenſe, or certainty where the ſtroke was, and ſhewed not where the party died of the ſtroke; for it was, and ſo of it Eo inſtante die obiit: And the opinion of the Court was, that it was vicious. Co. 5. 121. a. Poſt. 231.

Kirkby *verſus* Coles, Hill. 31 Eliz.

(11) ASſumpſit. And declared, that whereas a certain communication was between him and Cooper, for the Maſting of certain Hoggs for the Plaintiff; in conſideration, that the Plaintiff gave to Cooper three ſhillings for every Hog well maſted; the Defendant aſſumed, That they ſhould be well fatted, and re-delivered to him: To which promiſe, he giving credit, did deliver to Cooper One hundred and fifty Hoggs to be maſted; and for that fifty of the Hoggs were not re-delivered to the Plaintiff, he brought his Action. And after Verdict, Tredway did alledge in Arreſt of Judgment, That there was no conſideration to charge the Defendant; for he had no benefit; but Godfrey alledged for the Plaintiff, That the promiſe was the cauſe of the Contract, and being made at the time of the Communication it ſhall charge him; otherwiſe per-

haps, if it were made at another time. And it was adjudged between Smith and Edmunds, where two Merchants were indebted one to the other, and they agreed to deliver all their Bills and Bonds into the hands of the Defendant, he did aſſume, that he would not deliver them, till all actions were determined between them; and notwithſtanding he had delivered to one of them, and the other party brought his action; and it was adjudged maintainable, yet he had no benefit by keeping of them: Yet that was not material, for the action was grounded upon the promiſe and diſceit, ſo here. And of that opinion were Wray and Clench, becauſe the promiſe was at the time of the Communication. Gawdy Juſtice, was of the contrary opinion.

Ante 42.

Warcop *verſus* Morſe.

(21) ASſumpſit. And declares, that in conſideration he had bought of the Defendant three parcels of Land, upon the tenth of December; he afterwards, viz. 19. December aſſumed to make him a ſufficient aſſurance thereof before ſuch a day: after Verdict, Godfrey moved, that the conſideration was executed, but it was adjudged for the Plaintiff; for the aſſurance was the ſubſtance of the ſale and matter.

Ante 94.

Stretton *verſus* Tayler.

(13) INformation upon the Statute of Uſury, Tam pro ſeipſo quam pro Regina; the Queens Attorney entred a Non vult proſequi: And this was now pleaded in bar againſt the Informer for all; and it being moved in Court, Wray held it ſhould be no bar. But Popham Attorney alledged, that it cannot be found in any Record, that the party had proceeded, when the Attorney had entred a Non vult proſequi: For they do it not without great conſideration, when the Information had long depended, and nothing done in it, and it is entred for the eaſe of the Subject, that he ſhould not be grieved without cauſe; and it is not againſt reaſon, that in perſonal ſuits, the act of the one Plaintiff ſhould prejudice the other. And here the Queen is the principal and firſt named; and if it were pro Domina Regina tantum, it is clear, ſhe might diſcharge it; and the Replication ſhall be in the Attorneys name only: And therefore after Plea peaded, the Queen is only party in a manner: And it was adjudged within theſe eight years, That if the Informer be nonſuited, the Queen cannot proceed; and by the ſame reaſon, where the Queen will not proceed, it bars the party; and the Records of all times warrant it. But at another day it being moved again, Wray ſaid, they all held that the Entry was no bar to the party; and that upon conference, Anderſon and Manwood were of the ſame opinion, that the party is not barred by the Queens not proceeding, for in that the Law giveth the party the moyety, the Queen cannot diſcharge it. And Wray and Gawdy denied, that the nonſuit of the party did bar the Queen. And it was afterwards ruled, that the party is not barred by this Entry, 11 Co. 65. b.

Co. 11. 65. b.

Co. 11. 65. b.
Poſt. 583.
3 Inſt. 194.

Perry *verſus* Soam, Mich. 30 & 31 Eliz. Rot. 482.

PRohibition againſt the Defendant, Parſon of the Church of Shering in Eſſex; for that he had libelled in the Spiritual-Court for Tithes of green Tares, eaten before they be ripe: And for Tithes of Herbage of dry Cattel, and for Tithes of Sheep bought or ſold, and for Churchings and Burials; and ſurmiſed as to the green Tares, that in the ſaid Pariſh they had not ſufficient Meadow or Paſture for their Draught-cattel and Milch-kine: And in conſideration thereof, they had uſed time out of mind, &c. to pay the tenth Shock of their ripe Tares; but for the green Tares which were eaten before they were ripe, in conſideration they gave them to their Cattel, they were diſcharged of Tithes for the ſame. And as to the Herbage for dry Cattel, he ſurmiſed, That every Pariſhioner there which had Milch-kine and Calves, under the number of ſeven, ſhall pay for every Calf he rears one half penny, for every one they kill one penny, for every one they ſell the tenth penny; and if he have ſeven or above, to give one in ſatisfaction of Tithes of them, and all dry Cattel: And as to the Tithes of Sheep bought or ſold, he ſurmiſed, That they paid for the Lamb one half penny, and for the Wooll and Fleece of the Sheep one penny, and for all Sheep bought or ſold between the Lady-day and Lammas, to pay four pence; and to the reſidue of the year, ſaith nothing, nor to the Churchings and Burynings; and for that it was clearly held ill. And to the firſt, Coke ſaid it is no good ſurmiſe, for he may as well preſcribe to be diſcharged of Hay given to his Cattel, and it is a preſcription in Non decimando; and he doth not preſcribe for all Tares, but for thoſe given to his Cattel, and hath not averred, they were given to his Cattel; ſo purſueth not his preſcription, as 10 Ed. 4. 2. is that he ought. To the ſecond Surmiſe, it is not good; for he alledgeth not, that he had Calves; for if he hath no Calves, but dry Cattel, he pays nothing, and it is uncertain whether he ſhall have Calves, or not; ſo it is an uncertain thing for a certain duty. And laſt Term it was ruled in the Lady Greſhams caſe, Where one preſcribed to pay yearly by the hands of two perſons inhabiting in ſuch houſes, four pence to the Vicar in ſatisfaction of all Tithes, it was adjudged ill; for the houſes may decay, or none live in them; ſo nothing ſhall be paid: As to the firſt, the Court held it a good Surmiſe; for Wray ſaid, the matter is the want of Meadow and Paſture; and if he had ſaid, for want of Meadow and Paſture, they had uſe to eat their Meadows with their Cattel; and for ſo much as they did eat, to pay no Tithes, it had been good: But for the ſecond, the not averring he had Calves, this cannot be good, and the other are not to be defended: And therefore for all, except the firſt, conſultation was granted, and for that they would adviſe. (14) 2 Cr. 47. &

Engliſh *verſus* Pellitory, Tayler and Smith, Int. Mich. 30 & 31 Eliz. Rot. 521.

TReſpaſs for Aſſault, Battery, and Wounding: Two of them pleaded, that they were Leſſees of certain Lands; and there were certain Poſts upon the Land, and the Plaintiff would have (15)

taken them away, and they gently took them from him, &c. The third pleaded, that he came and found them contending for the Poſts, and he parted them, Molliter laying his hand upon the Plaintiff. The Plaintiff replieth, De injuriis ſuis propriis abſque tali cauſa, and found for him. Harris moved, that this was no iſſue; for the Plaintiff ought to have made ſeveral Replications, and abſque tali cauſa can be no iſſue to all: But the Court ſaid, though it be no good form of pleading, yet by reaſonable conſtruction theſe words abſque tali cauſa, being nomen æquivocum, ſhall be referred to every cauſe. And ſo the Pleading ſhall be maintained, and Judgment was given for the Plaintiff.

Termino Trinitatis, 31 Eliz. in Communi Banco.

Sir Tho. Cecil *verſus* Harris, Int. Trin. 29 Eliz. Rot. 823.

(1) DEbt againſt the Defendant as Executor for the arrearages of Rent in time of the Teſtator; he pleaded Levy per Diſtreſs & ſic non detinet, and upon iſſue joyned, it was found by Verdict, that a ſtranger which was the Aſſignee of the Term, by the Executor, had paid the Rent to the Plaintiff, which had accepted it; but no Diſtreſs was taken for it: And if the Plaintiff ſhould have Judgment upon this Plea, was the queſtion. Anderſon, Periam, and Windham, held clearly, that Judgment ſhall be againſt the Plaintiff; for the ſubſtance of the Plea is found with the Defendant; for it is found the Rent is paid: So non detinet the Rent, and the Subſtance is upon the non detinet, and not upon the levying by Diſtreſs. Walmſly held ſtrongly the contrary, that the ſubſtance of the Plea is upon the levying by Diſtreſs; and if it be found it was not levied, the reſidue is not material, for this is the matter traverſable; and upon this is the iſſue, and ſo is 4 H. 6. and 33 H. 6. But the other Juſtices clearly againſt him; and Anderſon denied the Book of 4 H. 6. and ſaid other Books are againſt it.

Ante 41. Poſt. 157. 209. 634.

Sutton's Caſe.

(2) EJectione firmæ, and declares of a Leaſe for years made to him the Plaintiff, by the Defendant himſelf: And upon not guilty pleaded, the Jury found a ſpecial Verdict, that the Defendant had nothing in the Land when he made the Leaſe to the Plaintiff; and that afterwards he entred upon the Plaintiff, and the Jury finding the whole matter at large, the queſtion was, if his Entry was lawful. Anderſon and Periam held clearly, that the Plaintiff ſhall recover; for this is a good Leaſe, and intereſt between the parties; ſo that the Leſſee may enter, and the other cannot put him out; and when he hath right and intereſt, he may have his action: And this may as well be found by the Jury, though but a matter of Eſtoppel, as any other matter. And Anderſon ſaid it hath been adjudged, if A. levy a fine to B. of his own Land for years, and B. is ouſted, A. ſhall have an Aſſize; and they ſaid, the Jury in any caſe are bound to find an Eſtoppel: and in Pleadals Caſe, becauſe they would not find an Eſtoppel, they were attainted. But Walmſly held the contrary; for being a matter of Eſtoppel, and the Jury being ſworn to find Veritatem facti, they ſhall not find an Eſtoppel: And the Jury having found the matter at large,

Ante 37. 1 Cr. 110. Co. 2. 4. b. 4. 53. a. Poſt. 309.

and

and the truth appearing to us, that the Plaintiff had not right nor cauſe of action, but by Eſtoppel, we muſt judge according to the truth of the matter: And Windham ſeemed to agree with him, that it ſhall be adjudged according to the truth of the matter: And thereupon Periam ſaid, they would know the opinion of other Juſtices, but ſaid privily there was no great queſtion in it.

Marler *verſus* Wright and Green, Int. 30 & 31 Eliz. Rot. 803.

(3)

EJectione firmæ. The caſe was, Edmund Biſhop of London made a Leaſe 6 Eliz. for twenty one years of Land, part of his Biſhoprick, rendring the ancient Rent, and afterward was tranſlated to York; and 17 Eliz. Edwin then Biſhop of London granted the Land to three for their lives, rendring the ancient Rent; the Leſſee Attorneth, the Dean and Chapter confirm the Leaſe. Edwin was tranſlated to York, and John now Biſhop of London made a Leaſe to the Plaintiff. The queſtion, if the Leaſe for three lives being confirmed by the Dean and Chapter was void to bind the Succeſſor by the Statute of 1 Eliz. the Leaſe for years being then in eſſe. And it was adjudged, that the Leaſe for three lives did not bind the Succeſſor; and the principal reaſon was, That by the words of the Statute, upon Leaſes made by Biſhops, the ancient Rent muſt be reſerved, and yearly payable; and in this caſe, the Rent reſerved upon the grant for three lives in Reverſion, although it be due; yet the Succeſſor had no remedy for it, during the Leaſe for years, by Diſtreſs or by Action of Debt, being reſerved upon a Leaſe for life; nor by Aſſize, for he had no Seiſin: And ſo it is not due or payable, according to the intent of the Statute, and the Plaintiff had Judgment.

1 And. 193. Moor 253.

Co. Lit. 45. a.

Smalwood and two others, againſt the Biſhop of Coventry, &c. and Marſh.

(4)

QUare impedit, brought by the Plaintiffs as Executors of William Sale, for not ſuffering them to preſent to the Arch-Deaconry of Derby, which became void in the time of the Teſtator, and belonged to him; and after his death, to the Plaintiffs to preſent; and the Writ and count ſuppoſed a diſturbance to the Teſtator in his life, In nunc retardationem executionis teſtamenti prædict'. And it was demurred upon it. 1. Becauſe the Arch-Deaconry is yet void; and ſo they may have an Action for the diſturbance to themſelves. 2. There is no ſuch Writ in the Regiſter. 3. Here is a double diſturbance to the Teſtator, and to themſelves. 4. The diſturbance to the Teſtator is alledged to be in Retardationem executionis teſtamenti, which cannot be; for in the time of the Teſtator there was no Teſtament. 25 E 3.40.4. This is not an action given by the equity of the Statute of 4 Ed.3.c.7.5. An Arch-Deaconry is ſuch a ſpiritual promotion, for which an action lieth not; for it is a ſpiritual office and function, and hath no certain place to be inducted in; as 24 Ed. 3. 42. where this queſtion is glanced at there. V. 50 Ed. 3. 26. 39 Ed.3.21. 18 Ed.3.9. And it was reſolved, that the Writ ſhall abate. Anderſon ſaid they were all reſolved, that as the Writ is brought, it ſhall abate, and yet they agreed that a ſpecial Writ lieth in this caſe for the Executors. And the principal reaſon of their Judgment was, becauſe the Writ was In nunc retardationem, which cannot be of a diſturbance in the life of the Teſtator. Vide This caſe revived, Mich. 33 Eliz. in Communi Banco.

Poſt. 207.

Poſt. 207.

Bond

Bond *verſus* Richardſon, Int. Mich. 30 & 31 Eliz. Rot. 610.

(5) DEbt upon an Obligation; the Condition was for the payment of a leſſer ſum at a certain day and place; the Defendant pleaded payment at the day and place according to the Condition: Upon which, they were at iſſue, and it was found, That he paid it before the day, and at another place, and the Plaintiff accepted it; and for whom this Verdict was found, was the queſtion. Anderſon, it is no queſtion, but it is found for the Defendant; and afterwards in Mich. 31 & 32 Eliz. it was moved again; and then Anderſon ſaid, They were all reſolved to give Judgment againſt the Plaintiff; for payment before the day, is payment at the day: And thereupon it was adjudged, that the Plaintiff ſhall be barred. Vide 5 Eliz. Dyer 222. contra.

1 And. 198. Ow. 45. 1 Leon. 311. Moor 267. 1 Cr. 284.

Mills *verſus* Snowball.

(6) ENtry ſur Diſſeiſin; The parties being at iſſue, and the Jury at the Bar: One of the Jurors was challenged by the Demandant, and alſo by the Tenant, and thereupon he was withdrawn: And afterwards, becauſe there were not Jurors ſufficient, it was prayed, That he might be ſworn; and by the aſſent of both parties he was ſworn by Order of Court. And upon evidence it was held, That if a Feoffment be made of divers Lands, and of a houſe in which the Feoffor doth dwell, and delivers the Feoffment in the houſe, and ſpeaks nothing of the Land; yet it is good of all: For they having an intent to give and take Livery, this is a good Feoffment; for they aſſembled there for that purpoſe. And it was held, That where one deviſeth Land to his wife for life, Remainder to his ſon and heirs; And if he dieth before his age of twenty one years, that then it ſhall remain to J. S. in Fee, and dieth; the ſon levieth a Fine, and dieth before twenty one years. J. S. ſhall have the Land after the death of the wife; for it is a plain Limitation.

Co. Lit. 48. a. Ante 95. Ante 122. Poſt. 359.

Anonymus.

(7) DEbt by an Executor, the Defendant pleads, that the Plaintiff was an Alien nee at Gaunt, under the obedience of Philip, King of Spain, enemy of the Queen: And it was held a good Plea, though the Action was brought as Executor; and though no wars was proclaimed between this Kingdom and Spain, by reaſon of open acts that he did as an enemy.

Lit. Sect. 198. Poſt. 683.

Green's Caſe.

(8) ACtion upon the Statute of Wincheſter; for that one Brook his ſervant was robbed, and alledges, that the Plaintiff himſelf came before a Juſtice of Peace, and was ſworn according to the Statute of 27 Eliz. And after Verdict, it was alledged in Arreſt of Judgment, that the Servant was to be ſworn, and not the Maſter, and ſo was the opinion of the Court: For the ſervant might know the perſons when the ſervant was robbed, and the Maſter was not in company: And the intent of the Statute is, that he that had notice, ſhall be ſworn. And thereupon the Judgment was ſtaid.

1 Cr. 38. v. 336. 2 Cr. 224.

Beaſe

Beaſe *verſus* Draiton.

(9) DEbt upon an Obligation: The condition was, that if J. S. makes an Obligation to the Plaintiff before Michaelmas, that then, &c. the Defendant pleaded, that J. S. made the Obligation, and ſealed and delivered it to another as his Deed, to the uſe of the Plaintiff. And it was adjudged, that it was no performance of the condition; for the meaning was, that it ſhould be a good Deed to the Plaintiff, and perhaps the other will not deliver it to the Plaintiff.

Ante 54. 1 Cr. 19. 20. 77. 2 Cr. 570.

Hare and three others *verſus* Celey, Int. Hill. 30 Eliz.

(10) TRespaſs for breaking their Cloſe called Church-field, and metes and bounds it: The Jury find a ſpecial Verdict, that the place where was ſixteen acres lying in a field called Church-field, and mered it by other meres and bounds that were mentioned in the new Aſſignment, of which Hare was ſeiſed in Fee, and eas expoſuit to the other three to ſow at halfs, ſcil. That he ſhould find one half of the Seed, and the other three the other half, and ſhould manure the Land; and that Hare ſhould have one moyety of the Grain there growing when it was reaped, and the others the other moyety: And after the Land was ſown, A. entred by the command of the Defendant, and ſpoiled a great part of the Corn: Upon which entry and ſpoiling, the Action was brought. 1. Matter, If Church-field being found to be a great field, in which divers men had intereſt, if the ſixteen acres in it may be called Church-field; and as to this the Court ſpake little. 2. Matter, If this expoſing the Land to half, be not a Leaſe of the Land; ſo as the Action was to be brought in the name of Hare and the three. 3. Admitting it was a Leaſe, if Hare be not Tenant in Common with them of the Corn, for the moyety of that which was ſown, was his; and the Court held it no Leaſe of the Land, but otherwiſe if it be for two or three crops: And therefore, as to the breaking of the Cloſe, Hare only was to bring the action; and as to the ſpoiling the Corn, they ought to joyn, being Tenants in Common: But in that they joyned in the action for breaking the Cloſe, whereas he ought to have brought it alone; it was adjudged the Writ ſhould abate.

Poſt. 170. Co. Lit. 198. a. Poſt. 530. 554. 729.

Higgins *verſus* Mill's Caſe in Cancellaria.

(11) THis Caſe was referred to Anderſon and Walmſly out of the Chancery, this Term. Higgins being poſſeſſed of a Term, deviſeth his Term to Elizabeth his Wife, and to Edward his Son, for their lives; and after to Humphrey his Son, and the heirs males of his body, and died. Elizabeth and Edward entred by force of the Deviſe, and died. Humphrey ſold his intereſt of his Term, and had iſſue John, and died. John ſued for the Term; and they certified their opinions under their hands, that John had no right to the Leaſe. Anderſon did not ſhew his reaſon, but Walmſly ſhewed his reaſon to be, for that John cannot claim it as heir-male, for that is not good to convey the intereſt of a Term to him. V. Leonard Loves Caſe, 10 Co. ad finem.

Co. 10. 87. b.

Termino

Termino Michaelis;

Triceſſimo primo & triceſ. 2°. ELIZABETHÆ, in Banco Reginæ.

Garrets *verſus* Fulwood.

(1) IT was held by the Court, that the Statute of 5 Eliz. cap. 23. is
1 Cr. 197. to be intended not only of Excommunication for criminal cauſes; but in any other Suits there for Legacies, Probate of Wills, Tithes, or other cauſe there.

Matthew *verſus* Haſſal, Int. Mich. 30 & 31 Eliz. Rot. 49.

(2) ERror of a Judgment in Ejectione firmæ of a houſe in London, where Judgment was upon confeſſion of the Defendant. Firſt Error aſſigned was, That a Writ of Inquiry of Damages was awarded, and no day given to any of the parties to be there at the time of the return; for the Entry ought to be, Ideo dies datus eſt partibus prædictis, or at leaſt to the Plaintiff; ſo that he might then pray his Judgment, Sed non allocatur: For the Defendant is not to have day, and the Plaintiff is to attend at his peril; and ſo is the courſe in
Ante 75. the Common Pleas, but it is otherwiſe in the Queens Bench. The ſecond Error, the Judgment was, That Recuperet poſſeſſionem termini prædicti, where it ſhould be Quod recuperet terminum, and ſo are all the Books: But the Court held it all one; for as in a Real action, he is to recover Seiſin; ſo in a Perſonal, he is to recover poſſeſſion, and the Writ is Habere facias poſſeſſionem, and the Judgment was affirmed.

Long *verſus* Woodliffe.

(3) DEbt upon an Obligation, which bore date in May, 30 Eliz. and it was for payment of a leſſer ſum in December, 31 Eliz. The Defendant pleads payment in December, 30 Eliz. according to the con-
2 Cr. 435. dition, whereas it ſhould be December, 31 Eliz. Iſſue was joyned Quod non ſolvit; and at the Niſi prius, the Defendant did confeſs the Action, Scit' quod non poteſt dedicere actionem quin non ſolvet. Harris Serjeant, moved in Arreſt of Judgment, that this being no iſſue the confeſſion that he had not paid, is not material; and ſo Judgment cannot be given for the Plaintiff: But the Court held, that he having confeſſed the Action, the words Quin non ſolvet, are not material, but ſurpluſage; and it ſhall be adjudged upon his confeſſion, and the Plaintiff had Judgment.

Hill

Hill *verſus* Tempeſt, & Rainsford *verſus* Mallet, Int. Trin. 31 Eliz. Rot. 811.

ERror of a Judgment in the Common Pleas in Treſpaſs of Battery, and this was after Verdict. The firſt Error, that the Entry was, That the Defendant appeared per Higgins Attornatum ſuum, leaving out his Chriſtian name. 2. Error, that after the iſſue and diſtringas awarded, the Action being brought againſt Hill and J. S. J. S. died before the laſt continuance; and judgment was given only againſt Hill: but to this laſt Error it was held, that the Writ ſhould not abate, but it ſhall ſtand againſt the Survivor, and the iſſue well tried, although that but one of them living, 4 H. 7. 7. 2 Eliz. Dyer 175. to the firſt Error vide poſtea in this term. (4) Poſt. 574. Poſt. 153.

Hadman and Green *verſus* Ringwood.

THe Plaintiffs as Churchwardens of Hotherſton in Norfolk, brought Treſpaſs for taking of a Bell out of the Church in the time of their Predeceſſors, and in truth it was in the time of Ed. 6. in the Rebellion of Kett there; upon not guilty pleaded, it was found againſt the Defendant, and 50 l. damages given; Godfrey moved, that this Action doth not lie by the Succeſſor of the Church-Wardens, for they are not incorporate by that name, but the Predeceſſor by reaſon of his poſſeſſion ought to bring the Action, & moritur cum perſona 19 H. 6. 6. Coke contra, and relied upon Fitz. N. B. 91. & 8 Ed. 4. 6. for otherwiſe no remedy for the wrong, for the Predeceſſor Church-Warden cannot have Action, his time being paſt; and ſo prima facie the Juſtices did conceive, for the Succeſſor ſhall have account againſt the Predeceſſor. Vide poſtea, Paſ. 32. placito 11. (5) Poſt. 179.

Damport *verſus* Thatcher.

ERror of a judgment in the Common Pleas in an Action of debt, and upon the judgment in the Scire fac' that iſſued upon it. And the Error aſſigned, and upon which the Plaintiff relied, was, that the judgment is entred, viſis præmiſſis videtur curiæ, that the Plaintiff ſhall recover his Debt; and ſo much for damages and coſts de novo adjudicatis, which was erroneous, for it is but a videtur curiæ, or the opinion of the Court, and no judgment by the Court, and then the judgment ſubſequent upon the Scire fac' is erroneous. But the Court held that the firſt judgment was not erroneous, but that no judgment was given, and then the Judgment in the Scire facias is erroneous, and therefore they reverſed that; but as to the firſt, there being no judgment, they could not judge upon it; and the party had no remedy upon it, for it cannot be remanded to the common place, to have judgment there given, but he muſt commence his ſuit de novo. V. poſtea, 33 Eliz. Hill. placito 10. (6) Poſt. 215. 2 Cr. 386. Poſt. 215.

Lucy *verſus* Fiſher, P. 31 Eliz. Rot. 311.

(7) REplevin: For taking of his Gelding in a Cloſe of five Acres of Land in Sporle; the Defendant made conuſans as Bailiff of Ph. Audley Eſq; in the place where, &c. for that one George Lether was thereof ſeiſed in Fee, and held them of the ſaid P. A. as of his Mannor of Eaſthall in the ſame County by fealty and rent of eighteen pence, and other ſervices, and for the ſaid rent arrear made conuſans as Bailiff of the ſaid Philip, as in thoſe Lands held of him: the Plaintiff traverſed the tenure of the Mannor, and being at iſſue it was found for the Plaintiff. Tanfield moved in Arreſt of judgment, that it was miſ-tried, for the iſſue being if the Land in Sporle were held of the Mannor of Eaſthall in the ſame County, the trial ought to be by a Jury of both Hills; and here the venire facias was awarded de vicineto Sporle only, and ſo it was adjudged between Richmond and Webb, Antea 114. 2. Exception, that he alledged that G. Lether held the Land, and afterwards avows as upon the Statute, which is not good; for when he meddles with the name of the Parſon, ſo as he takes conuſans of him, he ought to avow on him by the Common Law, and not upon the Land by the Statute, but for that the Court held it well enough: but as to the firſt, it was a miſ-trial, for the venire properly ought to be of the Mannor, and of the place where the Land lieth; but they gave day over to adviſe.

Ante 114.

Crickmere *verſus* Paterſon, Int. Tr. 30 Eliz. Rot. 568.

(8) TReſpaſs: Upon ſpecial Verdict the Caſe was, Docking ſeiſed of Lands, and having iſſue two daughters, deviſed the Land to the eldeſt and her heirs that ſhe pay to her youngeſt ſiſter yearly thirty pound, the queſtion was if this was a condition; and all the Juſtices held it was, for ſo is the intent of the Deviſor, and otherwiſe the youngeſt ſiſter had no remedy for the Rent; and Wray and Gawdy held, that if the words were paying thirty pound to her ſiſter, this clearly is a condition, and ſo ea intentione, or ad affectum, and his intent appearing, the Law ſhall ſo adjudge it, and that the youngeſt daughter might enter upon a moiety, for which the action was brought, and it was adjudged accordingly. V. Coke's Littleton 236. b.

1 Rol. 410. 1. Co. Lit. 236. b.

Poſt. 205.

Poſt. 378.

Warde *verſus* Blunt.

(9) ACtion upon the Caſe ſur trover, and ſuppoſed that he was poſſeſſed of divers loads of Corn and Hay at H. in the County of M. and that they came to the hands of the Defendant by trover, and he converted them to his own uſe; the Defendant pleaded that before the trover he was ſeiſed of certain Land in Burton in the County of Stafford in Fee, and the Corn and Hay was growing upon that Land, and he cut them as his proper goods, and was of them poſſeſſed till he loſt them, and they came to the hands of the Plaintiff by trover, and he loſt them again, and they came to the hands of the Defendant, and he converted as it was lawful for him to do. And upon this the Plaintiff demurred in Law, for the Plea amounts but to the general iſſue, and this cauſe was

Poſt. 434. 435. 485. 1 Cr. 157. Yelv. 174.

was ſhewn for Demurrer. Egerton moved, that the plea amounts to the general Iſſue, for it is no more then that they were his proper goods, and then he ought to plead non culp. and if it be a plea, he ought to travers, without that they were the goods of the Plaintiff, for the Plaintiff declareth that they were his proper goods, and he ought to anſwer it, 25 Ed. 3. 9. 22 Ed. 3. 18. 30 Aſſ. 22. 11 H. 4. 78. Atkinſon contra, although this plea amounts but to a general Iſſue, yet he ſhould not have demurred, but ought to have moved the Court, (9 H. 6. 11. 19 H. 6. 21.) that he ſhould plead another plea, or a nihil dicit be entred; for demurrer being joyned upon it, this is confeſſed, and then it is to be adjudged for the Defendant; but the Court held, that inaſmuch as this is the ſpecial cauſe ſhewn upon the demurrer, it is good, and then ſhall be adjudged for the Plaintiff, and afterwards the Plaintiff had judgment.

Simms *verſus* Weſtcott.

(10) ASſumpſit. The Plaintiff declares that in conſideration that he at the requeſt of the Defendant ſhould marry Elizabeth the daughter of the Defendant, he aſſumed to pay him thirteen pound ſix ſhillings eight pence after marriage when required, and ſhould have all the Hempe growing upon ſuch Land, and would give him a Bed, and divers other things there expreſſed; and alledges in facto that he had married the ſaid Elizabeth, and the Defendant had not paid the thirteen pound ſix ſhillings and eight pence, nor any of the other things; the Defendant pleads a ſpecial plea, and traverſeth he did not aſſume modo & forma. The Jury found he aſſumed to pay thirteen pound ſix ſhillings and eight pence, but did not aſſume any of the other things. And I moved that the Verdict was found for the Defendant, for when the Plaintiff declares of an Aſſumpſit to do divers things, and the Jury find he aſſumed to do only one of them, the Plaintiff hath failed in the Aſſumpſit; for he ought to ſhew the truth of his caſe, and not to vary from it. And ſo was the opinion of Wray, Shute and Clench, Gawdy contra, and cited 32 H. 8. Br. verdict 90. But Wray ſaid that Book was no Law, and the contrary had been adjudged in this Court; and afterwards Gawdy being abſent, it was adjudged for the Defendant, but the Court allowed him no Coſts, for Wray ſaid that was in their diſcretion. Poſt. 292. Ante 79. 80.

Lembro & Hamper.

(11) THey were indicted for perjury upon the Statute of 5 Eliz. 9. Tanfeild took exception to the Endictment, in that it was, falſo & corruptive depoſuere, but not voluntariè; and although at the end of the Endictment it is, & ſic voluntarium commiſere perjurium, yet this doth not help it, and for this cauſe they were diſcharged; and Gawdy ſaid, although the Verdict paſs againſt that which the Witneſs depoſeth, ſo as no action lieth againſt him, yet he may be Endicted for it. Poſt. 201. 2 Cr. 508.

Rithers Caſe.

(12) HE was endicted of perjury, for perjury committed in his anſwer in the Star-Chamber, and upon his examination to Interrogatories there; and becauſe theſe matters are not within the Statute, for he was not examined as a Witneſs between the parties, nor in perpetuam rei memoriam, he was diſcharged.

3 Inſt. 166. Yelv. 120. Ante 137.

Lanes Caſe.

(13) HE was endicted of perjury, for that upon an iſſue in ſuch matter between parties he did falſly depoſe ſuch a thing, &c. but ſheweth not how the iſſue was, nor how the depoſition trencht to the point of the iſſue, and he was diſcharged.

Ante 137.

Burtons Caſe.

(14) HE was endicted as a Common Barretor contra formam Statuti, Coke took exception, that there is no Statute that makes this an offence, but it was at Common Law, and the Statute of 34 Ed. 3. doth not make this an offence, but appoints a puniſhment; but it was held good, for ſo are many preſidents.

1 Cr. 340.

Sir Rowland Haywards Caſe.

(15) HE was endicted for ſtopping of a Highway ad nocumentum diverſorum ligeorum Dominæ Reginæ, and becauſe it was not, all the Queens liege people, he was diſcharged.

The Lord Dacres Caſe.

(16) HE was endicted for encroaching upon the Highway, and exception taken, becauſe it was not expreſſed of what place he was; Sed non allocatur, for proceſs of Outlary lieth not againſt him, but diſtreſs; and ſo it was ruled in the Lord Pagetts Caſe.

Bullen *verſus* Grant.

(17) TReſpaſs: The Caſe upon evidence was, Hugh Bullen father of the Plaintiff being a Copyholder in Fee, ſurrenders the Land to the uſe of his laſt Will, and deviſeth it to his Wife for life, remainder to G. his ſon in tail, remainder to T. his ſon in tail; the Lord admits M. and afterwards admits G. the Wife dieth, G. dieth without iſſue, T. is admitted and ſurrenders to the uſe of the Defendant, and dieth without iſſue; the Plaintiff before admittance, being heir at Law to H. B. enters, and upon an Ouſter brings treſpaſs. 1. It was held per curiam, that the heir may enter without admittance, for Wray ſaid, when the ſurrender is to the uſe of his laſt Will, this at firſt is the whole Fee; but when he deviſeth the Land for life or in tail, and doth not meddle with the reverſion, by this the reverſion never paſſed out of him to the Lord, but deſcends to his heir, and he ſhall have it without any admittance. 2. It was held that a ſurrender of Tenants in tail is no diſcontinuance, except the cuſtom be ſo; and although it was moved, that there can be

Ante 90. Poſt. 442. Co. 4. 23. a. Poſt. 484.

be no eſtate tail of a Copyhold, except it be ſhewn that the Lands had been given ſo, and always enjoyed, and that afterwards it had been enjoyed by them in the remainder and reverſion, and that their alienations did not uſe to bind, &c. for otherwiſe it ſhall be intended a Fee; yet the Court held the contrary, that it ſhall be intended an eſtate tail, except the contrary be ſhewn, and that it is an eſtate tail, and ſo always uſed. Poſt. 307. 372. Co. Lit. 60. b.

Hedd *verſus* Chalener.

(18) The caſe was, a Feme Copyholder takes Husband, which let the Land for more years than the cuſtom doth warrant; the queſtion was, if this be a forfeiture to bind the Wife, as a condition in law. Wray, if the Husband denieth to pay the rent, or to do ſuit at Court, theſe are preſent forfeitures, which ſhall bind the wife, for they are things that the Lord muſt of neceſſity have; but a Leaſe is no great prejudice to the Lord, and it is good to adviſe of it; but Shurley and Tanfeild ſaid it hath been adjudged, that Waſte is a forfeiture which ſhall bind the Wife. Poſt. 505. 1 Cr. 7. Co. 4. 27. a.

Muſtard *verſus* Hopper.

(19) Aſſumpſit: The Plaintiff declares that in conſideration the Defendant ſhould enjoy ſuch goods, &c. he would pay the party 25 l. the Jury upon non aſſumpſit find, that he promiſed to pay, if he enjoyed ſuch goods, &c. and it was adjudged for the Defendant, becauſe the Plaintiff declared of an abſolute promiſe, and the Jury find a conditional promiſe. Ante 79.

Bradburne *verſus* Eliz. Bradburne.

(20) Aſſumpſit, the Court held where there be divers conſiderations alledged by the Plaintiff, and ſome are frivolous and void, yet if any of them be good, the Plaintiff ſhall recover: and it was ſo adjudged. 2 Cr. 110. 127. Poſt. 759. 848.

Royle *verſus* Bagſhaw.

(21) Aſſumpſit, And declares that in conſideration that he at the requeſt of the Defendant would deliver as many quarters of Mault to J. S. to his uſe, as he would receive and have, before ſuch a day, the Defendant promiſed to pay tales denariorum ſummas, &c. before the Firſt day of Auguſt. And alledges in facto, that he deliver'd ſo many quarters of Mault, viz. each of ſuch value, &c. and upon non aſſumpſit, for part and payment pleaded for the reſidue, it was found againſt the Defendant. Lewis moved in arreſt of Judgment. 1. It is not alledged to whom the money ſhould be paid, ſed non allocatur; for it ſhall be intended to the Plaintiff. 1 Cr. 77. 2. The promiſe is incertain, for he doth not promiſe any ſum, but tales denariorum ſummas, but ſaith not what, &c. ſed non allocatur, for Wray ſaid, when the Plaintiff afterwards ſhews the value of every quarter, it ſhall be intended he ſhall pay according to that rate, and ſuch general aſſumpſit is good. 3. There are two iſſues, one payment, other non aſſumpſit, and the Jury find for both, quod aſſumpſit, where they ſhould find for one, he did not pay, and for the 1 Cr. 77. 2 Cr. 263.

the other that he did aſſume, but becauſe upon the Dorſe of the poſtea it appeared that the Jury found both iſſues againſt the Defendant, and it is but the miſpriſion of the Clerk of Aſſizes, the Record was rebailed to him to amend it, which he did, and the Plaintiff had judgment.

Ante 112.

Sir Anthony Sturleyn *verſus* Albany, Hill. 31. Rot. 668.

(22) Aſſumpſit: The Plaintiff declares that the Earl of Arundel granted to him a Rent of forty pound out of the Manor of Whittington, and after conveys the Manor to the Defenant and his Heirs, and that he 24. Mart. 22 Eliz. promiſed to the Plaintiff, that if he would ſhew him a Deed by which it ſhould appear that he was to pay the Rent; that he would pay to him all the Arrearages of it, and all that ſhould be Arrear after, and alledges that he 27 April 27 Eliz. ſhewed a Deed to the Defendant, by which it appeareth that he ought to have the Rent; and for eighty pound Arrear for two years laſt paſt, he brought his Action; the Defendant pleads that after the promiſe, viz. 2. July 22 Eliz. the Plaintiff entred into the Manor, and let it to J. S. for years; the Plaintiff replieth, that 1. Decemb. 27 Eliz. the Defendant re-entred, and for the Arrearages after he brought the Action, and upon the re-entry the iſſue was joyned, and found againſt the Defendant. Glanvile Serjeant took divers exceptions to the Declaration. 1. Becauſe by the entry into the Manor, the promiſe which was before, and the Action upon it is ſuſpended, and being once ſuſpended, it is gone for ever. Wray, the Action is brought for the two laſt years which were after the re-entry, for which he had no cauſe of Action before; and therefore cannot be ſuſpended omnino. Gawdy, it is not material when the Arrearages were due, for the cauſe of Action (the promiſe) was then in eſſe, which is ſuſpended if the cauſe be ſo; but here the Aſſumpſit is collateral, and is not ſuſpended by the entry into the Manor, for it is not iſſuing out of the Land; but if the Plaintiff had releaſed all Actions before the Deed was ſhewn, and then the Deed is ſhewn, yet the Plaintiff ſhould be barred, for the promiſe was before the releaſe. 2. Except. Becauſe the Deed was not ſhewn in convenient time, for it was five years after, and ſo divers Arrearages due. Sed non allocatur, for it is the better for the Defendant, the longer the time is before the ſhewing of the Deed; but if the promiſe had been, that upon ſhewing the Deed, to pay all that ſhould be due at Mich. there the Deed muſt be ſhewed before Mich. 3. Exception, the promiſe is, if he ſhew a Deed by which it appeareth he ought to pay the Rent, he will pay it, and the Plaintiff ſheweth that he did ſhew a Deed, by which it appeareth he ought to have the Rent, and ſo meets not with the conſideration; and of that opinion was Gawdy, but the other Juſtices è contra; for it is in the Declaration, which by the Statute is not to be overthrown for default of form, and ſo is well enough.

Ante 67. Ante 67. 1 Cr. 373. Co. Lit. 292. b.

Dobbin's Caſe, Trin. 31 Eliz. Rot. 562.

ASſumpſit: The Plaintiff counts, that whereas he claimed to (23)
have a title to certain Land in D. the Defendant in conſideration that the Plaintiff aſſumed to aſſign his right, title, and intereſt to the Defendant; he aſſumed to pay him forty pound, &c. and after Verdict it was alledged in Arreſt of Judgment, that this was an unlawful conſideration, and againſt the Statute of 32 H.8.9. for it appeareth not that the Plaintiff was in poſſeſſion by the ſpace of a year before, ſo that he could aſſign to the Defendant, nor that the Defendant was in poſſeſſion, that he might releaſe to him, ſed non allocatur; for it ſtands indifferent whether he was in poſſeſſion or not, and a Declaration ſhall not be avoided, but for great cauſe; and the Plaintiff had Judgment.

White's Caſe.

PRohibition. The Plaintiff ſuggeſts that by the Statute of 21 H.8.6. (24)
no Mortuary ſhall be paid but in ſuch places where it ought to be paid before the making of the Statute, yet he was drawn into the Spiritual Court againſt the ſaid Statute, and prohibition was granted; and Love ſaid, ſo it was adjudged in 16 Eliz. 1 Cr. 238.

Smith *verſus* M. Collins and three others.

EJectione firmæ: After iſſue joyned, the Record of the Niſi prius was (25)
at the ſuit of S. againſt M. Sharpe and three others, and found for the Plaintiff; and this matter was alledged in Arreſt of Judgment, and that there was no trial between the Plaintiff and Defendant, and adjudged quod Plaintiff nihil capiat per billam.

Scarlet's Caſe.

TReſpaſs. Verdict for the Plaintiff. Bartlett alledged in Arreſt of (26)
Judgment, that the venire facias was, & habeas ibi hoc breve, and ſaid not nomina juratorum, ſo that the Sheriff had no Warrant to impanell a Jury, alſo it was libratas pro libras. Sed non allocatur; being within the Statute of Jeofails, and it was adjudged for the Plaintiff.

Wiggely *verſus* Bradſhaw, Hill. 31. Rot. 406.

ERror, Bradſhaw had Judgment to recover by confeſſion in Debt, (27)
but had no judgment to recover damages, and for this cauſe the Judgment was reverſed.

Molton's Caſe.

COke demanded the opinion of the Court in this caſe, Molton (28)
being Tenant in Tail, had iſſue two Sons, R. and I. and dieth. R. levieth two fines of the Land, and dieth without iſſue, I. brings two Writs of Error upon theſe fines; the Defendant to the firſt fine, pleads the ſecond fine not reverſed; and to the ſecond he pleads the firſt not reverſed; the queſtion what is to be done. Curia, you may reply, that the ſaid fine pleaded in bar is alſo erroneous, and ſo aid your ſelf. 7 H. 4. 39.

Beſome

Beſome *verſus* Crooke, Trin. 31 Eliz. Rot. 763.

(29) ERror of a Judgment given in Southampton, in Debt upon an Obligation. 1. Error, for that at a Court held 9. Novemb. the Defendant brought his Writ of Priviledge, and the Mayor being abſent, the Bailiffs allowed it, and gave day till the next Court, when the Mayor being preſent did diſallow it; and for default of anſwer, nihil dicit was entred, which Coke ſaid was a plain Error; for after the Writ delivered they could not proceed, 6 H. 7. 6. and if it be ſaid the Bailiffs are not Judges, then they cannot hold a Court, and then the day given by them is null, and ſo is a Diſcontinuance. 2. Error, Oyer being demanded of the Obligation and Condition; this is rehearſed in hæc verba, but are not entred; ſo it appeareth not the Plaintiff had title, and for theſe Cauſes the Judgment was reverſed.

Palmer *verſus* Thorpe.

(30) THe Caſe was: A. let the Manor of D. to B. for thirty years, and the next day lets it to another for forty years, to commence at Mich. next after the date; the Tenant doth Attorn; the queſtion was, if it be good grant of the reverſion, being to commence at a day to come. Gawdy, a reverſion for years cannot commence at a day to come, for then the Grantor ſhall have a leſſer
Co. 8. 74. b. eſtate in himſelf. Wray, the reverſion being for years is a chattel which may well expect; and if I have a rent in Fee, may grant it for years to commence at Mich. for an eſtate doth not paſs, but an
Co. 155. a. Poſt. 287. intereſt. Coke, it hath been adjudged, if a man grants his term from M. it is good, for it is as a Leaſe from Michaelmas.

Cadee *verſus* Oliver.

(31) EJectione firmæ: It was found by ſpecial Verdict, that the Lord
2 Rol. 48. Muntjoy being ſeiſed in right of his Wife, was bound in a Statute of two thouſand pounds 6 Eliz. to L. D. and after let the Land to H. for twenty one years, and after let the Land to J. C. for ninety nine years, to commence immediately, and 12 Eliz. the Land was extended upon the Statute at fifty three pounds per annum; the Lord Muntjoy and his Wife grant the Land to Perry in Fee, and during the extent J. C. grants the term to his Son, the Lord Muntjoy died, the Son enters upon the conuſee of the Statute, &c. Two queſtions. 1. If the grant of the term by J. C. during the extent be good. 2. If the Leſſee may enter upon the conuſee of the Statute
1 Cr. 598. without a Scire facias. Cooper argued pro Plaintiff, Harris pro Defendant; and Harris ſaid it had been reſolved by the opinion of the two chief
2 Rol. 48. Juſtices, that the grant of the term was void, for the extent might continue longer time or ſhorter, and ſo might continue longer than the ninety nine years, & adjurnatur.

Hill,

Hill, Rainsford, & Tempeſt *verſus* Mallet, Trin. 31 Eliz. Rot. 811. vide Antea.

(32) ERror of a Judgment in Com. Banco, in Treſpaſs and Battery: Erroꝛ, that the Entry is that the Defendant appeared per Higgins, Atturnatum ſuum. Coke, this is meerly the default of the Clerk, which is helpt by the Statute of 32 H.8. and if it had been per Atturnatum ſuum it had been good, but this was denied; and the Court held it is no appearance, foꝛ want of the Chriſtian name of the Attoꝛney, foꝛ there may be divers Attoꝛneys named Higgins; and if one appeareth foꝛ another, as Attoꝛney, without Warrant, Action upon the Caſe lieth, which cannot be here. 1 Mar. Dy. 93. But Wray ſaid, if there were any warrant of Attoꝛney, and his name appeareth there, it may be amended, but as it is, the Judgment is erroneous. Ferrers moved that there was a warrant of Attoꝛney in the Common Place, in which his name appeared; and prayed the Court to award a Writ ex officio to certifie it, as 9 Ed. 4. 3. 11 H. 4. 92. Wray, in the Caſe between the Lord Norris and Braybrooke, it was much debated; and there after in nullo eſt erratum pleaded, it was granted, foꝛ this Plea goeth to a thing contained in the body of the Recoꝛd, and the Writ was granted.

1 Rol. 289. Ante 145. Ante 59. 75. 1 Rol. 289. 2 Cr. 6. Ante 84. 2 Cr. 6. Poſt. 177.

Lee *verſus* Curveton. Trin. 31 Eliz. Rot. 902.

(33) ERror in Debt upon Bond; the Defendant pleaded non eſt factum, and it was found againſt him. And the Plaintiff did count per factum ſuum Obligatorium, but ſaith not curiæ hic prolatum; and this was aſſigned foꝛ Erroꝛ. Coke, this is but matter of foꝛm, which makes not an Erroꝛ after Verdict; and the Clerk of himſelf might have put it in, without any inſtruction of the party. 2. Erroꝛ, That the Judgment ſhould have been, quod capiatur, and the Judgment is, that de fine nihil, quia pardonatur, whereas in truth the Plea was pleaded after the general pardon, Coke, perhaps he was ſpecially pardoned: but it was held, that ſhall not be intended; and foꝛ this laſt Erroꝛ the Judgment was reverſed.

Poſt 217. Co. 10. 94. b.

Billingham *verſus* Mynors. Trin. 31 Eliz. Rot. 95.

(34) ACtion foꝛ woꝛds, viz. Thou art a Traytoꝛ, ſpoken at Welſden in Suſſex: the Defendant pleads that he ſpake theſe woꝛds at S. in Hampſhire, viz. ſuch things Traytoꝛs do, abſque hoc, that he ſpake the woꝛds at W. in S. and upon this it was demurred, and being argued by Luckner, it was held clearly by the Court, that the Juſtification was ill, and the traverſe upon it, foꝛ the Action is general and tranſitoꝛy; and the Defendant doth not juſtifie the woꝛds in the Declaration, and the Plaintiff had Judgment.

Co. Lit. 282. b. Ante 99.

Honywood *verſus* Husbands.

(35) ACtion upon the Caſe, foꝛ diſturbing him of his Common appendent to his Land; and declared that A. was ſeiſed of the Land foꝛ life, remainder to B. in Taile, remainder to the right heirs of B. and that time out of mind, &c. they had common in this Land, foꝛ themſelves, Farmoꝛs and Tenants; and that the

ſaid A. and B. let the Land to him for years, whereupon he put in his Cattel and was diſturbed, &c. and after Judgment given againſt the Defendant upon nihil dicit, and a Writ awarded to enquire of damages, and returned; Pepper moved divers exceptions to the Declaration, (the Judgment being the ſame Term)
Ante 18. 1. Becauſe he ſheweth not how the particular eſtate begun, 20 Ed. 4. The Caſe of a Coxody. 2. The preſcription cannot be by the particular Tenant; and here he joyns the particular Tenant, and the remainder. 3. He counts that the particular Tenant and he in
Co. Lit. 45. a. the remainder did demiſe, whereas it is but the confirmation of
Poſt. 253. him in remainder. 4. He doth not aver the life of the Tenants for life. Topham contra, And he moved, that inaſmuch as the Judgment was given before, and a Writ of enquiry of damages, no exception can be taken to the Declaration; upon which Judgment was given: but the Court held contrary; for no abſolute Judgment was given, for upon the Writ of Enquiry of damages returned, a new Judgment is to be given, which is the perfect Judgment, before which any thing may be ſhewn to ſtay Judgment, and againſt the Declaration; and ſo it was ruled. And as to the firſt exception, Topham ſaid, it was not material, for it is but a conveyance to the Action; and he is a ſtranger to the Eſtate, 1 H. 5. 4.
Ante 112. Second, the preſcription is good, for the particular Eſtate, and the remainder is but one Eſtate. Third, it is the Leaſe of both, 27 H. 8. 11. Fourth, the life of the Tenant for life needs not to be averred, for it is the Leaſe of one that had the Inheritance. Gawdy held the Count good. Wray, the third and fourth exceptions are not material, but for the firſt, the Count is not good, for the Plaintiff muſt ſufficiently entitle and enable himſelf to the action, which he pretends to be, becauſe of his Intereſt in the Land; and then he muſt ſhew a ſufficient Right and Intereſt in his Leſſors; and to the Second, he ought to make a diſtinct Title to the Common, and not confound them as he hath, & adjournatur.

Tytherley *verſus* Welſh, Paſch. 31 Eliz. Rot. 310.

(36) ERror, The Caſe was, the Defendant had recovered againſt the Teſtator of the Plaintiff in Debt, and after Judgment, and before Execution the Teſtator dieth. And the Attorney of the Plaintiff in the Action of Debt ſueth a Scire facias againſt him that is now Plaintiff, to have Execution without any new Warrant, and recovers. And this was aſſigned for Error. Godfrey moved it was not Error, for the Attorney was not diſcharged by the Judgment, but may well ſue execution within the year. 33 H. 6. 49. 34 H. 6. 51. Gawdy Juſtice, that is true that the Attorney may pray Execution, but this here is a new Action againſt the Executor; and it is againſt another perſon, then againſt whom his Warrant was; and after for this cauſe the Judgment was reverſed.

Perſon

Perſon *verſus* Hickled, Trin. 31 Eliz. Rot. 66.

ERror of a Judgment given in the Common Bench, Mich. 30 & 31 Eliz. Rot. 3021. in an Aſſumpſit, where the Plaintiff counts that in conſideration he by his ſervant had delivered to the Defendant two Bills of Debt of Three hundred French Crowns, amounting to Eighty pound to be received at Roan in Normandy to his own uſe, he ſuch a day, &c. aſſumed to pay him ſixty one pound; upon non Aſſumpſit, it was found for the Plaintiff, and he had Judgment; and Error was aſſigned, for there is no conſideration to charge him, for if it appeareth not how he ſhould recover them, if he be denied payment, nor that they were Bills made to the Plaintiff, nor what benefit he may have upon them; and theſe matters were alledged in the Common Bench, in arreſt of Judgment, as it was alledged by Godfrey, and confeſt by Fermer Serjeant, and yet they gave Judgment for the Plaintiff, that it was a good conſideration, and well alledged, and ſo the Court held here, but adjournatur. V. Poſtea, Hill. 32. placito 8. (37) Poſt. 170. Poſt. 170.

Yates *verſus* Virdman. V. Antea Mich. 29 & 30 Eliz. placito 10.

ERror, After the Errors were examined the Plaintiff diſcontinued his Writ; and becauſe there was a manifeſt Error in part of the Record which remained in the Common Bench, he obtained a Writ out of the Chancery to the Lord Anderſon, to remove the reſidue of the Record; which Writ is in the Regiſter 216. and this part of the Record being removed and ſent into the Queens Bench, he brings a new Writ of Error, coram vobis reſidet, and would aſſign Error upon the new part of the Record removed. Coke moved that this Writ is not warranted by any courſe, for this is to alledge diminution after in nullo eſt erratum pleaded, and then ſhould be infinite, which the Law will not ſuffer, and this courſe is not a Writ of Error to proceed upon the firſt Record, for then it ſhould not vary from it, for all ſhall be entred upon the firſt Roll, but here it ſhall be upon a ſeveral Roll, which is not by any means warranted. Tanfield, we have ſued a ſpecial Writ to remove the reſidue of the Record and another Writ to the Court to proceed upon the whole Record which is now in Court, which is a ſpecial Writ upon our caſe; and all that is removed is but one Record, and all being removed, we cannot have any other Writ; and ſo is not infinite. And at another day being moved again, Coke ſaid, the Writ which is now brought, is but a Writ of diminution which ought to iſſue out of this Court, for this is the Writ of diminution in Fitz. Herbert 25. and the Plaintiff after a Scire facias ad audiendum errores, ſhall not have a Writ of diminution, for he is to ſee that the Record be full before he ſueth his Scire facias upon it, and the Defendant after in nullo eſt erratum pleaded, ſhall not alledge diminution as the books are; and then it ſhall be a great miſchief if the Defendant ſhall have no means to alledge diminution, that yet the Plaintiff by his own act ſhall have it by diſcontinuing his Writ of Error, and a Writ of diminution (38) Poſt. 281. 1 Cr. 575. Ante 84. Poſt. 281.

nution ought to be awarded out of the Court where the Record is, and not out of Chancery. Tanfield, a Writ of diminution doth alledge a certain parcel of the Record which is not certified; but here no part in certain is alledged, but generally residuum recordi; and therefore it is not a Writ of diminution; but admitting it be not well removed, yet is it not material, for being here it is to be examined by the Court as if an endictment be erroneously removed, yet being in Court, it shall be proceeded upon, 7 Ed. 4. 22. 9 Ed. 4. 32. The Court ex officio in some cases ought to award a Writ of diminution, where the party is estopped. And all the Justices held that this is but a Writ of diminution, for it is the same Writ that is in Fitz. and diminution cannot now be alledged, as 22 Ed. 4. and other books are, and this being awarded out of Chancery cannot be a warrant to this Court; and so this Court cannot proceed upon it, nor is it to regard it being brought hither without warrant, viz. by a Writ which is void, and so cannot examine Errors upon it; but when such Writ is to be awarded, and there is Error in it, and the Record is by it removed, it is otherwise, as 9 H. 6. 4. but because the party had not appeared, they commanded he should appear; and then plead or demur to it, and they would make a rule in it. V. Postea Trin. 34. B. R. placito 2.

Sweeper *versus* Randal, Trin. 30 Eliz. Rot. 770.

(39) TRespass for taking his Corn: upon not guilty peleaded, the Jury found that J. Gilbert let the Land to the Plaintiff at will, and afterward he agreed with J.G. ad sursum reddendum the Land and his Interest in it to him, and that he entred and let it to the Defendants who took the Corn; the question, if this was a surrender (I agree to surrender my Land) if it imports an Act to be done in futuro or in the present time. Gawdy, this can be no surrender but a relinquishing of his Estate, if these words be any thing; for Tenant at Will cannot surrender no more then he can grant, but he conceived it was an Act to be done in futuro. Wray, if I agree to let my Land, this is no Lease, no more shall this be a relinquishing of his Estate. Shute agreed with them. Clench, it seemeth the intent of the party was to relinquish the Estate at the time of the speaking, for otherwise the words were void, for he may leave it at any time. Gawdy, if his intent was so, the Jury should have found it expressly, but they had not done so; and the Plaintiff had Judgment.

Co. Lit. 55.

Post. 486.

Davies *versus* Thomas.

(40) DEbt upon a Bond, the condition was to secure him harmless against J. S. in an Action for fifty three pounds, for which he was Bail for him; the Defendant pleads he had paid to J.S. twenty pound in satisfaction of the fifty three pound, and so he kept him harmless; but for that the Plaintiff might be damnified before the payment, to which he doth not answer, the plea was held ill, and the Plaintiff had Judgment. V. 38 H. 6. 13.

Babington *verſus* Babington.

DEbt. The Defendant pleads a foreign Attachment in London, which was after appearance and pending the Action, and after advisement, it was ruled to be no good plea; but no cause was shewn, and the Defendant had a day to plead peremptory, or a nihil dicit to be entred. Wray said, this will be a president for the time to come. (41) 1 Rol. 552. Ante 101. Poſt. 593 691. 713.

Landydale *verſus* Cheyney, Hill. 31 Eliz. Rot. 638.

COvenant. The case was; Tenant for life made a Lease for years, the Lessee by Indenture, grants, bargains, and sells all his estate, to have and to hold in tam amplis modo & forma, as he ought to hold it; Lessee for life dieth, he in the reversion enters, and the Bargainee brought a Writ of Covenant against the Bargainor. Godfrey argued that the action did not lie, for here is no garranty in Deed or in Law, but only a grant or assignment of his Interest which doth not imply any Warranty; and if there be any Warranty, yet the Action lieth not, for the Covenant doth determine with the Estate; and so is 32 H. 6. 32. 9 Eliz. Dyer 257. so if Tenant in Tail makes a Lease for years, and dieth without Issue, the Covenant doth determine with the Estate. And of that opinion was the Court; and Wray said it was a strong case. And because none came of the Plaintiffs part, it was adjudged for the Defendant. (42) Poſt. 615. Moor 74.

Etnam *verſus* Tottam.

DEbt upon a single Obligation of thirty pound; the Defendant pleaded payment of Three pound pendente Billa, and demands Judgment of the Bill; but because he pleaded it without any specialty, the Plaintiff had Judgment. (43) Co. 5. 43. a. Poſt. 455.

Benington *verſus* Benington.

TRespas for entring into his House and Land: the Defendant pleaded it was the Freehold of Joan Benington, and he entred as her Servant, and by her Commandment, and the Issue was, if it were her Freehold or not. And the Jury found it was the Freehold of the Plaintiff for two parts, and the Franktenement of the said Joan for the third part: and the question was, if the Plaintiff should have Judgment upon this Verdict. And the Court held clearly he could not; for although the issue is found against the Defendant, viz. That all was not the Freehold of J. B. Yet it appearing a Tenancy in Common, so that the Plaintiff cannot maintain this Action, Judgment shall be given against him, and it was adjudged for the Defendant. (44) Poſt. 170. Ante 140.

The

The Lord Stafford againſt Thynne.

(45) Poſt. 170. ERror upon a Judgment in an aſſiſe, and aſſigned one Error in fait, viz. that the Land lay in D. in the County of Monmouth, and not in the County of Salop, where the Aſſize was taken: and upon this iſſue was joyned, and at the Niſi prius the Lord Stafford was non ſuite, and this was now returned. And Coventry prayed they might have Execution in the aſſiſe, and that Judgment might be affirmed; for he being non-ſuit for one Error, this is a non-ſuit in the whole Writ of Error. Wray, if there be Error in the Record, we cannot affirm it, but it ſhall remain as it is, and we will adviſe.

Procter *verſus* Tayler.

(46) ERror to reverſe an outlary which was ſued againſt him for coſts; the firſt Error that ten ſhillings was awarded to the Defendant upon non-ſuit pro damnis ſuis, whereas it ſhould be pro miſis & cuſtagiis ſuis, and this was held to be Error. 2. Error, That the Sheriff did not return the day when one of the Counties was held, as he ought; for it ought to appear to the Court when every County was held, that it may appear there were ſo many days between every County Court, as is appointed by the Statute; and for theſe cauſes the judgment was reverſed.

St. 2 E. 6. c. 25.

Silbury *verſus* Bird, Hill. 31 Eliz. Rot. 120.

(47) Poſt. 172. ERror upon a Judgment given in Colcheſter. 1. Error that the Writ of Droit cloſe was directed, Ballivis villæ de Colcheſter, whereas it ſhould be Ballivis ſuis; for they are the Queens Baylies; and it is not ſenſible that it ſhould be directed, Ballivis villæ. Coke, all the forms of the Writs are ſo, and it is therefore good. 2. Error; the Action is brought againſt an Infant, who appears by his Guardian, and no Warrant appeareth for it; for the Entry in ſuch caſe is, quod talis admiſſus eſt per curiam. 3 H. 6. 17. Fitz. N. Br. 27. i. 16 H. 7. 5. Coke, this is Error in fait, and in the Common Bench the Entry is per cuſtodem admiſſum, &c. And a ſpecial Entry is kept of it in a Roll, and ſo perhaps is kept in Colcheſter. Wray, this is no Error in fait, but in the Record. Gawdy, the Guardian ought always to be admitted per curiam. 2 Mar. Dy. 104.

Appleton *verſus* Burr. Paſch. 31 Eliz. Rot. 248.

(48) Poſt. 289. ERror upon a Judgment in an Action upon the Caſe, in C. Banco: the Plaintiff counts that he had ſued T. B. and had a proceſs to arreſt him, directed to the Defendant, being Sheriff of Eſſex; and thereupon he ſent his warrant to the Bayliffs of the Franchiſe of S. to take him; who arreſted him, and delivered him to his Deputy; and he ſuffered him to go at large, and had not his body at the day of the return, in amiſſionis debiti ſui periculum. Foſter aſſigned divers Errors. 1. He doth not alledge he delivered

2 Cr. 242. Ante 26.

to

to him within the County, and then the Sheriff had not cauſe to detain him. 2. He doth not alledge he let him at large without Sureties, for he ought to take ſureties of him, if offered. 3. He alledges he had not his body at the day, and perhaps he appeared of himſelf, and then the Plaintiff hath no prejudice. 4. For that he ſaith, in amiſſionis debiti periculum, which is not material, if he loſeth it not indeed. Godfrey argued cont', but the Court gave no opinion, ſed adjournatur.

Hawes *verſus* Coney. Int. Trin. 28 Eliz. Rot. 1010.

TReſpaſs for breaking his Cloſe in Thurkell: upon not Guilty pleaded, the Jury found a ſpecial Verdict. J. Smith had Iſſue, Tho. Smith, and R. Smith, and that Tho. Smith was ſeiſed of a Houſe, and Seven Acres of Land in Thurkell for life, reverſion in Fee, to R. his Brother, and that the ſaid R. was ſeiſed in poſſeſſion of Forty Acres of Land in poſſeſſion in Norton in the ſame County, and that R. made his Will, and by it deviſed all his Free and Copyhold Land to his Executors for performance of his Will, and the Will of J. S. his Father, in which were divers Legacies given, To have and to hold to them and every of them, and that they ſhould take the profits of it for Ten years, to the uſe of his Will, and that afterward his Executors or one of them ſhould ſell the Land, and diſtribute the money in performance of the ſaid Will, and dieth. Tho. the Brother being Tenant for life dieth within half a year after him. The Executors enter into the Land in N. but not in T. and occupied them for Ten years, and after enter into the Land in T. and ſell all the Land in T. and N. whereupon the Heir of Robert the Deviſor enters into the Land in T. and the queſtion was if his entry were lawful. Cooper argued for the Defendant, that by the words and intention of the Will, they had no Authority to ſell the Land in reverſion, for the words that they ſhall take the profits for Ten years, ſhew his intent only for the Land in poſſeſſion, of which profit may be taken. Coke contra, the profits ſhall be intended ſuch profits as he may take of a reverſion; and is like the caſe, 34 H. 6. 6. a deviſe was of all his Tenements in manibus ſuis exiſtentibus, the reverſion ſhall paſs; and cited the caſe, 39 Ed. 3. 27. for the expoſition of words in the Kings grant; Gawdy, the Reverſion is not deviſed, for no profit of it; but all the other Juſtices contra: for the intent of the deviſe was to perform the two Wills, and to pay Debts, &c. and perhaps the Land in poſſeſſion was not ſufficient; And Wray ſaid, the word (all) perſwaded him much, that his intent was ſo; and the words to have and to hold, and the words to take the profits, are of one ſenſe, for he cannot hold but by taking the profits; and here are two Wills to be performed, and therefore the deviſe ſhall be taken in the moſt liberal manner, for the performance of them. But if it had been found that the Land in poſſeſſion was ſufficient to perform them, this might peradventure have altered the Caſe. (49)

Dove

Dove *verſus* Williot.

(49) TRespaſs. Upon ſpecial Verdict the Caſe was this: Tenant for life, the Remainder in Fee of a Copyhold, he in the Remainder maketh a Leaſe by parol; Tenant for life and he in the Remainder joyn in a Surrender to the uſe of him in the Remainder in Fee; the queſtion was, if this were a good Leaſe, and ſhould take effect in the life of the Tenant for life. And it was held by Gawdy, Clench, and Wray, that it ſhould, for the Leaſe is good againſt him in the Remainder, and by the Surrender of the Tenant for life to the uſe of him in the Remainder, his Eſtate is drowned in the Fee, and as it were extinct, and cannot hinder the Leaſe to have operation; and is all one as if he were dead, and being all in one hand, cannot have any privilege ſevered from the Inheritance; as if he in the Remainder grants a Rent-charge; and
Co. Lit. 338. b. after the Tenant for life doth ſurrender, the Rent ſhall commence preſently. But Gawdy ſaid, if a Leaſe be made for two years, and after the Leſſor let the Land by Parol to another for four years, this is but a Leaſe for two years, although the firſt Leſſee Surrenders, for he had no power to contract for the two firſt years at the beginning; but otherwiſe it is when the Eſtate is determinable upon an incertainty. Plo. Comment. Smith and Stapletons caſe.

Knowles *verſus* Palmer.

(50) THe Caſe was moved by Atkinſon, that in Debt after Judg-
1 Rol. 905. ment, the party prayed an Execution by Elegit, which being granted the Sheriff doth return, that he hath divided the Land by Oath, &c. but he could not make Execution, for the Land was extended upon a former Statute, and thereupon the Plaintiff prays a Capias ad ſatisfaciendum, and had it; and thereupon Atkinſon prayed a Superſedeas, becauſe a Capias is not to be awarded after an Elegit, eſpecially if the Sheriff return he hath Lands, but if the return were Nihil, it were more doubtful, for when the Plaintiff hath elected the higheſt execution, and the Defendant hath Land which may be delivered, he cannot reſort to a lower execution. Gawdy Juſtice, he may have Execution by Capias, for this is the higheſt execution which can be, for it concerneth the body, and the difference is, that after a Capias he cannot have an Elegit, nor other Execution, but after an Elegit, if he be not ſatisfied, he may
2 Cr. 338. Poſt. 310. have a Capias, and ſo is the better opinion of the Books. 17 Ed. 4. 4. 21 H. 7. 19. 31 Ed. Proceſs 52. 5 Ed. 4. Br. Execution 93. and the Statute which giveth the Elegit doth not reſtrain the Execution at the Common Law. And the other Juſtices ſeemed to agree with him, but they would adviſe. Afterwards Knowles being taken by Capias, he prayed remedy upon it, but all the Juſtices held it well awarded, and they could not help him; although his caſe in equity, as it was opened, deſerved favour.

Weekes *verſus* Holmes & Uxorem.

DEbt againſt them for certain Barrels of Beer ſold to the Feme, Dum ſola fuit, they both waged their Law; and this Term both Baron and Feme did ſwear, according to the form of the Oath. Quod Nota, The Baron did ſwear for the Debt of the Feme. (51) Co. Lit. 172. b.

Parkins *verſus* Hinde, Trin. 30. Rot. 418.

PRohibition for ſuing for Tithes of Land in Babington, the caſe was, The Parſon of Babington, 29 H. 8. did Leaſe all his Glebe Land to Mills for Ninety nine years, rendring thirteen ſhillings four pence Rent, for all exactions and demands. And now his Succeſſor ſued for Tithes of the Land, being the Glebe Land, and upon it the Plaintiff ſued a Prohibition. Godfrey moved, that the Prohibition lieth, becauſe the Land was let rendring Rent, and it is for all exactions and demands; and by that he bars himſelf and Succeſſors of all Tithes. But all the Juſtices contra; for Wray ſaid, the Parſon ſhall have Tithes againſt his Leſſee, and the words here ſhall be no diſcharge; for theſe Tithes ariſe, and accrue after, and are not things iſſuing out of the Land, but collateral and due Jure divino; and therefore cannot be diſcharged but by ſpecial words: But if the words had been, as well for Tithes growing and ariſing upon the Land, as for other demands, then peradventure it had been a good diſcharge. But as the caſe is, it cannot be intended by any words, that he reſerved the Rent for Tithes: And ſo Gawdy Juſtice did conceive, eſpecially as the caſe here is, the Leaſe being of twenty four acres of Land, and only thirteen ſhillings four pence reſerved; and afterwards, the ſame day, they granted a Conſultation, but they ſaid, that the words ſhall diſcharge the Leſſee of all Rents and Services, but not of ſuit at Court, or ſuch things as are not then in demand, 11 Co. 13. (52) 2 Rol. 57. Moor 47. Co. 11. 13.

Mannings *verſus* Townſend, Trin. 31 Eliz. Rot. 136.

DEbt upon an Obligation, dated 1 May, 27 Eliz. The Defendant pleaded, that he was bound in this Obligation Simul cum Rich. Gotts, to whom the Plaintiff had releaſed all Actions and Demands, the ſaid firſt of May. The Plaintiff by Replication ſhewed, That after the Obligation ſealed by Gotts, he releaſed to him; and afterward, viz. The ſame day the Defendant ſealed the Bond, Abſque hoc quod tenetur ſimul cum Gotts. And upon this it was demurred in Law: And it was clearly held, that this Releaſe doth not diſcharge the Defendant; but they held the Traverſe to be ill, becauſe Gotts was bound with the Defendant; but becauſe the Defendant had not taken advantage of it, to ſhew it upon the Demurrer, and had confeſſed the matter in fait alledged by the Plaintiff, it was adjudged, that the Plaintiff ſhall recover, if nothing be ſhewn to the contrary within two days. (53) 2 Rol. 412. 2 Cr. 372.

Bugberd *verſus* Dominam Reginam, Hill. 31. rot. 4. or 48.

(54) ERror of a Judgment in a Quare impedit for the Queen, for the Church of Rettington in Eſſex; Error aſſigned, that the Judgment, that the Queen ſhall preſent, and recover for the value of the Church for half a year: Fenner Serjeant, the Queen is not by the Common Law to recover damages, nor any other perſon, and the Statute of Weſt. 2. c. 5. giveth no damages, but where the party is hindred of Preſentment, which the Queen is not in this caſe, when ſhe preſenteth by her Prerogative; as in this caſe, where ſhe preſenteth by reaſon of Lapſe. 14 Ed. 3. Quare impedit 54. 3 H. 6. Damages 17. And he had ſearched divers Preſidents, viz. Paſc. 7 H. 5. Rot. 442. and 2 H. 6. Rot. 404. 9 H. 6. Rot. 316. where no damages are given; and the caſe of 7 Eliz. Dyer 236. is but a Curia adviſare vult. And the Statute cannot be intended to give damages, but only to the true Patron, and not to the Queen, which claims only by Prerogative. Gawdy, The Queen ſhall not recover double damages, for the Queen cannot loſe her Preſentment; but ſingle damages is only for the Tort in the Preſentment; and this the Queen ſhall have, as any other perſon; and the caſe of 13 Ed. 3. Quare impedit 181. was near the time of the making the Statute; and they beſt intended the meaning of the Parliament. And although preſidents now are otherwiſe, it may be that the King did not regard damages, or were never demanded. Wray contra: It is hard, that when one part of the Statute will not ſerve for the Queen, and ſhe is out of it, that it ſhall be conſtrued ſhe ſhall have benefit of another part of
2 Inſt. 362. the Statute. And although the caſe of 13 Ed. 1. is ſo, yet divers Books ſince that, in the time of Edw. 3. & Hen. 6. and ſince are, That the King ſhall not have damages, and the Books and Preſidents being ſo till 7 Eliz. It is fit to adjudge the caſe according to them. Clench agreed. And afterwards, Trin. 32 Eliz. Wray ſaid he had conferred with Anderſon, Manwood, Periam, and Walmſly, and all (except Periam) agreed, That no damages were to be given; and afterwards for that cauſe the Judgment was reverſed. V. 6. Co. Boſwel's caſe, fol. 51. Poſt. 180.

Termino Michaelis, 31 & 32 Eliz. in Communi Banco.

Anneſly *verſus* Johnſon.

(1) REplevin after a ſecond Deliverance, Return was awarded to Johnſon; and Averia elongata being returned, a Withernam was awarded of the Cattel of the Plaintiff, and afterwards the Plaintiff cometh and ſatisfieth the Defendant his damages, and prayeth a Writ of Reſtitution of his Cattel. Fleetwood, Cattel taken in Withernam, are not repleviſable; for how then ſhall the party be ſatisfied for the meat of the Cattel. Curia, they are not repleviſable without doubt; but upon ſatisfaction he ſhall have a Writ of Reſtitution of the Cattel, and ſo is the courſe, which all the Clerks did agree: And as to the food, he hath the occupation of the Cattel, and it is reaſon he ſhould find them meat for it: And the Writ was granted. V. 16 H. 6. Return de Avers 2.

Goſtwicks Caſe.

A Leaſe was made to two for years, upon condition, that they (2)
nor either of them, ſhall alien any part of the Land; without Ante 35.
aſſent of the Leſſor, they make Partition, and one alieneth his part. This is a Forfeiture of the whole.

The Lord releaſeth and grants his Seigniory to the Husband, (3)
who is ſeiſed of the Tenancy in right of his Wife, to him and his Co. Lit. 299. a.
heirs; the Husband dieth, and his heir diſtrains for the Rent upon the Lands. Anderſon and the Court held, that it ſhall inure as a grant, which is moſt beneficial to the Grantee; and it is agreeing with the intent of the Deed, that the Husband and his Heirs ſhall have it.

Quare impedit. The Queen having the Advowſon of the Vicarage (4)
of D. grants the Vicarage to J. S. The queſtion was if the Advowſon paſſeth: Fenner argued it ſhould paſs. Puckering contra. And all the Juſtices held it ſhall not paſs: for by the Queens grant nothing ſhall paſs, but what ſhe intends to paſs; and the Vicarage is another thing then the Advowſon, and every thing muſt paſs by its proper name: And it ſhall not paſs in the Caſe of a common perſon.

Nota. By Anderſon and Walmſly, Adminiſtration committed may (5)
be revoked, notwithſtanding the Statute of 21 H. 8. And ſo it hath been often uſed. Windham and Periam doubted.

Rookwood's Caſe.

ROokwood having iſſue three ſons, had an intent to charge his (6)
Land with four pound per annum to each of his two youngeſt ſons for their lives; but the eldeſt ſon deſired him not to charge the Land, and promiſed to pay to them duly the four pound per annum; to which, the two younger ſons being preſent, agreed, and he promiſed to them to pay it: And for not payment after the death of the Father, they brought an Aſſumpſit; and the whole Court held clearly, that it was well brought, and that it was a good conſideration; for otherwiſe his Land had been charged with the Rents.

Hambledon *verſus* Hambledon.

A Deviſe was to three, and that the Survivor ſhall be each (7)
others heir; it was adjudged, that they were all Joyntenants: And ſo is the meaning of the Will.

Criſps Caſe, Trin. 31 Eliz. Rot. 1636.

QUare Impedit, and declares of a grant of the next Avoidance; the (8)
Defendant demanded Oyer of the Deed, and the Plain-

tiff ſheweth a Letter written to his Father by the Patron, in which he writ he had given him the next Avoidance: And upon this it was demurred, and ruled clearly without argument againſt the Plaintiff; for it was a meer mockery, and the grant cannot be without Deed.

Gillam's Caſe.

(9) EJectione firmæ. As Executor for ejecting him out of his Ferme & bona ſua ibidem cepit, &c. And after Verdict, found for the Plaintiff; it was alledged, that Bona ſua, &c. ſhall be intended his own goods, and not the Teſtators, Curia contra.

Ante 6.

Pemberton *verſus* Cony.

(10) J. S. makes an Infant of the age of four years his Executor, and doth by his Will appoint that J. D. during the nonage of the Infant, ſhall have the diſpoſition of his goods. Debt ſhall be brought againſt J. D. during the Infancy; for he is Executor during that time.

Ante 43.

Termino Michaelis, 31 & 32 Eliz. in Scaccario.

George Ognel *verſus* Paſton.

(1) DEBT. The Caſe was, Francis Woodhouſe was bound in a Recogniſance in Chancery to Ognell, which being forfeited, Ognell ſueth two Scire facias againſt him, and both were returned nihil; and thereupon had Judgment to recover his debt, and thereupon he ſueth out a Levari facias, which was returned nihil; and thereupon he ſueth a Cap. ad ſatisfaciendum directed to the Defendant, Sheriff of Norfolk; the ſaid Woodhouſe being then in priſon for ſuſpicion of Felony, and the Defendant doth arreſt him upon it, and after Woodhouſe was arraigned and found guilty; and afterwards being diſcharged of the Felony, the Defendant ſuffers him to go at large. Ognell brought debt upon the eſcape; the Defendant pleads the conviction of Felony, and all the matter, &c. And upon this the Plaintiff demurs. 1. Queſtion, if a Capias ad ſatisfaciendum lieth upon a Recogniſance in Chancery, a Scire facias being returned upon it. 2. Queſtion, Admitting a Capias was not grantable, if it be void, or only erroneous; ſo as the party muſt avoid it by Audita querela, or error. 3. Queſtion, If Woodhouſe being in priſon for Felony, if the Execution was well ſerved upon him. And this term it was argued by the Barons: and as to the third point, they all reſolved, and the Council of the other party did not much inforce the contrary. That Execution was well ſerved upon him; for although his body was at the Queens pleaſure, yet he ſhall not take advantage of his own Tort; (no more ſhall the Sheriff) but he ſhall anſwer the Action or Execution of a common perſon. And as to the firſt point, all the Barons were of opinion, that the Proces was well awarded and maintainable by the Law; for it being a Debt of Record, it is not reaſon, but his body ſhould be liable to Execution upon it, as to a common Obligation; and this Capias is not by the Statute of Weſt. 2. cap. 45. or 25 Ed. 3. but by the courſe of the Common Law, and the courſe of the Chancery, and Preſidents

Godb. 403. 2 Leon. 84. Moor 274. Co. 8. 142. a.

Poſt. 214.

1 Cr. 390. Poſt. 576. Co. 8. 142. a. 1 Rol. 897.

2 Cr. 3.

Presidents are usual there after Scire facias; and their courses are to be maintained as of other Courts. 2. Question, admitting the Capias lay not, yet it is not void, but erroneous: And this the Sheriff shall not dispute, nor take advantage of it; for it was a good Warrant to the Sheriff to take him, and false imprisonment lieth not against him, 9 Edw. 4. 13. 21 Edw. 4. 23. 36 H. 6. 32. And it shall always be a good Execution, until the party avoid it by Error; and by all their assent, the Plaintiff had Judgment.

2 Cr. 3. Co. 8. 142. a. Yelv. 42. Post. 188. 271. 576. 707. 767. 893.

Termino

Termino Hillarii,

Tricesſimo ſecundo ELIZABETHÆ,

in Banco Reginæ.

Venard *verſus* Wotton.

(1) ACtion for theſe words, viz. You have falſly forged your Fathers hand, and thereby falſly have procured your Fathers Tenants to pay their Rents to you, due to your Siſter. After Verdict for the Plaintiff, Fuller moved, That the words are not actionable, for it is not ſhewn what thing he forged; for which he is by any Law puniſhable: And here it may be he counterfeited his Fathers hand to a Letter, for which he is not puniſhable 28 Eliz. Inter Brook & Doughty. You have forged my Lord of Leiceſters hand to ſuch a Letter, adjudged not actionable: And ſo was the opinion of the Court, and Judgment for the Defendant.

Yelv. 146.

Taylor *verſus* Vale, Mich. 31 & 32 Eliz. Rot. 68.

(2) REplevin. The Caſe was upon Demurrer. Vale having a Rent-charge in Fee by Indenture, which was enrolled within ſix months, giveth and granteth it to Hall in Fee, and there was no Attornment. (Nota, in truth the caſe was, that he for a certain ſum of money, giveth, granteth, and ſelleth the Rent, &c. But it was pleaded only, that he by Indenture Dedit & conceſſit) And it was ruled without any Argument, that the Rent without Attornment paſſeth not, being only by way of grant, and not of bargain and ſale, although the Deed was enrolled. But Wray ſaid, That if by Indenture, in conſideration of a certain ſum of money Dedit & conceſſit, and the Deed is inrolled, this ſhall paſs the Rent without Attornment, though there be no words of Bargain and Sale: And the Plaintiff had Judgment.

Co. 8. 93. b.

Willis

Willis *verſus* Jermin, Hill. 31 Eliz. Rot. 674.

EJectione firmæ. It was found by Verdict, that the Dean and Chapter of Exeter let the Land to Harvy for years, rendring Rent payable at their Chapter-houſe in Exon, and for default of payment, the Leaſe to be void. Harvy aſſigned his Eſtate to the Defendant, the Rent was arrear, and not paid, being demanded at their Chapter-houſe. The Dean and Chapter, by the name of the Dean and Chapter of St. Mary de Exon (whereas they were incorporated by the name of St. Mary in Exon) make an Indenture of Leaſe for twenty one years to the Plaintiff of the Land, and in their Chapter-houſe put their Seal to it, and make a Letter of Attorney to J. S. to enter and make delivery of this Deed upon the Land, which he did accordingly; and if this be a good Leaſe, they pray the opinion of the Court. Harris Serjeant, prayed Judgment for the Defendant. First, the Leaſe of the Land is void by Miſnoſmer of the Corporation, Sed non allocatur; for it is no material variance, and ſo it hath been ruled. The ſecond cauſe, that the Leaſe was not good, becauſe the Dean and Chapter let it in their Chapter-houſe, by ſetting their Seal to it; which being a perfecting the Deed of the Corporation, there can be no other delivery: Then the firſt Leſſee continuing in poſſeſſion, and they out of poſſeſſion, the Leaſe was void, and the Delivery after by the Attorney, it having a former Delivery, is void; Sed non allocatur: For there is no other means for a Corporation, to make a Leaſe, but this. And Gawdy ſaid it is plain, That it is not the Leaſe or Deed of the Corporation until Delivery, as of another perſon. Thirdly, The firſt Leaſe ceaſeth not till Entry, and ſo cannot make a new Leaſe. Wray, the firſt Leaſe doth clearly ceaſe without Entry. Gawdy doubted. Fourthly, the Leaſe is not good, for the Attorney hath not executed his Warrant according to his Authority; for it was, that he ſhould enter and claim it to the uſe of the Corporation, and then deliver the Leaſe; and the Jury found that he delivered it upon the Land, but found not that he had entred and claimed, &c. Sed non allocatur: For in a ſpecial Verdict, the circumſtances of every thing need not ſo ſtrictly be found, as it is to be pleaded; and it being found, that by vertue of the Warrant he delivered it upon the Land, it ſhall be intended he purſued it duly. Fifthly, It is found that they demanded the Rent at the Chapter-houſe, where the demand ſhould be upon the Land. Sed non allocatur, for the demand at the place where it is payable, is ſufficient, and the Plaintiff had Judgment. (3)

1 Rol. 830. 2 Rol. 23. 42. 428.
Co. 11. 20. a.
2 Rol. 42.
1 Rol. 830. 2 Rol. 23.
Co. 3. 64. 5. Poſt. 221.
Poſt. 181. 188. Co. Lit. 48. b.
Co. 9. 51. b. Poſt. 669.
Co. Lit. 202. a. Poſt. 415.

Smith *verſus* Hillier and Clerke, Trin. 31 Rot. 880.

FAux impriſonment in Middleſex. The Defendant pleads that Lynne is an ancient Village, and that in it Uſitatum eſt a tempore quo, &c. to chuſe a Major every year, and that the Major for all the time, &c. was Cuſtos Gaolæ there; and ſheweth, that a Plaint was entred in the Court there againſt the Plaintiff; for which he was committed by the Major to the Gaol there, abſque hoc, that they are guilty of the impriſonment in Middleſex: Upon which (4)

which the Plaintiff demurs. Tanfield for the Plaintiff, the Bar is not good; first, Because the Prescription is, that for all the said time, &c. The Mayors had been Keepers of the Gaol, which was no good pleading of the Custom; for he ought to say, Usitatum est, &c. Secondly, The Major cannot commit one to himself; for there ought to be one to commit, and another to receive, and not to be both one person. Thirdly, he doth not prescribe to have a Gaol there, nor whether not there was a Gaol there; and it may be, that he may make his Gaol where he pleaseth, and then the Plea should be, Comissus custodiæ Majoris, and not to the Gaol; or the Prescription should be, That the Major, &c. was Custos of all Prisoners, and not Custos Gaolæ. Fourthly, he traverseth absque hoc, that he was guilty in Middlesex, which is not good; for he cannot traverse the place, but generally; for the Defendant cannot streighten the Plaintiff to a place. Fifthly, The Defendant justifying between the 28 day of September, and the 14 of October, at which day he was removed by Habeas corpus, and shew, that the 29 day of September Hellier was chosen Major, but do not answer to the time of the day of 29 September, before which he was chosen Major; for it may be, he imprisoned him the same day before he was chosen Major, which is not answered. Coke for the Defendant; the Bar is good, notwithstanding the Exceptions. To the first, it is once alledged, that Usitatum est to chuse a Major, &c. then Usitatum est shall be referred to every part of the Prescription, and need not reiterate it to every part. Secondly, The course of all Corporations is, that the Major which is the Judge, is Gaoler also: So the Sheriffs of London, they have a Court in the Guild-hall, and are Officers and Goalers to it. Thirdly, he need not prescribe in the Gaol; for it is incident to a Court to have a Gaol, as a Court of Pypowders to a Fair; also a Gaol is not in a place certain, but goeth with the person of the Gaoler. To the fourth, the Traverse is good. For if he Traverse generally, the justification in a place certain shall be waved, which is material as this case is, and shall not be enforced to it, where it is local; and in Covet's case, it was adjudged in False Imprisonment, he justifies as Constables in Sussex, absque hoc, that he is guilty in Middlesex, and awarded good. So in Lovels case in Trespass, for taking his horse in Cambridge, he justifies for Damage-feasant in Essex, absque hoc, that he was guilty in Cambridge, and it was good by award. To the fifth, upon which it was much relied, he answered, That it shall be intended a Justification for the whole day, for there shall be no division of a day; And if he imprisoned him before he was Major, the Plaintiff must shew it; for prima facie, it shall be intended to go to the whole day, 15 Edw. 4. 23. 9 Edw. 4. And of the same opinion was the Court in omnibus, and it was adjudged for the Defendants.

Ante 76.

Co. Lit. 282. b. Post. 375.

Co. Lit. 282. b. Post. 174.

Co. 1. 106. b.

Kimersly *versus* Cooper, Trin. 31 Eliz. Rot. 768.

(5) 1 Rol. 563. Action for words. The Plaintiff declares, that whereas by the Custom of London, the Major, Recorder, and Aldermen of London being Justices of the Peace, had used to take the Depositions and Examinations of any person produced before them in Perpetuam rei memoriam, and to keep the said Depositions upon Record

cord in the Court of the Guildhall, to be given in evidence to a Jury for the better knowledge of the truth between any persons; and that whereas he was examined and sworn before Sir George Bond, Mayor of London, being then and there a Justice of Peace, as a witness on the behalf of Ed. Sta. and made such Oath, &c. The Defendant said, that he had falsly sworn in the said Oath, Innuendon the Oath there taken in form aforesaid, &c. to his damages, &c. The Defendant pleaded, That the Plaintiff was not sworn before the said G. B. modo & forma prout, &c. And upon this it was demurred in Law. 1. The Traverse cannot be taken; for the alledging of the Oath is but conveyance to the Action, and so is not traversable: And if he never took such Oath, yet it is a great slander. 2. This Plea amounts to a General Issue, and so is not good. Harris of Lincolns-Inn, contra: That the Declaration is not good; for the force of it is, that the Mayor had used to take the Oath, &c. And if he had not Authority, it is no more than if the Plaintiff had taken a voluntary Oath; in which for saying he is forsworn, is not actionable. And the custom to warrant him to take the Oath, is not well alledged; for he ought to alledge, that the City is an ancient City; for otherwise he cannot prescribe in it, 21 Ed. 4. 54. 12 Edw. 4. 8. 22 H. 6. Prescription 47. And the Traverse is good, for it is not the conveyance, but the principal substance of the Action, and without it the Action is not maintainable, and so is traversable, 34 H. 6. 22. 13 Edw. 4. 4. 26 H. 8. B. Action sur Case 103. 14 H. 4. 30. Gawdy, Where the conveyance to the Action is that which doth entitle the Plaintiff to the Action, it may well be traversed, if the Defendant cannot wage his Law, otherwise where he may wage his Law; 8 H. 6. 5. 22 Edw. 4. 29. 7 Edw. 3. 54. 31 H. 6. 10. 26 H 8. Br. Traverse, 5 H. 7. 3. But principally for the first fault, that he alledgeth not, that it is an ancient City, the Declaration is not good. And of the same opinion were the other Justices, that it is a thing traversable, for the Action is grounded upon it; and it was then adjudged for the Defendant, without further argument. Post. 201.

Alexander *versus* Dyer, Trin. 31 Rot. 901.

(6) DEbt for Rent reserved upon a Lease for years, and declares, That where he let the Land to the Defendant for twenty one years from the Feast of St. Michael next ensuing, rendring Rent, and that the Defendant had entred the 29 day of September, and had occupied for one year, &c. the Defendant pleaded Nihil debet; and after Verdict against him, it was alledged in Arrest of Judgment, that it appeareth in the Declaration, that he had entred upon Michaelmas day, which is a day before his title began, and so is a Disseisin, and no Rent due. Gawdy, it is clear he is a Disseisor by his entry, and the accruing of his term shall not alter his estate, 7 Edw. 6. Dyer 89. Yet debt lieth for privity of Contract, 24 H. 8. Dyer. Rushdens Case, And so was the opinion of the other Justices, and the Plaintiff had Judgment. 1 Rol. 605. 2 Rol. 420. Post. 506. Co. 3. 23. b.

Dod *verſus* Coke.

(7) 2 Rol. 703. Ant. 157. TReſpaſs for breaking his Cloſe, called Sheeps-courſe in High-field, upon not guilty, the Jury found, that the place containeth divers acres; the Plaintiff is ſeiſed of one acre in it, in which the Defendant had entred; and that the Defendant is ſeiſed of a great part of the ſaid places and the Earl of Suſſex of another great part of it: And upon motion, the Court held the Action well brought; for although the Plaintiff counts of the breaking of his Cloſe, called Sheeps-courſe in High-field; yet he may aſſign his Treſpaſs in which place he pleaſeth: So the Verdict is found for the Plaintiff, and it was adjudged for him. Ant. 143.

Penſon *verſus* Hickbed, V. Antea Mich. 31 & 32 Eliz. Placito 37.

(8) Ant. 155. THe Caſe was now moved again, and two Cauſes were aſſigned, why the conſideration was not good: Firſt, it is not alledged for what the mony, contained in the Bills was due, nor to whom; and it may be they were Bills made to the Defendant himſelf, and due to him, and ſo no conſideration. 2ly, This buying of Bills of Debt, is maintenance, and ſo no conſideration: For the firſt, the Juſtices held the conſideration is not well alledged for the cauſes aforeſaid: But for the ſecond, they held it is not maintenance, for it is uſual amongſt Merchants to make exchange of mony for Bills of Debt, Et è contra. And Gawdy ſaid, it is not maintenance to aſſign a Debt with a Letter of Attorney to ſue for it, except it be aſſigned to be recovered, and the party to have part of it; and the Judgment was reverſed. Ant. 155.

The Lord Stafford againſt Thynne.

(9) 1 Rol. 220. Ant. 158. ERror of a Judgment in an Aſſiſe. 1. Error, That the Demandant counts of a Diſſeiſin de Tenemento, but ſaith not De Libero Tenemento; yet it was held good, for ſo much is implied. 2. The Judgment is Ideo capiatur, and Capias pro Fine lieth not againſt a Baron of Parliament. 11 H. 4. 15. 27 H. 8. 22. 29 Ed. 3. 39. 14 E. Dyer 315. But it was held by the Court to be good; for it is upon a Diſſeiſin found, upon which a Fine is given by the Statute; in which, no perſon being exempt, it ſhall bind a Nobleman as any other; and where a Fine is due, a Capias pro Fine is to be awarded; and for a contempt a Capias lieth againſt a Nobleman, and this Fine is for the contempt to the Law, ſo is 1 Hen. 5. And the Judgment was affirmed. Poſt. 503. Co. 6. 54. a.

Lane *verſus* Milward, Trin. 31 Eliz. Rot. 490.

(10) ERror upon a Judgment in Reading upon an Aſſumpſit. 1. Error, that the Venire fac' was 24 Jurator' where it ſhould be 12 Jurat. And this at firſt was held Error, but after divers ancient Preſidents were ſhewn where ſuch Ven' fac' were awarded, it was allowed to be good; for they would not Reverſe ſo many Preſidents. 2. The Action was againſt W. M. and the Judgment was againſt prædict' Th. M. but the Court held it was but a Miſpriſion of the Clerk, Poſt. 543. Co. 8. 159. a. Ant. 79. Poſt. 609.

Clerk, and might be amended in Affirmance of the Judgment. And the Judgment was affirmed.

Proude *verſus* Hawes.

ACtion for words, That the Plaintiff was a Common Barreter; after Verdict, it was alledged in Arreſt of Judgment by Egerton Sollicitor, That the words were not actionable; and ſo it ſeemed to the Court, and the Judgment was ſtaid. (11) 1 Cr. 192.

Ryles Caſe.

ACtion for theſe words, That he is a couzening Knave; for that he hath ſold him a Chain of Copper, for a Chain of Gold; and that he is a couzening Knave upon Record. Atkinſon moved, that the words are actionable, and vouched Bedfords caſe, for ſaying, Thou art a couzening Knave, for thou ſoldeſt a Saphire, for a Diadem; and the Action was maintainable. But Wray and Gawdy conceived the words are not actionable, except it had been alledged, that he is a Goldſmith, and got his living by buying and ſelling of Chains and ſuch wares, then peradventure the Action would lie, but not here. (12) Ant. 95.

Johnſon *verſus* Tucke, Int. Mich. 31 & 32 Eliz. Rot.

ASſumpſit. Which was ſuppoſed to be in the Pariſh of St. Mary le Bow in London. The Defendant pleads to part Non Aſſumpſit, and to the other part a Releaſe in the Pariſh of St. Magnes London, and iſſues were joyned upon both, and one Ven' fac' awarded to try both iſſues: And this was De viceneto de Bow, and found for the Plaintiff. Egerton Sollicitor moved in Arreſt of Judgment, That it was a miſ-tryal, for the Venire ought to be of both places; for it was agreed, That the Plaintiff might have, if he pleaſed, ſeveral Ven' fac'; and might have at his election but one Ven' fac', and he relied upon 27 Hen. 6. 6. But it was moved, that it was a good Trial for the iſſue which was at Bow, and a diſcontinuance for the other, 11 Hen. 7. 5. But the opinion of the Court was, that in as much as the Venire fac' was awarded for tryal of both iſſues, This is a miſtryal in all, and cannot be good for one; but in 11 Hen. 7. 5. the queſtion did ariſe; for that it did not appear, that the Ven. fac. was awarded to try both the Iſſues, and Judgment was ſtaid; and they ſaid he might take a Venire fac. de novo if he would. (13) Ant. 114.

Ward *verſus* Thorne.

ACtion for words, for calling him A Rebellious and Traiterous Knave; after Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Action did not lie; for rebellious may be upon a Proclamation of Rebellion out of Chancery, or other Courts; and when Traiterous and Rebellious are coupled together, they are of the ſame ſence. Curia: For the words Rebellious Knave, Action lieth not; but Traiterous being joyned with it, Action lieth; and the Plaintiff had Judgment. (14)

Troſs *verſus* Michell.

(13) ERor of a Judgment in Exceter againſt the Plaintiff upon a Forein Attachment; where a Suit being by Michel again Hore, the ſaid H. was returned nihil; and it was ſurmiſed, that the ſaid T. had certain money in his hands due to Hore; whereupon according to the cuſtom there, this money was attached in the hand of Troſs. T. came and pleaded Nihil debet to H. And upon this Michel doth demur, and adjudged for him, becauſe he ought to have pleaded, That he oweth nothing to H. nor had any money in his hands due to H. And upon this T. brought a Writ of Error: Firſt Error, becauſe it is a good plea, and the Plaintiff was to be barred, and not to recover; and ſo is the common pleading in London: For if it be no debt, it is not
Poſt. 184. attachable. But it was anſwered, that it is no plea; for he may have money in his hands which is attachable, and yet no debt; as if he hath money to keep, or if he find the money of H. or otherwiſe: And therefore he ought to anſwer to every intent, and not to one intent only. But Gawdy ſaid it is good to a common intent, and ſo is the Cuſtom of London. Secondly, Becauſe Michel had Judgment to recover coſts againſt T. which are not recoverable upon a Forein Attachment. Thirdly, Becauſe no Judgment was given, that T. ſhall be diſcharged againſt H. And the Judgment was reverſed, principally for the firſt Error.

Shelbery *verſus* Buſſard.

(15) ERror of a Judgment upon a Recovery againſt Bird in Colcheſter,
Ante 158. in a Writ of Right, in which the Plaintiff was vouched, and came in and voucheth the common Vouchee, and loſeth by default, &c. Firſt Error, that the Writ of Right was directed Ballivis villæ ſuæ de Col' where it ſhould be Ballivis ſuis, &c. for they are the Queens Bailiffs. Second Error, the Declaration was made before the appearance of the Defendant by Attorney, or in perſon. Thirdly, S. the
Poſt. 472. Vouchee appearing by Guardian, the Entry was, he appeared by Guardian, but ſaith not, Ad hoc per curiam admiſſum. Fourthly, The Judgment was general againſt the Vouchee, and not for the Land only within the Juriſdiction. Fifthly, The demand is De medietate duor' Meſuagior', and the Judgment is, Quod recuperet Tenement. prædict. where it ſhould be Medietatem Tenement. prædict. Sixthly, Becauſe no Judgment was given for S. the Vouchee againſt the ſecond Vouchee. Coke: The Judgment is well given, and there is no Error but the laſt; and he ſaid, the Record was otherwiſe, That Judgment was given againſt the ſecond Vouchee. But he moved, that the Writ of Error was not well brought, for it varieth from the principal Record; for in that the Plaintiff is named Shelbury: And here the Writ is brought by the name of Shelbery: ſo (e) for (u); and in Trin. 25. Eliz. a Recovery was againſt one by the name of Bird, and he brought a Writ of Error by the name of Burd: And for this variance the Writ did abate, 12 Aſſ. 2. 26 Aſſ. 31. Another variance, That the Record
Poſt. 198. was of Lands in Colcheſter, and the Writ of Error ſuppoſeth the Land in Colcheſter; and the Writ being meerly founded upon the Record; for theſe variances he prayed it might abate: But notwithſtanding theſe Exceptions, the Judgment was reverſed.

Termino

Termino Hillarii, 32 Eliz. in Communi Banco.

Porry *verſus* Allen, Trin. 30 Eliz. Rot. 611.

DEbt upon a Leaſe for years. It was found by ſpecial Verdict, That one Ball being Leſſee of theſe Lands for forty years, let them to Gibſon for thirty years; and he let them to Porry the Plaintiff for nineteen years, rendring 10 l. Rent; and afterwards Articles of Agreement were made between Ball and Gibſon, That Porry ſhould have and hold theſe Lands and other Lands for three years, rendring a greater Rent: To which Articles P. doth agree at another time and place, and occupieth the Land accordingly; and after let theſe Lands to the Defendant for ſeventeen years, rendring Rent: The three years expired, afterwards Gibſon grants his term to Cornwallis, who enters in 29 Eliz. And for Rent behind after his Entry, the Action was brought: and it was argued by Hammon of the one part, and Harris of the other. 1. Queſtion, If this was a Surrender by this Agreement? 2. If a Surrender may be as this caſe is, by one Termor to another, out of which his term is derived, becauſe one term cannot drown in another. But all the Juſtices held clearly, That this cannot be a Surrender; for the words and the acts between ſtrangers, can make no Surrender: And this Agreement that P. ſhall hold the Land, is a void Agreement for a ſtranger to take benefit by it. And Anderſon held clearly, that an Agreement or Covenant made between J. S. and J. N. that J. D. ſhall have ſuch Land for years; this being made between ſtrangers cannot amount to a Leaſe: So if J. S. Covenants with J. D. that his Executors ſhall have ſuch Land for twenty one years, this cannot amount to a Leaſe; for they are in this degree as ſtrangers, and for this point principally, they all held it can be no Surrender. And for the other point, they alſo held, that this can be no Surrender; for when Leſſee for twenty years maketh a Leaſe for ten years, the ſecond Leſſee cannot ſurrender to the firſt Leſſee; for ten years cannot be drowned in twenty: And it was adjudged for the Plaintiff. V. Poſt. Trin. 35 Eliz. Plac. primo B. R. fol. 302. (1) Co. 1. 155. a. Poſt. 486. Poſt. 302. 3.

Brooksbies Caſe.

QUare Impedit. Upon the Declaration, it appeared, that a Grant of the next Avoidance was made to him, and one H. B. and after the Church became void, H. releaſeth to the Plaintiff all his eſtate, right, and title; and he being diſturbed brought a Quare Impedit in his own name only: And after Verdict, this matter was alledged in Arreſt of Judgment, that the Releaſe after Avoidance was void; for it is a thing in Action, which cannot be granted or releaſed from one to another; but a Releaſe before Avoidance, is good. And being argued by Harris and Fenner Serj. on the Defend. part, and by Drew and Beaumont on the Plain. part. It was adjudged againſt the Plaintiff, that the Releaſe was void; for after the Avoidance, it is meerly a thing in Action, and ſo annexed to the perſon, that it cannot be granted or releaſed. And they commanded the Roll of Staffords Caſe to be ſearched, but no Judgment was there entred. Vide Dyer 282. (2)

Walter

Walter Moiles Caſe.

(3) COoper moved that W. M. had brought a Quare impedit, and died, pending the Writ; and he prayed to have another Writ by Journies accompt for his Executors; for he ſaid he could not have it, but by the allowance of the Court, and the Court granted it, but
Co. 6. 10. b. ſaid, regard well if it lieth in this caſe, or not; and in what form the Writ ſhall be.

(4) Cooper deſired the opinion of the Court, that if a Fieri facias be directed to make execution of Goods, and after the teſte of the Writ, and before the Sheriff executes it, the party ſells the Goods bona fide, if they can now be taken in Execution: And the Court held they might; for by the Award of Execution, the Goods were bound,
Poſt. 181.440. ſo that they may be taken in Execution into whoſe hands ſoever they come. And Walmſly ſaid, ſo it was ruled in a caſe at Hertford Term, wherein he was of Councel. V. 2 Hen. 4. 11 Hen. 6.

Bullock *verſus* Sir John Smith.

(5) ACtion. Sur trover of ſir Oren in London, and there converted, &c. The Defendant ſaid, he ſeiſed them in the Manor of D.
Co. 10. 91. a. c. Ant. 168. Poſt. 484. 504. in Eſſex, as Goods waved there; and ſo juſtifieth, abſque hoc, that he was guilty in London, and per Curiam, it was no Plea; for it amounts but to the General Iſſue, containing no matter local to make the place material.

Termino

Termino Paſchæ,

Triceſſimo ſecundo ELIZABETHÆ,

in Banco Reginæ.

Marſh *verſus* Aſtry.

(1) ACtion upon the Caſe, and declareth, That whereas he had brought a Writ of Entry againſt H. Champion, for certain Lands in Eaſt-Barnet, directed to the Sheriff of Hertford, returnable Octabis Martini, and delivered it to the Defendant, being Under-Sheriff of the ſaid County, to be executed in Forma juris, and gave him 2 s. for executing it; and that ſuch a day he had cauſed the ſaid H. C. to be ſummoned according to the Writ; yet Falſo & malitioſe intending to deceive the Plaintiff, and to hinder him of his Recovery of the ſaid Lands, did not return the ſaid Writ of Summons at the ſaid day of Octabis Martini, per quod he retardatus fuit, of his Recovery of the ſaid Lands and declared to his damages of 1000 l. upon not guilty pleaded, it was found for the Plaintiff. Coke moved in Arreſt of Judgment, That this Action being for Non-feaſans, i.e. For not returning the Writ, the Action lieth not againſt the Under-Sheriff, but ought to be brought againſt the Sheriff himſelf; for he is reſponſible for all things concerning the Office; and he relied upon 19 H. 6. 29. 41 Aſſ. 12. 21 Ed. 3. 46. 2. It was not averred that he was Under-Sheriff, and continued in the Office at the ſaid day of Octabis Martini; for otherwiſe the Action lieth not againſt him. Sed non allocantur. 1. The Under-Sheriff for a Tort done by himſelf, may be puniſhed: And here it is alledged, that he Falſo & malitioſe intending to delay the Plaintiff of the Execution of his Writ, did not return it: So it is as an embezling of the Writ, for which he is puniſhable; as 19 Hen. 6. &c. alſo he is charged in this Action: For that he took mony to return it, and did not. And to the ſecond Exception, it ſhall be intended that he continued in the Office, for he was Under-Sheriff when the Writ was delivered to him: And it is alledged, he cauſed the Summons to be made, and did not return it at the day; by which it ſhall be intended that the Authority was in him: And for this falſhood he is ſued, and it is found by Verdict againſt him; and it was adjudged for the Plaintiff.

1 Rol. 93. 94. 2 Rol. 607.

Poſt. 178.

1 Rol. 94.

Tilley *verſus* Anthony Wye Senior.

(2) APpeal of Murder by R. Tilley of the death of G. Tilley his Brother, againſt A. Wye Senior, and declareth, That An. Wye Junior, (which was abſent, and whom he would appeal, if preſent)

ſent) 18 Feb. 30 Eliz. &c. Such an hour at D. percuſſit the ſaid G. Tilley with a ſhot of a Dag, of which he languiſhed until the 26 day of February following, upon which day he died; and that the ſaid Anthony Wye Junior, feloniouſly and voluntarily him did kill and murder; and that the ſaid A. Wye Senior, Fuit adtunc & ibidem præſens abettans & comfortans the ſaid A. Wye Junior, the felony and murder aforeſaid to do, &c. Atkinſon for A. Wye Senior (who was preſent) demurred upon this Declaration in the Appeal, becauſe it is incertain; for it is, that A. W. Junior ſuch an hour, and place, made an aſſault upon the ſaid G. T. And there and then gave him a mortal wound, of which he died, &c. And that the ſaid A. W. Senior, was then preſent and abettant, &c. which is incertain; for it may be he was preſent the ſame day, at the time when the aſſault was made, but was gone before the time of the ſtroke; and then he is not principal, 35 H. 6. 48. In Treſpaſs the Defendant juſtifieth, that at the time of the Treſpaſs ſuppoſed, he was Parſon and took them for Tithes, and it was no Plea; for it may be he was at the time of the Treſpaſs ſuppoſed, and not at the time of the Treſpaſs done, ſo 35 Hen. 6. 12. Treſpaſs for lying in wait to beat him: The Defendant ſaith, that at the time of the Treſpaſs ſuppoſed, and after, he was his villain, and yet not good; for it may be, that he was not his villain at the time of the Treſpaſs done, 3 H. 7. 11. 10 Edw. 4. 15. Alſo two days are mentioned, one the day of the ſtroke, and the other the day of the death; and it is alledged, that he was adtunc & ibidem aidant, &c. ſo is uncertain to which of the days it is to be referred. Curia contra: For when it is ſaid, that he was adtunc & ibidem præſens, &c. to the felony and murder in manner aforeſaid doing; this muſt refer to the time of the ſtroke, by which the felony was done. Wray ſaid, if the Indictment had been, that ſuch a year, day, place, and hour, the ſaid
Co. 4. 40. a. A. W. Junior, made an aſſault and gave the ſtroke ut ſupra; and that the ſame year, day, and place, the ſaid A. W. who is now appealed was preſent; this had not been good: For it may be intended at another hour, becauſe the hour was not mentioned; and therefore it hath been adjudged, that in ſuch caſe the hour is neceſſary to be put into the Indictment or Appeal, when the felony was done; for he cannot be principal, when he is not at the ſame time preſent; but as it is now, it is well enough: For it is, that he was adtunc & ibidem præſent', &c. and cannot be intended, but he was preſent at the ſame inſtant of time. And of this opinion were the other Juſtices, but they would adviſe, &c.

Hedd *verſus* Chalenor.

(3)
2 Rol. 42. 135. Ante 149. EJectione firmæ: and declares upon a Leaſe by Indenture made by Jane Beard, and the Jury found, that the true name of the Leſſor was Johan, but ſhe let the Land by the name of Jane, and prayed the diſcretion of the Court. And this being moved, Wray ſaid, the names are both one; and ſo it had been adjudged before this time in this
Ant. 59. 2 Cr. 425. place, upon conference with the Grammarians, that Jane and Joane is one name. And Gawdy ſaid, the Action is not grounded upon the Indenture, but upon the Leaſe, and the Indenture is but an inforcing of it, and it is found ſhe let, &c. And afterwards, notwithſtanding this variance, it was found for the Plaintiff.

Spire

Spire *verſus* Roſs.

ACtion upon the Statute of 5 Eliz. for perjury, it was found for the defendant, and Nine pound aſſeſſed for coſts to him. And it was moved that Coſts ſhall not be given againſt the plaintiff, for he ſueth as a party grieved, and not as a common informer, and ſo not within the Statute of 28 Eliz. but it was anſwered that Coſts ſhall be here upon the Statute of 21 H. 8. which giveth it upon every Action upon Statute. Gawdy, this cannot be for the Statute of 5 Eliz. was made after that Statute. Queere of it. (4) 5 El. Cap. 9. 18 El. cap. 5.

Lewis Vanvivee *verſus* Mich. Vanvivee.

DEbt. upon a Bond, the Condition was to ſtand to the Arbitrement of J.S. of all controverſies between them. J.S. Arbitrated that the Defendant ſhould deliver to the Plaintiff, Six Kentiſh Clothes which were bartred by J. D. for the thred of the Plaintiff, and the breach was aſſigned in this point, and after Verdict for the Plaintiff. Fenner alledged in Arreſt of Judgment, that this is out of the ſubmiſſion, for it appeareth not there was any controverſie for it; and ſo void. Curia; it ſhall be intended to be in controverſie if the contrary be not ſhewn; and that they were in the hands of the Defendant; and it was adjudged for the Plaintiff. (5)

Herd *verſus* Burſtowe.

ERror in a Judgment in a ſcire facias upon a Recovery in Debt. 1. Error, becauſe the plaintiff ſued a ſcire facias after the year to have Execution by Attorney, without a new Warrant of Attorney, which ought to be, as 33 H. 6. 49. 34 H. 6. 51. but it was ſaid, he ought at firſt to aſſign this for Error, and to ſay that there is not any ſuch Record of a Warrant of Attorney, for this is a ſeveral Record from the body of the Record; and he ought to have a certiorari to certifie it. To which Gawdy agreed, there being no more Juſtices preſent. 2. Error, this is a ſcire facias againſt the Bail, for the not appearance of the principal; and it is not mentioned that proceſs was awarded againſt him, but that it was prayed, & ei conceditur, but it is not, Ideo preceptum eſt vice comiti, &c. as it ought to be; and although he that was Bail doth afterwards appear, this might be without proceſs, and ſo not good. 3. The name of the Baily that ſerved the proceſs, is not to the return of it. But it was ſaid, that this is by Statute, which doth not extend to a Baily, but to the Sheriff. 4. Error, Judgment was given without demurrer or Iſſue joyned; and although there need not be a Declaration in this caſe, no more then in a per quæ ſervitia. or a quid juris clamat, for theſe are Declarations in themſelves, yet there ought to be a plea to it, and the plaintiff to reply to it; and upon the pleal there muſt be an iſſue or demurrer, and then a Judgment, and not otherwiſe, except upon a nihil dicit; and after for the ſecond and fourth Error, the Judgment was reverſed. v. 10 Ed. 4. 7. 11 H. 4. 5. 25 Ed. 4. 15. (6) Ante 84. 153.

Tranſams Caſe.

(7) PRohibition. The Caſe was, Tranſam Parſon of Denham ſued one for Tithes in the Court of Norwich; and one that was Parſon of Stonham, a Pariſh adjoyning came in for his Title; and ſaid that the Land for which Tithes were demanded, are within his Pariſh of Stonham, and not within the Pariſh of Denham, and upon this they were at Iſſue and found for him, and ſentence given for him; and Tranſam appealed to the Arch-biſhop, and pending the appeal, Coſts were aſſeſſed againſt him in the Court of N. according to the Statute of 32 H.8.cap.7. and Proceſs againſt him there; and becauſe the Iſſue was triable at the Common Law, he brought a prohibition to the Court of N. but for that no ſuit was there depending, but he had removed it before the Arch-Biſhop by appeal, a conſultation was awarded, for they might well proceed for Coſts; but if he had
Poſt. 228. not removed it, a prohibition had well been grantable; and he might have had it, though he was party to the Libel.

Sale *verſus* Marſh.

(8) ACtion for theſe Words, Thou haſt uſed jugling with me, but thy jugling ſhall not ſerve thy trun, and haſt forged a Writ of Quare Impedit, Innuendo a Writ of Quare Impedit againſt him, and the Biſhop of Coventry. After Verdict it was moved by Lewis, that the words were not actionable. Curia, the firſt words are not actionable, but
Yelv. 146. the laſt will well bear an Action, and the Plaintiff had Judgment.

Dabridgecourt *verſus* Smalbrooke.

(9) ASſumpſit, That where the Defendant had recovered a Debt a-
Poſt. 271. gainſt Lane, and had a Capias ad ſatisfaciendum, directed to the Sheriff of War. and delivered it to the plaintiff being then Sheriff there, in conſideration that he would make J. S. (whom the Defend. did then name) his ſpecial Baily to ſerve his proceſs, that if the ſaid Lane did eſcape, he would take no advantage againſt the Plaintiff (where in truth the delivery of the Writ, and the promiſe was to S.
Ante 175. under Sheriff of the Plaintiff, and not to the Plaintiff himſelf) and alledges in facto, that he at the Defendants requeſt made J.S. his ſpecial Baily, who arreſted the ſaid L. and ſuffered him to eſcape, and that the Defendant againſt his promiſe had taken advantage of this eſcape, and had ſued him and recovered ſo much, &c. And upon non Aſſumpſit pleaded it was found for the Plaintiff. And it was alledged in arreſt of Judgment, that this is no conſideration; and that
Co. 10. 101.b. the promiſe was againſt the Statute of 23 H. 6. Curia, an Aſſumpſit
23 H. 6. c. 10. is within the Statute, and is as void as an Obligation, but here
Poſt. 271. 190. it is not contrary to the Statute; and it is a good conſideration,
230. that he ſhould make one his ſpecial Baily, which otherwiſe he would not do, nor truſt him, but would have made his Warrant to his own Baily, which was ſworn, and peradventure bound to ſave him harmleſs againſt eſcapes, &c. and it was adjudged for the Plaintiff, v. Poſtea Hill. 34 placito 2. in Camera Scaccarii. pag. 271.

Purſells

Purſell's Caſe.

HE was indicted of Felony before the Juſtices of Gaol delivery (10)
in the County of Som. and outlawed upon it, and brought Er- 8 H. 6. c. 10.
ror, becauſe in the Indictment he is ſuppoſed to be of London, and the
capias was awarded to the Sheriff of Som. whereas by the Statute it
ought to be to the Sheriffs of London, 8 H. 6. cap. 10. in which he
inhabited, and for this cauſe the utlary was reverſed. And exception
was taken to the endictment, which was taken and found before the
Juſtices of Gaol delivery, which have not authority to take indict- 2 Cr. 358.
ment unleſs they be Juſtices of Peace, 3 Mar. Br. Commiſſions 24.
and for this cauſe the endictment was alſo diſcharged.

Hadman and Green, *verſus* Ringewood. Antea Mich. 31 & 32. placito. 5.

IT was moved by Tanfield, that the Action was not well brought, (11)
becauſe it was ſuppoſed ad damnum ipſorum, whereas it ſhould be Ante 145.
ad damnum parochianorum, 8 Ed. 4. 6. Coke, it may be either way; and
he ſaid the preſidents are both ways, and Executors ſhall have Treſ-
paſs of goods taken in the time of the Teſtator, ſuppoſing it to be
ad damnum ipſorum. But afterward it was agreed that the Church-
wardens in whoſe time the goods were taken, may ſuppoſe it to be
ad damnum ipſorum, or ad damnum parochianorum at their choice, but the 2 Cr. 234.
ſucceſſors muſt of neceſſity ſuppoſe it to be ad damnum parochianorum;
and for this cauſe it was adjuged that the plaintiff nihil capiat per bil-
lam.

Wolman *verſus* Tye, Mich. 31 & 32 Eliz. Rot. 532.

THe Aſſumpſit that the defendant did aſſume that if the plaintiff (12)
was ejected during the Term by him or any other, that he 2 Rol. 71. b.
would give him Forty ſeven pound, and alledged that he was ex-
pulſed during the Term, and Judgment was given for the Plain-
tiff, and a Writ of enquiry of Damages awarded and returned;
it was moved in arreſt of Judgment, that he alledged that he was
expulſed during the Term, but ſaith not by whom. Gawdy at firſt Poſt. 675.
held, that by the Plea of the Defendant who had pleaded a ſpecial
plea, this matter was waved, and a demurrer was joyned upon the
Plea. But it was adjudged, that this was a thing material, and
traverſable, and without alledging of it the Plaintiff had no cauſe
of Action, and no Plea of the Defendant could make it good. As
in an Aſſumpſit to do a thing upon requeſt, if he doth not alledge the Ante 74.
time and place of the requeſt, it is not good; and advantage may
be taken upon it after non Aſſumpſit pleaded, Mich. 32 & 31 Eliz. it was
adjudged for the Defendant.

Harris Caſe.

(13) ACtion upon the Caſe was brought by an Attorney of the Queens Bench againſt Harris; he pleaded the priviledge of Oxford, and prayeth, &c. And it was held he ſhould not have it, for the Plaintiff being priviledged here, no other priviledge ſhall be allowed: ſo if an Attorney here be ſued by an Attorney of the Common place, he ſhall not have his priviledge. But notwithſtanding the Defendant ſaid he would plead it at his peril.

Foxall *verſus* Venables.

(14) ACtion upon the Caſe, and declares that he is an Inhabitant in D. in the Vil. of D. and that all the Inhabitants there time out of mind, &c. had a way to the Common, &c. and the Defendant ſtopped it, &c. and it was moved by Maſſy after verdict, in arreſt of Judgment, that the Inhabitants cannot preſcribe, but by way of uſage; and he hath not alledged Title to the Common. Egerton Sollicitor: Inhabitants cannot preſcribe for matter of Intereſt, but for an eaſement they may, and the Plaintiff need not make a Title, becauſe the Action is only for the diſturbance of the way; and that Inhabitants may preſcribe for an eaſement, he relied upon 2 Ed. 4.5. & 25 Ed.4.29. but to profit or commodity in the Freehold of another, they cannot preſcribe, 7 Ed. 4. 26. 18 Ed. 4.3. Gawdy, there is no difference, but in both caſes they ought to alledge an uſage. 2 Mar. B. Preſcript' 100. 6 & 7 Ed.6. Dy. 71. 18 Ed.4.3. Wray, contra,& adjournatur.

Poſt. 363. 441. 448.

Bugberds Caſe, Hill. 31 Eliz. Rot. 4. & 488.

(15) ERror in Quare Impedit, where damages were given for the Queen; and the Judgment was reverſed, Mich. 32. placito 44. The Plaintiff had a Writ of Reſtitution awarded for the mean profits, and a fieri facias ad valentiam be bonis & catallis of the Incumbent of the Queen, and all in one Writ returnable, Craſtino Trinitatis; the Sheriff takes the Inquiſition upon the day of the return of the Writ, viz. Craſtino Trinitat' and returneth it. And firſt exception was taken, that the Inquiſition being taken upon the day of the return of the Writ, was void; for the day is excluded, and is only for the return of it. 31 H.6. 13. 33 H.6.45. Second Exception; in the Writ of Inquiſition there is compriſed alſo a fieri facias, which is not to be. Curia, the Writ is well ſerved and varieth from the caſe of the exigent, 33 H.6.45. and of the venire facias ad diem octabis. there the day is excluded but not here: but if it had been taken the ſecond day of Craſt. Trinitatis, and before the fourth day of Craſt. Trinitatis, it had not been good. As to the ſecond exception, they may be both in one Writ, 6 & 7 Ed. 6 Dyer, the like proceſs, and it was ruled accordingly; v. Paſch. 38. B. R. placito 26.

Ant. 162. 2 Rol. 278.

Poſt. 468.

Parkes *verſus* Moſſe, Hil. 31. Rot. 31.

ACtion ſur Trover, The Defendant pleaded a Recovery againſt J.P. and that a fieri facias was awarded to the Sheriff, and after the Writ awarded and delivered to the Sheriff. J.P. died poſſeſſed of the goods, and made the Plaintiff his Executor, and afterwards the Defendant by force of the Sheriffs Warrant, took theſe goods in execution, as Baily to the Sheriff, and delivered them to him. The Plaintiff replieth, that the Sheriff returned upon the Writ tarde; and upon this it was demurred in Law. 1. Queſtion, if the party dying after the Writ of Execution awarded, and before it was ſerved, if it may be ſerved upon his goods in the hands of his Executor or Adminiſtrator; and it was held it might, for by the Execution awarded, the goods are bound, and the Sheriff need not take notice of his death. 26 H. 7. 5. 6 Ed. 6. Dy. 76. 2. Queſtion, if the falſe return of the Sheriff ſhall make the Baily puniſhable, for that he did lawfully; for he was a Baily errant, and a meer ſervant to the Sheriff; and not a Baily of a Franchiſe. And it was held clearly that it ſhould not; for by the Execution by the Baily, the party was diſcharged of the Execution; and therefore it is not reaſon he ſhall take advantage againſt the Baily. And it was adjudged for the Defendant. (16) Mo. 352. 1 Leon. 144. 1 Rol. 893. 2 Rol. 562. Ante 174. 1 Cr. 447.

Williams *verſus* Aſhet Aſh. Trin. 30. Eliz. Rot. 2322.

EJectione Firmæ, It was upon ſpecial Verdict found, that the Corporation of Mercers London were ſeiſed of the Lands in queſtion, in the ſeveral poſſeſſions of two men; and being ſo ſeiſed made a Deed of Leaſe to the Plaintiff, and a Letter of Attorney to J.S. to deliver the Deed and the poſſeſſion; the Attorney enters upon the poſſeſſion of one of the men, and there delivers the Deed; and after enters into the poſſeſſion of the other, and there doth deliver the Deed: and the queſtion was if this were good, for the Land for which the ſecond delivery was; for as to the firſt, it was held without queſtion, that it ſhall paſs; but for the ſecond the doubt was, becauſe one Deed cannot have two deliveries. But the Court held that as the verdict is found, this matter doth not come in queſtion; for the Jury found that the Corporation was ſeiſed; and being ſo ſeiſed made the Deed; and then there is no impediment but that the delivery ſhall be good for all, for it ſhall not be intended but that the two men had poſſeſſion only as Tenants at will to the Corporation; and then the delivery of the Leaſe in one place is good for all; and it ſhall not be intended that they had an Eſtate for years or life, except it be ſo ſhewn. And here the Defendant would have pleaded entry after the verdict in abatement of the Writ, but it was held clearly he had not day to plead it, but is put to his Audita querela. And Judgment was given for the Plaintiff. (1) Ant. 167.

Sir

Sir Francis Willoughby & Ralph Sacheverel *verſus* Patrick Sacheverel, &c.

(2) ATtaint: Upon evidence it was moved, that whereas Pat. Sach. had wrought an Action of Treſpaſs againſt the now Plaintiffs for breaking his cloſe, and depaſturing his graſs with their Cattle. Anno 15 Eliz. and continuing the ſaid Treſpaſs diverſis diebus & vicibus until the day of the Writ purchaſed, which was 28 Eliz. and upon evidence it appeared that Sir F. and Ralph had entred and occupied for half a year, and afterward Patrick entred and occupied it for a time; and after R. entred, and after P. entred, and after R. re-entred and occupied it till the day of the Writ purchaſed; the queſtion was if this entry by P. be not ſuch an interruption of the Treſpaſs. that he ſhall be forced for every Treſpaſs to have ſeveral Actions, or that one Action with a continuando will ſerve for all. And the Court held clearly that one Action of Treſpaſs with a continuando will ſerve for all; and it may well be brought with a continuando. Another queſtion was moved, becauſe it appeared that Sir F. entred only at the firſt, and not after that P. had re-entred; and yet the Jury had found Sir F. and R. guilty of the Treſpaſs, and had aſſeſſed entire damages, Three hundred and ten pound; and in this it was ſaid they had found falſly, and had given exceſſive Damages againſt Sir F. But the Court held clearly, that they might ſafely find them both guilty of the Treſpaſs; but it ſeemeth the Damages were exceſſive againſt Sir F. and they had done better if they had found Sir F. guilty only of the firſt entry.

Utty Dales Caſe.

(3) HAnham Serj. demanded the opinion of the Court in this Caſe. A Leaſe is made to J.S. to have and to hold, to him and his Aſſignees for his own life, and for the life of A. and B. J.S. dieth; if his Eſtate be determined, becauſe one cannot have a greater Eſtate of Freehold then his own life. Anderſon and the Court held clearly it is a good limitation, and he hath an Eſtate for all their three lives; for although he himſelf cannot have an Eſtate but for his own life, yet he may have it to grant to another, and the habendum for their three lives is a good limitation; and by his death the Eſtate is not determined, but occupanti conceditur. And it was ſaid by Anderſon and Periam, that if Tenant pur auter vie makes a Leaſe for years to commence after his death, this is good and ſhall prevent an occupant; for the Land is bound with this Intereſt of the Leſſee; and he ſhall have it againſt all others, during the Life of ceſty a que vie.

Poſt. 491.

Co. 5. 13. a.

William Coke de Inner Temple, *verſus* Ro. Bacon.

(4) AUdita querela upon a Recogniſance, of which there was a Defeaſance for payment of a leſſer ſum, and ſhewed a releaſe of One hundred fifty five pound, parcel of the ſum contained in the Defeaſance,

Defeaſance, and of all actions for it. And by all the Court, the releaſe doth not extend to all, but only to the ſum contained in the releaſe; and the whole Recogniſance is not rehearſed, but only this parcel, and he was put to ſhew other releaſes for the reſidue.

Paſch. 31 Eliz. in Scaccario.

St. Aubys Caſe.

(5)

The Caſe was, the Earl of Arundell being poſſeſſed of a Term for years in Lands, grants a Rent to St. Auby for his life, iſſuing out of the ſaid Lands; and dieth, and this is found by office, and the Land now being in the Queens hand, Drew prayeth an allowance of this Rent, the Term yet having continuance for divers years. But Popham the Attorney General moved it was a void grant to charge the Land, for he cannot have a Franktenement out of a Chattel; and if he hath not a Franktenement according to the word of the grant, he can have no other Eſtate, for it is not granted for any time certain. Manwood, although this cannot be a grant to make a Freehold, yet it ſhall be a grant as it may be, viz. a grant for ſo many years as the Term endureth, if he live ſo long; for it is not a Franktenement in Law, but a Chattel; and to this opinion Gent and Clerk Barons inclined, but ſaid, they would adviſe. Co. 7. 23. a.

Short *verſus* Helyar, Hill. 32. Rot. 444.

(6)

ERror in Treſpaſs. 1. The venire facias bore Teſte upon the Sunday, which is not dies juridicius, ſed non allocatur, for it is helpt by the Statute 32 H. 8. 2. Error, Treſpaſs was, pro defalcatione herbæ, & herbæ conculcatione pedibus ambulando, continuando, quo ad depaſturationem & conculcat' herbæ, &c, whereas depaſturing was not mentioned before, but it was held but ſurpluſage, and Judgment was affirmed. 2 Cr. 162. Moor 684. Poſt. 781. Poſt. 203.

Termino

Termino Trinitatis,

Triceſimo ſecundo ELIZABETHÆ,

In Banco Reginæ.

Elnors Caſe.

(1) ELnor & alii were indicted upon the Statute of 8 H. 6. of forcible Entry; and the Endictment was, quod cum in Statuto Parliam. tent' apud Weſtm. in Comitat' Middleſex, &c. quod Johannes Elnor and others, &c. de Slimbridge in Comitat. prædict' apud S. prædict. in com' prædict' one Cloſe being the Freehold of the Counteſs of W. with force and arms, &c. had entred, &c. and her expulit & diſſeiſivit, &c. And exception was taken to this Endictment, becauſe it is not certain in what County Slimbridge is, in which the Land is ſuppoſed to lie, for there are two Counties named before, Scil. Gloceſter and Middleſex, ſo in Com' prædict' is uncertain; and if it be referred to that which is named laſt, as it ſhall be moſt properly referred, then it is to Middleſex; and an Endictment taken in the County of Gloceſter of Land in Middleſex is void; and for this cauſe principally the Endictment was held inſufficient; and the parties were diſcharged.

Ante. 101.

Dalton *verſus* Selly.

(2) DEbt, It was held per curiam that a foreign attachment cannot be of a Debt before it be due, and therefore whereas one was indebted in a ſum of mony to be paid at Michaelmas; and it was attached before Michaelmas, but the Judgment of the attachment was not till after Michaelmas, it was clearly held to be void, becauſe it was not due when attached.

1 Rol. 553. Poſt. 713. Ante 172.

Cowleigh *verſus* Edwards. Paſch. 32 Eliz. rot. 310.

(3) FAux Impriſonment, for impriſoning him at Briſtol; the Defendant juſtifieth that he Arreſted him at Gloceſter, by vertue of a Commiſſion of Rebellion, abſque hoc that he was guilty at Briſtol. And it was moved that the travers was not good, for the cauſe of the Juſtification is not local, and ſo might juſtifie in the place where the Action was brought; otherwiſe it is, if the Commiſſion had been to arreſt him at Gloceſter; and ſo was the opinion of Wray, Sed adjournatur.

Ante 168. Poſt. 379.

Chriſtian

Chriſtian Plaice *verſus* William Howe, Hill. 32. Rot. 432.

ACtion for theſe words, Thou haſt taken a falſe Oath in the Conſiſtory Court at Exceter; and if the Action lay for theſe words, the Defendant did demur in Law; and it was alledged that the Action lay not, for it may have a good intendment, for every Judge before whom an Oath is taken may be ſaid to take a falſe Oath, not of himſelf, but of another before him. 2. This is not a perjury puniſhable here, for the Statute of 5 Eliz. extends not to perjuries in the Spiritual Courts, and ſo is not puniſhable by the Common Law. Curia contra, as to the firſt, it cannot be intended, the Plaintiff being a woman, before whom no Oath can be taken, and to the ſecond, although it is not puniſhable by the Statute, yet it is a great defamation, ſo that none will credit her in any thing; as to ſay of a Merchant, he is a Bankrupt, for the diſcredit; and though the Statute extends not to it, yet it leaves it to be puniſhed as it was before, ſo that it is puniſhable in the Star-Chamber; for which it was adjudged for the Plaintiff. (4) Poſt. 297. 609. 2 Cr. 436.

Edwards *verſus* Watkin, Paſch. 32 Rot. 18. vel 189.

ERror in Treſpas: the Writ was Quare clauſum fregit, and the Count was Clauſa fregit, and for this variance the Judgment was reverſed. (5) Poſt. 198.

Lucas *verſus* Donne, Mich. 31 & 32 Rot. 394.

ERror of a Judgment in the Court of Helſton, he ſheweth not what Court it was, nor by what title it was held, and the Count was in Engliſh, and for theſe cauſes the Judgment was reverſed. (6) Ante 85.

Devered *verſus* Ratcliffe late Sheriff of London, Paſch. 32. Rot. 339.

DEbt for an Eſcape, and counts that whereas he had a judgment in Debt againſt one in London, and a Cap. ad ſatisfac. againſt him, upon which a non inventus was returned, for which one of his Sureties being in Priſon there upon a plaint there, under the cuſtody of the Defendant, was detained in Execution ſecundum conſuetudinem civitatis prædict. as appeareth by the Record there, and after he eſcaped, &c. upon this the Defendant demurreth. 1. Cauſe, for that it is not expreſly ſaid, that there was ſuch a cuſtom, but only ſecundum conſuetudinem, &c. 2. The Recognizance of the Bail is joynt, and only one is commanded to be detained in Execution. 3. The cuſtom is not good, for he ought to have a Scire fac. againſt the Bail, for it is unreaſonable to take him in execution without anſwer, for he might plead a releaſe of the party, or that the principal is dead, and ſo diſcharge himſelf, &c. And for theſe cauſes it was held the Declaration was not good, and the cuſtom unreaſonable; and the Plaintiff had Judgment. (7) 1 Rol. 563. Poſt. 199.

Wood *verſus* Payne.

(8) EJectione firmæ: After Verdict it was alledged in Arreſt of Judgment, that the Declaration was incertain, viz. de uno meſuagio ſive tenemento, and four Acres of Land to the ſame belonging; and for this incertainty it was held clearly no judgment ſhall be given of the meſſuage, nor of the damages or coſts, for they are intire; but judgment was prayed for the four Acres, but to that it was ſaid to be incertain alſo, for it appeareth not to which of them they did appertain. But Gawdy ſaid, the words (pertaining) are void, for Land cannot properly belong to a houſe, as Hill and Granges caſe is; and then it is as a declaration of Meſſuage or Tenement, and four Acres of Land, which though it be void for the firſt, it is good for the Land; and thereupon the Plaintiff releaſed the damages, and for the four Acres had judgment: and it was ſaid that in Mich. 27 & 28 Eliz. ſuch judgment was given between Whitton and Roberts.

2 Cr. 125.

Kerry *verſus* Bowyer.

(9) AUdita Querela: For that the Defendant recovered againſt him this Debt in this Court, and was in debt to the Plaintiff in another Debt, he attached it in his own hands in London, and upon this brought the Audita querela; and it was clearly held, the Audita querela did not lie, for this inferiour Court cannot fetch this Debt out of this Court, and this Debt is not Attachable, as it was adjudged in Sir John Parrots Caſe, and Execution was awarded.

1 Rol. 552.

Ante 63.

Farr and Eaſt.

(10) THey were endicted upon the Statute of 8 H. 6. and exceptions were taken to the Endictment. 1. The entry is ſuppoſed to be into a houſe and twenty Acres of Land, & eum diſſeiſivit, but ſaith not (Inde) ſed non allocatur, for it ſhall be intended. 2. There was not contra pacem; which Gawdy held material. Wray contra, for it is vi & armis, &c. & contra formam Statuti, &c. which doth imply ſo much. 3. The Statute is, if a Recovery in Aſſiſe, or Action of Treſpaſs by Verdict, or in any other manner, &c. and theſe words (or in any other manner) are omitted, ſo the Statute is mis-recited; and this was held a material exception, for in this the ſenſe of the Statute is altered, for this is tyed to a recovery by Verdict only; but if it had been mis-recited in a point not material it had been otherwiſe, and the Endictment was diſcharged.

Magdalen Chamberlaine *verſus* Thorpe, Paſch. 32. Rot. 186.

(11) DEbt upon a Recognizance taken in London: and declareth that the Mayor there had uſed to take Recognizances by cuſtom of all except Infants and Feme Coverts, and upon any day except Sunday, and certain other days ſpecially named, and this Recognizance was taken before the Mayor there. Tanfield alledged divers

8 H. 6. c. 9.

1 Rol. 557. 67.

divers exceptions in Arrest of Judgment. 1. The custom is unreasonable, viz. to take Recognizances of all persons, except Feme coverts and infants, and doth not except men de non sane memory: Sed non allocatur, for such may acknowledge a Recognizance, and have no remedy to avoid them; and therefore they are excepted which may. 2. Exception, that it is not averred that the Defendant was not an infant, &c. or that the day upon which it was taken, was none of the excepted days; Sed non allocatur, for it shall be intended, if the contrary be not shewn by the Defendant; and so the Justices said the Law is clearly taken at this day upon the Statute of 1 R. 3. to plead a Feoffment by cestuy a que use. 3. Exception, that none can take Recognizances but Justices of Record which had Authority by Patent, &c. as the Justices of the Benches, and Justices of Peace by Commission; and the Major is not a Judge of Record, but by custom; sed non allocatur, for the Custom is good, and the Customs of London are confirmed by Parliament, and are good though strange; and so it was adjudged in this Court between Mabbe and Frying. 4. Exception, the Custom extends aswell to Recognizances taken of Strangers as Citizens, or for matters within the City; and for this cause Gawdy held it was not good. Co. 4. 124. a. 1 R. 3. c. 1.

Watkins *versus* Johns.

(12) TRespas for Assault, Battery, and breaking of a pack of Clothes and taking one Cloth out of it, &c. Defendant as to the Assault and Battery pleads not guilty; and as to the pack of Clothes, &c. he justifieth, for that the Queen granted the Office of Aulnage with the moiety of the profits of it, to W. Owen, and that the said Owen by his Deed, bearing date, &c. at such place made him his Deputy, and because the Defendant did offer to sell this pack of Clothes, not having the Aulnage Seal to it, contrary to the Statute, he seised it as forfeited; and upon this plea, a demurrer. Snagg for the Plaintiff argued. 1. The Plaintiff declares of the breaking of a pack of Clothes, and taking a Cloth out of it; and he answers to the taking of the pack, but not to the taking of one Cloth out of it, which is specially mentioned. 2. He reciteth not the Statute which makes the Office of Aulnage. 3. He sheweth that the Defendant offered to sell it contrary to the Statute, and sheweth not which Statute, and there are two Statutes which give several punishments, 27 H. 8. cap. 8. 12. & 6 Ed. cap. 6. 4. He justifieth by deputation from Owen, but sheweth not that the Office was granted to him to exercise by Deputy, for this is an Office of trust, and otherwise cannot make a Deputy. 5. He pleadeth that Owen by Deed dated at Aburgavenny made him his Deputy, but sheweth not the place where the Deed was made, which is issuable, for it may bear date at Ab. and yet sealed and delivered at another place; and so there is no place from whence the Venue shall come if the Deed be denied. And for these causes the Plea was held clearly insufficient, and it was adjudged for the Plaintiff.

Bugg & Nelſon *verſus* Woodward.

(13) PRohibition, For ſuing for Tithes in Court-Chriſtian; and doth ſuggeſt that one Prettiman was ſeiſed of the Land of which the Tythes are demanded, and in conſideration of five pound paid by him to the ſaid Parſon (Woodward) concordatum & agreatum fuit between them, that he and his aſſignees ſhould hold the Land diſcharged of Tithes during the life of the Parſon, and that afterwards he let it to the Plaintiff, and upon this a Prohibition was granted, and it was held he need not make proof of it, for it was a compoſition with the Parſon himſelf who ſued. And a conſultation was prayed, for the agreement is without Deed, and being for no time certain, but for the life of the Parſon, it cannot be good without Deed; and it is only an agreement, and no grant to be diſcharged; and a grant of Tithes to a ſtranger cannot be without Deed; no more can it be to the Party himſelf that is Tenant of the Land. And it was ruled in the Common-Place between Weſcled and Pepper, that a concordatum & agreatum between the Parſon and his Pariſhioner, that for twenty ſhillings Rent he ſhall have his Tythes for twenty years if the Parſon ſo long live, that a Prohibition lieth not; yet there it was perſonal, and here for life. Gawdy, a grant for life of Tithes is not good without Deeds, but here it is a contract for money, 21 H. 6. 43. Leaſe for years of Tithes is good without Deed, Et adjournatur: vide reſiduum poſtea, Mich. 33 & 34 Eliz. placito 10.

Poſt. 249.

Ante 136.

Buſhe's Caſe.

(14) DEbt upon an eſcape againſt a Sheriff, he pleads nihil debet, and by Verdict it was found, that the Plaintiff recovered againſt J. S. in Debt, and after the year paſſed, had a Cap. ad ſatisfaciendum againſt him, and the Sheriff by force of it took him, and ſuffered him to eſcape; and if upon this matter he was chargeable for this Debt was the queſtion, and it was adjudged he ſhould; for though the proceſs was erroneouſly awarded, yet it was ſufficient for the Sheriff to arreſt him, and he might juſtifie in a falſe impriſonment, and therefore cannot let him at large.

Ante 165.

Hungate *verſus* Hamond.

(15) A Juror was challenged and withdrawn; and upon a tales awarded, and proceſs againſt the other Jurors, he appeared amongſt them and was ſworn, and tried the iſſue, and this being alledged in Arreſt of Judgment, it was held erroneous, and the Judgment ſtaid.

2 Cr. 29.

Richard Cotton's Caſe.

(16) EJectione firmæ: Upon evidence it was held, That if a Diſſeiſor makes divers ſeveral Leaſes for years, and the Diſſeiſee enters into one part in the name of all, this is good for all, for they are all derived out of one Freehold, and that an entry upon part of the Land is an entry into the Houſe, which is in another part of the Land.

Ante 167.

1 Rol. 738.

Co. Lit. 252.

Met-

Metcalfe *verſus* Deane.

The Jury were gone from the bar to conſer of their Verdict, one of the Witneſſes that was before ſworn on the part of Deane, was called by the Jurors; and he recited again his evidence to them, and after they gave their Verdict for D. And complaint being made to the Judge of the Aſſiſes of this miſdemeanor, he examined the Enqueſt, who confeſſed all the matter, and that the Evidence was the ſame in effect that was given before & non alia nec diverſa, and this matter being returned upon the Poſtea, the opinion of the Court was that the Verdict was not good, and a venire fac. de novo was awarded. V. 35 H. 6. Examination 17. 11 H. 4. 17. and Brownlow cited a Preſident inter Leming and Kempe accordingly. (17) 2 Rol. 715. Moor 452. Poſt. 411. Co. Lit. 227. b.

Termino

Termino Michaelis,

Triceſſimo ſecundo & triceſ. tertio ELIZABETHÆ, in Banco Reginæ.

Milward *verſus* Clerk.

(1) ASſumpſit: and declareth that whereas the Defendant was arreſted at his Suit upon Proceſs, the Defendant in conſideration that he ſhould be permitted to go at large, and that the Plaintiff would give his warrant to the Bailiff who arreſted him, to ſuffer him to go at large, that he would appear at the day of the return of the Proceſs, or would give him ten pound, and alleged in facto, that he conſented that he ſhould be permitted to go at large, and gave warrant to the Bailiff, &c. and that he did not appear at the day, for which he brought Action for the ten pound: Upon non aſſumpſit it was found for the Plaintiff. Godfrey moved in Arreſt of Judgment, that this was a void aſſumpſit, againſt the Statute of 23 H. 6. for it is to ſuffer him to go at large contrary to that Statute. Gawdy and Clench, it is a good aſſumpſit, being made to the party which had authority to diſpenſe with his appearance; but if the promiſe had been made to the Sheriff, or to any other to his uſe, it had been within the equity of the Statute. Fenner doubted, but afterwards judgment was commanded to be entred, if other matter be not ſhewn.

Co. 10. 99. b.

Ante 178. Poſt. 200.

Parker *verſus* Plummer.

(2) YElverton Serjeant demanded the opinion of the Court, P. having a term for ſeventy years, deviſed that his eldeſt Son ſhould have the uſe and profit of it for three years, and that afterwards his youngeſt ſon ſhould have his Leaſe and term, Saving that I will that my wife ſhall have half the iſſues and profits of the Land during her life, bearing and allowing half the charges thereof. And the queſtion was if the Wife had any intereſt in it, or only to have an account for the profits of the Land received. Gawdy and Clench, ſhe hath an intereſt in the Land; for to have the iſſues and profits, and to have the Land is all one; and ſo was the intent that ſhe ſhould have the Land with the Son for her life; and if ſhe hath no intereſt, ſhe can have no Action; for account lieth not for want of privity.

Co. 8. 95. b. Co. Lit. 4. b.

Tibbott *verſus* Haynes, Paſ. 32. Rot. 353.

ACtion for theſe words, Tibbott and one Gough agreed to have hired a man to kill me, and that Gough ſhould ſhew me to the hired man to kill me. And upon not guilty, it was found for the Plaintiff. It was moved in Arreſt of Judgment that an Action lieth not for theſe words; and ſo held Gawdy, for it is not alledged that any Act was done by the Plaintiff, nor any thing put in ure by him; but only a communication between him and G. but otherwiſe it is, if the words had been, He hath hired a man to kill me. Fenner contra, for it is an ill part, for which he might be bound to his good behaviour. Wray was abſent; but afterward Wray being preſent, he agreed with Fenner, and judgment was given for the Plaintiff, againſt the opinion of Gawdy. (3) Ante 6. 2 Cr. 56.

Weſtbourne *verſus* Mordant.

ACtion upon the Caſe: and declareth that whereas he was poſſeſſed of a Meadow called Parſonage Meadow in W. adjoynant to a little Brook there, from the 20 Aprilis 31 Eliz. and adhuc inde poſſeſſionatus, the Defendant the ſaid 20 April put in divers loads of ſtone into the ſaid Brook, and by it obſtupavit aquam illam, that it from the ſaid 20 Ap. to the day of the Writ purchaſed, overflowed his Meadow, ſo that he could not have any benefit of it; and after Verdict found for the Plaintiff, it was moved in Arreſt of Judgment, becauſe the nuſance is ſuppoſed to be done before the Plaintiffs title did commence, ſo no cauſe of Action. Gawdy, the Declaration is good; for an Action of the Caſe declareth the whole matter, ſo that it is not material when the nuſance was erected, for he that is hurt by it ſhall have an Action. Fenner agreed, it may be the nuſance was not by the ſtopping till the running of the water, and the Action being brought as the truth is, is well brought; and Wray being abſent they commanded judgment to be entred, if nothing ſaid to the contrary. (4) 2 Rol. 142. Co. 5.101. a. Poſt. 109.403.

Sir William Waldegrave *verſus* Ralph Agas, Inter Mich. 31 Eliz. Rot. 712.

ACtion for words: And declareth that he was Sheriff of Suffolke, and a Deputy Lieutenant there, and was Captain of ſix hundred Souldiers for the ſafeguard of the Queens perſon; that the Defendant præmiſſorum non ignarus, and of purpoſe to draw him into diſcredit, ſpake theſe words to one Edward Hill which adtunc fuit & adhuc is his ſervant. It is well known that I am a true Subject, but thou ſerveſt no true Subject (Innuendo prædict. Willielmum Waldegrave) and that thy own Conſcience doth accuſe thee therefore. Upon not guilty pleaded, it was found for the Plaintiff, and damages five hundred pound. It was alledged by Lewes, in Arreſt of judgment (5) 1 Rol. 75.

that

that an Action lieth not for theſe words, for he ſaith not that Sir W. W. is no true Subject; although the Plaintiff ſaith innuendo the Plaintiff, theſe are not the words of the Defendant, for perhaps E. H. did not ſerve any man, or his intent may be otherwiſe; and if they be intended of the Plaintiff, yet they are not ſuch words of diſcredit, as for which Action lay: for it ſhall not be intended that he called him Traytor or Rebel, but that peradventure he was diſobedient to ſome Proceſs, or that he was Accountant, and made no true Ac-
Co. 4. 15. a.b. count, and cited Stanhop and Bliths Caſe, which ſee 4 Co. and Kimzeys Caſe; he being a Bailiff brought an Action for theſe words, Thou doſt ſerve falſe Warrants and deceiveſt the people; adjudged that the words were not actionable; for it is not averred by it that he made falſe Warrants, or knew they were falſe; and in the caſe of the Clerk of the Peace for Gloceſter, You make falſe Records and juſtifie them for true, no Action lay, for they might be falſe for miſ-writing or otherwiſe;
Poſt. 308. 268. and in Savage and Cooks Caſe, circa 27 Eliz. adjudged that theſe words, Thou art a Papiſt, and not the Queens friend, are not actionable; and the innuendo cannot aid the matter, nor the averment that he was his ſervant will not ſerve, as it was adjudged in the Caſe of George againſt Parker, for theſe words, Thou haſt broken my Shop, and taken my goods, innuendo, that he had robbed him of them, an Action did not lie; for the firſt words were not Actionable, and the ſecond could not aid them. Godfrey contra, and he agreed the Caſe of Kimzey and of the Clerk of the Peace of the County of Gloceſter, for he was of Councel in them, for they ſhall be intended in a good ſenſe, and could not be intended that they counterfeited Warrants, or Records; but here it ſhall be intended in malam partem, that he is no true Subject, but a Traitor to the Queen. And upon another day it was moved again; and Egerton Sollicitor urged, that theſe words being ſpoken of a man of ſuch credit as the Plaintiff, are to be more regarded then if ſpoken of a private man; and it is a Rule in the Civil Law, Sermo relatus ad perſonam debet intelligi ſecundum conditionem perſonæ; and he cited the Caſe of Mr. Edward Boughton againſt the Biſhop of Coventry and Lichfield, which was for theſe words, He is a vermine in the Commonwealth, and a corrupt man; and for that he was a Juſtice of Peace, and a man of good eſtimation, it was adjudged, after long arguments, that he ſhould recover, and had four hundred Marks damages; and afterwards it was moved again by Coke for the Plaintiff, that the perſon of whom the words were ſpoken being conſidered,
Co. 4. 16. a. would bear an Action; and cited Birchlys Caſe. V. 4 Co. when words are ſpoken which touch one in his duty or courſe of life. And theſe Actions are for the diſcredit, and therefore ought to be adjudged according to the credit and place of the perſon of whom they were ſpoken; and Trin. 2 H. 8. Rot. An Action was brought by the Biſhop of Wincheſter, for theſe words, My Lord of Wincheſter took me and impriſoned me till I entred into a Bond of twenty pounds to the Kings uſe, adjudged Actionable, and Hill. 19 Eliz. Rot. 484. The Lord Aburgaveny brought an Action for theſe words, My Lord of Ab. ſent for us, and put ſome of us into the Stocks; ſent ſome of us unto the Gaol, and put ſome of us into the houſe called Little Eaſe, and adjudged actionable; but ſuch words as in the two laſt caſes ſpoken of a private perſon were not actionable. Wray, the words themſelves for the generality of them may have a good con-

conſtruction and reaſonable intendment, and are not actionable; but the quality of the perſon of whom they are ſpoken being conſidered, he being touched in his credit, and courſe of life, they are actionable. As to call a Biſhop Papiſt, is actionable; ſo to call a Judge a Corrupt man, for they concern them in their office; but to call a private man ſo, are not actionable. And whereas it was ſaid, that it appeareth not they were ſpoken of the Plaintiff, but that it may be intended E. H. did not ſerve any man; as to that, the Innuendo takes away all incertainty in that; for ſo it is in all Actions upon the Caſe for words, the (Innuendo) makes them ſpoken of the Plaintiff, and the Defendant is found guilty; and ſo is Eſtopped to ſay, he did not ſpeak them of the Plaintiff. Gawdy, For the certainty of the perſon, there is no doubt, but that the (Innuendo) makes them as certain, as if he had ſaid Sir William Walg. is no true Subject; but for the generality of the words, he doubted and deſired to ſee Bucklies Caſe. But as to the words (true Subject) he ſaid, they could not have any other reference, then that he was not true in his Allegiance, or in his Subjection, and cannot be intended, falſe in other matters of accompt, &c. And becauſe Fenner was not ſatisfied, they would adviſe till another Term; and the next Term it was adjudged for the Plaintiff. 2 Cr. 202. Poſt. 230. Poſt. 268. 2 Cr. 202.

Taſſall *verſus* Shane, Trin. 32 Eliz. Rot. 828.

(6) DEbt upon a Bond. The condition was to pay Eleven pound upon the 12. of February, Defendant pleads an accord 8. February, That if he paid Eight pound upon the ſaid 12. of February, that he would accept it, for the payment of the eleven pound, and pleads a tender at the day, Et encore preſt. But this being but a Concord, which is no Plea in Debt, without ſatisfaction; it was adjudged for the Plaintiff. Co. 9. 79. a. Co. 5. 117. b. 1 Rol. 12. 9.

Thomas Dearing's Caſe.

(7) HE was indicted of murder. And Lewkener took divers Exceptions. 1. The Inquiſition was taken before Th. G. Coroner of the Lord Barkley, but ſheweth not, that he was Coroner of the County, or of what Liberty. 2. It is not ſhewn, how the Lord Barkley can make a Coroner, by Patent or Preſcription. 3. It is quod percuſſit cum gladio, and ſaith not felonice. And for theſe cauſes the Indictment was diſcharged.

Tho. Greenleaf *verſus* Jo. Barker.

(8) ERror of a Judgment given in an Aſſumpſit at Canterbury. 1. Error. That whereas the ſaid J. B. brought an Aſſumpſit, and declared, That whereas the ſaid J. B. was indebted to the ſaid T. G. by Obligation in five pound, to be paid upon the firſt of November following, in conſideration that he the third of November, at the inſtance and requeſt of the Plaintiff, would pay him the ſaid five pound, without ſuit or trouble; he aſſumed to deliver him a Bond in which J. S. was indebted to him in twenty ſhillings, with a Letter of Attorney to ſue for the Debt. And upon this Declaration after Verdict, Judgment was given for the Plaintiff; and upon this Judgment, Error was brought. 1. Error, That the conſideration

ſideration was not good, for he did no more then the Law did compel him to do, viz. to pay the money that was due before; and ſo was the opinion of Gawdy and Fenner: For he payeth no more then was due; but if it had been paid before the day, it is otherwiſe. For every conſideration muſt be for the benefit of the Defendant, or ſome other at his requeſt, or a thing done by the Plaintiff; for which he laboureth, or hath prejudice. As 37 H. 6. to cure one; and 20 Eliz. in the Common Place between Worthington and Sydenham in an Aſſumpſit. That whereas he was bail in the Queens Bench for J. S. ſervant of the Defendant, he ſuch a day aſſumed to ſave him harmleſs; but it not being alledged, that it was at the time of the bail or before, nor at his requeſt, but after it without conſideration, it was void. 9 Edw. 4. Concord to deliver one his own Writings, is void. 2. Error, The Aſſumpſit is void; for it appeareth not the Plaintiff could have any benefit of it: For it is not to ſue and recover the twenty ſhillings to his own uſe, and ſo is rather a charge; and of that opinion was Gawdy. Fenner contra. 3. Error, for that upon the Venire facias only twenty three were returned, whereas there are to be twenty four. Gawdy, it is helped by the Statute of Jeofails after Verdict; Fenner doubted. But both conceiving there was no conſideration, and ſo a plain Error; Wray being abſent, they were both of opinion to reverſe the Judgment. Tanfild who was not of Council in the caſe, ſaid it was adjudged, Paſch. 23 Eliz. inter Coke & Hewet, That in conſideration he would at the requeſt and inſtance of the Plaintiff, pay him twenty pound upon a Bond at the day when it was due, he aſſumed to deliver to him the Bond: This was adjudged a good conſideration. Gawdy, that may be, for it is to deliver to him the ſame Bond which was to be delivered upon the payment of the money; but here it is collateral, and they would adviſe.

Ante 42.

1 Cr. 409.

Co. 5. 36. b. 7. a. Poſt. 586.

1 Cr. 8. Poſt. 357. 2 Cr. 343.

Rigg *verſus* Clarke.

(9) Error of a Judgment in an Action upon the caſe, where Clarke did declare, That whereas he was poſſeſſed of a Gelding, in conſideration that he would lend his Gelding to B. to carry three buſhels of Coals from Ware to the houſe of B. he promiſed he would not aliter eum onerare, and alledges, that the ſaid B. aliter per viam prædict' onerabat ſpadonem prædict' & magis ponderoſius onus ſuper ſpadonem prædict' impoſuit; upon Non Aſſumpſit, and found for the Plaintiff, Judgment was given, and Error brought. 1. He ſaith, Per viam prædict', whereas it ſhould be in via, but this was clearly diſallowed; for it is all one, and of one ſenſe. 2. Error, that it is alledged, aliter onerabat, and ſheweth not how. Gawdy and Fenner held clearly it was Error: For to enable him to the Suit, he ought to ſhew how he over-burthened him. And being moved again, it was adjudged, that for this cauſe the Judgment ſhall be reverſed; although Godfrey moved ſtrongly, that it was well enough; for it lay not in the Conuſance of the Plaintiff, how he did over-load him; nor is it material, how he did over-load him: For if he alledged in one manner, and it be found in another manner, it is found for the Plaintiff; and this is after Verdict. And although the Declaration is faulty in form, this is aided by the Statute of 18 Eliz. But notwithſtanding theſe reaſons, the Judgment was reverſed; for it is a thing material which the Plaintiff is to ſhew.

Kennerſley

Kinnerſley *verſus* Smart, Trin. 32 Eliz. Rot. 898.

DEbt upon an Obligation: The Defendant pleads, that at W. in the County of Warwick, there was a communication and agreement between them for lending of money; and that the Plaintiff ſhould have ſo many Oxen, which were of ſuch value above ten pound per annum; and for the performance of this uſurious Contract, the Bond was made, and pleads the Statute of 13 Eliz. to avoid the Bond. The Plaintiff ſaith, That it was well and duly made upon good conſideration: abſque hoc, that it was made for ſuch uſurious contract: And upon this they were at iſſue, and tried in the County of Warwick, and found for the Plaintiff. Tanfield, this iſſue is mis-tried, for it ſhould be tried in London: For the iſſue is; that the Bond was not made upon an Uſurious contract, and the Bond was ſuppoſed to be made at London; and the Bond being made there, the trial is to be there. Coke & Kennerſley contra: For the Bond is confeſſed, but the Point is, If it were made by Uſury, which is alledged to be at W. in the County of Warwick; and upon this is the iſſue taken, 8 Edw. 3. 8. An iſſue being, if a Deed were made by Dures, the iſſue ſhall be tried by a Venire of the place where the Dures is ſuppoſed, and not where the Deed is ſuppoſed to be made, 22 Ed. 3. 15. 25 H. 6. 34. Hill. 28 Eliz. Rot. 311. vel 211. Inter Sibthorpe & Turnor. This Exception was taken, and ruled, that the trial ſhall be in the County of Eſſex, where the Uſury was ſuppoſed to be, and not at London, where the Deed is ſuppoſed to be made. And Paſch. 32 Eliz. Rot. 303. The like rule, Inter Pay & Wilkinſon. And this being moved divers days this Term; upon the laſt day of the Term the Plaintiff had Judgment. (10) Poſt. 870.

Parcel's Caſe.

HE was indicted, that at ſuch a day, and divers days before and after he was a Common Barretor, & Perturbator Pacis, but ſhewed no place where, nor cauſe, for which he is a Common Barretor; and theſe exceptions were taken by Lewkener: But the Court held it good, without any ſpecial cauſe ſhewn, and the place is not material, for it is in every place, and the trial ſhall be De corpore comitatus. (11)

Wilſon *verſus* Jeffrey, Paſch. 30 Eliz. Rot. 219.

ERror of a Judgment given in a Writ of Covenant; and the principal Error aſſigned was, That the Plaintiff declared upon an Indenture in this manner, Quod cum per ſcriptum Indentatum factum inter eos Teſtatum fuit, &c. And doth not alledge in facto, That he by ſuch an Indenture did Covenant. Fenner, ſo is the common courſe in Declarations; but in a Plea in Bar it is no good form. And all the Prothonotaries of the Common Place certified, that ſo are all their Preſidents; and Loe and other Clerks of the Queens Bench ſaid, ſo is their courſe; and the Judgment was affirmed. (12) 1 Cr. 188. 2 Cr. 537.

Katherine Hume *verſus* Luke Ogle.

(13) Co. 4. 42. b. APpeal of the death of her Husband, and declares, that the Defendant ſuch a day at Weſt-Lilburne in the ſaid County, gave him a mortal wound, of which, at Wetwood in the ſaid County he languiſhed, and the ſame day there died; and ſo the ſaid Defendant, the ſaid day and year at Weſt-Lilburne, aforeſaid, her ſaid Husband Modo & forma prædict' murdravit; and although not guilty pleaded, and iſſue joyned upon it, yet he waved it, and demurred upon the Declaration (as it was clearly held by the Court he might:) For if the Declaration be not good, it is in vain to proceed to a trial, yet it was clearly held, that it is not peremptory to the Defendant; for if it be adjudged againſt him, it is but a Reſpondes ouſter: And the cauſe of the Demurrer was, that the death is ſuppoſed to be at Wetwood, and yet the murder is ſuppoſed to be at Weſt-Lilburne, which is contrary, and cannot be; for although the ſtroke is ſuppoſed to be at Weſt-Lilburne, yet it is not felony till his death, which was at Wetwood, and there the murder is ſuppoſed to be done; and the caſe of Heyden (4 Co. fol. 41.) was cited. And as the Indictment there, was inſufficient for the time; ſo here for the place, which is more material; for from this the venire ſhall come; but if it had been Et ſic murdravit modo & forma præ- Co. 4. 42. b. dicta, it had been good. And Ive ſaid, divers of the ancient Preſidents are, that the murder is ſuppoſed to be where the ſtroke was. But the Juſtices held clearly, that the Indictment was ill; for of neceſſity it muſt be at the place of his death: And although the Preſidents are ſo, yet they did paſs Sub ſilentio, and were not well examined, and not to be regarded as Heydens caſe; and it was reſolved, that there was no difference between the caſes, and adjudged, that the Appeal did abate.

Sir Gilbert Gerrard, Maſter of the Rolls, *verſus* Mary Dickenſon, Paſch. 31 Eliz. Rot. 453.

(14) Co. 4. 18. a. ACtion upon the caſe for ſlandering his title, and declared, that whereas he was ſeiſed of the Manor of Hely in the County of, &c. And Sir Ralph Egerton was in ſpeech with him, to have a Leaſe of it for years, and offered ſo much for the Rent, and ſo much for a Fine, the Defendant præmiſſorum non ignara; but intending to ſlander his title, ſaid in the preſence of divers, I have a Leaſe of the Mannor of Hely for ninety nine years, and publiſhed a Deed of Leaſe to divers, affirming it to be good, and offered to ſell it, and all her intereſt in it, ubi revera, the Defendant did know it to be a forged Deed; and by reaſon of theſe words, Sir Ralph Egerton would not take a Leaſe, nor any other, by which he loſt the commodity of his Land, to his damages of One thouſand pound. The Defendant pleaded, that one W. Dickenſon her Husband, died at Uxbridge, &c. After whoſe deceaſe Talis Indentura qualis in Narratione prædict' ſpecificatur, & quoddam ſcriptum exemplificationis hujuſmodi talis Indenturæ ſub mgno. ſigillo Angliæ ſigillat', came to the poſſeſſion of the Defendant amongſt other writings; the which, the Defendant then and there did

did believe to be a good Leaſe, and duly made, ſealed and delivered; for which, ſhe doth juſtifie the words abſque hoc, that ſhe did know it to be a Deed of a forged Leaſe, and upon this it was demurred in Law, and argued by Coke and Warberton for the Plaintiff, and by Altham and Snagg Serjeant for the Defendant. And as to the Bar, it was held clearly by the Juſtices, and in manner confeſſed by the Defendants Councel, that it was ill; for ſhe ſaith Talis Indentura qualis, &c. ſo doth not anſwer to the Deed in the Declaration, for talis is not eadem. Co. 4. 18. b. But as to the ſubſtance of the Declaration, it was moved, that the Action did not lie; for the Defendant ſaith, ſhe had a Leaſe, which is not to be referred to the Deed of Leaſe, but to the Intereſt of the Leaſe; and when ſhe claimeth an Intereſt, ſhe is not puniſhable; and the caſes of Conſpiracy, 22 Edw. 3. 1. & 40 Edw. 3. 19. And the caſes of publiſhing of forged Deeds, 9 H. 6. 26. 20 H. 6. 11. 10 H. 7. 29. 15 Edw. 4. 25. were cited, that the party is not puniſhable, claiming an intereſt, or not knowing it to be forged. And divers Exceptions were taken to the Declaration. 1. It is not averred, that the Defendant had not title. 2. It is ſaid, ſhe offered to ſell, but ſaith not to whom, ſo incertain. 3. That ſhe publiſhed diverſis perſonis, but ſhewed not to whom. 4. It is ſaid, that ſhe knowing it to be forged, publiſhed it, and no place ſhewn of her knowing, which is material and traverſable; and ſo a place ought of neceſſity to be inverted. Sed non allocatur. And as to the matter, it was ſaid it was ſufficient to entitle the Plaintiff to an Action: For if one entitle a Stranger to my Land, and not himſelf, an Action lieth, Trin. 24 Eliz. inter Johnſon & Smith. The caſe was, Johnſon enters into a communication with Sir H. Bedingfield to ſell him certain Land; and the Defendant knowing it, ſaid in the Country, that a ſtranger had a Rent-charge out of it, by reaſon whereof Sir H. Bedingfield refuſed to proceed in the bargain. And (againſt Stanfield) caſe was cited (1 Co. 177.) So here when ſhe derived no title to her ſelf, but in effect ſaith, Her husband had a Leaſe, which now is a ſtranger; an Action lieth not. Wray Chief Juſtice, the words, I have a Leaſe, &c. ſhall not be conſtrued, that ſhe had a Term or Intereſt in the Leaſe it ſelf, but only an Indenture of Leaſe; and is as much as if ſhe had ſaid, that ſhe had an Indenture of Leaſe made to her husband in her keeping, ſo makes no title to her ſelf; and being ſo, all will agree ſhe is puniſhable: But if ſhe had ſaid, that ſhe had an Intereſt or Term for ninety nine years, and entitled her ſelf to it, it were otherwiſe. But in all caſes, when one doth entitle a ſtranger, it is not actionable, except it be ſhewn that ſome damage cometh to the Proprietor by it, viz. That he cannot let it or ſell it, &c. and that an Action lieth not where one doth entitle himſelf, the caſe of 17 Edw. 4. 3. doth prove it: For if one ſaith J. S. is his Villain, an Action lieth not; but if he ſaith, J. S. is Villain to a ſtranger it is otherwiſe. Gawdy, The ſaying I have a Leaſe, amounts to as much, as I have an Intereſt for years, for ſo it is intended in common Parlance; and ſhe doth not only ſay, ſhe hath a Leaſe, but this is inforced by offering to ſell it; but it being alledged, that ſhe publiſhed it, knowing it to be forged, and ſo doth endamage the Plaintiff, and of purpoſe to ſtop him to let, &c. It ſeemeth, the Action is maintainable; and at Common Law, if one ſue a forged Obligation, knowing it to be ſo, an Action of the caſe lay: And although ſhe claimeth a Leaſe to her ſelf, Mildmay's Ante 34. Co. 4. 18. a. Poſt. 427. Poſt. 836. Hob. 267.

ſelf, yet the publiſhing it, knowing it to be forged, an Action lieth: And although it is ſaid, that it is not publiſhed as a true Deed: but quaſi verum, this is a plain Affirmative, that it was true; and
Co. 4. 18. b. afterwards the Plaintiff had Judgment.

John Hooper's Caſe.

(15) JOhn Hooper alias Bartholomew, Carpenter, and others, were in-
Poſt. 249. 583. dicted upon the Statute of 8 H. 6. And becauſe the addition
2 Inſt. 669. came after the alias, it was held void, as to him, and the Indict-
ment diſcharged. And in the ſame Indictment, one was indicted by the name of J. the wife of J. S. of D. and it was moved, if this were good without any other addition to the Wife, of her myſtery, or
Co. Lit. 3. a. place of her habitation. Gawdy held it was not, Clench and Fenner
2 Inſt. 669. contra.

Edward Walwin's Caſe.

(16) ERor brought by him to reverſe an Utlary upon an Indictment of Murder: the Error was; for that in the Indictment he was named Edward Walwyn de Mackre, and the Capias was de Mackreo,
Ante 85. and by the name of Walweene, whereas his name was Walwin; and for theſe cauſes the Utlary was reverſed.

Berkenhead *verſus* Nuthall.

(17) ERror upon a Judgment in Debt. Error was, that in the Writ he demanded One hundred ſixty ſix pounds thirteen ſhillings four pence, and in the Declaration he demanded One hundred
Poſt. 185. ſeventy one pounds ten ſhillings, and for this variance the Judgment was reverſed.

The Archbiſhop of York againſt Sir Henry Barkly.

(18) ERror upon a Judgment in a Quare impedit. Variance was aſſigned between the Record and the Writ; for one was of the Church of Bonnington with a double (nn) and the other was Bonington with a ſingle (n), and Tanfield compared it to the caſe of Attaint, which was overthrown, becauſe one Record was York, and the other Yerk; but inter Colceſter and Colcheſter, in Bird and Shelberies caſe
Ante 172. (V. Antea,) it was held to be no difference, becauſe (h) non eſt litera, ſed aſpiratio. Another variance, becauſe the Judgment was ſuppoſed to be given before the Lord Anderſon, and his Companions; whereas it was before the Lord Dyer, &c. And this was held a great variance, and it was commanded to be examined, &c.

Leverett *verſus* Townſend.

(19) ACtion upon the caſe, and declareth, That whereas he was ſeiſed of ſixteen acres of Land in D. and by reaſon of it, had after Harveſt, ſevered Common in another parcel of Land of twenty acres adjoyning there, every year, the Defendant had plowed this Land, by which he was diſturbed of his Common. After Verdict, it was alledged in Arreſt of Judgment, that he having a Freehold in the Land, to which he claimed Common; he was to have

have an Aſſize, and not an action upon the caſe, 2 H. 4. 11. 8 Eliz. Dyer 258. But the Court, and Coke that was of Counſel of the ſame part, held he might have one action or the other: But Coke ſaid, it was not expreſſed, when the diſturbance was made, and ſo might be before Harveſt, and then no cauſe of action. Gawdy and Fenner held it well enough; for the diſturbance was by plowing up the Land, which was a Nuſance, and would remain ſo always; but they would adviſe. Co. 9. 112. b. Poſt. 466. Ante 191.

Warter *verſus* Perry and Spring.

(20)

SCire facias againſt them as Mainpernors of Broke, they pleaded that B. was dead the day of the Judgment given: The Court at firſt held it no Plea; for it goeth in avoiding the Judgment, and proveth it to be erroneous, which cannot be avoided but by Error: But they might plead the death of B. before the Scire facias, and after Judgment; for then they could not bring in the body: But afterward the Plea was received, becauſe they cannot have a Writ of Error to reverſe the Judgment. 1 Rol. 449. 742. Ante 185.

Veal *verſus* Roberts, Trin. 32 Eliz. Rot. 676.

(21)

EJectione firmæ. The caſe was, Stevens was ſeiſed of two cuſtomary Meſſuages and Lands to the ſame belonging, and Heydon was ſeiſed of two other cuſtomary Meſſuages and Lands to the ſame belonging; and W. & W. were poſſeſſed of certain Lands containing ten acres, called Normors (which were the Land in queſtion;) All which were parcel of the Poſſeſſions of the Abbey of Gloceſter. The Abbot and Covent let to J. V. the ſaid four Meſſuages and Lands, Necnon the ſaid Lands called Normors, Habendum & tenendum the ſaid Meſſuages and Lands, &c. Necnon the ſaid ten acres of Land, A tempore mortis ſurſum redditionis, forisfacturæ aut determinationis ſtatus & termini prædict' of S. H. W. & W. for years rendring Rent; the eſtate for years in Normors expired; the other eſtates of S. and H. were in being. The queſtion was, if the Leaſe ſhould commence for Normors. Johnſon and Snagg argued, it ſhould not, till all the eſtates were determined; for otherwiſe there ſhould be a great inconvenience for the apportioning of the Rent. And if a Leaſe be made to commence after the death of J. S. & J. D. it ſhall not commence till both be dead. Coventry & Coke, è contra and relied upon Juſtice Windhams Caſe, (5 Co. fol. 7. 8. b.) and Pollards Caſe there cited. Gawdy and Fenner Juſtices held clearly it ſhould commence preſently for Normors; and Gawdy relied upon Adams & Wroteſlies Caſe in Comment. fol. That a Term in Reverſion ſhall commence, not when the Term is run out in time only, but alſo when it is expired per ſurrender, or other means. And Fenner ſaid, the caſe is ſtronger then Windhams caſe; for here is ſeveral Habendums, by reaſon of the word (Necnon.) And afterward Wray being preſent, it was adjudged accordingly. Co. 5. 8. b. Pl. C. 119. a.

Fetherſton *verſus* Hutchinſon.

(22)

ASſumpſit, and declares, That whereas the Plaintiff had taken the body of one H. in Execution at the Suit of J. S. by vertue of a Warrant directed to him as ſpecial Bailiff; the Defendant 23 H. 6. c. 10.

in

in conſideration he would permit him to go at large; and of two ſhillings to the Defendant paid, &c. promiſed to pay the Plaintiff all the money in which H. was condemned: And upon Aſſumpſit, it was found for the Plaintiff; and it was moved in Arreſt of Judgment, that the conſideration is not good, being contrary to the Statute of 23 H. 6. And that a Promiſe and Obligation was all one. And though it be joyned with another conſideration of two ſhillings, yet being void and againſt the Statute for part, it is void in all. V. Dive & Manninghams Caſe, in Comment. f.

Ante 190.

Wolley, Dean of E. and the Chapter *verſus* Robinſon.

(23) TRespaſs. For entring into the Cloſe of the Dean; after Verdict found for the Plaintiffs, it was moved in Arreſt of Judgment, that this action being brought for the poſſeſſions of the Dean only, the Chapter was not to joyn. And for this cauſe Judgment was ſtaid.

Warner *verſus* Young.

(24) TRespaſs. For entry into a Wood called Demſil-wood in L. in Suff. the Defendant pleaded, That the Duke of Norfolk was ſeiſed of this Wood, and of a Meſſuage, and of Land to the ſame belonging, and let to him the ſaid Meſſuage and Lands for years by Indenture; and by it did Covenant, that for the reparation of the Houſe, and the fencing he might take Trees in the Wood; and becauſe part of the Houſe was decayed, he took the Trees for reparation, &c. And upon this the Defendant did demur, becauſe he doth not ſhew the Village or place where the Meſſuage, &c. was: That if an Iſſue was, that the Meſſuage was not in decay, no place is known from whence the Venue ſhould be. And for this cauſe it was adjudged no good Plea, and the Plaintiff had Judgment.

Bouches Caſe.

(25) SUffolk. He was indicted, for that he being Conſtable of the Hundred of H. arreſted one for Burglary, and after at D. in the ſame County, he let him eſcape; and becauſe no place was alledged where the Arreſt was made: And if he ſhould plead not guilty, the Venue ſhould be as well from the place where the Arreſt was made, as from the place of the eſcape; it was held, the Indictment was void, and the party was diſcharged.

Anonymus.

(26) WIlts. Certain perſons were indicted for entring into the Foreſt called Grovely Foreſt, and hunting there in a place called Denſhaw Wood; and the Indictment being traverſed, the Venire facias was awarded De vicineto de Grovely, and the Jury appearing at the Bar was diſcharged: For it was held, where a thing is ſuppoſed to be done in a place which is a Village in the Foreſt, the Venire facias ſhall be awarded De viceneto of the ſame Village: But if it doth not appear that it is a Village, then it ſhall be

be De Vicineto of the Foreſt, as 47 Ed. 3. 6 Hen. 7. 3. & 5 Hen. 7. But Gawdy and Fenner ſaid, That if the Sheriff returns, there is no ſuch Village or Pariſh; the Venire facias ſhall be awarded De corpore Comitatus. Ante 32.

Smith *verſus* Hitchcock.

(27) ACtion upon the caſe upon an Indebitatus eſt, 19. Novemb. 32 Eliz. the Defendant pleads he was indebted to the Plaintiff in Two hundred pounds, 30 Eliz. For which he gave him his Bond the ſame year. Which ſum the Plaintiff had recovered againſt him in Debt, and had execution, Abſque hoc, that adtunc, antea vel poſtea, he was indebted to the Plaintiff, aliter vel alio modo: And upon this Plea it was demurred in Law, Pudſey and Godfrey argued for the Plaintiff, that this is no good Plea; for it is but a traverſe of the conſideration, which is not traverſable, but is to be proved upon the General Iſſue; and this Plea amounts but to a General Iſſue: And though this be but matter of form, yet this was alledged ſpecially upon the Demurrer, and relied upon the caſe of 8 H. 6. 34 H. 6. The caſe of Treſpaſs in a Warren. And this Plea doth anſwer to the Aſſumpſit, but by way of Argument, 8 Hen. 5. 9. 11 Ed. 4. Partridge contra. For this is the ſubſtance and material part of the Action, and for that relied upon 12 H. 4. 7. and Kennerſly and Coopers caſe, Hill. 32 Eliz. Pl. 5. Gawdy, in every Action where Wager of Law lieth not, the Conveyance to the Action being a thing material, is traverſable; but here becauſe the conſideration is executed, it is not traverſable, as 5 Hen. 7. 21 Hen. 7. 13. Wray and Fenner, the conſideration in an Action upon the caſe is material, but not traverſable; as in an Action Sur trover, the Converſion is material, but not traverſable: And it was adjudged for the Plaintiff. Ante 169. Poſt. 250.

Cullier & Cullier.

(28) THey were ſued in the Spiritual Court for incontinency, and the Judges there would examine them upon their oath, if they did it; but becauſe Nemo tenetur prodere ſeipſum, in ſuch caſes of Defamation, but only in cauſes Teſtamentary and Matrimonial, where no diſcredit can be to the party by his oath; Coke prayed a Prohibition, and it was granted. Moor 906. Poſt. 262. 2 Cr. 388.

Yeoman *verſus* Stenlack.

(29) ERror. The Error was, that the Entry of the Warrant of Attorney of the Defendant was ponit loco, but ſaith not ſuo; but the Entry being, that the Plaintiff ponit loco ſuo, and that the Defendant ponit loco ſimiliter, it is good enough; and the Judgment was affirmed.

(30) In a Bill of Perjury, the parties being at iſſue, Coke took exception at the Declaration; which was, that the Defendant falſo depoſuit, &c. but ſaith not, corruptè & voluntariè; but in the concluſion of the Declaration, it was & ſic falſo, corruptè, & voluntariè depoſuit: But becauſe it was not alledged at the firſt, when the fact was alledged, the Declaration was adjudged inſufficient, and that the Plaintiff nihil cap. per Billam. Somerlands caſe. Antea. Ante 147.

Iſam & Paget *verſus* Hitchcock, Trin. 32 Eliz. Rot. 989.

(31) DEbt upon an Obligation, the Defendant pleads, that the Obligation was made to them, and to one Bellamy; and that they three had an Action of Debt depending againſt him, and demanded Judgment Si actio; and upon this it was demurred: And becauſe the Obligation made unto two, upon which they counted, cannot be intended an Obligation made to three; and if it be a Plea, it is in abatement of the Bill, and not in Bar it was adjudged without Argument for the Plaintiff.

Poſt. 253.

Blaby *verſus* Eaſtwigg & Eaſtwigg.

(32) ACtion ſur Caſe. After Verdict it was alledged in Arreſt of Judgment, that one of the Defendants was dead after the day of Niſi prius; and becauſe the party had not day to plead it, and the Court is not to take Cogniſance of ſuch Informations, they regarded it not, but gave Judgment for the Plaintiff.

1 Rol. 768.
1 Cr. 232.
2 Cr. 646.

Thomas *verſus* Ward, Trin. 32 Eliz. Rot. 947.

(33) EJectione firmæ. The Plaintiff declared of a Leaſe made to him of the Mannor of Middleton Cheny, by A. B. and C. the Defendant doth entitle himſelf by a Leaſe of the Biſhop of Rocheſter, long time before the Leſſors of the Plaintiff, &c. The Plaintiff by Replication confeſſed the Leaſe, but that it was by Indenture; and the Defendant by it did covenant, that he ſhould not put out or diſturb any of the Tenants of their Tenancies inhabiting there within the ſaid Mannor, doing their duties according to the cuſtom of the Mannor, Sub pœna foriſacturæ of his intereſt; and ſheweth that for that the Defendant had ouſted one Anne Greene, Unam tenentium & inhabitantium ibidem, of the Tenement parcel of the ſaid Mannor Nuper in poſſeſſione & occupatione dict. A. G. For this cauſe the Biſhop entred for Condition broken, and let it to the Leſſors of the Plaintiff. And upon this the Defendant did demur in Law; and the cauſe alledged was, That this is no Condition, but only a Covenant; for they are the words of the Leſſee only, and not of the Leſſor: But if the words had been, It is covenanted between them, &c. it had been otherwiſe, 28 Hen. 8. Dyer 7. Upon this difference, Houghton contra. Although the words ſound as the words of the Leſſee, yet being by Indenture, they are the words of the one and other: And although the words ſound in Covenant, yet the intent of them is to defeat the eſtate, which cannot be by Covenant, but by Condition. Browning and Beeſtons caſe in Com. And he cited a caſe to be adjudged between Hill and Lockſon; where the Leſſee covenanted to grind his Corn at the Mill of the Lord, and other Covenants; and in the end of the Indenture, he did Covenant to perform all the Covenants within the ſame, &c. Sub pœna foriſacturæ; and for not grinding his Corn, &c. the Leſſor entred, and adjudged for him; and relied alſo upon 21 H. 6. 51. 32 Edw. 3. Annuity 30. where the words of one in a Deed, ſhall be conſtrued the words of the other. And of that opinion were Wray and Gawdy clearly. But Tanfield moved, though it be a Condition, yet the breach

Poſt. 385.
Poſt. 385.

breach is not ſufficiently ſhewn. Firſt, Becauſe he ſaid, that he ouſted Anne Greene, one of the Tenants and Inhabitants there, out of the Land Nuper in poſſeſſione & occupatione A. G. and it may be ſhe was Tenant at Will, or had no lawful eſtate but by Diſſeiſin, and it ought to have been Nuper in Tenura & Occupatione A. G. Secondly, That he ouſted A. G. quæ fecit debitum ſuum, before expulſion, which may be ſhe did it at once, and not always, as ſhe ought to do. Thirdly, It is not ſaid ſhe did her duty according to the cuſtom of the Manor, but quod fecit debitum; which may be intended only in doing reverence, and not in doing her duty according to the cuſtom of the Manor: And theſe and other faults were held incurable; and thereupon it was adjudged for the Defendant.

Smith *verſus* Bernard.

DEbt upon an Obligation; the Defendant pleads Utlary in the Plaintiff, and concludes in Abatement; the Plaintiff pleads a nul tiel Record. And the Defendant had day to bring in the Record, and did fail at the day; and becauſe it was Debt upon Obligation, in which Utlary goeth in Bar, he failing of the Record, the Plaintiff had Judgment, but otherwiſe it is in Debt upon Contract; for there the Queen ſhall not have it. 6 Eliz. Dyer 227. (34) Co. Lit. 128. b.

Gunnell *verſus* Bradiſh.

A Venire facias iſſued, bearing date the ſeventh of July, and was returnable the ſixth of July; and becauſe this was a judicial Proces, and may be returnable De die in diem; it was held, it may be well amended: And it was ſaid, that it is uſual in the Common Bench, if a judicial Proces bears teſte upon Sunday, to amend it. (35) 2 Cr. 162. Poſt. 543. | Ante 183. 2 Cr. 162.

Sir George Fermor *verſus* Brooke.

ACtion upon the Caſe, for erecting a Bake-houſe in Toſſiter, and declares, That whereas time out of mind, &c. there had been a Manor called Toſſiter in the ſame County; and for the ſame time, there had been a Town of Toſſiter; and that all the Land within the ſaid Town of Toſſiter, had been holden of the ſaid Manor, of which he is Lord; and that he and all his Anceſtors, and all thoſe whoſe eſtate, &c. had uſed to have a Bake-houſe, and a Baker there, to bake White-bread and Houſe-bread for all the Inhabitants there, and Strangers paſſengers; and that none by the ſaid time, &c. had uſed to have a Bake-houſe there, but by their appointment; yet the Defendant had erected a Bake-houſe there Ad nocumentum ſuum. The Defendant taketh all by Proteſtation, except that he confeſſed, that there is ſuch a Town; and pleaded, That at the time when he erected his Bake-houſe, that there were three Bakers there, and that he was an Apprentice to the Trade, and that he ſet up the Bake-houſe for the benefit of all perſons, as it was lawful for him to do: And upon this Plea, the Plaintiff demurred; and it was argued by Francis Morgan for the Plaintiff, and Buckley for the Defendant: And it (36) 1 Rol. 559. Co. 8. 125. b.

was adjudged for the Plaintiff; for the custom is between the Lord and his Tenants, which by Indenture may have a good and lawful beginning; and peradventure their Lands were given to them upon this condition; And it is reasonable, that the Lord maintaining a Bakehouse, that for this charge they should have reasonable recompence; and the Plaintiff had Judgment. Vide 8 Co. 125. b.

Stretton *versus* Browne.

(37) FAlse Imprisonment. The Defendant justifieth, that he was Constable of B. and that he appointed the Plaintiff to watch there; and because he refused, he put him in the Stocks: And upon this it was demurred. First, Because the Defendant did not shew that the Plaintiff was an Inhabitant there; and he cannot appoint a stranger to watch, neither by the Statute of Winchester, 13 Edw. 1. cap. 4. nor of 5 Hen. 4. cap. 3. Secondly, it was moved, the Constable cannot imprison one for refusing to Watch, but must complain to a Justice of Peace, and he may inflict punishment upon the Refusers. Thirdly, That he ought to shew it was the Plaintiffs turn to watch. Curia; For the first cause clearly, the Plea is not good; but for the second, Wray held, that the Constable might imprison one for refusing to Watch. Gawdy contra: And for the first cause it was adjudged for the Plaintiff.

Post. 287. 375.

Bradley *versus* Whorewood.

(38) REplevin, in the Writ the Defendant was named Whorewood; and in the Count, and proceeding after, he was named Horewood: And this variance after Verdict was alledged in Arrest of Judgment, and notwithstanding it was held good; for it is as if there were no Original, which is helped by the Statute; and if it be said a Variance, it may be amended; and the Plaintiff had Judgment.

1 Rol. 199.

Wellock *versus* Hamond, Trin. 32 Eliz. Rot. 481.

(39) TRespass. The Case upon special Verdict was. Thomas Wellock Copyholder in Fee of Land of the nature of Borrough English, discendible to the puisne Son, and puisne Brother, had issue four Sons and a Daughter, and Surrenders the Land to the use of his Will, and deviseth the Land to his Wife for life, Remainder to J. his eldest Son, paying forty shillings to each of his Brothers, and to his Sister, within two years after the death of his Wife, and dieth; the Wife enters and dieth, J. enters and payeth not the Legacies within two years; but within five years he payeth them; William the youngest Son dieth without issue. J. surrenders the Land to the use of his Will, and deviseth them to his Wife, and dieth; the Wife enters and takes the Defendant to Husband. R. as puisne Brother and Heir enters, the Defendant ousts him, and he brings Trespass, and it was found, that the Land was worth four pound per annum. The question was, if the entry of R. was lawful. Godfrey and Coke for the Plaintiff: The first point; the Land being worth four pound

Co. 3. 20, 21. a.

per

per annum, and J. being to pay eight pound, what eſtate paſſeth by the Deviſe? And they argued, that an eſtate for life only paſſeth, for no eſtate is limited; and the conſideration is too little to make it a Fee-ſimple. And Godfrey cited a caſe in 10 Eliz. between Flatman and Clowton, That it was held by all the Juſtices, except Weſton accordingly; but when the conſideration is of the value of the Land, or near the value, it is otherwiſe. Second point, if the words paying be a Limitation or Condition, and they argued it was a Limitation and not a Condition; for if it be a Condition, it is void, and to no purpoſe, for it ſhall deſcend to him that is Heir to the Condition, and ſo is extinct, and no remedy to compel him to pay the forty ſhillings: And therefore the Law ſhall conſtrue it a Limitation of his eſtate, that it ſhall ceaſe, if he doth not pay it; and the Law ſhall tranſfer it to the Heir in Borrough Engliſh. And although the word ſound as a Condition, yet becauſe they being ſo conſtrued, would be void, they ſhall be expounded as a Limitation, and cited Crickmers caſe, which Vide ante, Mich. 31 & 32 Eliz. Placito 8. Shirley & Johnſon contra. It is a Fee-ſimple; for he payeth a conſideration for it, and the value is not material, and cited 29 Hen. 8. Br. Teſtaments 18. 6 Edw. 6. Br. Eſtates 78. 38 Edw. 3. 14. Secondly, The words are ſufficient and apt to make a Condition, 7 Edw. 6. Dyer 74. 3 Mar. 127. 18 Eliz. Dyer 348. And this can be no Limitation, becauſe the Lands are limited to other, if he pays not the money. And be it a Condition or Limitation, it is not found there was any demand of the money, and ſo no breach. Curia, it is a Fee, for the value is not material, and no Book ſpeaks of the value. Secondly, It is a Limitation, and not a Condition: For if it be Condition, it doth extinguiſh in the Heir, and no remedy for the money, but being a Limitation, the Law call conſtrue it, That upon the non-payment of the money his eſtate ſhall ceaſe, and then the Law ſhall carry it to the Heir by the cuſtom, without any Limitation over. And in a Deviſe it may well be, that an eſtate in Fee call ceaſe in one, and ſhall be transferred to another. Thirdly, The money was to be paid without requeſt, and it was adjudged for the Plaintiff. V. 3 Co. 20. b.

Poſt. 360. 454.

Ante 146.

Co. 6. 16. a. Poſt. 378.

3 Co. 21. a. Poſt. 378. Poſt. 376. 833.

Poſt. 359.

Scroggs *verſus* Griffin.

(40)

ASſumpſit. The Plaintiff declared, that whereas one Brown and another did run for a Wager of five pound, which B. did win; and upon communication of it, the Plaintiff did affirm, that there was diſceit and covin uſed in the ſaid Match; the Defendant ad-tunc & ibidem, in conſideration of twelve pence delivered to him by the Plaintiff, aſſumed, That if he could prove that there was diſceit in the running; that he upon requeſt would give him forty ſhillings. Upon Non Aſſumpſit pleaded, and found for the Plaintiff, it was alledged, That requeſt muſt be after the proof made. Curia contra: Proof ought always to be in the ſame Action, but when proof is referred to a particular perſon; and he can do no otherwiſe then he doth here, and the Action includes Proof and Requeſt, and the Plaintiff had Judgment.

Poſt. 237.

Bennet

Bennet *verſus* Shortwright, Trin. 30 Eliz. Rot. 774.

(41) PRohibition upon a Suit for Tithes of Corn, Wooll, and Calves, and for the Corn makes Suggeſtion, that they had uſed in the Pariſh, to pay the tenth Sheaf in ſatisfaction of all Tithes for Corn to the Parſon; and that he ſet them out, and the Parſon had them, and miniſtred this Plea in the Court Chriſtian, and they would not allow it; and it was held by the Court it was a good Suggeſtion: For if he ſet out the Tithes, and the Parſon would not take them, there is no reaſon he ſhould be charged again. And therefore Godfrey ſaid, he would take iſſue upon it, and it was held he might: For the Wooll, he made another Suggeſtion; for the Calves, he ſaid they uſed to pay within the ſaid Pariſh, &c. Two pence for the Milk of every Cow in ſatisfation of Calves: And the proofs were, that there was ſuch a uſage for all the Land, except five Farms; and for this cauſe it was held he had failed in his Preſcription, for it may be theſe Lands were parcel of the five Farms; but if it had been proved, that the Lands were not parcel, it had been otherwiſe: And for this cauſe a conſultation was granted.

Naſh *verſus* Molins.

(42) PRohibiton for ſuing for Tithes in Bocking Park in Eſſex, and ſurmiſed, That the Lands were parcel of the Poſſeſſions of the Priory of Chriſts Church in Canterbury; and that the ſaid Prior and his Predeceſſors had held it diſcharged of Tithes Tempore diſſolutionis, and pleaded the Statute of 31 Hen. 8. The Defendant pleads, that the Prior and his Predeceſſors did not hold them diſcharged; and upon this, iſſue was joyned, and being tried at Bar, it did appear upon the evidence, that the Prior or his Predeceſſors, time out of mind, &c. never paid Tithes. But no cauſe was ſhewn by unity of Poſſeſſion, real Compoſition, or other cauſe to ſhew it diſcharged. Coke ſaid it was no evidence; for it is a preſcription in non decimando. Curia contra: For a Spiritual Man may preſcribe in non decimando, and by the Statute of 31 H. 8. he ſhall hold it diſcharged as the Prior held it; and if he held it diſcharged non refert by what means; for it ſhall be intended by lawful means: And the Jury afterwards found for the Plaintiff.

Poſt. 216.

Tooley *verſus* Windham.

(43) ASſumpſit. For that there were controverſies between him and the Defendant, for the profits of certain Lands, which the Father of the Defendant had taken in his life time; and that he had purchaſed a Writ out of Chancery againſt the Defendant, to the intent to exhibit a Bill againſt him: Upon the return of the Writ, for the ſaid profits, the Defendant in conſideration he ſhould ſurceaſe his Suit, promiſed to him, That if he could prove that his Father had taken the profits; or had the poſſeſſion of the ſaid Land under the title of the Father of the Plaintiff; that he would pay him for the profits of the ſaid Land; and ſaid in facto, that he had proved, that the Father of the Defendant had taken the

the profits under the title of the Father of the Plaintiff; and upon Non Aſſumpſit, it was found for the Plaintiff. Coke, This is no conſideration; for the Suit in Chancery was unjuſt, and then the ſtaying of it is no good conſideration; and he ſheweth not how the Father of the Defendant did hold it, viz. by Leaſe or otherwiſe. Curia, It is no conſideration; for if the Father of the Defendant did take the profits, it is not reaſon his ſon ſhould anſwer for them: And ſo the Suit in Chancery unjuſt, and the ſtaying of it no good conſideration; but if the Suit had been for Evidences, or otherwiſe, the ſtaying of it had been a good conſideration; but here it is for a perſonal Tort; for which, neither the Executor or Heir are to anſwer. And Trin. 33 Eliz. it being moved again, all the Court held it no good conſideration; for he did not alledge, he was Heir or Executor, and ſo had no colour to charge him: And if it had been ſo alledged, yet no cauſe to charge him for a perſonal Tort: And it was adjudged for the Defendant. Poſt. 283.

Termino Michaelis, 32 & 33 Eliz. in Communi Banco.

Humphry Smalwood, Richard Cole, and Th. Sale, againſt the Biſhop of Coventry and Marſh. Intrat. Paſch. 32 Eliz. Rot. 2065.

(1) QUare Impedit brought by the Plaintiffs as Executors of John Sale for the Archdeaconry of Derby, which was abated, Trin. 31 Eliz. which vide antea, fol. Trin. 31 Placito 4. and was now revived. And three queſtions were now moved. 1. The Plaintiffs did count of a Grant of the next Avoidance made to their Teſtator, 23 Eliz. by the now Biſhop the Defendant, and made their title by it: If this Grant be a good Grant within the Statute of 1 Eliz. And if it be not good; if it be void againſt the Biſhop himſelf, or only voidable by the Succeſſor, and not by him that granted it. 2. If the Executors may maintain an Action for a diſturbance made to their Teſtator by the equity of the Statute of 4 Edw. 3. which giveth Action for goods taken in the time of the Teſtator. 3. The Biſhop Defendant pleads a Preſentment by himſelf, as Patron and Ordinary of Marſh, the other Defendant, and that he was inſtituted and inducted for ſix months before the Action brought; and ſo pleads Plenarty; if this were a Plenarty within the Statute of Weſt. 2. And after Argument by the Serjeants, the Juſtices reſolved for the Plaintiffs. Firſt, That this Grant was good againſt the Biſhop that granted it; for the Statute was not made for his benefit, but for the benefit of his Succeſſor, that he ſhall not be prejudiced by the act of his Succeſſor: But they held that a Grant of the Procheine Avoidance is within the Statute of 1 Eliz. and his Succeſſor may avoid it. Secondly, That this action was within the equity of the Statute of 4 Ed. 3 for it is a Chattel that ſhould go to the Executor, if the diſturbance had not been; and for a diſturbance in their own time, they ſhall recover damages to the uſe of the Teſtator; by the ſame reaſon for a diſturbance in the time of their Teſtator, they ſhall recover damages, by the equity of the Statute of 4 Ed. 3. Thirdly, They all held that this is not a Plenarty within the Statute of Weſt. 2. For it

2 Rol. 350. Ante 141. Co. Lit. 45. a. Co. Lit. 44. b. Ante 141. 4 E. 3. c. 7. 2 Rol. 350. 2 Inſt. 357.

must

muſt be Ex Præſentatione, non ex Collatione; and the Plaintiffs had Judgment.

Carter *verſus* Ringſtead, Hill. 32 Eliz. Rot. 120.

(2) TReſpaſs. Upon ſpecial Verdict the caſe was, J. Bury, 35 Hen. 8. was ſeiſed of divers Lands in Odyham, and of the Manor of Stapely in Odyham, and covenanted by Indenture to ſuffer a Recovery of all his Lands of Odyham, and of the Manor of Stapely, and of his Lands in W. and L. And that this Recovery ſhall be of all his Lands in Odyham, to the uſe of himſelf and his Wife for their lives, and after to divers other uſes; and for the Manor of of Stapely in Odyham, that the Recovery ſhall be to the uſe of himſelf, and of the heirs of his body, and after to other uſes: The Recovery was ſuffered accordingly. Bury dieth, and his Wife married Carter, and the queſtion was, if ſhe ſhall have all the Lands in
Co. 8. 118. b. Odyham, or all except the Manor of Stapely. And per Curiam, ſhe ſhall have nothing in the Manor of Stapely; for although by the firſt part of the Deed, ſhe is to have all the Lands in Odyham, yet this being by way of Declaration of his intent and meaning, it ſhall be ex-
Co. 1. 95. b. pounded as a Will, of which every part ſhall ſtand together if it may: And therefore it being expreſly ſhewn, that the Manor of Stapely ſhall be to other uſes, the Law ſhall expound it ſo, and ſhall not be carried to her by the firſt words in the Deed. And ſo the opinion of the Court was againſt the Plaintiff. 6 Co. 64. b.

Clavell *verſus* Mallory.

(3) AUdita querela, upon a Statute Staple acknowledged by one within age; and it was much queſtioned, if the Suit might be in this Court, or ought to be in Chancery, 16 Eliz. Dyer 322. And a preſident was ſhewn in 2 H. 5. that it lieth not here, but was to be in Chancery: But divers other preſidents were ſhewn, that Suits had been upon a Statute Staple in this Court; and it was therefore ruled, that it lieth here, for the Chancery hath no more Record of it, then this Court; for the Statute doth remain with the party, and the Preſidents in the Book of Entries are, that Suit had been here, and there is a Writ for it in the Regiſter; and therefore they reſolved, that a Suit might be upon it in this Court, and in the Queens Bench, as well as in Chancery. Another matter was moved, that in the Record the inſpection of the Infant is not mentioned, and he is now of full age; ſo he cannot
2 Cr. 59. be inſpected. But the Prothonotaries ſaid, that the entry is Quod venit in propria perſona, and prayeth an Inſpection, and the Court would adviſe of the proof of his age, and ſo is their common courſe; and accordingly a preſident was ſhewn, Trin. 2 Eliz. Rot. 194. But the Court ſeemed to doubt of it, and would adviſe.

Rook *verſus* Wilmot.

(4) DEbt upon a Recovery of Damages in the Exchequer; the Defendant pleaded, that a Fieri facias iſſued out of the Exchequer to levy the damages; and upon it he paid the money to

the

the Sheriff who was diſcharged of his Office before the return of the Writ, but the new Sheriff returned that he receit ſuch a Writ ſo indorſed, viz. fieri feci de bonis, &c. the ſum demanded (but the money was not brought into Court) and upon this the Plaintiff did demur. And it was adjudged for the Defendant, that the Plaintiff ſhould be barred, for he having once paid the money, it is not reaſon he ſhould be compelled to pay it again; and the Plaintiff is put to his remedy againſt the ancient Sheriff, if he will. V. Poſtea, Tr. 33 Eliz. Poſt. 238. 2 Cr. 73.

John Fabian *verſus* Winſton. Trin. 31 Eliz. Rot.

(5) TReſpaſs for Land in Uxbridge; the queſtion was upon the avoiding of a Leaſe upon condition for not payment of the Rent; the condition was that if he doth not pay the Rent at the Feaſts, in which, &c. or within twenty days after, that then, &c. and upon a ſpecial traverſe the Iſſue was, if the Plaintiff by Edm. Bedle demanded Seven pound and ten ſhillings of Rent due to him for half a year, the Twentieth day after the Feaſt, by the ſpace of half an hour before the Sun-ſet; and upon a ſpecial verdict it was found that the ſaid Ed. Bedle petiit ſeven pound and ten ſhillings, pro redditu dimidii Anni, Anglice for half a years Rent, præfato J. Fabian tunc debit' pro tenementis prædictis, and there remained demanding the Rent by the ſpace of a quarter of an hour, & non plus before the Sun-ſet, tanquam ad, and after the Sun-ſet; and that no other Rent was due but the half years Rent due at the Feaſt of the Annunciation before; and the queſtion was, if this verdict was found for the Plaintiff or Defendant. And all the Court held, as for the time, although it was not found to be half an hour, but a quarter of an hour, yet it was a good demand; for being demanded well enough for the time, it is not material although it be not preciſely according to the traverſe; but they all held this demand of the Rent (then due) is not good; for he ought preciſely to ſhew upon his demand what Rent he demands; for if it were due five years before, it was then due; and therefore he ought expreſly to ſhew what Rent, and for what time he demanded it; and although the Jury found that no other Rent was due, yet it is not material, for the requeſt muſt be certain; and it was adjudged for the Defendant. Ante 140. 157.

Giles Long *verſus* Heminge, Tr. 30 Rot. 2024.

(6) QUare impedit, for diſturbing him to preſent to the Church of Fromebellett, and declareth of an Advowſon appendant to the Manor of Fromebellett, by a Feoffment of the Manor by Tho. Long; the Defendant made title to it, and traverſeth, Abſque hoc, that Tho. Long enfeoffed him of the Manor, with the Advowſon appendant; and the Jury found a ſpecial Verdict, That the ſaid Tho. Long was ſeiſed in Fee of a Capital Meſſuage and Demeſne Land in Fromebellett, and of the ſervices of Fealty, and one penny Rent, by the hand of William Coyte, who was ſeiſed of certain Lands in Fee in Fr. and held them by the ſaid ſervices of the ſaid T. L. and that the ſaid Capital Meſſuage, Lands, and Services were known by the name of the Manor of Fr. and that the ſaid Advowſon had been always belonging to the ſaid Tenements

ſive manerio de Fr. and that 7 Eliz. the ſaid Tho. L. by parol without Deed gave the ſaid Meſſuage, and all the ſaid Tenements with the Advowſon to the Plaintiff, and made Livery accordingly, and afterward, 17 Eliz. the ſaid Tho. L. granted the Advowſon to the Defendant, and that 25 Eliz. Will. Coyte the Tenant did atturn to the Feoffment; and upon all this matter they prayed the diſcretion of the Court; and the Court reſolved for the Plaintiff; for they all agreed it was a good Manor, though all the Tenants but one are diſmembred from it; and when the Atturnment came he had then the entire Manor; and they ſaid that an Advowſon is properly appendant to the demeſnes, and not to the ſervices; and by the livery of the demeſnes, the Advowſon paſſed, and had paſſed, although there had been no Atturnment; and it was adjudged for the Plaintiff.

Ante 39.

Biſhop *verſus* Harecourt, Trin. 32 Eliz. Rot. 511.

(6)
Co. 5. 37. a.

ASſumpſit: And declared that in conſideration of, &c. the Defendant did aſſume ad deliberandum quandam Indenturam ante finem Termini Sanctæ Trinitatis tum proxim' ſequent. and the promiſe was, 5. Junii, the Plaintiff alledgeth that Trinity Term incepit 7. die Junii, & finivit 26. die Junii; and that he had not delivered, &c. upon non Aſſumpſit, it was found for the Plaintiff. And it was moved in arreſt of Judgment, that the Court ex officio is to take notice of the beginning of the Term, and that was the Eſſoine day which was 3. Junii, and then the Indenture was not to be delivered till Trinity Term was a Twelvemonth; and of that opinion was Anderſon; for the Eſſoin day is the firſt day of the Term, and ſo taken in all Pleas and Returns; the Three other Juſtices contra, for the Plaintiff had expreſly alledged, that the Term began the 7. Junii, and the Defendant had not denied it; and the Court ex officio, are not to ſearch the Rolls of the Court, &c. but admitting they ought ſo to do, and although in Law the Eſſoin day is the firſt day of the Term, and Writs may be returned then, yet in common ſpeech that is the firſt day when the Court ſits: and Anderſon againſt his own opinion gave Judgment for the Plaintiff.

2 Cr. 548.
1 Cr. 53.
1 Rol. 525.

Termino

Termino Hillarii,

Triceſſimo tertio ELIZABETHÆ,

in Banco Reginæ.

William Parſons, *alias* Frowde, *verſus* Chriſtopher Parſons *alias* Frowde, Int. Tr. 32 Eliz. Rot.

DEbt upon an Obligation of Five hundred pound, the Condition was to ſtand to an Arbitrement. The Arbitrators amongſt other Articles did arbitrate that the Defendant ſhould enjoy a Houſe called Bennets houſe, of which the Plaintiff was Leſſee for years during the Term, paying to the Plaintiff yearly twenty ſhillings; and for not payment of this twenty ſhillings Action was brought, the Defendant pleaded payment, and iſſue joyned and found againſt him; and it was alledged in Arreſt of Judgment that this was a condition annexed to the award, and by not payment of it his Eſtate ſhould ceaſe; and not ſuch part of the award, that for the not payment of it Debt ſhould be upon the Obligation. But the Court held clearly that this was part of the award, and for not payment of it Debt might be brought upon the Obligation; and ſo was the intent of the Arbitrators. Another exception was, that the replication was & prædictus Willielmus Parſons, and ſaith not alias Frowde, ſo part of his name is omitted, and he is not intended the ſame perſon that was named before. But the Court held it not material, for it being & prædictus Willielmus; that which cometh afterwards is not material; and it cannot be intended another perſon; and if it be, it ſhall be amended; and it was adjudged for the Plaintiff. Nota, Mich. 18 & 19 Eliz. inter Treſſam & Robins accordingly adjudged for the firſt point. (1)

Robert Limmer *verſus* William Every.

ERror, The Error aſſigned was, that the ſaid W. E. had brought a Debt upon an Obligation by the name of W. E. Adminiſtrator, bonorum & cattallor. A. E. durante minore ætate of J. E. Executor of the ſaid A. E. Executor of R. Every, and demands a Debt upon an (2)

Obligation of Twenty nine pound made to the ſaid R. E. the firſt
Hob. 246. Teſtator, whereas he could not bring an Action by this name, but as Adminiſtrator of R. E. But it was ſaid that Adminiſtration of the Goods of R. E. being committed to him by this name, Omnium bonorum, &c. A. E. it may well be committed to him by this name; eſpecially when A. E. did not die inteſtate, but made an Executor. 10 Ed. 4. 1. that by the grant of Adminiſtration of the goods of the Executor, Adminiſtration is by it granted of all the goods of the firſt Teſtator. 27 H. 8. 7. Curia contra, clearly, for by this Adminiſtration committed he hath no authority to meddle with the goods of the firſt Teſtator; and for this cauſe the Judgment was reverſed.

Minge *verſus* Earle, Paſch. 32. Rot. 208. vel 408.

(3) DEbt upon an Obligation; the condition was, that whereas
Poſt. 267. the Defendant had ſold certain Woods to the Plaintiff, growing upon certain Land called Spalding in Peaſemarch in the County of Suſſex, if the Plaintiff may enjoy it, &c. and if the ground whereupon the Wood ſtandeth be four miles from Rie, that then, &c. the Defendant pleaded that the Plaintiff may enjoy it, and this Land by the neareſt and uſual high-way for carriages is four thouſand paces, reckoning five foot to every pace, from Rie, Upon which Plea the Plaintiff demurred. Cooper Serjeant argued that the Plea was not good, for he doth not anſwer to the Condition, which is four miles, alſo for the miles it is mentioned in divers Statutes, 2 H. 4. 23. 1 Eliz. 15. 23 Eliz. 5. but in Statutes it ſhall be taken according to the intention of them, and this is according to the uſual ways, and not as a Bird or Arrow may flie; but in Bonds no ſuch intent appeareth, and therefore it ſhall be according to the account of the Country, and common reputation; and he anſwereth not to the miles, but to the paces. Towſe contra, We have pleaded ſo, becauſe we will not put it upon the Country, but upon the Law; for it is perilous to put it upon the Country when it is a doubt how it ſhall be conſtrued. Gawdy and Wray conceived, that to the exceptions to the pleading it was well enough; for if One thouſand paces make a mile, it is good, which tant' amount that it is four miles; but the doubt is, how the miles ſhall be conſtrued; for Wray ſaid, in the Caſe of Cambridge, it was held that a mile ſhall be certain, and accounted by the moſt near way, and ſhall not be taken as a Bird ſhall fly.

Foſter & Wilſon *verſus* Mapes, Trin. 32 Eliz. Rot. 71.

(4) COvenant upon an Indenture; the Defendant pleads non eſt factum,
Hob. 35. and the Jury found that this Deed indented was made between the Plaintiff and the Defendant, and that the Defendant did ſeal his part, and delivered it to the Plaintiffs, but they did not deliver their part, &c. and if, &c. And the Court without argument held clearly, that it was a good Deed to charge the Defendant. And Fenner ſaid it hath been adjudged, that if a man bargains

bargains and ſells his Land by Indenture, and the Bargainor doth deliver his part of the ſaid Indenture, and the other never delivereth his Counterpart, yet it is good; and for this point they reſolved to give Judgment for the Plaintiff. But afterward Hobart moved in arreſt of Judgment, that a ſufficient breach was not aſſigned; for the Covenant is, that whereas he had let to the Plaintiffs the Parſonage of B. that he would ſave them harmleſs, concerning it, againſt M. Blunt; and they alledge that M. B. entred upon them, and put them out; and that he was Parſon at the time of the entry, which is not ſufficiently alledged, for it is not averred that the entry of M. B. was lawful; and if his entry was not lawful, it is no breach of Covenant, for it is intended of a lawful interruption. Curia contra, for when the Covenant is to ſave them harmleſs againſt a perſon certain, he ought to defend him againſt the entry of that perſon, be it by droit or tort, for he is damnified if he be diſturbed, though by wrong, as 2 Ed. 4. 18. but if the Covenant had been to ſave him harmleſs againſt all perſons, there it ſhall be taken for a lawful entry or eviction; and the words to ſave harmleſs amounts to more then a Warranty, for that is for lawful titles; but here it is to be intended that M. B. had good title, for it is alledged that he is Parſon, and this is of the Rectory; and that he entred and let it; by which it ſhall be intended he had Intereſt; and it was adjudged for the Plaintiff. Hob. 35. 1 Rol. 430. Poſt. 675.

Truſſel's Caſe.

HE was removed out of London by Habeas corpus; and it was returned upon the Writ, that he was detained there for one Execution, and for divers other Actions at the ſuit of divers perſons, and it was moved to the Court that he ſhould be diſcharged of all the Actions, and of the Execution, for he is a perſon attainted of Felony, and had neither Lands or Goods to ſatisfie them, and his Body is not his own, but at the Queens pleaſure; and all the Juſtices held that as to the Actions he ſhould be diſcharged, for a perſon attainted ſhall not be put to anſwer, nor ſhall be put in Execution, and ſo are all the Books; but they ſaid they had ſpoken with the Juſtices of the Common Bench, and Barons of the Exchequer, who in both Courts had adjudged the contrary, and upon the very matter in Law, and not upon the form of pleading, but they would diſcharge their conſciences as they had; for they found no Book againſt their opinion, wherefore they all reſolved he ſhould be diſcharged of the Actions, but for the Execution they would adviſe, for then peradventure the party ſhould loſe it for ever. But Egerton Sollicitor who moved it, ſaid, when he is let at liberty by the Act of the Court, this doth not diſcharge him of the Execution for ever; and ſo it had been taken in this Court. And afterwards, Paſch. 33 Eliz. it was moved again, that he being attained of Felony was let go at large, but not pardoned of the Felony, and being at large was arreſted at the Suit of Ognell, by a Writ of Execution upon a Statute out of Chancery; and afterwards he removed himſelf by a Habeas corpus into the Queens Bench, and removed the Record of his attainder, and brought a Scire facias againſt Ognell, comprehending all this matter, (5) Poſt. 516. 7.

Ognell

Ognel appeared, and proteſtando, he was not the ſame perſon who was attainted, for Plea ſaid that he was at large, and out of priſon when he was arreſted upon the Writ of Execution; and upon this it was demurred; and afterwards Trin. 33. they all reſolved that he ſhall be diſcharged of the Execution, upon the Statute; for being a perſon attainted of Felony, the Queen hath Intereſt in his body, ſo he cannot be taken in Execution for Debt, wherefore they did diſcharge him of it.

Ante 164. Poſt. 516.

Andrews Caſe of Grayes Inn.

(6) GAwdy and Fenner Juſtices were of opinion, that upon a Leaſe for years by Indenture, by demiſit, & ad firmam tradidit, that a Covenant lieth againſt the Leſſor if he enters; but if a ſtranger enters, it lieth not without an expreſs warranty; for if in a Covenant againſt the Leſſor, upon theſe words he ſhall recover the Term it ſelf, 32 H. 6. 32. 9 Eliz. Dyer 258.

Poſt. 674.

Auſtin *verſus* White.

(7) ACtion for theſe words, Thou wert laid of the French Pox, adjudged Actionable. And Fenner ſaid it was adjudged in this Court, that for theſe words, Thou wert laid of the Pox, Action did lie, for it cannot be intended but of the French Pox.

Ante 2. 2 Cr. 144. 430. Poſt. 289.

Peake *verſus* Pollard.

(8) ACtion for theſe words, Thou art a mutinous and ſeditious man, and didſt procure the Queens Subjects to Sedition. Gawdy, the words are not actionable, for it is not ſaid, he moved them to Sedition againſt the Queen; and to this opinion the other Juſtices did incline, but this was only upon motion.

2 Rol. 99.

Lacy *verſus* Reynolds.

(9) ACtion for words, which were, He is as very a Thief as any is in Warwick Gaol, and avers that J. S. was then a Priſoner in Warwick Gaol, condemned for Horſe-ſtealing, and it was clearly held that for theſe words Action did lie, with this averment, but not otherwiſe; but after verdict this matter was alledged in Arreſt of Judgment, that the Defendant did plead the Bar, quod quidam ignotus came to Warwick, and there cut the purſe of J. N. and the Plaintiff ſciens this, him did receive and comfort, and by reaſon of it, ſpoke the words; the Plaintiff replied de injuria ſua propria, and upon this Iſſue was joyned, and found for the Plaintiff. And it was alledged that the Iſſue is ill joyned, for this matter doth not prove the Plaintiff a Thief, although it doth prove him a Felon; and ſo held the Court that the Iſſue was not well joyned, but they conceived that in as much as he had by this confeſſed the words, although the Iſſue is mis-joyned, and a mis-trial, yet this is as void, and the Court ſhall

2 Cr. 687. Poſt. 308.

ſhall give Judgment upon his confeſſion; and the Plaintiff ſhall not have his damages tared by the Court, but ſhall have a new writ to enquire of damages; and it was ſo adjudged. V.22 Ed.4.46.

Damport *verſus* Thatcher, v. antea, Mich. 31 & 32 pl.6. Inter Mich. 32 & 33 Eliz. Rot. 519.

ERror of a Judgment given in the Common Bench. 1. Error becauſe, as it appeareth before, the Record between them was removed into the Queens Bench by a Writ of Error; and then the Judgment in the Scire facias was reverſed, as to the Sureties, and no Judgment was given againſt the Plaintiff, whereupon the Plaintiff went into the Common Bench, and ſhewed this matter to the Court, and prayed his Judgment might be entred, and ſo it was, and Judgment given, and entred upon Record which there remains; and this matter was aſſigned for Error; for they had no Authority to give Judgment; for the Record was removed from thence, before the Writ of Error brought, ſo they had no Record before them to give Judgment. Gawdy, the Writ of Error was to remove the Record, ſi judicium inde redditum ſit; ſo when no Judgment was given, the Record was not removed, but always remains with them, ſo that notwithſtanding they might give Judgment upon it, 9 H. 6. 4. 4 Eliz. Dy. 206. and by this ſecond Writ of Error brought, it is affirmed that the firſt Record doth remain with them; and of this opinion were the other Juſtices. 2. Error, for that the Writ was brought againſt an Adminiſtrator, and ſaith not that the Inteſtate obiit inteſtatus; ſed non allocatur, for ſo is the uſual form, 9 H. 5. 6.3. Becauſe it appeareth there was no habeas corpus or deſtringas, whereas the trial was by verdict, for this was certified upon a Writ of Certiorari awarded: but it was held that this is aided by the Statute of Jeofails, 18 Eliz. that after verdict Judgment ſhall not be reverſed for want of a Writ original or judicial; but they all held if there never was a Habeas corpus or Diſtringas awarded, this ſhall not be aided by the Statute; for then they had no Authority to take the Jury; and they could not know if they were the Jurors returned upon the firſt Writ; but it ſhall be here intended there were ſuch Writs, for the Jury was taken; and it cannot be intended that they would or could call them without ſuch a Writ; and upon this preſumption it ſhall be intended there were ſuch Writs, but that they are embeſilled; and this is directly aided by the Statute; and the Judgment was affirmed; but the Judgment in the Scire facias ſtood reverſed as before.

(10) Ante 145. Ante 145. Poſt. 259.

Crews

Crews *verſus* Bayles, Tr. 32 Rot. 149.

(11) ERror to reverſe an Outlary after Judgment in a Bill of priviledge; and becauſe no proceſs of Outlary was awardable, for Capias did not lie in the Original, it was held a manifeſt Error, and the Outlary reverſed.

Meade *verſus* Cheyney.

(12) THe Plaintiff recovered againſt the Defendant as Executor of Skipwith; and upon a fieri facias a devaſtavit was returned; and upon this he prayed an Elegit, & habuit de terris executoris.

2 Leon. 188. Mo. 299. Poſt. 318. 530.

Wickham Biſhop of Lincoln againſt Cooper.

(13) PRohibition for ſuing for Tithes, and made ſuggeſtion that he and all his Predeceſſors, &c. were ſeiſed of the Manor of which the Tithes were demanded, diſcharged of Tithes during the time that it was in their poſſeſſion; and ſhewed that in the time of Ed. 6. this Manor was conveyed to the Duke of Somerſet, and was afterwards regranted and came to the Biſhoprick again. And Fleming moved for a conſultation; for it was a preſcription in non decimando, which cannot be: and upon his own ſhewing the preſcription was interrupted, and cannot be revived. Curia contra; for the preſcription for a ſpiritual perſon is good; and the Biſhops of Canterbury and Wincheſter uſe to preſcribe ſo; and the preſcription is not determined when it came to the Biſhoprick again; for tithe is not a thing iſſuing out of Land; and unity of poſſeſſion doth not extinct them, nor a Releaſe of all the right to the Land.

Ante 206.

Harvy *verſus* Thomas, Int. Mich. 31 & 32 Rot. 414.

(14) THe Caſe was; Harriſon and his Wife ſold the Land of the Feme by deed indented, but it was not enrolled within the ſix months; and afterwards the Baron alone makes a Leaſe by parol, and then the Baron and Feme levy a Fine to the Bargainee, and die; the queſtion was, if the Conuſee of a Fine ſhall avoid this Leaſe. And it was adjudged he ſhould; for being made by the Baron only, it was void againſt the Feme, and no acceptance could make it good; and as it ſhall be void to the Feme, ſo to the Conuſee; ſo of a Rent charge granted by the Baron, or a Recogniſance by him. And ſo it was reſolved in the Lord Mountjoys Caſe. 24 Eliz. that the Recogniſance of the Baron ſhall not bind the Conuſee of a Fine, and the Conuſee is in by the Feme, and the Baron joyneth only for conformity. V. 2 C. 77. b.

Co. 2. 77. b.

1 Rol. 389.

Ante 130.

Green *verſus* Edwards, Trin. 32. Rot. 1832.

(15) THe Caſe upon Demurrer was, Land was let to J. S. for ninety years if he liveth ſo long: and if he dieth within the Term, that then his Wife ſhall have it, durante toto reſiduo termini prædicti. J. S.

2 And. 258. 1 Leon. 218. Moor 297. Co. 1. 153. b.

J. S. dieth within the term, the queſtion was if his Wife ſhall have it during the reſidue of the term; and P. 33 Eliz. it was reſolved by all the Juſtices, that ſhe ſhall not; for the term was wholly determined, and the limitation to her was void; for as a remainder it cannot inure, for a remainder muſt be created with the particular eſtate, and is to be limited for a certain eſtate, viz. for years, life, in Fee, &c. and here no certain eſtate is limited to her; for although it is limited to her during the reſidue of the term, and ſo ſhall be intended a Leaſe for years; yet foraſmuch as every Leaſe for years is to have a certain commencement and ending, here it is uncertain if ſhe ſhall ever have it, for J. S. may out-live the ninety years, and therefore a Termor cannot grant his term after his death, and ſo the remainder here is void. But Anderſon ſaid, if the Wife had been party to the Deed, this peradventure might have been good to her, not by way of remainder, but by immediate grant and demiſe for ſo many years which ſhould be to come; and durante termino, ſhall not be taken for the intereſt but for the time, which Walmſly and Windham did expreſly deny, for they held it is at firſt void for the incertainty when it ſhall commence, or whether it ſhall commence; and it was adjudged that the Wife took nothing. V. 1 Co. 155. Co. 1. 155. a. Ante 9.

Vautry *verſus* Aplen.

REplevin: Defendant juſtifies as ſervant to J. S. as in his Freehold, the Plaintiff conveyeth by a Leaſe for years, from the Queen by her Letters Patents, but ſaith not Curiæ hic prolat. and traverſeth the Freehold of J. S. and upon this the Defendant demurreth generally, for want of theſe words, Curiæ hic prolat. and doth not ſhew it for cauſe; and if it were matter of ſubſtance or of form, and ſo amendable by the Statute of 27 Eliz. was well debated. And Periam and Walmſly at firſt conceived that it was matter of ſubſtance; for by this manner of pleading, the Defendant loſt the advantage to demand Oyer of the patents, for without ſaying (hic in curia prolat.) he cannot demand Oyer; and if there be variance between them and the pleading, he may pray that they be entred in hæc verba, of which now he hath loſt the advantage; but afterwards P. 33 Eliz. it was held by all the Juſtices (except Walmſly) that it was but matter of form and not much material, for it was but an inducement to the travers and ſo not traverſable, and it may be amended; and they ſaid, if the Defendant maketh no defence, and that there wants an averment to the Plea, theſe may be amended, and ſhall be inſerted, for the truth of the matter appeareth; and in this caſe the Letters Patents are not iſſuable: but Periam ſaid, if ſuch Plea had been in an Avowry when it was iſſuable, it ſhould be otherwiſe; and it was adjudged accordingly for the Plaintiff. (2) Co. 10. 88. a. Ante 153. Co. 10. 98. b.

Richmond *verſus* Butcher, Hill. 33 Eliz. Rot. 315.

REplevin. Upon demurrer the caſe was; John Colvell was ſeiſed in Fee, and let the Land for twenty one years rendring twenty ſhilling Rent during the term, to him, his Executors and Aſſignees, and dieth, the Defendant as ſervant to his heir for Rent behind after the death of the Leſſor, diſtraineth; and after argument it was adjudged that the heir ſhall not have the Rent, for it being (2) 2 Rol. 450. 1 And. 361. Co. 12. 56. R. 635. R. 613. 33. 1 Cr. 290. Co. Lit. 47. a. Jones 309.

being reſerved to the Leſſor, his Executors and Aſſigns, and the Heir being none of them, he cannot have it, 27 H. 8. 15. 21 H. 7. 25. 10 Ed. 4. 18. 11 Ed. 3. 86. Nota, they relied upon a Book ſhewn to them
R. 613. 634. in writing in 12 Ed. 2. where it was ſo adjudged.

Foſter *verſus* Fountain.

(4) EJectione firmæ: It was held upon evidence by the Court, that if a Fine be levied, and an Indenture to lead the uſe of it, be ſealed and delivered afterwards, this is not ſufficient to lead the
Co. 9. 10. b. uſe of the Fine, except it be averred and proved that the Conuſor intended before the Fine levied, to levy it to this uſe: Quære.

Bind *verſus* Plain.

(5) THe Plaintiff counts that whereas he recovered againſt Tho.
Poſt. 301. Ward in the Queens Court in Southwark, held before the Steward of the Mayor of London, twelve pound, and had a fieri facias to the Bailiff there to make execution of the goods of the ſaid Thomas Ward which were in his hands: and whereas the Baily was ready to do execution of the ſaid goods, the Defendant did aſſume to the Plaintiff, in conſideration that he 11. of September delivered to him the ſaid goods, that he would within fourteen days after Michaelmas pay to him twenty Marks, or otherwiſe deliver to him the ſaid goods again, if in the mean time no other made title to them, and proved them to be his goods; and averred that none made title to them between the 11. of Sept. and fourteen days after Mich. the Defendant pleads non aſſumpſit; the Jury find the recovery and the aſſumpſit, but find further that the ſaid T. W. long time before the recovery had ſold the goods to R. W. but with this proviſo, that he ſhall have the poſſeſſion of them for four years, which are not yet expired; and if he then pay ſuch a ſum of money, the ſale ſhould be void, and that R. W. made title to them by force of this ſale, Et ſi, &c. Cooper Serjeant alledged that the Declaration was not good. 1. Becauſe it was not ſhewn by what title the Court of S. was held. 2. That the Baily was ready to make execution, but ſheweth not where the goods were; but theſe exceptions were over-ruled not to be material, for they are but the inducement and conveyance to the Action. 3. There was neither time nor place of requeſt alledged, but only ſæpius requiſitus; Sed non allocatur, for it is to be paid at a day certain, and no requeſt needful; otherwiſe, if requeſt ought to have been made. 4. That upon the matter found judgment ought to be for the Defendant; for it is found the Plaintiff had only a ſpecial property, and the vendee the general property, and ſo no cauſe of the re-delivery, and ſo no cauſe of the conſideration, and it is found the Vendee had title; ſo it is ſufficiently proved a ſtranger had title; but Paſ. 33 Eliz. the Court reſolved for the Plaintiff, for they held that the Plaintiff having poſſeſſion of the goods quomodocunque he came to them, he is chargeable to Th. W. for them, although he hath but a ſpecial property, and he may maintain an Action for
Poſt. 884. them; ſo his delivery of the goods is a ſufficient conſideration; for by this the Defendant had the benefit of the uſe of them, and the Plaintiff hath loſs, for he is chargeable to the Action of T. W. and eſpecially the conſideration is good, being only for the re-delivery

of

of them, or payment of such a sum. And although he recited that he had these goods liable to the execution, which is not true, for T.W. having only a special property, they are not liable to this Debt, yet this is but a naked and void recital, and all the substance of the Declaration is upon the delivery of them; and this being found, it was a good Assumpsit, and it was adjudged for the Plaintiff. Error brought and Judgment affirmed, Pasch. 35. placito 16. B.R.

Mulgrave *versus* Ogden.

(6) ACtion sur trover of twenty Barrels of Butter, and counts that he tam negligenter custodivit, that they became of little value, and upon this it was demurred, and held by all the Justices, that no Action upon the Case lieth in this case; for no law compelleth him that finds a thing to keep it safely; as if a man finds a garment, and suffers it to be moatheaten; or if one find a Horse, and giveth it no sustenance; but if a man find a thing and useth it, he is answerable, for it is conversion; so if he of purpose misuseth it; as if one finds paper and puts it into the water, &c. but for negligent keeping no law punisheth him, Et adjournatur.

Agnes Jennings *versus* Gower.

(7) DEbt as Executrix: The case was, the Testator of the Plaintiff deviseth a term to J. Watts, and deviseth that if Agnes his Wife suffers the Devisee to enjoy it three years, that she shall have all his goods as Executrix; but if she doth disturb him, then he makes G. J. his son his Executor and dieth; Agnes as Executrix brings the Action within three years. Anderson at first conceived that the Action could not be brought within the three years, for this is a condition precedent, so that until the performance of it, she shall not be Executrix; but the other Justices held she was Executrix presently; for although in grants, estates shall not be till the condition precedent be performed, yet it is otherwise in a Will, for a Will shall be guided by the intent of the party; and this shall not be construed as a condition precedent, but as a condition to abridge her power to be Executrix if she perform it not; for so by Periam the intent appeareth here by the words subsequent, viz. if she disturbe, that then G. J. to be Executor, which doth prove that in the mean time he intended she should be Executrix, and afterwards P. 33 Eliz. it was adjudged for the Plaintiff that she was Executrix until she disturbed, and that the plea of the Defendant, viz. that she had made disturbance, was not good, without alledging in particular how she disturbed. Post. 914. Co. 8. 91. a.

Smy *versus* June & Alios.

(8) EJectione firmæ: The Case upon special Verdict was, Sir Tho. Cotton was seised of the Land in question in Fee, and conveyeth it to the use of himself for life, remainder to Cheny Cotton his eldest Son in tail, remainder to William his second Son, & primogenito filio prædicti Willielmi & hæredibus masculis dict' primogeniti filii dict' Will. & pro defectu talis exitus, remanere inde hæredibus masculis dict' Willielmi; and of Sir Tho. Cotton, with divers remainders over. Cheyny Cotton dieth with- 2 Inst. 519.

without iſſue; and after William the ſecond ſon had iſſue, W. his eldeſt ſon, and goeth beyond Sea; Sir Th. C. 29 Eliz. levieth a fine of this Land, which was to the uſe of himſelf for life, and after to the uſe of Ro. Cotton his third ſon in tail, with divers remainders over; and afterwards 21 Eliz. William the ſecond ſon dieth beyond Sea, Will. his ſon and heir being then and now within age; Sir Tho. Cotton dieth 27 Eliz & 31 Eliz. W. enters being within age, and lets it to the Defendant, reſerving no Rent, but at will only; Robert Cotton enters and lets it to the Plaintiff, upon which the Defendants re-enter, & ſi, &c. And it was argued by Drew and Glanvile Serjeants for the Defendants, and by Beaumont and Hamon for the Plaintiff. 1. Matter, if W. the ſecond ſon had an eſtate tail by the limitation to him and his firſt ſon, and to the heirs males of the body of his firſt ſon, for he then had no ſon; ſo it is void to the firſt ſon, if it ſhall veſt in W. by the intent of the Donor. 2. Admit he hath not an eſtate tail by this limitation (as it was after agreed by all the Juſtices that he had not) if by the remainder after limited to the heirs males of the body of W. and of Sir Th. C. they have joynt or ſeveral eſtates tail; and as to that, it was clearly agreed that they have ſeveral eſtates tail and not joint, ſo that clearly the fine of Sir T. was good to bar W. of one moiety, for he was Tenant in tail of it. 3. Matter upon the Statute of 4 H. 7. if the Fine being levied W. the ſon being beyond Sea, if his heir ſhall have five years after his death; for the Statute is, he ſhall have five years after his return; and in this caſe he never returns, and ſo is out of the words, and the proviſo ſhall not be taken by equity. But all the Juſtices to this reſolved to the contrary, for the intent of the Statute ſhall be obſerved; as the Statute ſpeaks, that an infant ſhall make his claim within five years after his age, yet if he claimeth within his age, it is good, yet it is out of the words. 4. Matter, if Tenant for life levy a Fine, and he in the reverſion or remainder doth not make his claim within five years after the Fine levied, after the Tenant for life dieth, if he ſhall have new five years after his death. And all the Juſtices held he ſhould, for this is as another title accrued to him, and it may be he had no conuſans of the forfeiture; and if he had, it is at his election if he will take advantage of it; and ſo Zomes caſe was cited to be adjudged 7 Eliz. 5. Matter, that yet the Plaintiff ſhall recover, for the title of the Defendants, was void, for they claim by Leaſe at will of an Infant where no rent was reſerved, and ſo void. Curia, although they have no title, yet it appeareth the Plaintiff had no title to a moiety, and then he could not puniſh the Defendants for his moiety in this Action where he muſt make title; otherwiſe perhaps in treſpaſs: and for the other moiety, he ſhall not have an Action without an expreſs Ouſter, which is not found; wherefore it was adjudged for the Defendants. V. Co. 2. Inſtitutes 519.

Co. 9. 105. b. Poſt. 254.

1 Cr. 157.

Termino Hillarii, 33 Eliz. in Scaccario.

(10) 1 And. 303. Poph 25. 53. Moor 291. 1 Rol. 475. 2 Rol. 184. 215. 2 Leon. 134.

Sir Moyle Finch *verſus* Throckmorton, Int. Hill. 32 Rot.

THe Caſe upon demurrer was; King Philip and Queen Mary 1 & 2 Ph. & Mary, Demiſed the Site of the Priory of Raveſton in the County of Buck. to Th. Throckmorton for ſeventy years rendring rent at

at the Feaſts of the Annunciation and Saint Michael, with a proviſo that upon non-payment within forty days after the Feaſts, the Leaſe ſhould ceaſe and be void: 9 Eliz. the rent was not paid at Mich. nor within forty days after, but afterward the Queens Receiver received it, and maketh an Acquittance as if it had been paid at the day, and receiveth the rent afterwards every year till 30 Eliz. and makes acquittances of it: 30 Eliz. the Queen grants this Land in Fee to Sir Tho. Hennage, and afterward an Office was found, which found the non-payment 9 Eliz. upon which Sir Th. Henneage entred, and let it to the Plaintiff, &c. 1. Queſtion, if the Leaſe was void or not without Office. 2. If the acquittance could make it good. 3. Admit there muſt be an Office, if after the Patent it cometh time enough for the Patentee to avoid it. And this was divers times argued at the Bar, and afterwards by the Barons, and all the Barons agreed for the Plaintiff; and this Leaſe was void immediately upon the non-payment; for the words are that upon non-payment the Leaſe ſhall ceaſe and be void, ſo that the Land is diſcharged of this contract of the term, and the Patentee is no longer a termor, nor (as Manwood ſaid) a Tenant at will, nor at ſufferance, but only as a Bailiff or Perſon of the profits de ſon tort, and then all the acceptance after cannot make a void Leaſe good; and the office is only neceſſary to inform the Queen when the condition was broken, to entitle her to all the mean profits, and to reduce the poſſeſſion, if the eſtate had continued out of the Queen; but as this caſe is only to entitle her to the mean profits, and being found only for this purpoſe it is well enough for the time, notwithſtanding the Patent of the Inheritance, for they held that the firſt eſtate ended as by limitation, and in ſuch caſe no office is needful to entitle the Queens; alſo it ends by the limitation in the firſt Letters Patents which are a Record, ſo the Record which doth create it doth deſtroy it, and the Patentee might enter as in Land of which there was no Leaſe; and it was adjudged for the Plaintiff. Nota, a Writ of Error was brought in the Exchequer-Chamber, and Error aſſigned in the matter of Law, and after argument Mich. 36 & 37 Eliz. the judgment was affirmed.

1 Cr. 100. 173.
2 Cr. 56. b.
Ante 167.
2 Cr. 344.
Co. 3. 64. b.
2 Rol. 215.
Co. 10. 114. b.
Co. Lit. 215. a.
Co. 5. 52. a.
Poſt. 855.
2 Co. 344.

Termino

Termino Paſchæ,

Triceſſimo tertio ELIZABETHÆ,

in Banco Reginæ.

Fermor *verſus* Dorrington.

(1) ACtion for words, which were, I will prove Fermor to be a perjured Knave; after Verdict it was alledged in Arreſt of Judgment that the words are not actionable, for he doth not ſay he was perjured, but that he would prove him perjured; for it may be, that if he doth any act after, that he may be convinced of it; but all the Court held that the Action lay, and the words cannot have ſuch conſtruction. Another matter was alledged, that in the Venire fac. and Diſtringas, one Taverner was named one of the Jurors, but in the return of the Diſtringas in lieu of Taverner one Turnor was returned, and was ſworn and tried the matter, ſo it is a miſ-trial being tried by one that was not returned in the Venire fac. and Coke cited a preſident in this Court between Dousby and Willot, where a Juror was returned by the name of Gregory Willot, and in the Diſtringas he was named George W. and he with others paſſed upon the Inqueſt, and for this cauſe the judgment was ſtaid: and another preſident in the Exchequer, where one Mizael was returned upon the Venire fac. and upon the Diſtringas one Michael, and both theſe were returned for ſirnames; and becauſe Michael was ſworn, &c. the judgment was ſtaied, and ſo it ſeemed to the Court; but they at firſt doubted if the variance in the ſirname be a cauſe to ſtay judgment, but for variance in the Chriſtian name, they agreed clearly the judgment ſhall be ſtaid, but one may have two ſirnames; but afterwards it was reſolved the judgment ſhould be ſtaid.

Poſt. 730.

2 Cr. 214.

Co. 5. 42. 3. Poſt. 258.

Poſt. 256.

Ante 57.

Taylor againſt Beal.

(2) DEbt for Rent reſerved upon a Leaſe for years: the iſſue being joyned if the Rent were paid or not, the Defendant gave in evidence for part of the Rent, that the Plaintiff by Covenant was to repair the Houſe and did not, and that thereupon he expended part of the Rent in repairing the Houſe; and the queſtion was if this evidence will maintain the iſſue: Gawdy conceived it did, for the Law giveth this liberty to the Leſſee to expend the Rent in reparations, for he ſhall be otherwiſe at great miſchief, for the Houſe may fall upon his head before it be repaired, and therefore the Law alloweth him to repair it, and recoupe the Rent,

Rent. V. 12 H. 8. 1. 11 Ri. 2. Barr. 242. 14 H. 4. 27. Fenner, it is no evidence; for if the Leſſor will not repair it, he is to have his covenants againſt him. Clench ſeemed he might well expend the Rent in reparations, but he ought to have pleaded it, and cannot give it in evidence upon the general iſſue; and they thereupon moved the Jury to find the ſpecial matter; and as to the reſidue of the Rent, he ſhewed that he paid it to others that had Rents charge out of the Lands, which the Leſſor had covenanted to pay, and that by the commandment of the Leſſor he paid the Rent, in diſcharge of the ſaid Rents; and this was clearly held good; for payment to another by the Plaintiffs appointment, is payment to himſelf.

Truſloe *verſus* Yewre.

IT was agreed upon evidence, that where a controverſie was between two perſons for a Leaſe of Land, who ſubmitted themſelves to the Arbitrement of J. S. for it, and J. S. did award that one of them ſhall have the Land, this is a good gift of the intereſt of the term, 12 Aſſ. 25. but if the Award were that he ſhall permit and ſuffer the other to enjoy the term, this giveth not the intereſt in it. Alſo it was held, that if a term be deviſed to an Executor, the remainder over, and the Executor enters generally this ſhall be taken as a Deviſe, for it is more for his benefit; but they moved the Jury to find theſe matters ſpecially, but they would not, but gave a general Verdict. (3) Co. 10. 47. b. Poſt. 348.

Gore *verſus* Parkhurſt.

EJectione firmæ: Bail was put in for the Defendant by the name of Parkes, but the Declaration and all the proceeding was by the name of Parkhurſt, and this matter after verdict was alledged in Arreſt of Judgment; and Trin. 33. it was adjudged that for this cauſe, Plaintiff nihil cap. per billam; for it doth not appear that the Defendant againſt whom the Judgment was given, was in cuſtodia Mareſchalli, and otherwiſe the proceeding againſt him is coram non judice, 31 H. 6. 10. and it cannot be intended the ſame perſon, neither can it be amended. And the Court ſaid, if there be a Bail, and the Bail is pulled off the file, the party is without remedy. (4)

In an appeal of murder the Defendant was acquitted, and the abbettors and damages were enquired and aſſeſſed to ſix pence. Godfrey moved that the damages might be increaſed by the Court as they may by Weſt. 2. cap. 12. and the Court ſaid, they ſhall be increaſed. (5)

Withington *verſus* Dalaber.

IN appeal of murder by a Feme, the Defendant pleaded nient accouple in loyal matrimony; & ſi trove que ſoit, not guilty to the Felony; the Plaintiff replies that ſhe was accoupled in loyal matrimony, and doth (6) Poſt. 495.

doth not anſwer or plead that he was guilty of the Felony. And it was moved, that this was a diſcontinuance. Curia, when a Plea is pleaded which is triable at Common Law, and concludes over to the Felony, there the Plaintiff ought to reply and conclude over to the Felony; but when he pleads a Plea triable otherwiſe then by the Common Law, it is otherwiſe.

Dethick's Caſe.

(7) HE was endicted upon the Statute of 5 Ed. 6. for ſtriking in Saint Pauls Church-yard; and it was moved, that it being the Church-yard of a Cathedral-Church, it is not within the Statute: Curia contra, Then he pleaded that he was by the Queens Patent created Garter King of Arms, and demands judgment, be-
Poſt. 542. cauſe he is not ſo named; and becauſe it was a name parcel of his dignity and not of his office only; for the Patent is, Creamus coronamus & nomen imponimus de Garter Rex heraldorum, and therefore in all ſuits againſt him he is to be named by this name; for this cauſe he was diſcharged of the Endictment.

The Lady Ratcliff *verſus* Shubley. Int. Trin. 31 Eliz. Rot. 415.

(8) ACtion for words, which were, She is as very a Thief as any that robbeth by the High-way-ſide. Upon not guilty pleaded, the Jury found that he ſpake theſe words, She is a worſe Thief than any that robbeth by the High-way-ſide; and the queſtion was if upon theſe words found by the Verdict ſhe ſhould have judgment. And the Court held clearly that the words in both caſes are actionable; but Gawdy and
2 Cr. 408. Fenner held that the words found do not agree with the Declara-
Hob. 503. tion; for the Jury do not find that the Defendant at the time mentioned in the Declaration, ſpoke the words in the Verdict; ſo it may be he ſpoke them at ſeveral times, and differs from Bridges Caſe 3 Mar. Dy. 75. where the Jury found he ſpake part of the words but not all; for there they did acquit him of the reſidue, and the words are not of one ſence. Wray contra, As very a Thief, and a worſe Thief, are all one.

Cole *verſus* Wall and Burnell.

(9) EJectione cuſtodiæ of a Ward and his Land, and declareth that the Lord of the Manor of S. had the cuſtody of the heir of his Copyholder, and of his Land, by the cuſtom there, until the Heir came to his age of fourteen years, and that he might commit the cuſtody of his body and Land to whom he pleaſed; and that one Cl. died ſeiſed of his Land being a Copyhold of Inheritance, and that the Lord granted to him the cuſtody of the Heir, being within the age of fourteen years, and the Defendant ejected him; after Verdict, it was alledged that an Ejectione firmæ doth not lie of a Copyhold Eſtate, and ſo it was ruled by the whole Court; and the Judgment was ſtayed. And the Juſtices ſaid,
Co. 4. 26. a. that an Ejectione firmæ doth lie of a Leaſe made by a Copy-
holder

Copyholder, but not of a Demiſe made by the Lord of a Copyhold, by Copy of Court Roll. But afterwards Trin. 33 Eliz. this caſe was moved again, and alledged, that this Action is an Action upon the caſe, in nature of an Ejectione cuſtodiæ; and not upon a grant by Copy, but upon a grant at Common Law: And thereupon it was adjudged, that the Action lay.

Guildeſlew *verſus* Ward.

(9) ACtion for theſe words, Thou haſt ſtoln a load of Hoppoles; and it was ruled, that they were actionable; for it ſhall not be intended but they were cut down before, for otherwiſe they could not be ſaid Hoppoles, or that he could otherwiſe ſteal them.

Marſh and his Wife. *Antea.*

(10) MArſh and his Wife, as Executrix to Wilkenſon, brought a Writ of Error to Reverſe an Utlary of Felony againſt the Teſtator; and the Error aſſigned was, That the Exigent iſſued to London, and the Sheriffs returned Quod exigi fecer' de Comitatu in Comitatum, where it ought to be De Huſtingo in huſtingum, for they have no Counties; and for this cauſe it was held a manifeſt Error. But the principal queſtion was, if Error lieth by an Executor to Reverſe an Attainder of Felony in the Teſtator. Coke and Popham Attorney-General alledged, That it cannot be maintained by an Executor. Firſt, Becauſe a perſon attained cannot have Executor. Secondly, Executor cannot have Error, but to Reverſe a Judgment in the perſonalty: But here the Judgment is more high, for it is in the realty, and it may be miſchievous, for the Executor may purſue faintly; and ſo the Judgment may be affirmed, and bind the Heir. Thirdly, upon a Writ of Error to Reverſe an Attainder in Felony, a Scire facias ought to be to warn the Lords mediate and immediate, which cannot be at the ſuit of an Executor. Gawdy conceived the Action did well lie: for Executors are privy to the Judgment, and peradventure have all the loſs; for it may be that he that is outlawed had only Goods, and no Land. And as to the diſability alledged, that the Teſtator was attainted, and ſo had no Goods, nor can make an Executor; It is not material in this ſuit, where they are to Reverſe the Attainder which doth diſable them, as 11 H. 4. 64. But it doth not appear by that Book, that he was outlawed for Felony. And as to the faint purſuing of the Action, the Heir and Executor by reaſon of their ſeveral intereſts, may have ſeveral Writs of Error, as the Tenant and Vouchee may. And as to the Scire facias, this needs not be in reſpect of the Goods which are intended to be in the Queens hands, who is always preſent in Court; and it is to be well conſidered, if it may be againſt the Lords; (but the Clerks ſaid, a Scire facias had been awarded againſt the Lords.) Wray, the diſability alledged is not to be objected againſt the Executor, the ſuit being to Reverſe it: And the Caſe is to be well conſidered, for it may be very miſchievous againſt the Lord. Et adjournatur.

1 Rol. 912. Co. 5. 111. a. Poſt. 273.

Poſt 273.

Poſt. 273.

V. Reſiduum. V. Poſtea, Paſch. 34 Eliz. Placito 2.

Garnons *verſus* Sir Henry Weſton. Int. Trin. 32 Eliz. Rot. 877.

(11) ERror upon a Judgment given in an Aſſiſe of a Rent-charge of Fifty pound per annum, in which the title was; John Vaughan and Anne his Wife (Mother of the Plaintiff in the Aſſiſe) were ſeiſed of the Mannors of Huntington-Engliſh, and Huntington-Welſh, and by Fine, 18 Eliz. conveyed the Mannors (inter alia) to one Whitney, per nomen of two Mannors, and of fifty Meſſuages, and three hundred acers of Land, &c. Who by the ſame Fine rendred the ſaid Rent of fifty pound to them, and the heirs of A. and rendred the Mannors and Tenements aforeſaid to them for their lives, Remainder to Fr. their ſon in tail, Remainder to the heirs of A. And that J. V. and A. died, and that the Rent deſcended to the Plaintiff as ſon and heir of A. and that Fr. entred as in his Remainder; and thereof infeoffed the ſaid G. who was tenant in the Aſſiſe; and upon Nul tort, Nul Diſſeiſin pleaded, and found for the Plaintiff, he had Judgment to recover; and upon this Error was brought. 1. Error, That this Fine is pleaded of theſe Mannors (inter alia) ſo it may be intended, that other Lands paſſed in the Fine; ſo an Aſſiſe brought againſt him that was only Tenant of the Mannors, is not good; for all the Tenants of the Land charged are to be named. 2. Becauſe the life of Fr. who was Tenant in tail, was not averred. 3. That the Fine by the grant of the Rent, and of the Land to the ſame perſon, by the Fine, is Repugnant for the Rent, and ſo void; for ſhe cannot take the Land and Rent at the ſame time. 4. When ſhe had the Remainder in Fee of the Land charged, the Rent by this is extinct. Stevens for the Plaintiff, and Bourchier for the Defendant. To the firſt, Gawdy and Clench held it to be Error; for it being inter alia, the per nomen ſhall be intended of more then the two Mannors; and the Ter-tenants of the reſidue not being named, it is not good. Fenner contra. To the ſecond Error, they all held, the life of Fr. needed not to be averred, for he had made a Feoffment, and ſo the eſtate did continue. To the third Error, it ſeemed to them, that the Rent granted by the ſame Fine that the Land was granted, was good; for the Law ſhall marſhal them, and the grant of both ſhall be good. For firſt, the Rent ſhall paſs, and then it ſhall be as a purchaſe of the Land by A. who was ſeiſed in Fee of the Rent; and the purchaſe of the Remainder in Fee ſhall not extinct the Rent, but it ſhall be in eſſe, during the particular Eſtate; for by this the poſſeſſion is only charged. And therefore Gawdy ſaid, the difference is where one
Co. Lit. 312. b. hath a Rent-ſervice, and he purchaſeth the Remainder or Reverſion in Fee, all the whole Seigniory is extinct: for the intire Tenancy is held, but the purchaſe of the Reverſion or Remainder in Fee doth not extinct a Rent-charge; for it is chargeable upon the Poſſeſſion, for he ſhall avow as in Land chargeable to his Diſtreſs. Et adjournatur. Nota, It was diſcontinued by the death of Sir Henry Weſton.

Page *verſus* Faucet, Paſch. 29 Eliz. Rot. 121.

ERror of a Judgment given in Lynne. Erroꝛ aſſigned was, that the Judgment was given at a Court held there 16. February, 26 Eliz. And this day was Sunday, and it was ſo found by the examination of the Almanacks of that year: And it was ruled, that this examination was ſufficient, and a trial per Pais was not neceſſary, although it were an erroꝛ in fact. And the Judgment was reverſed. (12) Ante 210.

Ward *verſus* Knight, Trin. 30 Eliz. Rot. 646.

ACtion ſur Caſe, and declares, That whereas Loſtocke is an ancient Village, and ancient Demeſn of the Crown of England; and that the Tenants and Men of antient Demeſn are to be quit of Toll in all places, &c. And that he was an Inhabitant and Tenant there, and had brought his goods to Yarmouth; the Defendant not being ignoꝛant thereof, had taken one Cable of his goods foꝛ Toll, &c. The Defendant did juſtifie, foꝛ that Yarmouth is an ancient Boꝛough, Incoꝛpoꝛate of Bailiffs and Burgeſſes, and had uſed from the time, &c. to have a Water-Bailiff there, and had uſed from the time, &c. to have Toll of the Tenants and Inhabitants of Loſtocke, foꝛ any of their goods brought there by Sea foꝛ Merchandiſe, and if it be not paid, to diſtrain, &c. And the Plaintiff being an Inhabitant of Loſtocke, brought by Sea twenty hundꝛed weight of Cable Ropes to Yarmouth foꝛ Merchandiſe; foꝛ which he demanded Toll, and becauſe it was not paid, took this Cable Rope Nomine diſtrictionis, &c. And upon this it was demurred, and it was argued by Golding foꝛ the Plaintiff, and by Hobart foꝛ the Defendant; and in the ſame Term it was adjudged foꝛ the Defendant: They gave no publick reaſon of it, but pꝛivately did agree between themſelves foꝛ the ſubſtance of the matter; foꝛ Wray ſaid, it is not reaſon they ſhould be diſcharged foꝛ Merchandiſe, and ſo are the Books. Vide 9 H. 8. 25. 19 H. 6. 66. 7 H. 4. 43. Fitz. N. B. 228. a. contr. (13) 1 Rol. 321.

Lovelace *verſus* Grimſden, Mich. 32 & 33 Eliz. Rot. 94.

ERror of a Judgment in the Common Bench. Erroꝛ aſſigned was, that in Treſpaſs foꝛ taking of five Hoꝛſes, the Defendant juſtifieth, foꝛ that one Guillam was amerced foꝛ blood-ſhed within his Leet; and that he and all thoſe which were Lords of the Mannoꝛ from the time, &c. had uſed to diſtrain the Beaſt of any which came within the Mannoꝛ, and were in the poſſeſſion of any man that was amerced in the Leet foꝛ the Amercement; and ſaid, that theſe five Hoꝛſes were in the poſſeſſion of Guillam; foꝛ which he did diſtrain them, &c. The Plaintiff took iſſue, that they were not in the poſſeſſion of Guillam: And upon this iſſue joyned, it was found foꝛ the Plaintiff, and Judgment given foꝛ him; and it was aſſigned foꝛ Erroꝛ, that the iſſue was joyned upon a thing meerly void; and ſo no iſſue, and not aided by the Statute of Jeofails: And the Court agreed, that if there be no matter of Bar in the Plea, and the iſſue joyned upon it, this is void, and not (14)

helped by the Statute of Jeofails: But if the Plea containeth matter of Bar, and iſſue is joyned upon a thing not material; this is
Poſt. 259. 455 aided by the Statute of 32 H. 8. But here is no matter of Bar; for the Preſcription is agreed to be void, and then if no Bar, no Iſſue; and ſo can be no miſ-joyning of iſſues, when there is no Iſſue joyned. And although the Bar was ill, ſo that the Plaintiff might have had Judgment upon the Bar; yet Judgment being given upon the Verdict, where no iſſue was joyned, is erroneous. And they all did agree, That the Judgment ſhould be reverſed; but they would adviſe till the next Term.

Green *verſus* Penilden.

(15) PRohibition for ſuing for Tithes, was prayed; for that he had pleaded in the Spiritual Court, that the ſaid P. was not lawful Incumbent, but one Taylor. Which Plea they would not allow the Pariſhioner to plead to the right of the Incumbency; and it was granted per Curiam: For he being the Tenant of the Land, may plead it, or elſe he ſhall be twice charged for his Tithes.

Man's Caſe.

(16) HE had married his Wives ſiſters daughter; for which he was ſued before the High-Commiſſioners: For although this was
Hob. 181. not prohibited within the Levitical degrees, yet becauſe degrees more remote are forbidden, they gave ſentence of Divorce: And he grounded his Prohibition upon the Statute of 32 H 8. cap. 38. And a Conſultation was prayed and granted, becauſe the Prohibition is not to be, if it be not within the Levitical degrees. And here it was general, and therefore not good. V. Coke upon Littleton, f. 235.

Stranſham *verſus* Cullington.

(17) PRohibition for ſuing for Tythes, as Proprietor of the Rectory of Cednam, and ſhewed, That the Tithes did grow Inter loca decimabilia of that Pariſh, as he ought to do, and that muſt be firſt proved: The Defendant there pleaded, That the Land was in the Pariſh of Aſhpole, and that he had paid the Tithes there; and upon this they are at trial, and upon this he had a Prohibition: For the
Ante 178. bounds of the Pariſh are triable by the Common Law. And upon another Prohibition for Tithes, Unity of Poſſeſſion in the time of the Abbot, at the time of the Diſſolution was ſurmiſed, and proved it by the teſtimony of Mr. Hynde and another, who ſaid, they had ſeen a Deed of Appropriation of the Parſonage to the Abbot; For which they verily thought, that there was an Unity of Poſſeſſion at the time of the Diſſolution. And this was ruled no proof, for it may be intended not to continue, and a Conſultation was granted; but they ſaid, that hear-ſay ſhall be allowed for a proof.

Apple-

Applethwart *verſus* Nortly, Mich. 32 & 33 Eliz. Rot. 472.

(18) ASſumpſit. That in conſideration he promiſed the Defendant to marry his Daughter, he promiſeth to give the Plaintiff forty pounds. Et dicit in facto, that he had married his Daughter: Upon Non Aſſumpſit, it was found for the Plaintiff; and it was alledged in Arreſt of Judgment, that no time or place was alledged of the Requeſt. Sed non allocatur, for it is in nature of a debt, and it is not here appointed to be upon Requeſt, but otherwiſe it is of a thing collateral. Ante 74.

Hopkins *verſus* Stapers.

(19) ASſumpſit. For that in conſideration he had ſold and delivered One thouſand couples of Newland Fiſh, Ad uſum proprium of the Defendant; and in conſideration he had ſhipped the ſaid Fiſh, and agreed to tranſport them from Briſtol to St. Lucar in Spain, and to re-tranſport from thence the value of the Fiſh, to London or Briſtol; Secundum uſum mercatorum, the Defendant promiſed to pay to him One hundred and twenty pound, upon the arriving of them in Portu St. Lucar; and alledges in facto, that he arrived with them ad Portum St. Lucar, and had re-aſported from thence goods, to the value of the Fiſh at London, Secundum uſum meacatorum. Upon Non Aſſumpſit pleaded, and found for the Plaintiff, Egerton moved in Arreſt of Judgment: Firſt, That it is no conſideration; for he ſaith he had ſold and delivered the Fiſh to the uſe of the Defendant, but ſheweth not to whom; by which it might appear, the property was altered by the ſale. Secondly, He ſaid in conſideration he agreed to tranſport, but ſaith not with whom; and it may be he agreed with a ſtranger, which doth not bind the Defendant. Thirdly, The promiſe is, he ſhall be paid when he arriveth in Portu St. Lucar, and he ſhewed he arrived ad Portum; which is no performance of the conſideration; and there is a difference between (ad & in) in conditions and conſiderations, though not in charges; and he relied upon 16 H. 7. 9. 3 H. 4. 9. Fourthly, He ſhewed, that he brought goods of that value to London, but ſheweth not to whom the property of the goods did belong; ſo they might be the goods of a ſtranger: Curia contra in omnibus. For to the firſt and fourth, they ſaid it ſhall be intended, that the goods were ſold and delivered to the Defendant, and that he re-aſported the goods of the Defendant; for it is Secundum uſum mercatorum, which implieth both. To the ſecond, it ſhall be intended that he agreed with the Defendant himſelf; and if it were with a ſtranger to his uſe, it is all one. To the third, (ad & in) are of the ſame effect, and ſhall not be intended otherwiſe; and it was adjudged for the Plaintiff.

Mead *verſus* Bygott.

(20) ASſumpſit. That whereas J. Arnold levied a Plaint in the Court of Stepney againſt Stokes, and a precept to attach the goods of Stokes were directed to the Plaintiff, being Bailiff there: And whereas he attached Stokes by two quarters of Corn, and delivered them to the ſaid Arnold to deliver them at the next Court; the Defendant aſſumed to ſave him harmleſs of the ſaid Corn. Upon Non Aſſumpſit pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, that the conſideration and promiſe was againſt Law, and ſo void; and ſo the opinion of the Court. For firſt, Attachment cannot be of Corn out of Sacks; ſecondly, if it may, it is to be kept by the Bailiff, and he ought not to deliver them out of his hand to the party Plaintiff; and ſo the promiſe is againſt Law, and void.

Ante 178.

Sir Richard Buckley *verſus* Wood, Mich. 31 & 32 Eliz. Rot. 381.

(21) ACtion for words, and declared, That whereas the Defendant did exhibit a Bill againſt him in the Star-Chamber, 30 Eliz. containing (inter alia) that he was a noſeler of Theeves, Murderers, and Pirates, &c. and recited a great part of the Bill; that afterwards the Defendant at Pausbery in Salop, 7. May, 31 Eliz. ſaid, He would juſtifie his Bill to be true in every part, &c. The Defendant pleads, that the ſaid ſeventh of May at Weſtminſter, in the County of Middleſex: He was demanded by the Lord Chancellor, if his Bill were true; and he ſaid it was true in all points, abſque hoc, Quod dixit prædicta verba, before or after the ſaid day, Aliter vel alio modo: And upon this the Plaintiff did demur, and Mich. 32 & 33 Eliz. Tanfield argued, that the matter in the Declaration is not ſufficient to maintain the Action; for it is for exhibiting the Bill, and ſaying it was true in all points. As to the firſt, For exhibiting a Bill in courſe of Juſtice, no Action lieth; and if it be falſe, he ſhall be puniſhed by coſts given in the Star-Chamber, and not by Action. And although the matters are not puniſhable there as Felonies, yet they are puniſhable there as miſdemeanors in him who was a Juſtice of Peace, and a Deputy Lieutenant of the County, and may be puniſhed for abuſing his Office, 11 Eliz. Dyer 285. a ſcandalis magnatum; for an Action for forging a falſe Deed brought againſt the Lord B. held not maintainable. And Mich. 27 & 28 Eliz. in this Court between Tuthill and Osborne, for exhibiting divers Articles to the Juſtices of Peace at the Quarter-Seſſions, to have the Good-behaviour; although they were falſe, yet not actionable, for it is in a courſe of Juſtice: So Mich. 8 & 9 Eliz. between Stanley and Curſon. One was brought in by Subpœna ad teſtificandum, and upon his oath declared matter of Infamy againſt the Plaintiff; yet he coming in by courſe of Juſtice, and if he ſwears falſly, he may be puniſhed for Perjury; it was adjudged an Action did not lie. And for the other words in Juſtification of his Bill, no Action lieth: For it is not ſaid, he ſhewed the contents of his Bill, and ſo can be no ſlander; and for ſaying he had a Bill depending againſt one, is no ſlander. Coke contra, He agreed, that

Co. 4. 14. b. Ante 193. Poſt. 247.

Co. 4. 14. b.

if

if his Bill of Complaint was in courſe of Juſtice, no Action did lie; but here he complains of divers matters which did not concern himſelf, but others, with which he had nothing to do; and it was the Lord Clintons Caſe, 19 Eliz. And this is no Star-Chamber matter, which toucheth his life; and one Leonards caſe was diſmiſſed for the like cauſe, where one exhibited an Engliſh Bill in the ſaid Court, containing divers ſlanderous matters, an Action upon the caſe did lie, and Paſch. 23 Eliz. in this Court between Bowes and Stanley, which was entred Trin. 21 Eliz. Rot. 559. This very cauſe was adjudged, Where one exhibited a Bill in Star-Chamber, and after came into the Country, and ſpoke of the matters of his Bill at Stafford, and affirmed them to be true, and adjudged an Action lay; for he ſhewed not his counſel, but publickly, and our Declaration was framed upon that preſident; Et adjournatur. V. Poſtea, 33 & 34 Eliz. Placito 7. Co. 4. 15. a.

Chambers and Johns.

(22)

They were indicted for incroaching upon the High-way, Et unum Tenementum ibidem erectaverunt, where it ſhould be erexerunt; for there is no ſuch Latine word as erectaverunt; and it is not Anglice did erect, which had been good. And for this cauſe it was diſcharged. Co. 5. 121. b. Ante 137.

Penhallo's Caſe.

(23)

He was indicted upon the Statute of 5 Edw. 6. cap. 4. for drawing his Dagger in the Church of B. againſt J. S. And doth not ſay (according to the Statute) to the intent to ſtrike him; and for this cauſe it was void: But then it was moved, if this were not good as for an Aſſault, that he might be fined upon it; but per Curiam, it is void in all: for being indicted upon the Statute, it is void as to an offence at the Common Law. 5 E. 6. c. 4. Poſt. 319. 494. 697. Poſt. 307.

Wing *verſus* Harris.

(24)

Ejectione Firmæ. Upon a ſpecial Verdict. H. 8. was ſeiſed of certain Lands called Burnels, and of the Site of the Hoſpital of St. Johns in Wells: He demiſed Burnells to Aylſworth for twenty one years, and afterwards granted the Reverſion of it (inter alia) to the Biſhop of Wells in Fee; and afterwards the Biſhop granted thoſe Lands (inter alia) to Edward the Sixth, which did diſcend from him to Queen Mary: and afterwards Queen Mary demiſed the Lands to the ſaid Aylſworth for ſixty years, not reciting the firſt Leaſe made to Aylſworth. This caſe was argued Mich. 32 & 33 Eliz. and Paſch. 33 Eliz. adjudged, that the Leaſe for ſixty years was void, for not recital of the Leaſe for twenty one years: For although by the taking of the ſecond Leaſe the firſt was drowned, yet at the inſtant time of the taking of the ſecond Leaſe it was in eſſe; and therefore ought to have been recited, eſpecially being a Leaſe upon Record; but of a Leaſe by matter in Fact, they agreed there need be no recital, The objection againſt it was, becauſe the Reverſion had been conveyed to the Biſhop; ſo in his time the Leaſe might have determined without any matter of Record. And for this cauſe, when it came to the Queens hand, it need not be recited: But the Court held, For as much as Aylſworth was the 2 Rol. 290. Moor 415. & 6. 3 Leon. 242. Hob. 808. 1 Cr. 198.

the perſon that was the Leſſee, and might well have knowledge of it, if it had been ſo done, and no ſuch thing is done, when the Reverſion was in the Queens hands, it is as if it had never been granted from the Crown; and for this cauſe it was adjudged accordingly. There were other points in the caſe, but it was reſolved only upon this.

Termino Paſchæ, 33 Eliz. in Communi Banco.

The Warden of All-Souls Colledge in Oxen *verſus* Tanworth.

(1) A Writ of Right was brought, by Cuſtos & Collegium of All-Souls in Oxon; and the Writ was Quod clamant tenere de nobis in Liberam puram & perpetuam elemoſinam, & quod clamant eſſe jus & hæreditatem ſuam, &c. And exceptions were taken to the Writ. Firſt, it ought to be in Liberam elemoſinam and not Puram & Perpetuam. Secondly, it ought to be Eleemoſinam with a double ee. Thirdly, they ought not to ſhew any tenure in ſpecial, but generally Tenent de nobis. Fourthly, for that they ſay not In jure Collegii; Sed non allocatur. For the firſt is but Surpluſage, and not material; the ſecond, the common courſe is ſo, and therefore it is good. Thirdly, they did well to expreſs the Tenure; for otherwiſe it might be taken for a Tenure in capite, which they do well to avoid. Fourthly, when the Writ is brought by Cuſtos & Collegium, this cannot be but In jure Collegii, as in their Incorporation; for they have no other capacity, and the preſidents are both ways.

Perrot *verſus* Auſtin.

(2) The Caſe was, A. covenanteth with B. to put his ſon an Apprentice to C. or otherwiſe, that his Executors ſhall pay B. twenty pound. A. doth not put his ſon an Apprentice to C. and dieth; B. brings debt againſt the Executors of A. And it was reſolved by the Court, that it lieth not for two cauſes. Firſt, It cannot be a debt
Co. Lit. 386. a. in the Executor, where it was no debt in the Teſtator: And if one covenants to pay ten pound, debt lieth againſt him or his Executors, as 40 Edw. 3. & 28 Hen. 8. Dyer, are; but if he doth covenant, that his Executors ſhall pay ten pound, an Action lieth not againſt them. The ſecond reaſon: The firſt part of the Deed ſounds in covenant, and the ſecond part ſhall be of the ſame nature and condition. Quære of this Reaſon.

Oglethorp *verſus* Hyde.

(3) Debt upon an Obligation to perform Covenants; the Defendant pleadeth generally performance of Covenants, where ſome are in the Negative, and ſome in the Affirmative; it was held, that this is but matter of Form, and is aided by the Statute of 27 Eliz. except the party ſheweth it for cauſe of his De-
Co. Lit. 303. b. murrer, that ſome of the Covenants are in the Negative, and
Co. 8. 133. b. ſome in the Affirmative; for the Court ſhall adjudge according
2 Cr. 562. to the truth of the matter: But if any of the Covenants are in the

the disjunctive, it is otherwise; for the Court cannot know which of them in the disjunctive he hath performed. Co. Lit. 303. b.

Ascue *versus* Fuliambe.

(4) AUdita Querela, because Execution was sued upon a Statute acknowledged in the City of Lincoln as a Statute-Merchant, which had but one seal, where it ought to be with two seals according to the Statute De Mercatoribus, 13 Ed. 1. And issue was joyned, if it were sealed with a seal of two pieces, and tried for the Plaintiff by a Jury of the City of Lincoln. And it was alledged in Arrest of Judgment, that the issue ought to be tried by the Certificate of the Major, and not per pais. Curia contra, For this is a matter of fact, and no parcel of the Record. The second cause, Lincoln is in the Margent, so it shall be intended to be tried by pais of the County of Lincoln, whereas it was and ought to be tried by a Venue of the City. Thirdly, a Writ of Error lieth upon this matter, and not an Audita Querela, 18 Ed. 3. 25. where Error is in suing Execution. But it was held clearly, that where a Statute is erroneously acknowledged as here, no Writ of Error lieth, but an Audita querela; for this is no Record. But if it be well acknowledged, and removed hither, and Execution is here erroneous, Error lieth thereof. Fourthly, this shall be taken as a Statute acknowledged according to the Statute of Acton Burnell of 11 Ed. 1. and not according to the Statute of 13 Edw. 1. De mercatoribus: So it is good for the goods and body, Curia contra: For the Conusee having sued Execution upon it as a Statute-Merchant, he shall not now be received to say, but that it was acknowledged according to that Statute for which the Plaintiff had Judgment. V. Pasch. 36 Eliz. in Banco Reginæ, Placito 6. Post 319. Post. 319.

Brunkhornes Case.

(5) SCire facias against B. and others, which were bail for one Parker; and their Recognizance was, if P. were condemned, that he shall pay the Debt within such a time, or render his body to prison. P. being condemned, and not rendring his body to prison, Scire facias was brought against them: Upon this Recognizance they pleaded, that P. such a day before the day in the Recognizance, paid the money. And this was held a good Plea without a Specialty, for the Recognizance, as to them, is but as an Obligation with a Condition; upon which they might well plead performance. V. contra. Ter. Pasch. 31 Eliz. Ordeways case. Antea Pasch. 31 Eliz. but the party in the Scire facias, upon this recovery cannot plead it, except satisfaction be acknowledged upon Record; for by nude payment he shall not avoid a matter of Record. Ante 132. Post. 238.

Leonard *versus* Bacon.

(6) FOrmedon. The Tenant pleads Non-tenure, and upon this they were at issue; and it was found, that before the Writ purchased, the Tenant infeoffed divers persons, to the intent to defraud them which had cause of Action for the same Lands, and notwithstanding he took the profits. And this Verdict was adjudged for

the Demandant, for the Feoffment was void againſt him by the Statute of 13 Eliz. 5.

Hayes *verſus* Allen.

(7) SUr cui in vita of a Meſſuage, the parties being at iſſue, it was found by Verdict that a Diſcontinuance being of the Meſſuage, the Diſcontinuee pulls it down, and erected a new houſe, part of the Land diſcontinued, and part upon his own Land adjoyning; and if upon this matter the Writ was well brought of the entire Meſſuage, or that it was to have been brought of ſuch part of the houſe; and how the Judgment ſhould be in this caſe, was the queſtion. And after Argument, it was adjudged for the Demandant, that the Writ was well brought by the name of the whole Meſſuage, and there needed not Forepriſe; for the Action is to be brought as the Land is at the time of the bringing the Action, and there is no other form of Writ in the Regiſter but for the intire houſe; and it was adjudged, that the Demandant ſhould recover; but the Judgment was entred ſpecially, that the Demandant ſhould recover Meſſuagium prædict', ſcilicet, So much in length, and ſo much in breath, according to what the Verdict found upon the Land in demand. V. Cokes, Entries 642. The Record of this caſe. V. 39 Hen. 6. 8. 33 Ed. 3. Entries 80. 11 H. 4. Dower 175. & 179. 16 Ed. 3. Brief 650. 32 H. 8. Dyer 47. Fitz. N. Br. 192. Nota, that Mich. 33 & 34 Eliz. Rot. 111. a Writ of Error was brought, and the Error was aſſigned in the very point adjudged; and after Argument, the Judgment was affirmed.

Poſt. 286. 290. 611.

Clark *verſus* Penruddock.

(8) THe caſe adjudged as it is reported, 5 Co. 100. b. againſt the opinion of Anderſon; but two Exceptions were taken to the Writ. 1. That it did not warrant the Count, for the Writ was Proſternere Domum, and the Count was Proſternere Penthouſe, and ſo variant and not warranted by the Writ, Sed non allocatur; for ſo is the form in the Regiſter, Proſternere Domum, where only part is to the Nuſance. 2. Exception, That the Writ is Modo querentis, but ſheweth not how the Meſſuage came to him; for if he cometh to it in Le poſt, as by Diſſeiſin, there is no colour for him to have remedy. Sed non allocatur, for the Count maketh it ſufficiently certain.

Poſt. 241. Poſt. 659.

Atkinſon *verſus* Atkinſon.

(6) ACtion for words, viz. I have ſerved thee with the Queens Letter, for ſtealing of goods out of my Mothers houſe; upon not guilty pleaded, and found for the Plaintiff, it was adjudged, that the Action did not lie; for the Defendant doth not ſay expreſly, that he had ſtolen the goods, but that he had ſerved him, &c. which may be, though he did not ſteal them; ſo it is only a charge by Implication. Periam cited a caſe of one Nowel a Clerk of this Court, where the words were, Thou waſt cubbed up for forging of Writs, and ruled no Action lay.

2 Cr. 154. Hob. 177.

1 Cr. 268.

Bighton

Bighton *verſus* Sawle.

IT was agreed by the Court, that where Judgment was given upon Demurrer, that after a Writ of Enquiry of Damages is returned, before a new Judgment given upon it, the Defendant may alledge any matter in Arreſt of Judgment: But Periam ſaid, this is where the damages are the pyncipal, but in debt where the debt is the pyncipal, and he hath Judgment to recover, and a Writ of Enquiry of Damages, it is otherwiſe. And Anderſon ſaid, that in Prat and Ruſſels caſe where a Judgment was given in the Queens Bench, before the Statute of 27 Eliz. and the Writ of Enquiry of Damages was returned after the Statute, and then the Judgment was given upon it; that this Judgment by the opinion of all the Juſtices was reverſable by force of that Statute. (8) Co. 11. 40. a.

Termino Paſchæ, 33 Eliz. in Scaccario.

Owen Joans *verſus* Elizabeth Hoel, Trin. 32 Eliz. Rot. ultimo.

EJectione firmæ of ſeven Cloſes, one called Greenmead, and ſo gave to the other ſeveral names; after Verdict found for the Plaintiff; upon not guilty pleaded, it was moved in Arreſt of Judgment, that he ought to count of a certain number of Acres; for now no Writ of Execution can be awarded to put him in poſſeſſion, and ſo it is in every Præcipe for Land. Curia contra, That is well enough; for when a name is given to every Cloſe, although the content of the Acres are not mentioned, viz. ſo many of Land, ſo many of Paſture, &c. it is ſufficient, though it were more formal to expreſs the Acres; and it is aided by the Statute of Jeofails, and the Court is aſcertained of the truth. And Popham Attorney ſaid, he had known it thrice ſo adjudged; and the Plaintiff had Judgment. (1) Co. 11. 55. a. Poſt. 339.

Termino Trinitatis,

Triceſſimo tertio ELIZABETHÆ,

in Banco Reginæ.

Vander Plunken *verſus* Griffith.

(1) 8 El. c. 2.

ACtion upon the Statute of 8 Eliz. for cauſing him to be arreſted in the name of Baildree, and three others, where the three others never conſented to it; and that this was for vexation, none of them having cauſe of Action: The Defendant pleaded not guilty, and found for the Plaintiff. And it was moved in Arreſt of Judgment, that this caſe is not within the Statute; for if he cauſeth one to be arreſted in the name of one of the Plaintiffs, though the other do not aſſent, he is out of the Statute; for he hath colour to do it, and it cannot be ſaid to be maliciouſly done; for one of the parties may give him ſufficient authority to ſue: To which it was anſwered, that then the Statute ſhall be defrauded; for then one that is a beggarly perſon, and cannot pay coſts, yet peradventure may conſent that one ſhall ſue in his name, and of the others, eſpecially in an Action of Treſpaſs; but otherwiſe in an Action of Debt: And of this opinion were Wray and Gawdy; but the other Juſtices contra, that it is out of the Statute, for the reaſon given before. But an Exception was taken to the Declaration, that the Statute was miſ-recited; for the Statute is, If any perſon ſhall voluntarily procure any other to be arreſted, to anſwer in the Court of, &c. where any priviledge is uſed to hold Plea in Actions perſonal. And where the Statute is recited, where any priviledge is uſed to hold Plea in any Action, omitting perſonal; ſo as recited, it refers to all actions: And ſo was the opinion of the Court, that it was a plain miſ-recital; and though the Statute is general and need not to be recited, yet when he reciteth it falſly, it makes the Plea ill: And for this cauſe principally it was adjudged, that the Plaintiff Nihil capiat per billam.

Poſt. 245. Ante 57.

Tedcaſtle *verſus* Holliwell, Intrat. Mich. 32 & 33 Eliz. Rot. 423.

(2) 2 Rol. 594.

DEbt upon an Obligation. The Condition, that whereas J. D. hath bound himſelf to be an Apprentice with the Plaintiff; if the ſaid J. D. during his Apprenticeſhip, or any other by his aſſent or procurement, take or riotouſly miſpend any goods of the Plaintiff; if then the Defendant within one month after notice thereof given to him, ſatisfie and pay to the Plaintiff for all ſuch ſums of money or wares, &c. ſo taken or notoriouſly ſpent by the

the ſaid J. D. or any other by his procurement or conſent, the ſame being ſufficiently proved, that then, &c. the Defendant proteſtando that the ſaid J.D. nor any perſon by his conſent (not making mention of procurement) had not taken nor riotouſly ſpent any goods of the Plaintiff, &c. For Plea ſaith, That the Plaintiff had not ſufficiently proved before Action brought, that the ſaid J.D. had taken or riotouſly ſpent any goods of the Plaintiff: Upon which Plea, the Plaintiff demurred; and it was argued by Daniel for the Plaintiff, and by Godfrey for the Defendant. And the queſtion only was, if the proof ſhould be in this action, or by any other means before? and what proof ſhall ſerve. V. 10 Edw. 4. 11. 7 Rich. 2. Bar. 241. And Scroggs caſe, Antea. Mich. 32 & 33 Eliz. And Gawdy and Fenner conceived the proof muſt be before the action brought by ſome collateral means, (but ſaid not what means or in what manner) for the Defendant is not to pay, but ſo much as is taken and proved to be taken or ſpent, &c. and this within one month after notice, ſo he is to have time to pay after proof made, and notice given; and this cannot be in this action. But much was not ſpoken to it, for there was an incurable fault in the pleading: For he for Plea ſaith, that the Plaintiff had not made proof that J. D. took or riotouſly ſpent, &c. but ſpeaks not, that any other by his conſent or procurement; and ſo doth not anſwer to the ſubſtance of the Condition, and for this it was held clearly ill: And for this cauſe it was adjudged for the Plaintiff, although it was ſaid, Qui per alium facit per ſeipſum facit: So the Plea extends to it, but the Court contra. But for the matter in Law, they ſaid it was ſtrong againſt the Plaintiff. Poſt. 470. Ante 205. Poſt. 239.

Salteſton and Offely *verſus* Payne.

(3) THe Plaintiffs Sheriffs of London brought an action upon the Caſe, for that the Defendant being in Execution under their cuſtody for Fifty three pound, at the ſuit of Spicer, had eſcaped, the ſaid Spicer not ſatisfied; for which they were compelled to pay the debt; the Defendant pleads, confeſſing all the matter; and that after this eſcape Spicer had acknowledged ſatisfaction of Record. And upon this it was demurred; and the Court held clearly, that an action upon the Caſe lieth againſt a priſoner for an eſcape out of Execution, to the intent to make the Sheriff chargeable with the Debt; and ſo adjudged between Hill and Holt, Quod vide antea: That the Sheriff ſhall have an action, Quia onerabilis. Fitz.N. Br. 130. b. 13 Hen. 7. 2. 14 Hen. 7. 1. But here becauſe the Defendant is to be charged, for that the Plaintiffs are chargeable with the Debt, and not otherwiſe, and the Defendant hath pleaded ſatisfaction acknowledged upon Record, which may be by his means, which is not denied; for otherwiſe the Plaintiff might have ſhewn the ſpecial matter by Replication; and ſo the Plaintiffs are to have no loſs, and ſo no cauſe of action, it was adjudged for the Defendant, and the Plaintiff Nihil capiat per billam. Ante 53.

Mountney *verſus* Andrews.

(4) SCire facias upon a Judgment in debt: The Defendant pleads, that upon a Fieri facias directed to the Sheriff of the County of Leiceſter:

Leiceſter; for levying the debt, he by force of it, took divers ſheep of the Defendants for the debt, and yet detaineth them: And this was ruled a good Plea per Curiam; although he doth not alledge that the Writ is returned, and although the Writ is conditional, Ita quod habeas denarios,&c. For the Plaintiff hath his remedy againſt the Sheriff, and the Execution is lawful, which the Defendant cannot reſiſt. Vide antea, Rooks caſe, Mich. 32 & 33 Eliz. fol. 208. 9.

Ante 233. Poſt. 390. Ante 209.

Allen *verſus* Hill, Mich. 32 & 33 Eliz. Rot. 54.

(5) EJectione firmæ, for a houſe in Cornhil, London; upon a ſpecial Verdict the caſe was; Fr. Benſon being ſeiſed of the houſe in Fee, 4 Eliz. deviſed it to Agnes his Wife for life; and after to the Heirs of his body, the Remainder to Th. Benſon his Brother in Fee. Proviſo, That if the ſaid Agnes clearly departs out of London, and dwell in the Country, that then ſhe ſhall have a Rent out of the ſaid houſe, &c. And found further, that Francis died without iſſue, and that Th. Benſon died, and that R. is his Heir, and that afterward, 15 Eliz. Agnes totaliter departed from London, and went to Milton in Suffolk: And after the ſaid R. before entry made by him, and the Executor of Fr. releaſed to Agnes; and afterwards entred, and let to the Plaintiff, and that Agnes married one Huggins; and the Defendant entred by his commandment. The ſubſtance of the matter was, if this proviſo doth determine the eſtate before entry, for if ſo, ſhe was Tenant at Sufferance, and the Releaſe could not enure to her eſtate: For it was agreed, it was a good Proviſo to make her eſtate to determine; although there be no words (to ceaſe) or that it ſhall be void; but being in a Will, it is implied in the words, (that then ſhe ſhall have a Rent) which cannot be, if her eſtate be not determined. And the Juſtices ſaid, ſhe is but Tenant at Sufferance; for if the deviſe had been expreſs, That if ſhe doth ſuch an act her eſtate ſhall ceaſe, after ſuch act done, though ſhe continue in poſſeſſion, and dieth, this is no Freehold in her; and here is as much in ſubſtance. And Wray ſaid it was held at an Aſſembly of all the Juſtices, That if Tenant per auter vie continue in poſſeſſion after the death of ceſtuy a que vie, he is but Tenant at Sufferance, and his diſcent ſhall not take away an entry; which Gawdy agreed, and that 18 Edw. 4. 25. is not Law: But there was a default in the Verdict, for it was found that ſhe totaliter departed from London, and went to Milton in Suffolk: but it was found, that ſhe dwelt out of London, and this is part of the Condition: And this not being found, it is not found that the Condition is broken; and then notwithſtanding any matter found, the entry of the Defendant is lawful. And it was moved, That as to it, a Venire facias de novo ſhould iſſue to examine this point better, if ſhe dwelt in the Country; for it was ſaid in this point, the Verdict was not well examined. But the Court held, that the Verdict is full; upon which a Judgment might be given, and then no Venire facias de novo is to be awarded; for it is found for the Defendant, when it is not found that the Condition is broken; and for this cauſe only it was adjudged for the Defendant. But then it was objected, that the life of Agnes was not found, and then the Defendant cannot enter. Fenner ſaid, it ſhall be intended ſhe is living

2 Cr. 170.

living; for the Jury did not doubt of it, for they find that if his entry upon the matter found is lawful, that he is not guilty: So they doubted of nothing but that point, and so it was adjudged in 28 Eliz. in this Court. And Judgment was, Quod querens nihil capiat per billam. Co. 5. 97. a.

Simonds *verſus* Lawnd.

(6) TResp aſs. The Jury found a ſpecial Verdict, That R. L. Father of the Defendant was a Copyholder of the Land in Fee, and ſurrendred it to the uſe of the Defendant in Fee, upon condition he ſhould perform the Covenant in ſuch an Indenture: The Defendant after admittance ſurrendred the Land to the uſe of the Plaintiff in Fee, upon condition if the Defendant paid ten pound, the ſurrender to be void: The Defendant neither paid the ten pound, nor performed the Covenants in the Indenture: The Father enters, and dieth ſeiſed, and it diſcends to the Defendant, and he enters, upon whom the Plaintiff enters: The queſtion was, if this entry were lawful, and adjudged it was not; for by the entry of the Father, both the Surrenders are defeated. So the Defendant may confeſs and avoid what was done to the Plaintiff, and it was adjudged for the Defendant.

Johns *verſus* Gittings, Hill, 33 Eliz. Rot.

(7) ACtion for words, Thou haſt played the Thief with me, and haſt ſtoln my Cloath, and half a yard of Velvet. The Defendant pleaded, that the Plaintiff was his Taylor, and that upon the day of, &c. he delivered to him a yard and half of Velvet, to make him a pair of Hoſe, and he made them too ſtreight. Ratione cujus, he ſpake theſe words, Thou haſt ſtoln part of the Velvet which I delivered you; abſque hoc, That he ſpake any words aliter vel alio modo. Upon which the Plaintiff demurred; for the Plea and Traverſe do not confeſs any words of ſlander, and then the Traverſe is meerly void. L. 5 Edw. 4. 26. 9 Edw. 4. 15. 37 Hen. 6. 34. 22 Hen. 6. 17. And of this opinion was the Court; but a manifeſt fault was alledged in the Plea, for he did not anſwer to the words, Thou haſt ſtoln my Cloth; ſo it is vicious and cannot be cured, and it was adjudged for the Plaintiff. Ante 237.

Gaſtrell *verſus* Townſend.

(8) ACtion for words. Thou haſt ſought the blood of my Husband, and waſt his death; for if thou hadſt been an honeſt Woman, he had been alive yet. And avers in facto that her Husband was killed: It was moved, the Action lieth not; for it is not ſaid, ſhe did any unlawful act; and it was cited to be adjudged, Mich. 18 & 19 Eliz. That for theſe words, Thou wert the death of J. S. Action lieth not, for it may be by grief. But it was ruled here, that the Action lieth, for they ſhall be taken to be ſpoken in Malam partem, and it was adjudged for the Plaintiff.

Elſden

Elſden & Page *verſus* Barnes, Hill. 33 Eliz. Rot. 519.

(10) ERror to Reverſe an Utlary in Treſpaſs. 1. The Plaintiff in the original was named Barnes, and in the exigent, Bernes; ſo an (e) for (a) Gawdy held it no Error, becauſe it was in the name of the Plaintiff. Fenner contra, For the exigent iſſued at the ſuit of a wrong perſon. 2. The original was blaba ſua, and the exigent was blada; and this was held a plain Variance, and the Utlary reverſed.

Ante 50.

Downes *verſus* Savage, Trin. 32 Eliz. Rot. 772.

(11) ERror to Reverſe a Fine in Cheſter, the Conuſance was taken of it by one, and the Dedimus poteſtatem to him, and another joyntly; and this was erroneous.

Aſhbrooke *verſus* Snape.

(12) IT was agreed by all the Juſtices, that if one be bound in an Obligation, and afterwards promiſeth to pay the money, Aſſumpſit lieth upon this promiſe; and if he recover all in damages, this ſhall be a Bar in Debt upon the Obligation.

Poſt. 242. 283. 1 Cr. 415. 2 Cr. 110.

Barnes *verſus* May.

(13) ASſumpſit. That whereas he ſold to the Defendant a pack of wooll for twenty pound, to be paid at a day certain, and licet requiſitus, viz. at ſuch a day and place, &c. he had not paid it; and that he ſold to the Defendant another Pack of Woll for ten pound to be paid when required, Et licet ſimiliter requiſitus, &c. without alledging day and place, yet adjudged good, for it ſhall refer to the firſt day and place of requeſt.

Termino Trinitatis, 33 Eliz. in Communi Banco.

The Queen *verſus* the Archbiſhop of York and S. Buck. Int. Hill. 33 Eliz. Rot. 2350.

(14) QUare impedit, for diſturbing to preſent to the Church of Ackworth, as in right of the Dutchy of Lancaſter, and declared, that whereas Henry the Eighth was ſeiſed, &c. and preſented R. Dean, Henry the Eighth dieth, and it deſcended to Edward the Sixth, and from him to Q. Mary, and from her to Queen Elizabeth, and that it became void, &c. The Archbiſhop pleaded, that Heath his predeceſſor was ſeiſed of the Advowſon as in groſs, and collated to it J. S. his Clerk, who was admitted, inſtituted, and inducted, and died ſeiſed; and ſo pleaded three ſeveral Collations one after another, and demanded Judgment if Action lay againſt him by the Queen; the other Defendant Incumbent pleaded the ſame Plea. And upon this it was demurred; and the queſtion was, if this double or treble uſurpation put the Queen out of poſſeſſion of an Advowſon which ſhe had in right of the Dutchy of Lancaſter; and adjudged it did not: For ſhe ſhall have her privi-

ledge

ledge in this as if it had been in Right of the Crown; and for such advowson a double usurpation did not put her out of possession as it hath been adjudged. And here is no usurpation, but a collation which shall not put a common person out of possession; and it was adjudged for the Queen, and a Writ to the Arch-Bishop of Canterbury: nota, an exception was taken that the Writ was general, and did not mention that the Queen had it in Right of the Dutchy, but the Count was special, and shewed it, but it was awarded good; and so is the Register, and a president shewn in 32 H. 6. accordingly. Post 519. Co. 6. 29. b. Post. 811. Ante 234.

Hall *versus* Turbett.

(2)

REplevin: The Defendant justifieth by reason of a Fine assessed by a Steward in a Court Leete, for not coming to the Court and doing his suit; and for it a distress taken; and upon this it was demurred. And all the Justices held that the Assessment being without presentment, that he ought to do suit at Court, was without Warrant; and in such case he shall be rather amerced than fined; for Anderson said, for such offences as are within the Conusance of the Steward as Judge, and of which he hath the view, he may Assess a Fine, but of others not, except they be presented; and non constat to the Steward if he were resident within the Leete or not, or what cause he had for his absence. And Periam said, if he shall Assess the Fine, he will Assess it too grievous; and so the party shall have no remedy; but for Amerciaments, a moderata misericordia lieth, 10 H. 6. 7. and for this cause the Plaintiff had Judgment. Co. 8. 41. a.

Kindler *versus* Leversage.

(3)

REplevin. The Case was, A. seised of the Land made a Lease at Will rendring six pound per annum, and by another Deed reciting this Rent, he granted eundem redditum to the Defendant for his life; the Lease at Will determines; the question was if the Grantee shall have this Rent for his life according to the words of the grant. And resolved he should, for eundem shall be taken for talem, viz. eundem in specie: viz. six pound per annum, as in the Queens patent, of a grant of easdem libertates to Islington, quas London, &c. this is not the same, but tales libertates; and it was afterwards adjudged for the Avowant, that the Rent shall continue during his life.

Margaret Palmes *versus* the Bishop of Peterborough.

(4)

QUare Impedit. He pleads that he demanded of J. S. the Presentee of the Plaintiff to see his Letters of Orders, and he would not shew them; and for this cause for that he was not ascertained whether he were Deacon or not, and also he demanded of him Letters missive or Testimonials testifying his ability; and because he had not his Letters of Orders, nor Letters missive, nor made

proof of them otherwiſe to the Biſhop, he deſired leave of the Biſhop to bring them, and he gave them a week, and he went away, and came not again, and that the ſix months paſt, and he collated by Lapſe; and upon demurrer upon it, it was adjudged for the Plaintiff,
Co. 5. 57. a. for theſe were not cauſes to ſtay the admittance, and the Clerk is not bound to ſhew his Letters of Orders or miſſive to the Biſhop, but the Biſhop muſt try him upon examination for one and other; and the Plea is not alledged in facto, but pro eo quod non monſtravit, ſo all cometh under the (eo quod) and ſo no part of it is traverſable; and for one and the other cauſe it was adjudged for the Plaintiff.

Reade *verſus* Johnſon.

(5) ASſumpſit for Twenty four pound; and declares upon an indebitatus aſſumpſit; Defendant pleads non aſſumpſit; the Jury found that the Plaintiff let to the Defendant Land for Seven years rendring Eight pound per annum, and the Rent was arere for
Ant. 240. Three years; and that the Defendant did owe no other Debt, or
Co. 10. 77. a. made any other promiſe, & ſi &c. And it was held by the Juſtices,
Poſt. 786. 859. that the Action did not lie, but only an Action of Debt.

Simpſon *verſus* Titterell; Mich. 32 & 33 Eliz. Rot. 914.

(6) EJectione firmæ: One Bendlows let the Land to the Defendant for
1 Rol. 410. years, proviſo ſemper, and it is further Covenanted that the Leſſee ſhall not aſſign his term to any other, except to the leſſor paying as much as another; and if the leſſor will not have it, that then he may alien it to none except his mother or his ſon; the Leſſee aſſigned it to his mother, Leſſor entred and let it to the Plaintiff; the queſtion was if the words were a Condition, or only a
Co. Lit. 203. b. Covenant. And all the Juſtices held it was a good Condition to
Co. 2. 71. b. defeat the Eſtate; for Periam ſaid, proviſo always implieth a Condi-
Poſt. 385. tion, if there be not words ſubſequent which may peradventure
Ant. 73. change it into a Covenant, as where there is another penalty annexed to it for non performance, as Dockwrays Caſe, 27 H. 8. 14. but it is a rule in proviſoes, where the proviſo is that the Leſſee ſhall perform or not perform a thing, and no penalty to it, this is a Condition, otherwiſe it is void; but if a penalty is annexed, aliter eſt; to which the reſt of the Juſtices agreed. And it was adjudged for the Plaintiff that the entry was lawful.

Barret *verſus* Heveſett, Paſch. 33. rot. 810.

(7) TReſpaſs for aſſault, Battery and wounding, apud Downham in the County of Suff. 26 September, 21 Eliz. the Defendant pleaded quoad vi & armis, not guilty, and quo ad reſiduum traſgreſſionis actio non &c. for he ſaid that Philip Earl of Arundel was ſeiſed of ſixty acres of paſture called Shepherds Hole in Thetford in the ſaid County of Suffolk,

Suffolk, and let them to Ro. Whitney, 28 Eliz. for twenty one years, and that the Plaintiff tempore quo clauſum prædict' fregit & cuniculos ipſius Rob. ibidem inventos cum retibus & aliis ingeniis capere voluit, for which the Defendant as ſervant to the ſaid R. and by his commandment tempore quo & molliter manus impoſuit upon the Plaintiff at T. in the ſaid ſixty Acres to hinder him from taking and carrying away the ſaid conies, quæ eſt eadem inſultus & tranſgreſſio unde, &c. abſque hoc that he is guilty de tranſgreſſione & inſultu, &c. alibi vel alio modo in Dict' Com' Suff. prout, &c. & hoc. and upon this it was demurred in Law, and adjudged for the Plaintiff. Nota, this Caſe was taken out of the Record delivered to the Reporter by Brownlow Protonothary.

Termino Trinitatis, 33 Eliz. in Curia Wardorum.

Hartopps Caſe.

ELizabeth Hartopp deviſed Lands to Denham and three others in Fee, to the uſe of Th. Hartopp her Brother, and the heirs males of his body; and for default of ſuch Iſſue, to the heirs females of his body, with other remainders over. Tho. dieth having Iſſue a Daughter, his Wife enſeint with a Son, which is afterwards born. And afterwards Elizabeth H. dieth; The queſtion was, if the Son or Daughter or neither of them ſhould have the Land; and upon argument ruled by Wray and Anderſon chief Juſtices, Kingsmill and Morris Surveyor and Attorney of the Court of Wards, that neither of them ſhould have the Land; for it being deviſed to the uſe of Tho. ut ſupra, and he dying before the deviſor, this cannot veſt in the heir, for it never veſted in the Anceſtor; for the words (heirs) are not to give the immediate Eſtate, but by way of limitation; and if this ſhall veſt in the heir, it ſhall veſt in him as a purchaſer, which was not the intent of the deviſor, and ſo ſhall be void; and they conceived the Caſe doth not differ from Bret and Rigdins Caſe; but becauſe the Office was not fully found, they would not reſolve it, but a melius inquirendum was awarded.

Termino Michaelis,

Triceſſimo tertio, & quarto ELIZABETHÆ,

In Banco Reginæ.

Kenſon *verſus* Reading, Int. Hill. 30. rot. 542.

(1) 2 Rol. 454. TRespaſs. The Caſe upon a ſpecial verdict was. The Queen had the Rectory of Greenwich to which the Manor of D. did appertain; and granted them per nomen Rectoriæ, and all the Lands, Tenements, Underwoods, and Hereditaments to the ſame belonging, Salvis ſemper & omnino reſervatis omnibus groſſis arboribus boſcis & maheremiis de & ſuper præmiſſis. And if by theſe words Boſcis, the Underwoods which are before let expreſly were excepted or not, was the Queſtion. Winter for the Plaintiff argued that the Underwoods are excepted. Foſter, contra; for the underwoods being granted by expreſs words cannot be excepted no more in the Caſe of the Queen then of a Common perſon; for the exception of that which is expreſly granted is void, otherwiſe it is of a thing that paſſeth only by implication; and here the word (groſſis) extendeth to boſcis, arboribus, &c. and ſo nothing is excepted but groſſis arboribus, &c. and not the Underwoods. And ſo was the opinion of the Court, that an exception in the Queens grant cannot be of that which is before expreſly granted, and her intent here is apparant by the word (groſſis) to except only the great Wood, and it ſhall be referred as well to the Trees as to the reſt; and it was adjudged for the Defendant.

Ante 6. Hob. 170.

Hill *verſus* Pilkinton, Hillar. 32. Rot. 171.

(2) DEbt upon an Obligation, the Condition was to perform Covenants in a Leaſe, the Defend. pleads Covenants performed. The Plaintiff by replication ſhewed the Covenants in the Indenture; whereof one was that he ſhould enjoy ſuch Lands let to him quietly without interruption, and ſheweth in facto, that the Defendant 20 Martii. 30 Eliz. had diſturbed him, and in that aſſigneth the breach; the Defendant by rejoynder ſheweth that in the Indenture there was a proviſo, that if he payeth 10 l. the 31 of March 30 Eliz. that then the Indenture and all therein contained ſhall be void: and alledgeth that he paid the 10 l. at the day (but this was after the diſturbance ſuppoſed) and hereupon it was demurred; and after opening of the Caſe by Bevercotts for the Plaintiff it was adjudged without any great argument for the Plaintiff; for by the Covenant broken before the Condition performed, the Obligation was forfeited;

feited; and it is not material that the Covenants become void before the Action brought. But Wray ſaid, that if the proviſo had been that upon the payment of the 10l. as well the Obligation as the Indenture ſhould be void, it had been peradventure otherwiſe; for then the Bond was void before the Action brought, & 35 H. 8. Dy. 57. and Bylowes Caſe was cited, where a Parſon made a Leaſe for years, in which were divers Covenants, and after he became non reſident, by which the Indenture became void, yet he might maintain an Action of Covenant, for a Covenant broken before his non reſidency, v. Dr. Hectors Caſe, antea, Mich. 29 & 30. B. R. placito 37. Ante 78.

Porter *verſus* Gray, Tr. 33. Rot. 365.

(3) A Vowry for an amerciament in a Leete; for that Ed. 6. granted the hundred of H. in which was a Leete to G. Owen in Fee, who died ſeiſed, and it diſcended to J. Owen his couſin and Heir, who being ſeiſed, granted it to Foſter in Fee, who by Deed enrolled granted it to the Earl of Leiceſter in Fee, who by Deed enrolled granted it to the Lord Norris in Fee; and for that the Defendant was reſiant within the hundred, and appeared not at a Leete held 23 April, 32 Eliz. he was amerced Twelve pence; and for that the diſtreſs, &c. And upon this avowry it was demurred in Law. 1. Becauſe he pleaded that G. Owen died, and it diſcended to J. O. his couſin and Heir, and ſhewed not that G. died without Iſſue, Sed non allocatur, for it ſhall be clearly intended. 2. That he ſaid that J. O. did grant it to Foſter, but ſhewed no Deed of the grant; and it was ruled to be ill, for this cauſe; for it cannot be granted but by Deed, which muſt be ſhewn. 3. That the Defendant did not ſhew that the Court was held within a month after Eaſter; and this was held a good exception, it being a Leete by grant; but of a Leete by preſcription it is otherwiſe, 20 H. 7. 22. 18 H. 6. 11. and they were of opinion to give Judgment for the Plaintiff, but would adviſe, &c. 2 Inſt. 72. Ante 125.

Love *verſus* Wotton, Hill. 33. Rot. 188.

(4) Debt upon an Obligation, the Defendant pleaded the Statute of Uſury made 6 Feb. 13 Eliz. (whereas the Parliament did begin the ſecond of Feb. 13 Eliz.) and that the Obligation was taken by Uſury; the Plaintiff replied it was not made for Uſury, &c. Contra formam Statuti modo & forma prædict. and upon this they were at Iſſue, and found for the Plaintiff; and for that the Statute was miſrecited, and it was a general Law of which the Court is to take Conuſance; although both the parties do agree there is ſuch a Statute, yet the Court well knowing there is no ſuch Statute, and ſo cannot be contra formam Statuti, the Court held no Judgment could be given for the Plaintiff, it being in the Barr of the Defendant, the Court held it clearly ill; and that a repleader ought to be, although it was after verdict; and it was adjudged that there ſhould be a repleader. 1 Mar. Dy. 119. Ante 236.

Tayler *verſus* Fiſher, Paſch. 32 Eliz. Rot. 146.

(5) Treſpaſs for breaking his Houſe, and taking away a Coſſett and a Pike of the Plaintiffs. The Defendant pleaded that long time

time before the Treſpaſs ſuppoſed, J. Bamfield was ſeiſed of the ſaid Coyſlet and Pike as of his own goods remaining in the Plaintiffs houſe, and that he ſold them to the Defend. and thereupon he tempore quo, &c. came to the Plaint. houſe and demanded them; and the Wife of the Plaint. then and there (the Plaint. being abſent,) licenſed him to enter into the houſe, and take them; and he thereupon entred, &c. and took them, as it was lawful for him to do, &c. And upon this it was demurred. And after divers motions it was adjudged for the Plaint. that he ſhould recover as to the entring into the houſe, but not as to the goods; for the goods being in the Plaint. houſe, and it not appearing how they came there, viz. either as Treſpaſs or otherwiſe, he cannot of his own head enter; and the Wives licenſe to enter into her husbands houſe is not good, for ſhe cannot give one Authority to enter into her Husbands houſe; but Gawdy contra, for it may be intended the Goods were there by the Plaintiffs Licence, and then he might well enter and take them; but the three other Judges contra: and it was adjudged for the Plaintiff, v. 30 Ed. 3. 12.

Poſt: 876.

Bretton & Elizabetha Uxor *verſus* Bolton of Graies Inn.

(6) Aſſumpſit: The Plaintiffs declared that whereas Tho. Bolton was the Brother of the Defendant, and the Defendant was a Counſellor, & peritus in lege, and whereas the Defendant did know that the ſaid T. was ſeiſed to him and the heirs males of his body, the remainder to the Defendant, and to the heirs males of his body, of the Manor of Heywood in the County of Norfolk, and that the ſaid E. the Wife of the Plaintiff had lent 100 l. to the ſaid T. for the payment of which ſum at a certain day to come, the ſaid T. and the Defendant were obliged by their writing Obligatory, ſigillo ſuo ſigillat' joyntly and ſeverally in 200 l. the Defendant in conſideration that the ſaid Eliza. at his ſpecial inſtance ſhould deliver to the ſaid T. the ſaid writing Obligatory to be cancelled; and ſhould lend to the ſaid T. another 100 l. did aſſume to the ſaid Eliz. that if ſhe would refer to the Defendant the making of the ſaid aſſurance for the 200 l. and would uſe no other Councel then the Councel of the Defendant, that he would provide talem aſſurantiam pro inde pro prædict' Eliz. per qualem ipſa eadem Eliz. haberet majus advantagium of the ſaid T. if he ſhould make default of payment of the ſaid 200 l. then ſhe had before for the ſaid 100 l. and alledged in facto, that ſhe truſting to his promiſe uſed no other Councel, &c. And delivered to the ſaid T. the ſaid bond to be cancelled; and that ſhe lent to the ſaid T. the other 100 l. and that the Defendant not regarding his promiſe, but intending to defraud her, then and there knowing that the ſaid T. was ad tunc, ut præfatur, ſeiſed in Tayle, viz. to him and his heirs males of his body (but ſaith not where the reverſion or remainder was) then and there falſo & malicioſe provided for her aſſurance a grant of an annual Rent iſſuing out of the ſaid Manor of H. to have in Fee (and ſhewed it in certain) which was a Rent ſecke; which ſhe truſting to the ſaid promiſe received for her ſecurity of her 200 l. and alledged in facto that the ſaid T. within one year died without iſſue, by which after his death the ſaid Rent ceaſed and became void; and the ſaid Manor came to the Defendant diſcharged of the ſaid Rent; and further alledged that the Defendant provided no other aſſurance for the payment of the ſaid 200 l.

and

and that the ſaid 200 l. and every part thereof were yet unpaid, & ſic. the Defendant falſly and maliciouſly deceived the ſaid Plaintiff in providing the ſaid aſſurance for the payment of the ſaid 200 l. by which ſhe is without remedy for the payment of the ſaid Rent or the ſaid 200 l. ad damnum 400 l. the Defendant pleaded non Aſſumpſit, and found againſt him. And divers matters were alledged in Arreſt of Judgment. 1. It was alledged that whereas the ſaid T. and the Defendant were obliged per ſcriptum ſuum Obligatorium ſigillo ſuo ſigillat' and ſo is uncertain, for it cannot be the Bond of both, for it is ſigillo ſuo, &c. in the ſingular number. Sed non allocatur, for ſigillo ſuo may be referred to both their ſeals, and both may uſe one ſeal. 2. The Aſſumpſit is that if ſhe at his inſtance and requeſt would deliver the Bond, &c. and ſhe alledgeth that ſhe delivered the Bond, &c. but ſaith not that ſhe delivered it at his inſtance; and if it was not delivered at his inſtance, but upon ſome other conſideration, as it may be intended; it is no performance of the conſideration. Sed non allocatur, for when ſhe delivered the Bond to be cancelled, it ſhall be intended upon the conſideration before, and at the requeſt of the Defendant. 3. For that it was alledged that the Defendant well-knowing that the ſaid T. was ſeiſed ut prefertur in Tayle, but ſaith not in whom the remainder was; and it might be to his righ heirs; and then the Rent-charge may have continuance. Sed non allocatur, for when in the recital it is ſaid that T. was ſeiſed in Tayle, the remainder to the Defendant; and it is ſaid afterwards that T. was ſeiſed ut prefertur in Tayle, this ſhall be intended with remainder over as before. 4. Upon the ſubſtance of the matter; that this aſſurance that was made was better then what ſhe had before, for it is not alledged when the firſt 100 l. was to be paid, but at a day to come which may be long after; and here the Rent that was granted being an Inheritance which charged the Land, was a better aſſurance then a Bond which charged the Goods, for which ſhe had no remedy if the Obligor left no Aſſetts to his Executor. But the Court held clearly the contrary, for the Bond charged his perſon and his Executors after his death, but this Rent did only charge his Land during his life; and he being dead, ſhe had no remedy. 5. The concluſion of the Action ſounds in nature of a diſceit, and then the Iſſue non Aſſumpſit is no anſwer to that the Plaintiffs have charged the Defendant. Sed non allocatur, for the Plaintiffs having declared upon the whole matter, and having ſhewed to the Court ſufficient matter that the Defendant had not performed his promiſe, the concluſion is not material, but the Court ſhall adjuge upon the whole matter precedent; ſo it is a good iſſue. And the Plaintiffs had Judgment.

Sir Richard Buckly, *verſus* Wood, Cujus principium antea, f. Paſch. 33. placito 21.

IT was now moved again by Egerton for the Plaintiff, that the Bill was not lawfully exhibited in the Star-chamber, for matters concerning his life which were not examinable there, for then his own Oath ſhall prejudice him; and if the Action did not lye for the exhibiting, yet it lay when he ſpoke of it in the Country; and ſpoke of the ſubſtance thereof (as it is expreſly alledged in the Declaration) (7) Ante 230.

claration) and ſaid that his Bill, and all that was contained in it was true, for this an Action lieth; for this is not in a courſe of Juſtice. Tanfield, if the Bill containeth any matter of ſlander of another, then of him againſt whom it is exhibited, an Action lieth as in 2 Eliz. between Stanley and Courſep; where the witneſs goeth beyond the point in Iſſue, or queſtion, and ſlandereth a third perſon, Action lieth; but here the exhibiting of the Bill is only in courſe of Juſtice, and concerneth himſelf only, and ſo is not puniſhable; and then his ſaying in the Country that his Bill was true, &c. is not puniſhable. And he ſaid that the Declaration is incertain, for it is that the Defendant did exhibit his Bill, conteyning (inter alia) this matter which is not good; for it might be there were words of qualification in the Bill, which qualified the firſt words, and therefore the whole Bill was to be recited. But all the Juſtices held this exception not to be material; for if there were any words of qualification, they were to be alledged by the Defendant, and it ſhall not be otherwiſe intended, but rather that it contained this matter of ſlander amongſt other matters of ſlander. And for the matter they all reſolved that the Action lay; for they were not matters examinable in Star-chamber; and when he exhibited the Bill maliciouſly in ſlander of the Plaintiff for matters not examinable there, it is reaſon he ſhould be puniſhed, and eſpecially when he ſpoke of the matters in the Country, and publiſhed them and affirmed they were true. But Wray ſaid, if the Bill had been well exhibited, for which matters the Court might take examination, ſo that his complaint was in courſe of Juſtice, an Action did not lye, although they were falſe and ſcandalous; and if it did not lye for exhibiting the Bill, then it lay not for ſaying that it was true; but in the principal Caſe they reſolved ut ſupra. And the Preſident Bowes his Caſe was ſeen in Court, which was all one with this Caſe, except that the words (inter alia) were left out; and all the Bill was recited, and afterwards at the end of the Term it was adjuged for the Plaintiff, 4 Co. 14. B.

Poſt. 564. 725.

Co. 4. 15. a.

Dalton *verſus* Sheffington, Tr. 32. Rot. 110.

(8) Ant. 85. ERror to reverſe an Outlary; the Original was Sheffington, and the mean proceſs Skeffington, and for this variance it was reverſed.

Atkins *verſus* Atkins, Hill. 33. Rot. 776.

(9) ERror to reverſe a Judgment in Norwich, in a Writ of Dower. The Caſe was, J.S. deviſed Land to S. and to the Heirs of his body; and after his deceaſe to B. the eldeſt ſon of S. and to the Heirs of his body, the remainder over to three other of the Sons of S. in the ſame Manor. The queſtion was what Eſtate S. had in the Land. Hubbard argued that he had an Eſtate for life, the remainder to his ſons as purchaſers. Coke contra. That he had an Eſtate Tayle, for by the firſt words an expreſs Eſtate in Tayle was given to him; and there are no ſpecial words to correct or alter them; and it was afterwards adjudged that S. had an Eſtate in Tayle; and that his wife ſhould have Dower, and the firſt Judgment in the Writ of Dower was affirmed.

Nelſon

Nelſon & Bugg *verſus* Woodward. Cujus principium antea. Trinit. 32. placito 13.

PRohibition: the Caſe was moved again: Gawdy Juſtice held that (10)
conſultation ſhould not be granted, for it is as a contract for 2 Rol. 63.
Tythes to come, which may be without Deed, and may be for Ant. 188.
life or years, and it is a contract that goeth in diſcharge of payment of Tythes, but a Leaſe or grant of Tythes muſt be by Deed
21 H. 6. 43. and here a Prohibition lieth to avoid circuity of Action; 2 Cr. 137.
and of this opinion was Clench Juſtice, Wray & Fenner contra; that Yelv. 94.
this is a ſale, and cannot be without Deed, and a grant and contract for Tythes is all one; but a ſale for one year may be of Tythes without Deed, and it is not reaſon he ſhould make a Deed to every one of his Pariſhioners for each of their Tythes for a year; and Wray ſaid he had conferred with the Juſtices of his houſe, and they were of his opinion. And as to the circuity of Action, the Plaintiffs here can have no Action upon the promiſe, for this was made with P. and although they are aſſignees of the Land, yet they can have no Action, & Poſtea p. 35. Eliz. it was ad- 1 Cr. 137.
judged for the Defendant, that this agreement cannot be without Deed, and the Aſſignee hath no colour to take thereof advantage, and a conſultation was granted.

Leeks Caſe.

HE was Endicted by the name of John Leeks, alias Style de Dets, (11)
and it was held to be ill, for he ought to have his addition Ante 198.
before the alias dictus, and ſo it was ruled in Grymes caſe, although both the names be not recited in the alias.

Lacy *verſus* Lacy.

ASſumpſit: That whereas the Defendant was poſſeſſed of a (12)
Leaſe for years, the reverſion to the Queen, in conſideration of ten pound paid by the Plaintiff to him in hand, and of ten pound to be paid to him upon the procuring of a new Leaſe to the Plaintiff, the Defendant did promiſe to ſurrender his Leaſe, and to procure a new Leaſe to the Plantiff before the end of Trinity Term, and that he had not performed it: upon non aſſumpſit pleaded it was found for the Plaintiff; and it was ſaid in Arreſt of Judgment that the Declaration was not good, becauſe he did not alledge he was ready to pay the other ten pound at the end of Trinity Term; Sed non allocatur: for it was not to be paid till the Defendant procured the Leaſe, ſo he was to do the firſt Act; and the Plaintiff had Judgment.

Brable *verſus* Hollywell, Tr. 33 Eliz. Rot. 483.

(13)

ASſumpſit: The Plaintiff counts that the Defendant upon a certain conſideration promiſed to deliver to him forty quarters of Wheat between Sturbridge Fair and Chriſtmas, if the Plaintiff liked thereof at Sturbridge Fair; and ſhewed he liked thereof, and upon the laſt of November at ſuch a place required the Defendant to deliver them, which he had not done. Upon

non aſſumpſit pleaded it was found for the Plaintiff; and it was alledged in Arreſt of Judgment, that the Declaration is not good, becauſe it is not ſhewn in the Court that he ſhewed his liking to the Defendant, and his liking is ſecret, of which the Defendant cannot take notice; and therefore of neceſſity it muſt be alledged 17 Ed. 4. and ſo it was ruled this Term between Chapman and Hurſt, which is entred Tri. 33. Rot. 487. But it was anſwered, that his liking was ſufficiently ſhewn, when it is alledged he required them at ſuch a day; but the Court held this will not aid him as this caſe is, for the liking is to be at Sturbridge Fair, and here a requeſt is alledged ult. Nov. which is long after, and at another place. And Judgment was given for the Defendant.

(14) ASſumpſit: The Plaintiff declared that the Defendant in conſideration the Plaintiff ſhould ſerve him for one year, and manure his Land, &c. promiſed to pay him forty ſhillings, and alledged in facto that he ſerved him for one year and manured his Land, &c. the Defendant pleads, the Plaintiff did not ſerve him for one year, but departed from his ſervice within the year, and upon iſſue joyned, it was found for the Plaintiff; and it was alledged in arreſt of Judgment, that the iſſue was not well joyned, for it was a traverſe of the conſideration, which is not traverſable, but it was ruled good, and the Plaintiff had judgment. Nota,
Ant. 201. the reaſon ſeemed to be, becauſe it was a conſideration executory.

Coles *verſus* Haveland.

(15) ACtion for theſe words, Coles hath ſtrained a Mare, innuendo carnaliter
Moor 419. cognovit aquam; the Jury found that the Defendant ſpake the words, C. hath ſtrained a Mare, meaning that carnaliter cognovit. And upon theſe words the Plaintiff had Judgment, although it was alledged that the words in themſelves had no ſence, and the Innuendo will not help the matter, but only denote the perſon; but becauſe the Verdict hath found preciſely that this was his meaning, and it is a phraſe of the Country, It was adjudged for the
Yelv. 153. Plaintiff.

Stoner *verſus* Audely.

(16) ACtion for theſe words, ſi. Aid me to Stoner, for I have Felony to lay to his charge, for he would have robbed me. After Verdict for the Plaintiff, it was alledged in Arreſt of Judgment, that the words are not actionable, for perhaps the ſaying, I have Felony to lay to his Charge, of themſelves are actionable; but when he ſaith further, for he would have robbed me, they prove no felony, but extenuate the firſt words, and ſhew what he did intend, and the laſt words are not
Ant. 6. actionable; for to ſay, One would have robbed me, an Action lieth not,
2 Cr. 331. without ſhewing ſome overt Act put in ure, which is Felony, or cauſe to bind one to his good behaviour; for though he had an intent, peradventure he repented of it, and did no evil Act. And Lea cited a Caſe adjudged in 27 & 28 Eliz. inter Tettul & Osborne, that theſe words, ſcilicet, Thou wouldſt have murdered me, are not actionable; and for this cauſe the Court inclined that an Action did not lye,
Sed adjournatur. Stapleton

Stapleton *verſus* Frier, Tr. 33. Eliz, Rot. 189.

ACtion for words, ſſ. My Lord Preſident of the North ſhewed Mr. Stapleton his hand ſet to a Book, whereby he had conſented to the late Rebels of the North, but by the means of Mr. Fairfax, my Lord Preſident was perſwaded, and the matter ſuppreſſed. After Verdict for the Plaintiff it was moved in Arreſt of Judgment, that an Action lay not, for it is not ſaid he conſented to the Rebels, but that his Hand was ſet to a Book, whereby he did conſent, &c. but ſheweth not who ſet to his Hand, and it might be done by another; alſo it is not ſaid he conſented to them in their Rebellion, but the conſent may be in ſome other matter, nor that he knew they were Rebels; alſo it appeareth not in what they were Rebels, if in Treaſon or only upon proceſs of Rebellion; Curia contra in omnibus; for it cannot be his Hand, if he himſelf ſets it not to the Book, but another may write his name; and when he ſaid, he conſented to the Rebels, and ſhewed not any certain perſon, this cannot be otherwiſe intended but that he conſented to all the Rebels in their Rebellion; but if he had ſaid that he conſented to A. and B. which were Rebels, this peradventure may be intended that he conſented to them in ſome other matter, as it was ruled 26 Eliz. inter Brown and Liſle, where the words were, He was Confederate with Campion the Jeſuite, no Action lay, for it is not ſaid he knew him to be a Jeſuite, nor in what manner he was Confederate with him. And in this Term it was adjudged for the Plaintiff. (17) Ant. 52.

Dullingham *verſus* Kyfeley.

PRohibition: And ſurmiſed that K. the Defendant being Proprietor of the Parſonage of Sapſto in Suff. had ſued Curtis in the Court Chriſtian, for Tythes of certain Land in the Pariſh of S. the Plaintiff being Parſon of Hemington in the ſame County came in pro intereſſe ſuo, and alledged there is a cuſtom within the Pariſh of Sa. that the Parſon of Hem. ſhall have thirteen Cheeſes for the Tythes of theſe Lands in Sa. and that in recompence thereof the Parſon of Sa. had thirteen Cheeſes for the Tythes of ſuch Lands in Hem. and upon this matter he grounded his Prohibition, alledging that he had pleaded this in the Spiritual Court, and it would not be received. Tanfield moved that the Prohibition lieth not, for it is for one that is not ſued, and it is not reaſon he ſhould ſtay the ſuit of a Stranger. Alſo here the very right of Tythes is to come in queſtion, and not the Bounds of the Pariſh, and ſo is not triable here, as 35 H. 6. 39, & 47. & 14 H. 4. 17. are, Coke contra, for the right of Tythes is not here in queſtion, but a modus decimandi, and ſo is triable here; and this was a good matter for the Pariſhioner to plead; and that which the Pariſhioner may plead, he that conveth in pro intereſſe may plead. Gawdy, the Pariſhioner might well plead it, but when the Parſon of another Pariſh will plead it, by this the right of Tythes will come in queſtion between the two Parſons; 20 H. 6. 18. the Caſe is, that when the right of Tythes is in queſtion (18) Ant. 71.

between two Parſons, this Court hath no jurisdiction: for the trial of the right, &c. belongs to the Civil Law, 31 H. 6. and afterwards the Court was of opinion to grant a conſultation. Sed adjournatur.

Smith *verſus* Clerke.

(19) 13. El. c. 12. PRohibition: The Caſe upon ſpecial Verdict was, two Incumbents were of the Church of Ungery Hatly in the County of Camb. one ſued the other in the Spiritual Court to deprive him for not reading the Articles, and giving his aſſent to them according to the Statute of 13 Eliz. and the Iſſue being if he gave his aſſent, the Jury found, that he read the Articles and ſaid, I give my conſent unto them ſo far forth as they agree with the word of God. And it was adjudged, that it was not ſuch unfained conſent as the Statute intendeth, but it ought to be abſolute without Condition. And a Conſultation was awarded.

Murrel *verſus* Smith.

(20) Co. 4. 24. b. EJectione firmæ V. 4. Co. 24. b. The Court held that he remained a Copyholder as before, and the Heir might enter without admittance, yet ſhould pay his uſual Fine, and do all his ſervices, except ſuit at Court, for that is gone by ſeverance from the manor, and ſhould be ſubject to forfeitures as waſte, &c. And Fenner Poſt. 499. Juſtice ſaid, that he might ſurrender his Eſtate to the grantee of the Freehold, to the uſe of the grantee, for he had the reverſion, but could not ſurrender to the grantee to the uſe of another, nor the grantee cannot grant it by Copy to another; ſo the Copyholder muſt always keep it in his hand; but quære of this: and the other Juſtices gave no opinion of this point.

Smith *verſus* Havens.

(21) TRespaſs: Upon demurrer the Caſe was, I. S. by his Will in writing, deviſed that If Eliz. his Wife think good to bring up his children in Learning, and to find them Meat, Drink, and Apparel, that then ſhe ſhall have his Land till I. S. his Son attaine his age of twenty four years, and dieth; the wife undertaketh the bringing up of the children, and dieth before the Son came to twenty four years of age; the queſtion was, if this was only a matter of confidence, or Poſt. 678. of an intereſt alſo in the Land. And all the Juſtices were of opinion, that it was not only a confidence but an Intereſt, and it was tied with the condition to bring up the children; and if it ſhould determine the children ſhould be without remedy for their education, 4 Eliz. Dy. 210. & adjournatur.

Jeffery *verſus* Coyte.

(22) Anr. 56. EJectione firmæ: The Caſe upon ſpecial Verdict was, Avice Trevelian being Tenant for life, the remainder to Thomas her Son in tail, they two 2 & 3 Ph. & Mar. let the land by Indenture to Agnes Browne for life, remainder to W. B. for life, rendring ten pound rent per ann. Avice dieth, Tho. that was in remainder, accepts the rent of Ag. B. and dieth, Hugh T. the iſſue of Thomas accepts the rent of the ſaid A. B. and after enters and makes a Feoment and levieth a Fine

to

to I. S. Ag. B. re-enters and dieth, W. B. as in his remainder enters. The queſtion was, if I. S. the purchaſer might avoid this Leaſe in remainder; or if the acceptance of the Rent from the firſt Tenant for life made this Leaſe good to W. B. in the remainder. Gawdy, this acceptance of the Rent by the iſſue in tail maketh good both the Eſtate for life, and the remainder to W. B. for they make but one Eſtate; and if a Leaſe be made to two, and the iſſue in tail accepts the Rent of one of them, and ſaith he will accept him only for his Tenant, yet it is good for both, and theſe Eſtates are directed out of both the Intereſts of Avice and Thomas their ſon, for they ſhall joyn in an Action of Waſte, 27 H. 8. fo 17 Eliz. Dy. 339. if Tenant for life, and he in the remainder joyn in a Leaſe for life, it is a forfeiture, for the Leaſe is derived out of both their Eſtates, and if it enured by way of confirmation it could be no forfeiture; and here when Avice the Tenant for life is dead, the eſtate ſhall be ſaid to be created only by him in the remainder; and all the Juſtices agreed if it were only the confirmation of Tho. then the acceptance of the Rent by his iſſue ſhould not make the eſtate in the remainder good. Wray and Fenner held the Leaſe is derived out of both their intereſts; and if any can avoid it, it muſt be the iſſue intail. Clench doubted, for he conceived that the eſtate was only created by the Tenant for life, and ſo had granted a reverſion; and ſo the acceptance by the Iſſue ſhould not bind him; but it was afterwards adjudged that the eſtate in remainder was good and would not be avoided by a Purchaſer.

Co. Lit. 251. b.

Ante 154.

Ant. 56.

Stone *verſus* Radiſh, Tr. 33. Eliz. Rot. 762.

(23)

DEbt upon an obligation; the Condition was for the delivery of twenty quarters of Wheat; the Defendant pleaded that pendente billa the Plaintiff had accepted fifteen quarters, and demands judgment of the Bill; and it was adjudged no Plea, for it is collateral and not parcel of the ſumm contained in the obligation; and if it be a Plea, it is a Plea in Bar and not in abatement. And it was adjudged for the Plaintiff.

Poſt. 260.

Ante 202.

Poſt. 342.

Acton *verſus* Hill, Int. Tr. 33. Rot. 393.

(24)

DEbt upon an obligation; The Condition was that whereas the Defendant was made Sub-collector of the Subſidy by the Plaintiff, if he gave a ſufficient accompt in the Exchequer of all ſums which he received, and if he diſchargeth or ſaveth harmleſs the Plaintiff of theſe Receipts againſt the Queen, and procureth to the Plaintiff a ſufficient acquittance or diſcharge out of the Exchequer, as in the like caſe is uſed, that then, &c. the Defendant pleads that he had accompted, &c. and had diſcharged and ſaved harmleſs the Plaintiff, &c. and had procured him an Acquittance, &c. and hereupon it was demurred. Wild moved for the Plaintiff that the Plea was not good, for he pleads in the affirmative that he had diſcharged, &c. and ſhewed not how, &c. 35 H. 6. 21. 40 Ed. 3. 20. Gawdy, if the diſcharge is to a particular thing, he muſt ſhew how, &c. but otherwiſe it is when it is to multiplicity of things, for then a general pleading is good, 5 Ed. 4. 8. and ſo peradventure it is here. Et adjournatur.

Poſt. 393. 477

Co. 2. 4. 2.

Clerke

Clerke *verſus* Hopkins, Hill. 32. Eliz. Rot. 238.

(25) ASſumpſit againſt the Defendant as Executor to Simons; he pleaded, that he is not Executor, and that he never adminiſtred, &c. the Plaintiff replieth, that at D. in the County of B. he adminiſtred goods to the value of, &c. And upon this they were at iſſue. The Jury find a ſpecial Verdict that the ſaid S. made his Wife Executrix and died, the Wife proveth the Will and Adminiſters, and made I. S. her Son of the age of thirteen years Executor, and the Defendant Overſeer, and dieth; the Infant proveth the Will, the Defendant by the conſent of the Infant ſelleth certain Goods, to the value of one hundred and forty pounds, to the uſe of the Infant; and if this were Adminiſtration, they pray the diſcretion of the Court. Tredway moved for the Plaintiff, that this is an Adminiſtration, for although an Infant may be an Executor, yet he muſt do things as an Executor; but it is not found that the Goods were ſold in execution of the Will, for then it would not be an Adminiſtration in the Defendant, 1 Eliz. Dy. 166. 9 Eliz. Dy. 255. and an Infant of the age of thirteen years cannot give his aſſent to the ſale of the Goods. Curia contra; for an Infant Executor is to pay Debts, and then he muſt ſell Goods to pay them, for peradventure the Creditors will not ſtay, nor take Goods for their Debts; and therefore the ſale by the Infant himſelf is good, ſo is the ſale by another by his conſent, and when it is no prejudice to the Infant, it is without doubt good; and here he doing it as a ſervant to the Infant, it is no Adminiſtration; and it was adjudged that the Plaintiff ſhould be barred.

Ant. 43.

Co. 5. 27. b.

Laund *verſus* Tucker.

(26) EJectione firmæ: It was found by ſpecial Verdict that Tenant for Life, and I. S. joyned in a Fine ſur coniſ. de droit come ceo, &c. to a ſtranger who rendred to I. S. for eighty years, remainder to the Tenant for life in Fee. Proclamations paſs, and the five years paſs without entry by him in the reverſion, Tenant for life dieth; the queſtion was, if he in the Reverſion ſhould have other five years. and it was adjudged he ſhould, and ſo it was adjudged in Somes Caſe, 7 Eliz.

Co. 3. 78. 9.

3 Co. 78. b.

Ante 220.

Hogg *verſus* Croſs, Hill. 33. Rot, 685.

(27) EJectione firmæ of a Houſe and Garden in London, of the Leaſe of one Rice: it was found by ſpecial Verdict that J. Warren was thereof ſeiſed in Fee, and held it in Burgage, and by his Will deviſed it to Margaret his Wife for life, and dieth; M. taketh Rice to Husband, who made the Leaſe; but they further found that the ſaid J. W. before the making of his Will, made a Deed of Feoffment to G. W. his Son, Habendum after the death of the ſaid J. W. the Feoffor to the ſaid G. W. in taile, and made Livery of ſeiſin ſecundum formam chartæ. And if any thing paſſed by this, they prayed, &c. G. Wray of Lincolns Inn argued for the Plaintiff, that this Feoffment was void and nothing paſſed, and then the Will made afterwards was good; for when no Eſtate is expreſſed

2 Rol. 10. 66.

Poſt. 269.

in

in the beginning of a Deed, but only an implied eſtate for life as here, and by the Habendum an expreſs eſtate is limited; this doth control the implied limitation; and if this be void and repugnant in Law as it is here being after the death of the Feoffor, all is void; but if there be an expreſs limitation in the beginning, if the Habendum be repugnant, it is void, and the firſt is good; and although livery be made, yet it is tied ſecundum formam cartæ, which is void, and ſo all is void, for it is but the execution of a void Deed. And this very point was ruled accordingly in Mayns caſe in the Court of Wards. Dalton contra, that an eſtate for life doth paſs by the premiſſes, and the Habendum void; but all the Juſtices reſolved the contrary, for it appeareth to be the intent of the Feoffor that no Eſtate ſhall paſs but in futuro, viz. after his death, which is againſt Law; and it being all the purport of the Deed, nothing ſhall paſs in any other manner, for nothing ſhall paſs by the premiſſes but according to his intent, which is nothing, for he intended not to paſs the Freehold immediately. But if one grant a term by Deed hab. after his death, this doth paſs by the premiſſes, for the premiſſes are ſufficient to carry it, and the Habendum ſhall not utterly deſtroy it; but it is otherwiſe here, where it is to take effect by limitation of the party, which is void, and the livery is alſo void to execute a void Deed. And without further argument it was adjudged for the Plaintiff, 2 Co. 55. b. Co. Littleton 48. b.

Ant. 29.
2 Cr. 376.
Co. Lit. 48. b.
2 Co. 55. b.
Hob. 171.
Poſt. 585.
Co. 2. 23. b.

Emott *verſus* Cole, P. 33. Rot. 337.

DEbt upon an obligation made ult' Martii 29 Eliz. the condition was to perform all Covenants, Conditions, Articles, Agreements and Clauſes in an Ind. bearing the ſame date; the Defendant pleads the Indenture, which was a Leaſe for years of certain Lands and ſtock of Cattel to the Defendant, and to Tolfry, rendring twenty pound Rent per annum, and all the Covenants and other Clauſes in it were concerning the Land, and pleads that long time before the leſſor had any thing in it, one C. was ſeiſed of the Land in Fee, and acknowledged a Statute to I. S. and that after the Leaſe made viz. 29. May 29 Eliz. the Counſee ſued execution, and all the Land was delivered in Execution (ſo they were thereof evicted) and that after the date of the Ind. until Execution ſued, he and T. had performed all the Covenants, Conditions, Agreements and Clauſes in the ſaid Indenture. And upon this Plea it was demurred in Law. Buckly for the Plaintiff took two exceptions to the Plea in Bar. 1. The condition was, if the Defendant and T. and their Aſſignees perform, &c. and he pleads that he and T. had performed, &c. but ſaith not that he and T. and their Aſſignees had performed, &c. and it may be, they had aſſigned it over. 2. The condition was, if they perform all the Covenants, Conditions, Agreements, Articles, &c. and when he recited them, he ſaid not which are all the Covenants, Conditions, Agreements and Clauſes in the Indenture, but leaveth out (Articles) ſo hath not pleaded performance of the Condition. The matter in Law was, if a leaſe be made of lands and goods rendring rent, if the land be evicted whether all the rent ſhall be gone, or there ſhall be an apportionm̄ in regard

(28)

regard of the goods; and ſo the not payment of the portion for the rent, be a forfeiture of the Bond; and he ſaid there ſhall be an apportionment, 12 H. 8. 11. 35 H. 8. Dy. 56. if the goods be evicted, there ſhall be an apportionment, and ſo e converſo: curia contra in omnibus. 1. Exception is not material, for it appeareth not there is any Aſſignee, and it ſhall not be intended except it be ſpecially ſhewn, and a bar is good to a common intent. 2. Exception (Agreements) is all one with (Articles) and if many words contain one thing in ſignification; if he anſwers to them in ſubſtance, it is good; for the matter in Law, there ſhall be no apportionment, for the Rent iſſueth out of the Land, and follows it; and ſo Wray ſaid it hath been heretofore adjudged. And it was here adjudged the Plaintiff ſhall be barred. V. 4. Eliz. Dy. 212. & 361. 9 Ed. 4. 1. 21 Ed. 4. 28, & 29.

Poſt. 607.

Haſſet *verſus* Payne.

(29) ATtaint. Coke ſheweth to the Court that in the firſt Ven. of the petit Jury one George Ellinger was returned, and upon the diſtringas, Gregory Ellinger was returned and appeared in the lieu of George Ell. and was ſworn and tried the matter, ſo the Tryal was by eleven, and then no Attaint lieth; and of this opinion was the whole Court, and for this cauſe the Attaint was ſtaid.

Ant. 222.

Bright *verſus* Metcalfe.

(30) DEbt upon a Bill of five pound, which had theſe words, To be paid as I pay my other Creditors; the Plaintiff declared generally that he was indebted to him in five pound ſolvendum upon requeſt; the Defendant demanded Oyer of the Bill, and it was entred in hæc verba, and pleads an inſufficient matter, upon which it was demurred, and this exception was to the Declaration for variance from the Bill; for he ought to declare ſpecially according to the Bill; and of this opinion was the whole Court, except Fenner, who was of opinion that the words, To be paid as he paid his other Creditors were void, and it is payable immediately upon requeſt, as 4 Ed. 4. Solvend' to a ſtranger is void; but the others held e contra; and it was adjudged for the Defendant.

2. Cr. 316.

Penred *verſus* Chambers, Hill. 33. Rot. 24.

(31) ERror of a Judgment given in debt in the Court of Pypowders in Canterbury, and the Error aſſigned was, that the Plaintiff in his replication hath not averred his Plea, nor in the end of it demanded his debt and damages, and for theſe cauſes the Judgment was reverſed by Clench and Fenner (Wray and Gawdy abſentibus) and they ſaid a Court of Pypowders may be held, though not in pleno mercatu or feria; but this is to be by preſcription, and the preſcription muſt be in the ſtile of the Court.

2 Cr. 313.

Morris

Morris *verſus* Thomas, Hill. 33. Eliz. Rot. 92.

(32) ERror of a Judgment in Angleſey in Ejectione firmæ, and the Error aſſigned was, that the Venire facias was quorum quilibet habeat four pound; whereas the Statute of 27 Eliz. cap. 6. extends not to Wales; for it is only of the Courts at Weſtminſter, and the Aſſizes. To which it was anſwered, that this is no fault at Common Law; for it is for the benefit of the parties to have the better Trial; and if it be, it is helped by the Statute of Jeofail's of 32. H. 8. for that extends to all Courts of Record; and this Judgment was at the Grand Seſſions there in Ejectione firmæ. And of this opinion was the Court, and affirmed the Judgment. 27. El. c. 6. 2 Cr. 672.

Calthorp *verſus* Woodward, Trin. 32. Eliz. Rot. 1115.

(33) ERror of a Judgment in Debt; Error aſſigned was, that the Venire facias was awarded upon the Roll. Trin. 28. Eliz. Return. Mich. 28. & 29. Eliz. And the Tryal was by Niſi prius, 4 July, before the return of it; which is a calling of the Jury without Warrant. And the Court held, that if the Venire facias hath an ill teſte, or an ill return, or is wanting, this is aided by the Statute after Verdict; but here it is not wanting, but the Jury is taken before the return of it, and ſo without Warrant: And for this cauſe it is ill, and not helped by the Statute. Poſt. 259.

Savery *verſus* Tey, Paſch. 33. Eliz. Rot. 102.

(34) ERror upon a Judgment in Debt in Norwich, upon the Statute of 33. H. 8. for buying of Titles. Firſt Error, for that the Defendant pleads not guilty, which is no Plea in this Action; but all the Court held it good, when the Action is grounded upon a penal Statute. Second Error, the Plaintiff demands fifty pound for the value of the Land, and the Jury find the value twenty pound; upon which the Plaintiff had Judgment to recover one moity, and the Queen the other moity; and no Judgment was for the reſidue of the fifty pound, viz. that the Plaintiff Sit in miſericordia pro falſo clamore ſuo. And for this cauſe the Judgment was reverſed; but in Treſpaſs or other Actions wherein the Plaintiff declares ad damnum, if leſs be found then he declares; yet the Plaintiff ſhall not be amerced, becauſe the Action is grounded upon an incertainty. Poſt. 621. Co. 8. 61. a. Poſt. 699.

Griffin *verſus* Bover.

(35) ERror to reverſe an Utlary upon Judgment; the Error was, that the original was Griffin, and the Cap. Giffin; and for this cauſe it was reverſed. Ant. 50. 85. 104.

Haſelip *verſus* Chaplen, Paſch. 33. Eliz. Rot. 292

(36) ERror upon a Judgment in the Common Bench in Replevin, where the Defendant avowed for an Eſtray: Error aſſigned was, for that the Defendant had Return awarded to him with Coſts and Damages, whereas no Coſts or Damages are given in this caſe, neither by the Statute of 7 H. 8. or 21 H. 8. For they are Jones 435. 21 H. 8. 19.

only in Avowries for Rents, Services, Cuſtomes, and Damage-Feſant, ſo this is out of the Statutes; but it was anſwered, the Statutes are to be expounded, that the Avowant ſhall have Coſts and Damages as well in other caſes, as in thoſe recited; for they are recited only by way of example. But the Court doubted, for damages are penal, and ſhall not be taken by equity; and they conceived it Error, but would adviſe, Et adjournatur V. Trin. 36 Eliz. Plac. 4. B. R.

Poſt. 329.

Ramſey *verſus* Bird Senior, & Bird Junior.

(37) ASſumpſit; after Verdict for the Plaintiff, it was alledged in Arreſt of Judgment, that the Declaration upon the File ſuppoſeth the promiſe to be made by B. ſenior only; but the Roll and the Record of Niſi prius, and all the proceedings afterwards were well laid to be by both; and by Examination it appeared, that the Paper-copy under the hand of the Counſeller (which is the firſt thing that is put into Court) was, that the promiſe was made by both; and the queſtion was, if it might be amended; and it was ſtrongly urged, that it ought not; for the File is as the original, and is the warrant of the Roll, and of all the proceedings; ſo that if the Roll be ill, it may be amended by the File, but the File is not to be amended: And it was ſaid, it was ſo adjudged in this Court, Trin. 31 Eliz. Rot. 774. inter Greenway and Elmes. But the Court (except Fenner) held the contrary, that it might be well amended; for as Brian ſaith, 10 H. 7. 25. Papers are now as Records. So that when it appeareth that the Paper Declaration is good, that the Promiſe was by both, it is the Fault of the Clerk to enter it upon the File, to be by one; and ſo it was adjudged to be amended, and the Plaintiff had judgment to recover.

Co. 8. 159. a. 161. b.

Denner *verſus* Shacroft.

(38) ACtion ſur trover; in the Diſtringas jurat' the Defendant was named Shacraft, but in the Venire facias, and all the other proceedings, he was truly named: And this Miſnoſmer was alledged in Arreſt of Judgment. Wray, the difference here is little, and in ſome Countries (a) is founded for (o) and ſo is not material, and it was awarded to be amended, and the Plaintiff had Judgment.

Ant. 222. Ant. 57.

Cottons Caſe.

(39) ACtion for words: In the Venire facias a Juror was returned by the name of J. S. of Abbotſan, and in the Diſtringas he was returned by the name of J. S. of Abbatſan; and it was awarded to be amended: So in this Term between Mortimer and Oger, a Juror in the Venire facias was named De Huſt; and in the Diſtringas, De Hurſt: And this was alledged in Arreſt of Judgment, and awarded good, and the Plaintiff had Judgment.

Ante 222.

Cottingham *verſus* Griffith & Snow, Sheriffs of Briſtol.

(40) DEbt upon an Eſcape; Iſſue was Nihil debent, the Venire facias and Diſtringas was, Quandam Juratam in placito tranſgreſſionis; and this after Verdict was alledged in arreſt of Judgment: And for this cauſe the Judgment was ſtaid, for it is not aided by the Statute of Jeofail's; but if the Venire facias or Diſtringas had been right, it had been otherwiſe.

Poſt. 622. 2 Cr. 278.

Gurney

Gurney & K. Uxor *verſus* Sir Ed. Clere.
Intrat. Trin. 33 Eliz. Rot.

DEbt upon an Obligation made to one P. and to the ſaid K. Dum ſola fuit, after Verdict it was moved in Arreſt of Judgment, That the Defendant did plead, That whereas the Condition of the Obligation was, that whereas he had by his Deed bearing date at B. &c. granted a Rent of forty Marks per annum to the ſaid P. and K. for their lives, payable at two Feaſts, &c. If he accordingly paid the Rent, that then, &c. and alledgeth, that he always paid it to the ſaid P. and K. during the life of P. and to K. after his death, until the four and twentieth day of January laſt paſt; at which day G. the Plaintiff having intermarried with the ſaid K. granted the Rent to J. S. &c. and iſſue was taken upon it, Quod non conceſſit, and found againſt the Defendant, and this was alledged to be no iſſue; for a grant of a Rent is pleaded, but no Attornment alledged, then the Grant is void, and an iſſue cannot be taken of that which is not; and Warners Caſe was cited to be adjudged in this Court, when in an Avowry the Defendant preſcribed to have Common to One Hundred Acres of Land; the Plaintiff traverſed, that he had not Common to One Hundred Acres of Paſture: And upon this iſſue was joyned, and after Verdict it was adjudged to be no iſſue. Second Exception, the Venire facias was of a wrong Village; for the Grant is ſuppoſed to be made at B. of a Rent iſſuing out of the Manor of B. and the Venire facias was of B. where it ought to be of the Manor of B. Sed non allocatur; for the iſſue being upon the Grant, the Venire facias ſhall be of the place where the Grant is ſuppoſed to be made. Third Exception, the Jury aſſeſſed Damages to Baron and Feme, Ratione detentionis debiti, where it ought to be only to the Baron, Sed non allocatur; for the Damages ſhall be to both: But the Court doubted of the firſt Exception, and it being moved again, Gawdy ſaid it is aided by the Statute of Jeofails, for it is an inſufficient pleading: As if a man pleads a Surrender, and pleadeth not an Agreement, this is inſufficient: But if iſſue be taken upon the Surrender, and the Verdict find it, it is helped; ſo to plead a Deviſe of a Term, and ſheweth not the Entry by aſſent of the Executor, yet if iſſue be taken upon the Deviſe, and the Jury find it, this is aided by the Statute; and it was adjudged for the Plaintiff. And Coke ſaid it was adjudged in Panniers caſe in this Court, where one pleaded a Concord, but pleads not Satisfaction; and iſſue is joyned, and Verdict againſt the Defendant; and it was adjudged good, and aided by the Statute. (42)

Poſt. 563. Co. 7. 2. a Ant. 116.

Ant. 228. Poſt. 455.

Welſh *verſus* Upton.

TRespaſs. It was moved in Arreſt of Judgment after Verdict, that the Venire facias and the Pannel were wanting; but the Diſtringas jurat' and the Pannel annexed to it remained: And this was adjudged to be helped by the Statute. (43)

Ant. 215. 257.

Andrews *verſus* Kirke.

(44) DEbt upon a Bond. The Condition was to deliver fifty quarters of Wheat, the Defendant pleaded in Bar, that he had delivered thirty quarters of Wheat pending the Bill, which the Plaintiff had accepted, but ſhewed no Deed, &c. And upon this iſſue was taken, that he had not accepted, &c. and found for the Plaintiff: and it was moved, that it was no Plea, ſo no iſſue; but it was reſolved, that it was helped by the Statute; and the Plaintiff had Judgment.

Ant. 235.

Wood *verſus* Butts.

(45) EJectione firmæ. The Defendant pleaded a Surrender of a Copyhold, by the hand of Foſſet then Steward of the Manor. Iſſue was joyned Abſque hoc, that he was Steward; and all the Court held this no iſſue: For the Traverſe ought to be general, that he did not Surrender; for if he were not Steward, the Surrender is void; ſo of a Surrender pleaded into the hand of the Tenants of the Manor: And it was held by the Court, that where iſſue is taken upon a Surrender, it ſhall be tried where it was alledged to be done, and not where the Manor is, of which the Copyhold is holden; and in the principal caſe, a Repleader was awarded.

Bradiſh *verſus* Biſhop.

(46) ASſumpſit. The Plaintiff ſhewed, that whereas the Defendant at London in Warda de Cheap, was obliged to J. S. the Defendant in conſideration that the Plaintiff would give, &c. at London, in Warda prædicta, ſuper ſe Aſſumpſit; and upon Non Aſſumpſit pleaded, the Venue was de Parochia de Arcubus in Warda de Cheap; whereas there was no Pariſh mentioned before in the Count: And this matter was alledged in Arreſt of Judgment, and Exception taken to the Count, that the Promiſe was laid in Warda, and not in a Pariſh within the Ward, as it ought to be, 7 Hen. 6. 36. Wards in London are as Hundreds in the Countrey, and the Pariſh as the Town: And as an Act cannot be laid to be done in the Hundred, ſo it cannot be in a Ward. Wray, An Aſſumpſit or other matter is uſed to be laid in a Pariſh, and it hath been ruled, if the Tryal be in another Pariſh, it is ill: Gawdy agreed, 7 Hen. 4. 13. a Venire facias may be of a Town, Pariſh, Manor, or other place known, but not of a City, County, or Ward: And this is not helped by the Statute of 18 Eliz. and ſo was the opinion of the whole Court, and that the Plaintiff cannot have a Venire facias de novo, but muſt begin again; for the fault was in his Count, and not by the award of the Court only.

1 Cr. 165.

Horſeman *verſus* Johnſon.

(47) TReſpaſs. The iſſue was, if the Manors of Perton and great Haſely, were holden of the Honor of Ewelme; and the Venire facias was of one Manor only: And for this cauſe it was ruled to be ill; and the Plaintiff taketh a Venire facias de novo of both the Manors,

Mannors, and the iſſue was tried for him. And Coke and Tanfield alledged in Arreſt of Judgment, that the Venire facias was not well awarded, but that Judgment ought to be given Quod querens nihil capiat per Billam; for it is a miſ-tryal, and a Venire facias de novo was not to be awarded, but for the ſame Jury, or where the Verdict is not well examined; and the firſt Verdict is here entred, and the Writ filed; ſo there ſhall be two Verdicts of Record for the ſame thing, and both full: But it being moved again, the Court held it to be good, and the Plaintiff had Judgment.

Ford *verſus* Brooke.

ACtion for words; for calling him a Perjured Perſon at D. in Eſſex; the Defendant juſtified, for that the Plaintiff was perjured in his anſwer in Chancery, at Weſtminſter in the County of Middleſex, and ſo juſtified the words at D. The Plaintiff replied, De injuria ſua propria; and the Venire facias by the Award of the Court was directed to the Sheriffs of Middleſex; for the juſtification ariſeth there, and the words were confeſſed. (48) Poſt. 468.

The Queen *verſus* Harris.

INformation upon the Statute of 5 Edw. 6. cap. 7. for buying of Wools contrary to that Statute: The Defendant pleaded as to all, except fifty ſtone of Wool, not guilty; and as to the fifty ſtone he pleads, that there is an Information depending againſt him for it in the Common Bench at the Suit of Lewis, and avers, That they are for the ſame offence, and demands Judgment, if as to them he ſhall be put to anſwer. And upon this it was demurred in Law; and it was argued by Godfry and Atkinſon for the Queen, that it is no Plea; for it is not alledged, that any Writ or Proceſs is ſued out upon the Information, and then it cannot be ſaid to be depending, 7 H. 6. 6. 10 Ed. 4. 13. 2. The Information here ſuppoſeth the buying of the Wooll to be the twentieth of November, 31 Eliz. and the ſelling to be the ſixth of May, the ſame year; and the Information in the Common Bench ſuppoſeth the ſelling to be the ſixth of July, 31 Eliz. ſo cannot be intended the ſame offence: And although the Defendant hath averred it to the Court, to be for the ſame offence, yet the Averment is not material when it appeareth to the Court it cannot be ſo, being at ſeveral days. But all the Court (except Gawdy) held the Plea good; for they ſaid, that immediately when the Information is brought into Court, it is entred upon Record: And this containeth all the ſubſtance of the matter, and in this point is not like other Writs; and therefore ſhall be ſaid to be immediately depending, although no Writ or Proceſs is ſued upon it; and this appeareth by the expreſs words of the Statute of 18 Eliz. Secondly it is a good Plea with an Averment; for otherwiſe by the falſe ſuppoſal of the day, when the offence is committed, the Defendant ſhall be put to double trouble. But Gawdy doubted of theſe matters; yet at another day it being again moved, the Plea was adjudged ſufficient, and it was adjudged for the Defendant. (49) Poſt. 325. 2 Cr. 482.

Rockwood

Rockwood *verſus* Feaſar.

(50) ACtion ſur trover in London: The Defendant pleaded, that long time before the Converſion ſuppoſed to be, J. S. was poſſeſſed of theſe Goods, as of his own Goods, at B. in Norfolk, and that he before the Converſion ſuppoſed, did caſually loſe them, and they came to the hand of Jo. Palmer by Trover, who gave them to the Plaintiff who loſt them in London; and the Defendant found them, and afterward did convert them to his own uſe by the command of the ſaid J. S. as it was lawful for him to do; and it was moved, that this is no Plea, for it amounts to the General Iſſue. But all the Juſtices held it a good Plea; for it confeſſeth the poſſeſſion and property in the Plaintiff, againſt all but the lawful Owner. Nota, this Plea was deviſed by Coke to alter the tryal.

Wood *verſus* Hamſtead.

(51) TRespaſs for taking the Cattel of the Plaintiff; the Defendant pleaded, that he was ſeiſed of the Land in which, &c. and let it to A. rendring Rent at the Feaſt of Eaſter; and if it be arrear at the ſaid Feaſt and ten days after, that he might re-enter; and ſaith at the Feaſt of Eaſter, in the year of, &c. the Rent was behind, and by the ſpace of ten days after; and thereupon he re-entred and diſtrained the Cattel Damage-Feaſant. And upon this it was demurred; Firſt, That he ſaith he let to A. but ſaith not virtute cujus he entred and was poſſeſſed; for it may be the Leſſor did not wave the Poſſeſſion, and then no Rent is due: Secondly, That he ſaith the Rent was behind by the ſpace of ten days, where it ſhould be after the ſpace of ten dayes; as in Browning and Beſtons Caſe, Comment. f. 3. there is no mention of the day and year of the Leaſe, but ſpaces left for them: And for theſe Cauſes, and principally for the ſecond, it was adjudged for the Plaintiff.

Ant. 88.

Dr. Hunts Caſe.

(52) HE was indicted, that whereas by the Law of the Land no perſon is to be cited into the Spiritual Court, to take any oath, but in caſes of Matrimony and Teſtamentary; that he being Commiſſary of the Archdeacon of Norfolk, had cauſed J. Bodinley to be ſummoned to appear before him at a place, &c. to compel him to take an Oath concerning Incontinency, which touched himſelf, againſt his will. Wray, this cauſe was referred to the Lord Anderſon, and the Lord Chief Baron, and to my ſelf, to certifie if the miniſtring of this Oath be againſt the Law. And we certified in this manner; Where the knowledge of the matter did belong to the Court Chriſtian, they may proceed according to the Civil Law. Gawdy, the Oath cannot be miniſtred to the party, but where the offence is preſented firſt by two men, Quod fuit conceſſum, and it was ſaid, it was ſo in this caſe.

Ant. 201.

Termino

Termino Michaelis, 33 & 34 Eliz. in Communi Banco.
Elmer & Uxor *verſus* Thacker.

QUod ei deforceat of Lands, of which the Wife was Tenant in Dower. The Defendant pleaded a Recovery againſt the Wife, Dum ſola fuit, in a Writ of Waſte by Nihil dicit, and that he releaſed the Damages, and had Judgment to recover the Land. The Demandants replied Null Waſte fait, and ſo would avoid the Recovery, and thereupon the Tenant demurred. And after Argument by the Serjeants, all the Juſtices did deliver their opinions, that this Writ lieth not upon a Recovery by Nihil dicit; for the Statute doth not give this Writ but upon a Recovery by default, which is intended before Appearance; but this is upon a Nihil dicit, which is no Default, but as a departure in contempt of Court, or rather a Confeſſion of the Action, and a not Denying of the Waſte; for in this caſe the Waſte is confeſſed, and no Writ ſhall be awarded to enquire of the Waſte, but only of the Damages: And this Judgment is quaſi by her own aſſent, for that ſhe will not plead; and the Court takes it as her acknowledgment, that ſhe hath nothing to plead againſt it; and the Statute that is made only for her benefit, and to relieve her againſt her Default, ſhall not relieve her againſt her contempt, or rather her own act. And whereas it was ſaid, that a Nihil dicit is taken as a default, for a Receipt ſhall be by a Termer or Feme Covert after a Nihil dicit, as 9 Ed. 4. cap. 37. is. And that a Receipt ſhall be by a Feme after a Writ of Inquiry of Waſte, and returned, and the Waſte inquired, that it is not like to this caſe; for the Statute that giveth receipt is for the benefit of a ſtranger, that they ſhall not loſe their Right by the default or negligence of the party that was to plead; and ſo a Nihil dicit, or Default, is all one to them: But here this Statute is for the relief of the party againſt whom Judgment is given by default, and ſo are not like. And this is not a Judgment by default, but rather a departure in contempt of Court, or a Nient dedire or quaſi a confeſſion of the Action; which is proved as Periam ſaid, by the Caſes in Comment' & Dyer, that in a debt againſt the Heir, if Judgment be upon a Nihil dicit againſt him, Execution ſhall be againſt him of his own Land: For in a manner he confeſſeth, that he is chargeable, and hath Aſſets. And Anderſon and Periam held ſtrongly, that if Judgment had been given by default in Waſte, that upon ſuch Recovery a Quod ei deforceat did lie, eſpecially in this caſe, when the damages are releaſed; and ſo the Waſte is not found by Inqueſt. Windham e contra, as to this point; but in the principal Cauſe, they all reſolved ut ſupra; and it was thereupon adjudged for the Defendant. Vid. 15 Ed. 3. Quod ei deforceat. 9. Vide Cookes Littleton, fol. 355. a. b. (1) 2 Inſt. 351. W. 2. c. 4. Ante 18.

The Sheriffs of Gloceſters Caſe.

INformation upon the Statute of 29 Eliz. againſt them, for taking above twelve pence in the pound, for executing Proceſs upon a Judgment in the Common Bench. The Defendants pleaded the (2) Proviſo 29. El. c. 4.

the Proviſo in the Statute wherein all Cities and Corporations and their Officers are excepted. Upon which it was demurred; for Owen Serjeant moved, that this Proviſo extended only for ſerving of Executions upon Judgments in their Courts, but not upon Executions of Judgments in other Courts; and ſo it may be collected by the preamble and body of the Act. But all the Court contra; for it ſhall be expounded as well for ſerving Executions upon Judgments in other Courts, as in their own Courts. And whereas it was objected, that the County of the City of Gloceſter extends four or five miles further than the City, and that this Execution was not in the City, but within the County of the City, and ſo it is not within the Proviſo. The Court ſaid, if it had been ſo pleaded, peradventure it ſhould be otherwiſe; but as it is pleaded, it appears not to the Court; and thereupon it was adjudged for the Defendant.

1 Cr. 287.

Buſh *verſus* Redgeley.

(3) DEbt upon an Obligation; the Condition was, to ſave the Plaintiff harmleſs againſt J. Robinſon of one Obligation; the Defendant pleaded Non damnificatus; Plaintiff replieth, that Robinſon had ſued him to the Exigent, and then he appeared, and the ſaid Robinſon had Judgment to recover againſt him. Upon the Obligation, Et iſſint damnified; the Defendant rejoyns, that he himſelf had retained an Attorney for the Plaintiff on the ſaid Suit, and the Plaintiff was at no Expenſes, nor was arreſted upon it, nor his Goods or Lands ſeiſed; and that after the Judgment, he was not damnified: And upon this the Plaintiff demurred; and all the Court reſolved for the Plaintiff, for that immediately upon the Judgment given, he was damnified; for his Body, Goods, and Land, are liable to the Execution: And if he afterwards alieneth his Land, he cannot by reaſon of this Judgment warrant it to be free of Incumbrances; ſo that by the very Judgment he is damnified: and if the Defendant after the Judgment had paid the debt, it would not ſerve, for he was damnified before.

Co. 5. 24. a. Poſt. 369. Ant. 53.

Brewſter *verſus* Sir Thomas Parrot.

(4) THe Caſe was; Leſſee for life makes a Leaſe for years, rendering Rent, and after Surrenders to the Leſſor upon Condition; the Leſſee for years takes a new Leaſe for years of the Leſſor; the Leſſee for life performeth the Condition, and puts out the Leſſee for years, who re-enters; and the Leſſee for life brings debt for the firſt Rent reſerved, and ruled it doth not lie; for the Leaſe out of which it was reſerved is gone and determined.

Poſt. 488, 523.

Offely *verſus* Bat, Paſc. 33. Eliz. Rot. 403.

(5) THe Caſe was, Conuſee of a Fine of a Reverſion before Attornment, ouſts the Leſſee, and makes a Feoment; the Leſſee re-enters, and the Feoffee diſtrains for the Rent. Periam and Windham held, that he could not diſtrain no more than the Feoffor himſelf before Attornment, Vid. Co. 113. a.

Poſt. 354.

Screver

Scriven *verſus* Prince.

FOrmedon of Three Meſſuages and certain Acres of Land; for part of the Acres of Land they were at Iſſue; and found for the Demandant; and as to the reſidue of the Acres the Tenant vouched; and for the Meſſuages they were at Iſſue upon a non-tenure pleaded; and the Jury found he was Tenant of one of the Meſſuages, and not of the other; but ſheweth not of which in certain. And the Court held that for the Acres, and the houſe of which the Verdict is found, the Plaintiff may have Judgment; and a writ to the Sheriff to deliver ſeiſin; and the Plaintiff at his peril is to ſhew to the Sheriff what Meſſuage it was the Jury did intend, for the Jury is not tied to ſet bounds to it, and he need not ſtay for his Judgment till the voucher be determined. (6) 2 Cr. 113. Poſt 465.

The Queen againſt Fairclough.

INformation in nature of an Action of Treſpaſs, for taking and cutting certain Trees of which the Queen was poſſeſſed. The Caſe upon ſpecial Verdict was this. Andreas de Lowe, and twelve others were poſſeſſed of divers trees by the grant of the owner of the Soil; and the ſaid Andreas for and in ſatisfaction of a Debt which he did owe to the Queen, aſſigned to her by Deed enrolled all the Trees; and the queſtion was if the Queen ſhould have by this Aſſignment all the trees, 8 Ed. 4. 24. 19 H. 6. 47. Comment 243. & 323. Coke for the Defendant did agree, that where the Queen came to an entire thing by Act in Law, as attainder or other Act in Law, ſhe by her Prerogative ſhall have the whole; but where ſhe cometh to have part of the Chattel by the grant of a common perſon, he by his grant ſhall not prejudice his Companion; and therefore in that Caſe the Queen ſhall not have her Prerogative; quære of this difference; the Barons did not ſpeak to the Caſe, but they ſaid it was a ſtrong againſt the Defendant; and they gave him day to take advice, if he could ſay any other matter. (7)

The Queen *verſus* Wall and Green.

SCire facias; The Caſe was, J. S. was bound to Green in a Statute of Four hundred pound, and his Land extended for this Debt, and delivered in Execution at the value of five pound per annum; and he was alſo bound in a Statute to J. D. who aſſigned it to the Queen for his Debt, and thereupon an extendi facias being awarded, it was found that the Land delivered to Green in extent was worth twelve pound per annum; and thereupon a Scire facias was awarded againſt them to anſwer the ſurpluſage of the profits above the ſaid five pound to the Queen; and the queſtion was, if it were duly awarded. Manwood and all the Barons held it was, for it being found that there was a purpluſage above that which would ſerve a common perſon, the Queen ſhall have it by her prerogative. Glanvil Serjeant, I will plead this at all peril. Curia, and you ſhall have a ſhort rule. Nota, afterwards all this matter was pleaded upon the Scire facias. And the Caſe was this, A Recognizance of One thouſand pound was acknowledged by J. S. to Comb. 20 Eliz. and afterwards 26 Eliz. the ſaid J. S. was bound in a Recognizance (8)

to Mabb. in one thouſand pound, 27 Eliz. Wall and Green Executors of Combe ſued execution of the firſt Recognizance, and the Land of the Conuſor was extended at 20 l. per annum, afterwards Mabb. was outlawed, by which the Recognizance to him came to the Queen; and Proceſs of extent iſſued for the Queen, and it was found that the Conuſor had nothing but the Land extended by Wall and Green; and that it was worth (above the twenty pound it was extended at) Forty pound per annum; and hereupon Scire facias was awarded againſt W. and G. to anſwer the Queen for the ſurpluſage above the yearly value that the extent was; and they pleaded their firſt extent by inquiſition; and that they were not yet ſatisfied; and hereupon it was demurred, which did depend till Mich. 38 & 39 Eliz. And then it being moved by Kingſmill Serjeant, Periam chief Baron, and Ewins puiſne Baron held clearly that the Queen ſhall not have any ſurpluſage, for by the extent they had an Intereſt and Term in the Land, which ſhall not be deveſted by the finding of the ſurpluſage afterwards, and the value is not material; for though it be now of ſo great a value, yet it may be before the time of the extent incurred, it will be of a leſſer value; and the Conuſee is to bear the hazard: and the Queen hath no ſuch Prerogative to diveſt it from the Subject, it being lawfully veſted in him, eſpecially this Debt accruing to the Queen by a common perſon. But Clerke ſecond Baron held ſtrongly the contrary, for it is the Queens Prerogative to be ſatisfied her Debt by any means, and it is no miſchief to the Conuſee, for he ſhall have as much anſwered to him, as the Land is extended at; but Judgment was given for the Defendants that they ſhould be diſcharged.

Termino

Termino Hillarii,

Triceſſimo quarto ELIZABETHÆ,

in Banco Reginæ.

Pollard *verſus* Lock, Trin. 31 Eliz. Rot. 810.

(1) INformation upon the Statute of 5 Eliz. for perjury; and declares that whereas J. R. brought Treſpaſs againſt him, and he pleaded not guilty, and the Plaintiff entituled himſelf by a Feoffment of the Land; he ſhewed a Court-Roll held before J. Locke, Gent. which proved it was Copyhold, prædict' Jo. Locke falſo depoſuit, that he was not Steward at that time, ubi revera he was then Steward, whereby the verdict paſſed againſt him, &c. after verdict, it was alledged in arreſt of Judgment, that the Declaration is inſufficient, for here are two J.L. mentioned, viz. the Defendant, and J. L. Steward, and ſo may be intended another man; and when it is ſaid prædict' J. L. depoſuit, this ſhall be intended to refer to him that was laſt named, and not to the Defendant; and every Declaration ought to be certain, and ſhall not be taken by intendment; and for this cauſe it was adjudged for the Defendant. V. 10 H. 7. 5. B. 5 H. 5. 8. 6 Ed. 6. D. 70. 21 H. 7. 30. B. Ante 127.

Wing *verſus* Earle, Cujus principium Antea, Hillar. 33. B. R. Placito tertio.

(2) THe Caſe was again moved, Gawdy ſaid, the Statute is private, and not being pleaded the Court is to take no notice of it; and ſo the other matter came not in queſtion: yet he held that a mile ſhall be accounted according to the Engliſh form, and not according to the Geometrical computation. And if one ſells Land, and is obliged that it containeth twenty Acres, this ſhall be according to the Law, and not according to the cuſtom of the Country. Fenner, if the queſtion had been upon the Statute, the miles ſhall be conſtrued according to the uſual ways for carriages; but upon the condition, if it be within four miles any way, the condition is broken, wherefore it was adjudged for the Plaintiff. Poſt. 476.

Pendlebury *verſus* Elmott.

(3) TReſpaſs for Aſſault, Battery and Wounding; the Defendant ſaid he was Conſtable of D. and for ſuch a misdemeanour of the Plaintiff, he laid his hands on him, and carried him to the ſtocks, quæ eſt eadem tranſgreſſio: And upon this it was demurred, and adjudged for the Plaintiff, for the Defendant did not plead not guilty to the Wounding, nor juſtified it; but if one pleads that the hurt which the Plaintiff had was of his own aſſault, this is a good anſwer to all; and the Plaintiff had Judgment.

Ante 94.

Browne *verſus* Pendlebury, Trin. 32 Eliz. Rot. 154.

(4) DEbt; for that the Defendant 4. Aug. 32 Eliz. granted to him an Annuity of five pound per annum for two years, payable at Mich. or within ſixteen days after; and declareth that it was behind at Michaelmas & adhuc aretro exiſtit, and upon this Declaration it was demurred. 1. Becauſe it is not averred that it was arere ſixteen days after Mich. Sed non allocatur, for it being alledged that adhuc aretro exiſtit, which is long time after the ſixteen days paſſed, it is well enough. 2. That Debt lieth not for this Annuity during the two years, but a Writ of Annuity. Curia cont', that Debt lieth, being a grant for years, for it is by the Deed as a Contract.

Ante 3.

Fowler *verſus* Aſton.

(5) ACtion for theſe words, I am put out of the Parſonage-houſe by Fowler the Patron, who is neither the Queens Friend, nor a true Subject. After Verdict it was alledged in Arreſt of Judgment, that the words were not actionable; and ſo it was adjudged 16 Eliz. between Burſted and Peck, that theſe words, He is not the Queens Friend will not bear an Action. And afterwards in this Term it was adjudged for the Defendant, that the words are not Actionable.

Ante 192.

Ante 193.

Stanley *verſus* Osbaſton.

(6) ACtion for theſe words, He was a Bankrupt, and alledged he was a Shoomaker, and uſed buying and ſelling of Leather; And it was adjudged that the Action did lie, although the Plaintiff was not a Merchant, but he got his living by buying and ſelling.

1 Cr. 31.
2 Cr. 345.

Seyman *verſus* Okeley, Paſch. 33 Eliz. Rot. 443. vel 93.

(7) TReſpaſs. The Defendant pleaded that Frier was ſeiſed in Fee, and let to him at Will; and afterwards releaſed to him all accomps, ſuits, and demands, ab initio mundi, until the day of the date, by which he was ſeiſed for life, &c. the queſtion was, if the Eſtate of the Leſſee at will was encreaſed; and upon motion reſolved by the whole Court, that the Eſtate is not enlarged; and the Plaintiff had Judgment.

Co. Lit. Sect. 508.

Underhay *verſus* Underhay, Trin. 31 Eliz. Rot. 669.

EJectione firmæ, It was found by ſpecial verdict, that J. S. made a Leaſe for three lives; and after let the Land to Willimot. Habendum to him for his life, which ſaid term to begin and have his being after the death, ſurrender or forfeiture of the three lives. And Livery was made maintenant: the queſtion was if this were a good Leaſe, becauſe the words, which ſaid term appoints that nothing ſhall begin till after the death, &c. And it was adjudged that for as much as the Eſtate was fully limited before the words (which ſaid Term) thoſe words are vain and idle; for utile per inutile non vitiatur. (8) 2 Rol. 66. Hob. 171. Ante 254. Hob. 171.

Perkins *verſus* Perkins, Hill. 33. Rot. 520.

THe Caſe upon ſpecial verdict was, The Father was Tenant for life, the remainder to Th. and Drew his ſons for their lives, Drew purchaſed the reverſion in Fee, the Father and Th. ſurrender to him without Deed; the queſtion was if this be a good ſurrender. Fenner, the ſurrender is void, for if it be good, it muſt firſt be the ſurrender of him in the remainder, which cannot be without Deed; and it cannot be the ſurrender of the firſt Tenant for life to him in the Remainder, for there is no word of ſurrender between them. (9) Co. Lit. 338. a.

Wigford *verſus* Gill.

TRespaſs; The Caſe was, J. S. erected a Mill-dam part upon his own Land, and part upon the Land adjoyning, the owner of the Land adjoyning pulls down the Dam upon his Land, by which all the Dam falls down; and the water did run out. All the Court held it was juſtifiable. So if one erects a Wall upon his own lands, and the land of his neighbour, and the neighbour pulls down the Wall upon his land, and thereupon all the Wall falleth down; this is lawful. (10) Co. 5. 101. a. b. Ante 118.

The Lord Vaux Caſe.

THe Lord Vaux levied a Fine to the uſe of himſelf for life, and after his death to the uſe of his two Daughters, till Ambroſe his ſon returned from beyond the ſea, and came to his full age, or died, which of the ſaid times, days or hours, came firſt, and then it ſhould remain to Ambroſe; he returned from beyond the ſea; the queſtion was, if this remainder be good; and if it be, when it ſhould commence in him, if before his full age. And by all the Juſtices the remainder is good, for although his coming to his full age, or from beyond ſea, be uncertain, yet his death is certain, and ſo it doth not meerly depend upon uncertainties. 4 Mar. Dyer 142. A. deviſeth to Avice his Wife for life; ſi tam diu ſola vixerit, and after her marriage or death, the remainder over, it is admitted a good remainder, 13 Eliz. 300. And they agreed the Daughters had an Eſtate for their lives conditionally, 3 Aſſ. 9. 11 Aſſ. 8. And Wray chief Juſtice ſaid that the words disjunctive (or die) being in the end of the ſentence, make the copulatives before to be disjunctives; ſo that if one of them be accompliſhed, the remainder doth veſt; and he was induced to it, by Truepennies Caſe in the Common place (11) Co. Lit. 225. a. Co. Lit. 225. a. Mo. 239.

place, 31 Eliz. where the Caſe was, the Husband made a Leaſe for years, if he and his Wife or any Child of their bodies ſhall ſo long live, the Wife dieth, and it was adjudged that the Leaſe continued; for the disjunctive that came laſt made the two copulatives before, to be of the ſame nature; and judgment was given in the principal caſe accordingly. And afterwards a Writ of Error was brought in the Exchequer-Chamber; and it was ended by compoſition. Nota, Gawdy ſaid that if a Leaſe be made to one until A. cometh to his age of twenty one years, and then it ſhall remain over to another, this is a void remainder; and it is not like a Leaſe for years, the remainder over; But Fenner and the other Juſtices were of the contrary opinion in that Caſe. Nota, the Caſe of Trupenny cited before, was between Baldwin and Coke, and it was thus: A. having an intent to marry B. one of the friends of A. and for the preferment of B. made a Leaſe to A. and B. for ſixty years if A. and B. or any Iſſue of their bodies ſo long live, and it was adjudged that the Leaſe doth continue as long as any of them live, for ſo was the intent of the parties; and Anderſon commanded Nelſon the Protonotary to enter upon the Record, that the Leaſe continued ſo long as any of them live. V. Co. Littleton 225. a.

Owen 52. Co. Lit. 225. a. 3 Leon. 74. 1 And. 161. Moor 239. Goldsb. 71.

Ridgeley *verſus* the Hundred of Warrington.

(12) ACtion upon the Statute of Hue and Cry; upon the evidence it was held by Anderſon and all the Juſtices, that whereas the Statute ſpeaks of Robberies done in the day before night, yet if a Robbery be committed in the morning before day, or in the evening after the day; in any time of the night in which men uſe commonly to travel, that the hundred is anſwerable for it, but if it be at twelve or one of the Clock in the night, at which time every one is intended to be in bed, the hundred is not anſwerable for the Robbery.

2 Cr. 106. Co. 7. 6. b. Poſt. 954.

Ognell's Caſe.

(13) TReſpaſs; The Caſe was upon ſpecial verdict. A Termor being outlawed for Felony, granted his Term and Intereſt to the Plaintiff, who is put out by J. S. and after the Outlary is reverſed; and the Plaintiff brought Treſpaſs for the profits taken between the Utlary reverſed, and the aſſignment; and the queſtion was if the action did lie, for that during that time the Queen had the Intereſt, and the Aſſignee had no right, and it was adjudged for the Plaintiff; for by the reverſal, it is as if no Outlary had been; and there is no Record of it.

Poſt. 278. Co. 8. 143. a.

Johns *verſus* Philips, Mich. 33 & 34 Eliz. Rot. 2101.

(14) SEcond deliverance. The Caſe was, A woman made a Leaſe for life, and afterwards granted the reverſion for 1000 years, and before Attornment ſhe takes J. S. to husband, and afterwards the Tenant atturned to the Grantee; the Court reſolved, and agreed, that the attornment came too late, but for ſome faults in the pleading no Judgment was given.

Co. Lit. 310. b.

William

William Richbell *verſus* Edward Goddard, Int. Trin. 33 Eliz. Rot.

ACtion upon the Caſe againſt the Defendant, Sheriff of the County of Southampton, that whereas J. Gold was indebted to him by two ſeveral Obligations, one payable, 21. Novemb. 33 Eliz. he 17. Novemb. 33 Eliz. procured a latitat out of the Queens Bench returnable octabis Hillarii, intending to declare againſt Gold upon theſe two Bonds, which Writ was delivered to the Defendant, 20. Novemb. 33 Eliz. apud S. and the Defendant by force thereof 4. Decemb. 33 Eliz. did arreſt G. at S. and afterwards 14. Decemb. 33 Eliz. ſuffered him to eſcape at London, by which the Plaintiff loſt his Debt; upon not guilty pleaded it was found for the Plaintiff. And it was alledged in Arreſt of Judgment. 1. That this Proceſs was taken out before the Debt was due upon one of the Obligations; and then the Plaintiff had no cauſe of Action for it; and ſo being an entire ſuit, it ſhall abate in all, Sed non allocatur; becauſe the Arreſt was after the Debt was due, and this (if a good plea) was to be pleaded by the party himſelf, and not by the Sheriff, for he muſt anſwer his own tort. 2. It was alleged that there was a miſ-trial, being tried in London, whereas the Iſſue (not guilty) refers to the whole matter; and the Arreſt which was the principal was at S. and without it there can be no eſcape, and the trial ſhould be of S. Sed non allocatur; for the eſcape is the matter upon which the Action is grounded, which was alledged to be at London; and the viſne ſhall be of the place where the eſcape was, and not of the place where the Arreſt was; and it was adjudged for the Plaintiff. (1) Ante 165. Co. 7. 2. a. Poſt. 625.

Termino Hillarii, 34 Eliz. in Camera Scaccarii.

Smalbroke *verſus* Dabridgcourt, Cujus principium antea, Paſchæ 32. placito 9.

ERror of a Judgment in the Queens Bench; the Errors were aſſigned by Godfrey. 1. That there was no conſideration, for it was no benefit to the Plaintiff to take the body of Lane, and it was the Sheriffs duty to execute the Proceſs. Sed non allocatur, for he being an Officer appointed by S. the now Plaintiff, it is no reaſon the Sheriff ſhould be at any loſs by his appointment; and therefore it was a good conſideration. 2. Error, this aſſumpſit cannot diſcharge a future eſcape. Sed non allocatur. 3. Error, the eſcape is alledged to be 8. Novemb. 29 Eliz. and the Defendant anſwered to an eſcape, 30. Decemb. 30 Eliz. Sed non allocatur, for the Plaintiff may alledge it at any day, and the Defendant may anſwer to it according as the truth is. 4. Error, that this aſſumpſit is in nature of a Bond, and ſo againſt the Statute of 23 H. 6. Sed non allocatur, for as the party may diſcharge a Priſoner in execution, ſo he may forecloſe himſelf from the benefit, if the Priſoner eſcapes, and the Statute never intended to help him that forecloſeth himſelf. 5. Error, that there was no Venire facias. Sed non allocatur, for that is to be alledged by way of diminution; and the Venire facias is never certified; and this is after verdict, and ſo cannot be alledged. And the Judgment was affirmed. (2) Ante 178. Ante 178. Ante 84.

Tenacy

Tenancy *verſus* Browne.

(3) ERror of a Judgment in the Queens Bench, upon a promiſe. 1. Error, that the Plaintiff in the Action declared that whereas the Defendant was indebted to him in ten pound, he did aſſume that if the Plaintiff would forbear him one week, that he would pay it; and alledges that he did forbear him for one week, but ſaith not for one week following. Sed non allocatur, for it cannot be otherwiſe intended. 2. Error, for that the Plaintiff being an Alien, the trial was per medietatem linguæ, and the Venire facias was quorum quilibet habet four pound Land, whereas an Alien can have no Land. Sed non allocatur, for it ſhall be referred only to the Engliſh. And the Judgment was affirmed.

Poſt. 841.

Termino

Termino Paſchæ,

Triceſſimo quarto ELIZABETHÆ,

in Banco Reginæ.

Jordan *verſus* Lyſter.

(1) ACtion for words, What art thou? a Bankrupt, and waſt a Bankrupt. After Verdict Coke moved in Arreſt of Judgment, that the Declaration was, quod cum fuit mercator per magnum tempus, &c. but ſaith not he was a Merchant at the time of the ſpeaking the words, and therefore the Declaration is unſufficient; and the words here are interrogative and not direct; but the Court held the Declaration to be good, being alledged that he was per magnum tempus a Merchant, &c. And that his anſwer to the interrogation is a direct affirmance, but they would adviſe, &c. 1 Cr. 282. 2 Cr. 222.

Marſhes Caſe, Principium antea, Paſch. 33. Pl. 10.

(2) THe Caſe was argued by Altham, that the Writ of Error lieth by the Executors, for the loſs of the goods which they ſhall otherwiſe have; for it may be he had no Lands, nor any loſs to any other then the Executor; and ſo it is reaſon that they ſhould have the ſuit to reverſe the Outlary, and to be reſtored to the goods, and for that, vouched 43 Aſſ. 41. & 49. 34 H. 6. 32. 15 Ed. 3. Error, where two may have ſeveral Writs of Error or attaint for ſeveral loſſes, and 43 E. 3. 32. 46 Ed. 3. 25. 19 Ed. 4. 5. & 6. where Executors ſhall have a Scire facias for the damages recovered, and the heir for the Land; and he ſhewed two preſidents, Mich. 11 H. 8. Rot. 13. where one Sudely was endicted for robbery and outlawed, the Executor brought a Writ of Error, and one Error was aſſigned that no Proclamation was awarded. 2. Error, for that there was not five months between the date of the Exigent and the return of it; and there a Scire facias was awarded againſt the Lords of the Fee, and it was returned there were no Ter-tenants; and the Outlary was reverſed; the other precedent was Tr. 18 H. 7. Rot. 3. where one was endicted of Murder and outlawed, and the Adminiſtrator brought Error, and the Error aſſigned was becauſe the Endictment was contra pacem Domini Regis, whereas the offence was in the time of R. 3. Coke argued è contra, for that the Outlary trencheth in the realty, and the Lands and Goods are forfeited, and the blood is corrupted, and therefore the Executor ſhall not have Error, quia de minimis non curat lex; and for that reaſon, at the Common Law Tenant for years ſhall not falſifie a recovery which binds the Land in the

Ante 225. 1 Rol. 558. Ante 225.

realty, 39 H. 6. falſifie Recovery 19. So at the Common Law, a traverſe ſhall not be of an office which finds a Wardſhip, &c. for the King (for they were but chattels) until the Statutes of 38 Ed. 3. & 2 Ed. 6. And for the preſidents cited, he ſaid the Errors were ſuch as were apparent faults which were reverſible by motion; and although the Books of 19 H. 6. 2. and 2 R. 3. 21. are that an Outlary erroneous in this Court is not reverſible by plea, but by Writ of Error, yet he ſaid the Law is otherwiſe. But the Juſtices held that
Co.Lit.256.b. an Outlary here cannot be reverſed by Plea, but ought to be by Writ of Error, and the Clerks ſaid ſo was the courſe always. But for the matter they would adviſe, Nota 5. Coke f. 111. This Caſe is cited, to be reſolved that the Writ of Error was well brought by the Executor, and that it was reverſed at his Suit. V. Paſch. 39. Placito 14. fol. 558.

Pet *verſus* Baſeden, P. 33. Rot. 392.

(3) PRohibition: The Plaintiff declared that whereas M. Pett was ſeiſed in Fee of divers Lands, and being ſo ſeiſed made his Will, and made the Plaintiff his Executor and deviſed part of his Land to his eldeſt ſon in Fee, and that he ſhould have it when he came to his age of twenty one years, and that in the mean time the Executors ſhould take the profits for payment of Debts and Legacies, and deviſed a hundred pound to Roſe his Wife pro & in exoneratione of her Dower in the ſaid Land, to be paid by his Executor within one year after his death, and that he died, and the Defendant married Roſe: and further alledged that the Defendant in conſideration that the Plaintiff promiſed to pay him the hundred pound within one year after the death of the Teſtator, did agree and promiſe to the Plaintiff to make him a reaſonable diſcharge of the hundred pound, and alſo to the Plaintiff and the ſon a reaſonable diſcharge of the Dower of R. and alledged in facto that he offered the payment of the hundred pound to the Defendant, and required a diſcharge of the ſaid hundred pound, and of the Dower; yet he intending to have the ſaid hundred pound, and after to recover the Dower of the Land, ſued for this Legacy in the Court Chriſtian; and although he offered there the hundred pound ſo as the Defendant would make a diſcharge of Dower, &c. yet they refuſed to accept this offer, and thereupon he ſued a Prohibition, and upon this Declaration it was demurred in Law. 1. Becauſe this Legacy is properly ſuable and recoverable in Court Chriſtian. 2. This agreement is no cauſe to draw it out of the Spiritual Court. 3. He had not ſhewed performance of the agreement; for he ſaith he offered it, but ſaith not that he paid it, nor that the Defendant refuſed it. 4. He ſheweth not the time he offered it. But the Court upon motion were of opinion that the Prohibition did lie, for here the words pro & in exoneratione make a condition, that he ſhall not have the hundred pound until he make a diſcharge
Co.Lit. 294. a. Co. 10. 42. a. of dower, &c. then when he alledged that he would have paid it, if the other would have diſcharged, &c. it is good enough, and the agreement between them is a cauſe of an Action upon the Caſe at Common Law, and this Plea being miniſtred in the Spiritual Court, and they refuſed, is a good cauſe of Prohibition.

Wyngate

Wyngate *verſus* Marke.

IT was held upon evidence, that if the Leſſee for years of the Queen be ouſted by a ſtranger, yet although he be out of poſſeſſion, he may aſſign over his term; for the reverſion being in the Queen, he cannot be out of poſſeſſion, but at his pleaſure; And it was held that where an Action, was brought by an alien as Adminiſtrator of J. S. who was Engliſh, the parties being at Iſſue, the trial being per medietatem linguæ, that it was not well tried, and the Judgment was ſtaid; for when the Plaintiff brings an Action not in his own right but as Adminiſtrator, the trial ſhall be by Engliſh only; and ſo was it held 23 Eliz. in Dr. Julios caſe; but if it had been averred that the Inteſtate had been an alien, it would be otherwiſe. (4) Ante 15.

Argenton *verſus* Weſtover & Lucas
Paſch. 33. Rot. 1680.

ERror to reverſe a Fine. 1. Error, it appeareth by the Record that the caption of the Conuſans of the Fine was before Sir Roger Manwood Ch. Baron, 27. Martii 27 Eliz. and the Writ of Covenant and dedimus poteſtat' bore teſte 9. Aprilis, ſo the Conuſans taken without Warrant; and by the Statute of 23 Eliz. the day of the caption is always to be certified; but the Court over-ruled it, and would not hear it argued, for they ſaid it is good enough, and otherwiſe they ſhould reverſe divers Fines. 2. Error, the Writ of Covenant was de Manerio de Corthuther, and the ded. poteſt. was de Manerio de Cortheder, and for this variance there is no Conuſans upon the Writ; but it being with an alias Corthuther, it was held good. And afterwards in P. 35. it was moved again, and other Errors aſſigned. 1. That by the caption of the Fine upon the dedimus poteſtatem, the Land was given to Weſtover and his Wife, and to the Heirs of the body of the Baron of the body of the Feme begotten: and the Fine engroſſed was, to the Heirs of the body of the Baron upon the Wife begotten, ſo is variant. But all the Juſtices conceived that it was not material, for in both caſes the Feme had but an eſtate for life, and the Baron an eſtate tail, and the words are of the ſame ſence. 2. Popham Chief Juſtice took an exception that the Writ of Covenant, and the caption was de Manerio & tenement. and five ſhillings Rent, and the Fine engroſſed was de Manerio & tenementis; but it was ſaid and agreed, that the courſe of Fines is, that if the Rent be under five pound, that they uſe not to mention it in the Fine engroſſed. 3. Error aſſigned was, for that the Caption was, ſi contingat the Baron to die without Iſſue, that it ſhould remain over, and the Fine engroſſed was ſi contingat that the Baron and Feme die without Iſſue, that it ſhall remain over; ſo it is variant: but it was held all one, for the eſtate in remainder is always limited upon the more long eſtate which is the eſtate tail, yet it was all of one ſence. And afterwards the Fine was affirmed. (5) Poſt. 677. 740.

Foxe *verſus* Goodſon.

(4) ASſumpſit: That whereas the Plaintiff had ſued ſuch an Action againſt the Defendant, and being at Iſſue had ſued out a Niſi prius upon it, the Defendant in conſideration the Plaintiff would ſurceaſe his Suit, promiſed to aſſign ſuch a Leaſe to him, and to pay his coſts of Suit, and alledges he had ſurceaſed, and the Defendant had not aſſigned the Leaſe nor paid his coſts of Suit; and upon non aſſumpſit pleaded, it was found for the Plaintiff. It was alledged in Arreſt of Judgment, that the Declaration was not good, becauſe he did not alledge what coſts he had expended; And all the Juſtices were of opinion it was not good for that cauſe, and the Defendant might have demurred upon it; but he not demurring, but taking iſſue, he ſhall not now have advantage of it; and thereupon it was adjudged for the Plaintiff.

Wroth *verſus* Wiggs.

(5) APpeal of Murder; the Defendant pleaded not guilty, and being arraigned by a ſubſtantial Jury of Middleſex, the evidence was pregnant that he was guilty of Man-ſlaughter, but for the murder was doubtful; the Jury found he was not guilty of murder, and being demanded if he was guilty of Man-ſlaughter, they anſwered they had nothing to do to enquire of it; and upon this the Court being in doubt ſent Fenner Juſtice to the Common Place to know their opinion, who conceived that by the Law the Jury are not compellable to enquire of the Man-ſlaughter, and thereupon they gave their Verdict as before, and the priſoner was diſcharged, 9 Eliz. Dy. 261. a.

Co. 4. 43. b.

Co. 4. 47. b.

Poſt. 296. 465.

Green *verſus* Piper.

(6) IT was held by the Juſtices, that a Houſe in London which was part of the poſſeſſions of a Prior that was diſcharged of paying Tythes of their poſſeſſions, yet by the Statute of 37 H. 8. 2. ſhall be charged for Tithes according to the Ordinance there; for before that Statute no dwelling Houſe was chargeable for Tithes, becauſe no profit ariſeth of it; and only Noblemens Houſes are excepted, and P. 35. it was adjudged accordingly, and a conſultation was granted.

Co. 11. 16. a.

Scory *verſus* Baber.

(7) PRohibition againſt the Proprietor of the Church of Southkirby in the County of York, who ſued for Tithes of Hay, and ſurmiſed that time out of mind the owners of theſe Lands had found ſtraw for the body of the Church in diſcharge of all Tithes of Hay. Coke moved that this is no cauſe of diſcharge for the Parſon was not chargeable with it, nor had any benefit by it; and in Hill. 30 Eliz. it was ruled that where one preſcribed that he had uſed to pay the Pariſh Clerk his wages in ſatisfaction of Tithe-hay, this was

Ante 71.

no

no diſcharge; and of that opinion was the whole Court; but if he had alledged that he gave the ſtraw to the Parſon, and he beſtowed it in the body of the Church, or that the Parſon had a ſeat in the body of the Church, it had been otherwiſe; and thereupon conſultation was granted.

Termino Paſchæ, 34 Eliz. in Communi Banco.

Lyſs *verſus* Watts.

(8) PRohibition upon a Libel for Tithes of Slate-ſtones; the Defendant prayed a conſultation, for that heretofore the Plaintiff ſued a Prohibition for the ſame cauſe in Chancery, and upon the ſame Libel, and there a conſultation was granted; for otherwiſe he ſhall be infinitely vexed, that when one Court grants a conſultation, he ſhall ſue a Prohibition in another Court. And of this opinion was all the Court, that he ſhall have a conſulation, if before a conſultation was granted in another Court upon the ſame cauſe. And it was here held by the Juſtices, that no Tithes are due of a Quarry of Slate or Stone, for the perſon may have Tithes of the Graſs or Corn which groweth upon the ſurface of the Land in which the Quarry is. Poſt. 736. 2 Inſt. 651. 1 Rol. 637.

Tropp *verſus* Bedingfield.

(9) DEbt upon an Obligation; The condition was, that if J. S. perform the Arbitrement of J. N. if any be made, before the Feaſt of Eaſter, and if none be made, if the ſaid J. S. came to the Guild-hall in Norwich at the Feaſt of Pentecoſt, and there ſuffers himſelf to be arreſted at ſuch a ſuit, and doth not remove himſelf, if ſuch ſuit be commenced, but ſhall anſwer to the Action without delay, or pay to the Plaintiff at the Feaſt of Michaelmas ten pound, that then, &c. the Defendant pleads that no Arbitrement was made before the Feaſt of Eaſter, that J. S. died before Pentecoſt, and anſwered nothing to the reſidue of the condition; and the queſtion was if it were a good Plea: And the Juſtices upon the firſt motion conceived it was, becauſe that by the act of God he is deprived of his appearance, and ſo his Bond is ſaved although he pay not the ten pound, for he had election to do the one or the other; but they would adviſe. Moor 357. Poſt. 399. Ante 10. 11.

Maſon *verſus* Nevill.

(10) TReſpaſs; The Defendant pleads that Alex. Nevill. his Anceſtor was ſeiſed and died ſeiſed, and the Land deſcended to him as Son and Heir, &c. the Plaintiff replied that long time before A. Nevill had any thing in the Land, J. S. was ſeiſed in Fee and infeoffed four others to the uſe of himſelf and his Wife for their lives, and after to the uſe of W. his Son for life, and after his deceaſe that they ſhall be ſeiſed ut in eorum priſtino ſtatu, upon condition that they ſhall receive the profits, and pay to B. the Wife of W. twenty pound per annum during her life, and after they ſhall be ſeiſed to the uſe of the Heirs Males of the body of W. That the Baron and Feme died, that W. entred and infeoffed the ſaid Al. N. and died, who entred and deviſed

deviſed it by his Will in writing to his younger ſon for life, and afterwards A. the Wife of W. died, and Nich. as ſon and heir of the body of W. entred and let to the Plaintiff; and upon this it was demurred in Law. 1. Becauſe he did not traverſe the deſcent. 2. Becauſe as this caſe is the Heir male of W. cannot enter, for by the feoffment the eſtate tail is diſcontinued, and none can enter except the Feoffees enter and revive the uſe; but after motion of the caſe by the Serjeants, without any great argument, the Court gave judgment for the Plaintiff; for the deſcent is not traverſable, but the dying ſeiſed, which is confeſſed and avoided by the deviſe. And Periam ſaid the deſcent in any caſe is not traverſable, but where both parties claim by the ſame perſon; and that this Feoffment was no diſcontinuance nor barred the entry of the Heirs; quære the reaſon, for the Court did not ſhew any reaſon of their judgment, 14 H. 8. 23. 19 H. 8. 6. 21 Eliz. Dy. 366.

Ante 30.
2 Cr. 221.

Eyre *verſus* Woodfine, Paſch. 33 Eliz. Rot. 818.

(3) Ejectione firmæ: The Caſe upon ſpecial Verdict was this, A Termor for years being outlawed upon the Statute of Recuſancy, by which his term was forfeited to the Queen, the Lord Treaſurer, and Barons of the Exchequer, ſold it for ten pound to Fr. Michel and afterward the Outlary was reverſed; the queſtion was, if the Termor ſhall have again his Term; and after argument by Glanvile of the one part, and Beaumont of the other part; Anderſon and Walmſly conceived the Termor ſhall have again his term, and not the money for which it was ſold, and in whoſe ſoever hands the Lands came, and by whatſoever conſideration; the party ſhall be reſtored; for the Outlary being reverſed, it is as if there were no Record, and the Queens intereſt was but conditional, viz. it is good if the Outlary be good; and therefore the term being ſold, it is tied with the condition into whomſoever hands it cometh, that if the Outlary be reverſed; the term is reduced to the owner. And it is not like a ſale made by the Sheriff, for the Sheriff ſells it by Authority of Law to levy the money; and there if the Judgment be reverſed, the party ſhall be reſtored only to the money, and not to the term, for he loſt it not by the Judgment: But Periam doubted and ſaid that although by the Book of 11 H. 4. 65. that upon the reverſal of the Outlary, the party ſhall have reſtitution; yet the Book ſpeaks not if it be ſold before. And here it is miſchievous of both ſides, if the party that bought it lawfully ſhall loſe it; and of the other ſide, if the other ſhall not be reſtored to it, he ſhall have nothing, for it will be hard to be reſtored to the money out of the Queens Coffers; but afterwards, Trin. 34 Eliz. Anderſon and Walmſly gave Judgment for the Plaintiff, Periam not being reſolved in it. V. 20 Eliz. Dy. 363.

Moor 270.
Co. 5. 90. b.
Ante 278.
Co. 8. 143. a.
Co. 5. 90. b.

Loftus Caſe.

(5) Nota: Puckering demanded the opinion of the Juſtices in this caſe, Loftus being poſſeſſed of a term for eighteen years, and of another term in the ſame Land in reverſion for forty years, died inteſtate: his Wife takes Adminiſtration and enters, and marrieth J. S. who let it to J. D. for twenty one years rendring Rent

and

and makes his Executor and dieth; the queſtion was if his Wife or Executor ſhall have the rent. Periam, during the firſt term for years the Excutor ſhall have it; for the Baron had given away all that term, and no intereſt remained in the Feme, and the rent by the Indenture ſhall go to the Executor; but for the reſidue of the term of twenty one years, which is derived out of the Leaſe for forty, the Wife ſhall have it as annexed to the reverſion or term which the Wife had; quære, for the other Juſtices delivered no opinion. Co. Lit. 46. b. Ante 33. Co. Lit. 46. b.

Bayly *verſus* Churington.

(6) ACtion for theſe words, Thou art a falſe Knave, thou waſt arraigned for two Bullocks; adjudged that the words were not actionable; for he ſaith not he was arraigned for ſtealing two Bullocks; and if the words had been ſo, yet the words had not been actionable; for a man may be arraigned for Felony, and yet be no Felon. 2 Cr. 268. 9.

Charnel's Caſe.

(7) ACtion for words againſt Husband and Wife, becauſe the Wife ſaid, My Turkies are ſtoln, and Ch. hath ſtoln them. It was moved that an Action lay not; for it appears the Feme could have no Turkeys, for they are the Barons, ſo could not be true, and then no diſcredit. Curia contra, becauſe ſhe had charged him with ſtealing; and if one which had no Horſe, ſaith J. S. hath ſtoln my Horſe, this is as great diſcredit as if he had had one, for every one knoweth not whether he had a Horſe or not. 2 Cr. 600.

Blitheman *verſus* Blitheman.

(8) DOwer: The Defendant pleads, ne unques ſeiſe per Dower, &c. and upon this they were at Iſſue, the Jury found a ſpecial Verdict, that J. Blitheman the Husband of the Demandant, and Father of the Tenant, was ſeiſed of the Land in tail, and in conſideration of a marriage of the Tenant his eldeſt ſon, covenanted by Indenture that this Land after his death ſhall diſcend, remain, or ſhall be to the Son and his Heirs, and afterwards he taketh the Demandant to wife and dieth; and if he was ſeiſed of ſuch an eſtate of which ſhe was dowable was the queſtion. And the Court reſolved for the Demandant; for by the Indenture no eſtate was altered in the Baron, but he remained Tenant in tail as before, and this for two cauſes. 1. Becauſe it is only a covenant and executory, for which an Action of Covenant lieth if he perform it not; for it is not that he will ſtand ſeiſed to the uſe of himſelf for life, and after to the uſe of the Son, but only that it ſhall deſcend, remain, or be to the Son after his death, which may be by his permiſſion that it ſhall deſcend, and be to the Son without any alteration of the eſtate. 2. If it were an expreſs Covenant that he would ſtand ſeiſed to the uſe of himſelf Co. 2. 52. a. Poſt. 471. Poſt. 345.

for

for life and after to his Son, this had been void to alter the uſe to
Cok. 471. the Son; for he being Tenant in tail, and reſerving to himſelf an eſtate for his own life, in that he reſerved all that he might lawfully diſpoſe, and then by the Covenant he can diſpoſe of no more then he can lawfully do, and ſo the limitation after his death is meerly void, and the eſtate remained in him as before; for both which clauſes, but principally for the firſt, they held the Demandant ſhould have Judgment, and it was given accordingly. V. 2 Co. f. 52.

Termino

Termino Trinitatis,

Triceſſimo quarto ELIZABETHÆ,

in Banco Reginæ.

Fox *verſus* Lee, Trin. 33 Eliz. Rot. 555.

ERror of a Judgment in Ludlow, in Debt upon an Obligation; the Condition was for payment of ſeventy pound, ſcil. thirty five pound at one day in the Temple-Church, London; and thirty five pound at another day. The Defendant pleads payment of the ſeventy pound at Ludlow, Secundum formam & effectum conditionis prædictæ, and iſſue taken upon it, and found againſt him, and Judgment given for the Plaintiff: And two errors were aſſigned, firſt, That he alledged payment of the ſeventy pound according to the Condition, where he ought to plead ſeveral payments, of thirty five pound at one day, and of the other thirty five pound at the other day, and not to couple them together. But the Court held it good enough; for when he pleads payment, Secundum formam & effectum conditionis prædictæ, this Reddendo ſingula ſingulis is as if he had pleaded he had paid them ſeverally at the ſeveral days. Second Error, For that the names of the Jurors did not appear of Record, but it was held good enough, for that never appeareth where the Jury is full of the principal Pannel, but where the Inqueſt is part of the principal Pannel, and part by Tales de circumſtantibus, there the names of both ſhall be entred upon Record: and the Judgment was affirmed. (1)

Yates *verſus* Windham. Quod vide antea Mich. 31 & 32 Eliz. B. R. Placito 38.

IT was moved this Term. Coke ſhewed, that upon the ſecond Writ, Quod coram vobis reſidet, the Plaintiff aſſigned new Errors, ſcil. A Diſcontinuance; and that the Judgment was, that the Defendant ſit in miſericordia; whereas it appeareth, that the Defendant did appear upon the Summons: To which the Defendant in the Writ of Error appeared and pleaded, That heretofore the Plaintiff brought a Writ of Error upon this Judgment, and ſhewed all the proceeding in it, and that this is diſcontinued, in which none of theſe Errors were aſſigned: and upon this the Plaintiff demurred in Law, and Coke argued, That this Writ of Error, and the Errors aſſigned upon it, cannot be maintained. 1. The Plaintiff cannot alledge diminution to Reverſe a Record, after Errors aſſigned, and Scire facias ſued upon it; nor can the Defendant alledge it after In nullo eſt Erratum pleaded, for by it the Record is affirmed, and ſo 28 H. 6. 7 Edw. 4. & 22 Edw. 4. 2. In a Writ of Error Coram vobis reſidet. the Plaintiff ſhall not aſſign (2)

Ante 84. 155.

Errors but in the Record removed, and not in the Judicial Proceſs; for the words of the Writ are, that there is Error In recordo quod coram vobis reſidet. So it is admitted, that this is all the Record. 3. Upon a Writ of Error, Quod coram vobis reſidet, the entry is Allegando errores prædict' in forma prædict' allegat. and ſo is the preſident, Trin. 20 H. 7. 88. But if theſe Errors be over-ruled, he may aſſign other Errors within the Record: But here is no mention of the former Errors. Alſo this is entred in another Roll, and not upon the ſame Roll, ſo that the Court might ſee all together, and ſo is the courſe; otherwiſe the Court ſhall not intend it to be the ſame cauſe, and the Court ſhall be compelled to infinite ſearch, which the Law will not allow. But the Juſtices ſaid, That in as much as the firſt Writ is diſcontinued, and this is a new Writ ſued, the Plaintiff is not tied to the former Errors, but may aſſign other Errors at his pleaſure; for it is now as if no Errors were aſſigned before, and he may aſſign other Errors in the Record, or other Errors out of the Record; and this removing of the reſidue of the Record in this manner is well allowable; and theſe Errors may be well aſſigned, and as to theſe points they were ſatisfied; but for the entry of it upon another Roll, they doubted, and would adviſe: And afterwards for this cauſe it was held a miſ-entry, and the Plaintiff put to a new Writ of Error.

Beaucamp *verſus* Neggin.

(3) ERror of a Judgment in Aſſumpſit. First Error, For that N. the Plaintiff in the Aſſumpſit declared, That whereas the ſaid B. in conſideration that the ſaid N. had paid for him, and at his requeſt to C. at ſuch a day (which was a year before the promiſe) ten pound, he aſſumed to repay it Cum inde requiſitus eſſet; which conſideration is not good, becauſe it was for a thing paſt. Second Error, The Aſſumpſit was laid at Worceſter In alta Warda ibidem, and the Venire facias was of the City of Worceſter, whereas it ſhould be De alta Warda, for by it, it is intended there be more Wards: Sed non allocantur. For as to the firſt, when the payment is laid to be at his requeſt, the conſideration doth continue, and ſo is the common courſe. And as to the ſecond Error, it ſhall not be intended, that there be more Wards, except it be alledged.

Ante 42:

Brown *verſus* Worſely, Trin. 33 Eliz. Rot. 683.

(4) ERror of a Judgment in the Common Bench, in an Action for words, viz. Thou art a Whore and a Thief, for thou haſt poyſoned thy Husband. And upon not guilty pleaded, the Jury found againſt him, and aſſeſſed damages for the firſt words, ſix pound ſix ſhillings eight pence, and for the other words twenty marks. And theſe damages were ſeverally aſſeſſed by the advice of the Lord Anderſon, before whom it was tried; and thereupon ſeveral Judgments were given for the damages: And upon this Error was brought, for the words will not maintain an Action. For the firſt words, ſuit for them is to be in the Spiritual Court, and no remedy for them at Common Law: And as for the ſecond words, although the words Thief will maintain an Action, yet the words ſubſequent will not maintain the former. But Mich. 34 & 35 Eliz. the Judgment was affirmed, that an Action lay for the laſt words: But for the

Co. 10. 130. b. Poſt. 329.

Co. 4. 18. a.

2 Cr. 114. 1 Rol. 51.

the words, Thou art a Whore, no Action lay; and as to that, the Judgment was reverſed.

Pyers *verſus* Turner, Hill. 34 Eliz. Rot. 766.

(5) A Sumpſit, As Adminiſtrator to Greenway, and declares, that whereas one Walter Turnor, the ſon of the Defendant, was bound by Obligation of eighteen pound to the Inteſtate; which money was not paid at the day, but the Son moved the Father to pay it for him; the Defendant in conſideration the Inteſtate would give him a longer day, promiſed to pay it; and that the Inteſtate gave him a longer day, ſcil. the ſixth of day of May, &c. and upon Non Aſſumpſit pleaded it was found for the Plaintiff. And it was now moved in Arreſt of Judgment; firſt, That he did not ſhew the place where Adminiſtration was committed, as 35 H. 6. 31. is. Sed non allocatur; for it is good in a Declaration, but not in a Bar. Secondly, It was moved that here is no conſideration, for the giving day to the Father who was not indebted, is not material; otherwiſe, if he had given day to the Son. Sed non allocatur; for by Gawdy, laying all the matter together, that the Father required it upon the requeſt of the Son, and the other giving day, it is good; and a recovery in this Action ſhall be a good Bar in debt upon the Bond againſt the Son: And to this the Court agreed, and the Plaintiff had Judgment. Nota, Trin. 37 Eliz. in the Exchequer Chamber this Judgment was reverſed, for it was no conſideration. Ante 240. Ante 207.

Haſſall *verſus* Juxon.

(6) TReſpaſs, for breaking a Houſe in ſuch a Pariſh and Ward in London. Upon not guilty, the Jury found the Treſpaſs, and that the houſe was in the Pariſh, but not in the Ward; and it was held, that this Verdict is for the Plaintiff; for the finding it was not in the Ward, is ſuperfluous, it being admitted by the parties, and the Jury had not to meddle with it; and it was adjudged for the Plaintiff. Ante 41. Poſt. 333.

Allens *verſus* Andrews, Hill. 34 Eliz. Rot. 720.

(7) THe Plaintiff had brought debt as Adminiſtrator to George Warlow, by reaſon of Adminiſtration committed to him by the Archbiſhop of Canterbury againſt the Defendant, and had Judgment to recover; and after the year brought a Scire facias upon the judgment: the Defendant pleaded, that the Inteſtate died in London, and had not Bona notabilia in divers Dioceſſes; and that after the Judgment, the Biſhop of London committed Adminiſtration to the Wife, and upon this it was demurred. And Andrews himſelf moved, that he might well plead this Plea; for it was a matter of puiſne temps, and he could not plead it before: But all the Juſtices held, he came too late; for Popham ſaid, if the Adminiſtration had been repealed, he might well avoid the Judgment by this Plea, for it was of puiſne temps: But this was a matter he might have pleaded before, and it is in annulling of the Record, which is not ſufferable; and the Plaintiff had Judgment. Poſt. 315. 457.

Boyer *verſus* Jennings, Paſch. 33 Eliz. Rot. 248, or 348.

(8) ERror of a Judgment in Debt in the Common Bench, where the Defendant pleaded a good Bar, and the Plaintiff made an ill Replication; and the Defendant did not rejoyn, but Judgment was given againſt him upon a Nihil dicit; and now he would aſſign Error, for that the Replication was ill: ſo that it appeared upon his own ſhewing, that he had no cauſe of Action, and then no Judgment was to be given for him. But the Court held, he could not aſſign Error in it; for Judgment being given by Nihil dicit, it is all one as if no Bar or Replication had been made; for the Court without Iſſue or Demurrer, ſhall not adjudge upon the Replication: and although it was entred, yet when the Defendant doth not rejoyn, this is a waver of all; and if it were in this Court, it is never entred until the Rejoynder be made; wherefore the Judgment was affirmed, 3 H.6.41. 38 H.6.39. 12 Ed.3. Eſſoign 17.

Ante 62.

Co. 8. 133. b.

Termino Trinitatis, 34 Eliz. in Communi Banco.

Flower *verſus* Rigden.

(1) REplevin. The Caſe was, a Diſſeiſor infeoffed a ſtranger, and after the Diſſeiſee brought an Aſſize againſt the Diſſeiſor only; and the Feoffee pending the Aſſize, let the Land to the Plaintiff. The Diſſeiſor pleads to the Aſſize Nul tort, nul diſſeiſin, &c. and found againſt him, whereupon the Diſſeiſee recovered: The queſtion was, if the Termer for years ſhall falſifie his recovery, that is to ſay, that the Defendant in the Aſſize Ne diſſeiſe pas. And it was agreed by the Court, that he might; for the Termer here did not claim by him againſt whom the recovery was had; and there is no doubt, that the Freehold, out of which the Term is derived, is not recovered, and the Freehold is not bound by it: And the doubt at Common Law was, if the Termer might falſifie where the Recovery was againſt the Leſſor, but it was never doubted, but that where a Recovery is not againſt the Reverſioner, but againſt a ſtranger which had nothing in the Land, but that the Leſſee might falſifie in point tried, and ſo is 1 H.7.19. And it is a rule, that every ſtranger to a recovery may falſifie, (for he cannot have Error or Attaint) if he came not in pending the Writ, by him againſt whom the recovery was, for then he is bound: And afterwards it was ſo adjudged, that he might falſifie in the point tried.

Co. Lit. 46. a.

Poſt. 718.

Farrar *verſus* Johnſon.

THe Caſe was, A Feme Leſſee for life, the Reverſion to two Coparceners, the Feme and one of the Coparceners make a Leaſe for years of the whole, rendring ten pound Rent per annum to the Feme, during her life, and after ten pound to the ſaid Coparcener; and afterwards, the Feme and the two Coparceners joyn in a Fine, Sur conuſans de droit come ceo, &c. to two ſtrangers, which was to the uſe of Farrar, the Husband of the Coparcener that joyned

joyned in the Leaſe. Two queſtions were moved. 1. If he in the Reverſion levy a Fine to the uſe of himſelf, if Attornment be needful, and reſolved it was not; for he is in by the Statute of 27 H.8. So in every caſe of a Fine levied of a Seigniory, or of a Reverſion to an uſe. 2. If by this joyning in the Fine by Tenant for life with the Reverſion, if the Eſtate for life be ſurrendred, and the Rent extinct, becauſe the Reverſion to which the Rent was incident, is gone? And the Court doubted, but inclined it was not; for every one granted what in him lay. And Periam ſaid, if they had not levied a Fine, and Tenant for life died, the Leaſe was good but for a moity of the Parcener that let, yet the Rent remained for all. Co. Lit. 309. b.

Termino Trin. 34 Eliz. in Scaccario.

Edward's Caſe.

ACtion upon the Caſe. For that the Plaintiff having a Cellar, in which he put divers Hogſheads of Wine; and the Defendant having a Ware-houſe over the Cellar, maliciouſly laid into the Warehouſe ſuch a weight of Wares, Quod propter gravitatem ponderis, the Floor of the Ware-houſe fell down and ſpoiled all his Wines, by which, &c. The Defendant pleaded, that J. S. was poſſeſſed of the Ware-houſe, and of the Cellar; and let the Cellar to the Plaintiff, and the Ware-houſe to the Defendant; and that at the time of the Leaſe made, the Ware-houſe was much in decay and ruinous; and that there uſed to be laid in the Ware-houſe a thouſand weight, and that he put in it but eight hundred weight, Et propter ruinoſitatem it fell down; and concluded his Plea, Et hoc paratus eſt verificare: And upon this, it was demurred in Law; and the principal cauſe of the Dumurrer was, for that the Plaintiff laid to the Defendants charge, that he malitioſè did over-charge the Ware-houſe with Wares, and that it fell Propter graviatem ponderis; and the Defendant anſwered, that it was ruinous and fell Propter ruinoſitatem, and did not traverſe that which was laid to his charge. And this caſe was argued by Atkinſon and Fleming for the Plaintiff, and by Coke and Dalton for the Defendant; and after ſeveral Arguments at the Bar, Gent and Clark Barons held ſtrongly; that the Plea was not good for want of a Traverſe; for when a Maleſeſans is laid to the Defendants charge, he ought expreſly to traverſe it, and not to anſwer it by Argument. But Manwood Chief Baron held ſtrongly the contrary, that the Plea was good; for he confeſſed that it fell, but ſhewed how: As in Waſte, the Defendant pleads that it was ruinous at the time, without anſwering expreſly to the waſte: So in an Action upon the Caſe againſt an Inn-keeper, it is a good Plea, that the Plaintiff was robbed by one which came in company with him, without traverſing, that it was by his default; but it was anſwered, that no Male-feſans is expreſly ſuppoſed by theſe acts, but only a permiſſion: But here an ill act is expreſly ſuppoſed, which ought expreſly to be traverſed; and the two Barons ſaid, that ſo was the opinion of other Judges, with whom they had conferred; wherefore againſt the opinion of Manwood, they gave Judgment for the Plaintiff. (3) Co. 8. 33. a.

Termino

Termino Trinitatis, 34 Eliz. in Camera Scaccarii.

Highgate *verſus* Diggs.

(1) ERror aſſigned was, that Diggs had brought a Writ of Covenant, and declared upon an Indenture; but in the Bill upon the File, there was no date of the Indenture, but ſpaces left for it; but the Declaration was perfect and compleat, and for that, the Bill upon the File is as an original Writ, which is the Warrant for the Declaration; and this not being perfect, the Declaration cannot aid it: For this cauſe the Judgment was reverſed, and they ſaid, if there be no Bill upon the File, this is a plain cauſe of Reverſal, and that they had ſo adjudged it: And ſo it is here as if there were no Bill. Wherefore, &c.

Ante 119.

Rawſon *verſus* Maynard.

(2) ERror of a Judgment in the Queens Bench: The Error aſſigned was, for that in an Ejectione firmæ the Plaintiff did count of a Leaſe of the fourth part of a Houſe in N. in four parts to be divided; by force of which, he entred in Tenementa prædict' and was inde poſſeſſionatus, until the Defendant did eject him De Tenementis prædict'; whereas he ought to ſuppoſe his Entry into the fourth part, and the Ejectment of the fourth part. Sed non allocatur; for the Juſtices ſaid, that the Entry and Ejectment ſuppoſed De tenementis prædict' ſhall not be intended of the entire Tenement; but of the fourth part of the Houſe, according to his Declaration; and the Judgment was affirmed.

Ante 234.

Termino Trinitatis, 34 Eliz. in Curia Wardorum.

Jernengham & Cornwallis.

(3) THe Caſe was; A man was ſeiſed of three Mannors, of two in Fee, and of the third in Tail, all being held in Capite, and he deviſed all of them to a ſtranger: The queſtion was, for how much this Deviſe was good? which was referred to the two Chief Juſtices, and they conceived it was good for the whole two Mannors which he held in Fee, and void for the third; for he being Tenant in Tail of the third Mannor, and that deſcending to his Iſſue, is a ſufficient performance of the Statute of 32 H. 8. and the intent of it is ſatisfied.

32 H. 8. 1.

Termino Michaelis,

Tricesimo quarto & Tricesimo quinto ELIZABETHÆ, in Banco Reginæ.

Beal *versus* Charter.

TRespas for false imprisonment; The Defendant justified as Constable of A. because the Plaintiff brought a child of the age of two months, and laid it in the Church-yard of A. to the intent to have destroyed it, or to charge the Parish with the keeping of it; for which he did arrest him, and put him in the Stocks; for which, &c. And upon this, it being demurred, it was held a good Justification, for it is an ill practice, and is good cause to stay the Plaintiff, and to imprison him; and afterwards in the same Term it was adjudged, that the Plaintiff nihil capiat per billam. (1) Poph. 12. Moor 284. Owen 98. 1 Leon. 327. Ante 204.

Grute *versus* Locroft, Pasch. 33 Eliz. Rot. 211.

TRespas upon Demurrer; the case was, Baron and Feme Joyntenants, during the Coverture for sixty years; the Baron by Indenture let all the Land for seventy years, to commence immediately after his death; the Baron dieth, and the Feme survived: The question upon demurrer was, if this be a good Lease to charge the possession of the Feme. It was first moved, that it was a void Lease, because it was not to commence till after the death of the Baron; and it might be, that he might over-live the whole Term: And it is all one, as if he had granted the Term to commence after his death, which had been void. Second point, he dying before the Term commenced, the Interest is vested in the Feme: But it was adjudged a good Lease. For as to the first, it is not like the case put, for there nothing passed until his death; but here a good Term is created in Interest, although not in possession. For the second point, the Baron having an Interest to dispose of in his life, he might dispose of all the Term, and it should bind the Feme: So when he hath disposed by an Act executed in his life of the Interest of the Term, and hath created a Term in Interest; this is as good as if he had granted all the Term: And so it was adjudged. 1 Co. 155. a. (2) Moor 395. Poph. 4. Co. 1. 155. a. Ante 152. Co. Lit. 46. b.

Martidale

Martidale *versus* Martin.

(3) EJectione firmæ, by the Leſſee of Sir Edw. Clere againſt the Leſſee of Peacock, for certain Lands in Thetford. Upon ſpecial Verdict the caſe was, An Anceſtor of Sir Ed. Clere deviſed certain Land to divers and their Heirs (under whom Peacock claimed) to the uſe of them and their Heirs: Upon this truſt and confidence, that they out of the profits of it ſhould erect a Free-School, and pay ſo much to the Maſter yearly, and ſo much to the Uſher, and ſhould give ten pound per annum to five poor men; and it was found, that the Land was not ſo employed, nor any School erected, &c. And if this were a Condition, for breach whereof Sir Ed. Clere might enter, was the queſtion, There were two points in the caſe, firſt, If theſe uſes were void by the Statute of 23 H. 8. cap. 10. Secondly, If it were a Condition. And after Argument, all the Juſtices held; firſt, that it was not reſtrained by the Statute of 23 H. 8. for that was only to reſtrain ſuperſtitious uſes, and never intended to reſtrain uſes that were in favour of Learning, and relief of the Poor. Vide 1 Co. Porters Caſe. Secondly, They reſolved it was no Condition, for the words being upon truſt and confidence, ſhew that he repoſed truſt in them, and would not have the Land return for not performance of it; and there can be no more apt words to ſhew his intent, and not to tie the Land with a Condition. And Popham cited Machins caſe (which was entred, Mich. 29 & 30 Eliz. Rot. 649.) where the Leſſor deviſed his Land to his Leſſee for years, for the ſame term he had before, and paying the ſame Rent, and at the ſame days, and upon the ſame Covenants which were in the firſt Leaſe; and the queſtion was, If this were a Leaſe conditional, that his Leaſe ſhould ceaſe if he did not perform the Covenants, and adjudged it was not; for the firſt Covenants were only by way of Covenant, and not Conditional: And here it cannot be by way of Covenant, and therefore the Deviſe as to that was void, and ſtood for the reſidue; and afterwards it was adjudged for the Leſſee of Peacock.

Co. 1. 25. b.
23 H. 8. c. 10.
Co. 1. 24. a:
Co. 1. 25. b.

Juſtice Fenner *verſus* Fiſher.

(4) TReſpaſs; The Defendant juſtified, for that Jo. Wright was ſeiſed in Fee, and let to him for years; that the Plaintiff claiming by colour of a Deed of Feoffment, where nothing paſſed, entred, &c. The Plaintiff replieth, by Proteſtation, that Wright was not ſeiſed in Fee, Pro placito ſaith Quod non demiſit: And upon this Iſſue was joyned, and found for the Plaintiff. And it was now moved in Arreſt of Judgment, that the Plaintiff hath not made any title to himſelf in his Replication: But all the Juſtices held it good enough; for in this Action a man need not make any title to himſelf, but otherwiſe in an Aſſize or other real Action: Alſo by the Defendants Plea, that the Plaintiff entred by colour of a Deed of Feoffment, in that he doth admit him to be Tenant at Will, which is not deſtroyed; and it was adjudged for the Plaintiff. V. 18 Ed. 4. 26. 3 Ed. 4. 18. 22 Ed. 4. Treſpaſs 140.

Co. 6. 24. a.
Poſt. 754. 798.
1 Cr. 19.
Poſt. 295.
Poſt. 671.
Ante 64.

Appleton *verſus* Burr.

(5) ERror of a Judgment in the Common Bench, in an Action upon the Caſe againſt the Plaintiff, Sheriff of E. for ſuffering a priſoner to eſcape that was arreſted by a Capias upon an Original Writ. 1. Error, it was alledged that the Sheriff directed his Warrant to the Baily of the Franchiſe to arreſt him, who arreſted him, and delivered him to the Under-Sheriff in ea parte Authorizat', &c. and ſhewed no place where the Baily delivered the priſoner, for it may be it was out of the County. 2. It was not ſhewn, that the priſoner did not appear at the day; and if he did appear, the Plaintiff was at no loſs. Sed non allocantur; for the ſhewing of the place was but an inducement to the action; and when he pleaded not guilty, the eſcape is the matter material; and to the ſecond, though he did appear, yet the tort is not purged, and the Judgment was affirmed. Ante 158.

Charnock *verſus* Sherrington.

(6) ERror, for that Sherrington recovered againſt one Worſely in Debt, and afterwards Worſely enfeoffed the Plaintiff of his Land; and then Sherrington ſued an Elegit upon the Judgment, and the Plaintiff before Execution made, ſued this Writ of Error, and would aſſign Error in the Judgment; and it was demurred in Law if the Writ did lie. Curia, it ſeemeth it did not. 1. That the Feoffee cannot have a Writ of Error, except it be for Error in ſuing the execution. 2. Till Execution ſued he is not a party grieved, and this was the reaſon that he in the reverſion or remainder ſhall not have Error in the life of the Tenant for life, upon a Judgment given againſt the Tenant for life, becauſe he was not a party grieved, but he might have it after the death of the Tenant for life, before the Statute. But Egerton ſtrongly urged the contrary, becauſe the Land is liable to the execution. V. 18 Ed. 3. 25. 4 Dy. 1. 2 Ed. 4. 24. Co. 3. 4. a. Poſt. 294.

Graves Caſe.

(7) ACtion for theſe words, Mr. Wingfield you never thought well of me ſince Graves did ſteal my Lamb, adjudged actionable; although it was alledged in Arreſt of Judgment, that it was not a direct affirmance that G. R. did ſteal it.

Levets Caſe.

(8) ACtion for words, and declared that the Plaintiff was an Inholder in D. the Defendant ſpake theſe words, Thy houſe is infected with the Pox, and thy Wife was laid of the Pox, adjudged actionable; for it ſhall be intended the great Pox, and if it were the ſmall Pox, yet they were actionable; for it is a diſcredit to the Plaintiff, and Gueſts would not reſort thither, and it was adjudged for the Plaintiff, and fifty pound Damages given. Ante 214. Poſt. 582. Co. 4. 17. a.

Baxter and his Wife *verſus* Mounting.

(9) ERror to reverſe a Fine. The Error aſſigned was, that the Baron and Feme, and the Third perſon levied the Fine, and the Writ of Covenant was againſt the Baron and Feme, and the third perſon; and in the Summons the Feme was left out. Coke moved that for this Error the whole Fine ſhall be reverſed, and it being ill in part, is ill in all. 2 Ed. 3.39. 27 H.6.6. 10 Ed.3.1.50. and ſo was the opinion of the Court, but they would adviſe.

Ante 124.

Warneford *verſus* Haddock, Mich. 33 & 34 Eliz. Rot. 47.

(10) ERror to reverſe a Judgment in an Action of Waſte. 1. Error, for that in the Action of Waſte the Defendant appeared upon the Diſtreſs, and after Declaration made no anſwer, but Judgment was given againſt him by nihil dicit; and upon the Writ awarded to enquire of the Waſte and Damages, the Sheriff went not to the place waſted, but enquired of it at another place, and this was aſſigned for Error. Sed non allocatur, for when Judgment in Waſte is given upon a Demurrer or nihil dicit the Waſte is confeſſed, and the Writ ſhall be only to enquire of Damages, and although the Writ do command the Sheriff to go to the place; and this is but of form and nugation; but otherwiſe it is where Judgment is given by default before appearance; ſo is 3 Eliz. Dy. 204. 2. Error, he aſſigned the Waſte in a houſe, and by his Title it appeared the Plaintiff had only two parts of the reverſion of the houſe. Sed non allocatur, for although he hath but two parts, yet he ſhall puniſh the Defendant for Waſte done, in that which was held of the Plaintiff; and the Meſſuage being intire, he cannot aſſign the Waſte otherwiſe, and he did count according to his Title. 3. Error, becauſe it did appear the Defendant had the two parts by ſeveral demiſes; and therefore though the Plaintiff had the reverſion in one hand, yet he ought to have ſeveral Actions. Sed non allocatur: for he having counted upon the whole matter, it is as ſeveral counts; and he may well joyn them in one Action. And Paſch. 35 Eliz. the Caſe was moved again; for that it doth appear by the Count, that the Defendant held one part of the demiſe of the Plaintiff; and the other of the demiſe of a ſtranger, which had granted his reverſion to the the Plaintiff, ſo he had the reverſion by ſeveral Titles, he cannot maintain this Action; And although he hath declared ſpecially how he held it, ex dimiſſione & aſſignatione, this will not aid him, but if he had made ſeveral Leaſes he might have had one Action of Waſte, as 44 Ed. 3. is. But all the Juſtices held the contrary; for in as much as he hath ſhewn the truth of his Caſe in his Declaration, and he hath the reverſion in one hand, he ſhall maintain this Action. 4. Error, that the Sheriff had taken an Inqueſt to inquire of the Waſte, whereas the Judgment being by confeſſion, it ought not to be enquired: but becauſe divers preſidents were ſo, it was awarded no Error; and the Judgment was affirmed.

Ante 234.

Termino

Termino Hillarii,

Triceſſimo quinto ELIZABETHÆ,

in Banco Reginæ.

Sharley *verſus* Richardon, Int. Hill. 34. Rot. 462.

DEbt upon an Obligation of Fifty pound, the Condition was to perform the Arbitrement of Walter Bolton and Ed. Price of all Actions, &c. The Defendant pleaded they made no Arbitrement; the Plaintiff by replication ſhewed that they made an Award, ſcilicet, that each of them ſhould give to the other within four days after the Award a general releaſe of all demands till the date of the Obligation, proviſo ſemper that if either of them diſliked the award within twenty days after the award; and ſhould pay to the other within the ſaid twenty days ten ſhillings, that then the Arbitrement ſhould be void, and it ſhould be lawful for them to ſue their Actions, &c. one againſt the other. And upon this it was demurred; and argued by Tanfield of the one part, and Lewis of the other; and after argument it was adjudged for the Plaintiff, for all the Juſtices held that the firſt part of the award was good; and the proviſo being repugnant and contrariant to the premiſes is wholly void; and for the not performance of that part which was good, the Action did lie; for when they awarded that they ſhould releaſe each to other within four days, by not performance of it the Bond was forfeited; then the proviſo that upon payment of ten ſhillings all ſhould be void, this cannot ſave the Bond, which was before forfeited. And when one hath releaſed to the other, the other if the proviſo be good might tender the ten ſhillings to make the Arbitrement void, which would not avoid the releaſe; and it was adjudged for the Plaintiff. (1)

Ridler *verſus* Punter.

EJectione firmæ. It was found upon ſpecial Verdict, that W. and his Wife being poſſeſſed in right of the Wife of a term which ſhe had as Adminiſtratrix to C. her firſt Husband; and W. being indebted by contract, granted the term to Coleman, to the uſe of W. (2) 3 H. 7. c. 4.

and his Wife for their lives, and after to the uſe of Coleman himſelf. W. is ſued for this Debt, and recovery againſt him, and a Fieri facias being awarded to the Sheriff, he for this Debt of W. ſold the Term to the Plaintiff; the queſtion was if this ſale were good. It was moved, that this grant of a Term, being but a Chattel, and to the uſe of the Grantor himſelf, is void by the Statute of 3 H. 7. Curia contra, for the preamble of the Statute is, where grants were made by fraud or covin, of Chattels to the uſe of the Grantors themſelves, to defraud Creditors or others, that they ſhall be void; but this grant is not to avoid Creditors; for the term being in right of the Wife as Adminiſtratrix, if it had ſo continued in the hand of W. and had never been granted, this was not extendible for the Debt of W. and if W. himſelf had it as Executor, it was
Co. 10. 56. b. not extendible for his proper Debt, and fraud ſhall not be intended,
Poſt. 816. except it be expreſſly found. And this grant is out of the Statute of 39 H. 7. 4. and all other Statutes of that nature, wherefore, &c.

Eaſt *verſus* Harding.

(3) TRespaſs for cutting of Trees; the queſtion was, if it be a for-
1 Rol. 508. feiture by the Common Law for a Copyholder to cut Trees,
Ante 5. without a ſpecial cuſtom for it. Gawdy and Popham held it was, for it is to the Lords diſinheritance; and is not allowable for a Copyholder to do it without a Cuſtom; and if he did it, it was a forfei-
Poſt 499. ture; but by Popham, if it be found that he did it for reparation of
1 Rol. 508. the Houſe, by which it is made better, there peradventure it is otherwiſe.

Gregory *verſus* Nevill.

(4) ASsumpſit, That whereas M. the Leſſee for life of Land, the reverſion to the Defendant, had granted to the Plaintiff a Rent of Ten pound out of it, in conſideration that the Plaintiff promiſed to relinquiſh the Rent, the Defendant promiſed to pay him Thirty pound, and alledged in facto that he did relinquiſh the Rent, and did not claim it, &c. and upon non Aſſumpſit it was found for the Plaintiff; and upon motion in Arreſt of Judgment, it was reſolved that the Declaration was not good, becauſe he ſhewed not how he relinquiſhed the Rent, for it might be by words, which was no diſcharge.

Bagnal *verſus* Sachaverell.

(5) ASsumpſit, For that whereas the Defendant was indebted to him
Ante 133. in Fifty pound, he promiſed to pay it, the Jury found that quoad Forty ſeven pound, parcel of the ſaid Fifty pound, he did aſſume to pay it, &c. quoad reſiduum non aſſumpſit; and it was moved, if upon this verdict the Plaintiff ſhould have Judgment; and reſolved he ſhould not, becauſe it was found that he did aſſume only
Ante 147. for part, ſo the ſame Aſſumpſit was not found that the Plaintiff did declare upon; and although it was upon an indebitatus Aſſumpſit, it would not alter the Caſe.

Nedham

Nedham *verſus* S. Corſellis, an alien.

ACtion for words, for that whereas J. Cerke brought an Aſſumpſit against the Defendant, and they being at Iſſue upon it, the Plaintiff being produced as a witneſs at the trial at Guildhall before Wray Chief Juſtice, for Clerke, and upon his Oath gave evidence to the Jury; the Defendant ſuper hoc immediate ſaid, thou haſt forſworn thy ſelf, innuendo in the ſaid Oath. And upon this Declaration the Defendant did demur. And it was adjudged that the Action lay upon theſe circumſtances; for it was ſuper hoc immediatè, &c. after he took the Oath, and it is innuendo the ſaid Oath. And a Writ of enquiry of damages was awarded; and it was held that upon this Writ the Enqueſt ſhall be all of Engliſh, and no part of Aliens, for it is out of the Statute. (6) 28 E. 3. c 13.

Sherwood *verſus* Winchcombe.

PRohibition. The Plaintiff declared that whereas King H. 8. was ſeiſed of the Manor of D. of which a portion of Tithes of ſuch a place was parcel time out of mind, &c. conveyed it to him, and he was impleaded in the Court-Chriſtian for theſe Tithes, &c. and upon this Declaration it was demurred; for Tithes cannot be parcel of a Manor, for they are things ſpiritual, for which at Common Law a Common perſon cannot ſue, and being of a diſtinct nature, cannot belong to a Manor, 10 E. 3. 5. 9 H. 7. 46 Ed. 3. cattalla felonum cannot be parcel of a Manor, and although the King may have Tithes, yet he hath them not as a lay Fee. And of that opinion were all the Judges, that he cannot preſcribe for Tithes as parcel of a Manor; but if he had preſcribed to have decimam partem granorum, this had been good, but not portionem decimarum, and a conſultation was granted. V. 2 Co. 45. b. (7) Poſt. 599. 763.

Scavage *verſus* Beauchampe.

ACtion upon the Caſe, by a Sheriff againſt the Defendant, becauſe he was a priſoner and in execution, & violenter eſcaped. The Defendant pleaded, that before the time of the eſcape the Under-Sheriff carried him out of the priſon to ſuch a place, which was out of the juriſdiction, and afterwards brought him back again, and there he remained till the time of the eſcape ſuppoſed, and then he went out as it was lawful for him, and upon this it was demurred in Law. 1. It was moved that an Action did not lie for the Sheriff againſt a priſoner for an eſcape, for he ought to keep his priſon at his peril. Curia contra, and ſo it was ruled between Holt and Hill; for the priſoner by Law is to remain in the place whereto he is committed. And as to the matter, the Juſtices conceived, if the priſoner be once by the Act of the Under-Sheriff carried out of priſon to another place out of his juriſdiction, although he be brought again to the priſon, he is not in execution, and need not tarry; but they would adviſe. (8) Ante 534

Levett

Levett *verſus* Farrar.

(9) FAlſe Impriſonment. The Defendant juſtified, for that a Writ upon the Statute of Northampton was awarded 30. July 32 Eliz. to the
2 E. 3. c. 4. Sheriff, and the Juſtices of the Peace of the County of Norfolk to remove a force; and he being Under-Sheriff by the Commandment of the Sheriff went to the places, and found the force, and becauſe he was not able to remove it, he made Proclamation that every one ſhould depart and leave their Weapons, &c. and afterwards he enquired of the force; and it being found that the Defendant was one of them that made the force, the Defendant 6. Auguſt, afterwards by vertue of the ſaid Writ did Arreſt him, and committed him to Priſon; and ſo juſtifieth. And upon this the Plaintiff demurred. 1. Becauſe this is a Commiſſion to the Sheriff, which the Under-Sheriff cannot execute. 2. He ought to commit him at the ſame time when the force was done; and cannot Arreſt him afterwards, when the force is ended. 3. Becauſe it is not averred that he was Under-Sheriff at the time of the Arreſt. But the Court notwithſtanding theſe and other exceptions held
Poſt. 440. the Plea good. For when it is directed to the Sheriff, by the name of his Office, and not by a particular name, nor doth expreſly command him to do it in perſon, the Under-Sheriff may do it, for it is a Writ grounded upon the Statute; and not a Commiſſion, for then it had been otherwiſe. 2. The Arreſt is lawful at another time; for if the force had been removed before his coming, yet if by enquiry it be found that a force was done, and who did it, he may Arreſt them at another time; and it is not like the Statute, that the Auditors may commit the Accountant, for there he is before them. 3. It ſhall be intended he continued Under-Sheriff, when in the ſame Plea it is alledged he was Under-Sheriff; and the contrary is not ſhewn. And it was adjudged for the Defendant.

Termino Hillarii, 35 Eliz. in Camera Scaccarii.

Scroggs *verſus* the Lord Mordant.

1 Cr. 142. 143. THe Plaintiff as Adminiſtrator of Bridges brought a Writ of Error to reverſe a Judgment in Scandalis magnatum in the Queens Bench. 1. The Defendant alledged that the Writ of Error lieth not; for this Writ of Error is given by the Statute of 27 Eliz. and the Statute is, that the party, Plaintiff or Defendant, ſhall have a Writ of Error, but ſpeaketh not of the Heir, Executor, or Adminiſtrator. 2. That Execution was ſued againſt the Teſtator by Elegit, and the Lands only were extended, but no goods delivered in Execution, ſo the Adminiſtrator had no loſs; and when he had no loſs he cannot be reſtored to any thing. But the Court reſolved for both points, that the Writ of Error did well lie; for as to the firſt, it is within the intent of the Statute, for which the Statute did provide. And as to the ſecond, he is privy to the Record; and may have loſs by it in futuro. And in
Ante 289. many Caſes he that hath no loſs nor can have loſs, may maintain a Writ of Error; as the Tenant which makes a Feoffment pending

ding the Writ againſt him; ſo in Treſpaſs againſt two, and execution of the damages is had againſt one only; and the Plaintiff is ſatisfied, and he againſt whom the Execution was, died, yet the Survivor may ſue a Writ of Error; and for this point 20 Ed. 3. was cited, whereupon it was awarded that the Writ did lie; and that the Defendant ſhould anſwer. V. 6 Co. 80. Nota alſo, that it may be that the execution of the Land may be avoided, and then the Adminiſtrator may be damnified.

Termino

Termino Paſchæ,

Triceſſimo quinto ELIZABETHÆ,

in Banco Reginæ.

Munday *verſus* Cordal, Int. Hill. 35. Rot. 60.

(1) ACtion for theſe words, Thou art a Forger, and art ſued in the Star-Chamber for going by one Sedge. It was after Verdict moved in arreſt of Judgment, that an Action did not lie for thoſe words, for it is not ſhewn what thing he forged, and how he was ſued, for it might be, it was without cauſe. But the Court gave Judgment for the Plaintiff; for when he ſaid, Thou art a Forger, this is intended of ſuch a thing of which forgery might be, and to be ſpoken in the worſe part; and when he ſaid, He is ſued in the Star-Chamber, this doth aggravate it; that he did ſuch a Forgery, for which he is ſuable there.

1 Cr. 326.

Barley's Caſe.

(2) HE was indicted for the Murder of Weatherhead, and being arraigned upon it, he pleaded that A. the wife of Weatherhead, brought an Appeal againſt him for this Murder; and he was arraigned upon it, and pleaded not guilty, and tried, and found by the Jury that he was not guilty of Murder, but that he was guilty of Man-ſlaughter; and thereupon he prayed his Clergy and had it, and demands Judgment if he ſhall be again put to anſwer this Felony; and thereupon it was demurred; and now this term it was judged a good Plea; and thereupon he was openly in Court diſcharged, but no ſpecial reaſon was given of the Judgment, quære, for the finding him guilty of Man-ſlaughter in the Appeal was more then needed, as it appeareth in the Caſe of Wroth and Wiggs Antea, and then the allowance of Clergy is to no purpoſe, &c.

Ante 276.

More *verſus* More and his Wife.

(3) ACtion for words againſt the Baron and Feme, for words ſpoken by the Feme, and alſo for words ſpoken by the Baron; the Defendants did confeſs the Action; and upon a Writ of Enquiry of damages, the damages were entirely aſſeſſed, and held ill; and for this cauſe the Judgment was ſtaid, for the damages ought to be ſeverally aſſeſſed for the ſeveral words. V. 9 Ed. 4. f.

Co. 10. 131. a.

Green *verſus* Dancy.

ACtion for theſe words, Thou art falſly forſworn in Bell-Court, Innuendo, a Court Baron held at Bell; and per Curiam, with this innuendo the Action did lie, otherwiſe not. (4) Ante 135. Poſt. 348. Poſt. 209.

Lee *verſus* Secombe.

ACtion for theſe words, He was falſly forſworn in the Court of the Biſhop of Exon, at Exon. And it was moved in Arreſt of Judgment, that it doth not appear he was ſworn in any judicial Court, for it may be in the yard of the Biſhop, which is called his Court. Fenner, it is known to us that every Biſhop hath his Court, that is his conſiſtory to determine cauſes, and it ſhall be intended he was forſworn there, and the Plaintiff had judgment. (5) Ante 185.

Levermore *verſus* Martin.

ACtion for theſe words, Thou art forſworn and perjured; the Jury found a ſpecial Verdict, that the Defendant ſaid the Plaintiff was a forſworn Fellow, to whom the Plaintiff ſaid, Will you ſay I am perjured, the Defendant ſaid, Yes, if you will have it; and the Court conceived that upon this matter an Action did not lie, and it was adjudged for the Defendant. (6)

Butler *verſus* Paynter.

ACtion for words, for that whereas the Plaintiff was a Juſtice of Peace, the Defendant ſaid, You do openly maintain and countenance the worſt people againſt Gods Laws and the Queens. After Verdict it was moved that an Action did not lie for theſe words, for it is not ſhewn who theſe people are which he intended were the worſt people, viz. Rogues, Hereticks, or the like, and it is not ſhewn that he did know them to be ſuch perſons, nor in what he did maintain them; and of that opinion were Fenner and Clench, but Popham Chief Juſtice contra, for they found to his diſcredit; and he ſaid it was adjudged upon good deliberation, in a Caſe between Sir Hen. Portman and Stowell, that for theſe words, Thou maintaineſt ſuch a Suit, an Action did lie, for maintainance is unlawful and odious, and it is here alledged to be ſpoken malitiosè, and cannot be intended but he maintained them in their naughtineſs. And afterwards Mich. 35 & 36 Eliz. the caſe was moved again, and it was held by the whole Court that the Action did not lie, for the words are too general to maintain an Action. (7) Yelv. 21.

More *verſus* Roſwell, Hill. 35 Rot. 22.

DEbt upon an Obligation: The condition to perform Covenants of ſuch an Indenture, and the breach aſſigned in this, that the Defendant did Covenant to aſſure ſuch Land by ſuch aſſurance as by the Councel of the Plaintiff ſhould be deviſed, and alledges that the Plaintiff cauſed ſuch an aſſurance to be drawn and ingroſſed, and put Wax to it, and required the Defendant to execute it, and he refuſed; and upon this the Defendant did (8)

demur. Harris Serjeant moved that no breach of the Covenant was ſhewn, for when he is to make ſuch aſſurance as the Council of the Plaintiff ſhall deviſe, and the Plaintiff himſelf doth deviſe it; this is no breach, for he is not compellable to make it, 6 H. 7. 4. 26 H. 8. 17 Ed. 4. Gawdy, this clearly is no breach, for when it is referred to ſuch an aſſurance as Council ſhall adviſe, this ſhall be intended, ſuch aſſurance as ſhall be reaſonably adviſed, and not in ſuch manner as the party himſelf of his own head ſhall adviſe, which peradventure may be unreaſonable; and afterwards being moved again at another day, all the Court was of the ſame opinion, for which the Plaintiff would have been non-ſuited, but he could not, becauſe he appeared the ſame Term, and therefore he prayed adviſement till the next Term, to the intent to be non-ſuited and to diſcontinue it. V. 5 Co. 19. b. V. Paſch. 38. placito 20. B. R. contra.

Ante 9.

Poſt. 465.

Stafford *verſus* Bottorne, Hill. 35. Rot. 647.

(9) Co. 5. 19. b. ASſumpſit: For that the Defendant upon ſuch conſideration promiſed to make to the Plaintiff ſuch aſſurance of the Rectory during their joynt lives, as ſhall be deviſed by the Councel of the Plaintiff, and alledged in facto that one Jo. Morris was of his Councel, and that he dedit his adviſe that the Defendant ſhould make a Leaſe by Indenture, &c. and that the Plaintiff himſelf poſtea apud L. dedit notitiam to the Defendant of the advice of the ſaid J. M. and required him to perform it, which he had not done. After Verdict Godfrey moved in Arreſt of Judgment, that the Councellor is to give notice of the advice to the Defendant, and not to the Plaintiff; for perhaps he will not ſpeak it truly; and the Defendant is not bound to give credit to his report; and ſo is 11 H. 7. 21. Coke contra, for being the Councellor of the Plaintiff, he is to give his advice to the Plaintiff; and he to notifie it to the Defendant, 11 H. 7. 23. 8 Ed. 4. 22. 14 H. 8. 21. and the Defendant is not at any miſchief, for he is not to do it without notice; and if notice be given, he is to do it at his peril, if it ſtand with the agreement; and if the Plaintiff giveth notice to make ſuch an aſſurance and he doth it, although it be not adviſed by Council, this ſhall excuſe him; and if the Plaintiff ſhall afterwards ſay that the Counſel adviſed any other aſſurance, he need not make it, for the Plaintiff is not to vary from his firſt requeſt. Popham, if the words were, that he ſhall make ſuch an aſſurance as the Councel of the Plaintiff ſhall adviſe the Defendant, it is no doubt, but the Councel muſt notifie it to the Defendant; and if the words were, as the Councel of the Plaintiff ſhall adviſe him, it is no doubt, that notice is only to be given to the Plaintiff; but the words here are, As by the Councel of the Plaintiff ſhall be deviſed, which doth ſtand indifferent; and he conceived it is ſufficient to be given to the Plaintiff, and he ſhall give notice thereof to the Defendant; for in the performance of every condition, every one is to perform that which lieth in his notice; and therefore if the promiſe be, that you ſhall make ſuch aſſurance as my Councel ſhall adviſe you, I ought to give notice who is of my Councel; and it was ruled in a Co. 8. 92. a. Wiltſhire Caſe, where one made a Leaſe for years, with a proviſo, that if he tendred ten ſhillings at the Cathedral Church of Sarum, at any time during the term, that the Leaſe ſhould be void; he was bound

Ante 9.

bound to give notice to the Leſſee when he would be there to tender, for the time was incertain (V. 18 Eliz. Dy. 354.) And ſo another caſe was ruled, that if one be obliged to another to pay ſo much to him, when he came next to Pauls, he ought to give notice when he would come next thither. So here it is to be expounded with reaſon, for the Councel of the Plaintiff is not bound to travel to ſeek the Defendant; and if he give Councel to the Plaintiff, and he give notice to the Defendant, this is ſufficient, and there is no miſchief to the Defendant; for if the Plaintiff doth report it to him falſly, yet if the Defendant doth perform it, it is ſufficient, and he cannot vary from it, but hath diſpenſed with the Defendant for any other, and ſhall not ſay afterwards that the Defendant hath done it according to the advice; and this is the ſureſt way, and of that opinion were Fenner and Clench (abſente Gawdy) and it was afterwards adjudged for the Plaintiff. V. 5 Co. 19. b. Co. Lit. 211. a.

Okes *verſus* Kirby.

(10) ASſumpſit: In conſideration the Plaintiff at the Defendants requeſt would ſurceaſe ſuch a ſuit, &c. the Defendant promiſed to ſeal him a Bond when required, &c. and alledged in facto that he did ſurceaſe the ſuit, and the Defendant licet ſepius requiſitus, ſuch a day and place, had not ſealed it. After Verdict it was alledged in Arreſt of Judgment; firſt it is not alledged that he ſurceaſed at the requeſt of the Defendant. 2. That the requeſt to ſeal the Bond was not by the Plaintiff; Sed non allocantur: for as to the firſt it ſhall be intended, for it is for the Defendants benefit; and to the ſecond, it ſhall be intended, if the contrary be not ſhewn that it was by the Plaintiff, or by his ſervant for him; wherefore it was adjudged for the Plaintiff.

Lewes *verſus* Hay, Mich. 33 & 34 Eliz. Rot. 448.

(11) ERror, for that the Judgment was, & Idem Jo. Lewes in miſericordia; where it ſhould be Th. Hay, it was amended by award.

Bartlett *verſus* Wright.

(12) EJectione firmæ: For a Meſſuage one Rood and two Acres of Land in Bridgenorth, of the Leaſe of Elburne; the Jury upon not guilty pleaded, find a ſpecial Verdict; that one Delborough was ſeiſed of the houſe and of two-yard land in B. and that the two Acres of Land were time out of mind parcel of the two yard-land, and that the ſaid D. let to the ſaid E. Leſſor of the Plaintiff, all my houſe and two yard-land in B. in the poſſeſſion of Geffe, and they found that the two Acres of Land were not in the poſſeſſion of G. but all the reſidue were; and the queſtion was if the two Acres do paſs. And it was argued by Pudſey of the one part, and Herne of the other; Gawdy conceived it did paſs; for when it is named my houſe, and two yard in B. this is ſufficiently certain, and that which came after is not material, and it is good for all, though no part were in the poſſeſſion of G. Popham accorded, for when the Law makes a certainty, that which cometh after and is repugnant is void; as if one grant the Manor of D. in D. and this extends to D. and S. if he hath Demeſns and Services in D. and S. this Co. 8. 10. a. Ante 39. 2 Cr. 22.

ſhall paſs only that which is in D. for the words are ſupplied that a Manno̲r paſſeth; but if he hath Demeſnes and Services only in D. then the whole ſhall paſs, for otherwiſe the Grantee ſhall not have a Manno̲r; ſo here, for that the yard lands are intire, and he cannot have the yard land except he have two Acres, they ſhall alſo paſs, and it ſhall not be reſtrained by the laſt clauſe. So if one hath five Acres called Blacklands, and he granteth all his Acres called Blacklands in the tenure of J. D. and J. D. hath but four of the Acres, yet the five ſhall paſs: Clench & Fenner contra, for the intent of the parties was to paſs, only that which was in the tenure of G. and a yard land is no ſuch certainty, but when it is referred to another certainty, this ſhall be good, eſpecially when the grant may be ſupplied by the Land in the tenure of G. but if no part were in his tenure, it is otherwiſe; & adjurnat'. And afterwards, P. 35 Eliz. Popham being abſent, it was again moved, and againſt the opinion of Gawdy it was adjudged for the Defendant.

Ante 16. Poſt. 474.

Dell *verſus* Babthorpe.

(13) TReſpaſs. Upon ſpecial Verdict the caſe was, J. S. had a Cloſe and a Wood adjoyning to it, and time out of mind a way had been uſed over the Cloſe to the Wood to carry and recarry; he granted the Cloſe to one, and the Wood to another; the queſtion was, if the Grantee of the Wood ſhall have the way, and it was adjudged he ſhould not, for the Grantor by the grant of the Cloſe had excluded himſelf of the way, becauſe it was not ſaved to him, and he himſelf could not uſe it, no more can his Grantee. V. 20 Ed. 3. Admeaſurement 8.

Clever *verſus* Gyles, Trin. 34. Rot. 865.

(14) EJectione firmæ: It was found by ſpecial Verdict, that Knight ſold to Onely certain Land by Deed indented, upon condition of re-entry upon payment of twenty pounds, and that all aſſurances ſhall then be to him and his Heirs, and covenants to make other aſſurances, and that they ſhall be to the uſe in the Indenture, afterwards he makes a Feoffment to the ſame Bargainee, to the uſe of him and his Heirs, and afterwards Levies a Fine to him, which was to the uſes in the Indenture; and if by this abſolute Feoffment, and to the expreſs uſe of the Bargainee, if his eſtate be conditional or not, was the queſtion; and adjudged, that notwithſtanding the abſolute Feoffment, and to an expreſs uſe; yet it being upon no new agreement, this is guided by the covenant, and it ſhall rule it, as well as an expreſs limitation of the uſe.

Co. 2. 73. b.

Porter *verſus* Gray.

(15) AVowry for an amercement in a Leet, for not doing ſuit, the Plaintiff was non-ſuited, for which the Defendant had a return, and he prayed his coſts, but the opinion of the Court was, he ſhould not have coſts; for it is not ſuch a thing for which the Statute doth give coſts, for it extends only to cuſtoms and ſervices.

Ante 245. Poſt. 329. 2 Cr. 28. Poſt. 329.

Bynde

Bynde *verſus* Plaine. V. Antea, H. 73. C. B. placito 5.

ERror. Error aſſigned in the matter of Law, and for that the Plaintiff did avere that between the 11. day of Sept. and 14 days after Mich. no challenge or claim was made, and doth not anſwer to the reſidue of the 11. day of Sept. if claim was then made. But Popham and all the Court held it good, for it is good to a common intent, and we muſt not pinch ſo upon inſtances of time; and it ſhall not be preſumed that challenge was made, if it were not ſpecially alledged; and the Law preſumeth all the day to be the day of the promiſe, and that no claim or challenge upon that day, if it be not ſhewn; and in any Plea or Declaration, it is ſufficient to ſatisfie the common intendment. And it hath been adjudged that where an Arbitrement was the 12. of April, and the Arbitrator awarded that the party ſhall releaſe all Actions until the making of the Award, in Debt upon an obligation for not performance of the Award, he pleaded a releaſe of all Actions until the 12. of Ap. and it was adjudged a good Plea; for the inſtant of time is not to be reſpected; wherefore the Judgment was affirmed. (16) Ante 218. 9. Poſt. 858.

Termino

Termino Trinitatis;

Triceſſimo quinto ELIZABETHÆ,

in Banco Reginæ.

Hughes *verſus* Robotham Executor of J. S.

(1) ASſumpſit, That whereas the 14. Ap. &c. the Plaintiff was poſſeſſed of a Leaſe for years, and the Teſtator was poſſeſſed of the reverſion for years, the Teſtator in conſideration the Plaintiff would ſurrender to him all his eſtate, promiſed to give him thirty pounds, and alledges in facto, that 20. Ap. &c. he ſurrenders, &c. and upon non Aſſumpſit, it was found for the Plaintiff. Foſter moved in Arreſt of Judgment, 1. It was not alledged that he was poſſeſſed of the intire term at the time of the ſurrender; and it may be had aſſigned part of it before to another. 2. Both parties are Termors, one in poſſeſſion and the other in reverſion, and a Termor cannot ſurrender to a Termor, for one eſtate cannot drown in the other. As to the firſt all the Court held clearly that the Declaration is good, for it ſhall not be otherwiſe intended but that the eſtate did continue, and it being but an inducement, it need not be ſo preciſely alledged. To the ſecond, Popham ſaid it is clear that he which hath an eſtate for ten years may ſurrender to him that hath an eſtate for twelve years, and the eſtate is drowned, and the other ſhall come in poſſeſſion, and there is no doubt but a ſurrender to him that hath a greater eſtate for years is good, as to him that hath an eſtate for life, which Gawdy did expreſly affirm; and here it ſtandeth indifferent, if the reverſion had a greater eſtate for years or not; but if one be Leſſee for twenty years, and he let the Land for ten years, and he ſurrenders to him that hath the reſidue of the term, this is good to convey his Intereſt, but not to drown the Eſtate, but he ſhall have the twenty years as before; otherwiſe it is of a ſurrender to another man that hath the reverſion for years. And Popham conceived that if the Teſtator had the Reverſion for a leſs number of years, yet the ſurrender is good, and the eſtate ſhall drown in it. And if a man be Leſſee for twenty years, and the reverſion is granted for one year to another, which grants it to the Leſſee for twenty years, this is a ſurrender of the firſt Leaſe for twenty years, and is as if he had taken a new Leaſe for a year of his Leſſor: Quod Fenner Juſtice affirmed, and ſaid the ſurrender was good, although the Reverſion was for a leſs term for years, for here are ſeveral terms out of the Reverſion, and one cannot

Ante 173.

cannot ſtand with the other, but coming together, one ſhall drown the other, and the number of years is not material; for as he may ſurrender to him which hath the reverſion in Fee, ſo he may to him that hath the reverſion for a leſſer term; but when Leſſee for twenty years maketh a Leaſe for ten years, who ſurrenders; this cannot drown in the other, becauſe it was not to commence until the term expired; and it was adjudged accordingly for the Plaintiff. V. Hill. 32. C. B. placito 1. Ante 173.

Termino

Termino Michaelis,

Triceſſimo quinto & ſexto ELIZABETHÆ,

in Banco Reginæ.

Ad St. Albans.

Balſton & A. his Wife Executrix of M. S. *verſus* Baxter.

(1) DEbt upon an Obligation made to the Teſtator to pay thirteen pound ſix ſhillings and eight pence, dated 29. Ap. 23 Eliz. the condition to pay ten pound at the Feaſt of St. Th. the Apoſtle then next enſuing at the Church Porch of Newton; The Defendant pleaded, that before the ſaid Feaſt, viz. ult. Nov. 24 Eliz. the Teſtator did agree with him, that if he would provide for him ſix pound and pay it at his houſe in N. the 15. day of Decemb. next, and would promiſe that he would pay the four pound reſidue at the Feaſt of St. John Baptiſt enſuing, that he would accept it in full ſatisfaction of the ſaid ſum of ten pound, and alledgeth in facto that he paid the ſaid ſix pound the ſaid 15. day of Dec. and then promiſed he would pay the reſidue at the ſaid Feaſt of St. John the Baptiſt; and the Teſtator did then accept the ſaid promiſe in full ſatisfaction of the ſaid ten pound, & hoc, &c. and upon this it was demurred. And this Term upon the firſt motion without any great deliberation, the Court did adjudge for the Plaintiff, for this is a concord pleaded, and is executory, and ſo can be no bar in Debt upon a Bond, no more then in a Treſpaſs; and this promiſe to pay the reſidue is a thing in Action, and can be no bar of a Debt, which is certain; as in Debt upon an Obligation, it is no Plea that he accepted another Obligation in recompence of it, 11 H. 4. but by Gawdy, if he had pleaded payment of a leſſer ſum before the day, and at another place in ſatisfaction of a greater ſum of money, and had relied upon it; this peradventure had been a good Plea; and they all reſolved in the principal Caſe, that it was no good Plea to avoid a Bond upon ſuch naked matter.

Co. 6. 44. a. Poſt. 306.

Co. 5. 117. a. Ante 46. Poſt. 309.

Nevill *verſus* Payne.

(2) QUo Warranto ſued by Nevill in the name of the Queen againſt the Defendant for claiming a Leet within the Manor of Medburne; the Defendant pleaded that he was ſeiſed in Fee of the Manor of Medburne, and claimed the Leet there by preſcription, and the Venire facias (they being at Iſſue upon the Preſcription) was awarded of the Vill. of Medburne, and tried againſt the Queen; and it was upon motion adjudged a miſ-trial, for the Preſcription being that he had a Leet within the Manor of

of M. and iſſue joyned upon it, the viſne was to be of the Mannor of M. and not of the Village of M. For there was no mention of a Village in the Record, and the Venire facias might well be of the Mannor: And then it was prayed, that the poſtea might be certified; but becauſe it was miſ-tried, and ſo upon the matter no trial, and being againſt the Queen, it was ordered the poſtea ſhould not be received; for if it ſhould, the Defendant might exemplifie the verdict, as duly tried, and it would be an evidence againſt the Queen, which ſhall not be ſuffered.

Doctor Cæſar *verſus* Curſeny.

(3) ACtion for words, That whereas the Plaintiff was Judge of the Admiralty, and J. S. had a Suit againſt the Defendant, in which the Plaintiff gave ſentence againſt the Defendant; the ſaid Defendant ſaid, that the ſaid ſentence given by the Plaintiff Innuendo ſententiam prædict', &c. was corruptly given; the Defendant pleaded not guilty, and found againſt him, and two hundred pound damages aſſeſſed. And it was now moved in Arreſt of Judgment, that an Action did not lie for thoſe words; for it is not alledged, that the ſentence was corruptly given by the Plaintiff; for it may be the Defendant did intend it was corruptly given by reaſon of the falſe teſtimony of falſe Witneſſes, or corruption in them, and ſo touched not the Plaintiff: but the Court held, that the words can have no interpretation but in an ill ſence; and to be intended of the Judge that gave the ſentence; and ſo it is preciſely alledged in the Declaration. Then it was moved, that a tales was awarded De circumſtantibus, which was not to be awarded in this caſe, by the Statute of 35 Hen. 8. 6. for that is intended to be granted when the trial was all by Engliſh, and not when the trial is per medietatem linguæ; for peradventure it ſhall be all of Engliſh, there being none there but ſuch. But all the Court held it within the intent of the Statute, and within the Letter of it; for it is, that in all Actions, &c. tales ſhall be awarded as in the Bench. But a queſtion could not be, if it were in the Bench; and where it was objected, peradventure there ſhall be no ſtranger there; the Statute had regard to it, for then no tales can be ſerved; for the Statute is, tales ſhall be awarded, Quales, &c. and ſo ſhall be of ſuch perſons as were of the former return. Thirdly, it was moved, that the tales was miſ-awarded; for there are none returned but aliens, and not De medietate, &c. And the Court conceived it to be good: For in this it is ſufficient to return ſo many only, which with the other might make a full Jury, but otherwiſe of Tales in Banco; wherefore here when aliens were only wanting, it was ſufficient to return them. And it was adjudged for the Plaintiff.

Co. 10. 104. a.

2 Cr. 316.

Co. 10. 105. a.

Poſt. 84

Rayne *verſus* Orton, Hill. 34 Eliz. Rot. 70.

(4) ASſumpſit for fifty ſhillings upon an Indebitatus Aſſumpſit; the Defendant pleaded, that after the Aſſumpſit there was a Concord between them, that he ſhould give to the Plaintiff fifteen ſhillings, parcel of it, and the thirty five ſhillings reſidue, the Plaintiff ſhould receive of him in Hats; and alledgeth the payment of

the fifteen shillings, and that he was always ready to pay the residue in Hats. And upon this it was demurred, and without Argument it was adjudged for the Plaintiff; for it being a Concord executory in part, can be no Plea; for a Concord is always to be intirely executed, and not to be executory in any part; and it was adjudged for the Plaintiff. 6 Hen. 7. 9.

Ante 304.

Sir Christopher Hilliard *versus* Constable.

(5) Action for these words, Sir Christopher Hilliard is a Blood-sucker, and sucketh blood; but if any man will give him a Bribe, as Sheep, or a couple of Capons, he will take them. Upon Not guilty pleaded, it was found not guilty as to all the words, except he is Blood-sucker, and sucketh blood; and for them he was found guilty: And the opinion of the Court was, upon motion in Arrest of Judgment, that the last words not being found, an Action did not lie for the first: For though he alledged in his Declaration, that he was a Justice of Peace, and one of the Council in the North; yet the first words cannot be any slander, for it cannot be intended what blood he sucked. And by the advice of the greater part of all the Justices of England, it was adjudged for the Defendant. Vide Mich. 37 & 38 Eliz. Placito 41.

Post. 433.

Burton & Estove *versus* Gowell. Trin. 35 Eliz. Rot. 92.

(6) Trespass, upon special Verdict the Case was, J. S. was seised in Fee of Land, and by his Will in writing made at Pulham, devised the Land to the Defendant, and after at Sterston lying sick Dixit & declaravit, that his Will made at Pulham shall not stand, and the question was, if this were a Revocation, because it was by word only, and by words in futuro, and not in præsenti: To the first it was resolved, that a Will may be revoked by Parol only; and so is Harrisons Case, 14 Eliz. Dyer. To the second it was said, that verba in futuro shall be taken futurely when they refer to a future act, otherwise when they refer to a present resolution. But by Popham, if he had said, I will revoke my Will made at Pulham, this is no present Revocation, for it referred to a future act: But when he saith, It shall not stand; this takes effect presently: As if I say to another, You shall have my Land for ten years; this is a present Lease: and it was adjudged a Revocation.

2 Cr. 115. 497.

Sherburne's Case.

(7) Prohibiton against the Parson of T. for suing for Tithes of Wood of the Park of Thachsty, and surmised, that he and all those, &c. time out of mind, &c. had used to pay to the Vicar of T. ten shillings yearly, for all Tithes of Wood growing in the said place; and the proofs were. That he paid ten shillings for discharge of Tithe-Wood in the Park, and two other places. And Coke Sollicitor moved for a Consultation; first, Because he surmised he paid so much to the Vicar in discharge of Tithes; and by this the right of Tithes, between the Parson and Vicar, is to come in question,

Ante 71. 136.

queſtion, which is meerly triable in the Court Chriſtian, as it hath been twice adjudged in this Court, Mich. 28 & 29 Eliz. inter Hunt & Bush, and Mich. 30 & 31 Eliz. the Lady Greſhams Caſe. Second cauſe, The proofs do not prove the preſcription; for the preſcription is to pay ten ſhillings for the Tithes of the Wood, &c. and the proofs are of that Park, and two other places. And of that opinion was the Court for both points, but it was adjourned, and no conſultation awarded. Ante 71. Poſt. 736. 1 Cr. 576.

Crouch *verſus* Givers.

(8) Aſſumpſit; For that the Defendant in conſideration of a marriage, &c. aſſumed to give him unum cubiculum, innuendo, the furniture of a Chamber; and for not performance, the Action brought; and upon Non Aſſumpſit, found for the Plaintiff, and thirty ſix pound given in damages. Coke moved in Arreſt of Judgment, that the breach is not well alledged, in not giving the furniture of a Chamber, and the innuendo here can have no ſuch intendment; and it is meerly a collateral and void matter, as innuendo a Horſe; for the innuendo ought to have ſome affinity with the matter precedent. Godfrey ſaid the phraſe of the Country is ſo, to give a Chamber upon the marriage; the meaning is the furniture, &c. But the Court contra: For prima facie, it is meerly contrary, except it had been ſo averred in pleading; and it was adjudged for the Defendant. Co. 10. 130.

Gravener *verſus* Rake, Trin. 33 Eliz. Rot. 611.

(9) The queſtion was, if an Eſtate-tail might be of a Copyhold. Gawdy and Clench, that it cannot be by the Statute, but may be by uſe and cuſtom. Popham and Fenner contra, That there may be an Eſtate-tail by the Statute of Copyhold, by æquitatem rationis, but it cannot be by cuſtom. Co. 4. 23. a. Poſt. 373. Ante 149. Co. Lit. 60. b.

Hall and Gauen & alii.

(10) INdictment upon the Statute of 8 Hen. 6. Exception was taken, becauſe the Statute was recited, Si aliquis expulſus ſit & diſſeiſitus, whereas the Statute is vel diſſeiſitus. But Gawdy and Fenner held it not much material; for the words are diſjunctive, yet they are always expounded as copulative; For if he be not expulſus & diſſeiſitus, Action lieth not upon the Statute. Secondly, the Statute was recited Vel aliquod Feoffment' aut diſcontinuationem, whereas the Statute is Poſt talem ingreſſum aliquod Feoffment'; and for this miſrecital it was held inſufficient: And it was moved, although the Indictment was void for the Entry with force; yet it being that they with others Riotoſe and routoſe entred, &c. it ſhould be good for the Riot. Curia contra, for the Indictment beginning with the Statute of 8 Hen. 6. and concluding contra formam Statuti, this can have no relation to any offence, except upon this Statute; and the Indictment was awarded inſufficient, and diſcharged. 8 H. 6. c. 9. Poſt. 697. Ante 231. 2 Cr. 498. Poſt. 355. 697.

Ball *verſus* Roane.

(11) ACtion for theſe words, There was never a Robbery committed within forty miles of Wellingborough, but thou hadſt thy part in it. After Verdict it was moved in Arreſt of Judgment, that the Action did not lie, becauſe it was not averred there was any Robbery committed within forty miles, &c. For otherwiſe it is no ſlander, & ſic opinio Cur'; and Judgment for the Defendant, Mich. 36 & 37 Eliz. 6 R. Placito 11.

Ante 214.

Poſt. 312.

Preſton *verſus* Pinder.

(12) ACtion for theſe words, You have ſought to murder me, and I can prove it; adjudged that it lay.

Ante 6.

Guerdon *verſus* Winterflud.

(13) ACtion for theſe words: He is a ſuborner of Perjury. After Verdict Harris Serjeant moved, that the Action did not lie; for it is not alledged, that he ſuborned any perſon to commit perjury; and the words of themſelves have no ſence, for one cannot ſuborn perjury. Curia contra, for he cannot be a Suborner of perjury, but it muſt be neceſſarily intended he did ſuborn ſome perſon to commit perjury, and the words in themſelves are very ſlanderous; wherefore it was adjudged for the Plaintiff; and a hundred marks damages being given, the Court was moved to mitigate them, but they denied it.

Perepoint's Caſe.

(14) ACtion for theſe words, My Maſter hath put me away, becauſe I would not be a Papiſt; for he will keep no Servants but Papiſts; and alledgeth, that he was a Juſtice of Peace; and upon Demurrer, the Court held that the Action did not lie for thoſe words.

Ante 192.

Young *verſus* Watſon, Paſch. 35 Eliz. Rot. 41.

(15) DEtinue of Goods, the Writ was Ad valentiam twenty pound, the Declaration Ad valentiam forty pound, it was adjudged Error, and the Judgment reverſed. And in another Writ of Error between the ſame parties, Paſch. 35 Eliz. Rot. 42. Firſt Error aſſigned was, that there were not fifteen days between the Teſte, and the return of the Venire facias; but it was held, that this was clearly helped by the Statute of Jeofails. Second Error, that the Venire facias had no return; for the Statute did not help Non-returns, but Miſ-returns: And this was held Error, for the Jury appeared without Warrant; and for this cauſe it was reverſed.

2 Cr. 294.

Poſt. 310.

Gore & Uxor *verſus* Perdue, Paſch. 34 Eliz. Rot. 234.

(16) ERror upon a Judgment in Dower, where the parties were at iſſue, and afterwards the Defendants made default; whereupon a Petit cape was awarded, and Judgment given by default: Error

Poſt. 531.

Error aſſigned, that the Tenant was within age at the time of the Judgment; and the Court held it no Error, eſpecially being after appearance, for he cannot ſave his default by Non Summons. Vide 7 Edw. 2. & 17 Edw. 2. Saver de default. Poſt. 323. Ante 51. 2 Cr. 465.

Tiblethorpe *verſus* Hunt, Hill. 35 Eliz. Rot. 557.

DEbt upon an Obligation of fourteen pound, for payment of ſeven pound; the Defendant pleaded payment at the day, and upon this they were at iſſue; the Jury found payment of fifty ſhillings, parcel of it, and that the Defendant then delivered to the Plaintiff certain Hats to the value of the reſidue, which he accepted: And it was adjudged againſt the Defendant; for this is no payment, but he might have pleaded this matter ſpecially and then the acceptance of the Plaintiff had been a Bar. (17) Ante 304.

The Queen *verſus* Ingerſall.

ATtaint. The Caſe upon ſpecial Verdict was. Brooks had ſued an Information for the Queen and himſelf, againſt the Defendant, upon the Statute for buying of Cattel out of Fair or Market, &c. And ſuppoſeth he bought the Cattel of one Pearepoint and aliis Ignotis: The Defendant pleaded not guilty, and the Jury find for the Defendant. And upon this the Queen alone (for ſhe cannot joyn with the party) brought an Attaint; and the Grand Jury in the Queens Bench, Paſch. 35 Eliz. find this ſpecial Verdict, ſcil. That it was given in evidence to the Petit-Jury by one Whitworth, That the Defendant out of Fair and Market did buy forty Cattel, which were the Cattel of Pearepoint; but they found that in truth the Cattel were bought of Whitworth, as the Cattel of Whitworth; and that it was not given in evidence that they were bought of Whitworth, as the Cattel of Whitworth; and if upon the whole matter, &c. And it was argued by Coke and Man for the Queen, that upon this matter the Jury is to be attainted: For here the point in iſſue is found, that they were bought out of Fair or Market, and it is not material if they were bought of him that is named in the Information, or of others, and then the Petit-Jury was to find him guilty; and for that cited 38 Hen. 8. Bro. Iſſues 81. And a Caſe in the Exchequer, 13 Eliz. in an Information for buying of Corn of J. S. Contra formam Statuti; and the Jury find it was bought of J. B. and adjudged againſt the Defendant; and ſo the Juſtices did agree here, that the buying of the Cattel of any other perſon is ſufficient to maintain the Information. And although it be matter of Law, yet the Jury finding the contrary to it an Attaint lieth. As Pleadals Caſe, 10 Eliz. was, and 5 Eliz. 219. Dyer. But it was here ſaid by the Juſtices, that if the Judge delivers the Law to the Petit-Jury, and they find accordingly, although he miſtakes the Law, the Jury ſhall not be attainted: And it was moved, if an Attaint lieth where Verdict paſſeth againſt the Queen upon an Information, and the Court held it did. But in the principal Caſe the Court held, that there was no ſufficient matter to Attaint the Petit-Jury: For it appeareth, that the evidence given to them was falſe in part; and although the falſity was in a point not material, ſcil. that the Cattel were the goods of Pearepoint, whereas they were the goods (18) Ante 140.

of

of Whitworth; yet by reason of this falsity, the Jury need not give him credit in any other part; and so they had no cause to find their Verdict upon this Oath against the Defendant; And here though it was found he sold them Ut averia W. yet this is an express Averment, that they were the goods of Whitworth, as in pleading, it is alledged that Land descend to one Ut filio & hæredi.

Hanger *versus* Fry.

(19) The Case upon special Verdict was, That the Plaintiff recovered in Debt against H. Fry, and sued a Writ of Elegit, and the Sheriff did deliver to him some Lands of the said H. Fry, in Extent, super quo the Plaintiff came in Court, and surmiseth that the said H. Fry had other Lands in the same County, and prayed another Elegit, and had it; and by vertue of this second Writ, the Lands in question were delivered: The question was, if this second Extent was good, and if not, if it be void or voidable, 18 Edw. 2. Execution 140. 22 Edw. 3. 14. 29 H. 8. Popham Chief Justice, if it doth appear that the Plaintiff had taken the first Land upon the Delivery of the Sheriff, and accepted it, then he cannot afterwards take a new Extent; and if he doth, it is wholly void, and not only voidable or erronious, for then the Record is ended, the Attorneys of both parts are out of Court, and it is as a Writ without original, which is wholly void: But here it is found, super quo he came and prayed a new Extent; and this shall be intended the first day of the Extent returned, and then it is reason that he may wave it, and pray a new Extent; for he never accepted of the first, and so are the Books, that if the Demandant in Dower accepted the Land assigned by the Sheriff, she cannot in another term pray a new execution. Fenner and Clench were of the same opinion, and said so is the course in the Common Place to grant a new Elegit, if the party pray it upon such surmise; and afterwards it was adjudged, that the new Extent was good.

Moor 341. 1 Rol. 304. Ante 160.

Stainer *versus* James.

(20) It was moved in Arrest of Judgment, that the name of the Sheriff was not to the Distringas, nor to the Tales awarded upon it, and it was tried by Nisi prius. And it was said, that the name of the Sheriff was not of necessity till the Statute of York, nor was used or appointed; and by that Statute, the Sheriff is to forfeit a penalty, if he doth not return his name upon it; but this doth not make the return ill, and it is helped by the Statute of 32 H. 8. which helps insufficient returns; and no Writ returned. Curia contra; for of necessity, the name of the Sheriff is to be to the return, otherwise it appeareth not by what Warrant it came in; and otherwise any man without the Sheriff might return Writs, which would be a great inconvenience; and the Statute doth aid only insufficient returns, or when the Writ cannot be found; so it may be intended it is imbezled: But here it appeareth, and that it was never returned, wherefore it cannot be good. And it was said, it was so ruled in the Common Place, 35 Eliz. Walklies Case, and also in this Court between Mark and Lancaster. And for this cause the Judgment was staid.

Post. 704. Post. 509. 2 Cr. 188. Post. 704. Ante 308. Moor 65. 587. 1 Cr. 189. Post. 466.

Childe

Childe *verſus* Towers.

ASſumpſit in the County of Warwick, Warwick being in the Margent, and declareth, That the Defendant was poſſeſſed of a term for years at Norton, in the County of Northampton, Et poſtea apud Stonely in Com' prædict' aſſumed, &c. And upon Non Aſſumpſit the Venire facias was awarded de Stonely in Com' War', and trial upon it; and it was held a miſ-trial by all the Court; for apud Stonely in Com. prædict. ſhall be intended in Com. North. which is laſt named, and not to Warwick which is in the Margent. (21). Ante 101. Poſt. 324. 436.

Termino

Termino Hillarii,

Triceſſimo ſexto ELIZABETHÆ,

in Banco Reginæ.

Thornaigh *verſus* Diſney.

(1) DEbt upon an Obligation of four hundred pound, the Defendant demandeth Judgment of the Bill, for that the Plaintiff in the Obligation was named J. Thornaigh, De Fenton in Com. Nott. Arm'. And in the Declaration he was named Jo. Tho. Arm', ſo (De Fenton in Com. Nott.) were left out; and for this variance demands Judgment: And upon Motion without Argument, it was ruled, that the Defendant ſhould anſwer over; for this is no variance to abate the Bill; when he is well named in his proper name and ſirname, the addition is not material; otherwiſe, if it were of the part of the Defendant. And Coke Sollicitor, who pleaded it, ſaid, That he did it only to gain time, becauſe it was a matter of great extremity. Vide 3 Hen. 6. 23. 5 Edw. 3. 230.

Forteſcue *verſus* Hext. Hill. 35 Eliz. Rot. 35.

(2) ACtion for theſe words, Thou art a Witch, an Enchanter, a Necromancer, and a Sorcerer, and thereby waſt the cauſe of the death of my Husband. And upon Demurrer, and reading the Record without any Argument, adjudged, that the Action lay: For by Popham, there cannot be more hainous words, and by them the party was to ſuffer corporal puniſhment. Nota, the ſame Term and Roll, between the ſame parties, Action for theſe words, He is a Witch, and bewitched my Husband to death; for he made his Picture in Wax, and roſted it every day by the fire, until he roſted my Husband to death. Upon Demurrer, Harris Serjeant moved, That theſe words will not maintain an Action; for when ſhe ſhewed the cauſe of the words, it appeareth to be a vain and fond conceit, and then no cauſe to call him a Witch; as to ſay, Thou art a Thief, for thou haſt ſtoln my evidences. But the Court held the words very heinous and actionable, and it was ſo adjudged.

Bleverhaſſett *verſus* Baſpoole.

(3) ACtion for words, for that the Plaintiff was a Juſtice of Peace, and the Defendant was endited of Felony, and pleaded to it not guilty, the Defendant ſaid theſe words, Mr. Haſſett did ſeek my life, and offered ten ſhillings to the Under-Sheriff to impannel a ſpecial Jury that might find me guilty of the Felony; and it was adjudged that the words were very ſlanderous being ſpoken of a Juſtice of Peace, and the Plaintiff had Judgment.

Doctor Ford & Uxor *verſus* Hollingbrough. Trin. 35 Eliz. Rot. 361.

(4) DEbt upon an Obligation brought by the Plaintiff and his wife, Executrix of Dr. Drury: The Condition was, That whereas Dr. Drury had let Land to the Defendant for Seventeen years; if the Defendant or his Executors do pay to Dorothy Goldingham ten pound yearly, during the ſeventeen years, if he or his Aſſigns, and all other perſons that ſhall claim the ſaid Lands under him, ſhall or may ſo long occupy the ſame Lands, &c. that then, &c. The Defendant pleaded, that within five years, &c. he ſurrendred the ſaid Lands to Dr. Drury, and that all times before he paid the ten pound; and upon this it was demurred in Law. Coke argued for the Defendant, for that his Eſtate was ended by the act and aſſent of the Obligee himſelf, who was to take advantage of it, and therefore the Action did not lie. Tanfield contra, and all the Court held that the Action did lie; for the condition was collateral to pay money to a ſtranger, ſo long as he or his Aſſignees might enjoy the Land; here though he ſurrendred, yet to a ſtranger his eſtate is not determined, but is in eſſe: and this is an act to be done by him to a ſtranger, which the Obligee ſhall not eſtopp him to do, and the Obligee who had the reverſion, and which is in by the ſurrender, is as to a ſtranger in by him, and under his title and occupied as his Aſſignee: Alſo the words are if he ſhall or may enjoy, &c. and here he might have enjoyed it; and therefore during the time he might have enjoyed it, he is to pay it. But Popham ſaid, if the condition had been, if he or his Aſſignees, or thoſe which ſhould occupy the Lands, ſhould pay the money, and after he had ſurrendred to the Obligee, and he did not pay it, the obligation had not been forfeited; for the Obligee in that caſe was the party that was to pay it, and he ſhould not take advantage of the non-payment, as 35 H. 6. Bar; wherefore it was adjudged for the Plaintiff.

Clerk *verſus* Day. Hill. 35. Rot. 467.

(5) THe Caſe upon ſpecial Verdict was, Joan Marſh deviſed certain Land to Roſe her Daughter for life, and if ſhe marry after my death and have heir of her body, then I will that the heir after my Daughters death ſhall have the Land, and to the heirs of their body begotten; and if my Daughter die without iſſue of her body begotten, then Philip Taylor ſhall have it to him and his heirs. J. M. died, Roſe married Silly, and had iſſue; the queſtion was if Roſe had an eſtate in tail, or for life only. Firſt it was agreed by all the Juſtices, that a deviſe to one and the heir of his body, is an eſtate tail, and ſhall go to all the

Ow. 148. Moor 593. 1 Rol. 832. 9. 2 Rol. 417.

heirs of her body, for (heir) is nomen collectivum, and one can have
Poſt. 453. but one heir at one time, and this ſhall go from heir to heir; but Gawdy and Fenner held that Ro. had but an eſtate for life, for ſo it is limited by expreſs words, that ſhe ſhall have for life, and then her heir ſhall take as a Purchaſer, and it ſhall not execute in Ro. Popham Chief Juſtice contra, for the eſtate is limited to the Anceſtor,
Poſt. 316. and after limited to the heir, and ſhall execute in the Anceſtor, eſpecially the words being, if ſhe hath any heirs, and therefore intended that any heir ſhall have it, & adjournat'.

Waring *verſus* Whale, Paſch. 34 Eliz. Rot. 132.

(6) ERror to reverſe a Fine in Shrewsbury, levied before the Bailiffs there: Firſt Error, it did not appear that they had any authority to take Fines, and they cannot have it by preſcription, or by general words in the Kings grant. 2. It is levied without any Writ of Covenant. 3. It is de meſſuagio ſive tenemento, which is in
Ante 116. the diſjunctive and incertain. Curia, this Fine is void, for that it appeareth not by what authority the Fine was levied, for it is in
Ante 117. derogation of the Crown, and profits of the Crown, pro licentia concordand', and Paſch. 36. the Fine was reverſed.

Ka. Geanes *verſus* Portman.

(7) THe caſe upon ſpecial Verdict was: J. Geanes the husband of the Plaintiff, and T. G. were joyntenants for life, the reverſion to H. Portman, J. G. by the aſſent of T. G. occupied the Land alone, and took the profits alone to his own uſe, and ſowed the Land to his own uſe, and made the Plaintiff his Executor, and died; and afterwards T.G. made his Wife Executrix, and died; ſhe ſold the Corn to the Defendant which took it, and the Plaintiff brought treſpaſs; and upon motion all the Court agreed for the Plaintiff, for by this aſſent that J. G. alone ſhould occupy the Land and take the profits to his own uſe, this doth amount to a Leaſe at will,
Co. Lit. 186.a. which one joyntenant may make to the other, ſo the Plaintiff hath good title; but if he had ſaid to his companion, I will not occupy it, this had not been material, for he doth not by this, aſſent that his companion ſhall have all, nor gave any thing by this to his companion.

Pratt *verſus* Stocke.

(8) ASſumſipt by an Adminiſtrator, and counts of an Adminiſtration
Jones 264. granted to him by Th. Tayler Batchelor of Law, Commiſſary to the Biſhop of London; the Defendant pleads the Statute of
37 H. 8. c. 17. 37 H. 8. 17. intending that none by that Statute can be a Commiſſary but a Doctor of Law; alſo that ſince the laſt continuance (which was from Quindena Martini to die lunæ poſt oct. Hillarii) the Biſhop of London granted Adminiſtration to him by his letters bearing date 27. January, and upon this it was demurred: two points moved. 1. If a Batchelor of Law may be a Commiſſary ſince the Statute of 37 H.8. 2. If Adminiſtration be committed pendente billa, if the Bill abateth; but as to that it was held clearly that the Plea was miſpleaded, for this is pleaded after the darrain continuance, where it appeareth to be after his Plea pleaded;

but

but the Court held for the Plaintiff. J. Popham ſaid, that adminiſtration and probate of Wills was by the Common Law, which any might do; and the Statute of 37 H. 8. is in the affirmative, that Doctors of the Civil Law may be Commiſſaries though they are married, but it is not reſtrictive, that no other may be Commiſſaries, and therefore taketh not away the liberty at Common Law. And if a Batchelor at Law cannot be a Commiſſary, yet acts done by him are not void till they be avoided by ſentence, as if a Lay-man be preſented, inſtituted and inducted, this is not void. And to the ſecond, they hold that if letters of Adminiſtration be granted to one, and after are granted to another, by this the firſt are not avoided, except by judicial ſentence, but by the miſpleading this cometh not in queſtion, and the Plaintiff had judgment. 2 Cr. 258. 259. Ante 283.

Buckland *verſus* Brooke. Hill. 35 Rot. 360.

(9) ASſumpſit againſt the Defendant as Adminiſtrator, W. B. upon an Indebitatus aſſumpſit, the Action was brought, Hill. 35. the Defendant pleads that the Inteſtate ſuch a day made an Obligation to J. S. of forty pound for payment of twenty pound at Mich. which ſhould be Ann. Dom. 1593. and that he hath fully adminiſtred all the goods of the inteſtate, which were the inteſtates at the time of his death, except to ſatisfie the ſaid twenty pound, Et ſic nihil habet nec tempore exhibitionis billæ prædict' habuit, &c. and upon this it was demurred, Foſter for the Plaintiff, that this Debt upon contract is to be ſatisfied before the debt upon the obligation, which is not yet due, for by this means he may defeat all contracts by a Debt upon bond which ſhall be due one hundred years after. Alſo the plea is not good, for that he ſaith that he hath no goods which were the Inteſtates at the time of his death, for he may have goods that were not the Inteſtates at the time of his death, and ſo is 7 H. 4. 39. Alſo he ought to anſwer to the time ſince the Bill exhibited, for he ought to ſay he had not at the time of the Bill exhibited, or at any time poſtea, and non habet, &c. without anſwering to the mean time is not good. Curia contra, the matter of the plea is good, for Debts upon bond are to be paid before Debts by contract, and this proved by the declaration in theſe actions, that he hath ſufficient to ſatisfie all other Debts; and to the firſt exception, the plea is good to a common intent, and if the truth be as the Plaintiff ſuppoſeth, he is to ſhew it, and the Book of 7 H. 4. is not Law in that point, but the Court doubted as to the laſt exception, but Daniel ſaid it was but of form, and it was not ſhewed for cauſe of demurrer. Et adjournatur. 1 Cr. 363.

Cordal's Caſe.

(10) NOta: Coke Attorney ſhewed to me a reſolution of Gawdy and Anderſon in a caſe referred to them by the Queens commandment, in which two points were reſolved; where a deviſe was to two perſons of Lands to hold for payment of the Legacies in a Will, and the Debts of the Teſtator, and afterwards to Ed. Cordal his Brother for life, remainder to his firſt ſon in tail, and ſo to the ſecond, the remainder to the Heirs of the body of Ed. C. Firſt it was reſolved that this is no Freehold in the two perſons, but only a term for years, although it cannot be ſaid for any certain Co. 8. 96. a. Co. 8. 96. a.

number of years, for the profits are not certain, nor the Debts, yet it is a chattel and quaſi a term, as a deviſe during the minority of J. S. or Land extended for Debt; and this is in favour of Wills, but otherwiſe it is of ſuch a limitation in a Deed, for there it is a Freehold conditional. V. 8 Co. Mannings Caſe. 2. It was reſolved, that the eſtate tail was not executed for the poſſibility of the mean eſtate that might interpoſe, and therefore it was always disjoyned, during the life of Ed. C. ſo that of that eſtate his Wife could not be endowed and this was reſolved upon conference.

Ante 314. R. 738. Co. Lit. 28. a.

Termino

Termino Paſchæ,
Triceſſimo ſexto ELIZ'ABETHÆ,
in Banco Reginæ.

NOta, in this Term there were ten Serjeants made, which appeared in Chancery, tres ſeptim. Paſch. viz. John Heale of the Inner-Temple; of Grayes-Inn, William Daniel and John Spurling; of Lincolns-Inn, George Kingſmill, Peter Warburton, Richard Braethwaite and Thomas Fleming; of the Middle-Temple, Richard Lewker, John Savill and David Williams. All of them except Daniel and Kingſmill had their Writs in Mich. Term, returnable in Eaſter Term, as the Juſtices ſaid the order was to have one Term between the Writ and the Return, but Daniel and Kingſmill had their Writs in the vacation between Hillary and Eaſter Term, yet they all appeared together, and had their Antiquities as they were. (1)

Godfry *verſus* More.

ACtion for theſe words, Thou haſt killed a man at M. in Eſſex, upon not guilty it was found for the Plaintiff, and it was moved in arreſt of judgment, that the words were not actionable, for they were too general, for it may be he killed one in his defence, or he killed a Thief that aſſaulted him in the high-way, or was an Officer, and in arreſting killed him, &c. and of this opinion at the firſt was Gawdy; but it being moved again, all the Court held that the words being alledged to be ſpoken maliciouſly, ſhall be taken moſt ſtrongly againſt him that ſpoke them, and it was adjudged for the Plaintiff. (2)

Tryor *verſus* Beſtney Betts.

PRohibition for ſuing for Tithe-hay in Chartres, and ſurmiſed that the Defendant is Parſon Imparſonee of the Parſonage of Ch. and that there was a Vicar of Ch. of which the Defendant was Patron, &c. and that time of out mind, &c. he had uſed to pay to the ſaid Vicar in full ſatisfaction of the Tythes of Hay of the place, where, &c. ſix ſhillings eight pence per annum, and the paſturing of a horſe in the ſame place. And Godfrey moved that it was no good ſurmiſe, for by it the right of Tithes came in queſtion, to whom they were to be paid to the Parſon or Vicar, as 31 H. 6. & 6 Ed. 4. are, and Buſhes caſe in this Court. Gawdy and Popham, where the right of Tithes is to come in queſtion, this ſhall be tried in the Court Chriſtian, and it is no Plea, he hath uſed to pay the Tithes to the Vicar, for then he confeſſeth he ought to pay Tithes, but the queſtion was who ſhould have them, and this ſhall be tried in the Court Chriſtian, and that was the reaſon in Buſhes Caſe, for there he pretended he was to pay Tithes in ſpecie, but here is only a modus decimandi, which though he pleads it, to be to the Vicar, in diſcharge of Tithes, yet it is good, for otherwiſe there will be a great (3) Ante 71.

great miſchief, for the ſpiritual Court will not allow a plea of modus decimandi, but only of payment of Tithes in kind, and they will not allow him to plead the intereſt of the Vicar, nor payment to him for diſcharge, but he ought to come in pro intereſſe, and if he will not come, but collude with the Parſon, to charge the Pariſhioner to pay Tithes in ſpecie, he ſhall be charged to pay other Tithes then he hath uſed, and therefore the Common Law ſhall aid him, and eſpecially as this caſe is, as it was moved by Tanfield, that the Defendant is Patron of the Vicaridge, and the Vicar in conſideration of theſe Tithes, diſchargeth him of all ſpiritual care and charge. Fenner and Clench inclined to this opinion, Et adjournatur.

Grills *verſus* Ridgeway.

(4) Poſt. 439. Poſt. 883. Ante 62.

The caſe 3 Co. 52. b. Gawdy ſaid it is without queſtion that a repleader may well be after demurrer, but that is when the pleading is inſufficient of both parties; Popham, if it be inſufficient in matter, ſo that by it the Action is confeſſed, and the Plaintiff reply, and a demurrer upon it, yet judgment ſhall be given againſt the Defendant, but where the bar is inſufficient not in matter, but in form; (as for want of a traverſe) and a replication is to it, which is ill, and a demurrer upon it, there ſhall be repleader; and afterwards the Juſtices moved the parties to diſcontinue the Action and to commence again, and ſo they did.

Rowland Hargthorpe *verſus* Margery Milforth & Anth. Miltforth.

(5) Debt againſt the Defendants as Executors, they pleaded fully adminiſtred, and ſo nothing in their hands; upon iſſue the Jury found that they two and one Agnes Mil. their Mother were made Executors, and that Ag. had adminiſtred and waſted goods to the value of ſix hundred pound, and that the Defendants had not of the goods of the Teſtator, but to the value of ſixteen pound, and that Ag. was dead; and if they ſhould be charged by this devaſtavit, of their co-executor, or only charged for the ſixteen pound, was the queſtion, and the Court held clearly that one Executor ſhall not be charged by the devaſtavit made by his companion; for the act of one Executor ſhall charge the other no further then the goods of the Teſtator in his hands amount unto, but not to charge him of his own goods; for it was the folly of the Teſtator to put ſuch truſt in one, that would do ſuch acts to his diſadvantage, but the acts of one ſhall not hurt the other, for their own goods; as if one Executor will confeſs an action, this ſhall bind the other; ſo if he will releaſe an action, or give away all the goods of the Teſtator, this ſhall bind his companion. V. 3 & 4 El. Dy. 210. 21 H. 6. 46. where they ſhall be charged of the goods of the Teſtator, the non-ſuit, releaſe or other act of one ſhall bind the other, but not if they ſhall be charged of their own goods, 11 H. 4. 69. where both do waſte the goods, execution ſhall be againſt both of their proper goods. (Ante 216.) It was then moved, if judgment ſhall be againſt them of the whole debt, or of ſo much as is found in their hands; and the Court held clearly that judgment ſhall be of the whole debt, but that execution ſhall be only for the ſixteen pound, which is found to be in their hands; for otherwiſe the Plaintiff ſhall be barred of the reſidue, which is inconvenient. (1 Cr. 373. 167.) V. 46 Ed. 3. 9. 7 Ed. 4. 9. 33 H. 6. 24. 34 H. 6. 24. And afterwards at the end of the Term all the Prothonotaries of

of the Common Place, certified that their course was not to enter Judgment for the whole Debt, but only that he shall recover so much as was found in their hands, and thereupon the Justices would advise of their judgment in that point; but for the first point they were all resolved ut supra.

Fulshaw *versus* Ascue.

(6) ERror to reverse a judgment in the common Place, for that Ascue brought an audita querela to avoid a Statute acknowledged before the Major of Lincoln, because it was sealed with a seal of one piece, where the Statute of 13 Eliz. 1. de mercatoribus doth appoint it to be sealed with a seal of two pieces, whereof the Major shall keep one, and the Clerk appointed for this purpose the other, the Defendant pleaded it was sealed with a seal of two pieces, according to the Statute, and thereupon at the Nisi prius at the City of Lincoln, it was found for the Plaintiff in the audita querela, and thereupon in the Common Bench it was adjudged that statutum prædictum in forma prædict. recognitum penitus vacuum foret, & pro nullo habeatur, and upon this Error was brought. 1. For that the trial in this case was not good, for the issue was not to be tried per pais, but by the Certificate of the Major, and all the other matters were alledged as before in the Common Place. 2. That this judgment quod penitus evacuetur is erroneous, for though it be void as a Statute, yet it is good as an obligation; but the judgment was affirmed: for as to the trial, it was a matter in fact triable by the County; and if it be not a Statute, it is no obligation, but being discharged as a Statute, it hath lost his force in all respects; and that the sole means to avoid it, is by an audita querela, for Error lieth where the Statute is good, but the execution is erroneously sued upon it, as 17 Ass. and the judgment was affirmed, vide the judgment in the Common Bench, Pasch. 33. placito 4.

Post. 355.

Post. 355. 810.

Ante 231. 233. Post. 355.

Codwell *versus* Parker, Mich. 33 & 34 Eliz. Rot. 419.

(7) APpeal de Maihem; the parties were at Issue, and one Juror was returned by the name of Palus Cheale and in the distringas, and pannel annexed, he was named Paulus Cheale and by that name sworn, and this matter was alledged in Arrest of Judgment, and this was held no trial, for it was only by Eleven, and for that cause a Venire facias de novo was awarded. V. 5 Co. 42. b. and upon that the Issue was tried. And it was moved in Arrest of Judgment, for that the Record was entred, that in the first Venire facias one Palus Ch. was returned, and in the Distringas awarded upon it, Palus Ch. was left out, and Paulus Ch. put in, super quo consideratum est per Cur. that a Venire facias de novo shall be awarded, and it is not mentioned that Paulus Ch. was sworn, and Trial had, wherefore no cause here appeareth to award a Venire facias de novo and so this is mis-awarded. But the Court held, although this be the cause set down in the Record, yet it shall be intended that there is a good cause apparent upon the whole Record together to award a Venire facias de novo, and the Court seeing it, did award the second Venire facias; and it shall not be intended to be an Error, when there is any cause to justifie it; and the cause mentioned in the Record is not so material to bind them; for the Office of the Court is to see all the causes, and to give Judgment upon

Co. 5. 42. 3.

Ante 57.

any

any matter which may appear to them, and it ſhall be intended they did ſo, as 22 Ed. 4. 45. b. upon a Judgment in a Writ of Dower. Another exception was taken, becauſe no manucaptors are returned upon the diſtringas. And the Court held it ſhall be amended by the Sheriff, and it is not material if no manucaptors be returned when the Jury appeareth full, and the verdict given upon it is good. 3 H. 7. 8. and Judgment was given for the Plaintiff.

Walſh *verſus* Collinger, Mich. 32 & 33 Eliz. Ro. 460.

(8) 1 Cr. 184. Moor 365. ERror to reverſe a Judgment in the Court of N. I. Error that the Judgment is entred to be before the Mayor and J. S. & J. D. Aldermannis, &c. and at the ſame time the Plaintiff was made Major, pending the Suit; Sed non allocatur, unleſs the party had excepted to it in the Court, and it was diſallowed there, then it had been Error, but if he admits him to be his own Judge, it is not Error, 2 H. 4. 4. 2. Error, the preſcription is to hold Courts before the Mayor, and two Aldermen, and it is alledged that at ſuch a Court held before the Mayor and J. S. and J. D. Aldermen, &c. and alledgeth in facto that J. S. was not then Alderman, the Defendant pleaded in nullo eſt erratum. Godfrey moved that this is no Error, no more then in Error to avoid a Fine, that one of the Judges before whom the Fine is ſuppoſed to be levied, was not a Judge. 1 Ed. 5. 3. b. but the Court (abſente Popham) held it to be a manifeſt Error, for the Court cannot be held except before Aldermen, ſo there muſt be two at leaſt, and if J. S. was not Alderman, there were not two Aldermen; and it is not like the Caſe of a Fine, for that is before ſuch Juſtices, & aliis fidelibus; and if there be no ſuch Judge as one of them which is named, yet the Fine being levied before other Judges is good. And for this cauſe the Judgment was reverſed, and it was here held by the Juſtices, that a diſcontinuance after verdict is not helpt by any Statute.

Griffin *verſus* Spencer.

(9) Poſt. 899. ERror of a Judgment in the Common Bench; Error aſſigned was, that Spencer brought Debt upon an Obligation againſt Griffin, the condition was, that if Griffin pay to Spencer a hundred pound within one month after notice of his return from Conſtantinople in Iſtria into England, that then, &c. the Defendant pleads that there was no notice given to him of the return, &c. and upon this the iſſue is taken, and found for the Plaintiff, and judgment given for him; and now Error was aſſigned, becauſe it was not averred that the money was not paid, and then no cauſe of Action. As in Debt for not performance of an Arbitrement, the Defendant pleads no Arbitrement, the Plaintiff ſhall not only ſay that they made an Arbitrement, but alſo that the Defendant had not performed it, in ſuch a part, to inform the Court that there is good cauſe of Action; ſo here: but the Court held clearly that it was no Error; for when the Defendant ſaith he had no notice, this is a confeſſion per nient dedire that he had not paid it, and iſſue being taken upon a collateral matter, and found for the Plaintiff, judgment ſhall be given for him; wherefore the judgment was affirmed.

Reade

Read & Morpeh *verſus* Erington, Trin. 33 Eliz. rot. 611.

EJectione firmæ, and declares of a Leaſe made by Anthony Mitford, 20. January, 11 Eliz. of Two hundred Acres of Land, One hundred Acres of Meadow, and one hundred and fifty Acres de paſture in Pont-Iſland, Habendum from the Feaſt of St Mich. laſt paſt for twenty years; upon not guilty pleaded, the Jury find a ſpecial verdict, which was thus in ſubſtance; that Anthony Mitford was ſeiſed in Fee of the Manor of Pont-Iſland in the County of Northumberland, of which the Tenements in which, &c. were parcel, and of other Lands called Crawleys in Pont-Iſland, parcel alſo, tenement' in quibus, &c. and of another parcel of Land called Iſland-Green in Pont-Iſland, parcel of the Tenements in which, &c. and being ſo ſeiſed, 8 Eliz. conveyeth the Manor of Pont-Iſland to the uſe of himſelf for life, remainder to Jaſper his eldeſt ſon, and the Heirs males of his body, remainder to the right Heirs of Anthony; and the Lands called Crawleys to the uſe of the ſaid Jaſper and Margaret his Wife, and of the Heirs males of the body of Jaſper; and afterwards to the uſe of the right Heirs of Anthony. And the Lands called Iſland-Green to the uſe of the ſaid Anthony and Julian his Wife for their lives, remainder ut ſupra. And they further find that Jaſper had Iſſue Mary his daughter, married to the Defendant, and afterwards died without Iſſue male; and that Jaſper was the eldeſt ſon, and Heir of Anthony; and they further find that Anthony 11 Eliz. makes the Leaſe in the Declaration prout, &c. and that afterwards the Leſſees 24. Martii 11 Eliz. made a Deed of Feoffment of theſe Lands to Alexander Heron and others in Fee, with a Letter of Attorney to enter into them or any part thereof; and to make livery according to the Deed; and that the Attorney made livery in a Stable of a houſe, parcel of the Manor of Pont-Iſland, Anthony M. the Leſſor being then and there preſent; and that at the time of the Livery the Lands called Crawleys were in the poſſeſſion of Anthony, as Tenant at ſufferance to the ſaid Margaret the Wife of Jaſper; and that the Lands called Iſland-Green were in the hands of divers Farmers and Leſſees, by vertue of ſeveral Leaſes to them made before the Leaſe made 11 Eliz. and that Anthony and Julian were dead; and that the ſaid Alexander Heron and the other Feoffees enter and grant all their Term, Eſtate, and Intereſt to the Leſſees of the Plaintiff, & ſi ſuper totam materiam, &c. Nota, the Jury found that Crawleys contained ſixty Acres, and Iſland-Green One hundred and Twenty. And upon this ſpecial verdict theſe matters were moved. 1. If the Remainder limited to the right Heirs of Anthony Mitford, for Crawleys, in which he had no particular Eſtate, be in him as his ancient reverſion, or veſteth in his right Heir as a remainder by purchaſe, for if it were a purchaſe in the Heir, it was not chargeable with the Leaſe of Anthony Mitford. And all the Court reſolved clearly, that the uſe limited to the right Heirs of Anthony is the ancient uſe in him, and was never out of him, and is in him as a reverſion to grant or charge, and from him ſhall deſcend to his Heir, and is as if it had not been mentioned, and the limitation to his right Heirs is a void limitation, and is no more then the Law veſts in him. 2. Queſtion, if this Feoffment by the Leſſee for years, the Leſſor being upon the Land, was a good Feoffment for the Leſſor

(10) Moor 284.

Co. Lit. 22. b. Poſt. 334.

(as it was ſaid) cannot be diſſeiſed, he being upon the Land; and no Freehold can be deveſted out of him, but he being in poſſeſſion guards the Land, that no Feoffment can be made. Curia contra, that it is a good Feoffment, and ſhall inure by way of Feoffment, for the Leſſor and Leſſee being upon the Land, the Law ſhall judge him in poſſeſſion that hath the right to it, and the Leſſee hath the ſole right to the poſſeſſion, and livery ought always to be given of the poſſeſſion; and therefore he that hath the poſſeſſion ſhall make the
Co. 2. 22. b. 31. Livery; and therefore if the Leſſor makes Livery, the Leſſee being
Co. Lit. 48. b. upon the Land and contradicting it, this is void, for it cannot inure upon the poſſeſſion, nor give it, when the Leſſee is there and keeps it; and the Law ſhall adjudge it only in him; and when he cannot give or meddle with the poſſeſſion, he cannot make Livery. And è converſo, when the Leſſee hath poſſeſſion, he may make Livery, and the preſence of the Leſſor which hath nothing to do there cannot diſturb it, but immediately by his being there, this is an entry by him, and a veſting of the Freehold in him; ſo Perkins, ſ. and 20 Eliz. Dy. 360. And Popham ſaid, that if it cannot inure as a Feoffment; and though it cannot deveſt the Freehold, nor be a diſſeiſin to the Leſſor, yet clearly it is a forfeiture, becauſe the Leſſee had taken upon him to make a Feoffment, and give a Fee-ſimple, and ſo it is an extin-
Co. 1. 76. a. guiſhment of his Term; as if the Leſſee of the Queen makes a Feoffment, no Freehold paſſed, for he cannot deveſt the Freehold out of the Queen, yet it is a forfeiture. And for theſe cauſes the Court did clearly reſolve for that part for the Defendant; but for Crawleys, becauſe it was found to be in the hands of Anthony M. as Leſſee to Margaret, it was held that nothing paſſed, and ſo for Iſland-Green, that was found to be in the hands of ſeveral Farmers, nothing paſſed, nor was it any forfeiture. 3. Coke Attorney moved, that the Plaintiff had declared of a Leaſe made 10. Jan. 11 Eliz. Hab. from Mich. before; and it appears by the ſpecial verdict it did not commence from Mich. before, for it was the joynture of Margaret that was Tenant for life, and died afterwards, ſo, for that it was a leaſe only from the time of her death, and ſo the Plaintiff had failed in his Declaration. But the Court reſolved that the Declaration was good as to that point; for it being by Indenture (as it was found) it is good between the parties, and Margaret being dead it ſhall be ſaid to begin according to the time limited in the Indenture; and he cannot declare in any other manner; but if it had been without Deed, peradventure it ſhould be otherwiſe. 4. It was moved, that for Iſland-Green the verdict is for the Defendant, for it is found it was in the hands of Farmors and Leſſees, by vertue of Leaſes made before this Leaſe; and it was not found that their Leaſes are ended, and then it ſhall be intended that they yet continue, and then the Defendant cannot be guilty of the Ejectment of the Plaintiff. But the Court conceived this not to be material, it being not found that the Defendant claimed under the Leſſees; and the Plaintiff having entred, and the Defendant entring upon him, this is an ejectment of the Plaintiff, for which the Plaintiff ſhall puniſh him; And it was reſolved that for the Manor of Pont-Iſland, Judgment ſhall be for the Defendant; and for Crawleys and Iſland-Green, Judgment ſhall be entred for the Plaintiff.

Downs

Downs *verſus* Hopkins.

IT was found by ſpecial Verdict, that the Land was ancient Copyhold Land demiſable for one or two lives, and that this Land was granted by Copy to J. D. the Husband of the Plaintiff, Habendum to him for life, and to the Plaintiff durante viduitate ſua; and the queſtion was if this were warranted by the Cuſtom, for the Wifes Eſtate, for it is no abſolute but a limited Eſtate. But all the Juſtices did hold without any argument that it was good; for when the Cuſtom warranted the greater Eſtate for life to be made, it doth warrant the leſſer Eſtate, ſpecially here, becauſe this is alſo an Eſtate for life, but limited and as it were conditional; then it was moved, that the Wife was named only in the Habendum, and it was held good, for it is common in Copies, and ſo adjudged, 4 Co. 23. (11) Poſt. 373. Ante 115.

Hopton and his Wife *verſus* Johns.

ERror to reverſe a Common Recovery had againſt the Wife and her former Husband, in which they were Tenants, and vouched the common Vouchee; and the Error aſſigned was, that the Feme was an Infant, and appeared in perſon, and not by Guardian, and loſt, and ſo is as a recovery by default, although they appeared and pleaded, for that Judgment was given upon default; and Common Recovery is but a Common Aſſurance, and not a Recovery by Title, which peradventure ſhould be good, and an Infant cannot make an Aſſurance; and therefore it was erroneous, and for this cauſe the Judgment was reverſed. (12) Ante 309.

Charter *verſus* Freind, Hill. 35. Rot. 502.

ERror upon a Judgment in Redisſeiſin; Error aſſigned was, that the Plaintiff had entred pendente breve, and in this Action he is to be reſtored to the Land. But it was ruled that he cannot aſſign this for Error, for he cannot plead any thing in this Action, eſpecially it being a dilatory Plea, but an audita querela is his remedy if he have cauſe; and here the Plaintiff is not to recover Land, but to be reſeized. Wherefore the Judgment was affirmed. (13)

Milborne *verſus* Daſhburne.

TReſpaſs, The Caſe was. A Reverſion upon a Leaſe for life is granted for life, cum poſt mortem of the Tenant for life acciderit; the queſtion was, if this ſhall refer to the Commencement of the future time, as to the Eſtate, or to have the Land in poſſeſſion; and it was ruled it ſhall not refer to the Commencement of the Eſtate, but to the having the Land in poſſeſſion. 23 Eliz. Dyer 376. (14) Co. 10. 107. b.

Biſhop *verſus* Grant, Hill. 35. ant. 36 Eliz. Rot. 253.

(15) ERror of a Judgment in an aſſiſe of a Rent-ſeck in Kent, where the Plaintiff made his Title, that the Rent was granted to be paid yearly at the four Feaſts, viz. Chriſtmas, Annunciation St. Jo. Baptiſt, and Michaelmas, and at another place out of the Land; and ſheweth that the Rent was Arrear for four years at the Annunciation laſt paſt, for which the Plaintiff in craſtino prædict' Feſti purificationis beatæ Mariæ, demanded the ſaid Arrearages. 1. Error, that the Rent was demanded upon the Land; and not at the place where it was payable.

8 Cr. 508. Sed non allocatur, for it is well demanded upon the Land, and it is not like to a Rent reſerved upon a Leaſe with a clauſe of re-entry. 2. Error, that it was demanded after the Feaſt, Sed non allocatur. That no Feaſt of the purification is mentioned before, ſo it appeareth not that the demand was after the Rent was due, or before. Foſter moved that this word (Purification) ſhall be void, and ſurpluſage, and then prædictum Feſtum ſhall refer to the Feaſt laſt mentioned.

Ante 311. Gawdy, although the word (Purification) be void, yet prædict' Feſtum cannot refer to the laſt Feaſt, for there are divers Feaſts mentioned, ſo it cannot be referred to any one certain, but the word (Purification) can be no more void, then the word (prædict') ſhall be void, and the other to ſtand, Comment. 86. and for this cauſe the Judgment was reverſed; but if it had been, & poſta after the ſaid Feaſt of the Purification, &c. it had been good; for all after the word poſtea ſhall be void; and for this cauſe the Judgment was reverſed.

Pipe &c. *verſus* Dominam Reginam, Trin. 35 Rot. 868.

(16) ERror by Pipe, as Son and Heir, and Executor of Sir R. Pipe, the Biſhop, and the Incumbent, againſt the Queen, upon a Judgment in a Quare Impedit by the Queen againſt Sir R. Pipe as Patron, the Biſhop, and Bagſhaw the Incumbent, to preſent to the Church of B. in the County of Derby, to which ſhe made Title to preſent by lapſe, and recovered. Error aſſigned, for that the Patron died pendente breve, and yet Judgment was given againſt him. And this was held by the Court to be a manifeſt Error; for

Co. 7. 26. b. although the death of the Patron ſhall not abate the Writ, as 9 H. 6. 30. is, yet when Judgment is given againſt him, it maketh all Erroneous, and ſhall cauſe the Judgment to be reverſed in all, for it cannot be reverſed by parcels. Nota, This Error was confeſſed by the Queens Attorney: and note here, all the other were

Co. 6. 25. a. ſummoned and ſevered, except Pipe; and this was held good: for as ſummons and ſeverance ſhall be in a Quare Impedit, ſo in a Writ of Error upon it. But then it was moved that this Writ of Error was not well brought by the Plaintiff as Heir and Executor together; but the Court as to that held it good enough; as a Writ of Debt may be brought againſt one as Heir and Executor together. But then it was moved that he had no cauſe to bring a Writ of Error as Heir, or as Executor, for he cannot have it as Heir, for the Inheritance is not touched, for the Queen only claimed by Laps, ſo affirmeth the Inheritance; and as Executor he cannot bring an Action, for he hath no damage, for the Teſtator had preſented, and the Incumbent was in the Church; but if

the

the Teſtator had not preſented, peradventure it had been otherwiſe; and here all the loſs is to the Incumbent, and he cannot reverſe the judgment, for he is ſevered; but the Court held the Writ of Error did well lie, for it is to maintain the Incumbent in the Church; and the Incumbent although he be ſevered, yet ſhall of neceſſity have judgment to be reſtored, for the judgment is entirely to be reverſed. And Trin. 36 Eliz. the judgment was reverſed, but it was not ſaid at whoſe Suit, viz. as Heir or Executor. And it was ſaid the Incumbent may well enter, for by the reverſal there is no Record of the recovery againſt him.

Buckly *verſus* Williamſon, Hill. 36. Rot. 246.

ERror of a judgment in Debt upon an Obligation; the Error aſſigned was, that the teſte of the Writ was 15. Septem. 32 Eliz. returnable Octab. Michaelis, and the money was due at Mich. 32 Eliz. and ſo after the teſte, and before the return of the Writ, and this appeared by the condition, which was entred in hæc verba; and for this cauſe, although the Judgment was after Verdict, ſo that if there had been no original it had been good, yet it being brought before cauſe of Action, the judgment was reverſed, and it is not aided by the Statute of 18 Eliz. (17). 1 Cr. 575. 2 Cr. 70. Hob. 199.

Termino Paſchæ, 36 Eliz. in Scaccario.

Allen's Caſe.

A Scire facias was ſued in the Queens name againſt Allen, why execution ſhould not be againſt him for a debt that came to the Queen by Attainder of J. S. the Defendant pleads that the Queen hath granted over this Debt, and all actions and demands for it to York; and upon this it was demurred, if the ſuit could be in the Queens name, after it is granted over (Nota, in truth there were ſpecial words in the Patent, that he might ſue for it in the Queens name, but this was not pleaded; and the Court held clearly, that if it had been pleaded, the Suit might be in the Queens name, for the Queen had this liberty to grant to ſue in her name, but if as the caſe is pleaded, he might ſue in the Queens name) the Court doubted, and two preſidents were cited, the one P. 30 Eliz. Rot. 291. where Green to whom a debt was due, was attainted of Felony, and the Queen granted over the debt, and all actions and demands for it, and a Scire facias was ſued in the Queens name; the other preſident was Hill. 32 Eliz. Rot. 216. Mabb was indebted by Bond to J. S. and the debt came to the Queen by Attainder, and ſhe granted it and all Actions for it to Bowes, and notwithſtanding the Suit, for it was in the Queens name; but the Court ſaid, they will ſee the preſidents, & adjournatur. (1) Dier 1. b.

Green *verſus* Edwards, Hill. 36 El.

INformation for converting Two thouſand timber Trees into Coals to make Iron; and demanded 4800 l. the Defendant pleads that the ſame Plaintiff had another information againſt him for the ſame cauſe, and demanded the ſame ſum, and demanded (2) 2 Cr. 481. Ante 261.

Judgment

Judgment whither he ſhall anſwer to the laſt, pending the firſt. And Altham argued, he was not to anſwer; for when a Declaration is made, and the certainty appeareth, there ſhall be no other ſuit for the ſame cauſe, for the double vexation to the Defendant. 14 Ed. 3. brief 318. 22 H. 6. 52. 14 Aſſ. 6. 29 Aſſ. 40. 39 H. 6. 12. & 28. 40 E. 3. 35. 39 H. 6. 14. and there is no difference between the Caſe of the Queen, (as it was objected) and of a common perſon, for the Queen ſhall not have two ſuits for the ſame cauſe, 19 Ed. 3. brief 470. & 33 Ed. 3. brief 916. & Q. Impedit 58. and if it ſhould be ſuffered, the party ſhall be twice charged, and have no remedy, for an Audita querela lieth not againſt the Queen. 18 Ed. 3. 2. 45 Ed. 3. brief 547. Coke Attorney contra; for it is but in the nature of a Treſpaſs, 5 H. 7. 15. no Plea in Treſpaſs, that another is depending; and the Queen hath a prerogative above a common perſon: and he offered to withdraw the firſt ſuit, but the Defendant would not aſſent to plead to the ſecond; And the Barons would adviſe; but they ſaid it was not peremptory, but a reſpond' ouſter.

2 Cr. 481.

Agard *verſus* Candiſh.

(3) INformation upon the Statute of 8 E. 4. 2. for giving licences; upon not guilty it was found for the Queen. And it was moved by Tanfield, that the Action lieth not in this Court; for the Statute appoints it to be ſued in certain particular Courts therein mentioned, and there is no word of the Exchequer: Atkinſon contra, the Statute is in the affirmative, and not in the negative that it ſhall not be ſued elſewhere. Stradling's caſe in the Commentaries, f. And to this the Barons agreed, for this is a ſuperior Court, though not named, and ſo ſuit may be here, for there are no reſtrictive words in the Statute, and this Court hath power to hold Plea in any thing concering the Queen, if not reſtrained. Et adjournatur.

Hitchcock & Uxor *verſus* Skinner & Lacy, Sheriffs of London.

(4) DEbt upon an eſcape of Lyſter, who was taken in Execution, and declared that whereas the Plaintiff as Executor of one Bevill brought an Action of Debt againſt Lyſter, and recovered and had Execution, the Defendants ſuffered him to go at large, and counted in this Action, in the debet & detinet; the Defendants pleaded nihil debent, and found for the Plaintiffs. And it was moved in arreſt of Judgment, that the Action was not well brought in the debet & detinet, for as the firſt action was only in the detinet, ſo this Action grounded upon the Record ought to be, and to purſue it, 10 H. 7. 5. b. 11 H. 6. 17. 9 H. 6. 11. 20 H. 6. 4. 5. & 6. where an Executor brings Debt for arrearages of account found before Auditors aſſigned by himſelf; ſo in all Caſes where an Executor ſueth for any thing due to the Teſtator, or by reaſon of any ſuch thing; as if an Executor recover damages in Treſpaſs, de bonis teſtatoris aſportatis, and recovers, and then brings Debt for the Damages, it muſt be in the detinet; and in Scroggs Caſe, againſt the Lady Greſſam, 27 Eliz. C. B. when ſhe was Executor to her Husband, and ſold Lands by vertue of an Act of Parliament, to pay her Husbands Debts, it was adjudged ſhe ſhall be charged only in detinet; and if a recovery ſhould be in this Action in the debet & detinet, it ſhall not be to the uſe of their Teſtator, but of themſelves.

Poſt. 350.

2 Cr. 545. Co. 5. 31. b.

2 Cr. 545.

Periam

Periam; this Action is grounded upon a tort done to themſelves, and is not grounded meerly upon the Record; and is not like the caſes put of Debt upon arrearages of account, or upon a Recovery, but is meerly collateral, for the tort done by the Sheriffs in ſuffering the party to eſcape; yet when it is recovered it ſhall be Aſſets in their hands, and the Action in the debet & detinet is well brought. Ewens & Clerke contra, for the ground of the Action is the recovery as Executors, and the tort is due to them in that right; and therefore the Action is to be brought in the detinet only, and it was afterwards adjudged accordingly. 2 Cr. 546. Co. 5. 31. b.

Termino

Termino Trinitatis,

Triceſſimo ſexto ELIZABETHÆ,

in Banco Reginæ.

Humble *verſus* Glover, Hill. 36 Rot. 420.

(1) Poph. 120. 55. Gould. 182.

DEbt upon a Leaſe for years, made by Tho. Play to the Defendant, and declares upon an Aſſignment of the reverſion by Indenture of Bargain and Sale enrolled; the Defendant pleads that after the grant of the Reverſion, and before any Rent arrear, he aſſigned over his Term to Scotmead, and doth not name his Chriſtian name, but a blank was left for it; and upon this Plea it was demurred. 1. Point, if the Leſſee ſhall be charged with the Rent after the Aſſignment of his Term; and reſolved he ſhould not. V. 3 Co. 23 b. for there is no privity between the Bargainee and Leſſee, but by reaſon of the privity of Eſtate, which being gone, the Leſſee is not chargeable; but between the Leſſor and Leſſee he ſhall not diſcharge himſelf, by aſſigning over his Term, for the privity is by reaſon of the contract and reſervation, rather then by the occupation of the Land; which by his own Act he ſhall not diſcharge; but in this Caſe the privity is deſtroyed. 2. Point, it was moved that the Plea is not good, for a grant to one not naming his Chriſtian name is void, for it is uncertain to whom the grant is, except the grant be to one which by reaſon of his dignity or office, it is known there is no other of the ſame name, as to Popham Chief Juſtice, or Glanvile Serjeant; and yet in that Caſe it muſt be averred that there be no more of that name; and if an Obligation or Grant is made to one, and his Chriſtian name is miſtaken, the grant is void; ſo a grant made by him, a fortiori, where there is no Chriſtian name; and of that opinion was all the Court, except Fenner, and that the Plaintiff ſhall have Judgment to recover; but no Judgment was given, becauſe the Plea was diſcontinued.

Moor 351. Poſt. 636. 633. Jones 44. Co. 3. 24. a.

Ante 57. 59. Co. Lit. 3. a.

Brooke *verſus* Clarke, Paſch. 36. Rot. 397.

(2) ACtion for words; for that whereas Clarenceaux King of Arms had a Patent of his office; and that he might grant Commiſſion to any to be his Deputy, to viſit in things concerning his Office; and he by his Commiſſion did appoint the Plaintiff to be his Deputy in the Counties of Devon and Somerſet; and the Plaintiff by vertue thereof did ſit and inquire of matters concerning the Office, the Defendant præmiſſorum non ignarus ſaid of the Plaintiff, He came and ſat by force of a forged Commiſſion; and he is a Scrivener and no Herald; the Defendant pleaded not guilty; and it was found againſt

gainſt him. And it was now moved in arreſt of Judgment. 1. That the words would not maintain an Action. 2. If ſome of the words were actionable, yet others of them were not, and damages were entirely given. To the firſt, the Court conceived that the Action lieth; for they touch him in his profeſſion, and are very ſlanderous, that he ſat by vertue of a forged Commiſſion: And whereas it was objected, that peradventure he did not know it, it is expreſly averred by thoſe words, Præmiſſor' non ignarus; but if thoſe words had not been in the Declaration, it had been otherwiſe; for it might be, that he ſat by virtue of a forged Commiſſion, and knew it not, and then it touched him not in his credit. And the words, He is a Scrivener, and no Herald, touch him in his profeſſion, and by it he getteth his living; and therefore it is reaſon, that for them he might bring his Action. And as to the ſecond, All the Juſtices held, that Judgment ſhall be given for the Plaintiff; for it ſhall be intended, that damages were given for the words, which were actionable. But Popham ſaid, that if an action be brought for words ſpoken at one time, and for other words ſpoken at another time; and for the words ſpoken at one time an Action lieth, but not for the words ſpoken at the other time, and damages are intirely aſſeſſed, no Judgment ſhall be given; for the Action is brought for all the words, and damages for all: And ſo it was held in the Lord Admirals Caſe, 18 Eliz. and afterwards Judgment was given accordingly. Co. 10. 130. b. Co. 10. 131. a. Ante 282. Co. 10. 131. a.

Chapman *verſus* Thumblethorp, Hill. 36 Eliz. Rot. 113.

TReſpaſs, for breaking his Cloſe, Et quædam averia ibidem exiſtent' cepit & aſportavit. The Defendant pleads, that the Cattel were his own goods, and that J. S. took them by wrong, and put them in the Plaintiffs Cloſe by his aſſent; for which, he finding them there, did take them, &c. as it was lawful, &c. And upon this Plea it was demurred. Pudzey argued for the Plaintiff, that the Defendant could not enter into the Plaintiffs Cloſe to fetch them out, except they were put there by the Plaintiffs Tort; and this Plea doth amount to a General-iſſue, for he cannot Traverſe the property of the goods. But the Court held it a good Plea; for the Plaintiff by his Declaration doth not aver the property of the goods to be in him, but ſaith only quædam averia: And when the Defendants Beaſts are taken from him by wrong, and are not out of his poſſeſſion by his own delivery, he may juſtifie the taking of them in any place he finds them, and it was adjudged for the Plaintiff. (3)

Haſelop *verſus* Chaplin. Cujus principium antea. Mich. 33 & 34 Eliz. B. R. Placito 36.

IT was now moved again, and divers Preſidents were ſhewn out of the Common Bench, that always ſince the Statute, damages and coſts had been given to the Avowant in Avowries for Amercements in Leets, and for Heriots, and other caſes not (4) Ante 257. 8. Ante 300. 2 Cr. 28. 1 Cr. 532. 3. 2 Cr. 520.

mentioned in the Statute. And the Juſtices conceived, that their courſe being ſo ſince the Statute, the Law ſhall be conſtrued to
1 Cr. 534. be ſo; and ſo inclined in their opinion: But then it was moved, that the Replevin was De averiis taken, and the taking was only of a Horſe, and ſo ill. And of that opinion was the Court, that the Count had made the Writ falſe; and for this cauſe the Judgment was reverſed.

Dickins *verſus* Marſhal, Paſch. 33 Eliz. Rot. 403.

(5) The Caſe upon ſpecial verdict was; J. T. deviſed all his Lands and Goods after his Debts and Legacies paid to R. Toby and Mary his Children, equally to be divided between them. The queſtions were, firſt, Whether an eſtate of Inheritance, or only a Freehold paſſed by thoſe words? Secondly, If they were Joyntenants or Tenants in common? And after Argument, the Court
Co. Lit. 9. b. Co. Lit. 42. a. reſolved, 1. That an Eſtate for life only paſſed; for although the deviſe of the Lands and Goods are coupled together, and it be a deviſe for ever of the Goods; yet for the Land, there being no words to paſs the Inheritance, only an Eſtate for life paſſeth. And although it was objected, that the Deviſe of the Land is, after his Debts and Legacies paid; ſo this is limited after he hath made an end of diſpoſing any thing; and it was to his Children, of which his Heir is one; ſo that he intended to give as much to one, as to the other, and that he doth not limit any eſtate over to any other; yet the Court held, that only an Eſtate for life did paſs. Popham ſaid, it may be doubted if any Land did paſs, in caſe he had a term for years in Lands, and ſo the Deviſe of Land may be ſupplied, and that only the term ſhall paſs. Second point, They all conceived
Ante 9. it was a Joynt-eſtate, and that they ſhall not take by parts in common; for he doth not appoint a diviſion to be made. But Fenner ſaid, that in 2 Eliz. between Hide and Southcot it was adjudged, that a Deviſe of Land to two equally divided, this was a Tenancy in common. But here it is to two equally to be divided, and it is not certain that a Diviſion ſhall be made. Vide 3 Co. 39. b.

Barry *verſus* Stanton.

(6) The Caſe upon ſpecial Verdict was. A Leaſe was made for years upon condition he ſhall not Deviſe the Land, or aſſign over his term, and by his Will he deviſed it, Gawdy, Fenner and
Ante 60. Clench, held clearly, that the Condition was broken; for by this Deviſe the term is diſpoſed by his gift, which is an Alienation, and is as ſtrong as any other Alienation. But Popham delivered no opinion.

Kent *verſus* Sponder.

(7) Scire facias to have execution of Land, and damages recovered in an Ejectione firmæ; the Defendant pleaded an Entry into the Land after the Judgment, and before the Scire facias; and becauſe he did not anſwer to the damages, the Plea was ruled ill in all:

Where-

Wherefore it was adjudged, that the Plaintiff ſhall have Execution of the Land, and damages.

Patridge *verſus* Mayler.

(6) ERror upon a Judgment in an action upon the Statute, 1 & 2 P. & Mar. c. 12. for taking a Diſtreſs in one County, and inchaſing and impounding it in another County, and the Venire facias awarded only of the place where the taking was; and this was aſſigned for Error; and for this cauſe the Judgment was reverſed. Poſt. 480.

Harvy *verſus* Wroth.

(7) ERror upon a Judgment in Dower. Error aſſigned was, that the Tenant was an Infant, and the Judgment was by default. Ante 308. V. 5 Edw. 3. 70. 17 Edw. 3. 47. 17 Edw. 2. Saver Default 80. where an Infant ſhall be compelled to ſave his Default. And it was moved here, that in as much as in a Writ of Dower the Paroll ſhall not Demur for his nonage, that the Infant ſhall be compelled to ſave his Default: And ſo it was cited to be adjudged in Cories Caſe. 34 Eliz. Sed adjournatur.

Berry *verſus* Taunton. Hill. 36 Eliz. Rot. 376.

(8) THe Caſe upon ſpecial Verdict was. A Leaſe was made to Giles Taunton for eighty years, upon condition, That if he, his Executors or Aſſignees do demiſe the Lands for more then from year to year, that then the Leaſe ſhall ceaſe and be void. G. T. doth deviſe it to his Son, and dieth, the Son enters by the aſſent of the Executor; the queſtion was, if the condition be broken, for the deviſe is not properly a Demiſe. But all the Juſtices held it a breach; Ante 60. for a Condition ſhall not be taken ſo ſtrictly, that it ſhall be according to the preciſe words; and if the meaning be broken, it is a breach of the Condition; and none will deny but a grant of all his Eſtate had been a breach; ſo it is here of a Deviſe: And it was ſo adjudged.

Lee *verſus* Norris, Paſch. 36 Eliz. Rot. 41.

(9) EJectione firmæ: The Plaintiff declared of a Leaſe by J. S. The Defendant ſaid, that long time before the Leaſe and Ejectment, that the Queen was ſeiſed of the Lands, and let it to B. for years, who let it to the Defendant for two years; upon whom J. S. the Leſſor of the Plaintiff entred, and expulſed him, and let it to the Plaintiff: And upon this it was demurred, becauſe the Plea amounts to Non-guilty. Gawdy, the Plea is good; but if it had been in the caſe of a common perſon, it had not been good, without ſaying, He ouſted the Leſſee, and diſſeiſed the Leſſor; but here there can be no Diſſeiſin to the Queen; wherefore he ſaith enough, that he put out the Leſſee; for otherwiſe it is not good, 10 Edw. 4. 6. for otherwiſe his Entry may be intended lawful; but when he ſaith,

he expulſed him, this intendeth an unlawful Entry, and confeſſeth in him ſuch a poſſeſſion, that he may make a good Leaſe againſt any but him that hath right. Fenner agreed, and by this Entry he hath gained ſuch a poſſeſſion, that the Leſſee of the Queen may bring an Ejectione firmæ, although the Queen be not put out of the Freehold; which Popham agreed.

Nevill *verſus* Seagrave, Trin. 33 Eliz. Rot. 323.

(10) REplevin. The Defendant avows for Damage-feaſant; the Plaintiff replieth, that the day after the Diſtreſs taken, he tendered ſufficient amends, ſcil. Six pence, which the Defendant refuſed; upon which the Plaintiff demurred, becauſe the Tender
Poſt. 813. was not before the impounding. Gawdy, the tender is good, although the Cattel be impounded; and if the party that diſtrained refuſeth it, the Owner may take them out of pound. And it is clear, if the Tender were before the impounding, he might take them out, Quod fuit conceſſum: Whereupon the Court gave day to the Defendant to ſhew cauſe to the contrary, otherwiſe Judgment ſhall be given for the Plaintiff: But Tanfield at the Bar ſaid it was adjudged in Sir Henry Cromwels Caſe in the Common Bench, that tender
Poſt. 813. after impounding, cometh too late. V. 5 Co. 76. a.

Dr. Andrews *verſus* Wood.

(11) DEbt upon an Obligation. The Condition was to perform Covenants in an Indenture of Leaſe, whereof one was to pay the Rent at the day; the breach aſſigned was for not payment of
Poſt. 829. the Rent. Upon which it was demurred, becauſe no demand of the Rent was alledged; but the Court did over-rule it, becauſe it was an expreſs Covenant; and by the Recovery the Obligation is determined. Sed Adjournatur.

Lambert *verſus* Auſtin, Trin. 35 Eliz. Rot. 185.

(12) REplevin. The Defendant avowed upon the Statute of 32 H. 8.
38 H. 8. c. 34. as Executor; for that the Lady Southwell was ſeiſed in Fee of the Manor of Weſton, and 3 Eliz. granted a Rent of five pound per annum to Richard Adamſon for his life, iſſuing out of the Manor, who made the Defendant his Executor, and died 28 Eliz. And for ten years arrearages between 17 & 28 Eliz. he avowed. The Plaintiff replied, that after the Grant, ſcil. 12 Eliz. the Lady Southwell made a Feoffment of this Manor to Copley; who 13 Eliz. let the Land to Brocket for twenty one years, which occupied it for the term, which expired 34 Eliz. and afterwards Copley let it to the Plaintiff for three years; upon whom the Diſtreſs was taken, and upon this it was demurred. The queſtion reſts only, if for the Rent incurred during the term, if by the Statute he may
Co. Lit. 162. a. diſtrain for it after the term expired, upon him in the reverſion: for the Statute is, that he ſhall diſtrain upon the poſſeſſion of the Tenant in Demeſn, which was chargeable with the Rent, or any claiming under him. Gawdy and Fenner, the Tenant of the Free-

hold

hold is only to be charged, for an aſſiſe only lieth againſt him, and he is the party that is to attorn; and the Leſſee for years is only chargeable for his Cattel being upon the Land, as a ſtranger ſhall be in that caſe; and the intent of the Statute was only to give remedy againſt him who was chargeable in the life of the Teſtator. And Fenner ſaid, if Leſſee for life grants a Rent-charge, and then makes a Leaſe for years, and dieth, debt lieth for this Rent againſt the Executors of the Tenant for life, and not againſt the Tenant for years, for he is not the party chargeable; and in this caſe, if no Seiſin was had, there is no remedy: For Tenant for years cannot give Seiſin, and a Releaſe of this Rent muſt be to the Tenant for life, and not to the Tenant for years. Clench and Popham contra, That the Tenant for years is only chargeable in debt, for the Rent incurred during the years, and not the Tenant of the Freehold, and both are chargeable, one with an Aſſiſe, and the other with a Diſtreſs during the eſtate. Then it is to be conſidered in this caſe, who is chargeable by the intent of the Statute: If Tenant Pur auter vie grant a Rent and ceſty que vie dieth, the Grantee of the Rent dieth, the Executors of the Grantee have no remedy by the Statute; for the Statute giving the Diſtreſs intends the party that properly and uſually is to be diſtrained, which is the Termer in poſſeſſion, and thoſe that come in privity under him; but ſo is not he in the Reverſion: And therefore in this caſe the Executors cannot diſtrain, but only have an action of Debt, and the Statute giveth the Diſtreſs upon the Tenant in Demeſn, which is chargeable immediately, and not on him in the Reverſion, except his Cattel come upon the Land by eſcape. Fenner, If Tenant in Tail grant a Rent-charge, and then makes a Leaſe for years according to the Statute, and dieth, the iſſue ſhall hold it diſcharged, and the Grantee ſhall not diſtrain during the term. Quod Gawdy conceſſit, & Adjournatur.

Folcot *verſus* Ridge.

PRohibition for ſuing for Tithe-Hay upon fifteen acres of Land, ten acres of Meadow, and ſeven acres of Paſture, and ſurmiſeth, that he and all thoſe, &c. time out of mind, &c. had uſed to pay four pence yearly in ſatisfaction of all Tithes of Hay cut there, &c. and iſſue upon it; the Jury find the preſcription, but that part of the Land was never mowed, but ſhew not what part in certo. The queſtion was, if this verdict be certain enough, and for whom it was found, and it was adjudged for the Plaintiff; for both parties are agreed, that all the Land had been Mowen, and the finding contrary to it is void; and the Verdict is certain enough. (13) Ante 283.

Anneſly *verſus* Stokes.

ERror upon a Judgment in Debt; for that in the Writ he was named Son and Heir apparent, and in the Declaration, Son and Heir generally; and for this variance the Judgment was reverſed, yet it was ſaid, that Apparent was Surpluſage, Sed non allocatur. (14)

Termino Trinitatis, 36 Eliz. in Communi Banco.

Frederick *verſus* Frederick.

(1) PArtition. The Caſe was upon ſpecial Verdict. A. levies a Fine to J. S. which by Indenture is declared to be, to the uſe of B. for life, and after to the uſe of the Children of C. procreatis: C. at the time of the limitation had two Sons, and before the death of B. had iſſue two Daughters; the queſtion was, if the Daughters ſhould take: After argument at the Bar, it was reſolved by the Court (except Owen) that the Daughters ſhould not take. Anderſon firſt ſhewed his opinion, that the Poſtnatæ ſhall not take; but only the Children that were in Eſſe at the time of the limitation for they ſhall not take as Joyntenants, nor as Tenants in Common, nor by way of Remainder; and therefore not at all; as Joyntenants they cannot take; for they were not in being at the time of the limitation of the Remainder, nor as Tenants in Common or by Remainder, no more then they could take by an eſtate executed by other conveyances: And uſes are not allowable, but as they are conſonant to the Rules in Law and Reaſon; and it is plain here, that no preſent or future uſes are limited to thoſe that ſhould be afterwards born, and no matter can be collected out of the parties intent to help them. Walmſley accorded; this Rule is to be obſerved in Uſes, in every Caſe there is to be Donor and Donee, who ſhall take as well in limitation of an Uſe, as of an Eſtate executed: And although the Common Law knows nothing of Uſes, yet now by the Statute an Uſe is an Eſtate; and to take ſuch an Eſtate, there ought to be a Donee. As if a gift be made to the Father, Et primogenito filio, if he hath no ſon then, the ſon born afterwards ſhall not take, and the Uſe ought to be obſerved, as it is appointed; and when it is limited in poſſeſſion, it muſt take in poſſeſſion, and in futuro, and in expectancy, when it is ſo limited; but there muſt be a Donee to take at ſuch a time as it is limited. And where it was objected, That the intent and meaning of the Uſes is to be obſerved, it is true, if they be not fond and idle, as in Wills, which are greatly favoured, for the weakneſs of them that make them. And it is againſt the Rules of Law and Reaſon, and of Uſes, that one who is not in Eſſe ſhould take by an Uſe limited in poſſeſſion: And therefore the Sons in Eſſe ſhall only take in this caſe, and not the Daughters born after. And in the Earl of Bedfords Caſe it was ruled by the advice of the Juſtices in the Court of Wards, that where he made a Conveyance to the uſe of himſelf for years, the Remainder to his eldeſt Son in Tail, the Remainder to the Heirs of the Earl, although his meaning was (as it appeareth by the words) that his Heir ſhould take as a Purchaſer; yet it was ruled according to the Rules of Law, and not according to his meaning; ſcilicet, That he ſhould take it as a Fee executed in himſelf. And it ſeemeth, That if a limitation be

Co. 6. 17. a. Ante 121.

Co. 1. 100. Ante 121.

Ante 321. Moor 721.

be to the right Heirs of J. S. and he hath iſſue a Daughter and dieth, his Feme enſeint with a Son, who is afterwards born, yet the Daughter ſhall retain it, for ſhe was in the Eſtate executed. Beaumond agreed in omnibus: Owen contra, For the intent here appeareth, That all the Children ſhall have it; for procreatis referreth to thoſe that were born, as to thoſe that ſhall be born, and an uſe is a matter of Conſcience. But it was adjudged by the other Juſtices againſt the Daughters.

The Lord St. John *verſus* Talbot.

(2) FOrfeiture of Marriage, and counts that the Father of the Defendant held of him by Knight-ſervice and died, the Defendant his Heir being within age; whereupon the Plaintiff tendered him a marriage, and he refuſed and married himſelf elſewhere, and at his full age intruded; the double value of his marriage not being ſatisfied; the Defendant acknowledging the tenure and marriage, traverſeth the Tender: And it was thereupon demurred, and ruled, that the Tender is chiefly traverſable in this Caſe; but the Court held, that in a Valore maritagii, the Tender is not traverſable, for the Lord ſhall have it without Tender. Anderſon and Walmſly held, that if the Heir marry himſelf before Tender, the Lord ſhall have only Valorem maritagii, and not the Forfeiture; for the Tender afterwards, when he is married, is in vain, for he cannot accept of it, and it ſhall not gain to the Lord the double value.

Poſt. 468. Co. Lit. 82. 2 Cr. 66. Co. 5. 126. b.

Gurney & Somes Caſe.

(3) DEbt for Thirty five pound for their Fees, as Sheriffs of London, for executing a Capias ad ſatisfaciendum directed to them, and demanded by force of the Statute of 29 Eliz. cap. 4. twelve pence in the pound for the firſt One hundred pound, and ſix pence in the pound for the reſidue: And it was thereupon demurred; Firſt, becauſe there is not any action given by the Statute: Secondly, becauſe they ought to have but ſix pence in the pound, where the ſum exceeds fifty pound, and not to take twelve pence in the pound for the firſt one hundred pound, and ſix pence for the reſidue; and ſo the Court held upon the firſt Argument in both points. Sed quære, quia adjournatur.

29 El. cap. 4. Poſt. 654. 2 Cr. 103. 1 Cr. 287.

Ferrer *verſus* Johnſon.

(4) ACtion upon the Caſe, for diſturbing him of an Office, the Plaintiff made a ſpecial title to it, and a ſpecial Verdict was found, wherein a title variant in part from that which was alledged, was found. And after divers arguments it was held per Curiam, That notwithſtanding the Variance, the Plaintiff ſhould have Judgment: For Walmſly ſaid, that the Title in this Action was ſuperfluous, and the Variance found was not material. And it was held per Curiam, That if one grant an Office of

Ante 288. Co. Lit. 233. b. Poſt. 839.

of Bailiff or Steward, or the like, with the profits thereof, without
Co. Lit. 233. b. rendring an account, he cannot diſcharge the Grantee, but he ſhall continue to have the profits of the Office; but otherwiſe it is, if no Fee or Profits had been granted for the exerciſing thereof. And Walmſly held, that one may grant an Office, Habendum after
1 Cr. 279. the death of J. S. for it varieth from the Caſe of Land, &c. and
Co. 11. 4. a. the Plaintiff had Judgment.

Termino

Termino Michaelis,

Triceſſimo ſexto & ſeptimo ELIZABETHÆ, in Banco Reginæ.

Ro. Blackwell *verſus* Eyre, Hill. 36. Eliz. Rot. 404.

ASſumpſit, and declared, Quod cum quidam exitus in quadam actione ejectʼ firmæ of the Leaſe of Blackwell the Plaintiff, junctus fuit inter Anth. Buxton querentʼ & R. Senior, & Geo. Nedham & Hen. Bradly Defendants, ad quem exitum triandum, the ſaid Anth. Buxton had ſued out a Venire facias, the Defendant in conſideration that the ſaid Anth. Buxton and R. Blackwell the Plaintiff, ad triandum exitum prædictʼ parcarent inforciare their title, Sed darent tenuem & parvam evidentiam ſuper triationem exitus verſus præfatʼ R. Senior, Geo. Nedham, & Hen. Bradly, aſſumed to pay to the Plaintiff two hundred and ſeventy pound, ſcil. Twelve pound at the Feaſt of St. Michael, next enſuing, and twenty four pound at every other Feaſt of St. Michael, until the two hundred and ſeventy pound were paid, and if default of payment ſhould be made of any of the ſaid ſeveral ſums by the ſpace of one month, then he would pay for every month after ſuch default twenty ſhillings Nomine pœnæ, and alledged in facto, Quod exitus prædictʼ triatus fuit; and that the ſaid A. B. and the Plaintiff ſpared to inforce their title, and gave but ſmall evidence Super triationm exitus prædictʼ againſt the ſaid R.S. G.N. & H.B. ſic quod juratores jurati ad triandum exitʼ prædictʼ dixere; that the ſaid R.S. G. N. & H. B. were not guilty, and alledges in facto, that the Defendant did not pay the ſaid twelve pound at the Feaſt of Michaelmas aforeſaid, and that thirty four months are paſſed ſince the ſaid Feaſt, after the ſaid Feaſt, till the tenth of June, 35 Eliz. And that the Defendant had not paid the ſaid twelve pound at the ſaid Feaſt of St. Michael, 32 Eliz. nor within one month after, nor the thirty four pound forfeited Nomine pœnæ, and for the not payment, &c. he brought his Action; the Iſſue Non Aſſumpſit; the Jury find a ſpecial Verdict, that in the ſaid firſt Action of Ejectione firmæ, there were two Iſſues joyned, ſc. R. S. pleaded not guilty, and G. N. and H. B. pleaded a Surrender of the Term, and Iſſue upon them, Et ſi ſuper totam materiam, &c. The queſtion was, if this Verdict be for the Plaintiff or the Defendant. And it was moved, that the word Exitus was a general word, and might be referred to both the iſſues; and ſo is good Reddendo ſingula ſingulis, and relied upon 28 Edw. 3. 97. 41 Ed. 3. Brief. 4. H. 6. 11. But it was anſwered, that although Exitus be general, and may be referred to divers Iſſues, yet it being (1) Moor. 351.

ing coupled with quidam, this reſtrained it to one, and junctus fuit is in the ſingular Number, and ſheweth it cannot be intended to refer to more iſſues; and the Plaintiff afterwards ſheweth that exitus prædict' triatus fuit; and that the Jurors ſaid, that they three were not guilty, ſheweth his intent to be, that but one iſſue was joyned; and the Verdict findeth the contrary to it; and ſo he hath failed of his conſideration. But the Court held, That the words quidam exitus being general, ſhall refer to both; and in this it may be intended, that they meant both; and in that it is afterwards ſaid, that the Jury found them not guilty, this is but nugation; and he needed not to have ſpoke of the Verdict, and ſo is not material; and of that opinion was the whole Court, & adjour'. And at another day it was moved again, Popham and Gawdy being abſent. And Clench and Fenner held their former opinion; and then another matter was moved, that it was not ſhewn how long the payment of the twenty ſhillings ſhould continue; for it is not ſaid, quouſque the Plaintiff ſhall be ſatisfied: But they held it not material, for it ſhall be intended till they be ſatisfied; and they gave Judgment for the Plaintiff, and ſaid he might have a Writ of Error if he would.

Poſt. 427.

Button *verſus* Wightman.

(2) EJectione firmæ. For Lands in Harrow, upon a Leaſe by the Lord North; upon ſpecial Verdict the Caſe was, 38 H. 8. The Dean and Canons of Chriſt-Church in Oxon were incorporated by the name of the Dean and Chapter of the Cathedral Church of Chriſt, Oxon ex fundatione Regis H. 8. and 1 Ed. 6. they make a Feoffment to Edward Lord North, by the name of the Dean and Chapter of the Cathedral Church of Chriſt in Academia Oxon ex Fundatione Regis H. 8. And afterwards, 12 Eliz. they make a Leaſe of the Land for years, by the true name of their Corporation to the Defendant; and the Jury find further, that the City of Oxon, and the Univerſity of Oxon, ſunt unum & idem in circuitu; but the Liberties of the Univerſity extend further than the Limits of the City. The queſtion was, if this Addition in Academia be ſuch a Miſnoſmer as ſhall make the Feoffment void. Fenner, this Miſnoſmer is a material variance, for the place of the name of a Corporation is material; for a Corporation cannot be without a name, and Oxon, & Academia Oxon, are diverſe, Quæ in uno cadere non poſſunt, although both contain the ſame thing: As a Grant to an Abbot, and all the perſons of the Covent, or to a Major, and all the perſons of the Corporation, is not good. 13 Edw. 4. 22 Edw. 4. For it is not by the name of their Corporation, and it is no addition to name one of the Univerſity of Oxon; and that they are both of the ſame content, is not material. Popham, Clench, and Gawdy, contra: We all agree there muſt be a local place of a Corporation; and ſo it is here, though not ſo preciſely, and the recital of the local place by another name is good; and it is not neceſſary to recite the place by the very Letter of the place. 44 Edw. 3. 16. a Recovery was had againſt the Prior of the Hoſpital of St. Johns of Jeruſalem, and in a Scire facias upon it, the word Hoſpital was omitted, yet held good. L. 5. Ed. 4. 20. The Caſe of the Abbot of York, &c. and Oxon, and the Univerſity of Oxon, are by intendment both one, and ſo are in common knowledge. 28 H. 6. 8. the Caſe of Prior, &c. And if a Corporation be made of a Town, and then it is made a City,

Co. 10. 125 a.

City, and they grant Land by the name of a City, it is good. And by Popham, an Univerſity is as much a local place as a Town, and there be divers Colledges founded in Academia Oxon, without any other place; which doth prove it is a local place, and is all one with the City. And there is a great diverſity in the name of a Corporation, between the name before the place, and after of the place; for that which is precedent before the place ought to be preciſely obſerved; but in the name of the place, it is ſufficient if it be ſhewn by circumſtances: And therefore Oxon and the Univerſity of Oxon being both one in common knowledge, and ſpeech, and well known, a Grant ſhall not be avoided by this Miſnoſmer; and Judgment was given for the Plaintiff, and the Defendant immediately brought a Writ of Error.

Jordan *verſus* Cleabourne, Paſch. 35. Eliz. Rot. 144.

(3) EJectione firmæ, of the third part of a Cloſe called Gate-houſe Cloſe; and after Verdict for the Plaintiff, it was alledged in Arreſt of Judgment, that an Ejectione firmæ lieth not of a Cloſe, although a name be given to it; for it is in nature of a Præcipe of Land, which ought to be of a certain number of Acres. Popham and Gawdy, it is but a perſonal Action, and a Treſpaſs in its nature; and although an Habere fac' poſſeſſionem lieth upon it, yet a name being given to the Cloſe, the Sheriff may well take Cogniſance of it; and in 22 Eliz. it was ſo adjudged. Clench and Fenner, contra, for all the Preſidents are, that it ſhould be demanded by a certain number of Acres, & adjourn'. And in the ſame Term inter Palmer & Humphry, which is entred Trin. 35. Eliz. Rot. 815. an Ejectione firmæ was of a Garden called Minchins Garden, of a Meadow called Dale Meadow, and of a piece of Land called Minchins piece; and being found for the Plaintiff, it was moved in Arreſt of Judgment, that an Ejectione firmæ lieth not of a piece of Land without ſhewing the number of Acres. Vide 5 H. 7. 9. 45 Ed. 3. Brief. 588. 11 H. 4. 43. and adjudged that the Ejectione firmæ was well brought; but upon a Writ of Error brought, the Judgment for this cauſe was reverſed. Nota, Paſc. 38 Eliz. Rot. 453. inter Penn & Merevill. Ejectione firmæ de una Virgata terræ. Adjudged in the Exchequer-Chamber, that it lieth not.

Mo. 422. 702; Ow. 18.

Ant. 235.

Ireland's Caſe.

(4) ERror upon a Judgment in a Replevin in the Common Bench; the Declaration was in Eaſter Term, the Defendant imparled and afterwards pleads, and nothing done more in Michaelmas Term, and in Hillary Term the Plaintiff replieth, and they were at iſſue; and after evidence, and before Verdict, the Plaintiff was nonſuit, but the Jury gave a Verdict for the damages; and now the Plaintiff aſſigneth this for Error, that it was a diſcontinuance. And the Court held it to be a manifeſt fault, and the Plaintiff might aſſign it, though it was for his advantage. And it was held, that though a Verdict was given for the damages, yet it is but in the nature of an Inqueſt of Office; and therefore it is a Diſcontinuance not helped by the Statute of 32 H. 8. or 18 Eliz. as Diſcontinuance after Verdict found, and the Judgment was reverſed.

Long *verſus* Michell.

(5) ERror of Judgment in the Common Bench; and the Error aſſigned was, That the Judgment was given upon a Verdict by Niſi prius, and there is no Record of the poſtea, nor the Writ of Habeas Corpora certified, nor in the cuſtody of the Cuſtos brevium, which is the office for this purpoſe: And upon a Writ of diminution it was certified accordingly. But it was alledged, that in as much as in the Plea-Roll the Record maketh mention, that the Verdict was given and certified, and Judgment given upon it; it is well enough; for this is the principal Record, but the Court held, that every Officer hath his ſeveral charge, and their courſe is to be obſerved. And in the Common Bench the courſe is, that the Plea-Roll ſhall be warranted by the Record of the poſtea, which is always to remain with the Cuſtos brevium; and when it is not warranted by it, it is erroneous. But in this Court the Plea-Roll is the chief Record, and the Poſtea is entred in it, and Judgment given upon it; and if the Poſtea be certified, and is afterwards loſt, it is not much material: Therefore for this cauſe they held it Error. Sed adjournatur.

Poſt. 368, 466, 367, 433.

Griffith *verſus* Williams, Hill, 36 Eliz. Rot. 610.

(6) F. N. Br. 220. ERror upon a Judgmennt in Wales in Ejectione firmæ. 1. Error, That the words Vi & Armis are not in the Declaration. 2. Error, the ſuit there was by Plaint, whereas it ought to be by original. Williams Serjeant; none of theſe are Errors: For as to the firſt, it may be one way or other, 7 H. 6. 4. 17 Ed. 3. 1. and it is after Verdict, and is but matter of form, and cited a preſident, Trin. 33 Eliz. inter Lawſel & Spring, that this is helped after Verdict. And as to the ſecond Error, the Statute of 34 H. 8. appoints, that for Lands in Wales the Action ſhall be by original, is to be intended in real Actions, in which Lands are demanded, but this Action is in the perſonality. And the Court held, that Judgment was to be affirmed. Sed adjournatur.

Laurence Tanfield *verſus* Rogers & Watſon, Paſc. 36 Eliz. Rot,

Ex 75. (7) REplevin for taking of Cattel at Clanfield in Com' Oxon': Rogers avows in his own right, and W. as Bailiff of Chapman, and his Wife made Cogniſance for Damages-feaſant, as in their Freehold. The Plaintiff ſaid, that long time before the taking, &c. J. Edmuns was ſeiſed of the Mannor of Clanfield in Fee, and gave it to Thomas his ſon, and Agnes his Wife in tail, that Thomas died, having iſſue by the ſaid Agnes two Daughters; Agnes enters, and by Indenture 25 Eliz. let to J. Fox, the Scite of the Mannor, and all the Demeſn Lands of the ſaid Mannor, and all other Lands with it enjoyed by the ſaid Fox; Ac etiam totum illud Manerium de Clanfield ac omnia terras & Tenementa eidem Manerio ſpectant'. Habendum the ſaid Scite and Demeſns, and alſo the ſaid Mannor and Premiſſes to the ſaid J. Fox for twenty one years, from the day of the date of the Indenture, yielding and paying for the ſaid Scite and Demeſns and Premiſes therewith letten, three pound ſix ſhillings eight pence; and yielding and paying for the ſaid Mannor

and

and Premiſſes therewith letten nine pound ten ſhillings, and conveyed the eſtate of J. Fox to himſelf, and that he put in his Cattel, and averred, that the Land where the taking was, was at the time of the Leaſe parcel of the Demeſns of the Mannor, and were in the poſſeſſion of the ſaid J. Fox, and that the ſaid Scite and Demeſns had been uſually let for twenty years before, and that the Rent was the ancient Rent, that they were not then in Leaſe, and that the Leaſe was not without impeachment of waſte, and that Agnes is dead, and the two daughters were the heirs of the body of Agnes, in whoſe right the avowry was. The Defendant demanded Oyer of the Indenture, which was entred ut ſupra, and pleads, that the Mannor was not let for the greater part of twenty years before the Leaſe made; and upon this the Plaintiff demurs: And the queſtion was, if this were a good Leaſe for the Scite and Demeſnes which had been uſually let, and avoidable for the reſidue, or being both joyned in one Leaſe, is avoidable in all. And it was moved, though it be by one Indenture, yet the words being ſeveral in the Demiſe, and the Habendum and ſeveral Reſervations; this is not a joynt, but ſeveral Leaſe. And one Leaſe for the Scite and the Demeſnes, and another for the reſidue of the Mannor, 14 Eliz. Dyer 308. Winters caſe, but admitting it to be a joynt Leaſe, yet when one Rent is reſerved for the Scite and Demeſnes which had been uſually letten, and another Rent for the Mannor; ſo the Rents are ſeveral and diſtinct, and ſo no prejudice to the Iſſue Intail, and no danger of apportionment. But of the other part it was urged, that this is an entire Leaſe; for when ſhe firſt lets Scite and Demeſnes, and after lets the entire Mannor, it is as if ſhe had let the Mannor entirely and the Rent reſerved as iſſuing out of the whole Mannor. And at the end of the Term it was moved again, and all the Juſtices reſolved there are ſeveral Reſervations, and ſo the Leaſe is good for the Scite and Demeſns; and it ſeemeth, that theſe ſeveral Reſervations, Co. 5. 55. and the ſeveral words in the Habendum make it as ſeveral Leaſes; but they ſaid it was not much material, whether it be ſeveral Leaſes, in regard there are ſeveral Reſervations; and it was adjudged for the Plaintiff.

Cherbourn *verſus* Rye.

DEbt upon a Leaſe for years of a Houſe and Land: The Defendant pleads, that the Leſſor had entred upon part of the Land let, and that he had pulled down part of the Houſe, and ſo had ſuſpended his Rent: The Plaintiff replieth that the Defendant had re-entred into the Land, and into that part of the Land where the Houſe ſtood. And hereupon it was offered to demur; Bromly moved, if the Rent were not revived by the re-entry into the Land where the Houſe ſtood. Popham and Gawdy conceived the Rent is not revived; for when the Houſe was let, it is part of the cauſe for which the Rent was reſerved; and when the Leſſor had taken from him part of the benefit, ſc. the Houſe, yet his re-entry into the Land where the Houſe ſtood, doth not revive the Rent. Fenner and Clench doubted. Et adjournatur. (8) 1 Rol. 940.

Peter

Peter Palmer *verſus* Boyer.

(9) ACtion for words, that he being a Counſeller at Law, and Steward to J. S. of his Mannors, the Defendant ſaid of him, He is a paltry Lawyer, and hath as much Law as a Jack-an-ape. Upon not guilty pleaded, it was found againſt him, and damages twenty pound. And it was moved, that the Action lieth not; for it is not ſaid, he had no more Law than a Jack-an-ape. But it was adjudged for the Plaintiff, for the words are ſcandalous, and touch him in his Profeſſion.

Baxter *verſus* Shade.

(10) ACtion for theſe words. Thou art a forſworn Jack in the Court-Baron of D. thou haſt ſworn me out of twenty ſhillings Rent, and haſt me on thy ſide. Adjudged that the Action lay, and the Plaintiff recovered.

Poſt. 348.

Ball *verſus* Roane.

(11) ACtion for theſe words. There was never a purſe cut within twenty miles of Wellingborough, but thou hadſt thy part in it; and avers, that ſuch a purſe was cut, &c. and he had no part in it. And it was moved, that an Action lieth not; for it is not ſaid he had a part of it as a partaker in the Felony, for he may have a part in it in the loſs, and ſo it is no ſlander: But it was adjudged for the Plaintiff; for the words ſhall be taken to be ſpoken in the worſt ſenſe, in diſgrace and reproach of the Plaintiff. Nota Serjeant Yelverton cited a caſe, Paſch. 32 Eliz. Sir Edward Haſtings brought an Action for theſe words, You have procured a perjured man to ſeek my Blood; and ruled, that an Action did not lie. But Fenner ſaid the caſe was not adjudged, but ended by his Arbitrement. Vide Mich. 35 & 36 Eliz. Antea B. R. placito 11.

Ant. 308.

May *verſus* Middleton, Trin. 35 Eliz. Rot.

(21) DEbt upon an Obligation of eighty pound. The Defendant pleads, that the Plaintiff pending the Bill brought againſt him a Plaint in London, and there by cuſtom had attached forty pound of a debt due to the Defendant in the hands of J. S. in ſatisfaction of forty pound due upon this Bond, and demanded Judgment of the Bill, and prayed it might abate. And to this the Plaintiff did demur, for this amounts but to an acceptance of part Pendente Billa, which goeth in Bar, and not in Abatement. And it was argued by Godfry for the Plaintiff, and Altham for the Defendant; and all the Court (except Popham) conceived, that it is a Plea in Bar, and not in the abatement of the Bill, for the Plaintiff for this part is to be barred for ever; and this Receipt of parcel is a lawful act; but if the Demandant enters pending the Writ, this ſhall abate the Writ, for his entry may be unlawful. And Fenner ſaid, it hath been ſo adjudged in the Common Bench. Vide the Book of Entries fol. 159, a preſident accordingly;

Ant. 253.

ly; and they adjudged it ſo, againſt the opinion of Popham, becauſe the Plaintiff by his own act doth falſifie his own Writ. But it was ſaid, a Recovery is by Act in Law, which may help the caſe; otherwiſe of a bare acceptance.

Brent *verſus* Ingram.

ACtion for words. For that the Defendant ſaid to J. B. ſon of the Plaintiff, in the preſence of divers, Thou (Præfat. J. B. innuendo) and thy Father (innuendo the Plaintiff) were both perjured, and I (innuendo the Defendant) will prove you both perjured. Upon not guilty, it was found for the Plaintiff, damages twenty pound. And it was moved in Arreſt of Judgment, that it was not averred that J. B. was the ſon of the Plaintiff; but it was held well enough, for that it was alledged, that the words were ſpoken to J. B. his Son. And it was adjudged for the Plaintiff. (13) 2 Cr. 444.

Lacy *verſus* Whetſton.

ASſumpſit. And declared, that whereas there were divers Controverſies between the Plaintiff and Defendant, concerning the right of the office of Steward and Clerk of the Court of Pleas in Peterborough, and concerning the right of the Court of Pypowders in Peterborough, and concerning the office of Stewardſhip and Clerk of divers Courts of the Dean and Chapter of Peterborough, and concerning an annuity of ſix pound thirteen ſhillings and four pence granted by the Dean and Chapter of Peterborough to J. S, And that whereas they ſubmitted themſelves to the order of Mr. Heron de præmiſſis fiend', the Defendant in conſideration, that the Plaintiff of his part aſſumed to ſtand to the Award of Mr. Heron, did aſſume to ſtand to, and perform the Award and Order of Mr. Heron de præmiſſis fiend', and alledges in facto, that Mr. Heron made an Award, that the Defendant ſhould have and enjoy the ſaid office of Steward and Clerk of the Pleas, and of the ſaid Court of Pypowders, without interruption of the Plaintiff; and that the Plaintiff ſhould enjoy the Stewardſhip of the Courts of the ſaid Dean and Chapter of Peterborough, and the Court of Pypowders without interruption of the Defendant; and alſo the ſaid annuity of ſix pound thirteen ſhillings and four pence, and that the Plaintiff ſhould make an Aſſigment of all his right in the ſaid office of Steward, and Clerk of the Court of Pleas in Peterborough, and of the Court of Pypowders there, to the Defendant in ſuch manner as he ſhall adviſe; and further awarded, for that the Defendant had exerciſed the ſaid office of Steward of the Courts of the ſaid Dean and Chapter without the aſſent of the Plaintiff, and for divers other conſiderations, and for the quieting of all controverſies between them, that he ſhould pay to the Plaintiff thirty pound within three months then next enſuing; and for not payment of the thirty pound he brought this Action. Upon non Aſſumpſit pleaded, it was found for the Plaintiff, and damages forty pound. And it was now moved in Arreſt of Judgment; Firſt, that the Arbitrement is not made according to the ſubmiſſion; for the ſubmiſſion was for the right of the office, (14)

fice, &c. And the Award is only, that the Defendant ſhall enjoy the office, and ſpeaks not of the right of the office. Sed non allocatur; for the Award is, that he ſhall enjoy the office, which doth imply the right of the office; and the Award is, that the Plaintiff ſhall make an aſſurance of the right of the Office, which is as much as the ſubmiſſion requireth. Secondly, it was moved, that the Award is, for that the Defendant had medled with the Office of, &c. without aſſent of the Plaintiff; and for divers other conſiderations, and for ending all Controverſies, that he ſhall pay thirty pound, &c. which is void; for that the Arbitrator Awards this for other Conſiderations, with which he was not to meddle, and for the ending of all Controverſies which is out of the Submiſſion; for he was to meddle only with the Controverſies concerning the offices, &c. and the ſubmiſſion is to his Award Super præmiſſis. Sed non allocatur; for other Conſiderations being but general parlance implies nothing, except expreſs Conſiderations were ſhewn, for otherwiſe none ſhall be intended: But if any had been found which were not within the ſubmiſſion, this would make the Award void for that part; ſo in that it is awarded for the ceaſing of all Controverſies between them, &c. it ſhall not be intended there where any except concerning the offices, if none be ſhewn in the Award or by Averment; and this being ſo in a general intendment, is good. And it was adjudged for the Plaintiff.

Poſt. 661. 858. 861.

Walter Dennis *verſus* Wells. Mich. 34 & 35 Eliz. Rot. 147.

(15) ERror of a Judgment and Execution ſued in the Common Bench. Error aſſigned was, for that the ſaid Wells recovered againſt the ſaid Dennis, a Debt of four Hundred Marks, and had Execution by Fieri facias; and upon it the Sheriffs returned, that he had levied ninety pound, parcel of the Debt, and had the Money in Court; and that Dennis the Defendant had no more Goods, unde, &c. And notwithſtanding Wells ſued a Capias ad ſatisfac' of the whole four hundred Marks, and an Exigent upon it: Upon which Dennis was outlawed; and to reverſe this Utlary and Execution, he brought a Writ of Error. And for this cauſe it was held clearly by the Court, that the Execution and Utlary was erroneous; for it ought to have made mention of the ninety pound which was levied before: and the Utlary and Execution was reverſed; but no Error being aſſigned or found in the Judgment that was affirmed. 44 Edw. 3. 12. 4 Hen. 7.

Callard *verſus* Callard.

(16) EJectione firmæ. The Caſe upon ſpecial Verdict was, that Thomas Callard being ſeiſed in Fee of certain Land, in conſideration of a marriage of Euſtace his eldeſt Son, ſaid theſe words (being upon the Land.) Euſtace ſtand forth, I do here reſerving an Eſtate for my own, and my Wives life, give thee theſe my Lands, and Barton to thee and thy heirs. The queſtion was, if this was a good Feoffment to Euſtace. Coke Attorney General for the Plaintiff, there are two points to be conſidered,

2 Rol. 7. 788.

ſidered. 1. If this ſhall inure as a Feoffment to the uſe of Th. and his Wife for their lives, and after to the uſe of Euſtace and his Heirs, or if it be an immediate Feoffment, and the reſervation void. 2. If it be not a Feoffment, if the words ſpoken, being in conſideration of Marriage, the uſe ſhall ariſe out of the poſſeſſion of Thom. and ſhall execute by the Statute of uſes, although it be without Deed. 1. It ſeemeth that it is a good Feoffment, and the uſe ſhall ariſe upon it, although the words (reſervant) are firſt; for ſo the Court is to conſider it, to make all to ſtand together, and in 22 Eliz. between Hare and Barton, it was adjudged that where one giveth Land to J. S. reſerving a rent to the Feoffer and his Heirs, Habendum to the Feoffee and his Heirs, the reſervation being before the Habendum, yet the Feoffment being by Indenture, it is well enough; for the Law ſhall marſhall it according to the intent; ſo here it ſhall be intended as following, and to ſhew the intent of the parties, and not to make it all void. 2. Admitting that the reſervation is repugnant, and it can be no Feoffment, yet the uſe ſhall ariſe and execute by Parol, for it is out of the Statute of Enrollments, for this doth not hinder the riſing of any uſes, but only upon Bargains and Sales, which ſhall not execute by Bargain and Sale, but by Indenture enrolled; but all other uſes are at the Common Law, which ariſe upon conſideration upon Marriage, &c. But he did agree that an uſe ſhall not ariſe upon general words or words ſpoken in futuro, but in præſenti; as to ſay, if you do ſuch a thing, I will give you my Land; but upon words ſpoken adviſedly, and by reaſon of a valuable and great conſideration, and ſpoken in præſenti, as I do here, &c. which is an immediate gift. And he had ſeen the Record of the Caſe, 12 Eliz. Dyer 296. and the words were upon communication of a Marriage to be had. I will aſſure after my death Old Acre to my ſon, it was ruled no uſe ariſeth; and the reaſon ſeemeth to be, that the words were ſpoken in futuro; and therefore if one ſaith to his ſon, in conſideraton he is his ſon, I do give thee my Manor of D. this is ſufficient to raiſe an uſe; for they being words ſpoken with adviſement, and for conſideration, it ſhall be intended a gift of the Land. Gawdy, I have not ſeen any Book, that at the Common Law a uſe ſhall ariſe by Parol, but in a Bargain and Sale which is by reaſon of the conſideration given for the Land, and that is the reaſon that a Fee doth paſs without the word Heirs, and in this caſe an uſe ſhall not ariſe, for it appeareth his intent was to paſs the Land by way of Feoffment, when he ſaith, Stand forth, I do here give thee this Land, &c. which is void by way of Feoffment, for the reſervation preceeding it is repugnant to the Livery, for it cannot inure in futuro, Fenner, the reſervation is void, and it ſhall inure to Euſtace preſently; and an uſe by Parol upon good conſideration is ſufficient. Clench, it ſhall inure as a Feoffment to the ſon, and an uſe ſhall ariſe to the Father, &c. and ſo the intent of all the parties ſhall be obſerved. And at another day it was moved again. And Popham ſaid they were all reſolved that Judgment ſhall be given for the Plaintiff, (which claimed under Euſtace) And being moved to ſhew the reaſons of their Judgment, they would not; But Gawdy ſaid, he was clear of opinion, that an uſe ſhall not ariſe by parol. Popham and Fenner ſaid, they were clear of a contrary opinion. And Popham ſaid, that 7 Ed. 6. It was adjudged, that an uſe may riſe by

Ant. 279.

Moor 544.

parol, and he could ſhew the Record of it: Fenner ſaid it was a good Feoffment, but would ſay no more. And it was adjudged for the Plaintiff.

Bold *verſus* Bacon.

ACtion for ſlandering his Title, and declared that whereas William Bacon Brother of the Defendant had married one Iſabel, and died, and afterwards the Plaintiff married her; and whereas the Plaintiff and the ſaid Iſabell, as in her right, were ſeiſed of divers Lands as well Free-hold as Copy-hold in Fee; and had made a Surrender of the Copyhold to the Plaintiff and his Heirs; and of the Freehold hath levied a Fine to the uſe of the Plaintiff and his Heirs; And that whereas the Plaintiff intended and had offered to ſell the ſaid Land for payment of his Debts, &c. and had offered them to J. Cleyburne in Sale, the Defendant well knowing the ſame, and envying the Eſtate of the Plaintiff, and to ſlander his Title to the Premiſes, ſaid theſe words, She (innuendo the Wife of the Plaintiff) was never the lawful Wife of my Brother William Bacon, for ſhe was married before to one Nicholas Killingtree who is yet alive, which Marriage is fully to be proved, and hath been already as fully proved as any other Marriage can be proved, and that by reaſon of theſe words none would buy the Land, &c. to his damage of 300 pound: upon not guilty pleaded, it was found for the Plaintiff, to his Damage Twenty pound. And it was now moved in Arreſt of Judgment, that upon the matter the Action lieth not, for that which is alledged is no ſlander, for it may be that Killingtree was married to her infra annos nubiles, and they afterwards diſagreed, or that a divorce was had between them for this cauſe; and then although Killingtree be alive, yet it might be a Lawfull Marriage with William Bacon, and by conſequence with the Plaintiff; and ſo is no direct ſlander. Gawdy and Clench conceived the Action lieth; for the Action is brought for ſlandering his Title, and not his perſon; and the Law intends it was a good marriage with Killingtree, and no divorce was, except the contrary be ſhewn; and thoſe that heard the words knew not if a divorce was. Fenner contra, this Action lieth not but by reaſon of the prejudice in the Sale; and this appeareth not, for upon a Surrender or Fine by a feme covert, ſhe is examined, and it is good till the Baron doth defeat it, which appeareth not here, and an Action doth not lie for ſlander, but when it is expreſs, and not by argument; and here it is by way of Argument, for that K. was married to her, and is alive, and ſo may be collected that ſhe is not the Lawfull Wife of the Plaintiff; and the Surrender and Fine not good. Popham agreed. 1. Becauſe it was ſaid it was but by way of argument, and all the words may be true, and yet ſhe may be the lawfull Wife of the Plaintiff, for it may be ſhe was precontracted to the Plaintiff, and afterwards married to K. and then to Bacon, and he died, and then divorced from K. and married to the Plaintiff; and ſo there may be an evaſion of the concluſion. 2. Here is no direct ſpeech, but oblique; and an Action lieth not but for words directly ſpoken, and cited Anne Davies caſe 4 Co. f. 17. ſo if J. S. hath Land by diſcent; and ſells it to J. D. and he offers to ſell it to B. and one ſaith to C. in Common diſcourſe, that J. S. is a Baſtard, and this cometh to the ears of B. yet J. D. ſhall have no

2 Cr. 184.

Action

Action, for it was not ſpoken directly to ſlander the Title of J. D. but oblique this is no ſlander; but if he had ſaid to B. take heed how you buy the Land, for J. S. was a Baſtard, Action lieth, for it was directly ſpoken to that purpoſe to ſlander the Title, Et Adjournatur.

Buckhurſt *verſus* Newnton.

PRohibition for ſuing for Tythes of Faggots, of Oake, and Elme, cautele making his Libel for Faggots, which were of Beech and Thorne; the Defendant prayed a conſultation, ita quod he ſhould not meddle with the Faggots of Oake and Elme, for otherwiſe the party that maketh the Faggots may per cautelam put in a ſtick of great Wood into the Faggots, and ſo prejudice the Parſon of all the Tythes of the reſidue. But the Court ſaid, if it be ſo, the party muſt ſhew the ſpecial matter pro conſultatione Habenda, that the Oake and Elme are ſo intermixt, that he cannot do otherwiſe; and pray a conſultation as to that which was Thorne and Beech. And ſo it was done in Molyns and Dawes caſe, where ſuch a ſpecial conſultation was granted upon ſuch ſpecial Plea; but as it is he can have no conſultation for any part. (18) Yelv. 119.

Pannel *verſus* Fenn, Int. Mich. 35 & 36. Rot. 26. vel Hill. 36. rot. 56.

TReſpaſs upon ſpecial verdict; the Caſe was, John Fenn was poſſeſſed of a Leaſe for years, and having Iſſue John and George his Sons, and Margaret his Daughter, maketh George and Margaret his Executors, and deviſeth his Term to his Executors until ſuch time as all his Debts and Legacies be paid, and that they ſhall have levied all charges they ſhall be put unto by any ſuit touching his will, or by any other means in the due Execution of his Will, and the reſidue of his term then unexpired, he deviſeth to John his Son; and to the Heirs of his body, and afterwards to George and his Heirs, and dieth; the Executors enter generally into the Lands, and Margaret ſells the Term to the Plaintiff, and afterwards George ſells it to the Defendant, and John dieth without Iſſue, and they further find that the Debts are not paid. The queſtion was, if George and Margaret take this Term as a Legacy, or as Executors: and Secondly, if the general entry be an Execution of the Legacy; and as to the firſt, the Juſtices reſolved, if they take it as a Legacy, then the Plaintiff and Defendant are Tenants in Common, and then an Action of Treſpaſs doth not lie; for although the Defendant who had the Eſtate of George doth not plead the Tenancy in Common, but pleads not guilty, yet this appearing to the Court by the verdict, the Action lieth not, but they all reſolved they do not take as a Legacy, but as Executors; for no more is given to them by the Will, then the Law giveth to them as Executors, then the deviſe is void, and they take as Executors, for it being given to them until Debts and Legacies be paid, this the Law willeth; and when it is given to them until they be ſatisfied of the charges they are put unto by the Will, this is no more then the Law giveth, for by Law they are to be ſatisfied of all ſuch charges, if the charges do not ariſe by their own default. But admitting the deviſe be good, yet their general (19) 1 Rol. 618. 9. 924. Moor. 350. Gould. 185.

entry doth not execute the Terme in them as a Legacy; for when a particular Intereſt is given, and the reſidue to another, this entry ſhall not be an election to take it as a Legacy, except there be an expreſs Declaration of their intent, for otherwiſe they ſhall be charged for the reſidue as a devaſtavit, which the Law will not inforce; but if the entire Terme be given to the Executors, it ſhall be otherwiſe, for there is no miſchief, and it was adjudged for the Plaintiff.

Ant. 223. Co. 10. 47. Poſt 387. Poſt 816.

Stich *verſus* Wiſedome.

(20) ACtion for theſe words, Many an honeſter man hath been hanged, and a Robbery hath been committed, and I think he was at it, and I think he is a Horſe-ſtealer: It was moved after verdict, that an Action lieth not without an expreſs averment he was ſo; Curia contra, they are a great ſlander, if the Defendant ſheweth not a good cauſe of his thinking; and it was adjudged for the Plaintiff.

Nichols *verſus* Badger.

(21) ACtion for theſe words, Thy credit hath been called in queſtion, and a Jury being to paſs upon it, thou foyſtedſt in a Jury early in the morning, and the Lands thou haſt are gotten by lewd practices. It was adjudged that no Action lay, for the words are too general.

Mo. 428.

Banks *verſus* Stacy.

(22) ACtion for theſe words, Thou art a forſworne Jack in the Court of A. thou didſt ſwear away Twenty Shillings from B. and avers that the Court of A. was a Court Baron; And the Plaintiff had Judgment although it was not ſhewn between what perſons or in what Action he was ſworn.

Ant. 342. 297.

Colt *verſus* Howe, Trin. 36. rot. 897.

(23) COvenant, for that the Defendant by Indenture did Covenant that he his Executors and Aſſignees would repair a Mill let to the Defendant, and alledgeth that the Mill was defective in reparations, and the Defendant his Executors and Aſſignees did not repair it, and it was demurred upon the Declaration, becauſe he did not alledge that he nor his Executors or Aſſignees did not repair it, for if any of them did repair it, the Action doth not lie; and it ought to be alledged in the diſjunctive, not in the conjunctive. And of that opinion was the Court, that the breach was not well aſſigned; and though this fault was not aſſigned by the demurrer, yet he ſhall take advantage of it; but upon the motion of the Court the Defendant waved his demurrer, and the Plaintiff amended his Plea, and the Defendant pleaded to Iſſue.

Weeks Caſe.

ACtion for theſe words, Weeks aſſaulted me, and others, to have robbed us, but we were too ſtrong for them and eſcaped, adjudged actionable; for if one ſaith that J. S. lay in wait to do a Robbery or Murder, an Action lieth tho no Felony was done. (24) Moor 409. Ant. 6.

Berry *verſus* Greene.

TReſpaſs upon ſpecial verdict, The Caſe was. A Copyholder ſurrenders to the uſe of J. S. the Lord without reaſonable cauſe refuſeth to admit him; the queſtion was, if he might enter without admittance. And the Court held clearly he could not enter, unleſs there be a ſpecial Cuſtome to warrant it; for after the ſurrender and before admittance, he which maketh the ſurrender continueth in poſſeſſion, and not the Lord or ceſty a que uſe, and he ſhall have Treſpaſs againſt any that enters, as if a Copyholder ſurrenders to the uſe of his Will, yet it is clear he ſhall have it during his life; ſo in the principal caſe, Ceſty a que uſe ſhall not enter nor have Action before admittance. (25) 2 Rot. 264. 1 Cr. 283. 2 Cr. 403. Co. Litt. 62. a.

Atterton *verſus* Harward.

ACtion upon the Caſe, and declareth that a Capias ad ſatisfaciendum upon a Judgment was awarded againſt the Defendant to the Sheriff of Suff. who directed his Warrant to the Plaintiff as his Baily to ſerve it, and that the Plaintiff aſſumed to the Sheriff to ſave him harmleſs againſt all eſcapes, and that by force of the Warrant he arreſted the Defendant, and the Defendant intending to make the Plaintiff to be charged, eſcaped, for which the Plaintiff in the firſt Action, brought an Action againſt J. Colt then Sheriff, upon this eſcape, and recovered, and Colt brought an Action againſt the now Plaintiff upon his Aſſumpſit; and for this tort he brought his Action: Upon not guilty pleaded, it was found againſt him. And it was moved in Arreſt of Judgment, that there is no ſufficient cauſe in the Declaration to maintain an Action, for although the Sheriff may have an Action of the Caſe againſt the Priſoner who eſcapes, as it was adjudged in Hill and Holts Caſe, yet the Baily ſhall not have it. And of that opinion was the Court, for the Baily was not chargeable to the Sheriff by Law, but by his Aſſumpſit; and this being his voluntary act, ſhall be no cauſe to charge the Defendant, but ſhall onely make himſelf chargeable. But they agreed, if the Baily had been chargeable by Law, without ſuch promiſe, an Action did lie for him againſt the Defendant, who cauſed him to be charged. (26) Ant. 53.

Watkinſon

Watkinſon *verſus* Man.

(27) UPon ſpecial Verdict the queſtion was, if a Leaſe made by a Prebend is good by the Statute of 32 H. 8. for he is not ſeiſed in Jure Eccleſiæ ſed præbend. And it was adjudged good, for a Prebend is not excepted, but only Parſons and Vicars, and being not excepted, he is as Biſhops. And Popham ſaid, in Dr. Dales Caſe, for a houſe Juxta Pauls, it was ſo adjudged, and ſo had been twice adjudged in his experience. And Fenner ſaid, it was ſo adjudged in the Caſe of a Treaſurer of a Church.

Termino Michaelis 36 & 37 Eliz. in Communi Banco.

James Apharry *verſus* Roger Bodingham, and the Petit Jury.

(1) ATtaint upon the Statute of 23 H. 8. for that the Petit Jury at the Aſſiſes at Hertford, gave a verdict for Bodingham, and aſſigned the Faux ſerement in this, that whereas R. Bodingham brought Debt againſt J. Apharry as Heir to G. his Father, he pleaded Riens per diſcent unde debitum prædict' ſolvere potuit, &c. to which the ſaid R. Bo. replied that he had by diſcent, viz. at Suſ. in the ſame County, and Iſſue was taken upon it; And evidence was given that certain Lands in S did deſcend to him as Son and Heir to his Father; but he ſhewed a deed indented made 27 Eliz. between himſelf of the one part, and Walwin and others of the other part, by which he covenanted for natural affection, &c. to ſtand ſeiſed of the Land to the uſe of himſelf for life, remainder to his firſt Son in Tayle: and ſo to his other Sons, the remainder in Fee to himſelf, in which there was a clauſe to give power to make Leaſes, and to revoke the uſes; and the Petit Jury notwithſtanding this conveyance conceived it to be fraudulent, and ſo void by the Statute of 13 Eliz. did find that he had aſſetts. Nota the Action brought by Bod. was 33 Eliz. long time after the conveyance made by Apharry, but it was proved that the Plaintiff Apharry had notice of the Obligation before the making of the conveyance. Glanvil for the Defendant; notwithſtanding this conveyance, the remainder that is limited to his right Heirs is his ancient reverſion; and this he had by diſcent, and the Iſſue being that he had riens per diſcent, and he having this reverſion by diſcent, the Iſſue is found againſt him, though the conveyance had been bona fide. But to that it was anſwered, that the Iſſue was he had nothing by diſcent, unde debitum prædict' levari poteſt; and although he had this reverſion by diſcent, yet it being a reverſion upon an eſtate in Tayle, it is not extendible for this Debt: quod fuit conceſſum per curiam, abſente Anderſon. It was then moved by the Councel of the Plaintiff, that this is no fraudulent conveyance within the Statute of 13 Eliz. (for it is clear that the Statute of 27 Eliz. doth not touch it) for a conveyance by the Statute of 13 Eliz. muſt be made by the Debtor, and not his Heir or any other; for the Heir is not a Debtor in reſpect of his perſon, but in reſpect of the Land. Walmſly, it ſeemeth that it is within the Statute, for the Heir is a Debtor, which is proved by the Writ againſt him, which is in the debet & detinet, whereas an Action againſt the Executors is in the detinet only, and ſo is within the intent of the Statute, but the grand

Co. 10. 80. b. Poſt 355.

Co. 5. 316. 35. b Ant. 326.

Jury

Jury may find it ſpecially if they will, to which Owen and Beaumond did conſent, that the conveyance of the Heir ſhall be fraudulent as a conveyance by the Father, which is the principal Debtor; and ſo they conceived it clearly, but the grand Jury gave a general verdict, and affirmed the firſt verdict. Nota, when the grand Jury was ſworn, the Juſtices demanded of the Crier what manner of Oath he gave to them, for the Oath ought to be ſpecial: But Scot the Prothonotary ſaid it ought to be genetal to try the Iſſue in the attaint; to which the other Clerks agreed.

(2)

QUare Impedit, It was reſolved if there be two Parſons of one Church, and each of them hath the entire cure of the Pariſh, and both the Benefices of the value of Eight pound per annum, one of them dieth, and the other is preſented, this is a plurality within the Statute of 21 H. 8. cap. 13. and is within the intent of the Statute, that none ſhall have two livings or Benefices with cure. 21 H. 8. c. 13.

Jackman *verſus* Hoddeſdon.

(3)

TRespaſs; upon not guilty pleaded, the Jury being at the Bar, The queſtion was, upon the forfeiture of a Copyhold in Layton Buſſard, by reaſon of a Leaſe for years made by a Copyholder. And it was held per curiam, that a Leaſe for years of Copyhold Land by Indenture or parol is a forfeiture, unleſs there be an expreſs Cuſtome to warrant it. And thereupon it was ſhewn on the part of the Copyholder, that there were Leaſes made by Indenture, 27 H. 8 and divers times ſince, ſome Twenty, and ſome Forty years ſince, of Copyhold Land of that Mannor. But the Court held that was not ſufficient, for they are of too late time to prove a preſcription, which ought to be from time, whereof, &c. And the Court held that a wilfull refuſal to pay a Fine is a Forfeiture, if the Fine demanded by the Lord be reaſonable, where the Fine is Arbitrable at his Will, and the Jury is to try whether it be reaſonable or not. And the Cuſtome of the Mannor was here ſhewn to be, that the Lord was to ſeiſe the Land, till Fine was made with him for it, which was held a reaſonable Cuſtome. And upon evidence it was held, that if a Tenant be amerced and dieth before the Lord hath levied it, that it is loſt, for it is quaſi actio perſonalis. Poſt 499. 1 Rol. 507; Poſt. 779. Co. Lit. 59. b.

Vaughan *verſus* Comitem Bedford, the Biſhop of *London* and Gainsford.

(4)

QUare impedit, for the Church of Littleton. It was held per curiam upon evidence, that a Corporation may be known by two names; and if it hath been ſo known from time, &c. a grant made by either of the names is good.

Lyne *verſus* Backhouſe.

(5)

ACtion for theſe words, He hath beaten me and taken away my purſe, and Twenty ſhillings in Money. It was held per curiam, that the words are not actionable (abſente Anderſon) for it may be intended he took it as a Treſpaſſor, for he chargeth him not with Felony.

Underhill

Underhill *verſus* Jo. Brooke & Margaret Uxorem.

(6) DEbt againſt them as Executrix of her former husband upon an Obligation of Two hundred pound. The Defendants by J. G. their Attorney plead. viz. prædict' Johannes & Margareta by their Attorny plead that they were divorced before the Writ purchaſed, and it was thereupon demurred in Law. 1. Becauſe it is not alledged that the divorſe did continue, for it may be it is repealed, Sed non allocatur, for it ſhall be intended to continue, if the contrary be not ſhewn; Secondly, becauſe they plead as Baron and Feme, & prædict' Johannes & Margareta, and that after imparlance; Sed non allocatur, for they do not plead & prædict' Johannes & Margareta uxor ejus; for then it ſhould be an Eſtoppel; but they plead according to good form; and it was adjudged that the Writ ſhould abate.

Deux *verſus* Jefferies.

(7) 1 Rol. 939. DEbt upon an Obligation; the Defendant pleads that the Plaintiff by Indenture, &c. did Covenant that he would not ſue the Bond before Michaelmas, and thereupon demanded Judgement, ſi actio, &c. intending that the Action being ſuſpended for that time, was gone for ever, And it was thereupon demurred, and argued by Fleming for the Plaintiff, and by Drew for the Defendant, and 21 H. 7. 24. 4 H. 7. 6. were cited. But the Court without further argument reſolved for the Plaintiff, for it is only a Covenant, and ſhall not inure as a releaſe, and it is not to be pleaded in Bar, but the party is put to his Writ of Covenant, if he ſued before the time. But if it had been a Covenant that he would not ſue it at all, there peradventure it might inure as a Releaſe, and to be pleaded in Bar, but not here; for it never was the intent of the parties to make it a releaſe. And it was adjudged for the Plaintiff.

Pipes Caſe.

(8) ASſumpſit, and declareth that whereas the Defendant was arreſted for ſurety of the Peace, in conſideration the Plaintiff would be bayl for him, he did aſſume, &c. and alledgeth in facto that he became Bayl for him, but ſaith not before whom; and this matter after verdict being alledged in arreſt of Judgment, it was held to be good cauſe of ſtaying it, by Walmſly and Beumond, for the conſideration ought to be preciſely alledged to be performed, and therefore he ought expreſly to have alledged before whom he had entred into Bayle, that it might appear he had authority to take Bayle. Sed adjournatur.

Samms *verſus* Foſter.

(9) Co. 8. 124. ACtion of Trover and converſion, of an Ore-hide of the Plaintiffs in Middleſex, The Defendant pleaded that the City of London is an ancient City, and that there is a Cuſtome there, that ſi aliquis extraneus forinſecus e libertate ejuſdem civitatis buy any thing de alio forinſeco a libertate prædict', that it ſhould be forfeited to the Major and Commonalty of the ſaid City, and ſaith that the Plaintiff

Plaintiff extraneus a libertate, did buy the ſaid Ox-hide of another foreigner, whereupon he ſeiſed it in London to the uſe of the Major, &c. abſque hoc that he did find it, and convert in Middleſex; And it was thereupon demurred. Glanvil argued for the Plaintiff, firſt, that it was not a good or lawful cuſtom, and in proof thereof cited the caſe 36 H. 6. of Jewels of the Kings ſold, and 21 H. 7. 40. 3 Eliz. Dy. 186. and 246. And the form of the pleading he ſaid is not good, viz. ſi aliquis extraneus e libertate, but doth not ſhew where the liberty is, and the traverſe is not good, for he ought to traverſe every County, beſides London, and not Middleſex only. Anderſon and Beamond conceived the form of the pleading to be ill; but for the matter of the cuſtom it ſelf they doubted. Owen ſaid the cuſtom was good, and had been allowed before theſe times. Et adjournatur.

Taverner *verſus* dominum Cromwell.

TResp aſs. The Caſe upon demurrer was: divers Copyholds were granted by one Copy, and ſeveral Habendums and ſeveral Reddendums for every of them, but they all began at one time, and were to end at one time. The Copy-holder committed waſte in one of the Copy-holds, the queſtion was, whether that ſhould be a Forfeiture of them all. Secondly, for this Copy-hold wherein the waſte was done, which was cutting down trees, the Copy-holder preſcribes, That every Copy-holder of that parcel of wood, hath uſed to cut down trees there growing; the queſtion was, if ſuch a preſcription for one Copy-holder only was good. Thirdly, whether the not coming to the Court upon Summons at the Church becauſe of ſeiſure, was the third queſtion. For the firſt, all the Juſtices reſolved that they are ſeveral grants, and as ſeveral Copies, and the forfeiture of the one is not the forfeiture of the other, and the ſeveral Habendums and Reddendums make them ſeveral in themſelves, although they be all by one Copy. V. 4. Co. 27. a. For the ſecond they held the preſcription good, for Walmſly ſaid there is a difference between a preſcription for Freehold Land and for cuſtomary Land; for cuſtom which concerneth Free-hold, ought to be throughout the County, and cannot be in particular place 45. Aſſ. But a Preſcription concerning Copy-hold Land is good in a particular, for de minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copy-holder there, for which he might preſcribe; and Beamond agreed this difference, and cuſtom to have profit a prender, priviledge, or diſcharge, may very well be in a particular, and by Owen it was ruled accordingly in Collis's caſe in the Queens Bench: For the third they conceived it to be no cauſe of forfeiture, for it ſhall not be a forfeiture but upon refuſal to perform his ſervices, or a wilful not payment of Rent, or wilful abſence from Court, but in this caſe it may be he had no notice of the Summons, and knew not of the Court, for the Summons properly is to be to his perſon or at his houſe, or it ought to be averred, he had notice thereof, And Exception was taken to the Summons, becauſe it was but four days before the Court, whereas it ought to be fourteen days at the leaſt, and of that opinion was Walmſly; but the other Juſtices were againſt him therein; for they ſaid the Summons was well enough for the

(10)
1 Rol. 507. Co. 4. 27. a.
Co. 4. 31. b. Poſt. 390.
Poſt. 506.
1 Cr. 217.

time; and it was adjudged for Taverner the Copy-holder. Vide Cokes Entries 272 & 288.

Bach *verſus* Oneſly, Paſc. 33. Rot. 409.

(11) Ant. 264.

REplevin; The Caſe upon demurrer was, that one Roger Cooper made a Leaſe for years to the Plaintiff, and afterwards levied a Fine of the Reverſion to Noke, who before Attornment entred and Ouſted the Leſſee, and enfeoffed the Avowant; the Plaintiff re-enters, and for Rent arere after the Feoffment, and re-entry, the Defendant avoweth; and the queſtion was, if the Avowry were maintainable; and after divers arguments at the Bar, it was reſolved this Term by Walmſly, Beamond and Owen, that the Avowry was not maintainable for want of Atturnment; Co. 5. 113. for as the Conuſee himſelf could not avow without Atturnment, no more ſhall he that claims in the per from him, as his Heir or Aſſignee, for as the folly of the Conuſee (who might have had a quid juris clamat, and compel the Tenant to Attorn) ſhall prejudice himſelf, ſo it ſhall his Feoffee, but the Lord of a Villain, or he who cometh in by Eſchets ſhall avow without Atturnment, for they come in in the poſt, and no folly can be intended in them; and Walmſly ſaid the reaſon that an Atturnment ſhall be upon a Fine is becauſe the Tenant is not to take Conuſans of every Fine, until it be notified to him, by bringing a Quid juris clamat, or a per quæ ſervitia; and therefore it is not reaſon, that he by his re-entry ſhall be compelled to take Conuſans of the Fine, and inforce him to Attorn, who otherwiſe was not by Law compellable; for the Law will not compel him to take notice of a Feoffment by the Conuſee, who is quaſi a ſtranger to him; but there is ſo great privity between the Leſſor and Leſſee, that he ought at his peril to take notice of acts done by the Leſſor upon the Land, whereof by intendment he cannot be ignorant; but of acts done by a ſtranger, the Law enforceth him not take knowledge; and the caſe of Littleton, that a re-entry ſhall be an Atturnment is quaſi a maxim and reaſon of Law; Co. Litt. Sect. 576. 7. for otherwiſe it is very hard, and ſhall not therefore be conſtrued ſo largely, as to extend to the Feoffment of another, for it may be the Leſſee was beyond the Sea, or in Priſon, at the time of the Feoffment, and therefore no equity is given to this maxim, wherein is no exception, and therefore they held that the Avowry was not good for want of Atturnment; but they in their Arguments did conceive, that if in this Caſe the Conuſee had deviſed the Reverſion and died, or had died without Heir, ſo as the Reverſion had Eſcheated, that the Deviſee or Lord might have avowed without Atturnment: And it was adjudged for the Plaintiff, 5 Co. 113. Nota, Thwaytes Caſe in the Court of Wards was cited to be ruled by the advice of the Juſtices, that where a Reverſion was granted, and before Atturnment, the Grantor made a Leaſe for years, that Atturnment afterwards cometh too late.

Pethouſe *verſus* Crane & alios.

TReſpaſs: The Caſe upon demurrer was, Tenant for life remainder in tail, remainder to the right Heirs of the Tenant for life, the Tenant for life acknowledged a Statute, and dieth, the Tenant in tail dieth without iſſue; the queſtion was, if the right Heir of the Tenant for life be bound by this Statute, and the Land liable in his hand: And all the Juſtices conceived, that the Land is liable, for the right Heir hath it by diſcent, as the caſe 5 Ed. 4. 2. where ſuch a Tenant for life granted a Rent charge, and if the Tenant for life had granted the remainder over, as he might, the Grantee ſhould have held it charged, Sed adjournatur, and was not adjudged this Term. (12) Ant. 350. Co. 104. 2.

Freeſton *verſus* Stanford & alios.

TReſpaſs: the Defendant pleadeth, that the place where is called White-acre, &c. and that it is his Free-hold. The Plaintiff replieth, that the place where is called Black-acre, alius quam in Barra. The Defendant rejoyneth that the Acre mentioned in the Bar, and the Acre mentioned in the Replication, are one and not divers. And it was thereupon demurred, and adjudged without argument to be no Plea; for it is repugnant to ſay they are both one, when the Plaintiff by his Replication hath affirmed upon record that it is another; for when he ſaith alius it cannot be idem, and ſo are 14 H. 8. 4. 27 H. 8. 7. and Walmſly ſaid it was ſo adjudged 28 Eliz. wherefore it was adjudged for the Plaintiff. (13)

Hollingworth *verſus* Aſcue, Paſc. 35 Eliz. Rot. 1255.

DEbt upon an Obligation of three hundred pound, the Defendant demanded Oyer, and upon Entry in hæc verba, it appeared that it was a Statute Staple of three hundred pound acknowledged by the Defendant, and two other before the Major of Lincoln; but becauſe the Seal of Lincoln annexed thereto was not a Seal of two pieces, according to the form of the Statute of Acton Burnell; it had been ruled before betwixt theſe parties, That it was not a Statute-Staple (but void as a Statute-Staple) wherefore he now brought his Action of Debt as upon an Obligation at the Common Law; And it being hereupon entred, the Defendant pleaded, that it appears, that two others were bound joyntly with him, who are yet alive and not named: Judgment ſi actio, &c. againſt him only; and upon this Plea it was demurred. Harris Serjeant argued for the Defendant, That the Writ ſhould abate, becauſe they three are joyntly obliged, and none of them without the other can be Sued, as 4 H. 7. and 17 Eliz. are. Alſo Debt cannot be brought upon this Statute, for being void as a Statute, it cannot be brought as upon an Obligation. And Debt lies not upon a Statute-Staple, as appears by 4 Ed. 4. 5 Ed. 2. Debt. 167. Owen Juſtice held, That the Action lay, for he doth not declare upon the Statute, but he declares that he was bound by Obligation. And when you ſay that you and two others acknowledged a Statute unto him, that is not any anſwer unto him. Alſo the Plea is not in abatement, becauſe it is not averred that the other two did (14) Ant. 319. Antè 231, 307 Ant. 319.

enſeal and deliver it as their Deed; for otherwiſe it ſhall not be intended but that the now Defendant ſealed and delivered it only; and ſo is the Courſe of pleading, as appears in 28 H. 6. & 17 Eliz. Beamond accord in omnibus; For a Defendant ſhall not take advantage of a joynt Bond, unleſs he avers that the others delivered it alſo. And that Debt lies upon a Statute, or it is extendable at the election of the party. Walmſly. The Statute compriſeth two things by the words Teneri & Obligari, it is an Obligation: By the words Conceſſit quod levetur de terris; it is a Statute whereupon Debt may be brought. Anderſon Chief Juſtice. Debt may be brought upon a Statute-Staple or Merchant; for the words Obligari & Teneri make it an Obligation, although it be not a Statute to ſome intent; and by delivery of the party it is an Obligation, but not a Statute until the Majors hand be thereto; and a delivery may be without words of delivery, as it hath been adjudged, that one made a Releaſe, and caſt it upon the Table and ſaid, There, this will ſerve, This is a good delivery. And to aver that the other two delivered it, he conceived it to be needleſs; for it ſhall be intended to be ſo if the Plaintiff doth not ſhew the contrary; wherefore, &c. Et adjournatur; but afterward in the next Term it was adjudged for the Plaintiff, that Debt well lies upon the Statute as upon an Obligation, and it ſhall not be intended that the others ſealed it without Averment, &c. And a Writ of Error was brought, which is yet depending. Vide poſtea Hill. 38. B. R. placito 8. & Mich. 39. placito 12.

Ant. 319.

Co. 9. 137. a. Ant. 7. Co. Lit. 36. a.

Poſt. 461. 494.

Sacheverel *verſus* Bagnoll.

(15) WAſte: The Plaintiff counts, that one Eliz. Bingham was ſeiſed in Fee, and by Deed infeoffed Sir Gerviſe Clyſton, and others in Fee to the uſe of the ſaid Eliz. for life, and after to the uſe of Eliz. her daughter for life, remainder to the Plaintiff in tail. That Eliz. the Feoffer died, and Eliz. the daughter took the Defendant to Husband, who committed Waſte, and his Feme died; and for that Waſte done during the coverture, This Action was brought (and it was not brought in the Tenet nor Tenuit, wherefore for this cauſe the Court held the Writ to be ill) the Defendant pleads in Bar (confeſſing all the matter precedent) a concord and ſatisfaction, viz. That the Feoffees gave and delivered unto him the Deed of Feoffment to uſes, which he delivered to the Plaintiff in ſatisfaction of the Waſte, &c. And it was thereupon demurred and argued by Savell, That it was not any Plea. Firſt, Becauſe it is an Action founded upon a Statute, and in the Reality, wherein concord is not any Plea, and in proof thereof relyed upon 1 H. 7. & 13 H. 7. where it is held, that concord is not any Plea. Secondly, Becauſe the concord alledged is by the Delivery of a Deed to the Plaintiff which belonged unto him, and ſo it cannot be any ſatisfaction, as 33 & 38 H. 6. a Deed of the gift of intail, to the iſſue intail cannot be any ſatisfaction; So 9 Ed. 4. & 19 Eliz. Oneley's caſe; accord upon this reaſon; wherefore, &c. Warberton e contra. First, the Writ of Waſte is not Tenet nor Tenuit, and therefore it is not good, becauſe it is variant from the form of the Regiſter, for it ought to have been the one way, and to make his count ſpecial: And of that opinion was the Court, that for this cauſe the Writ was ill; As alſo becauſe the Writ ſuppoſeth, that the Baron fecit vaſtum;

2 Rol. 31. 833. 1 Rol. 266.

1 Rol. 128.

vaſtum; whereas the Baron being charged as Tenant in right of his Feme, the Writ ought to have been fecerunt vaſtum, for ſo is the form in the Regiſter, and ſo is N. Br. and to this opinion the Court agreed, the form alſo of the Writ was ill for this cauſe, for in Debt againſt them for Debt of the Femes, it ſhall be debent, &c. The Court alſo conceived that the Writ lies not againſt the Baron for Waſte committed by him in the time of his Feme, for he is to be charged by reaſon of his Feme, and joyntly with her, and ſhe being dead, the Action is gone; for it is but a perſonal wrong done by her; but the Protonotaries informed the Court that an Action of waſte hath been brought againſt the Baron for waſte done in the life of the Feme; and the Writ was Quod tenuit in jure Uxoris; and it hath been maintained; but the Court ſaid they greatly marvelled at it. Vide 10 H. 8. 11. But for the matter all the Court reſolved that it was a good Bar, admitting that the Action lies; for it is in its nature perſonal; for damages only are to be recovered, and not the place waſted; and in every Action perſonal, concord with ſatisfaction is a good Plea; and therefore in an Attaint Concord is a good Plea; but where Land is to be recovered by a Writ of Waſte, it may peradventure be otherwiſe, as 11 & 13 H. 7. & 10 Eliz. 2. Dy. 277. are; and here the delivery of this Deed is good matter of ſatisfaction; for the Deed did not appertain to ceſtuy que uſe, but to the Feoffees by the common Law, and the Statute doth not transfer it unto him; then by conſequence the gift by the Feoffees to the Defendant is good, and the delivery thereof by him to the Plaintiff is good ſatisfaction, and Walmſly cited, That it was adjudged in one Ekins caſe, wherein he was of Counſel, that the Deed appertained to the Feoffee, and not to ceuſtuy que uſe; Wherefore it was adjudged for the Defendant.

Co. Littl. 54. a. Poſt. 462. 2 Rol. 834. Co. 5. 75. b. Co. 9. 78. b. 2 Cr. 342. Ante 194. 2 Cr. 217. 2 Rol. 31. Poſt. 496.

Hill *verſus* Hart.

(16)

WAſte: a ſpecial Verdict was found, that the Plaintiff had but a third part of a Reverſion in Common with two others; and whether he ſhould have Waſte, the others not named, was the queſtion; for it was ſaid that this Action is quaſi in the reality; but the Court held, that the Action lies not for one Tenant in common ſole; for damages and the place waſted are to be recovered by moities or a third part; it is alſo inconvenient that the third part ſhould be recovered and delivered in Execution. But it was moved, that this matter of Tenancy in Common ought to have been pleaded; otherwiſe the Defendant ſhall not take advantage thereof; for the iſſue here was joyned upon a collateral matter, viz. upon the deviſe of a reverſion, &c. But the Court ſpake not thereto. Sed adjournatur.

Moor 388. Co. Lit. 197. b.

Brown *verſus* Peys.

(17)

TReſpaſs: upon a ſpecial Verdict, the caſe was ſuch, John Warners was ſeiſed of the Mannors of Warners and of Church-hall, and deviſed the Manno of Warners to the eldeſt Son of his Cozen Richard Foſter in Fee, and deviſed the Manno of Church-hall to one Margery Waters for life, remainder thereof To ſuch of my Cozen Richard Foſters Children as ſhall then be alive and have the Mannor of Warners, and died; the eldeſt ſon of Rich. Foſter entred into the Manno of W. and alien-

Co. Lit. 27. a.

ed

ed to the Lord Rich in Fee; afterwards Margery Waters died, the eldeſt Son of Richard Foſter then living; and whether he ſhould have the Mannor of Church-hall, or any other of the Sons of the ſaid Rich. Foſter, or whether the Heir of the Deviſor ſhould have it, was the queſtion. Warberton Serjeant argued for the Plaintiff, that the eldeſt Son of Foſter, notwithſtanding that he had alienes the Mannor of W. ſo as he had it not at the time of the death of Margery, yet by the Intendment of the Will ſhould have the Mannor of Church-hall; for the words of the Will being: And if ſhe dye, any of my Cozen Foſters Children then living, which ſhall have the Mannor of W. he to have the Mannor of Church-hall, are words demonſtrative, to ſhew that he who ſhould have the Mannor of W. ſhould have the Mannor of C. and the party is ſufficiently ſhewn, although he had alienes the Mannor before; as 15 Eliz. Dyer 323. Deviſe to Jane his Daughter was good, although ſhe were a Baſtard. So Hill. 30 Eliz. Rot. 336. in the Queens Bench betwixt Chapman and Thomſon, a man deviſed Lands which he had bought of one Kingſmill, who had ſold it to another, and he to the Deviſor, yet it was a good deviſe; and although he had alienes it, yet he is the party who had it; as Tenant in Dower, or Tenant by the Courteſie, although they alien their Eſtates, yet they ſhall be ſued in Waſte; and if in this caſe the eldeſt Son had been diſſeiſed or evicted from the Mannor of W. it is not reaſon he ſhould loſe the benefit of Church-hall alſo; wherefore, &c. But all the Court after argument on all ſides reſolved to the contrary, for in Wills the words ought to be obſerved as near to the intent as may be; and therefore the Deviſe being to one of Richard Foſters children, his Childs Child ſhall not have it, for it is out of the words; it ought alſo to be ſuch a Child as then ſhould have the Mannor of Warners; for there be two deſcriptions who ſhall have it, and both of them ought to meet together at the time of the deviſe executed; otherwiſe he ſhall not take thereby, viz. he ought to be a Child, and ſuch a Child as then ſhould have the Mannor of W. for his intent was that both Mannors ſhould go together; therefore it was adjudged accordingly for the Defendant.

Co. Lit. 54. a.

Wright *verſus* Moorhouſe, Mich. 35, & 36. Eliz. rot. 517.

(18) ACtion for theſe words, Before the Plaintiff came to the ſervice of the Merchant Taylors, he dwelt in Shrewsbury, and ſet the Town together by the ears, and ſo long as he was there they were never in quiet; but afterwards they lived quietly; and he being Clerk to the Merchant Taylors, was of conſent and counſel with W. Goodlaw, to deliver the Books of the Corporation which he had in his keeping, to the intent that thereby ſome of the Lands of the ſame Corporation might be found concealed. And it was thereupon demurred, becauſe that for none of theſe words an Action lies; but after Argument, the Court reſolved for the Plaintiff, for theſe words touch him in his Office and credit; for his Office is an Office of Truſt, and theſe words touch him therein; and Anderſon ſaid, if one ſaith to a Counſellor, Thou didſt diſcloſe my Counſel; or to a Juſtice of Peace, Thou art a falſe, or a lewd Juſtice, or Thou dealeſt corruptly, or Thou doſt not adminiſter true Juſtice, an Action lies; Beamond ſaid, If one ſaith to a Councellor or Attorney, Thou didſt deliver my Evidence to my Adverſary, an Action lies, wherefore it was adjudged for the Plaintiff.

1 Cr. 14.
Co. 4. 16. a.

Sir

Sir Edw. Cleer *verſus* Peacock and others.

(19)

QUare impedit: The Plaintiff declares that Sir Richard Fulmerſtone was ſeiſed of the Advowſon of D. in Fee, and deviſed it for ten years, Remainder to Sir Ed. Cleer in Fee, the Defendant by his bar confeſſed the Deviſe for years; but that the Deviſe was after to Sir Ed. Cleer and his Feme, and their Heirs, upon ſuch Condition, that if they did not ſuch an Act, their Eſtate ſhould ceaſe; and that it ſhould be to the Defendant, and ſhews the breach, &c. whereupon it was demurred. Firſt, becauſe the Plaintiff entitles himſelf by a Deviſe in Fee abſolutely, and the Defendant pleads a Deviſe unto him and his Feme upon Condition, and takes not any Travers. Secondly, that by a Will an Eſtate in Fee cannot be limited to ceaſe, nor a Remainder to be limited over. Thirdly, it was moved whether there may at this day be a Deviſe of an Advowſon in groſs. Harris Serjeant argued that the bar was not good without a Travers, and in proof thereof relied upon 19 H. 6. 13. To the ſecond, that the Condition is void, for an Eſtate in Fee cannot ceaſe upon ſuch a limitation, nor another Eſtate riſe thereby, nor can an Eſtate of inheritance be limited to ceaſe, as 2 & 3 Phil. & Mary 127. & 11 H. 7. 6. and Scholaſtic. caſe, but there the Eſtate deviſed was an Eſtate tail, and therefore differs from this caſe, 28 H. 8. 33. To the third, that it is not deviſable, for it is not valuable, nor within the intent of the Statute. Ant. 30. Poſt. 361.

Drew e contra, Firſt, that the bar is good without Travers, for when the Baron ſurvived, he might plead it as a Deviſe made unto him ſole, 17 Ed. 4. 7. 35. H. 6. 38. Secondly, an Eſtate in Fee as well as an intail may determine upon a limitation, and agreed that a Remainder cannot be limited upon an Eſtate in Fee determined; but upon an Eſtate determinable upon a limitation it may. Thirdly, it is deviſable, for it is an hereditament and lies in Tenures, as 5 H. 7. 37. & 43. & 31. are, and it is valuable, for it is Aſſets in a Formedon, wherefore, &c. but the Juſtices ſpake not to the two firſt points; but to the third Anderſon conceived clearly, That it is not deviſable; for it is out of the Letter and intent of the Statute; for a Deviſe ſhall be but of ſuch things which are departible, and of an Annual value, for the Queen ought to have the third part thereof, or the third part of the value thereof, and this is not partible; and although it may be holden and is Aſſetts in a Formedon, yet it is not Aſſetts in Debt; for it is not of an Annual value and ſo cannot be deviſed. So it is of Liberties and common ſans number, they cannot be deviſed becauſe they be not departible; and ſo it was agreed in the Lord Monjoys caſe for the Manor of C. that neither cuſtomes nor liberties in groſs are deviſable; but Walmſly, Beamond and Owen held that it is well deviſable, for the body of the Act is, that Lands, Tenements and Hereditaments may be deviſed, and this is an Hereditament; and there is not any mention therein that it ſhall be of things valuable; nor is there any mention of value, but in the ſaving; and that is, that the Queen ſhall have the third part, or the value of the third part, which may well be; for it is not of neceſſity that they ſhould be things of annual value which ſhould be deviſable; and an Avowſon is an Hereditament departible, as betwixt Siſter, Co. Lit. 18. a Ant. 142. 205 Poſt. 361. Co. Lit. 374. b

Siſter and Dower ſhall be thereof, and it is valuable, viz. twelve pence in the pound, as 12 H. 8. 8. and other books are; and the Statute ſhall be well ſatisfied, for of things valuable the Queen may have the third part or value of them; and if they be not valuable, the third part howſoever they be, and it is clear, that an Advowſon appendant, and liberties appendant to Land are deviſable, as thoſe which are ariſing out of the Land; and a Reverſion upon an intail, whereunto no Rent is annexed is deviſable, yet it is not of any annual value. Sed adjournatur.

James Cogan *verſus* Katherine Cogan, Paſc. 38. Eliz. Rot.

(20) TRespaſs upon Demurrer: The Caſe was, That John Cogan was ſeiſed in Fee, and let it to Robert Cogan for life; Remainder to Katherine the Defendant for life: Provided, That if John the Leſſor had iſſue a Son, during his life, who ſhould live unto the age of five years, that the Eſtate limited to the Defendant, Katherine ſhould ceaſe, and it ſhould remain to the ſaid Son in tail, the Leſſor had iſſue the Plaintiff, who attained his age of five years; and whether the remainder limited to the Defendant ſhall ceaſe, and the remainder limited to the Plaintiff were good or not, was the queſtion, and after the Serjeants had argued the caſe, it was reſolved by the Court for the Defendant, for Anderſon ſaid, there be certain rules in Law touching Remainders, viz. that a Remainder ought to paſs at the firſt by the Livery, and ſhall not take effect with a Condition precedent, nor ſhall begin upon ſuch a Condition; and although Colthurſts caſe gives colour thereto, and that the Remainder in queſtion ſhall be good; yet he held not that caſe to be Law in this point; for a Remainder depending upon a Condition precedent is meerly void; and further in this caſe, an entry is requiſite to avoid the Remainder for life, for a Freehold cannot determine without the ceremony of Entry; but otherwiſe it is of a Leaſe for years, wherefore this Remainder depending upon a limitation which is againſt the Rules of Law is void. Walmſly to the ſame intent; the Remainder is void by Littleton, and by the ancient grounds of a Law, for the Remainder (by Littleton) ought to paſs at the time of the Livery, and the nature of a Livery is a Giving; and there cannot be a Giving, but there ought to be one to take in preſenti or in expectancy, ſo as the Law ſhall preſerve it in the interim and there needs not be any Deed of a Remainder, which proves, that it paſſeth by the Livery, and by Richilds caſe the Remainders ſhall take effect when the particular Eſtate takes his effect, and ought to paſs preſently by the Livery or otherwiſe will never paſs, and although in Colthurſts caſe, the condition be precedent in words, yet it is ſubſequent in reaſon, wherefore it may be well maintained by Law; and a Remainder cannot paſs by contingency, for then there would an Abſurdity follow, viz. There ſhould by the firſt Livery, be an immediate Reverſion expectant upon the Remainder for life; and afterward, This Remainder ſhall be turned out, and the Reverſion alſo, and a new Remainder and Reverſion ſhould come in place of them, ſo as there ſhould be turnings out and turning in at ſeveral times by one Livery which was made at one time.

Ante 205. Con. 361. t. Co. Littl. 218. a. Sect. 720. 1.

But

But as touching the ceasing of the Estate in Remainder, he conceived it might very well be without any Entry by the operation of Law, the particular Estate remaining in being; wherefore, &c. Beamond, to the same intent: For a Remainder ought to begin and be created with the first livery, and concurrent with the other estate, and cannot afterwards begin upon a Condition. And he said, he never had heard or read, That a Proviso could create a Remainder, although it might determine a Remainder; but he held, That a Remainder of an Estate of Freehold or Inheritance, cannot cease without Entry or Claim, no more than an Estate of Freehold in possession. Owen agreed with Beamond in omnibus, for the Reasons before specified. Wherefore it was adjudged for the Defendant. Post 379. Ant. 359.

Dawbridge *versus* Cocks.

(21)

TResp. The question was, whether a Copiholder might lop off the boughs, without an especial custom; and it was resolved per Curiam, That by the Common Law he may cut off the under boughs, which cannot cause any waste. But the Amputation of the top boughs will cause the Putrifaction of the whole Tree. Wherefore it is waste as well as the Decapitation thereof, &c. Ant. 5.

Paulter *versus* Cornhill and others.

(22)

EJectione firmæ. Upon evidence it was held, that the Husband shall not be Tenant by the courtesie of a Copyhold, unless there be an express custom to warrant it; It was also held by all the Court, That if a Copyholder surrenders in Tail, and the heir of the Donee is to bring a Formedon, he ought to Count of the gift made by the Copyholder who surrendred, and not by the Lord; for he is but the Instrument to convey it, and nothing passeth from him. It was also moved, whereas the Surrender was to the use of one in Fee, upon condition to pay one hundred pound to a stranger; and if he failed, that it should be to the use of a Stranger in Fee, whether that were a good limitation to the stranger, so as there should be a Fee dependant upon a Fee. The Court spake not much hereto, but willed to have it specially found; yet Beamond conceived it to be good enough, for it shall be as an use limited upon a Feoffment; and these uses shall rise out of the first Surrender. Fourthly, Whether in this case (upon the tender of the one hundred pound to a stranger, and he refusing) the condition be saved, for as much as it is to be done to a stranger. Beamond, There is difference where one is obliged to do an act to a stranger, and he refuseth; the Obligation is not saved, for he takes upon him to do it. And where a Lease, or Feoffment, or Surrender is made as here, upon such a condition; for herein it is otherwise, but the Court moved, that it should also be specially found. Co. 4. 27. Post. 442. 582. Ant. 359. Ant. 399. Co. Litt. 209. a. Post 694.

Archer *versus* Green.

(23)

FOrmedon. The Tenant pleads a Fine with Proclamations in Bar, by one Richard, the Demandants ancestor. The Plaintiff Replies, that Richard entred upon his Father, being Tenant in Tail, and levied the fine: And before the Proclamation passed, the Father re-entred and died, &c. And by the whole Court, it was held

held to be a good Replication, and the Bar well avoided. For when
Co. 3 90. Ant. 122. the Father re-entred before all the Proclamations paſſed, the Fine thereby is avoided to all purpoſes, as well as to himſelf as to the ſon who levied it: But if the Proclamations had incurred before his entry, although he had re-entred within the five years and died, yet it ſhould have bound the ſon and his heir for ever. Vide poſtea.

Strowd *verſus* Willis, Mich. 36 & 37 Eliz. rot. 312.

(24) DEbt upon an Obligation, conditioned for the payment of thirty ſeven pound ten ſhillings Rent, reſerved upon a Demiſe of Copyhold Land for forty years, according to ſuch Articles indented. The Defendant pleaded, that he had not any thing in the Land demiſed by the ſaid Articles; and it was thereupon demurred. Savel for the Plaintiff, he is concluded by the recital of the Obligation, and alſo by the Articles, 5 H. 7. 20. Againſt a Leaſe by Indenture, the Leſſee ſhall not ſay, that the Leſſor had nothing to let; and by a bare recital in an Obligation, one ſhall be eſtopped, as 13 Ed. 4. 4. is. And a recital by a ſingle Bill, ſhall eſtop the party, 25 Ed. 4. 54. Ante 122. Ricite by an Obligation, that he made a Will, he is eſtopped to ſay the contrary, and 2 & 3 Eliz. Dyer 190. accord. Wherefore, &c. Drew to the contrary; for where one is obliged to pay Rent, if he cannot enjoy the Land, he is not bound to pay it; and therefore 14 Ed. 4. 4. 20 H. 6. 22. H. 6. 57. Poſt 757. The tender thereof ſhall be upon the Land, and not to the perſon, 21 H. 7. 6. The Dean of Windſors caſe, it is ruled, That if he cannot enjoy the Land, he ſhall not pay the Rent. And as to the Eſtoppel by the recital, there is a difference where it goes in the generality, and where in the particularity: For where it is in the generality, as to Infeoff one of all the Lands diſcended unto him; or to be nonſuited in all Actions depending in the Common Bench, he ſhall not be eſtopped to ſay, That he hath not any Co. 2. 33. b. Land, or that he hath not any Action depending there, 18 Ed. 4. 4. Againſt a Condition to perform all Covenants, a man may ſay, that there were not any Covenants, and 21 H. 4. 54. agrees with this difference. And of this opinion were all the Court at the firſt; but afterwards, upon a ſecond Argument, they conceived, that he ſhould be eſtopped. Wherefore, it was adjudged for the Plaintiff.

Agnes Fowler *verſus* Dale, Hil. 36 Eliz. rot. 42. or 421.

(25) REplevin. The Defendant made Conuſance as Bailiff of Sir Thomas Hatton, the place where being parcel of the Manor of Benyfield; and that the Will' of Benyfield is an ancient Will', and that in the ſaid Will', Habetur talis conſuetudo & a tempore quo, &c. habebatur, &c. Quod quilibet inhabitans in aliquo antiquo Meſſuagio, within the ſaid Will' ſhould have Common in the ſaid Waſte for all his Beaſts Levant & Couchant within the ſaid Will', and that he was an Inhabitant, &c. And Iſſue was joyned upon this Preſcription, and found for the Plaintiff; and it was moved in Arreſt of Judgment, that it was a void and ill Preſcription for every Inhabitant to preſcribe, &c. And therefore the Bar was ill, and the Iſſue being joyned upon an ill Bar, the Plaintiff is not to have any Judgment. Yelverton moved for the Plaintiff, to have Judgment; For it is pleaded by way of Cuſtom and Uſage, and it is not a Preſcription, which may be well enough, for Common

may

may be as well by reaſon of Inhabitancy, as otherwiſe. And 22 H. 6. 43. Common may well be appendant to an Houſe; ſo it is 10 H. 7. 24. 15 Ed. 4. 32. It is ſaid there is not any difference betwixt Common appendant, and Common by reaſon of inhabitancy; ſo as it is there admitted, that there may be Common in reſpect of inhabitancy. It hath been objected, That Inhabitants are not perſons able to preſcribe: But it was thereto anſwered, That it is not here alledged to be in the perſon, but to be the uſuage of the Village. V. 18 Hen. 8. 11 H. 6. Prior of Dunſtables caſe, 7 Edw. 4. 24. 15 Edw. 4. 29. 18 Edw. 4. 3. 20 Edw. 4. 10. And ſecond' Mariæ Præſcriptio, Bro. 100. Inhabitants cannot preſcribe, but a Cuſtom may be alledged, that Inhabitants may have Common. Wherefore, &c. Anderſon. It hath been adjudged lately in this Court, That it is a void and an idle Preſcription, and I can ſhew the Roll thereof, and there is not any colour againſt it; for an Inhabitant cannot have Common, if he hath not any Intereſt or Eſtate therein: And this is not ſhewn in ſuch a Preſcription, wherefore it is not a good Preſcription. Alſo if he be ouſted thereof, he hath not any remedy nor Action for it, but the Lord who is the owner thereof: And therefore the Intereſt ſhall not be taken from the Lord, and the Lord and the Inhabitants cannot both have Intereſt therein. Walmſley, ſuch a Preſcription cannot begin at this day, and therefore continuance cannot make it good. For a grant of Common Inhabitantibus cannot be good, becauſe they be not any Corporation; and by Preſcription it cannot be good for it is in nature of a purchaſe, and an Inhabitant cannot purchaſe to himſelf and his Succeſſor. Beamond, This is not any of the four Commons, viz. Appendant, Appurtenant, in Groſs or Vicinage; wherefore it is no good Common. Owen accord; for they be not any Corporation to preſcribe; but a Freeholder may alledge, That he is ſeiſed, and that he and all thoſe, &c. have had Common, and that is a good Preſcription: But all the Juſtices held, That Uſage may be alledged by reaſon of Inhabitancy to have an Eaſement, but not to have Inheritance. Anderſon; It is the common courſe throughout England; and it is abſurd and Oppoſitum in objecto, that the Common ſhould be in the Inhabitant; for it ſhould be miſchievous to take it by a Preſcription from the owner of the Soyl. And it is not poſſible, that ſhould be good by Uſage, which cannot have a lawful continuance. And Cuſtom and Preſcription are all one: Wherefore, &c. Sed Adjournatur.

Ant. 180.

Co. 6. 60. a.

Ant. 35.

Co. 6. 60. b. Ant. 180.

Jeſop *verſus* Payne, Parſon of Upway.

PRohibition prayed for ſuing for Tythes of Locks of Wool, ſuggeſting, That he paid the tenth Fleece of Wool in ſatisfaction for all Locks, and Tythes due for Wool. Drew moved, that the Preſcription was not good, becauſe it is but to have the ſame thing, and of the ſame nature in recompence, And it hath been ruled in the Queens Bench, to give the tenth Sheaf in ſatisfaction of the Tythe of the Corn, and Rakings is not ſufficient to maintain a Prohibition. And there in 33 Eliz. in the caſe of Shakerley againſt Sir James Marvin, it was held, That it was not any Preſcription to have Cocks of Hay for all Tythe-Hay; but the Court held, That in this caſe the ſubſtance of the Preſcription was good enough, and agreed to the caſe of the Rakings; for that is as good Corn as any other, but Locks be not of the ſame value

(26) Poſt. 475. 660.

Poſt 446. 660. 609.

with the Fleece: But in regard of a fault in the ſuggeſtion that it was not, (That they uſually had paid,) &c. which is iſſuable, it was not good: And therefore they held, That conſultation ſhould be awarded.

Charnock *verſus* Sir Thomas Gerard.

(27) AUdita Querela: For that the Conuſee upon a Statute Staple, had purchaſed part of the Land, and the Plaintiff another part, and yet had cauſed the Plaintiffs Lands to be extended and delivered in Execution; and it was held to be a good cauſe for an Audita Querela. It was then moved to have a Superſedeas to ſtay Execution; for although they were extended, yet they were not delivered by Liberate. And the Court doubted, becauſe it was upon a Statute-Staple, which was not returnable in this Court, but in the Chancery: But it well may be upon a Statute-Merchant; for that is alwayes returnable in this Court. But the Prothonotaries ſaid, That an Audita querela lies well in this Court, in this caſe, and a Superſedeas ſhould be awarded; as it was in the caſe of the Lord Dudley, and divers other Preſidents accorded therewith. Whereupon the Court afterwards reſolved, that it well lay here, and a Superſedeas was thereupon awarded.

Stainfield and his Wife *verſus* Viſcount Bynden, Mich. 35 & 36 Eliz. rot. 1434.

(28) DOwer. The Tenant pleads in Bar, that the Wife of the Demandant was endowed by Commiſſion out of the Court of Wards De dote aſſignanda, which ſhe accepted, and demanded Judgment Si action, &c. And it was thereupon demurred; and after Argument by the Serjeants, the Court reſolved for the Demandant; for they conceived, although the Statute of 32 H. 8. for the Authority to the Court of Wards, yet the Authority of the Chancery is not tranſmitted to the Court of Wards: For the Marriage ought to paſs under the Great Seal; the Office ought to be always returned into the Chancery; the Livery ſhall be always ſued out of the Chancery, and all other Acts (ſaving the Survey of the Wards, Lands, and Letting it for years) ſhall be in the Chancery, and not in the Court of Wards: and therefore an aſſignment by Commiſſion out of the Court of Wards is void and ſhall not bind him, and no Act there ſhall bind the Heirs or any other mens Inheritance; but this Dower ought to have been aſſigned
F.N.B. 263.d. out of the Chancery by a Writ De dote aſſignanda, and if it be evicted, the Record ſhall be tranſmitted into Chancery, and there ſhe ſhould be endowed de novo; wherefore it was adjudged for the Demandant.

Termino

Termino Hillarii.

Triceſſimo ſeptimo ELIZABETHÆ, in Banco Reginæ.

Wesby's *verſus* Skinner and Catcher, late Sheriffs of London, Hill. 34 Eliz. Rot. 169.

DEBT upon an Eſcape; upon Nihil debet pleaded, an eſpecial Verdict was found, That the priſoner for whoſe eſcape the Action was brought, was in Execution in the Counter at the Suit of one Dighton for Two hundred and forty pound, and at the Suit of the Plaintiff for four hundred and forty pound: That the Defendants in Exitu ab officio delivered him as in Execution for one cauſe onely, viz. at the Suit of Dighton, to the new Sheriffs, and they ſuffered him to eſcape; and for this eſcape the Action was brought againſt the ancient Sheriffs; And whether upon this matter the Action lies againſt the Defendants, or ought to be brought againſt the new Sheriffs: becauſe the tort began firſt in them, was the queſtion. Tanfield, the new Sheriffs are chargeable, for there is not any Law to compel the ancient Sheriffs to deliver the Priſoners by Indenture with their cauſes; but the new Sheriff ought at his peril to take notice eſpecially of Executions, which are upon and out of the Records; for he ought to be attendant upon every Court at Weſtminſter, and to have his Deputy in every Court, whereby he is to be informed of every Execution iſſuing out of every Court. And in divers caſes a man muſt take notice at his peril of Acts, of which by intendment he may have Conuſance; as Leſſee for life ſhall take notice of Livery made upon the Land, ſo Leſſee for years or for life, ſhall take notice of the grant of a Reverſion by Deed enrolled. And in 16 Eliz. it was ruled in one Wyſe's caſe, where a Writ of Diſcharge was ſhewn in the County Court for the ancient Sheriff, who was not preſent, that he ought at his peril to take notice thereof. So Executors ought to take notice of every Judgment againſt their Teſtator: And if in this caſe the Ancient Sheriff had died, and a new Sheriff made, he at his peril ought to take notice of the priſoners in Execution, and of their Cauſes. So here, the new Sheriffs (1) Co. 3. 71. b. 3 Co. 72. b.

Sheriffs when they found him in Execution, and ſo was lawfully under their charge: but if there had not been any cauſe certified of detaining him in priſon, it might peradventure have been otherwiſe; for then, if they detained him in priſon, they ſhould have been chargeable in falſe impriſonment. Alſo in this caſe, they ſuffered him to eſcape before Dightons debt was ſatisfied: Wherefore foraſmuch as he did a Tort therein, it is reaſon he ſhould the rather be charged therewith. Snigg e contra. The ancient Sheriffs are not diſcharged, nor the new Sheriffs charged until three things be performed, viz. The Patent to the new Sheriff; the Writ of Diſcharge to the old Sheriff; and the Delivery of the Priſoners by Indenture to the new Sheriff: And there is a Writ in the Regiſter, f. 295. That the Priſoners and Writ ſhall be delivered to the new Sheriff by Indenture. Wherefore in as much that it was not done ſo, whereby the new Sheriff might have Conuſance, they ſhall be charged, and not the new Sheriff. Wherefore, &c. Popham and all the Court (Gawdy abſente) held, That the ancient Sheriff ſhall be charged, and not the new Sheriff: For this Delivery over of the Priſoner, and Writ by Indenture, was by the order of the Common Law: and reaſon wills, That the Sheriff ſhould not have Priſoners delivered unto him, but that he alſo ſhould have the cauſes certified with them; and not to compel him to ſearch out the Cauſes of their impriſonment: And in regard there was a default in the old Sheriff, that when they delivered the Priſoner by Indenture, they ſhewed but one cauſe only of his detainment, and not both. It is therefore reaſonable they ſhould rather be charged than the new Sheriff; and it was an Eſcape in them preſently: For the Priſoner when he is delivered to the new Sheriff for one cauſe, although he be in Execution for one cauſe, he is out of Execution for the other: Wherefore it is an Eſcape Maintenant in the ancient Sheriff, and they be forthwith chargeable therewith; and the Law will never charge the new Sheriff, but where the priſoner is delivered unto him in the Common Gaol of the County, with the cauſe of his detainment, and he needs not otherwiſe to take him. And therefore in Dawbridgecourts caſe in this Court, who being Sheriff of the County of Warwick, and had a priſoner in Execution (whom he kept in an houſe in Warwick, and not in the Common Gaol of the County) being afterwards removed from his Office, would have delivered the Priſoner to the new Sheriff at the ſaid Houſe, who refuſed to receive him, unleſs he were brought to the Common Gaol, and afterwards the priſoner eſcaped, it was adjudged, that the ſaid D. was chargeable with this eſcape, and not the new Sheriff, unleſs he had been delivered unto him in the Common Gaol. And as to the caſe where the old Sheriff dieth, that may be agreed to be good Law, for its of neceſſity, becauſe there the new Sheriff was to take notice at his peril; and it was afterwards adjudged accordingly. Note, Gawdy ſaid unto me, That he was of the ſame opinion clearly, for the inconveniencies which otherwiſe would enſue to Sheriffs, to inforce them to ſearch all Records out of every Court, and in the interim not to know what to do with their priſoners. Vide 5 Ed. 4. 71. 39 Hen. 6. 33. Note, a Writ of Error was after brought in the Exchequer Chamber, and after Argument there, the Judgement was affirmed. V. 3 Co. 71.

Ant. 13.
Ant. 12.
Co. 3. 72. a.
2 Co. 72. b.

Stokes

Stokes *versus* Annesby.

ERror to reverſe a Judgment in a Writ of Dower in the Common Bench. The Error aſſigned was, for that in Term Mich. 21 & 22 Eliz. Rot. 2315. Annesby brought a Writ of Dower againſt Stokes, returnable Quind' Martini, at which day the Tenant made default. And a Grand Cape was awarded returnable Octab. Purificat. next following; at which day the Tenant appeared and tendred his Law De non Summons, and had day to make it until Quinque Septim' Paſch. At which 5 Septim' Paſch. the Tenant iett eſſoyne, which was adjourned until Tres Trin. 22 Eliz. At which day the Tenant appeared, and the Demandant releaſed the default. And the Tenant imparles until Mich. 22 & 23 Eliz. And upon the Plea-Roll, Paſch. 22 Eliz. it is entred, that the Tenants then appeared and pleaded in Bar; that the Demandant detained Charters from him, being Feoffee to the Baron; and Iſſue was joyned thereupon, which was afterwards tryed in Mich. 23 & 24 Eliz. and found for the Demandant; and ſhe thereupon had Judgment; and thereupon this Writ of Error was brought. The firſt Error aſſigned was, becauſe this appearance and pleading in Paſch. 22 Eliz. at which day the party was out of Court, by the Eſſoyne caſt and adjourned, is meerly contrary to the Record, and void; and therefore the Iſſue joyned, and Tryal and Judgment thereupon are altogether void. But Coke Attorney General, and Glanvil Serjeant moved, That the Eſſoyne-Roll, and all thereupon ſhould be void. For when the party appears, and pleads, that appearance confounds the Eſſoyn; and that appearance and pleading is upon the Plea-Roll, which ſhall the rather, and more forceably be intended true, then the other Roll; for the Plea-Roll, controls all other Rolls: But after divers Arguments, the laſt day of this Term, the Court reſolved it to be Error; for every Roll hath his courſe and order. And when it appears, That the Tenant was Eſſoyned, and the Eſſoyn adjourned until another Term, the parties thereby are out of Court, and their appearance cannot be recorded. And in that, an appearance is recorded, and a Plea pleaded upon the Plea-Roll, it ſhall be intended to be a practice and miſ-entry (as in truth it was, as appeared upon examination) then otherwiſe. Wherefore the firſt ſhall be intended the true Roll, and all proceedings ſhall be according to it; and the appearance after, when none of the parties had day in Court, is void: And ſo the Plea pleaded, and Trial, and Judgment thereupon, are erroneous, and not aided by any of the Statutes of Jeofails. Wherefore for this cauſe they awarded, that the Judgment ſhould be reverſed. A ſecond Error alledged was, That this Plea of Detainment of Charters by the Feoffee, is a void Plea en ſon bouch (which was agreed by all the Court) and then the Iſſue joyned thereupon, is void, and ſo a miſ-tryal and Jeofail; and of that opinion was Fenner Juſtice: But it was thereto anſwered, That although it were an inſufficient Plea, yet it is not meerly void; for it is a Plea proper to this Action: And Iſſue being joyned thereupon, and tryed, it is aided by the Statute of Jeofails, and not like where Not Culpable is pleaded in Debt, or Non debet in Treſpaſs; for thoſe are meer void Iſſues

(2)

1 Cr. 92. Ant. 340.

Co. 9. 18. a.

Poſt. 455.

Iſſues in thoſe Actions. But the other Juſtices did not ſpeak much thereto, the Judgment being reverſed for the firſt cauſe.

Ive *verſus* Ambrey.

(3) Ant. 340. ERror upon a Judgment in Debt, and Utlawry thereupon. The Error aſſigned was, For that the Plaintiff appeared, and declared, and proſecuted per Ivonem attornatum ſuum, as the Plea-Roll was; but the Roll of the Warranty of Attorny is ponit Jovem ſon Attorny. And for this cauſe it was held to be Error, and ſhould not be amended; but the Judgment and Utlawry thereupon was reverſed.

Hall *verſus* Combs, Trin. 34 Eliz. rot. 667.

(4) 2 Rot. 51. EJectione firmæ, of a Leaſe of Dodington againſt the Defendant, as Tenant of one Ayleſworth, upon a ſpecial Verdict the caſe was, That King Henry the Eighth had two Mills under one houſe, and granted to Ayleſworth all the Houſes, Mills, Lands, &c. in Wells, and the Suburbs, and Liberties thereof; and it was found, that one of thoſe Mills was in Wells, and the other out of Wells, and Co. 2. 33. a. the Liberties and Suburbs thereof. And whether this Mill paſſed, for as much as they were both under one Rooff, was the doubt, and adjudged for the Plaintiff, that it paſſed not.

Harford *verſus* Gray.

(5) REplevin. The Plaintiff in Bar to the Avowry made title to an Hundred, That the Abbot of Abbington was ſeiſed in Fee, and pleaded the Statute of 31 H. 8. of Monaſteries; and that the Abbot ſurrendred to King Henry the Eighth, and that Poſtea, ſcilicet, 28 H. 8. King Henry the Eighth died ſeiſed, and it diſcended to King Edward the Sixth; and from him to Queen Mary; and from her to Queen Elizabeth, who now is, who granted it to the Lord Norris, who let to the Plaintiff. And upon this Bar, a Demurrer was joyned; and now exception taken, becauſe it cannot be, that the Abbot ſhould ſurrender in 33 H. 8. whereas it is pleaded, the King died in 28 H. 8. But it was thereto anſwered by Tanfield, That it was but a miſtaking of the Clerk, and might be well amended: For it appears, that it cannot be, that King Henry the Eighth died in the eight and twentieth year of his Reign, where an Act of Parliament is pleaded in 31 H. 8. and a Surrender in 33 H. 8. Wherefore that which comes after the Poſtea, (viz. 28 H. 8.) is vain and void, and may be well ſtricken out, and yet the ſence remain perfect enough, viz. Quod poſtea, he died ſeiſed, and in proof hereof, he relied upon 11 H. 7. 3. 20 H. 6. 15. & 11 H. 6. 22. And of that opinion was all the Court, becauſe it is not much material, but matter of conveyance only. Sed Adjournatur.

2 Cr. 96. Mo. 464.

Hore

Hore *verſus* Broom.

REplevin. The Parties being at Iſſue, the Jury appeared in Banco to try it. And the Defendant would have challenged the Array, Ore tenus, becauſe it was returned by one Stonner Sheriff, two days after he had received a Writ of diſcharge. And it was held by the Court, That he could not challenge it for that cauſe; Becauſe it would be a direct averment againſt the Record; for it is returned by him as Sheriff; and the return accepted. But by advice of the Court, he made his challenge to the Array, becauſe it was favourably made and returned in favour of the Party, &c. And Iſſue being joyned thereupon, and all this matter given in evidence. The Court directed the Tryors, that it was not duly made and returned, for it was without Warrant. Whereupon the Array was quaſhed. (6)

Jordan *verſus* Jordan.

ASſumpſit, and declares whereas he ſued a Writ of Latitat againſt the Defendant, intending to ſue him for a Debt of Forty pound directed to the Sheriff of Wilts, and delivered it to J. S. to procure a Warrant from the Sheriff to arreſt the Defendant; And J. S. accordingly obtained a Warrant, that the Defendant in conſideration the ſaid J. S. would forbear to arreſt him, aſſumed to J. S. to appear in the Queens Bench, at the day contained in the Writ, or to pay the Debt. And for not performance of this promiſe he brought the Action. And the Defendant pleaded non aſſumpſit, and found againſt him, and it was now alledged in arreſt of Judgment, becauſe he did not ſhew how the Debt grew due, nor in facto that there was any ſuch Debt due. Secondly, becauſe he declares of a promiſe made to J. S. and not to himſelf; and for this cauſe principally it was held to be ill, and adjudged for the Defendant. (7) 1 Rol. 32. Poſt. 849.

Bothwright *verſus* Harvy, Mich. 36, & 37 Eliz. rot. 573.

DEbt upon an Obligation of One hundred and twenty pound. The Condition was, that if he acquitted and ſaved him harmleſs from an Obligation of Sixty pound, wherein the Plaintiff and Defendant were obliged to J. S. that then, &c. The Defendant pleads, that J. S. ſued the Plaintiff upon that Obligation, and had Judgment, But that before execution he delivered the Sixty pound to the Plaintiff to ſatisfie it, and it was thereupon demurred and adjudged to be no Plea; for although execution be not ſued, yet by the Judgment the Party is damnified, for his Land and Body is thereby lyable; and although he pays the Sixty pound Debt, yet he doth not ſatisfie the Coſts. So the Bond is not ſaved, for he doth not acquit nor ſave him harmleſs, as 2 and 3 Eliz. 186. is, alſo the Bond is conjunctive, Acquit and ſave, &c. wherefore he ought to do both, which was not done. And it was thereupon adjudged for the Plaintiff. (8) 1 Rol. 432. Ant. 264.

Philpots Caſe.

(9) A N Exigent was awarded againſt Philpot and his Wife, and di-
1 Rol. 583. vers others upon an Indictment of Recuſancy. The Huſband appeared upon the exigent, and conformed himſelf according to Law, but the Wife made default and did not appear. The Huſband prayed to be bailed, de die in diem, until the appearance of his
Poſt. 611. Wife, for the default of the Wife ought not to prejudice the Huſband. And the practice and uſage of the Common Bench is, where proceſs of Outlawry iſſues againſt Baron and Feme, and the Baron appears, he ſhall have day by Bail, until the appearance of his
2 Cr. 445. Feme; but the Court ſaid, that it was in the diſcretion of the Court, when he came in upon the exigent, whether he ſhould be let to Bail. And this Court uſed not to let the Baron to Bail, but to continue him in priſon for the contempt of his Feme, until the Feme comes in, wherefore the Bail was refuſed. Vid. 8 H. 4. 6. 21 H. 6, 4.

Rotheram *verſus* Crawley, Paſc. 35 Eliz. Rot. 332.

(10) DEbt upon an Obligation. The Defendant pleads a releaſe, and upon the pleading, the Caſe appeared to be, that there were Controverſies betwixt the Plaintiff, Lord, and the Defendant being his Tenant for a Relief, and an Harriot, and they having ſubmitted it to Arbitrament, it was awarded that there ſhould be a Releaſe made of them, and in performance of this Arbitrament a Releaſe was made by theſe words: Of all Reliefs, Duties, and Amercements; and this Releaſe pleaded in Bar of this Obligation, which was not put in Arbitrament, nor intended to be releaſed. And upon all this matter diſcloſed, it was demurred, and Coke Attorney General moved, that it ſhould not be a Bar, for this word Duties being placed betwixt Reliefs and Amercements, ſhall be intended
Co. 8. 153. a. Duties of ſuch a nature, and not any other; wherefore it ſhall not extend to this Bond. But the Court held the contrary, for although the intent was not to extinguiſh it, yet Duty extends thereto in extremity of Law, wherefore it ſhall be an extinguiſhment and diſcharge of the Bond. And thereupon it was adjudged for the Defendant.

Thornborough *verſus* Monpenſon.

(11) COvenant; The Covenant wherein the Breach was aſſigned was, That he ſhould make ſuch an aſſurance as his Counſel ſhould deviſe of an Annuity of Twenty pound, and alledgeth for Breach, that his Counſel deviſed that he ſhould bind himſelf and his Heirs by an Obligation for the payment of this Annuity yearly, which he had not done. And iſſue being joyned thereupon, after Verdict, it was moved in arreſt of Judgment, that this was not within the Covenant, and ſo no breach, for it is not any aſſurance of the Annuity. Popham, if a man Covenant to make ſuch an aſſurance of the manner of D. as his Counſel ſhall deviſe, & the Counſel deviſeth an Obligation or a Statute to be made for the peaceable enjoyment thereof, he is not bound to make it (Quod curia conceſſit) But if the Covenant were to do ſuch Act or Acts for the
2 Cr. 251. aſſurance

aſſurance of the Mannor of D. as his Counſel ſhall deviſe, and they deviſe a Statute for the peaceable enjoyment thereof, he is bound to do it. It was alſo moved that this was not within the Covenant, becauſe the deviſe was that he ſhould bind him and his Heirs; and there is not any word in the Covenant, that the Heir ſhould be obliged; wherefore, &c. But the Court gave not any anſwer thereto, and it was ended by arbitrament.

Weaver *verſus* Cardan.

(12) ACtion for theſe words, Thou wert detected of Perjury in the Star-Chamber. It was held upon motion that the Action lay not; for an honeſt man may be detected, but not convicted; ſo no ſlander. Sed adjournatur.

Harleſtons Caſe.

(13) IT was found before the Coroner, Super viſum Corporis, That I. Harleſton fell into a Marlepit fortuito and ſo died. Afterwards by the procurement of the Queens Almoner, a Commiſſion iſſued out of the Crown Office (Quaſi in nature of a Melius Inquirendum) and was awarded to the Sheriff to enquire of his death, and of what Goods and Chattels he was poſſeſſed at the time of his death; and it was found before the Sheriff, that he was Feio de ſe, &c. It was moved that this Writ or Commiſſion was not well awarded, but utterly void; for the Statute of 28 Ed. 3. cap. 9. is expreſly, that no ſuch Commiſſion ſhall be granted; and that the Sheriff ſhall not take Indictment by Writ or Commiſſion, and F. N. B. R. 144, and 250 agreeth therewith. But Ive the Clerk informed that they have divers preſidents ſince that Statute of ſuch Commiſſion awarded.

Collet *verſus* Marſh, Trin. 35 Eliz. Rot. 38.

(14) ERror upon a Judgment in a precipe quod reddat. The Error aſſigned was, becauſe the Defendant was not ſummoned at the Church door, according to the Statute of 31 Eliz. cap. 3. and by reaſon of his default a grand capias was awarded, and Judgment given againſt him, and he loſt his Land by default, and in truth the Sheriff returned him ſummoned at the Church door. And it was thereupon demurred, whether he ſhould have this averment, or ſhould be put only to his Action upon the Caſe againſt the Sheriff. Quere, for the Court upon the motion doubted thereof. Et adjournatur, vide poſtea, Trin. 37. B. R. placito. 2.

Moor 349. 1 Rol. 793. 621. Gould. 128. Poſt. 397.

York *verſus* Allen.

(15) ATtaint was brought in the Common Bench of a Verdit in Banco Reginæ, whereupon the Record was removed, and there the Verdict was affirmed, and now the Plaintiff in the firſt Action prayes execution according to the firſt Verdict, as 7 Ed. 6. Dyer 81. is. And Popham and the other Juſtices held that he ſhould have execution; for the Juſtices in the Common Bench, may not

1 Rol. 887.

award execution, for they have but only tenorem Recordi. But if the Verdict had been diſaffirmed, and execution on the firſt Verdict had been had before, the Court of the Common Bench might have awarded reſtitution very well, and afterward execution was awarded accordingly.

Watts *verſus* Hagden.

(11) REplevin. The Defendant avows the taking in White Acre for Damage-Feaſant: the Plaintiff replies that they were taken in Black Acre, abſque hoc that they were Damage-Feaſant in White Acre; and it was thereupon demurred. Et per curiam without argument it was ruled to be an ill Traverſe. For he ought to have traverſed the place of the taking, and not that they were Damage-Feaſant; wherefore it was adjudged for the Avowant.

Dell *verſus* Higden, Trin. 36. Eliz. Rot. 547.

(17) 1 Rol. 506. Moor 358. Co. 4. 23. a Poſt. 380, 391. Ant. 149. EJectione firmæ, upon a ſpecial Verdict the Caſe was, Tenant in Tail of a Copy-hold, Remainder in Fee, is impleaded by plaint in Court Baron in nature of a Writ of entry in the Poſt, and ſuffers a common Recovery with voucher: whether this ſhall bind the Remainder was the queſtion, the Tenant in Tail being dead without iſſue, and it was found, Quod nunquam antea videbatur talis Poſt. 391. 2. recuperatio in curia manerii prædicti. The Court upon the motion ſeemed to incline, that it ſhould bind the Remainder, but they ſpake not much thereto. Sed adjournatur.

Parlet & Bartholmew *verſus* Cray, Mich. 36 & 37 Eliz. Rot. 25.

(18) 1 Rol. 916. Co. Lit. 8. a TReſpaſs. The Caſe was, That a man having Fiſhes in his Pond, made his Executors, and died. The Defendant being his Executor takes the Fiſhes, and the Plaintiff as Heir brings Treſpaſs, and upon this matter diſcloſed by Barr, it was demurred in Law, and adjudged without argument for the Plaintiff. For Co. Lit. 8. a. although it be Felony to ſteal Fiſh out of a Dam, or Pond, or Trunk, as 18 Ed. 4. 8. yet the owner dying and leaving them in the Pond, they are as profits of the Free-hold, which the Executor ſhall not have, but the Heir or he who hath the Water; wherefore it was adjudged for the Plaintiff.

Leigh *verſus* Shaw, Trin. 36 Eliz. Rot. 767.

(19) EJectione firmæ of a Chamber. The Caſe was, that one let a Rectory for years, excepting the Manſion houſe of the Rectory, Saving to the Leſſee the Chamber, now in queſtion, and whether this ſhall be ſaid to be let for years was the queſtion. Popham, here is an exception out of an exception, which is good enough, and ſhall make it paſs by force of the Leaſe; for this exception or ſaving makes the thing excepted as if it never had been let: ſo a ſaving out of a ſaving makes it as if it never had been excepted, and then it paſſed by force of the Leaſe at firſt. To which opinion without any argument the other Juſtices agreed, and it was adjudged for the Plaintiff.

Santon

Stanton *verſus* Barnes, Hill. 36 Eliz. Rot. 492.

(20)

UPon a ſpecial Verdict it was found, that it was ancient Copyhold Land, parcel of the Mannor of A. and devisable in Fee, or for life, Solummodo ea capienti extra manus Domini. And it was moved that the Surrender was to the uſe of one for life, Remainder in Tail; Remainder in Fee who were admitted accordingly by the Tenant for life, who dieth. And whether that were good to him in the Remainder in Tail was the queſtion. For Tanfield moved that in regard the cuſtom is found expreſly, that it ſhall be ſolummodo ea capienti extra manus Domini, It ought to be an immediate taking; and he ſhall not take by way of Remainder. Alſo the cuſtom will not warrant any eſtate but for life or in Fee. But the Court reſolved to the contrary, that it is good enough. For in that it is limited to one, and the Heirs of his body, it is not void: but if it be not an Eſtate Tail, it is a conditional Fee, and ſo it was agreed by us all in the Caſe of Granvenor and Rake. For when a cuſtom warrants a greater, it ſhall warrant the leſſer Eſtate alſo; to the ſecond it may be well limited by way of Remainder as well as to the immediate taker; for when the cuſtom warrants it, it cannot reſtrain a Fee to be limited as well by way of Remainder as otherwiſe; and he in Remainder, and the particular Tenant make but one Eſtate; and in that, it is found that the cuſtom is, that it ſhall be granted Solummodo ea capienti, it is void therein, wherefore it was adjudged accordingly for the Plaintiff.

Co. Litt. 52. b. 1 Rol. 511.

Ant. 307. Co. Lit. 52. b. Ant. 323.

Noke *verſus* Awder, Trin. 36 Eliz. Rot.

(21)

COvenant, wherein he ſhews that one John King made a Leaſe for years to A. the Defendant, who by Deed granted it to Abel, and covenanted with him, that he and his Aſſignes ſhould peaceably injoy it without interruption. Abel grants it to J. S. who grants the Term to the Plaintiff, who being ouſted by a ſtranger brings this Action, and after iſſue joyned upon a collateral matter and Verdict for the Plaintiff, it was alledged in Arreſt of Judgment, that this Action lay not for the ſecond Aſſignee, unleſs he could ſhew the Deed of the firſt Covenant, and of the aſſignment, and of every mean aſſignment, for without Deed none can be aſſignee to take advantage of any Covenant, which cannot commence without Deed. And to that purpoſe cited old Act 102. and 19 Ed. 2. Covenant 25. And if one be infeoffed with warranty to him his Heirs and Aſſignes, and the Feoffee makes a Feoffment over without Deed, the Aſſignee ſhall not take advantage of this Warranty, becauſe he hath not any Deed of Aſſignment. But if he had the Deed, it ſhould be otherwiſe; and to that purpoſe, vide 13 Ed. 3. vouch. 17. 3 Ed. 3. monſtrans de fayts 37. 11. E. 4. ibid. 164. 15 Ed. 2. ibid. 44. 13 H. 7. 13, and 14. 22. Aſſ. plea. 88. But Popham held that he ſhall have advantage without the Deed of aſſignment; for there is a difference where a Covenant is annexed to a thing which of its nature cannot paſs at the firſt without Deed, and where not. For in the firſt caſe the Aſſignee ought to be in by Deed, otherwiſe he ſhall not have advantage of the Covenant; and therefore he denyed the caſe of the Feoffee with warranty. For the ſecond Feoffee ſhall have benefit of the warranty, although he doth

Moor 419. Poſt. 436. Co. 3. 63. a

Co. 3. 63. a

doth not ſhew the Deed of aſſignment, but ſhews the Deed of the warranty; and ſo is the better opinion of the books. And to that opinion the other Juſtices inclined. Sed adjournatur. V. 3. Co. 63. V. poſtea Mich. 37, & 38. placito 52.

Poſt. 436.

Carrel *verſus* Read.

(22)

Mo. 402. Ow. 65.

COvenant. Leſſee for years Covenants to drain ſuch water out of Land before ſuch a day; he pleads that before the day, the Leſſor entred and continued in poſſeſſion, until after the day. And it was thereupon demurred and adjudged to be no Plea, becauſe it is a collateral Act to be done by him: unleſs he had ſaid, that the Leſſor held him out, and diſturbed him to do it.

Ant. 362. Co. 8. 92. a 1 Rol. 453. 4.

Hillary, 37 Eliz. in Communi Banco.

Allen *verſus* Hollowell.

(23)

EJectione firmæ the Defendant pleads that the Queen was ſeiſed in Fee; and let it to J. S. for years by patent, who let it to the Defendant: and prays in aid of the Queen; and it was ruled to be no Plea, becauſe he is not immediate Tenant; wherefore a Reſpondes ouſter was awarded.

Day *verſus* Bisbitch.

(24)

1 Rol. 891. 2 Rol. 556.

TReſpaſs. For the taking and carrying away of a Dyers Fat, upon an eſpecial Verdict, it was found that the Sheriff upon an Action againſt the Plaintiff, attached it being faſtned to the wall of the houſe, and delivered it to the Defendant. And whether this taking or delivery were lawful, or not, was the queſtion. Firſt, it was moved, that it could not be attached, becauſe it is parcel of the Freehold, and fixed thereto. Secondly, That the Action lies not againſt the Defendant, becauſe he hath it by the Delivery of another, and not by his own taking. And it was reſolved by all the Court that it could not be attached, in regard it is fixed to the Land and Wall: And Anderſon ſaid, that Wainſcot fixed to a Wall cannot be removed, and if it be, it is waſte; So of Tables doymant, fixed, &c. And Walmſley ſaid, that in the time of the Lord Dyer, this difference was here taken and agreed, that a Furnace fixed in medio domus is but a Chattel, and is removeable; but otherwiſe it is being fixed to the walls, and afterwards it was adjuged accordingly for the Plaintiff. The ſecond matter was not much inſiſted upon, becauſe he was preſent and took it; and ſo he was an immediate Treſpaſſer; vide 42 Ed. 3. 6. 20 H. 7. 13. 21 H. 26.

Co. Lit. 53. a

Brawn *verſus* Michael.

(25)

ACtion for words. Whereas he was a Juſtice of Peace, that the Defendant ſpake of him theſe words, He hath delivered untruths upon his Oath in his Anſwer in the Chancery at the Suit of J. S. And it was thereupon

thereupon demurred, and without privity of the Court, in Mich. 36, & 37 Eliz. Judgment was entred for the Plaintiff; and it was now moved to stay the Writ of inquiry of Damages to be awarded, and all the Court agreed thereto, for Judgment was entred without their privity, for they all now agreed that an Action lies not for these words. For he might deliver untruths upon his Oath in his answer, and not be perjured; for there be therein two Oaths, the one upon his knowledge, the other upon his Evidence upon report of others, which may be untrue, and he not be perjured: Wherefore, &c.

Sharrock *versus* Hannemer.

(25) FAlse Imprisonment: The Defendant justifies for that he was High Constable of the Hundred of D. in the County of Salop, and that the Plaintiff made an affray upon J. S. and that he came presently after the affray made, and J. S. prayed him that he would take sureties of the Peace, because he stood in fear of his life, whereupon he committed the Plaintiff to ward there (for that he would not find sureties for the Peace) as it was lawful for him to do; and traverseth the Imprisonment in any other County; and it was thereupon demurred. First, because a Constable cannot take sureties of the Peace, unless for an affray committed in his view. Secondly, because the County is not traversable. But as to the second the Court would not hear any Argument, for there is no question but it is traversable when the justification is Local; and so it was adjudged in the Queens Bench, 27 Eliz. Rot. 404. betwixt Dawby and Dawby. But as to the first, Anderson, Walmsley, and Beamond held that the justification is not good. For Anderson said, that a Constable may commit one for the breach of the Peace in his view, but not if it be done out of his sight. And he cannot take an Obligation for the breach of the Peace, if it be not broken in his view; and an High Constable is not such an Officer nor Conservator of the Peace, whereof the Common Law takes any notice, for he is not mentioned in any Book; and neither the High nor Petty-Constable can take any mans Oath, that he is in fear of his life, wherefore, &c. Walmsley, a Pettit-Constable may commit one who hath broken the Peace, although it were out of his sight, if he will not find sureties of the Peace, upon information that one intends to make a Battery, and to disturb the Peace. For by preventing of the occasion of the breach of the Peace, it shall be well preserved. And although that 10 Ed. 4. 22 Ed. 4. 25. 3 H. 4. 9. are, that he may commit one upon view of the breach of the Peace, and make him find surety therefore, yet 44 Ed. 3. Tittle Barr. is that he may do it upon Information of the Peace broken, or to be broken, or that he comes where the persons are assembled to break it, for thereby the breach shall be avoided: but he may not take sureties by Recognisance entred, because he is not a Judge, nor any Officer of Record, but is elected by matter in pais, and therefore may take surety by matter in fait (viz.) by Obligation. But an High Constable cannot do so, for he is not a Conservator of the Peace by any Law, nor find I any Authority which mentions him, and in the North there be not any High Constables. But neither high nor pettit Constable can take an Oath of any one that

Ant. 168.

Ant. 204.

he

he is in fear of his life, wherefore, &c. Beamond, a Conſtable and Sheriff are Conſervators of the Peace at the Common Law, and may take ſurety of the Peace by Obligation, upon view of the Peace broken or Tumult made, otherwiſe not. But they cannot take any mans Oath that he is afraid of death, for he is not a Judge nor Officer of Record, which is the reaſon that an Obligation taken by him ſhall be in his own name, and not in the Queens name, and ſhall be certified at the Seſſions of Peace. But a Chief Conſtable cannot do ſo, nor be they by the Common Law, but by Cuſtom, and for Conformity, wherefore, &c. Owen, a Conſtable is a Conſervator of the Peace by the Common Law, and may take ſureties of the Peace as well before the Peace broken, as after, for otherwiſe it would be too late; and this Authority at the Common Law yet remains, and that a Chief Conſtable may alſo do it; but notwithſtanding his opinion, for the reaſons before expreſſed, it was adjudged for the Plaintiff.

Mercer *verſus* Charter, Paſch. 33 Eliz. Rot. 1618.

(26) ATtaint upon a Verdict in an Aſſiſe. An eſpecial Verdict was found, which was imperfect in divers points, and how it ſhould be remedied was much doubted, for they all reſolved he could not have a Certificate, although a Certificate lies in the firſt Action; a new Venire facias alſo lies not, becauſe no Venire facias lies in the Action, but it was a Jury the firſt day, but as they were now adviſed, they conceived that he ſhould have a new Summons of the Jurors in the Action. And Anderſon and Beamond held that he might diſcontinue this Action, and bring a new attaint; but Walmſley and Owen conceived that after a diſcontinuance by act of the party, he ſhall not have a new attaint, neither by the Common Law, nor at this day by the Statute of 23 H. 8. but that he ſhall be fined and ranſomed, but they all reſolved that after a Nonſuit he ſhall not have a new attaint neither by the Common Law, nor by the ſaid Statute. Et adjournatur.

F.N.B. 108.D. Co. Lit. 139. a

Baldwin *verſus* Wiſeman, Trin. 36 Eliz. Rot. 906.

(27) TReſpaſs upon a ſpecial Verdict, it was found that Rich. Baldwin had iſſue, Richard and Henry, and two Daughters, and deviſed his Land to Henry in Tail, if he lived unto his age of Twenty four years, upon Condition that he ſhould pay one hundred pound to his Daughters; and if Henry died without Heir, then if Richard did not pay the ſaid hundred pound, that it ſhould remain to his Daughters and their Heirs, and whether this were a Condition or a Remainder by limitation to the Daughters, was the queſtion; and Walmſley and Beamond held that it was a Condition, and Beamond ſaid, that a deviſe to J.S. paying one hundred pound to J. D. and if he fail, that it ſhall remain to J. D. as a void Remainder. So a deviſe to A. and his Heirs, and if he die without Heir, that it ſhall remain to B. is a void Remainder. But Owen e contra in the principal Caſe, for it is a limitation by reaſon of the intent. But being afterward moved again, it was adjudged according to the opinion of Walmſley ut ſupra, that it is not any Limitation but a Condition, and that Richard was in for the Condition broken.

1 Rol. 411. 2.

Ante. 205.

Elizabeth

Elizabeth Counteſs of Rutland *verſus* Iſabel Counteſs of Rutland.

ELizabeth Counteſs of Rutland, and other Executors of Edward Earl of Rutland, Executor of John Earl of Rutland, againſt Iſabel Counteſs of Rutland: Action upon the caſe of Trover of divers Jewels and other Goods to the value of One thouſand pound; and alledgeth, That the Defendant knowing thoſe Goods to appertain to John Earl of Rutland in his life time, and after his death to Edward Earl of Rutland, as Executor to John, and after his death to the Plaintiff as Executor to Edward, Executor to John, had converted them to their damage of One thouſand pound. The Defendant pleaded Not guilty, and found guilty to the damage of Nine hundred and forty pounds. And it was now moved in Arreſt of Judgment, That this Action lies not for an Executor upon a Trover and Converſion in the time of their Teſtator; for it is not within the Statute of 4 Edw. 3. as a Quare impedit, and an Ejectione firmæ have been taken to be within the equity thereof. Secondly, Becauſe there is not any certain time ſhewn of the Converſion, whether it were in the time of the Teſtator, or of the Executor. Yelverton to the firſt Exception; The Action well lies for an Executor by the equity of the Statute, and ſo it was adjudged, Paſch. 33 Eliz. in Banco Reginæ, That this Action lies for Executors upon a Trover and Converſion in the time of their Teſtator; and it was one Drakes Caſe. To the ſecond, the day of the Converſion is not material; for be it in the time of the one or the other, the Executor ſhall recover and have damages to the uſe of their Teſtator: But the Count is certain enough, for it is That the Defendant knowing the Goods to be the Goods of the ſaid John Earl of Rutland, and intending to defraud the Plaintiffs, had converted them. So of neceſſity it is to be intended, that the Converſion was in the Plaintiffs time. And as to the firſt, all the Juſtices reſolved, That an Executor may well maintain an Action for Goods converted in the time of their Teſtator, by the equity of the Statute of 4 Edw. 3. as well as a Quare impedit; and ſo is the common experience at this day. But as to the ſecond, Beamond and Owen held it to be a material Exception; for the day of the Converſion ought to be expreſly laid, although it be not Traverſable; for it is matter of ſubſtance, and the point of the Action: and therefore the day and place of the Converſion ought to be expreſly mentioned. And it hath been adjudged in the Queens Bench in Stranſhams Caſe, and in Sir Thomas Pylliſtons Caſe, That the place of the Converſion ought to be laid; otherwiſe it is ill: And as this caſe is, the Action may be brought of the Converſion in the time of the Teſtator, or in his own time. And it is doubtful in whoſe right it is brought, for want of the time certainly expreſſed: And in the one caſe he ought to have his Action upon the Statute, and in the other caſe by the common Law; wherefore it is not good. But Anderſon and Walmſley held ſtrongly to the contrary; for the Caſe being agreed, that the Executors ſhall have the Action as well for the Converſion in the time of their Teſtator, as in their own time; it is not material in whoſe right the Action be brought: For they

(28)
Owen 156.
Mo. 266.
1 Rol. 288.
Poſt. 387.
Poſt. 384.
Ant. 97.

are to recover damages to the uſe of their Teſtator both ways. And it is agreed on all ſides, that the day laid down, is not Traverſable; and not being expreſſed, it is not much material; nor the Inqueſt ſhall not have regard thereto: But the time is well laid down, for it is poſt mortem, intending to defraud: So of neceſſity it is to be intended, that the Converſion was poſt mortem. And as to the Caſes cited, That the place of the Converſion is material in this Action; that is, becauſe otherwiſe there cannot be any trial, if no place had been alledged: But as this Caſe is, being after Verdict, it is not any Exception to ſtay the Judgment; although peradventure it might have been an Exception, if there had been a demurrer thereupon; for that is not in default of ſubſtance, but it is to the manner only: Afterwards in this Term the Record of the Caſe of Ruſſel and Pratt, which was Hillary, 21 Eliz. Rot. 410. in Banco Reginæ was brought in and ſhewn. And in that it was proved. That an Action lies for an Executor for a Converſion in the time of his Teſtator, but nothing proved for the day. And it was ſaid by Anderſon, That the Lord Chief Juſtice, and Chief Baron were of this opinion; but further day was given till the next Term; and if any of the parties died, Judgment ſhould be Tunc pro nunc: And afterward, the next Term it was adjudged accordingly for the Plaintiff. Nota, that in this Caſe, it was reſolved, that three Executors bringing this Action, and the one being an Infant, and they all ſued by Attorney, that it was good, becauſe they all are but one perſon, and ſue in autre droit, and not in their own right: And it is not reaſonable, that one or two ſhould ſue by Attorney, and a third by Gardian or Prochine Aime.

1 Rol. 485.

1 Rol. 288.

Walker *verſus* Collier, Hillarii, 36 Eliz. Rot. 906, or 306.

(29)

Co. 6. 16. a. 1 Cr. 158.

TReſpaſs. Upon a ſpecial Verdict the Caſe was, the Land was deviſed to one for life, Remainder to the Plaintiff, paying Five and forty ſhillings to John S. And it was found, that the Land was worth three pound per annum. The Tenant for life died; and whether the Plaintiff had thereby a Fee, or for life, was the queſtion: And all the Court reſolved without any great Argument, That he ſhould have it in Fee, eſpecially when the money is not appointed to be annually paid. And Anderſon ſaid, That this word Paying, made his Eſtate Conditional; but the not finding whether it was paid, is not material, no more is the finding of the value. Wherefore it was adjudged ut ſupra for the Plaintiff.

Ant. 205. Poſt. 498, 745. 1 Cr. 158, 159. Ant. 146.

Chomley *verſus* Humble, Hillarii 35 Eliz. Rot. 2018.

(30)

Co. 1. 86. a.

TReſpaſs. Upon demurrer the Caſe was ſuch. A Feoffment was made to the uſe of one for life, Remainder to Henry Chomley in Tail, Remainder to another in Tail, Remainder over in Fee to the Lord Chamberlain, Lord Hunſdon, with this Proviſo, That if any of them in Remainder in Tail, Go about to levy a Fine, or to

do

do any act, whereby the uſes limited ſhall not take effect according to the Limitation, or that there ſhall be any diſcontinuance; that then the Eſtate of him who ſo goeth about, ſhall ceaſe; as if he were naturally dead, and no otherwiſe. And whether this were a good Proviſo, and that the Eſtate ſhall ceaſe by ſuch an act done, was the queſtion. And after argument by the Serjeants on either ſide, the Court delivered their opinion, that it was not good. Anderſon, at the Common Law Ceſtuy que uſe had nothing, and an Eſtate of Inheritance at the Common Law cannot ceaſe; and the Statute of Uſes doth not help it: For the Statute cannot help any Uſe, where there is not any perſon who is ſeiſed to the uſe. Walmſly, The Proviſo, that it ſhall ceaſe, as if he were naturally dead, is void, and without ſenſe: For if he were dead, it ſhould deſcend to the Son, and he ſhould be in, in the per by the Father, and it ſhould come unto him quaſi by degrees and ſteps; but that cannot be when the Father is in eſſe and living: Wherefore the words in the Proviſo to this purpoſe, are void, and without any ſignification, and they are as if they never had been mentioned; and ſo it is an Eſtate-tail abſolute and without Condition: But in entry into Religion, the Land ſhall deſcend to the Son; for the Law reputes him dead. But if an Act of Parliament had been made ut ſupra, it ſhould be good enough, and ſhould make a diſcent to the Son without death; but by conveyance there cannot any ſuch diſcent be made. And an Eſtate of Inheritance in Land, Ant. 361. cannot be made to ceaſe by any conveyance, without ſome other Act doing. Beamond ad idem: An Eſtate in Tail cannot ceaſe at the Common Law, no more can it in Uſe at this day; for it is as an Eſtate executed at the Common Law; and the iſſue cannot have a Formedon, living the Father, and that Feoffees at this day ſhould be ſeiſed to his Uſe is abſurd. Wherefore, &c. Sed adjournatur, and not adjudged at that time: But afterwards in the next Term adjudged, that the Proviſo was not good, and that the Iſſue could not have it for the forfeiture, 1 Coke 86.

Dyotto *verſus* Curredale.

ACcompt. Suppoſing that he was his Receiver at London to render Accompt. The Defendant ſaith, That he received it at Litchfield to deliver over to J. S. which he had delivered abſque hoc. That he was his Receiver at London, and it was thereupon demurred, and without Argument adjudged for the Plaintiff; for the place of the Receipt is not Traverſable; for the Receipt is not local, but tranſitory, which matter may be given in evidence in any place. But if the Traverſe had been abſque hoc, that he received it in another manner, it had been well enough. Wherefore it was adjudged ut ſupra. (30) Ant. 184.

Howlet *verſus* Osbourn.

(31) ASſumpſit. The Caſe was, that one delivered ten pound to the Defendant to deliver to the Plaintiff; and the Defendant promiſed the Plaintiff to pay it unto him: And upon this the Plaintiff brought his Action, and ruled, That it lies not. But Walmſley ſaid, If the Plaintiff had given a day for the payment thereof, it had been a good conſideration.

Poſt. 834.

Eylet *verſus* Lane & Pers.

(32) TReſpaſs. It was found by ſpecial Verdict, That the Land was demiſable in Fee, or in Tail by the Cuſtom; and that this Land was demiſed in Tail by Copy, and that the Copyholder ſuffered a Recovery in a Writ of Entry in the Poſt, with Voucher over; and that ſuch Recoveries were not uſed there before: And whether this ſhould bind the Eſtate Tail or no, was the queſtion. And the Court upon motion thereof conceived, That it ſhould be hard to warrant ſuch Recoveries, unleſs there be an eſpecial cuſtom to maintain it; and it is hard to maintain it, for a Warranty cannot be annexed to ſuch an Eſtate. Quære. But afterwards it was adjudged, That this Recovery being againſt the Tenant in Tail himſelf, was at the leaſt a Diſcontinuance, as it is of a Recovery againſt Tenant in Tail in poſſeſſion at the Common Law: But whether it were a Bar to the Intail, or not, they agreed not in opinion. But for the cauſe of the Diſcontinuance, Judgment was given for the Defendant.

Ante 372.
Poſt. 391.
1 Rol. 506.
Poſt. 392.

Price *verſus* Williams.

(33) DEbt as Executor to the Lady Price upon an Obligation: The Condition was for the payment annually of forty pound, during the life of the Lady at the Feaſt of St. Michael, and the Annunciation, or within thirty days after every of the ſaid Feaſts. The Lady dies within the thirty days: Whether this ſhall diſcharge the payment due at the ſaid Feaſt before her death. And the Court held, that it did.

Co. 10. 12. 79. b

Termino

Termino Hillarii, 37 Eliz. in Camera Scaccarii.

Percy *verſus* Bardolf.

ERror upon a Judgment given in the Queens Bench: Debt was brought againſt Baron and Feme, for the debt of the Feme. Upon an Obligation made by the Feme dum ſola fuit, upon Non eſt factum pleaded, and found for the Plaintiff. Judgment was, That the Baron ſhall be in miſericordia, and that the Feme capiatur: And this being aſſigned for Error, the Judgment was reverſed; for it ſhould be capiantur for both. 34 H. 6. 23. 15 Edw. 4. 2. 3 Edw. 4. 24. 4 Edw. 4. 25. 1 Hen. 7. 25. 9 H. 6. 9. 1 Cr. 407. 513.

Termino

Termino Paſchæ,

Triceſſimo ſeptimo ELIZABETHÆ, in Banco Reginæ.

Dudley *verſus* Kington.

(1) Mo. 401. DEbt upon an Obligation. The Condition was, That if the Plaintiff had, poſſeſſed, and enjoyed the Office of Bedleſhip of the Court of Conſcience in London, That then, &c. The Defendant pleaded, Quod habuit, gaviſus fuit & occupavit, &c. Whereupon they were at iſſue, and the Jury found that the Plaintiff did exerciſe and occupy that Office from the time of the Bond made, until that time: But whether it were an Office de Jure, they knew not, Et ſi ſuper totam materiam videtur curiæ, that that ſhould be ſaid to be an having, poſſeſſing and enjoying of the Office, they found for the Defendant; otherwiſe for the Plaintiff. And Harris Serjeant hereupon moved, That this Verdict is for the Plaintiff. For this occupying of the Office cannot be ſaid to be an having and enjoying thereof; for a Deputy may exerciſe an Office, yet he hath not any Office, as 39 H. 6. is; and to that opinion Gawdy inclined. For it ought to be an having in intereſt, and not only an Occupation which ſhall make a perfor-mance of the Condition: But Popham, Fenner and Clench e contra. For Fenner ſaid there was a diverſity betwixt an Office in verity, and an Office in reputation only; for an Office in reputation which is not revera, one cannot have any other poſſeſſion than by the occupation thereof; and the occupying thereof, is all the enjoying which may be of it: For it is not an Office in Intereſt, but only in the name and uſe thereof. And therefore there cannot be any intereſt thereof but by the uſing it: As to have the Office of Marſhal or Tryer before the Juſtices of Aſſiſe, or the like. Wherefore, &c. And afterwards Judgment was given accordingly for the Defendant.

Girland *verſus* Sharp.

(2) TReſpaſs. Upon Demurrer the Caſe was, That one infeoffed his two ſons to the uſe of himſelf for life, and after to the uſe of them and their Heirs, Ad ultimam voluntatem ſuam perimplendam And afterwards deviſed it to Sharp, the Defendant, in Fee; and whether Sharp ſhall hereby have the Land, or not, was the queſtion. Gawdy conceived, That he ſhould not; for an Uſe cannot be limit-
Co. Lit. 271. b. ed upon an Uſe. Then when he limits it to the Uſe of his two ſons, and their Heirs, he cannot afterwards limit it to the Uſes of his laſt Will. But the words Ad performandum ultimam voluntatem, as to

limit

limit any uſes thereby, are void words; and to that opinion Clench agreed. But Fenner doubted thereof; wherefore it was adjourned.

Thinn *verſus* Chomley, Trin 36 Eliz. Rot. 842.

(3) DEbt. And declares, That he let certain Land to Agar for one and twenty years, rendring annually at the Temple Church, London, Thirty pound at Michaelmas, and the Annunciation, Et ſi contingat, That the ſaid Rent ſhould be behind, and not paid at the days, &c. That then the ſaid Agar, his Executors and Aſſignes, ſhould forfeit nomine pœnæ, three ſhillings four pence for every day which ſhould incur after ſuch default, until the ſaid Rent and Arrearages ſhould be paid. That afterward upon 28 February, 32 Eliz. the ſaid Agar granted his Eſtate to the Defendant; and that after the grant at Michaelmas, Anno 33 Eliz the Rent was arrear, and not paid, and it was in arrear for five hundred ſeventy ſix days after. And that at another Rent-day it was in arrear, and not paid, and remained in arrear for twelve days. Wherefore he had forfeited, &c. Whereupon he demanded three hundred pound ſixteen ſhillings and eight pence. The Defendant thereupon pleaded Nil debet, and it was found againſt him; and it was now moved in Arreſt of Judgment, that this Action lies not againſt the Aſſignee; for this penalty is meerly founded upon the Contract, which is in privity betwixt the Leſſor and the Leſſee, and it runs not with the Land. But Gawdy and Clench held that it well lay, for the Land is charged therewith, and the Aſſignee for his own time ſhall be chargeable. But Fenner held e contra, for the penalty is quaſi collateral. Fenner alſo moved, That the Declaration was not good; for he is not entituled to the penalty, unleſs the Rent be demanded, no more than he ſhould be to the Forfeiture of a Leaſe for non-payment. Gawdy, it is not alike; for the Condition which goes in Defeaſance of an Eſtate, ſhall be taken ſtrictly; but the penalty is in nature of the Rent. And as he ſhall have the Rent it ſelf without demand, ſo he ſhall have the penalty. And to that opinion Clench agreed, Popham abſente. Wherefore it was adjourned.

Gould. 129, 186. Mo. 357. Co. 70. 28. b.

Goodale *verſus* Wyet, Hill. 37 Eliz. Rot. 805.

(4) EJectione firmæ for Lands in Alisbury: Upon a ſepcial Verdict the caſe was, That Sir John Packington by Deed indented, infeoffed of thoſe Lands one Woodliff upon Condition, That if he paid to the Heirs, Executors, or Adminiſtrators of Woodliff one hundred Marks within a year after his death; that then Charta prædicta & ſeiſina ſuperinde deliberata foret vacua & nullius effectus. Woodliff Infeoffs J. S. thereof, and dies, and within a year after his death, Sir John Packington agrees with the Heir of Woodlif for thirty and two pounds to be paid in ſatisfaction of the hundred Marks. Nevertheleſs at the day he paid unto him the one hundred Marks upon his promiſe beforehand, to re-deliver all unto him but the two and thirty pound, and the Heir then returned back unto him all but the two and thiry pound: And hereupon Sir John Packington entered upon J. S. who entered, and let it to the Plaintiff. Popham; although the one hundred Marks were intirely paid, and ſo the Condition was performed

Co. 5. 95. b. 1 Rol. 408. 21.

Ant. 67. Co. Litt. 209. b

formed in words, yet circumſtance will make it to be no payment nor performance in Law. For Payments ought to be plain and true: But here there is not any true Payment of more than thirty and two pound; for of the reſidue there was not any Payment; for he that paid it, may thereof have an Accompt againſt him who received it: And it is as no Payment, but quaſi a Receipt to render an Accompt: And to that opinion Gawdy ſeemed to agree. Gawdy alſo held, that the money ought to have been paid here to the Aſſignee; for he is the party, who is to have the loſs, and therefore he ought to have the Payment: And although he be not named, it is not material; and for that purpoſe Vide 6 Rich. 2. Quid juris clamat. Wherefore they adviſed the Jury to find this matter ſpecially, and ſo they did; Quere tamen de ceo Perkins 148. And after argument it was adjudged accordingly for the Plaintiff for the reaſon before ſpecified. Note, That afterwards a Writ of Error was brought upon this Judgment, and the Error was aſſigned in point of Law; and affirmed, that they were good words of a Condition, and that this Payment being Covenous, was no performance, 5 Co. 95. b.

Hill *verſus* Prideaux.

(5)

TReſpaſs: For that he chaſed his Cattel In tantum ita quod per fugationem interierunt. The Defendant pleads, That the place where, &c. is holden of him by ſuch ſervices, and he diſtrained thoſe Beaſts, and impounded them in a Pound overt; and that they died there de fame in default of the Plaintiff, the which is the ſame Treſpaſs. And it was thereupon demurred, and without Argument adjudged for the Plaintiff; for when the Plaintiff alledged, that in tantum effugavit, quod per effugationem interierunt; and he pleads, Quod fame interierunt, that is not any Plea without a Traverſe, Quod per effugationem non interierunt.

Ant. 94. Ant. 30.

Jinkinſon *verſus* Mayne.

(6)

Moor 401. Ant. 62. Poſt. 470.

ACtion for theſe words, The Plaintiff deſerved to have his Ears nailed to the Pillory. Adjudged that the Action lies.

Smith *verſus* Vanger Colgay.

(7)

TReſpaſs by an Adminiſtrator De bonis aſportatis in vita inteſtati. After Verdict it was moved in Arreſt of Judgment, That this Action is not given by the Statute of 4 Ed. 3. but ruled without Argument, That the Action lay by the Equity of the Statute; for it is in equal miſchief, 14 H. 7. 13 Accord.

Ant. 377.

Earl of Pembroke *verſus* Sir Henry Berkley. Paſc. 36. Eliz. Rot. 351.

(8)

Moor 706. 2 And. 20. Co. 2. 71. b. Poph. 116. Gould. 130. Poſt. 56.

ACtion upon the Caſe, for diſturbing him to execute his Office; and upon Demurrer the caſe was, That the Earl of Pembroke was ſeiſed in Fee of the Manor of Froomſwood in the County of

of Somerſet, with the cuſtody of the Foreſt of Fromeſwood thereto appertaining (the Foreſt being the Queens) he granted by Indenture to Sir Maurice Berkley, Father to the Defendant; and to the Heirs males of his body, the Office of the Lieutenantſhip of the Foreſt, and the cuſtody of a walk within the ſaid Foreſt called Stavordale walk, with all Fees thereto appertaining. Provided, and the ſaid Maurice Berkley doth covenant, promiſe and grant for him, his Heirs, &c. That the ſaid Earl, &c. ſhall have the command of the Game there. Provided alſo, and the ſaid M. B. doth further Covenant, not to fell or cut any wood, but for neceſſary Browſe, &c. Sir Maurice Berkley dies, and afterwards Sir Henry Berkley being his Heir, enters and cuts down four Oaks, whereupon the Earl claimed it for the Condition broken. And whether it were a Condition, or but a Covenant, and whether it were broken, and if the Eſtate of Sir Henry Berkley by this act done, be determined and forfeited, were the queſtions. Tanfield and Atkinſon argued that it was but a Covenant, and not a Condition; for the words are all the words of the Leſſee, and there is not any reſtraint impoſed by the Leſſor; and being conjoyned by the Leſſee with the Covenant, are only of the nature of a Covenant, and not conditional. But if it had been Provided always, and it is Covenanted, &c. there peradventure it might have been a Condition; for they be the words as well of the Leſſor as of the Leſſee; and in proof thereof relied upon 28 H. 8. 6. and 13. 3 & 4 Phil. & Mar. 150. Gravenors Caſe. 5 Eliz. 222, and 318. That the word Proviſo being coupled with a Covenant, and being ſpoken by the Leſſee only, do not amount to a Condition, but to a Covenant only. But Paſch. 33 Eliz. Rot. 709. in the Common Bench, betwixt Symſon and Totterel, where a Proviſo was, And it is Covenanted and Granted that the Leſſee ſhall not aſſign his term, it was adjudged to be a Condition for the reaſons before; and here be not any words which ſhew the intent of the parties to make the Eſtate conditional; but rather e contra. For the firſt clearly is not any Condition, but a Covenant only. And of the ſame nature is the ſecond, for that is provided alſo, &c. which is in the ſame manner; and although the words in the Indenture are quaſi the words of both, yet are they properly the words of him who ſpeaks them. Coke the Queens Attorney, and Williams Serjeant e contra. For this Proviſo ſounds as a Condition, becauſe it ſtands ſubſtantive; and it is to reſtrain the doing of a thing: And it is alſo a Covenant of the breach whereof Damages ſhall be recovered; but admit it were not a Condition, yet the cutting down of the trees was a forfeiture of his Office, by a Condition in Law annexed thereto, whereof the Earl ſhall take advantage, and not the Queen, as 39 H. 6. is. Gawdy, this Proviſo here is not any Condition; for a Proviſo of it ſelf in a Deed which hath not any perfect ſentence annexed thereto, is neither a Condition nor a Covenant. For the Concluſion thereof ſhews how it ſhould be taken, but this is matched here with the words of a Covenant; ſo that the words which make it to have any perfect ſenſe reſt only in Covenant; for if it ſhould be taken by it ſelf, it hath not any meaning, and then it cannot make it a Condition; the words alſo ſpoken by the Leſſee only, ſhall never make a Condition; and to that opinion Clench agreed, Popham & Fenner e contra; for the Proviſo here hath a perfect Concluſion, for the words that the Leſſee ſhall not fell Trees, refer to the Proviſo and to the Covenant; ſo it ſounds as well to the Condition as to the

Ant. 202.

Ant. 242.

Ant. 202. Poſt. 486.

Covenant; and it ſhall be as if there had been ſeveral ſentences; and there is not any difference betwixt this and the Caſe of Sympſon and Tytterell before recited. And Popham ſaid, that if there were not here a Condition in fait, the Defendant had forfeited his Eſtate by a Condition in Law annexed thereto; and that forfeiture is to the Plaintiff. For it is a Condition annexed, that he ſhall preſerve the Game; and when he deſtroys that which is for the preſervation of them, he thereby breaks the Condition in Law; and although the Woodward may by his Office cut down Trees and not be puniſhed, yet the Law ſhall puniſh a Keeper who offends therein. And as to that which hath been ſaid, that if it be a forfeiture, it ſhall be to the Queen, of the entire Office, that is not ſo; for there is a difference when a man hath an Office, and grants the intire Office to another for life, and the Grantee breaks a Condition in Law, the intire Office is forfeited. But if a man hath another inferior Office derived out of his Office, but not any part of the principal Office, but appertaining thereto, and in his gift, the forfeiture of the inferior Office is given to the Grantor, and it ſhall not be a forfeiture of both Offices, which is the reaſon of the Caſe, 39 H. 6. of the Caſe of the Duke of Norff. Gawdy, I do not remember any Book, that the cutting down of Trees is the forfeiture of the Office of a Parker; for the Condition annexed to his Office, is but to preſerve the Deer, and therefore 5 Ed. 4. if a ſtranger kills the Deer, it as a forfeiture of his Office: But clearly it is not ſo if the ſtranger cut down the Trees; and as this caſe is, it doth not appear to be any forfeiture; for although the Defendant hath cut down four Trees, yet it appears not but that there is ſufficient left for Browſe and ſhade for the Deer, and for covert for them, wherefore, &c. Adjournatur. And afterwards upon conference amongſt all the Juſtices of England, it was held by the greater part of them to be a Condition, and adjudged accordingly. 2 Co. 71. poſtea Paſch 39. pl. 17.

Co. Lit. 233. b

Poſt. 560.

Portman *verſus* Willis.

(9) Gould. 129. Moor 352.

Ejectione firmæ, upon a ſpecial Verdict it was found, That the Biſhop of Wincheſt. 26 H. 8. let the Land to Robert Hill for 99 years. That Robert Hill 1554 being poſſeſſed of that Leaſe made his Will, and thereby deviſed divers Legacies of Plate and other Goods to others; And afterwards therein deviſed All the reſidue my Goods, my Debts and Legacies paid unto Margaret my Wife, whom I make my ſole Executrix, to ſee my Will performed; and I make Henry Portman my Overſeer. Robert dies, the Feme enters generally, and deviſeth that Term to James Hill, and dieth before the Debts paid. James enters by the Executors aſſent, and was a Suitor to the Biſhop of Wincheſter, that he might ſurrender it to the uſe of Symms and his Heirs, who agreed thereto; afterwards James Hill in the Court of the Manor of Taunton (whereof this Land was parcel) ſurrendred it to the Steward there, to the uſe of Symms and his Heirs in perpetuum; and afterwards the Biſhop agreed to that ſurrender, and let that Land to the Plaintiff, and the Defendant (as a ſervant to Symms) entred; Et ſi ſuper totam materiam. The firſt point moved was, whether by the deviſe of Omnia bona, this Leaſe for years did paſs; for it was moved, that it was intended only of chattels perſonal, but not of real, and in proof thereof 4 Ed. 6.

grants

grants 51. was cited, where by the grant of Omnia bona, Leaſes do not paſs. But Catalla comprehends as well real as perſonal, as Stanford 45. and the Law regards this diverſity betwixt them; for the Writ of fieri facias and other Writs mention Bona & Catalla, which they would not do, if Bona comprehended both. Secondly, when the Feme entred generally, whether ſhe ſhall be ſaid to be in as Legatory, or as Executrix; for if ſhe took it as Executrix, her deviſe thereof is void. Thirdly, whether this ſurrender into the hands of the Steward, to the uſe, &c. and the Leſſor agreeing thereto, be a good ſurrender to extinguiſh the Term, although it be a void limitation of the uſe. Gawdy, by the grant of Omnia bona mobilia & immobilia, Leaſes for years paſt: So likewiſe it is of the grant of Omnia bona in general, and 39 H. 6. 35. is that a man had Rent for years, and granted omnia bona ſua: and it was held that this Rent paſſed, and 7 H. 4. is that an Executor ſhall have an Ejectione firmæ by the equity of the Statute of 4 Ed. 3. de bonis aſportatis, &c. So the Law accounts of them as Goods. But Popham and Clench held, that 4 Ed. 6. is Law in this point, that by the grant of Omnia bona Leaſes paſs not; but they conceived that in Wills, they may well paſs. For it is a Legacy whereof the Civilans are Judges, and they hold that bona comprehends all Chattels: And we in this point ought to Judge according to their Law. For the ſecond point Gawdy and Popham held, that ſhe ought to have made her election before ſhe had it as Legatory, eſpecially as this Caſe is, it being given by the name of the Reſidue. So as ſhe ought to have ſhewn that there was ſufficient to ſatisfie all Debts and Legacies, over and beſides that Leaſe, and that ſhe would have it by the name of the Reſidue, and it is here found that ſhe died before all the Debts of the Diviſor were paid, ſo as ſhe cannot have it as the Reſidue until they be paid or ſatisfied. For the third point, of the ſurrender they ſaid little thereto, Gawdy only conceived that it was not any ſurrender; for it was never intended to ſurrender to extinguiſh it, but to grant it to an uſe, which if it takes not effect, it is void to all purpoſes to make a ſurrender. Et adjournatur.

Ant. 379.

Ant. 348.

Co. Lit. 218. b

May *verſus* Alvares.

(10)

ASſumpſit, and declares, whereas the Defendant was poſſeſſed de diverſis bonis of the Plaintiff, that the Defendant in conſideration the Plaintiff would forbear the Goods, promiſed to deliver them within ſix months, and alledgeth in facto that he did forbear them for ſix months, and that the Defendant had not yet delivered them, upon non aſſumpſit, pleaded and found for the Plaintiff, it was moved in arreſt of Judgment. Firſt, that there was not any conſideration, for it is that he ſhould forbear; and he doth not ſhew for what time, which is not any conſideration; for ſo he might forbear but for a quarter of an hour, and although it be alledged, that he forbear for ſix months, That helps not the conſideration alledged. Secondly, he doth not ſhew what Goods they were, and ſo incertain. But the Court held it to be well enough notwithſtanding theſe exceptions, for as to the firſt, it is a ſufficient conſideration, that he forbear; and he ought to ſhew for what time he forbore it; and when the Defendant ſaith, that he would deliver them within ſix months, therein is implied, that the other ſhould forbear them for ſix months, and therefore it is ſufficiently ſhewn that he forbore them for ſix months. Secondly, there need not

2 Cr. 683. Poſt. 455. Ant. 380.

any certainty of the goods to be ſhewn, for he is not to recover them in ſpecie, but damages, &c. wherefore it was adjudged for the Plaintiff.

Barton *verſus* Lever & Brownlow, who were Recoverers for Sir Rich. Shutleworth, Paſch. 23 Eliz Rot. 396.

(11) Poph. 100. Moor 365. 2 Rol. 394. Poſt. 420.

ERror. The Caſe was, that R. Barton Tenant in Tail, levied an erroneous Fine in Septimo Elizab. and afterwards upon the decimo Martii, undecimo Eliz. (which was the firſt week in Lent) a Writ of entry was brought againſt the Conuſee, returnable Die Lunæ quarta ſeptimana quadrageſſima proxim' futur'. Et in die Lunæ quarta ſeptimana quadrageſſimæ of the ſame Lent, the Conuſee appeared and vouched R. B. who entred into the Warranty and vouched over, and ſo a Recovery was ſuffered: R. B. dies, the iſſue in Tail brings error to reverſe the Fine; and this Recovery was pleaded in Bar; and it was thereupon demurred. Atkinſon argued for the Defendant, that it was a good Bar to the Writ of Error. The firſt queſtion was whether this entry into warranty, and ſo a voucher over, and ſo a Recovery had, be a Bar to the iſſue in Tail to have a Writ of Error of the Fine; and he held that it was. For by entring into warranty generally a man ſhall loſe all Rights and all Actions which he hath to the Land, all Rents, all Conditions, and every other benefit which he may have thereto; and for that purpoſe 2 Ed. 2 voucher 208. and 7 Ed. 2. voucher, That Rent is gone by a general entry into warranty. So 3 Ed. 3. 51. 5 Ed. 3. 11. That a Condition is gone; ſo 50 Ed. 3. that his Action is gone although he would ſave it by proteſtation; and 13. Aſſiſe Plea, that a Baron by his entry into warranty with his Feme ſhall loſe his own Action, 19 H. 6. By a partition betwixt Coparceners, the Writ of Error is gone. And although it were ſaid that this Writ of Error is but only an examination of the Record, which is not gone by the entry into warranty; that is not ſo, for by his entry into the warranty, his Title to have reſtitution is gone; and if he ſhould reverſe that Fine, he is to have reſtitution; ſo by conſequence the Land is demanded, which is gone by this entry into warranty, and voucher over. Secondly, whether this Recovery were good, or but voidable or meerly void, which reſted only whether theſe words proxim' futur' ſhall refer to the Lent after following, for if ſo, here is a Recovery ſuffered before the return of the Writ; and he held that it ſhould refer to die Lunæ in quarta ſeptimana in the ſame Lent and ſhall not refer to quadrageſſimæ although it were laſt mentioned. For Relatio ſhall not be ad proximum antecedens in all Caſes; and in proof thereof vouched, 22 Ed. 3. and 28 H. 8. Boulds Caſe was cited to that purpoſe. Hutton e contra, to the firſt, he conceived it is not any Bar, becauſe by the Fine he had neither jus in re nec ad rem, and then this intended recompence cannot go to this title in Tail which he had not; and to this Writ of Error the iſſue in Tail is entituled, and is not to be barred by any Act of his Anceſtors. And therefore 2 and 3 Elizab. 188. Dyer, Tenant in tail releaſeth Errors, and after is barred in a Writ of Error, it ſhall not bind the iſſue in Tail. F. N. B. 108. F. Tenant in Tail brings an Attaint and is nonſuited, yet the Iſſue ſhall have the Attaint, and here he hath not any right to the Land by the Fine levied with Proclamations, wherefore he cannot have any recompence in value to bar it. And therefore

foꝛe 25 Eliz. it was adjudged in the Lord Norris's Caſe againſt Braybroch, that where Tenant in Tail was, remainder over in Tail to Lionel Norris, the Tenant in Tail ſuffered an erroneous recovery, and died without iſſue, Lionel in remainder was attainted of Treaſon, and all his Lands, Rights, Actions to Land, were given by Parliament to the Queen, and afterwards he was reſtoꝛed in blood. This title to have a Writ of Erroꝛ was not thereby given to the Queen, foꝛ it was not an Action noꝛ Right to the Land, but a cauſe to examine the Recoꝛd, wheꝛefoꝛe, &c. As to the ſecond, he conceived that of neceſſity futur' ought to refer to quadrageſſima, and not to quarta ſeptimana, and theꝛefoꝛe there is an apparent fault in the Writ, and it is meerly void; foꝛ it is ſuffered by them who have not any day in Court; foꝛ they come in and ſuffer this recovery a yeaꝛ befoꝛe the Writ is returnable; foꝛ the Writ beaꝛs Teſt in prima ſeptimana quadrigeſſimæ, and it is returnable, Die Lunæ quarta ſeptimana quadrageſſimæ proxime futur', which woꝛds of neceſſity ought to refer to quadrageſſimæ, and not to Die Lunæ, noꝛ to quarta ſeptimana, foꝛ the rule is ad proximum antecedens fiat relatio, and in proof thereof relied upon 4 Ed. 3. 3. 16 Ed. 3. B. R. 652. 5 Eliz. 224. and 23 Eliz. 376. wheꝛefoꝛe this Recovery is erroneous foꝛ this apparent fault in the Recoꝛd, and ſo no bar of the Writ of Erroꝛ. But afterwards the whole Court reſolved foꝛ the Defendant in both points. Foꝛ to the firſt, when Tenant in Tail levies an erroneous Fine, he hath yet a right in the Land, which by his entry into the Warranty, and receiving thereby an intended recompence in value is barred. Foꝛ although Tenant in Tail cannot by Deed releaſe Erroꝛs to bar the iſſue in Tail; foꝛ as he is entituled to the Land, ſo he is to the Writ of Erroꝛ, which Tenant in Tail cannot releaſe oꝛ extinguiſh no more than he can give the Land; yet as by Fine oꝛ Recovery, he may bar the Tail it ſelf; ſo may he bar the Writ of Erroꝛ, and here when he enters into the Warranty, and vouches over, and hath recompence, he is in by his Warranty of all Eſtates; and the recompence in value is a ſufficient bar foꝛ all Eſtates and Rights; and as that ſhall be a bar foꝛ the Land it ſelf, ſo ſhall it bar his Action alſo and give away all his right to the Land. And to the ſecond matter they held that this recovery is not void noꝛ erroneous. Foꝛ theſe woꝛds proxim' futur' ſhall not be referred to quadrageſſima, but to Die Lunæ quarta ſeptimana. Foꝛ theſe woꝛds proxim' futur' being witten in a ſhoꝛt hand, are indifferent to which they ſhall be referred, and if it be conſtrued proxima futura then it agrees well with quarta ſeptimana, and if it be proximo futuro, then it agrees well with Die Lunæ, ſo in theſe two ſenſes it may be conſtrued, that the Recovery ſhall be good: But if it be proxime futuræ, then that refers to quadrageſſimæ, and the Recovery is void, foꝛ that it was a Judgment upon the voucher; and a recovery in value befoꝛe the Writ was returned, which cannot be: We muſt then conſtrue it in ſuch a manner, ut res magis valeat quam pereat; and according to both their intendment, and according to what ſeemeth moſt likely. Foꝛ it is not to be ſuppoſed that either the Plaintiff oꝛ Court intended, that the Writ which was ſued foꝛ his benefit, ſhould be made returnable a yeaꝛ after; the preſidents alſo have been there viewed, whereof divers of them are in this manner, whereunto regard ought to be had, that they be not conſtrued to be void and erroneous, when by any conſtruction they may be made good. Wheꝛefoꝛe, Co. 3. 2. a

foꝛe, foꝛ theſe reaſons in Mich. 37 and 38 Eliz. they all delivered their opinions abſolutely foꝛ the Defendant. And Popham ſaid he would have the Auditoꝛs and Students to obſerve theſe points agreed by the Court: Firſt, that a Recovery had after an erroneous Fine, ſhall bar the iſſue in Tail, from having a Writ of Erroꝛ to reverſe that Fine: Secondly, that a Recovery, although erroneous, ſhall bar alſo a Writ of Erroꝛ of the Fine until it be reverſed. Thirdly, that a Recovery which is void, is not any Bar. Fourthly, 1 Rol. 789. that the Recovery here is not void noꝛ erroneous, becauſe the Writ ſhall be intended returnable the ſame Lent; wheꝛefoꝛe, &c. But there was never any Judgment entred in this Caſe, becauſe the parties were moved to compound.

Pearce *verſus* Bacon.

(12) ACtion upon the Caſe foꝛ diſturbing him in uſing his Common. And where uſitatum fuit, &c. infra manerium prædictum. That every Copyholder within the Mannoꝛ ſhould have Common in ſuch a waſte of the Loꝛds, foꝛ two ſheep foꝛ every Acre of arable Land. And that the Defendant being Loꝛd there, had digged holes and burroughs therein foꝛ Conies; and ſo had diſturbed him of his Common. After not guilty pleaded and found foꝛ the Plaintiff, it was alledged in arreſt of Judgment, that this preſcription foꝛ a Copyholder againſt his Loꝛd is not allowable. Foꝛ every preſcription by a Copyholder to have Common, ought to be that the Loꝛd hath had foꝛ him and his Tenants, &c. ſo he cannot preſcribe in this manner. Poſt. 531. But all the Court reſolved that the preſcription was good. Foꝛ there is difference, where he preſcribes againſt a ſtranger, there he ought to alledge the preſcription in the Loꝛd. But where he preſcribes againſt the Loꝛd himſelf, he ought to alledge it by way of uſage, and although in acient time, they were accounted only but as Tenants at will, and ſo might not preſcribe againſt their Loꝛd; yet now they be accounted in an high regard, and as well as they may preſcribe foꝛ their Eſtate in the Land it ſelf againſt the Loꝛd; ſo may they do foꝛ collateral things foꝛ the benefit Ant. 353. of their Eſtates, as common, &c. wheꝛefoꝛe it was afterwards adjudged accoꝛdingly foꝛ the Plaintiff. V. 4. Co. 31. b.

Atkinſon *verſus* Atkinſon.

(13) DEtinue of goods. The Plaintiff had Judgment, and after the yeaꝛ Moor 402. the Plaintiff ſued a ſcire facias to have execution; the Defendant pleaded that upon a Writ of diſtringas awarded to the Sheriff upon that Judgment, he delivered ſuch Goods to the Sheriff; and foꝛ the reſidue that they were appꝛiſed at ſo much by an inquiſition taken by the Sheriff; and that he delivered the money to the Sheriff; but he doth not aveꝛ this matter to be returned by the Sheriff; and hereupon exception was taken, that this was not a Plea to extoꝛt Execution upon ſuch a ſurmiſe; and of that opinion at the firſt was Popham Chief Juſtice, foꝛ then by ſuch a feined Plea, any one who hath Judgment to recoveꝛ a Debt, ſhall never have execution. But Gawdy held that he very well may plead it, foꝛ otherAnt. 238. wiſe the Defendant ſhould be pꝛejudiced; foꝛ he might have 20 ſeveral Executions ſerved againſt him upon one Judgment; and he ſhould be put to his remedy againſt the Sheriff only, who peradventure is not woꝛth it; and it is a leſſer miſchief to inforce the Plaintiff, if his Plea be true, to take his Action foꝛ it againſt the Sheriff

Sheriff; and if it be not true, to take iſſue thereupon: afterward it being moved again, all the Court was of that opinion; whereupon he took iſſue accordingly, 44 Ed. 3. 18. 20 H. 6. 24. 21 H. 6. 5. 19 Ed. 3. Scire facias 120. and afterwards iſſue being joyned, the Jury found for the Plaintiff that the Goods were not delivered, but nothing concerning the payment; and it was held for that cauſe to be an ill Trial, and that the Plaintiff could not have Judgment for that which was found, but that he ought to try it de novo.

Clun *verſus* Peaſe & Turner, Mich. 36 & 37 Eliz. rot. 1817.

(14)

TReſpaſs. It was found by ſpecial Verdict, that the place where is parcel of the Mannor of Brettenhall in Eſſex, and Copyhold Land demiſable in Fee, in Tail, or for life; and that one Henry Smith was a Copyholder thereof in Tail, the Remainder to Edward Smith in Tail; and ſuffered a Recovery with Common voucher in a plaint in nature of a Writ of entry, in the Court of the Mannor (and that under it the Plaintiff claimed) and that afterwards he died without iſſue; and that the Defendant in right of Smith entred: And further they found, Quod nulla fuit conſuetudo pro communibus recuperationibus ante uſitat. within the ſaid Mannor, Et ſi, &c. Warberton for the Defendant; It is firſt found expreſly, that it is an Eſtate tail, and then it is not barred by this recovery. Firſt, a Warrant cannot be annexed to a Copyhold: for he to whoſe uſe the ſurrender is made, is in by the Lord: And he who would have a Warranty, ought of neceſſity to be in by the party. Secondly, a Warranty is at the Common Law, and the Eſtate in the Land is by Copyhold and Cuſtom; and therefore the Warranty cannot be annexed thereto. For thoſe Eſtates be created, and they be Demeſnes, and to be defeated by the Cuſtom of the Mannor; and therefore there ſhall not be a Tenancy in Dower, nor by the courteſie of them without an eſpecial Cuſtom. Then without a Warranty there cannot be any voucher nor recovery in value; and without a recovery in value there cannot be any bar to the iſſue in Tail; wherefore, &c. Glanvil held, that it ſhould bind. Writs of entry are allowable, be they with Title, or without Title; and there be ancient preſidents, that there have been Recoveries there in nature of real Actions and Receipts, and other courſes as at the Common Law. And the Lord Keeper who now is, about Twenty ſix years ſince purchaſed a Copyhold within the Mannor of Caſtobury in the County of Hert. which was entailed, and upon great advice he was to have a Recovery. And whereas it was ſaid that Warranty cannot be annexed, true it is, it cannot be annexed at the time of the ſurrender, but it well may be by a Releaſe or Confirmation afterwards. And admitting it could not be, yet none could counterplead it but the Vouchee; and if he enters willingly into the Warranty, that ſhall bind him when the Recovery is had, and if it be not good to bind in perpetuum, yet clearly it is a diſcontinuance, wherefore, &c. But all the Juſtices held that this Recovery ſhould not bind the iſſue in Tail; for it ſhall not bind upon an expectancy of a Recovery in value, which is the reaſon that it binds for Land at the Common Law; and here he cannot have any Land in value, for he cannot have any Land at the Common Law; and he cannot have cuſtomary Land; for if it ſhould be ſo conveyed, the Lord thereby ſhould loſe his Fine, and one ſhould hold his Land as a Copyholder without admittance

Co. 4. 23. a
Poſt. 717.
Ante 372.
Ant. 380.
1 Rol. 506.
Ant. 380.
1 Rol. 506.

mittance or grant from the Lord, which is contrary to the nature of Copyhold, and contrary to the preſcription, which is to hold by Copy, &c. But it is a diſcontinuance clearly, which cannot be defeated by entry; wherefore they gave day to ſpeak to that point. But afterwards it was adjudged for the Plaintiff; but quære whether upon the principal matter or not, v. Hill. 37. placito 17.

Ant. 380.

Brown *verſus* Foſter, Mich. 36 & 37 Eliz. Rot. 2892.

(15) REplevin. The Defendant avows for Damage-Feaſant; the Plaintiff makes Title as Copy-holder, and ſhews that within the Mannor of A. time whereof, &c. Talis habebatur & habetur conſuetudo, that any Copy-holder of the Mannor may ſurrender in any place within the Mannor, into the hands of two of the Copyhold Tenants, &c. and that there is another Cuſtom, that if any ſurrender to the uſe of another, without expreſſing any Eſtate, that the Lord may grant it in Fee to him to whoſe uſe the ſurrender was made. And the Plaintiff by Copy (granted in this Mannor) made his claim: and the Defendant thereupon demurred. But note that the Defendant in his Avowry claimed by Copy granted by the Steward of the Mannor, but he doth not expreſs the Stewards name. Williams for the Defendant moved, Firſt, That the firſt cuſtom is not well pleaded, for it is pleaded by uſage and cuſtom: But he doth not plead that ever it was put in ure in that manner, which ought to be alledged, 21 Ed. 4. 28. and 22 Ed. 48. and ſo it was held in this Court in Sir William Hattons Caſe, where it was pleaded, Quod talis habebatur conſuetudo, within a Mannor, Quod licebit ſeneſchallo to impoſe a Fine, &c. And the ſecond Cuſtom is unreaſonable and void; for it is to limit and charge the Land with a greater Eſtate than the Copyholder gave, which is unreaſonable, the Lord being but the perſon and means of conveying it, &c. Yelverton e contra, Firſt the avowry is ill, becauſe he claims by Copy granted by the Steward, and he doth not ſhew his name, which is iſſuable, And as to the Cuſtom it is good and reaſonable when a Copyholder ſurrenders and ſhews not any Eſtate, that the Lord may grant it in Fee to him to whom the ſurrender was made, for he is a Chancellor in his own Court to diſpoſe thereof when the Tenant leaves it uncertain; and therefore it was ruled here betwixt Lippingwell and Bunting, that where a Copyholder bargained and ſold his Copyhold (but he ſhewed not what Eſtate) and ſurrendred it to the uſe of the Bargainee, and the Lord granted it to the Bargainee in Fee, it was good, and the Bargainee ſhould retain it in Fee, and of that opinion was the whole Court in this Caſe, that this Cuſtom was good and allowable being uſed, ſo as when the Tenant doth not appoint the Eſtate of Ceſty que uſe, that the Lord may, the Intereſt of the Land being betwixt the Lord and the Copyholder, it is not unreaſonable that upon ſuch an incertainty, the Lord ſhould aſcertain it; but for the Plea they held, that the firſt Cuſtom was not well pleaded; for it is not ſufficient to alledge a Cuſtom that one might do ſuch an Act, but that he uſed to do it, as to alledge Dimiſibile & dimiſſum, &c. They alſo all agreed, that the not naming of the Steward made the Avowry to be ill; and then they held that the Avowry being ill, although the bar to the Avowry were ill, yet he cannot have return, whereupon the parties agreed to plead de novo, and ſo the matter in Law was not reſolved.

Co. 4. 29. b.

Ardern

Ardern *verſus* Darcy.

WAſte. The Plaintiff prayed a Writ of Eſtreapment againſt the Tenant and his Servants. Anderſon doubted, Whether it lay or no, becauſe the Plaintiff is therein to recover his damages. But Walmſley and Beamond held clearly, that it well lies: For it may be the damages be more than the Tenant can recompence if he had deſtroyed the Houſe and Woods; and they relyed upon 4 Ed. 3. 32. 12 Rich. 2. Eſtreapment plac' ultimo, & N.B.R. 61. Which Authorities are directly, that an Eſtreapment lies in this Action. And Brownlow the Prothonotary ſaid, that there was not any preſident as he remembred, that it had been awarded in a Writ of Waſte; but he ſaid he could ſhew preſidents where it was awarded in a Writ of Entry ſur deiſin. And the Court ſaid, they were all one; for there damages are recoverable: The Court alſo commanded them to ſearch preſidents, whether it lay againſt Servants, for they doubted thereof; but it was afterwards awarded. (16) Co. 5. 115. b. Poſt. 84.

Vaughan *verſus* Beal.

PRohibition being prayed for ſuing in the Spiritual Court, for the Tythes of Lands holden of the Queen in capite. It was now moved, that conſultation ſhould be awarded; for that there is not any cauſe to grant a Prohibition; for then he never ſhould have any remedy for them: for if he may not ſue for them in the Spiritual Court, he cannot ſue for them here. And all the Court held, that a Prohibition lay not: For although N. B. R. 401. is, that a Prohibition lies in this Caſe, yet that is to be intended where it is ſued in Chancery, where peradventure they may give remedy for the Tythes. But becauſe they were informed, that there be the like Preſidents in the Queens Bench, they ſaid, they would further adviſe. (17)

Hutchinſon *verſus* Lewſon.

DEbt upon an Obligation conditioned. Whereas the Plaintiff was obliged in ſuch Obligations for the Defendant, That if he were charged or moleſted in his body or goods for thoſe Obligations, he would within a month ſatisfie him for it. The Defendant ſaith, That he had paid him ſuch a ſum for all his charges within a month: And it was thereupon demurred, and without Argument adjudged for the Plaintiff: For he ought to ſhew how the Plaintiff was moleſted, and that he had ſatisfied ſo much; or that he was not moleſted: As if one be obliged, that he ſhall make ſuch aſſurance as the Plaintiffs Counſel ſhall deviſe. It is not ſufficient to ſay, that he made ſuch an Aſſurance; but he ought to ſay, that the Plaintiffs Counſel deviſed ſuch an Aſſurance, (18) Ant. 253.

which he had made: Wherefore without further argument it was adjudged for the Plaintiff. Vide 5 Ed. 4. 8. 22 Ed. 4. 15. 35 Hen. 6. 10.

VVard *verſus* Lambert, Hill. 35 Eliz. Rot. 34.

(19)

2 Rol. 783. UPon an especial Verdict the Case was, That one reciting by Indenture, that whereas J. S. was bound in a Recognisance and other Bonds for him; now he for divers good considerations, bargained and sold the Lands to him and his Heirs: The Deed is inrolled within the six months, but it was found there was not any money paid. And whether this was a good bargain and sale, or not, was the question upon demurrer. Anderson: Every owner of Land may part with it as he pleaseth, if it be according to Law: And here it is not shewn that the bargain and sale was, because the Vendee was bound for him; and if he were, yet it

Co. 1. 176. a cannot be a good bargain and sale: But if there had been apt words, he might thereby have raised an use by way of Covenant, but clearly not a bargain and sale. Walmsley accord: In every bargain and sale there ought to be a Quid pro quo: But the Vendor here hath nothing for his Land, and therefore it is void, but it might have risen by way of Covenant; but there ought to have been apt words (viz.) a Covenant to stand seised to uses: For

Co. 7. 40. if I give Land, or bargain or sell Land to my Son, no use ariseth thereby; and to that opinion the other Justices inclined, That it is not good by way of bargain and sale, but that it had been a good consideration to raise an use by way of Covenant. Wherefore it was adjudged accordingly.

Anonymus.

(20)

1 Cr. 288. ACtion upon the Case was brought for these words, Thou art forsworn, and I will make thee Flowre the Pillory, or else it shall cost me a hundred pound. Et per totam curiam, an Action lies not; for Anderson said, there is a great difference betwixt the words forsworn and perjured. For forsworn is, where he swears against the truth in ordinary discourse; but perjurium est quando jus alterius pervertitur, which is to be intended in a Judicial Proceeding: And this difference hath

Ant. 135. been allowed of, Quod curia concessit. But to say, He was forsworn in such a Court, or betwixt such parties, an Action lies. Wherefore it was adjudged for the Defendant.

Jackson *verſus* Neal, Trin. 36 Eliz. Rot. 2987.

(21) EJectione firmæ; It was found by special Verdict, That the Lord Hunsden was seised of the Manor of Paris-Garden in the County of Surrey, wherein he divers Copyholds, and made a Lease to two of the Copyholds, and of the Court Baron for two thousand years, saving to himself the other Demesnes and Services. The Lessees kept Court there, and a Copyholder surrenders to the use of A.

in

in Fee. A. obtains licence in Court to let it for one and twenty years, from Michaelmas last past: He makes a Leaſe afterward for one and twenty years to begin at Chriſtmas following to the Plaintiff, who entred, and being ouſted by the Defendant, brings an Ejectione firmæ. And whether this were a good grant by copy, and this Leaſe by the Copyholder allowable or not, was the queſtion; and all the Court held, That it was a good Copy; for Anderſon ſaid, this Caſe hath been often in queſtion; for it was the Caſe of the Lord Hatton for his Tenants of Wellingborough, and of divers others ſince that time. And it hath been oftentimes held, that the Court may well continue as to that purpoſe for admittance of Copyholders; for otherwiſe every one of his own act might deſtroy his Copyholders Eſtate. And ſecondly, they conceived that the Leaſe is not warranted by this Licenſe, and then no Ejectione firmæ lies upon this Leaſe. Afterwards in Trin. 37 Eliz. Judgment was given for the Defendant upon this point of the Leaſe.

Ant. 103.

Ant. 288.

Termino Trinitatis,

Triceſſimo ſeptimo ELIZABETHÆ, in Banco Reginæ.

Grenningham *verſus* Ewer, Hill. 37 Eliz. Rot. 806.

(I)
1 Rol. 447. Gould. 142. Moor 395. Poph. 98. Poſt. 539.

DEbt upon an Obligation conditioned, That if the Defendant delivered unto the Plaintiff three Obligations, wherein the Plaintiff was obliged unto him, or ſealed and delivered to the Plaintiff a Releaſe of them, as ſhould be deviſed by the Plaintiffs Counſel before Michaelmas, That then, &c. The Defendant pleads, that neither the Plaintiff nor his Counſel did deviſe any Releaſe before Michaelmas. Judgment Si Actio, &c. And it was thereupon demurred. Gawdy held it to be a good Plea: For there is a Rule in Law, That the Conditions of Obligations are always for the benefit of the Obligor, and ſhall be expounded liberally for him; then there be two things to be done, viz. To deliver the Obligations, or to make a Releaſe; and a Releaſe cannot be made by the act of the Obligee, becauſe he did not deviſe it: So by his act, part of it becoming impoſſible to be performed, the Law ſhall diſcharge him of the other part; and it may be he had loſt the Oligations, ſo as they might not be delivered: And the intent of both, was but only to have them diſcharged, which may be by a Releaſe made. Wherefore, &c. Clench: Without doubt he ought to do the one, or the other, or at leaſt-wiſe to offer himſelf to the Obligee, that he is ready to make the Releaſe, ſo as there be not any default in him; for he ought to do the firſt Act: For it may be, the Obligee would have required him to have made the Releaſe, and he would not be found; ſo he by his own act would have avoided the Obligation, which is not reaſonable. Fenner accord: Firſt, it is plain if both things reſt in the power of the Obligor to perform, he may perform the one or the other at his Election; and if before the day of performance, it becomes impoſſible to perform the one thing or the other, by the act of the Obligee or of God, that he is diſcharged of the Obligation; and ſo it was adjudged 4 Edw. 6. in Bendlows Report; although it becomes impoſſible by the act of God. But here the Obligor hath not election to do the one, or the other; but he hath power of himſelf to do the one thing, viz. to deliver the Obligations; and of the other by a contingent act to be done by the Obligee at the election of the Obligee, if he will adviſe it: But forаſmuch as the Obligee hath not adviſed it, the Obligor is now bound to deliver the Obligation; the non-performance whereof is a forfeiture of the Obligation. Popham accord: If it were diſ-junctive and abſolute to perform

Poſt. 399.

form the one or the other at the election of the Defendant; and one part afterwards becomes impossible to be performed by the act of the Obligee, the Obligation shall thereby be discharged; but it is not here dis-junctive at the first: But upon a possibility afterwards, it may come to be dis-junctive, viz. If the Obligee devise the Release; the which devise not being made, the Condition is single and absolute, to deliver the Obligations: As if A. were obliged to Infeoff me of certain Land, or upon the return of B. from Rome to pay me twenty pound; if B. never returns, yet he shall Infeoff me. And it is clear, if the second part of the Condition had been, That he should make me such a Release, as J. S. a stranger should devise, and he did not devise any, that the Obligor ought to have performed the first part of the Condition. But here because the Obligee himself did not devise the Release, the question is, whether he shall have advantage of the Obligation? and I conceive it to be all one with the case of 4 H. 7. If one be obliged to Infeoff me of such Land, or to marry A. S. before such a day, and a stranger marries A. S. before the day, yet he ought to make the Feoffment: But if the Obligee married with A. S. before the day, the Obligation is discharged. The reason there is, because there is an absolute dis-junctive Condition at the first; and when the Obligee himself dispenseth with the one, the Obligation is discharged. But here it is but a simple Condition, without the act subsequent of the Obligee. Which act not being done, the Obligation remains always on the one part to be performed; which not being performed, it is forfeited. Wherefore, &c. Residuum, Hill. 36 Eliz. placito 1.

Collet & Marsh. Quod vide antea Hill. 37 Eliz. B. R. Plac. 14.

IT was now moved again; and Gawdy held it to be erroneous, and that it might well be assigned for Error: For against any thing done or returned by the Sheriff as an Officer, there may be an Averment, as 6 & 7 Eliz. Dyer 234. A Bishop certified, That he offered the Oath to an Ecclesiastical person, according to the Statute of 1 Eliz. cap. An Averment may well lie against it, that he did not offer it: So if a Bishop certifies a refusal of the payment of Tythes, yet an Averment lies against it; and the Statute of 31 Eliz. is, That the Summons shall be made at the Church-door and returned: So it is in the Copulative, That the Proclamation of the Summons shall be made and returned; and it is not sufficient to be returned, for then the Statute is of little purpose: But all the other Justices, e contra. For at the Common Law, if the Sheriff returned the party summoned, where he was not; and thereupon a Grand Cape was awarded, there was not any remedy, but a Writ of Deceipt, and not Error; for the Justices ought to credit the Officers, and it is not any Error in them to award a Grand Cape. So here, forasmuch as it is of Record before them, That the party was summoned according to the Statute, they are bound to award a Grand Cape, and no Error in them. And this Statute doth not intend to give other remedy than was at the Common Law for the Tenant: And it is not reason, that this awarding of a Grand Cape, upon this Summons returned, and default recorded, should be said to be erroneous in the

(2)
1 Rol. 621.
Ant. 371.
Ant. 80.

the Court. Wherefore the Judgment was affirmed. But Popham and Fenner conceived in this Caſe, That the party might have a Writ of Deceipt, if the Proclamation of Summons were not made according to the Statute; for now he is not ſummoned according to Law. But Clench and Gawdy e contra, becauſe it is a good Summons by the Summoners upon the Land. Wherefore, &c.

Day *verſus* Auſtin, Hill. 37 Eliz. Rot. 295.

(3) DEbt for Rent upon a Leaſe for years. The Defendant pleaded, That before the Leaſe, a Judgment was given in debt againſt the Plaintiff, at the ſuit of J. S. and afterwards he made this Leaſe; and afterwards, this Land was extended and delivered in Execution by Elegit. Before which Extent, there was nothing in arrear; and it was thereupon demurred, and without Argument adjudged to be a good Plea.

Stroud *verſus* Marſhall.

(4) Poſt. 622. Co. Lit. 247. b F.N.Br. 202. d. DEbt upon an Obligation. The Defendant pleads, That at the time of the Obligation made, he was De non ſane memory. And it was thereupon demurred, and adjudged to be no Plea; for he cannot ſave himſelf by ſuch a Plea, and the opinion of Fitz-Herbert held to be no Law. Wherefore it was adjudged for the Plaintiff.

Eaton & Monox *verſus* Laughter, Trin. 36 Eliz. Rot. 407.

(5) Moor 357. Poph. 98. Co. 5. 21. 2. DEbt upon an Obligation of Four hundred pounds conditioned, That if one Rainsford aliened his Wives Lands; if then during her life, he purchaſed other Lands of as good title and annual value to his wife and her Heirs; or do or ſhall leave her by his laſt Will ſo much in value, by making her his Executrix, or in a Legacy; that then, &c. The Defendant pleads, That the Feme was dead, and that Rainsford is yet alive. The Plaintiff by Replication for breach, ſhews the time of the death of the Feme; and that the ſaid Rainsford, neither in her life, nor ſince her death had purchaſed Land of ſuch a value; and it was thereupon demurred. Atkinſon and Coke argued for the Defendant, That the Obligation was not broken; for it is in the diſjunctive, that he ſhall leave ſo much to his Wife by his Will, or purchaſe Lands, &c. And the firſt is become impoſſible to do by the Act of God: Therefore he is diſcharged of both; and in proof thereof, they relied upon 15 Hen. 7. 2. 2 Edw. 4. 2. 16 Hen. 6. Action upon the Caſe 44 & 9 Eliz. 262. The other part is alſo impoſſible to perform according to the Condition viz. To purchaſe Lands to the Wife and her Heirs, the Wife being dead, and the purchaſe need not to be made to the Heir: For the Heir is not named, but to take by way of Limitation, and not otherwiſe; as in Bret and Rigdens Caſe. And if it ought to be made to the Heir, yet the Obligation is not forfeited; for Rainsford is yet alive, and hath time, during his life, to perform it. Hutton and Tanfield e contra. Although

Litt. Sect. 352.

though the Defendant hath a diſ-junctive Condition, he ought to perform the one, or the other at his peril; and ſo is 21 Edw. 3. 29. And although the Husband had time, during all his life, to perform it, yet it ought to be done, during his Wives life, for otherwiſe the Obligation is forfeited. As to infeoff, to reinfeoff the Feoffer, he at his peril ought to do it, during the Life of the Feoffer; for that the time being incertain, he ought to perform it: But if there had been a certain time to do the one thing or the other, and it is become impoſſible by a ſubſequent Act, That the one of them ſhould be performed before the day, he is diſcharged of both. And Hutton cited a Caſe, Mich. 35 & 36 Eliz. Rot. 1227. One Glens Caſe to be adjudged in the Common Bench; where A. promiſed to B. That if C. did not appear at Weſtminſter ſuch a day, that he would pay unto him twenty pound; and pleads that C. died before the day, and ruled to be no Plea; for he ought yet to have payed the twenty pound. So 18 Eliz. in Juſtice Rhodes Reports, Barbers Caſe in the Common Bench; That where one was obliged that A. ſhould appear the firſt day of the enſuing Term in the Star-Chamber, or otherwiſe he would pay twenty pound. A. dies before the day, ſo as by the act of God he could not appear: Yet it was ruled, that the twenty pound ſhould be paid, or otherwiſe the Obligation ſhould be forfeited; and Mich. 34 & 35 Eliz. in the Common Bench, this Caſe was betwixt Trop and Bedingfield. A. was obliged in One hundred pound upon Condition, That he ſhould ſtand to the Award of J. S. if he made any before the Feaſt of M. or otherwiſe at the ſaid Feaſt of M. to be at ſuch a place; ſo as he might be arreſted at the ſuit of the Obligee, or elſe to pay twenty pound at the ſaid Feaſt of M.. No Arbitrament was made before M. A. died, and the twenty pound was not paid at M. It was adjudged that the Obligation was forfeited. Popham: It cannot be ſo as you put the Caſe: But if it were that he ſhould appear, or that he ſhould appear there; or otherwiſe that he ſhould pay twenty pound, and he died before the day, yet the twenty pound ought to be paid. For there is not any diſ-junctive Condition, that he ſhould do one of the two things at any time before: But until Michaelmas he is obliged only to appear; and if he appears not, then comes the ſecond Condicion to have his eſſence, viz. to pay the twenty pound; ſo it is not to be paid, but upon the Non-performance of the other. And afterwards in the principal Caſe, all the Juſtices reſolved, That the Obligation was not forfeited: For by the expreſs words of the Condition, it is limited to Rainſford to perform it at any time during his life; and the impoſſibility thereof cometh by the act of God, which ſhall not turn the Obligor to any prejudice: So as now, being prevented of part of the time, he is diſcharged from performing it. But when the Law appoints a man time to do a thing, during his life, he ought at his peril ſee it be performed, otherwiſe the Obligation is forfeited. And when a man hath election to do one thing or another before a certain time, and by the act of God it is become impoſſible that he ſhould perform the one, the Law ſhall priviledge him for the other, that he ſhall not forfeit any Obligation by the non-performance thereof. And ſo Fenner ſaid it was adjudged in 4 Ed. 6. in Benlows Report. And they all (beſides Gawdy) held that the Obligation was for ever diſcharged. But Gawdy conceived, that the Obligation was not yet forfeited, but that he ought, during

Co. Lit. 219. b

Ant. 277.

Poſt. 864.

Ant. 396.

during his life, to purchaſe Lands to the Heir of his wife, other-
Lit. Sect. 352. wiſe the Obligation ſhould be forfeited; but the other Juſtices were againſt him in that point. Wherefore it was adjudged for the Defendant. 5 Co. 21. b. 22.

Welcome *verſus* Gryll, Mich. 36 & 37 Eliz. Rot. 354.

(6)
Moor 366. Gould. 124. ERror upon a Judgment in the Common Bench; the Error aſſigned was, For that a Writ of Debt was brought by Thomas Welcome; and the Judgment entred, Quod prædictus Johannes Welcome recuperet, &c. where it ſhould have been Thomas. And it was prayed, That it might be amended; for it was but a Miſpriſion and Miſ-
1 Cr. 463. entry of the Clerk. Sed non allocatur. But the Judgment was reverſed.

Meggs *verſus* Griffith.

(7)
Moor 408. Gould. 138. ACtion for theſe words, One told me, that he heard ſay, that Miſtreſs Meggs had poyſoned her Husband: Ubi revera nullus dixit, &c. And upon Not-guilty pleaded, it was found for the Plaintiff; and now alledged in Arreſt of Judgment, that an Action lies not for theſe words; for it is but a Report of an Hear-ſay, which cannot be any
Poſt. 645. diſcredit; but notwithſtanding it was adjudged for the Plaintiff. For it is a great Defamation, and is a cauſe of drawing her name and life in examination. Wherefore, &c.

Howel *verſus* Williams, Paſch. 36 Eliz. Rot. 333.

(8) ERror upon a Judgment in a Writ of Entry ad communem legem; The Error was aſſigned, in that it was not ſhewn in the Count, That the Tenant by the Courteſie (who alienedꝰ) was dead: For otherwiſe this Writ lies not, but the Writ of Entry in conſimili caſu, ſed
F. N. Br. 207. non allocatur. For although this Action lies not in the life of Tenant by the Courteſie, ſo that if he be alive, the Plaintiff hath not any cauſe of Action; yet it ſhall be ſo intended, eſpecially when the Tenant hath pleaded thereto, and admitted it, and if he were alive, the Tenant ought to have alledged it. Wherefore the Judgment was affirmed.

Sir Humphrey Ferrers and others *verſus* Wignal, Hill. 37. Eliz. Rot. 848.

(9) TReſpaſs, as Executor of Edward Holt, for the taking of an Ox. The Defendant juſtifies as ſervant to John Ardern, for that Sir John St. Leger was ſeiſed of the Mannor of Bardeſley, within which Mannor is ſuch a Cuſtom, that every Tenant of a Meſſuage within

within the Mannor, dying ſeiſed thereof ſhould pay an Hariot (viz. his beſt beaſt) and that the Lord might ſeiſe it; and that one John Holt was Tenant of a meſſuage within the Mannor; and that Sir John Saint Leger infeoffed of that Mannor one Corbert and Lewſon to the uſe of the ſaid John Ardern, and that afterwards the ſaid John Holt died ſeiſed of that Meſſuage which deſcended cuidam Edvardo Holt, and that he died ſeiſed, being poſſeſſed of that Or; thereupon he as ſervant to the ſaid John Ardern, and by his command took it as an Harriot, &c. And it was thereupon demurred. Firſt, for that he entitles John Ardern to the Mannor as a Purchaſor, viz. by Feoffment, and ſheweth not the Attornment of John Holt the Tenant, whoſe ſervices are demanded; for otherwiſe he cannot entitle him to the ſervices of that Tenant; and although a man may plead the Feoffment of a Mannor; and that by force thereof, he was ſeiſed of that Mannor, without ſhewing the Atturnment of the Tenants (for it is neceſſarily to be intended, as Livery without pleading it) yet when he will entitle himſelf to the ſervices of any particular Tenant, he ought expreſly to ſhew his Atturnment. Sed non allocatur; for the Court ſaid there was not any difference in the pleading of the one caſe more then of the other; but that the Atturnment may be well intended; and if he did not Atturn, the other ought to have pleaded it; and they all here agreed, that by the Feoffment of the Mano, the ſervices paſſed not without an expreſs Atturnment; but that may well be intended in the pleading if the contrary be not ſhewn. Another exception was taken, for that he pleads this Meſſuage to diſcend Cuidam Evardo Holt, and doth not ſay prædicto Edvardo Holt teſtatori; So it ſhall be intended to a ſtrange perſon, and then the Plea is not good; ſed non allocatur; for he juſtifies the taking after the death of Edw. Holt the Teſtator and to him it ſhall be intended to be referred, and not to any other; wherefore without any great argument, it was adjudged for the Defendant. Co. 8. 82. b. Yelv. 135.

Yelverton *verſus* Yelverton, Hill. 35. Eliz. rot. 272.

(10) Noy 19. 2 Rol. 790. l. Moor 342.

UPon Demurrer the Caſe was: The father covenanted by Indenture in conſideration of natural affection, to ſtand ſeiſed of all his Lands which he had, and which he afterward ſhould purchaſe, to the uſe of himſelf for life, and after to his youngeſt ſon and his heirs; afterwards he purchaſed Land and died; and whether the eldeſt or youngeſt ſon ſhould have it, was the queſtion. Bacon argued for the youngeſt ſon that he ſhould have it, for this covenant ſhews his intent expreſly, and is to work in futuro, and therefore good enough; as if a man deviſeth Lands which he hath not, and after purchaſeth them; ſo if one covenants that he will purchaſe Lands before Mich. and that before Eaſter following he will levy a Fine of thoſe Lands which ſhall be to ſuch uſes; and he levies a Fine and doth not limit any uſes, it ſhall be according to the covenant before the purchaſe, Quod fuit conceſſum per curiam, for they ſhall be as uſes declared upon that Fine whereof he ſhewed his intent before. But in ths principal caſe all the Court held, that this covenant veſts nothing in the younger ſon, and is not ſufficient to veſt any uſe in him of this Land; for a man cannot by a Poſt 423. 493.

covenant raiſe an uſe out of Land which he hath not; for no more then a man may charge, let, or grant a thing which he hath not; no more may he limit an uſe out of Land which he hath not. Alſo upon every Feoffment or purchaſe, the Feoffor or Donor from whom the Land paſſeth, is to limit the uſes to the Feoffee or purchaſor; then before the purchaſe one cannot limit how the uſe ſhall be, viz. that it ſhall be to his youngeſt ſon, where the Feoffor hath limited it to the uſe of him and his heirs, which ſhould be to limit an uſe out of an uſe which the Law will not ſuffer; therefore judgment was given accordingly for the eldeſt ſon; and here a caſe was cited in 20 Eliz. (but neither the name, nor in what Court were mentioned) that a Mortgager intreated a ſtranger to redeem the Land at the day, and covenanted by Indenture that after ſuch redemption the ſtranger ſhould have the Land to him and his Heirs; and that he in conſideration of ſuch a ſum would ſtand ſeiſed to the uſe of him and his heirs; the ſtranger redeems the Land at the day; the Mortgager enters, the Deed is enrolled within the ſix months, yet ruled that nothing paſſed, becauſe he had not any eſtate or intereſt therein at that time to contract for it.

Beſwick *verſus* Cunden Hill. 35 Eliz. rot. 493.

(11) Mo. 353. Poſt. 520. ACtion upon the Caſe, for that the Defendant levied a Damm in ſuch a River ſuch a day, whereby it ſurrounded the Land of J. S. who afterwards Infeoffed the Plaintiff thereof; and that the Defendant adhuc malitioſe cuſtodivit the ſaid Damm, whereby the Plaintiffs Land is ſurrounded. Upon this Declaration it was demurred in Law. Pelham, the Action is not maintainable, in regard the Plaintiff had not any thing in the Land at the time of the nuſance erected, and there is not any new thing done to his injury; and in proof thereof cited 4 Aſſ. 3. 2 H. 4. 11. 18 Ed. 2. Aſſ. 374. But the caſe in 14 and 15 Eliz. Dyer 319. is good Law; for there the Lady Brown made a new nuſance by every turning of the Cock, for which ſhe was puniſhable, although ſhe made it not at the firſt; but here the Land was ſurrounded by the levying of the damm, and continued ſurrounded. So the firſt nuſance continues till this preſent; and therefore the Feoffee ſhall not have his Action. Foſter e contra, The Action is not brought for the levying of the Damm, but for the continuing thereof from ſuch a day to ſuch, which was after the Plaintiffs purchaſe: And Fitz. N. Br. 11. That the heir of the Feoffee ſhall have it againſt the Feoffee of him who levied it; and in Paſch. 25 Eliz. It was adjudged in this Court in Rolfs Caſe, where one erected an houſe ſo neer to anothers, that the rain deſcended from the new houſe, &c. And the heir brought an Action upon the Caſe for the nuſance made by building the houſe in his fathers time, and recovered by Judgment. Gawdy, the Action is well brought for continuing of the firſt nuſance, but not for the levying thereof, and therefore the Action is well brought for the keeping it up in his time, and not for the levying thereof. Popham, there will be a difference when there is not any profit remaining unto him, to whom the nuſance is levied. Then it is cleer that none ſhall have the Action but he to whom it was done; as if I have pot-

F. N. B. 124. Co. 5. 101. a.

pot-water running from a River to my home, and T. S. ſtops it in his Land before it comes to my Land, and I die, or make a Feoffment over, my heir or Feoffee have not any remedy for this Tort made before their time. But where any profit remains which comes to the Heir or Feoffee after the nuſance done; there for ſo much of the profit as is come unto them, and is taken from them by the continuing of the nuſance, they ſhall have their Action; then here by the levying of the Dam, the inheritance of him to whom it was levied, is not taken away, but although his Land be ſurrounded, ſome profit remained unto him which he hath conveyed to the Feoffee, which being taken from him by the continuance of the nuſance, it is reaſon that the Feoffee ſhould have his Action: And therefore if one levies a Bank in a River, whereby part of my Land is ſurrounded, and afterwards I make a Feoffment of my Land to J. S. and afterwards another part is ſurrounded by reaſon of that Bank, he ſhall have an Aſſiſe of nuſance, Quod fuit conceſſum; ſo here for that the Land of the Feoffee grew a malo ad pejus de die in diem, by reaſon of the inundation made by this Damm, it is reaſon the Feoffee ſhould have his Action. The ſame Law is for a non feaſance, viz. for not repairing of a Bank, where, &c. Clench and Fenner e contra, Becauſe the Tort before made is extinguiſhed by the Feoffment, and there is not any thing done ſince the Feoffment which the Feoffee could puniſh; wherefore, &c. But afterwards in Mich. 37 and 38 Eliz. being moved again, all the Juſtices agreed, that the Action was well brought; wherefore it was adjudged accordingly for the Plaintiff. Poſt. 520.

Ant. 191.

Poſt 520.

Ant. 191.

Brook *verſus* Watſon.

ACtion upon the Caſe and declares, Whereas he was an Alderman and a Merchant in York, and had always kept a true Debt book, that the Defendant ſpake of him theſe words, He is a falſe Knave and keepeth a falſe Debt-book, for he chargeth me with the receipt of a piece of Velvet, which is falſe. After not guilty pleaded and found for the Plaintiff, it was moved in Arreſt of Judgment that an Action lay not for thoſe words. Hubert for the Plaintiff moved that the Action was maintainable, becauſe they touch him in his Trade of living, for in a Merchant fidelity in his trade is requiſite; for he many times buys and ſells his wares upon truſt; but all the Juſtices held that the Action lay not. For, for the firſt words, He is a falſe knave, It is clear that an Action lieth not. And for the ſecond part, That he keepeth a falſe Debt-book, it is not actionable, for it is not any diſcredit unto him; for it may be his ſervant keepeth it or that ſomewhat might by overſight be miſ-entred therein. And it is not of neceſſity that every Merchant ſhould have a Debt-book; and by that diſcredit there is not any diſcredit to his trade, as to ſay of a Counſellor, That he miſ-enters the name of his Client in his book, viz. the Plaintiff for the Defendant, is not any cauſe of Action; but to ſay, That a Counſellor gives ill counſell, or that a Merchant is a bankrupt, an Action lies, becauſe it toucheth them in their profeſſion. Popham alſo ſaid, That the Action was not maintainable; becauſe the Defendant ſpake only of a grievance unto himſelf by that falſe Entry, and not in general

(12) Moor 409.

words to diſcredit him; for if he had ſaid to others, Take heed how you deal with him, for he keepeth a falſe book; then peradventure an Action would lie, becauſe he drew other cuſtomers from him, therefore it was adjudged for the Defendant.

Stringar *verſus* Stanlack, Hill. 37 Eliz. rot. 325.

(13) FAlſe Impriſonment. For that he took and impriſoned him for the ſpace of an hour; the Defendant pleaded that a Capias ad ſatisfaciendum at the ſuit of J. S. iſſued to the Sheriff of Wilts againſt the Plaintiff, who made his warrant to the Defendant to Arreſt the Plaintiff, whereupon he by vertue thereof Arreſted the Plaintiff. Et hoc, &c. The Plaintiff replies, that after the Writ of Execution Awarded, and before the Caption and Impriſonment, he ſatisfied the Sheriff of the moneys, &c. whereupon the Sheriff made his Warrant directed to all his Bailiffs, &c. that they ſhould ſurceaſe the Execution; and that he delivered it to the Plaintiff, and that the Defendant Arreſted him, and preſently after the Arreſt he ſhewed unto him this diſcharge, and yet notwithſtanding he detained him in priſon for the ſpace of an hour; the Defendant rejoyns that he was illiterate, and preſently after the delivery of the Warrant of Superſedeas from the Sheriff, he went to a literate man to know the effect thereof, and in the interim detained him in priſon, and as ſoon as he was informed of the contents thereof, he ſet him at large; and it was thereupon demurred; for it was ſaid, that he taking upon him the Office to be a Bailiff, ought not to be ignorant thereof, or what he is to do; and that pretence of ignorance ſhall not excuſe him, but at his peril he is to take notice of this diſcharge, &c. Fenner; When he is once taken by force of a Capias ad ſatisfaciendum, the Sheriff himſelf could not have diſcharged the priſoner without offence to the Law, although he had received the monies; for the Writ is Capias ad ſatisfaciendum, ita quod habeas Corpus ejus, &c. So although he pays the money, yet the Sheriff ought not to diſcharge him; and if he do, he is chargeable with an Eſcape; wherefore his Warrant is no Warrant to the Bailiff after he was once Arreſted, to diſcharge him; and the Defendant did well, and no Tort in detaining of him; and of that opinion was Popham Chief Juſtice; but Gawdy and Clench held, that in regard it was but a Writ of Execution, and to have the money in Court, he having received the money, ought not to have Arreſted the party; and if he hath Arreſted him, might well diſcharge him. V. 33 H. 6. 48. per Danbie 13 H. 7. 16. 21 H. 7. 23. But as to the point of the Bailiffs ignorance they delivered not any opinion; but Fenner held that he well might take time to be informed thereof, and he is not compellable to take notice of it; but Popham doubted thereof. Gawdy then moved an Exception to the Replication; for it is that after this Warrant of Superſedeas from the Sheriff delivered unto him, he detained him in priſon, and ſo complains of the Tortious impriſonment; but ſpeaks nothing of his caption, whereof he complained in his Declaration; ſo there is a manifeſt departure as to it; for it maintains not his Count; and ſo for this cauſe only it was adjudged for the Defendant.

Ant. 9. 2 Cr. 180.

Peter

Peter Caryes Caſe.

PEter Carye was Indicted for drawing his Sword in Aula Weſtmon. ſedentibus curiis, and in diſturbing the Sheriff in making an Arreſt upon one T. by force of a Bill of Midd. And being arraigned and found guilty, had judgment of perpetual impriſonment, and to pay a hundred pound to the Queen. And Note, upon the Evidence it appeared to be upon the Stairs aſcending the Court of Wards, and ſo out of the view of the Courts. But Popham ſaid, although it were out of the view of the Courts, yet if the Indictment had been as it ought to have been (and as we have preſident thereof in Ed 4.) viz. Coram Domina Regina, the Judgment ſhould have been, that his right hand ſhould have been cut off, and that he ſhould forfeit all his Lands and Chattels, and have perpetual impriſonment. (14) 3 Inſt. 140.

Gray *verſus* Fletcher, Hill. 37 Eliz. rot. 601.

REplevin, The Defendant juſtifies for Damage Feſant; The Plaintiff claims common in the place where, &c. and iſſue thereupon; and the Jury found the preſcription. But further found that he and all thoſe whoſe Eſtate, &c. had uſed, &c. to pay for the ſaid Common every year, an Hen and five Eggs; and if, &c. They prayed the diſcretion of the Court; and it was thereupon moved, that it was found againſt the Plaintiff, for it is not found as he alledged; for he alledged it as abſolute, and it is found conditionally, viz. if he paid for it, &c. Popham, I was of Counſel with a Devonſhire caſe, where a man preſcribed to have Pot-water out of a River, and iſſue thereupon, and found that he uſed to have it, paying ſix pence by the year, and adjudged that it was found againſt him who preſcribed; but that is not like to this caſe, for there was a condition Executory every year with the preſcription, and therefore it ought to be intirely alledged. But here it is a thing collateral from the preſcription, and the preſcription is perfect without alledging it; wherefore it is well enough found for the Plaintiff; and Gawdy ſaid, that if the Hen and Eggs were not paid, in this caſe he might diſtrain the Plaintiffs beaſts going upon the Common, although it were upon his own Land; Quod Popham conceſſit: wherefore it was adjudged for the Plaintiff, 26 H. 8. 5. V. 5. Co. 76. b. (15) Co. 5. 78. b. Poſt 546. Poſt 415. Co. 9. 78. Poſt. 445.

Wilcocks *verſus* Watſon, Hill. 37 Eliz. rot. 1011.

DEbt upon an obligation againſt him as Executor of A. the Defendant pleads plene adminiſtravit, and iſſue thereupon, the Jury find a ſpecial Verdict, that A. made E. his Executrix, and died poſſeſſed of divers goods, which E. made a fraudulent gift of all her goods to J. S. &c. and continued in the poſſeſſion of them, and (16) Mo. 396.

and took the Defendant to husband and died; that the Defendant is poſſeſſed of part of thoſe goods to the value of, &c. and payed Legacies; and if thoſe goods ſhould be found to be Aſſetts
Poſt 565. in his hands, they found for the Plaintiff; and if, &c. for the Defendant. Fenner held that they ſhould not be Aſſetts; for although being but fraudulent, it ſhall be ſaid to be a void gift againſt the Donor and Creditor, and ſo liable to his Debt; yet it is good betwixt the Donor and Donee; and ſhall not be ſaid Aſſetts in the hands of any but the Donor or Donee; but here the husband is a meer ſtranger thereto; wherefore, &c. But all the other Juſtices e contra, for they by the Common Law (the gift being fraudulent) are liable to the Plaintiffs Execution: And Popham ſaid, if the gift were good againſt all but Creditors (as it is) then they belong to the Donee, and in his hands are liable to this Debt; and if the gift be void, they remain to the Executors of the Feme; and then the Baron having taken them and payed Legacies, is chargeable by
1 Cr. 89. reaſon thereof, as Executor de ſon tort demeſn. And ſo thoſe goods Quacunq; via data, are liable to this Debt in whoſoever hands they come, unleſs by title paramont, or by ſale bona fide; wherefore it was adjudged for the Plaintiff.

VVheeler *verſus* Collier, Hill. 37 Eliz.

(17) Moor. 419. ASſumpſit: And declares that the Baron of the Defendant was endebted to the Plaintiff in Fifty pound for Beer, and died inteſtate, and Adminiſtration, &c. was committed to the Defendant; and that afterwards the Defendant in conſideration that the Plaintiff would deliver unto her ſix barrels of Beer, aſſumed to pay to the Plaintiff as well the fifty pound due by the Inteſtate, as for the ſix barrels delivered unto her ſelf; and that he there upon had delivered to the Defendant ſix barrels of Beer, &c. And after non Aſſumpſit pleaded and found for the Plaintiff, and intire Damages Aſſeſſed, as well for the one Debt as for the other; it was moved in Arreſt of Judgment, that the Plaintiff ſhould not recover, becauſe for the Inteſtates Debt, the Judgment ſhould be againſt the Defendant de bonis teſtatoris, and for the Beer de-
2 Cr. 110. livered unto her ſelf de bonis propriis, and therefore the Plaintiff ought not to have joyned them in one Action, or at leaſt wiſe, that damages ought to have been ſevered by the Verdict. Popham, it is clear that one cannot joyn in one Action an Aſſumpſit of the Teſtator, and an Aſſumpſit of the Defendant for his own Debt; but here the Defendant aſſumed for the Debt of the Inteſtate and her own Debt; and if ſeveral Judgments be to be given, it is cleer
Hob. 68. that there ought to have been ſeveral Actions brought for them. And I conceive that ſeveral Judgments ſhall be given, viz. for the Inteſtates Debt, if he hath, &c. Et ſi non, de bonis propriis; For, if Judgment ſhould be given de propriis bonis generally, then ſhe notwithſtanding ſhe had no more goods of the Inteſtates then to ſatisfie that Debt, ſhould be bound to pay Legacies, and that payment ſhould not excuſe her, which is not reaſonable; but all the other Juſtices e contra, becauſe this Action is brought againſt her of her own Aſſumpſit; the Judgment ſhall be general in both
Ant. 91: 102. caſes de bonis propriis; for it is a charge by her own Act; yet if it had been

been de bonis Teſtatoris, She ſhould have paid it to them, and it ſhould have been allowed unto her; and here by her Aſſumpſit as Adminiſtratrix, it is become her own proper Debt, as if ſhe had entred into an obligation: wherefore, &c. afterwards, Mich. 37 & 38. It was adjudged for the Plaintiff.

Bateman *verſus* Spring, Hill. 37. Eliz. rot. 363.

(18) ASſumpſit in London: The Defendant pleads a concord in Suff. of all matters, treſpaſſes, &c. but in London, Abſque hoc that he aſſumed in London; the Plaintiff maintains his Declaration and Travers the concord, and it was thereupon demurred; and after Argument it was adjudged to be a good Travers; for otherwiſe by a falſe plea a man ſhould make all actions tranſitory to be local, which is againſt Law; and of that opinion was the whole Court; wherefore it was adjudged for the Plaintiff. Ant. 99. Co.Litt.282. *b.*

Termino Trinitatis 37 Eliz. in Communi Banco.

Chriſtopher Baker *verſus* Searle,

Hill. 37 Eliz. rot. 1144.

(19) EJectione firmæ: Upon not guilty pleaded, a ſpecial Verdict was found that Edw. E. of Bedford was ſeiſed in tail of the Rectory of D. & de decimis inde, &c. (which are the Tithes in queſtion) and let it to John Willet and his Aſſigns for the lives of Chriſtopher Baker, Joan Baker his Feme, and Chriſtopher W. And that the ſaid John Willet Demiſed the ſaid Rectory and Tithes to one Danbury and his heirs, to the uſe of Chriſtopher Baker the Plaintiff for eighty nine years, if any of the ceſty q. vies ſhould ſo long live, Virtute cujus dimiſſionis idem querens fuit poſſeſſionatus; until the Defendant entred, &c. And it was hereupon moved for the Defendant. Firſt, That the Verdict was not good for the Plaintiff, becauſe he doth not ſhew the beginning of the Eſtate tail, which is the particular Eſtate: and that the Court held to be an aparant fault; Alſo he doth not aver the life of the Tenant in tail; So the Leaſe of the Tithes which conſiſts in grant was determined by his death. As alſo for that the uſe is not limited to B. but for years only; ſo the remainder of the uſe is in Danb. and the life of Danb. is not averred; And if he be dead, Chriſtopher Baker the Plaintiff is in as an occupant, and then no Ejectione firmæ lies in the caſe; but the Court held clearly, That there is not any uſe limited but for the years, becauſe the reſidue of the Eſtate is in W: the Grantor and not in Danb. And it is all one as to this purpoſe, with a Feoffment to the uſe of one for life; the uſe for the reſidue of the Eſtate is in the Feoffor. And clearly there cannot be any occupancy, becauſe it is granted to D. and his Heirs, which excludes the occupancy. Another Exception was taken by Walmſley, for that he ſaith, virtute cujus dimiſſionis, where he comes in by the limitation of an uſe; Ant. 118. Co. Lit. 44. b 2 Cr. 112. 2 Rol. 446. Poſt. 440. Poſt. 442. Ant. 131. 2.

uſe, ſo it ought to have been Et virtute Statuti, &c. And this was held to be an apparent fault in ſubſtance and not in form; wherefore it was adjudged for the Defendant.

Mathewſon *verſus* Lydiate.

(20) Poſt 470. 546. 2 Rol. 30. Co. 5. 22. 3.

DEbt was brought upon a Charter party Indenture: The Caſe was ſuch; Indentures were made betwixt the Maſter and three others of a Ship on the one part, and G. Lydiate and ſix other Merchants on the other part, whereby the Owners of the Ship Covenanted with the Merchants to Ship ſuch Merchandiſes to ſuch a Port beyond Seas; and to recarry from the ſaid Port, certain other Merchandiſes to ſome Port in London, whereby every of the Merchants Covenanted ſeverally to pay for every Tun brought to London, to any Port there, Thirty ſhillings, and if they made default in payment, to pay Three pound for every Tun, and for Twenty Tun brought to a Port at London, and not paying Thirty ſhillings for every Tun he demanded Sixty pound. The Defendant pleads that the Seal of one of the Merchants was debruſed from the Deed, and it was thereupon demurred. Glanvil, This Deed is ſeveral for every of them; and although the Seal of one of them is debruſed, it is not material; 2 Rot. 30. for it remains good againſt the others, and it is not like to the Caſe, 3. H. 7. 5. for there the Obligation is joynt and ſeveral. And this caſe is common in London, for they Covenanted ſeverally; and when any one of them have performed his part, the manner is to pull off his Seal, and then the Deed is Cancel'd againſt him, and remains good againſt the others. And this very point was adjudged before Daniel Serjeant in London; and afterwards Debt was brought thereupon in this Court, and the Plaintiff recovered (which Daniel being preſent affirmed, and that he adjudged it upon conference with ſome of the Juſtices) but in the principal Caſe the Record was viewed, and it appears that he alledged, that he brought the Merchandize to Ratcliffe within the County of Middleſex, and ſo he hath not ſhewn that it was brought to a Port in London, and although Ratcliffe is one of the Ports of London, yet it is not ſo averred, wherefore without regard to the matter in Law, it was adjudged for the Defendant. V. 5. Co. 22. b. V. Poſt Hill. 38. C. B. placito 22.

Snelling

Snelling *verſus* Norton.

DEbt againſt him as Adminiſtrator to one Norton upon an Obligation; the Defendant ſhews the Cuſtom of London to be, that if a Contract be made by a Citizen to pay money to another Citizen; and he who made the Contract dies, that his Executors or Adminiſtrators ſhall be chargeable therewith, as if it were upon an Obligation; and ſhews further how the inteſtate was indebted upon a Contract to one A. who had recovered againſt him; and that he had Riens ouſter en ſes manes, &c. And it was thereupon demurred. Glanvil moved that this Cuſtom was not good; for firſt it is againſt Law that an Executor or Adminiſtrator ſhould be charged upon a ſimple Contract. Secondly it is againſt Law, that a ſtranger ſhould be barred of his Debt upon ſpeciality, by reaſon of a Debt upon a ſimple Contract; wherefore, &c. Daniel e contra. The Cuſtom was always to bind the Executors or Adminiſtrators to pay Debts upon Contracts; and Cuſtoms in London are confirmed by Parliament, and are now as ſtrong as a Statute. And therefore in London they preſcribe to give Land in Mortmaine, which is againſt Statute Law; and there is not any Cuſtom but that it deprives, and is againſt the Common Law in ſome point. And this Cuſtom is reaſonable; for a Debt upon a Contract is as well due as a Debt upon an Obligation; and therefore there is as great reaſon for the payment of the one, as of the other, although the Law hath given a greater prerogative, viz. a priority of paying the one, rather then to the other; And although it might ſeem hard to have allowed this Cuſtom in this Court, if it had been originally pleaded here, yet when the Cuſtom hath been executed againſt the Adminiſtrator by the Laws of the City, whereto he is ſubject, it would be miſchievous unto him to be diſallowed it here. For then he ſhould be twice charged without remedy; and this difference is taken in 1 Edw. 4. 8. Owen Juſtice, the Cuſtom is reaſonable; for the Executor in Conſcience is bound to pay Debt upon a Contract as well as upon ſpecialty. And ſuch a matter was about four years ſince in this Court, but not adjudged; and of that opinion were the other Juſtices, eſpecially as this Caſe is, being executed againſt him, who is liable and chargeable by the Cuſtoms of London; and afterwards in Mich. 37 and 38 Eliz. it was moved again: and another exception taken, for that the Cuſtom cannot be to bind the Adminiſtrator, becauſe he begins to be chargeable by the Statute of 31 Ed. 3. and no Action lay againſt him at the Common Law; but it was denied per totam Curiam; for an Adminiſtrator was chargeable; and to be ſued at the Common Law; but he might not ſue; and the Statute was but in affirmance of the Common Law; and they were ſued as Executors at the Common Law. And ſo it is 19 Ed. 3. Covenant 24. And

(21)
Co. 5. 82. b.
Poſt 843.
Co. 5. 82. b.

the Caſe of 8 Eliz. 274. That an Action lies not againſt them
Co. 5. 82. b. at the Common Law, is not Law in this point. The Plaintiff would then had been Non-ſuited, Sed non potuit (for as much as two of the Juſtices had delivered their opinion) no more
2 Cr. 35. then after a verdict; wherefore it was adjudged for the Defendant,
Poſt 658. 5 Co. 82. b.

Termino

Termino Michaelis.

Triceſſimo ſeptimo & triceſſimo octavo ELIZABETHÆ, in Banco Reginæ.

Vicary *verſus* Farthing.

TRespaſs. The parties were at Iſſue, and at the tryal by Niſi prius in the County of Devon, to prove the Nonage of the Plaintiff at the time of the Leaſe made (which he would avoid) a Church Book was given in evidence, and after the Juries departure from the Bar, and before they had agreed upon their verdict, the Plaintiffs Solicitor delivered to the Jurors the ſaid Church book: and afterwards they found for the Plaintiff; and all this matter being examined before Walmſley Juſtice of Aſſiſe there, he returned this verdict, and all this matter upon the poſtea. And now for this cauſe it was moved by Serjeant Heale, that Judgment ſhould be ſtayed, and in proof thereof cited, 11 H. 4. 18. 35 H. 6. Examination 17. 14 H. 7. 2. And alſo one Medcalfs Caſe which was in the Common Bench, Anno 34 Eliz. where a witneſs examined gave evidance to a Jury; and afterwards one of the Jury when they were conferring upon their verdict, called him to recite his evidence again, which he did, and affirmed upon his Oath upon his examination, that he did not ſpeak more or leſs then before; and yet this matter being returned upon the poſtea, it was reſolved that no Judgment ſhould be given upon that verdict; and Hugh Wiatt ſaid that in this Queens time it was ruled in one Pickerings Caſe, That where Letters Patents were given in evidence to the Jury, and afterwards when they were conferring upon their verdict, the Plaintiff without the Courts direction delivered unto them the ſaid Letters Patents, which were given in evidence, that Judgment was for this cauſe ſtayed upon the verdict. Gawdy and Popham denied that Caſe; but Gawdy ſaid, that as this Caſe is, the Juſtice of Aſſiſe might have refuſed this verdict. And it is alſo clear, that Writings or Books which are not under Seal, cannot be delivered to the Jurors without the aſſent of both parties, but being delivered by the Court without the aſſent of the parties, neither of the parties can avoid the verdict, in regard they were given in evidence before; and the Court had given direction to the Jury concerning their validity, eſpecially being evidences in writing, which cannot be altered, nor by intendment cannot induce the Jury further to their verdict, then the ſhewing of them in Court had done before; but

(1) Moor. 451. 1 Rol. 715.

Poſt 616. Ant. 189. 2 Rol. 715.

Co. Lit. 227. b.

2 Rol. 715.

Medcalfs Caſe might well be, becauſe it being but evidence by parol, the witneſs might peradventure alter his Teſtimony before given, by a greater inforcement, or otherwiſe, then he ſaid before (although upon his examination he would not confeſs ſo much) which peradventure was the cauſe to move the Jury to give their verdict, wherefore it ſhall be a good cauſe to ſtay the Judgment, and of that opinion were Popham and Clench. For otherwiſe it would be very miſchievous to the party for whom this verdict paſſed, if the delivery of evidence by the contrary party, or peradventure by a ſtranger, without his privity, ſhould ſtay his Judgment, which is the reaſon that eating and drinking by a Juror (unleſs it be at the coſts of the party for whom the verdict paſs) ſhall not avoid the verdict. But Fenner e contra, becauſe there might be ſome matter in this book to induce them otherwiſe then they intended before; and becauſe it was delivered on his part, for whom the verdict paſſed; wherefore it was adjourned; but afterwards in Trin. 38 Eliz. it was adjudged for the Plaintif.

Co. Lit. 227. b

Courtier *verſus* Barret and Sampſon, Hill. 36. Rot. 496.

(2) ERror upon a Judgment in the Common Bench in a Replevin; the Defendant avows for Damage Feaſant; the parties were at Iſſue, and the Plaintiff was Non-ſuited after evidence; and the Jury aſſeſſed Damages for the avowant, and now the Plaintiff brings Error, and aſſigns for Error a diſcontinuance, for that the Plaintiff declared in Michaelmas Term, and the Defendant imparled until Hillary Term, and from Hillary Term till Eaſter Term; and there is not any continuance; and then the Plaintiff declared again, (as the manner there is) and the Defendant pleads thereto, and Iſſue there joyned; it was moved that this now was not to be aſſigned for Error, becauſe it is after verdict, and ſo aided by the Statute of Jeofails. But it was ruled by the whole Court, that it was not aided; for here the Plaintiff being Non-ſuited, there is not any verdict given; but in that whereof the Jury are to enquire of Damages, their verdict is but an office of Inqueſt, and no verdict whereof, &c. And it was cited to be here adjudged ſo betwixt Buſty and Ireland. Secondly, it was moved, that here was not any diſcontinuance; for the ſecond Declaration is a new declaration of it ſelf, and doth not refer to the firſt, and there ought not to be any continuance of the firſt. For it is not an Alias prout patet, &c. ſo it cannot be intended to refer to a former; but it was thereto anſwered, that it is not the manner to make ſuch entries in the Common Bench; yet it may be well intended to refer to the former proceedings; wherefore they ſent for two of the Prothonotaries of the Common Bench, who came and informed the Court that their courſe was not to make an alias prout patet, but to make all their Declarations de novo, and yet they referred to the firſt Record; wherefore for this diſcontinuance the Judgment was reverſed.

Poſt. 416.

Hoc

Hoe *verſus* Taylor, Paſc. 37 Eliz. Rot. 369.

(3)

ERror upon a Judgment in the Common Bench in Treſpaſs, for cutting down underwood. The Defendant Juſtifies by reaſon of a Leaſe of the Land made unto him by J. S. for years, the Plaintiff ſhews that the ſaid J. S. was ſeiſed of the Mannor of Milford, whereof that place, &c. And that the underwood growing in the place where, &c. had time whereof, &c. been demiſed by Copy, and that the ſaid J. S. before the Leaſe to the Defendant, granted unto him, and his Heirs by Copy, &c. the underwood there from time to time growing; to be cut down by the Plaintiff and his Heirs, quolibet anno, four or five acres annuatim, &c. Whereupon he was thereof ſeiſed, ſecundum conſuetudinem, &c. until the Defendant entred and made the Treſpaſs; and thereupon the Defendant Demurred in Law; and after argument, it was there adjudged for the Plaintiff; and now was aſſigned for Error. Firſt that underwood growing cannot be demiſed by Copy; for here the ſoyle it ſelf is not let, but only the underwood annually growing, which was agreed by the Court, that the Land it ſelf here was not demiſed by the Copy. Secondly, that notwithſtanding this grant to the Leſſee, that the Leſſor might well cut down the underwood, for it is but in nature of the grant of Eſtovers, where the Grantor may take Trees with the Grantee: But the Court reſolved for the Plaintiff, that the Action was maintainable; for this underwood is a thing of Inheritance and perpetuity; for after every cutting down, they will grow again from the ſtubs; and ſo may be well demiſed in Fee by Copy: and as Eſtovers might be granted in Fee, ſo might this alſo. And Fenner ſaid that he knew a Market within the mannor of Crookehorne in the County of Somerſet to be demiſed by Copy; and it was ſaid here that Sir John Bourns Caſe was adjudged, that a grant of Tythes by Copy was good. They alſo held that the Grantor here could not meddle with the Woods, nor his Leſſee, for he hath intirely granted the underwood, and not Eſtovers, or ſo many loads of Wood; wherefore the Judgment was affirmed. V. 4. Co. 30.

Mo. 315. Co. 4 30. b.

Co. Lit. 48. b. 1 Rol. 498.

Co. 4. 31. b. Poſt. 814.

Sir Chriſtopher Blunts Caſe.

(4)

IN an Information upon an Intruſion by the Queen againſt Sir Chriſtopher Blunt, a Juror was challenged for not ſufficiency of Freehold; and by the examination of the Juror it appeared that he had Freehold of the value only of Fifteen ſhillings per annum, yet it was ruled by the Court that he had ſufficient to paſs on that Jury; for at the Common Law, if a Juror had any Freehold it was ſufficient. But by the Statute of Primo Henry 5. he ought to have Forty ſhillings per annum, and by the Statute of 27 Eliz. he ought to have four pound per annum, where the Damages exceeded forty marks per annum. But the Statutes ſpeak only betwixt party and party, which extends not to the Queen, wherefore the Juror was ſworn, but it was ruled that he ought to have ſome Freehold; and therefore one who had not any Freehold was there challenged and withdrawn.

Co. Litt. 272. a.

Hardy

Hardy *verſus* Seyer, Paſch. 37 Eliz. Rot. 254.

(5) Popham 99. Owen 107. Gould. 179. 1 Rol. 410. Moor 400.

EJectione firmæ; upon a ſpecial verdict the Caſe was, a Leaſe was made to a Widdow for Forty years, Sub hac tamen conditione quod ſi tam diu vixerit ſola & inhabitaverit, within the ſaid houſe: the Widdow continues unmarried in the ſaid houſe all her life time; and dies within the Forty years, and whether the Term was determined was the queſtion betwixt the Executor of the Widdow, and him in reverſion. For if thoſe words were a Condition meerly, and not a limitation, the Term remains; for ſhe performed it during all her life, untill it became impoſſible by the Act of God, which ſhall not turn to her prejudice; but if it were a limitation, if ſhe ſhould ſo long inhabit therein, it is otherwiſe. Gawdy, Clench and Popham held that the words Sub condition. quod ſi &c. are void words, for they are inſenſible, and be neither limitation nor Condition; for all Conditions ſhall be taken ſtrictly, and no words ſhall be ſupplied by Intendment to make a Condition to deveſt or to deſtroy an Eſtate; and it is no more here then that a man makes a Leaſe for years rendring Rent, Sub Condition. quod ſi, &c. The Rent be not paid, and ſays no more, which is without ſence; for it may be intended that he ſhould forfeit a pain, or that the Leſſor ſhould re-enter, which is uncertain; and every quod ſi ought to be anſwered with the words quod tunc, thereby to make the intention of the parties full, what ſhall be done; for otherwiſe we cannot Judge of their intention; for it may be they intended that then ſhe ſhould forfeit a penalty, or parcel of the Term, or part of the profits. And for this incertainty it is void and of none effect; and the Leaſe is abſolute; but if the words were that the Leaſe was for Forty years if ſhe ſo long live unmarried, and inhabited therein; Popham held it to be a limitation, and to determine the Leaſe by her marriage or death, ſo that ſhe cannot inhabit therein; and ſo Bromley affirmed was the intent of the parties, and the truth of the Caſe; and that it was miſtaken in drawing the verdict; for the words Sub hac conditione quod were not in the Leaſe. But Fenner held that the words ſub conditione are full enough to make a Condition of Re-entry without any other, and ſupplies the defect ſubſequent; and are a Condition and not a limitation; and that this Condition is well performed, and the Leaſe remains abſolute; wherefore it was adjudged for the Plaintiff.

Co. 5. 9. b.

Evington *verſus* Brimſton, Trin. 36 Eliz. Rot. 86.

(6) Moor. 356. 2 Rol. 83. 2 Cr. 382.

TReſpaſs of his Beaſts taking. The Defendant Juſtifies as a diſtreſs for an Amercement in a Leet in Spalding, becauſe he left his gate open ad Nocumentum Inhabitantium, &c. Et per totam Curiam is not a Nuſance inquirable; for it is a private Injury, and the amercement thereof ill; And Judgment given for the Plaintiff.

Buskin *verſus* Edmunds, Trin. 37 Eliz. Rot. 628.

DEbt upon Demurrer. The Caſe was, that A. let Lands to B. in the County of Bucks, rendring Rent at the Receipt of the Royal Exchange in London; and for non-payment a re-entry. The Rent was not demanded nor tendred at the day, the Leſſor entred; and whether his entry were congeable or not without demand, was the Queſtion. Gawdy held that it was; for being reſerved out of the Land, there needed not any demand, as the Abbot of Hydes Caſe is, and in 16 Eliz. Dyer in the Biſhop of Exeters Caſe, where Iſſue was taken upon the Tender, which proves that a demand is not requiſite; but all the other Juſtices held that there ought to be a demand at the place where it is payable; for it remains yet a rent, which in its nature is demandable by him who would have it; and they ſaid that ſo it hath been adjudged before theſe times. Wherefore it was afterwards adjudged accordingly, that the Entry of the Leſſor was not lawfull; Poſtea, Mich. 40. & 41. B. R. p. 33. (7) 1 Rol. 459. Moor 408. Poſt 636. 1 Rol. 459. Ant. 167. 2 Rot. 420. Co. Lit. 202. a.

Boraſton *verſus* Hay, Trin. 36 Eliz. Rot. 1101.

TRespaſs. The Defendant pleaded that the Land was Copyhold Land, parcell of the Manno of Abberſley in the County of Worceſter; and that the Cuſtome there is that if a Copyholder in Fee hath a Wife at the time of his death, and two ſons or more, that the Wife ſhall have that Land during her life as a Frank bank. And that if the eldeſt ſon dies, living the Wife, although he hath Iſſue, his Iſſue ſhall not have it, but the ſecond ſon; and ſhews that Robert Boraſton Grandfather to the Plaintiff was a Copyholder of that Manno, and died before his Wife, having Iſſue the Plaintiffs Father, and one John Boraſton his ſecond ſon; that the Wife held her ſelf in her Freebank; and that the eldeſt ſon died, living the Wife; and that afterwards John Boraſton the younger ſon was admitted, and ſurrendred to the Defendants uſe, &c. and Iſſue was taken upon this preſcription; and the Jury found the Cuſtome as before, and that the younger ſon ſhould have it, unleſs the eldeſt ſon was admitted thereto, as to the reverſion, or made Fine for it with the Lord in his life time. Et ſi ſuper totam materiam, &c. the Court ſhall adjudge the Defendant guilty; they found the Defendant guilty; if otherwiſe, not Guilty; and upon this verdict it was moved by Tanfield, that it was found for the Plaintiff; for the Cuſtom is not found in that manner as he pleaded it; and therefore it is found againſt him who pleaded it; for he pleaded a general Cuſtom without exception; and the Cuſtom found is with an exception and ſpecial; and of that opinion were all the Juſtices, that the Cuſtom found, is not the Cuſtom put in Iſſue; wherefore it is found againſt the Defendant, as the Caſe in 2 Eliz. Dier 192. where a Cuſtom was pleaded, that a Feme ſhould have it during her life; and it was found that ſhe ſhould have it durante viduitate onely; afterwards Popham ſaid, it is a Common Caſe, that if there be a preſcription to have Common, for all his Beaſts, and it is (8) Moor. 359. Ante 405. Poſt 546.

is found, that he ought to have Common for all his Beaſts, Levant and Couchant. It is found againſt him who pleaded it; and Fenner was of opinion to give Judgment preſently for the Plaintiff; but it was then moved that here was not any verdict found upon this Iſſue; for they concluded their verdict, ſi &c. They found the Defendant guilty, if otherwiſe, not guilty, &c. And ſo there is not any concluſion of the point in Iſſue; and of that opinion were all the Juſtices upon view of the Record; and that for this Cauſe it was inſufficient and a groſs fault; whereupon a venire facias de novo was awarded.

Warner *verſus* Winch, Paſc. 37. Eliz. Rot. 53.

(9) ERror of a Judgment in Debt in the Common Bench. The Error aſſigned was, that the Plaintiff declares for a Debt upon an Action of Twenty pound; and after imparlance declares de novo, and therein demanded a Debt of Eighteen pound; and had Judgment to recover; and it was held to be erroneous, for that there were but one Original and two declarations, and the one varying from the other: and therefore it was adjudged here Mich. 36 and 37 Eliz. where in Debt upon an Obligation dated 1 Maii. The ſecond Declaration was upon an Obligation dated 2 Maii, and thereupon Judgment, that it ſhould be reverſed: Whereupon the Judgment here was afterwards reverſed.

Ant. 412. Poſt 507. 2 Cr. 537.

Goodwin *verſus* Grudge.

(10) ERror upon a Judgment in Debt, where the Judgment was affirmed, it was held by all the Juſtices, and ſo the Clerks ſaid was their uſage; that the Defendant in the Writ of Error ſhall have Execution preſently without a Scire facias, although the year and day be paſſed ſince the firſt Judgment. Vid. 15 H. 7. 5.

Poſt. 706.

Badcock *verſus* Atkins.

(11) ACtion for theſe words, Thy Father (Innuendo the Plaintiff) hath ſtolen ſix ſheep. The Defendant juſtifies, and Iſſue taken thereupon, and found for the Plaintiff; and it was alledged in arreſt of Judgment, that the Declaration was not certain nor ſufficient to ſhew that he ſpake thoſe words of the Plaintiff. For it is not averred that he ſpake them to the Plaintiffs ſon, nor that the Plaintiffs ſon was there preſent; and then it cannot be intended of the Plaintiff; and the Innuendo will not help this incertainty. And although the Defendant hath admitted it by his Plea: yet that ſhall never help a Declaration which is defective in ſubſtance: but if it were defective in form only, as by leaving out the place where a thing was done, or by pleading a collateral Plea, that may be made good, as 18 Ed. 4. 16. and 6 Ed. 4. 2. and of that opinion were all the Juſtices (beſides Gawdy) that the Declaration was not good; for it cannot be intended to be ſpoken of the Plaintiff more then of any other perſon, unleſs it had been averred

Poſt 429.

red, that his ſon was there preſent: and although the Defendant by his Plea confeſſeth, that he intended them of the Plaintiff, yet that ſhall not help the Declaration which is inſufficient. But Gawdy e contra: becauſe it ſhall be intended, that the Plaintiffs ſon was there, for otherwiſe he could not have ſaid, Thy Father. But notwithſtanding it was adjudged for the Defendant.

Sale Leſſee of Nevel (who claimed to be Lord Latimer) Plaintiff *verſus* Barrington.

EJectione firmæ. The Defendant pleaded not guilty, and after iſſue joyned, the Queen ſent a ſpecial Writ to the Court, reciting how the Defendant was Tenant in Tail with divers Remainders over; the Reverſion to the Queen, and that her Reverſion might be prejudiced by this tryal: Wherefore it was commanded them not to proceed to the Tryal of this iſſue Regina inconſulta. And it was thereupon much diſputed, whether this Writ were allowable or not; becauſe it is a Perſonal Action only, wherein it appears not how the Queen can be prejudiced; for it may be the Plaintiff claims his Leaſe under the Queens title. It was alſo objected, That in regard the Defendant is Tenant in Tail, with divers Remainders over; the Reverſion to the Queen, it is a very remote cauſe to have aid. By the Statutes alſo of 2 Edw. 3. cap. 8. & 11 Rich. 2 cap. 10. Juſtice ought not to be hindred by the Kings Writ, either under the Great or Petit Seal; and therefore this Writ ſhall not be any cauſe of delaying this ſuit. But Coke the Queens Attorney ſaid, That this was not to delay Juſtice or hinder right, but to do right; for it is neither Law nor Juſtice, that the Queen ſhould be prejudiced in her Inheritance without being made privy, which ought to be by Aid-Prayer. And when the Defendant will not pray in aid, this Writ is in nature thereof to inform the Court how it concerns the Queen, and to inhibit the proceedings until, &c. For if the Court be informed by Pleading, that it concerns the Queen in her Inheritance, they Ex Officio ought to ſtay it until the Queen be conſulted, &c. And when they do not, ſhe may by Law inforce them by her Writ; and that ſuch a Writ hath been awarded, appears by Fitz. N. Br. 154. 21 Edw. 3. 44. & 31. Edw. 3. Saver Default 27. But theſe are in Real Actions, yet it may alſo be in Perſonal Actions, where the Queens title appears to come in queſtion; and ſo is 2 Rich. 3. 13. And although he be Tenant in Tail, Remainder over who is impleaded, yet it is all one; for Tenant in Tail ſhall have aid of the Queen, but not of a common perſon, as appears 10 H. 7. 20. & 38 Ed. 3. 14. And that this is allowable in a Perſonal Action after Iſſue, as well as Aid-Prayer ſhall be allowed, ſtands upon one Reaſon, and is one Law; and ſo it hath been put in ure. And Mich. 34 & 35 Eliz. in the Common Bench in an Ejectione firmæ, by one Blofield for Lands, parcel of the poſſeſſions of the Earl of Arundel, after iſſue ſuch a Writ was awarded as is here, and by advice of all the Juſtices was allowed. And it was held by all the Juſtices here, That this

(12) Moor 421.

1 Rol. 159.

1 Rol. 167.

Co. Lit. 269.

Moor 843.

Writ ought to be obeyed. For as much as it appears unto them (although this tryal is but in a perſonal Action) That the Queen may be prejudiced in her Title. And by the Writ, there is a Recital of a Title in the Queen; and that this tryal is prejudicial thereto, which is not reaſon to be tryed Regina Inconſulta. And her tryal of Right is to be diſcuſſed in Chancery, where the Queens Records are to prove her Title. Wherefore it is not reaſon we ſhould proceed without a Procedendo; and ſo they all held. Whereupon they ſaid, it were fitting, that the Plaintiff ſhould procure a Procedendo, Wherefore, &c.

Paramour *verſus* Varrold, Mich. 35 & 36 Eliz. rot. 26.

(13) Moor 340. Poph. 101. FAux Impriſonment in London The Defendant pleaded a Recovery againſt the Plaintiff in Debt, in Sandwich Court in Kent by cuſtom, and by force of a Capias ad ſatisfaciendum awarded there, he took and impriſoned him at Sandwich; Abſque hoc, That he is guilty in London. The Plaintiff for Replication ſaith, That he impriſoned him in London, Prout, &c. Abſque hoc quod habetur aliquod tale Recordum, & hoc paratus eſt verificare per Recordum illud, &c. And thereupon the Defendant demurred in Law: Firſt, Becauſe he takes a Traverſe upon a Traverſe, where he ought to have maintained his Declaration; as 1 Hen. 7. 21. Secondly, Becauſe he avers, Quod non habetur aliquod tale Recordum, & hoc paratus eſt verificare per Recordum illud, which is a meer contrariety; for he therein confeſſeth, that there is ſuch a Record, which is the expreſs caſe, in 9 Hen. 7. where it is alledged and held to be Error, And all the Court for the firſt held clearly, that the Plea is good; for otherwiſe, every Defendant by a falſe Plea might draw a Tranſitory Action in what place he would, and might make the place and day alledged material; which the Law will not ſuffer, but will rather ſuffer the Plaintiff to Traverſe ſuch a falſe Plea without maintaining his Action. And ſo are the Books of 10 Edw. 4. 2. 12 Edw. 4. 6. 43 Edw. 3. 23. For the ſecond point, Gawdy and Fenner held the Replication to be ill; for it is meerly contrary and repugnant to ſay, That there is no ſuch Record, and that he would aver it by the ſame Record, and that this is matter of ſubſtance which needs not be expreſſed upon Demurrer: For no Plea is good without an Averment, but it is a meer Nugation, and the Court ſhall not have any regard thereto; if the party will not aver it: And a void Averment is as no Averment, and ſo this Plea is ill. Popham and Clench e contra in this point. For although the Averment be void and contrariant in this caſe, yet the Plea is here good without an Averment; for it is a Plea in the Negative, and need no other Averment, but to ſay, Et hoc petit quod inquiratur, &c. And then the other ſhall ſay, Habetur tale Recordum, & hoc paratus eſt verificare per Recordum. And then the Defendant ſhall joyn with him, Et prædictus defendens ſimiliter, &c. But then Pelham for the Defendant ſhewed, That this Action is

Ant. 92.

by

by Original Writ, wherein the Treſpaſs is ſuppoſed, 1 May, 34 Eliz. And in the Declaration the Treſpaſs is ſuppoſed to be 20 May, 34 Eliz. So the Writ ſuppoſeth the Treſpaſs to be done before it was in truth done; as appears by the Declaration. And for this cauſe it was held by the whole Court to be ill, and adjudged accordingly. 2 Cr. 664.

Marvin *verſus* Maynard.

ACtion upon the Caſe. Whereas he was ſeiſed of the Manor of Upton Gray, that the Defendant to ſlander his Title, ſpake theſe words, Mr. Marvin (innuendo the Plaintiff) hath not any Title to Upton, (innuendo Upton Gray) Upon not guilty pleaded, it was found for the Plaintiff, and now moved in Arreſt of Judgment. Firſt, Becauſe he doth not ſhew what Eſtate he had therein; For it may be that he hath it but Pur auter vie, and then Ceſtuy qui vie being dead, he hath not any Title: He ought alſo to recover his damages according to his Eſtate, &c. Secondly, The words are not ſpoken of Upton Gray, but of Upton only; which cannot be intended of Upton Gray, and it cannot be helped by the innuendo. But all the Court reſolved, That the Declaration was well enough. For as to the Firſt, he needed not ſhew what Eſtate, &c. for his Seiſin of any Eſtate is ſufficient; And therefore Fenner ſaid in the caſe of Huddleſton againſt the Lord Dacres in a Writ of Annuity, the Defendant pleaded, That he granted it unto him to be his Steward; and that he was ſeiſed of the Manor of D. and requeſted him to keep his Court there, and he refuſed, &c. And Exception was there taken, becauſe he ſhews not of what Eſtate he was ſeiſed, and ruled to be well enough: For peradventure it might be perillous to diſcover his Eſtate. And to the ſecond they held, That the innuendo did ſufficiently ſerve to ſhew his intent what he meant in naming Upton: For it is uſually known without the Addition, and might be called ſo; wherefore the Innuendo ſtands well with his ſpeaking. But if without the Innuendo, it could not by any Intendment be taken ſo, it might have been otherwiſe. Wherefore it was adjudged for the Plaintiff. (14)

Sharplus *verſus* Hankinſon, Hill. 37 Eliz. rot.

(15) Ante. 388. DEbt upon an Obligation Condition, That if the Obligor payed to the Oblige twenty pound of lawful Engliſh money, which ſhall be in the year of our Lord, 1599. in and upon the thirteenth day of October, next enſuing the date hereof; That then, &c. The Defendant pleaded, That the day of payment was not yet come, and it was thereupon demurred, and moved for the Plaintiff, That the Condition ſhall be conſtrued, that the payment ſhall be upon the Thirteenth of October next enſuing the date of the Bond, which day is paſt; and the words, Which ſhall be in the year, &c. ſhall have relation that it ſhall be ſuch money as ſhall be currant, Anno 1599. But Fuller for the Defendant moved, that the words ſhall be conſtrued, That the payment ſhall be upon the Thirteenth of October, which ſhall be in Anno 1599. next enſuing. So by this Expoſition and Interplacing of the words, all parts may ſtand together; and ſo without doubt, was the intent of the parties. Gawdy, The Condition is ſenſeleſs; but he conceived when a certain time of payment is expreſſed, that ought to ſtand, and all the reſidue ſhall be void, being repugnant. And there cannot be ſuch a conſtruction made, That the next enſuing ſhall refer to Anno 1599. For that is certain enough without thoſe words; but it ſhall refer to the Thirteenth of October: For otherwiſe the Thirteenth of October had not any ſence; wherefore he conceived, that the day was paſt. Fenner, Clench, and Popham e contra: For Fenner held, that when the words in Deeds be repugnant, they ſhall be rejected, and we ought to adjudge upon the other words: Then here, when the payment is appointed to be in Anno 1599. there is certainty enough; and the words, The Thirteenth of October next enſuing the date, are repugnant and void; and therefore the day of payment is not yet come. Popham: The payment ſhall be upon the Thirteenth of October Anno 1599. For it is reaſonable to conſtrue it according to the intent of the parties, and as it may ſtand; and then it ſhall be conſtrued, that the Obligor ſhall pay ſuch money as ſhall be currant, 1599. And that he ſhall pay it upon the thirteenth of October next after the year 1599. And the words after the date hereof, are repugnant and void. And by this Expoſition all the words ſtand, but the date hereof: And if it ſhould be conſtrued to be paid upon the thirteenth of October next enſuing the date, it ſhould be impoſſible: For how may a man pay money in Anno 1593. which ſhould be currant in Anno 1599. before which time peradventure the coyn may be changed; and therefore this conſtruction ſhall be received, whereby the day is not yet come. Clench held, that it ſhould be conſtrued as Fuller had expounded it; ſo as all the words might ſtand by interpoſing and interplacing of them. Wherefore, becauſe three of them agreed againſt the Plaintiff, but upon ſeveral reaſons, Gawdy conſented unto them, that Judgment ſhould be given againſt the Plaintiff. And without further argument it was adjudged for the Defendant.

Penn

Penn *verſus* Glover.

REplevin upon Demurrer; The Caſe was that the Biſhop of Rocheſter made a Leaſe for years of a Mannor wherein were divers Copyholders, with a Proviſo, That the Leſſee ſhall not moleſt, vex, or put out any Copyholder, paying his duties and ſervices; ſub pœna foriſfacturæ And the Biſhop entred for the condition broken: The breach was aſſigned in hoc, that the Defendant Vi & armis, entred upon a Copyholder in a Cow-houſe, parcel of the premiſes, and beat him, Et ſic moleſtavit, &c. and it was thereupon demurred. And Tanfield moved, That this was not any breach of the Condition; for the moleſtation is to be intended of ſuch ſort, that he ſhould ouſt him of his Copyhold, either by often diſtraining, that he could not enjoy it quietly, or by ſome other vexations whereby he was inforced to relinquiſh his poſſeſſion. And it is not ſhewn here, that he ouſted him from his Copyhold; and if he entred upon his Copyhold, and did not ouſt him, it is not any breach, and the wrong here is done only to his perſon, and not to his Copyhold Tenement. And of that opinion was all the Court, that hereby the Condition was not broken; for that moleſtation ought to be intended, ſuch as ſhould be an expulſion or moleſtation concerning his Copyhold Tenement; and there is not any breach by a Tort done to his perſon, or in diſturbing him in any other Lands, unleſs they were his Copyhold-tenements within the Mannor. Wherefore without any further Argument it was adjudged accordingly. (16) Moor 402.

Welden *verſus* Bridgewater, Hill. 34 Eliz. rot. 489.

TRespaſs. Quare clauſum fregit vocat' Bear-meadow apud Paunchbourn, and his Graſs there growing, &c. Upon not guilty pleaded, it was found by an eſpecial Verdict, that the Plaintiff was ſeiſed of the Mannor of Paunchbourn and that in the ſaid Mannor there was a Meadow called Wide-Meadow, containing eighty acres, whereof the place where, &c. is parcel, and that from time whereof, &c. this Meadow hath been divided by lot between divers perſons, Pro captione fœni de herba inde proveniente; and that from time whereof, &c. the Plaintiff, and all thoſe whoſe eſtate, &c. have uſed to have had allotted unto them yearly out of the ſaid Meadow thirteen acres; which being allotted, ſhall be called Bear-Meadow; and that the place where, &c. was allotted to the Plaintiff, and that the Defendant entred and cut down the Graſs, &c. And if, &c. Atkinſon for the Plaintiff; the queſtion is, whether the Plaintiff hath a profit a prender in that Land only, or the Land it ſelf; ſo as he might have Treſpaſs, Quare clauſum fregit, &c. For if he hath but a profit, he cannot maintain this Action, as 5 Hen. 7. 10. of him who hath a Warren only in another mans ſoyl, or 15 H. 7. or 14 H. 8. of him who is a Commoner only. But it ſeemeth here, this Land being allotted unto him, he hath an Intereſt and Freehold therein for the time, and may well have this Action; as Fitz. N. Br. 62. Partition between Coparceners, that the one ſhall have the Mannor of (17) 1 Rol. 829. Co. L. 4. a. 48. b Moor 302.

of D. for one year, and the other the Manor of S. and that every ſecond year they ſhall exchange. Now each of them for their time have a ſeveral Freehold, and ſhall have Treſpaſs alone, Quare clauſum fregit. So Temps Ed. 1. Partition 21. Partition, That the one ſhall have it from ſuch a day to ſuch a day, and the other for the reſidue of the year. Wherefore, &c. And of that opinion was the whole Court; for it may be good by preſcription: And by the Alotment, it is the proper Soil and Freehold of him to whom it is allotted, and that he well might maintain a Quare clauſum fregit. Wherefore it was adjudged for the Plaintiff.

Co. Litt. 4. a.

Sower *verſus* Bradfield, Trin. 37 Eliz.

(18) DEbt for forty ſhillings upon an Arbitrement. Whereas the Plaintiff claimed from the Defendant and one J. S. five pounds expended for them Pro diverſis negotiis; and they had ſubmitted themſelves to the Abitrement of Sir William Paſton for it; who arbitrated, that the Defendant and J. S. ſhould pay to the Plaintiff four pound, viz. The one forty ſhillings, and the other forty ſhillings; and for the forty ſhillings to be paid by the Defendant, he brought this Action. And it was thereupon demurred, Firſt, becauſe this is a debt certain, which ought not of it ſelf be put in arbitration. Sed non allocatur. For although a debt upon a Bill or Contract cannot by it ſelf be put in Arbitrement, yet this five pound is claimed as expences, Pro diverſis negotiis; and ſo may be well put in Arbitation. Secondly, it was alledged, That this Action ought to have been joynt againſt them both for the four pound, and not ſeveral. Sed non allocatur. For the (viz.) makes it as ſeveral Arbitrements for both: Wherefore it was adjudged for the Plaintiff.

Hob. 318.

Adams *verſus* Albon.

(19) IT was moved in Arreſt of Judgment after Verdict, that the Venire facias bore teſte, 9 July, 37 Eliz. returnable Die Mercurii proxime poſt tres Trinitat' proxime ſequent', which day is not yet come; for the 9 July 37 Eliz. is Dies Mercurii in tres Trinitat' 37 Eliz. and the laſt day of the Term: And therefore the Writ here is not returnable the ſame day, but ought to be Die Mercurii proxime poſt tres Trinitat' which is a year after. Wherefore this trial is before the day that the Venire facias is returnable, and therefore ill; and it is not like where in a tryal, the Venire facias is not returned: For that ſhall be intended good, a Venire facias being awarded and returned, and that it was imbeſſed, which is aided by the Statute. And of that opinion was the whole Court at this time. Sed adjournatur.

Ant. 388.

Fuller *verſus* Fuller, Hill. 36 Eliz. rot. 586.

My. 353. (20) TReſpaſs. For Lands in Chigwel in the County of Eſſex; upon not guilty pleaded, a ſpecial Verdict was found, that one Henry Fuller was ſeiſed of this Land in Fee, holden in Soccage, and had iſſue four ſons, viz. John, Richard, Edward, and Henry, and deviſed the Land

Land to Richard the ſecond ſon, and his heirs of his body, and after his death without iſſue, then to Edward the third ſon in tail, and then to John the eldeſt ſon in tail, Remainder to the right heirs of the Deviſor: Richard dies, having iſſue two ſons, viz. Thomas and William. Afterwards Henry the Deviſor ſaid, That my Will is, that the ſons of Richard, my ſon deceaſed, ſhall have the Land deviſed to their Father, as they ſhould have had if their Father had lived, and had died after me. Henry the Deviſor died, Thomas the ſon of Richard entred, upon whom John the eldeſt ſon of Henry entred; Thomas re-enters, John brings Treſpaſs, Et ſi, &c. This caſe was argued by Towſe for the Plaintiff, and by Foſter for the Defendant, and two points therein moved: Firſt, whether by reaſon of this new Speech and Declaration after the death of Richard, Thomas his ſon ſhall take as a Deviſee: Secondly, admitting it be not a good Deviſe to Thomas, whether John the eldeſt ſon ſhall have it during the time that any iſſue of the body of Richard be alive; or whether Edward in Remainder ſhould enter preſently; becauſe it is not limited unto him until the death of Richard without iſſue; ſo as in the mean time the heir of the Deviſor might retain it: For if he in Remainder ought to have it, then the Defendant hath Primer poſſeſſion; and ſo the Plaintiff hath not any cauſe of Action. Gawdy held, that Thomas ſhould not take it, and that there was not any difference betwixt this and Brets caſe; there the Deviſe was in Fee, here it is in Tail, which is all one: and this Speech of the Deviſor, is not of any effect; for there is ſuch a Speech in Brets caſe; but the Deviſe of the Manor of D. which he had not, was good with a new publication after he had purchaſed it; ſo of a Deviſe to an infant in ventre ſa mere with a new publication after its birth: For there is his Will writen, That he ſhould have it; and it is expreſſed by his words afterwards, But here there is not any written Will, That the ſon of Richard ſhould have it, and he cannot have it as his heir. Wherefore, &c. To the ſecond point there is no doubt, but that he in Remainder ſhall have it preſently; for the Deviſe being void to the firſt, it is as if it never had been made: So it is if the firſt Deviſee refuſe, he in the Remainder ſhall have it preſently; as 37 Hen. 6. Plow. 414. Secundo Mar. Dyer. Jaſper Warrens caſe. Wherefore the Plaintiff hath not any cauſe of Action, &c. And in this point all the other Juſtices agreed with him; and as to the firſt point Clench agreed alſo, but Fenner and Popham e contra. And Fenner held, that Thomas ſhould take it by this Deviſe; for this differs from Brets caſe, in the manner of the new publication. And as a Deviſe to one who is not in eſſe, with a publication afterwards when he comes in eſſe is good, ſo it is here: For it appears (as it is found) that the Deviſor knew well, that the heirs of the body of Richard ſhould not take by deſcent, their Father being dead; and therefore he would have them to take as they might, viz. As Purchaſors by the name of Heirs of the body of Richard, although Richard was dead at the time of the Deviſors death: and to do that, he made this new Declaration of his Will. Popham accord, That Thomas the heir of Richard ſhould have it as Deviſee by this new publication; for none will deny that if the Deviſe had been to Richard and the heirs of his body, and Richard had been dead at the time of the Deviſe, but that the heir ſhould take it as a Purchaſor: And truly there is not any difference: for this new publication is quaſi a new Will, as it is in Trevilians caſe

Ante 401.

Co. 1. 101.

Poſt 493.

Co. Lit. 26. b.

caſe Dyer 142. And I hold clearly, if a man hath iſſue three ſons, and Deviſe his Land to the eldeſt in Tail, Remainder to the ſecond in Tail, Remainder to the third in Fee; and the eldeſt dieth, having iſſue in his Fathers life time, that his iſſue ſhall have it without a new publication, becauſe the intent of the Deviſor was not to diſ-inherit any of his ſons; And it may be he did not know of the death of his eldeſt ſon, who was peradventure beyond Sea, or elſewhere abſent. And there is not any reaſon to make ſuch a conſtruction, as to diſ-inherit his iſſue; for by ſuch means, many may be diſ-inherited, and the Wills expounded againſt the intent of the Deviſor. But of ſuch a Deviſe to a ſtranger, it may peradventure be otherwiſe; for the Deviſee being dead, the intent of the Deviſor doth not appear to carry it from his own heir to the heir of a ſtranger. But for the ſecond point, in regard they all agreed againſt the Plaintiff, it was adjudged preſently for the Defendant.

Charter *verſus* Hunter, Trin. 37 Eliz. rot. 1064.

(21) ERror of a Judgment in an Action upon the caſe for words, Thou art a Prigging, Pilfering Merchant, and haſt pilfered away my goods from my Wife and Children. The Error aſſigned was, becauſe an Action lay not for theſe words; and of that opinion was the whole Court; for the words do not impeach him of Felony: Wherefore the Judgment was reverſed.

Bartholomew *verſus* Dighton, Hill. 37 Eliz. rot. 251.

(22) 1 Rol. 287. ERror upon a Judgment in the Common Bench; becauſe the Plaintiff being an Infant, ſued by Attorney, and recovered; whereas he ought to have ſued by his Guardian: But the Court upon the motion held, that in regard the Plaintiff hath recovered, and it is for his benefit, and no prejudice by his appearance by Attorney, that it ſhould not be aſſigned for Error; but they would adviſe; and afterward, Paſch. 39 Eliz. being moved, it was held clearly to be Error, and the Judgment was reverſed for that cauſe.

Co. 4. 53. b. Poſt 541. 2 Cr. 441.

Whetſtone *verſus* Higford.

(23) UPon evidence to a Jury, the queſtion was, Whether one might be the Queens Chaplain, and have Plurality of Benefices by the Statute of 21 H. 8. by being retained by Parol only. Popham held, that the Queen could not retain by Parol only: But Fenner e contra, who ſaid, there was a caſe in this Court, wherein he himſelf argued, where the Serjeant of the Mace, being made by the delivery of the Mace unto him, it was held to be good. And his office being in queſtion as being forfeited, he pleaded the Queens Licence by parol to be abſent and not to exerciſe it; and it was

Co. 9 98. b. 9. a.

was adjudged to be good, for her Corporate Body doth not take away or destroy the Human Body, but that she might retain servants, and do other Acts as a Common Person does; and it was shewn that this Chaplain died above thirty years since; and that during his life he was reputed her Chaplain, and exercised the place of Chaplain as well in her private Closet as elsewhere; and had all the benefits as her Chaplain, &c. Wherefore the Court said that it should be intended that he was her Chaplain, and well and duly retained; wherefore the question being to avoid a Lease made by him to the Plaintiff, it was held that he was a person able to make such a Lease; and the Jury found for the Plaintiff.

Germin *versus* Rolls, Mich. 36 & 37 Eliz. Rot. 365.

ERror upon a Judgment in the Common Bench, where Germyn brought Debt in the Common Bench against Rolls as Executor of Norwood, for certain Fees due unto him as Attorney of the Common Bench, as also for Fees due unto him for Sollicit- ing Causes in the Queens Bench, as also for money expended a- bout a Fine for alienation. The Defendant pleaded Nunques Execu- or, &c. and found against him; and Judgment for the Plaintiff; and Rolls brought his Writ of Error. And the Error assigned was be- cause this Action of Debt lieth not against an Executor; for al- though it lies against him for an Attorneys Fees, because the Testator could not have waged his Law for them, in regard he was compellable to expend them; yet for as much as it is brought for Fees in solliciting Suits in the Queens Bench; where he was not Attorney, for which an Action lies not against an Executor; then having conjoyned them, and Damages intirely given, the Judgment is therefore erroneous in all. And it was agreed by the whole Court that the Action lay not for part against the Executor, and that the conjoyning of them hath made all ill, so as he might have demurred upon it, and have abated the Writ; but by his Plea he having admitted it, he hath now made it good, was the question; for it was said that the reason why this Action lies not against an Executor, is, because the Testator might have waged his Law; and an Executor by intendment cannot have Conusance thereof; But when he takes upon him notice thereof, and admitteth that there was such a Contract, then he may be well charged, as 10 H. 6. 25. and 13 Ed. 3. Tit. Executor. And so 2 Ed. 4. Accompt lies not against an Executor; yet if he upon account brought against him enters into the Accompt, and be found in Arrear, Action of Debt for this account lies against him. Sawdy, the Judgment is erroneous, for this Writ of it self lies not against an Executor; and the admittance of the party shall never make a Writ, which of it self is ill, to be good; but the Court shall adjudge it according to Law, as 10 Ed. 4. trespass against the Lord vi & armis, and he admits it, yet the Court shall abate the Writ, so 28 H. 8. 13. Debt is brought for a rent-service, which hath continuance, although the Defendant admits it, the Court shall abate the Writ. Fenner e contra, for this is not such an action which lies not against an Executor of it self, but it lies not by reason he is not privy to the Contract, and he could not have

(24)

Post. 459.
1 Cr. 194.
1 Rol. 924. 5.
2 Rol. 107.
Moor 366.
1 Cr. 159.
2 Rol. 107.
1 Cr. 159.
2 Cr. 521.
2 Cr. 521.
1 Cr. 107, 194.
1 Rol. 925.

notice thereof; but if his ignorance is taken away, and he may have notice thereof, the Law will charge him, as 46 Ed. 3. Debt was brought againſt an Executor for a ſervant wages, and becauſe that he himſelf retained the ſervant for the Teſtator, ſo as he thereby had Conuſance, it was held that he ſhould be charged; otherwiſe not: So here becauſe by his Plea, he takes notice thereof, and admits it by an implicite confeſſion, the Action well lies, wherefore, &c. Popham, I agree that if in Debt upon a ſimple contract, the Executor confeſs the Action, or pleads Nihil debet, Judgment ſhall be given againſt him, becauſe in the one Caſe upon the Tryal the truth of the Debt appears; and in the other Caſe he by his Plea confeſſeth it; but yet in reſpect the Teſtator might have waged his Law, or pleaded Nihil debet, and the one way is taken from the Executor to diſcharge that Debt, he ſhall not be charged and enforced to plead if he will not; but I doubt here whether by this Plea the Contract be confeſſed. And therefore a Caſe hath been cited to be adjudged in the Common Bench, 30 Eliz. betwixt Huſon and Webb, that in Debt againſt an Executor upon a ſingle Contract who pleaded plene adminiſtravit and found againſt him, yet no Judgment could be againſt him, but the Judgment was againſt the Plaintiff, which is all one in the reaſon with this Caſe; therefore it is good to ſee the Record thereof. Et adjournatur, Hill. 38. B. R. plac. 4.

Poſt. 471.

Ant. 121.

Poſt. 459.

Shaw *verſus* Tompſon.

(25) Debt for fifty pound recovered in a Court Baron. The Caſe was, that a Feme recovered Dower of a Copyhold according to the Cuſtom of the Manor by pleint in a Court Baron; and for that her Baron died ſeiſed, ſhe recovered by Judgment there, Fifty pound Damages; and for that Fifty brought this Action, and declares upon all this matter; and it was thereupon demurred; and the ſole queſtion (as Tanfield moved it) was whether ſhe might recover Damages to Fifty pound there, where they cannot hold Plea above Forty ſhillings; but the whole Court held that the Damages were well awarded; and that ſhe might well recover ſo much there; for as they may hold Plea of the Land, ſo for the Damages as far as the demandant is damnified, and ſhall be well allowed. Sed adjournatur, V. Hill. 38 Placito 3. V. 4. Co. 30. B.

1 Rol. 601. Moor 419. Co. 4. 30. b.

Atwood *verſus* Ballard.

(26) Treſpaſs for his Cloſe breaking. The Defendant Juſtifies by reaſon of a way by preſcription from his Franktenement in D. unto the Vil. of S. in the ſame County, Iſſue was taken de injuria ſua propria, &c. and a Venire facias awarded from the viſne of D. only, and thereby it was tried and found for the Plaintiff. And it was now moved in arreſt of Judgment, that it was a miſ-tryal; for the viſne ought to have been awarded from D. and S. Gawdy. True it is if the preſcription to have a way had been traverſed, and ſo it hath been adjudged here; but by this replication the way is confeſſed; and it may be that he breaks his Cloſe without uſing the way

2 Cr. 599. Poſt. 427, 898.

way, for the way is not in queſtion; and of that opinion was Popham, but Fenner and Clench e contra; and therefore it was adjourned. Vid. 13. H. 7. 13. 21 H. 6. 22. 34 H. 6. 15. 10 Ed. 4. 10.

Bragg *verſus* Banning, Hill. 37 Eliz. Rot. 1004.

(27) ACtion upon the Caſe, and declares, whereas he and all thoſe, &c. have had a way from his Houſe in D. over Green-acre in S. and over Black-acre into ſuch a place in P. that the Defendant had ſtopped his way in S. And upon Not-guilty pleaded it was found for the Plaintiff; and it was alledged in Arreſt of Judgment, that the Declaration was not good, becauſe he alledgeth not in what Vil. Black-acre was; for if the preſcription be traverſed, the Venire facias ſhall be from every Vil. where the Land is over which the way lies, and ſo it was adjudged in 33 Eliz. Haukhurſts Caſe in the Common Bench, wherefore, &c. Gawdy. It is clear, that this is a fault for which the Defendant might have demurred; for true it is he ought to have alledged all the Lands through which he is to have his way, and Vills where they lie; and if the preſcription be traverſed, the Venire ſhall be from every Vill. But now when he pleads Not guilty, the Venire ſhall be from the Vill, where the ſtopping is alledged; for the way is not principally in queſtion, but it ought to be proved upon the evidence, and thereto all the Juſtices agreed; wherefore it was adjudged for the Plaintiff. Ant. 429. Poſt. 69, 751.

Pennyman *verſus* Rabanks.

(28) ACtion upon the Caſe for ſlandring his Title, for that he ſaid to J. S. who was in ſpeech to buy the Plaintiffs Land, I know one that hath two Leaſes of his Land, who will not part with them at any reaſonable rate. Ubi revera nulla talis dimiſſio facta fuit. The Defendant juſtifies by reaſon of two ſeveral Leaſes by parol made unto himſelf. The Plaintiff replies de injuria ſua propria abſque tali cauſa, and Iſſue joyned and found for the Plaintiff; and it was now moved in Arreſt of Judgment, that an Action lay not for theſe words; for he doth not ſay, that any had Leaſes for years, but it might be well intended of Leaſes at will, which are not any prejudice. Sed non allocatur; for it cannot be intended that he ſpake of Leaſes at will, becauſe he mentions Leaſes grantable over, and alſo ſuch as ſhall prejudice the Purchaſor; wherefore, &c. Secondly, the Declaration is not good, becauſe he concludes, Ubi revera nulla talis dimiſſio, &c. whereas there be two Leaſes mentioned, and this concluſion goes but to one which is incertain. Sed non allocatur; for Dimiſſio eſt nomen collectivum, and comprehends both Leaſes, as 15 Eliz. 325 Aſſize, The Plaintiff made two Titles to two Barrs, the Tenant ſaith, Veign le Aſſize ſur le title that goes to both, wherefore, &c. Thirdly, becauſe it appears by the Defendants Juſtification, that he intended of Leaſes made of himſelf; and if a man claim eſtates, although they be falſe he ſhall not be puniſhed, which was agreed by all the Court, that no Action lay againſt one for ſaying, that he himſelf had Title or Eſtate in Lands, &c. although Moor 410. Ant. 338. Ant. 197.

it were falſe. But here the words in the Declaration as they are ſpoken being in the third perſon, be not intendable of himſelf but of ſome other, and import a ſlander to the Plaintiffs Title; and then his juſtification afterwards ſhall not take away that Action which before was given to the Plaintiff for the ſlandering of his Title; wherefore Rule was given that Judgment ſhould be entred for the Plaintiff, unleſs other matter was ſhewn upon the third day of the next Term, and afterwards Paſch. 38 Eliz. it was adjudged for the Plaintiff. Fenner contradicente.

Anonymus.

(29) ONE was indicted upon the Statute of 5 Eliz. of perjury, for that there was a Suit in Chancery betwixt one Marſhall and Harvie for the Manor of Staverton in the County of Devon, and a Commiſſion was thereupon awarded to examin Witneſſes, that the Defendant ſwore, the deed of the Feoffment of the Manor (manerium prædictum innuendo) was delivered as an eſcrow to be delivered, &c. ubi revera, it was delivered abſolutely, &c. The firſt exception was, that this Oath, that the deed of the Manor was delivered as an eſcrow, &c. is not material, unleſs it be ſhewn that it concerned the Manor in queſtion; for otherwiſe although it were falſe, it is not puniſhable neither by Action nor by Indictment upon the Stutute. For the Statute is, If a Witneſs depoſe falſly concerning any Cauſe, &c. For which falſe Oath he is not puniſhable by this Statute, unleſs it be ſhewn or averred, how this concerns the Cauſe. And of that opinion was the whole Court; and although it is alledged, Manerium prædict. innuendo, yet it ſhall not help it; for a man ſhall not be puniſhed as a perjurer by an Innuendo, wherefore for this cauſe only the Indictment was diſcharged.

Caſtleman *verſus* Hobbs, Hill. 37 Eliz. Rot. 334.

(30) Moor 396. Owen 57. 2 Cr. 205. ACtion upon the Caſe for theſe words, Thou art a Thief, for thou haſt ſtoln half an acre of my Corn, Innuendo, the Corn growing upon half an acre of ground reaped, and put into ſhocks by the Defendant. And upon this Declaration the Defendant demurred, and upon the firſt motion without much arguing, it was adjudged for the Defendant; for the ſtealing half an acre of Corn cannot be ſaid to be Felony, for it ſhall be taken in Common parlance and intendment, Corn growing upon the Land which the Plaintiff cut down and carried away, and the Innuendo helps nothing, unleſs the words precedent have a vehement preſumption of the Innuendo; and herein no man will intend that it was Corn ſevered, when he ſaith half an acre of my Corn: Wherefore it was adjudged for the Defendant.

Reynolds *verſus* Pinhowe, Trin. 37 Eliz. Rot. 337.

(31)

ASſumpſit. Whereas the Defendant had recovered Five pound againſt the Plaintiff in conſideration of four pound given him by the Plaintiff, that the Defendant aſſumed to acknowledge ſatisfaction of that Judgment before ſuch a day; and that he had not done it, and it was thereupon demurred, for it was moved that there was not any conſideration; for it is no more than to give him part of the money which he owed him, which is not any conſideration. But all the Court held it to be well enough; for it is a benefit unto him to have it without ſuit or charge; and it may be there was Error in the Record, ſo as the party might have avoided it, wherefore it was adjudged for the Plaintiff. 1 Rol. 28. Moor 412. Poſt. 538. 1 Cr. 8. 1 Rol. 28. Poſt. 538.

Woodroff *verſus* Vaughan, Mich. 36 & 37 Eliz. Rot.

(32)

ACtion for that he ſpake in the preſence of one Lumley theſe words of the Plaintiff, I did not know that Woodroff (Innuendo the Plaintiff) was thy Brother; he hath forſworn himſelf, and I will prove him perjured, or elſe I will pay him his charges; after Verdict upon Not-guilty pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, becauſe it is not averred that Lumley was Brother to the Plaintiff; and therefore it ſhall not be intended as ſpoken of the Plaintiff, as it was agreed this Term in Badcocks Caſe; Sed non allocatur; for when it is alledged to be ſpoken in the preſence of one only, it cannot be intended but that it was the Plaintiff, if the other revera be his Brother; and therefore it may be well helped by the Innuendo; but otherwiſe it is where it is ſpoken in the preſence of divers others, as in the Caſe alledged. Secondly, it was moved that for theſe words an Action lay not; for, for the words he hath forſworn himſelf, an Action is not maintainable, which was agreed per curiam. Then for the words, I will prove him perjur'd, or elſe I will bear his charges, no Action will lie; but the whole Court reſolved to the contrary; for it is as great a ſlander as if he had ſaid directly that he was perjured; and it is not reaſon that by ſuch colourable addition to ſlanderous words, the party ſhould be without remedy; wherefore it was adjudged for the Plaintiff. 1 Rol. 39. Moor 365. Ant. 416. 1 Rol. 39.

Whitbie *verſus* Marſhall.

(33)

EJectione firmæ, as Leſſee of Mr. Gray for Lands in Langley in the County of Leiceſter, at the Niſi prius in the Country, ſix of the Jurors were challenged and treited, and the Jury remained pro defectu juratorum, and afterwards at the next Aſſiſes a new Diſtringas was awarded againſt all the firſt Jurors, as well thoſe who were treited before, as the others, and at the Niſi prius in the Country, the Iſſue was tried by ſome of the Jurors of the ancient pannel, and by others returned upon a Tales de circumſtantibus awarded, but none of them who were treited before tried it: And the Verdict found for the Plaintiff; and it was now alledged in Arreſt of Judgment, that this Diſtringas was ill awarded; for it ought not to have been awarded Poſt. 430.

awarded againſt them who were treited but againſt the others only; and then the Trial thereupon was ill, but the Court held that in regard it was but a judicial proceſs, which being awarded againſt them, where it ought not to be, is but the default of the Court, and ſhall not turn the Plaintiff to prejudice. It was a good Tryal by the Common Law, in reſpect the Tryal was by the Lawful Jurors, as alſo clearly by the Statute of Jeofails, which helps miſawarding Proceſs; wherefore it was adjudged for the Plaintiff.

Moor *verſus* Vaughan.

(34) TReſpaſs at the Niſi prius. The Jurors were challenged; and the Jury remained pro defectu jurator, and afterwards a new Diſtringas with a Niſi prius was awarded againſt the ſame Jurors who were treited before; and ſome of them who were treited appeared and tried it; and this matter was alledged in Arreſt of Judgment, and held clearly by all the Juſtices that it was a miſ-tryal, and not aided by any of the Statutes of Jeofailes; whereupon a Venire facias de novo was awarded to have a new Tryal.

Ant. 429.

Sir Edward Denny *verſus* Eakenſtall, Hill. 37 Eliz. Rot. 882.

(35) EJectione firmæ. Upon a ſpecial Verdict it was found, that the Arch-Deacon of Ely having the Parſonage of Haddon appropriated to his Arch-Deaconry, Anno 12 Eliz. let the Land in queſtion, being parcel of his gleab for fifty years. The Biſhop of Ely being Patron of that Arch-Deaconry; and the Dean and Chapter of Ely Anno 15 Eliz. confirmed that Leaſe. The Arch-Deacon dies, the Biſhop Collates to that Arch-Deaconry J. S. who enters and let the Land to the Plaintiff, Et ſi, &c. The firſt queſtion moved was, whether this confirmation by the Biſhop be not void by the Statute of Prim. Eliz. which makes all grants and aſſurances, &c. by a Biſhop more than Eſtates for twenty one years, or three lives to be void, Et ſi ſic. The Leaſe made by the Arch-Deacon is void againſt his ſucceſſor. But all the Court held that the Statute doth not extend thereto, for that Statute is intended of grants of Lands, Tenements, and Hereditaments, parcel of the Poſſeſſions of the Biſhoprick, &c. But here the confirmation paſſeth not any Eſtate, but it is an aſſent only to the Leaſe of the poſſeſſion of the Arch-Deaconry, and not of the Biſhoprick; for it is not the alienation of the Patron, and therefore not within the Statute; but otherwiſe it is where a Biſhop is diſſeiſed, and confirms it to the diſſeiſor: Wherefore, &c. Secondly, it was moved that this Leaſe is void by the Statute of 13 Eliz. for the confirmation after the Statute ſhall not bind the ſucceſſor although the Leaſe made before the Statute ſhall bind him who made it; but the Court thereto delivered not any opinion. Sed adjournatur.

Co. Lit. 300. b.

Ant. 18.

13 El. c. 10.

Anonymus

Anonymus.

COke the Queens Attorney demanded of the Court their opini- (36)
on in this Case: A man having two daughters being his Heirs, deviseth his Land to them and their Heirs, and dies. Whether they shall take as Joyntenants by the devise, or as Coparceners by descent? And all the Justices held clearly, that they shall have it as Joyntenants; for the devise giveth it them in another degree than the Common Law would have given it them, and for the benefit of the survivorship between them.

Ant. 9. 1 Cr. 161. Post. 695.

Doyle *versus* Wood, Trin. 36 Eliz. Rot. 128.

TRespas. The Defendant Justifies as in his Freehold; the (37)
Plaintiff makes Title, that this Land is parcel of the Mannor of D. and demisable, time whereof, &c. by Copy in Fee, in Tail, or for life, or for lives, &c. and that this Land was let unto him by Copy in Fee. And the prescription was traversed, and found that it had been demised and demisable, from time whereof, &c in Fee, but never in Tail; and that it was granted to the Plaintiff in Fee; and it was thereupon held by the whole Court, that it was found for the Plaintiff. For the allegation that the Land had been demisable in Fee or in Tail, &c. is but a conveyance to his Title; and forasmuch as it was found, that it was demisable in Fee, and that it was demised unto him in Fee, that is the effect and substance of his Title, which is found for him, and sufficient; wherefore the Plaintiff had Judgment to recover.

Moor 359. Ant. 41. Ant. 415.

Stafford *versus* Bateman, Hill. 37 Eliz. Rot. 118.

TRespas upon demurrer. The Case was, that by vertue of a (38)
fieri facias out of the Exchequer for the Queens debt, the Defendant took the Plaintiffs beasts, being Levant and Couchant upon the Land of the Debtor, and sold them for the Queens debt, and adjudged that it was not lawful; for they were not to be sold as the goods of the Debtor, but they might have been distrained for the Queens debt; wherefore, &c.

2 Rol. 159.

Morgan *versus* Williams, Mich. 36 & 37 Eliz. Rot. 319.

DEbt as Administrator to one Philips, and declares that Admini- (39)
stration of the Goods of Philips were committed per Andream Vane sacræ Theologiæ Doctorem, such a day apud Monmouth; and the Plaintiff recovered in the Common Bench by default, and Writ of Error was thereof brought; and the Error assigned, because it is not shewn that Vane was Ordinary of Monmouth, nor that the committing of Administration appertained unto him; and in regard it was in a Declaration which ought to be certain, and he is not a Bishop, nor any person who may be intended to be the Ordinary, the Judgment was therefore reversed

Moor 367. Ant. 102. Post. 791.

Samon

Samon *verſus* Pitt, Trin. 36 Eliz. Rot. 877.

(40)

Co. 5. 77. b. 1 Rol. 243. Moor 359.

ASſumpſit, and declares. Whereas there were divers Controverſies between the Plaintiff and Defendant, concerning divers Lands in D. whereupon they ſubmitted themſelves to the Arbitration of J. S. That the Defendant aſſumed in conſideration of ſix pence to perform ſuch award as J. S. ſhould make; and alledgeth that J. S. awarded that the Defendant ſhould enter Bond to the Plaintiff, that the Plaintiff and Eliz. his Wife haberent & gauderent all the Lands in controverſie excepting ſeven Acres; and for non-performance of this Arbitrament, the Action was brought, and upon this Declaration it was demurred in Law; and it was argued for the Defendant that this award was void. Firſt, becauſe it is awarded, that he ſhall enter into Bond, and it is not ſet down in what ſum he ſhould be bound, ſo he knows not how to perform it; and if he ſhould enter into Bond without a ſum, it were void; and the Arbitrament being void, the Defendant is not bound to perform it. Secondly, the award is void in this, that they awarded, he ſhould be bound that the Plaintiff and his Wife ſhould enjoy, &c. and the Wife is not party to the ſubmiſſion, nor is to have any benefit by the award; for the Arbitrators have not any power to award a thing to be done to a ſtranger. But Tanfield for the Plaintiff moved that the award was good, notwithſtanding theſe exceptions. For as to the firſt, although it be not ſhewn in what ſum the Defendant ſhall be bound, yet he is to tender an Obligation in ſome ſum, and it is at his election in what ſum he will be bound, be it never ſo ſmall; and as to the ſecond, the Arbitrament is good; for although it be void as to the Feme, becauſe ſhe is not a party to the ſubmiſſion; yet to be bound that the Baron ſhall enjoy it, is good, as to him, as 18 Ed. 4. 22. and 19 Ed. 4. That the party and a ſtranger as his ſurety ſhall be bound, it is void as to the Stranger, but is good as to the Party; and he himſelf ought to enter into the Bond. But as to the firſt, all the Court held it to be a void Arbitrament; for the Arbitrators are abſolute Judges, and therefore ought to decide abſolutely and certainly what ſhall be done; and they cannot give their Authority unto us, or to the party to make certain their incertainty, no more than they may make an award, that J. D. ſhall make an award between the parties, for their Authority is not transferrable; and therefore this award being uncertain is void, and the parties are not bound to perform it. But Popham and Fenner ſaid, that if he ought to enter into any Bond, it ought to be in a ſum according to the value of the profits of the Land; and therefore if A. covenant to enter into Bond for the enjoyment of ſuch Land, without naming any ſum, it ought to be the ſum according to the value of the Land, as 8 Aſſ. an annuity is granted to a man until he be promoted to a Benefice, he need not accept a Benefice of a leſſer value than the Annuity. And Popham held the Arbitrament to be void for the ſecond Cauſe; for it being an intire thing that was appointed to be done, being void in part, it is void for the whole; but otherwiſe it is where he appoints two things to be performed, and the one is within the ſubmiſſion, and the other not, and they are awarded to be performed ſeverally, it is good for that which is within the ſubmiſſion, and void for the other. But to this

Ant. 4.

Co. 5. 78. a. Poſt. 726.

Co. 5. 78. a.

Co. 5. 78. a.

Co. 5. 78. a. 1 Rol. 243.

this point, none of the other Juſtices ſpake: But for the firſt cauſe principally without other Argument it was adjudged for the Defendant. 5 Co. 77. b.

Sir Chriſtopher Hilliard *verſus* Conſtable.

ACtion for words. Quod vid. antea Mich. 35 & 36 Eliz. B. R. placito 5. was now moved again; and Gawdy and Fenner held, That for the words, He is a Blood-ſucker, and ſeeketh others Blood (for all the other words all the Juſtices agreed, that they were not actionable) the Action lies not; for they be not words, which of themſelves import any Defamation; for it is uſual when a Juſtice of Peace purſues offenders, and does his Office, to call him Blood-ſucker; and it is not any ſlander unto him, and may be taken in ſome good ſenſe in executing his Office, and not in malam partem, that he is a Blood-ſucker in ſeeking murther or otherwiſe. But Popham and Clench e contra; for it ſhall be conſtrued according to the common intendment of the word which is always in malam partem; and to ſuck blood is to take blood unjuſtly from a perſon. Wherefore, &c. Afterwards the ſame Term at Serjeants Inn, before all the Juſtices of England there aſſembled, this Caſe was moved, and the greater part of them reſolved, That the Action lay not (but I heard not their particular Reaſons.) Wherefore the next day by the aſſent of Popham and Clench, it was commanded, that Judgment ſhould be entred for the Defendant. (41) Mo. 418. 1 Rol. 57. 1 Rol. 56. 7.

Sir Walter Hungerford *verſus* Veiſey, Paſc. 37 Eliz. Rot. 249.

FRror upon a Judgment in the Common Bench. The Error aſſigned was, becauſe the Venire facias was awarded upon the Roll returnable Die Mercurii Proxim. poſt Craſtin. Trinitatis; but the Writ it ſelf was returnable Die Veneris Proxim. poſt Craſtin. Trinitatis, which was the firſt day, and therefore Erroneous, becauſe the Writ by the Roll was returnable out of Term: And it was held clearly to be erroneous; for the Roll is that whereto the Court gives credit, and not to the Writ: For if the Writ were ill, it ſhould be reformed by the Roll, and that was clearly Erroneous at the Common Law, as appears 7 Edw. 4. 15. 2 Rich. 3. 11. 4 Eliz. 211. And it is not aided by the Statute. But if it doth not appear, that any Writ was awarded, it is aided by the Statute, but not an ill Writ. Sed adjournatur. (42) Moor 402. 1 Rol. 204. Moor 465. Ant. 340. Poſt. 572. 618. 22.

Aſcue *verſus* Sanderſon, Paſch. 37 Eliz. Rot. 218.

ACtion upon the Caſe. Sur Trover of Three hundred Sheep, the firſt of December, 36 Eliz. the Defendant pleaded that he was Sheriff of the County of Lincoln, and that J. S. recovered againſt the Plaintiff One hundred pound; and thereupon had a Fieri facias to levy that debt, which Writ was returnable Craſtino Animarum, 35 Eliz. That this was delivered to him being then Sheriff of the ſaid County, upon the firſt of October, 35 Eliz. to be executed. That (43)

he by force thereof, upon the twentieth of October 35 Eliz. took the ſaid three hundred Sheep, and ſold upon the two and twentieth day of October, Anno 35 Eliz. one hundred and four Sheep for forty pound, parcel of the ſaid one hundred pound, and that the other one hundred ninety two Sheep remained in his hands pro Defectu Emptorum. And at the ſaid day of Craſtin' Anim' he returned the ſaid Writ accordingly, and all this matter. The which is the ſame converſion, Abſque hoc, that he converted them, Aliter vel alio modo. And it was thereupon demurred: And after Argument, the whole Court held the Plea to be inſufficient. Firſt, and principally, because he doth not by his Plea confeſs any Converſion, and then the Traverſe is ill: But he ought upon this matter to have pleaded Not guilty, and have given it in evidence. Secondly, because the Declaration ſuppoſeth the Trover and Converſion to be the firſt of December 36 Eliz. and he juſtifies the Converſion in October, 35 Eliz. So he meets not with the Plaintiff in time; and therefore he ought to have traverſed it, and the Travers Aliter vel alio modo ſhall never anſwer to the time, but to the manner of the Converſion. Thirdly, he makes not any Juſtification for four of the Sheep, but that he ſeiſed them; but he ſhews not what he did with them: wherefore the Plea doth not anſwer all that which is compriſed in the Declaration, and for that cauſe is ill in all. And of that opinion was all the Court, and appointed Judgment to be entred for the Plaintiff; but after cauſed it to be ſtayed for the equity of the matter.

Poſt. 435. Poſt. 555. Ant. 146. Poſt. 439.

Staughton *verſus* Newcomb, Mich. 35 & 36 Eliz. Rot. 381.

[(44) ERror upon a Judgment in debt in the Common Bench. The Error aſſigned was, becauſe the Record is Quod obtulit ſe in placito debiti de 10l. And when he declared, he declared for a debt of twenty pound; and it was held to be a manifeſt Error.

Johnſon *verſus* Pays.

(45) BIll of debt upon the Statute of 5 Eliz. of Perjury. After Verdict it was moved in Arreſt of Judgment, that by the Statute of 18 Eliz. cap. 5. no Suite ſhall be upon a penal Statute, but by Information or Original Action; ſo this Bill is not maintainable. But it was thereto anſwered, that in the ſame Statute is a Proviſo, where the Action is given to the party grieved, and not to him who will ſue generally that he may ſue as before. Wherefore upon view of the Statute, it was held to be maintainable, and adjudged for the Plaintiff.

Stile *verſus* Butts, Trin. 37 Eliz. Rot. 159.

(46) TRespaſs, for carrying away Thirty loads of Clay in Brookbanck-Green, digged there by the Plaintiff: The Defendant pleads, that he is a Tenant and Inhabitant in Brookbanck, whereof the ſaid place called Brookbanck-Green is parcel; and that there is a Cuſtom there, that every Tenant and Inhabitant there may dig, have, and carry away Clay in Brookbanck-Green for his neceſſary uſe; and that the Plaintiff not being a Tenant there De ſon tort Demeſn,

1 Rol. 567. 8. Moor 411.

demeſn digged that Clay and laid it upon the Land; wherefore he took it for his neceſſary uſe, as lawful it was for him to do: And it was thereupon demurred, and upon the firſt motion, without any Argument, the Court held the Juſtification to be ill: For by the preſcription it appears, That the Tenant might digg and have Clay; then he cannot have but what himſelf digs, and he ſhall not have that which is digged by a ſtranger; for it is reaſonable he ſhould have what himſelf digged, but it doth not warrant him to take what another hath digged, who peradventure did it lawfully by the Lords Licence. This is alſo like to Common, which appertains not to the Tenant, nor is his until it be taken by the mouth of his Cattel; and if a ſtranger there, cuts the Graſs, the Commoner cannot carry it away, nor have his Action of Treſpaſs, &c. No more here. Wherefore it was adjudged for the Plaintiff. 2 Cr. 256.

John Vita *verſus* James Vita, Mich. 36 & 37 Eliz. Rot. 265.

(47) ERror upon a Judgment in Ipſwitch, in Debt for twenty pound by John Vita againſt James Vita. The Defendant pleaded Nihil debet, & de hoc ponit ſe ſuper Patriam, and the Iſſue was entred Et prædictus Jacobus ſimiliter, where it ought to have been Johannes, and tryed and adjudged for the Plaintiff. And this was the Error aſſigned: And all the Court held it to be amendable by the Statute of 8 H. 6. which gives authority to amend Records removed out of the Common Bench by Error for faults, which hapned per vitium Scriptoris, or by the Clerks negligence. And this Statute extends as well in Equity to the Records of other Courts, which are not removed for Error. Whereupon it was awarded to be amended, and the Judgment was affirmed. 2 Cr. 67. Ant. 79. Co. 8. 199. a Poſt. 752, 904.

Dee *verſus* Bacon, Paſch. 37 Eliz. Rot. 472.

(48) ACtion upon the Caſe, upon Trover and Converſion of Goods. The Defendant juſtifies the taking of them Damage-Feaſant, Abſque hoc, he converted them aliter vel alio modo; and it was thereupon demurred in Law; for the Traverſe is not good, becauſe he confeſſeth not any Converſion; the Plea alſo amounts to a Non Culp'. Wherefore without Argument it was adjudged for the Plaintiff. Ant. 434. Ant. 146.

Perkins *verſus* Clark & Cleydon.

(49) ASſumpſit. The Caſe was; A man deviſed his Lands to be ſold by J. S. his Executor, J. S. ſells it for forty pound, and dies Inteſtate before his Receipt of the forty pound. Adminiſtration of the Goods of the firſt Teſtator was committed to the Plaintiff, Whether he ſhould have an Aſſumpſit for this forty pound, or had any other Remedy, was moved by Spurling Serjeant. Gawdy, It is a good Caſe; for the money if it be recovered, is Aſſets in their hands: But he conceived the Adminiſtrator ſhould not have an Action to recover it. And Clench thereto agreed; but the other Juſtices would not deliver any opinion, but ſaid it was fitting to conſider thereof. Co. 5. 9. b.

Roſs *verſus* Morris.

(50) ASſumpſit brought in Suffolk, and declares, Quod cum proſecutus fuit un brief de Subpœna out of the Chancery, apud Weſtm' in Comitatu Midd', and intended to ſerve it: The Defendant apud Hepworth in Comitatu prædict' aſſumed, That if he would not ſerve the Writ that he would give him ſo much, &c. Upon Non aſſumpſit pleaded, and found for the Plaintiff by a Jury of Suffolk, it was now moved in Arreſt of Judgment, that it was a miſ-tryal: For although Suffolk was in the Margent, yet the Chancery apud Weſtm' in Comitatu Midd' is laſt named in the Record; then when the Aſſumpſit is alledged apud Hepworth in Comitatu prædict' This Comitatu prædict' refers to the County laſt named, viz. Midd' and then the Tryal in Suffolk is ill: Wherefore, &c. And of that opinion was Gawdy upon the firſt motion; but afterwards being moved again, becauſe the County of Middleſex is not mentioned but in the recital, and not in the ſubſtance of the Record; and the Aſſumpſit is alledged to be made apud Hepworth in Comitatu prædict', and Suffolk is put in the Margent of the Record, and there the Action is brought. Hepworth in Comitatu prædict' ſhall be intended to be referred to the County named in the Margent of the Record, and not to the County mentioned by way of recital, and ſo the Tryal may be intended there. Whereupon all the Court reſolved, that it was well enough; and it was adjudged for the Plaintiff.

Poſt. 465.

Ant. 311.

(51) But note, in the ſame Term an Exception was taken to the Indictment of one Grymes, who was indicted of Burglary apud Hereford; for that Hereford was in the Margin of the Indictment, and the Indictment was, Quod Richardus Grymes de D. in Comitatu Radnor, generoſus fecit Burglariam apud S. in Comitat' prædict'. And for this Cauſe Exception was taken; for that two Counties were named, the one in the Margent, the other in the Indictment; ſo it is incertain to which of them Comitatu prædict' ſhall be referred; and if it ſhould refer to the laſt mentioned, it is clearly ill. And for this cauſe divers Indictments have been diſcharged; and the Court held it to be an apparant and groſs fault here. Quære, Whether there be not a difference between theſe Caſes, becauſe the County is mentioned in the body of the Indictment.

Noke *verſus* Awder, Antea Hill. 37 Eliz. Plac. 21.

(52) IT was now moved again, and all the Juſtices agreed, That the Aſſignee ſhall have an Action of Covenant without ſhewing any Deed of the Aſſignment; for it is a Covenant which runs with the Eſtate, and the Eſtate being paſſed without Deed, the Aſſignee ſhall have the benefit of the Covenant alſo: And the Executor of the Baron, who is Aſſignee in Law, who comes in without Deed, ſhall have the benefit of ſuch a Covenant, as appears 30 Ed. 3. in Symkins Simonds Caſe. And Popham and Fenner held, That a Feoffee ſhall vouch by a Warranty made to his Feoffor, without ſhewing any Deed of Aſſignment: For the Deed of Aſſignment is not requiſite, nor is it to any purpoſe to ſhew

Ant. 373. Moor 419.

Co. 5. 18. a.

ſhew it; for it appears by the Books, that being ſhewn, it is not traverſable by the Vouchee. And as a Warranty or Covenant is not grantable, nor to be aſſigned over without the Eſtate; So when the Eſtate paſſeth, although it be by Parol, the Warranty and Covenant enſue it, and the Aſſignee of the Eſtate ſhall have the Benefit thereof. Coke Attorney-General (who was of Counſel with the Defendant) ſaid, That the Law was clear as you have taken it, yet the Declaration is ill; for he declares, Quod cum Johannes King 10 Eliz. let that to the Defendant for years, Virtute cujus, he was poſſeſſed and granted it to Abel by Indenture with the Covenant, who in 15 Eliz. aſſigned it to the Plaintiff. And further alledgeth, That long time before that the ſaid J. K. had any thing, one Rober King was ſeiſed in Fee, viz. 7 Eliz. and ſo ſeiſed, died ſeiſed in 15 Eliz. and it deſcended to Thomas King, who entred upon the Plaintiff and ouſted him: So he doth not ſhew that John King, who made the Leaſe, had any thing; for Robert King was thereof then ſeiſed: And then when John King let to the Defendant, and he granted his Term by Indenture, nothing paſſed but by Eſtoppel; then the Leſſee by Eſtoppel cannot aſſign any thing over, and then the Plaintiff is not an Aſſignee to maintain this Action. But admitting that J. K. had at the time of the Leaſe made by him a Leaſe for a greater number of years, and that R. K. had the Freehold, and thereof died ſeiſed, and ſo all might be true which is pleaded; then the Entry of Thomas King upon the Defendant is not lawful. So Quacunque via data, this Action cannot be maintained; and this point for the Caſe of Eſtoppel, was adjudged in this Court in the Caſe of Armiger verſus Purcas, in a Writ of Error. And all the Court held here, that it was clear upon the matter ſhewn, that the Action lay not; for the Plaintiff ought to have ſhewn an Eſtate by deſcent in J. K. at the time of the Leaſe and Aſſignment made, or an Eſtate whereby he might make a Leaſe: And that this was afterwards determined; and ſo confeſs and avoid the Eſtate in the Leſſor; otherwiſe this Action of Covenant lieth not; and it never lies upon the Aſſignment of an Eſtate by Eſtoppel. Wherefore they were of opinion to have then given Judgment againſt the Plaintiff; but afterward they would adviſe until the next Term. Note, This was continued until Trin. 41 Eliz. and then being moved again, all the Juſtices reſolved, that the Aſſignee of a Leaſe by Eſtoppel, ſhall not take advantage of any Covenant; but that it ſhall not be intended a Leaſe by Eſtoppel, but a lawful Leaſe: But no ſufficient Title being ſhewn to avoid it, it is then as an Entry by a ſtranger without Title, which is not any breach. Wherefore it was adjudged for the Defendant. Moor 419.

Bateman *verſus* Allen, Trin. 36 Eliz. Rot. 339.

(53) FJectione firmæ of a Leaſe of William Hill and Ann his Wife, 14 Martii, 36 Eliz. for one and twenty years of Land in Uttaxton in the County of Stafford. Upon Not-guilty pleaded, the Jury found a ſpecial Verdict, That one Henry Clark was ſeiſed in Fee, and by his Will deviſed that Land (Prout in Newys & Scholaſticas Caſe, Plowd.) And further ſhews, That the Teſtator had Iſſue Francis and John his Sons, and Scholaſtica and Ann one of the Leſſors; and that Francis

Francis and John died without iſſue male; that Scholaſtica took to husband Newys, which Newys and Scholaſtica levied a Fine of that Land, Whereupon William Hill and Ann his Wife, as in right of Ann, entred for the forfeiture upon Rhodes the Conuſee, and let it to the Plaintiff, Prout in the Declaration; whereupon the Defendant entred and ouſted him. Sed utrum the Entry of the Defendant upon the matter, be lawful or not, they prayed the Advice, &c. And if his Entry were lawful, they found for the Defendant, and if not, &c. So all the matter found in Scholaſtica's Caſe, was now in queſtion again. But Williams Serjeant moved, That for as much as in all the Verdict it is not found that the Defendant had the primer poſſeſſion, nor that he entred in the right, or by the command of any who had Title; but it is found that he entred upon the poſſeſſion of the Plaintiff without any Title, his entry is not lawful, and the Plaintiff had good cauſe of Action againſt him. Wherefore the Plaintiff ſhould recover, and ſo held all the Court, That for this Cauſe Judgment ought to be given for the Plaintiff, and they would not hear any Argument of the matter in Law. But if the concluſion of the Verdict had been Si, &c. whether the entry of Hill and his Wife, were lawful or no? then the Judgment ſhould have been upon the matter in Law: For then it ſhould be intended, that the Defendant had Title, if the Leſſor of the Plaintiff had not Title, and that the Plaintiff had not Cauſe of Action, but now not: But then it was moved, that the Plaintiff notwithſtanding ſhould not have Judgment; for he hath declared of a Leaſe by Baron and Feme, and he doth not ſhew it to be by Deed, and without a Deed it cannot be ſaid the Leaſe of the Feme. And in proof thereof, Vide Plowd. 436. Dyer 91 15 Ed. 4. 8. But all the Juſtices held it to be well enough; for it may be intended by Deed, and yet no Declaration thereupon: Alſo, although it be without Deed, it is well enough, at leaſt-wiſe during the life of the Baron; and it is a Leaſe from them both, during that time. Secondly, It was moved, that it was found that Hill and his Wife entred upon Rhodes, the Conuſee of the Fine, and made the Leaſe to the Plaintiff, and it is not found that they expelled Rhodes; and then it reſts upon the matter in Law, whether the Plaintiff hath any Leaſe? For if they entred, and their Entry be not lawful, and they did not expel Rhodes (which is not averred) but Rhodes may be intended to continue in poſſeſſion; then they gained no poſſeſſion, and the Leaſe to the Plaintiff is void, and he hath not any cauſe of Action; ſo it reſts upon the matter in Law to be decided. But all the Juſtices held it to be good enough; for it ſhall not be intended, that Rhodes was upon the Land, but that they by their Entry gained the poſſeſſion: And although they be in as Diſſeiſors, their Leaſe is good to the Plaintiff, and the Defendant without Title is not to eject him. Wherefore without any regard to the matter in Law, the Plaintiff had Judgment to recover.

Co. 2. 51. b. Poſt. 481. 656, 708.

Co. 2. 61. a.

Woodliff

Woodliff *verſus* Drury.

TReſpaſs, after Verdict, Coke Attorney-General moved in Arreſt of Judgment. The Caſe upon the pleading was, That one made a Feoffment, and it was declared by the Indenture, that it ſhould be to the uſe of himſelf, and A. his Feme that ſhould be, after their Marriage, and of the Heirs of their bodies; and he took A. to Feme: Whether ſhe ſhould take by the limitation of this Uſe, was the queſtion; and he moved, that ſhe ſhould not: For preſently by this Feoffment, the Fee is in the Baron by the poſſeſſion, executed to the uſe which he had before the Marriage, which cannot after the Marriage be divided, and made an Eſtate-tail in him: For he had the Fee in him until the Marriage; for it might have been that the Marriage had never taken effect, and that would have confounded the other uſe. And uſes in futuro ſhall not riſe upon ſuch future Acts; for then an uſe ſhould riſe out of an uſe. But all the Juſtices held, that although he be ſeiſed in Fee in the mean time, as in truth he is, yet by the Marriage the new uſe ſhall ariſe and veſt, if there be no Act in the mean time to deſtroy that future uſe (as it was in Chudleys Caſe) according to the limitation of the uſe. And Judgment was given accordingly for the Plaintiff. (54) 2 Rol. 791. Co. 1. 101. a. Poſt. 827. Co. Lit. 187. b.

Grills *verſus* Ridgway, Hill. 37. Eliz. Rot. 345.

DEbt upon an eſcape, ſuppoſing that the Defendant Sheriff of Devonſhire, ſuffered one Chawner who was in Execution, to eſcape in London the 18. Decemb. 34 Eliz. Co. 3. Fol. 52. The Defendant pleads, that the ſaid Priſoner eſcaped the 16. December in D. in the County of Devon, and that he freſhly purſued him, and by Freſh-Suit took him again the 17. of December, and retained him in Execution again; Abſque hoc, That he is guilty, Aliter vel alio modo. And it was thereupon demurred and argued for the Plaintiff, That in as much as he was once eſcaped, and thereby cauſe of Action to the Plaintiff, no Freſh Suite may take away that Action from him. But the Priſoner being re-taken, ſhall not peradventure take advantage of his own wrong to help himſelf, by Audita Querela thereupon; and in proof thereof, Vide 13 Hen. 7. 1. 14 Hen. 7. 1. 5 Edw. 6. Eſcape Bro. But all the Juſtices ſaid, That as to that, an Action of Debt did not lie againſt the Sheriff, where the Sheriff uſed his endeavor, and took him again upon Freſh-Sute; although, that in the night, or otherwiſe he might loſe the ſight of him: But if before he be re-taken, the party brings his Action of Debt, then the re-taking of him afterwards ſhall not avoid the Plaintiffs Action, although the re-taking be upon Freſh Sute. A ſecond matter was moved, that the Eſcape is ſuppoſed 18 December 34 Eliz. And he pleads, that the Priſoner eſcaped 16 December, and the re-taking was 17 December: So he anſwers not to the eſcape mentioned in the Declaration. For the Traverſe Aliter vel alio modo doth not anſwer to the time, but to the manner of any thing alleged; and for that Vide 33 Hen. 6. 28. 37 Hen. 6. 27. And of that opinion were all the Juſtices at this time, beſides Popham, that the Plea was ill for that Cauſe. Sed adjournatur. (55) Co. 3. 52. Ant. 318. Ant. 44. Co. 3. 52. b. Ant. 102. Co. 3. 52. a. Co. 3. 52. b. Ant. 434.

Michaelis

Michaelis 37 & 38 Eliz. in Communi Banco.

Boucher *verſus* Wiſeman.

(1) ACtion upon the Caſe againſt the Defendant, late Sheriff of Eſſex. Whereas the Plaintiff had recovered againſt Pynder One hundred pound, and had a Fieri facias; that the Defendant by vertue thereof levyed twenty eight pound, and had not returned the Writ, nor payed the money to the Plaintiff: The Defendant pleaded Not guilty. And now upon evidence to the Jury, it was proved, That the Writ was delivered to Cowell, the Defendants Under-Sheriff, 9 Novemb. 34 Eliz. and the ſame day he made Execution. And he proved, that the ſame day a Writ of Diſcharge was delivered him dated 6 November 35 Eliz. But becauſe he did not prove, that he had notice of this Writ of Diſcharge before the Execution ſerved, the Court held clearly, That he was yet Sheriff, and chargeable to the Plaintiffs Action. The Defendant alſo ſhewed the Indenture whereby he made Cowell his Under-Sheriff, wherein was an Exception, That he ſhould not meddle with the Execution of any Writ above the Sum of forty Pound, ſo as to that he was not his Under-Sheriff; but he did it De ſon tort Demeſn, and the Defendant is not chargeable therewith. But all the Court held it to be a void Exception: For when he made him his Under-Sheriff, therein was included, that he ſhould execute all Writs; and therefore the Exception is repugnant and void. Thirdly, it was alledged, That this was not a due Execution: For Pynder had made a Deed of his Goods before, &c. and ſhewed the Deed dated the ſame day of the Writ of Execution. Et per totam curiam, although the gift were bona fide; yet Execution might be taken of thoſe Goods. For by the ſuing forth the Execution, all the Defendants Goods are lyable; ſo as no gift of the ſaid Goods, the day of the date of the Writ, or afterwards can ſtop the Execution. Wherefore they reſolved the Jury accordingly, without inquiring of the Fraud, and they found for the Plaintiff. Vide 4 H. 6. 7. 17 Aſſ. Plac. 2. 5 Eliz. Dyer 219.

Ant. 12.
Ant. 294.

Hob. 13.

Co. 8. 171. a
Ant. 174, 181.

The Dean and Chapter of Hereford againſt the Biſhop of Hereford and Ballard.

(2) QUare Impedit. The Caſe was, that the Dean and Chapter of Hereford granted the next Avoidance of a Church to Ballard. Whether that were a good grant to bind the Succeſſor by the Statute of 13 Eliz. was the queſtion. Walmſley and Owen held, that it was not; for although it is not a thing whereof any profit can be made, nor any Rent reſerved, yet it is an Hereditament, whereof the Statute intends that no grant ſhall be made; and ſo it hath been adjudged in the Caſe of the Biſhop of Litchfield: But Anderſon e contra. For the Statute doth not intend to reſtrain them but for ſuch things which are for profit, and by reaſon whereof, prejudice might acrue to the Succeſſor, which cannot be in this Caſe. Wherefore, &c. Beamond was abſent, Et adjournatur.

Ant. 407.

Goodday

Goodday *verſus* Michell.

(3) TRespaſs. Quare clauſum fregit and two Gates and three Perches Sepium fregit. The Defendant juſtifies; for that the ſaid Cloſe was within the Pariſh of Rudham, and that all the Pariſhioners there from time whereof, &c. had uſed to go over the ſaid Cloſe upon their Perambulation in Rogation week, Et quia the Plaintiff obſtruxit duas Januas & tres Particatas ſepium in via prædicta. The Defendant being one of the Pariſhioners, Januas & tres Particatas illas ſepium fregit, &c. And it was thereupon demurred, and after Argument by the Serjeants, the Court reſolved for the Plaintiff. Anderſon, It is not to be doubted, but that Pariſhioners may well juſtifie the going over any mans Land in their Perambulation, according to their uſage, and to abate all Nuſances in their way: as F. N. B. 185. B. and the Book of Entries 158. But whether the Juſtification here, be good or not, was the queſtion. And he held it to be ill, for Pariſhioners cannot preſcribe, neither in matter of Eaſment, Ant. 180. nor Intereſt, nor otherwiſe; but in matter of Eaſement as a way to the Church, or common Fountain, or otherwiſe they ought to alledge Cuſtom or Uſage within the Pariſh, as 7 Ed. 4. 26. & 15 Ed. 4. 29. are. Secondly, the Plaintiff declares of the breaking of two Gates, Et tres Pertical' Sepium. The Defendant makes Title to a way; and becauſe the Plaintiff made duas Januas & tres Pertical' Sepium (and doth not ſay prædictas) the Defendant Januas & Sepes illas fregit. So he juſtifies the breaking of the Gates and Hedges in his Bar mentioned; but he anſwers not to them, whereof the Plaintiff declares: And thereto agreed all the Juſtices that this fault in the Bar was incurable. For Walmſley ſaid, that he thereby doth not anſwer to that wherewith the Plaintiff chargeth him: For it may be, that the Plaintiff had erected four Januas & ſex particatas ſepium, and the Defendant hath broken all of them, whereof for two Gates and three Perches of the Hedge he might juſtifie for the cauſe alledged; and for the other two Gates and three Perches, &c. caſt down, he brought the Action. So the Defendant anſwers not to them, whereof the Plaintiff complains; and he cannot refer it to thoſe mentioned in the Declaration, but to the Januas & Sepes mentioned in the Bar. The Bar is alſo ill for another cauſe, for that it is Et quia the Plaintiff obſtruxit Januas, &c. whereas he ought to have averred preciſely Quod obſtruxit; for otherwiſe no Iſſue can be taken. Wherefore it was adjudged for the Plaintiff.

Fitch *verſus* Hockley.

(4) TRespaſs upon demurrer upon Evidence. The Caſe was, A Copyholder in Fee ſurrendred to the uſe of himſelf for life, Co. 4. 23. a Remainder to J. his Son for life, Remainder to the uſe of his laſt Will; and the admittance was Secundum formam ſurſum redditionis prædict' J. dies, the Father afterwards ſurrenders it to the uſe of the Defendant in Fee, and dies without making any Will. Whether this be a good Surrender, was the queſtion between

the Heir of the Copyholder, and the Defendant. Harris moved, That it was void to veſt the Fee in the Defendant; for when the Father ſurrendred to the uſe of himſelf for life, and after to the uſe of J. his ſon for life, and after to the uſe of his laſt Will, the Fee of the Copyhold was in the Lord; ſo as the Father had but an Authority to diſpoſe it by his Will, and not otherwiſe. And then when he makes not any Will to diſpoſe thereof, the Law ſhall transfer it to the Heir, and the Surrender in the interim to the Defendant is void. Walmſley; The Surrender to the Defendant is good; for a Copyholder may ſurrender parcel of his Eſtate, and in ſuch manner as pleaſeth himſelf; and he who comes in by ſuch a Surrender, is in by the Copyholder, and not by the Lord. And when a Copyholder ſurrenders to the uſe of one for life, or in Tail, the reſidue ſhall be ſaid to be in himſelf, and he ſhall be ſaid to be the Donor: But here he hath expreſſed an Uſe to himſelf for life, Remainder to J. his ſon for his life, and after to the uſe of his Will; the which is as ſtrong as if it had been to himſelf. And although he might have diſpoſed it by his Will, if he had not made that ſecond Surrender, yet by that Surrender it paſſed to the Defendant. Anderſon accord, and it is a Feoffment at this day to the uſe of his Will; for it is to the uſe of himſelf, becauſe he might diſpoſe of it by his Act in his life time; ſo he might here. Sed adjournatur.

Ant. 361.
Ant. 148, 407.
Co. Lit. 112. a
Poſt. 878.
Co. 4. 23.

Jeremy *verſus* Goochman.

(5) ASſumpſit, and declares, That in conſideration Quod deliberaſſet & dediſſet to the Defendant twenty ſheep, he aſſumed to pay unto him five pound at the time of his Marriage, and alledgeth in facto, that he was Married, &c. The Iſſue was Non aſſumpſit, and found for the Plaintiff, and now moved in Arreſt of Judgment, becauſe it is for a conſideration paſt; for it is in the Preter tenſe Deliberaſſet, and therefore no cauſe of Action: And of that opinion was the whole Court, wherefore Judgment was ſtaid.

Poſt. 741, 885.

Bright *verſus* Forth.

(6) REplevin. The Defendant made Conuſance as Bailiff to Margaret, Counteſs of Derby, for Damage-feaſant. Upon Demurrer the Caſe was, That Henry Earl of Derbey was ſeiſed of the Manor of Currey-Revel (which extended into Currey-Revel and Bradway, and into other Villages; and in Bradway were divers Copyholders for life) and ſuffered a Recovery of the Manor, excepting the Land in Bradway. And afterwards that part which extended into Bradway, was conveyed to the Conteſs of Derby, and afterwards the Earl and Counteſs of Derby kept a Court at Bradway, and the Steward granted that Copyhold, being a Copyhold for life to the Plaintiff. And whether this were a good Grant by Copy, or not, was the queſtion. Glanvile, The Grant is void, becauſe a Manor cannot be ſevered. And although there be Demeſns, Copyholds, and Services in Bradway, yet that cannot make it to be a Manor, and then the Grant of the Copyhold is void,

void, especially being a Copyhold for life: For there when the Estates of the Tenants for life be determined, they cannot be granted again when the Mannor is dismembred: But of Copyholds of Inheritance, it may peradventure be otherwise; for it remains a Mannor, and a Court shall be kept as to them. And this diversity was agreed in Sir Christopher Hatton, the Lord Chancellors Case. And so was the Case of Meredith for a Copyhold in Stokingham, where there were Copyholds of Inheritance; and this very Case was here, 29 Eliz. where a Feme was endowed of divers Copyholds for life, so as they became severed from the Mannor; and she granted Copyholds, and adjuged void. Williams e contra; for being averred, that there be Demesn, Copyholds, and Services in Bradway, it shall remain a Mannor at least-wise to grant those Copyholds. Vide 26 Hen. 8. 4. 33 H. 8. Br. 1 H. 5. 11. And afterwards being moved, all the Justices resolved, That the Grant was void in regard there was not any such Mannor of Bradway before, nor now. And Anderson said, If this Severance had been of Copyholds of Inheritance, that the Copyholders and their Heirs should have had it; but it can never be surrendred, for Surrenders are by Custom, and therefore they ought to be in the Court of the Mannor; and a Surrender to the Lord himself in his house, or out of Court, is not good, Quod Beamond concessit; wherefore it was adjudged accordingly for the Avowant. And here a Case was remembred, which was adjudged in the Queens Bench, in this very point, That this was a good Copy, Co. 4. fol. 26. a. But it was thereto answered, That it was a strange Judgment, and never was entred by the direction of the Court, and a Writ of Error was brought thereupon in the Exchequer-Chamber, and the opinion of the Justices there was, that it was erroneous: And thereupon the Copyholder compounded, and took only his Corn, and relinquished the Title. Vide Trin. 30 Eliz. B. R. plac. 10. Ant. pag. 102. 3.

Ant. 103.

Ant. 103.

Ant. 103.

Co. 4. 26. b. Ant. 103.

Lewen *versus* Dodd.

(7)

DEbt. The Case was, That one seised of a house in London, let it for years rendring Rent, and afterwards devised it to his two sons equally, and to their Heirs: The one dies; whether it shall survive to the other and his Heirs, was the question. Drew argued, that it should not; for they are by those words Tenants in Common, and not Joyntenants; for to that intent the Devisor put in that word Equally, and 30 H. 8. Devise 29. Devise to two Et hæredibus eorum; the one dies, his part shall not survive, but his Heir shall have it; for so was the intent of the Devisor. A multo fortiori in this case, where it is limited to them Equally betwixt them, and their Heirs after them. And in Pasch. 18. Eliz. is a president in the Court of Wards, in one Shepherds Case, where he made a Devise in this manner; Item, I will that my Lands called Earthpits, shall equally remain to Joan and Mary my two Daughters, and the Heirs of their two bodies. And by the opinion of Manwood and Dyer, it was resolved, That they were Tenants in Common, and that the surviving Daughter should not have her Sisters part for her life. Anderson; There is an equality in Estate, in Condition, in taking of the Profits, and all this is here: And if it had been Æquis portionibus, I would doubt, whether they should be Tenants in Common,

mon; but as it is, they are Joyntenants: But if the words had been to them equally, and to their Heirs equally, that ſhould make a Tenancy in Common; but here equally is annexed to the Eſtate, and they being Joyntenants, have one equal Eſtate; and the Book touched in 30 Hen. 8. hath been oftentimes over-ruled to be no Law. Owen, a Deviſe ought to be taken according to the intent of the Deviſor; and the intent here was, not to give all to the one by the Survivorſhip, but an equal advancement, and that their Heirs ſhould have an equal advantage: If we ſhould conſtrue it, that they ſhould be Joyntenants, they ſhould not have it ſo, and the word equally is vain and idle; and a Deviſe to them equally, and to be equally divided between them, is all one. Walmſley, the intent in the Deviſe ſhall be collected upon the words. And when the intent is ambiguous upon them, it is a ſure way to follow the Courſe of the Common Law: And it may be he put this word equally in his Will, to ſhew his intent, that the one ſon ſhould have it as well as the other; and that may be ſatisfied, if they take as Joyntenants, for they ſhall have equal portions and equal poſſibilities of Survivorſhip; and the caſe of 30 H. 8. before vouched was never taken for Law: And I have demanded the opinion of divers other Juſtices of our houſe, and they held, that they were Joyntenants; and the word equally is not of any effect, but to ſhew his intent, that they ſhould have an equallity in their Eſtates, and in the perception of the profits; which intent is ſatisfied, if they be Joyntenants. And in 17 Eliz. was a caſe in this Court, where a Deviſe was to two, part and part-like; and the Court was divided in opinion, whether they were Joyntenants or Tenants in Common. But the Lord Dyer held them to be Joyntenants: And it is not a ſafe courſe to ſearch the Intent, unleſs we be certain of the Intent. And as to the Caſe vouched in the Court of Wards, it may be that they were Tenants in Common of the Freehold there, becauſe the inheritance is ſeveral. Beamond: If the Deviſe had been to them, and their Heirs equally, it is clear, that they ſhould be Tenants in Common: So he conceived it to be all one here, otherwiſe the word equally ſhould be void. For the conſtruction that equally ſhall refer to the Eſtate and perception of the profits, would have been good without this word equally: And the word being equally to them, and to their Heirs; this Copulative conjoyns equally to the Heirs, as well as to them, and they be of ſuch ſenſe, As a Deviſe to them equally, and to their Heirs equally, in which caſe they cannot be Joyntenants. And in the Queens Bench it hath been agreed, where the words were equally to be divided, that they ſhould be Tenants in Common. And I have ſpoken with the Juſtices of our houſe, and they incline to this opinion. Whereupon it was adjourned. V. poſtea, Mich. 41 & 42 Eliz. B. R. Plac. 6.

Br. dev. 29.

Ant. 330.

Poſt. 695.

Upton *verſus* Baſſet.

(8) 27 El. c. 4.

Treſpaſs upon Demurrer. The Caſe was, That the Plaintiff and Defendant claimed by ſeveral Leaſes, from one and the ſame perſon; and the Plaintiff in his Replication avers, That the Defendants Leaſe was made upon Fraud; but ſhews not any Fine by himſelf paid for his Leaſe, nor any Rent reſerved thereupon, nor any other valuable conſideration wherefore it was made; whereupon the Defendant demurred thereto. Yelverton at

the

the Common Law, There was not any Fraud remedied, which ſhould defeat an after-purchaſe; but that only which was committed to defraud a former Intereſt, Quod fuit conceſſum per curiam. And the Statute of 27 Eliz. did not remedy it; for there is not any money or conſideration paid for this ſecond Leaſe, no more than for the firſt; and therefore not aided by that Statute. Lewknor e contra: For every one who obtains any thing or Eſtate by his own act, is a Purchaſor, and ſo within the words of the Statute. The Plaintiff hath alſo averred, That it was made by Fraud to deceive him, which is confeſſed by the Demurrer: Wherefore, &c. Anderſon, The confeſſing the Fraud is not material, for as much as the Plaintiff is not ſuch a perſon as ought to have benefit thereof, and within the Remedy and Proviſion of the Statute: For it is clear, a fraudulent conveyance is not made void againſt all, by that Statute, but only againſt thoſe who afterwards come to the Land upon good conſideration; for ſo are the words, and ſo was the intent of the Statute: And therefore if a man who hath not good government of himſelf, makes a Conveyance by advice of his Friends of his Lands upon truſt, and without any conſideration, and afterwards one procures him for five hundred pound or other petty conſideration, to ſell unto him Land worth five hundred pound per annum. Although this laſt Purchaſor pays money, yet he ſhall not avoid the firſt Conveyance; for the Statute was made to help thoſe, who came to Land upon good Conſideration lawfully, and not without Conſideration, or by any indirect means; and this Caſe hath been reſolved. Walmſley accord: For it is not void againſt all, no more than if a Fraudulent gift be of Goods, it is not Fraud by the Statute of 13 Eliz. againſt all, but only againſt his Creditor, but remains good againſt the Donor himſelf. Beamond; this is not void againſt all, as a Feoffment upon Maintenance or Champerty, is not void againſt the Feoffor, but againſt him who hath right. And I was privy to a Caſe which was reſolved by the two Chief Juſtices, and three other Juſtices, viz. One made a Leaſe for eighty years without conſideration, and afterwards conveyed the Land to his Wife for a Joynture after Marriage: And they reſolved, becauſe this laſt Conveyance was voluntary without valuable conſideration, That the Wife could not avoid the former Leaſe, by averring that it was Fraudulent. Owen accorded with them in omnibus, and ſaid, That he was at the making of this Statute, wherein ſpecial care was taken, That there ſhould not be any words which ſhould extend to Purchaſors; but ſuch as paid money, or other good conſideration for their purchaſe. Wherefore it was adjudged for the Defendant. V. 3. Co. 83.

Co. 3. 83. a.

Co. 3. 83. b.

Auſtye *verſus* Fawkener.

(9)

REplevin. The Defendant avows for Damage-Feaſant; the Plaintiff juſtifies, for that he had a Cloſe adjoyning to the Defendants Cloſe; and that the Defendant and all the Occupiers of the ſaid Cloſe from time thereof, &c. had uſed to repair the Fences between the Cloſes; and for not ſufficient incloſing, his Beaſts entred, &c. and iſſue was taken upon the Preſcription, and found for the Avowant; and now moved in Arreſt of Judgment, That the Preſcription, That every Occupier, &c. is too general; for Tenant

Yelv. 74.

at Will, or at ſufferance, or a Diſſeiſſor, are Occupiers. Walmſley, True it is, the preſcription is not good: For this Incloſure is a charge upon the Land; and they who are only Occupiers, as a Diſſeiſſor, Tenent at Will, or ſufferance, cannot charge the Land therewith: But it ought to have been, that he and all they whoſe Eſtate, &c. But ſuch a preſcription to pay ſo much in diſcharge of Tythes by the Occupiers of Lands, hath been allowed to be good; for that goes in diſcharge, and for the benefit of the Land, and Tythes ariſe upon the occupying the Land: But yet in regard that Iſſue is taken upon this preſcription, and a Verdict hath found it, this is not any cauſe for ſtaying Judgment, but it is aided by the Statute of Jeofails. And thereto the other Juſtices agreed, viz. That the preſcription was not good, and that it was helped by the ſaid Statute. Wherefore, &c.

Ant. 180.

Poſt. 455.

Gryſman *verſus* Lewes, Parſon of Kingſland.

(10) PRohibition. For ſuing for Tythes of Cows, Steers, Oxen, Horſes, &c. wherein he ſurmiſed a Cuſtom, That every Pariſhioner ſhould pay for every Milch-Cow, one penny by the year, and for every other Cow, an Half-penny per annum, in recompence and diſcharge of all Tythes of Cows, Oxen, Steers, and Calves, and alſo a Penny for every Mare, in diſcharge of all Tythes of of all Horſes, Mares, and Colts there; and it was thereupon demurred, and Conſultation prayed. For Tythes paid for one thing, cannot be intended a recompence for Tythes of another thing, where Tythes are reſponſable for both in kind: And therefore it was adjudged in Sir Charles Moriſons Caſe, where one preſcribed to pay the tenth part of Corn in the Sheaf, for the Tythes of all which is in the Sheaf, and of all which is Raked; and adjudged to be a void preſcription, becauſe he is to pay Tythes of both of them. It is alſo unreaſonable; for then he may put the leſſer part in Sheafs, and leave the greater part to be Raked. And the opinion of Fitz N.B. 53.G. That Tythes ſhall not be paid for the Agiſtment of Cattel, is no Law. And oft that opinion was the whole Court, that this preſcription is not good to be diſcharged of one Tythe by the payment of another: For he ought to pay ſomewhat for the Tythe of every thing which is due. And if Tythes ſhould not be paid for the Agiſtment of Cattel, he might imploy all his Land in feeding of barren Cattel, and ſo defraud the Parſon of his Tythes. And a ſpecial conſultation was afterwards awarded Dummodo non agatur de decimis, for Milch-kine, Draught Oxen or Beaſts agiſted for proviſion for his houſe.

Poſt. 475, 786.

Ant. 363.

Poſt. 660.

Poſt. 475. 6.

Ant. 363.

2 Inſt. 652.

Jennings *verſus* Bragg.

(11) EJectione firmæ, upon a ſpecial Verdict, the Caſe was, That a Diſſeiſſee made a Leaſe for years, and delivered it as an Eſcrow to a ſtranger, commanding him to enter into the Land, and then to deliver it as his Deed, who did it accordingly: And whether this was a good Leaſe, or not, was the queſtion. And it was moved, that it was not; for when it is delivered as an Eſcrow, and afterwards is delivered upon the Land as the Deed of the Diſſeiſee, That hath relation to the time of the delivering it as

Co. Lit. 48. b. Co. 3. 35. b. Poſt. 483.

an

an Eſcrow to be his Deed; at which time he had but a right to the Land, and his Leaſe was not good. As if an Infant or Feme-Covert ſhould deliver a Deed as an Eſcrow, and it is delivered after full age, or when ſhe is ſole, yet it is void; for it hath relation to the firſt Delivery, ſo e converſo, where a Feme Sole delivers a Deed as an Eſcrow, &c. And this Caſe was agreed by the Court, becauſe it was delivered by authority before, when ſhe was Sole; ſo it is of a Deed of Feoffment, and Letter of Attorney, therein to make Livery by a man of ſane memory, which is delivered by the Attorney, when he is Non compos mentis; yet it is good, becauſe it hath relation to the authority before. But Anderſon ſaid it was a good Leaſe in this Caſe; for it was not his Deed until the ſecond delivery, at which time he had good right and power to let it. Wherefore, &c. Sed adjournatur. 3 Co. 35. Co. 3. 35. b.

Belford *verſus* Foord.

TReſpaſs. The Caſe was ſuch; A Prebend of Sarum made a Leaſe for ſeventy years, and the Dean and Chapter confirms Conceſſionem prædict', for fifty one years & non ultra; the fifty one years are now expired. And whether this were now a good Leaſe againſt the Succeſſor, was the queſtion. Glanvil moved that it was good; for the Term is a thing intire, and therefore cannot be apportioned by their confirmation. And here they confirm Dimiſſionem prædictam, which is the whole Term, which ſhall not be controlled by the ſubſequent words. This Confirmation alſo is but a conſent, and therefore cannot be given conditionally, or in any other manner than the thing it ſelf whereto it is annexed, is given. And the difference is betwix a Conſent and an Intereſt; for he that hath an Intereſt, may thereto anner a Condition or Limitation. And if the Prebends Succeſſor be to bring his Action of Waſte, he ought to count upon a Leaſe for ſeventy years, and that they had aſſented thereto; And 7 Hen. 4. is, that aſſent before the Grant is ſufficient. Anderſon, If the Leſſor is to bring Waſte, he ſhall count of a Leaſe for ſeventy years: But after his death, if the Succeſſor brings Waſte, he ſhall ſhew the Confirmation and eſpecial Matter. Walmſley, The Leaſe is made good for all the years; for all the right and intereſt remained in the Prebend, and the Dean and Chapter have only a conſent, which cannot be apportioned; but they ought to aſſent to all, or to no part; for their conſent goes only to the Action, which is to the making of the Leaſe; and not to the thing acted, which is the Intereſt of the Leaſe; then when they conſented to the making of the Leaſe, they had done all which they could do, and had nothing to do with the Leaſe it ſelf. But Anderſon and the other Juſtices held ſtrongly, That the Leaſe was not good but for fifty one years only; for they at their election might confirm for all, or for part, and the Confirmation ſhall not be taken larger than they have made it: But if they confirmed the Demiſe, and not ſhewn for what time, it ſhould be the entire Term. But when they ſay for fifty one years, & non ultra, that very well qualifies what is precedent, and it ſhall not be conſtrued larger, &c. Wherefore, &c. Et adjournatur. Vide Reſiduum poſtea Paſch. 38 Eliz. B. R. Plac. 34. V. 5. Co. 18. (12) Co. 5. 81. a. Poſt. 472.

Parker

Parker *verſus* Parker.

(13) DEbt upon an Obligation, conditioned to ſtand to the Arbitration of J.S. ſo as it be delivered to either of the parties before Michaelmas. The Defendant pleads, That no part of the Arbitrement was delivered unto him before Michaelmas: And it was thereupon demurred; becauſe if it were delivered to any of them, it ſufficed. But all the Juſtices (Anderſon abſente) held, That one part of the Arbitrement ought to be delivered to each party, ſo as he might take notice thereof; and this word either ſhall be expounded as every. But when Anderſon came in Court, being moved unto him, he doubted thereof; and the matter was referred again to Arbitration.

Wormleighton *verſus* Burton, Trin. 37 Eliz. Rot. 2838.

(14) REplevin. The Defendant made Conuſance as Bailiff to Sir Foulk Grivell, for that he had a Leet within his Manor of D. and that at ſuch a Court the Plaintiff was amerced for putting his Geeſe upon the Common there; and for that Amercement diſtrained: And becauſe it was not ſhewn, That the Common was within the Leet; as alſo, becauſe the Court held, that it was not any Article inquirable in a Leet, not puniſhable there, it was adjudged without Argument for the Plaintiff.

Worſley and his Son *verſus* Charnock.

(15) AUdita querela, to avoid an Execution upon a Statute, where Out-lawry in one of the Plaintiffs was pleaded: And thereupon a Demurrer in Law, whether it might be pleaded in that Suit which is only to be diſcharged, and not to recover any matter: But it was ruled to be a good Plea; whereupon the other Plaintiff prayed Summons and Severance; ſo that he only might ſue. And all the Juſtices beſides Walmſley, held, that he might well have it; for that in this caſe they only ſue to be diſcharged: Wherefore the Nonſuit of the one, ſhall not prejudice the other. It is alſo to diſcharge their Land, in which caſe it is not reaſonable that an act of the one ſhould make the other mans Land to be charged. But Walmſley doubted thereof; and therefore it was adjourned. Vide 34 Hen. 6. 31.

Poſt. 472.

Co. 6. 25. b. 2 Cr. 425. Poſt. 892. Co. 10. 135. a. Poſt. 635, 549.

Hart *verſus* Brewer & Hariſon, Trin. 36 vel 37 Eliz. Rot. 2042.

EJectione firmæ: It was found by a ſpecial Verdict, that one Herſt 26 H. 6. deviſed two houſes in Walbrook in London (being the houſes now in queſtion) to the Churchwardens of St. Stephens to theſe uſes; Firſt, to find an obit, and to beſtow three ſhillings four pence annually upon an obit in the Church of St. Stephens. Secondly, to repair the ſame houſes. Thirdly, to beſtow the reſidue of the profits about Reparations of the ſame Church of St. Stephens, and to provide Ornaments in the ſame Church; but the deviſe was Conditional, that if they failed in finding the obit, that then the Eſtate ſhould ceaſe, and the Land ſhould be to the Major and Commonalty of London; and that they ſhould find that obit, and repair the Tenements, and beſtow the reſidue of the profits upon London-Bridge. And they found the Statute of prim. Ed. 6. and that the obit was well maintained within five years before the Statute, and derived Title to the Defendant under the Queen, and the Succeſſors of the Churchwardens made a Leaſe to the Plaintiff; and whether theſe houſes were given to the Queen, was the queſtion. Daniel moved, that they were; for the obit is the principal thing why the houſes were deviſed; and the Reparation of the Houſes and Church are but acceſſaries, without which the obit could not be maintained; but if it had been to make the Repation, or for the Ornaments of another Church, it had been otherwiſe; wherefore, &c. But all the Juſtices held *e contra*, and for the Plaintiff; That the Queen ſhould have no more but that which was appointed for the maintenance of the obit; and that ſhe ſhould not have that which was given for the other uſe of Reparation and finding Ornaments; for although the obit is appointed to be in the Church, yet the Church is for divers other good purpoſes; and for thoſe good uſes the Church ought to be repaired, and to have Ornaments. And the letter of the Statute is plain, that the King ſhall have that only which is given to ſuperſtitious uſes. And Walmſley ſaid, that the Caſe of the Town of Wakefield, where Houſe and Lands were given to give part of the profits to a Prieſt to ſay Maſs, and other part of the profits for the Reparation of the ſaid houſe, and other part of the profits to repair certain Bridges; it was adjudged that the Queen ſhould have all but what was given for the Reparation of the Bridges. And Beamond ſaid, that he was of Counſel in a Caſe in the Queens Bench, where Land was given to find a Prieſt to ſay Maſs, and alſo to give part to the Poor; and becauſe the part to be given to the Poor was incertain, the Queen had all. But there is an expreſs difference by the Letter of the Statute between Land given for the maintenance of an obit, and Land given for the maintenance of a Prieſt; wherefore it was adjudged for the Plaintiff.

(16) 1 E. 6. c. 14.

Co. 4. 112. a

Co. 4: 111. a & b

Scot

Scot *verſus* Sir Anth. Mayn.

(17) 2 And. 18. Co. 5. 20. b Poſt. 479.

DEbt upon an Obligation, conditioned for the performance of Covenant in an Indenture; wherein Mayn the Defendant had let to the Plaintiff certain Land for twenty one years, and covenanted with him, that upon the ſurrender of that Leaſe at any time during his Leaſe, that he would make him a new Leaſe for ſo many years, &c. The Defendant pleaded that the Plaintiff had not ſurrendred unto him, &c. The Plaintiff ſhews that the Defendant had levied a Fine of thoſe Lands, ſur conuſance de droit come ceo, &c. to Sir John Savage; and it was thereupon demurred, becauſe he doth not aver that he offered to make him a ſurrender, although he were not able to accept thereof, nor to make a new Leaſe; but all the Court held that there needed not any tender to be made of the ſurrender, when he hath diſabled himſelf to accept thereof by his own Act, or to make a new Leaſe; wherefore it was adjudged for the Plaintiff; And Error was afterwards brought thereupon, and the Judgment affirmed, 5 Co. 20. b.

Buckler *verſus* Harvy.

(18) Co. 2. 55. a. Moor 423. 2 And. 29.

EJectione firmæ, upon a ſpecial Verdict. The Caſe was ſuch; Tenant for life, Remainder to A. Buckler in Tail, Tenant for life 4 Martii, 20 Eliz. makes a Leaſe for four years; and afterwards 11 April 26 Eliz. grants the Reverſion Habendum tenementa prædicta, from Midſummer next enſuing, for the life of the Grantor; after Midſummer the Leſſee for years Atturns, the Term afterwards expires. The Grantee enters, the Grantor levies a Fine unto him, ſur conuſance de droit come ceo, &c. the Tenant in Tail in Remainder enters for the forfeiture, and lets it to the Plaintiff, upon whom the Defendant being the Grantee in Reverſion re-enters, the firſt Tenant for life being yet alive, Et ſi, &c. The firſt queſtion was, whether by this grant of the Reverſion Habendum after Midſummer, and the Atturnment made after Midſummer, the Grant be good or void. Secondly, admitting it to be void, if when the Grantee enters, and he being in by Diſſeiſin, the Tenant for life levies a Fine to him ſur conuſance de droit come ceo, &c. Whether this be a forfeiture of his Eſtate or not. And it was argued by Heal for the Plaintiff, and by Harris for the Defendant; Walmſley, a grant of a Reverſion, Habendum after the death of the Tenant for life, is good; for ſo is the courſe in Fines; for this limitation is as to the having the Poſſeſſion, and not as to the having the Reverſion; for that is in the Grantee preſently; but when a Reverſion is granted Habendum, after a day future, he is thereby excluded to have the Reverſion until that time; and therefore it is utterly void, and the Habendum ſhall not be void, but where it is not requiſite; as in Releaſe of a Right, or grant of a Term; but here the Habendum is neceſſary to ſhew the Eſtate; but as to the Forfeiture I make ſome doubt: For I know not how there can be a Forfeiture to him who hath not any Reverſion; for by the Entry of the Grantee, it

Poſt. 585.

is

is diſſeiſin; and all Remainders and Reverſions are taken from the parties in whom they were. And how can one forfeit an Eſtate which he hath not? as here he hath not who levied the Fine. And it hath been held in this Court by the Lord Dyer and others, that if he in Remainder for life, levies a Fine ſur conuſance de droit come ceo, &c. that it is not any forfeiture, for it is but as a Releaſe; and therefore 10 Ed. 4. Rent cannot be reſerved upon ſuch a Fine; and there is not any book that it ſhould be a Forfeiture. Anderſon; It is clear that it is a Forfeiture; and it is not by reaſon of any Eſtoppel, but by reaſon of the prejudice to him in Reverſion; and although the Tenant for life hath but a right, yet when he hath levied a Fine, he in the Remainder might enter preſently for the Forfeiture upon the diſſeiſor; but if he had releaſed by Fine, there ſhould not be any Forfeiture, but by that Fine levied every one ſhould be concluded, but that he gave a Fee by the Fine, and it is not material although that he in Remainder be a ſtranger thereto; as if a ſtranger brings Waſte againſt Tenant for life, and he pleads Nul Waſte fait; or if Tenant for life prays in aid of a ſtranger, he in Remainder is a ſtranger to theſe Records; yet he ſhall take advantage in regard of the prejudice to the Reverſion. For the firſt point I doubt, but I conceive the Grant to be void, and that he by his Entry is a Diſſeiſor. Beamond, the Grant is void; for if the Eſtate had paſſed by the Livery, it had been clearly void; and the ſame Law is here; for the Habendum is not void otherwiſe, but in regard that no Eſtate is limited in the Premiſes, and becauſe the Habendum limits the Eſtate, and all the Eſtates depend upon that which is void; and the grant being void, the Grantee by his entry is a Diſſeiſor, and yet there ſhall be a Forfeiture of the Tenant for life, in regard he preſumed to give a greater Eſtate than he had; wherefore, &c. Owen was abſent, and in the Dutchy Chamber, and it was there adjourned; but afterwards Paſch. 38 Eliz. upon theſe reaſons it was adjudged to be a Forfeiture, and the entry of him in Reverſion to be lawful, 2 Co. 55. 8 Mich. 39, & 40. B. R. Pl. 15. Co. Lit. 252. a

Wentworth *verſus* Wentworth.

DOwer, The Tenant pleads, That he by Deed indented, granted a Rent out of that Land to the Demandant in recompence of her Dower, which ſhe accepted, &c. The Demandant by Replication confeſſes the grant of the Rent and her acceptance; but that in the ſame Indenture there was a Condition, that if the Rent ſhould not be paid within a month, &c. that the Rent ſhould ceaſe, and the Deed ſhould be void; and ſaith that the Rent was not paid; and thereupon the Tenant demurred. Glanvil for the Tenant argued, that the Demandant ſhould be barred; for Dower is of common right, and may be aſſigned in Lands, or in Rent out of the Lands; and the Condition annexed to that Aſſignment is void; for ſhe is in Paramount, as 2 Ed. 4, Executor delivers a Legacy upon condition, the condition is void; it is not ſhewn alſo that ſhe demanded the Rent, and then the Condition is not broken; Drew e contra: The Condition is well annexed to the Grant, and therefore it is not any bar to her Dower; for it is not abſolutely, but conditionally aſſigned, and recompence of Dower ought to be as abſolute and beneficial as Dower it ſelf: and it is not like to a Joynture (19) Poſt. 462.

ture aſſured upon a Condition (as Vernons caſe is) which may well
Co. 4. 2. b be becauſe the Statute makes it a bar if ſhe accept thereof; here alſo needeth not any demand, becauſe ſhe is not to defeat an Eſtate thereby, nor is the Non-payment thereof pœnal. Walmſley, As this Caſe is pleaded, there is not any Aſſignment of the Rent for the Dower, and therefore it is not any bar of Dower, for it is pleaded, Quod dedit & conceſſit unum annualem redditum, &c. and although dedit & conceſſit are good words in the Deed, yet when the Tenant is to plead it, he is to plead it in apt words, viz. Quod aſſignavit; for a gift of Rent or Land is no bar to Dower, and to that purpoſe I have ſeen a Caſe in the years of Ed. 2. in the book at large, where it was pleaded, that the ſon granted Land in Dower to his Feme ex aſſenſu patris, and ruled that it was not good, for it ought to have been aſſignavit; for in pleading every one ought to plead according to Law; and as it is here pleaded, the Feme may have a Writ of annuity upon this Grant, which ſhe cannot have if it were an Aſſignment; and the words of the Deed being dedit, &c. the intent of the parties to have it a Grant, doth thereby appear, as alſo by annexing a Condition thereto; for it is clear that a Condition cannot be annexed to an Aſſignment of Dower; and the Tenant againſt whom it is, hath pleaded it as a Grant; and if he hath election to uſe it as he will (as in many caſes a man ſhall have) yet he hath here made his election to have it as a Grant, and we may not take it otherwiſe; and as to the demand, it needed not, when ſhe is not to deſtroy the Eſtate; for the Condition being, that if the Rent be not paid, it ſhall be void, it is pœnal to the Heir; for then ſhe ſhall be reſtored to her Dower, and therefore the Heir ſhall do the firſt Act by his Tender; and therefore it was adjudged in a Caſe wherein I was of Counſel in this Court. A deviſe made of a Rent out of Land to one, and a deviſe of the Land it ſelf to another upon Condition to pay the Rent, the Deviſee of the Land ought to pay the Rent without demand in ſalvation of his Land. Beamond accord, I agree that an Aſſignment of Land for Dower or of Rent for Dower ought to be abſolute; for the Rent comes in place thereof,
Co. Lit. 34. b and ſhall be of the ſame nature; and the annexing of a Condition to the Aſſignment of Dower is void; but here is not any Aſſignment, but it is a meer Grant, and there needs not any demand, becauſe the Feme is not to defeat any Eſtate by the Non-payment; wherefore, &c. Owen, The pleading Quod dedit & conceſſit is good in ſubſtance, but not in form, for it ought to have been pleaded Aſſignavit; but although he hath not done ſo, it is good in Law; for a gift in recompence of her Dower is an Aſſignment; and although it be good in form, yet it is not material, for that the other hath not demurred for this cauſe; but for the Condition, it is void for the reaſons before alledged; but if it had been good, it ought to have been demanded, for upon the Non-payment, the Feme is to take the Land from the Heir, for ſhe ſhall be reſtored to her Writ of Dower; wherefore, &c. But Walmſley and Beamond continued their former opinion, for it is not form but ſubſtance; for the Deed ſhall not be taken in any other manner than as he pleads it, which is not any Aſſignment; the condition alſo is not annexed to the Land, but to the Grant: and for the Condition broken, ſhe is not to have the Land, but only to be reſtored to her Action to demand her Dower; wherefore there needed not any demand. Anderſon

was

was absent, and it was therefore adjourned; afterwards Pasch. 38 Eliz. it was moved again, and then it was adjudged accordingly for the Demandant.

Baldwin *versus* Smith, Trin. 36 Eliz. Rot. 1676.

(20)

REplevin: The Issue was whether the Land was the Freehold of one Kent? upon special Verdict it was found that Francis Archer was seised of this Land in Fee holden in Soccage, and devised it to Robert Archer his son for life, and after to the right and next Heir male of the said Robert and to the Heirs males of the body of such a right and next Heir male of Robert; and found further, that at the time of this devise, Robert had Issue John his eldest Son; the devisor died, Robert entred and infeoffed Kent with Warranty; John Enters, Kent re-enters after Roberts death, and John re-enters upon him, &c. Et si upon all this matter, the Estate of Kent be lawful or not; and that John is to be barred, was the question. First, whether this be an Estate tail or for life only in Robert. Secondly, whether this Warranty descending upon John being an Infant (as it was found he was) shall bind him, because he could not enter during the life of his Father. Thirdly, the Warranty descending, and the right of Remainder vesting all at one time, which of them shall be preferred? Drew for the Avowant moved, that it is an Estate tail in Robert, because the Remainder is limited to his next Heir male immediate, as in the Case 39 Assise. Devise to one & uni hæredi de corpore, &c. was taken to be an Estate tail; the Remainder also should otherwise be in Abeyance which the Law avoids; if it also were not an Estate tail, it is void, for the Remainder shall never be in esse during the particular Estate; but all the Justices (Owen absent) held, that Robert the Father had but an Estate for life; for so are the words plainly; and the right Heir shall take it as a Purchasor; and Beamond held that John shall take it, and the Remainder shall vest in him presently, living the Father; for the Remainder is limited to the right and next Heir of the Father, which words being in a Will shall be taken according to the intent of the Devisor, viz. to him who was then Heir apparent; for he is in the intention of a plain man the right and next Heir; but Anderson and Walmsley against him in this point, and that this Remainder should be expectant; but it was admitted by them, that this Remainder being depending upon an instant, is good enough. Anderson held that the Warranty should not bind; for a Warranty shall not bind a right, but where he who should be bound thereby had time to avoid it by his Entry; and therefore it was adjudged in the Queens Bench, where Land was given to Baron and Feme for their lives; the Remainder to the next Heir-male of the body of the Baron; the Remainder to the Baron and Feme in Tail; the Baron levied a Fine with Warranty, that the Fine should not bar the Heir-male; for he had not time to avoid it during the life of the Baron. Walmsley held that this Feoffment of it self destroys the Remainder, so as it never shall come in esse; the Warranty also destroys the Remainder, and it is not like to a former right; and if the making of a collateral Warranty be a Tort, it is before the right accrued unto him, and therefore the Remainder here is not to be regarded as an ancient right; and I have the report of a Case in this Court, where a Feme Tenant for life, the Remainder to the right Heir of the Baron, the

Co. 1. 66. b.

Ant. 314. Co. Lit. 22. a.

Ant. 314.

Baron made a Feoffment with Warranty, the opinion of Dyer and others was, that the right heir of the Baron ſhould be bound thereby. Beamond, the Warranty cannot bar if there be a Remainder in Expectancy, becauſe a Warranty ought always to bind him who hath right of Entry or of Action; and here he hath not any of
Co. 1. 66. b. them in his Fathers life time, but the Feoffment of it ſelf deſtroyed it, becauſe it never came in eſſe. Et adjournatur, and afterwards in Trin. 38 Eliz. It was adjudged for the Avowant, that this Remainder by this Feoffment and Warranty was deſtroyed and barred. V. 1. Co. 66.

Palmer *verſus* Wolley.

(21) ACtion ſur Trover: A Preſcription was alledged in London, That every Shop in London ſhould be ſaid to be a Market Overt for all wares there ſold, which the Court upon the firſt motion conceived to be too general and unreaſonable a cuſtom. And Anderſon ſaid, It had been agreed, that if one buys in a Shop any thing which appertains not to his Trade, as to buy Plate in a Mercer or Drapers Shop, it is not a Market Overt as to that purpoſe. So if the ſale be in a back Shop, or in another place not open, no property ſhall be changed by ſuch ſale. 5 Co. 83. b.

Fox *verſus* Carlyne.

(22) BRownlow the Prothonotary ſhewed me a Record Trin. 37 Eliz. Rot. 927. in the Common Bench between Fox and Carlyne, where upon a ſpecial Verdict, the Caſe was, that one deviſed Land for years to J. S. Reddend' & ſolvend' 20 s. annuatim at Mich. to J. D. and for
Ant. 205. non-payment of that ſum, the Heir entred, ſuppoſing that thoſe words made a Condition, and that the Condition was broken, and that he therefore might enter; and his Entry was adjudged congeable.

Mich. 37 & 38 Eliz. in the Exchequer-Chamber.

Stubbings *verſus* Rotheram.

(1) ERror upon a Judgment given in an Aſſumpſit againſt an Executor upon a promiſe of the Teſtators, where the Plaintiff declared that the Teſtator in conſideration of Marriage promiſed to
Poſt. 459. pay to the Plaintiff an hundred pound, and for not performing
Co. 4. 93. this promiſe brought the Action, and Judgment there given for
Co. 9. 87. a. the Plaintiff, and this matter was aſſigned for Error, that the
Ant. 121. Action lay not againſt an Executor; and all the Juſtices and Ba-
Poſt. 459. rons (beſides Clerk Baron) held it to be erroneous for this cauſe;
Ant. 121. for Anderſon ſaid, the reaſon why Debt lies not againſt an Executor upon the contract of the Teſtators, is becauſe the Law doth not intend that he is privy thereto, or can have notice thereof; and he cannot gage his Law for ſuch a Debt as the Teſtator might; and when Debt will not lie, it is not fit that this Action upon a bare promiſe ſhould tie him; for it ſtands all upon one reaſon; and if theſe Actions ſhould be allowable, it would be very miſchievous; wherefore the Judgment was reverſed. Quære, Whether a Recovery in this Action againſt an Executor, is allowable againſt a Debt

Debt upon an Obligation, if it ſhould be an Adminiſtration; for it would be then miſchievous to Creditors; and if it ſhould not be an Adminiſtration, it would be then miſchievous to Executors, that they ſhould be charged therein, and have not allowance thereof againſt other Creditors; for it may be that at the time of the recovery they did not know of other Debts. Note, this Term the like Judgment was given betwixt Gryggs and Helhouſe in an Action brought againſt an Adminiſtrator upon a promiſe of the Inteſtates to pay monies, &c.

Chamberlayn *verſus* Nichols.

(2)

ERror upon a Judgment in Debt upon an Obligation: The Error aſſigned, was, becauſe the Obligation being ſingle, the Defendant pleaded payment without an Acquittance, and Iſſue taken thereupon and found for the Plaintiff, and Judgment accordingly, whereas it is not any Plea, and ſo the Iſſue taken upon a void and no Plea, and therefore an ill and void Trial, and therefore the Judgment thereupon is erroneous; but all the Juſtices and Barons held, although it were an ill Plea, upon which the Plaintiff might have demurred, yet an Iſſue being taken and found by Verdict, it is holpen by the Statute; and the truth is there was not any payment; wherefore the Judgment is well given accordingly; and the Judgment was affirmed.

Co. 5. 43. a
Ant. 157.
Poſt. 697, 716, 456, 884.
2 Cr. 86.

2 Cr. 86.
Co. 5. 43. a
Ant. 367.
Ant. 228, 259, 260, 446.
Poſt. 458, 777.

Philips *verſus* Sackford, Paſch. 36 Rot. 488.

(3)

ERror of a Judgment in an Aſſumpſit, where the Plaintiff declares, That in conſideration the Plaintiff would forbear to ſue one Brediman for twenty pound debt which he owed unto him, that he aſſumed to pay the aforeſaid twenty pound before Mich. and alledgeth in facto, that from the time of the Aſſumpſit, Abſtinuit from ſuing him, & adhuc abſtinet, and after Non Aſſumpſit pleaded and found for him, it was adjudged for the Plaintiff: The firſt Error aſſigned, becauſe he alledgeth not any requeſt, but generally licet ſæpius requiſitus, &c. Sed non allocatur; for where a time certain is limited for the payment of any thing, he never ſhall alledge a requeſt before the day; but otherwiſe it is where it is incertain. A ſecond Error aſſigned was, that the conſideration that he would forbear, &c. and ſheweth not for what time, is not a ſufficient conſideration; for it may be, that he forbore but for a quarter of an hour, or other ſmall time; and although it were alledged, Quod abſtinuit, & adhuc abſtinet, that will not help it; and of that point the Juſtices doubted; but the greater part held, that it was not a ſufficient conſideration. Sed adjournatur, and afterwards for this cauſe it was reverſed.

1 Rol. 27.

Poſt. 561.
Ant. 387.
2 Cr. 683.
Ant. 19.
2 Cr. 683.
1 Rol. 27.

Bingham *verſus* Smeatkwick, Hill. 37 Eliz. Rot. 362.

(4)

ERror of a Judgment in an Ejectione firmæ, where S. declares of a Leaſe of Will. Yerbury, 13 April 36 Eliz. of the Lands in queſtion for three years; the Defendant ſaith, that long time before Will. Yerbury

Yerbury, the Leſſor had any thing, one Thomas Chaffyn was thereof ſeiſed in Fee; and 25 Martii 24 Eliz. Let them to John Yerbury for twenty one years, which John Yerb. 3 Apr. 32 Eliz. Let them to Will. Yerb. for eight years, if one Arthur Yerb. ſhould ſo long live; that the ſaid W. Y. being ſo poſſeſſed, the Reverſion over to John Yerb. that J. Y. the 11 July 33 Eliz. died inteſtate; that Adminiſtration of all the goods of J. Y. were committed by the Archbiſhop of Canter. (becauſe he died poſſeſſed of divers goods in divers Dioceſſes within the province of Canter.) to Hen. Blake, that Will. Y. ſo being poſſeſſed, Let as it is alledged in the Declaration; that afterwards, viz. 15. April 36 Eliz. Arth. Yerb. died, whereupon the Defendant as ſervant to Hen. Blake, and by his command ejected him. Et hoc, &c. the Plaintiff replies confeſſing the Leaſe to John Yerbury; but further ſaith, that the ſaid J. Y. 30 Jan. 30 Eliz. granted all his intereſt to Arth. Yerb. that the ſaid Arth. Y. 31 July 35 Eliz. died inteſtate; that the Archbiſhop of Canterb. 27 Aug. 35 Eliz. committed the Adminiſtration of all the goods of Arth. Y. to the ſaid W. Y. who by force thereof entred and made a Leaſe, prout in the Declaration, &c. And Travers that that the ſaid John Y. let it to W. Y. for eight years, prout in bar; and upon this Iſſue joyned and found for the Plaintiff, and Judgment given for him; the Error aſſigned was, that he had traverſed that Eſtate which was an Eſtate determined, and by him in his Replication avoided before; for he in his Replication affirms, that the ſaid J. Y. 30 Eliz. &c. (which is before the Leaſe alledged to be made to W. Y.) had granted all his Eſtate to Arth. Yer. under whom he made Title; then although afterwards he makes this Leaſe to W. Y. it is not material, ſo he hath well avoided it; then the Travers is idle, and iſſue joyned upon a vain matter, and then the Verdict thereupon ill, and the Judgment erroneous; and therefore it is like an Iſſue taken upon a Colour given in an Action of Treſpaſs, that if it be tried, yet it is a Jeofail, and not remedied by the Statute; but all the Juſtices and Barons beſides Walmſley, held, that although it be an ill travers, and an ill iſſue joyned (as it is agreed by them all that it was) yet being tried, and Verdict given, it is aided by the Statute of Jeofails, and the Judgment thereupon is well given. A ſecond Error aſſigned was (but that was ore tenus) that in the Replication, the Plaintiff hath not made any good Title; for he conveys to himſelf Title as Adminiſtrator of the goods of A. Y. committed unto him by the Archbiſhop of Canterb. and he doth not ſhew, that the Archbiſhop was Ordinary, nor that the Inteſtate had goods in divers Dioceſſes; and if he had not, the Archbiſhop had no Authority to cammit Adminiſtration, and then he hath not any Title, and Judgment ought to be given againſt him, But all the Juſtices beſides Walmſley held, that in regard it was in the Replication, and but the Inducement of a Travers, wherein if he had not made any Title at all, but had ſaid, that W. Y. made the Leaſe unto him prout in the Declaration, and Traverſed abſque hoc, that J. Y. Let unto him during the life of A. Y. it had been good enough; wherefore the making of an inſufficient Title in his inducement to the Travers is not material, eſpecially being after Verdict found; but they held that ſuch manner of pleading had not been good, unleſs he had averred, that he had Aſſets in divers Dioceſſes, or that it was within the Dioceſs of Canterbury, or that he was loci illius Ordinarius; but for the reaſons aforeſaid, the Judgment was good

Poſt. 651.

Ant. 6.

good enough, and not to be reverſed; but it was moved by the Queens Attorney, that the committing of Adminiſtration being by the Archbiſhop, although he had not goods in divers Dioceſſes, becauſe it is in his Province wherein he hath jurisdiction, is not void, but only voidable by ſentence; and it is not like to an Adminiſtration committed by another Biſhop of the goods of a man who died in another Dioceſs, or who had goods in divers Dioceſſes; and this difference hath been taken and agreed in the Queens Bench, and therefore the Plea is well enough; but the Juſtices ſaid, that it was all one, and that the Adminiſtration is void in both caſes and not avoidable only. But yet for the reaſon aforeſaid, they held that it was not Error; but the Judgment was affirmed. Vide 30. H. 6. 13. Plow. 277. 10 H. 7. 8. 5 Co. 30.

Coke Ant. 456.

Ant. 283.

Co. 5. 30. a

Termino Hillarii,

Tricesſimo octavo ELIZABETHÆ,

in Banco Reginæ.

Corbyſon *verſus* Pearſon.

(1) TRespaſs for the taking of his Beasts (viz. four Cows) in a place called Breachleys, and chasing and impounding them without cause. The Defendant justifies as in his Freehold, for Damage-Feasant; the Plaintiff by Replication shews, that he is, and time whereof, &c. was seised of a Messuage and twenty Acres of Land in D. and that he and all whose, &c. have had from time, &c. Common for all his Beasts, Levant and Couchant upon the said Tenements, &c. in the place where every year after the sown Corn was severed and carried away until it were re-sown; and that he there after the Corn was severed and carried away, put in his said Beasts into the place where, &c. utendo communia sua prædicta, &c. The Issue was taken upon the Prescription, and found for the Plaintiff, and now moved in Arrest of Judgment, that the Replication was not good; and so the Plaintiff ought not to have Judgment, because he saith that he put in his Cattel after the Corn severed and carried away, and saith not that it was before the Land was re-sown; for otherwise he had no Title to Common. Secondly, because he avers not that those Cattel were Levant and Couchant upon the Land aforesaid, for otherwise he cannot use Common with them, nor hath not sufficiently entituled himself to put them in, and in proof thereof vouched 10 Ed. 3. 56. and the presidents in the book of entries, trespas in common 9 & 11. But all the Justices held, that in regard Issue is taken upon the Prescription, although peradventure the Plea is ill, and ought to be adjudged against the Plaintiff, if he had demurred thereupon for this Cause; yet it now shall be taken to be good enough and to be holpen by intendment, when it is said that he put them in utendo communia sua prædicta, That it was at such a time as the Common is to be used, and with such Beasts as are there to use the Common; wherefore without any great argument because it was after Verdict and might be well intended, and so aided by the Statutes of Jeofails, it was adjudged for the Plaintiff.

Ant. 455.

Serle

Serle *verſus* Roſſe.

ERror of a Judgment given in the Queens Bench upon an Aſſumpſit againſt an Executor, and declares that the Teſtator in conſideration of ſuch a Marriage, aſſumed to pay to the Plaintiff twenty pound; the Error aſſigned was, becauſe this Action lies not againſt an Executor for the Non-performance of the Teſtators promiſe; and for this cauſe the Judgment was reverſed. (2) Ant. 454.

Fenner *verſus* Plasket & Green, Mich. 37 & 38 Rot. 290.

REſcous: The Plaintiff declares, that a Rent-charge in Fee was granted to the Feme of the Plaintiff, and to Ed. Coſins her firſt Husband, and that Ed. Coſins died, and ſhe took the Plaintiff to Husband, and for Rent arrear durante viduitate of his Feme he diſtrained, and upon Reſcous brought this Action; the Defendant hereupon demurred in Law, but ſhewed not any cauſe of his demurrer; but the principal cauſe (as I heard) was, for that his Feme was not joyned in the action; the diſtreſs being taken for Rent due dum ſola fuit; But notwithſtanding it was adjudged for the Plaintiff; for it is a Tort done to the Baron for which he might have an Action ſole, or may joyn his Feme therein, becauſe it ariſeth upon a duty due unto her before the coverture, but it is at his election. (3) Moor 422. 1 Cr. 419.

Rolls *verſus* Germine, Ante Mich. 37 & 38 placito 24.

BEing now moved again, Gawdy continued his opinion, that Debt lies not againſt an Executor upon a ſimple contract with the Teſtator, although he acknowledgeth the contract or admits thereof; but the Court ex officio ought to abate the Writ: But Popham and Fenner e contra; but then there was another matter moved, that this Action of Debt would not have lien, if it had been brought againſt the Teſtator himſelf for part thereof, viz. for ſo much as he expended as Solicitor in Suits in the Queens Bench; for thoſe are not allowable by the Law, for ſuch Fees which he expends in ſuch buſineſs; and therefore no Action lies for them, but an Attorney in ſuch Caſes where he is Attorney, may lay out Fees, and have Debt for them. And of this opinion were Popham, Clench and Gawdy, but Fenner doubted thereof; afterwards in Paſch. 38 Eliz. being moved again, they held their opinion, that for thoſe Fees the Action lay not; ſo the Writ was abateable in all; and therefore they gave rule, that if other matter were not ſhewn the fourth day in Trin. Term following, that Judgment ſhould be reverſed. (4) Ant. 425. 6. Ant. 454. Poſt. 804. Moor 366. Poſt. 760. 2 Cr. 521.

Wilſon *verſus* Packman, Hill. 37 Eliz. Rot. 416.

ACtion ſur Trover and Converſion of Goods. Upon demurrer the Caſe was, the Ordinary committed Adminiſtration of the goods of an Inteſtate to the Defendant; afterwards the next of kin ſues a Citation in Court Chriſtian againſt the Defendant to repeal that Adminiſtration, and he pendente lite ſells thoſe goods, and afterwards his Adminiſtration is repealed, and Adminiſtration (5) Co. 6. 18, 19. Moor 396.

on committed to the Plaintiff, who for this converſion pendente lite brings this Action; and it was moved for the Defendant, that this Action lies not; and the Adminiſtration at the Common Law is well committed; and the Statute doth not alter the Law in this point, but gives a penalty againſt the Ordinary, if he commits them not to the next of kin; and the Adminiſtrator until Adminiſtration repealed, hath an abſolute Authority to diſpoſe of the goods as he pleaſes. Tanfield e contra, the Converſion pendente lite in Court Chriſtian is not lawful, but is a Tort to the Plaintiff; and that the ſentence there proves, which is, that all things attempted or done pendente lite ſhall be void, and the Juſtices ought to have regard to the Civil Law in this point, as in 27 H. 6. Gard. 118. 2 R. 2. Quare Impedit 143. & 4 H. 7. 13. And by the ſentence it appears, that the Adminiſtration is revoked as if it never had been; and upon this reaſon it is in Dy. 339. where an Adminiſtrator recovered a Debt; and afterwards another procured himſelf to be joyned in the Adminiſtration, and releaſed the Debt and afterwards it being revoked, this Releaſe was not any bar to the Execution; and Mich. 35 & 36. Eliz. in the Common Bench betwixt White and Cary, this very point was in queſtion, and adjudged that the Action lay. Gawdy, The Action well lies, for the ſentence doth not repeal mean Acts done by an Adminiſtrator which are for the Inteſtates benefit; but for as much as theſe Goods were not converted or imployed for the Inteſtates uſe, it is reaſonable that he ſhould be charged for them. Popham and Fenner e contra, for the Adminiſtrator hath an abſolute and lawful Intereſt and power to diſpoſe of the Goods, until the repeal be made, and it is not like to an Appeal upon a ſentence, for that makes it as no ſentence; but the Appeal of the Letters of Adminiſtration doth not avoid it ab initio, and make a lawful Act tortious, but rather in this Caſe, the new Adminiſtrator ſhall have an accompt for the monies received; and the words in the ſentence be not to be regarded, for they are ordinary in all ſentences. So he having the Goods lawfully, and converting them lawfully, ſhall not anſwer for them as for a Tort done; and Popham here ſaid, if Adminiſtration being committed, the Ordinary commits new Adminiſtration, it is a repeal of the former without any ſentence of Appeal; and if the firſt Adminiſtrator waſte the Goods, the Debtee ſhall have the action againſt him; and if he pleads that Adminiſtration is committed over, he may well by his replication maintain it, becauſe he waſted the Goods when he was Adminiſtrator; wherefore, &c. Et adjournatur, but afterwards the action was diſcontinued by the Plaintiff, 6 Co. 18.

Co. 6. 18. b.

Co. 6. 19. a. Poſt. 565.

Curteis *verſus* Savel and three others.

(6) 2 Rol. 133.

APpeal for the death of her Husband; upon ſeveral Iſſues pleaded, the Plaintiff was non-ſuited upon a tryal againſt the one; and whether that ſhould be a Non-ſuit againſt the reſt was the queſtion: And the whole Court held it to be a Non-ſuite againſt them all; wherefore as to the ſuite of the party, it was ruled that he ſhould be diſcharged, but held that the others who were not tryed, ſhould be arraigned upon the Declaration at the Queens ſuite.

Poſt. 465.

Aſcue

Double after

Aſcue *verſus* Hollingworth, Ante Mich. 37. Plac. 14. C. B. Trin. 37 Eliz. Rot. 393.

(7)

ERror of a Judgment in the Common Bench in Debt; the Caſe was, that Aſcue was bound to Hollingworth in a Statute-Staple acknowledged before the Major of Lincoln in two hundred pound; and Aſcue thereto put his Seal, and the Seal uſed at Lincoln for one hundred years for that purpoſe, was alſo put thereto; but becauſe it was not enſealed with a Seal of two parts according to the Statute of Acton Burnel, it was ruled in an Audita Querela between the ſaid parties, that it was void as a Statute; whereupon Hollingworth brought his Action of Debt thereupon as upon an Obligation; and all this matter being diſcloſed, and a Demurrer joyned thereupon, it was adjudged for the Plaintiff. Aſcue the Defendant thereupon brought Error, and aſſigned for Error the very point in Law, that this was not an Obligation, and that Debt lies not thereupon, and no other cauſe was moved for Error. And it was now argued by Pudry for the Plaintiff, and by Yelverton Serjeant for the Defendant. Gawdy held, that Debt lies not hereupon as upon an Obligation; for when a thing is void in the principal and ſuperior operation thereof (as it hath been adjudged here, that it is void as a Statute) it cannot be good in an inferior, as 33 H. 8. fol. 50. a pardon of Petit-Treaſon was no diſcharge of Murder; and Blunt and Andrews Caſe, Bargain and Sale of Land and all the Woods and Under-woods, the Deed not being enrolled, it cannot enure as a Grant of the Wood; and although the books be, that Debt lies upon a Statute, &c. yet he ought to declare thereof as upon a Record, and not as upon an Obligation (and ſo all the Prothonotaries affirmed to have been always their courſe) Fenner accord; for it is not an Obligation; for a non eſt factum cannot be pleaded in this Action; and although it were ſealed by the Conuſor, it never was delivered by him as his Deed, but he only acknowledged it before the Major, which is not of any effect to make it to be his Deed. Clench, There be words Obligatory in a Statute as well as in an Obligation; alſo in the end he binds his Lands and Goods, and the acknowledgment makes it afterwards to be a Statute: So it is an Obligation and more. And poſito, that he had ſealed and delivered it as his Deed, and had not acknowledged it, it is no queſtion but it had been a good Obligation; and although peradventure it had been a good Statute, Debt had not lain thereupon as upon an Obligation, but as upon a Record; yet now when it never was any Statute, he conceived it might well be ſued as an Obligation; wherefore (Popham abſent) Adjournatur.

Gould. 190.
2 Rol. 149.
Moor 405.
Poſt. M. 38. &c.
9 Pl. 12.
H. 39. pl. 16.
Ant. 355. 6.
Poſt. 494, 532.
2 Rol. 56.

Haddon *verſus* Arrowſmith.

(8)

EJectione firmæ, upon a ſpecial Verdict, the Caſe was ſuch; the Queen being Lady of the Manor of Winterbourne, grants licence by her Steward to a Copyholder for life within the Manor, to make a Leaſe for three years, if he live ſo long, he lets the Land to the Plaintiff for three years abſolutely, who upon Ejectment by a ſtranger brought this Action. Stephens for the Defendant argued, that this Leaſe was not according to his Licence, and therefore it is not warranted thereby; for an authority ought preciſely to be purſued, and then an Ejectione firmæ in this Caſe lies not; for although

1 Rol. 331.

it

Poſt. 469. it hath been here adjudged; that Leſſee for years of a Copyhold which is made without Licence of the Lord being a common perſon might maintain an Ejectione firmæ, becauſe he is Leſſee againſt all but the Lord, yet when the Queen is Signioreſs, it is otherwiſe; for the Copyholder cannot diſſeiſe the Queen; wherefore it cannot be a good Leaſe; for nothing paſſed from the Copyholder to the Leſſee. Atkinſon e contra, for theſe words, If he live ſo long, are but to ſhew how long the Leaſe is to continue, which is no more than what the Law appoints, and therefore good enough; wherefore, &c. 2 Cr. 437. and of that opinion was all the Court; for the limitation, that he ſhall make a Leaſe for three years, if he ſo long lives, be but words of Surpluſage, and no more than the Law ſaith; and then the words of the party, If he live ſo long; if they had been in the Leaſe, had been vain: And the difference in this Caſe will be betwixt a Copyholder in Fee, and a Copyholder for life; for if ſuch Licence had been granted to a Copyholder in Fee, and he had granted it for three years abſolutely, that had not been warranted by the Licence; for the intent was to give him Licence, but not to hurt the heir; and without theſe words in the Leaſe, the Leaſe is good and ſhall bind the Heir; but it is otherwiſe of a Copyholder for life; for the Law without theſe words determins the Leaſe by his death. But Gawdy ſaid, admitting it to be not warranted by the Licence, yet the Leſſee may well maintain this Action; for there is not any difference betwixt a Leaſe made by a Copyholder where the Queen is Signioreſs of the Mannor, and where a common perſon; for in both Caſes the Leaſe is good betwixt the Leſſor and Leſſee, and againſt all ſtrangers; Quod Fenner conceſſit; but Clench denied, and Popham ſpake not to that point; and Fenner ſaid, that a Lord cannot limit a condition in his Licence, for he gives nothing, but only diſpenſeth with the forfeiture, and all the Eſtate paſſeth from the Copyholder; wherefore he could not anner thereto a Condition, no more than Ant. 451. the Heir might aſſign Dower upon Condition, or an Executor deliver a Legacy conditionally; and Popham thereto agreed. But here this is not a Condition, but a limitation of the Eſtate which he might well limit, but in the principal point they all agreed: Wherefore it was adjudged for the Plaintiff.

Smith *verſus* Freeman.

(9) ERror upon a Judgment in Waſte: The Writ recites the Statute, Quod nullus faciat vaſtum, venditionem ſeu diſtrictionem, where it ſhould be deſtructionem, And it was prayed that it might be amended, for it is but the default of the Clerk; and it was held by all the Court that it could not be amended, becauſe it is in the original Writ. 5 Co. 45.

Ant. 119. Co. 5. 45. a.

Green *verſus* Wilcoks, Mich. 37 & 38 Eliz. Rot. 332.

(10) DEbt againſt an Executor; the Defendant pleads, that hanging this Action, J. S. brought another Action of Debt for an hundred pound, true Debt of the Teſtators, which Action he had confeſſed; and that he had Riens inter maynes beſide to ſatisfie that judgment; the Plaintiff proteſtando that it was not a true Debt, for Replication ſaith, that this Recovery was by Covin to defeat him of his Action; and it was thereupon demurred in Law, becauſe he

Double aſſes

he ought to anſwer thereto if it be a true Debt; and if ſo, it cannot be recovered by Covine, and ſo the Covine is not iſſuable; but all the Court held that the Replication was good enough; for if the Recovery be not by Covine, the Plaintiff is barrable, and therefore it is the principal matter to be anſwered; and the Conuſance of the Action is not material, viz. whether it be a true Debt, and an Action truly perſued, and a Recovery may be covenous, although it be upon a true Obligation, as Mich. 36 & 37 Eliz. in Sarah de Banhaults Caſe in this Court where the Teſtator was obliged in an Obligation (with an intent to defraud Creditors) to pay a thouſand pounds; the Obligee brings Debt thereupon in Windſor Court againſt the Executrix, and recovered; and it was pleaded in bar here, and the Iſſue was whether the Recovery were by covin by rule of the Court, and found againſt the Defendant; yet there it was a true Debt, and Judgment given accordingly. So here; wherefore, &c. And the Court moved the parties, that the Defendant ſhould pay Coſts and wave the Demurrer; and afterwards upon a motion it was adjudged for the Plaintiff, and Error thereof brought and reverſed for the matter in Law; for it cannot be a Covinous Recovery if the Debt be true, and the Covin alledged is not material.

Sir Henry Knevett *verſus* Pool and Hawkins and two others, Trin. 36 Eliz. Rot. 326.

TReſpaſs: Quare clauſum fregit, and his Corn there growing, cut and carried away; upon Not guilty pleaded a ſpecial Verdict was found, and thereupon the Caſe was ſuch, Tenant for life Remainder for life, the Tenant for life makes a Leaſe for years to Hawkins, who is ouſted by a ſtranger, who commits a diſſeiſin, the diſſeiſor makes a Leaſe for years; his Leſſee ſows the Land; the Tenant for life dies, he in Remainder (the Corn not being ſevered) and the firſt Tenant for years of the Tenant for life; the diſſeiſor and his Leſſee for years enter and cut, and carry away the Corn; and the Tenant for life in Remainder brings Treſpaſs, Et ſi, &c. And found damages ſeverally for entring into the Land, and for the Corn carried away; and as to the entring into the Land, it was held clearly, that the Verdict is againſt the Defendant, for although ſome of them had Title to have the Corn, and the others in aid of him might come and enter upon the Land to carry the Corn away, yet that is by liberty in Law which ought to have been pleaded and cannot be given in evidence, nor ſhall be holpen upon the Verdict. And the whole Court was clearly of that opinion; wherefore as to that the Plaintiff ſhould have Judgment; and as to the Corn Tanfield for the Plaintiff argued, that they appertained to him in Remainder, and not to the Leſſee for years of the Tenant for life; nor to the diſſeiſor nor his Leſſee, 1. To Hawkins the firſt Leſſee, they appertained not, becauſe they did not ſow them at his own Coſt, nor was in poſſeſſion of the Land at the time of his Eſtate determined; and the ſole reaſon why a Leſſee whoſe Eſtate is determinable upon an incertainty ſhall have the Emblements, is becauſe they ariſe out of his labor and coſts, the Law gives him that privilege after the determination of his Eſtate, which is the reaſon given in Broke Eblements pla. ultimo; but if he were not at the coſt and labor to ſow it, he ſhall not have the Corn, but he who ſhould have the Land, ſhall have the Corn; for Quicquid plantatur ſolo, (11) Co. 5. 85. a.

ſolo

ſolo credit; and therefore if a man ſows Land, and lets it for life, and
Ant. 61. the Leſſee for life dies before the Corn be ſevered, his Executor ſhall
Hob. 132. not have them, but he in Reverſion; but if he himſelf ſowed the
1 Rol. 727. Land and died, it were otherwiſe. So if Tenant for life ſows the Land, and grants over his Eſtate, the Grantee dies before the Corn ſevered, his Executor ſhall not have the Corn; which Caſes Gawdy and Popham agreed. So Mich. 29 & 30 Eliz. there was a Caſe in this Court, where a man ſowed his Land, and deviſed his Lands for life, Remainder in Fee; Tenant for life dies, the Corn not ſevered; the queſtion was, whether the Executor or he in Remainder ſhould have it? and held that he in Remainder, which Caſe they all agreed, then here this reaſon is ſtrong againſt the firſt Leſſee that he ſhould not have it: But if he had entred living the Tenant for life, and had continued his poſſeſſion until his death, it had been otherwiſe; for then it ſhall be conſtrued, as if he always had continued in poſſeſſion, and had ſown it himſelf; but when he did not enter it was his folly and his laches to prejudice himſelf; and the diſſeiſſor nor his Leſſee for years ſhall not have them; for their Eſtate is incertainly determinable by their own Tort which the Law will never regard nor give any privilege thereto; wherefore, &c. But all the Juſtices (abſente Clench) reſolved to the contrary, that the Corn appertained to Hawkins the firſt Leſſee of the Tenant for life; for he having right to it at the time of the death of the Tenant for life, the Law ſhall preſerve his Title and right as if he had entred. For Gawdy ſaid, if he had entred in the life of the Te-
1 Rol. 727. nant for life, it is clear that he ſhould have had the Corn: Now when he could not enter, the Law ſupplies his Entry, as 19 H. 6. 28. Tenant pur autre vie is diſſeiſſed; he ſhall not have Treſpaſs for the mean profits, until the Re-entry; but if ceſty q. vie dies, ſo as he cannot re-enter, the Law ſhall give him the Action without re-entry. Then Leſſee for years having right to have them in the life of the Tenant for life, it is not reaſon it ſhould be taken from him by the incertainty of the death of the Tenant for life; wherefore he in the Remainder hath no right to have them, wherefore he ſhould not have his Action againſt the Defendant; and it was therefore held, that the Plaintiff had no cauſe to recover; and afterwards Paſch. 38 Eliz. their opinion being again delivered openly in Court, it was commanded that Judgment ſhould be entred for the Defendant, if other cauſes were not ſhewn to the contrary by the laſt day of the Term, and it was adjudged accordingly. 5 Co. 85.

Penryn *verſus* Corbet, Trin. 37 Eliz. Rot. 504.

(13) APpeal of Murder, of the death of his Brother; it was tried
Moor 407. by Niſi prius in London, and all the Juſtices of the Kings Bench ſat upon it in the Guild-hall in London; the Jury found him Not Guilty of the Murder, but guilty of Homicide; and this by advice of the Court they might well do; and they might if they would (if they thought him Not Guilty of the Murder) have found him Not Guilty generally, and not have ſpoken of the Homicide; and it is at their Election in this Caſe how they will give their Verdict; and afterwards this matter was moved in Court whether this Verdict was well found, and ſhould be a Conviction for the Homicide. And Popham ſaid, that it was ſo ruled by the advice

advice of all the Juſtices of England in Stowels Caſe. Vide the Caſe of Wrott and Wiggs, where the Jury found him not Guilty gene- Ant. 276.
rally, and would not find him guilty of the Homicide, although the evidence was pregnant, that he was guilty thereof; yet it was good by the advice of all the Juſtices of both Benches. The De- Co. 5. 50.
fendant then pleaded the Queens pardon, and prayed to have it allowed; and a preſident was ſhewn, Paſch. 8 Eliz. Rot. 33. Muſgraves Caſe where the Defendant pleaded the Queens Pardon in this very Caſe; and it was allowed; although in 9 Eliz. Dyer 261. there was a Quere thereof; but Popham ſaid it was a ſtrong preſident; Poſt 632.
for it is hard the Queen ſhould pardon that which is the ſute of the party; and there is no queſtion if it had been an appeal of Homicide, as it well might, the Queen could not have pardoned it; whereto Coke the Queens Attorny of Counſel with the Defendant agreed: for it is meerly the ſute of the party. But here the ſute of the party is an appeal of Murder; and that wherein he is found guilty, is not for the party, but for the Queen; wherefore the Ante 460.
Court would adviſe thereof until the next Term; and afterwards Paſch. 38 Eliz. the Plaintiff being compounded with, would have been Nonſuited; and the Court doubted whether it might be allowed, being after a general verdict, although it were in another Term. It was then prayed that a Retraxit might be entred thereof; And therein alſo the Court doubted whether it might be, but they would adviſe.

Wilkinſons Caſe.

(13)

WIlkinſon by Colour of a Writ de vi laica removenda awarded out of the Chancery, retournable in this Court, was put out of poſſeſſion by the Sheriff, and the poſſeſſion by that means gotten by his adverſary; and this being ſuggeſted to the Court by affidavit, reſtitution was awarded, and to that purpoſe a preſident Moor 462.
ſhewn, 35 Eliz. rot. 66. between Erkenſall and Palmer for the Parſonage of Wiberton in the County of Cambridge in ſuch Caſe, upon ſuch a ſuggeſtion, reſtitution was awarded.

Walter *verſus* Dawes, Trin. 37 Eliz. rot. 458.

(14)

ASſumpſit as Executor to Robert Walter his Father, for that where- 2 Rol. 599.
as the ſaid Walter the Teſtator was Juſtice of Aſſiſe in the Gould. 180.
County of Glamorgan, and two other the adjoyning Counties, and Moor. 412.
that every Juſtice of Aſſiſe there had uſed time whereof, &c. to appoint an Officer called the Clerk of his Fines, who hath the ingroſſing of all Fines within the ſaid Circuit, and had 5 s. for the ingroſſing of them; the Defendant in conſideration that the Teſtator would appoint him to that Office, aſſumed to pay unto him Twenty marks per annum, quamdiu he ſhould exerciſe it; and that the Teſtator appointed him to that office; and that he executed it for three years; and for nonpayment of this Twenty marks per annum, for the three years he brought the Action; the Defendant pleads that he did not exerciſe that Office; and Iſſue being joyned thereupon and tried by a Viſne of D. in the County of Worceſter where the Action was brought, and found for the Plaintiff, this matter was alledged in arreſt of Judgment; becauſe this office by intendment is to be exerciſed in the Counties in Wales; and

then the tryal ought to have been in the County of Hereford, begin the County next adjoyning, and not in the County of Worceſter, and of that opinion was the whole Court; for although the office, might be exerciſed in any place by ingroſſing the Fines in any place; yet it ſhall not be ſo intended to be out of the Circuit, unleſs it be expreſly ſhown: they alſo held that this was not any office and therefore the appointing him to be his Clerk of the Fines is not any conſideration to maintain this Action; whereſore without further argument it was adjudged for the Defendant, abſente Gawdy.

Wytham *verſus* Waterhouſe.

(15) 1 Rol. 346. Co. Lit. 351. a

A Leaſe for years was granted to the Defendant to the uſe of the Grantors ſiſter, whom he afterwards ſhould marry; who married her accordingly and then died; the Feme takes the Plaintiff to husband, and afterwards ſhe died; and the Defendant takes Adminiſtration of the Plaintiffs wives goods; and the Plaintiff ſued the Defendant in Chancery to have this Term; and it was there decreed by the advice of all the Juſtices of England, that neither the Term nor the uſe thereof appertained to the Plaintiff.

Corbet *verſus* Cook, Mich. 37 & 38 Eliz. rot. 602.

(16) Moor 450.

DEbt upon an Obligation conditioned, that if he appeared at Weſtm. ſuch a day to anſwer, &c. that then, &c. (this was a Sheriffs Bond) the Defendant pleaded that before the day of the return of the Writ, the Term was adjourned to Hertford; and that there he appeared, and thereupon the Plaintiff demurred: it was firſt moved whether this Plea were good, the Obligation being taken (as by intendment it might be) after the Adjournment of the Term, whether he ought not to appear at Weſtm. or at Hertford; but it was held that the Obligation ſhall always relate to the day and place compriſed in the Writ, for that ſhall not have regard to the Adjournment; and yet if the Term be adjourned he ought to appear in the Queens Bench, or otherwiſe he ſhall forfeit his Bond; as 9 Ed. 4. is, and ſo be divers preſidents. Secondly, It was moved that the Plea was not good, becauſe he doth not conclude prout patet de recordo. For although he appeareth, yet if his appearance be not entred upon record, he forfeits his Obligation, and he ought to conclude ſo; otherwiſe the Plaintiff cannot have an anſwer thereto, to ſay Nul tiel Record; and of that opinion was all the Court.

Nector and Sharp, Executors of Thrower *verſus* Gennet, &c. Trin. 37 Eliz. rot. 178.

(17) Owen 72. Gould. 141. Moor. 413.

PRohibition againſt Gennet and others, Wardens of the Company of Tallow-Chandlers in London, ſurmiſing that the Defendants ſued them in Court Chriſtian for a Legacy of two hundred pound given unto them by the Teſtator of the Plaintiff; and that they there pleaded that their Teſtator was Keeper of Ludgate, and was poſſeſſed of goods to the value of Three hundred and twenty pound, and no more; and was obliged in an Obligation of One thouſand pound to Spencer and Maſſam Sheriffs of London, that he ſhould ſafely keep the priſoners committed to his charge; and

ſhould

ſhould ſave the Sheriffs harmleſs from all eſcapes, &c. and ſhews that one Helms was taken upon a capias utlagat. after Judgment in Debt, and eſcaped; and Debt was brought upon this eſcape againſt the Sheriffs of London, and Judgment againſt them; and ſo the Obligation forfeited; ſo there was Riens inter mayns more then to ſatisfie this Obligation; and becauſe the Eccleſiaſtical Court would not allow of this Plea, a Prohibition was ſued; and it was thereupon demurred. Atkinſon for the Defendant prayed a Conſultation; for this Plea is not any Plea; and therefore the Court Chriſtian which is to take notice of our Law, ought not to allow it; for the Judgment in Debt was in Anno 20 Eliz. and the Capias utlagatum, whereupon he was taken was in Anno 25 Eliz. ſo as the Plaintiff could not take benefit thereof; for he was not in Execution for him, as one taken by a capias pro fine, after the year and day is not in Execution for the Plaintiff, as 1 H. 7. 19. 36 H. 6. 24. Quod fuit conceſſum per curiam, and then the Obligation is not forfeited, for it is not any eſcape; and therefore an Action lieth not againſt the Sheriffs, and if it be not any forfeiture, it is plain that this Legacy ſhall be firſt paid. But the Legatory by the Civil Law ſhould enter into Bond to make reſtitution, if the Obligation ſhould afterwards be recovered, ſo there is not any inconvenience to any; and to that the Council on the other ſide, and the whole Court (beſides Fenner) agreed: that this is no Plea unleſs the Obligation be forfeited; but Fenner ſaid he doubted thereof: Coke, the difference is when the Obligation is for the payment of a leſſer ſum at a day to come, it ſhall be a good Plea againſt the Legatee before the day, for it is a duty maintenant which is in the Condition, as 9 Ed. 4. 12. is. But otherwiſe it is where a Statute or Obligation is for the performance of Covenants or to do a collateral thing; there until it be forfeited, it is not any Plea againſt a Legatee, for peradventure it never ſhall be forfeited, and may lie in perpetuum; and by ſuch means no Will ſhould be performed. Tanfield, the Obligation is clearly forfeited; for the Condition is that he ſhall not ſuffer any Priſoner committed to his Priſon to eſcape; and to ſave the Sheriffs indemnified from all eſcapes, &c. ſo it is in the conjunctive, and then although the Priſoner was not in execution, ſo as no Action of Debt lies for the eſcape; yet being taken by the capias utlagat. the ſuffering him to eſcape is a breach of the Bond. Coke, It appears by the Record, That the capias utlagat. was awarded 25 Eliz. and was returnable 35 Eliz. ſo meerly void, for every Capias ought to be returnable the enſuing Term; for the miſchief which otherwiſe might befal the Priſoner, to be kept always in Priſon, as appears 21 H. 7. 16. 8 Ed. 4. 4. Dyer 175. and then he was never lawfully his Priſoner, and might well let him at large. Fenner conceived that being taken by Proceſs, he might not diſpute whether the Proceſs was lawfully or well awarded, but he ought by reaſon thereof to detain him; and the ſuffering him to go at large is a forfeiture of the Bond, but all the other Juſtices to the contrary; for although peradventure this arreſting by force of this Proceſs is excuſable in Faux Impriſonment by the Sheriff, 14 H. 8. 16. and 11 H. 4. 36. yet clearly it is no lawful Impriſonment; and as to the benefit or prejudice of a ſtranger, he ſhall never be ſaid to be a Priſoner; and the Goalers ſuffering him to go at large is lawful; and the Obligation is not forfeited thereby; wherefore conſultation was awarded.

Poſt 706. 1 Rol. 895. Co. 5. 88. b.

1 Rol. 928.

Co. 5. 28. b.

Co. 5. 89. b.

Bowyers Caſe, Hill. 27 Eliz. Rot. 750.

(18) Gould. 188. Moor 410. ERror upon a Judgment given in an Action of the Caſe for words ſuppoſed to be ſpoken at Bridg-North; in the County of Salop. The Defendant pleads that he ſpake them as a witneſs upon his Oath, upon an Iſſue tried at Chard. in the County of Somerſet. The Plaintiff replies de ſon tort demeſn, &c. and thereupon it was tried by a venire of Bridg-North; and Error thereof aſſigned, becauſe it ought to have been by a viſne of Chard where the juſtification aroſe; Ante 261. and it was held cleerly to be a miſ-trial; and not aided by the Statute of Jeofayles; wherefore the Judgment was reverſed.

Nevell *verſus* Sydenham.

(19) 2 Cr. 66. VAlore maritagii, againſt John Sydenham and Mary his Wife, Daughter and Heir of Buckland; and declares that the ſaid Buckland held of the Queen by Knights ſervice in Capite, and died, Mary his Daughter and Heire being within 14 years of Age; and that an Office was found, and the Queen ſeiſed the Ward, and granted it to Edward Nevell his Father, who died poſſeſſed, and made him his Executor, whereby he was poſſeſſed, and tendred a convenable Marriage to the ſaid Mary, when ſhe was within age, viz. one Badger, and that ſhe refuſed; wherefore, &c. The Defendant traverſeth the Tender, and it was thereupon demurred: and after Argument by the Serjeants, The Juſtices delivered their opinion ſeverally; Ant. 335. 2 Cr. 66. and Owen and Beamond held that the Plaintiff ſhould recover, becauſe the Marriage appertaineth to the Lord de mero jure, without any tender; and that there needed not any tender to be alledged; and when it is alledged, it is not material, for it ſhall never be traverſable; and that there needed not any tender, they relied upon the Statute of Mert. that the Marriage belongs to the Lord de mero jure, whether ſhe will marry her ſelf or not: ſo as the Lord hath Election to have the Marriage or the value of the Marriage; and it is quaſi a ſervice due to the Lord by reaſon of his Tenure which is due of it ſelf without any other Act to be done by the Lord, as well as his Relief or other duty; and the difference hath alwaies been betwixt the double value demanded, and the ſingle value, in the firſt there ought to be a tender of neceſſity, becauſe he is to have the Penalty upon the Heirs refuſal; but in the other not: It would alſo be miſchievous to Lords, if they ſhould not have it without tender; for it may be the Heir might be eſſoyned or beyond Sea at the death of his Anceſtor, and alwaies after until full age, or a cloſe Priſoner by the Queens command, ſo as the Lord by no poſſibility can make a tender; wherefore being a duty due unto him, it is reaſon he ſhould have it without a tender; and therefore the Traverſe is not good, and the Plaintiff ought to recover. Ant. 335. 2 Cr. 66. But Walmſley and Anderſon very ſtrong to the contrary, that there ought of neceſſity to be a tender; and that it is well Traverſable. Ant. 335. For although the Lord is to have the Marriage of the Heir mero jure (as the Statute is) it is true; but there he ought to do an Act to have it (viz. to make tender of Marriage) for without tender the Heir cannot make a refuſal; and it is not reaſon, the Heir ſhould pay for the value of his Marriage, where peradventure he would

would willingly have accepted thereof, if it had been offered him. And here ought two things to be done to have the Marriage. The one the Lords tender, the other the Heirs acceptance or refusal; and without the first Act done by the Lord, nothing accrues unto him; and the payment of the value of the Marriage is, and that the Land shall be retained until he pates the value of the Marriage, is a penalty inflicted upon him, as in Case of the double value; and therefore it is a good reason that there should be a tender in the one, as in the other Case; and the Register and Nat. Brev. and the book of Entries are all in point, that tender ought to be alledged; and therefore there is not any reason to say it should be vainly and idly alledged; and the Statute of Merton cap. 7. which is so si hæres pro Domino suo noluerit se martiare, hath been always expounded, that if upon request he will not marry, &c. So always there ought to be the Lords request, and for the mischiefs they are rather to be suffered then that the Law should be changed; and there would on the other side be as great mischief to the Heir; for if he should pay for her Marriage without tender, she might peradventure be one of such deformity that none will marry with her; and then what reason is there that he should pay for her marriage: And Walmsley said, in Case of a Female it is more clear; for the words of the Statute of Westm. 1. cap. 22. which gives the Lord two years, after she hath accomplished her age of 14 years to tender her Marriage, the Statute there is expresly, that the Lord shall tender her Marriage within the time; then against an expres Statute, it is no reason he should have it without tender; wherefore, &c. Et Adjournatur. See the Books cited. Dy. 255. 306. 2 H. 7. 9. 21 Ed. 4. 43. Temps H 8. forfeiture de marriage 7. 40 Ed. 3. 6. 31 Ass. 26. 35 H. 6. gard. 71. 24 H. 3. gard. 149. 18 Ed. 3. 18. 35 H. 6. 53.

Wells *versus* Partridg.

EJectione firmæ, of Lands in Uxbridge. The parties were at Issue; upon the evidence it appeared, that the Plaintiff was Lessee for three years of a Copyholder; and the Custom of the Manor was proved to be such, that a Copyholder there might let the land for 3 years. Anderson conceived that the Lessee of a Copyholder cannot maintain an Ejectione firmæ in any other manner; but if he might, it is clear he ought to shew the Estate of his Lessor at the first; and the Licence of his Lessor, and the especial custom to warrant that Lease, for otherwise being a general Count, it shall be intended of a Lease at the Common Law, which a Copyholder cannot make; as if the Heir in Burrough English brings a Mort daunceſter, he ought to shew the Custom in his Count, and declare according thereto; and he held the Action to be well maintainable; but he ought to shew the Custom; otherwise it is not good. But because there was other clear matter for the Defendant, it was passed over, and the verdict found for the Defendant. (20)

Ant. 462. Post 483. 535, 676, 717, 728.

Knight *versus* Rushworth.

ASsumpsit. The Case was that one Mary Rushworth had entred into a Bond of Two hundred pound to the Plaintiff; and Mary Rushworth gave all her goods to the Defendant to pay her Debts. The Defendant pretending that this Bond was read to the said Mary Rushworth as an Obligation of One hundred pound only and so void, assumed to the Plaintiff, that if he and two witnesses would Deponere before the Mayor of Lincoln, that the Ob- (21)

ligation was read to M. R. as an Obligation of Two hundred pound, that he would pay it. Whereupon the Plaintiff with two others, came before the Mayor of Lincoln; and there depoſed upon a Book accordingly; and hereupon brought this Action: whereto it was demurred. Yelverton for the Defendant moved, that this Action lies not, for there is not any conſideration beſides this Oath which is unlawful, and therefore void. Hearn, it is not material whether the conſideration be for the Plaintiffs benefit; for if it be any charge or trouble to the Defendant it ſufficeth, as in Albanies Caſe; and he conceived the Oath to be lawful enough, he being before the Mayor, not only by his Authority, but before him alſo as a witneſs. And 2 H. 4. and N. B. R. are, That if a Feme ſwears that ſhe will not ſue a Cui in vita, the Oath is not unlawful, and ſhe might be ſued pro læſione fidei in this Caſe in the ſpiritual Court, but becauſe the matter is meer Temporal, the Temporal Court will grant a Prohibition, which allows that the Oath is lawful. Anderſon, the Travail of coming before the Mayor is a very good conſideration; and truly the Oath is not illegal, being taken before him; and the ſmallneſs of a conſideration is not material, if there be any; and the Caſe cited of 2 H. 4. proves, that the Oath is not illegal; for the Spiritual Court ought not to meddle therewith being Temporal. But if a woman ſwears to marry ſuch a one; and ſhe be ſued in Court Chriſtian, pro læſione fidei, the ſuit is lawful, and no Prohibition lies in that Caſe; and if one takes an Oath before Arbitrators in the Countrey voluntarily, which have no Authority to take an Oath; it hath been puniſhed in the Star-chamber, being falſe, for its falſity. Walmſley accord. For Oaths are in two manners, viz. by compulſion, as before Judges who have Authority to take an Oath, or voluntarily by conſent of the party, which is alſo lawful, as 10 Ed. 4. 11. The Condition of an Obligation was to prove ſuch a thing before J. S. it is not to be doubted but that there it may well be by Oath before J. S. and the Oath being taken voluntarily and without compulſion is lawful enough; and whereas it was objected that the word being Deponere before the Mayor, is a word incertain. For Deponere is to lay down, it is certain enough; for to depoſe or lay down for truth, are Synonima's & tant amount. Beamond and Owen doubted herein at firſt, but afterwards they agreed with their Companions, that the conſideration was ſufficient and lawful; wherefore it was adjudge for the Plaintiff.

Ant. 67.

2 Cr. 381. Ant. 237.

Matthewſon *verſus* Lydiate, Quod V. Ant. Trin. 37. Pl. 20.

(22)

Ant. 408. Poſt 546.

The Caſe was now revived again upon a new Action brought; and the matter pleaded in Bar as before; and a Demurrer thereupon. Glanvil, moved that it was a ſeveral Deed, for every one Covenanted by himſelf that the one ſhould pay, &c. and that the other ſhould pay, &c. and therefore it is as ſeveral Deeds in one piece of Parchment; and in that regard although the Deed of the one be diſcharged by the breaking off the Seal, yet it remains the Deed of the other. Warberton, Although the firſt words have a Covenant ſeparatim, yet in the end is this Clauſe. Et ad performandum omnes conventiones prædict' every of them ſeparatim bound himſelf in a double freight, wherein every of them bound himſelf that the Covenants of his companions and his

own

 double after

own should be performed, which is joynt in it self. Walmsley and Beamond. The Covenant is, that every one binds himself, ad performationem omnium conventionum mercatorum prædictor' the which extends to every of them, Reddendo singula singulis, viz. to perform his own Covenants. Anderson, I doubt much thereof, for in the premises it is a joynt Deed, for as a joynt Demise by joynt Lessors to joynt Lessees, and the Covenants are in words several; so as if the one had released the Covenants to the one of the Lessees, that had not discharged the others, for their Covenants are several; But if a discharge of the Deed of the one be a discharge for all, I doubt much; wherefore the Court moved the parties to compound. Vid. Postea Hill. 39 Plac. 18.

Further *versus* Further, and others.

DEbt upon an Obligation against F. and three others Administrators of J. S. who pleaded that one J. D. had brought Debt in the Queens Bench upon an Obligation of One hundred pound against one of the Administrators, and recovered by a Nihil dicit, and that they had Riens in ses Maynes to satisfie over and above the said Debt; and it was thereupon demurred. Glanvill moved that this was not any Plea, for in regard the Defendant in the first Action might have abated the Bill by saying that he had Coadministrators not named, this recovery shall not bind any stranger; this recovery is also covenous being by default, and in proof thereof vide 9 Ed 4. 12. Anderson and Beamond held that it was a good Plea prima facie, for a stranger cannot falsifie a recovery by reason of Joyntenancy or Nontenancy, or by such dilatories, but only for matter of substance; and if the recovery be for a true Debt it is not reason but that the Administrator might suffer it to pass by default; and it is reason it should be allowed to all the others; and if there be any Covine, it is to be averred by the Plaintiff, for prima facie, it shall not be so intended, but that it is true, and if there be any Covine in it, he may falsifie it for that cause; and a Recovery against one Administrator shall bind him and all his Companions; and therefore it is reason it should bind all Estrangers; and of that opinion Owen and Walmsley said they were; but they would be advised, &c. (23) Ant. 41. 426.

Stapletons Case.

DRew moved the Court that one Stapleton of Yorkshire being Tenant in Tail, covenanted to stand seised in consideration of the Marriage of his eldest son, to the use of himself for life; and after to the use of his eldest son for his life, and after to the use of the first son of his eldest son, which should be in Tail; and that afterwards the eldest son had Issue one Gilbert Stapleton his eldest son. The Grandfather afterward upon great cause would sell part of the Land, and assure more in recompence to the son, and the Purchasors would not take any assurance unless the Infant (who was but four years of age) would suffer a recovery; and yet it was conceived that the Covenant did not alter any estate; and so it was adjudged in this Court in the Case of Blythman *versus* Blythman. Quod Walmsley, Beamond & Owen concesserunt; but yet to satisfie the purchasor he prayed, that a Gardian might be allowed to that (24) Ant. 279, 280.

that Infant, that a recovery might be ſuffered againſt him as Vouchee, whereto the Court agreed, and therefore admitted two gentlemen there preſent (the Infant being brought into Court) to be Gardians for him; and then a Recovery was had of that Land at the Bar wherein the Infant was vouched; and he by his Gardian appeared and vouched the common vouchee.

Ant. 172. Hob. 197. 1 Cr. 307.

Byron *verſus* Byron.

(25) 1 Rol. 909. DEbt as Adminiſtrator of Byron upon an Obligation; the Caſe was, that the Inteſtate died in Lancaſhire, but the Obligation was at London at the time of his death; and the Biſhop of Cheſter in whoſe Dioceſs the Inteſtate died, committed Adminiſtration to J. S. who releaſed to the Defendant; and the Archbiſhop of Canterbury committed the Adminiſtration to the Plaintiff; and this releaſe was pleaded in Bar, and it was thereupon demurred. Warberton, every Debt follows the perſon of the Debtee, and Cheſter is within the Province of York, where the Arch Biſhop of Canterbury hath nothing to do, Anderſon, Where one dies who hath goods in divers Dioceſſes in both Provinces, there Canterbury ſhall have the prerogative; otherwiſe there would be two Adminiſtrations committed, which is res inaudita. The Debt is where the Bond is, being upon a ſpecialty; but Debt upon a Contract follows the perſon of the Debtor; and this difference hath been oftentimes agreed, Vid. Dy. 305. And if the Archbiſhop of Canterbury hath not any prerogative in York, but that ſeveral Adminiſtrations ought to be committed; yet at leaſtwiſe Adminiſtration for this Bond ought to be committed by the Archbiſhop of Canterbury; wherefore this releaſe is not any Bar.

1 Rol. 908.

Frampton *verſus* Stiles.

(26) 2 Rol. 22. Co. Lit. 229. a. DEbt upon an Obligation conditioned for the performance of certain Covenants, in quadam indentura hic in curia prolata; and in truth the Deed was not indented, but it was written Hæc Indentura fact. per curiam. And it is not any Indenture, although there be two parts thereof; wherefore becauſe the Defendant did not ſhew an Indenture by him pleaded, it was adjudged for the Plaintiff, 5 Co 20 B.

Anonymus.

(27) DEbt per vers Executor, &c. As Executor he pleaded Nunques and an eſpecial verdict found, that Adminiſtration of the goods of the Teſtator was committed to the Wife of the Defendant who is dead, and that he kept bonam partem bonorum in his hands, and ſold them. Williams moved that this verdict was void for the Incertainty; for bonam partem is altogether incertain but it was held to be well enough; for if he detain any part, it makes him Executor de ſon tort, &c. Wherefore it was adjudged for the Plaintiff.

Termino Paſchæ.

Triceſſimo octavo ELIZABETHÆ, in Banco Reginæ.

Hyde *verſus* the Dean and Chapter of Windſor Paſchæ 37 Eliz. Rot. 162.

ERror upon a Judgment in the Common Bench, in a Writ of Covenant, the Caſe was ſuch: The Dean and Chapter 30 H. 8. let an Houſe to A. for years by Indenture, and A. Covenanted to Repair the Houſe at all times neceſſary during the term: A. grants his Eſtate to Hyde, and dies. And againſt Hyde for not repairing, Covenant was brought, who pleaded, Quod non permiſit domum prædictam eſſe diſcoopertam, & ruinoſam, at any time neceſſary, &c. And hereupon Iſſue was joyned, and found for the Plaintiff, and adjudged for him, and Error thereof brought. The firſt Error aſſigned was; That this Action lies not againſt the Aſſignee, in regard he did not Covenant for himſelf and his Aſſignees, and therefore it determines by his death, which Gawdy and Fenner agreed, That this Covenant ſhall not bind longer, then during the Life of the Leſſee himſelf, as Dy. 114. A Leſſor covenants to pay all Quit Rents during the Term, the Leſſor dies: No Action lies for any Quit Rents after his death. But Gawdy ſaid, It did not appear here, but that the Leſſee is yet alive: For he doth not aver that he is dead, and otherwiſe it ſhall not be intended, that he is dead. But Fenner e contra therein, Becauſe it is to enable the Plaintiff to the Action, he ought therefore to aver it. But they all held, That Covenant lay in this Caſe againſt the Aſſignee by the Statute of 32 H. 8. For it is a Covenant which runs with the Land, but otherwiſe it were, if it were to build a new houſe. A ſecond Error aſſigned was, That here was not any Iſſue joyned, for it is non permiſit domum eſſe diſcoopertam ad aliquod tempus neceſſ. Quaſi diceret, That it would be ſometimes neceſſary to ſuffer the houſe to decay. But the Court held it to be only an Iſſue miſjoyned, and ſo aided by the Statute; Wherefore it was adjourned. Vide poſtea Paſchæ 39. Pl. 3. 5 Co. 24.

(1) 1 Rol. 521. Poſt 552. Moor. 399.

1 Rol. 521.

Banks *verſus* Whetſton, Hill. 37 Eliz. rot. 614.

DEtinue of money, (not in Bag, or Cheſt) And it was thereupon demurred, whether the Action lay; And, without Argument, adjudged for the Defendant, That the Action lay not: for Detinue ought

(2) Moor 394. Co. Lit. 286. b.

ought always to be of things certain, and which may be known to be delivered: and moneys be incertain, and one piece cannot be known from another. And therefore, in an appeal of Robbery for money, If the Defendant gages battaile, it is no Plea, That he was taken with the Bayner: for the Bayner cannot be of a thing not to be known.

Humphrys Caſe.

(3) JOhn Humphrys was endicted upon the Statute of 8 H. 6. of Forceably entring into a Cloſe, called Serjeant Herns Cloſe in D. in the County of Lincoln; Shurley took exceptions thereto, That it was incertain; So as there cannot be any Reſtitution, But he ought to have ſaid, That the Cloſe contained 20 acres of Land more or leſs, as in truth it was, Sed non allocatur. For Popham ſaid, It had been adjudged, That an Ejectione firmæ lay of a Cloſe well enough, and therefore a fortiori upon an Endictment.

Co. 11. 55. Ant. 116. Ant. 235.

Norton *verſus* Riſhden. Trin. 37 Eliz. rot. 483.

(4) DEbt upon an Obligation contained, That if he appeared before the Plaintiff at D. ſuch a day, that then, &c. (which was at the Commiſſaries Court in Oxford) The Defendant ſaith, That he appeared before the Plaintiff at S. before the day, which he accepted of, and allowed for his ſaid appearance to be at D, &c. And it was thereupon demurred, and without Argument adjudged for the Plaintiff: Becauſe the Condition was to do a collateral thing, and the Acceptance of another thing cannot diſpenſe therewith, nor is a diſcharge of the Obligation, Dy. 1.

Co. 9. 79. a.

Framſon *verſus* Delamere. Trin. 37 Eliz. rot. 1079.

(5) ASſumpſit, and declares. Whereas one Adderly levied a plaint before the Sheriffs in the Counter, London, againſt one Malyns, which Malyns was thereupon Arreſted and Impriſoned, until the Plaintiff, at the Defendants requeſt, became Bayl for the ſaid Malyns; That the Defendant aſſumed to the Plaintiff to ſave him harmleſs from that Bayl: And alledgeth further, That the ſaid M. was condemned at the Suit of Adderly, and that upon a Capias awarded againſt him, it was returned, Non eſt inventus. Whereupon the Plaintiff was taken in Execution upon this Judgment, Quouſque he paid the ſaid condemnation. The Defendant pleaded Non aſſumpſit, and it was found, That the ſaid Adderly levied a plaint againſt the ſaid M. who was arreſted thereupon, and the Plaintiff, at the Defendants requeſt, became Bayl for him at the Suit of Adderley: And that afterwards the ſaid Adderley declared againſt the ſaid M. by the name of W. Adderbye, and thereupon recovered, and the Plaintiff upon it taken in Execution by reaſon of that Bayl. And that the ſaid Adderley had not been known by any

any other name then Adderley. And if upon the matter the Plaintiff be onerabilis in lege ut manucaptor M. upon that Judgment, they found for the Plaintiff, and Aſſeſs for Damages 80 l. Et ſi non &c. they found for the Plaintiff, and Aſſeſs for Damages 1 d. And hereupon, after Argument, the opinion of the Court was, That he was not onerabilis in lege, &c. So he had but a penny Damage. For the Bayl was at the Suit of Adderley, and from him the Defendant was to ſave him harmleſs: But this condemnation was at the Suit of Adderbye, who is another Perſon, and cannot be intended all one; and he was not Bayl to that Suit, and therefore not onerabilis in lege thereto. But this appears to be but the default of the Clerk, which peradventure might be amended, if the Record were before us: Becauſe, it is but the variance of one Letter of the Bayl from the Plaint, which is in nature of an Original. But yet it cannot be now amended by us, becauſe we have not the Record here; Nor are we Judges of the ſaid Record, and therefore he never was in lawful Execution thereupon. But yet in regard the Serjeant took him in Execution by proceſs of Law, that peradventure ſhall diſcharge him of the falſe Impriſonment: And the Plaintiff for the money, which he hath paid to Adderley thereupon, in diſcharge of that Execution, ſhall have an Accompt againſt Adderley to have it again. Wherefore, &c. But the Court gave not any Judgment for the Plaintiff, although it is clear: Becauſe the Defendant had pleaded Non aſſumpſit, and it is found Quod Aſſumpſit: although that there is not any breach of Promiſe, nor any Damage to the Plaintiff; the Plaintiff upon this Verdict ſhall recover the 1 d. Damage found by the Jury. But let him adviſe him firſt, how he take any Judgment thereupon.

Denyſon *verſus* Burgh.

ACtion upon the Caſe for theſe words, I have a matter againſt D. the Plaintiff, who hath ſtoln by the high-way ſide. After Not Guilty pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, That the Action lay not for theſe words: For it ſhall not be intended by them, that he committed any Robbery, or Felony, for he might ſteal Sticks or Stones, &c. And of that opinion was the Court: Wherefore it was adjudged for the Defendant. (6)

Conesbie *verſus* Rusky.

IT was held by Popham and Fenner upon Evidence, That where the Baron was ſeiſed of a Manno in right of his Feme, and Let a Copy-hold, parcel thereof, for years by Indenture, and died: That it ſhall not deſtroy the Cuſtom as to the Feme, but that, after the death of her Baron, ſhe might Demiſe it by Copy as before. The ſame Law is, If Tenant for Life of a Manno lets a Copyhold, parcell of the Manno, for Years, and dies, It ſhall not deſtroy the Cuſtom as to him in Reverſion. (7) 2 Rol. 271.

Langton

Langton *verſus* Gardiner.

(8) Moor 428. ACtion upon the Caſe, againſt the Sheriff of the County of Surry. Whereas the Plaintiff ſued a Latitat againſt D. intending to Declare againſt him in Debt upon an Obligation, and thereupon the Defendant Arreſted him, and at the day returned Cepi corpus, & paratum habuit, &c. and for that he appeared not at the Day, he bought this Action: and it was thereupon Demurred, and the Defendant ſhewed to the Court, That he had taken Bond of the party for his appearance, and was compellable by the Statute of 23 H. 6. to let him to Bayl, and therefore it was not reaſon he ſhould be now chargeable. But the Court ſaid, It might peradventure have been a good Plea, if it had been pleaded, but, it not being done, the Court cannot intend it, nor take coniſance thereof: Wherefore it is reaſon, that for this fallity he ſhould be charged at the Suit of the party; Wherefore it was adjudged for the Plaintiff.

Neve *verſus* Lyne. Mich. 36 & 37 Eliz. Rot. 263.

(9) ERror upon a Judgment in an Aſſumpſit in the Common Bench. The Error aſſigned was, That there was not a ſufficient conſideration to maintain the Aſſumpſit: For the Plaintiff declares, Whereas there were divers controverſies betwixt the Plaintiff, and J. S. The Defendant, in conſideration that the Plaintiff would ſubmit himſelf to the Arbitration of J. D. for thoſe matters, Aſſumed, &c. And alledgeth, that he ſubmitted himſelf, and that the Defendant had not performed his promiſe &c. Atkinſon moved, That this is not any Conſideration, for it is not of any value; For although he ſubmit himſelf, he may revoke it the next day, or preſently: But if it had been in conſideration that he would ſubmit, and ſtand to the Award of J. D. it had been otherwiſe. But all the Court e contra: For it ſhall be intended a Submiſſion with an abiding to the Award, for ſo was the intent of the Parties: And, if he had revoked it, the Defendant ought to have pleaded it, otherwiſe it ſhall not be intended. Wherefore the Judgment was affirmed.

Oland *verſus* Burdwick. Hill. 37 Eliz. rot. 924.

(10) Gould. 189. Co. 5. 116a. Mo. 314. 1 Rol. 806. TReſpaſs. Upon a ſpecial Verdict; The Caſe was: A Feme Copyholder, durante Viduitate, after the Cuſtom, Sows the Land, and before Severance of the Corn, takes Baron: Who ſhould have the Corn was the Queſtion betwixt the Baron and the Lord of the Manor. And, after Argument, it was adjudged for the Lord (the Defendant) that he ſhould have the Corn, by the Opinion of Popham and Clench, Contradicente Fenner, & abſente Gawdy: For Clench ſaid, There was a difference, when the Eſtate of him who Sows the Land is determined by his own Act by a caſualty, and when by the Act of the Law, or by another man: And therefore in this Caſe, if the Feme had Let the Land, and the

the Leſſee had ſown it, and afterwards the Feme had taken Baron, yet the Leſſee ſhould have the corn. But, if the determination be by the Act of him, who ſowes the land, it is otherwiſe. As if a Leaſe be made upon condition, That he ſhall not commit waſte; The Leſſee ſowes the land, and afterwards commits waſte, The Leſſee ſhall loſe the corn: which Caſes Popham agreed. And he further ſaid, If Tenant-at-will ſows the land, and afterwards determines his eſtate by his own Act, by diſagreeing to the Leaſe, or otherwiſe, the Leſſor ſhall have the corn. But it is not ſo, when his eſtate is determined by the Act of the Leſſor. And if Tenant for life ſowes the Land and ſurrenders, or makes a Feoffment, and the Leſſor enters, he ſhall have the corn: whereto Fenner agreed. So it is here, when the eſtate of her, who ſowed the Land, is determined by her own Act, for Volenti non fit injuria. Fenner e contra; The difference will be, when the Eſtate is determined before the ſeverance by incertainy, by the forfeiture of the Leſſee; or, for a condition broken. So as the Leſſor enters for a Tort done, or by Title Paramount, the Leſſor ſhall have the corn: And when by limitation of the eſtate, as here: And therefore if a Leaſe be made to Baron and feme during the coverture, and the Baron ſows the land, and afterwards he ſues a divorce, yet he ſhall have the corn; which Popham and Clench agreed: For that it is not meerly by the Act of the party, but by the Judgment of Law. Fenner; If a Leaſe be made for ſeven years upon a condition on the part of the Leſſee, at the end of the ſeven years to be performed, to have it for life; the Leſſee the laſt years ſowes the Land, and performs not the condition, yet he ſhall have the Emblements. But Popham and Fenner denied it. And Judgement was given for the Defendant. Vid. 37 H. 6. 35. 40 Ed. 3. 5. 33 Ed. 3. Treſpaſ. 254. 5 Co. 116. Co. 5. 116. a. Co. Lit. 55. b.

Warner and Collins Caſe.

WHo were indicted upon the Statute of 8 H. 6. and, becauſe it was not alledged to be manu forti, although it were vi & armis, the Endictment was ruled to be inſufficient, and the Parties were diſcharged. (11) Ant. 93.

Jeremy *verſus* Lowgar.

ACtion upon the Caſe, and declares, Whereas he was ſeiſed of land in right of his wife for the life of the Feme of a leaſe by J. S. and they let it to the Defendant for years, the Defendant had burnt the houſe; and thereupon the Action was brought. The Defendant pleads to Iſſue, and found againſt him, and it was now moved in arreſt of Judgment. Firſt, That this Action lies not in regard it was the Plaintiffs folly to make a leaſe, and not provide by covenant, otherwiſe; That the Leſſee ſhould not commit waſte: Which is the reaſon, That the Leſſor had not any Action at the Common Law to puniſh waſte. But Fenner and Clench (Popham and Gawdy abſentibus) held the contrary, by reaſon of the charge, wherewith he is cgargeable over. Secondly, It was moved, That, if an Action did lie, Yet this was not maintainable by the Baron only, without his Feme: for the Tort, which is done, is done to the eſtate, which he had in right of his Feme. And ſhe is to (12) Poſt. 777. 1 Cr. 187.

have the loſs, (viz. of the land) as alſo to anſwer the Damages, if ſhe ſurvives her husband: and it may be the Baron ſhall never be at any loſs, for it may happen, that the Action will not be brought
Ant. 357. againſt him in the life of the Feme, and then he is not chargeable, and it can never be brought againſt him alone: wherefore it is reaſon, that the Feme ſhould be joyned in this Action. But the Court doubted thereof, Et adjournatur.

Burrough *verſus* Taylor. Trin. 27. rot.

(13) EJectione firmæ. Upon a ſpecial Verdict, The Caſe was: That the
Co. 4. 72. b. Queen let lands in Brewern to the Defendant for years, rendring Rent ad Receptum Scaccarii apud Weſtmon. ſeu ad manus Receptorum, vel Ballivorum Noſtrorum permiſſorum pro tempore exiſtentium, annuatim ſolvend. With a Proviſo, That the Leaſe ſhould be void upon Non-payment. The Queen grants the Reverſion to Dodington, who demanded the Rent at the day at the Receipt of the Exchquer at Weſtmin. and the Tenant tendred it upon the land. And for Non-payment of the Rent entred, and let it to the Plaintiff: And it was moved, That Judgment upon the matter ſhould be for the Plaintiff. For a ſpecial place of payment being appointed, the Demand, and Tender ought to be there, and not elſewhere, as in 33 H. 8. and Kidwelleis Caſe. Then here, The Receipt of the Exchequer apud Weſtmon. is the Local denomination of the place, where the payment ſhould be, & not for the Queens Receipt thereof only: But all the Juſtices (abſente Gawdy) held the contrary, That the Tender need not be at the Receipt of the Exchequer. For Popham ſaid, That when the Queen makes a Leaſe,
Co. 4. 73. a. reſerving Rent at the Receipt of the Exchequer, or by her Receiver, &c. It is no more then the Law appoints; For, without thoſe words, the Law is, That the Farmer ought to pay it there, or to the Receiver for the County, and ſo it hath been Ruled before theſe times, and it is clear if theſe words (at the Receipt of the Exchequer, &c.) had not been in the Leaſe, the Patentee of the Reverſion ſhould not take advantage of the Condition without a demand upon the Land, and therefore not here. And the limitation of the payment at the Receipt of the Exchequer at Weſtmin. doth not alter the Caſe. For the Leſſee is bound to pay it at the Receipt of the Exchequer, in whatſoever place it is: as where it is adjourned to Sion, or any other place, the Farmers ought to pay their Rents there, and not at Weſtmin. The nomination then of Weſtmin. in the Leaſe is not material; But it is becauſe the Receipt is moſt uſually at that place. And of that Opinion were the other Juſtices in omnibus, and therefore Rule was given. If other matters were not ſhewn, That Judgment ſhould be entred for the Defendant, 4 Co. 72. b.

Heigham *verſus* Beſt. Trin. 36 Eliz. rot. 972.

(14) TRespaſs upon Demurrer. The Caſe was; a Vicarage was en-
2 Rol. 54. 335. Owen 58. 74. dowed to have the Tythes of the third part of the Manor of

D.

D. and whether the Vicar thereby should have the Tythes at the third part of the Demeasns, and of the Free-holders also, was the Question. And, after Argument at the Bar, it was resolved by Popham and Fenner (for the other Justices were not in Court) That the Vicar should have Tythes as well of the Freeholders, as of the Demeasns. For Fenner said, That an Endowment is to be construed according to the intent of the parties, which (without doubt) was, That the Vicar should have Tythes throughout the Mannor. And therefore, if the Queen grants unto me Conusance of all Pleas within the Mannor of D. I shall have Conusance of Pleas between the Freeholders of the Mannor. Popham; If the Queen grants me Free-Warren within my Mannor of D. I shall have it within my own Demeasns only. For if otherwise, the Queen should impose a charge upon another person, which the Law will not suffer: So it is, if the Lord grants a Rent-charge out of his Mannor. But if the Queen grants unto me Felons goods, or Wayfs and Strays, within my Mannor, I shall have it in the Lands of the Freeholders. For it is a liberty due to the Queen, which she may grant, and is not any charge to the Subject: for she hath it in every mans Land, and therefore may grant it to any other. So this composition doth not create a new charge, but is a disposing of the ancient, which was due by the Tenants; for it runs through all the limits of the Mannor, as well to the Freeholders, as to the Demeasns. But if the Lord had made such a grant before the Council of Lateran, It would not have charged his Freeholders, but his own Demeasns only. And it was adjudged accordingly for the Vicar. 2 Rol. 54.

Butler *versus* Wallis. Trin. 37 Eliz. rot. 206.

TRespass the Defendant pleads, That the place where, &c. is the Freehold of J. S. and that he entred by his command. The Plaintiff replies, That, as to one Acre, it is the Freehold of J. S. which he let unto him at will. Absque hoc, That he entred by command of J. S. As to the residue, that it is the Freehold of J. S. who was bound unto the Plaintiff in a Statute, and that the land was extended. And afterwards, viz. 28 Octob. 36 Eliz. a Writ of Liberate was awarded; and that the Sheriff by force of that Writ afterwards, viz. 27 Octob. 36 Eliz. delivered unto him that land in execution, by vertue whereof he entred, and was possessed until, &c. And thereupon the Defendant demurred. And for the first part of the Replication, it was held clearly to be good, and that by this special pleading, the command is traversable. And as to the second part it was moved, that the Replication was not good: For it doth not appear that the possession was delivered by the Sheriff, by vertue of the Liberate. For the Liberate bears date 28 Octob. and he pleads delivery of the possession upon the 27 of Octob. before, which is clearly ill, and without warrant. And of that Opinion was Gawdy, but the other Justices e contra. For when the land is seised into the Queens hands, and afterwards a Writ of Liberate is awarded, the Party may presently thereby enter without the Sheriffs delivering of possession. As where an Ouster le maine is awarded, the Party may enter presently, as 4 Ed. 3. is. And (15) 1 Rol. 737. 8. 1 Cr. 586. Co. 4. 67. Post. 523. 1 Rol. 738.

here, the land being certain, which is extended, the Party may well enter therein after the Writ of Liberate awarded. Popham alſo held, In regard it is pleaded, that the Sheriff Virtute Brevis delivered the Land in execution 27 Octob. thoſe words (the 27 of Octob.) are void. For it appears it could not be then delivered Virtute Brevis. Wherefore it was adjudged for the Plaintiff.

Ant, 368.

Bird *verſus* Wilford. Trin. 37 Eliz. rot. 394.

(16) ERror of a Judgment in Debt in the Common Bench upon confeſſion. The Error aſſigned was, That Wilford brought Debt upon an Obligation, as ſucceſſor of Brandon late Chamberlain of London, upon an Obligation made unto him, Solvendum to him, and his Succeſſors, and alledgeth the Cuſtom of London, that the Chamberlain there hath uſed from time, &c. to take Bonds to him, and his Succeſſors. And that there is a Cuſtom there, That the ſucceſſors of the Chamberlain ſhall ſue thoſe Bonds in any Court, and further alledges, That all their Cuſtoms are confirmed per Parliament. 7 R. 2. And the Plaintiff had thereupon Judgment, whereas by Law this Obligation, being a Chattel, cannot go to a ſucceſſor. And for this Cauſe Foſter moved, That it was Error, and the Judgment ought to be reverſed: For there is a difference, as it appears, 20 Ed. 4. 2. betwixt an Obligation made to a Corporation, which conſiſts of one ſole perſon, as Parſon, Prebend, &c. For that ſhall not go to his ſucceſſor; For he may make an Executor, who ſhall have the benefit thereof. But of a Corporation, which conſiſts of divers perſons; as Dean, and Chapter, &c. which cannot have an Executor; There the Obligation made to one ſhall go in ſucceſſion: And here by the death of the Chamberlain, in the interim, before a ſucceſſor ſhall be Elected, none can have the Action: and if it ſhould go to the ſucceſſor only, the Action is ſuſpended: and a perſonal Action once ſuſpended is gone for ever. But on the other part it was moved, That in regard it is alledged to be a Corporation for that purpoſe to take Obligation, it may be well allowed, and ſhall go to the ſucceſſor, and not to the Executor, and ſo be 8 Ed. 4. 18. And ſo was the Caſe ruled here, Paſch. 21 Eliz. Mabbs Caſe. And Godfry ſaid, That it was one Taylors Caſe, ſo ruled accordingly: Where Debt was brought by the ſucceſſor of the Chamberlain, in the Mayors Court, upon ſuch an Obligation, and a Recovery and Error thereof brought, and before Manwood, and other ſpecial Commiſſioners for this purpoſe the Judgment was affirmed. And of that opinion were Gawdy and Fenner (Popham and Clench abſentibus,) For the Chamberlain is a ſpecial Corporation to that purpoſe, and an Obligation may as well go in ſucceſſion, as land, as Dyer 48. is; And therefore the Cuſtom being averred to be ſo, it is lawful and reaſonable, &c. Wherefore, they gave Rule, That, if other matter were not ſhewn to the contrary upon the firſt day of the next Term, that the Judgment ſhould be affirmed. Which accordingly was then affirmed. Note, In Mich. 43. and 44 Eliz. in the Queens Bench betwixt Wilford and Hutten, Debt was brought upon ſuch a Recogniſance made to Brandon his predeceſſor, alledging the

Co. 4. 65.
Poſt 682.

Poſt 682.

the Cuſtom of London for the Chamberlain to take Obligations, or Recogniſance to them, and their ſucceſſors, for Orphans portions. And, after Judgment for the Plaintiff, Error was brought thereof in the Exchequer Chamber, where the Judgment was affirmed.

Sherley *verſus* Sackvile. Trin. 27 Eliz. Rot. 498.

ERror of a Judgment in the Common Bench in Debt upon an obligation. The Error aſſigned was, Becauſe Surrey was in the Margin of the Declaration, and the Defendant therein was named of D. in the County of Suſſex, and that he made that Obligation at Darking in Comitat. prædict. and upon Non eſt factum pleaded, it was tried by the County of Surrey, and thereupon Error brought; for Comitat. prædict. refers to the County laſt named, which is the County of Suſſex; ſo a Mis-Trial: Sed non allocatur; for it ſhall have relation to the County where the Action is brought, and that named in the Margin for the other County mentioned was by way of recital, and therefore it ſhall not relate thereto. Wherefore the Judgment was affirmed. (17) Ant. 436.

Alſop *verſus* Cleydon.

ASſumpſit. A ſpecial Verdict was found: and thereupon adjudged for the Defendant, and it was now moved, Whether the Defendant ſhould have coſts by the Statute of 23 H. 8. 15. for it was alledged, that that is to be intended where the Plaintiff is nonſuited, or a general Verdict paſſeth againſt him; ſo as it appears that he had not any cauſe of Action. But the Court ruled, That he ſhould have coſts; for a ſpecial Verdict is as well a Verdict for him, for whom it is found, as a general Verdict, and there is not any difference, when Judgment is given thereupon, but it is as if a general Verdict had been given for the Defendant. Wherefore, &c. (18) Moor 406. 23 H. 8. c. 15.

Portman *verſus* Morgan.

EJectione firmæ of 30 Acres of Land in D. and S. The Defendant was found guilty of 10 Acres, and Quoad reſiduum, Not guilty, And it was moved in Arreſt of Judgment, That it is uncertain, in which of the Vills this Land lay, and therefore no Judgment can be given, nor any Execution. Sed non allocatur, and it was adjudged for the Plaintiff; for the Sheriff ſhall take his information from the party, for what 10 acres the Verdict was. 29 H. 8. Dy. 34. (19) Ant. 265.

Clifton *verſus* Gybbon.

ASſumpſit: The Defendant aſſumed upon good conſideration to make ſuch aſſurance of ſuch Land, as the Plaintiffs Counſel ſhould adviſe: The Plaintiff himſelf, without any Counſel, or advice of any Counſel, requires ſuch an aſſurance to be made; (20) 1 Rol. 466.

Whether the Defendant be bound to make it, was the Queſtion: and it was Ruled by the Court that he ought; for to have adviſe of Councel, is but for the ſtrengthening of his aſſurance: and if the Plaintiff at his own peril will enquire it of himſelf, the Defendant ought to do it as he requires. Wherefore it was adjudged accordingly for the Plaintiff, 5 Co. 19. b. Vid. Paſ. 35. B. 4. Placito 8.

Co. 5. 19. b. Ant. 298.

Weare *verſus* Woodliff.

(21) ASſumpſit: The Parties being at Iſſue, and a Ven. fac. awarded, and returned, and afterward a Diſtringas, the matter was before the Juſtices of Niſi prius in Exon, but it did not appear upon the Dorſe of the Diſtringas, that it was returned by the Sheriff, there being no return at all upon it, and this matter was alledged in Arreſt of Judgment: And a Preſident for that purpoſe cited betwixt Stayner and James, 35 Eliz. where for this cauſe Judgment was reverſed: But all the Juſtices held, That, for as much as it is in the ſame Term wherein it came in, it may be well amended upon examination of the Sheriff, that he intended to return it, and the Return ſhall now be made thereto: But if it were in another Term, it cannot be amended. Wherefore it was ordered, That the Sheriff ſhould be examined, and if it appeared, that he intended to return it, and that it was tried by the ſame Jury, as it ought to be, that it ſhould be amended: and it was afterwards amended, and the Plaintiff had Judgment.

Ant. 310. Ant. 340. 1 Cr. 563.

Alſton *verſus* Pamphyn.

(22) ACtion upon the Caſe for ſtopping of a way to his Free-hold in Newton in Norfolk. Upon Not guilty pleaded, it was found for the Plaintiff, and now moved in Arreſt of Judgment, That in reſpect it is a Nuſance to his Freehold, he ought to have had an Aſſiſe, and could not have an Action upon the Caſe, vid. 2 H. 4. 11. 21 H. 7. 30. Dy. 250. But all the Court held, That he might have an Action upon the Caſe, or an Aſſiſe, at his Election: And Popham ſaid, he had ſeen it ſo in experience divers times. Wherefore it was adjudged for the Plaintiff.

Co. 9. 112. b. Poſt 845. Ant. 199.

Bedel *verſus* Sir Edw. VVingfield.

(23) EJectione firmæ, of ſix acres of Paſture. The Record of the Niſi prius was 6 acras Parturæ, and it was tried, and found for the Plaintiff, and now moved, That this word Parturæ might be amended, and made Paſturæ, according to the Record, which is the Original; for it was but the miſpriſion of the Clerk: and it was ſo Ruled by the Court, and it was amended, and Judgment entred for the Plaintiff.

Ant. 340.

Willoughby

VVilloughby *verſus* Gray. Paſch. 37 Eliz. rot. 483.

ERror of a Judgment in the Common Bench. The Error aſ- (24)
ſigned was, becauſe the Ven. fac. bare Date 24 Decemb. which 1 Rol. 204.
was out of Term: And it was ruled to be no Error, but aided by Owen 59.
the Statute of Jeofailes. So it hath been ruled where a Ven. fac. Moor 465.
bare Teſte upon the Sunday, that it was aided by the Statute. A Noy 57.
ſecond Error aſſigned was, That the Writ was made returnable coram Juſticiariis Noſtris, and doth not ſay apud Weſtm. Sed non allocatur, for it is neceſſarily intended. Thirdly, the Writ is Et habeas ibi nomina, and leaves out Juratorum. Sed non allocatur, for it is meerly a miſpriſion of the Clerk; wherefore it was awarded, that it ſhould be amended, and the Judgment was affirmed.

Bedingfield *verſus* Feak.

PRohibition. The Caſe was ſuch. In the Village of D. in Norfolk (25)
there hath been a Parſonage, and Vicarage to the Church 1 Rol. 643.
thereof, time whereof, &c. And the Parſons have always had the 2 Rol. 310. 335
great Tythes, and the Vicar the ſmall Tythes; And that the Parſons for forty years have had the Tithes of ſuch a Field, viz. the Corn: And it was now planted with Saffron, and the Vicar ſued for the Tythes thereof, and the Parſon ſued a Prohibition, and it was thereupon demurred. Coke moved, That it well lay; For by the Statute of 2 Ed. 6. Tythes ſhall be paid, as they had been paid for forty years before: which had always been to the Parſon: And although the Land be now otherwiſe imployed, yet the Parſon ſhall have the Tythes thereof: And therefore it hath been adjudged here in the Caſe of Shipdam-Park in Norfolk, where 10 s. was alway paid for the Tythes of all things renovant within the ſaid Hob. 39.
Park, and afterwards the Park was diſparked, and converted into arable Land; yet no other Tythes ſhould be paid but the 10 s. Popham; It was otherwiſe ruled in the Exchequer, in Maſter Worths Caſe, for a Park in the County of Sommerſet. Fenner; The Law is certainly, as it is cited in that Judgment in this Court. And the Clerks ſaid, That they had divers Preſidents in Court according to the Judgment cited. Popham, The difference is, when the Preſcription is to pay Money for all the Tythes of ſuch a Park, and there peradventure, if it be diſparked, he ſhall not pay any Tythes; and where it is to pay the ſhoulder of every Buck, or a Doe at Hob. 40.
Chriſtmas, for all Tythes of the Park; There, if it be diſparked, Tythes Moor 909.
ſhall be paid as of other Land. And in the principal Caſe he held, That 1 Cr. 28.
the Vicar ſhould have the Tithes of Saffron, as minutæ Decimæ. 1 Rol. 643.
For notwithſtanding that Tythes had been always paid for that Moor 863.
Land to the Parſon, yet being converted to another nature and uſe, it ſhall be paid to the Vicar, as if it had been converted into an Orchard. So, if the Vicar is to have all the Hay, if the Meadow be converted into arable, the Parſon ſhall have it; ſo e converſo. Wherefore a Conſultation was awarded.

Gawen

Gawen *verſus* Ludlow.

(26) Moor. 403. 1 Rol. 485. 2 Rol. 278.

REplevin. The Defendant at the firſt appeared, and afterwards, upon pleading and Demurrer, Judgment being for the Plaintiff, and a Writ of Inquiry of Damages awarded, returnable Octab. Mich. the Sheriff returned the Inquiſition; but upon the day of the Eſſoyns Octab. Mich. and for this cauſe exception was taken, That it was not well executed, for no Writ returnable Octab. Mich: can be executed upon the ſame day of the Return thereof. And Popham at the firſt was of that Opinion. But Gawdy, Fenner, and Clench, e contra; Becauſe upon all the day of Octab. Mich. the Writ might have been executed; for the Writ is onely to have the Writ, at the ſame day. Afterwards being moved again, the Caſe of Buckleer and the Queen, in a Quare impedit, was remembred, where the Writ of Inquiry of the value was executed the firſt day of the Return, but the Jury did not give their Verdict, until two dayes after, and it was adjudged to be good; for the Jury being charged the firſt day, although they gave not their Verdict until two days after, it ſhall not prejudice the Party; but the Verdict being given ſhall relate to the firſt day of the Return, and ſhall be ſaid to be executed upon the firſt day, for it ſhall have relation to the firſt day. Wherefore Popham agreed with them, that the Writ was well executed. Vid. 33 H. 6. 45, and 46 Paſ. 32 B. Placito 15. antea. fol. 180.

Poſt 761. Ante 18c.

Wright *verſus* the Mayor and Commonalty of Wickham. Intratur Trin. 37 Eliz. rot. 242.

(27) Moor 413. Owen 21. 2 Rol. 757. 788 2 Rol. 412. 3.

ERror, To reverſe a Fine levied of 120 Acres of Land, by Baron and Feme, to the Defendants. The Error aſſigned was, That the Writ of Covenant, upon which the Fine was levied, did bear Teſte 10 Auguſti 12 Eliz. returnable Menſe Michaelis eodem Anno (which was 27 Octob.) and that a Dedimus poteſtatem iſſued to certain Commiſſioners to take the Conuſans, which did bear Teſte 11 Auguſti in the ſame year, and that the Feme, from whom he claimed, died 17 Octob. eodem Anno, before the return of the Writ of Covenant. (Nota, He entituled himſelf as heir to the Feme, but neither in the Writ, or aſſignment of Error, ſhewed how heir, or that the Lands were the Lands of the Feme) The Defendants pleaded, That, after the Fine levied, the Plaintiff did enfeoff J. S. of the ſaid Lands: The Plaintiff replied, That he did not enfeoff, &c. and upon that they were at Iſſue, and it was found, that he enfeoffed J. S. of 20 Acres, parcel of the 120 Acres, but not of the reſidue. Snag. for the Plaintiff prayed, That the Fine might be reverſed for the 100 Acres, of which no Feoffment was made. But first an Exception was taken to the Aſſignment of the Error, viz. That the Feme Conuſor died, before the return of the Writ, which is contrary to the Record, and not to be admitted. But Godfrey, for the Plaintiff, anſwered, That the difference is between a Conuſans taken in Court, which is always after the Writ returned, there the Party cannot ſay the Conuſor was dead before the Writ returned; but againſt a Conuſans taken in pais before Commiſſioners he may aſſign for Error, the death of the Conuſor

Poſt. 469.

Poſt. 677.

niſor before the return of the Writ; for that is not contrary to the Record; for the Coniſor may die after the Coniſans, and before the return of the Writ: and death is a countermand of the Coniſans, and the recording of it afterward is erroneous, 8 Eliz. Dyer. And although, to ſome purpoſes, it is a Fine after the Coniſans, and before the Queens ſilver is entred, for the Coniſee may have a Quid juris clamat, as 22 H. 6. is, yet it is no perfect Fine, for the death of either of the parties doth abate it. And 1 Mar. Dyer, doth not impugne this difference; for there the Error was aſſigned, that the Coniſor died before the Teſte of the Dedimus poteſtatem, which is directly contrary to the Coniſans before the Commiſſioners, which are Juſtices appointed for that purpoſe; but here it is confeſſed, that the Party was living at the Coniſans, but died after; which was agreed per totam Curiam. And Popham ſaid, That one may be received to ſay againſt the Coniſance of a Fine taken before the Chief Juſtice of the Common Bench (which may be without a Dedimus) That the Coniſor died before the return of the Writ of Covenant. And as to the matter in Law, Godfrey ſaid, That the Fine is to be reverſed for the 100 Acres, and it is not ſtrange for a Fine to be reverſed in part, and to be in force for the reſidue. As a Fine levied of guildable Lands, and of Land in ancient Demeſnes, though the Lord by a Writ of Diſceit avoid the Fine for the ancient Demeſn Land, yet it is good for the other Land; as 17 Ed. 3. Tanfield and George Coke Contra; For in a Writ of Error the Plaintiff is to annihilate the Record, and to have Reſtitution of that, which the Record giveth away from him; and if by any Act he hath barred himſelf to ſubvert the Record, or to have Reſtitution, his Writ of Error is gone, and in this Caſe he cannot have reſtitution of that of which he made a Feoffment; as, if he had made a Feoffment of the whole, no Error lieth, 12 H. 6. 6. 39 Aſſ. So a releaſe of his right. And the Right is intire, though a feoffment be onely made of part, and the Right cannot be divided, as 3 H. 4. 17. if one be indebted to me by contract for 20 l. and I take Bond for 10 l. of it, the whole contract is determined; ſo 29 Ed. 3. if one enfeoff me of 20 Acres with warranty, and I enfeoff J. S. of one of them, the warranty is gone: 9 H. 6. by Babington, 19 H. 6. the Caſe of partition; but by Act in Law it is otherwiſe, as 7 Ed. 4. caſu penultimo, if the Sheriff levy part of a Debt by Fieri facias, the Party may have an Action for the reſidue. Tota Curia contra in the Point in queſtion, That the Feoffment only deſtroyeth the title of Error, for that party. Fenner ſaid, He, which hath title to a Writ of Error, hath right to the Land; and none will deny, but, if he releaſeth all his right in the Land, a Writ of Error lieth not. Popham, He hath a right of Action to the Land, but not a right in the Land: for, if the Land had deſcended to him, he had not been remitted, but a right of Action may be divided. As if two bring Error againſt J. S. he pleadeth the releaſe of one of them, he ſhall be ſevered, and the other ſhall recover: but if one hath a right, and he brings Action againſt two, and one pleadeth a releaſe, this is good to both. And the Court agreed to reverſe the Fine for the 100 Acres: but poſtea it was ſhewed, that he made himſelf Heir to the Feme, but ſhewed not how, nor that the Land was the Land of the Feme, and for thoſe cauſes the Writ of Error was held to be inſufficient.

2 Cr. 12.

1 Rol. 775.

Co. Lit. 264. b

Co. 6. 25. b. Poſt 518.

Ant. 468.

Childs

Childs *verſus* Weſcot. Paſch. 37 & 38 Eliz. rot. 712.

(28) Poſt 481. EJectione firmæ. Upon a ſpecial Verdict, the Caſe was. Three Joyn-tenants for life; The one of them purchaſed the Reverſion by Fine: Whether the Joynture were hereby diſſolved, or not, was the Queſtion betwixt his Heir and the other two who ſurvived. Glanvil moved, That the Heir ſhould have his part; for Poſt 743. the difference hath been always, where the Reverſion comes to the Free-hold, there the Joynture is deſtroyed; but where the Free-hold comes to him in Reverſion, and to another, it is otherwiſe. And it was reſolved accordingly in the Court of Wards, Co. Lit. 182.a. in Morgan's Caſe, by the opinion of the two chief Juſtices. And ſo held all the Court: and Walmſley ſaid, It was ſtronger here, Becauſe he takes this Reverſion by Fine Sur conuſans de droit come ceo, &c. which implies a precedent gift, and that implies a ſurrender of the Conuſee: But a gift to two, and the Heirs of the one, the Free-hold remains in Joynture, becauſe it was ſo given at the beginning: but otherwiſe it is, where one of them acquires the Reverſion afterwards, or it deſcends upon him; for if it were not ſo, it would be miſchievous, becauſe, if the other two committed waſt, he ſhould not have any remedy for it. But there was not any Judgment given at this time; for that it was ſaid, there were divers faults in the Verdict, and therefore it was adjourned. Vid. Reſid. poſtea, Trin. 38. R. B. Pl. 16. 2 Co. 60.

Corbyn *verſus* Brown. Mich. 37 & 38 Eliz. rot. 523.

(29) ASſumpſit, The Defendant pleaded Not guilty, and found for the Plaintiff, and this matter was moved in Arreſt of Judgment by Hearn, That this was not any Iſſue in this Action. But all the Court held, That although it be not a proper Iſſue in this Action, and therefore the Plaintiff might have demurred thereupon, yet becauſe in this Action there is a Diſceipt alledged to charge the Defendant, Not guilty is an anſwer thereto, and that it is but an Iſſue miſ-joyned, which is aided by the Statute, being after Verdict; for that aids miſ-joyning of Iſſues or other faults: and this is an Iſſue, but an imperfect Iſſue. Whereforе, abſente Owen, it was adjudged for the Plaintiff. And Walmſley ſaid, That he had many Preſidents in the Queens Bench of that Iſſue joyned, and tried in this Action, and Judgment thereupon.

Halland *verſus* Mabbs.

(30) Ant. 62. ACtion for theſe words, J. Halland (the Plaintiff) will come home again, if he eſcape the Gallows, for he hath deſerved to be hanged. After Verdict it was moved, That an Action lay not for thoſe words. And ſo it was Ruled accordingly: for they are too general. Becauſe

because the Countrey people might intend; that he deserved hanging, although he never committed any Felony. Wherefore it was adjudged for the Defendant.

Anonymus.

ACtion upon the Case for these words, Thou hast feloniously taken my Wood: After Verdict for the Plaintiff, Spurling moved, That an Action lay not for these words, for it might be intended Wood standing, and so no Felony: But the Court resolved to the contrary; for being spoken in the worst sence, it shall be construed most strongly against him, who spake it, viz. That it was Wood cut down: For otherwise he could not have said Feloniously taken, wherefore by Anderson and Beamond, contradicente Walmsley, and Owen absente, it was adjudged for the Plaintiff. (31)

Sheldon *versus* Hodges.

REplevin. The Defendant avows for Damage fesant. The Plaintiff by his replication claims Common by prescription in the place where, &c. being Broadway, in the County of Worcester, appurtenant to his Manor of D. in the County of Glocester, and Issue thereupon, and two Ven. fac. awarded to the Sheriffs of the several Counties. And now seven of the County of Worcester appeared, and five of the County of Glocester. And although there ought to have been six sworn of each County to try that Issue, as appears 49 Ed. 3. 1. 31 H. 8. 46. yet by the assent of the parties, those twelve, who appeared, by advice of all the Justices were sworn, and tried the Issue, and the parties released all Errors, the one to the other; and it was commanded, That this Assent should be entred upon the Record; for otherwise it would be a strange President. (32)

Cary *versus* Dancy. Mich. 37 & 38 Eliz. rot. 1946.

EJectione firmæ; upon a special Verdict, the Case was; Tenant in tail of Lands in Andover Levies a Fine with Proclamation, with the Remainder to himself in Fee, the Fine was afterwards reversed by a Writ of Disceit: and it was thereupon held by the whole Court, That the Issue in tail is remitted, and shall avoid all Estates made by him; For the Fine is void between the parties: But the Tenant in tail, after that Fine levied, and before it was Reversed, had made a Lease for years, the remainder over for life: And whether the Issue might enter to avoid those Estates, was the Question. And it was held, That he could not without a Scire fac. sued against him, who had the Free-hold; For he, who is to defeat a Record, is always to commence his Suit against him, who is privy to the Record; But when he hath Reversed it against him, he ought to have always a Scire fac. against him, who is Ter-tenant; For it may be, he hath some matter to bar him of (33)

of Execution. And otherwiſe he ſhall not be bound, unleſs he be made privy by a Scire fac. or that two Nihils be returned: As if Error be brought to Reverſe an Erroneous Recovery, or a Contra formam collationis is brought againſt an Abbot, who alienes, or a Ceſſavit de Cantaria, in all theſe Caſes the Tenant of the Land ſhall not be ouſted, without a Scire fac. ſued againſt him. And, if he be, he ſhall have an Aſſiſe. Fitz-H. N. B. 142. and 211. 23 Ed. 3. contra form. 3. 2. Aſſiſ. 13. Wherefore, &c. But Quere in this Caſe, how a Scire fac. may be awarded for the Defendant in the Suit, and where the Land it ſelf is not in Demand. Afterward, Trin. 38 Eliz. the Court was moved again, and they held, That he could not enter without a Scire fac. But they reſpited Judgment, and gave a Rule, That if any of the Parties died, Judgment ſhould be entred, Tunc pro nunc.

Inſt. 458.

Betford *verſus* Ford, Ante Mich. 37 & 48 Pl. 67.

(34) Ant. 447. The Caſe was now argued again by Drew on the one ſide, and by Glanvile on the other. And after Argument the Court reſolved, That this Confirmation goes to the whole Term, and cannot be abridged by the following words. For Owen ſaid, The Confirmation was conceſſionis predictæ in forma predicta, and it cannot be abridged by the ſubſequent words. But if he had confirmed the Land for 51 years only, it had been good for ſo much. But here the firſt words go to all the Term, and therefore the limitation for 51 years comes too late: and to this reaſon Anderſon agreed. Walmſley; If one will confirm an Eſtate, he cannot apportion it by his Confirmation; As a Confirmation to a Diſſeiſor for an hour, is good for all the eſtate: But when the eſtate is divided it is otherwiſe: As if an eſtate be for life, Remainder over, The confirmation may be to any of them: So if Leſſee of a Diſſeiſor for 20 years makes a Leaſe for 10 years, the Diſſeiſee may confirm it to either of them, and not to the other. Wherefore, &c. And afterwards this Term it was adjudged accordingly, That the Confirmation went to all.

Ragiſters Caſe.

(35) A Writ of Dower was brought of Lands in the County of Northumberland, The Pariſh Church wherein this land lay was at Newcaſtle, which is a County by it ſelf. Where the Proclamation of the Summons, by the Statute of 31 Eliz. ſhould be made, was the Queſtion, and Ruled per curiam, That it ought to be at the Pariſh-Church door, although it were in another County then where the land lies.

Worſley and Worſley, the Father and Son *verſus* Charnook.

(36) A Udita Querela. For ſuing Execution upon the Fathers land in D. and of the Sons land in S. upon a Statute acknowledged before the Mayor of Preſton, Sealed with one piece: and it was now moved, That they ought not to joyn in this Action: For they ſuppoſed the Execution of their lands ſeverally

everally, which are ſeveral cauſes of Suit, whereof every one ſhall have his Action apart: as 35 H. 6. 20. of an Execution ſued againſt Joynt-Tenants of their Lands; They ſhall joyn in an Audita Querela: but, if Execution be Sued of their bodies, they ſhall ſever, for the Tort is ſeveral. Harris Serjeant e contra; For although the Execution of their Lands be ſeveral, yet it is upon one Statute, which is intire; and therefore one Audita Querela lies, as 20 Ed. 3. Aud. Quer. 28 is. An Audita Querela is alſo by way of defence, as 34 H. 6. 31. is; and by way of defence two may joyn, although their Plea be ſeveral, as 12 Ed. 4. 6. Wherefore, &c. Anderſon; The Statute is joynt, and therefore the Conuſee might have Execution joyntly againſt them, if they have goods, or Lands joyntly, and he might have ſeveral Executions of their Lands. Wherefore the cauſe of their grief being ſeveral, they might have ſeveral Actions, if they would, or have it joyntly; becauſe it is grounded upon a Statute, which is joynt, which is the principal cauſe of their grief. Walmſley and Beamond e contra; For although the Statute be joynt, yet the Extent is ſeveral; and the prayer of the Plaintiffs to be reſtored to their Lands is ſeveral: For peradventure the Land of the one, which is extended, is more than the Land of the other, and it ſhould be unequal to reſtore to them joyntly. And every Remedy ought to be according to the grief and loſs, which being here ſeveral by reaſon of the Execution ſued againſt their ſeveral Lands, the Action to redreſs it ſhould be ſeveral. Wherefore, &c. Et adjournatur. Afterwards in Mich. 38. & 39 Eliz. it was moved again, and Anderſon held his Opinion as before; That the Audita Querela is well ſued joyntly, being grounded upon a Statute, which is entire, and one Action of Debt might have been maintained againſt them upon that Statute. But Walmſley, Beamond, and Owen e contra: Becauſe it is here pretended, that the Statute was never good, being ſealed but with one piece of Wax, and ſo the Execution againſt them was always Tortious; wherefore for this wrong they ought to ſever in the Action to have it reverſed, the Tort being to them ſeveral: But if the Statute were once good, and afterwards Releaſed, and Execution ſued againſt the Releaſe, there peradventure it ſhould be otherwiſe, becauſe it is there grounded upon one entire Cauſe; wherefore the Suit here being joynt by them, which ought not to be, It was adjudged, that the Writ ſhould abate.

Hunt *verſus* Singleton.

Hill. 38. rot. 1814.

TRreſpaſs Upon ſpecial Verdict; the Caſe was, The Dean and Chapter of Pauls being ſeiſed of a Meſſuage in St. Foſters Pariſh in London, 4 Ed. 6. let them to Hargrave for 40 years, who aſſigned his Leaſe to R. Eales; afterwards Eales, 20 Eliz. let two Chambers of the Meſſuage to Robins for 12 years, and afterwards Eales reciting Hargraves Leaſe, &c. Surrenders it to the Dean and Chapter, and they afterward, reciting the Surrender, let the Meſſuage to Eales by theſe words, All their ſaid Meſſuage, or Tenement, with the Appurtenances to the ſame belonging, or in any wiſe appertaining, by the ſaid Eales now occupied, and all other Rooms with the ſame now (37) Poſt. 564.

occupied, and now in the tenure of the ſaid Eales, between the Meſſuage of I.S. Eaſt, and of I.D. Weſt, and ſo much in length, for Forty years. And the Jury found, That theſe Rooms were then in the tenure of Robins and not of Eales, and that the neather Story of the ſaid Meſſuage was between the ſaid bounds, but not theſe Rooms; and after the Dean and Chapter let the Rooms to the Plaintiff for Forty years, who entred, and was ouſted, &c. Et ſi ſuper totam materiam, &c. And it was adjudged for the Plaintiff. Note, I collected this Caſe out of the Record delivered to me by Mr. Brownlow. The reaſon ſeemeth to be, That Eales had not the Rooms in his poſſeſſion at the time of the Leaſe, although he had the Reverſion; but they were ſevered for the time, and paſſed not by the Leaſe. Vid. Paſch. 39 Pl. 25.

Ante 16.
1 Cr. fol. 130.
Ant. 300.

Termino

Termino Trinitatis, Triceſſimo octavo ELIZABETHÆ, in Banco Reginæ.

Wright *verſus* Wright. Trin. 38. Eliz, rot. 628.

PRohibition. Upon Demurrer the Caſe was: The Biſhop of Winchester had Lands within a Pariſh, and preſcribed in Non Decimando (as it was agreed, that a Spiritual perſon might) and let it to a Lay perſon for years. Whether this Leſſee ſhall pay Tythes to the Parſon or not, or ſhould hold diſcharged, as his Leſſor held it, was the Queſtion. Vid 10 El. Dy. 277. & 18 Eliz. 341. & Reſid. poſtea. M. 38, & 39 Pl. 36. (1) Co. 2. 43. b. Moor 425. Poſt. 511. Poſt. 579.

Sir Nicholas Bacons Caſe.

REplevin. The Defendant pleaded, That the property of the Beaſts Tempore Captionis was in the Lord North, and Iſſue was thereupon joyned: and it was moved, That this was not any Plea; but that there ſhould be a Repleader, and Ruled per curiam, That it was a good Plea. Vid. 29 H. 6. 35. (2)

Sherington *verſus* Flewood.

PRohibition for Tythes. Popham ſaid, If Land be overflown with water, and afterwards gained by induſtry, Tythes ſhall preſently be paid thereof, although it had been overflown, Time whereof, &c. So if Land be full of Thorns and Buſhes, from time whereof, &c. and it is grubbed up and made Meadow, or Arable Land, Tythes ſhall be preſently paid thereof, notwithſtanding the Statute 2 Ed. 6. For thoſe Lands of their own nature were not barren, but by negligence, or ill husbandry became ſo. And the Statute doth not intend, that Tythes ſhall not be paid within ſeven years after the manurance, &c. But of ſuch Land, which was merely barren, and made good by foldage, or other induſtrious means. And this was agreed by the other Juſtices. He alſo ſaid, That it hath been here adjudged, That Tythes ſhall not be paid for Rakings, unleſs they be foul Rakings. The Pariſhioners alſo preſcribed, That he uſed to pay 1 d. for every milch Cow, in ſatisfaction for the Tythe of milch Kine and Beaſts agiſted, which was moved not to be a good preſcription: For Tythes for one thing cannot be Tythes for another. But if he had preſcribed, That he had paid 1 d. for all Cows and Beaſts agiſted, that peradventure had been good: And this diverſity was ſo Ruled in the Caſe of Dr. Lewes, and of that Opinion were the Court here. Then Godfrey moved, that no Tythes by the (3) 1 Rol. 647, 651. 2 Inſt. 656. St. 2 E. 6. c. 13. Moor 909. Ante 363. Poſt. 702. 1 Rol. 651. Ant. 446. Ant. 446.

Ant.446. 1 Rol.647. 2 Cr.576. 2 Cr.237. 1 Rol.647.

Law are payable for Beaſts agiſted, and ſo is Nat.Br.53.G. But all the Court held, That for Beaſts agiſted for hire, or for dy[illegible]ttel, which are depaſtur'd to be ſold, Tythes ſhall be paid: But for dy Cattel reared for the Plow, or to be expended in the Houſe, no Tythes ſhall be paid for them. Sed adjournatur.

Ewer *verſus* Hayden.

Trin. 36 Eliz. rot. 359.

(4) Poſt.658. 2 Ro.57. Moor.359. Owen 74.

DEbt for Rent reſerved upon a Leaſe. Upon a ſpecial Verdict the Caſe was ſuch: One Hayden being ſeiſed in Fee of Lands and Houſes in Lawton in the County of Oxford, and alſo of Houſes and Land in Waterford in the County of Hertford, Let the Houſes and Lands in W. in the County of H. to the Defendant, and afterwards Deviſed all his Meſſuages and Lands in L. in the County of O. and all his other Lands, Meadows, and Paſtures in W. in the County of H. to the Plaintiff: And Whether the Houſes in W. in the County of H. paſſed by this Deviſe to the Plaintiff, by theſe words, All other my Lands, &c. was the ſole Queſtion. Tanfield moved, that thoſe Houſes paſſed; for in Grants, eſpecially in Deviſes, the expoſition of the words ſhall be according to the common intendment of the Grantor, and of the Ley-gens: As if one builds an Houſe upon Bl. Acre, and

2 Rol.57. maketh Feoffment of Bl. Acre: The houſe ſhall paſs, and ſo is the common Courſe; That in a Grant by Copy de virgata terræ, the Houſe thereupon ſhall paſs: and ſo is the common Phraſe in the Country, that a man hath an 100 l. Land; therein is intended all his Poſſeſſions, Lands, Houſes, &c. And in Andrews Caſe it was adjudged, That if one brings an Ejectione Firmæ, or a Præcipe of 100 Acres, according to the Statute-meaſure:

Ante 267. Poſt.665. But if he bargains, and ſells 100 Acres of Land, that ſhall not be according to the Statute-meaſure, but after the uſual account in the Country. Winter è contra; I agree, if a man levies a Fine of 100 l. of Land, that the Houſes ſhall paſs by ſuch a Fine; as 43 Ed. 3 18. ſo by a Deviſe, or Grant of all his Lands, his Houſes

2 Rol.57. ſhall paſs. But here the intent of the Deviſor appears, that he reſtrained the word Land according to the propriety of the word, viz. Arable Land; for he couples it with Meadow, and Paſture, and ſo ſhews his intent, that Land ſhall not extend to all kinds. In the firſt part of his Will alſo, he Deviſeth his Houſes, and Land in L. in the County of Oxon; but in the laſt Clauſe he doth not mention any Houſes: And the Verdict found, that he had there, Land, Meadow, and Paſture, ſo as his Will might be ſatisfied. Wherefore, &c. Fenner accord; for his particular deviſing of his Lands, Meadows, and Paſtures exclude the general intendment of this word Terra, and reſtrains it only to Arable Land, and excludes Houſes, and Wood. Gawdy è contra; The difference is apparent betwixt Writs, and Deeds, or Wills; for in a Writ nothing ſhall be demanded, or recovered, but according to its proper ſignification: But in Wills, or Deeds, they ſhall be taken according to the common Intendment, and Phraſe, And this appears 32 H.8. Dy.43, Wherefore in a Will, by the Deviſe of his Land, all his Houſes may paſs. And ſo here Popham accord:

For

For if a man bargains and ſells all his Lands in D. all his Houſes, and Wood there ſhall paſs; as it was reſolved before the two Chief Juſtices, Wray and Dyer. And Warrants of Attorney are always entered in placito Terræ, although Houſes onely, or Wood is demanded; for that is intended by the word Terra. But if a man ſeiſed of three Houſes and three Acres of Land in D. Deviſe his Land, and one of his Houſes in D. there the other two Houſes paſs not; for his intent is apparent therein, that but one Houſe only ſhould paſs. But here the words are in the general, as to the Lands in W. and therefore it ſhall make the Houſes there alſo to paſs. Wherefore, &c. But Gawdy ſaid, That in the laſt Caſe put by Popham, all the Houſes ſhall paſs. Clench was abſent: Ideo adjournatur. And afterwards it was adjudged, that the Houſes in W. did not paſs, for the reaſon given by Fenner. Vid. Paſc. 41. Plac. 3. 2 Rol. 57. 2 Rol. 53. Mo. 360.

Thornton *verſus* Kemp.

Hill. 38. Eliz. rot. 987.

(5)

Aſſumpſit, Whereas I.S. was indebted unto him in 100 l. in conſideration, that the Plaintiff would abate 10 l. of that Debt, and forbear the 90 l. reſidue until Michaelmas next enſuing, he aſſumed to pay the ſaid 90 l. at Michaelmaſs to the Plaintiff; if the ſaid I. S. did not pay it, and alledges in Facto, that he abated 30 l. of the ſaid Debt, and forbear the ſaid 100 l. until Michaelmaſs then following; Whereupon he brought his Action. The Defendant pleads, That after this promiſe, and before Michaelmas, the Plaintiff levied a Plaint in London againſt I.S. for this Debt, and cauſed him to be arreſted thereupon: And upon this Plea the Plaintiff demurred. Firſt, Becauſe he alledgeth, that he abated 10 l. and doth not ſhew how; ſo as the Court might take Conuſance, whether it were a ſufficient Diſcharge. And of that Opinion was the whole Court. Vid. 22 Ed. 4. 40. 18 Ed. 3. barr. 243, or 247. Secondly, Becauſe it now appears by the Defendants Plea, which the Plaintiff hath confeſſed by the Demurrer, that the Plaintiff had not forborn him: for when he ſued him, it was not any forbearance, But Gawdy and Popham held it to be well enough: for he hath forborn him the payment; and the promiſe is not, that he ſhall forbear from ſuing him. But Fenner and Clench e contra; For it is in vain to forbear him the payment, when he doth not forbear to ſue him for it: And this was the intent of the Aſſumpſit, That he ſhould not be moleſted for it before Michaelmas, &c. Ant. 253.

Ram *verſus* Patenſon.

Hill. 38. rot. 522.

(6)

Prohibition upon the Statute 45 Ed. 3. For that whereas he libelled in the Spiritual Court for Tythes of Timber-Trees. The Defendant ſaid, That thoſe Trees were long ſince mortuæ, aridæ, & putridæ, fit only for fire-bot, and not for Timber; and it was thereupon Demurred: And all the Juſtices (Popham abſente) held, That no Tythes ſhould be paid for thoſe Trees: for being over the growth of 20 years, they were once diſcharged of Tythes, and therefore ſhall always be diſcharged. Another point 1 Rol. 640. Co. 11. 49. a. 2 Cr. 100.

was

was alſo then moved, The Suit being for Tithes of the loppings of the Trees: And the truth was, thoſe Trees had not been lopped for 20 years together: ſo as then the branches of the loppings were diſcharged from Tythes; but afterwards they were lopped every ſeven years. Whether now Tythes ſhall be paid for theſe branches? And they all held, that they ſhall not pay Tythes; for as the Body is priviledged, ſo are the Branches.

Moor. 908. Pl.C. 470.b. Co. 11.48.b. 2 Cr. 100.

Abraham *verſus* Twigg.

Hill. 38. Eliz. rot. 739.

(7) Mo. 424. Co. 7.41.b.

A Vowry for Rent. The Caſe upon Demurrer was: Peter Dormer was ſeiſed in Fee, and made a Feoffment to the uſe of himſelf, and his Heirs of his Body; and for default of ſuch Iſſue to Gabriel Dormer, and to his Heirs males lawfully engendred; and for default of ſuch iſſue, to the right Heirs of Peter. Peter Dormer dies without iſſue, Gabriel Dormer enters, and deviſeth that Rent out of that Land to the Avowant, and dies having Iſſue: And whether Gabriel Dormer by the limitation of this uſe ſhould have a Fee-ſimple, or Fee-tail, was the Queſtion? Exception was taken to the Avowry, becauſe it is not ſhewn when the Deviſor died; ſo as it might appear, that this Rent was afterwards due: Sed non allocatur; For the matter it was moved, whether it were an Eſtate-tail in Gabriel? For although it be not limited to the Heirs of his body, yet being by way of uſe, which is expounded according to the Intent, and as Wills, it ſhall be conſtrued as an Eſtate-tail, as 9 Ed. 3. Tail 21. and 5 H. 6. 6. But all the Juſtices (Popham abſente) held, that it was an Eſtate in Fee in Gabriel Dormer: and although it were by way of uſe, it differs not from other gifts by Deed, and ſhall not have any other conſtruction: and it cannot be an Eſtate-tail, becauſe there is not any body, from whom this Heir male ſhould come. And ſo it is in caſe of a Deviſe, as appears 9 H. 6. 25. Wherefore it was then adjudged for the Avowant. 7 Co. 41.b.

Ant. 40.

Lit. Sect. 31. Ant. 40.

Kelſock *verſus* Nicholſon,

Mich. 37 & 38 Eliz. rot. 387.

(8) Noy 36. 1 Rol. 46. Moor 422. Poſt. 496.

Detinue of an Obligation. An eſpecial Verdict was found; That the Plaintiff, and one Stephenſon, as Executor to I.S. had an Obligation, wherein A.B. was obliged unto their Teſtator in 20 l. and Stephenſon, one of the Executors, in ſatisfaction of his proper Debt to the Defendant, by words only, dedit & deliberavit that Obligation to the Defendant, and died: And the Plaintiff, being ſurviving Executor, brought a Detinue for this Obligation. Quære; For the Juſtices did not give any great opinion therein, but ſeemed to be divided. Vid. 10 Ed. 3. 28, & 29 Dy. 5. Reſiduum poſtea, Mich. 38, & 39. Plac. 15.

Blofields Caſe.

(9) Mo. 459. Co. 5.86.b.

Two were condemned in Debt; the one is taken by a Capias ad ſatisfac. and afterwards ſuffered by the Sheriffs voluntarily to go at large. And then the other was taken in Execution, and would upon this matter have maintained an Audita querela; Becauſe now the one is diſcharged, not by his own wrong, but by the Sheriffs Act, of whom the Party is put to have his remedy. But

Poſt. 850. 1 Cr. 75.240.

Gawdy

awdy and Fenner held, That this was not any cauſe to diſcharge
m: Popham and Clench abſentibus. 33 H.6.18. 5 Co. 87.b. Poſt.555.

Blunco *verſus* Marſton.

) Rohibition: and ſurmiſeth, That he was Parſon, and the De- (10)
fendant was Vicar of the ſame Church, and Sued him in 2 Rol.335.
ourt Chriſtian for Tithes, upon an Endowment, that the Vicar Poſt,578.
ould have the Tythes of all the Lands within the Pariſh; and Moor.457, 910.
ledgeth, that he pleaded there, that he is Parſon imparſonee there;
nd that the Land, whereof Tythes are demanded, is parcel of
s Glebe; and that they of the Spiritual Court would not there
low of this Plea. And it was held clearly, That a Prohibition
y upon this Surmiſe; For Eccleſia Decimas ſolvere Eccleſiæ non de- Poſt.579.
t. And Tanfield ſaid, That here lately this matter was in Queſti- 1 Rol.335.
n betwixt Young and the Parſon of Boxley, in the County of Wilts,
nd adjudged, That no Tythes ſhall be paid of Glebe-Land. But
opham ſaid, If the Vicar be endowed to have all the ſmall Tythes Poſt.578.
ithin the Pariſh, and the Parſon make a Leaſe of his Glebe-
and, the Leſſee ſhall have the ſmall Tythes ariſing therefrom
the Vicar, and the groſs Tythes thereof to the Leſſor. Which
as agreed per Curiam poſtea. M. 39, & 40 Pl. 1.

Sir Anthony Maynie *verſus* Scot. Paſch. 38 Eliz. rot. 42. Vid. ante, fol. 450.

ERror of a Judgment in Debt upon an Obligation in the (11)
Common Bench; (quod vid. ante, fol. 450.) The Condition Poph.109.
as, to perform the Covenants within ſuch an Indenture. The Moor.452.
Covenant, wherein the breach was aſſigned, was, Whereas he
ad let that Land to S. for 21 years, he covenanted, upon ſur-
ender of the firſt Leaſe, to make unto him a new Leaſe for 21
ears. The Defendant pleads thereto, that Scot never ſurren-
ered his Leaſe unto him. The Plaintiff replyes, that the Defen-
ant had accepted a Fine ſur conuſance de droit come ceo, &c. of Sir
ohn Scavage, and others, and thereby had granted, and rendred
nto them the Land for 80 years: & hoc, &c. And thereupon the
Defendant Demurred; Becauſe he doth not ſhew, That he,
notwithſtanding this Leaſe, had offered to make a Surren-
er, ſo to perform as much as on his part was to be performed,
lthough the other could not make a Leaſe according to his
Covenant. And it was thereupon adjudged for the Plaintiff;
For the Defendant being diſabled to make a Leaſe, he needed
not tender the Surrender unto him. And Error being brought
hereof, it was aſſigned onely in the point, and matter of Law.
And Tanfield moved, That the Judgment was Erroneous: For
his Covenant to make a new Leaſe, is not to be performed,
unleſs upon a former Act to be done by the Leſſee, viz. the ſur-
endring, which at leaſtwiſe ought to be offered: becauſe there
ught a promptneſs to appear in him to do that on his part,
hat is to be performed, although the other cannot make the
Leaſe on his part; and in proof hereof relied upon 32 Ed. 3. Bar.
16 & 34 Ed. 1. Debt. 168. But all the Juſtices reſolved, without
ny great Argument, That, in regard the Defendant hath diſ-
abled himſelf by this Fine to make the Leaſe according to his
Covenant, And the Plaintiff is not to make the Surrender, but
with an intent to have a new Leaſe, which he cannot have; It
would therefore be in vain for him to offer his Surrender. But

the

the Covenant is broken of it ſelf. Wherefore the Judgment was affirmed. 5 C. 20. b.

Partridg *verſus* Naylor. Paſch. 38 Eliz. rot 299.

(12) Gould. 145. Moor. 453. Noy. 52, 62. Ante 331. 1 & 2 Phil. & Mar. c. 12.

ERror of a Judgment in the Common Bench. In an Action upon the Statute of 1 & 2 Ph. & Mar. c. 12. againſt three, for impounding a Diſtreſs in ſeveral Pounds in three ſeveral Hundreds, Where the Caſe was; That three Diſtrained a flock of Sheep, and ſeverally impounded them in three ſeveral Pounds in ſeveral Hundreds. Upon Not guilty pleaded; and Verdict found accordingly, and Damages aſſeſſed by the Jury at 40 s. And thereupon Judgment entred, That every of them ſhould forfeit 5 l. (being the penalty given by the Statute) and the treble of 40 s. againſt every of them. And this was aſſigned for Error, That there ought to be but one 5 l. againſt them all; and but one trebling of the 40 s. againſt them all; but it is but one Diſtreſs, and one offence in them all againſt the Statute. And, in Hill. 39 Eliz. being moved again, All the Court reſolved, That it was erroneous. And for this cauſe Judgment was reverſed.

Gybſon *verſus* Garbyn. Hill. 38 Eliz. rot. 1060.

(13)

ACtion upon the Caſe. Sur Trover and converſion of Sixteen Broad-Clothes. The Defendant pleads, That, before the time of the Trover and Converſion, one Morrice was poſſeſſed of thoſe Goods, and ſold them to the Defendant; and, before he had notice, that they appertained to the Plaintiff, he ſold them to I. S. The which matter, &c. And it was thereupon Demurred.

Weſt *verſus* Monſon: Hill. 38 Eliz. rot. 228.

(14) Poph. 110. 2 Rol. 693. 5, 6. Moor. 431.

ERror of a Judgment in an Aſſiſe in the County of Lincoln before Gawdy and Owen Juſtices of Aſſiſe there. Where in an Aſſiſe againſt Weſt, he pleaded Nul tenant de Frank-tenement named in the Writ; and if named, there was not any Tort, &c. The Jury found, That the Plaintiff was diſſeiſed by the Defendant, prout in brevi ſupponitur; Niſi verba contenta in voluntate *Roberti Monſon* (which they found in hæc verba) conveyed a good Eſtate in the Lands to the Defendant; And thereupon they prayed the diſcretion of the Court. And thereupon Judgment was given for the Plaintiff, and Error thereof brought. Yelverton: The firſt Error aſſigned was; Becauſe the Aſſiſe did not inquire of the Tenancy, which ought to be in every Caſe, unleſs where the Aſſiſe is taken in right of Damages; as 12 Aſſ. 10. 20 Aſſ. 4. 11 H. 6. 46. 37 Aſſ. 15. 40 Aſſ. 29. 21 Aſſ. 20. 23 Aſſ. 2. 50 Ed. 3. 11. And although the Verdict finds, Quod ipſe fuit Tenens; yet becauſe it is not ſaid, Liberi tenementi, it is not good; for ſo it may be ſaid of a Tenant for years, or by Elegit. And the Concluſion, prout per breve ſupponitur, will not help it; for that doth not prove him to be Tenant. The Verdict is alſo imperfectly found; and then the point ought alſo to have been better examined by the Juſtices of Aſſiſe ex officio, as 12 H. 4. 20. is; and becauſe they did it not, it is erroneous. Secondly, It is not found, that he was ſeiſed of any Eſtate, ſo as he might be diſſeiſed. Wherefore, &c. But all the Court reſolved, That in regard there was but one Tenant named in the Aſſiſe, and the Jury hath found, That he diſſeiſed the Plaintiff, prout per Breve ſupponitur: It is thereby to be intended,

That

That the Plaintiff was ſeiſed of ſuch an Eſtate, which might be diſſeiſed, and that the Defendant is to be intended always Tenant, in regard there is not any other named in the Writ, who could be Tenant: But if there had been more Defendants named in the Writ, then they ought to have enquired of the Tenancy. And all the Juſtices, beſides Gawdy, reſolved, That the Verdict was found for the Plaintiff: and that which came after the Niſi, being imperfect, as it was agreed clearly by all, that it was (for they found not, That Robert Monſor was at any time ſeiſed of that Land, that he might make a Will, nor that he made any Will) It was idle, & void: & Judgment ſhould be given upon the precedent Verdict: As in the Caſe of Sir Rowland Hayward, 23 Eliz. Dy. 372. And the Verdict being perfect before, that, which comes after the Niſi, being idle and void, ſhall never hurt it, but Judgment ſhall be given upon the Verdict, which is good: But where that, which comes after the Niſi, is material, and is well found, the Court ſhall then adjudge as well upon that, as upon the reſidue of the Verdict. And although the Verdict was imperfect, and the Tenant might have prayed a Certificate of Aſſiſe to make it more full, ſo as Judgment might have been given upon the entire Verdict: yet that needed not be awarded by the Court ex Officio, but they might well have adjudged upon that which was found. Wherefore the Judgment was affirmed againſt the Opinion of Gawdy, who ſaid, That he always held the Verdict to be imperfect, and that no Judgment ought to be given thereupon. But in reſpect he was informed by Owen his companion, That the Opinion of many of the Juſtices, upon conference with them, was, That the firſt part of the Verdict was perfect; That, which came after the Niſi, was void and idle; and that Judgment ought to be given for the Plaintiff: He aſſented thereto; Yet in his Opinion held, That the Verdict was imperfect in all: For the Jury intended not to find the one part without the other; And it is not a perfect Verdict, for it is all in one entire Sentence, wherefore they ought to have adjudged upon all together, and ſo not like to the Caſe in 23 Eliz. For there was an abſolute Verdict given, and that which came after was idle. Wherefore, &c. But notwithſtanding the Judgment was affirmed.

1 Cr. 212. Ante. 41. Poſt. 482.

Childes *verſus* Weſcot.

Ante Terminum Paſchæ, Placito 28.

THe Caſe was now recited to be ſuch: Tenant for Life, Remainder to four others for their Lives; The Leſſor in Reverſion levies a Fine Sur conuſance de droit come de ceo, &c. to the Tenant for Life, and to one of thoſe in Remainder, to the uſe of the Tenant for life, for his life, and after to the uſe of the other in Fee. The Tenant for Life dies; He in Remainder, who took the Fine, dies; And whether his Heir ſhould have that part, was the Queſtion. And it was reſolved by all the Court, That that Part ſhould deſcend to his Heir, and ſhould not ſurvive. But it was then moved in Arreſt of Judgment, That he declares in an Ejectione firmæ, of a Leaſe by Baron & Feme, and ſhews not that it was by Deed: and without a Deed it cannot be a Leaſe of the Femes. For her acceptance of the Rent upon ſuch a Leaſe cannot make

(15) Ante. 470. Ante. 470. Ante. 438. Ante. 112.

it good: And in proof thereof was cited Dy. 91. 21 H. 8. 2. 15 Ed. 4. 13. 21 H. 6. 24. Walmſley; Although he Counts not of a Deed, yet a Deed may well be intended. Anderſon; That cannot be, but he ought to Count thereof preciſely, if a Deed be neceſſary. And afterwards a Preſident was ſhewn unto them, Paſchæ 33 Eliz. betwixt Moſely and Guilbert, where he made his Count of a Leaſe by Baron and Feme, and mentions not any Deed, and yet adjudged to be good. And Drew ſaid, That he was a Councel therein, and that then this Exception was taken thereto, and that then another Preſident was ſhewn in the Queens Bench betwixt Diggs and Withers, and there adjudged good: Wherefore upon theſe Reaſons, and Preſidents ſhewn in Court (being the laſt day of the Term) the Plaintiff had Judgment to recover.

Co 6. 61.

Sharp *verſus* Sharp.

(16) UPon a ſpecial Verdict, the Caſe was: That J. S. being ſeiſed of Land in Fee, being upon the Land, Demiſed the Land to the Plaintiff for Life, Et quod nulla alia deliberatio Seiſinæ facta fuit. And, Whether this were a good Leaſe for Life, being but by Words only upon the Land, was the Queſtion. Anderſon; It is a good Livery, and ſo it hath been held to be before this time, and ſo I can ſhew you. But the Caſe is better: for the Jury find Quod demiſit for Life, being upon the Land, which is an expreſs finding of the Leaſe. And although it be afterwards found, Quod nulla alia liberatio Seiſinæ facta fuit, it is not material: And in the firſt Words there is a good Livery and Leaſe intended, and it ſhall be good in Pleading, a multo fortiori in a Verdict. Walmſley; True it is; by the firſt Words, if no more had been found, it ſhould be intended to be a good Leaſe, and a Livery in Facto to have been made: But when the Jury find further, Quod nulla alia, liberatio Seiſinæ facta fuit, They have thereby left it to our Judgement, Whether it be a good Livery or not, which it is not: For Livery is a ſolemn thing, and ought to have an external Act, and not Words only, ſo as the intent of the Parties ought to be apparent to have a Livery. For Bracton and Britton hold, That a Free-hold cannot paſs by Words only. Owen and Beaumond accord, For Livery is an Actual thing, and ought to be made by ſome Act done, and Words upon the Land, I let you this Land, &c. cannot make the Land to paſs, and the Verdict is plain enough, That they did not intend any other Livery, then by Words only. Anderſon, If there be words uſed upon the Land, to ſhew the intent of the Parties to make the Land to paſs, it is a good Livery: As in Dower ad Oſtium Eccleſiæ. Livery within the view although nothing be done, but Words uſed only, yet the Land ſhall paſs thereby. But, notwithſtanding his Opinion, it was adjudged for the Defendant, That it was not any Leaſe. Note, That Serjeant Glanvil ſaid, ſuch a Caſe was between Swan and Sparks. 6 Co. 26.

Mo. 458. Co. 6. 26. a. Ant. 481. Co. Littl. 48. b. Co. 6. 26. a.

Huit *verſus* Cogan.

(17) THe Caſe was: Two Perſons recovered ſeverally againſt one in Debt; He, who had the firſt Judgment, ſued firſt an Elegit, and had the Moyety of his Land delivered in Execution. Afterwards, the other ſued an Elegit, and the Sheriff prayed the Advice of the Court, Whether he ſhould deliver the Moyety of the entire

entire, which was all that, that remained to the Debtor, or but the Moyety of the Moyety, viz. the Moyety of that, which remained to the Debtor. And Anderson, Beaumond and Owen held, That he should deliver but the Moyety of that Moyety, which he had at the time of the Writ awarded. But they advised the Sheriff to return that special matter. Vid. 10 Ed. 2. Execution. That the entire Moyety shall be delivered.

Cross *versus* Powel.

(18) DEbt. The Case was: A Deed-Poll was made between C. and P. whereby C. Covenants with Powel to assure unto him such Land, and Powel by the same Deed Covenanted with C. to pay unto him for it 40 l. Powel delivered the Deed first to C. and C. afterwards delivered it to P. and C. brings Debt for this 40 l. And all this matter being disclosed by pleading, It was thereupon demurred by the Defendant, pretending, That by this re-delivery of the Deed unto him it had lost its force. But all the Court held, That it is a good Deed to both. For here is a Writing, Sealing, and Delivery, and the delivery thereof to the Defendant is not material: For if a Deed be delivered to be cancelled, to the Party himself, yet if it be not cancelled, and the other gets it again, it remains a good Deed. Wherefore it was adjudged for the Plaintiff. Littl. 550. Post 487, 498.

Stephens *versus* Eliot.

(19) EJectione firmæ, of Lands in Stepney in the County of Middlesex, by Edw. Ascue. And upon the Evidence it appeared, That Edw. Ascue, the Lessor, being in the County of Lincoln, delivered a Letter of Attorney to deliver this Lease upon the Land. But it appeared further upon Examination of the Witnesses, That the Lessor in the County of Lincoln, being out of Possession of the Land, delivered that Lease to the Attorney as his Deed, to the Plaintiffs use, and afterwards the Attorney entred into the Land, and according to his Warrant delivered it to the Plaintiff upon the Land. Yet per Curiam it was held to be a void Lease. For it was delivered in the County of Lincoln, when he had nothing in the Land. And although it was moved, That the first delivery was void, therefore the second Livery was good; yet they held it to be void. For, although the first be void, to pass a thing, yet it is his Deed by the first delivery, so as it takes thence its Essence: Wherefore the second delivery thereof was void. Secondly, It was moved, admitting this to be well delivered, yet the Land being Copy-hold Land, and Let by a Copy-holder, Whether the Plaintiff might thereby maintain an Eject. firmæ at the Common Law? And all the Court, besides Beamond, held, That he could not. For the nature of Copy-hold Land is to be recovered only in the Copy-hold Court, by Plaint according to his Case, and the Law takes not any Conisance of them, but as Tenants at Will; & although their Customs are pleadable, & allowable at our Law, yet no Action can be maintained for them at the Common Law, nor by any Writ of the Queens. But Beamond doubted thereof. Thirdly, If Tenant in Tail of a Copy-hold surrender, Whether it be a Discontinuance, and shall take away the Entry of the Ant. 446.

Ant. 469. Post. 522.

Ant. 148. Iſſue? And, per totam Curiam, It ſhould. For, being admitted that he is Tenant in Tail, It is to be admitted alſo, That he may make a Diſcontinuance, which cannot be by any means, but by Surrender; for he hath not any other courſe of Conveyance. Wherefore, &c.

Wright *verſus* Penry.

(21) ENtry Sur Diſſeiſin of a Diſſeiſin made to himſelf: The Plaintiff prayed a Writ of Eſtrepement, and it was doubted, Whether he ſhould have it: becauſe he is in this Action to recover all his Damages. But afterwards upon good Advice the Writ was
Poſt. 774. granted: For otherwiſe the Plaintiff might have his Houſes, and Woods defaced, and deſtroyed, and turned to his remedy to recover in Damages againſt one, who peradventure hath not ſo
Ant. 393. much in value.

Anonymus.

(22) NOte, That Serjeant Daniel ſaid, He had ſeen this Preſident: That the Biſhop of Durham Impriſoned one for a Lay Cauſe, whereupon the Arch-biſhop of York, as his Soveraign, cited him to appear before him to anſwer for that Impriſonment, Whereupon complaint being made to the King in Parliament: The matter was heard there, and the Arch-Biſhop ſubmitted himſelf to the Kings Grace, and was fined 4000 Marks. And the Juſtices ſaid, They had ſeen it alſo.

Termino Michaelis,
Triceſſimo octavo & Triceſſimo nono ELIZ.
in Banco Reginæ.

Comyns *verſus* Boyer.

Trin. 38 Eliz. rot. 953. Middl.

ACtion ſur le Caſe, Sur Trover of 9 Oxen apud Stepney in Com. prædict. 29 Aug. 37 Eliz. and converting them to his proper uſe the ſame day, at the ſame place, &c. The Defendant pleads, That the Vill. of Crawley in Comitat. Suſſex is, and time whereof, &c. was an Ancient Vill. within which habetur, & tenetur, and time whereof, &c. hath been held one Fair every Year, upon the twenty nineth day of Auguſt, for all the Queens Subjects thither reſorting: Et quod ante tempus, quo, &c. viz. The ſaid twenty nineth of Auguſt, 37 Eliz. One William White was poſſeſſed of thoſe nine Oxen, and them to the Defendant for 28 l. the ſaid twenty nineth of Auguſt in open Fair ſold, and delivered, whereby he was of them poſſeſſed, as of his proper goods, and them converted at Stepney in Middleſex, the ſame day in the Declaration, prout, &c. And it was thereupon demurred. First, Becauſe the Declaration ſuppoſeth the property of thoſe goods to the Plaintiff, and the Defendant doth not confeſs, nor deny it, nor anſwer thereto: But the Court held, That his Plea was good enough as to that. For when he Juſtifies by buying in a Market Overt; it is thereby allowed, That the property was in the Plaintiff, but he is bound by that Sale, and he needed not otherwiſe confeſs it. Secondly, The Preſcription is alledged: That there had been a Fair in that Vill. and he doth not alledge it to be in any certain perſon, &c. But it was held to be good; For he need not take Conuſance in whom it is: And ſo is the uſual courſe of pleading in ſuch Caſes. Thirdly, He alledgeth the Preſcription to be to hold a Fair there every Year upon the twenty nineth of Auguſt, and he doth not except Sunday, as it ought to be. Sed non allocatur. For a Fair holden upon the Sunday is well enough: Although by the Statute there is a Penalty inflicted upon the Party, that ſells upon that day, but it makes it not to be void. Fourthly, It is not alledged here, That any Toll was paid, for otherwiſe the property is not changed. 12 Ed. 4. 8. 35 H. 6. 29. Dy. 99. Sed non allocatur. For it is not of neceſſity, and in many Vills no Toll is uſed to be paid: And if it ought, it ſhould be ſhewn on the other part, to avoid the Sale, That

(1)

Ant. 146, 174.

2 Cr. 165. Co. 10, 91. a. b.

2 Cr. 496.

2 Cr. 496, 595.

Ant. 86. Poſt. 559.

That there was not any Toll paid. Fifthly, It is not alledged, That William White was poſſeſſed of thoſe Goods, as his proper goods, nor that he had any property in them, but generally, that he was poſſeſſed of them, and ſold them. Sed non allocatur. And, notwithſtanding theſe Exceptions, and others, it was adjudged for the Defendant.

Harrington *verſus* Wiſe.

Mich. 37, & 38 Eliz. 226.

(2) Noy. 57. 1 Rol. 847, 8. 2 Rol. 449, 50. Moor 459.

DEbt, for 60 l. Rent upon a Leaſe, 23 Septemb. of Lands in Newadham in the County of Warwick, Habend. a Feſto Sancti Mich. proxim. futur. for five years, rendring 120 l. per annum at the two Feaſts. The Defendant pleads, Nihil debet, &c. An eſpecial Verdict was found, That there were certain Articles endented in writing of the ſame date, whereof the Plaintiff ſealed the one part to the Defendant, and the Defendant ſealed another part to the Plaintiff: which were in this manner. Imprimis, It is covenanted, and agreed between the Parties, That James Harrington doth Let the ſaid Lands for, and during 5 years, to begin at the Feaſt of S. Michael next following. Provided always, That the ſaid Wife (the Defendant) ſhall pay to the Plaintiff annually, during the Term, at the Feaſts of S. Michael, and the Annuntiation, 120 l. by equal portions. Alſo the ſaid Parties do covenant, That a Leaſe ſhall be made, and ſealed according to the effect of theſe Articles, before the Feaſt of All Saints, next enſuing. And they further find, That he entred by force of that Demiſe, and that the Rent was Areer, prout, &c. And if, &c. Two Points were moved. First, Whether it were an Immediate Leaſe, or but an Agreement to have a Leaſe made, by reaſon of the laſt Words, which refer to a Leaſe to be made, and ſealed: But all the Juſtices held it to be a good Leaſe. For the Words, It is agreed, that he doth Let, being in the Preſent Tenſe, is a good Leaſe by the Words of the Agreement, and that which follows is in reference to further Aſſurance, &c. And the rather as it is here, for that it is to be made after the beginning of the Term. So he ought to have the Term preſently at Mich. 21 H. 7. 36. 1 Ed. 6. Bro. Leaſes 66. Secondly, Whether this Proviſo were a good Reſervation of the Rent, or a Condition only: For that there be not any Words of Agreement to pay it, nor any Reſervation. But all the Juſtices held, That it was a good Reſervation, being by Articles, whereto either of them were Parties, it is an Agreement, that the Rent ſhall be paid annually, during the Term: Which Tant amount, as if it had been a Reſervation upon the Leaſe by Words of Reſervation. And Popham ſaid, That it was a Reſervation, and Condition alſo, as in the Caſe of Sir Henry Berkley, ante; where a Proviſo joyned with the words of Covenant make it a Condition, and a Covenant alſo. And it was adjudged for the Plaintiff.

2 Cr. 92. Ant. 33. 156, 173. Hob. 35. 1 Rol. 847, 8. Ant. 385.

Hall *verſus* Henneſley.

Hill. 38, rot.

(3) ACtion for Words. Whereas he was Robbed by perſons unknown of divers Parcels of Linnen Cloth; That the Defendant

endant præmiſſa ſciens, in ſlander of the Plaintiff; ſpake theſe Words in the preſence of divers others, viz. Hugh Hall (innuendo he Plaintiff) hath received 3 pieces of his Cloth again of the Thief, and eareth with the Thief, and if I have any hurt hereafter, I will charge him ith it. After Verdict for the Plaintiff, it was moved in Arreſt of udgment, That an Action lies not for theſe Words. For when e ſaith, That he was Robbed by perſons unknown, then the ſaying, That he received his goods of the Thief, is not any offence. For it is not alledged, that he knew who was the Thief, from whom he received his Goods, and to ſay, that he bare with the Thief, is no offence: For one may bare with a Thief, as to bare with him, that he ſhall not proſecute him, which is not any offence n Law; and one may receive his goods again, which were ſtolen without offence, unleſs it be done on purpoſe to conceal the Offender, and to help him to eſcape. It was moved alſo, that this Declaration was not good. For it is, That he ſpake thoſe words n præſentia diverſorum, and doth not ſay, in auditu, and, if none heard, t is not a ſlander: And as to it, non allocatur. For it ſhall be neceſſarily intended, that it was in auditu, when it was in præſentia, &c. But for the words themſelves, they all held, for both reaſons alledged, that they were not Actionable. Wherefore it was adjudged for the Defendant. Ante. 62.

Sleigh *verſus* Bateman.

Hill. 37 Eliz. rot. 514.

(4) Aſſumpſit: And Declares, Whereas Henry Cavendiſh, 1 April, 27 Eliz. 2. Let a Cloſe, called Biggen-booth, to one Hugh Bateman for 21 Years, who aſſigned it to the Plaintiff: That the Defendant, 9 Martii 34 Eliz. in Conſideration, that the Plaintiff at the inſtance, and requeſt of the Defendant, reconcederet, or yield up all his Intereſt, and Term for years in the ſaid Cloſe, to the ſaid Henry Cavendiſh, ac contentus eſſet, that the ſaid Henry Cavendiſh ſhould have the ſaid Cloſe, ad urendum ad voluntatem ſuam; Aſſumed to the Plaintiff to pay unto him 70 l. when he ſhould be thereto requeſted, and alledgeth in Facto, That afterward, viz. 10 Martii 37 Eliz. ad prædict. Inſtantiam & Requiſitum of the Defendant, he did regrant, and yield up his ſaid Leaſe to H. C. and was content that the ſaid H. C. ſhould have the Cloſe to uſe at his will. And for the non-payment of the 70 l. by the Defendant, the Plaintiff brought this Action. The Defendant pleads a ſpecial Plea, and traverſeth the Aſſumpſit modo & forma, and hereupon a ſpecial Verdict was found; viz. That H. C. Let ut ſupra, and the Aſſignment to the Plaintiff, and the Aſſumpſit as it is alledged; And that the Plaintiff, 10 Martii 34 Eliz. at the Defendants Requeſt delivered an Indenture containing the ſaid Demiſe to one William Jackſon, to deliver Simul cum toto Statu, & Intereſſe termini prædicti, to the ſaid H. C. upon the Defendants agreement to pay to the Plaintiff the ſaid Sum of 70 l. And that Superinde the ſaid Will. Jackſon, for the Plaintiff, and by his appointment, delivered and ſurrendred to the ſaid H. C. the ſaid Indenture and Demiſe, and the Eſtate, Intereſt, and Term of the Plaintiff therein: And that the ſaid H. C. accepted thereof, and plucked away the Ant. 483. Ant. 483.

the Seal thereof. And it was further found, That the Plaintiff was content, that the ſaid H.C. ſhould have Tenementa prædicta, uti ad voluntatem ſuam: and that afterwards, the ſame day, H. C. made a new Leaſe thereof to the Plaintiff, Et ſi, &c. And hereupon it was moved, That this Verdict is found for the Plaintiff: The whole matter here only is, Whether this be a good Surrender made according to the Aſſumpſit, and ſo a good performance according to the Conſideration alledged. Firſt, That by the delivery of the Indenture of the Leaſe to Will. Jackſon, ad deliberandum ſimul cum toto Statu & Intereſſe ſuo, to Hen. Cavendiſh, and he delivered it accordingly, It is as good a Surrender, as if he himſelf had Surrendred it by expreſs words: For, Qui per alium facit, per ſeipſum facit; And if he himſelf had delivered the Indenture, and all his Intereſt in the Land, to the Leſſor, who had accepted thereof, and Cancelled the Deed, it had been a good Surrender. The Law is the ſame, where he delivers the Leaſe to a Stranger, and Commands him to do it, who doth it accordingly. Secondly, Admitting there was not any Surrender made by this Act: Whether, when the Leſſee himſelf accepts of a new Leaſe from the Leſſor, it be not then a good Surrender? As 37 H.6.15. is, and ſo the Conſideration is well performed. But the Court, as to that, held clearly; That it is not any Surrender according to the Aſſumpſit: for it ought to be an abſolute Surrender in Deed, and not a Surrender in ſuch manner; and ſuch a Surrender alſo, that he might have the Land in him to diſpoſe of afterwards, to whom he would, which is not here done by this taking of his ſecond Leaſe. Thirdly, It was moved, That this is a Surrender by Agreement, That the Leſſor ſhould have the Land to uſe at his pleaſure; which is as good a Surrender, as if it had been by expreſs words, That he did Surrender the Land. For, when it is agreed, That the Leſſor ſhall have, and diſpoſe of it; It is as much, as if he ſaid; He yielded up all his Intereſt. For otherwiſe, the Leſſor hath not any authority to diſpoſe thereof. And to that purpoſe was Cited, 21 H.7.7. 40 Ed.3.24. Dy.251. But it was thereto objected, That this is not any Surrender; Becauſe it is not found, That he uſed any words to the Leſſor, That he was content, &c. But the Jury had only found, That he was content, &c. which might be by aſſent of his mind. But all the Court Reſolved as to the firſt Point, That it was not any Surrender. For one cannot Authoriſe another by words only, to make any Surrender of his Leaſe, although it were by a Leaſe for years. But as to the Third, they all held clearly, That it was a Surrender. For when the Leſſee agrees with the Leſſor, and is content, that he ſhall have again the Land, It is a good Surrender of a Leaſe for years: And ſo it was agreed in the Caſe of Brown and Kingſwell, That a Leaſe for years may be termined by ſuch words: But it was there doubted, Whether a Leaſe for Life might be ſo determined? And the Jury finding, That he was content; It is thereby as good a Surrender, as if it had been found, That he uſed ſuch words. Wherefore it was adjudged for the Plaintiff.

Ant.264.

Co.Littl.337.b.

Holman

Halman *verſus* Collins.

Mich. 37 & 38 Eliz. rot. 211.

ERror of a Judgment given in Plimouth in an Aſſumpſit, where the Defendant pleaded Non Aſſumpſit, and found againſt him, and Judgment given for the Plaintiff. The firſt Error aſſigned ore tenus (for it was not aſſigned upon the Record) was, Becauſe the Stile of the Court is, Burgus Dominæ Reginæ Burgi de Plimouth, ibid. tent. in Guild-hall, coram Johanne Philips, Majore ejuſdem Burgi, 18. April, 36 Eliz. and ſhews not in the Stile of the Court, by what authority it was holden, viz. by Preſcription, or by Charter: And of ſuch inferior Courts, their authority to hold Pleas ought always to be ſhewn, Otherwiſe the Court of the Queens Bench cannot take Conuſance of them, 13 Ed. 4. 8. Dy. 262. 2 R. 3. 9. and Hillar. 31 Eliz. rot. 826. betwixt Stanton and Rogers: And of that Opinion was the whole Court, Popham abſente. A ſecond Error was aſſigned, Becauſe it appeared not upon the Record, that Halman the Defendant came in by Attachment, or that he declared againſt him Sub cuſtodia, &c. But the Record is certified only in this manner, after the Stile of the Court, as before, &c. W. Coll. queritur verſus Greg. Halman de placito tranſgreſſionis ſup. caſum, &c. Et ſunt Plegii de proſequendo, Joh. Doe. R. Roe. Et unde idem Willielmus queritur, quod cum, &c. So he ſhews not that any Proceſs was awarded againſt the Defendant, nor that he came in by Proceſs, nor that he was Sub cuſtodia of any, as is the uſual courſe in ſuch Caſes, and it was held to be a manifeſt Error. But it was doubted, whether it were not helped by the Statute of Jeofayls, being after Verdict. A third Error aſſigned was, Becauſe here was a diſcontinuance after the Verdict, and before the Judgment. And the Statutes do not aid diſcontinuances after Verdicts, but only diſcontinuances before Verdicts, whereof the party might have taken advantage before the Trial. But Gawdy and Fenner ſaid, That it was aided by the Statute, which remedies all diſcontinuances, as well after as before. And divers other Errors were aſſigned for inſufficiency in the Declaration; But, becauſe they held the firſt to be a manifeſt Error, they ſpake not to any others; but reverſed the Judgment.

(5)
1 Rol. 795.
Noy. 35.
Moor. 422.
Ow. 50.
2 Cr. 184.
2 Cr. 184.
Moor 422.
1 Rol. 795.

Longs Caſe.

WIlliam Long was Endicted at Norwich, within the County of the City of Norwich of the Felonious ſtealing of a piece of linnen cloth, and was thereof arraigned, and pleaded Not-Guilty, and found Guilty, and prayed his Clergy, and was burnt in the hand: and upon information to the Court, That this Endicting of him was by practice, and he found guilty upon ſmall evidence, he obtained a Certiorari to remove the whole Record into the Crown Office. Which being removed, there were divers Exceptions to the Endictment, to diſcharge the ſame. For it was moved, that it might well have been diſcharged by Exception, and there needed not any Writ of Error to avoid it: and he could not have a Writ of Error, as the Caſe is, becauſe he was a Clerk convicted only, and not attained. For when he prayed his Cler-

(6)

gy, which was allowed him; There never was any Judgment afterwards given; And of that opinion was the whole Court. The firſt Exception was, Becauſe the Endictment is, Seſſio pacis Dominæ Reginæ tent. apud Guild-Hall Civitatis prædictæ, &c. and Civitas Norwich was in the Margin: And it is not mentioned, That it is a Seſſions held for the County of the City of Norwich: and it may be, that it was a Seſſions of the Peace for the County of Norfolk, and then they ought not to enquire there of a Fact within the City. Secondly, It is not alledged, That the Guild-Hall was within the City, Sed non allocatur: for it ſhall be intended to be within the City. And it ſhall of neceſſity be intended to be a Seſſions of the Peace for the City only; becauſe Civitas Norwich is in the Margin. A ſecond Exception was, becauſe it is alledged, Quod apud Norwicum, within the County of the City, he Feloniouſly ſtole, &c. And doth not ſhew within what Pariſh, and Ward of the City he did it, &c. And it was alledged (as the truth is) that there be in that City twelve Wards, and two and thirty Pariſhes, &c. Vid. 7 H. 6. 35. Sed non allocatur. For the Court takes not any Coniſance of ſuch Pariſhes, and Wards; for it is but a ſurmiſe which they regarded not: and ſo are all the Preſidents, That the fact is alledged apud ſuch a City without mentioning any Pariſh, or Ward. A third Exception, Becauſe the Endictment is, Quod Felonice furatus fuit quandam peciam Panni linei cujuſdam Antho. Nixon præd' Draper, ad valenciam, &c. and doth not ſay, de bonis & catallis cujuſdam Anthonii Nixon: as the common form of the Preſidents are, and therefore ill: for an Endictment ought to be certain to every intent, without any intendment to the contrary; And here it may be, that this piece of Linnen was not the goods & chattels of Anthony Nixon, at the time of his taking of them; But by him let out, or delivered, or pledged to another, and it ought to have been ſhewn whoſe bona & catalla they were. And it ought not to vary from all other Preſidents. And the Court held it to be a material Exception for the reaſons aforeſaid, and for that cauſe the Endictment was diſcharged by the whole Court, Gawdy abſente, and Reſtitution awarded to the party, for his goods ſeiſed for that cauſe.

Henry Earl of Lincoln *verſus* Hoskins.

Mich. 37 & 38 Eliz. rot. 31.

(2) 13 El. Chap. 20. DEbt. upon an Obligation of 50l. dated 16 July, 23 Eliz. conditioned, That if he from time to time ſhould ſerve the Cure at Taterſhall, and not depart without licence, and if he ſhould make ſuch a leaſe of the Parſonage of Kirkby, as the Earl ſhould require, and if he did not any Act by Reſignation, or, &c. whereby the Leaſe ſhould be void. That then, &c. The Defendant pleads, That the Rectory of Kirkby was a Benefice with Cure, whereof he was Parſon. And further recites the Statute of 13. Eliz. That no Leaſe of any Benefice with Cure ſhould endure longer, than the Parſon ſhould be reſident upon his benefice, without abſence for 80. days, And recites it with this clauſe therein, Tam diu (where the words are tam cito) quam ea, aut aliqua pars inde veniret, ad aliquam poſſeſſionem, vel uſum inhibitum, vel &c. Which words by the Statute of 14 Eliz., are repealed, and appointed to be omitted; And further recites the Statute of 14 Eliz. That all Bonds, &c. made to permit any to

Ante. 123.

enjoy

enjoy any Leaſe, ſhall be of ſuch effect as the Leaſe; and alledgeth, that this Bond was made for the enjoyment of that Leaſe: And it was hereupon demurred. Firſt, In regard of the miſrecital of the Statute. Secondly, Becauſe it is not alledged, that he was abſent. For otherwiſe, neither the Leaſe, nor Bond be void. And for theſe cauſes, without any Argument, it was adjudged for the Plaintiff that the Plea was inſufficient.

Peter Roos *verſus* Adwick.

Paſch. 37 Eliz. rot. 499.

(8)

TReſpaſs for breaking his Cloſe apud Egmanton. The Defendant pleaded Not-guilty, and an eſpecial Verdict found, that William Normington was ſeiſed of that land in fee, and Let it to one Nicholas Adwick, and his Aſſigns, during his Life, and the Lives of William and Thomas Adwick, his ſons, and afterwards Let it to Peter Roos for years, to whom Nich. Adwick attorned. And afterward Nicholas Adwick the Father Let it William his ſon (now Defendant) at will, and died, leaving William and Thomas his ſons. And the ſaid William being in poſſeſſion, at the time of the death of Nicholas his Father, Peter Roos entred, and the Defendant ouſted him, Et ſi ſuper totam materiam, &c. The ſole Queſtion was, Whether a Leaſe to one for his own Life, and the Lives of two others, be a longer and larger eſtate, then for his own life only? Johnſon for the Plaintiff held, that it was not: For in as much as it is limited unto him for his own Life, it is the greateſt eſtate of Free-hold, and the limitation for the lives of others is vain and void; For a man cannot have a greater and leſſer eſtate in him at one and the ſame time. But againſt that it was argued for the Defendant, that it was a good limitation unto him for the three lives, and he had them all in him to Aſſign; and although he cannot have benefit in his own perſon of more than his own Life, yet he hath the reſidue of the other lives to aſſign over. And a man may have a greater or a leſſer eſtate in him all at one time where the leſſer is ſubſequent, as an Eſtate for life, Remainder for years; which although in his own perſon he cannot have benefit thereof, yet he may aſſign it, or deviſe it, as 49 Ed. 3. or to forfeit it, as 19 Ed. 3. Tit. Covenant. And he might ſave it in a Quid Juris clamat, as 20 Ed. 3. Quid Juris clamat is. And if it had been limited unto him for his own life, Remainder pur auter vie, It had been good, by a grant over: So if a Reverſion be granted unto him pur auter vie it had been good; and ſo it is where it is all by one limitation, he may thereof have benefit by aſſigning it over, or to charge it with a Rent, or to Let it for years, which is good as long as any of the ceſty que vies be living. And for expreſs authority herein, were cited, 8 Ed. 3. 402. 31 Eliz. Dierſleys and Nevels Caſe, and 32 Eliz. Vuedals Caſe, wherein it was held, but not adjudged, that it was a good Leaſe for the three lives, and not for the life of the Leſſee only. The common experience alſo in Leaſes of Biſhops, and of Tenants in Tail is to be granted to one for his own life, and the lives of two of his ſons. And it hath been allowed always to be good, as long as any of them be alive: & they are made in this manner, Becauſe a Leaſe for Life Remainder over cannot be good. And he would not take it in Joynture with any other, for then the other might

Gould. 157. Moor. 398. Co. 5. 13. a. Ant. 182.

Ant. 58. Ante 182.

Ante 182.

prejudice him in part, and he could not ſurrender, nor change it at his pleaſure. And of this Opinion were Gawdy and Fenner, Juſtices; For otherwiſe, he ſhould not take ſo much as was limited unto him. And there is not any inconvenience herein: But all the Eſtates may well ſtand together in him. And Fenner ſaid, That he was of Counſel with M. Southcote in the Common Bench, where the Biſhop of London made ſuch a Leaſe to one for his own life, and of two others; and it was agreed to be good for all. Wherefore, they (abſentibus aliis Juſticiariis) gave Judgment for the Defendant. Note; Popham was there at the time of the Argument, but roſe before the end thereof, but ſeemed to agree in opinion with them, although he delivered it not openly: Wherefore it was adjudged, Ut ſupra, but no Judgment was entred, becauſe the Parties compounded. 5 Co. 13.

Wyld *verſus* Cookman.

(9) Noy 34. Moor 404. ACtion for theſe words, Thou waſt forſworn in the Leet, innuendo a Leet holden in ſuch a Manor, ſuch a day, &c. The Defendant pleads, that the Plaintiff the ſame day with others were ſworn before the Steward, to preſent, &c. And they preſented, that ſuch a Ditch was not ſcoured, ad nocumentum, &c. which was falſe, and ſo juſtifies; And it was thereupon demurred: And now moved, that this was not any Plea, becauſe it is not ſaid, That they knew it of their proper notice to be falſe: otherwiſe it is not Perjury, for they make their Preſentment upon evidence, which if they believe, and preſent falſly accordingly, it is not any Perjury. Gawdy and Fenner; It is properly and commonly intended, That they ſhould preſent falſe upon their own knowledge. And if they preſented upon evidence, the Plaintiff ought to ſhew it by Replication. Popham; But a man may not juſtifie by intendment, but it ought to be preciſely alledged. Gawdy; There is another incurable fault therein. For it is not alledged, that the Ditch was within the Leet, and if it be not, the Preſentment thereof is out of their charge, and it is not any Perjury. Which was agreed by all the Juſtices: Wherefore it was adjudged for the Plaintiff. Clench demanded whether an Action lay for theſe words: And all the Juſtices held, That it did.

Ant. 135. Poſt. 721.

Freeſton *verſus* Crouch.

Hill. 38 Eliz. rot. 711.

(10) Poph. 109 Moor 460. ERror of a Judgment in the Common Bench: For that Treſpaſs was there brought, and the Defendant pleaded at large, That the place where, is two Acres, &c. and abuttals it, and juſtifies as in his Freehold. The Plaintiff by his Replication made a new Aſſignment, That the place where, is two Acres, and abuttals them otherwiſe than in the Barr. The Defendant Rejoyns, That the two Acres mentioned in the Barr, and in the Replication are all one, &c. And thereupon the Plaintiff demurred, and adjudged there, that the Rejoynder was ill, and adjudged for the Plaintiff; And thereupon Error brought, and aſſigned in the very point and matter of Law, becauſe it might be true, that what the Plaintiff ſhews in his Replication and Abuttals, and what the Defendant hath pleaded in Barr may be all one. For the one

May

ıay abut it upon the one ſide, and the other upon the other part, ıd both be true: And then there is not any reaſon, but he may lead it, and ſo is 21 H.6.21. 33 H.6.14. And ſo it was adjudged ɔ H.8.rot.449. betwixt Tylney and Spelman Serjeant. Wherefore, c. But Popham, Clench, and Fenner, Juſtices, held the contrary. ſor when the Plaintiff replies, and makes a new Aſſignment, nd ſaith, that it is alias quam in barra, Then he waves that, whereto ie Defendant hath pleaded: ſo as, if in truth it be the ſame thing, e can never take advantage thereof, but is eſtopped to give evi- ence in that, which the Defendant hath pleaded, and therefore to iat place newly aſſigned, the Defendant ſhould have pleaded in arr thereto, or ought to have pleaded Not-guilty, and ſo are 14 H. 4. and 27. H.8.7. But Gawdy è contra. And he held the Law to be ıith 21 H.6.21. For it is not reaſon, If they be all one place, but iat he ought to plead it, and not to ſtand upon an Eſtoppel, and ut it upon evidence to a Jury. But notwithſtanding, for as much s the other Juſtices were of the contrary Opinion, he aſſented ıith them, That the Judgment ſhould be affirmed.

Beckford *verſus* Parnecott.

Trin. 37 Eliz. rot. 632, vel 613.

(11)

EJectione firmæ, upon a ſpecial Verdict, The caſe was, That one Richard Parſons was ſeiſed of divers Lands in Aldworth, and had 1 Rol.618. ſue four Daughters, viz. Barbara, Joan, Frances, and Mary, and 27 Moor.404. liz. made his Will in Writing, and thereby deviſed all his lands Gould.150. ı Aldworth to Barbara and Joan his Daughters, and made them his Executrices, and after in 33 Eliz. purchaſed other lands in Aldworth which are the lands in queſtion) and after one J.S. came to the De- iſor, and deſired that he would ſell unto him thoſe lands, which he ıtely purchaſed. And he ſaid, No, they ſhall go with my other lands in ldworth, to my Executrices. Afterwards in 34 Eliz. he being ſick, the Will was read unto him, and he ſaid nothing thereto: But then ave divers Legacies of Goods to others, and cauſed them to be ɣitten and annexed in a Codicil thereto, and died. Whether hoſe lands newly purchaſed ſhall paſs to the Executrices by that Will, was the Queſtion: viz. Whether by thoſe words uſed to a tranger, or the annexing of the Codicil to the Will, being only oncerning Goods, be as a new publication of his Will to make hoſe Lands to paſs, &c. Firſt, It was agreed by the Council on ɔth ſides, and by the Juſtices, That if the Deviſor after the pur- Ant.401. haſe of that Land had made a new Publication of his Will, and Ant.423. hewed his intent, That thoſe Lands ſhould paſs, it had been a ɔood deviſe of them: For the words in the Will are All his Lands ı Aldworth, which are apt enough, and ſufficient to carry them, ınd he could not have added more apt words thereto. But after- vards, all the Juſtices (Gawdy abſente) held, that it is a new Pub- ication of his Will, and ſufficient by the words to J.S. For that hews his intent ſufficiently, and the Will wit hath words ſuffi- ient. And Fenner held, that the annexing of the Codicil thereto, s a new Publication as to it: for therein he affirmed, that it 1 Rol.618. hould be his Will at that time. But the other Juſtices doubted hereof, becauſe he doth not ſhew thereby any intent, That this

Will

Will ſhould be for his purchaſed Land: Nor, that he then remembred them. But for the reaſons before, It was adjudged for the Plaintiff, that thoſe Lands well paſſed by the Will.

Aſcue *verſus* Hollingworth.

Ante Mich. 36. & 37 Pl. 14. & Hill. 38. Pl. 7. & Hill. 39. Pl. 16.

(12) THe Caſe was now moved again to be ſuch, H. Aſcue, W. Aſcue, and John Fitz-Williams were bound to Hollingworth in 400 l. by ſuch words, Obligamus nos ad Solutionem prædictam, & ſi defecerimus de ſolutione prædicta, tunc currat ſuper nos, & quemlibet noſtri pœna Statuti Stapul, &c. Hollingworth thereupon brought Debt againſt H. A. only, who demanded Oyer thereof, and it was entred in hæc verba, &c. The Defendant pleaded, that it was intended to be only a Statute: and, becauſe it was not ſealed in ſuch manner as it ought to be, with a Seal of two parts, it was a void Statute, whereupon he demanded Judgment, whether he ſhould ſue it as an Obligation: And it was thereupon demurred, and adjudged againſt the Defendant in the Common Bench, and Error thereof brought, and two Errors only aſſigned. Firſt, that it being void as a Statute, It is not any Obligation, and ſo an Action of Debt lies not upon it. Secondly, If it be an Obligation, it is joyntly entred by three, and therefore he cannot ſue the one without the others. Godfrey è contra; For the firſt Error, although it be void as a Statute, yet it is a good Obligation, for there be words therein Obligatory: And every Statute is delivered to the party; As 20 Ed. 3. Accompt 79 is. And an Indictment, which finds a thing as Felony, which is not ſo, is void for the Felony; but is a good Indictment for the Treſpaſs, as 6 H. 7. and 18 Ed. 4. are. Secondly, although three be named in the Deed, yet it appears not that they all enſealed it: Therefore the Action brought againſt one of them is well enough; and ſo is 28 H. 6. 3. Gawdy; It is good, as an Obligation, becauſe it never was any Statute. As to the ſecond Error, he held the Judgment to be Erroneous for that Cauſe. For the words of the Obligation are joynt: and being a Joynt Bond, The one ſhall not be ſued without the other; and although the party admit thereof, yet the Obligation being entred upon Record, ſo as it appears unto us, that the Action is miſconceived, we ought to abate it, and ſo is 14 Eliz. Dy. 310. Fenner; It cannot be an Obligation, for a Deed ought to be according to the intent of the parties: and here it was never intended by the parties to have it delivered as an Obligation; but was acknowledged as a Statute, and that appears by the Mayors Seal put thereto, and the words therein. And here is not any allegation of the delivery thereof. And although in Debt upon a Bond, the delivery thereof need not be preciſely alledged; for it ſhall be intended: yet being here alledged to be acknowledged as a Statute (which needs not any delivery) There ought an expreſs delivery be alledged thereof, in Debt brought thereupon as upon an Obligation (if it be to be taken as an Obligation) Otherwiſe it never ſhall be ſo intended. And to the ſecond Error he conceived it to be an Error apparent for the reaſon before alledged. Popham; Debt lies upon a Statute, as upon a Record, or as upon an Obligation, although it never were delivered. For it is upon

Ante 355, 461. Poſt. 544.

Ant. 231.

Record

ecord, that it was delivered. And the party is estopped to say e contrary: But here it is a void Statute; so it is not any ecord to estop him. And therefore it is good, if it hath not any de- ery. But the Defendant might well have pleaded Nient son fait, d given this matter in Evidence: But he hath implicity admit- d thereof by his Bar, That it was a Delivery, and therefore he th now passed it. As to the second Error, It appears not whe- er the other two did enseal it, or not: Nor whether they be now ing, or not; otherwise the Action is well maintainable against e one only, which ought to be shewn on the other part: And pri- a facie, It may be good against the one. Clench absente, adjournatur. tewards, Hill 39 Eliz. it was moved again, and resolved, not- withstanding these Exceptions, That the Judgment should be firmed. Post. 544.

Eason *versus* Newman.

Hill. 37 Eliz. rot. 460.

(13) Gould. 152. 1 Rol. 5. Moor 460.

Action upon the Case Sur Trover: A special Verdict was found; That one Pepper was possessed of those goods, and the Defen- ant found them, and Pepper made the Plaintiff his Executor, d that the Defendant, knowing them to appertain to the Plain- ff, denied to deliver them unto him upon his request. And whe- er, That were a conversion without any other Act done, was the uestion. And all the Justices, Popham absente, held, That it was Conversion by the sole Denial. But being afterwards moved gain, Popham held it to be no Conversion: But it was cited at e Bar, That 23 Eliz. in this Court, It was ruled to the contra- y: Et adjournatur.

Kirton *versus* Williams, and three others.

Trin. 38 Eliz. rot. 623.

(14) Poph. 115. Owen 57. Moor. 457. Noy 36.

N an Appeal of Mayhem, Three appeared: the one of them pleads, Nul tiel in rerum natura, as the fourth named, and Quoad the Felony Not-guilty. The other pleaded Misnosmer, and to the Felony, Not- uilty. The third pleaded Not-guilty, To the Pleas of the two irst the Plaintiff Demurred. For Tanfield moved, That it was ot any Plea to plead in Abatement, and also Not-guilty, in any Case, but where the life is in Jeopardy, which is allowed in favorem itæ. But here this Action is but in nature of Trespass. And of hat Opinion was the whole Court. For Popham and Fenner said, When one pleads in Abatement, and also in Bar of the Action, The Plea in Bar waves the Plea in Abatement of the Writ, unless it be where the life is in Jeopardy, in Case of Felony, and hat is in favorem vitæ. Afterwards the Court awarded, That the Pleas in Abatement were ousted, and the Pleas of Not-guilty hould only stand. Ant. 223.

Kelsack

Kelſack *verſus* Nicholſon.

Ante Trin. 38. Placito 8.

(15) THe Caſe was now moved again for the Plaintiff, That the Action lay. For although an Executor may give a thing in poſſeſſion, and it ſhall bind his Companion, as 28 H. 8. 23. is, or may releaſe a Debt, which alſo is good againſt his companion, ſurviving him; for they are things executed, and nothing remains to his companion: yet here, notwithſtanding the Delivery of this Bond, the Debt, which is a thing in Action, remains, and by conſequence he ſhall have remedy for the Deed, eſpecially as this Caſe is; for that the Deed was not delivered to the Debtor, and ſo might have been a Releaſe unto him of the Debt, but to a ſtranger. And it is as if Tenant in Tail ſhould give the Deed of Intail, and die, yet the Iſſue, having right to the Land, ſhall have a Detinue for the Deed. Gawdy; The Caſes be not alike: For a Tenant in Tail cannot give the Land it ſelf from his Iſſue, no more can he give the Deed of Intail. But if Tenant in Fee-ſimple gives the Charters of his Land, and dies, ſo as it deſcends to his Heir, yet he hath not any remedy for the Charters. So here, in regard the Executor might have releaſed the Debt; So may give, and diſpoſe of the Inſtrument of the Debt. And if there be two Leſſees by Indenture, and the one gives the Indenture to a ſtranger, the Term ſhall ſurvive to his companion; For nothing of the Term paſſed by the gift of the Indenture: yet his companion hath not any Remedy for the Indenture. So here, &c. Wherefore, &c. And of that opinion were Popham, and Clench: But Fenner è contra. For in as much as the Debt remains to the ſurviving Executor, ſo the Deed ſhall remain, and appertain unto him: Wherefore, &c. But notwithſtanding it was adjudged for the Defendant.

Ant. 478. 2 Rol. 46. Ant. 483. 2 Rol. 31. Ant. 357. Moor. 422.

Johnes *verſus* Davers.

(16) THe Plaintiff, being Regiſter to the Biſhop of Gloceſter, brought an Action upon the Caſe, and declares, That the Defendant Dixit & propalavit hæc Latina verba in præſentia diverſorum, qui intellexerunt Romanam Linguam, viz. Inimicus meus, (the Plaintiff Innuendo) is an Extortioner, and divers others ſlanderous words, which were clearly Actionable. And the Defendant pleaded a vicious Bar, and it was thereupon demurred. But now Snag for the Defendant moved, That, upon this Declaration, the Plaintiff ought not to recover. Firſt, it is ſuppoſed, that the Defendant ſpake ſlanderous words in Latine, in preſentia diverſorum, who underſtood Linguam Romanam, which well may be; for Lingua Romana, at this day, intends the Italian Tongue, & not the Latine Tongue. And then, if the words were ſpoken in the preſence of thoſe, who underſtood not that Tongue, the Action clearly is not maintainable: For it was not ſlanderous where none underſtood it. And therefore it was adjudged in the Exchequer, where one ſpake divers ſlanderous words in the Welch Tongue, the Action lay not, without averring them to be ſpoken in the preſence of thoſe, who underſtood the Welch Tongue. And of that Opinion was the whole Court, That if it might be intended, That the Latine and Romane Tongues differed

1 Rol. 74. Hob. 126, 268. Poſt. 865.

differed (as at this time it ſeemeth they differ: for the Roman Tongue now uſed may be intended the Italiam Tongue) then the action lies not. Secondly, He doth not ſay, That the Plaintiff was an Extortioner, But he ſaith Inimicus meus, which cannot be intended of the Plaintiff, more than of any other. And although the Plaintiff alledgeth, that he ſpake them (innuendo the Plaintiff) it is not material; for it did not ſo appear to them, who heard it. But if it had been averred, that at the ſame time he was the Plaintiffs enemy: And that the Defendant had not any other enemy, there peradventure it would have been otherwiſe. And the whole Court were clearly of that Opinion. And Popham cited Sir John Bourns Caſe to be adjudged, that where three were ſworn in Evidence againſt him, and he ſaid, One of you is perjured, and the one of them brings an Action for theſe words, and alledgeth that the Defendant ſpake thoſe words (Innuendo of the Plaintiff) and adjudged, that the Action lay not. Wherefore, for the laſt Exception it was adjudged againſt the Plaintiff. Mich. 43 & 44 Pl. 45. 1 Rol. 74. Co. 4. 17. b. Hob. 268. Poſt, 865.

Harecourt *verſus* Biſhop.

(17) ERror of a Judgment in the Common Bench in a Aſſumpſit. The Error aſſigned was, Becauſe the Judgment was entred, Quod Querens recuperet 100. per Juratores aſſeſſ. & 5l. pro miſis, per Jurat. hic de Incremennto adjudicat. So it is per Jurat. where it ought to be per Curiam, and thereby a Miſpriſion and Error. But it was prayed, that it might be amended; for it is but a Miſpriſion of the Clerk in his Entry: and therefore is well amendable by the Statute of 8 H. 6. cap. 12. But the Court held, That it was not amendable; for it is the default of the Court in the Judgment, which never is amendable: for if it had been omitted by whom they were aſſeſſed, it had been clearly ill: And ſo it is when it is entered to be aſſeſſed by a wrong perſon, it is not amendable; no more, then where an Entry is, Ideo capiatur, where it ſhould be, In miſericordia, which is meerly the default of the Clerk, who entered the Judgment. Wherefore it was reverſed. Poſt 865.

Bacon *verſus* Hill.

Trin. 37 Eliz. rot. 382.

(18) TReſpaſs. Upon a Special Verdict, it was found, That one Jeffery Hill was ſeiſed of three Tenements, viz. Rawlings, Rivets, and Downings, and had iſſue three Sons, viz. John, Richard, and Robert; and by his Will in writing deviſed all thoſe Tenements to his Wife for her life; and after her decreaſe, that his Tenement called Rawlings ſhould be to John his Son; and his Tenement called Rivets ſhould be to Richard his Son; and his Tenement called Downings (being the Land in Queſtion) to Robert his Son. And further deviſed, That if one, or two of his Sons died; that then his part or parts ſhould remain to the Survivors. And further deviſed (having three Daughters) to every of them 10l. to be paid out of his Land by every of his Sons, as ſoon as they ſhall enter their parts, after the death Moor 464.

of their Mother, as aforeſaid. And in the end of the Will puts this Clauſe: Provided always, if it fortune any of my ſaid Sons to marry, and have Iſſue, and to die, before he enters his Part: then I will, that his Part ſhall remain to his Heir of his Body, and not remain to his other Brothers, as aforeſaid. And they further found, that the deviſor died, and afterward his Feme died; and every of the Sons entered into their Parts; and after Robert had iſſue the Defendant, and died: and John the eldeſt ſon had iſſue a daughter, married to Bacon the Plaintiff: And whether the ſon of Robert ſhall have this Land, as Heir in Tail, or Heir in Fee-ſimple; for that his fathers deviſe was paying 10 l. which being a conſideration, gives unto him a Fee, or at leaſt wiſe a Fee-tail: as Tanfield argued for the Defendant. And all the Court reſolved, that Robert ſhould not have a Fee-ſimple; for although it is deviſed, that every one ſhould pay a Conſideration, viz. 10 l. yet it being further limited, that after the death of every of them it ſhould remain over; that ſhews his intent, that he ſhould have it for his Life only, notwithſtanding that Limitation of the payment. But Gawdy held, that he ſhould have an Eſtate-Tail by this deviſe; for when he willed, that this iſſue ſhould have it, although the father did not enter his part; a fortiori he intended, that his iſſue ſhould have it by deſcent, when he entred his part and died, having iſſue. But Popham, Clinch, and Fenner e contra; for an intention ſhall never be taken to be againſt the expreſs Letter of a Will: and here by the premiſſes it is not limited but for life, and the laſt Clauſe doth not limit an Eſtate-Tail, but where he had iſſue, and died before he entred his part. So it is limited upon a Condition, which is not performed; wherefore, &c. And Popham ſaid, It might be intended, that he limited it in this manner, becauſe if the father had died before he had entered & taken the profits, that he might by ſuch means have provided for his iſſue, and that then his iſſue ſhould have it; otherwiſe not. Wherefore it was adjudged for the Plaintiff.

Ant. 378.

Eaſt *verſus* Harding.

Hill. 37 Eliz rot. 996.

(19) Ejectione Firmæ. An Eſpecial Verdict was found, That Sir Henry Lea was ſeiſed in Fee of the Manor of Quarender, in the County of Bucks; whereof the Land, &c. was parcel, &c. and Copy-hold Land, and demiſable in Fee, &c. And that Sir Henry Lea granted it by Copy to the Defendant: And further found, That the ſaid Sir Henry Lea infeoffed one Keen of the ſaid Land, who let it for twenty one years to the Paintiff: and afterwards, viz. 32 Eliz. the Defendant cut down two Elms, being Timber, to repair his Houſe: And that he let the Land for three years by parol only, to begin the next Michaelmas: And that the leſſee died before Michaelmas: And that afterwards the leſſee of the Plaintiff entred, and the Defendant re-entred, and ouſted him: And that upon the Tueſday before the Verdict found, he had beſtowed one of the Elms for Repairing, and that the other remained ready ad Reparationem faciendam, and, &c. And upon all this matter ſhewn, &c. More for the Plaintiff moved, That

Ant. 292. Moor. 392. Owin 63. 1 Rol. 507. 8. 9. 10.

That, in this Caſe, the Copy-hold was forfeited. Firſt, Becauſe there is Waſte committed, which of it ſelf is a Forfeiture in Law, as 9 H. 4. is. And although it be found, That by the Cuſtome he might cut down for Reparations, yet he ought in convenient time to imploy it: Otherwiſe, it is a Forfeiture. And it is found, That they were cut down in 32 Eliz. and not imployed until 37 Eliz. after this Action brought, and the one of them not yet imployed: So for that it is forfeited. Secondly, The Leaſe here made is a Forfeiture. For, by making that Leaſe, he took upon him to make a greater Eſtate, then he had any authority to do, And although it were by Parol only, yet all is one, and the making of the Leaſe and Entry of the Leſſee, is a Diſſeiſin: which is the reaſon, That it is a Forfeiture in it ſelf. Pudſey, for the Defendant, moved, That there was not any Forfeiture: And if there were, yet the Lord cannot take any advantage thereof, before it be preſented by the Homage. But all the Court againſt it: For the Preſentment is not of neceſſity, but for the Lords better inſtruction of his Title, and he may, if he will, take advantage of it before the Preſentment. And all the Juſtices held, That the making of this Leaſe for years is a Forfeiture in it ſelf, when there is not any Cuſtome to warrant it: For he hath no Authority by the Law to make ſuch an Eſtate. And although this is a Leaſe to begin at a future day, and the Leſſee hath not entred, yet it is a Forfeiture preſently; for it is a good Leaſe between the Parties. Secondly, As to the cutting down the Trees, they were not all agreed, whether it were a Forfeiture, in regard it was found, That they were neceſſary for Reparations, & that he cut them for that purpoſe. Gawdy, and Fenner held, That it was not any Forfeiture; For it is found, that he imployed one; and it is well enough in reſpect of the time: For it may be they were not ſufficiently ſeaſoned before. And it is found, they were cut down for that purpoſe, and are not otherwiſe imployed: Wherefore it cannot be any Forfeiture, And Fenner ſaid, Although that Tree, which is not imployed, is more then was ſufficient to repair the Houſe: Yet, ſeeing that he cut it down for that purpoſe, and peradventure dit not know what would ſerve for that purpoſe, It is not any Forfeiture; for it was adjudged in this Court, where one cut down wood to make Hedges, and uſed the greater part thereof in Hedging; yet for the reſt, which was cut down for that purpoſe, no Tythes ſhould be paid. But it was then moved, admitting there were a Forfeiture; Whether the Leſſee for years of the Feoffee ſhall take advantage thereof. For it was agreed by all the Juſtices, That the Feoffee himſelf, if he had not made that Leaſe, might have taken advantage of the Forfeiture: For he is Dominus of that Copy-hold. But, Whether his Leſſee might enter, Gawdy and Fenner, doubted, But they agreed, that Leſſee for years of a Mannor may take advantage of the Forfeiture of a Copy-hold. But Popham and Clench held clearly, That Leſſee for years of the Feoffee might well take advantage of that Forfeiture. For the Copyholder, as to the Forfeiture of his Eſtate, remains in all degrees as before the Severance thereof from the Mannor. Wherefore, &c. Et adjournatur.

Ant. 291.

Ante 351.

1 Rol. 507.

Ant. 292.

1 Rol. 508.

1 Rol. 509.

Ante. 252.

Brown *verſus* Michel.

Trin. 37 Eliz. rot. 661

(20) Noy. 36. ERror of a Judgment in the Common Bench, for theſe words, Mr. Brown (innuendo the Plaintiff) hath delivered untruths upon his Oath, in his anſwer to the Bill of J.S. in the Chancery. And there the Plaintiff recovered. And the Error now aſſigned was, That the words were not actionable. And all the Court (abſente Gawdy) agreed, That the words were not actionable. For a man doth not ſwear all things in his anſwer to be true: But onely thoſe, which are of his own knowledge; and for the others, That he believes them to be true. And it may peradventure be untrue in ſome matter of Circumſtance, and not in matter of Subſtance, which is not material, nor is any Perjury, or Offence, and ſo no Action lies. And the Judgment was reverſed. And it was ſaid at the Barr, That the Judgment in the Common Bench was entred by the Plaintiff againſt the direction of that Court.

Auſtyn *verſus* Twyne.

Trin. 37 Elz. rot. 348.

(21) 2 Rol. 778. Moor 408 Poſt. 719. FJectione firmæ. Upon a ſpecial Verdict, it was found, That one Henry Dean, being Patron of two Churches, viz. the Church of Dean, and the Church of Aſh, being within a mile together; And the one of the value of ten pounds, and the other of the value of eight pounds, and more; The Ordinary by the aſſent of the Patron, united, and conſolidated the ſame Churches; And the ſame day the Patron confirmed that Union, & afterwards the Queen, reciting that Union, ratifies, and confirms it by her Letters Patents: And, Whether it were a good Union? was the Queſtion. It was agreed by the Counſel on both ſides, That this Union reſted at the Common Law, and it is out of the Statute of 37 H. 8. cap. 21. Becauſe the Churches are above the value of eight pounds mentioned in that Statute. Atkinſon, for the Plaintiff, moved, That it was not good Union; For it ought to be by a Precedent Licence from the Queen: And a Subſequent Confirmation will not ſerve; For ſhe ought to be the firſt Agent in the making an Union; Or, at leaſt wiſe, give the Precendent Aſſent thereto, as 50 Ed. 3. 26. 21 Ed. 3. 6. and 19 Ed. 3. Gard. 18 Foſter e contra; The Ordinary is the pincipal Actor in the Union, and, if he doth it with the conſent of the Patron, and Queen, be that Subſequent, or Precedent, it ſufficeth. Vid. 40 Ed. 3. 28. 6 H. 7. 14. 11 H. 7. 6. 9 H. 6. 22. Gawdy, Clinch, and Fenner were of the ſame Opinion, That this Union was good, and the Confirmation is well enough for the time. Popham; I agree, That ſuch an Union, made at the Common Law, was good, and it was not material, whether the Queens Aſſent be Precedent, or Subſequent. But I conceive, That it is not good at this day: For by the Statute of 37 H. 8. there cannot be any Union made of any Church exceeding the value of eight pounds. For, although the Statute is in the Affirmative; That the Ordinary may make an Union, where the Church is under the value of eight pounds: Yet therein is a Negative implied, That he ſhall not make ſuch an Union, where

2 Cr. 518. 2 Rol. 778.

the

he Church is above the value of eight pounds. For, by the Common Law, the Ordinary of himself might have made an Union of those Churches, which were poor, and the one not having sufficient to maintain a Minister, by the consent of the Patron, without any confirmation from the King. But what should be said to be a poor Church, was the Doubt. And this Statute of 37 H. 8. hath put it in certain, viz. where it is not above the value of eight pounds, and that such an Union shall be good without the Kings Confirmation. For, at the Common Law, the Ordinary could not have made an Union, unless where the Church was poor. And the Statute herein also hath an Implied Negative; That there never shall be an Union, where the one sufficeth to maintain a Minister, which the Law accompts to be eight pounds. For there is a proviso in the Act, That, if the people of any Church will increase the value to eight pounds, That the Union shall be void; which shews the intent of the Statute to avoid accumulation, and to restrain the authority in Uniting of Benefices, which they had by the Common Law. Gawdy, and Fenner contra; For the Statute 37 H. 8 is onely in the Affirmative, and not with a Negative: And then it never takes away the Common Law, as appears 33 H. 8. 50. and 4 and 5 Ph. and Mary, 135. And at the Common Law the Ordinary, by consent of the Patron, without the Kings Confirmation, might have made an Union of Churches which were poor; But not of Churches, which had sufficient to serve the Cure, each of them by its self without the King's Confirmation: But, by the consent of the King, Patron, and Ordinary, an Union may be of any Churches of what soever value it be. And this authority is not taken away by the Statute, nor restrained, but limited of what an Union may be made without the King. Wherefore, &c. Popham, We are to hear the Civilians, where an Union may be made at the Canon Law. And afterwards Doctor Steward for the Defendant, and Doctor Crompton for the Plaintiff were heard in Court. And it was agreed by both, That by the Cannon Law the Ordinary, with the Patrons assent, might have made an Union of two Churches, although either of them were worth one hundred pounds per annum, and sufficient to maintain a Minister of its self, and this by the express Text of the Canon Law. For an Union may be made for divers Causes, viz. Poverty of the people, or Paucity of the Parishioners, or the like. And such an Union might have been made without the Popes Confirmation. And if an Union had been unlawfully made, Yet Steward said, That being afterwards confirmed by the Pope, It was for ever good, and valid. And such authority as the Pope had, the Queen now hath by the Statutes. And Crompton denied not, but that such Unions might be made, of what value soever the Churches were: But he said That, in this Case, the Union was made upon a supposed, and pretended Poverty, which appears to be false, and so the Ordinary deceived, Quia ex falsitate; wherefore it is void. But the Court said, That they were not to dispute of the Validity of the Union. For that comes in Question in the Spiritual Court. But, for as much as an Union in such Case might be made at the Common Law; It is not restrained by the Statute. Wherefore, by the assent of Popham, It was adjudged for the Defendant, That it was a good Union.

Baptist

Baptiſt *verſus* Michelbourn.

Paſch. 38 Eliz. rot. 432.

(22) C. 6. 20. b. ERror of a Judgment, in an Action upon the Caſe, upon a Trover in the Marſhallſey. The Trover, and Converſion being ſuppoſed at Southwark, within the Virge, and adjudged for the Plaintiff. The Error aſſigned was, Becauſe none of the Parties were Del-hoſtel le Royne, nor living within the Virge. And it was thereupon Demurred. And Godfrey moved, That for this Cauſe the Judgment was erroneous, For that Court cannot hold Pleas betwixt ſtrangers: and, in proof thereof, he Cited a Preſident, Hill. 1 Ed. 4. rot. 47. and the Book of Entries, 278 10 H. 6. 13. 7 H. 6. 31, Popham, and Fenner held, That the Action well lay; For the Statute of Articuli ſuper Chartas, Cap. 3. Which ſhews, That Treſpaſſes ſhall not be brought there, nor Action betwixt others, then of the Hoſtle of the King, is intended of Treſpaſſes Co. 6, 20.b. for Land, and not of ſuch Perſonal Actions. And there be many Preſidents, That in all times ſuch Perſonal Actions have been there brought, and allowed. But Gawdy doubted thereof. But they all held, That if the Action be not maintainable there, The Judgment is void: Yet Error lies thereof. Sed Adjournatur. Note, Co. 6, 20. b Another Preſident was ſhewn in Mich. 32. H. 6. rot. 27. betwixt Rede and Purcas, Error of a Judgment in Treſpaſs in the Marſhalſey, becauſe that none of them were Del Hoſtel de Roy, and Reverſed.

Parrat *verſus* Carpenter.

(23) Ante 94. ACtion upon the Caſe for Words: and Declares, Whereas he was Parſon of D. and a Preacher; That the Defendant ſpake theſe words. Parrat (the Plaintiff innuendo) is an Adulterer, and hath had two Children by the wife of J.S. and I will cauſe him to be deprived for it. After Verdict it was moved, That an action lay for theſe words; for they be very ſlanderous to the Plaintiff, and touch him in his Credit, and profit, and are cauſe of Depriuation, if they be true. But the Court held, That it is a Slander examinable only in the Spiritual Court, and not here. Wherefore it was adjudged for the Defendant.

Broughton *verſus* Randall.

Trin. 38 Eliz. rot. 876.

(24) ERror of a Judgment in Wales, in Dower; where the Parties were at Iſſue. And at the day of the Ven. fac. returned, none of the Jurors appeared: Whereupon an Habeas Corpora, with a Decem Tales, was awarded; And thereupon a Trial had with part of the principal pannels, and part of the Tales and Judgment accordingly. The Error aſſigned was, Becauſe an Hab. Corp. with a Decem Tales, was awarded, where none of the principal pannel appeared. And a Tales ought not to be awarded, but where two at leaſt of the principal pannel appeared: So that they of the Tales, with the principal Jurors who appeared, might make a Jury,

as

ıs 27 H. 6. 10. and 37 H. 6. Tales, Br. 12. But all the Juſtices held, That if upon an Habeas Corpora and Diſtringas, none of the Jury appeared; yet a Decem Tales ſhall be awarded: but not upon the Ven. facias, and that this is the difference, and therefore, as this Caſe is, it is Erroneous. But it was then ſaid, That it was altogether the courſe in Wales, to award Tales in ſuch Caſes. And the Court ſaid, If it were ſo, it is not any Error: For the Cuſtome of every Court is a Law in that Court; as 10 Ed. 4. and 5 Ed. 4. are. But it then was ſaid, That he ought to have pleaded it ſpecially: Otherwiſe the Court cannot be informed thereof. But the Court ſaid thereto, they might be informed thereof by Preſidents, and by a Certificate from the Judges there, whereto they would give Credit, And ſo was now lately done, Where in a Quod ei deforciat, in Wales, becauſe we were informed, That the common courſe was to give Judgment Final in that Action, It was no Error. And ſo the Court appointed here: Wherefore Adjournatur. Afterwards, becauſe no Preſidents were ſhewn, It was Reverſed. *Note* here, the Title of the Feme, to recover Dower, was, That the Father and Son were Joynt-Tenants to them, and the Heirs of the Son. And they were both hanged in one Cart. But, becauſe the Son (as was depoſed by Witneſſes) ſurvived, as appeared by ſome Tokens, *viz.* his ſhaking his Legs. His Feme thereupon demanded Dower. And upon this Iſſue Nunques Seiſie Dower, This matter was found for the Demandant. Co. 10. 104. b. Co. 5. 85.

Fetherſton *verſus* Allybon.

DEbt againſt an Executor, upon an Obligation made by his Teſtator. The Plaintiff was Non-Suited: The Defendant had Coſts by order of Court. Otherwiſe it is, where an Executor is Plaintiff, and is Non-ſuited. For it cannot be intended, That it was conceived upon malice by him. Vid. Statute 23 H. 8. cap. 15. (25) 1 Cr. 29. 219. 2 Cr. 229. 361

The Earl of Lincoln *verſus* Flower.

Paſch. 38 Eliz. rot. 159.

ERror of a Judgment in Debt, upon an Obligation, in the Court of Common Bench, where the Earl pleaded Non eſt factum, and found againſt him, and Judgment given. Ideo capiatur. And, thereupon Error aſſigned, becauſe he was a Peer of the Realm, and a Capias lies not againſt him. Sed non allocatur. For by this Plea found againſt him a Fine is due to the Queen: And none ſhall have any Privilege againſt the Queen; Therefore Capiatur pro fine well lies. And the Judgment was affirmed, 27 H. 8. 22. 11. H. 4. 15. (26) Ante 170.

Elinor Bliſſet *verſus* Johnſon.

ACtion for theſe words, Thou (innuendo the Plaintiff) art a Villanous & a Murderous Quean; for thou didſt murder my laſt Wife. The Defendant pleaded Not Guilty. The Jury found, That the Defendant ſpake thoſe words of the Plaintiff to one Spinkſoot. She is a Villainous, Murderous Quean; for ſhe did murder my laſt Wife. Et ſi, &c. Popham and Fenner held, That this Verdict is againſt the Plaintiff: For they be not the ſame words mentioned in the Declaration. (27) 2 Rol. 718. Ant. 224.

And

And if the Defendant had been found Guilty generally, and the
2 Rol. 718. Plaintiff had recovered, the Recovery would not have been a Bar in a new Action for theſe words: For they be ſo variant, that he cannot help himſelf with an averment that they are the ſame words. But Gawdye contra; for they are all one in ſubſtance. And the difference to whom they were ſpoken, is not material. And they may be well averred in a new Action for theſe words, that the words in the firſt Declaration, and theſe are all one. Therefore it was adjourned.

(28) Thomſon *verſus* Clerk. Mic. 37, & 38 Eliz. rot. 228.

ACtion ſur Trover, and Converſion of Goods, apud D. in Comitat. Nott. The Defendant ſaith, That he recovered againſt the Plaintiff a Debt of 20 l. by Bill in the Queens Bench, & thereupon had a Fieri fac. directed to the Sheriff of York, who, apud Wakefield in Comitat. Eborum, ſeiſed thoſe Goods, and delivered them unto him in ſatisfaction of this Execution: and ſo juſtifies the Converſion. And it was thereupon demurred, and without argument ruled: that the pleading was ill. Firſt, Becauſe he ſhewed not where the Queens Bench was, at the time of the Recovery, it being a Court removeable; as 5 Ed. 4. 8, is. Secondly, The Trover and Converſion is ſuppoſed to be in the County of Nott.
Ant. 174. and he juſtifies in the County of York, without traverſing; &c. Thirdly. The Sheriff upon a Writ of Fieri fac. cannot deliver the
2 Cr. 246. Defendants Goods to the Plaintiff, in ſatisfaction of his Debt. Wherefore it was adjudged for the Plaintiff.

Gyppyn *verſus* Bunney.

(29) UPon a Special Verdict the Caſe was ſuch. A Copy-holder
Moor 465: in Fee Surrendered to the uſe of one for Life, the Remain-
1 Rol. 505. der to another in Fee; Tenant for Life is admitted, afterwards he in Remainder ſurrenders to the uſe of J. S. in Fee, of which ſurrender the Lord accepted, and admitted J. S. The Tenant for life dies, the heir of the firſt Copyholder enters, and J. S. outs him; Et ſi &c. Coke Attorney General, moved, that J. S. ſhould
Co. 4. 23. have this Land. For, firſt, the admittance of the Tenant for
Poſt. 662. Life is ſufficient for him in Remainder, to veſt the Remainder in him; as 18 Ed. 4. a Signiory is granted for Life with the Remainder to another, attornment to the Tenant for Life is good
Co. 10. 47. b. to him in Remainder. So of a Deviſe of goods, Remainder over; the Executor conſents that the firſt Deviſor ſhall have them: it is good for the other. Secondly, the Lords acceptance of the Surrender is quaſi an admittance; for in that he allows
1 Rol. 505. him to make a Surrender, he thereby admits him to have a Remainder, whereof to make a Surrender. Wherefore, &c. Popham, Tenant for Life, and he in Remainder, have but one Eſtate in Law; and therefore the admittance of the one ſhall ſerve the other as a livery or attornment. The Reaſon, which is objected againſt it, is, Becauſe the Lord ſhould then loſe his Fine of him in Remainder. But it ſeemeth to me, that there is one onely Fine due upon this Surrender, which the Tenant for Life ſhall pay before his admittance; as where the Queens Tenant in Capite aliens for Life, Remainder over; there is but one Fine due for this Alienation. So here, unleſs there be an eſpecial Cuſtome that two Fines ſhall be due. Fenner of the ſame Opinion. But becauſe the other Judges were abſent, it was adjourned.

Criſp

Criſp *verſus* Fryer.

Trin. 25 Eliz. Rot. 588.

(30)

TRespaſs. Upon Demurrer; the Caſe was ſuch. Jo. Rouſe was ſeiſed in Fee of the Mannor of Royden in Suff. whereof the Land in queſtion was parcel, and whereof the Plaintiff was a Copyholder in Fee, rendring 20. s. per annum, at Mich. And at the Feaſt of St. Michael, upon the laſt inſtant of the day, the Lord came thither, and demanded the Rent then due, and for two years before; and none was there to pay it: Whereupon the Lord there continued demanding his Rent, untill after Sun-ſet; and, for Non-payment, entred for a Forfeiture: And whether it were a Forfeiture, or not? was the ſole queſtion. And it was moved, That it was not a Forfeiture; becauſe it was not any wilfull Denial, but only a negligent Non-payment: and this Diverſity hath been commonly agreed; and the Lord is not at any miſchief: for he may diſtrain for his Rent; as 6 R. 2. Avowry 86. is. And ſo it was adjudged alſo, Mich. 36. and 37 Eliz. in Communi Banco, in Vaughans Caſe, that the Lord may well Avow for his Rent. Wherefore, &c. Gawdy, the Lord demanding his Rent upon the laſt inſtant of the day, whereon it is due, and the Tenant being not there to pay it; I conceive to be a Forfeiture as well, as if he had made an expreſs denyal to pay it. For this Non-payment is Denyal in Law; As 30 H. 8. 42. is. And as Littleton ſaith, Non-payment of a Rent Seck upon demand is a Deinal in Law, whereof the Grantee might have an Aſſiſe. But if the Demand had been here at any other day, then the ſame day when it was due, the Non-payment thereof had not been any Forfeiture: For the Tenant is bound to attend upon the day of payment of his Rent, when the Lord alſo is bound to demand it, and not at any other day, And if it ſhould not be a Forfeiture, it would be a great miſchief to Lords to drive them to diſtrain, and avow for every. 6. d. or 12 d. which ſhould be due from his Copy-holder. Fenner to the contrary. The Entry for the Forfeiture is for a Condition in Fait, not for a Condition in Law; and the Condition in Law is not for Non-payment of the Rent, but for the refuſal to pay his Rent. And a Denial in Law ſhall not ſerve to make a Forfeiture, but there ought to be an expreſs denyal in Fait: otherwiſe it would be very miſchievous to a Copy-holder; that for ſuch a negligent Non-payment, there ſhould be a forfeiture of his Eſtate. Popham; It is a forfeiture: for the Copihold Eſtate is maintained by the Cuſtome of the Mannor: and therefore he ought to perform his Cuſtomes, and duties on his part to be performed, which he hath not done here, by his Non-payment of his Rent at the day it was due and demanded. And truly a denial in Law is as much a forfeiture, as a denial in Fait. As if the Lord demands his Rent upon the day, and if the Tenant is there, and ſaith nothing, it is clearly a forfeiture. And 23 Elizab. Sir Chriſtopher Hattons Caſe againſt his Tenants of Wellingborough; It was agreed by all the Juſtices, That, if a Copyholder comes not to the Lords Court after a particular Summons made to their perſons to come, it is a forfeiture without any expreſs

Noy 58.
1 Rol. 506.
Moor. 350.
Ant. 149.
Sect. 233.
Hob. 135.
1 Rol. 507.

pꝛeſs denial to come. Yet it was there agreed, That the
Ante 353. not coming after a general Summons at the Church was not any Fozfeiture: (Quod fuit hic per Curiam conceſſum) But it was there agreed, that if he might excuſe his not coming upon any good cauſe, as Sickneſs, oꝛ the like, ꝛc. it ſhould ſave the Fozfeiture. And there is not any difference betwixt theſe Caſes. And admitting here, that the Lozd had warned his Tenant, that he ſhould demand his Rent upon the Land at the day it was due, and command to be there ready to pay it, and the Lozd upon the day demands the Rent, & none is there to pay it, it had been clearly a Fozfeiture. So here: foꝛ the Law appoints the day foꝛ the payment as ſtraitly, as if the Lozd had given expꝛeſs notice thereof. Wherefoꝛe, ꝛc. Et adjournatur.

Dame Greſham *verſus* Banning.

Hill. 38 Eliz. Rot. 847.

(31) SCire facias, Upon a Reconuſance made unto her by one
Moor 429. Gerveys; who was returned Dead, whereupon ſhe ſued a
Goulds. 160. new ſcire facias againſt the Heir of Gerveys, and the Terr-tenant: upon which the Sheriff returned, that he had ſummoned Paul Banning, who was Tenant of the Mannoꝛ of S. which was the Land of Gerveys, after the Reconuſance acknowledged, whereupon Paul Banning came in, and pleaded; That one Mann was ſeiſed of three Acres in D. whereof G. was ſeiſed in Fee after the Reconuſance made: Judgment, Si Actio. The Plaintiff ſaith, that Gerveys was not ſeiſed in Fee of thoſe three Acres after the Reconuſance, ꝛc. And thereupon they were at Iſſue, and an eſpeci-
Poſt. 689. al Uerdict found, that the ſaid Gerveys, and one Bedingfield were joyntly ſeiſed in Fee of thoſe 3 Acres after the Reconuſance, ꝛc. And thereof infeoffed the ſaid Mann, who is yet ſeiſed thereof in fee, ꝛc. Et ſi, &c. Coventry and Coke moved, that this Uerdict is found foꝛ the Plaintiff. Foꝛ the Iſſue being, whether he was ſeiſed in Fee of thoſe 3 Acres? And it is found, that he was not ſeiſed,
Ant. 41. but of the Moyety of them: Which being a Special Iſſue, it is found againſt the Defendant pleading this Plea. But if it had been truely pleaded, that which is found had been ſufficient to have abated the Writ, and to have put the Plaintiff by from her Execution. But being a falſe Plea, it is found againſt the Defendant; As 26 H. 8. 5. 30 H. 8. Dy 41 & 365. But Godfrey moved, that the finding of this Joynt-ſeiſin ſufficeth to maintain the Iſſue. Foꝛ every Joyn-Tenant is ſeiſed of the Entire. But all the Juſtices held to the contrary, that the Uerdict upon this Reaſon is found againſt him, who pleaded it. Foꝛ Joyn-tenants in truth are but ſeiſed of Moyeties. But Fenner ſaid, that in regard it now appears, upon this Uerdict found, that Execution ought as well to be ſued againſt Mann, as againſt Paul Banning the Defendant, it ſufficeth him, and is all one, as if it had been found, that he was ſeiſed, as he hath pleaded; As 40 Ed. 3. 5. an Alienation is ſuppoſed to be in Fee, and found to be foꝛ life only, it is well enough. But Popham and Gawdy, e contra; becauſe this is an Eſpecial Plea, and ought to be found as it is pleaded: otherwiſe it will not ſerve. And there is difference, when the Plea is to the point of the Writ, & when it is a Collateral Plea, oꝛ in Bar. Sed adjournatur. Afterwards the Lady Greſham died, and ſo the matter was determined.

Brigg

Brigs *verſus* Sheriff.

Trin. 37 Eliz. Rot. 359, or 354.

(32) ERror, of a Judgment in the Common Bench in Treſpaſs of Battery; the Error aſſigned was, becauſe the Declaration is, Quod cum le Defendant, ſuch a day, &c. aſſaulted and beat the Plaintiff, &c. So it is quaſi a Recital, and not a direct Affirmation, that he beat him, &c. Clerk, The firſt Declaration is ſo: But thereto the Defendant imparled, and after entred this ſecond Declaration againſt him, and in that Cum is omitted: and Judgment is given thereupon for the Plaintiff. Sed non allocatur. For the firſt Declaration is the principal. And thereupon the Judgment is given: And the ſecond ought to accord with the firſt. Et non e converſo. Wherefore it was reverſed. 2 Cr. 537. 2 Cr. 537. Ante 416.

The Queen againſt Vaughan

Hill. 36 Eliz. Rot. 8.

(33) INformation of Intruſion againſt Vaughan. Upon Not Guilty pleaded, a ſpecial Verdict was found: that the Prior of Kings-Langley in the County of Hertford, Anno 31 H. 8. ſurrendred the Site of his Priory and all his Lands, &c. to the King, by Deed enrolled. And afterwards in 31. H. 8. the King granted the Site of the Monaſtery to the Suffragan of Dover for his life; who in 38. H. 8. dyed, and that Site came to the Queen that now is. That afterwards Anno octavo of her Reign, a Commiſſion iſſued to inquire in what eſtate and reparations that houſe was, and that thereby it was found to be ruinous, and the Lord Treaſurer, and others, by Commiſſion, ſold the Stone and Lead of the Houſe, Afterwards Anno 16 Eliz. the Queen granted the Site of the ſaid Priory to Grimſtone with a Proviſo, That if the ſaid Lands or Tenements, or Profits thereof were not concealed, ſubſtracted, or unjuſtly detained from the Queen, her Father, Brother, or Siſter, before the 14 of Eliz. that the Patent ſhould be void. And they further found, that the Queen was not anſwered any Rent, or Profits thereof, beſide the ſaid Stone and Lead, before the 14 of Eliz. Et ſi, &c. And upon this matter Coke, the Queens Attorney, prayed Judgment for the Queen. For there is not any Land conveyed by that Patent, but that, which is concealed from the Crown: But the Priory, and that Site now in queſtion, cannot be concealed. For it was by the Priors Surrender expreſly mentioned, and ſo revealed to the King: By the Kings Grant alſo it is revealed, being therein mentioned by expreſs words. Then if once it be revealed by expreſs words, at the time of his Title accrued, it can never be concealed, as long as the Crown hath not another Title thereto. But, if it be afterwards diveſted from the Crown by the Kings Grant in Fee, and afterwards comes again to the Crown by Attainder of Felony, becauſe it is by a new Title, it may be concealed; and that is in common experience; and the Land it ſelf ſhall never be ſaid to be concealed, or unjuſtly detained: Co. 10. 114. a.

And therefore it was adjudged in Paſch. 23 Eliz. betwixt Smith and Petoe: That where King Hen. 4. granted Land, parcel of the Crown, by his Letters Patents under the Dutchy Seal, which was void; and the Queen, who now is, granted thoſe Lands with a Proviſo, That if the Lands were not concealed, That then, &c. It was ruled, That this Land ſhould not paſs. For Land cannot be concealed, and therefore out of that Proviſo: and ſo it was reſolved in one Shaftoes Caſe of Ireland. Wherefore, &c. And after divers arguments on either ſide, the Court reſolved for the Queen. For they all agreed, that it cannot be concealed, after it once be revealed by any eſpecial words in any Record, unleſs that land were abſolutely given from the Crown, and afterwards came unto it by a new Title. And a Concealment is not, but where Lands are in the Queen by Attainder, or other Title, and there is not any Record to inform Her what Lands they are. But here the Record of the Surrender is of the Site, and all the other Lands, &c. For the Site is expreſſed, that it is in the King. But for the other Lands, they are in the generality, and may be well concealed. For there is not any Record to ſhew what they are. So where there is any Office, to entitle the Queen, after an Attainder, or any Survey, thoſe Lands which are particularly mentioned in the Office, or Survey, cannot afterwards be ſaid to be concealed: for they be revealed to the Queen by thoſe Records. But, if any Land be omitted out of that Survey, it may well be ſaid to be concealed. And Popham ſaid, that all this was agreed, in the Caſe of London and Sir Chriſtopher Hatton. So it paſſed not within the proviſo of the Concealment, for Patents are to be conſtrued ſecundum intentionem Regis, and not in deceptionem. And here it was not intended to paſs any Land, but that which was concealed, and firſt revealed by Grimſton, which is not here, for the reaſons before mentioned. The greater queſtion then is, Whether this be within the Clauſe of the Lands and Profits, inde injuſte detent', &c. &c. And it was held by Popham and Gawdy, that it was not. For Popham ſaid, that nothing ſhall be termed to be Injuſte detent' from the Queen; but that, whereof the Queen had but a Right only, and never had any poſſeſſion. And theſe words are enſerted into Patents, by reaſon of a Judgment in the Exchequer, where an Abbot was diſſeiſed of certain Land, and afterwards the Abbey and all the Poſſeſſions being given to King Hen. 8. the Queen granted this Land, whereof the Abbot was diſſeiſed, by expreſs words, with ſuch a Proviſo; that if they were not concealed, that then, &c. And adjudged, that they paſſed not. For the King never had any Title, but a right only to that Land, and therefore the Lands were unjuſtly deteined, and therefore from that time it hath been uſed to have theſe words, Vel injuſte detent', &c. But when the King had poſſeſſion thereof, as he had here by the death of the Suffragan who
So. 10. 114 b. was Tenant for life, it cannot be ſaid a detainer from Her. For She might have had an Accompt againſt any, who takes the profits of thoſe Lands, which proves, that She alwayes was in poſſeſſion of them: And here this Land being waſt Land whereof no Profits are anſwered to the Queen, it cannot be

ſaid

ſaid to be an injuſt Detainment from Her. Wherefore upon theſe reaſons, it was adjudged for the Queen. Vid. 10. Co. 114.

Blodwell *verſus* Edwards.

Hill. 38 Eliz. Rot. 1061.

(34) ERror: The Caſe was ſuch; John Blodwell, being ſeiſed of Land in Fee, made a Feffment to the uſe of himſelf for life, and after to the uſe of ſuch Iſſue, and Iſſues Males, of the body of Margaret Loyd, from eldeſt, to eldeſt, and who by common ſuppoſition, or intendments, ſhould be adjudged, or reputed to be begotten by the ſaid I.B. upon the body of the ſaid Margaret Loyd, whether the ſaid Iſſue, and Iſſues Males, ſo born of the ſaid Magaret, and reputed to be begotten upon here by the ſaid I.B. ſint per Legem hujus Regni Angliæ adjudicati & legitime mulierly begotten, or unlawfully & mmulierly begotten betwixt the foreſaid Margaret & the foreſaid I.B. and to the Heirs of the bodies of ſuch Iſſue, or Iſſues Males, De ſeniore in ſeniorem exiſtent. nat. de prædicta Margareta in Forma prædicta. Afterwards John Blodwell had Iſſue by the ſaid Margaret, Richard Blodwell now Plaintiff. And Edwards the Defendant recovered againſt the ſaid John Blodwell in an Aſſiſe 12 Elizab. John Blodwell died: and Richard Blodwell brought Error, as he in the Remainder, and averred, that he was the Iſſue engendred of the body of the ſaid Margaret, and was alwayes ſince his birth, and yet is reputed to be engendred by the ſaid John Blodwell, &c. The firſt Error aſſigned was, becauſe the Tenant in the Aſſiſe pleads to the Iſſue in Nul Tort. And at the day of the Habeas Corpora returned, the Entry is, Quidam Recognitorum Aſſiſæ venerunt, & quidam non venerunt; Ideo a Diſtringas with a Decem Tales was awarded, and thereupon trial had: and therefore erroneous, becauſe it is not mentioned, that the Tryal was deferred, and the Tales awarded pro defectu Juratorum, and it may be, notwithſtanding Quidam Juratorum non venerunt, that a full Jury, might have appeared: And then the deferring of the Trial, and the awarding of Tales was without cauſe. Vid. 22 Ed. 4. 15. 1. R. 3. 4. 15. H. 7. 16. A ſecond Error aſſigned, was becauſe the Sheriffs name was not to the Return of the Writ of Habeas Corpora, nor to the Return of the Writ where the Decem Tales was returned. And for not putting his name to the Return, it was vitious by the Statute of York, 12 Ed. 2. cap. 5. And for that Vid. 26 H. 8. 3, 9 Ed. 4. 19. 11 H. 6. 94. And theſe be not holpen by any of the Statutes of Jeofayls. And the Recovery was before the Statute of 18 Eliz. Wherefore, &c. And all the Court reſolved, that both Errors were manifeſt; and for that cauſe the Judgment reverſable: and the Counſel on the other ſide did not much inſiſt upon them to defend them. But it was moved, that the Plaintiff had not here ſufficiently entituled himſelf to have any Remainder, and then he cannot have a Writ of Error. For a Remainder ought to be limited to a perſon in Eſſe, or who by intendment ſhall come in Eſſe, during the particular Eſtate. But the Law hath not any expectancy of a Baſtard Son to be born, which is not in Eſſe at the time of the limitation. And here it doth not appear by his Averment, that he is the lawful Iſſue,

1 Rol. 799. Moor 430. 2 Rol. 43. 4. Noy. 35.

1 Rol 799.

Ante 300.

Iſſue, Wherefore, &c. Gawdy; admitting he were a Baſtard, yet the limitation unto him is good; For although he be not lawful Iſſue, yet he is the Iſſue of his Mother without queſtion; and a Remainder to a reputed Son is clearly good, as 41 Ed. 3. 19. and Dy. 113. And the Limitation here being to the eldeſt Iſſue of the Feme, he ſhall take it, although he were a Baſtard. For ſo it appears to be the expreſs intent of the Deed. Popham, although a Limitation of a Remainder to a Baſtard in Eſſe is good, for that he is a perſon know, and may in time be a perſon known, and reputed for the Son of another: Yet it cannot be ſo to a Baſtard before he be born. For the Law hath not any expectancy, that any ſuch ſhould be, nor will give liberty, or ſcope to provide for ſuch before they be. And he cannot take by ſuch a name, unleſs he be ſuch a perſon, who is reputed a Son, and none can gain the name at the inſtant time of his Birth, but it ought to by by continuance of time, and reputation of the Country, and not of the Father himſelf. And if he cannot take it at the time of his birth, he never afterwards ſhall take: for the Law will not expect longer for the increaſing of a Reputation. The Limitation alſo to one, and the Iſſues of his body, is always to be intended lawful Iſſue, and the Law will never regard any other Iſſue. So here, foraſmuch as he hath not averred himſelf to be a lawfull Iſſue, but only a reputed, which cannot be, he hath not conveyed unto himſelf a ſufficient title to have this Writ of Error. And to that opinion Fenner inclined, and ſaid, that they had conferred with divers of the Juſtices in Serjeants Inn in Fleetſtreet, and that the greater opinion of them was, that a Remainder to his firſt reputed Son, or Baſtard, is not good; becauſe the Law doth not favour ſuch a Generation, nor expect that ſuch ſhould be, nor will ſuffer ſuch a Limitation, for the Inconvenience which might ariſe thereupon. Wherefore, becauſe the Plaintiff was in truth a lawful Son, engendred between the ſaid J.B. and the ſaid M.L. after they were married together; and this Conveyance was only made in this manner to avoid ſcruple, which otherwiſe peradventure might happen, becauſe the ſaid J.B. was married to a former Wife, and was divorced from her, if this Divorce ſhould be repealed, which cannot now be in queſtion, all the parties being dead; the Plaintiff diſcontinued this Writ of Error, and brought a new Writ of Error Coram vobis reſidet; and therein averred the ſaid Marriage, and that he was the firſt Iſſue during the Eſpouſals. Et ſic pendet.

2 Rol. 43.

Co. Lit. 3. b.
2 Rol. 43. 4.

Co. Lit. 3. b.

2 Rol. 43. 4.

Harding *verſus* Sherman

(35) ACtion ſur Trover apud Paxton in Com. Hunt. The Defendant pleads a Bargain and Sale apud Royſton in Com. Hertf. in the Market there, whereby he after converted them apud P. in Co. H. the Plaintiff ſaith, that he was poſſeſſed of thoſe Goods apud P. in Com. H. and that J.S. there ſtole them from him, and by Covin betwixt him and the Defendant, at P. in the County of H. he ſold them to the Defendant, as he hath pleaded. The Iſſue was upon the Sale made by Covin, &c. And it was tried in the County of H. and found for the Plaintiff, and it was moved to be a Miſtrial, for it ought to have been by a Jury of the County of Hertf. or at leaſtwiſe

iſe by a Jury of both Counties. And of that opinion was awdy. But the other Juſtices e contra; For the Sale is confeſ-d, and the Iſſue is upon the Covin, which is well tried by a ury of the County of Hertf. where it was alledged. And it was terwards adjudged accordingly.

Wright *verſus* Wright.

(36)

Rohibition, and Surmiſeth: That the Biſhop of Winton, and all his Predeceſſors, from time, whereof, &c. held the Manor of 1 Rol. 653.
iſtmere for them, and their Farmes and Tenants for years, or at Co. 2. 43. 4.
ill, free, & diſcharged from the payment of all Tithes; and that Ante 475.
, being Leſſee of the ſaid Biſhop, offered this Plea in the Spiri-ial Court, and that they refuſed it there. The Defendant pleads, hat the Spiritual Court received the Plea, and admitted him i his proofs, and traverſeth the refuſal of the Plea there. And it as thereupon demurred, Walter for the Defendant moved, that is Surmiſe of the Refuſal of the Plea is traverſable: for a Pro-bition lies, where they refuſe to do right to the Parties, or the ute is where it ought not to be, and ſo injuſtice is done to the arty, otherwiſe the Sute in the Spiritual Court, which is the oper place to the ſue for Tithes, ought not to be ſtayed: And then e material Cauſe to award this Prohibition is the refuſal of e Plea. For otherwiſe, without this Surmiſe, a Prohibition eth not; As 7 Ed. 6. 79. and 8. Ed. 4. 14. And a ſurmiſe, which takes ay the Juriſdiction from another Court, is always traverſ-le; As 12 H. 4. 13. 13. H. 4. 16. 34 H. 6. 15. are. And ſo in this Court hath been oftentimes ruled, that the Refuſal of a Plea in the piritual Court alledged was traverſable, as Paſch. 30 El. betwixt Co. 2. 45. 2.
iton and Morris, and Tr. 30. El. betwixt Aſcoll & Wigen, where in a rohibition for a Sute for Tithes, he ſurmiſeth, that he pleaded the Spiritual Court, That the Parſon had not read his Arti-es, and therefore not Parſon by the Statute of 13 El. And this lea being there refuſed, the Refuſal was traverſed by direction the Court. The Preſcription alſo is not good here: For one nnot preſcribe De non Decimando, nor to be diſcharged from ithes: And although the Biſhop, being a Spiritual perſon, ight preſcribe to be diſcharged of Tithes, yet his Leſſee ſhall Poſt. 785.
y Tithes, becauſe he is a Lay perſon, and cannot participate of Co. 2. 44.
e privilege of his Leſſor. And therefore Tanfield, who argued Poſt. 559.
n the ſame ſide, ſaid, that it was adjudged 31 Eliz. in the Ex-equer, that the Queens Leſſee ſhall pay Tithes, yet the Queen ever payed any: for ſhe is privileged by reaſon of her Preroga-ve. And the Caſe in Dy. 349. proves nothing againſt it; for the atute there was made for the Lands of the Abbots, and not for e Lands of the Biſhops; Wherefore, &c. Coke, concerning the Co. 2. 45. a.
ales of the Traves of the refuſal of the Plea, they be all be anſwered with this difference, the Refual is traverſable, leſs where a Modus Decimandi is in queſtion: For therein Satis nſtat to the Court here, that the Spiritual Court will not al-w of any Plea for a Modus Decimandi. The Refuſal of the Plea for not reading his Articles is traverſable. And the Preſcription re is good: for before the Council of Lateran Tithes were not Co. 2. 44. b.
yable here to certain perſons, nor to places; as appears 11 Aſſ

Pl.

Pl. 9, 44 Ed. 3. 5. 16 H. 7. 18. Which is the reaſon alſo, why the King ſhall have the Tithes of Lands out of any Pariſh; becauſe the ſaid Council extended not unto them. And Lay-men at the Co. 2. 44. a. Common Law were not capable of any Tithes, becauſe they could not ſue for them in a Court Chriſtian. But by way of Retainer he may well have them; As 8 Ed. 4. 14. Regiſter fol. 38. & Nat. Br. 41, G. And there it is held, that an Aſſignee may hold diſcharged of Tithes, & 43 Ed. 3. 34. & 7 Ed. 6. the Farmor of a Parſon my ſue in the Spiritual Court for Tithes. And as it is in Knightleys Caſe, the Pope might have diſcharged one from the payment of Tithes. So there may be a Preſcription, that a Biſhop and his Farmor may hold without paying Tithes. Wherefore, &c. And, being afterwards moved again, all the Court reſolved, That this Mo. 425. Allegation of the refuſal of the Plea is not the ſubſtance of the Plea, but a Surmiſe, which was never traverſable; Eſpecially where a Modus Decimandi ſhall come in queſtion. And 1 Rol. 653. that this Preſcription for the Farmer is good, and as well as Poſt. 704. if it had been by the Biſhop himſelf. For, the Leſſor himſelf being of right diſcharged, the Farmer alſo ſhall be diſcharged againſt Poſt. 578. the Parſon: But peradventure not againſt his Leſſor. Wherefore it was adjudged accordingly. 2. Co. 44.

Palmer *verſus* Potter and others.

Hill. 38 Eliz. rot. 693

(37) Moor. 431. ACtion upon the Caſe againſt the Bayliffs of Northampton: for that upon a Fieri fac. directed to the Sheriff of the County of North. returnable Octab. Mich. he ſent his Warrant to the Defendants, being Bayliffs of North. to execute it, who returned Nulla bona, &c. before Mich. and at Mich. they were amoved from their Office, and others choſen. And for this falſe Return the Action was brought, and all this matter found by Verdict. And it was clearly held by all the Court, That it was a void Return; for the Writ being returnable Octab. Mich. the Sheriff ought not before that time have accepted any return of Nulla Bona. For he might have had ſome afterwards; and before the return of the Writ: And the Writ being by them returned after Mich. they being diſcharged of their Office, it is void; for they have no authority to meddle with the Return after: But if they had executed the Writ before Mich. then the Sheriff might have accepted of their Return before Mich. but not after. Wherefore it was adjudged for the Defendant.

The Lord *Dercies* Caſe.

(38) 2 Ro. 193. 211. Mo. 417. QUo Warranto againſt the Lord Darcy; for that he claimed to be diſcharged from the Queens Purveyors in his Mannor of North-Kirby and Walton in the County of Eſſex. He pleaded, That King Ed. 4. granted to the Dean and Chapter

Chapter of Pauls divers Liberties within thoſe Mannors; where-of one was: to be diſcharged of Purveyance, non obſtante aliquo Statuto; That afterwards, in 33. H. 8. thoſe Mannors came to the King by Surrender; that Edward the 6th. granted thoſe Mannors to the Lord Darcy, the Defendants Father, with all thoſe Liberties, Franchiſes, and Priviledges, as the Dean and Chapter of Pauls, or any other, had it, by reaſon of any Charters, or Preſcription, non obſtante aliquo Statuto, &c. Et eo warranto he claims thoſe Liberties. The replication was; that by the Statute 27 H. 8. cap. 24. it is ordained, that all places ſhall be ſubject to the Kings Purveyors. Wherefore, &c. And it was thereupon demurred: and argued by Atkinſon for the Defendant, that in as much as the Dean and Chapter of Pauls had thoſe Liberties and Priviledges; and thoſe Mannors by the grant of King Edward the 6th. were given to the Lord Darcy, with all ſuch Liberties, and Priviledges, as the Dean and Chapter of Pauls, or, &c. ever had; with an expreſs Clauſe of Non obſtante aliquo Statuto: the Statute thereby is diſpenſed with, which gives thoſe Liberties to the King; and the Patentee may well have thoſe priviledges. But Gawdy, and Popham held e contra; For the Clauſe being general, of all liberties and priviledges, &c. it is to be intended of ſuch liberties and priviledges, which the Dean and Chapter had, and were not reſumed by any Statute, But this liberty to be diſcharged of Purveyance was reſumed by the Statute of 27 H. 8. Wherefore it ſhall not be revived by general words, but by an eſpecial grant of thoſe liberties by their expreſs name, with an expreſs Non obſtante of that Staute: So that it might appear, that the King intended to grant them, notwithſtanding this Statute. And therefore it was agreed in the Exchequer, in the Lord Pagets Caſe, about 20 Eliz. for certain Liberties claimed in the Foreſt of Canck-wood; That where liberty of Catalla Felonum were granted by King H. the 6th, to J. S. in that Foreſt, and afterwards, by a private Statute 28 H. 6. all liberties granted by him were reſumed; and afterwards this Foreſt came to the King by Attainder; and this Foreſt was granted over with all the liberties, which J. S. had therein with a Non obſtante aliquo Statuto; Yet this Liberty, which was reaſſumed, was not revived, nor paſſed, unleſs there had been an expreſs mention. And they held, that this Statute of 27 H. 8. goes to the Succeſſor, although he be not named, &c. Sed adjournatur. Cokes Entries, 559.

2 Rol. 193.

2 Rol. 193.

2 Rol. 211.

Lynch *verſus* Spencer.

Hill. 36 Eliz. rot. 445.

(39)

EJectione firmæ of a Leaſe of Sir George Brown. Upon Not-guilty a ſpecial Verdict was found. Sir Richard Bridges was ſeiſed of this Land in Fee, and thereof infeoffed one Winſcomb, and others, upon Condition that they ſhould regrant it to him, and his Feme in tail, remainder to the right Heirs of Sir R. B. who regranted it accordingly. Sir R. B. and his Feme had Iſſue A. B. their Son. Sir R. B. dies; A. B. Levies a Fine with Proclamation to Sir G. Brown, the Leſſor, and his Heirs, to the uſe of him, and his Heirs. The Mother afterwards lett it to the Defendant for his life, and died. Sir G. Brown afterwards entred upon the

3 Rol. 878. 2 And. 44. Moor. 455. Co. 3. 50. b. 11 H. 7. c. 20

Defendant, pretending his Entry to be Congeable by the Statute of 11 H. 7. Cap. 29. and let it to the Plaintiff; upon whom the Defendant reentred, and ouſted him. Et ſi, &c. And this was argued by Glanvile and Drue for the Plaintiff, and by Savil and Kingſmil for the Defendant. Firſt Whether this were an Eſtate tail within the Statute? becauſe they are Donees by Feoffees; as alſo for that this Gift varies from the Condition: for the Condition is, that the Gift ſhall be made by the advice of his Council;, and it was not done by the advice of his Council. Secondly, Whether a Leaſe for life only, and being without warranty, be a diſcontinuance within the Statute? Thirdly, Whether Sir G. Brown be ſuch a perſon, as may take advantage of this forfeiture, by the words, or equity of the Statute? or if it be given only to the Heir, who hath diſabled himſelf to take advantage thereof by reaſon of this Fine? And all the Juſtices reſolved clearly for the Plaintiff. As to the firſt, there is no great doubt, but that it is an Eſtate tail within the Statute; for that Gift by the Feoffees is given by the proviſion of her Huſband; and to make the Gift in tail by the advice of his Councel, is no material part of the Condition; but being made unto him without advice of his Councel, it is well enough. Secondly, a Leaſe for life without warranty is clearly a Diſcontinuance within the intention of the Statute; for although the words are, that if the Woman alien, diſcontinue, releaſe, or confirm with Warranty, &c. yet it is not thereby intended, that a warranty is requiſite to all thoſe acts; but it ſhall refer to Releaſe, or Confirmation, which otherwiſe without a warranty are not any Bar, or diſcontinuance. And therefore it was ruled in the Court of Wards, by the advice of Wray, and Anderſon, that where ſuch a Feme, Tenant in tail, accepted a Fine, and thereby granted, and rendered the Land for a 1000 years, there was not any diſcontinuance, nor warranty; and yet it was ruled to be within the Statute: for otherwiſe the Statute ſhould be utterly defrauded. And it was ſo ruled by the advice of all the other Juſtices of England. So every act, which is a diſcontinuance of it ſelf, although it be without warranty, is within this Statute. Thirdly, they alſo all reſolved (although it be a new Caſe, and the more difficult) that Sir G. Brown is a perſon, who well may enter for the forfeiture within this Statute; for it is clear, that by this Fine levied with Proclamation by A. B. being Iſſue in tail in the life of his Mother, the Eſtate-tail is barred thereby; and it is quaſi a giving of the Eſtate-tail to the Comiſee: And, at the leaſt wiſe, the Remainder in fee paſſed by that Fine to Sir G. Brown; ſo as he had the Remainder at the time of this diſcontinuance made, And the Tort is done unto him; and then he is within the words and intent of the Statute, to enter for the Forfeiture: for the Statute is, That all Diſcontinuances ſhall be void, and, That it ſhall be lawful for him, to whom the Reverſion or Remainder is, to enter, &c. So the words of the Statute are clear; and it would be very hard to reſtrain the intent thereof, that the Entry ſhould be given to the Heir only. And although the Proviſo is, that it ſhall not extend to Alienations, or Diſcontinuances made by aſſent of the Heir: So therein is intended, that the Statute doth not give advantage to any, but to the Heir, to whom the Authority

Poſt. 524.

1 Rol. 878.

1 Rol. 878.

is given to aſſent, would be unreaſonable to tie the general words by ſuch a ſpecial Proviſo. And this Aſſent may as well be given by him in Reverſion, or Remainder, where there is not an Heir, as well as by the Heir. And clearly, as this Caſe is, A. B. who is Heir, cannot enter: For he gave all his Authority, Title, and Intereſt by his Fine, to Sir G. Brown, whereby he is the perſon, who ought to enter. Anderſon ſaid, that after this Fine levied, the Feme, who was in, might well be ſaid Quaſi Tenant in Tail, after poſſibility of Iſſue: for no Iſſue of hers can inherit: and ſo it is where Baron and Feme are Tenants in ſpecial Tail, and the Baron levies a Fine with Proclamation, and dies, having Iſſue, the Feme enters, ſhe is Quaſi Tenant in Tail, after poſſibility, &c. For no Iſſue had by her can inherit the Entail; by reaſon of that Fine. And ſo upon theſe reaſons they all reſolved for the Plaintiff: and an Objection was made, that A. B. was not found to be Son and Heir of Sir Richard Bridges and then his Fine conveys nothing to Sir G. Brown. And although he be found to be Son to Sir Rich. Bridges and his Wife, that may be true, if he be his ſecond Son; and ſo there is not a ſufficient Title found for the Plaintiff. But all the Court reſolved, That this, being in a Verdict, is well enough; for being found to be Son, and none other found to be Heir, he may well be intended to be Son and Heir of Sir R. B. Wherefore it was adjudged for the Plaintiff. Vid. 3. Co. 50.

Mayn *verſus* Beak.

Trin. 38. Eliz. rot. 1738.

(40) DEbt Upon a Leaſe for years, made 26 Junii, 26 Eliz. Habendum a feſto Annun. ultim. præterit. for 35 years; rendring the firſt ten years 40. l. annually upon the firſt day of October, and the laſt of March, æquis Portionibus. And after the ten years 46. l. 13. s. 4. d. upon the ſame dayes; the firſt payment to begin the firſt of October next following. And for 23. l. 6. s. 8. d. due upon the laſt of March, 36 Eliz. the Leſſor brought this Action; and it was thereupon demurred. And Savel for the Defendant moved, that he ſhould have but 20 l. at that day; for the Leſſor is to have 40l. for every year, during the ten years; and the ten years do not expire (being accompted from the making of the Leaſe) untill the 26 June 36 Eliz. For from that time only the Leaſe had his Eſſence; and the Leſſor is to have 40l. for ten years, which otherwiſe he had not. But all the Court reſolved for the Plaintiff. For although the Leaſe in intereſt begins not until 26 June, 26 Eliz. yet, in the accompt of the number of years it began the Annunciation before; ſo that the ten years expired at the Annun. 36 Eliz. and then the firſt Reſervation ended; and every day after 23. l. 6. s. 8 d. is to be paid. And now although the Leſſor cannot have ten years together 40. l. but ſhall fail in one of the payments; yet that is not material; for it is impoſſible, that he ſhould have it ten years and ten times, as this Reſervation is. Wherefore it was adjudged for the Plaintiff.

Banyſter *verſus* Truſſel.

(41) Latch 145. Jones 149.

DEbt upon an Obligation. The Defendant pleaded, That he was attained of Felony, which Attainder continues yet in its force, and unmands Judgment, if he ſhall be put to anſwer: and it was thereupon Demurred. And Walmſley held, That it was a good Plea; and, that he ſhall not be put to anſwer. And ſo are all the Authorities in the Books, 2 Ed. 4. 1. 4 Ed. 4. 8. 6 Ed. 4. 4. 6. Hen. 4. 6. And Stamford 107. is, that he ſhall not be put, during that time, to anſwer to another Felony; for he cannot forfeit more, then he had forfeited before. And Britton 18. ſaith, that a Felon attainted ſhall not anſwer to any thing, unleſs to a greater Felony: and there is no authority in our Books againſt it. And theſe authorities are grounded upon good reaſon; for there is a Rule, the Law will not make a man to labor in vain: and it would be in vain for one to ſue, and in the end not to enjoy the effects of his Sute, viz. Execution; which he cannot have of his Lands, becauſe they be now the Lords; nor of his Body, or Goods, for they belong to the Queen: wherefore, during that time, all Obligations and Contracts betwixt him and others are diſſolved; and he may be reſembled to a man, who enters into Religion, or to a Feme Covert, who cannot be ſued without her Baron, to whom ſhe hath given her body. But Anderſon, Beamond, and Owen, e contra; for in all the authorities which are vouched, there is not any Judgment, or ſettled Opinions; wherefore the Law is to be examined how it ſtands: and in truth there be more and greater reaſons to maintain it, that he ſhould be put to anſwer, than otherwiſe; for the other Conſtruction would be very miſchievous. The principal reaſon pretended againſt it is, Becauſe the Queen hath an intereſt in his body, and in all that he hath, and may cauſe him to be executed when ſhe will. But that is not any cauſe to ſtop the Plaintiff in his proceedings; for he may proceed, and have Judgment againſt him, and, if he ſhould be at large, take his body in Execution; and yet the Queen, when ſhe pleaded, might command execution to be done on his body, notwithſtanding the parties Execution. And there is a Rule, that none ſhall take advantage de ſon tort Demeſn. And there is not any difference betwixt this Caſe, and where one is outlawed in Debt, or Treſpaſs; for then the Queen may have his body in priſon, and his Goods as forfeited, and he is diſabled to ſue any man: But yet it is not to be doubted, but that he ſhall anſwer to the Sute of any other. And whereas it was objected, that his body is not his own during this Attainder, that is not ſo; for he may purchaſe any Land: and if there be any perſonal wrong done unto him, when he is pardoned, he may have his Action for it. And the Caſe of a Feme Covert is not like hereto; for that is to avoid the intollerable miſchiefs, which otherwiſe would happen to her Husband. And it is not reaſon, that a man doing a wrong ſhould take advantage thereof to himſelf, and take away another mans Action; and therefore it is fitting he ſhould be put to anſwer: for the Queen and Plaintiff may be both ſerved; the Queen by executing him when ſhe pleaſeth; the Plaintiff in the Interim to have him in Execution. And there-

Ant. 215.

fore

foꝛe Owen ſaid, It was adjudged in the Exchequer, in one Croſts Caſe, where one had a Judgment againſt another in Debt, who was afterwards attainted of felony, and impriſoned at Newgate; &, during that time, the Plaintiff purſued a Capias ad ſatisfacieudtm and delivered it to the Sheriff of London: and the Felon was afterwards pardoned, and let large; and the party thereupon brought Debt upon the Eſcape, and adjudged maintainable. Which proves, that he might be taken in Execution during the Attainder (Sed quære, if it were not adjudged, becauſe he being in their cuſtody after the Pardon, ſhould then be ſaid to be in Execution foꝛ the party) wheꝛefoꝛe upon theſe reaſons, againſt the opinion of Walmſley it way adjudged, That he ſhould anſwer. Vide Co. Entries 248.

Ante 214.

Moor 178. Ow. 69. Ante 213. 1 Leon. 276.

Hallings *verſus* Connard.

Trin. 38 Eliz. rot. 1734.

(42)

DEbt Upon an Obligation conditioned foꝛ the perfoꝛmance of Covenants within a certain Indenture. The Breach was aſſigned; whereas the Covenantoꝛ covenanted with the Covenantee, that he, at the Coſts of the Covenantee, would aſſure ſuch Lands unto him befoꝛe ſuch a day; That the day was paſt, and no aſſurance tendered by the Covenantoꝛ, noꝛ Coſts by the Covenantee; and whether the Covenant were bꝛoken, oꝛ not? was the Queſtion. And it was argued by Williams foꝛ the Defendant, that the Plaintiff ought to tender the Coſts firſt, otherwiſe the other is not bound to make the Aſſurance: and he cited 3 H. 7. 4. and Dy. 371. and a Pꝛeſident in the Book of Entries, where Iſſue was taken upon the tender of the Coſts. Warberton e contra; the Covenantoꝛ is to make the Aſſurance, and that may be what he pleaſeth. viz. Fine, Feoffment, Recovery, and theꝛefoꝛe he ought to notifie his readineſs to do it, and what he will do, ſo as the other might know what coſts he is to tender: But if he had covenanted to make ſome certain Aſſurance, as Fine, Feoffment, Recovery, &c. it ſhould have been otherwiſe. And ſo it was adjudged in this Court, 34 Eliz, betwixt Frank and Foſter; which Glanvile affirmed, he being of Council therein. And of that opinion was the whole Court here; that the Covenantoꝛ ough to give notice what Aſſurance he will make, and to ſhew his readineſs to do it, otherwiſe the Obligation is foꝛfeited. But Walmſley ſaid, there was no difference, whether the manner of the Aſſurance is left to the Covenantoꝛ, and where he covenants to make one kind of Aſſurance; foꝛ in both Caſes he is to do the firſt Act, and to tender the Aſſurance. Wheꝛefoꝛe it was adjudged foꝛ the Plaintiff. But the Entry of the Judgment was ſtayed upon the Defendants pꝛayer, and the matter reſerved to Oꝛder. 5 Co. 22. b.

Ow. 157. Moor 454. 7. Co. 5. 22. b.

Co. 5. 22. b

Co. 5. 22. b.

Woodroff *verſus* Greenwood.

Hill. 38 Eliz. rot. 912.

(43)

COvenant. Upon Demurrer the Caſe was. Tenant in Tail, Reverſion to the Queen in Fee, lets it foꝛ twenty one years by

by Indenture; and Covenants, that the Leſſee ſhall enjoy it againſt all perſons, without the interruption of any beſides the Queen, her Heirs or Succeſſors; exiſtentibus Regibus, vel Reginis Angliæ. The Queen grants her Reverſion to Wentworth; the Tenant in Tail dies without Iſſue; Wentworth enters, and ouſts the Leſſee, and he brings Covenant; and adjudged that it lay: for none are excepted beſides the Queen, and her Succeſſors, and not her Patentee.

Fitton and the Counteſs of Northumberland his Wife, Sir Thomas Cecil and his Wife, Sir William Cornwallis and his Wife, and the Lady Davers, Daughters and Heirs of the Lord Latimer, Plaintiffs, againſt Hall and others.

(44) Moor. 455. 2 And. 48. Co. 5. 97. Ante 469.

Quare Impedit. The Defendant pleads releaſe of all Actions made by Cornwallis, hanging the Writ: and awarded, that it was in Barr to himſelf only; and that for the others the Writ ſhould ſtand. Whereupon Glanvile moved, that the Declaration was not good; for they count, that the Lord Latimer was ſeiſed in Fee of the Advowſon, and granted the next Avoidance to Carew, who preſented, and afterwards the Lord Latimer died, and it deſcended to them: and therefore ill; becauſe there is not alledged any Preſentment in their Father, nor in any who had the Inheritance, but only in the Grantee of the next Avoidance, which is not any Title. For in a Quare Impedit the Preſentment ought always to be alledged in him, who hath the abſolute Inheritance, and not in any other: and in proof thereof were cited 18 Ed. 3. 15. 24 Ed. 3. 37. 40 Ed. 3. 10. 43 Ed. 3. 4. 33 H. 6. 32. 7 Ed. 4. 20. 9 H. 7. 23. 16 H. 7. 7. In which Books it is held, that a Preſentment by a Tenant for life, or for years, or by a Guardian, or by the Grantee of the next Avoidance, is no Title for him in reverſion. And that this very Caſe was here in queſtion, Trin. 26 Eliz. rot. 1108 in a Quare Impedit by the Dean of Lichfield, and a Demurrer thereupon for this very Cauſe. And the Opinion of the Court was, That for this cauſe it was ill; but no Judgment was given, becauſe the Plaintiff diſcontinued his Suit: Wherefore, &c. But all the Juſtices, beſides Owen, held, That the Declaration was good enough; for this Preſentment by the Grantee is in right of the Grantor, and gives unto him ſufficient Seiſin: For the Books be not directly, that a Preſentment alledged in the Grantee is not good; but that where a Preſentment is alledged in the Grantor and Grantee, that the Preſentment in the Grantor is only traverſable; for that is the Principal, and the alledging of the Preſentment in both is not double; And here the Title is not only alledged by the Preſentment, but alſo by the deſcent principally, Wherefore, the demurrer being joyned thereupon, they awarded, that, if other matter were not ſhewn the firſt day of the next Term, that Judgment ſhould be entred for the Plaintiff. And it was afterwards adjudged accordingly. 5. Co. 97. b.

Co. 5. 97. 8. a.

Co. 5. 98. a.

The

The Queen *verſus* Huſſey.

(45)

QUare Impedit. Upon Demurrer, the Caſe was, King H. 8. gave a Mannor, with the Advowſon appurtenant, to Charles Brandon Duke of Suffolk, and his Heirs Males of his body ind Ch. Br. by Deed enrolled Anno 30 H. 8. regranted that Manor and Advouſon to the ſaid King, and to his Heirs and Succeſſors. Afterward the Statute of 34 Hen. 8. cap. 20. was made, nd after the ſaid King granted that Advouſon to Tannor in Fee, rom whom by mean Conveyances, it came to the Defendant. h. Brandon died without Iſſue Male; and, the Church being ow void, the Queen preſented, and the Defendant diſturbed er; and ſhe brings a Quare Impedit: And the Defendant ſhews ll this matter; and that afterwards, there were three Preentments by the Patentees, under whom the Defendant laimed. And, upon all this matter, it was demurred in Law; nd it was argued by Warburton for the Queen, and by Hearn for he Defendant. Firſt, whether this Grant by Tenant in tail, being good to bind his Iſſue, (as it is agreed by all, that it as by the expreſs words of the Statute of 34 H. 8.) The King hereby hath a baſe Fee in him, and his Reverſion expectant thereon, or whether he ſhall be in, as in point of Reverter? Secondy, admitting, that he is ſeiſed of a baſe Fee, whether this Grant to Tannor, not reciting his Eſtate, be good? And, whether it ſhall endure as long as the baſe Fee continues only, or be ſufficient alſo to paſs the Eſtate in Reverſion in Fee? Thirdly, omitting, that this Patent is not good, whether this double Uſurpation ſhall bind the Queen in this Action, and be a good Title for the Defendant? As to the firſt, all the Juſtices reſolved; that King Hen. 8. was not ſeiſed of any baſe Fee, but of an abſolute Eſtate given unto him; and he was in, as in point of Reverter; and there is not any difference betwixt this Caſe, and where Tenant in tail, the Reverſion to the King, is attained of Treaſon; ſo he hath the Fee conjoyned in him. nd the Statute of 34 H. 8. makes it clear, that he hath by the Deed inrolled an abſolute Fee in him. As to the ſecond, admitting, that he hath two Fees in him; yet the Patent is good or the baſe Fee, and for the Reverſion in fee, without reciting he Kings Eſtate; and the Eſtate of the Patentee ſhall go out of both Eſtates. And as to the third, Anderſon and Beamond held clearly, that two, or three Uſurpations ſhall not put the Queen out of Poſſeſſion; nor gain any title againſt her; for when he Queen hath any thing permanent, no Subject can take it rom her by any Tort. And they ſaid, it hath been ſo adjudged n this Court, although the Queen had the Advouſon in right of he Dutchy. But Walmſley doubted of the point of Uſurpation, eing after two Preſentments; becauſe the Preſentee comes ot in only by Act of the Patron, but by the Ordinary, who admits him. But for the other points, they all reſolved; and it as adjudged for the Defendant.

2 And 42. Moor 421. Jones 6. Co. 1. 49. b. Hob. 323.

Co Lit. 18. a. Co. 1. 49. b. Hob. 323.

Co. 1. 49. b.

2 Cr. 123. 4. Cos 6. 30. a. Ante 241.

Beſwick.

Beſwick *verſus* Cumden.

Trin. 38. Eliz. rot. 1038.

(46) Moor 449. Noy. 68. Ante. 402. ACtion upon the Caſe; and counts, that he was ſeiſed in Fee of Lands adjoyning to a Brook, whereof the Defendant was ſeiſed; and that the Defendant cuſtodivit, & manutenuit quandam molem in the Brook, by reaſon whereof the Brook ſurrounded his Land, &c. Whereupon the Defendant demurred; and it was argued by Glanvile for the Plaintiff, and by Lewkner for the Defendant. And all the Juſtices reſolved for the Defendant: Ant. 466. 845. Firſt, that this Action upon the Caſe lies not; becauſe, if it were a Nuſance, the Plaintiff might have his remedy by any Aſſiſe or Quod permittat. And a Man ſhall never have an Action upon the Caſe, where he may have any other remedy by any Writ founded in the Regiſter; and this is only given, where there wants ſuch a Remedy. Ant. 403. Secondly, there is not here any offence committed by the Defendant; For he alledgeth, that he kept, and maintained a Bank; which is, that he kept it as he found it: and that it is not any offence done by him; for he did not do any thing; And if it were a Nuſance before his time, it is not any offence in him to keep it. But the Plaintiff is to have his remedy to abate it, by a Quod permittat: and therefore the Caſe here differs from 4 Aſſ. Pl. 3. For there the uſing was a new Nuſance, but is not ſo here. Wherefore it was adjudged for the Defendant.

Whyddons Caſe.

(47) Poſt 835. Co. Lit 31. a. Hob. 246. ANnuity. The Defendant ſaith, that he delivered the Deed of Annuity to the Plaintiff, as an Eſcrow to be his Deed upon a certain condition to be performed, otherwiſe not; And that the Condition was not yet performed: and thereupon the Plaintiff demurred. And, without argument adjudged for the Plaintiff. For the delivery of a Deed cannot be averred to be to the party himſelf as an Eſcrow. Vid. 19 H. 8. 8. 29 H. 8. Dy. 34. Vid. poſtea, Trin, 43. Pl. 7.

Damport *verſus* Sympſon.

(48) 2 Cr. 469. ACtion upon the Caſe; and counts, that he was poſſeſſed of a Fountain of Silver to the value of 500 l. and delivered it to J. D. to tranſport beyond Sea, and there to ſell it, and to render an account thereof to the Plaintiff, which the ſaid J. D. make; and converted to his own uſe. Whereupon the Plaintiff brought his Action upon the Caſe againſt him, wherein they were at Iſſue, and the Defendant being produced as a witneſs on the part of J. D. falſly ſwore, that the ſaid Fountain was not worth above the value of 180 l. whereas, in truth, it was worth 500 l. By reaſon of which falſe Oath, the Jury gave to the now Plaintiff but 200 l. Damages: whereas they would otherwiſe have given more Damages: whereupon he brought this Action; the Defendant pleads Not-guilty, and found againſt him, and Damages aſſeſſed to 300 l. And it was moved i.i 1 Cr. 469.

Arreſt

Arreſt of Judgment, That the Action lay not; for the Law intends the Oath of every man to be true. And therefore until the Statute of 3, & 11 H. 7 which gives power to examine, and puniſh Perjuries in the Star-Chamber, There was not any puniſhment for any falſe Oath of any Witneſs, at the Common-Law; and now there is a form of puniſhment for perjury provided by the Statute of 5 Eliz. And if this Action ſhould be allowed, the Defendant might be twice puniſhed, viz. by the Statute, and by this action; which is not reaſonable. And of that opinion were Walmſley, Beamond, and Owen; that this action lies not: for at the Common-Law, there was not any courſe in Law to puniſh perjury: but yet before the Statute of 3 H. 7. The Kings Counſel uſed to aſſemble, and puniſhed ſuch perjuries at their diſcretion: and if he ſhould be puniſhed in Law by this Action, there would be ſome preſident of it before this time: but being there is not any preſident found thereof, it is a good argument, that the action is not maintainable: and it appears by 7, & 8 Eliz. Dyer 272. That at the Common-Law there was no puniſhment for perjury, but in caſe of Attaint: but in the Spiritual Court pro Læſione fidei, in Caſes Spiritual they uſed to puniſh them; and here they would, in this action, draw in queſtion the intent of the Jurors, what greater damages they would have given, unleſs for this Oath, which is ſecret, and cannot be tryed, and therefore to puniſh a man for his Oath, upon a ſecret intent would be hard: and if this might be ſuffered, every witneſs would be drawn in queſtion. Wherefore upon theſe reaſons they held, That this Action lay not, and gave Judgment for the Defendant againſt the opinion of Anderſon, who conceived the Action was maintainable.

2 Cr. 601.

2 Cr. 601.

4 Inſt. 12.

Co. Lit. Sect. 103

Ive *verſus* Sams. Trin. 38. Eliz. rot. 1805.

(49)

WAſt, and Counts of a Demiſe for thirty years made to the Defendant of the Manor of Tottnham in Eſſex, The Defendant pleads, Non Dimiſit modo & forma, and thereupon a Special Verdict found, That J.S. Lett the Manor to the Defendant for Thirty years, Exceptis omnibus boſcis, & ſubboſcis, and afterwards makes another Leaſe to the ſame Leſſee for ſirty years of all Woods, and Underwoods growing, and being upon the Manor without impeachment of Waſte: and after that made a third Leaſe to the ſame Leſſee for thirty years of the Manor, to Commence after the end of the firſt Term. The firſt Term expires, the Leſſee afterwards cuts down trees; and Ive having the Reverſion brings Waſte. Et ſi, &c. Hearn for the Plaintiff; the queſtion is onely, Whether by this Exception, or the ſecond Leaſe, the Wood be ſo ſervered from the Manor, that it doth not paſs by the third Leaſe of the Manor, and whether this third Leaſe was not an implicite ſurrender, and drowning of the ſecond Leaſe; and he held clearly, That the Woods, and Underwoods, notwithſtanding this Exception, and the ſecond Leaſe, remained parcel of the reverſion of the Manor, and paſſed by the third Leaſe of the Manor: and ſo is the opinion of Portman in Plowd. 164. & Dyer 223. Glanvile e

Co. 5. 12. a.

contra. First, By the exception the Soil is excepted, as 14 H. 8. 1. is, and, during that time, it remains excepted, and divided from the Mannor, to all purposes. But if one Lets an acre, parcel of a Mannor, for years, the reversion there is parcel of the Mannor, and shall pass by a Grant of the Mannor: But a Lease of the Mannor excepting an acre, the acre excepted is not any part of the Mannor to any purpose, and shall not pass by a Lease of the Mannor: and this difference appears by Bromley, in Plow. 104. & 38. H. Then the soyl of the Wood being severed for the time, it shall not pass by the third Lease of the Mannor; and the second Lease doth not conjoyn them to the Mannor: for thereby the soyl is not Lett, but onely the Wood growing, &c. which extends only to a Lease of the Trees; so it remains always severed. Wherefore this issue is found for the Defendant, that he did not Lett, &c. Walmsley; It is agreed in Culpeppers Case, 2 Eliz. Dy. That if I sell Trees growing within my Land, they are now become Chattels: but, if I buy them again, they are now rejoyned to the Inheritance; and here by this exception of the Wood, the soyl is excepted, and severed from the Mannor in possession: but it is parcel of the reversion of the Mannor; and there is not any difference, where parcel is Lett, and where parcel is excepted; so it passed by the taking of the third Lease, which was clearly a surrender, or extinguishment of the second Lease presently; although this third Lease is to commence at a day future; as it hath been agreed in this Court; because by his acceptance, he allows the Lessor able to Lett the Land during the other Lease. Anderson; There is no doubt; but that the soil of the Wood is excepted, and yet it remains parcel of the reversion of the Mannor, and shall pass by a Grant, or Lease of the Mannor, and shall be recovered by a recovery of the Mannor: and there is not any difference to this purpose, betwixt a Lease of parcel, and an exception of parcel of the Mannor. And I agree, that if Trees be severed from the Mannor by Grant, yet, if they afterwards return to him, who had the Mannor, They be rejoyned, and are not Chattels in him: and that his acceptance of the third Lease was presently a surrender, or extinguishment of the second Lease. For he could not have the Land, and Trees in him, in several degrees; but the Trees shall be rejoyned to the Land by the last Lease: and if Lessee for twenty years takes a Lease for ten years, to begin at Michaelmas, there is no doubt, but that the term for twenty years is surrendred, or determined presently: for by the Lessees acceptance the Lessor hath power to make a new Lease, during the former, and at the time of the Lease making. Wherefore, &c. And Beamond agreed with him in omnibus. Wherefore (absente Owen) Judgment was given for the Plaintiff. Note: Walmsly said, If one bargains and sells his Trees to one, and after Lett the Land unto him for years, the Trees are now rejoyned to the Land: So that if the Lessee cuts them down, he shall be punished in Wast. Sed Quære de eo. 5 Co. 11.

Co. 5. 11. a.
Co. Lit. 4. b.
Co. Lit. 324. 5.
Post. 605.
Ant. 264.
2 Cr. 84.
Co. 4. 63. b.

Brown

Brown *verſus* Terry. Hill. 37. Eliz. rot. 620.

THe Caſe upon Demurrer was. It was found by Office, That J. S. who held of the King, died without Heir. W. S. as Heir to J. S. traverſeth this Office, and was at iſſue with the Queen, that J. S. did not die without Heir; and, hanging this Iſſue, he made a Feoffment of the Land, with Letter of Attorney to make Livery; and after the iſſue was tried, and Judgment given againſt the Queen. And after that Judgment, and before the Writ of Amoveas manum executed, the Attorney made Livery according to the Deed: and, whether this were a good Feoffment, or not, was the queſtion. Firſt, becauſe the Heir, at the time of the making of the Deed of Feoffment, had nothing, &c. Secondly, Becauſe at the time of the Livery executed, the Queens hands were not amoved, and ſo the Livery was during the Queens poſſeſſion. Daniel, Serjeant; By the Judgement, the Queens poſſeſſion is utterly defeated, and is in the Heir, before any Amoveas manum awarded: for that is onely to this purpoſe, To compel the Eſcheator to avoid the poſſeſſion, if he will hold it againſt the Judgment; and ſo the opinion of Stamford, 78. 10 Aſſ. 2. 10 Ed. 3 Aſſ. 156. And the difference is where the Queen ſeiſeth by Title: for then her Title being determined, there ought, notwithſtanding to be Livery made to him who hath the Right: but, when She ſeiſeth without cauſe; and he, who hath Right, hath Judgment for him, he may enter without Livery: as 5 Ed. 3. Quare Impedit 34. And the Deed of Feoffment before the Judgment is good: for the party had always the right of Inheritance, and the Free-hold of the Land. Wherefore, &c. Anderſon: There ought not to be a traverſe, where the Queen by Office is entituled to the Fee in the Land; unleſs it be in Caſe, where an Office is found after an attainder of Felony, or Treaſon; in which Caſe it is given by the Statute of 2 Ed. 6. cap. 8. But Owen ſaid, that this traverſe is given by the Statute of 34 Ed. 3. cap 14. Vide Stamf. 61. Statute 36 Ed. 3. cap. 13. 8 H. 5. 19 R. 2. Title Traverſe 37, & 47 Anderſon; if the Judgment be good, yet the Queen is not out of poſſeſſion, untill the Writ of Amoveas manum executed: and then the Livery is void; and the Deed is not good. For, at the time of the Feoffment, he had not any authority to make Livery; but it is good to be adviſed therein. But Beamond e contra: that the poſſeſſion is out of the Queen by the Judgment; for the reaſons before ſhewn; and the Livery is well made by the Attorney; the Queen being out of poſſeſſion. Owen; The Deed, being void at the firſt, cannot be made good by a ſubſequent Act; as, if I make a Deed of Feoffment of Land, which I have not, and ſuch a Letter of Attorney, and afterwards I purchaſe the Land; yet this Deed is void: So here. Wherefore, &c. Walmley abſente, adjournatur: but, afterwards the ſame Term, it was adjudged, That the Livery was good: For, by the Judgment, the Queens hands were immediately amoved. And he had authority to execute Livery upon the Land.

(50)

Ant. 463

Co. 9. 98. 2.

Laughter *verſus* Humphrey.

(51) REplevin. The Caſe was: That a man, and Woman, being Joynt-Tenants in Fee of a Mannor, intermarried, and after levied a Fine thereof to a ſtranger, who rendred it to them in tail: they have iſſue three Daughters. The Baron dies; the Feme takes a ſecond Baron, and they levy a Fine, and retake it in ſepecial tail; the Feme dies without iſſue by the ſecond Baron. The Daughters enter. A Leſſee for years of the ſecond Baron diſtrains a Copy-holder for his Rent. He brings a Replevin The other avows, and did not aver the life of the ſecond Baron: and, for that cauſe, it was held to be ill. And it was here moved, Firſt, Whether the firſt Eſtate-tail be within the Statute of 11 H. 7. and held clearly, That, for the one Moyety, it was: But, for the other, not. Secondly, Whether the Eſtate in Fee be within the Statute of 11 H. 7. And it was held by all the Juſtices, That it was not, for it may go to a collateral Heir. And this Statute doth not provide, but for the Heir in Tail only. Thirdly, It was moved, that an Avowry cannot be made for Rent of a Copy-holder in this Court, no more, then an Ejectione firmæ, which is not for the Leſſee of a Copy-holder. But all the Court e contra. For there is great difference between the Caſes. For the Ejectione firmæ is brought for the Copy-hold it ſelf. But this Avowry is for Rent due to the Lord, which is a Duty at the Common-Law; and therefore an Avowry may well be for it: as, 8. R. 2. Avowry 86. is. Wherefore, &c.

Ant. 14. Ant. 514. Ant. 583.

Bonner *verſus* Walker.

(52) AVowry. The Iſſue was, Whether the place, where, &c. was the Free-hold of the Avower, or not? and it was found by the Verdict, That it was the Free-hold of the Avowants wife, Et per Curiam, it is found againſt the Avowant, For when he ſaith, his Free-hold, it is to be intended his ſole Free-hold; and in his own Right. Wherefore, &c.

Mallet *verſus* Mallet.

(53) TReſpas for Lands in North-Peyton in Somerſetſhire, It was held per Curiam, that a Mannor in Reputation, which is not a Mannor in truth, will not paſs by the name of a Mannor, in a Fine, or Common Recovery: for they ſhall not be taken by Intendment. But otherwiſe it is in a Conveyance: for there the intent of the parties will help it.

Co. 6. 64. b. Poſt. 707.

Townſend *verſus* Wale. Trin. *or* Hill. 35. rot. 1244.

(54) UPon a ſpecial Verdict, the Caſe was: A Man, ſeiſed of Lands in poſſeſſion, and of other Lands in Reverſion, upon an Eſtate for life, deviſeth by his Will in writing, That his Executors

Own 155. 2 And. 59. Moor. 341. 508.

cutors should have all his Lands Free, and Customary, in D. for ten years to perform his Will, and the Will of his Father, with the profits thereof; and that after the ten years, his Executors, or any of them, should sell it for the payment of his debts. He makes three Executors, and dies: the one dies; the ten years expire; the Tenant-for-life dies; the two surviving Executors sel the Land, &c. Spurling; This Sale is not good. First, the Reversion of the Estate for life passed not; because he had other Lands there to satisfie the words, and it was not his intent to pass it, because there were not any profits to be taken thereby. Secondly, The Sale by two Executors is not good: for it ought to have been by all, or by the one of them only. But the Court resolved to the contray in both. Wherefore it was adjudged accordingly. Ant. 26.

Soulle *versus* Gerrard. Mich. 37, & 38 Eliz. rot. 1149.

(55) Moor 422.

Ejectione firmæ. Upon Not-guilty pleaded, a special Verdict was found, That Richard Baker was seised of his Land in Fee, and held it in Soccage, and had issue four Sons; and devised it to Richard, one of his Sons, and his Heirs for ever; and, if Richard died within the age of one and twenty years, or without issue, that then the Land should be equally divided amongst his three other Sons. The Devisor died, Richard the Devisee had issue Mary, and died within age; the three Sons enter, and Lett it to the Plaintiff. And the Defendant, by Maries command, outed him. Glanvile for the Plaintiff; it had been objected, That this remainder should not take effect, unless that Richard died without issue, and within age, for his Dis-junctive *Or* shall be taken for the Copulative *And*. But that cannot be: for that were to construe the intent against the direct words of the Devisor; which never shall be. Secondly, It hath been objected, that this remainder is limited to depend upon a Fee simple; which cannot be. I agree, That, at the Common-Law, as 19 H. 4. 8. & 29 H. 8. Dy. 33. a remainder cannot be limited to depend upon a Fee-simple: but, after the Statute of 32 H. 8. it well might; for the Statute gives liberty to every Owner to dispose of his Land by Devise at his Will, and Pleasure. So, there- Co. 1. 85. b. by the Land ought to pass according to the Will of the Devisor: for so the Act of Parliament willeth. And, as a Remainder may be limited to depend upon a Fee by Act of Parliament; So it may by a Will, which is to be construed in such manner. And this is the opinion of Monson in Plowden, 413. And here, if it cannot be good by way of remainder; yet it shall be as a several Devise: so that the remainder limited shall be as a several Devise, and as a revocation of the first Estate after such an Act done; which may well be. Anderson; the words in the Act of Parliament, That, he may dispose at his will and pleasure are not to be construed so largely, as hath been said: but, He may dispose at his will, and pleasure, So as it be according to the Rules of Law: otherwise, it is a vain Will. And, if other construction should be made thereof, there would many absurdities ensue hereupon. And in this Case, if the Limitation had been single, viz) That, if he died without issue, &c. it were plain, That it was an Estate-tail: for that shews what Heir ought to have it, 2 Cr. 416.

and

and explains the former limitation, and is not repugnant thereto; and I conceive that this part of the limitation, If he die within age, is utterly void: for a Remainder cannot depend upon a Fee; and then it is all one, as if the limitation had been ſingle, if he died without Iſſue. So Richard had an Eſtate-tail, which deſcended to his Daughter, and ſo the Defendants Entry was lawful. Wherefore, &c. Walmſley; the words in the Statute, At his will and pleaſure, are to be conſtrued, that he is enabled thereby, to deviſe by his Will to what perſon, what quantity of Land, and what Eſtate he will, according to the rules of Law; but it inables him not to make any deviſes againſt the rules of Law; and here the deviſor hath given a Fee, ſo, as no nothing remains unto him. Wherefore he cannot to that intent limit a remainder over: For if ſo, a former Title, and Eſtate would thereby be defeated by a new one, which is againſt all the grounds of Law, whereby a remainder is void, which depends upon a Fee. But it ſeemeth here, That Richard hath an Eſtate-tail by the words, And if he die without iſſue, &c. He conceived alſo, That, if the remainder might paſs upon his dying within age, yet it could not be until he died without iſſue alſo. For the Words being, If he died within Age, or died without Iſſue, Then, &c. this Then, which ſhews the beginning of the Remainder, ſhall be When he dies without iſſue, and not before. So it is all one, as if the Dis-junctive Or had been a Copulative. Wherefore the Plaintiff ſhall be barred. Beamond accord; the Statute, That he may diſpoſe at his will and pleaſure, goes as well to Acts executed, as to Deviſes; but thoſe ought always to be ſo intended, as that they may ſtand with the rules of Law. Otherwiſe, his Will is vain. Wherefore this Remainder to begin upon the dying within age is vain. So as the firſt part of the Will is of no value. Then the ſecond part makes, that the Deviſee hath an Eſtate-tail, although it be in a Deed; As 5 H. 5. 6. & 37 Aſſ. 15. A fortiori, in caſe of a Deviſe. Wherefore, &c. Owen accord; that the remainder cannot begin upon the firſt part of the limitation, no more, then if it had been upon a Conveyance or Grant; but that is void: Then the other part makes it an Eſtate-tail. And I agree, That, if the remainder might Commence upon the firſt limitation, yet it ought not to Commence by the words, and intent, untill the other part be performed alſo, viz. That the Deviſee died without iſſue. Wherefore here the Eſtate is in the Daughter. And it was adjudged for the Defendant.

1 Inſt. 99. b.

Wentworth *verſus* Wright.

(56) Owen 144. Moor 399. 2 Cr. 642.

Quare Impedit. The Caſe was: one Davies, Incumbent of the Church of A. was created Biſhop of Saint Aſaph; the Queen thereupon preſented the defendant to that Church: and the Plaintiff, being Patron, brought the Quare Impedit, and, whether the Queen by Prerogative, or the Patron ought to preſent? was the queſtion upon a demurrer. Yelverton, for the Plaintiff; there be in Law divers avoydances of Benefices, whereof this Creation of the Incumbent into a Biſhop is one, whereby the

he Church becoming void, the Parton ſhall have the benefit, nd Preſent again; and I know not any reaſon, why the Paron ſhould not have the benefit of this avoydance, as well as n other caſes of avoydance, as in taking of a ſecond Benefice, Deprivation, or otherwiſe. And there is not any Book where- 2 Cr. 692.
y it may be proved, that there is any ſuch prerogative in the Queen, but only 5 Mary, Br. Preſentment al Egliſe 31. And againſt hat is the opinion 11 H. 4. 37. And, if a Church becoms void y the Incumbents being created a Biſhop, the Queen, or Paron may preſent; and 5 Ed. 3. Quare Impedit 35. 21 Ed. 3. 39. 1 Ed. .5. 6 H. 4. 5. Although it appears in thoſe books, that the Church was void by the Incumbents being created Biſhop, yet he Queen made not any Title to the Benefice for that cauſe, hich is a great argument that the Queen hath not any ſuch prerogative. And ſo are 44. Ed. 3. 25. and Temps Ed. 1. Quare impedit 81. where the King, (although the Benefice was void by creating he Incumbent a Biſhop) made not any Title. And Doctor and udent, 116. b. is; That, if a Benefice be void by Death, Creatin, or Ceſſion, the ſix Moneths ſhall be accounted from the time f the Death, Creation, or Ceſſion; which proves, That the Preſentment appertained not to the Queen: for then there could ot be any Lapſe. And 6 Eliz. 228. the opinion is expreſly, hat the Queen hath not any prerogative in this caſe. Wherefore, &c. Drew e contra, The books vouched That the King, aving Title by his prerogative, did not take advantage hereof, but made other Title, are not of any authority againſt he Queen. But ſome of them, as 41 Ed. 5. 5. & 17. Ed. 3. 40. 2 Cr. 692.
nd the greater opinion in 11 H. 4. 37. prove expreſly for the Poſt. 790.
Queen. And the common Experience at this day is, That 2 Cr. 691.
he Queen, in all thoſe caſes of creating the Incumbent a Biſhop, ath preſented to his Benfices: and ſo there be many preſidents. hereof. And in 6 Eliz. Dyer, 228. the Plaintiff did not demurr pon the Queens prerogative; but took iſſue, that the Church as void by reſignation, before the Creation. And, although is ſaid, That this prerogative cannot be proved by Reaſon, his is not material, nor ought there any reaſon to be given, e enquired about the Queens prerogative: For, in regard ſhe is the Head of the Weal publique, and defends Her Subects, and their Poſſeſſions, the Law attributes unto her many prerogatives, for which no reaſon can be yielded; as to have he Tythes of Lands lying out of any Pariſh; to have the rimer Seiſin of all Lands, as well of others, as of thoſe, which re holden of Her in Capite; to have the Temporalities of the Biſhopricks; and the like. Yet there is great reaſon alſo for his prerogative: for the Queen hath advanced the Incumbent o a great dignity, and it is Her great loſs to part with the Temporalities of the Biſhopricks. She was alſo the means o cauſe the avoidance of this Benefice. And it is an uſual practiſe, That the Queen for the moſt part, upon creating of 2 Cr. 692.
Biſhops, grants unto them to hold their Benefices in Commendam Dier 228. b.
which is good againſt the Patrons; becauſe the Preſentations Poſt. 542.
belonged unto her. And that is as great a prejudice to the Paron, as if the Queen her ſelf had preſented thereto. Wherefore, &c.

Marſh

Marſh *verſus* Curteys.

Trin. 37 Eliz. rot. 132. *or* Hill. 38 Eliz. rot. 1302.

(57) EJectione Firmæ. Upon a ſpecial Verdict it was found; That
1 Rol. 427. the Plaintiff was ſeiſed of a Meſſuage, and Lands in Fee, and Lett it to the Defendant for years, rendring Rent, upon Condition, That the Leſſee ſhall not parcel out the Land, nor any part thereof from the Houſe. The Leſſee grants all his term in the Houſe, and part of the Land; retaining to himſelf the reſidue of the Land, and afterwards Letts part of that reſidue: the Rent afterwards is Arrear, and demanded by the Leſſor, and accepted. And, for the condition before broken, he enters; and, whether his Entry were congeable, or not, was the queſtion. Glanvile, for the Plaintiff; First, the Condition is here broken, for the Words parcel out the Land is a common
1 Rol. 427. term in Eſſex, which is as much as to ſay, That he ſhall not Lett, or divide any part thereof from the Houſe; but that they ſhould all go together: ſo the Condition is clearly broken; the acceptance then of the Rents afterwards ſhall not eſtop him to take advantage of the Condition: becauſe it is collateral; but otherwiſe it is, where the Condition is for Non-payment of Rent; and this difference is proved by the Books, 46 Aſſ. 5. 20 Ed. 4. 18. Wherefore, &c. And, as to the firſt point, all the Juſtices, Anderſon, Walmſly and Beamond agreed clearly, that the Condition was broken: for although it were objected, that the Land is not parcelled from the Houſe, but the Houſe from the Land, and ſo the Condition not broken in the Words, and a Condition ought to be taken ſtrictly: it is all one, where the Houſe is divided from the Land, and where the Land from the Houſe; for the intent of the Condition is broken, and alſo the Words: for the Land is divided, and parcelled from the Houſe; and the dividing thereof from the Houſe is the Matter, and Subſtance of the Condition; and it is not material, where it began, nor where the ſeparation was made. Wherefore, &c. and in proof thereof Vide 5 Ed. 3. Debt. 15. For the ſecond point, Anderſon, and Beamond held; That this acceptance ſhall barr him
Poſt. 572. of his Entry; For he accepted it, as Rent due unto him by the Leaſe; which cannot be, if the Eſtate be undone by an Act precedent; for if he had entred for the Condition broken, he could not have had the Rent; and when he accepted the Rent, he ſhews his intent, and Election to have the Leaſe continue. And there is not any difference; as to this purpoſe, betwixt a collateral Condition, and a condition for paying Rent: for the reaſon, that he ſhould be barred of his Entry is one in both Caſes, viz. Becauſe, by his own act, he hath affirmed the Leaſe to have continuance after his title of Entry accrued unto him; but the acceptance of Rent, due before his title of Entry, is no barr: for, it being then due, he might have debt for it. And it doth not ſhew any election in him to continue the Leaſe, as it doth here. Wherefore, &c. Walmſley e contra, in this point; for there hath been a common difference betwixt a Condition collateral, and a Condition for the payment of Rent: for, in the laſt caſe, acceptance of the Rent, due after, diſpenſeth therewith; but not with the firſt.

And this difference was agreed here in Rawlins Caſe, for the ſhip, where the condition was for the payment of Rent, and a Fine: after non-payment of both; he accepted of Rent due afterwards. And it was held to be a diſpenſation with the Condition for non-payment of the Rent, but not for the other part of the condition. And this difference ſtands upon good reaſon, becauſe the acceptance of the Rent is a good diſpenſation with the condition. And in that he received the Rent it ſelf (the non-payment whereof is his Title of Entry) that acceptance is a ſatisfaction unto him for the Rent: but it cannot be any ſatisfaction for any other matter. For one thing due unto me, cannot be ſatisfaction for another thing due unto me. And the Rent is due for the profits of the Land taken by the Leſſee. But when the Leſſor is ſatisfied of the thing, for which the Entry is given him, it is good reaſon to barr him of his re-entry as where the Lord hath cauſe of Ceſſavit, acceptance of the Rent ſhall barr him. Wherefore, &c. Owen abſente, adjournatur. Afterwards, it was adjudged for the Plaintiff. 3 Co. 65.

Lee and his wife *verſus* Coleſhill.

Paſch. 38 Eliz, rot 1707.

(58)

DEbt by them, as Executors of Smith upon an Obligation, againſt the Defendant, as Executrix to Coleſhill her Husband. The Defendant pleaded the condition to be for the performance of Covenants within a certain Indenture betwixt Smith on the one part, and Coleſhill on the other part: Whereby Coleſhill, being Cuſtomer of London, made Smith his Deputy in the ſaid Office, and Covenanted to ſurrender thoſe Letters Patents before a certain day, and to procure new to himſelf, and the ſaid Smith. As alſo, that if Smith died, living C. that C. ſhould pay to the Executors of Smith 300l. and ſhews the Statute of 5 Ed. 6. cap. 16. That all promiſes, bargains and contracts, for the buying of divers Offices (whereof this is one) ſhall be void, and thereupon the Plaintiff demurred. Glanvil prayed Judgment for the Plaintiff; for there be many Covenants within the Indenture, whereof ſome are good and lawful: and for them, doubtleſs, the Obligation remains good. For, although, the Statute makes the Covenants concerning the buying of the Office, and the Obligation as to it void, yet for the other Covenants therein recited, being lawful, the Obligation continues in force. Vid. 20 H. 6. 23. and 4. H. 7, that an Obligation may be avoided, or diſcharged in part, and ſtand good for the reſidue. Drew e contra. All the parts here of this Indenture concern the exerciſing of this Office. And if any of the Covenants concerning other matters in the Indenture ſhould be accounted good, yet the Obligation is void in all (but for the good Covenants peradventure an Action of Covenant would lye, if they be not performed) for the Statute ſaith, the Bond to that purpoſe ſhall be void. And then, it is not poſsible, it ſhould be void to this intent, and be good for another: And, it hath been held in the Queens Bench, if a Parſon makes a Leaſe, which is void by the Statute for non-Reſidence; and there is an Obligation for the performance of Covenants; Although there be ſome Covenants therein, which do not concern the Leaſe: yet the Bond is intirely void. Otherwiſe, all the meaning

Co. 3. 82. 5. E. 6. c. 16.

of the Statute ſhould be defrauded by putting in a lawful Covenant, within the Indenture, wherefore the Court here did not deliver any great opinion: but, abſente Walmſley, adjournatur. And it was afterwares adjudged, that this Obligation was void in every part, being againſt Law. Co. 82. 83.

Wilkinſon *verſus* Netherſol.

(59) INformation upon the Statute for buying of Leather, brought in the Court of Pye-Powders of D. The Defendant was there condemned, and in Execution: and being brought hither by Hab. corp. it was moved, that the Judgment was void et coram non Judice. For, although it be the Kings Court, yet Sute ſhall
Co. 6. 20. a. not be there upon any penal Law, but within one of the Queens uſual Courts at Weſtm. As Plowd. 208. Stradlings Caſe. And hereto all the Court agreed, that a Suit is not maintainable there. But becauſe they have power to hold Pleas in Actions of Debt, and ſo had colour to hold Plea in this Action, the Judgment is not void, but voidable only by Error. And Anderſon ſaid, the Court of Pye-Powders had his name, becauſe they are there to hold Plea
4. Inſt. 272. only of things Parvi ponderis, viz. of Contracts, and other things done in the Fair.

Willis *verſus* Fletcher. Paſch. 38. Eliz. rot. 1137.

(60) REplevin. The Defendant made Counſance for Damage feſante, as Bayliff of A. and ſhews, that B. was ſeiſed of the Land, which was held in Capite, and deviſed it to A. And becauſe it appeared upon the matter, that A. was but Tenant in Common with the Heir, exception was taken to the Conuſance: Becauſe it ought to have been made in the name of the Heir alſo. Walmſley held
Ant. 143. that the Tenants in common ought to joyn in the Avowry, and the Conuſance ought to be in both their names: for the Damages are to both. But Anderſon and Beamond held the contrary. For a Tenant in common may ſolely defend, and he only may take a Diſtreſs; although his Avowry is by way of Action, and yet may juſtifie it. But, becauſe he ſhewed not in the Conuſance, what Eſtate the Deviſor had at the time of the Deviſe; but, onely, that he was ſeiſed of the Land, it was held to be ill. And therefore adjudged for the Plaintiff.

Aldworth *verſus* Peel.

(61) DEbt againſt Peel as Executor. The Plaintiff had Judgment to recover de bonis Teſtatoris; And thereupon a Scir. fac. was awarded, and the Sheriff returned, quod nulla habuit bona Teſtatoris; And the Plaintiff ſurmiſeth, that he had waſted the Teſtators Goods: Whereupon he prayed a Scir. fac. Why he ſhould not have Execution de bonis propriis: and ruled by the Court, That this Writ ſhall not be awarded upon the ſurmiſe of the party, upon a devaſtation; nor, in any Caſe, where the Judgment is de bonis
Ant. 216. Teſtatois, unleſs it be upon return of the Sheriff, where he returns a
Poſt. 859. Devaſtavit. Vid. 9 H. 6. 9. and 57. Fitz. H. Execution. 9.

Grego-

Gregory *verſus* Hill.

(62) REplevin. The parties being at iſſue upon a Preſcription to have Common in certain Land called Stich-Hah in Comitat. War. it was held by Anderſon, Walmſley, and Beamond (abſente Owen) who delivered their opinion ſo to the Jury; that, where one preſcribeth to have common appurtenant to his houſe, and twenty acres of Land, and it appears upon the Evidence, that he hath but eighteen acres, or a leſſer parcel, yet he hath not failed of his preſcription. But, if he had twenty acres, and ten acres are Free-hold, and the other Copy-hold, he there fails of his preſcription: For he cannot make a preſcription for both. So it is, if it appears upon the evidence, that part of the Land was Copy-hold an hundred years ſince; but now is his Free-hold. Ant. 390. Ant. 390.

Huberts Caſe in Camera ſtellata.

(63) ONe Hubert of Norfolk was convicted in the Star-chamber upon a Bill exhibited againſt him, for procuring one Webſter to counterfeit himſelf to be one Alexander Gellibrand (who was then beyond ſea) and to acknowledge a Fine of his Lands by the name of A. G. There being then in Court the Lord Keeper, Popham Chief Juſtice, Gawdy, one of the Juſtices of the Queens Bench, and Walmſly one of the Juſtices of the Common Bench, & divers Lords: the Sentence was, that he ſhould make Fine to the Queen; and ſhould be impriſoned, and that the Fine levied unto him ſhould be void (if it could be ſo done) by entring a Vacat upon the Roll, or otherwiſe, as the Juſtices of the Common Bench ſhould beſt approve. And, if it cannot be ſo made void, That then Hubert, by Fine, or otherwiſe, as A. G. ſhould Deviſe, ſhould reconvey the Land to him, and his heirs, in the ſame manner as it was before, at the time of the Fine levied. But Popham ſaid, that it might be well made void by entering a Vacat upon the Roll. And he ſaid, that it was ruled in the Caſe of one Holcomb in the Common Bench, where one brought Debt againſt Holcomb, and procured a ſtranger in his name to appear, and confeſs the Action in the name of Holcomb; Whereupon Judgment was entered. This practiſe being afterwards examined in Court, and diſcovered by confeſſion, a Vacat was entered upon the Roll. And to warrant this, another preſident was ſhewn, Tempore H. 6. And the Lord Keeper ſaid, that he had always noted this difference. If one of my name Levies a Fine of my Land, I may well confeſs, and avoid this Fine, by ſhewing the eſpecial matter: for that ſtands well with the Fine. But if, a ſtranger, who is not of my name, Levies a Fine of my Land in my name, I ſhall not be received to aver, that I did not Levie the Fine, but another in my name: for that is meer contrary to the record; and ſo it is of all recognuſances, and other matters of Record. But I conceive, when the fraud appears to the Court, as here, they may well enter a Vacat upon the Roll; and ſo make it no Fine: although the party cannot avoid it by averment, during the time, that it remains as a Record. Co. 12. 123. Co. 12. 123. Co. 5. 68.

Bon *verſus* Smith

(64) GLanvile, Serjeant prayed the opinion of the Court in this Caſe, A Man had iſſue, a Son, and a Daughter, and deviſed his Land to his Son in Tail, and if he died without iſſue, that it ſhould remain to the next of his Name, and died; The Son died without iſſue, the Daughter being then married, whether ſhe ſhould have this Land was the queſtion; and held per Curiam that ſhe ſhould not, For ſhe had loſt her name by her marriage. But it ſhould go to the next Heir Male of the name. But, if ſhe had not been married at the time of her Brothers death, the Daughter ſhould have had it: For ſhe was the next of the Name, Vide poſtea.

Poſt. 576.

Hollingworth *verſus* Aſcough.

(65) AUdita Querela upon a Defeaſance of a Statute of 2000l. and grounded the Audita Quer. upon the Defeaſance; the Defendant ſaith, that he made another Defeaſance Abſque hoc, that he made that Defeaſance. And it was thereupon demurred; becauſe he ought to have pleaded the general iſſue, non eſt factum: for this Plea amounted no more. And of that opinion, after argument by the Serjeants, was all the Court. Wherefore it was adjudged againſt the Defendant,

Block *verſus* Pagrave, & Pagrave.

Hill. 37 Eliz. rot. 631.

(66) DOwer. Upon a ſpecial Verdict the Caſe was. That one deviſed his Land to Mary Pagrave his Wife, until Faith his Daughter ſhould come to the age of Twenty one years, and then to Mary Pagrave, and Faith, for their Lives; and the ſaid Faith, the Daughter, hath not yet attained her age of Twenty one years; And in Dower againſt Mary P. and Faith, they plead, that they be not Tenants of the Free-hold modo & forma, prout, &c. And whether upon the matter, Mary and Faith be joynt-Tenants, or Tenants in Common, or how otherwiſe they hold, was the queſtion. Anderſon and Beamond: if it be a Term for years in Mary P. the Mother, and a Free-hold to the Mother, and F. the Daughter; this Term for years cannot ſtand with the Free-hold: and therefore it is drowned, and they are immediate Joynt-Tenants of the Free-hold; and the iſſue is found for the Demandant. But, if the Term be drowned only for the Moyety, as they ſaid it was clear, that it ſhould be; and ſhe is Tenant for years, remainder to Faith of the other Moyety: it is then found for the Defendant, that they be not Tenants modo & forma, prout, &c. But they held that they were Joynt Tenants for the reaſon aforeſaid. Walmeſly agreed, that if it ſhould enure, as an immediate Deviſe; That the Term ſhould be extinct, and

Co. Lit. 182. b

and they are joynt-Tenants of the Free-hold. But peradventure the Will was to make it a Term in the Mother, and, after the expiration of the years, a Free hold; according to the intention of the Deviſor it ſhall be conſtrued, that it ſhould not be a Deviſe of the Freehold until after the years expired: and in the mean time the Land ſhould deſcend to the Heir. But afterwards, upon realeaſe of Damages, the Defendants confeſſed the Action.

John Leak, and John Michel, for themſeves, and the Queen,

verſus John Howel, and John Hall. Trin. 33 Eliz. rot. 24.

(67)

INformation upon the Statute of Primo Eliz. cap. 12. and For that That divers perſons unknown, betwixt the Firſt of January 33 Eliz. and the Firſt of March 33 Eliz. in quibuſdam Navibus, to the Plaintiffs unknown, brought in from the parts beyond the ſeas, Uſq; Ratcliff in Comitat. Middl. within the Port of London, one hundred forty four pieces of Buckram, fourteen pieces of cloth of Gold, one hundred twenty four pieces of Linen cloth, and divers other parcels therein mentioned; and the ſaid Goods and Merchandiſes, 15 Feb. 33 Eliz. out of the ſhips, by way of Merchandiſe, put upon the Land, and diſcharged after four of the clock in the afternoon, the Cuſtome, and Subſidie for them due, not being paid, nor agreed for with the Cuſtomer of London, nor in any other Port, nor with their Deputy, againſt the form of the Statutes in ſuch Caſe provided: and that, by reaſon thereof, all the ſaid Goods became forfeited; Whereof the one Moyety ſhould be to the Queen, and the other Moyety to him, who ſeiſed, or ſued for them; and, that thoſe Goods came to the Defendants hands. Whereupon he prayed Proceſs againſt them, &c. The Defendants plead, that the ſaid Goods, and Merchandiſe were not, at the time mentioned in the information, put upon the Land, or diſcharged by way of Merchandiſe, prout in the information, &c. Et hoc paratus eſt verificare. The Queens Attorney, by replication ſaith, That they were put upon the Land, and diſcharged by way of Merchandiſe, prout, &c. in the information, &c. Et hoc petit, quod inquiratur per patriam, &c. prædictus Defendens ſimiliter. And hereupon a ſpecial Verdict was found, viz. That all thoſe Goods were taken by way of reprize, and brought within the Port of Penryn in Cornwall, and that 15 Feb. 33 Eliz. about Twelve of the clock at Noon-day, put into two Lighters, and by them brought to the Sea-ſhore, aqua ab inde refluxa, about Two of the clock poſt meridiem; And, that the greater part of thoſe Goods were put on Land before four of the clock poſt meridiem; and, that the ſaid fourteen pieces of cloth of Gold, and the one hundred twenty four pieces of Linen, were put upon the Land out of the Lighter after four of the clock poſt meridiem; and that there was an agreement, before the ſaid Goods were taken out of the ſhip, made at the Cuſtome-houſe in Penryn, with Rich. Enys, Deputy of John Baſſet, Deputy to Thomas Peyton, the Cuſtomer there, and with the Comptroller of the Cuſtome there, to anſwer to the Queen all Cuſtoms, and Duties; which ſhould be found due to the Queen for the ſaid Goods,

Goods upon view of them; And, that the ſaid R. Enys had exercised that place as Deputy there, for three years before, &c. And if upon all this matter, &c. And it was argued divers times before the Barons; and moved firſt, whether for theſe Goods, taken by way of Repriſe, any Subſidie is to be paid? for the Statute of Primo Eliz. cap. 19. is, That for Goods brought into the Realm by way of Merchandiſe, or carried out of the Realm by way of Merchandiſe, Cuſtome ſhall be paid: ſo the Statute therein extends only to Merchants, which Traffique, and not to Goods wracked, nor to the Goods of Ambaſſadours, or of any other man brought in for his proper uſe, and proviſion; and ſo of Goods taken by way of repriſe, which are taken with the hazard of the lives of the takers of them, which are not brought in by way of Merchandiſe. But the Court reſolved as to it, That Subſidy was to be paid for them: For the Statute extends not onely to Merchants, but to all Goods brought in by any man to make a benefit by the Sale of them, and ſo it hath been often ruled before theſe times. Secondly, Whether there were here any agreement with ſuch a perſon, as the Statute intends; For the Statute is, that the Cuſtome not paid, nor the Cuſtomer, or his Deputy, by, and with the conſent of the Comptroller in the Cuſtome-houſe, not agreed with: and here the agreement is not with the Deputy himſelf, but with the Deputy of the Deputy, with the Aſſent of the Comptroller, &c. And it was moved, that this is good enough: for the Deputy of the Deputy is Deputy of the firſt cuſtomer; and, although there be twenty, the one under the other; as the twentieth Aſsignee ſhall vouch by Warranty made to one, and his Aſſignees, as 38 Ed. 4. 21. and 7 Eliz. Dy. 238. a Deputy certifies fully, it is his Maſters Act, for the ſupplies his place; and 32 Ed. 3. Bar. 259. Commiſſion to one to make purveyance for Carriage, another, as his Deputy did it, and held well enough. And here Rich. Enys was Deputy in Facto, and exercised the place in the Cuſtome-houſe: And, although he were not de Jure, that ſhall not prejudice the Merchants, who made their Compoſitions with him: For it would be very miſchievous unto them to examine by what authority they ſit, and make their compoſition. And for that purpoſe vide 9 Ed. 4. 5. grant of liberty by a King an uſurper 21 H. 6. Attornment by a Diſſeiſor 18 Eliz. Lord Arundels Caſe, ſurrender to a diſſeiſor, and a Regrant by him, held to be good. And of that opinion were all the Barons, that it was ſufficient for them to make their compoſition: for he being deputy in Facto, and ſitting in the Cuſtome-houſe with other Officers, they making their compoſition there, it was well enough. Thirdly, Whether this agreement, being incertain, be good? &c. And it was held, that it was; for, being Goods taken by way of Repriſe, They could not by Intendment have notice what the quantity, and parcels of the Goods were, to make a more certain compoſition. And it is all one in reaſon with Fogſſas Caſe. Fourthly, Whether this were any putting upon the Land after four of the Clock poſt meridiem againſt the Statute of 1 Eliz. cap. 12. And all the Barons reſolved, that in regard it was found, that the ſaid Goods were unladen out of the Ships in Lighters, and by them brought to ſhore at two of the Clock poſt meridiem, aqua ab inde refluxa, that was a putting them upon the Land before the fourth hour

Co. 5. 17. b.

Poſt

oſt meridiem. And ſo, for the matter in Law, they all reſolved for he Defendants. And divers exceptions were taken to the manner of their proceedings. Firſt, becauſe it is not alledged in the Declaration, that they were brought into the Realm by way f Merchandize, but only laid upon the Land by way of Merhandize; which is not any offence againſt the Law: for Goods nay be brough in not by way of Merchandiſe, and yet laid upon he Land by way of Merchandiſe, as Goods of an Ambaſſadour rought unto the Land, who afterward dies before they be unlaen, and then laid upon the Land to be ſold, this is no offence gainſt any Law. And the Court ſeemed to incline, that it was material Exception. Secondly, the Defendants Plea ought o be concluded; Et de hoc ponit ſe ſuper patriam. And the iſſue ought ot to be by Replication, where an Affirmative and Negative is efore. Thirdly, Twelve of the Jury appeared, and were adourned to another day. And the Record is, that at the day, our of thoſe Twelve made default, therefore a Decem tales was warded, where it ought to have been, that, although four of hem adjourned, made default, yet twenty others appeared, and herefore it ought to have been, Et quia octo only appeared, Et redum Juratorum made default, therefore a Decem tales was awardd, and in proof hereof was cited 1 R. 3. 4. 15 R. 7. 16. But the Barons doubted, whether it were not helped by the Statute of 32. H. 8. And whether it ſhould extend to informations for the Party and Queen. But, at the end of the Term, Judgment was given for the Defendants upon the matter in Law,

Goodwin *verſus* Longhurſt.

(68) UPon a ſpecial Verdict, the Caſe was: that a Copy-holder had Licence from his Lord to let his Land for Twenty one years, he letts it to the Plaintiff for three years, who entred, and being Ejected, brought an Ejectione firmæ. And it was moved; firſt, if a Leaſe be made by a Copy-holder for years, and the Leſſee is ouſted, whether he may maintain an Ejectione firmæ thereof at the Common-Law: and all the Barons held clearly, that he might, for it is a good Leaſe between the parties, and againſt all others, but the Lord. And, as this caſe is, it is good againſt him alſo, by reaſon it is done by his Licence. Secondly, it was moved, whether this Leaſe being but for three years, be warranted by his Licence to make a Leaſe for twenty one years? but the Barons ſpake not much thereto: Sed adjournatur. But afterwards, upon another motion, they all reſolved, that it was a good Leaſe, and this Action well maintainable thereupon at the Common Law. And was adjudged accordingly for the Plaintiff.

Ant. 469. Poſt. 623. Antea 69.

Bufkyn *verſus* Edmunds.

Mich. 38 & 39 Eliz. in Camera Scaccarii.

(69) FRror brought in the Exchequer-Chamber, and aſſigned, because the Plaintiff declares in debt againſt the Defendant, as Aſſignee, and ſuppoſeth, that he Lett to J. S. for years, rendring Rent; and that J. S. by his Will deviſed to the Defendant, and he entred, and was poſſeſſed, &c. And ſhews not, that the Leſſee made any Executor; nor, that the Defendant entred with the Aſſent of the Executor, nor Virtute Legationis; nor hath he conveyed any lawful Eſtate to himſelf; but is in meerly by Tort:

1 Rol. 459. 618. 2 Rol. 428. Ant. 415. Poſt. 636.

and

and ſo the Action was not maintainable: and for this cauſe all the Juſtices and Barons held the Declaration to be ill, and therefore reverſed the Judgment. But for the principal matter, whether there ought to be a demand of the Rent? all the Juſtices and Barons held, that there ought to be a Demand, although it were payable out of the Land, beſides Anderſon, who held the contrary: for he ſaid, it being appointed to be paid out of the Land, it is but a Summ in groſs, and no Rent. Ant. M. 37. pl. 7.

Bagſhaw *verſus* Playn. Mich. 37, & 38. rot. 524.

(70) 2 Cr. 88. ERror of a Judgment in Debt, where the Plaintiff declared againſt the Defendant, as Executor to J. S. in Debt upon an Obligation, and Demands 47 l. 8 s. 8 b. monetæ Flandriæ attingen. ad valenciam 40 l. 2 s. 6 d. The Defendant pleaded Plene Adminiſtravit, and found againſt him, and Judgment thereupon, Quod recuperet Debitum prædictum. The Error aſsigned was; becauſe it was not inquired by the Jury upon taking the Verdict, nor by Writ to inquire of the value of the money, and to give Judgment accordingly. But Daniel, Serjeant moved, that it was well enough, and the Value ſhall be intended to be, as it is in the Declaration, and to that purpoſe cited a Preſident in the Book of Entries, fol. 157. and another Preſident in the Queens Bench, Hill. 32. Eliz. rot. 637. betwixt Davidgs and Wychalls, where Debt was brought for 20 l. and declares upon ſale of certain Pilchards for 22 l. Portugaliæ, quæ attingunt ad valenciam 20 l. Legalis Monetæ Angliæ; And upon a Nihil dicit, had Judgment to recover the 20 l. and it was much debated, and argued, but all the Juſtices and Barons here held it to be Error: For the value of Flemiſh Money is not known 2 Cr. 88. to us no more than the value of Twenty Quarters of Wheat, or the like, whereof the value is to be inquired; as 11 H. 7. 5. and 9 Ed. 4. 49. which is the reaſon, that the Plaintiff in his Declaration, ought to expreſs the value thereof. But of current Money here, whereof the value is known, it needeth not. And therefore Poſt. 800. the Judgment here ought to have been Quod recuperet the 47 l. 8 s. 8 d. Flemiſh Money, and a Writ have been awarded to inquire of the value thereof. And therefore, as it is given, it is erroneous. And for that cauſe the Judgment was reverſed.

Stafford *verſus* Pooler. Trin. 36. Eliz. rot. 223.

(71) ACtion upon the Caſe for theſe words; Whereas the Plaintiff, Anno 34. Eliz. was, and yet is a Juſtice of Peace in the County of Gloceſter, that the Defendant apud A. in Comitat. Gloceſtriæ, ſpake theſe words; One Web, being Arreſted, as acceſſary of Felony for ſtealing his own Goods, Mr. Stafford (innuendo the Plaintiff) knowing thereof, diſcharged the ſaid Web by an agreement of 3 l. whereunto Mr. Stafford was privy, whereof 30 s. was to be paid Mr. Stafford, and was paid to his man by his appointment. The Defendant pleaded Not-guilty, and found againſt him, to his Damage of 40 Marks; and Judgement given in the Queens Bench for the Plaintiff. And now Error thereof brought, and aſsigned; that the words were not Actionable: for they be inſenſible, and it is impoſſible, that one ſhould be Arreſted as acceſſary of Felony for ſtealing his own Goods: for although one peradventure may be a Felon for ſtealing his

his own Goods from his Bayliff, with an intent to charge him with them; yet he cannot be an accessory in Felony for stealing his own Goods; for he is therein principal, or nothing. And although he said, he discharged him by agreement, &c. yet that is not any Offence: for it is not averred, that there was any offence committed. And, although he were Arrested, yet it may be he was not guilty of any Offence; and he might also discharge him by agreement, and yet it is not any offence; for it may be, that in an appeal of Robbery he compounded. But all the Justices (besides Walmsly) held, that the Action was maintainable: For one may be an accessory in Felony for stealing his own Gods, viz. where he procures another to steal them. And, although there were not any Felony committed, yet being arrested for that cause, he ought not to discharge him upon an agreement for Money. For it is a great offence, being done by a Justice of Peace: and, being false, is a great slander unto him; And shall be intended to be spoken in the worst sence, that he was privy to the agreement to conceal the Felony. Wherefore the Judgment was affirmed by all the Justices and Barons, besides Walmsly. Ant. 68.

Woodward *versus* Parry.

(71) DEbt upon a Bill Obligatory of 14 l. The Defendant Woodward demanded Oyer of the Bill, which was; that Woodward acknowledged, that he owed him 14 l. solvendum una cum 6 l. upon accompt between them. And it was entred in hæc verba. And the Defendant thereupon demurred in Law; because it is a debt of 20 l. and not of 14 l. And he ought to have Counted accordingly, or at leastwise ought to have counted upon the Bill, as it is. And it was thereupon adjudged for the Plaintiff. And the Error now assigned in this Point. But all the Justices and Barons resolved, that it was good enough: for there is but 14 l. due upon this Bill. And that, which comes after the Solvendum, is void; as that, which comes after an Habendum. A second Error assigned was, for that this Action was brought by Parry, and his wife, for a Debt due to the Feme before the Coverture. As also because Parry, being a Clerk of the Queens Bench, It was entred upon the Declaration Querens in propria persona, &c. which cannot be. For although the Baron hath a priviledge; yet the Feme hath not. Sed non allocatur: For every Plaintiff, if he will, may be in propria persona, and this Entry is not by reason of his priviledge; but because they are there in person. Wherefore the Judgment was affirmed.

Grymston *versus* Reyner. Hill. 38 Eliz. rot. 943.

(72) ASsumpsit. For that the Defendant, in consideration of such Clothes delivered at such a place, promised to pay 8 l. And, in Consideration of a Debt upon arrearages of Accompt, the Defendant being endebted in 18 l. the Defendant promised to pay it. The Defendant pleaded Non Assumpsit; and found against him, and several Dammages assessed; but entire Costs, and Judgment accordingly for the Plaintiff. And Error thereof brought and held, That the Consideration upon the second

Aſſumpſit was not ſufficient. But for the firſt, and for the Entire
2 Cr. 343. Coſts, the Judgment was affirmed. And for the ſecond Aſſumpſit, it was reverſed.

Bedell *verſus* Stanborough. Paſch. 38 Eliz. rot. 480.

(73) EJectione firmæ of a Leaſe apud Denham of Lands in the Pariſh de Denham prædicta. After Not guilty pleaded, and Iſſue, a Ven. fac. was awarded de Vicineto de Denham: And Error therefore aſſigned; becauſe the Ven. fac. ought to have been de Parochia de Denham, where the Land lies. Sed non allocatur: For, in regard it is de
2 Cr. 341. parochia de Denham prædicta, the Pariſh, and Village are intended to extend, and to be all one, and no more. Secondly, becauſe that an Habeas corpora Juratorum was awarded upon the Roll; but a diſtringas iſſued. Sed non allocatur: For it is a miſconveyance of the Proceſs, and it is helped by the Statute. Wherefore it was affirmed. And Trin. 40 Eliz. rot. 243. betwixt Morley, and Clapham, it was ſo adjudged.

Dixon *verſus* Adams.

(74) ASſumpſit, for that J. S. and J. D. were obliged to Adams in 40l.
1 Rol. 28. and thereupon he ſued J. S. in the Queens Bench, in which Sute Dixon became Bail, Adams recovered, and upon a Scire fac. againſt Dixon, the Bayl, had Judgment againſt him. And he, without other Proceſs, paid the condemnation, and Adams in conſideratione inde, aſſumed to Dixon to deliver unto him the principal Obligation, and a Letter of Attorney, to ſue it againſt J. D. and for not performance hereof the Action was brought. And upon Non Aſſumpſit pleaded, and found for the Plaintiff, he had Judgment. And thereupon Error brought; becauſe it was not a ſufficient conſideration. And ſo it was held by the whole Court: For Dixon had not done any act, whereto the Law would
Ant. 429. not have compelled him. Wherefore the Judgment was re-
1 Rol. 28. verſed.

Termino

Termino Hillarii, Triceſimo non ELIZABETHÆ, in Banco Reginæ.

Greningham *verſus* Ewer. Ante, Trin. 37. Pl. 1.

THE Caſe was now moved again. And Gawdy, Clench & Fenner held; That the bar was good: For the Defendant hath Election to deliver the Obligations, or to make an Acquittance, as the Plaintiff ſhall Deviſe. Then, if the Plaintiff will not deviſe the Acquittance, he is diſcharged of the making thereof, by the Default of the Plaintiff, and, by conſequence, from the delivery of the Obligation: For he, having Election to do the one thing, or the other, It is not reaſon that the Obligee ſhould compel him to perform the one only. Popham; If it were an abſolute diſjunctive Condition, that the Obligor ſhould do the one thing, or the other; then the Election ſhould be to the Obligor abſolutely. And, if the Obligee diſables him to perform the one part, the Law ſhall diſcharge him of the other: but it is here but a conditional Election, viz. if the Obligee will Deviſe an Acquittance, And, if he will not deviſe it, he is abſolutely obliged to deliver the obligations. And, if the condition had been, that he ſhould deliver the obligations, or ſhould make an acquittance before Michaelmaſs, if the Plaintiff would require it, it had been cleer, that he ought to deliver the Obligation, unleſs the Obligee required an acquittance: So here. Gawdy; There is great difference betwixt the Caſes. Wherefore it was adjudged for the Defendant. (1) Ante 396. Poſt. 718. 1 Rol. 447. Mo. 395. 6. 1 Rol. 447.

The Arch-Biſhop of Canterbury *verſus* Kemp.

ACtion ſur Trover of divers Trees apud D. in the County of Surry. The Defendant pleads, that Queen Mary was ſeiſed in Fee of the Manor of D. in the County of Suſſex, where thoſe Trees were growing, and granted it to the Defendant in Tail, wherby he was ſeiſed thereof; And, that J. S. cut the ſaid Trees, and granted them to the Plaintiff, who loſt them, and the Defendant found, and converted them, &c. The Plaintiff replies De injuria ſua propria, &c. And thereupon Iſſue was joyned. Coke moved, That the Replication was ill: For De injuria ſua propria is not any Plea, where the Defendant makes juſtification (2) Poſt. 812.

by claiming an Intereſt in the Free hold to himſelf, As 16 Ed. 4. 4
Co. 8. 67. a. 44 Ed. 3. 18. & 14 H. 4. 32. is, upon the ſame reaſon. But where one claims not any Intereſt, but Juſtifies by Command, or Authority derived from another, it is otherwiſe. And of that Opinion was the whole Court. Wherefore a Repleader was Awarded.
Ante 14.

Holcomb *verſus* Rawlyns. Paſch. 38 Eliz. rot. 401.

(3) TReſpaſs, for his Cloſe breaking 1 Aug. 31 Eliz with a Continuando unto the 36 of Eliz. The Defendant pleaded, That long time before, &c. Thomas Clerk was ſeiſed in Fee, and Lett in unto him for years, &c. and gives Colour to the Plaintiff. The Plaintiff replies That he himſelf was ſeiſed, until by the ſaid Tho. Clerk, diſſeiſed, who Lett it to the Defendant, prout in Barra; And, That after he re-entred: And the Treſpaſs meſne betwixt &c. And thereupon the Defendant Demurred. Tanfield for the Defendant moved; That, forasmuch as it appears, That the Defendant is in by Title, (viz. by a Leaſe from the Diſſeiſor) the Diſſeiſee, after his Re-entry, ſhall not puniſh him for his occupying the Land: For he never was a Treſpaſſer unto him. And, in Proof thereof, relied upon 34 H. 6. 30. 37 H. 6. 35. 2 Ed. 4. 17. 13 H. 7. 15. But Popham, Gawdy, and Fenner e contra: For, by the Re-entry of the Diſſeiſee, he is remitted to his firſt Poſſeſſion, and as if he never had been out of Poſſeſſion; and then all, who occupied in the mean time, by what Title ſoever they come in, ſhall anſwer unto him for their time. As, if a Diſſeiſor had been Diſſeiſed be another: the firſt Diſſeiſee re-enters, he ſhall in Treſpaſs puniſh the laſt Diſſeiſor: For, otherwiſe, it would be miſchievous unto him; For after his Re-entry he ſhall have no Remedy for the meſne Profits. And it is not to be doubted, but that the Diſſeiſee, after his Re-entry, ſhall puniſh the ſecond Diſſeiſor, and the Servant of the firſt Diſſeiſor, who occupied under his Maſter, Which was not denied by any. And by the ſame Reaſon he ſhall puniſh him, who comes in by Title: for that is now as a Treſpaſs done unto himſelf. Wherefore, &c. But Clench e contra; Becauſe the Tort was not done by him, who comes in by Title, but by another. And the Diſſeiſor, who made the Leaſe, and received the Rent, is only puniſhable, and not the other. Wherefore, &c. But notwithſtanding, for the other Reaſons, It was Adjudged for the Plaintiff. 33. H. 6. 46.
Moor. 461. 2 Rol. 554. Co. 11. 51. Hob. 98. 2 Rol. 554.

Goff *verſus* Byby, and others.

(4) APpeal of Murder againſt divers: One, as Principal; and the reſt, as Acceſſories: ſome, before the Fact; the other, as Acceſſories after. The Principal was found Guilty of Manſlaughter only. And it was now moved, That the Acceſſories ſhould be Diſcharged; For there is not any Appeal againſt them of Man-ſlaughter. And they cannot be Arraigned, as Acceſſorie to the Murder; The Principal being acquitted. But all the Court held; That, as to the Acceſſories before the Fact, They ought to be Diſcharged; For the Verdict for the Principal hath found, That there was not any precedent Intent to Kill: But
Mo. 461. Co 4. 43. b.

for

for the Acceſſories after, They ſhould anſwer. For every Appeal, and Declaration therein includes as well Homicide, as Murder; which the Common Plea proves, viz. That he ſhould anſwer to the Felony, and Murder, Not-Guilty. It was then moved Whether they ſhould be tried by one Ven. fac. or ſeverally? And all the Clerks ſaid, That the Courſe was to try them by ſeveral Ven. fac. in an Appeal; But upon an Endictment, They uſed to try divers together. But it was afterwards moved, That the Principal, after Conviction, had his Clergy, and was never Attainted: And therefore the Acceſſory is to be Diſcharged. And of that opinion was the whole Court; That if the Principal had his Clergy, or Pardon before his Judgment, although it were after Conviction, the Acceſſory ſhall be diſcharged. But, if he prays, his Clergy after he hath had his Judgment, (as he well may) or if he be pardoned, yet the Acceſſory ſhall be Arraigned. And afterwards, Coke, Attorny-General, coming into Court, was demanded what he could ſay, why the Acceſſories ſhould not be Diſcharged: And he anſwered, That he had conſidered thereof, and conceived, That the Difference taken was good. Whereupon they were Diſcharged. 3 H. 7. 1. Vide 4 Co. 43. Co. 4. 44. a. Co. 11. 35. a.

Vanſpike *verſus* Cleyſon.

ACtion for words, and declares; Whereas he was Merchant, That the Defendant, to diſcredit him, ſaid to one Dudley, Doth Vanſpike (the Plaintiff) owe you any Money? To whom he ſaid, That he did; He then ſaid to Dudley, You had beſt call for it, Take heed how you truſt him, And it was thereupon demurred, and Adjudged for the Defendant: For it is not any ſlander to the Plaintiff; But good Counſel to Dudley. (5) 1 Rol. 67.

Grymes *verſus* Blofield. Trin. 36. Eliz. rot. 844.

DEbt Upon an Obligation of 20 l. The Defendant pleads, That J. S. Surrendered a Copy-hold Tenement to the Uſe of the Plaintiff in ſatisfaction of that 20 l. with the Plaintiff accepted, &c. And it was thereupon demurred. Popham, and Gawdy held it to be no Plea: for J. S. is a meer ſtranger, and in no ſort privy to the Condition of the Obligation: and therefore ſatisfaction given by him is not good. Vide 36 H. 6. Barr 166. 7 H. 4. 31. Afterwards, Paſch. 31 Eliz. by Popham, and Clench, cæteris Juſticiariis abſentibus, It was adjudged for the Plaintiff. (6) 1 Rol. 471. 1 Rol. 471.

Bade *verſus* Starkey. Trin. 38. rot. 143.

FRror of a Judgment in Debt in the Common Bench. The Error aſsigned was; becauſe the Plaintiff ſues by Attorney, where he was an Infant, and ought to ſue by Guardian. But, becauſe the Action was brought by him, as Adminiſtrator, ſo that he ſued in Auter droit, Infancy is no Impediment unto him, no more then Outlawry: And therefore he might well ſue by (7) 1 Rol. 288. 2 Cr. 441. Ante 404.

by Attorney. And it was thereupon Adjudged for the Defendant That the firſt Judgment ſhould be affirmed.

Clarencius *alias* Brook, *verſus* Dethick, *alias* Garter.

(8) ACtion for Words. The Defendant pleads, that the Queen by her Letters Patents, dated, &c. created him King at Arms, Et Nomen ei impoſuit, Quod nuncupetur *Garter* Principalis Rex Armorum; And, that he ſhould Sue, and be Sued by that name: And, becauſe he was not named according to his Creation, he demands Judgment, Si Actio; &c. And it was thereupon demurred. Gawdy and Popham held, that he was named well enough: for this Sute againſt him, as a private perſon, and therefore it ſufficeth to name him by his proper name. But if he had been ſued, or were to ſue for any thing concerning his Office, it ſhould be otherwiſe. And Gawdy ſaid, although it were otherwiſe ruled here upon an Endictment, yet it was always againſt his opinion. But Fenner ſaid, that it is a name of Dignity, and parcel of his name, as Knight, and therefore ought to be named by it in every Sute: otherwiſe it ſhould abate. Et Adjournatur.

Ante 224.

Armiger *verſus* Holland.

(9) PRohibition. The Caſe was; That Doctor May, being Parſon of North-creak in Norfolk, was created a Biſhop; and the Queen, by her Letters Patents Licenced him to hold that Parſonage in Commendam; And afterwards the Queen preſented Holland thereto, who was inducted and ſued for Tithes; And upon this matter, a Prohibition was brought. Coke prayed a Conſultation; For the diſpenſation by the Queen only is not ſufficient; For the Statute of 25 H. 8. appoints how a Diſpenſation ſhall be granted by the Arch-Biſhop of Canterbury, and confirmed under the Great Seal. And the Statute hath words in the Negative; That it ſhall not be granted in any other manner. Godfrey; This Statute only transfers the Authority of the Biſhop of Rome to the Arch-Biſhop: But the King, by his Prerogative, at the Common-Law, might have granted ſuch a Diſpenſation, which is not taken away by this Statute. Gawdy and Fenner held, That the King had this Prerogative at the Common-Law: For the Benefice is made void by the Queens Act, and ſhe may well diſpenſe with her own Act: Then although there be general Negative words in the Statute, the Queen ſhall never be reſtrained by them; unleſs ſhe be expreſly named. And this Prerogative the Statute never intended to take away from the Queen. But Gawdy ſaid, He doubted whether a Preſentment upon ſuch an Avoidance appertained to the Queen by her Prerogative, or to the right Patron. Coke; I can ſhew you the Reſolution of all the Juſtices, That the Queen in this caſe ſhall Preſent. Popham, So is the common experience at this day. Vide 6 Eliz. 228. & Adjournatur.

2 Rol. 233. 359

Hob. 6. 146.

Adte 527.

Hargreave *verſus* Arden. Trin. 38 Eliz. rot. 1117.

(10) HRror of a Judgment in the Common Bench in a Replevin upon a Non-ſute. The Error aſſigned; becauſe that the Pleint in the County, and the Recordare, whereby it was removed, was inter Arden & Hargreave: But the Declaration, and all the Proceedings, and Judgment, was Inter Ardern & Hargreave. And for this variance the Error was aſſigned: For that Proceeding was without Warrant, and without Original upon the matter. But it was held by the Juſtices (abſente Popham) That this variance is not material: For non refert what the Pleint was in the County; for it is determined, when the Record is once removed, and the party declars in Banco. Wherefore, without any great Argument, the Judgment was affirmed. Vide 3 H. 6. 2. 21 Ed. 4. 6. Ant. 170. Ant 170.

Durming *verſus* Ketle. Mich. 38, & 39 Eliz. 449.

(11) AFter Verdict, It was moved in Arreſt of Judgment, That the Ven. facias was Vice-Comitibus London. Salutem: præcipimus ibi, &c. where it ſhould be vobis; and therefore Ill: but, becauſe it was a judicial Writ, it was ordered to be amended; and the Plaintiff had Judgment. 1 Rol. 200. Ante 203.

Gower *verſus* Capper, Mich. 38 & 39 Eliz. rot. 211.

(12) ASſumpſit, and declares; Whereas the Defendant was endebted unto him by Bill in 20 l. The the Defendant, in Conſideration the Plaintiff aſſumed unto him to deliver him the ſaid Bill, aſſumed to procure two ſufficient Sureties to be bound to the Plaintiff for the payment of the ſaid 20 l. and ſledgeth in facto, That he delivered the ſaid Bill to the Defendant; And, that he, intending to deceive the Plaintiff, procured two Sureties to be bound, that were of no value. The Defendant pleads, that the Plaintiff had not delivered unto him the ſaid Bill. And it was thereupon demurred; And, without Argument, adjudged for the Plaintiff. For the alledging, that he had delivered the Bill was but Surpluſage; for the conſideration was, the promiſe to deliver it: and therefore he needed not have alledged, that he delivered it. But a promiſe againſt a promiſe is a ſufficient ground for an Action. And although it be ſledged, that he found Sureties, yet when it is alledged, that they are inſufficient (which is allowed by the Defendants plea, and demurrer) it is all one as if he never had found Sureties. Wherefore it was adjudged for the Plaintiff. 1 Rol. 337. Hob 88. Poſt. 703.

Wolf

Wolf *verſus* Meggs. Trin. 37 Eliz. rot. 1063.

(13) 1 Rol. 578. ERror of a Judgment in the Common Bench. The Error aſſigned was; Becauſe the Plaintiff declares in Debt upon an Obligation of 16 l. to his Dammage of 10 l. And, upon Non eſt factum Pleaded, the Jury found Dammages to 7 l. and 40 s Coſts; and the Court increaſed the Coſts 4 l. So he had Judgement to recover his Debt, and Dammages, and Coſts to 13 l which is more, then in his Count, And this was aſſigned for 1 Rol. 578. Error. Sed non allocatur. For, although the Jury cannot give more Co. 10. 116. 117 Dammages, then the Plaintiff Counts, yet the Court may Poſt. 568. 866. increaſe them, as they pleaſe. Wherefore the Judgment was affirmed. Vide. 13 H. 7. 16. 2 H. 6. 7. Dy. 258.

Gadley *verſus* Whitecot. Mich. 38 & 39 Eliz. rot. 464.

(14) ERror of a Judgment in Ludlow; For that the Plaintiff was Sued there in Debt upon the Statute of 5 Eliz. for uſing a Trade, not being an Apprentice to that Occupation, and there recovered. The Error aſſigned was; Becauſe it is Enacted 2 Cr. 644. by the Statute of 18 Eliz. that ſutes upon Penal Statutes ſhall Ante 77. be by Original, or Information; and it is here by Pleint. And it was therefore Reverſed.

Corus *verſus* ———

(15) 1 Rol. 427. DEbt upon an Obligation Conditioned for the performance of Covenants. The breach aſſigned was; that the Defendant Leſſor covenanted, that it ſhall be lawful for the Plaintiff, being Leſſee, quietly to enjoy the Land; And that the Leſſor himſelf ouſted him. And it was thereupon Demurred, Poſt. 675. For this illegal Ouſter is no breach of the Covenant. But Hob. 35. without Argument, the Plaintiff had Judgment. 1 Rol. 427.

Aſcue *verſus* Hollingworth, Ante M. 38 & 39. Pl. 12.

(16) Gould. 190. Mo. 405. THe Caſe was now moved again, and all the Juſtices Reſolved, that Debt was well brought upon it, as upon an Obligation; becauſe it never had any Effect, as a Statute: as alſo, That the Declaration againſt one of the Obligors only was good enough; although the Words of the Obligation are joynt; becauſe it doth not appear, that the other two did Ante. 495. ever Seal it, or that they are yet alive, Which ought to be ſhewn by the Defendant, if he will have the advantage; For otherwiſe the Court will not intend it. But now another Error was aſſigned; becauſe the Record is, that the Plaintiff appeared per Attornatum ſuum, and he gives him not any Name, and the Record was viewed, which was Quod Querens obtulit ſe per Attornatum ſuum, without naming any Attorney. But, when the Defendant appeared, he then declared againſt him per J. S. Attornatum

Attornatum ſuum, and ſo it was ſaid, was all the Courſe in the Common Bench, and it was ſo certified to the Court by the Prothonotaries, that their courſe was in this manner. Wherefore the Judgment was affirmed, Ante 75.

Dodingtons Caſe.

INformation in the Exchequer, in nature of an account, was brought againſt Dodington Executor of Sir Walter Mildmay, ſuppoſing, That Sir Walter Mildmay had received Money of the Queens amounting to 1500 l. Upon a ſpecial Verdict, The Caſe was; That Sir Walter Mildmay had recived annually out of the Exchequer 50 l. as a Fee for his Dyet for 30 years together, which was paid him by the command of the Lord Treaſurer: who had authority by Privy-Seal to make allowance, and payment of all Fees, Dues. But, in truth, theſe were not any due Fees. And, Whether his Executor ſhall be charged with theſe ſumms ſo received? was the queſtion. And after argument, it was adjudged that he ſhould be charged: For it was held, That this payment of the Money, by the appointment of the Lord Treaſurer, was not allowable; for the Privy Seal is not ſufficient authority to diſpoſe of the Queens Treaſure, unleſs where it is due; And, he diſpoſing of it otherwiſe, it is out of his Authority. Secondly, it was held, That this Money, delivered by the authority of the Lord Treaſurer who is quaſi a Judicial Officer, and it was quaſi a Judicial Act by him: Yet it ſhall not bind the Queen; for it was without his Authority, and without Warrant, to make allowance thereof, not being due, and it is at his peril, who receives it, or demands allowance thereof. It was alſo objected, that Money could not be known, whether it were the Queens Money, and it would be hard to charge him with the receipt thereof: As if one ſells Land, or any other thing bona Fide, to one of the Queens Officers, who pays unto him the Queens Money, it would be hard to make him accomptable for that Money ſo received; for he cannot know it to be the Queens Money. But it was held here, That, in regard he received it out of the Exchequer by colour of a Fee, where it was not due; and by Colour of a Warrant, where it was not ſufficient; he could not be miſconuſant, that they were the Queens Money, and ſhall be charged with them; ſo in every other Caſe, where he receives the Queens Money, knowing it to be the Queens Money, he is chargable: but if he received it in payment, not knowing it was her Money, and whereof by Intendment he had not any Conuſance, it is otherwiſe. And, for theſe reaſons it was adjudged for the Queen againſt the Defendant, And although he were Executor, he ſhould anſwer for it, as a Debt from the Teſtator. 11 Co. 90. b. (17) Moor. 475. Co. 11. 90. b. Co. 11. 92. a. Co. 11. 91. b.

Matthewſon *verſus* Lydiate. Ante, Hill. 38. Pl. 22.

(18) Ante 408. 470. Co. 5. 23. a. THe caſe was now moved again. And now all the Court agreed, that the breaking off the Seal of one of the Obligors ſhall not avoid the Deed, but againſt him only. For the Deed is ſeveral by every of them; and a releaſe to the one will not ſerve the other. But if the razed the Deed in any Clauſe, which concerns them all, or in the Date, That ſhould have avoided the Deed, as to all. But otherwiſe, the Deed is intended ſeveral to every of them. Wherefore the pulling off the Seal from one is no diſcharge againſt the other. And afterwards, it was adjudged accordingly for the Plaintiff.

Lovelace *verſus* Reynolds. Paſch. 37 Eliz. rot. 723.

(19) Poſt 563. TResPaſs de Clauſo fracto. The Defendant preſcribes to have Common. And Iſſue thereupon. The Jury found, That the Defendant had Common there by preſcription, prout, &c. paying for it every year a peny to the Plaintiff. And, Whether this Verdict were found for the Plaintiff, or Defendant? was the Queſtion. Lewkner moved, that it was found for the Plaintiff: for the perſcription ought to be alledged entirely, as it is. And this paying of the Peny is part of the preſcription: For otherwiſe the Plaintiff hath not any remedy for it; Wherefore he hath failed of this preſcription, not alledging it. Spurling & Harriese contra: for he hath alledged as much of the preſcription, as ſerves for him. And the Non-paymen of the Peny ſhall be ſhewed on the other part; and the not alledging thereof is not material. And ſo it hath been adjudged in the Queens Bench, Trin. 37 Eliz. bewixt Gray & Fletcher, quod vide ante, Trin. 37. Pl. 15. And, for his Rent, The other hath his remedy by diſtreſs, as 26 H. 8. 5. Wherefore, &c. Anderſon; This is not any Rent: for Rent cannot be reſerved out of a Common, or other thing, which is not in Demeſne. But here, Whether the paying this Peny be a Condition precedent, or ſubſequent, is all the doubt. Walmſly, it cannot be called a Rent: for that is only out of a thing, whereon an Entry may be made, unleſs out of Meſnalty; as 1 H. 4. is. And that is for the poſsibility of the Eſcheat. And a Rent-charge cannot be granted out of a Meſnalty. But although it be not a Rent, yet a Diſtreſs may be taken for it; As 26 H. 8. is: becauſe the Commoner hath a benefit there by. And, by Intendment it began with the Common by Agreement of the parties: and it will be hard to prove it to be a Condition. And, if it be a Condition, it is ſubſequent, and need not be ſhewn by the Defendant, no more then in the Caſe, adjudged in this Court of Poutrel, where an Annuity was granted pro conſilio impendendo, it was adjudged, that he needed not ſhew, that he gave Counſel. Beamond; It is a Condition, but ſubſequent. And therefore, it is not requiſite, that the Defendant ſhould plead it. And therefore he held, That the Verdict was found for the Defendant. Et Edjournatur. Vid, poſtea; Paſch. 39. Pl. 22. 5. Co. 79. a.

Ante, 415. Poſt. 563. Ante. 405. Co. 5. 78. b. Co. 7. 11. a.

Meyls

Myles *verſus* Willoughby.

(20) REplevin. The Caſe was. One, having a Reverſion in Fee erpectant upon an Eſtate-for-life, Deviſed a Rent of 4 l. to one for life; the Tenant in Fee dies; and after ſeven years incurred, The Deviſee made his Executors, and died. The Executor diſtrained, and Avows for that Rent. And it was thereupon Demurred in Law; Becauſe he doth not aver, that the Land remains in the Seiſin of the Tenant, who ought to pay it, or in the hands of ſome other, who claims by him by Purchaſe, or Diſcent, according to the Statute of 32 H. 8. cap. 37. And Anderſon, and Walmſley held it to be a material exception: for he ought to have purſued the words of the Statute, which gives him the remedy; although he needed not ſhew how he was ſeiſed; for that would be miſchievous unto him, being a ſtranger, who cannot know it. But it ſufficeth to ſhew it generally, according to the words of the Statute. Walmſly ſaid, There was another Exception; becauſe he did not aver, that the arrearages incurred after the death of the Tenant for life. For, if he in Reverſion upon a State for life grants a Rent-charge, it ſhall not begin untill after the death of the Tenant-for-life. And, although arrearages incur in the life of the Tenant for life, they be not due. Quod Anderſon conceſſit. But, in the principal Caſe, becauſe it appeared upon view of the Record, that it was layed, that the Heir of the Deviſee was ſeiſed in Fee, & adhuc ſeiſitus exiſtit, It was held good enough. Wherefore it was adjudged for the Avowant.

Bowlſton *verſus* Hardy.

(21) ACtion upon the Caſe. Whereas he was ſeiſed of certain Lands in Fee, and the Defendant was ſeiſed of other Lands adjoyning, the Defendant had made two Cony-burrows in his lands adjoyning; and had put Conies in them, which increaſed to a great number, and went into the Plaintiffs Land, and deſtroyed his Corn, and made it barren, whereby he loſt the Profits of his Land; And therefore brought the Action. The Defendant pleads, that the Plaintiffs Land was late parcel of the Manor of D. and that Qu. Mary, being ſeiſed of that Manor, granted it to Sir Will. Peto, and granted unto him to have Warren in the ſaid Manor, and that the Plaintiff Lands was conveyed unto him; and that Sir W. P. bargained, and ſold the Manor to the Defendant, and all Warrens, &c. thereto appertaining, or accepted, and reputed, as part of that Manor; whereby he juſtifies, &c. And it was hereupon demurred. And all the Juſtices, without argument, reſolved, that the Plea was ill: for he hath ſhewn a Warren in Groſs in the Patentee, which is not conveyed unto him by the Bargain, and Sale; for a Warren is not parcel, nor any member of a Manor, but it may be appertaining, but that is by preſcription. But, whether an Action upon the Caſe lay upon this matter? was the only queſtion. Anderſon, The Action lies not. For, although one hath Conies in his Land, he hath

Moor 453. Co. 5. 104. b.

not any property in them; becauſe they be feræ Naturæ. And to have an Action againſt one for Dammage done by Savage, and Wild Creatures, wherein he hath not any Intereſt, and they cannot be known, whether they come out of his Land, is unreaſonable. And he, who hath the Damage thereby, may well kill them, and they may be ſaid to be his Conies, when they are upon his Lands. And, if other men have other Warrens adjoyning, againſt whom ſhall the Action be brought? truly againſt none of them. Walmſley accord; for the property of the Conies is not in any, nor can any man ſo keep them, but that they will break out of themſelves; which is reaſon, that none can have them in his own Land, unleſs by Grant from the King, or by Preſcription: if otherwiſe, he is puniſhable in a Quo Warranto. For the Queen hath the Royalty in ſuch things, whereof none can have any Property. And this Cauſe is not like to the Caſes put, on the other ſide, of erecting a Lime-kill, Dye-houſe, or the like: For there the annoyance is by the Act of the parties, who make them; but it is not ſo here. For the Conies of themſelves went into the Plaintiffs Land and he might take them, when they came upon his Land, and make profit of them. And none may erect a Dove-houſe, but he, who is Lord of a Manor. And, if any other private man erects it, he is puniſhable in the Leet, as a Common Nuſance. But no Action upon the Caſe lies by any Private man againſt him who erects it. Quod Anderſon, & Beamond conceſſerunt. And they ſaid, they had ſeen it to be inquired of before the Lord Dyer at the Aſſiſes, as a Nuſance. And this Caſe is not like to other Caſes, which were put of Nuſances; for there the Tort is by the party himſelf, who doth it; but here the putting the Conies into his own Land is not any Tort. And, if there be any wrong, It is by the Conies themſelves, who are feræ Naturæ; Wherefore it is not reaſonable to puniſh any other. And Beamond agreed with the other Juſtices in omnibus. Wherefore afterward, by the Aſſent of Owen alſo, It was adjudged for the Defendant. 5 Co. 104. b

Poſt. 876.

Co. 5. 104. b.

Capp *verſus* Lancaſter.

(22) DEbt. Upon a Bill of 70 l. to be paid upon Demand. And, forasmuch as the Plaintiff did not ſhew an actual Demand, Willams, for the Defendant, demurred: For he ſhewed, That the Demand was parcel of the Contract; So that the Money was not due, until Demand. And a Demand being requiſite, a Demand in Law, by bringing the Action, will not ſerve the turn; As 11 H. 4. 18. where one is bound to levy a Fine upon Requeſt, &c. But Walmſly, Beamond and Owen held it to be well enough: For it is a Duty Maintenant, and therefore there needs not any Demand, as in the other Caſes; For there the Plaintiff had not any cauſe of Action, until a Precedent Act done by him: but it is not ſo here. Wherefore they Adjudged it for the Plaintiff.

Poſt. 721.

The Counteſs of Warwick *verſus* the Biſhop of Coventry.

DEbt Upon and Obligation conditioned, that, if he paid 15 l. at the Feaſt of St. Michael next following, and 15 l. Annually at the Feaſt of S. Michael, until Hockinhall (the Plaintiffs Chaplain) were advanced to a Benefice, that then, &c. he pleaded, That he was preſented to a Benefice before the firſt Feaſt of S. Michael. And adjudged to be no Plea: For the firſt 15 l. is to be paid, notwithſtanding he were advanced. For the limitation until he be advanced, &c. goes only to the other ſubſequent payments. Wherefore it was adjudged for the Plaintiff. (23)

Edmunds *verſus* Marks.

DEbt upon an Obligation conditioned, That if the Defendant ſhould come to the Kings-head, &c. upon the 12 of October, and there elect two Arbitrators, who, with two others to be elected by the Plaintiff, ſhall arbitrate of all ſuch ſums, which the Plaintiff hath diſburſed for the Defendant, and promiſed to be paid to the Plaintiff by the Defendant; that then, &c. The Defendant pleads, That, upon the 12 of October, he came to the Kings-head, &c. and there elected two Inhabitants of the ſaid Ville Arbitrators, ad faciendum Arbitrium of all Summs, &c. And that the Plaintiff was not there, &c. And hereupon the Plaintiff demurrs. And, after argument, it was Adjudged for the Plaintiff. For Walmſly ſaid, That the Plea was not good; becauſe he ſaith he came thither upon the 12 of October, &c. And he ſheweth not at what hour of the day, nor how long time he continued there: For it ought to be to the laſt inſtant of the day, and to be there at ſuch a convenient time before, That the Arbitrament may be made. The Plea alſo is not good; becauſe he doth not ſhew, That his two Arbitrators were there preſent. For they ought to be there: For the words are, That they together with the Plaintiffs Arbitrators, &c. Wherefore, for theſe Cauſes It was Adjudged for the Plaintiff. (24)

Read *verſus* Burley.

REplevin. The Defendant avows the Taking, by reaſon, that he was ſeiſed of an Houſe, being the Place, where, &c. & Lett it to Brett for years, rendring 6 l. Rent. And for Rent arrear he avows the taking of ſo much Yarn, and of an Horſe, and prays Retourn Averiorum. The Plaintiff ſaith, that he is a Cloth-worker, and delivered certain Wooll to be ſpun; and the Cloth-workers uſed to take back their Yarn by Weight; And, becauſe there were no Weights there, he ſent to the next Village for Weights; And, in the mean time, The Avowant Diſtrained that Yarn being upon his ſhoulders, and the Horſe, which he had there to carry the Yarn; And upon this the Avowant Demurres. Walmſly, Beamond, and Owen (abſente Anderſon) held, That this Yarn, being upon the Plaintiffs ſhoulders, could not (25) Poſt. 596.

not be diſtrained, no more then a Net in a mans hand; as as 6. R. 2. is, or an horſe whereupon a man rides, or which is in a mans hand. But Walmſly held, that the horſe is diſtrainable. For it is not to be reſembled to an Horſe in a common Hoſtry: for that is in Favor, for the benefit of the Common wealth; becauſe a common Hoſtry is a common place, where men are to Herbage. But, if a man puts his horſe in the houſe of any private man, he is diſtrainable, and it is not material, although he be not Levant and Couchant. For the Reaſon, that beaſts diſtrainable ſhall not be diſtrained for Rent, unleſs they be Levant, and Couchant, is; Becauſe that otherwiſe, the Owner, by Intendment, cannot have notice, that they are there, that he might have them again. But here the horſe was put there by the conſent of the owner, and with his Privity. But if this Houſe were a common place for weighing, it would peradventure be otherwiſe. But Beamond & Owen e contra: For this Trade of Cloth-workers is neceſſary, and to be favoured; and this Horſe is not to be diſtrained no more, then an Horſe, which carries Corn to Market, and is put into a friends houſe for the time, he is not diſtrainable. Which Walmſley denied. And where an Horſe carries Corn to a Mill, and is tied at the Mill-doors, during the grinding of the Corn, he ſhall not be diſtrained. Which Walmſly agreed; becauſe it is a common place, and for the publick weal: but they be not alike. But they all agreed, that the praying the Return Averiorum, where there was but one Horſe, was ill: but they doubted, whether this fault was of Form only, and then it was helped by the Statute of 27 Eliz. It was therefore Adjourned Mich. 39 & 40. C. B. placito 41.

Co. Lit. 47. a.

Poſt. 596.

Poſt. 596.

Termino

Termino Paſchæ,
Triceſimo nono ELIZABETHÆ,
in Banco Reginæ.

Edwards *verſus* Stapleton.

Mich. 38, and 39 Eliz. 470.

(1) Aſſumpſit by an Executor of a Promiſe made by his Teſtator. The Defendant pleads Non Aſſumpſit; and found for the Plaintiff; and Judgment for him. And, this being in Kingſton. Error was thereof brought and aſſigned; becauſe he did not ſhew in Court the Teſtament in the Declaration mentioned. Whereto it was ſaid, That it was but default of Form, which is ayded after Verdict: But all the Court held it to be matter of Subſtance; for otherwiſe he doth not Entitle himſelf to the Action, without ſhewing the Teſtament. For which cauſe it was reverſed. Poſt. 592. 2 Cr. 299.

Doctor Barrow *verſus* Andr. Gray of the Inner Temple.

Paſch. 38 Eliz. Rot. 521.

(2) Aſſumpſit, and declares; Whereas one Halſhed was ſeiſed in Fee of certain Land in the County of Hertford, and was bound in a Reconuſance of 1000 l. to the Plaintiff, and Infeoffed the Defendant of his Land; that the Defendant, in Conſideration, That the Plaintiff ſhould aſſign unto him his Reconuſance, aſſumed to pay the Plaintiff 80 l. before ſuch a day; and alledgeth in facto, That he aſſigned over the Reconuſance, &c. The Defendant pleaded Non Aſſumpſit; and a ſpecial Verdict found, That, at the time of the Reconuſance made, Halſhed was ſeiſed of the Land ſold to the Defendant, and alſo of a Cloſe called Walkley, and infeoffed one Hyde of the Cloſe called Walkley: and the Plaintiff releaſed to Hyde all his Right, Intereſt and Demand in the Land called Walkley; and afterwards, Halſhed infeoffed the Defendant; and the Defendant aſſumed ut ſupra, &c. And, that the Plaintiff aſſigned the Reconuſance to the Defendant. Et ſi, upon all this matter, the Aſſignment of this Reconuſance be a ſufficient

ent conſideration. They found for the Plaintiff. Et ſi, &c. And it was now moved by Snag and Gray himſelf; That this Verdict is found for the Defendant. Firſt, That a conſideration to aſſign a Reconuſance over is illegal, and maintenance, and therefore it is no good Conſideration; becauſe againſt Law. Secondly, That by this releaſe of all his Right, and Demand in the Land to Hyde, who had part of the Land chargeable with the Reconuſance, The entire Reconuſance was diſcharged; and then it could not be aſſigned over: And, That the aſſignment over was void, and was not any Conſideration: And, that a releaſe of all the right in the Land is a Diſcharge of the Reconſuance, altough it be made before Execution ſued. And in proof hereof a Preſident was ſhewn, Mich. 26. & 27. Eliz. rot. 1702. in the Common Bench, Hyde verſus Morley, Audita Querela was brought to avoid the Execution of a Statute; becauſe the Conuſee by Deed ſhewn in Court, had Releaſed unto him, being then Tenant of the Land, and Purchaſor, all his Right, Intereſt and Demand in the Land; and it was adjudged to be a good cauſe of diſcharge: but all the Court reſolved for the Plaintiff in both points; and as to the firſt they held, that the aſſignment of a Debt, or Reconuſance to a ſtranger is an illegal and void conſideration; but to aſſign it to the Terr-Tenant, by was of diſcharge of his Land, is clearly Lawful. And as to the Second, That this releaſe to Hide of all his Right, and Demand in the Land, is not any diſcharg of the Reconuſance; for, at the time of the Releaſe made, he had no right, nor cauſe of Demand in the Land; for the Land is not the Debtor, but the Perſon, and the Land is only charged in reſpect of the perſon: and here at the time of releaſe, being before the Execution ſued, he had not any right, nor demand in the Land; Wherefore it is not any diſcharge of the Reconuſance. And Popham ſaid, that he had conferred with the Juſtices of the Common Bench concerning the Judgement cited; and they did not remember any ſuch Judgement: But were of opinion, that ſuch a releaſe was not any diſcharge of the Execution. Wherefore it was adjudged for the Plaintiff. Vide 25 Aſſ. 7. 45 Ed. 3. 22. Vide Trin. 27. Placito ſecundo.

Ante. 40

Co. 10. 50.

Hyde *verſus* the Dean and Cannons of Windſor.

Ante Paſch. 38 Placito primo

(3) THe Caſe was now moved again, and the ſole Queſtion of difficulty was, Whether this Action lies againſt the Aſſignee for this Covenant broken, he being not named in the Covenant? and Tanfield, for the Plaintiff, in the Writ of Error moved, that it lies not: for a Covenant lies not againſt the Executor of the Covenanter not being named; as 48 E. 3. 2. and Dy. 114. A multo fortiori it lies not againſt the Aſſignee, not being named; As old N. Br. 102 is. But, if it be covenanted for him, and his Aſſigns, it is otherwiſe; as 25 H. 8. Bro. Coven. 32. Wherefore &c. But Popham, Clench, and Fenner (abſente Gawdy) held clearly, that

Co. 5. 24. a. Ante 457.

hat an Action of Covenant lies againſt an Aſſignee in this Caſe, although he were not named: For a Covenant, which uns, and reſts with the Land, lies for, or againſt the Aſſignee t the Common Law (Quia tranſit terra cum onere) although the ſſignees be not named in the Covenant. And a Covenant ies againſt an Executor in every Caſe, although he be not amed; unleſs it to be ſuch a Covenant, as is to be performed y the perſon of the Teſtator, which they cannot perform. Where- ore the Judgment was affirmed. N. Br. 146. Dy. 257. per Brown. Co. 24. Ant. 457. 1 Rol. 519.

Harvey *verſus* Oſwald. Trin. 38 Eliz. rot. 391.

(4)

EJectione firmæ. The Defendant claims by a Leaſe for years from the Leſſor of the Plaintiff. The Plaintiff pleads a Condition, that, if he aſſigned over any part of his Term, that is Leaſe ſhould be void; and, that he had aſſigned parcel f his Term, whereupon the firſt Leſſor entred, and Lett to he Plaintiff. The Defendant rejoyns; that the firſt Leſſor, fter the Condition broken had accepted Rent of him, due after he breach ſuppoſed, The Plaintiff ſur-rejoyns; that at the ime of this accepting of the Rent, he had not any notice of this reach of the Condition. And it was thereupon Demurred, And Argued by Barker for the Plaintiff, and by Towſe for the Defendant: Clench and Popham only being in Court. And Clench held that the Entry of the Leſſor was not congeable: For, y his acceptance of the Rent, he hath affirmed him to be his Tenant after the Condition broken, and thereby hath diſpenſed with the forfeiture. Popham e contra, true it is, when the Con- dition is broken, the Leſſor hath Election to continue the Leaſe, r to avoid it: But, without privity, that ſuch election was n him, he cannot make an election. And it appears here, upon he Demurrer, that he had not any notice, that ſuch election was in him: and therefore his liberty of Entry cannot be taken rom him by his Acceptance of the Rent. Which is the reaſon n the books, that, for an Entry upon a Condition broken, as for Waſte, or Alienation, &c. or ſuch collateral Conditions, an acceptance of the Rent, after the Condition broken, is no Barr of Entry; becauſe, by Intendment, he had not any notice of the breach of the Condition: which being collateral to his knowledge, no acceptance of his ſhall affirm the Leaſe. But, if he had taken notice of the Condition broken, and had made an Acquittance of the Rent, it had barred him of his Entry. But if the Condition be of ſuch a Nature, that he performance, or non-performance thereof lies in the Conuſance as well of the Leſſor, as of the Leſſee, it is otherwiſe. Et ad- journatur. Trin. 39. Plac. 12. 3. Co. 94 a. Moor. 456. Poſt. 572. Poſt. 582. Poſt 572.

Shere *verſus* Dickenſon. Mich. 38. & 39 Eliz. rot. 490.

(5)

ERror of a Judgement in the Common Bench, and Aſſigned; becauſe the Ven. fac. was awarded upon the Roll in this man- ner, Ideo præceptum eſt Vice-Comiti, quod Ven. faciat, 12, qod ſint hic and a ſpace left for the day of the Return; ſo there was not any day for the return upon the Roll, although the day of the

return was expreſſed in the Ven. fac. And it was ſaid, that the Ven. fac. ought to be awarded upon the Roll, and to have a day certain. For that is the Warrant for the Writ of Ven. fac. and, if it be not according to it, it is Error, and not amendable. And of that opinon were Popham and Fenner. But Gawdy held it to be amendable. Et adjouratur. But afterwards the Judgment was affirmed.

2 Cr. 64.
Poſt. 677.

Goodale *verſus* Caſtle.

(6) ACtion for theſe Words, Thou art a common Filcher, companion of Cut-throats, and a Forger of Writings. After Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That theſe Words were not Actionable. And all the Juſtices held, that for all the Words, beſides And a Forger of Writings, no Action lies. But for thoſe words, Popham and Gawdy held, That the Action well lay: For the Words ſhall be intended of ſuch Writings, whereof there may be a Forgery. But Fenner e contra; For it may be of Writings, the forging whereof is not puniſhable, as a Church-Book. And Forgery ſhall not be intended, unleſs it be preciſely alledged, Clench abſente: adjournatur.

Deering *verſus* Moor.

(7) TReſpaſs. The Defendant pleaded Not-guilty. The Jury found, that the Plaintiff was ſeiſed of that Land, with two others as Heirs in Gavelkind. And that the Defendant entred. Etſi, &c. And upon motion, without argument, by Popham, and Fenner (cæteris abſentibus) it was adjudged for the Plaintiff. For although it had been a good Plea in abatement, for the Defendant to ſay, that the Plaintiff was Tenant in common with a ſtranger; yet, foraſmuch as he hath not pleaded it, he hath loſt the advantage thereof: and the finding it by the Jury is not material. And ſo it was ſaid to be adjudged in this Court, in one Stowells Caſe; wherein Treſpaſs brought the Defendant pleaded Not Guilty. And the Jury found, that the Plaintiff was Joynt-Tenant of the Land with a ſtranger not named: yet there the Plaintiff recovered. Wherefore it was adjudged ut ſupra for the Plaintiff.

Ante 143.

Moor 466.

Auſtie *verſus* Maſon.

(8) ACtion for theſe Words. Thou haſt made a forged Bond, and I will prove it. The Defendant pleaded Not Guilty. After Verdict, it was moved, that the Action lay not; for he ſaid not, That he had Forged a Bond. And it may be he was a Scrivener, and might write a Bond, which was afterwards Forged, and yet be no ſlander unto him. Sed no allocatur: And it was adjudged for the Plaintiff.

Kynnerſley *verſus* Barnard. Hill 38 Eliz. rot. 424.

(9) ACtion upon the Caſe ſur Trover of an Horſe, and ſelling him, and converting the Money to own uſe. The Defendant confeſſeth, That it was the Plaintiffs Horſe, and that one

J. Courtnal

J. Courtnal found, and delivered him to the Defendant, to reſtore upon requeſt; whereupon he re-delivered him to the ſaid J. C. before the Action brought. Abſque hoc, that he ſold him, and Converted the Money to his proper uſe. And it was thereupon demurred; becauſe he ought to have pleaded the general Iſſue, and he could not traverſe the Converſion. But all the Court held, although it be doubted in the Books, 27 H. 8. 2. 33 H. 8. 4 Ed. 6. Bro. Action ſur le Caſe, and Dy. 121. yet, forasmuch as in this Action the ſubſtance is the Converſion, and without it, the Action cannot be founded; that it well might be Traverſed. But in regard he hath here traverſed the Converſion of the Money to his own uſe, which is not materially alledged in the Declaration, but is ſuperflous; and by his Traverſe hath made it to be part of the Iſſue: the Traverſe therefore is ill in that point. And the Demurrer being upon the Traverſe, it was adjudged for the Plaintiff. Ant. 434.

Blomfield *verſus* Roſwick. Mich. 38, and 39 Eliz. rot. 259.

(10)

AUdita Querela. For that he, and one May, were bound to the Defendant in an Obligation, and he recovered againſt them in Debt, and had May in Execution. And May was Diſcharged by the Sheriff out of Execution: and afterwards, by another Capias, took Blomfield in Execution: whereupon he brought this Audita Querela to be diſcharged. And it was hereupon Demurred. And after argument by Godfrey for the Plaintiff, and by Richardſon for the Defendant, it was held by Popham, Clench and Fenner (abſente Gawdy) that this was not any cauſe to Diſcharge the Execution. For if one be in Execution, and eſcapes de ſon Tort demeſn, it hath been adjudged in an Audita Querela, to be no cauſe of diſcharging himſelf; no more ſhall it be for his companion. And it hath been alſo adjudged in this Court, betwixt Sympſon and Boyton, That, if he eſcapes by the Sheriffs permiſſion, and be re-taken, yet it is a good Execution for the party, if he will: and it ſhall not conclude the party to inforce him to take his remedy againſt the Sheriff: à multo fortiori, where two be in Execution, the eſcape of the one, ſhall not give his Companion any advantage, and make the Plaintiff to loſe his Execution, and be put to his remedy againſt the Sheriff, who peradventure is nothing worth. Wherefore it was adjudged for the Defendant. 5 Co. 86. Reſiduum, Trin. 39. Placito 14. Ante 102. Ant. 478. 9. Poſt. 573.

Overton *verſus* Sydal. Hill. 37. Eliz. rot. 1042.

(11)

DEbt againſt an Executor for Rent reſerved upon a Leaſe for years. The caſe upon demurrer was: That the Prebend of Tervyn in the County of Cheſter Lett that Land for years, rendering Rent; which Leaſe was confirmed by the Dean and Chapter. The Leſſee dies: the Executor aſſigns over his Term: the Prebend reſigns; A new Prebend is made; and for Rent due, after the Aſſignment, he brings Debt againſt the Executor of the firſt Leſſee; and, whether this Action lies againſt the Executor, after the aſſignment of the Term, was the ſole Queſtion. Gawdy; the Action lies not: for the firſt Co. 3. 24. c. Mobr. 351. 2.

Leſſee was chargeable, as well by reaſon of the Poſſeſſion, as alſo for the privity of Contract; and therefore, although he aſſigns over his Term, yet, by reaſon of the privity of Contract, he ſhall always be chargeable to the Leſſor for the Rent, as well for that due afterwards, as before: as 44 Ed. 3. 6. And a Caſe lately adjudged in this Court, between Walker, and Harris, Mich. 28. and 29 Eliz. But where he is not chargeable, by reaſon of the privity of Contract, but by privity in Law, by reaſon of the Eſtate in him, if the privity be transferred, either on the one ſide, or other, the Action, upon the privity of Contract, is Determined: as where the Leſſee aſſigneth over his Term, and the Leſſor aſſigneth over the Reverſion, the Grantee ſhall not charge the Leſſee for the Rent due after the Aſſignment; as it was adjudged in this Court, Hillary, 36 Eliz. rot. 420. betwixt Humble and Glover; and as it is, where the privity is removed on the part of the Leſſor, ſo it is in this Caſe; For the Executor here is not chargeable by the Contract, but by the privity in Law, viz. that he hath the Term; which being removed, the Action againſt him faileth: For there is not any Cauſe of Action betwixt them, but by reaſon of the Term, which is in him, and his Intereſt therein. And Sublata cauſa tollitur effectus, Wherefore, &c. Fenner accord; the Executor is not party, nor privy to the Contract, as the Teſtator is; For he ſhall not be charged but only in the Detinet, and not in the Debet & Detinet. Quod Popham conceſſit, ſed Gawdy negavit. For, in regard he occupies after the Teſtators death, there is no doubt but that he ſhall be charged in the Debet & Detinet. And then Fenner ſaid, that this Charge is, by reaſon he hath the Term, and not by reaſon of the Contract. For no doubt, if the Teſtator himſelf had aſſigned over his Term, although he himſelf had been chargeable for the Rent, during his life, yet when he dies, his Executors are not chargeable for the Rent due after his death. The ſame Law is here, when the Executor Aſſigns over the Term, whereby he was only chargeable, he ſhall not be charged for any Rent afterwards due. Here alſo the privity of the Contract is removed from the Plaintiffs part; For, the Plaintiff not being Leſſor, but his Succeſſor, he is not party, but privy only in Law: ſo the Executor is only chargeable for the privity in Law. Wherefore the Plaintiff cannot have this Action againſt him, but during the time that this privity, by reaſon of the Eſtate, and intereſt in the Term continues; and therefore the Plaintiff, after this Aſſignment, cannot maintain this Action againſt the Defendant. Clench accord in omnibus. Popham e contra at the firſt; For he held, that the Executor ſhould be as well chargeable, as the Teſtator; becauſe he comes in loco Teſtatoris, and as he ſhall partake of every benefit which his Teſtator ſhould have done, ſo ſhall he be ſubject to every charge: wherefore, he by his own Act, ſhall not avoid this Action againſt him. But afterwards, upon better adviſement, he held; In regard the Plaintiff is not party to the Contract, but only privy in Law; and the Defendant is not chargeable, by reaſon of his own Contract, but by a privity in Law, the cauſe of his Charge being removed by the Aſſignment of his Term, that this Action lies not for the Plaintiff againſt him. Wherefore it was adjudged accordingly, 3 Co. 24.

Moor 351.

Co. 3. 22. 3.

Co. 3. 23. b. Ant. 328.

Mo. 352.

Hampton

Hampton *verſus* Boyer.

DEbt againſt an Executor, upon an arbitrament, made in the time of the Teſtator. It was demurred in Law, whether it lay, or no? becauſe the Teſtator might have waged his Law. And adjudged, without argument, that it lay not. (12)

Meryll *verſus* Robyns. Trin. 26. or 36 Eliz. rot. 786.

ERror of a Judgment given a Writ of Entry upon Diſſeiſin. The Error aſſigned was; becauſe the Sheriff returned not the names of the Summoners, or Veyors. And held for this cauſe to be Error; for if there be no Summons made, the party cannot have a Writ of Deceipt Et non conſtat de Recordo, againſt whom he ſhould have it. Wherefore it was reverſed. (13) Moor. 459.

Williams *verſus* Williams.

Trin. 38 Eliz. rot. 740. Hill. 35 Eliz. rot. 597.

SCire facias, by John Williams, as Executor of Emme Williams his Mother, againſt Williams, the Defendant, to have Execution of 240 l. Damages, recovered in a Writ of Dower. The Defendant pleads, that he had brought a Writ of Error upon this Judgment, againſt the Demandant, in the Writ of Dower; and Aſſigns for Error, becauſe the recovery was againſt him by default, being an Infant. And that, pendente ceo indiſcuſſo, The Demandant in the Writ of Dower died. And that he had brought a new Writ of Error Coram vobis reſidet againſt the Plaintiff, as Executor, quod adhuc pendet: and Demands Judgment; ſi pendente Brevi de Errore indiſcuſſo, Executionem habere debet. And it was thereupon Demurred. Fenner; I doubt whether a Writ of Error lies in this Caſe; becauſe, the Demandant in the Writ of Dower being dead, the Eſtate recovered is Determined, which is the principal; and therefore the Writ of Error is determined. Secondly; conceive, that the Error aſſigned is not Error: For Dower is favored: and a Feme ſhall not tarry for Dower during the Minority of the Tenant. Wherefore a recovery againſt him, although it be by default, is good enough. (But to this point none of the Juſtices ſpake; for it came not now in Queſtion upon this Action.) Thirdly, if a Writ of Errors lies, I conceive it to be a good Plea; for it is not reaſon to have Execution of an erroneous Judgment, when no Default can be aſſigned in the Plaintiff in the Writ of Error. And of that opinion was Gawdy, as to the laſt point; Becauſe there appears not any default in him, who purſed the Writ of Error, in not proceeding, or neglecting to proceed therein. But the default which was, was occaſioned by the death of the Defendant, in the firſt Writ of Error. But if the Plaintiff in the firſt Writ of Error had been Non-ſuited in the firſt Writ of Error, or had diſcontinued, or were ſlack in the proceeding therein, there peradventure it would have been otherwiſe. But as to the firſt point whether a Writ of Error, to reverſe the Judgment for the Damages, the principal being determined by (14) Moor 342. Poſt 567. Poſt. 567.

by the death of the Demandant. Popham and Gawdy held; that this Writ of Error was maintainable, to avoid the Judgment of the Damages; for it is as well a grievance, as the loſs of the Land. And if there be a recovery in a real Action of the Land and Dammages, and the Tenant, againſt whom the Recovery is, dies, and the Heir, who ought to have the Writ of Error, in reſpect of the Land, will releaſe all Writs of Error; yet the Executor may ſue a Writ of Error, to avoid the Judgement for the Damages: for every one, who hath loſs, ſhall have a remedy to redreſs it. And ſo it was ruled in this Court in one Nicholſons Caſe; that an Executor ſhall maintain a Writ of Error, to reverſe an Attainder againſt his Teſtator, to the intent to be reſtored to the Teſtators Goods; Although by his Attainder he had loſt his Land, which is the principal. Which Caſe Fenner ſaid he remembred; and that it was ſo ruled by the opinion of three Juſtices againſt one. But, as to the Plea, Popham held, that it was a good Plea: if it had been alſo alledged, that he aſſigned Errors upon this Writ of Error; otherwiſe it is not any Plea. For this Scire fac. to have Execution, &c. is the means to compel the Plaintiff to Aſſign his Errors; otherwiſe the Plaintiff will never Aſſign them; and if the Plaintiff hereupon Aſſigns his Errors, it is well enough for the time, as Dyer 77, is, otherwiſe Execution ſhall be awarded againſt him. And it was not any anſwer, to ſay, that a Writ of Error is yet depending. Vide Trin. 36. B. R. Placito 1. Reſidum.

Vide Paſch. 34 B. R. Plac. 2. p. 223.

Heddy *verſus* Wheel-houſe. Trin. 38 Eliz. rot. 963.

(15)

Moor 474. Poſt 591.

TReſpaſs for the taking of a Cow. The Defendant Juſtifies; becauſe the Town of Northampton is an ancient Town, and that King H. 7. Anno 11. Regni ſui, granted to the Mayor, and Burgeſſes of Northampton, unam Feriam annuatim to be holden upon the Feaſt of St. Hugh, cum omnibus libertatibus, & liberis conſuetudinibus ad hujuſmodi Feriam ſpectant. vel pertinent. And ſhews, that at ſuch a Fair their holden, J. S. ſold that Cow to the Plaintiff: whereupon he demanded a Peny for Toll, and becauſe the Defendant refuſed to pay that Peny for Toll, he Diſtrained that Cow, as Bayliff, for the Non-payment. And the Plaintiff thereupon demurred in Law. The ſole queſtion was, Whether by this Grant there be any Toll to be demanded? For if it were due, it was agreed on both ſides, that a Diſtreſs might be taken for it: and that the Defendant, as Baliff, and one of the Corporation, might well diſtrain for it. But it was argued for the Plaintiff that Toll was not demandable, unleſs by Grant from the King, or by Preſcription. And it cannot be here by Preſcription, becauſe it is a Fair newly Created: Nor by Grant; for there be not any words of Grant of Toll: And it is not any Liberty, or Cuſtom of common Right appertaining to a Fair; and therefore it paſſed not by the general Words cum omnibus libertatibus, &c. But it was argued for the Defendant, That Toll is a thing of Common Right, due for the Entry of things ſold in Fairs or Markets; and for the better knowing of the things ſold, and into whoſe Property they be paſſed: And therefore by the Grant of a Fair, cum libertatibus ad Feriam pertinent,

:inent. &c. it well may paſſ. And of common Right a Peny ſhall be paid for ſuch; unleſs in places, where nothing, or a greater Summe is by preſcription to be paid. Vide 9 H. 6. 45. & 12 Ed. 4. 9. Wherefore, &c. Popham; Toll is not a thing of neceſſity, nor Ant. 485. incident to a Fair for there be many places where no Toll is paid: and if Toll had been uſed to be paid, no doubt, but that by grant of a Fair it had well paſſed, without the words, cum pertinentiis. And queſtionleſs alſo, the King may grant a Fair, and that Toll ſhall be paid, although it be a Charge upon the Subject; becauſe his Subjects (viz. the Vendees) Poſt. 711. have benefit, and eaſe by ſuch Fairs: But the King cannot ap- 2 Inſt. 220. point a burthenſome Toll, but it ought to be a Petit Sum, as a penny or two-pence, which are the ſmalleſt Coyns, or of leſſer, but not of any greater value, to charge the Subject. But without Grant, or Preſcription, Toll is not of Common Right to be demanded. Wherefore, &c. Clench inclined to that Opinion: But, becauſe the other Juſtices were abſent, Adjournatur. Vide Reſiduum poſtea, Mich. 39, & 40 Placito 29.

Cadogan *verſus* Powel.

(16) ERror of a Judgment given in Aſſiſe in Monmouth. The Error Aſſigned was; Becauſe Andrew Powel had brought an Aſſiſe againſt William Cadogan, and John Cadogan, de quadam portione Decimarum renovant. de 300 acris Terr. in Staveney. William Cadogan pleads, Nul Tenant de frank-tenement Tenementorum prædictorum in viſu poſitorum, & in Querela ſpecificata named in the Writ, and if not found Nul tort, &c. John Cadogan pleads, Nul tort. And the Aſſiſe taken, Quoad placitum Willielmi Cadogan, finds, Quod non fuit aliquis Tenens eorundem Tenementorum in viſu recognitorum poſit. & in Querela ſpecificat. in Brevi nominatus. Et quod idem Willielmus fecit nul Tort, &c. And they further find, that the Plaintiff was ſeiſed of the Tithes, until by the ſaid John Cadogan diſſeiſed, &c. And thereupon Judgment was given, Quod querens nihil capiat per breve verſus Prædictum Willielmum, ſed ſit in miſericordia. Et quoad J. C. That the Plaintiff ſhould recover, &c. And it was aſſigned for Error, that the Judgment ought to have been intirely againſt the Plaintiff: For, when it was found, that there was Nul Tenens noſme, &c. the Writ abated in all againſt them both; And Judgment ought to have been given for the Defendant. But it was thereto ſaid, That this Aſſiſe of Tithes, which is given by the Statute of 23 H. 8. of Tithes, is well maintainable againſt any, who takes the Tithes. And it is not requiſite to name the Terr-tenant: and then, although it be found Quod die Impetrationis Brevis non fuit aliquis Tenens eorundem Tenementorum, &c. That is to be intended, Quod non fuit tenens of the Land, out of which the Tithes, &c. which is not material. And in proof thereof vide 12 Ed. 3. Brev. 267. 31. Aſſ. 31. Dy. 84. But all the Court held, that Tenementorum in viſu poſit. & in Querela ſpecificat are intended of the Tithes themſelves; and of neceſſity there ought to be a Tenant named, otherwiſe the Aſſiſe is not maintainable; then the Aſſiſe finding, That there is not any Tenant named, it ought to abate. Quære how it can be? For, when it is found, that he was ſeiſed, until by John diſſeiſed, It is therein found, That John was the Diſſeiſor, and Tenant: For it being of Tithes, which are in pernancy, he remained

remained always Tenant of them to every Action; And could not diſpoſe of it, as he might of the Land it ſelf. But notwithſtanding, for this cauſe, the Judgment was reverſed.

The Earle of Pembroke *verſus* Sir Henry Barkley.

Quod vide Ante, Paſch. 37. B. R. Placito 8.

(17) Ante. 384

ERror was brought of a Judgment; and amongſt the Errors Aſſigned, the point in Law, that the Proviſo was not a Condition, was Aſſigned. But the Juſtices and Barons would not hear any argument, in regard it had been diſputed amongſt them before the Judgment given; and, for the greater part, holden to be a Condition, and by their advice adjudged accordingly. But now divers other Errors were aſſigned; Firſt, Co. 2. 71. b Becauſe the Action is an Action upon the Caſe for diſturbing him to exerciſe the Office of the Keeper of a Walk in the Foreſt of Fromeſel-wood; and ſuppoſing that he was ſeiſed of the Manor of Stok-Triſter; to which Manor the Office of the cuſtody of the ſaid Foreſt appertained: and that he, and all thoſe, whoſe, &c. time, whereof, &c. by reaſon of the ſaid Office, had had, &c. Omnia bona, & catalla foris-facta within the ſaid Foreſt, except bona, Co. 5. 110. a. & catalla forisfacta ſecundum aſſiſam Foreſtæ, &c. whereas there cannot Co. Lit. 114. a. be a preſcription to have omnia catalla foris-facta, &c. And then there be Damages demanded, and given for a Profit, which he could not have. A ſecond Error aſſigned was; becauſe the diſturbance is alledged, that he 23 Decemb. 35 Eliz. deputed William Wheeler to keep Staver-dale-walk within the Foreſt, made an Aſſault, and hindred him to receive the cuſtody of the ſaid Walk, ac alia proficua (and doth not ſhew what Profits) in the ſaid Walk emergentia colligere non permiſit, ſed impedivit (And he ſhews not how the diſturbance was) 11 Ed. 3. Treſp. 112. A third Error aſſigned was; becauſe the diſturbance is alledged 23 Decemb. per quod a prædicto 23 Decemb 35. uſq; 10. Feb. next following, he loſt the Profits of the Office; and he ſhews not any cauſe whereby he loſt the Profits from the 23 of Decemb. nor that he loſt the Profits the ſaid 23 of Decemb. And yet Damages are given for that time alſo, where Damages are not to be given. For, it is not alledged, that he was kept out from the exerciſing of the Office, nor any diſturbance after the 23 of Co. 2. 72. a Decemb. nor with a Continuando. Wherefore for theſe Errors, and Imperfections in the Declaration, and divers others, without regarding any matter in Law it was awarded, that the firſt Judgment ſhould be reverſed.

Roſs

Roſs *verſus* Moſs.

ERror brought in the Exchequer Chamber of a Judgment given in the Queens Bench in an Aſſumpſit; where the Plaintiff declared, that, in Conſideration he would relinquiſh ſuch a Suit, the Defendant promiſed to diſcharge him againſt all Suits of J. S. and alledges in facto, that he relinquiſhed his Action; And, that the Defendant had not diſcharged him from ſuch an Action. And hereupon Judgment was given for the Plaintiff; and Error thereof brought, and aſſigned, that this is not any conſideration; for he might relinquiſh it to day, and afterwards begin it again: He ought alſo to have averred, That the Action, which he was to diſcharge, was actionable. And, for both theſe cauſes, it was held to be Error, and the Judgment was reverſed. (18) Poſt. 869. Ant. 455.

The Lord Audley *verſus* Pollard.

EJectione firmæ. It was held by all the Juſtices, That where a Fine was levied with Proclamation, and a friend of him, who had the Right, entred to his Uſe, to avoid this Fine without his appointment; and the Conuſee re-entred, and the five years paſſed: that this Fine is not avoided, but ſhall bind. For by the expreſs words of the Statute of 4 H. 7. a Fine ſhall bind, unleſs it be avoided by Entry, Claim, or Action of him, who hath right thereto, within the five years. And it is not ſufficient for a ſtranger to Enter, unleſs it be by his command, who hath the right. But Gawdy ſaid, That the agreement peradventure of him, who had the Right, within the five years after ſuch an Entry made in his name, would ſerve: but an agreement afterwards would not ſerve. Quære. Note, Popham ſaid, that he demanded the opinion of all the Juſtices in Serjeants-Inn about the principal Caſe, and they were of the ſame opinion. 9 Co. (19) Mo. 450. Co. 9. 106. a. St. 4 H. 7. c. 24. Co. Lit. 258. a Co. 9. 106. a. Moor. 450. Co. 9. 106. a.

Morgan *verſus* Johnſon.

Paſch. 39 Eliz. in Communi Banco.

DEbt upon a Bill, which was in this manner. Memorandum, That I, Thomas Johnſon, do bind my ſelf to John Morgan, to pay unto him all ſuch monies, as my Brother oweth him. In witneſs whereof, &c. And in the end of the Bill underneath was written, That William, the Brother of Tho. Johnſon, owed to Morgan 40 l. And the Plaintiff in his Declaration avers, that William, the Defendants Brother, then ought unto him 40 l. and it was thereupon demurred, and it was moved for the Plaintiff. That although this Bill was uncertain at the firſt; yet by the averment, and Writing under it, it is certain enough: as a Leaſe by Deed for ſo many years, as J. S. ſhall name, when J. S. had named them, it is ſufficient and certain enough. And all the Juſtices agreed for the Plaintiff, That by the averment the Debt is ſufficient, and the Deed may be referred to a Collateral matter. As an Obligation to perform Covenants within an Indenture. Wherefore it was adjudged for the Plaintiff. (20) Co. Lit. 45. b

Wiſeman *verſus* Crow. Trin. 38 Eliz. rot. 2302.

(12) TRespaſs: upon Demurrer, The Caſe was. Tenant for life, the remainder to Tho. Wiſeman in tail; remainder to John Wiſeman the Plaintiff, in Fee. A Writ of Entry is brought againſt Tenant for life. He vouched Tho. Wiſeman the firſt Tenant in Tail, who voucheth the common Vouchee. And ſo a Recovery was had. Tenant for life dies; Tho. Wiſeman dies without Iſſue. John Wiſeman the Plaintiff enters upon the Defendant, who ouſts him, and, upon all this matter diſcloſed in pleading, after Argument of the Serjeants, it was adjudged for the Defendant, by the opinion of Anderſon, Beamond, and Owen. For this Recovery is out of the Letter, and intent of the Statutes of 32 H. 8. and 14 Eliz. For they extend only to reſtrain the Recoveries againſt Tenant for life only, as tenants; which at the Common-Law was a bar to him in remainder, and as Recoveries; alſo where Tenants for Life are only vouched, and none who have the Inheritance, was party thereto. But here, by his voucher of the firſt Tenant in Tail, the Judgment being given againſt him, that is not to be ſaid a Recovery againſt Tenant for Life, But againſt Tenant in Tail, and he who hath the Inheritance, being Party to the Record, it binds every other. But, if one in Remainder was only in aſſenting, and no Party to the Recovery: it might peradventure be otherwiſe. But here it is more, then Aſſent: and the common Caſe, if Tenant in Tail bargains, and ſells the Land, and a Præcipe is brought againſt the bargainee, and he vouches the Tenant in tail, and he voucheth the common Vouchee: there all agreed, that this ſhall bind all in remainder; and yet there the Bargainee is but Tenant for Life. And Anderſon ſaid, this very Caſe was ſo adjudged in the Queens Bench: and although Writ of Error was thereof brought, and the Error aſſigned in this point in Law, the greater part of the Juſtices of the common Bench, and the Barons of the Exchequer agreed to affirm the Judgment. But it was afterwards reverſed for a point in pleading, and not for the matter in Law. But Walmſley argued to the contrary. For the Letter, and intent of the Statute of 14 Eliz. is to reſtrain Recoveries againſt Tenants for Life; that they ſhould not bar any, but thoſe who are party, or aſſenting thereto. And he in Remainder, who is not party unto it by Voucher, nor aſſenting unto it, ſhall not be barred by ſuch a Recovery, which the Statute reputes to be falſe, and covenous, and to the prejudice of him in Remainder, who had a good and rightful Remainder; which was not to be bound by ſuch a fained Recovery, and, whereas it is ſaid, that this Recovery is not againſt Tenant for Life only, but alſo againſt Tenant in Tail in Remainder: that is not material. For the Recovery is principally againſt Tenant for Life; and the Judgment is only againſt him for the Land; and againſt him in remainder only for the Recovery in value. So it is directly within the Letter, and Purview of the Statute, and within the intent to be remedied. Wherefore, &c. But, notwithſtanding theſe reaſons, it was adjudged for the Defendant. 10 Co. 43. Co. Enteries.

Poſt. 570.
Co. 3. 60. b.
St. 14. El. c. 8.
Co. 10. 46. a.
Co. 10. 46. a.

Love-

Lovelace *verſus* Reignolds. Ante, Hill. 39. Pl. 19.

THe Caſe was now moved again. And all the Court reſolved, (22) that the Verdict was found for the Plaintiff, and againſt him, who pleaded the preſcription. For the preſciption is entire, and the payment of a Peny annually is parcel of the preſcription, and it ſhall be intended to be as ancient as the Common; and that they began at one time. Wherefore, when he preſcribes to have Common generally, and it is found, that he uſed to have it, paying 1 d. for it, The Common, which is found, cannot be intended the ſame Common, which he hath preſcribed to have. As in 10 Ed. 4. 17. Preſcription to have Common in groſs, evidence to prove, that he hath Common appertenant, doth not maintain the Iſſue; for it is not the ſame Common. If this part alſo of the preſcription ſhould not be ſhewn for the Common, the Tenant of the Land ſhould not have any remedy for his 1 d. And as to the Judgment cited in the Queens Bench, there is a plain difference between that Caſe, and the Caſe in queſtion. For there the Copy-holder preſcribes to have Common in the Lords Land, and it was traverſed: and it was found, that he had Common according to his preſcription. And it was further found, That the Copy-holders in the ſaid Manor had uſed to pay to the Lord, Pro eadem Communia unam Gallinam, & quinq; Ova per annum. And adjudged, that the preſcription was well pleaded. For there were two preſcriptions, the one for the Commoner, the other for the Lord. Wherefore, it was ſufficient for the Commoner to alledge the preſcription for the Common, and he needed not meddle with the other. And this being found is ſufficient, and the finding the preſcription on the Lords part is not material, which was the reaſon of the Judgment there, as Popham and Fenner affirmed unto us. But here the preſcription is entire, whereof the payment of 1 d. is parcel, which ought to have been entirely alledged. And of that opinion were Popham and Fenner. Wherefore they all agreed, that Judgment ſhould be given for the Plaintiff.

Ante, 546. Co. 5. 79. a.

Ante. 546

Anonymus.

ACtion upon the Caſe for theſe words, Thou art a Corn-ſtealer. (23) After Verdict for the Plaintiff, upon Not-guilty pleaded, It was moved; That an Action lay not for theſe words. For it is not alledged of what value: and it might be under 12 d. value, and ſo not Felony; It might be alſo that the Corn was growing, and ſo no Felony. Sed non allocatur. For the value is not material, becauſe the Action would lie for calling him Thief generally. It ſhall not alſo be intended, but of ſuch Corn, which might be ſtolen, and not of Corn ſtanding. Wherefore it was adjudged for the Plaintiff.

2 Cr. 671

Francis Throgmortons Caſe.

ACtion upon the Caſe againſt Francis Throgmorton; becauſe he (24) procured the Plaintiff to be Endicted as a Common Barretter before the Juſtices of Peace in the County of Warwick; And that afterwards, he was lawfully acquitted thereof, before

Anderſon and Clench Juſtices, Juſtices of Aſſiſe there. The Defendant pleaded Not-guilty, and found againſt him. And it was alledged in Arreſt of Judgment, that the Declaration was not good. For he hath ſhewn, that he was acquitted before A. and C. Juſtices of Aſſiſe, which is not good: for he cannot be acquitted before them, as Juſtices of Aſſiſe, but as Juſtices of Oyer and Terminer. And it was held to be an apparent fault by the whole Court. Anderſon and Beamond held, that the Action lies not for the matter. For when one prefers an Endictment, and is ſworn thereupon, it is to be intended, that he prefers it lawfully, and in zeal of Juſtice. And, although the other be found Not-Guilty, it is not reaſon he ſhould be puniſhed for exhibiting a Bill; no more, then where a Bill is exhibited in the Star-Chamber for matters examinable there, an Action upon the Caſe lies not, although it be falſe; no more here. But where two or more conſpire together, to procure one to be Endicted of Felony or Treſpaſs, and he is afterwards acquitted: it ſhall be intended by Law to be maliciouſly done; for which, Conſpiracy lies: But no Action lies, where only one prefers a Bill of Endictment; for it would be in hinderance of Juſtice. Wherefore, &c. But Walmſley doubted thereof; for the Declaration ſuppoſed it to be Malicioſe. And there is not any reaſon, if any one, without cauſe, will procure another to be Endicted, but that an Action will lie againſt him. Whereupon it was adjourned.

Ante. 71.

Ant. 248.
F. N. B. 42. g.

Hunt *verſus* Singleton.

(52) TReſpaſs. It was found by ſpecial Verdict, that the Dean, and Chapter of Pauls, made a Leaſe for forty years of an houſe in London. The which Houſe was then in Leaſe for ten years to a ſtranger. Whether this were a good Leaſe, or no? was the Queſtion: And it was held by the whole Court, without Argument, that it was not a good Leaſe, but meerly void by the Statute 13 Eliz. and not warranted by the Staute of 14 Eliz. which made Leaſes of Houſes in Cities to be good for forty years: So as it be not made in reverſion of any other Leaſe. For, although this Leaſe is to Commence immediately; Yet it is in Law a Leaſe in reverſion, and therefore within the words of the Statute. And the Satute here needs not to be found by the Verdict; Becauſe it is a general Law. Wherefore it was adjudged accordingly. Vide ante, Paſch. 38. Pl. 37. 3 Co. 60. a.

Ant. 473. 4.
13 El. c. 10.
14 El. c. 12.

Wheatley *verſus* Chriſtopher Beſt.

(92) DOwer. The Tenant made Default after Default; Whereupon Thomas Beſt prayed to be received for his Term made unto him before the Coverture: and he was received, and his Term ſaved. The Queſtion now was, how the Judgment and Execution ſhall be; for if it ſhould be Quod ceſſat executio during the Term, ſhe ſhould not then have the Rent reſerved upon the Leaſe. And all the Juſtices argeed, that the Judgment ſhould be entred generally, that ſhe ſhould recover Seiſin of the Moyety of the Land, (the Land being Gavel-kind) And, that the Writ of Execution ſhould be ſpecial, that the Sheriff ſhould not ouſt the Termor; But that he ſhould come upon the

Co. Lit. 32. a.

the Land, and demanded Seiſin for the Feme: and thereby ſhe ſhould have the Moyety of the Rent, with the Reverſion. And Beamond ſaid, that ſo it was done 3 Eliz. in his Mothers Caſe, upon a Petition of Dower; the Reverſion being in the Queen. Wherefore the Court comanded to have it to be done ſo in this Caſe.

Bradbury *verſus* Reynel.

(27) DEbt againſt him as Executor of Tyrrel. The Defendant pleads, that Tyrrel died Inteſtate, and, that certain of his Goods came to the Defendants hands, and afterwards Adminiſtration was committed to J. S. to whom he had delivered the ſaid goods. Et per curiam, it is not any Plea; For if the Adminiſtration had been committed unto him, it would not have purged the firſt Tort. So here, although Adminiſtration is committed to a ſtranger, in regard that he hath once made himſelf chargeable to the Plaintiffs Action, as being Executor de ſon Tort, &c. he ſhall never afterwards diſcharge himſelf by matter ex poſt facto. Wherefore, &c. Adjournatur. Et vide 21 H. 6. 8. 9 Ed. 4. 47. 2 R. 3. 20.

Ant 406.

1 Cr. 89.
Ante 102. 468.
Ant 406.
Go. 5. 34.

Matthews Caſe.

(28) DEbt upon a Leaſe for years made at Northampton of Lands in D. in the County of Northampton. The Defendant pleaded Nihil debet, and found againſt him: and it was moved in Arreſt of Judgment, that the Ven. fac. was awarded de North. whereas it ought to have been from D. where the Land lies. But, if the Leaſe had been traverſed, it ſhould have been from the place, where it is alledged to be made. But the Court held the Trial to be good enough: for the Debt is due by reaſon of the Contract which was at Northampton. Wherefore, abſente Anderſon. It was adjudged for the Plaintiff.

Ante 259.

Blundens Caſe.

(29) DEbt upon an Obligation, Conditioned to pay an Annuity at the Annunciation of our Lady, or within twenty days after. The Iſſue being joyned upon a Collateral matter, and found for the Plaintiff. Drew moved in Arreſt of Judgment, that the Original was brought the eight of April, and he alledgeth the breach to be at the Annunciation laſt paſt, which was within the twenty days after the Feaſt of the Annunciation, and ſo the Action brought before he had cauſe of Action, and the Court held it to be an apparant Fault. For the Annuity was not due until the end of the twenty days. And Walmſly ſaid, that it hath been adjudged, where one makes a Leaſe for years, rendring Rent a Mich. or within twenty days after, and dies after Mich. and within the twenty days, that the Rent was due to the Heir, and not to the Executor. Whereupon the Judgment was ſtayed.

Co. 10. 128. b.
Poſt. 575.

Fereby *verſus* Lurkyn.

(30) ASſumpſit, and Declares, that the Defendant in Conſideration the Plaintiff would make a Leaſe unto him of ſuch Land, aſſumed to pay 20 l. And alledged in Facto, that he had Lett the Land

Land to the Defendant for five years; and the Defendant had not paid him the 20 l. The Defendant pleaded Non Aſſumpſit, and found againſt him: and after Verdict, it was moved in Arreſt of Judgment, that the Plaintiff had not performed the Conſideration. For, he being to make a Leaſe, it ſhall be intended for Life. But the Court held, that the promiſe being general, to make a Leaſe, it may be any Leaſe, viz. at Will, which he might determine preſently: and it is not any conſideration to ground an Action. Wherefore the Judgment was ſtayed.

Willoughbies. Caſe. Paſch. 39. Eliz. rot. 1250.

(31) PErcival Willoughby, and Bridget his wife, one of the Coheirs of Sir Francis Willoughby, (becauſe Sir Francis Willoughby died Seiſed of a great Inheritance, having five Daughters, whereof the eldeſt was married to Perc. Willoughby; and not any Son; And the ſaid Sir Francis, leaving his wife Dorothy, who, at the time of his death, pretended her ſelf to be with Child by Sir Francis, which if it were a Son, all the five Siſters ſhould thereby loſe the Inheritance deſcended unto them) prayed a Writ de Ventre Inſpiciendo out of the Chancery, directed to the Sheriff of London, that he ſhould cauſe the ſaid Dorothy to be viewed by twelve Knights, and ſearched by twelve Women in the preſence of the twelve Knights, & ad tractandum per Ubera, and Ventrem Inſpiciend. whether ſhe were with Child, and to certifie the ſame into the Common Bench. And if ſhe were with Child, to certifie for how long time in their Judgments, & quando ſit paritura. Whereupon the Sheriff accordingly cauſed her to be ſearched, and returned, that ſhe was twenty weeks gone with Child: And that within twenty weeks fuit paritura. Whereupon another Writ iſſued out of the Common Bench, Commanding the Sheriff ſafely to keep her in ſuch an Houſe, and that the doors ſhould be well guarded; and that every day he ſhould cauſe her to be viewed by ſome of the Women named in the Writ (wherein ten were named) and when ſhe ſhould be delivered, that ſome of them ſhould be with her to view her Birth, whether it be Male, or Female, to the intent there ſhould not be any Falſity. And, upon this Writ, the Sheiff returned; That accordingly he had cauſed her to be kept, &c. And, that ſuch a day ſhe was delivered of a Daughter. Note, This Writ, and the Proceedings thereupon are grounded upon Bract. lib. 2. fol. 69. and upon the Writ in the Regiſter, fol. 227.

2 Cr. 686. Co. lib. 8. b.

2 Cr. 686.

Termino Trinitatis, Triceſimo nono ELIZABETHÆ, in Banco Reginæ.

Williams *verſus* Williams.

Ante, Paſch. 39 Plac. 14.

THe Caſe was now again argued, and only upon the Errors Aſsigned. The firſt was, That the Recovery was againſt him by default in Dower. And, that he, at the time of the Recovery, was, and yet is within age. The ſecond Error was, That he was not Terr-tenant at the time of the Action brought, nor ever ſince. For the firſt Error Aſsigned, vide 6 H. 8. Saver Default; Br. 50. Dy. 104. 17 Ed. 2. Saver Default 30. For the ſecond, for that he is not Terr-tenant: although it be ſaid, that he loſe nothing in the Land, and then he cannot have a Writ of Error: yet here he loſeth Damages; and to excuſe himſelf from them, it is reaſonable, that he ſhould have this Writ of Error. And in 6 Ed. 3. 8. It is holden, that he, who leads Non tenure, might have a Writ of Error. For, although, he hath not therein Free-hold, yet he may have in Reverſion what he may loſe by the Judgment: but it is otherwiſe of him, who diſclaims. Wherefore, &c. Gawdy, as to the firſt held it to be Error; for a Recovery againſt an Infant by Default differs not from another Præcipe. And in Primo Mariæ, Dyer, in Anderſons Caſe, it is Ruled after long Argument, that a Recovery againſt an Infant by Default in another Præcipe is erroneous. But Popham, and Fenner contra. For Fenner ſaid, That a Writ of Dower was favoured: and it is not reaſonable, that the Demandant ſhould be prejudiced by the Tenants Infancy: For, if thereby the Demandant ſhould be delayed, Women ſhould never recover their Dowers, and have the fruits, and benefit thereof. For the Tenancy might be in an Infant, who never would appear, but ſuffer the Judgment to paſs againſt him by Default and have it afterwards Reverſed for this cauſe. And Popham ſaid, there was not any difference betwixt a Writ of Dower, and another Præcipe. For a Recovery againſt an Infant by Default, is good in both Caſes. For it ſhould be miſchievous, if the Demandant, who hath Right, ſhould be delayed of her Right, becauſe the Tenant is an Infant, & will not appear. For, if that ſhould be ſuffered, all Land, whereto another hath Right of Action, would be put in an Infant, againſt whom there could not be had a good Recovery, and it is not as miſchievous on the other ſide. For if an Infant, having Right, uſeth it, he may have his Writ of Right. But Gawdy ſaid, Although

(1) Moor. 342. 1 Rol. 796. Ante 557.

Ante 557.

2 Cr. 111. 392. Co. Lit. 35. a. Poſt. 638. 1 Rol. 796.

though it were a greater miſchief: yet it is to be ſuffered rather then have the Law to be changed, unleſs it be by Parliament As, at the Common Law, Le parol demurrera for the Non-age of the Demandant, which was miſchievous unto him: and therefore the Statute of Gloc. cap 2. was made to redreſs it: and ſo of others &c. Clench agreed with Gawdy; For it would be dangerous to compel Infants to appear, and plead, who know not their own Title eſpecially, if they have the Land by deſcent. But if it may appear that an Infant hath the Land by Purchaſe: that priviledge peradventure would not then be allowed him; becauſe the Tenancy might purpoſely of Covin be put into him, to delay the Demandant. Wherefore, &c. Fenner as to the ſecond Error held, that he might well aſſign it for Error, to diſcharge himſelf of the Damages: but the other Juſtices did not ſpeak thereto. Sed adjournatur.

Rivers *verſus* Oodskirt. Trin. 38. Eliz. rot. 794.

(2) ERror of a Judgment in the Common Bench, in an Action Sur Trover, where the Plaintiff Declared, Quod cum poſſeſſionatus fuit de 40 l in quadam Crumena exiſtent. ut de bonis ſuis propriis, and loſt them; and the Defendant found, and converted them to his own uſe in retardationem Executionis Teſtamenti, to the Plaintiffs damage of 40 l. The Defendant pleaded Not-Guilty, and found for the Plaintiff, and the Jury aſſeſſed for Damages 40 l. and for Coſts 20 s. And the Plaintiff had Judgment accordingly, and thereupon Error was brought. The firſt Error aſſigned was; Becauſe he alledgeth not, that he was poſſeſſed of a Purſe, but only of 40 l. in the Purſe, and the Converſion is alledged of both, and Damages given intirely for both. Sed non allocatur. For it ſhall be neceſſarily intended: and ſo is 21 H. 6. in Detinue. Secondly, Becauſe it is alledged, that he was poſſeſſed of 40 l. ut de bonis propriis, and that the Defendant converted them in retardationem Executionis Teſtamenti, which is contrariant, &c. The Goods being his proper Goods, that they ſhould be converted in retardationem, &c. And for this repugnancy it was ill. And of that opinion was Fenner Juſtice, and in proof thereof, relied upon 25 Ed. 3. 40. and Sales Caſe 31 Eliz. But all other Juſtices e contra; For the Executor is poſſeſſed of the Teſtators Goods, as de bonis ſuis propriis, & ſo may declare. And yet the converſion of them is in retardationem Executionis Teſtamenti; & this exception was taken in the Counteſs of Rutlands Caſe in this Court, & yet held to be good: for theſe words are but Surpluſage, which do not abate the Count. The third Error Aſſigned was; becauſe he counts but of 40 l. Damages; and the Damages and Coſts aſſigned by the Jury exceed the ſum, whereof he declares; which ought not to be, and therefore it is erroneous: and to that purpoſe 13 H. 7. 16. 18 H. 6. 17. & 2 H. 6. 7. were cited. Sed non allocantur; For the Damages ought not to be aſſeſſed more, then whereof the Plaintiff himſelf hath counted; but, becauſe the Suit might for a long while have depended, they may be further aſſeſſed, and increaſed. For Non conſtat at the time of the Declaration what the coſts of Suit would amount unto. But, if the Damages and Coſts had been intirely aſſeſſed at more then are mentioned in the Declaration, it had been ill. For Non Conſtat but that the Damages exceed the Damages mentioned in the Declaration. Wherefore it was adjudged accordingly, and the firſt Judgment affirmed.

Ante 544. Co. 10. 116. b. 7

Co. 10. 117. b.

Web

Web *verſus* Poor.

ACtion for theſe words. I will call him in Queſtion for poyſoning my Aunt, and I make no doubt to prove it. After Verdict for the Plaintiff; it was moved in arreſt of Judgment, That the Words were not actionable; for it is not any direct affirmation that he poyſoned his Aunt. Sed non allocatur; For it cannot be more direct, when he ſaith, He will call him in Queſtion, and maketh no doubt to prove it. Secondly, it was alledged, That the Action lies not, becauſe it is not averred, that his Aunt was poyſoned, for otherwiſe it is not any offence. Sed non allocatur; For his credit is impeached, although he never did any ſuch Fact: as to ſay, That he was perjured in this Court, although he never were ſworn, is Actionable. Wherefore it was adjudged for the Plaintiff. (3) 1 Rol. 50. 72 77 Ante 6. 2 Cr. 331.

Yielding *verſus* Fay. Trin. 36. Eliz. rot. 948.

ACtion upon the Caſe againſt the Defendant, as Parſon of Quarleys in the County of Southampton. Whereas, within the ſaid Pariſh there is a Cuſtom, that the Parſon there at all times of the year had uſed to keep within the ſaid Pariſh a common Bull, and a common Boar, for the common uſe of the Kine, and Sows of the Pariſhioners at any time Quandocunque eceſſe foret, for the encreaſe of Claves, and Pigs within the ſaid Pariſh, that the Defendant being Parſon there for three years, had not kept any Bull or Boar there, by reaſon whereof the Plaintiff being an Inhabitant there, had loſt the increaſe, &c. The Defendant proteſtando, that there is not any ſuch Cuſtom, pleaded Not-guilty, and thereupon the Plaintiff demurred: For in an Action for a Non-feaſance, Not-guilty it is not any Plea; For they be two Negatives, which cannot make an Iſſue, no more, then two Affimatives; 32 H. 6. 23. But in an Action for a Miſeaſance it is otherwiſe. And of that opinion were the Court; And, that it is a good and reaſonable Cuſtom; and, that every Inhabitant, who hath prejudice by the not keeping of the Bull, or Boar, may well maintain his Action. Wherefore it was adjudged for the Plaintiff. (4) 1 Rol. 109. 559 Moor. 355.

Sedburrough *verſus* Raunt. Mich. 38, & 39. Eliz. rot. 155.

ERror of a Judgment in the Common Bench in Debt upon Non ſum Informatus. The Error Aſſigned was, That the Defendant, at the time of the Judgment, was within age, and appeared by Attorny, Whereas he ought to have appeared by his Guardian. And upon two Scire facias two Nihils were returned: Whereupon it was prayed, That, for this cauſe, the Judgement might be Reverſed. And by Gawdy, and Fenner (cæteris Juſticiariis abſentibus) it was therefore reverſed. For Gawdy ſaid, If he were within age, at the time of the Judgment given, although he were not ſo at the time of the Error brought, it is reverſable, (5) 1 Rol. 287. 2 Rol. 573. 2 Cr. 581. 2 Cr. 581. 2 Ro. 573.

and is triable per Pays; and not like to an Error upon a Fine or a Statute acknowledged by one within Age: For they be no
Co.Lit.380. b. reverſable but by Inſpection. But here, in regard the Defendant made default upon two Nihils returned, it is not now Triable, but it as a Confeſsion. Wherefore it was for this cauſe reverſed.

Bradſhaw *verſus* Eyr. Hill. 39. Eliz. rot. 532.

(6) TRespaſs de Clauſo fracto in Abney. The Defendant pleads, That
Mo. 462. long time before, &c. one Nicholas Bagſhaw was Seiſed of the place, where, &c. in Fee; and, that one Godfrey Fuliamb was Seiſed in Fee of an Houſe, and twenty Acres of Land in A. aforeſaid, And, that the ſaid G.F. and all they, whoſe Eſtate, &c. have had for him, his Farmers, and Tenants of the Premiſes, common in the ſaid place, where, &c. for all their Beaſts at all times of the year, as to the ſaid Tenement appertaining; And, that the ſaid G. F. infeoffed of the ſaid Tenement the ſaid N. B. and, that afterward the ſaid N. B. Lett unto the Defendant the ſaid Houſe, and twenty Acres of Land, with all Commons, Profits, and Commodities thereto appertaining, vel occupat: vel uſitat: cum prædicto Meſſuagio; and thereby juſtifies the putting in of his Cattle to uſe the Common, &c. And it was thereupon demurred. The matter in Law was only, Whether this Common, being extinct by the Unity of Poſſeſsion, may be revived by any of thoſe words? Or, whether it may not enure, as a new Grant of Common for ſo many years (and by Gawdy,
Hob. 131. and Fenner (Popham, and Clench abſentibus) it was held clearly, That this Common was extinguiſhed by thir Unity of Poſſeſsion; it being Common appertenant, and cannot be revived again; although a Feoffment had been made of the Land. And Gawdy ſaid, that ſo it is of Common appendant, and, as to this purpoſe, there is not any difference betwixt them. But they held, That by the Word of the Leaſe Of all Commons, Profits, &c. occupied, or uſed cum Meſſuagio, &c. It is a good Grant of a new Common for the time. For, although it were not Common in the hands of the Feoffor, yet it is Quaſi Common uſed therewith: and, although it be not the ſame Common it was before, yet it is the like Common. But becauſe there was not a ſufficient averment, that this Common was uſed by the Leſſee at the time of the Leaſe, it paſſed not, and it was therefore adjudged for the Plaintiff.

Wiſeman *verſus* Gennings. Trin. 48. Eliz. rot. 505

(7) UPon a Special Verdict the Caſe was; That A. Tenant for life,
Ante 562. remainder to B. in Tail, remainder to R. in Fee; A.
Co. 3. 60, b. ſuffers a Common Recovery with voucher of B. A. dies, B. dies without iſſue. Whether R. ſhall avoid this Recovery by the Statute of 14 Eliz. was the queſtion. Popham; it hath once been here adjudged a good Recovery to bind the remainder in Fee, notwithſtanding the Stat. of 14 Eliz. And being brought
Ant. 562. into the Exchequer-Chamber, all the Juſtices agreed with the

Judi-

Judgment for the matter in Law; but reverſed it for the Form. And to that opinion the whole Court now agreed, and would not hear any further argument in this Caſe. Wherefore it was adjudged for the Plaintiff.

Southwel *verſus* Brown. Mich. 35, & 36. Eliz. rot. 141.

(8) COvenant. The Plaintiff declares, That the Defendant per Scriptum Articulorum betwixt the foreſaid Defendant on the one part, and the Plaintiff on the other part, convenit, &c. After Verdict, it was moved in arreſt of Judgment, that the Declaration was not good; becauſe he doth not alledge, That that writing was Sigillo defendentis ſigillatum. But Glanvile moved. That it needed not: For it is per Scriptum ſuum factum, &c. convenit, &c. and therefore the Sealing, and Delivery ſhall be intended; for it cannot be Factum without thoſe circumſtances, And the Court ſaid, if this word Factum were in, it might peradventure be good for the reaſons before alledged: but, becauſe upon view of the Record, it appeared, That this word Factum was left out, and it was only as it is before recited, it was adjudged for the Defendant, that the Declaration was not good.

John Rogers *verſu* Gravat, Parſon of St. Pulchers.

(9) ACtion for theſe words, Thou art a Witch, and a Sorcerer. After Verdict it was moved, that the words were not Actionable; But the Court reſolved e contra. For Gawdy ſaid, If he witcheth men ſo as they die, it is Felony: and, if he uſe witchcraft in any other manner, he ſhall ſtand upon the Pillory. So, in every reſpect, it is a ſlander, and a good cauſe of Action. Wherefore it was adjudged for the Plaintiff. 2 Cr. 531.

Gervis *verſus* Hallewel.

(10) PRohibition. A Sentence in the Spiritual Court at Litchfield was had againſt the Plaintiff, who afterwards appealed to the Arches, where the Sentence was affirmed, and adjudged ut ſupra againſt the Plaintiff: Whereupon he ſued a Commiſsion to the Delegates, and the matter was re-examined, and Sentence then given for the Plaintiff. And thereupon another Commiſsion was ſued forth to re-examine this matter. And now a Prohibition was prayed to ſtay this: For it was ſaid, That by the Statute of 25 H. 8. It is appointed, that a Sentence before the Delegates ſhall be final; and then this ſecond Commiſsion is not well awarded. But it was thereto ſaid, that the Queen hath by Law an abſolute power to grant Commiſsions to re-examine, which is not reſtrained by the Statute of 25 H. 8. And that it hath been ſo ruled before theſe times. And of that opinion was Popham. But, becauſe it was a new Caſe, they would adviſe thereof. Mo. 462. St. 25 H. 8. c. 19. Hob. 146. Poſt. 601.

Rogers *verſus* Bird.

(11) DEbt upon an Obligation. The Defendant pleads to Iſſue, and found for the Plaintiff. After Verdict it was moved in Arreſt of Judgment, That the Ven. fac. was returnable Die Sabbathi poſt Octab. Trin. And the Diſtringas iſſued bearing Date the day after Craſtino Trinitatis, and Trial had thereupon. And, becauſe it was without warrant, being before the return of the Ven. fac. it was therefore ill. But, becauſe by the Roll the Ven. facias. was awarded returnable Craſtino Trinitatis, which is the Warrant to make the Ven. fac. and was well awarded, and it was the Default of the Clerk, who did contrary to the Roll, it might be well amended. Wherefore it was ruled, that it ſhould be amended according to the Roll. And the Plaintiff had Judgment. But Popham ſaid, If the Trial had been upon the Ven. fac. it was Erroneous, and had not been amendable. Vide 7 Ed. 4. 15. 2. Rr. 3. 11.

Ant. 433.

Ante 433.

Harvie *verſus* Oſwel. Ante, Paſch. 39. Placito 4.

(12) THe Caſe was now moved again. Fenner held, That the Plaintiff might well Enter, notwithſtanding his acceptance of the Rent; becauſe he had not any notice of the breach of the Condition; as 4 Ed. 3. Releaſe 11. Tenant infeoffs his Son, and Heir, and dies, the Lord accepts the Rent from the Heir, not having notice of the Feoffment, yet he ſhall have his arrearages, and reliefs. So 2 R. 2. Title Atturnment, where a Feme Grants a Reverſion, and takes the Grantee to Baron, the Tenant pays the Rent unto him, not knowing of the Grant, this is not any Atturnment. The Condition alſo being collateral, the Acceptance of the Rent is not any barr. Gawdy; There is not any difference betwixt a Condition annexed for Non-payment of Rent, and any other Condition. But, in both Caſes, if the Leſſor accepts the Rent, which is due after the Condition broken, it diſpenſeth with the Condition broken, if he had any notice at that time of the Condition broken: but here, becauſe he had not any notice of the Condition to be broken, as it is confeſſed by the demurrer, and by poſſibility he could not take notice thereof; It is not any diſpenſation with the Condition; and therefore no barr to his Entry. But, if the Leſſee had alienes parcel of the Term, and the Leſſor had accepted the Rent from the Alienee, that would have affirmed the Leaſe: For thereby he took notice of the Alienation. Wherefore, &c. Popham continued his opinion as before. And thereupon it was adjudged for the Plaintiff.

Ant. 553. Co. 3 64. Moor. 456.

Ante 526.

Bate *verſus* Rookwood. Paſch. 39 Eliz. rot. 97.

(13) ERror of a Judgment in the Common Bench, in an Action for theſe Words, Thou art a forſworn Fellow; For by thy falſe Oath thou haſt hanged as true a man, as thy ſelf. The Error aſſigned was, That theſe words were not Actionable: but all the Court held the

he contrary; For, although the firſt words, A forſworn Fellow, will Ante 135.
ot maintain an Action; yet, when he declares, that by his falſe
Oath he had cauſed a man to be hanged, that cannot be intend-
d, but to be a falſe Oath judicially taken in evidence againſt a 2 Cr. 204.
Priſoner. And the Words, Thou haſt hanged, ſhall be conſtrued to
e, Thou haſt cauſed to be hanged. Wherefore it was awarded,
That the Judgment ſhould be affirmed. Another Exception was
aken; becauſe the Declaration was, Quod propalavit quædam ſcan-
aloſa verba, prout in his Anglicanis verbis ſequent. (viz.) Thou, &c.
nd it may be the words were ſpoken in another Language, which
hey, who were preſent, underſtood not; and then there is not
ny cauſe of Action, as it hath been adjudged before theſe times.
ed non allocatur. For it ſhall be intended, that he ſpake Anglicana
erba. And the words, Prout in his Anglicanis verbis ſequent. is tant amount
s if he had ſaid, Hæc Anglicana verba ſequentia. Wherefore it was
djudged, ut ſupra.

Blumfield *verſus* Roſewith. Ante, Paſch. 39 Plac. 10.

THe Caſe was now moved again, and recited to be ſuch; May (14)
and Blumfield were obliged joyntly, and ſeverally to the De- Ante. 555.
endant: he ſues them ſeverally by ſeveral Bills, and had Judge-
nent againſt them ſeverally, and afterwards ſued a Capias ad ſa-
ſaciendum againſt May, who was taken in Execution, and the
Sheriff ſuffered him to eſcape, and afterwards he ſued Execu-
ion againſt Blumfield, who, being thereupon taken, brought an
Audita Querela, comprizing all this matter: and, whether it lay,
r not? was demurred in Law. Gawdy, and Fenner held; That Co. 5. 86. b
he Execution was well ſued againſt the Plaintiff. For the dif-
erence will be, where one is diſcharged out of Execution by the
act of the party himſelf, to whom he was endebted, as by a
Releaſe, or making him his Executor, or the like. And where
ne is diſcharged by his own Act, or the Act of a ſtranger, as by
he Sheriffs permitting him to eſcape. For, in the firſt, it is
diſcharge for both; but it is not ſo in the laſt. And, if one of
hem die in Execution, it is not any diſcharge for the other.
nd, if they were ſued by one Original, and ſeveral Præcipes, yet
e might have had ſeveral Capias ad ſatisfaciendum againſt them; And
o both ſhould be in Execution, at one, and the ſame time; As
9 H. 8. is. And although the Entry upon ſuch a Record is,
Quod unica fiat executio, yet that ſhall be intended to be an Execution
ith ſatisfaction. But, when they are ſued by ſeveral Originals,
r by ſeveral Bills, as this Caſe is; there is no Queſtion,
ut that ſeveral Executions might be ſued. Wherefore, &c. Po-
ham conceived, that the Plaintiff ſhould be relieved: For the
Obligee hath taken againſt his Companion as great ſatisfaction,
s poſſibly he might have; For, he being in Execution and diſ-
harged, no new Execution might be againſt him of his Body,
Goods, or Land, &c. And becauſe it is an Execution with ſo
reat ſatisfaction, as may be, the other ſhall not be charged.
But I agree, when the one is in Execution, that the other may
e taken in Execution, when they are ſued by ſeveral Originals,
r Bills; for Non conſtat Curiæ, that it is all one Debt: But,
hen they be ſued by one Original, and ſeveral Præcipes, I doubt,
that

that when the one is in Execution by a Capias, whether the other might be taken by another Capias. For it appears to us upon the Record, that all is but for one Debt; and the Entry of the Record is Quod unica tantum fiat executio. And it is clear, That, if one of them be taken by a Capias ad ſatisfaciendum, A Fieri fac. or Elegit cannot be awarded againſt the other: and ſo is 4 Ed. 4. 38. 5 Ed. 4. 5. Et adjournatur.

Morgan *verſus* Wye. Trin. 36. Eliz. Rot. 1074.

(15)

Yelv. 15. Moor. 356. ERror in the Exchequer-chamber of a Judgment in the Queens Bench. The Error aſsigned was; becauſe the Ven. fac. was awarded to the Coroner, for Conſanguinity in the Sheriff; and it was returned by the Coroner, and afterwards a Tales was awarded, and it was returned by the Sheriff. And it was tried, and a Verdict given, and Judgment: and, for this cauſe held to be Erroneous, and not aided by the Statute of 32 H. 8. or 18 Eliz. Wherefore the Judgment was reverſed.

Poſt. 586.

Termino Trinitatis, 39 Eliz. in Communi Banco.

Willis *verſus* Stroud.

(16) ACtion upon the Caſe. Where the Defendant recovered in this Court againſt the now Plaintiff in Debt, of which Judgement the Plaintiff now hath brought Error in the Queens Bench; and, by reaſon thereof, the Record was removed into the Queens Bench; that the Defendant notwithſtanding, well knowing thereof, had taken forth here at Weſtm. a Capias ad ſatisfaciendum directed to the Sheriff of Dorſet, by reaſon whereof the Plaintiff at D. in the County of Dorſet, was taken in Execution, the Defendant pleads to Iſſue, and it was found againſt him. And now alledged in arreſt of Judgment; Firſt, That the Action is not well brought in Middleſex; For the Tort was in the County of Dorſet, by the taking him there in Execution, But Walmſly, Beamond and Owen held; That the bringing of the Action in Middleſex was well enough; For the ground of all the Tort is the ſuing out of the Capias, which was here in Middleſex. But Walmſly held; that the Action lay not, unleſs it be alledged, that it was purchaſed in an undue manner by fraud between the Defendant and others, and without notice of the Court: For, if it were granted by the Court, he is not puniſhable; but Beamond, and Owen held, that the Action well lay: becauſe it is alledged, That he, maliciouſly intending to charge him, had purſued this Writ, &c. Anderſon abſente. Adjournatur.

Poſt. 844. Co. 7. 1. b.

Wythers *verſus* Rooks and Smith.

(17) REplevin. The Parties were at Iſſue: Rooks afterwards died. And it was ſhewn to the Court, and moved, Whether the whole Writ ſhould abate, or not? and the opinion of all the Court was, That it ſhould not abate, but ſtand good for

Ante. 145.

ſtand good for the other. And Walmſly ſaid, he had known it to have been twice ſo adjudged in his time. Wherefore, &c. Vide Dyer 175. a.

Pilkinton *verſus* Dalton.

(19) DEbt; upon a ſpecial verdict the Caſe was. A Parſon made a Leaſe for years, rendring Rent at Michaelmas, or within a moneth after; the Leſſee Enters, the Leſſor dies within ten days after Michaelmas, Whether the Executor hath any Remedy for this Rent? was the Queſtion, and Ruled, That he had not: For the Rent was not due in the Teſtators time, nor until the end of the moneth. And, in ſuch Caſe it hath been adjudged that ſuch Rent belongs to the Heir, where it is reſerved by a Lay-Perſon, and he dies after Michaelmas, and before the moneth ended. Wherefore it was here adjudged accordingly. Vide 10 Co. 129. Ant. 565. 2 Cr. 310. Co. 10. 128. b.

Ordwey *verſus* Godfrey. Paſch. 39 Eliz. rot. 1433.

(20) SCire facias againſt an Adminiſtration to have execution of a Judgment againſt the Inteſtate. The Defendant pleaded, Quod nulla habet bona, quæ fuerunt Inteſtati, tempore mortis ſuæ, in manibus ſuis adminiſtranda, nec habuit die Impetrationis Brevis, nec unquam poſtea And it was thereupon Demurred, and held by all the Court, that it was not any Plea: for a Judgment cannot be anſwered without another Judgment; And it may be ſhe had Adminiſtred all the goods in paying Debts upon ſpecialties, which is not any Adminiſtration to Barr the Plaintiff. Or as ſome ſaid, It may be ſhe had paid Debts upon a Statute, or Recogniſance which are not allowable againſt a Judgment. But Anderſon denied it; For there is not any Priority of Debt upon Record, unleſs in Caſe of the Queens Debts, which is firſt to be paid. And here the Defendant ought to have pleaded Specially, how ſhe had Adminiſtred. Wherefore it was Adjudged for the Plaintiff. Co. 5. 28. b. Poſt. 822. Poſt 822.

Wolley *verſus* Bradwell, and his Wife, Executrix of Sir Thomas Manners.

(21) THe Defendant pleaded Outlawry in the Teſtator, 29 Eliz. not Reverſed. And it was thereupon demurred. Hern for the Plaintiff moved, that it was not any Plea; becauſe (admitting it to be a Plea) it ſhould be, in regard the Teſtator, being Outlawed, could not have any Goods, but they appertained to the Queen, and then the Executors might not have any Goods to ſatisfie: but that is not ſo: for the Teſtator might have a Debt due upon a Contract, which is not forfeited; or, it might be, that the Teſtator deviſed Lands to be ſold by his Executors, which are ſold, Money is Aſſets in their hands, and in 3 H. 6. 17 & 32, It is holden to be no Plea. And of that opinion were Walmſly, and Owen. For a Perſon Outlawed may well make a Will, Poſt. 851.

Will, and have Executors. And the Executor may have Aſſets to ſatisfie, over, and beſides the Goods forfeited to the Queen; as in the Caſes before put, and in others of the ſame nature. But Beamond e contra: for the bar is good to a common intent. And theſe kind of Aſſets ſhall not be intended, unleſs they be ſhewn: Wherefore prima facie the Plea is good. Anderſon abſente, adjournatur. Afterwards, for defect in the pleading, without regard to the matter in Law, it was adjudged for the Plaintiff. 8 Ed. 4. 6. 21 Ed. 4. 5. 39 H. 6. 27.

Coniers, Sheriff of Durhams Caſe.

(22) DEbt upon an Eſcape. The Caſe was, That upon a Recognſance in Chancery, the Conuſee ſued Execution by a Capias ad ſatisfaciendum, by force whereof the Conuſor was taken, and eſcaped, and Debt brought thereupon. Savel moved, That a Capias lay not in this Caſe; and there the Sheriff is not chargeable. Wherefore, &c. And the Court held, That the Capias ad ſatisfaciendum was erroneouſly awarded: yet the party, being taken by force thereof, it is a good Execution for the Party, as long as it continues unreverſed, and the Sheriff is chargeable for the Eſcape. Wherefore it was adjudged accordingly.

Ant. 164. 3.

Ant. 165.

Jobſons Caſe.

(23) JObſon deviſed certain Land in New-Caſtle in Tail, the remainder to the next of his Kin of his Name: and, at the time of the Deviſe, the next of his Kin was his Brothers Daughter, who was then married to J. S. The Deviſor died. The Tenant in Tail died afterwards without Iſſue. Whether this Daughter ſhould have the Land was the Queſtion upon a ſpecial Verdict, and adjudged without argument, that ſhe ſhould not: For ſhe is not now of the Name of the Deviſor, but of her Husbands Name. But if ſhe had been unmarried at the time of the Deviſe and death of the Donor; although ſhe had been married at the time of the death of the Tenant in Tail without iſſue, yet ſhe ſhould have had the Land. Wherefore it was adjudged accordingly.

Ante 532.

Ante. 532.

Anonymus.

(24) A Dedimus poteſtatem was awarded to take the Conuſance of a Fine of four perſons. The Commiſſioners return the Conuſance of three only, It was moved to the Court, what ſhould be done to make this to be a Fine againſt thoſe three. And two of the Curſitors were called into Court, and oppoſed, whether the Name of the fourth might not be razed out of the Dedimus poteſtatem, and make the Writ of Covenant to accord therewith: and it was anſwered, that it might be done very well, and that it had been ſo done about thirty years ſince; And it was ſhewn to the Court, That a Dedimus Poteſtatem was awarded to take the Conuſance of a Fine from Baron and Feme; And the

ye Conuſance of the Baron onely was returned, and the Feme would ot acknowledge it. And the now Lord Keeper, upon this Matter ewn unto him, Ordered, That a new Dedimus poteſtatem ſhould e awarded, to take the Conuſance of the Baron only: and, That ſhould by of the ſame date as the firſt was; and, that the eturn of the Commiſſioners ſhould be annexed thereto, Anderſon; o it may be done here, or otherwiſe, If the Fine be levied be- wixt the Plaintiff and the three others only, it ſhall be good ithout Queſtion; for there is not any prejudice to the fourth. y the Writ of Dedimus poteſtatem might be amended, and the Writ of Covenant made to accord with it. And any of thoſe ree ways would be well enough. And there is no doubt, if Dedimus poteſtatem be awarded to take the Conuſancc of a Fine of ree Perſons, but that the Commiſſioners may take the Conuſance f the Fine of one of them at on time, and of another at another me: for it may be, they cannot come to one place, at the ſame me; and when the Conuſance of one is duly taken, it is againſt eaſon, that the refuſal of another ſhould impeach it. Quod alii ıſticiarii conceſſerunt.

Termino Michaelis,
Triceſimo nono, & Quadrageſimo
ELIZABETHÆ,
in Banco Reginæ.

Blinco *verſus* Barksdale, Vicar of Marſton.

Paſch. 39 Eliz. rot. 258.

(1) Mo. 910. 2. Rol. 335. Ant. 479.

PRohibiton: Upon Demurrer the Caſe was ſuch. A Parſonage was appropriated in the time of King Hen. 3. to a Prior, and at the ſame time a Vicarage was endowed by theſe Words; Salva Vicaria, quæ conſiſtit in Alteragio, & in Minutis Decimis totius Parochiæ prædictæ ad Eccleſiam prædictam ſpectante: Et utlerius, ſi contigerit ipſos Monachos in propriis uſibus Inſtauramenta habere infra Parochiam prædictam; Quod tunc ipſi a præſtatione Decimarum omnino immunes eſſent. At the time of which Appropriation, There were ſix Yard-Lands of the Parſonages Glebe within the ſame Pariſh; which Parſonage came by the Statute of 31 H. 8. at the Diſſolution (being then in the Prior's hands diſcharged de minutis Decimis) to the ſaid King in the ſame manner: And the King granted thoſe ſix Yard Lands to the Plaintiffs Anceſtor in Fee, from whom it deſcended to the Plaintiff. And for the ſmall Tythes of thoſe ſix Yard-Lands the Vicar ſues, and the Plaintiff brought the Prohibition containing all this Matter. And it was thereupon demurred. And, on the Plaintiffs part, it was argued, That by this Endowment of the Vicarage no Tythes ſhall be paid unto him of the Glebe of the Parſonage, quamvis Dotatio ſit de minutis Decimis totius Parochiæ; and this Land is parcel of the Pariſh: For, at the time of the Endowment, this Land was not Tythable, and the very Point was adjudged in this Court 32 Eliz. betwixt Yong and Core; That no Tythes ſhould be paid for Glebe Land. Coke, Attorney General e contra: For the Endowment is de minutis Decimis totius Parochiæ; and this Land is within the Pariſh, and therefore Tythes ſhall be paid thereof. But, as long as it continues in the Parſons hands, no Tythes ſhall be paid thereof; Becauſe the Levite ought not to pay Tythes to another Levite: But, when the Glebe Land is conveyed into the hands of a Lay-man, as here it is, It ſhall be otherwiſe; And therefore, if a Parſon had Let his Glebe-Land, the Leſſor ſhould have the Great Tythes from his Leſſee, and the Vicar ſhould have the ſmall Tithes. And therefore it was ruled of late in the Exchequer, in one

2 Rol. 335.

Ant. 479.

Ant. 512.

Greſleys

Griesleys Caſe, where certain Glebe Land upon the Endowment was allotted to the Vicar, and all the ſmall Tythes within the Pariſh; That he ſhould not now pay Tythes of that Land: But, if he had Leſſed it over, his Leſſee ſhould have paid Groſs Tythes to the Parſon, and ſmall Tythes to the Vicar his Leſſor: So here the Parſon himſelf ſhould be diſcharged; But in regard the Plaintiff hath not the Parſonage, but the Land only, he ſhall pay Tythes. But all the Juſtices held clearly, that Tythes ſhall not be paid in this Caſe: For the Vicar cannot by this Endowment demand ſmall Tythes of the Glebe Land of the Parſonage; But he ſhall have the ſmall Tythes from all the Pariſh, where they were due at the time of the Endowment; But that was not of the Parſons Glebe Land: Ergo, &c. But an Endowment by expreſs Words of Minutæ Decimæ of the Glebe Land of the Parſonage might well have been, and then the Parſon himſelf ſhould have paid them to the Vicar. And Popham ſaid, This Clauſe Et ſi ulterius contigerit, &c. was put into the Endowment for the benefit of the Priory, to diſcharge them from the payment of Tythes for any Land, which they ſhould have by purchaſe, as long as they held it in their own hands. And they all held, as it was diſcharged from the payment of Tythes in the hands of the Priory at the time of the Diſſolution; So the Plaintiff now, having but ſome part of Land by Letters Patents from the King, ſhall be diſcharged by the Statutes of 31 H. 8. and 32 H. 8 from the Payment of Tythes for ever after againſt the Grantee of the Parſonage, and all others, in regard it was diſcharged at the time of the diſſolution. And Popham ſaid, The difference would be, Where the Diſcharge were by reaſon of the Perſons, who were to pay Tythes, as the Order of Ciſtercians, &c. Then then Patentee ſhould pay Tythes: But if the Land were diſcharged from the Payment of Tythes by reaſon of an Unity, It ſhall then be diſcharged by the Statute in the Hands of the Patentee; for that Priviledg runs with the Poſſeſſion. Wherefore it was adjudged for the Plaintiff.

Ante. 479.

Moor. 910.

Ant. 475.

Dier. 277. b.

Moor. 913.

Archers Caſe.

ACcompt *verſus* Archer, as Baliff of his Manor of D. The Defendant gaged his Law, and had day to make it, and at the day, he being ready to make this Law, it was ruled, That Ley-gager lay not in this Caſe; for it is a matter Triable per Pais, whereof they may take Conuſance. Whereupon a Repleader was Awarded. (2) Moor 468. Poſt 790. Co. Lit. 295. a.

Hoe *verſus* Felix Marſhall, Hill. 36 Eliz. rot.

SCire facias Upon a Bail in this Court by I. S. which was; That, if I. S. were condemned here at the Plaintiffs ſute, that he ſhould Gould. 166. Moor 469. Co. 5. 70. b. Ante 131.

ſhould pay the Condemnation, or render his Body to Priſon: Otherwiſe, the Defendant would pay it for him; Et conceſſit, quod tunc levetur de Terris, & Tenementis Bonis, & Catallis of the Defendant. And in Barr hereof the Deft. pleaded a Releaſe of all Debts, Duties, Actions and Demands made after the Reconuſance, and before the Judgment. And thereupon the Plaintiff demurred. Athoe argued for the Plaintiff, and Jermy for the Defendant. And Gawdy, and Popham held it not to be any Bar; For it is neither a Debt, Duty or Demand at the time of the Releaſe made, nor cauſe of Action, nor any thing before the Contingent performed: For he is not bound in any Sum certein; But it is a Poſſibility to be a Reconuſance after Judgment; and Default made, and then it becoms certain by the Judgment. And therefore a Releaſe before that time ſhall not diſcharge it. And Gawdy ſaid if a Man Covenants to do a thing before Mich. and before Mich. the Covenantee releaſeth to the Covenantor all Actions; This is not any releaſe of the Covenant: But if it be afterwards broken, he may maintain his Action; as Hall, and Kirbies Caſe in Dyer is. But, if he Releaſe the Covenant it ſelf, it is otherwiſe: as 35 H. 8. Reads Caſe is. Popham; There is a difference, where it is a Duty Defeaſable by Act ſubſequent, and where it grows by an Act ſubſequent. In the firſt Caſe it may be releaſed; For it was in Eſſe before the Act done: But in the other Caſe it is not in Eſſe, and therefore cannot be releaſed. If one Coventans to infeoff me before Mich. a Releaſe of all Actions before Mich. is no Barr to an Action of Covenant brought after Mich. For there was not any cauſe of Action at the time of the Releaſe made: But if an Obligation be made for the performance of that Covenant, a Releaſe of all Actions is a diſcharge of that Obligation: For it was a Duty Defeaſable: If I alſo grant unto you; That, if B. do ſuch an Act, I will pay unto you 20 l. if you releaſe unto me all Actions; and afterwards B. performs the Act, The 20. is due, and an Action lies for it: For it was not in Eſſe at the time of the Releaſe. And in 15 Eliz. it was adjudged, where a Leaſe was made to Baron and Feme for their lives, the Remainder to the ſurvivor for 20 years, it is uncertain in whom it ſhall veſt, and is not yet in Eſſe, and therefore the Baron can either Releaſe Grant, or ſurrender it: But if he ſhould make a Feoffment. that peradventure might deſtroy the Poſſibility. And in the principal Caſe, in regard it is not any Recognizance, nor any thing untill a Contingency, which was not, happend at the time of the Releaſe, it cannot therefore be releaſed by the word Demands (which is the moſt general Word for it) not being then in demand. And Popham ſaid; that the Opinion of the greater part of the Juſtices of Serjeants-Inn, where he was, was accordingly. Wherefore, &c. Fenner & Clinch e contra: For it is a Reconuſance from the time of the Bayl entred; Although it be not certain, nor ſuable, before the Judgment. But the Judgment being given, and the Defendant not rendring his body, nor paying the Debt, it is a Recognizance ab initio for ſo much Debt againſt the Baylor; And this Releaſe is a good Barr now, when a Scire facias is ſued. For Clinch ſaid, if a Baylor be ſeiſed of Land at the time of the Bayl entred, and after Aliens that Land, and afterwards Judgment is given, and default made, &c.

Co. 5. 20 1.
2 Cr. 171.

Dier. 217. b.

That

That Land, which he had Alienes, is ſubject to this Execution. And Fenner ſaid, Although this Releaſe at firſt was not a diſcharge thereof, Yet now being reduced to an Action, It is a good Barr; As in Littletons Caſe, where one hath a Judgment to recover 20l. and releaſeth to the Defendant all Actions, It is not any Diſcharge of the Execution. But, if after this Releaſe a year and day paſſeth, ſo as he be put to a Scire fac. It is then a good Barr. Wherefore, &c. And afterwards Clinch (ut audivi) mutavit opinionem, and agreed with Popham and Gawdy. Whereupon (Repugnante Fenner) Judgment was given for the Plaintiff. 5 Co. 70. b. Poſt 731.

The Earl of Lincoln *verſus* Fyſher.

Hill. 37 Eliz. rot. 1715.

(4)

DEbt for an Amercement in a Leet; and Counts, That he had a Leet within his Manor of Fokingham of all Reſiants within the Manor; And that at ſuch a Court holden there before one J. Guſtard his Steward there, the ſaid Steward ſpeaking to the Defendant, That he was a Suitor there, and telling him, That he ought to be ſworn to enquire, &c. The Defendant contemptuouſly anſwered him, In ſaying ſo thou lyeſt. And for this Contempt the Steward impoſed a Fine of 20 s. upon him, For which this Action was brought. The Defendant pleaded Nihil Debet, and found againſt him, and after Verdict it was moved by Yelverton Serjeant, That this was not any ſuch Contempt, for which there ought to be any Fine impoſed; For it is no more in effect, Then Thou ſpeakeſt untruly, which one may ſay to a Stewad without offence. But all the Court held it to be an apparent Contempt, and Abuſe unto him, being a Judge, and in his Authority; And, That he himſelf might aſſeſs a Fine for ſuch Contempt, and that for ſuch Fines aſſeſſed by a Steward Debt lies, without any Preſcription alledged to aſſeſs ſuch Fines, or to have ſuch an Action. Wherefore it was adjudged for the Plaintiff. Ow. 113. Moor 470. Co. 8. 38. b.

Cham *verſus* Matthew,

Paſch. 39 Eliz. rot. 383.

(5)

TRespaſs: Upon the Caſe, The parties pleaded to Iſſue. The Plaintiff for his Expedition of Tryal ſurmiſed, That he was ſervant to the Sheriff of Cornwal, where the Action was bought and Triable, and prayed a Ven. fac. to the Coroners; and the Defendant non dedixit; Whereupon Proceſs was Adwarded to the Coroners: And after Trial, and Verdict for the Plaintiff, Glanvile moved, That this Proceſs was miſawarded, and a Mis-tryal: For Proceſs ought not to be awarded to the Coroners; But where the callenge is principal. And here to ſay, That he was ſervant to the Sheriff is no principal Challenge; As 21 Ed. 4. 67. is; But only to the Favour. Wherefore, &c. But the Court held, Forаſmuch, as if the Sheriff had returned this Pannel, it had been a good cauſe to quaſh the Array for Favour, That the Plaintiff, to avoid that Delay, might well ſhew Moor 470. 2 Cr. 21. 547. 2 Cr. 547. Co. Lit. 156. a. Poſt. 585.

ſhew it, and have proceſs to the Coroners, and ſo much the rather, this being a Judicial Writ, and not Original; As Plow. 74. Wimbiſhes Caſe is. And the Clerks ſaid, there were many Preſidents accordingly. Wherefore it was adjudged for the Plaintiff.

Thoroughgood *verſus* Scroggs.

Mich. 38, and 39 Eliz. rot. 390.

(6) ERror of a Judgment in the Common Bench in Treſpaſs upon the Statute of 8 H. 6. of Forceable Entry. The Error Aſſigned was; Becauſe a Capias was directed to the Sheriff of Bedford, returnable Craſtino Animarum; And it was returned by one Dive, who then was not Sheriff, but one Luke. And it was held to be a manifeſt Error: But becauſe the Defendant appeared afterwards, and pleaded, it was not now material; And, that his Apparance had made it good; A ſecond Error Aſſigned was, that the Jury found damages 20 l. and 2 s. Coſts; And the Coſts were increaſed by the Court to 20 s. And the Damages, and Coſts being trebled, he had Judgment to recover 63 l. whereas the Coſts aſſeſſed by the Court ought not to be trebled, but only thoſe Coſts, which the Jury Aſſeſſed. Sed non allocatur. For all the Preſidents are otherwiſe. Wherefore Rule was given to Affirm Judgment.

Co. 10. 11. 6. b.

Pay *verſus* Brown, and Guybon.

(7) TReſpaſs upon a ſpecial Verdict, The Caſe was found to be ſuch; Nicholas Hare, being Lord of the Manno of Stow, demiſed that Land, being Copyhold Land of Inheritance, to A. upon Condition, That he ſhould pay to Brown 20 s. annually, during his Minority; and an 100 l. at his full Age. A. fails of the payment of the 20 s. and ſurrenders to the uſe of Pay, and his Heirs; The Lord admits him, and afterward Brown attains to his full Age, and the 100 l. is not paid unto him; Whereupon the Lord enters for the Condition broken, and grants it by Copy to Brown. And whether his Entry was Lawful; Or, that the acceptance had diſpenſed with the Condition? was the Queſtion. Fenner held, that he well might enter: For he, to whoſe Uſe the Surrender is made, comes in by him, who ſurrendred; and not by the Lord; For the Lord is but as an Inſtrument to convey the Land. Wherefore, &c. the Condition is not gone. But Gawdy doubted thereof; Cæteris Juſtjciariis abſentibus, Adjournatur.

ant. 553.

Ante 361.

Pollard, and his Wife *verſus* Armſhaw.

(8) ACtion for theſe Words Thou art a Whore, and J. S. hath the uſe of thy Body: The Cart is too good for thee. After Verdict, it was moved, that the Action lay not for theſe Words, and ſo held all the Court. But, if one ſaith to a Woman, which keepeth an Inn, or a Tabling-Houſe, Thou keepeſt an houſe of Bawdry

Ant. 289.

dry. It is Actionable; For thereby her Houſe is ſlandered. Wherefore it was adjudged for the Defendant.

Harriſons Caſe.

(9) ACtion for theſe words; Thou haſt forſworn thy ſelf at London, and there it appeareth upon Record. Upon Demurrer, it was ruled, That it well lay,

Hammon *verſus* Gryffith.

(10) INformation Upon a Penal Statute for the Queen, and himſelf. Before any Plea Pleaded, the Informer died. And Coke Attorney General, moved the Court, whether he might proceed upon it for the Queen. And the Court held, that he might: And if the Informer will be Non-ſuited, or Releaſe, the Queen may proſecute. And ſo it was ruled in this Court betwixt Stretton and Taylor, where the Queens Attorney would enter a Non vult proſequi; Yet the Informer might proceed for his Part. And ſo where the Queen will pardon, &c. For it is but for her own Part only. Wherefore it was ruled accordingly.

3 Inſt. 194. Co. 11. 66. a. Ante 138.

Makarell *verſus* Bachelor.

(11) DEbt upon divers Contracts: All for Apparel; ſome for Fuſtian Sutes; ſome for Velvet and Sattin Sutes, laced with gold Lace, amounting to 44 l. whereof he was ſatisfied 4 l. The Defendant pleaded Infancy. The Plaintiff replied, That he was one of the Gentlemen of the Chamber to the Earl of Eſſex, and ſo it was for his neceſſary Apparel. And it was thereupon demurred; and the Court held, that they were to adjudge what was neceſſary Apparel, and ſuch ſutes of Sattin, and Velvet be not neceſſary for an Infant; although he be a Gentleman, &c. It was then prayed, That he might have Judgment for thoſe, which were neceſſary Apparel. But the Court held, in regard he had acknowledged ſatisfaction for 4 l. parcel, &c. and they did not know wherefore it was payed, therefore he could not have Judgment for any part: Otherwiſe, he ſhould have Judgment for thoſe Contracts, which were allowed of, &c. Wherefore, &c.

2 Cr. 561. Ant. 129. Co. Lit. 59. b.

John Fuſſes Caſe.

(12) AN Endictment was againſt him by the name of John Fuſs of Aldrington, alias dictus John Fuſt of Aldrinton Yeoman, Quod Felonice, & Burglariter fregit domum, &c. And becauſe there wanted the Addition of Yeoman in the firſt name, which was not till after the alias dictus, it was ruled to be ill; As alſo, for that he did not ſay Noctanter, the Endictment of Burglary was not good. But Gawdy ſaid, it was good for the Felony. But for the firſt cauſe he was diſcharged. And it was ſaid, That there were divers Precidents in this Court accordingly.

Ante 198.

Palmer

Palmer *verſus* Humphrey, Hill. 39. rot. 599.

(13) EJectione firmæ. It was found by an eſpecial Verdict, That the Sheriff, upon an Elegit, Impaneld a Jury who found, that Humphrey, the Defendant, was poſſeſſed of a Leaſe for one hundred years, which began at Mich. 2. and 3. Philip, and Mary, ubi revera (as it was found, it began at Mich. 3, and 4 Philip, and Mary) cujus quidem H. Statum, Intereſſe, & Terminum in Tenementis prædictis Juratores prædicti appretiarunt at 80 l. And the Sheriff ſold it to the Leſſor of the Plaintiff for 80 l. And, whether the Sale was good, nor not? was the Queſtion. Popham ſaid, I have conſidered of the Record, and conceive, that the Sale is void; for there is a difference betwixt a Sale upon a Fieri facias, and upon an Elegit: for the Elegit is Quod per Sacramentum duodecim proborum hominum, per rationabile pretium, & extent. They Apprize the Goods & Chatteis of the Debtor, and extend his Land. And therefore, without an Inquiſition, he cannot ſell them:) which was agreed by all the Juſtices, and ſo is Dyer, fol. 100, &c. And then, if the Inqueſt find one thing, & he ſells another (as the Caſe is) it is not warranted by the Inqueſt, and therefore void: But, if the Inqueſt had found that he was poſſeſſed of ſuch Land, for term of divers years adhuc ventur. which they appriſed at ſo much, without ſhewing the certain beginning or determination thereof, it had been well enough; for they ſhall not be compelled to find a Certainty, not having means to be informed thereof. And therefore about twelve years ſince it was agreed in this Court, in Sr. George Sydenhams Caſe *verſus* Rolls, where an Inqueſt upon a Fieri fac. found, That the Defendant, againſt whom, &c. was poſſeſſed of ſuch a Term bearing Date, &c. (whereas it truth it did not bear the ſame Date) And the Sheriff ſold the ſame Term, That the Sale was not good. And then the Court directed the Sheriff, that upon a new Fieri fac. it ſhould be found, that he was poſſeſſed of a Leaſe for years generally, yet continuing, and that he ſold it &c. And it would be well enough. So here, &c. And of that opinion were the other Juſtices: but the Parties compounded the Matter. And Hanger the Leſſor gave two hundred Marks more to have Aſſurance of the Term: And ſo it was determined, 21 H. 6. 11. 18 Ed. 2. Tit. Execution, Dy. 116, & 193. 4. Co. 74.

Poſt. 735.

Button *verſus* Long.

(14) PRohibiton. And ſurmiſeth in Diſcharge of Tithes, That J. S. Prior of Brade-ſtoke was ſeiſed of the Rectory, whereto, and of the Lands, out of which the Tithes were demanded, in Fee, ſimul, & ſemel, from time, whereof, &c. and at the time of the Diſſolution; Et ratione inde, the ſaid Land is diſcharged &c. The Defendant traverſeth the Unity at the time of the Diſſolution; And thereupon the Plaintiff demurred. Fenner, & Clench (cæteris Juſticiariis abſentibus) held the Travers to be good; for, although there was an Unity of Poſſeſſion from time, whereof

Co. 2. 48. a.

whereof, &c. Yet if it were not at the time of the Diſſolution; it ſhall be charged. But if the Diſcharge had been pleaded generally by Preſcription, and not by reaſon of Unity; then the Preſcription ought to have been anſwered, and not the Unity. And in Trin. 34 Eliz. betwixt Calmady and Wyther, it was ſo ruled in the Common Bench. Whereſore it was adjourned.

Buckler *verſus* Hardy. Ante, fol. 450 Mich. 37. & 38 Eliz. rot. 1159.

(15) Ejectione firmæ. Upon a Special Verdict, The Caſe was ſuch. Andrew Buckler being tenant for life, the remainder to Chriſtopher Buckler in tail, remainder to the right Heirs of the ſaid Andrew, letts the Land to J. S. for four years, and afterwards granted the Reverſion to one Row, Habendum from Midſomer next for the life of the ſaid A. B. After Midſomer J. S. the Leſſee, atturned to Row, and after that granted all his term unto him, who entred, and granted the ſaid Land to Hardy the Defendant, to have, and to hold to him, for his life, but no Livery was made. Hardy entred, and after the four years expired, Hardy continued his poſſeſſion, Andrew Buckler levied a Fine unto him Sur Conuſance de droit come ceo, &c. Chriſtopher Buckler the tenant in tail, enters, for a Forfeiture, and lets it to the Plaintiff for years, upon whom the defendant re-entred. Et ſi, &c. The firſt Queſtion was, When this Reverſion was granted by A. B. to R. Habendum after Midſomer; and the attornment to that Grant is after Midſomer: whether it be a good or void Grant? And all the Juſtices agreed, That the Grant was void, being limited to begin at a day to come. For, if it ſhould be good, the Leſſor ſhould have a particular Eſtate reſerved in himſelf in the mean time; which cannot be: So, if the Attornment had been made thereto preſently, yet it had been clearly ill. And, although the attornment was not till after Midſomer, yet it cannot help the Grant, which was void at the beginning: for Quod ab initio non valet, in tractu temporis convaleſcere non pteſt. As, if a man makes a Leaſe for years, and, before the Leſſees Entry, he grants the Reverſion, and afterwards the Leſſee enters, and attourns, yet it is void: becauſe he had not at that time a Reverſion to grant. So in Trevillians Caſe, One deviſed his Land before the Statute of Wills, and afterwards the Statute was made, and the Deviſor died, yet this Will is void. But, if a man grants a Reverſion, Habendum after the death of the tenant for life, it is a good: for it is but a Limitation when he ſhall have the poſſeſſion. But, if it were Habendum after the death of a Stranger, it ſhould be otherwiſe. And Popham ſaid, It had been ruled, where a Feoffment was made Habendum after Michaelmas, and the Attorney made Livery after Michaelmas, yet it was void. Secondly, admitting the Reverſion paſſed not to Row, when he afterwards purchaſed the Term, and granted the Land to Hardy for his life (no Livery being made) Whether the Land paſſed by that Grant; And Gawdy, Fenner, and Popham held, That the term paſſed; for 10 Eliz. Dyer 277. is, where a Termor for years deviſed the land to one for his life, that the term paſſed: So here. But Popham ſaid, If there had been in the Deed a Letter of Attorney to make Livery, then peradventure it would have been otherwiſe: for thereby the purpoſe of the Grantor had appeared to paſs a Free

Moor. 423 Ante 255.

Moor 424.

Ant. 450.

2 Cr. 563. Poſt. 874.

hold, and not the term only. But here is no more than the Grant of his term during his life. Thirdly, Admitting he had the term, or not, by this Grant: Whether, after the term expired, he continuing the poſſeſſion, ſhall be ſaid to be tenant at ſufferance? and, if he hath not the term, whether by his entry he be a diſſeiſor? and then, when A. B. levied a fine unto him Sur Conuſance de droit come ceo, &c. It is a forfeiture every way, for the Conuſor and the Conuſee are both eſtopped to ſay, that he had not any eſtate before the fine, by the gift of the Conuſor. Where-
Moor 424. fore it is a manifeſt forfeiture. And ſo the entry of Chr. B. tenant in tail is Congeable. Wherefore its was adjudged for the Plaintiff. Mich. 37 & 38 Placito 18. C. B. 2 Co. 55.

Gregory *verſus* Booker.

(16) TReſpaſs. The parties being at Iſſue, the Plaintiff for his expedition ſurmiſed, that he was ſervant to the Sheriff; which
Ant. 581. being confeſſed by the Defendant, the proceſs was awarded to the
Ant. 574. Coroners: And, after Verdict, it was moved in arreſt of Judg-
Ant. 581. ment, that the Tales de Circumſtantibus was awarded, and returned
Poſt. 894. by the Sheriff, which was held by the whole Court to be good
Co. Lit. 158. a. Cauſe for ſtaying the Judgment; for it is as a miſ-trial, not aided by any of the Statutes. For the proceſs being once awarded to the Coroners, the Sheriff afterwards is not the Officer, to return the Jury, no more, then any other man; and proceſs ought always to be returned by him who is an Officer by Law to return it: otherwiſe it is meerly void. But, afterwards, upon view of the Record, it appeared, that the Tales was returned by the Coroners, and their Names annexed thereto: Wherefore it was without further Queſtion. But the Court ſaid, If their Names had not been annexed to the Tales de Circumſtantibus, yet it had been well enough; for they be annexed to the firſt Pannel: And it ſhall be intended, that the right Officer returned it. And the uſual courſe is, That to ſuch Tales there is not any Officers Name ſubſcribed, and yet is good enough; for it is not within the Statute of York; which appoints, That the Name of the Sheriff ſhould be ſubſcribed. But it was moved, That the Record of the Poſtea is, That the Tales were returned by the Sheriff. But the Court held, That it was amendable. And it was done accordingly, and the Plaintiff had Judgment.

Pawlet *verſus* Chriſtmas.

(17) ERror of a Judgment in the Common Bench, The Error aſſigned was; becauſe there were but twenty three of the Jurors Names returned by the Sheriff upon the Panel, where there ought to have been twenty four. And the Trial was by ten of them, and a Tales de Circumſtantibus: But, becauſe this Default was in the Return of the Names of the Jurors upon the Writ of
Ante. 194. Habeas Corpora, and not upon the Ven. fac. in which Writ were twenty four Names, It was ordered to be amended. Coke; It
Co. 5. 37. a. hath been adjudged here, That when upon a Ven. fac. twenty three were only returned, and a Trial had by twelve of them, It was

was well enough. Popham; That is true, where the Trial is by twelve of them returned: But, if in such Case a Tales be awarded, and the Trial had been by part of the principal Panel, and by part of the Tales, it is otherwise. But in the principal Case it was amended, and the Judgment affirmed.

Doctor Herbert *versus* Munday.

EJectione firmæ. Upon Evidence a Question was moved. A Parsonage within the Dioceſs of Winton was annexed to a Prebendary in Sarum; the Prebend in 1 Ed. 6. letts it for ninety nine years, which was confirmed by the Biſhop, Dean, and Chater of Sarum: Whether this were good without the Confirmation of the Biſhop of Winton, in whoſe Dioceſs, &c. Popham; This was in my Time a great Queſtion: but it hath been in two or three Cases ſince reſolved, that it is well enough. Whereto all the other Juſtices agreed. (18)

Somerton *verſus* Doctor Cotton, Parſon of Finchley.

PRohibition for Tithes of Wood, and ſurmiſeth, That within the Pariſh is ſuch a Cuſtome, That all the Parſons of the ſaid Church, time whereof, &c. Habuerunt, & gaviſi fuerunt ſuch Land parcel of the Mannor of Finchley, in recompence of all tythe of wood within the ſaid pariſh. And it was hereupon demurred. Harris Serjeant, moved, that this preſcription was not good, for the Lands now in queſtion, whereof tythes are demanded, were not averred to be parcel of the Mannor; and then the Land, parcel of the Mannor, cannot be ſaid to be a recompence for all the other Lands within the Pariſh, wherewith the Lord of the Mannor hath nothing to do. Popham, It may be, that, at the beginning, all the Land within the Pariſh was parcel of the Mannor, and that then this allowance of the profits of this Land was allotted in diſcharge of tythes of all the wood within the ſame Pariſh; and, that, at the firſt, it was all the Land of the Allotter. Wherefore it was adjudged for the Plaintiff, by the aſſent of all the Juſtices. Hill. 40. Placito 5. (19) Poſt 736. 599.

Becknam *verſus* Rye.

TReſpaſs. After Verdict it was alledged in arreſt of Judgment; that neither upon the Ven. fac. or Diſtringas, there was not made any Return. And it was held by the whole Court to be good Cauſe for ſtaying the Judgment; and, that it is not aided by the Statutes; for they aid Miſ-returns or Inſufficient Returns: but here is not any Return, and therefore not aided. And Judgment was thereupon ſtayed. (20) Ante 310.

Penruddock *verſus* Errington.

TReſpaſs of Battery. The Defendant was bayl for A. and B. who were afterwards condemned. And the Judgment was brought into the Exchequer-Chamber by a Writ of Error, and here it was affirmed, and other new Coſts were given by the Juſtices in the Exchequer-Chamber, and the Record was remanded, (20)

manded. And now a Scire. fac. was prayed againſt the Bayl, as well for the firſt damages, and coſts upon the firſt Judgment, as for the new coſts. And Popham and Fenner doubted, Whether thoſe coſts were well aſſeſſed; for the Statute of 27 Eliz. gives them not any ſuch authority. And at the Common Law no coſts were given upon a Writ of Error, until the Statute of 3 H. 7. cap. 10. And if this ſhould extend to thoſe Writs of Error newly given, it would be requiſite to adviſe. But clearly the Bail is not chargeable with theſe coſts; for they take upon them to pay only the Condemnation of this Court, and not of any other. Wherefore a Scire. fac. was awarded accordingly, the other Juſtices being abſent, &c.

Robinſon *verſus* May.

(22) DEbt upon an Obligation conditioned to diſcharge, or ſave the Plaintiff harmleſs from an Obligation, wherein the Plaintiff, as Surety for the Defendant, was obliged to J. S. to pay 100l &c. The Defendant pleads, That the ſaid Obligation to J. S. was upon an Uſurious Contract, and pleads the Statute of Uſury, and concludes; Et ſi non Damnificatus. And hereupon the Plaintiff demurred. And it was moved, That it was not any Plea: for although the Bond be void, yet he ought to ſave him harmleſs from Suit, &c. And here he hath paid the Debt. Tanfield, The Plea is good: Otherwiſe the Statute of Uſury ſhould be defrauded; for by a compact the Uſurer would ſue the Surety, and he ſhould pay him, and have this remedy upon his Counter-Bond. But all the Court held it to be no Plea; for he ought to take heed to ſave his Surety harmleſs. Wherefore it was adjudged for the Plaintiff. *Note*, The Reaſon conceived: For that the Surety by Intendment cannot know of the corrupt Contract, to plead it in avoidance of the Bond; wherefore the Principal ought to take care thereof

Poſt. 643.
2 Cr. 33.
2 Cr 33.

Middleton *verſus* Hill.

(23) SCire fac. Upon a Judgment of 240l. The Defendant pleaded, That he borrowed of the Plaintiff 100l. and contracted to give unto him 20 l. for the loan for a year. And for the payment of that 120 l. The Plaintiff would have the Defendant to confeſs that Judgment, and pleaded the Statute of Uſury to avoid it. Godfrey moved, That it was not any Plea: for the Statute of 13 Eliz. is, All Bonds, Contracts, and Aſſurances Collateral, &c. ſhall be void. But here this Judgment cannot be termed an Aſſurance, nor be avoided by ſuch a Surmiſe: And the whole Court was of that Opinion; That Judgments ſhall not be avoided upon ſuch Surmiſes: for if there had been any ſuch matter, the Defendant might have pleaded it upon the Action brought, and not have ſuffered a Judgment, And although it may be a practice to avoid the Statute, yet it ſhall rather be tolerated, then to avoid Judgments upon ſuch ſuggeſtions. Wherefore Judgment was commanded to be entred by Nihil dicit; becauſe the Court upon a former Motion had given him day for the amendment of his Plea, and he had not altered, nor amended it: for, as he affirmed, It was his Matter, and he could not plead otherwiſe.

Hunt

Hunt *verſus* King.

FOrmedon. The Caſe was ſuch; Tenant in tail infeoffs A. the Iſſue in tail, and afterward diſſeiſeth him, and levies a Fine, A. re-enters; and after the Proclamations paſſed, then A. infeoffs B. The Tenant in tail, who levied the Fine, died, A. dies, the Iſſue of A. brings a Formedon againſt B. Whether the Eſtate tail was bound by this Fine? was the Queſtion. Popham, and Fenner held that it was. But there was not any Argument thereof. Sed adjournatur. Poſt. Paſch. 40. pl. 16. (24) Moor 391. Poſt. 610. Co. 3. 90.

Martyn *verſus* Burlings.

ACtion for theſe Words; Is *Martyn* your Attorney? He is the fooliſheſt, and ſimpleſt Attorney towards the Law; and if he doth not overthrow your Cauſe, I will give you may Ears. He is a Fool and an Aſs. After Verdict for the Plaintiff, It was moved, That the words were not actionable, and ſo the Court conceived upon the firſt Motion: But, being upon another day moved again, they reſolved, That the Action well lay; For to ſay, That, An Attorney will overthrow his Clients Cauſe, is a great ſlander, and toucheth him in his Place. Wherefore it was adjudged for the Plaintiff. (25)

Redfern *verſus* Todd.

ACtion for theſe words, He ſhould have been hanged for a Rape, but it coſt him all the mony in his Purſe. After Verdict, it was moved That theſe words were not actionable: But the Court reſolved That the Action well lay. And it was adjudged for the Plaintiff. (26)

Odiham *verſus* Smith. Mich. 35 & 36 Eliz. Rot. 89.

ERror of a Judgment in the Common Bench. Trin. 34 Eliz. Rot. 124. in Treſpaſs of his Cloſe breaking apud Wytlſham, & an Ox there taking. The Defendant juſtifies for Dammage Feſant in Black Acre. The Plaintiff made a new Aſſign of the Treſpaſs in Wh. Acre. The Defendant juſtifies there, as Servant to Belknap Rudſtone: for that the Plaintiff held of him the place, where, &c. by Heriot Service (inter alia Servitia) as of his Manor of Paulter; and that he ſeiſed the ſaid Ox there for an Heriot. Whereupon the Plaintiff demurred, and had Judgment to recover there; becauſe the Lord could not ſeize an Heriot Service, but he ought only to diſtrain for it. And Error being now brought, It was aſſigned in the very point of the Judgment. Foſter argued for the Defendant in the Writ of Error, that there were two Cauſes of the Judgment. The one upon the point in Law, That an Heriot Service is not ſeiſable, becauſe it is a Service, which lies in Render and not in Prender; And all the Pleading thereof is; That he is ſeiſed thereof by the hands of his Tenant, which cannot be, if he himſelf ſeiſe it. The other upon the pleading. For in the Bar he juſtifies for Dammage Feſant, wherein he claims not any Property; and in the Rejoinder he juſtifies for an Heriot, wherein he claims it as his: So it is contrary, and a departure (27) 1 Rol. 781.

Where-

Wherefore, &c. But all the Juſtices ſeverally delivered their
Ante 32. Opinions, that they held, that an Heriot Service was ſeiſable, and
1 Cr. 260. therefore the Judgment was erroneous; for where the tenure is, that the Lord ſhall have beſt beaſt for an Heriot, it is in his election what he will take for the beſt, and what he conceiveth to be the beſt he may well take, although it be not ſo: and therefore the difference is betwixt a tenure of yielding annually an Ox, and of rendring annually his beſt beaſt; for in the firſt Caſe, it is in the tenants election what he will render: but, in the laſt, the Lord hath election what he will prender, And therefore Popham ſaid; If, at this day, one makes a gift in tail, or a Leaſe, rendring annually his beſt beaſt, the Leſſor, or Donor, may ſeiſe what he thinks to be the beſt beaſt; As, if I give to one my beſt
Co. Lit. 145.a. Horſe in my Stable, he well may take him without my delivery. So by this Reſervation it is quaſi an agreement of the tenant, and a gift by him, that the Lord at his election may take his beſt beaſt; and otherwiſe the Lord ſhould not have it: for, if the tenant will not render it, but the Lord be put to diſtrain, he can never have that which is reſerved, but that only, which is received. And Popham and Gawdy ſaid, When the Lord ſeiſeth it, it is quaſi a Seiſin by the hands of his tenant: for it was by his agreement at the creation, and as a gift by him. As to the Objection againſt the pleading, they held it to be well enough; for by the Novel Aſſignment the bar is out of doores, and as if it never had been pleaded; as 27 H. 8. 7. is. And it may be, that he took an Ox in Bl. acre, being his own land, for Damage feſant, and another Ox in Wh. acre, as for the Heriot. So they may well ſtand together. And if the Caſe be ſo, he could not otherwiſe have pleaded it. Wherefore, they all reſolved for the Plaintiff in the Writ of Error. But they ſaid, they would adviſe and confer with the Juſtices of the Common Bench, to know their reaſons. But it was ſaid at the Bar, that the Judgment in the Common Bench was, when only three Juſtices were there, and one of thoſe three was againſt that Judgment, Et adjournatur, and
1 Rol. 781. afterwards in Mich. 40 and 41 Eliz. the Judgment was reverſed for the matter in Law.

Goodale *verſus* Butler. Paſch. 38 Eliz. rot. 118.

(28) INformation upon the Statute 21 H. 8. of Non-reſidency. The De-
Co. 6. 23. b. fendant pleaded Not-guilty; and a Special Verdict was found, That the Defendant was Parſon of Downham in Norfolk, and had a Parſonage-Houſe, and Glebe-Land within the Pariſh; but he inhabited not therein, but in a Copy-hold Tenement, which he had in right of his Wife in the ſaid Pariſh; and he always ſerved the Cure: And Whether this were a Non-reſidency within the Statute? was the Queſtion. And, after argument be Tanfield for the Plaintiff, and Athoe, for the Defendant, the Juſtices delivered their Reaſons ſeverally. And Gawdy and Popham held, That it was not a Reſidence according to the Statute, which was made for three Cauſes. Firſt, That the Cure ſhould be ſerved. Secondly, That the poor ſhould be fed. Thirdly, That the Parſonage-Houſe ſhould be upholden and maintained; which laſt cannot be, If the Incumbent doth not inhabit it. And if the Statute ſhould be otherwiſe conſtrued many inconveniences would enſue.

For

or Parſons would purchaſe other Houſes within their Pariſhes, nd be always reſident upon them, and ſuffer their Parſonage-ouſes to decay, and Sterilitate their Glebe-Land, and Meliorate eir own poſſeſſions in prejudice of their Succeſſors. And as awdy ſaid, The Statute which ſaith, That he ſhall be reſident pon the Benefice, ſhall be intended, where there can be a Reſi-ency: for he cannot be reſident upon the Tithes, nor upon he Glebe-Land, where there is not any Houſe: But only his ha-itation is within his Parſonage-Houſe. Clinch, and Fenner e con-a. For they held, that, if he be reſident within his Benefice, which extends to the whole Pariſh) it is ſufficient: but if he be eſident upon any other Houſe adjoyning to his Pariſh, but not ithin his Pariſh, although he every Sunday and Holyday ſerve he Cure; yet it is not ſufficient; as it was adjudged here in Brown nd Hudſons Caſe, 33 Eliz. And they ſaid, That the intent of the tatute for his Reſidency is, that he ſhould Paſcere gregem cibo, xemplo, & verbo, all which he may do, when he is reſident in any art of the Pariſh, And the Statute is in the Disjunctive, viz. r, at, or upon his Benefice. Et in disjunctivis ſufficit unum eſſe verum. And it s clear, that all the Pariſh is his Benefice; ſo he is reſident in is Benefice. But peradventure he is not reſident upon his Be-efice, unleſs he inhabits within the Parſonage Houſe (But Note, he Statute is in the Copulative, In, at, & upon his Benefice) The tatute alſo cannot intend Reſidency upon the Parſonage-ouſe: for there be divers Parſonages, which have not any Par-nage-Houſe. But it may be alienedby the former Parſon, ith the conſent of his Patron and Ordinary, or lett out, ſo as is Succeſſor cannot have it; and therefore his Reſidency may e in any other Houſe within the Pariſh. Wherefore, &c. And enner ſaid, that the Lord Anderſon was clear of his Opinion; That t is a ſufficient Reſidence, if he inhabits within any part of the Pariſh. Et adjournatur. 6 Co. 21.

Co. 6. 21. b.

Co. 6. 21. b.

Heddy *verſus* Wheel-houſe. Ante Paſch. 39 Pl. 15.

THe Caſe was now moved again, and, after Argument at the Barr, Popham, Gawdy, and Fenner delivered their Opinion; That by the ſaid Grant of a Fair cum omnibus libertatibus, &c. Toll s not due, nor demandable; for Toll is not incident to a Fayr, s common experience proves, for the greateſt part of the Fayrs n England have not any Toll. But by expreſs words in the Kings Grant, the Grantee may have Toll, ſo he may have Poizage, or ontage. For the Subjects thereby have a greater benefit for their nony they pay for it, viz. in the one caſe true Weights, and in he other caſe of paſſage over Water, which otherwiſe was not well Fordable. But Popham ſaid, the Caſe may be, That by the Kings Grant, with ſuch words as here, Toll may paſs: As where ne hath a Fayr by Grant or Preſcription, whereto Toll hath u-ually been paid, which afterwards is forfeited to the King nd the King then grants it cum omnibus libertatibus ad hu-uſmodi Feriam ſpectantibus: By this Grant, the Grantee ſhall ave Toll; for Toll was formerly belonging thereto. And herefore the Kings Grant did not grant a new Fayr, but he ancient one; for it was not extinct by the Kings poſſeſſion: nd therefore there is a difference, That ſuch Liberties, which

(29)
Ant 558. 9.
2 Inſt. 220.
Moor. 474.

Co. 9. 25. b. which a common perſon hath by Preſcription, or Grant, and which, if the common perſon had not, The King himſelf ſhould have throughout England, as Wayf, Eſtray, Wreck, &c. There, if the common perſon hath them by Grant, or Preſcription, and they come to the King by Forfeiture, or otherwiſe: They are extinguiſhed in the Crown, and the Queen wall have ſuch Liberties by her Prerogative, and they cannot afterwars be granted, but by a new Creation. But ſuch Liberties, which a common perſon hath by Grant, or Preſcripcion, which the King (if ſuch Preſcription had not been) could not have by his Prerogative, as Warren, Park, Fayr, Market with Toll, &c. if theſe come to the Crown, &c. they remain in eſſe, and are not extinct: for, if the King ſhould not have them by this means, they would be loſt. Wherefore, abſente Clinch, it was adjudged for the Plaintiff.

The Earl of Shrewsbury *verſus* Sr. Walter Lewſon.

(30) Scire fac. in Chancery, as Adminiſtrator to George E. of Shrewsb. upon a Reconuſance of 4000 l. conditioned for the performance of Covenants. The parties being at iſſue, it was ſent hither to be tried, and it was found for the plaintiff; and now moved in arreſt of judgment, becauſe it is not mentioned in the Writ, Ant. 551. Quod profert Literas Adminiſtrationis, &c. But, becauſe it was in a Writ founded upon the Record, and the courſe is not to mention it in Writs, and ſo be all the preſidents in the Chancery, It was therefore ruled to be well enough. Vid. 37 H. 6.

Grondy *verſus* Iſcharn. Hill. 38 Eliz. rot. 828.

(31) Ant. 50. Error to reverſe an Outlawry, The Error aſſigned was, becauſe the Capias was eſte Edmundo Anderſon; ſo as T. was wanting: for the Teſte is the Warrant of the Writ, and ſo it is of Judicial Writs, and therefore the Outlawry was reverſed.

Waterhouſe *verſus* Woodſtreet, in Camera Scaccarii.

(32) Error in the Exchequer-Chamber of a Judgment in the Queens Bench for 100 l. againſt an Executor, who pleaded Riens enter Main, and found, that he had 50 l. and Judgment Quod recuperet Debitum prædictum; Et quod habeat executionem de bonis Teſtatoris, &c. The Error aſſigned is, becauſe the Judgment was for the Entire, where it ought to have been but for the 50 l. Co 8. 134. a. 1 Cr. 373. But it was ſaid, That the Judgment ſhould be for the Entire; Poſt 887. and, that he might have Scire fac. upon the Judgment, when more aſſets came to the Executors, and ſo is 46 Ed. 3. 9. and ſo are the preſidents there, viz. Paſch. 31 Eliz. rot. 131. inter Haydon & Melford, Hill. 36 Eliz. rot. 388. and Trin. 38 Eliz. rot. 269. But the Juſtices demanded more ancient preſidents, and would adviſe.

Termino

Termino Mich. 39 & 40 Eliz. Reg in Communi Banco.

Gorges *verſus* Stanfield.

WAſt in cutting down three hundred Oakes. The Defendant, as to two hundred, pleaded, That the Houſes Lett unto him were ruinous, &c. and he cut down to repair thoſe Houſes: And, as to the Reſidue, he cut them down, and keeps them to Imploy about Reparations, tempore opportuno, &c. upon this Plea the Plaintiff demurred in Law. And by all the Court, ſans Argument, It was held to be no Plea: For, if it ſhould, every Farmer might cut down all the Trees growing upon the Land, when there were not any neceſſity of Reparations. Wherefore it was adjudged for the Plaintiff. (33)

Leuknor *verſus* Huntly.

DEbt upon an Obligation. The Defendant pleaded, That one Jaqnes brought Debt in London againſt the Plaintiff, and according to the Cuſtom there, attached this Debt now demanded, in the Defendants hands, and pleads the Recovery, and Judgment there, &c. The Plaintiff replies that before the Attachment, the ſaid Jaques brought debt in the Queens Bench againſt the now Plaintiff for the ſame cauſe; and, hanging that ſute, this Attachment was made, &c. And it was thereupon demurred. And Glanvile, for the Defendant moved, that the Plaintiff ſhould be barred: for although one cannot attach a Debt in London; for that a ſute is here depending in the Queens Bench (as it formerly hath been ruled in this Court) yet one who hath conceived an Action here, may affirm a Plaint in London for the ſame debt, and may make an Attachment of the Parties debt according to the Cuſtom. For there the debt in queſtion is not touched by the Attachment. And the Plaintiff might now have pleaded this Attachment in Bar, for ſo much of his debt in the Action brought in the Queens Bench. And the opinion of the whole Court was, that the plea in Bar was good: And Judgment was commanded to be entred accordingly. Poſtea, Mich. 40 & 41. Placito 36. (34) Poſt. 712. 3. Ante. 157.

Rotheram *verſus* Green.

TReſpaſs. The Defendant Pleads, That W. Green, his Father, was ſeiſed in Fee of a Tenement in L. and that he, and all his Anceſtors, and all thoſe, &c. in the ſaid Tenment, from time, whereof, &c. have uſed to have common in the place, where, &c. for all their Beaſts levant and couchant upon the ſaid Tenement; and that it deſcended unto him, &c. And Iſſue was taken upon the Preſcription, and a ſpecial Verdict found, viz. That E. G. Grandfather to the Defendant, was ſeiſed of the Tenement; And that he and all his Anceſtors, and all whoſe, &c. from time, whereof, &c. had uſed Common, &c. (according to the Preſcription) And he, being ſo ſeiſed, releaſed to Sir (35)

Thomas Rotheram, the Plaintiffs Anceſtor, all his Right, and his Common in part of the Land, where he had the Common, and died, and the Tenement deſcended to W. G. and from him to the Defendant. Et ſi, &c. Drew prayed Judgment for the Plaintiff. For, by Releaſe of the Common in part of the Land, the whole Common is gone, and extinct; for otherwiſe the Tenant of the reſidue of the Land ſhould be charged with all the Common, which is not reaſonable. And thereupon it is, That if a Lord releaſeth his Signiory in one Acre, All is gone: As 21 Ed. 3. Scire fac. 112. is. Spurling e contra; Becauſe the Common is appurtenant, and it is for the Manurance of the Land, and ſtands with common Right. Anderſon; This is not a Common of common Right; for it is for Swine and Sheep, and it is not like to 17 Eliz. Dyer, where the Lord improved part of the Common, leaving ſufficient to the Commoner, and infeoffed a Commoner of that part improved: For there the Common is not extinct; becauſe the Land improved was diſcharged of Common before the Feoffment. But this is like to Ramptons Caſe; which was adjudged in this Court; Where one having Common in a great Field, wherein many men had Land, he purchaſed on Acre from one of them, it was adjudged, That all this Common was extinct, &c. So here, The Common alſo is intire through the whole
Co. 4. 38. a. Land: Wherefore a releaſe in part ſhall diſcharge the whole. The Preſcription alſo is general, to have Common in all the place, where, &c. And the Jury have found a Releaſe in part of the Land, and therefore the Preſcription is found againſt the Defendant. Beamond and Owen agreed with him in both points: But Walmſley held, that the Common was not gone for the Reſidue; becauſe this Releaſe went in benefit of the Terr-tenant, and it was as an Improvement by him: But, as touching the Preſcription, he agreed, that it was found againſt the Defendant, for the reaſon abovesaid. Wherefore they all agreed againſt the Defendant. And it was adjudged accordingly.

Tiſdale *verſus* Bedington.

(36) ACtion upon the Statute of Maintenance, For maintaining a
1 R. 2. c. 4. Sute in the Spiritual Court. Warberton moved, That this Action lay not: For the Statute of 1 R. 2. cap. 4. whereupon this Action is founded, is to be intended only of maintaining Sutes in the Courts of Common Law: And upon view of the Statute the whole Court was of that Opinion, and willed him to demurr. And Drew remembred a Caſe in the Court, Paſch. 37 Eliz. between Conſtantine and Barns, whereupon it was Ruled, that no Action lay for maintaining a Sute in the Spiritual Court.

Edwards *verſus* Peel.

(37) QUid Juris clamat upon grant of a Reverſion by Fine by I. S. and the Tenant pleads, That I. S. had nothing in Reverſion at the time of the Fine levied. Glanvile moved to the Court, That the Truth of his Caſe was, That the Land was the Land of the Tenant for Life, Remainder to I. S. in Fee, who by Fine granted it by the Name of a Reverſion. Walmſley;

It

is clear then, that the Reversion passed by that Fine, and you ay shew that special matter in your Count, and that will help u. Quod fuit concessum per omnes Justiciarios.

Somerset *versus* Markham.

(38) Rohibition, To stay a Sute in the Admiralty Court. It was agreed per Curiam, That if one sued in the Spiritual Court a matter, whereof they have Jurisdiction, and therein a Plea pleaded, which is triable at the Common Law; yet if they ill allow the Plea, they shall have Jurisdiction thereof, and try Post. 666. Otherwise a Prohibition lieth. It was also held, that if one iswers to a sute in the Spiritual Court, and suffers Sentence Ant. 88. pass against him, he never shall have a Prohibition: And if he ings an Appeal, the Defendant in the Appeal shall not have a rohibition. And this was the principal Case here, and Ruled ordingly.

101

Wykes *versus* Tyllerd.

(39) Eplevin. The Defendant made Conusance, as Bayliff to one Co. Lit. 144. a. Rysden, for Rent reserved upon a Bargain and Sale of Land 2 Rol. 448. y Indenture enrolled. The Plaintiff thereupon Demurred. lanvile prayed Judgment for the Avowant: for he said, he knew ot any cause of Demurrer, unless it were, whether there might e a Reservation upon a Bargain and sale, which is a common ase, and held, That there may: Walmsley; But I will maintain by reason: For nothing passed by the Indenture, but the use; ow may then a Rent be reserved thereupon? Anderson It is lear, that at the Common Law such a Reservation had been void: ut now the Bargainor shall have the Rent by the Saving in the Statute of Uses, Where any are seised, to the intent that any may have Rent. And so it was holden in Danbies Case, And I have seen a judgment in the very point, That the Reservation was good; & all the Court agreed in this Case. Wherefore, without further argument at the Bar, or Bench, it was adjudged for the Avowant.

Stratfield *versus* Dover, Trin. 39 Eliz. rot. 1914.

(40) Respass. Upon Demurrer the Case was, Tenant in Tail of Co. Lit. 373. a. a Gift from the Queen is disseised. The Disseisor Levies a Moor 467. Fine with Proclamations, the five years pass; The Tenant in 1 Cr. 430. Tail dies: Whether the Issue shall be bound or not? was the Post. 612. Question. Anderson held, that the Issue should be bound: For he is 1 Cr. 430. not helped by the Statute of 34 H. 8. Although it hath been conceived, that where a Fine is levied by a Tenant in Tail, his Issue may be aided by this Statute, which the other Justices agreed unto. Walmsley; This Case is to be well advised upon; for he conceived, it was to be remedied by the equity of the Statute: Co. 8. 78. a. It would otherwise be a common Mischief, That Donee in Tail of the King would suffer a Disseisin, and the Disseisor should levy a Fine; and thereby barr the Issue. Wherefore, &c. Pasch. 40. Placito 20.

Rede *verſu* Burley,

Ante Hill. 39 Placito 25 C. B.

(41) REplevin. A Clothier put certain Wool to a Spinner to Spin, and afterwards comes with an Horſe to bring back the Yarn: And becauſe there were not any Beam, or Weights in the Spinners Houſe to weigh it, the Clothier and Spinner, by the leave of one of the Neighbours, who had a Beam & Weights in his Houſe, brought his Horſe thither, and entred therein to weigh the ſaid Yarn, and whileſt they were there, the Lord of the Houſe diſtrained that Horſe and Yarn for his Services. And whether the taking hereof by diſtreſs be lawful, or not? was the Queſtion upon Demurrer. Anderſon, Beamond and Owen held, That they be not diſtrainable: For the Trade of a Clothier is pro bono publico, who ought to be allowed all neceſſary means, and without doubt Cloth put to a Weaver to be woven, nor Yarn in an Houſe to be Spun, be not diſtrainable (Quod Walmſley agreed) And weighing is as neceſſary, as the former. Wherefore the Yarn brought thither for that purpoſe, and the Horſe, which brought it, are priviledged, and are not diſtrainable. And although (as it hath been ſaid) If the weighing had been in a publick Houſe for that purpoſe, they had not been there diſtrainable; for it is a place priviledged for theſe purpoſes, as a Farrior, or Taylors Shop; but being now brought to a private Houſe for that purpoſe, It is not ſo: He ſaid, That the cauſe of the bringing priviledgeth them; as an Horſe, which carrieth Corn to a Market, and is ſet up for a time in a private Houſe, is not diſtrainable, as Beamond ſaid; becauſe his purpoſe of bringing the Horſe was pro bono publico. Owen alſo held, that they were not diſtrainable for another reaſon; for that they alway were in the Poſſeſſion of him who brought them; As it is of an Horſe, whereupon one rides. Wherefore, &c. Walmſley e contra; becauſe it is not averred, that it was a common Beam, or place for weighing; for there is a difference between a common place, and a private Houſe. Sed Adjournatur: And afterwards it was adjudged, that the diſtreſs was not lawful.

Ante 549.

Co. Lit. 47. a.

Ant. 560.

Termino Hillarii
Quadrageſimo ELIZABETHÆ,
in Banco Reginæ

Hobs *verſus* Tedcaſtle, Hill 38 Eliz. rot. 876.

AUdita Querela. The Caſe upon Demurrer was ſuch; Tedcaſter ſued a Bill of Debt againſt Holloway in this Court, who put in Bail Hobs (the Plaintiff) & another, which is entred in this manner, That they acknowledged, that if the Defendant was condemned in that Sute, that he ſhould pay the Condemnation, or render his body to Priſon; otherwiſe they would pay the Condemnation for him. Afterwards Holloway the Defendant was condemned, & died before the Codemnation ſatisfied, or his body rendred, &c. Whereupon a Scire fac. was awarded againſt the Bill, & after two Nihils returned, Execution was awarded, and the Plaintiff taken in Execution: Whereupon he brought this Audita Querela, ſurmiſing the death of the ſaid Holloway the Defendant, And the Court demanded of Kemp their courſe in this Caſe of the time of awarding Execution againſt the Bail, who ſaid, that always after Judgment they awarded a Capias againſt the Defendant, and upon a Non eſt inventus returned, They awarded a Scire fac. againſt the Bail. But there was not any Capias awarded here againſt the Defendant. And all the Court held it to be very reaſonable, not to ſue Execution againſt the Bail, untill there was default in the Principal. And the Reconſuance of the Bail, that the Principall ſhould render himſelf, &c. is to be intended upon Proceſs awarded againſt him, &c. And here there was not any Proceſs awarded againſt him in his Life time, and therefore the Bail is diſcharged; and ſo it was adjudged for the Plaintiff.

(1)
Jones 29.
1 Rol. 336.
Poſt. 186.
Moor 432.
Stile 324.
Poſt. 733.
2 Cr. 98.
2 Cr. 47. 8.

Charter *verſus* Peeter.

FIeri Facias was awarded upon a Judgment given in this Court, by force whereof the Sheriff took the Defendants Goods in Execution; and before Sale, the Record was removed by a Writ of Error into the Exchequer-Chamber, and a Superſedeas awarded. And the Sheriff returned upon the Fieri fac. a Seiſure of the Goods, and that they remained in his Hands pro defectu Emptorum: And he alſo returned, That a Superſedeas was award-

(2)
Poſt. 602.

ed;

ed, &c. And hereupon it was prayed for the Defendant, That he might have Reſtitution of his Goods. But all the Court held, Although this Record be removed, and notwithſtanding the Superſedeas awarded, in regard it came not unto the Sheriff, until he had begun to make Execution, as appears by his return; That a Venditioni exponas ſhall be awarded to perfect it: and although the Plea-roll be removed, yet it ſhall be awarded upon the return of the Fieri fac. which remains filed in the Office. And ſo it was likewiſe done in the Caſe betwixt Sir. Miles Corbet, and Rookwood Trin. 39 Eliz. rot. 406. in this Court; although the Record was there removed by a Writ of Error. Vide primo Mariæ, Dyer 99.

Raſtal *verſus* Turner. 39 Eliz. rot. 413.

(3) EJectione firmæ: Upon a ſpecial Verdict the Caſe was: I. Cundy Tenant for Life, Reverſion in Fee of a Copyhold to William Cundy her Son; The Tenant for Life ſells it in Fee. And for aſſurance it was deviſed, That he ſhould make waſte to commit a Forfeiture, and that the Lord ſhould enter for the forfeiture, and ſhould grant it to the Vendee in fee; She committed waſte in burning an Out-houſe, which was preſented, and the Lord ſeiſed it for the waſte, and granted it to the Vendee upon condition that he ſhould rebuild the Houſe, and that he ſhould pay ſuch a ſumme to the Vendor. The Tenant for Life died, The Heir in Reverſion (being admitted) entred upon the Vendee; And whether his entry were Congeable? was the Queſtion. Gawdy held, that it was; For the colluſion betwixt the Tenant for Life, and the Vendee, to take away the Inheritance is apparent, unto which Fraud the Lord was conſenting, as is manifeſt by his Demiſe by Copy to the Vendee, upon the condition ſupra, &c. Therefore he ſhall not have advantage of this forfeiture, eſpecially againſt him in Reverſion, being a Stranger. And he conceived, that no forfeiture of a Tenant for Life ſhall by Law prejudice him in Reverſion, or Remainder; As, where Tenant for Life of an Office commits a forfeiture, it ſhall not prejudice him in Reverſion; as 39 H. 6. is. So here, although it were a forfeiture during her time, whereof the Lord might have taken advantage, yet it ſhall not prejudice or bind another. Wherefore the other Juſtices being abſent in Parliament, becauſe he conceived it to be a clear caſe, he commanded Judgment to be entred accordingly.

1 Rol. 508. 9.
Poſt. 880.
Poſt. 880.
Co. 9. 107. a.

Paramore *verſus* Pain, Mich. 39, & 40 Eliz. rot. 547.

(4) DEbt. for 40 l. The Defendant pleads, That the Plaintiff was indebted unto him in 40 l. and he therefore ſued a Plaint in London, and there this Debt in Demand was attached in his Hands. And he pleaded the foreign Attachment in certain, and the Judgment thereupon, &c. The Plaintiff replies, That he was not indebted to the Defendant in 40 l. nor in any other Sum. And it was thereupon demurred by Tanfield. For the Debt is not now Traverſable, becauſe it is recovered in London; Et non diſrationatur within the year, and day, as it might be by the Cuſtom. But Coke moved, that the Replication was good: For, whether he were indebted, or not, is very well Iſſuable;

For,

for, if he were not indebted, they in London could not attach the Plaintiffs debt by a Foreign Attachment for nothing. And so was the Opinion of the whole Court. And Fenner said, that in the Common Bench, 22 & 23 Eliz. It was so Ruled in one Brays Case. Wherefore it was here adjudged for the Plaintiff.

Pigot *versus* Hearn, Mich. 39 & 40 Eliz. rot. 299.

(5)

A Ction of Trover of certain Corn. The Matter in Law, whereupon the demurrer was grounded, was, The Lord of the Mannor of Pr. within the Parish of Ovingham in the County of Northumberland prescribed, that he and all his Ancestors, and all those, whose, &c. had used from time, whereof, &c. to pay to the Parson of O. (the now Plaintiff) and all his Predecessors 6 l. for all manner of Tythes growing within the said Parish. And that by reason thereof, He, and all they, whose, &c. Lords of the said Mannor had used from time, whereof, &c. to have Deciman Garbam, sive Decimum cumulum Garbarum, seu granorum of all his Tenants within the said Mannor. And whether these were good Prescriptions, or not, was the Question. Popham, Gawdy and Fenner held, That they were good, and as to the first they conceived, That a Modus Decimandi by the Lord for himself, & all the Tenants of his Mannor, to Bar the Parson from demanding Tythes in Specie, is good: for it might have a lawful beginning, viz. That before it was a Mannor, all the Lands were in the Lords hands, and 6 l. was paid for the Tythes thereof. Then, when he conveys parcel thereof to others, it shall be discharged, as it was in the Lords hand; As in the Case of Doctor Cotton, Mich. 39 & 40. Placito 19. And as to the second Prescription, that it was good to have the tenth Shock, &c. For he hath it as a Profit apprender, as Parcel, or a thing appurtenant to his Mannor, and not as Tythes; for a Layman cannot have Tythes by Prescription, because he is not capable of them, in regard they be Spiritual. But he may have the tenth Shock, as a temporal Profit apprender; As 44 Ed. 3. 5. And it well may be parcel of a Mannor: Otherwise of Tythes, which cannot be said to be parcel, or appendant to a Mannor; As it was adjudged in Winch's Case, 34 El. and so is the Book of 10 Ed. 3. 5. And therefore, if the Lord had prescribed to have had Decimas garbarum, it had been ill: But when he prescribes to have decimam garbam. &c. it is otherwise; for so there is a difference betwixt the pleading for Tythes, which are Spiritual, and of a Tenth, which is temporal. They also agreed, that if the Queen was Lady of a Mannor, She might prescribe to have Tythes: For she is capable of them, although they be Spiritual; As 22 Ass. 75. For she is mixta persona, & Capax Spiritualis Iurisdictionis; As 23 Ed. 3. Ayd de Roy. Wherefore, absente Clinch, They adjudged it for the Defendant, 2 Co. 45. a.

Co. 2. 45. a. Post. 763. Post. 785. Hob. 42. Ante. 587. Ant. 293. Ante 511. Co. 2. 44. a

Matures *versus* Westwood.

(6)

COvenant: Upon Demurrer, The Case was; A. Lessee for twenty years, grants it by Indenture to W. for ten years, wherein he Covenants at the end of the Term to leave it sufficiently repaired, And the Possession to the Lessor, his Executors, or Assigns. Afterwards A. assigned the Reversion to the Plaintiff.

Post 61

tiff: and becauſe the Defendant, at the end of the ten years, did not deliver up unto him the Tenement ſufficiently repaired, he brought this Action. And it was firſt moved, Whether this Action lay by the Statute of 32 H. 8. for an Aſſignee of a Reverſion for years? and therein the whole Court held, that it did. Secondly, This Covenant is Collateral, viz. for the delivering of a Poſſeſſion: & it was not broken until after after the Term determined, and therefore the Aſſignee cannot have any advantage thereof; for he was not Farmer when it was broken, but only Tenant at ſufferance: and of that opinion was Fenner; But all the other three Juſtices e contra. For there cannot be a more apt Covenant to run with the Land, then to leave it ſufficiently repaired; And that is broken inſtantly with the determination of the Eſtate. Wherefore they reſolved for the Plaintiff. But then an Exception was taken to the declaration, viz. That he did not aver, that he had the Reverſion at the time of the Grant: but it is alledged, that A. Lett to the Defendant for years, and afterwards granted the reverſion to the Plaintiff, to which Grant the Defendant attorned; and it was holden to be an apparent fault, Vide 7 H. 7. 3. Wherefore, for this cauſe, it was adjudged for the Defendant, Vide poſtea, M. 40. & 41. pl. 2.

Poſt. 650.

Ante 78.

Bennet *verſus* the Biſhop of *Norwich*.

(7) ERror of a Judgment in a Quare Impedit. The Caſe was ſuch: the next avoidance of a Church was granted to A. and B. Afterwards A. releaſed to B. the Plaintiff, and after that the Church became void: and whether B. ſhould Preſent only, or have for the diſturbance the Quare Impedit in his own Name only? was the queſtion. And it was held by all the Court, that he ſhould; for the next avoidance is a thing in Intereſt, and is grantable to a Stranger, wherefore it might be releaſedly the one to the other: but if the Church was void at the time of the Releaſe made, it were otherwiſe; for then it is a thing in action, which cannot be conveyed over. Wherefore the Judgment was affirmed.

Co. Lit. 270.b Moor. 467.

Co. Lit. 270 b.

Bowyer *verſus* Garland.

(8) DEbt againſt an Adminiſtrator upon an Arbitrament made betwixt the Plaintiff, and the Inteſtate, in writing. And the Defendant demurred thereupon; and, without Argument, it was adjudged for the Defendant; becauſe the Inteſtate might have waged his Law. But otherwiſe it were, if it had been in debt upon Arrerages of accompts before Auditors.

Co Litt. 295.a. 2 Rol. 107.

Acton *verſus* Barham.

(9) ERror of a Judgment in Sandwich. The Error aſſigned, becauſe that in Treſpaſs of taking his Oxen in D. the Iſſue was, Whether the place, where, &c. was holden of him, as of his Manor of S. by Heriot &c. And the Ven. fac. was awarded de Vicineto de D. and S. whereas it ought to have been from S. only; and for this cauſe, it was held to be Error: Although it were alledged, that the awarding the Ven. fac. from the Viſn. of D. was but Surpluſage, and not Error, where the Vill. whence the Iſſue ariſeth,

Poſt. 620.

ſeth is alſo named. But it was thereto anſwered, That this ſhall not help it; for it is not awarded according to Law. And it may be there be many more returned from D. then from S. which the Law will not allow of. Wherefore it was held to be Erroneous: But Judgment was not then given; Sed Adjournatur, Mich. 40 & 41 Placito 10.

Wilſons Caſe.

(10) Co. 9. 118. b. Ant. 87.

Wilſon was Endicted of Forgery, upon the Statute of 5 Eliz. before A. and B. Juſticiariis ad pacem, nec non ad diverſas Felonias, &c. audiendum & Terminandum, aſſignatis. Et per Gawdy, Fenner, & Clinch, It was held, that they had not any power to take this Endictment. For the Statute which appoints, that the offences ſhall be enquired before Juſtices of Aſſiſe, or Juſtices of Oyer and Terminer, intend thoſe who have general Commiſſions, and not thoſe who have but a ſpecial Commiſſion only, as the Juſtices of Peace. But Popham doubted thereof.

Armiger *verſus* Holland.

(11) Ant. 542. Ant. H. 39. pl. 9. Poſt. 690.

Upon Demurrer. The Caſe was ſuch, Meye, Parſon of North-creak, in the County of Norff. (It being a Benefice above the value of 8 l. per annum) takes a ſecond Benefice, and was thereto Admitted, Inſtituted and Inducted. Afterwards he was Elected Biſhop of Carliſle, and before his Creation, and Inſtallation, The Queen by her Letters Patents reciting, that he was Parſon of North-creak, granted unto him, that he might hold it in Commendam, Non obſtante, &c. Afterward he was Sacred, and Inſtalled; and then Holland was Preſented, Admitted, Inſtituted, and Inducted to the Church of North-creak. Afterward the Biſhop of Carliſle Lett the ſaid Parſonage to Armiger the Plaintiff. And which of them had the right, was the Queſtion? Wherein three points were made. Firſt, whether by the Order of the Common Law, The firſt Benefice be void without Deprivation by the taking of a ſecond Benefice? Secondly, Whether the Statute 21 H. 8. be a general Law, whereof the Court ought to take Conuſance, although it be not pleaded? Thirdly, admitting it were not void by taking the ſecond Benefice; Whether it were not void by his being Created a Biſhop, viz. Whether the Diſpenſation granted by the Queen to hold in Commendam be good, or not, by reaſon of the Statute 25 H. 8. which gives Authority to the Arch-biſhop of Canteb. to grant it? As to the firſt point, All the Juſtices reſolved, that by the acceptance and induction into the ſecond Benefice, the firſt was void by the Order of the Common Law, without any Sentence of Deprivation, and for that purpoſe, 5 Ed. 3. 9. 9 Ed. 3. 26. 10 Ed. 3. 1. 24 E. 3. 30. 11 H. 4. 37. 14 H. 7. 28. 12 H. 8. 6. 14 H. 8. 17. As to the ſecond they held, That the Statute of 21 H. 8. is a general Law, and therefore needed not to be pleaded, nor any part thereof. And therefore by the taking of a ſecond Benefice, and by the Induction to it, the firſt is clearly void; and ſo it appears to the Court without pleading the Statute, Vid. Dy. 27. As to the third, they all agreed. That the Qu. by her Prerogative, without the Arch-biſhop, may grant to a Biſhop, to hold a Church in Commendam, Notwithſtanding the Statute of 25 H. 8. But for the two firſt points, they awarded a Conſultation, 4 Co. 75.

Hob. 146. Ant. 571 542.

Charter *verſus* Peter.

(12) Ant. 597. Cont. Poſt. 621. ERror was brought in the Exchequer Chamber of a Judgment in the Queens Bench for theſe Words Thou art an enemy to the State. The Error aſſigned, that the words were not Actionable; and adjudged that they were: For the words cannot have any good Conſtruction, but are very ſlanderous. Wherefore the Judgment was affirmed.

Keen *verſus* Cope, Hill. 39 Eliz. rot. 941.

(13) EJectione firmæ. A ſpecial Verdict was found, that Tho. Jennings was Tenant in Tail, Remainder to John Jennings. Tho. Jennings, the firſt Tenant in Tayl made a Leaſe to the Defendant, and two others, for their Lives, according to the Statute of 32 H. 8. with Warranty, and died without Iſſue: and that John Jennings in the Remainder was his Brother and Heir, who entred, and Lett to the Plaintiff for years, upon whom the Defendant entred, and ejected him, Etſi, &c. The ſole Queſtion was, whether this Warranty ſhall Barr him in Remainder to enter, or not? For the Leaſe not being a diſcontinuance (being warranted by the Statute) determined by his dying without Iſſue, and it cannot bind him in remainder: For he cannot have the Rent reſerved; and then the Eſtate is determined, and the Warranty with the Eſtate, and it ſhall not barr him in the remainder. Wherefore it was adjudged for the Plaintiff. Note The Leſſor did not warrant it for him, and his Heirs; But pro Redditu prædicto he warrants it againſt him, and his Heirs: And for this cauſe alſo it was held, that it was a Warranty for his Life, and was determined by his death.

Pigot *verſus* Gaſcoyn & Further.

(14) Poſt. 719. DEbt, as Adminiſtrator to Anthony Longvile, durante Minore ætate of W. Longvile, the Executor, upon an Obligation, and avers, That W. Longvile was within the age of twenty one years. The Defendant pleaded an ill Bar, and it was thereupon demurred. But, becauſe the Court was reſolved upon Conference with divers Civilians openly in Court, that the power of an Adminiſtrator, durante Minore ætate, doth ceaſe at the Executors age of ſeventeen years; and that Adminiſtration committed after that age of the Executor, is meerly void; and notwithſtanding this averment here, the Executor might be above the age of ſeventeen years, and within the age of twenty one years: It was therfore adjudged, Quod Querens nihil caperet, &c. 5 Co. 29.

Stanley *verſus* Boſwel.

(15) 1 Rol. 53. 55. ACtion for theſe words ſpoken of the Plaintiff, being an Attorny, Thou art a Cozening Knave, & getteſt thy living by Extorion and

& didſt cozen one *Pigeon* in a Bill of Coſts, of 10 l. The Defendant pleaded Not-guilty, and found againſt him, and after Verdict, it was moved, that an Action lay not for theſe words. And all the Court agreed, that the firſt words, Thou art a Cozening Knave, an Action lies not, for they be too general; and no body knows what is intended by them. And for the words, Thou getteſt thy living by Extortion, no Action lies; for ſo he may do, and be no Extortioner: As in the Caſe of Stanhop, Thou getteſt thy living by ſwearing, & forſwearing, &c. But for the laſt words, becauſe they touched him in his Profeſſion (For to make a falſe Bill is againſt his Oath) and is a great falſity, and abuſe to the Court, they all held the Action to be maintainable, and gave Rule, that Judgment ſhould be entred accordingly, &c. Co. 4. 15. b.

Mariot *verſus* Smith.

(17) Ejectione firmæ. Upon a Special Verdict, it was found, That one L. was ſeiſed of the Land, and made thereof a Charter of Feoffment to the Leſſor, and his Heirs, dated the tenth of September; and he, by another Deed, Reciting that L. had made unto him a Charter of Feoffment of that Land, dated the Eleventh of September, gave thereby Authority to A. to receive Livery, and Seiſin for him Secundum formam, & effectum Chartæ prædictæ; A. receives Livery upon the Feoffment accordingly. And it was found, that there was not any other Warrant of Attorney. And Whether this were a good Feoffment, or not? was the Queſtion. Drew moved, that it was: For all is certain, viz. the Name of the Feoffor and Feoffee, and the certainty of the Land, and nothing miſtaken, but the date, which being ſufficiently certain before, it is not material, although it be miſtaken; As in 2 Ed. 4. fol. ultimo, and Dy. 376 Cottons Caſe. But all the Juſtices reſolved to the contrary: For the Warrant to receive Livery is by the Letter of Attorney, which authorizes him to receive it Secundum formam Chartæ, dated the Eleventh of September, whereas there is not any ſuch; and ſo he had not any Warrant to receive it: Wherefore the Livery made is void; and the date of the Deed was the principal note to know it. And if it varies in the Date, there is not any ſuch Deed; and where a Statute is pleaded, and miſ-recited in the date, as in Plow. 84. Stranges Caſe, there is not any ſuch Statute. And it is not like to Cottons Caſe; for there, although the Houſe was miſ-named, in whoſe Tenure, &c. yet it was certain enough before, and paſſed by the Charter of Feoffment; and the Letter of Attorney referred thereto. And ſo they all held, if the Warrant had been to make Livery, it had been ill: But it was then moved, that in regard that the Feoffor himſelf made the Livery to the Attorney; it ſhall be a good Livery unto him, although it ſhall not be to the Feoffee. But Anderſon and Walmſley denied it. For there was not any intent to Infeoff the Attorney, but the Feoffee: Wherefore it is utterly void, and it was adjudged for the Defendant.

Arch-Deacon *verſus* Jennor.

(18) THe Caſe was; One made a Leaſe for years; The Leſſor Covenanted, that the Leſſee ſhould have Houſe-bote, Haybote, and Plow-bote, without committing any Waſte upon pain of Forfeiture of the Leaſe, Whether this were a Condition? was the Queſtion. Anderſon: The Covenant is no more then what the Law appoints, and therefore vain: And ſo all, what is Subſequent, is vain. Quod Beamond agreed. Walmſley; It is a Covenant on the Part of the Leſſor; and therefore it cannot be a Condition.

Co Lit. 204.

Termino

Termino Paſchæ,
Anno Quadrageſimo ELIZABETHÆ,
in Banco Reginæ.

Holland *verſus* four others.

HOlland brought an Appeal of Murder againſt four of Sir George Fearmors men by Original Writ, And at the day of the Writ returned, they appeared at the Barr, and then he would have declared againſt them being at the Barr, as in cuſtodia Mareſchalli; and by the Rule of the Court he could not. For the appearance of the Defendants do not make them in cuſtodia Mareſchalli; unleſs there be a Record made, Quod committitur Mareſchallo; Or that they find Bail: Otherwiſe not. Wherefore in regard the Plaintiff would not Declare againſt them upon the Writ, the Plaintiff was therefore Demanded, and called upon the Writ, and was Non-ſuited, and the Defendants diſcharged. Note. He would not Declare againſt them upon the Writ, becauſe there was a Fault herein, viz. want of an Addition of one of the Defendants in the firſt name. And if he had declared, and the Writ had then abated, it would have been Peremptory unto him. For Tanfield for the Defendant ſaid, That a Non-ſuit before Appearance is Peremptory. Vide 22 Ed. 3. 7. 22 Aſſ. Pl. 97. (1) 1 Rol. 581. Poſt. 695.

The Earl of Worceſter *verſus* Paddon.

TReſpaſs. After Verdict it was moved in Arreſt of Judgment, That the Ven. fac. was made returnable three dayes after the Term, and after a Diſtringas was awarded, and the Jury taken thereupon, which was ill, becauſe the firſt Ven. fac. was ill. Gawdy; If there were no Ven. fac. it were holpen by the Statute of Jeofayls. But an ill Ven. fac. upon the Record is not holpen. Popham; The like Caſe was of late in this Court, and Ruled to be ill. Wherefore, for this Cauſe, the Judgment was arreſted. Vid. 1 Eliz. Dy. 168. 107. 265. (2) 2 Cr. 442.

Hutchins *verſus* Martin.

UPon Evidence to a Jury, It was moved, where Leſſee for years accepts of a ſecond Leaſe to begin at Mich. following; Whether it be not an immediate Surrender of the firſt Leaſe? And the Court held, That it was, and that the Leſſor might enter in the interim, and take the profits. And Coke, Atturney General, ſaid, That it was lately ſo adjudged in the Common Bench. (3) 2 Rol. 496. Ant. 522. Co. 5. 11. b.

Childs

Childs Caſe.

(4) Ant. 101. CHild was Endicted upon the Statute of 5 Ed. 6. for ſtriking in a Church-yard; George Croke took Exceptions thereto, Becauſe it was apud generalem Seſſionem pacis tent. apud Blanford, and it is not ſaid in Comitatu prædicto. And although the County was in the Margin, and ſo by intendment it might refer thereto; yet, becauſe Endictment ſhall not be taken by Intendment, he was for this Cauſe diſcharged, 11 H. 7. 10.

Darrel *verſus* Middleton.

(5) EJectione firmæ of a Leaſe made the twentieth of Auguſt, from Mich. then laſt paſt Ante Datum hujus Indenturæ, and he neither ſhews the Indenture, nor the Date thereof. After Verdict, This matter was alledged in Arreſt of Judgment: That there did not any Certainty appear by the Declaration, when the Leaſe ſhould commence. For there is not any Date of the Indenture expreſſed. Wherefore, &c. But all the Court held it to be well enough. For when he declares of a Leaſe made of the twentieth of Auguſt, for twenty years, from Mich. then laſt paſt: If he had ſtayed there, it had been clearly good, Then the Addition ante Datum Indenturæ ſhall be void, and the beginning of the Leaſe appears certain enough. Wherefore it was was adjudged for the Plaintiff.

Collins *verſus* Harding, Paſch. 39 Eliz. rot. 333.

(6) Co. 138. 57. DEbt upon a Leaſe for years; And Declares, That one Pergrew being ſeiſed in Fee of two Acres; the one Free-hold, the other Copy-hold Land, and having the Lords Licence to make a Leaſe of the Copy-hold Land by Indenture, Lett the two Acres by Indenture to J. S. for twenty one years, rendring 20 s Rent, and afterwards, Maii 32 Eliz. granted the Reverſion of the Free-hold-Land to the Plaintiff in Fee; To whom the Leſſee attourned: And upon the ſame day ſurrendred the Reverſion of the Copy-hold-Land into the hands of two of the Tenants of the Manor, to the uſe of the Plaintiff in Fee, and at the next Court this Surrender was preſented, and the Plaintiff admitted accordingly. And afterward the firſt of Auguſt 33 Eliz. Jo. St. the Leſſee granted all his Eſtate to the Defendant. And for the Rent of three years Arrear at Mich. 37 Eliz. the Plaintiff brought this Action. The Defendant pleads a Releaſe from the Plaintiff made to J. S. the firſt Leſſee upon the fourteenth of Novemb. 33 Eliz. (which was after the Aſſignment) of all Actions, and Demands, until the date of the Deed, which J. S. (as the Defendant alledgeth) died poſſeſſed, and made him his Executor; intending thereby, that by this Releaſe made to J. S. being the principal party, the Action of Debt was gone for ever. And it was thereupon demurred. And it was agreed by all the Court, that the Bar was ill: And, that there was no cauſe to barr this Action: the Releaſe being of all Demands, until the date of the Deed, and this Rent was not arrear till afterwards. It was then moved, that the Declaration was not ſufficient to maintain this Action,

Hob. 177.

lation; for when he divided his reversion, (viz. by granting the reversion of the Freehold, which then immediately passed by the attournment, whereas the Copy-hold passed not until the Surrender presented, and the admittance in Court) The Rent was hereby utterly extinct. Or at leastwise, the Plaintiff ought to have had several Actions, because he now hath the reversion by several Conveyances. And of that opinion was Gawdy. And Popham said, That he was of the same Opinion, if this Rent should be said to be Issuing out of both Acres. But he held, that this Rent shall be Issuing only out of the Free-land; because that is the most worthy, and whereof the Common Law takes Conusance. As if Rent be granted out of Land Guildable, and out of Land in ancient Demesn. The Action shall be brought for it at the Common Law. And if a Lease be made of Land and Goods, rendring Rent; it is issuing only out of the Land. But we will well advise thereof. And the other Justices spake not thereto, sed adjournatur. Post, Mich. 41. Pl. 15.

Co.Lit.148.a.

Post.623.

Ante 258.6. Post.622. 3.

Wade *versus* Bussard.

(7)

1 Rol.65.

ACtion on the Case for these Words, Thou hast Forged an Obligation, and I will prove it. The Defendant Justifies, because he had forged such an Obligation in the name of Wendy. The Issue de non Tort Demesn, &c. and found for the Plaintiff; and now moved, that an Action lay not for these Words. For he doth not shew, that this Obligation was sealed and delivered. But the Court held it to be well enough, for it cannot be otherwise intended, for, without those Circumstances, it is not an Obligation, but a Writing only. But they held, that for saying, Thou hast made a false Bond, an Action lieth not: For that may be upon false Instructions. Secondly, it was alledged, that this Issue was not good: for there being a special Forgery alledged, it ought to be specially Traversed, But the Court held the Issue to be well enough. And, if it were not good, it is aided by the Statute 32 H. 8. Wherefore it was adjudged for the Plaintiff.

Co.8.67.a

Leigh *versus* Wood, Mich. 39, & 40 Eliz. rot. 374

(8)

2 Rol.286.

PRohibition to stay a suit for Tithes, wherein he surmiseth: that he set forth his Tythes. And afterwards, for some reasonable causes (not shewing what in certain) he had detained part of them. And that the Parson had sued him for them in Court Christian: and it was thereupon demurred: And Fenner and Clinch held it to be good Cause for a Prohibition. For, by setting out of the Tythes, they are become Lay-Chattels. For which he may have his remedy at the Common Law by Trespass, or Detinue, and therefore there is not any cause of Sute in the Court Christian. Gawdy, and Popham e contra. For against the Party himself, who set forth his Tithes, a Sute is well maintainable in the Spiritual Court, if he detains them, although the Parson (if he would) might have his remedy at the Common Law. But if a Stranger takes them after they be set forth, his remedy is only at the Common Law. And the Statute of 32 H. 8. proves it. For the words thereof be, If any do not set out, or do detein, or with-hold his Tythes (which is to be intended after they be set out)

2 Inst.643.

Post.844.

out) He ſhall be ſued in the Court-Chriſtian, &c. For otherwiſe Miſchief would enſue to the Parſon, in that he would ſecretly ſet his Tythes forth, ſo as the Parſon ſhould not know thereof, and would afterwards carry them away. Et adjournatur.

Beadle *verſus* Sherman.

Paſch. 39. Eliz. rot. 699. vel Hill. 40 Eliz. rot. 699.

(9) Co. 13 47. Poſt. 613. DEbt upon the Statute 2 Ed. 6. for not ſetting forth of Tythes, wherein he declares, that he was Parſon of Lytlington, in the County of Cambridge, and that the Defendant being a Pariſhioner there, and having Corn there growing, &c. The Tythes whereof amounting to the value of 50 l. He had not ſet them forth: Wherefore he demanded the treble value, viz. 150 l. After Verdict for the Plaintiff, upon a Nihil debet pleaded, it was moved in arreſt of Judgment, that the Suit for this treble value ought not to be brought at the Common Law, but in the Spiritual Court, as it ought to be for the Tythes before they be ſet forth. But Tanfield for the Plaintiff moved, that it might be well brought at the Common Law; and ſo it was ruled in the Exchequer, upon great advice, in the time of Manwood, betwixt one Wood & Halton; for there the Information was brought by the Queen only upon this Statute, and the treble value was demanded, and adjudged that it lay not, for the Statute gives it to the Party grieved, and not to the Queen. And then it was brought by Wood, being the Party grieved, and he had Judgment to Recover. And a Preſident in this Court Hill. 34 Eliz. rot. 682. betwixt Wentworth and Criſp was cited, where ſuch an Action was brought, and the Plaintiff had Judgment to recover; and all the Juſtices were of the ſame opinion in this Caſe: but, becauſe it was a new Caſe, they would adviſe until nert Term. Another exception was taken; becauſe it appears, that the Plaintiff had this Parſonage in right of his Wife for years, and ſo ought to have joyned his wife with him in this Action. Sed non allocatur. Reſiduum poſtea, Trin. 40 Placito 1.

2 Cr. 70. 2 Inſt. 612. 2 Inſt. 650. Poſt. 621. 1 Inſt. 650. 1 Cr. 419.

Cowper *verſus* Langworth, Hill. 40 Eliz. rot. 479.

(10) 1 Rol. 601. 1 Rol. 601. Poſt. 817. Co. 6. 45. DEbt upon a Recogniſance acknowledged in Chancery. The Defendant pleaded, that the Plaintiff had ſued a Scire fac. upon it in Chancery, and had Judgment there, and had ſued an Elegit, and demanded Judgment, ſi, &c. and it was thereupon demurred. The Queſtion was, Whether after this Execution awarded by the Elegit, the Plaintiff might wave it, and have a new Action of debt? And all the Juſtices held that he might; and that the Judgment in the Scire fac. upon the Recognuſance being in force, yet he might have a new Action of Debt. So, if one recovers in debt upon an Obligation, yet, that remaining in force, he may have a new Action. For Popham ſaid, the difference is, where one recovers in Treſpaſs, or other Action, wherein he recovers nothing certain, but damages only; if he hath Judgment in ſuch an Action, there, when that Judgment is in force, he cannot have a new Action; but where the thing which is demanded is certain, as debt, &c. it is otherwiſe. Wherefore it was adjudged for the Plaintiff.

George

George Skarning *verſus* Elias Shartwell.

DEbt. The Judgment was, Quod prædictus Georgius capiatur; whereas it ſhould have been prædictus Elias. And this was ſigned for Error. And it was prayed, that it might be mended: for it is but the Default of the Clerk. And by Fenner, and Clench (cæteris Juſticiariis abſentibus) it was held, That was not amendable; becauſe it is part of the Judgment, and ne Act of the Court. (11) 1 Rol.201. Ante 170. 1 Rol.201.

Shaw *verſus* Tompſon.

ACtion upon the Caſe for theſe words; Thou art a forſworn knave, and I will prove thee to be forſworn in the Spiritual Court. After verdict for the Plaintiff, it was moved, that an Action lay not for theſe Words, no more then for ſaying, Thou wert forſworn in White-Church-Court; which words have been here reſolved not to be actionable. But all the Court held, that the Action well lay: For the Eccleſiaſtical-Court is a Judicial-Court, and well known. Wherefore it was adjudged for the Plaintiff. (12) 1 Rol 40. Ante 135. Ante 185.

Corbet *verſus* Hill.

ACtion for theſe Words; The Plaintiff was perjured in his Anſwer in the Star-chamber, innuendo a Bill there exhibited by the Plaintiff againſt the Defendant. After Verdict it was moved, that an Action lay not: For it is well known, that a Plaintiff cannot be perjured in his Bill exhibited; for he is never ſworn thereto. But all the Court held, that the Action was maintainable for the firſt words, and they be ſufficient without the innuendo, which being repugnant is void, and not to be regarded. Wherefore it was adjudged for the Plaintiff. (13) 1 Rol.40.83.

Anonymus.

ACtion for theſe words; The Plaintiff hath forſworn himſelf; Innuendo before the Juſtices of the Aſſiſe of &c. And the whole Court held, that the Words were not Actionable; for the precedent Words be not ſufficient of themſelves: And the Innuendo ſhall never help it. Wherefore it was adjudged for the Defendant. (14) Ant.297.

Auſtyn *verſus* Lucas.

IT was held by all the Juſtices, That for Broom, Furrs, or any other Fewel expended in a Pariſhioners houſe, there are not any Tithes due, or payable. A preſcription alſo to pay the tenth Cheeſe, made from May-day until the firſt of Auguſt in recompenſe of all Tithe-milk for the whole year, is good. For that comes of labour, and is not due of it ſelf and therefore is a good diſcharge: but to pay the Tenth quart of Milk, is not good; for that is but for what is due. But Popham ſaid, to pay the tenth quart of Milk at the Parſonage houſe, or at any other place, is good enough. (15) 1 Rol.644.651. 2 Inſt.652. 2 Cr.113. 1 Rol.651. Ant.363.

Hunt *verſus* King. Paſch. 39 Eliz. rot. 361.

(16) ERror of a Judgment in Formedon in the Common Bench. The Caſe; That W. King the Grandfather, Tenant in Tail, Infeoffed Rich. King, the Father, in Fee, and afterwards Will. King diſſeiſed him, and Levied a Fine with Proclamations, to Hitchcock, and before the Proclamations paſſed, Rich. King, entred, and, after that the Proclamations paſſed, Hitchcock, the Conuſee, enters, and W. K. and R. K. died, John King, the Son of Rich. King brought the Formedon, where this a Fine with a Que Eſtate was pleaded in Barr, &c. The Demandant thereupon pleaded this Entry by his Father, which was Traverſed, and found for the Demandant, and Judgment given for him, and thereupon, Error brought. And the Error aſſigned in the matter in Law; That this Fine ſhould barr the Intail: For although it was a Fine levied by him, who was Tenant in tail, and had the right of the Intail in him at the time of the Fine Levied; and although the Fine, as to the Poſſeſſion, was defeated by the Entry of the Father, who was diſſeiſed, yet, when the Proclamations run out, and are not ſtopped, nor avoided, this Fine is a good barr within the Statute of 32 H. 8. to bind the right of the Intail, which was in him, who Levied the Fine; and, that this is not to be compared to Fines at the Common Law, nor to other Fines of other perſons: for it ſufficeth here, that the Fine was levied by one, who had the right of the intail, or that he was one, to whom the Land was intailed, although that none of the parties hath the intereſt in the Freehold, or in the reverſion, or remainder of the Land; as it was adjudged
Co. 3. 90. a. in Zouch, and Banfields Caſe; that a Fine levied by Tenant in tail, who is diſſeiſed, to a ſtranger, who had nothing in the Land, was good to barr the intail. And it is not any plea for the iſſue in tail, Quod partes ad finem nihil habuerunt, &c. Popham alſo cited the Lord Sturtons Caſe to be adjudged in 16 Eliz. where Sturton being Tenant for life, remainder in tail to the Lord Surton, remainder in Fee to a Stranger, the Lord Sturton diſſeiſed the Tenant for life, and Levies a Fine, the Tenant for life enters before the Proclamations paſſed; ſo as he defeated the Fine. and after the Proclamations were paſſed, although neither the Free hold, or inheritance in Fee were bound by this Fine, yet it was adjudged, that the intail was bound by it: So it ſhall be in all Caſes, where the Fine is levied by one, to whom the Land is intailed, or who may claim as Heir in Tail. And therefore he is to be barred, as Heir in Tail, to have a Formedon. And, although it appears, that he had right to have the Land, as Heir of the Fee, and might well enter; and, although the Tenant might well have Demurred upon this Entry pleaded, and had not done it, but had taken iſſue upon it, and it was found againſt him, yet in regard it appears, that the Demandant had no Right to this Land by this nature of Action. And this appears to
Co. 10. 50. a. the Court, they ſhall adjudge againſt him. Wherefore they
Ante 122. Reverſed the Judgment. Note; Warberton Serjeant cited one Grants Caſe, to be lately adjudged in the Common Bench, where

where one deviſed Land to his Feme for life, Remainder to his Son in tail, when he ſhould have attained to the age of Twenty five years. He, before his age of Twenty five years, Levies a Fine (when he had nothing in the Remainder, as it was agreed, that he had not; for the remainder did not veſt in him until that age) and afterwards died at his age of Twenty five years. The Feme afterwards died, it was adjudged, that this Fine ſhould barr his Iſſue, although at the time of the Fine he was not Tenant in Tail; but was a perſon to whom the Land was intailed: and therefore the fine was a barr to his Iſſues.

Wade and his Wife *verſus* Smith.

(17) ERror to reverſe a Judgment, and Outlawry againſt them in Debt. And, becauſe it was to reverſe an Outlawry, it was held, that they could not aſſign Error; but in perſon: and, becauſe the Baron could not bring in his Feme, it was held, Ant. 370. that he could not aſſign Error; for he cannot aſſign it without his Feme. And ſo it was ruled by the Court. And the courſe of the Court is, that it cannot be otherwiſe aſſigned.

Termino Paſchæ, Anno 40 Eliz. in Com. Banc.

Davies Caſe.

(18) ACtion ſur Trover of Goods. The Defendant juſtifies, as Servant to the Sheriff of Middleſex, becauſe the Plaintiff had ſtoln thoſe Goods, and carried them to D. within the County of Middleſex; at which place the Defendant ſeiſed them, ut bona waviata; and, without argument, it was adjudged for the Plaintiff: For he ought to alledg a Felony committed; and, that the Goods were waved by the Felon; But it is not alledged, that the Felon waved them. Wherefore it was adjudged ut ſupra.

Anonymus.

(19) A Writ of Warrantia Cartæ was brought of two Meſſuages, and Twenty acres of Land, wherein he counts, that the Defendant infeoffed him of the ſaid Meſſuages, and Twenty acres per nomen unius Toſti, & 2 virgat. Terræ. And Exception was taken hereto; becauſe, that, which comes under the name of per Nomen, doth not warrant the Count: For the two Meſſuages cannot paſs by any word contained under the per nomen. Sed non allocatur: For it may be there was only one Toft there at the time of the purchaſe of the two Meſſuages, and they might ſince that time, have been builded. Wherefore it was adjudged for the Plaintiff. Ant. 234.

Stratfield *verſus* Dover.

(20) Ant. 595. THe Caſe was now moved again by Williams, that the pleading was ill: For the Defendant made Conuſance, as Bayliff of Ed. Verney; for that King Ed. 4. gave the Land to the Anceſtors of Ed. V. in Tail, and conveyed it by deſcent to Ed. V. The Plaintiff ſaith, That Fr. Howſe, before the taking, was ſeiſed in Fee; and in 25 Eliz. Levied a Fine with Proclamation, and five years paſſed; and, that this Fine was to the uſe of Fr. H. himſelf, and his Heirs, who let to the Plaintiff for years, &c. And for this cauſe it was inſufficient: For he never Traverſeth the gift in Tail, nor the ſeiſin in Tail, in Ed. V. nor in his Anceſtors, nor confeſs, nor avoid it. Wherefore, without regard to the Matter in Law, it was adjudged for the Defendant. Mich. 39 & 40. C. B. Placito 40. ant.

Termino

Termino Trinitatis.

Quadrageſſimo ELIZABETHÆ,

in Banco Reginæ

Beadles *verſus* Sherman. Ante, Paſch. 40. Plac. 9.

THe Caſe was now moved again, to have the Reſolution of the Court: and they all Reſolved, that the Action well lay upon the Statute. It was then moved, That thoſe Tithes were perſonal Chattels, which appertained to the Baron only, and he hath joyned his Feme with him in this Action; and therefore it was ill. Sed non allocatur: For, the Feme, being Termor, the Baron is poſſeſſed of them in her Right, and the Action is given to the Proprietor, or Farmor, &c. wherefore the Action is well brought in both their names. And it was adjudged for the Plaintiff. Note; That a Writ of Error was brought upon this Judgment. And the Error was Aſſigned in the point of Law. And the Judgment was affirmed. (1) Poſt. 621. Co. 13. 48.

Fox *verſus* Wright.

DEbt upon a Bill enſealed of 200 l. which was in this manner That the Defendant, in conſideration of a Bill of 50 l. wherein the Plaintiff was bound to Will. Flud, for the payment of 42 l. for the Defendant, obligavit ſe in 200 l. ad indempnem conſervandum the Plaintiff from all Actions by reaſon thereof, ſolvendum to the Plaintiff cum requiſitus eſſet; and alledgeth, in facto, that he had not ſaved him harmleſs, pro eo quod, that the ſaid Will. Flud had ſued him upon that Bill, and recovered 90 l. Damages, and had taken him in Execution thereupon, unde Actio Accrevit, &c. The Defendant pleaded Non eſt factum. And upon the evidence it appeared, that this Obligation was written in a Book, and in the ſame leaf the Defendant put his hand and ſeal thereto. And at the Niſi Prius in London, before Popham, it was moved, whether it were a good Deed, or not? And he held, that it was: But willed the Jury to find it eſpecially. But they generally found it to be Factum ſuum; For they ſaid, it was an uſual courſe in London. And being afterwards moved in Court, Clench and Popham agreed, that it was a good Deed, But Fenner doubted. Yet now, by the Verdict of the Jury, it is put out of Queſtion. Secondly, it was moved, that the Plaintiff could not have advantage of this Bond; becauſe it is not alledged, that he gave notice of this Sute to the Defendant. Sed non allocatur. But it was adjudged for the Plaintiff, although not any Reaſon given thereof. (2) 2 Rol. 25. 2 Rol 25. 2 Cr. 288.

Hewer

Hewer *verſus* Bartholomew. Trin. 39. Eliz. rot. 830

(3) ACcompt, ſuppoſing that he received 100 l. by the hands of John Coventry. The Defendant pleaded Nunques ſon receiver by the hands of John Coventry to render accompt, &c. And thereupon they were at Iſſue. The Jury found, That Barth. paid that 100 l. to Hewer the Plaintiff in redemption of a Mortgage; and he commanded his Servant to put it in his Cloſet: who did ſo: And afterwards B. demanded of the Plaintiff certain evidences, and Bonds; which he refuſed to deliver. Then the Defendant required, that he might have his Money again, which he then had paid. And the Plaintiff thereupon commanded his Servant, John Coventry that he ſhould fetch back the ſaid 100 l. ad redeliberandum to the foreſaid I. B. the ſaid 100 l. by him paid; And, that the ſaid John Coventry did fetch again, the ſame Money, and poured it forth upon the Table eidem I. B. ea intentione, ut idem I. B. ſuas centum libras prædict. quas idem I. B. to the ſaid Plaintiff had paid, Reciperet in præſentia of the Plaintiff: and the Plaintiff then, and there did will the Defendant ad recipiendum the foreſaid 100 l. per ipſum Defendentem præfato Querenti, ut præfertur, ſolut. quas 100 l. idem Defendens ad tunc, & ibidem recepit, & aſportavit. Et ſi ſuper tota materia, &c. And all the Court reſolved, That this payment was a good diſcharge of the Mortgage; and although he afterwards required it again, as his own Money, yet it ſhall not avoid that, which was abſolutely paid: But the Mortgage remains abſolutely diſcharged; and the Moneys were the Plaintiffs own Moneys. And although he delivered them to the Defendant as his own, not knowing the Law therein, ſuppoſing it to be no payment; yet in regard he did not give it otherwiſe, nor upon other conſideration, the Defendant received them as the Plaintiffs Money, and is accomptable for them. Secondly, Popham, and Gawdy held, that this was not any receipt by the hands of I. C. but by the hands of the Plaintiff himſelf: for when he willed the Defendant to receive it, it was his own delivery; and when he commanded his Servant to fetch it ad deliberandum to the Defendant, and he brought it down and poured it forth ea intentione, that the Defendant ſhould receive it; that is not any authority to the Servant to deliver it; nor did he by that Act deliver it. But Popham ſaid, if he had commanded his Servant to bring the ſaid Money, and deliver it to the Defendant, and he had done it in the preſence of his Maſter, and the Maſter had required the other to receive it, that peradventure might have been a receipt by the hands of the Servant. Fenner held the contrary in this point: For he conceived it to be a delivery by the Servant; becauſe he fetched it down, and poured it forth to the other to receive it. And Clench doubted, Et adjournatur. But afterwards the Plaintiff diſcontinued his Sute, and brought a new action, ſuppoſing the receipt by his own hands.

Gerry *verſus* Holford.

Ejectione firmæ. A ſpecial Verdict found, that there were two Co-partners of an Houſe: The one entred generally, and made a Leaſe for life, by the name of All that his Houſe, &c. The queſtion was, whether all, or the Moyety only of the Houſe paſſed? Popham, and Fenner held, That the intire houſe paſſed: For, when he ſaith, All that my Houſe, &c. that intended the whole Houſe; and by his Livery made he gained the entire, and gave the entire, although by his general Entry it is not intended, that he entred into more, then to what he had right, But Gawdy e contra; For, as his Entry prima facie doth not gain more, then he had right to demand; no more ſhall this Leaſe. And Foſter, at the Barr, cited, that it was adjudged in this Court, in Reignolds Caſe, according to the opinion of Popham, (4) Ante 115.

Gervis *verſus* Peade.

TEnant pur vie made a Leaſe for Twenty one years by Indenture: And Covenanted that he had not done any Act to prejudice the ſaid Leaſe; but, that he ſhould enjoy it againſt all perſons. The Tenant for life dies, and the Leſſor enters. The Leſſee brings Covenant againſt the Executor. And it was adjudged, that it lay not: For, the laſt words, But that he ſhall enjoy it againſt all perſons, refer to the firſt words, viz. for any Act done by him, &c. And ſo the Covenant is not broken. (5) Ant. 157. Ante 44.

Termino

Termino Michaelis,

Quadrageſimo, & Quadrageſimo primo

ELIZABETHÆ, in Banco Reginæ.

Graves *verſus* Short. Hills 40 Eliz. rot. 847.

(1)

2 Rol.715. 1 Rol.783.4. ERror of a Judgment in the Com. Bench in a Formedon. The Errors aſſigned were: The firſt in fait; that the parties being at iſſue, whether a Feoffment were made, &c. and the Jurors at the Niſi prius, being gone together to confer, &c. Wil. Malevory, one of the Jurors, ſhewed to the reſidue of the Jurors an Eſcrow in Writing, pro pœtentibus quod non fuit dat. in Evidence per partes prædictas, per Quod they found the Verdict for the Demandant. And, upon this Error aſſigned it was demurred in Law. And, after argument at the barr, The Court reſolved, that it was not any Error, nor could be alledged for Error: For it doth not appear, that it was Evidence given to the Juror by any of the parties, or by any other in behalf of the Plaintiff; but it ſhall be intended, that he ſhewed it of himſelf; and, that it was a piece of evidence, which he had about him before, and ſhewed it to inform himſelf and his fellows; and, as he might declare it as a witneſs, that he knew it to be true; ſo he might ſhew any thing, which he knew: And therefore it is not like to 11 H.4,33.& 35 H.6. Title Examination. They alſo held, that if this were cauſe to avoid a Verdict, if it had been ſo found by Examination, as they conceive it was not, yet in regard it was not examined, nor made parcel of the Record, it cannot be aſſigned for Error. For Popham ſaid, the trial hereof reſts only in the Examination, and it ſhall not be per pais: as Non-age ſhall be by Inſpection to avoid a Fine; ſo this matter ſhould to avoid the Verdict. For, if ſo, then every Verdict upon ſuch a Surmiſe, might be drawn in queſtion; and peradventure, after the parties be dead, & all the Jurors dead, ſo as they cannot be examined; which would be a great inconvenience. And therefore they held, that ſuch a Cauſe of ſtaying the Judgment ought to be always, if it be upon Verdict at the Niſi prius, upon the Poſtea returned: and, if it be upon Verdict in Banco, it ought to be made parcel of the Record; otherwiſe the party ſhall not take advantage of ſtaying the Judgment, or of aſſigning it for Error. Another Error was aſſigned ore tenus, That the Record is, Ad quem diem, ſcilicet Octab. Trinitatis 39 præceptum eſt, quod habeat corpora Juratorum coram Juſticiariis in Banco in Craſtino Animarum, niſi Juſticiarii in partes illas venerint octavo Julii proxime præterito, where it ought to have

2 Rol.715.

Co.Lit. 227.b. Ante 411.

Ante 411.

have been proxime ſequente. Sed non allocatur: For it was ſaid that all the preſidents are ſo in the Common Bench to make their Entries as of the time paſt: But otherwiſe it is in this Court. Wherefore the Judgment was affirmed, Afterwards, at another day, it was moved to have Coſts allowed, and Dammages for the delay of Execution, upon the Statute of 3 H. 7. cap. 10. Whereupon it was doubted, becauſe it was in a Formedon, in which (being the principal Action) no coſts were allowable. But notwithſtanding, upon conſideration of the Statute, for that the Statute is general, That if a Writ of Error was brought before execution, and in delay of the execution, and the Judgment be afterwards affirmed, that the Demandant or Plaintiff ſhall have Coſts, & Damages; And it mentions not any Action: They all reſolved, that Coſts and Damages ſhall be given for delay of Execution, although in the firſt Action no Damages were recoverable. Wherefore it was adjudged accordingly. Poſt. 659. 1 Cr. 145. R. 704. 1 Cr. 145.

Matures *verſus* Weſtwood. Trin. 40. Eliz. rot. 1023.

(2) COvenant. The Plaintiff Declares, that Mary Brice was poſſeſſed of a term for Twenty years of an Houſe in London, and Lett it by Indenture for four years, wherein the Defendant covenanted to repair it, and to leave it at the end of the term ſufficiently repaired; and that M. B. the Leſſor aſſigned over her reverſion to the Plaintiff, and that the Defendant thereto attourned, and that afterwards upon ſuch a day the term expired, and that the houſe was not well repaired, (viz. &c. and ſhews wherein) and for this he brought the Action. The Defendant pleads, that before this Grant of the reverſion, viz. ſuch a day, he aſſigned his term to one Weſtbury, who was poſſeſſed at the end of the term. And it was thereupon Demurred. The point intended was, Whether the aſſignee of a Reverſion ſhall have an Action of Covenant againſt the firſt Leſſee, after the aſſignment of his Term. (And it was admitted on both ſides, and by the Court; That, although he were but an aſſignee of a reverſion for years, yet he was a ſufficient aſſignee to have action of Covenant:) and to the principal mater none of the Juſtices ſpake, beſides Gawdy, who ſaid, That the matter in Law is with the Plaintiff, that the Action well lies, but, for a defect in the barr, and not upon the matter in Law, Judgment was given for the Plaintiff; viz. becauſe the Defendant pleaded, that he granted his Leaſe, &c. and doth not ſhew the place? So it is not iſſuable to be tried, which they all agreed to be a manifeſt fault. Another exception was alſo taken; becauſe it is alledged in the Declaration, that M. B. granted the reverſion to the Plaintiff, and the Defendant being Tenant, attorned. And the Defendant pleaded a grant of his Eſtate over before the attornment. And he doth not traverſe, that he had nothing at the time of the attornment; and that the Court alſo conceived to be amiſs: But, for the firſt exception, principally, it was adjudged for the Plaintiff. Ant. 600. Poſt. 670.

Anthony Theobald *verſus* Brook.

(3) ACtion for theſe Words, which the Defendant ſpake to one
1 Rol.51. Gurney; Bring me to the Conſtables houſe; for I am robbed this night: And bring me to Bonaventure Theobalds houſe to arreſt him; for old Theobalds (innuendo the Plaintiff) ſetteth his ſons to rob me (innuendo dictum Bonaventure, & quendam Johannem, filium ipſius Anthonii) from time to time. The Defendant pleaded Not-guilty, and found againſt him: And, after Verdict, it was moved in Arreſt of Judgment, that the Words were not Actionable; Becauſe it is not alledged, that any of Anthonies ſons robbed him; and it is but an intent of ſetting to rob, and no act done. The words alſo are inſenſible. But, notwithſtanding, it was held by the Court that the Words were very ſlanderous; and, that the
Ante 6. Action was maintainable: And ſo it had been adjudged in this Court, That one ſuch lay in wait to murder me; or, That he ſent his ſervant to murder me, &c. Wherefore it was adjudged for the Plaintiff, Note, Error was hereof brought; becauſe it is not preciſely affirmed of the Plaintiff: But it is ſaid Old Theo-
1 Rol.51. balds, and he doth not name the Plaintiff, and an Innuendo will not ſerve; whereupon it was reverſed.

Walmſley *verſus* Havand.

(4) ASſumpſit. The Plaintiff recovered, and afterwards took
1 Rol.333. forth a Capias againſt the principal party, which was returned, Non eſt inventus. He then took forth a Scire facias againſt the Bail, and they were returned Nihil. And, before the Scire facias awarded, the Sureties brought in the Principal. And he prayed, that he might render himſelf to priſon in diſcharge
Poſt.738. of his Sureties. And, whether he came in timely enough? was the Queſtion. And afterwards he was awarded to be com-
2 Cr.109. mitted to the Marſhalſey in Execution; and the Sureties were diſcharged. And it was ſaid by the Court, that there have been
2 Cr.109. divers Preſidents of that kind in this Court. And, although he
1 Rol.334. had rendred himſelf after the ſecond Scire facias awarded, before Judgment thereupon, he had been received. Wherefore, &c.

Berry *verſus* Lane. Hill. 39 Eliz. rot. 246.

(5) ERror of a Judgment in the Common Bench in Debt for 10l. the firſt Error aſſigned was, that the Ven. fac. was in this manner, Venire faciat coram Juſticiariis noſtris a die Paſchæ in 15. dies 12 libros & legales homines, &c. And he ſhews not in the Writ where it was returnable (viz. apud Weſtm.) as it ought to be; But, becauſe the Roll is Ven. fac. hic, &c. That is a good Warrant for the writ;
Ant.433. and it, being a judicial writ, ſhall therein be amended. And ſo alſo in libros for liberos, it was held by the Court to be amendable. Secondly, becauſe the writ Vicecomiti Londini, Et quod habeat, whereas it ſhould be Habeatis; and that was ordered alſo to be amended: which was done accordingly, and the Judgment affirmed.

Walford *verſus* Hundred de Beners.

(6) ERror of a Judgment in an Action upon the Statute of Hue
Poſt.638 and Cry; Wherein Walford ſuppoſeth, That Andrews, his Servant

Servant, was robbed, and Walford brought the Action. The Defendant imparled; Et idem dies datus eſt prædicto Andrews; whereas it ſhould be eidem Walford; and afterwards the Defendant pleaded, and after that waved the plea, and confeſſed the Action. And Error thereof brought, and aſſigned; for that there was here a diſcontinuance, becauſe die datus eſt Andr. and ſo to a ſtranger, and not to the Plaintiff. But it was moved, That it was the miſpriſion of the Clerk to give a continuance againſt a wrong perſon, and might well be amended; As 22 Ed. 4. 3. But the Court held; if a Continuance is to be given to two, and it is given but to one only, that is a miſpriſion of the Clerk, and ſhall be amended; as 22 Ed. 4. 3. is: But, where no Continuance is given to the party at all, but to a ſtranger, as here, it is the Act of the Court, and not amendable. And ſo was the opinion of the whole Court, Gawdy excepted. It was moved alſo, that the appearance of the party after, and his pleading, hath aided that diſcontinuance. Sed non allocatur. Wherefore the Judgment was reverſed.

Sydenham *verſus* Robins.

(7)

ACtion upon the Caſe for ſtopping a way; and declares, whereas he was ſeiſed in Fee of an houſe in Dulverton, and, that he, and all thoſe, whoſe, &c. had had a way over a Cloſe of the Defendants, called Culver-houſe-cloſe in Bruſhford, from his houſe to another Cloſe called Exon: Which he had in Bruſhford; that the Defendant had ſtopped his way by erecting of an Hedge croſs the way, and the ſaid Cloſe, &c. The Defendant pleaded Not-guilty, and found guilty; and, after Verdict, it was moved, that this was a Miſtrial: becauſe the Ven. fac. was from Bruſhford, whereas it ought to have been from both Vills; for the way ought to be proved: But the Court held, That, in regard Not guilty was pleaded, and ſo the ſtopping is properly in iſſue, the Venue ſhall be only from the Vill, where the ſtopping is: but, if the iſſue had been upon the Preſcription, it had been otherwiſe. Wherefore it was adjudged for the Plaintiff.

2 Rol. 614.

2 Rol. 614. Ante 427.

Levet *verſus* Hawes

(8)

ASſumpſit, and declares, in conſideration, That the Plaintiff agreed with the Defendant; that J. L. Son, and Heir of the Plaintiff, ſhould eſpouſe Conſtance the Defendants kinswoman, and in conſideration, that the Plaintiff agreed to aſſure to the ſaid Conſtance Lands of 10 l. per annum for her Joynture, That the Defendant aſſumed to the Plaintiff to give to J. L. the Son in marriage with the ſaid Conſtance 200 l. and alledgeth in facto, That the Marriage took effect; and, that the Plaintiff had aſſured ſuch Lands for the Joynture; and that the Defendant had not payed to his Son the 200 l. Whereupon the Father brought the Action. And upon Non aſſumpſit Iſſue, and found for the Plaintiff, it was moved in arreſt of Judgment, That the Action ought not to have been brought by the Father:

Poſt. 652. Ante 63.

For the Son only is to have advantage thereof: But it was ſaid on the other ſide, that the promiſe is only made with the Father, and all the conſiderations ariſe on his part, and the Son is a ſtranger thereto, and therefore the Son cannot maintain the Action, but the Father. But the Court doubted thereof. Et adjournatur. Hill. 41. Plac. 11.

Poe *verſus* Doctor Mondford. Trin. 40. Eliz. rot.

(9) ACtion for words. Whereas the Plaintiff was, and is a Phyſician, that the Defendant intending to defame him, and to prejudice him in his Art, Falſe & molitioſe ſpake of him theſe Words, Mr. *Poe* (*innuendo* the Plaintiff) hath killed Mr. *Paſfield* of the *Old Jury* with Phyſick (*quendam Johannem Paſfield* late inhabiting within the *Old Jury*, and now deceaſed, *innuendo*) which Phyſick was a Pill, and the Vomit was found in his mouth: and Doctor *Atkins* and Doctor *Paddy* (*quoſdam Henricum Atkins, & Johannem Paddy*, Doctors in phyſick, *innuendo*) were there, aad found it ſo, and it is true: *ubi revera* neither the ſaid Doctor Atkins nor Doctor Paddy, nor any other ever found any ſuch thing to be committed by him; Et ubi revera he never adminiſtred any Phyſick unto him in Pills, or otherwiſe, &c. The Defendant pleaded a concord in barr, which Plea was ill pleaded (as it was agreed on both ſides) whereupon the Plaintiff demurred. And now Coke, Attorney General moved, That an Action lay not for theſe words. For it is not any ſlander to a Phyſician to ſay of him, That he killed one with Phyſick: For he might do it involuntarily, in not knowing the diſeaſe, and no diſcredit unto him. Popham, and Fenner held, that the Action lay not: For it cannot be any diſcredit to a Phyſician to ſay, that he killed one with Phyſick: For it is an uſual and common expreſſion, and it may be without any default in him, for they may miſtake the diſeaſes in their own bodies, much more in others, and apply wrong medicines, which may be the cauſe of the Patients death, and yet no diſcredit unto them. But if it had been, that he ſcienter, & voluntarie, miniſtred Phyſick to one to kill him, that toucheth him in his profeſſion, and the words had been actionable: but not here. And, although it be ſaid, that he never adminiſtred any Phyſick unto him, that is not material: Wherefore they, without any argument on the Plaintiffs ſide (Clench repugnante, & Gawdy abſente) adjudged it for the Defendant.

Action *verſus* Barham, Ante, Hill. 40. Plac. 9.

(10) ERror of a Judgment in the Common Bench in Treſpaſs for the taking of an Ox in Mynſhal. The Defendant juſtifies, becauſe Land in Dodington was holden of him, as of his Manor of Chelſey by an Heriot Cuſtom. The iſſue being upon the tenure, a Ven. fac. was awarded from Mynſhal, Dodington, and the Manor of Chelſey, and found for the Plaintiff, and Judgment thereupon accordingly, and Error aſſigned; becauſe the Venire facias is awarded to more Vills, than it ought to be: For, by this means, the Sheriff may return more from the places, where there cannot be any notice, and the parties thereby prejudiced;

2 Rol. 605. Poſt. 855. 2 Cr. 405.

diced; and therefore it is an equal miſchief, where the Ven. fac. is to more Vills, then it ought to be, as where it is to fewer. And Walter for the Plaintiff cited a Judgment in the Exchequer, in an Information of an Intruſion againſt of Lands in D. and S. For the Lands in D. they were at Iſſue: For the Lands in S. it was demurred; and a Venire facias was awarded from D. and S. and after Verdict, it was moved in arreſt of Judgment, and for this cauſe it was ſtayed. Popham and all the Court held; That, if a Venire facias was awarded from more Vills than it ought to be, that it is ill, and erroneous, for the miſchief which thereby might happen to the party: for, peradventure, the Sheriff would return but one, or two from the place, where beſt notice might be given, and all the reſt from places, where it needed not, and who by Intendment cannot have as good notice as the others. But they all held, That the Venue was well awarded in this Caſe: for Mynſhal, which is the place where the taking was, is as much neceſſary as the other: For, although the Iſſue is upon the Tenure, yet the Damages are alſo to be inquired of: and they of the Vill, where the taking was, might have the beſt notice thereof. Wherefore the Venire facias awarded from that place alſo is was enough. Wherefore the Judgment was affirmed. 2 Rol. 602.

Johns *verſus* Carne.

(11)

Debt upon the Statute of 2 Ed. 6. for not ſetting forth his Tithes. The Defendant pleaded Not-guilty, and found againſt him: and now moved in arreſt of Judgment, Firſt: That this action of Debt lies not; becauſe a certain penalty is not given by the Statute; but the treble value, which is uncertain. Sed non allocatur. Vide ante, in Bedle and Shermans Caſe. fol. 608. Secondly, becauſe the Defendant pleads Not-Guilty, which is not any iſſue in an Action of debt; but he ought to have pleaded Non debet. Sed non allocatur. For this action, being founded upon the Statute, upon a wrong done, this iſſue is good enough. Thirdly, becauſe he brought this Action for himſelf, and the Queen; and the Queen cannot have any benefit thereof; nor is it given to the Queen by the Statute, but to the parties grieved only. And it was held by the Court to be a material exception, and thereupon the Court Commanded the Judgment to be ſtayed. Ante 613. Poſt. 766. 2 Inſt. 651. Ante 257. Ant. 608.

Owen Wells *verſus* Hemmerſon.

(12)

Action for theſe Words: Thou art a Rebel, and no true Subject. After Verdict, it was moved in arreſt of Judgment, that an Action lay not for theſe words, and the whole Court was of that opinion: for he may be ſaid to be a Rebel upon a Proclamation of rebellion againſt him in an Engliſh Court. And it was afterwards adjudged accordingly. Ant. 602. Poſt. 638. 878.

Croſs

Croſs *verſus* Andrews. Hill. 40. Eliz. rot. 1032.

(13) ACtion upon the Caſe againſt an Inn-keeper of Stratton-Audley in the County of Oxon. And declares upon the common cuſtom of the Realm, That an Innkeeper ſhould keep the Goods of his Gueſts ſafely, &c. The Defendant pleaded: That, when the Plaintiff lodged with him, he was ſick, and of Nonſane memory, by occaſion of his ſickneſs, whereof he then languiſhed; and it was thereupon demurred; and adjudged without argument for the Plaintiff. For the Defendant if he will keep an Inn, ought at his peril, to keep ſafely his Gueſts Goods, and although he be ſick, his ſervants then ought carefully to look to them. And to ſay he is of Non ſane memory, it lieth not in him to diſable himſelf, no more then in Debt upon an Obligation. Wherefore it was adjudged for the Plaintiff.

1 Rol. 2.
1 Rol. 2.
Co. 4. 123. b.
Ante 398.

Clerk *verſus* Clerk.

(14) EJectione firmæ. The Defendant pleaded Not-guilty, and found for the Plaintiff. And it was moved in arreſt of Judgment, that the Venire facias was ad faciend. Jurat. in Placito tranſgreſſionis, whereas it ſhould have been in Placito tranſgreſſionis, & Ejectione firmæ, and therefore a Mis-trial, and not ayded by any of the Statutes. But it was moved e contra, That it was but a Miſawarding of proceſs, which is aided by the Statutes. The Writ alſo, being judicial, may be well amended; for it is but the default of the Clerk, the Roll, (which is the Warrant thereof) being good. But the Court (Gawdy abſente) held, That it is not amendable; For non conſtat, but that there may be an Action of Treſpaſs depending, and that this Venire facias is awarded thereupon. And although it were ſaid, That an Ejectione firmæ is but a plea of Treſpaſs in its nature, yet the Actions are ſeveral, and therefore the Venire facias ought to be accordingly, and this miſawarding of proceſs is not aided by any of the Statutes: But if there had not been any Venire facias, it had been holpen by the Statute of 32 H. 8. and 18. Eliz. Wherefore a Venire facias de novo was awarded.

Ante 433.
Ante 258.
Poſt. 854.
Co. 9. 78. a.
Ante 258.

Collins *verſus* Harding. Ante, Paſch. 40. Plac. 6.

(15) THe Caſe being again moved; Gawdy, Fenner, and Clench held, That, the Leaſe being made by the Lords Licence with one entire reſervation, it is a good Leaſe, and a good Rent, which iſſueth out of the entire Land, Copy-hold, and Free. For the Rent is for Land, and the profits thereof) for which he may well contract, and in recompenſe whereof the Rent is to be paid, and therefore it iſſueth out of both. And it is not like to a Leaſe of Land, and Goods; for all of it is there iſſuing out of the Land only, and nothing out of the Goods. And when the Reverſion was granted at one time, and an Attornment thereto, and a Surrender is made to his uſe at the ſame time, which is preſented, and an admittance made accordingly, although at another time, yet it ſhall have relation to the time of the Grant, and Surrender made: As where an Obligation is made by two,

1 Rol. 234. 5.
2 Rol. 408. 426.
Hob. 177.
2 Rol. 426.
Ante 607.

an

nd the one ſeals at one time, and the other at another time, et it is one entire Deed, and ſhall relate to the time of the firſt elivery, and the party ſhall declare accordingly. So here, is now in the hands of the Grantee, as one intire reverſion, nd he ſhall declare accordingly, and although they be ſeveral reerſions, yet he ſhall declare upon the truth of the matter; and upn the whole Caſe the Action is well brought. As a man may have ne Action of Debt upon ſeveral Obligations: So, upon ſeveral Grants of reverſions, he ſhall declare according to his Caſe. Wherefore, &c. Popham held, that the Rent was iſſuing out f the Freehold only, which is the more worthy, and moſt rearded in Law; and although a Leaſe for years of a Copy-hold regarded, as a Leaſe at the Common Law, wherefore an Ejectine firmæ lies at the Common Law; as all the Juſtices of England beſides 3.) reſolved: yet this being coupled with Free-land, it ſhall not be regarded to have Rent iſſuing thereout: But it ſhall e, as where Rent is reſerved upon a Leaſe of Land, and Goods. But in regard he declared upon all the matter, the Court, ſhall adjudge upon the whole matter, that he had good cauſe to ecover; as in Caſe, where a Leaſe is made of Land, and Goods, rendring Rent, and he brings Debt thereupon, and declares according to the Caſe, he may well recover: So here. Wherefore it was adjudged for the Plaintiff.

Hob. 178.

2 Rol. 426.

Ante 607.

Ante 535.

Ant. 607.

Hodges *verſus* Smith

(16) DEbt upon an Obligation of 200 l. The Defendant pleaded, that after the Obligation made, the Plaintiff, by his Indenture ſhewn in Court, covenanted, and granted unto him, that if he payed 100 l. at ſuch a day, that the Obligation ſhould be void; and alledges in facto, that he paid it at the day, &c. And the Plaintiff hereupon demurred; For it was moved on his part, that, it being made after the Indenture, cannot be pleaded in Barr thereof: but he ought to take his advantage thereof by way of Covenant, and it ſhall not enure, as a Defeaſance, or Releaſe. But all the Court held the contrary, that he may well plead it in barr, and ſhall not be put to his Writ of Covenant by circuits of Action. And therefore they all held, that the Plaintiff ſhould be barred.

Fyſh *verſus* Thorowgood.

(17) ACtion for Words. Whereas ſuch a Commiſſion iſſued out of the Exchequer to the Plaintiff, and one J. S. and by force thereof they took divers Examinations of Witneſſes, and returned them into the Exchequer; that the Defendant ſaid, that the Plaintiff had returned, as the Depoſitions of Witneſſes, into the Exchequer the Examination of divers, who were never ſworn. The Defendant pleaded in Barr, that a Commiſſion iſſued to examine, &c. And, &c. And, that the Plaintiff returned into the Exchequer the Examination of one J. S. who was never ſworn, and therefore, &c. And it was hereupon demurred, and ruled by all the Court, that the Juſtification, and Barr were not good: For although one, who was not examined, was returned into the Exchequer, yet that does not prove the Words, That the Plaintiff returned, &c. Becauſe

the

the juſtification is of one witneſs only returned, and the words are in the plural number; it was then moved, that the words themſelves were not actionable; for they be not any ſlander, which will bear an Action. But all the Court reſolved to the contrary: For, being averred, that he was a Commiſſioner, and that he returned Depoſitions, taken before him and his companion, into the Exchequer, it is a great fault in him to certifie one, as ſworn and examined upon his Oath, who was never examined; and it is Fineable. Wherefore it is a great ſlander unto him to report it of him, &c. And it was adjudged for the Plaintiff.

(5) Barton *verſus* Aldeworth.

ACtion upon the Caſe. Whereas he purſued a Latitat againſt J.S. intending to declare in Debt, upon an Obligation of 100 l. wherein he was bound unto him, and delivered that Writ to the Defendant, being Sheriff of Briſtow, to execute it, and advertiſed him of his cauſe of Action, and of his intent to declare in Debt, &c. And that the Defendant, being Sheriff, arreſted him by vertue of the ſaid Writ, that the Defendant had let him at large, abſque aliqua ſecuritate inventa for his appearance, and at the day returned Cepi corpus; and that the ſaid J. S. did not appear at the day, but hid himſelf; and that upon an Habeas corpus awarded, he returned paratum habeo, which was falſe, whereby the Plaintiff was delayed in his Sute, whereupon he brought this Action: The Defendant pleaded, that the ſaid J. S. being arreſted, put him in ſureties for his appearance J.N. and J.D. who are perſons of ſufficient Eſtate within the County, who were obliged unto him in 40 l. for the appearance of J.S. at the day in the Writ mentioned, and pleaded the Statute of 23 H. 6. by reaſon whereof he let him at large, and traverſeth abſque hoc that he let him at large abſente aliqua ſecuritate inventa prout, &c. And it was thereupon demurred: for it was moved in the Plaintiffs behalf, that the Sheriff at his peril is to take heed, that he take good and ſufficient Sureties for his appearance, and to ſave himſelf harmleſs concerning it: For, although the Statute appoints him to let to Bail, yet it appoints him not what Security he ſhall take. But he ought to take ſufficient to preſerve himſelf indempnified. But all the Court held the Plea and Travers to be good; for the Statute appoints him to let at large upon Bail, and therefore he is compellable to take Bail, and it is left to his diſcretion what Bail he will take. Then when he anſwers, that he took Bail of him. viz. J.N. and J.D. having ſufficient Eſtates within that County, that ſhall excuſe him againſt the party; and it is not reaſonable, he ſhould be chargeable in an Action upon the Caſe for doing that, which the Law appoints. And Popham ſaid, if he takes one Surety, it is ſufficient for he is not compellable to take two Sureties: and, although that he had not the body at the day, and afterward at the day of the Habeas Corpus returned, returned quod paratum habeo, when he was at large, that is a contempt to the Court, and Fineable, but it is nothing as to the party, nor can he take any advantage thereof. Wherefore it was adjudged for the Defendant.

Poſt. 672. 808. Co. 10. 101. a. Poſt. 624. 852. Poſt. 873.

Bennyon

Bennion *verſus* Watſon, & Elwicke, late Sheriffs of the City of York. Trin. 39 Eliz. rot. 1084.

(19) ACtion upon the Caſe: Whereas John Bell was indebted unto him in three ſeveral Obligations in 141l. and he purſued a Latitat directed to the Sheriff of the City of York, which he ſued, &c. with an intention, that the ſaid John Bell being arreſted, and appearing according to the courſe of the Court of Queens Bench he might have exhibited his Bill of Debt upon thoſe three Obligations againſt him, and have declared againſt him in Cuſtodia Mareſchalli ſecundum conſuetudinem Curiæ, to recover his Debt; and alledges in facto, that the Defendants by force of this Writ arreſted him apud York, and afterwards, to defraud him from taking the advantage of his Writ, and to recover his Debt by that means, before the return of the Writ, apud Cropwell-Biſhop in Comitat. Nottingh. they let the ſaid John Bell at large, and to eſcape without taking any reaſonable Sureties for his appearance, per quod he is not only delayed of his Sute, but utterly deprived to have any remedy for his debt againſt the ſaid John Bell, to his damage of 200 l. The Defendant pleaded Not guilty. And after the Ven. fac. returned, and before the Triał, one of the Defendants died. And afterwards, upon ſurmiſe to the Court, that one of the Defendants was dead, the Diſtringas, and the Record of Niſi prius was betwixt the Plaintiff, and the one Defendant only; and it was found for the Plaintiff to his damage of 200 l. And after Verdict, it was moved in Arreſt of Judgment, Firſt, That the Bill was abated by the death of one of the Defendants; For, it being a joynt action, wherein they are chargeable as Sheriffs, and not ſeveral, the Bills ſhall abate by the death of the one of the Defendants. Sed non allocatur; for it was held by the whole Court, That this being but in nature of a Treſpaſs, and meerly perſonal, and in regard he cannot have another action but againſt the Surviver, it ſhall not abate no more then in Treſpaſs, or Replevin. Secondly, becauſe the Triał was only by a Venue of Cropwell, whereas it ought to have been from York alſo; for there was the principal part of the act, viz. the delivery of the Writ, and the Arreſt. And upon Not guilty pleaded, all is in Iſſue. Sed non allocatur: For the Tort, whereupon the Action is founded, is upon the Eſcape only, which was committed in the County of Nottingh. And although the Arreſt is to be proved, otherwiſe there cannot be an Eſcape, yet the Eſcape being the ſole cauſe of the Action, the Triał ſhall be by a Venue from that place only, where the Eſcape was. And Fenner ſaid, that in regard York was a City, and a County, which could not joyn with any other; therefore, alſo, the Triał ſhall be only from the County, where the Action is brought. Thirdly, it was moved, Whether this Action lay upon this Eſcape, and for the non-appearance of the party: For, it was ſaid, that that was an offence to the Court, for which they ſhould be fined; and they ought not to be twice puniſhed. But the Court held, that the action did lie; becauſe here is an apparent negligence in the Sheriff, to let him at large, without any Bail; and thereby the party prejudiced in his Sute, as he hath declared. And the Defendant is found guilty thereof, and therefore it is reaſonable, that the

2 Rol. 602. Poſt. 652. Ante 272. 1. 2 Rol. 602. Ant. 624. Poſt. 652. Ante 124.

Party ſhould have his Action: And it is not like to the Caſe, where the Sheriff let him at large upon Sureties; for there he did his devoir, and that whereto he was compellable, and no wrong; but it is not ſo here. Wherefore it was adjudged for the Plaintiff, and Error brought, but it was diſcontinued.

Markham *verſus* Gonaſton. Trin. 40 Eliz. rot. 212.

(20) 2 Rol. 29. 30. ACtion upon the Caſe. Whereas the Plaintiff, and Sir Francis Willoughby, 18 May. 38 Eliz. were bound in a Reconuſance of 600 l. to William Tracy Eſquire, at the requeſt of the ſaid Sir Francis Willoughby, and for his Debt, with a Condition for the Payment of 315 l. upon the nineteenth day of Novemb. following; And, whereas Sir F. W. 20. May, 38 Eliz. agreed with the Plaintiff, That he, and G. Fox, would be obliged to the Plaintiff, by an Obligation of 1000 l. with a Condition for the payment of the ſaid 315 l. upon the ſaid nineteenth day of Nov. & to ſave him harmleſs from the ſaid Recomiſance, and from all damages, and loſſes, by reaſon thereof; and whereas upon the ſaid 20 May, 38 Eliz. the Defendant at the requeſt of the ſaid Sir F. W. writ Formam prædicti Scripti Obligatorii, and of the Condition, leaving a ſpace in the ſaid Condition for divers Engliſh words to be put therein: viz. in quinta linea inter hæc verba an & Tracy: and another ſpace in the ſame line, &c. (and ſo mentions divers) And afterwards upon the ſame 20 Maii, An. 38 Eliz. the ſaid Geffry Fox ſealed Scriptum Obligatorium prædictum, with the ſaid ſpaces therein, and delivered it to the Defendant (having the ſaid ſpaces therein not filled up) to the uſe of the Plaintiff, as his deed; That the Defendant fraudulently, and maliciouſly intending to deceive the Plaintiff, and to avoid the ſaid Bond quoad the Plaintiff, poſtea the ſame day and year, without the aſſent, or notice of the Plaintiff, filled up the ſaid ſpaces, viz. in the firſt ſpace, interlining the word William, and in the ſecond ſpace, betwixt the words, an & Tracy, interpoſed theſe words of Raglay, and ſo of others; and that the ſaid 315 l. was not payed at the day; and, that afterward William Tracy ſued a Scire fac. upon this Reconuſance, and had Judgment upon two Nihils returned, and had Execution thereupon; and alledgeth in facto, That by reaſon of this interpoſition of theſe words, the Obligation had loſt his force; and he is deprived of his remedy to recover his Debt to his damage, &c. The Defendant pleads, That he was Servant to Sir F. Willoughby, and by his command writ this Obligation, leaving the ſpaces therein for the inſcribing of the ſaid words, after the enſealing, and delivery thereof, by the ſaid G. Fox, and that he writ it accordingly; and that after the enſealing and delivery thereof by G. F. to the Plaintiffs uſe, and before the Plaintiff had any notice of that Obligation, he, by the command of Sir. F. W. his Maſter, did fill up the ſaid ſpaces by the aſſent of the ſaid G. F. and that afterwards Sir F. W. ſealed and delivered it to the Plaintiffs uſe. Whereto the Plaintiff agreed, and traverſeth, That he falſo, fraudulenter, & malicioſe filled up the ſaid ſpaces, modo & forma, &c. And it was thereupon demurred; firſt, it was held by all the Court, That the Addition of a Condition to an Obligation, which was ſingle, although it be for the advantage of the Obligor, ſhall avoid the Deed, being done by the Obligee, or any Stranger: For he is put to have his remedy againſt the ſtranger, by an Action upon

Co. 10. 27. a.

the

he Caſe. Vid. 14 H. 8. 27. 36 H. 6. 5. 26. H. 8. fol. ultimo. So of a Nature of a Condition, 41 Ed. 3. 10. 28 H. 8. 27. 30 Ed. 3. 8. This interpoſition alſo of the Words, in the Condition of the Obligation, being words material (as it was agreed by all the Court, hat they were) avoids the Deed: For it is parcel of the Deed, nd by thoſe words the Condition is altered: For, whereas before it did not appear, to which of the Tracies the Reconuſance as entred, it is now made certain; and it may be, that it was ow to another man, then in truth it was. But although it were ot ſo, yet it is altered. For, whereas it before reſted upon an verment, yet it is now altered: And, if before it was void for ant of thoſe words, as they conceived it was, It is now made ood by inſerting of them, which alters the Deed, and therefore t is ill. And although this alteration is for the benefit of the Obligor, yet it is not material, for the Deed ought always to emain, as it was at the beginning. And therefore Fenner ſaid, hat it was adjudged in the Common Bench, that where Feckam, Dean of Pauls, made a Leaſe for years, rendring 27 l. (as as the intention) But the Indenture of the Leaſe was 26. l. But the Counterpart was 27 l. the Leſſee afterwards, according to the Intention, and to make it agree with the Counterpart nade it 27 l. and ſo it was for the benefit of the Leſſor, yet it was uled, That for this cauſe the Leaſe was void: So here. Vide 8 H. 8. 17. and 9 Eliz. Dyer, 261. It was alſo reſolved, That although it was filled up by the appointment of his Maſter, that ſhall ot excuſe him from the ill fact. And, although it were done before notice of the Delivery of the Obligation to the Plaintiffs ſe; yet it was holden, That it was not material: For, preſently, by the delivery to the Plaintiffs uſe, it veſted in him without notice (and the Obligor had no further to meddle therewith) For, eing for his benefit, it veſted in him before the agreement, and s not Countermandable; As 33 H. 8. 29. is. And, although that he interpoſition of thoſe words was by the aſſent of the Obligor, fter the Obligation was ſealed; yet it is not to any purpoſe: But, if it had been appointed by the Obligor before the enſealing nd delivery thereof, that it ſhould be afterwards filled up; opham ſaid, It might then peradventure have been good enough, nd it ſhould not have made the Deed to be void. But, being after, it ſhall avoid the Deed. Wherefore it was adjudged for the Plaintiff. Note, That Markham had before brought Debt in the Common-Bench, upon this Obligation againſt G. F. who pleaded the filling up of the Spaces, after the Bond ſealed, and delivered; and ſo not his Deed: And it was held clearly to be a good cauſe of avoiding the Bond. Wherefore he there took Iſſue, that they were not filled up, after the ſealing, and delivery, which being proved at the Niſi prius, he was non-ſuted. Wherefore, for his remedy, he brought this Action; and it was adjudged accordingly for the Plaintiff, and a Writ awarded to inquire of damages.

1 Rol. 29.

Ant. 54.

Co. 11. 27. a. Poſt. 800.

Sawyer *verſus* Wilkinſon. Trin. 40 Eliz.

(21) TRespaſs, For the taking an Ox-hide 10 June 38 Eliz. apud St. Peters in Cornhil. The Defendant juſtifies; For that the Mayor and Comminalty of London were ſeiſed in fee of an Houſe called Leaden-hall, being the place, where, &c. And becauſe the ſaid Ox-hide, at the time aforeſaid, was there damage feſant, he,

as Bayliff to the ſaid Mayor and Comminalty, & by their command, took it there Dammage feſant, &c. Quæ eſt eadem tranſgreſſio. The Plaintiff ſaith, that London is an ancient City, and that a Common Market is kept there every Friday, within Leaden-Hall aforeſaid, for Hides, and other things; that the ſaid 10. June 38 Eliz. was Friday, and Market day there; and that he bought the Hide in the Market there of one W. B. and delivered it to William Hunt to carry away; and the ſaid W. H. put it upon his ſhoulders, ready to carry it away: and he having it in a Basket upon his ſhoulders, and going therewith from Leaden-Hall, the Defendant took it, &c. which he is ready to aver, &c. And hereupon the Defendant demurred; firſt, for that the Defendant juſtifies dammage feſant, and the Plaintiff ſhews this matter to take from him his Authority for the Caption, and he varies from the manner of the Caption, and doth not conclude his Plea, Quæ eſt eadem, &c. Secondly, becauſe the Defendant juſtifies for a taking, which is intended upon Land dammage feſant: And the Plaintiff ſpeaks of another, and doth not travers. Sed non allocatur; for the Plaintiff ſhewing the ſpecial cauſe of the Hides being there; and that for this cauſe, the Defendant had colour to take it, but, by reaſon of the Matter in Law, which he ſhewed, his taking was not juſtifiable, it ſeemeth, that the Replication was good, and he needed not a Travers: and the concluſion of the Plea, Quæ eſt eadem tranſgreſſio, is not requiſite, becauſe he agreed in the place, and time of the Caption; but ſhews cauſe why it is not diſtrainable. And they all agreed, That this Dr-hide brought into the Market, and ſold, cannot be diſtrained dammage feſant. But Popham held, That the Plaintiff ought to have traverſed; for he doth not agree in the manner of the Caption. But Gawdy and Fenner è contrà; becauſe it is his matter in Law: and therefore it ſufficeth to plead it without any travers. Wherefore it was adjudged for the Plaintiff.

Baron *verſus* Sleigh. Hil. 40 Eliz.

(22) ACtion upon the Caſe, Whereas the Plaintiff was Bail in the Queens Bench for one A.S. at the Suite of William Rich in Debt for 19 l. and whereas the ſaid A.S. was ſued in debt by the Defendant for 200 l. in which Action one Jo. Starton, and Hercules Anthony were Bail for him: That the Defendant after a Recovery in Debt againſt the ſaid A.S. of the ſaid 200 l. took forth a Capias againſt the ſaid A.S. which was returned Non eſt inventus: And, that the Defendant afterwards, at Weſtm. &c. by fraud, and Covin to charge the Plaintiff with the ſaid Debt of 200 l. recovered ut ſupra, informed the Court in deceipt of the Court, That the Plaintiff was Bail for A. S. at his Suite (whereas he was not, but was Bail only for him at the Suite of Rich, which was well known to the ſaid Defendant) he thereupon injuſte impetravit a Writ of Scire fac. upon this Bail againſt the Plaintiff, which being returned Nihil, he by the like fraud, and deceipt procured a ſecond Scire fac. againſt the Plaintiff, which was alſo returned Nihil. Whereupon it was adjudged, that the ſaid Sleigh the Defendant ſhould have execution againſt the Plaintiff. That the Defendant, præmiſſorum non ignarus, by the like fraud, & deceipt to arreſt the Plaintiff, in deceipt of the Court, procured a Capias ad ſatisfac. againſt the Plaintiff. Whereupon the Plaintiff

tiff was arreſted, &c. to his dammage, &c. The Defendant pleaded Not guilty, and found againſt him, and it was moved in arreſt of Judgment, that this Action lies not. For it is to procure Proceſs Judicial to be awarded, which is the Act of the Court, and the miſawarding thereof, although it be upon information of the party, as it is the ſurmiſe of the party, no Action lies for it: For it is but erroneous, and the default of the Court to award it upon ſuch information. And in proof thereof, 21 Ed. 4. 23. was cited, where a Writ of Habeas Corpus was awarded to remove a Cauſe out of London, for that the party had an Action depending here, whereas in truth he had not any: Although this were upon the Information of the Atturney to the party, and the other delayed in his Sute thereby, yet it is not actionable; but, if it were awarded upon ſurmiſe, that he was Servant to one of the Clerks, where he was not, there an Action would lie; for that the Court could not know, but meerly upon the parties Information. So here, before the Proceſs had been awarded, the Court might have ſeen, whether he were the ſame perſon, who was Bail. Wherefore, &c. But Fenner and Clinch held, that the Action was maintainable, in regard it was ſhewn, that he procured it by fraud and Covin, to deceive him, and although he knew that he was not the ſame party: ſo there is an apparent Tort in him, and it is alledged, that he was the cauſe of awarding the Proceſs againſt him; As where one procures a falſe Sute to be brought in anothers name, or where one caſts a protection without cauſe, or the like; wherefore without argument abſentibus Popham, and Gawdy, they adjudged it for the Plaintiff. 17 Ed. 3. 51. 20 H. 6. 31 & 24. 27. Aſſ. Plaintiff 75.

2 Cr. 667. Co. 7. 1 a. Poſt. 714. Poſt. 794. Poſt. 715.

Blake *verſus* Stanley.

(23) ACtion for words, Thou art a Coyner of falſe Money, and I have money to ſhew which thou coyneſt. After Verdict it was moved, That the words were not actionable; for he doth not ſay, that he coyned Money currant in England, otherwiſe it is not Treaſon, but Miſpriſion. Sed non allocatur, and adjudged for the Plaintiff, abſentibus Popham and Gawdy.

Stebbing *verſus* Goſnal. Trin. 40 Eliz. 108. vel. 376. Suff.

(24) ACtion upon the Caſe, by a Copy-holder againſt his Lord, ſuppoſing that he was a Copy-holder in Fee, and that within the Manor is ſuch a Cuſtome, That every Copy-holder ſhall have the Loppings of the Pollingers; and becauſe the Defendant had cut down two Oaks being Pollingers, whereby he loſt the benefit of the Loppings, he brought this Action; The Defendant Proteſtando, that there is not any ſuch Cuſtom, for Plea ſaith, that he cut down two Oaks, being Pollinger-Timber Trees, and left the Loppings there for the Plaintiff. And thereupon the Plaintiff demurred. Godfrey for the Plaintiff moved, that it was not any plea; for a Copy-holder hath not only intereſt in the preſent Loppings, but in a future profit by the Loppings, and therefore the Lord ought not to cut them down to his prejudice. And he cited a Caſe to be adjudged in this Court, betwixt Garnon and Keble, that this point was adjudged upon demurrer, that an Action upon the Caſe was maintainable. And of that Opinion were Popham and Fenner: For a Copy-holder of Inheritance

1 Rol. 108.

tance hath intereſt in the Loppings and Boughs, as well as the Lord in the Timber: And if the Lord cut down all the Timber-trees, then the Copiholder ſhall loſe all the profit, which for the future might come unto him, and never afterwards ſhould have any more Loppings; and it is a reaſonable cuſtom to have the Loppings of the Pollingers, which anciently have been continued. Wherefore, &c. But Clinch doubted, becauſe that then the Lord, who had intereſt in the timber, ſhould never by this means have any profit thereof, and thereby loſe his Inheritance; wherefore it is reaſon, that he might take the timber, and leave the Loppings to the Copiholder: Otherwiſe, they ſhould never be cut down, and the timber would decay, which would be a prejudice to the Common-wealth. But notwithſtanding, Popham, and Fenner (abſente Gawdy) gave rule, That if other cauſe were not ſhewn, Judgment ſhould be entred for the Plaintiff.

Smith *verſus* Belay.

(25) A Vowry for a Rent-charge: Upon Demurrer the Caſe was, that Edward Ardes the Grandfather made a Feoffment to the uſe of Katherine his Wife for life, Remainder to Richard his Son for life, and after to his eldeſt Iſſue, which ſhould be at the time of his death, Remainder in fee to J.S. Richard had Iſſue John his Eldeſt Son, Edward the Grand-father dies, Katherine lets it for years to Richard. Richard and J.S. made a Feoffment, and levied a Fine with Warranty, and Proclamation to Belay. Katherine dies, within five years after Richard dies. John being his eldeſt Iſſue, at the time of his death, enters as in his Remainder. And whether the Remainder were deſtroyed by theſe Acts, or, that he now might enter? was the ſole Queſtion. Tanfield moved, that this being a contingent Remainder, and being deſtroyed by the Feoffment, and Fine, before it hapned and fell, that it never ſhould now take effect: For, if there be any diſturbance before, that this future uſe comes into Eſſe, it is deſtroyed for ever: And in this Caſe upon the ſame Title, betwixt Terringham and Ardes, this Court was clear in opinion, that this future Uſe was deſtroyed, but that was upon Evidence to a Jury. And in Chidleys Caſe this Point was reſolved by all the Juſtices accordingly: And of this opinion was the whole Court. But becauſe there were none on the other ſide, they would adviſe.

2 Rol. 794.
2 Cr. 168.
2 Cr. 168.
Co. 1. 134 b.
2 Rol. 794.

Ireland *verſus* Coulter. Paſch. 40 Eliz. rot. 393, or 339.

(36) DEbt againſt him as Executor to one Hunt, The Defendant pleads, that Hunt the Teſtator was bound in a Statute of 100 l. and beſides, that he had not any Aſſets: And hereupon they were at Iſſue, and a ſpecial Verdict found, that the Defendant was Executor de ſon tort demeſne; and that the Teſtator was indebted unto him, and that he retained divers goods to ſatisfie that Debt due unto himſelf, and over and above, then to ſatisfie the Recognuſance he had not in his hands, &c. Et ſi, &c. It was argued by Tanfield & Goldſmith for the Plaintiff, and by Coke for the Defendant, The ſole point was, whether an Executor de ſon tort may retain Goods to ſatisfie himſelf? And Coke moved, That he well might. And the Plaintiff, by this Action againſt him,

1 Rol. 922.
Co. 5. 30. a.

im hath allowed him to be rightful Executor: Wherefore the nding, that he was Executor per Tort is not material. And e, being allowed to be Executor, may do all things, as an Exeutor, viz. pay debts, or any other lawful acts. And as he may o it to a ſtranger, ſo he may pay himſelf. Gawdy, and Fenner ere of his Opinion: For as he ſhall be charged by reaſon of is poſſeſſion: Like reaſon it is he ſhould be allowed all lawful cts; and this is here a lawful act: As where a Diſſeiſor pays ent, they ſhall be recouped in damages. So if one enters s Guardian, who is not Guardian, he ſhall have allowance for ll reaſonable acts, as a lawful Guardian ſhould. And it might be; That in this Caſe he did not know himſelf, but that he was ightful Executor, as if the Teſtator had firſt made a Teſtament, nd thereby made him Executor, and afterwards he made anoher Teſtament, and thereby made another Executor; and the irſt was proved, all lawful acts done by him are good; and, alhough the other Teſtament be afterwards found and proved, hat ſhall not defeat the lawful acts. Popham and Clinch e contra; For an Executor de ſon Tort ſhall never have any benefit by his Malefeſance. And it is not like to the Caſe, where a Diſſeiſor ays rent: For that is not any wrong, or prejudice to a ſtranger, r to any other to pay that which is due; but here this is prejudial to a ſtranger; for every one will be Executor after the eath of a Teſtator, and by that means be their own Carvers, nd pay themſelves before any other Debtors, whereby great nconveniencies would enſue. Neither is this like to the Caſe, here one enters as Guardian, who is not Guardian; for there he Infant may have Treſpaſs againſt him, or he may charge him s Guardian. And if he charge him as Guardian, it is reaſon e ſhould then have allowance as Guardian. Where one likewiſe s made Executor by a former Teſtament, and afterwards anoher Teſtament is made, and therein another made Executor, nd the laſt Teſtament not being known, the firſt is proved, and he Executor pays debts unto himſelf; and then the ſecond Teſtament is diſcovered and proved; Yet peradventure the payment of the firſt Executors debts ſhall be allowed him, againſt ll ſtrangers at the leaſt: For he had color to do it, as Executor by the firſt Teſtament, and he is to be allowed for all Judicial acts, which he did, &c. But it is not ſo here, where he takes upon im to be Executor de ſon Tort & Teſte Demeſne. And a preſident was ited, Paſch. 32 Eliz. in Communi Banco; That an Executor de ſon Tort night not retain to ſatisfie himſelf. Wherefore, &c. Afterwards upon another day it was moved again, and the Court ſaid, They were reſolved, that an Executor de ſon tort Demeſne cannot retain goods to ſatisfie himſelf his own Debt. And Popham ſaid, That divers of the Juſtices at Serjeants Inn (to whom he had propounded the Caſe) were of that opinion, And, that they reſolved to enter Judgment for the Plaintiff: But it was then ſurmiſed to the Court, that the Defendant was dead, and thereupon a ſtay of Judgment was prayed: But the Court would not lay it upon ſuch ſurmiſe. But upon the Plaintiffs prayer Judgment was entred. 5 Co. 20.

1 Rol. 922. Co. 5. 30. b.

Phillida

Phillida Shackborough *verſus* Biggins.

(27) APpeal of Murther for the death of her Husband. The Defendant pleaded Not guilty, and was found Not guilty of the Murther, but guilty of the Manſlaughter. The Defendant prayed to be diſcharged, becauſe the general Pardon had diſcharged him, that he ſhould not be put to have his Clergy, & this puniſhment is not for the party Plaintiff: But it was ruled; That it was at the parties Sute, and that ſhe might well pray it, and ſo ſhe did. Note, that Muſgraves Caſe was here cited, and the Record viewed, and no Judgment herein. Trin. 41. Pla. 14. poſtea.

Ant. 465.

Brownlow *verſus* Farr. Trin. 39 Eliz. rot. 626. Linc.

(28) TRespaſs for the taking of two Loads of Wheat ſet out for the ninth part of the Grain in Hepworth. Upon Not guilty pleaded, it was demurred upon the evidence, and the Caſe was, That King Ed. 6. was ſeiſed in Fee of the ninth Sheaf of the Corn and Grain in Epworth, *alias* Hepworth as parcel of the poſſeſſions of the Abby of St. Leonards, in Comitat. Eborum: and by Letters Patents under the Great Seal in 7 Ed. 6. granted to Eſtoſe and Downman, and to their Heirs, Totam illam medietatem nonæ garbæ bladorum & granorum vocat. The ninth Sheaf, de, & in Epworth in Comitat. Eborum modo vel nuper in tenura, ſive occupatione Willielm. Ward, ac nuper Monaſterio St. Leonard in Comitat. Eborum diſſolut. ſpectant. And under this Patent the Plaintiff claimed the entire ninth Sheaf: For in truth all was in the tenure of Ward by a Leaſe made 36 H. 8. under Rent: But Epworth was not in the County of York, but in the County of Lincoln. And, whether upon the Patent, the entire ninth Sheaf paſſed, or not? was the queſtion, by reaſon of the Statute of Miſrecital made 7 E. 6. And it was argued by Roper for the Plaintiff, that all paſſed, for, the quantity being miſtaken, it is expreſly aided by the Letter of the Statute; and if not, yet by the intent of the Statute. But Henry Yelverton e contra. But as to the Miſpriſion of the County, where Epworth lay, it was agreed on both ſides not to be material. For that is holpen by the Statute, and ſo held the Juſtices Popham and Clinch, cæteris Juſticiariis abſentibus: but as to the principal Matter, Popham ſaid, That the Patent could not convey more than the Moyety, if it could convey that: For, when the King was deceived in his Grant it was not the intention of the Makers of the Statute to help that Grant; as if the King grants the Moyety of two acres, it is not reaſon, that the Patent ſhould be conſtrued, that he ſhould have two acres: And that is the difference, as to the quantity where the certainty is plain; as where the King grants two acres, called the Manor of D. whereas the Manor contains an hundred acres, it is a good grant of the whole Manor, and of all the acres: But if he had granted all his Manor of D. containing ten acres, whereas it contained twenty acres, Nothing had paſſed by the Common Law, but it is aided by the Statute: There is alſo a difference as to the quality, and nature of the thing. As where King Hen. 8. granted to Sir Thomas Moor, Totam Turbariam ſuam in D. where a former Patentee, having ſuch a Grant, had before converted part thereof into arable Land, and part into Paſture, That Sir Thomas Moor ſhould have but that only, which was then Turbary.

And

and the Statute doth not remedie ſuch a Grant. For Turbary is a profit parnable, which may be in one place, and not in another, after converſion; but if it were a great Moor, and after ſuch converſion of part into Arable, or Paſture, the King had granted totam Moram ſuam, it had been otherwiſe; for that is provided for by the ſaid Statute; and if he had granted all his Eſtovers in ſuch a Wood, whereas he had not any Eſtovers, but a Coppice in the ſaid Wood; he was not remedied be this Statute: and, if a common perſon had granted an acre called the two Acres, one acre only had paſſed. A fortiori in the Kings Caſe. Wherefore it was adjudged for the Plaintiff with the aſſent of Clinch, cæteris Juſticiariis abſentibus.

Barſdale *verſus* Smith.

TRespaſs by a Vicar, for taking of two loads of Hay, and carrying it away. The Defendant pleads, that the place, where, &c. is within the parish of Maidſtone, whereof he is Parſon Impar-ſonee; and it was ſet out for Tithes: and that he uſed to have Decimas garbarum, & fœni. The Plaintiff replies, and ſhews a Compoſition in the time of K. Hen. 3. and that the Vicarage was then endowed, which was; that the Vicar ſhould have Minutas decimas, & totam decimam garbarum in Watworth (which was an Hamlet within the ſaid Pariſh, and the place, where, &c. and was parcel of that Hamlet) and, that at all times, whereof, &c. he, and his predeceſſors (Vicars there) had uſed to have the Tithe of Hay there. Wherefore, &c. And it was hereupon demurred. Tanfield, By this preſcription, he cannot have Hay. For Garba is always Corn, and therefore this preſcription cannot ſtand with the compoſition. Coke e contra: for as the uſage hath been, ſo it ſhall be expounded. For it was adjudged in the Exchequer, where a Patent was made by King John to one, and his ſucceſſors; and becauſe Bracton ſaith, that anciently ſucceſſor was taken for Hæres, and that always ſince it had uſed to deſcend Jure hæreditario, it was adjudged, that the Heir ſhould have it by that Charter. Wherefore, &c. And all the Court here reſolved accordingly, in regard it was an ancient Charter, and conſtantly had been uſed to extend to Hay, the word Garba might well extend thereto, although at this day it is commonly uſed in another ſence. Wherefore it was adjudged for the Plaintiff. (26) 2 Rol. 335. Co. Litt. 8. b

Broom *verſus* Hore.

DEbt for Rent: The Caſe was, That Sir Chriſtopher Broom Lett Land to Hore, rendring Rent, who Lett to Wrigleſworth the fourth part of an acre, and afterwards Sir Chriſtopher Broom granted the reverſion to George Broom now Plaintiff: and he brought debt againſt Hore for the entire Rent. Tanfield moved, that the Action lay not; for when the Leſſee granted his Eſtate in part, and the Leſſor granted all the reverſion of the Entire, the privity thereby for that part, which was granted over, was utterly deſtroyed, and no action as to that part lies againſt the firſt Leſſee; as in the Caſe of Humble and Glover was adjudged in this Court; and the Action being gone in part, is gone for the whole. Stephens e contra: becauſe the entire Eſtate remained (30) Co. 3. 24. a. Ante 328. Co. 3. 23. b.

mained in part of the Land, and ſo the entire privity, and action remains for the whole againſt the firſt Leſſee; and ſo is 24 H. 8. Ryſdens Caſe, and 2 Aſſ. 52. and all the Court was of that opinion. It was afterwards moved by Tanfield, that here was a ſuſpenſion of the entire Rent. For it is alledged and confeſſed, that the Plaintiff entred into that part, Lett to Wr. and then that is a ſuſpenſion of the entire Rent; But the Court ſaid, That this Entry, were it lawful, or tortious, being by the command of W. veſted all in W. and he was but ſervant to W. and nothing thereby veſted in the Plaintiff, and therefore here is not any poſſeſſion in him. Wherefore it was adjudged for the Plaintiff. 3 Co. 24.

Poſt 637.

Malyns *verſus* Sir John Hawkins.

Hill. 38 Eliz. rot. 676.

(31) A Udita Querela, to avoid an Execution of 500 l. upon a Judgment in this Court, and ſurmiſeth: That the ſaid 500 l. was paid to Sir Jo. Hawkins after the Judgment in diſcharge of the Judgment, and the Audita Querela was awarded out of the Chancery, directed to the Juſtices of this Court, &c. Whereupon a Scire fac. was awarded. And the Sheriff returned, That Sir Joh. Hawkins was dead. Whereupon it was ſurmiſed to the Court, that Dame Hawkins was his Executrix, and a Scire facias was awarded againſt her, which was grounded upon this Audita Querela, and ſhe appeared upon it, and pleaded, That the foreſaid 500 l. was not paid in diſcharge of the Judgment, and thereupon they were at iſſue: and it was found Quod illæ 500 l. fuerunt ſolutæ by Sir Horacio Palevizino to Sir Joh. Hawkins, to have the Judgment aſſigned over unto him. Et ſi &c. And thereupon the opinion of the whole Court was, That when the Jury found, Quod illæ 500 l. ſolutæ fuerunt, that ſufficeth for the Plaintiffs iſſue. And what was found more is but ſurpluſage; and that an Audita Querela well lies upon this matter in fait to diſcharge the Execution; for if it be true, that the 500 l. were paid for the Judgment: it is not reaſon he ſhould be ſtayed in Execution for it. And, although it be found, that a ſtranger paid it, yet when it is found, Quod Illæ 500 l. ſolutæ fuerunt, it is then to be intended the ſame ſum, for which the Judgment was obtained, and thereupon the Judgment was diſcharged, and Rule given, that Judgement ſhould be entred accordingly. But afterwards Tanfield at another day moved, That, this Audita Querala being an Original out of the Chancery; the party being returned mortuus. there being but one party named therein, it is totally abated: and the Scire fac. thereupon awarded is void, and without warrant. Wherefore, &c. Doderigde e contra. For this Audita Querela is not in nature of any Writ: but it is as a Commiſſion for the Juſtices to call the parties, and to hear the Complaint, and to do right, and there is not any party certain thereto, So, although the Teſtator be dead, the Executor may well be called by a Scire fac. and being made a party, may be examined; and this Sute is in eaſe of the party who is in priſon, and therefore ſhall be favored in Law, and not quaſhed, if any one be made party to the examination. And to that purpoſe Vid.

1 Rol. 310.
2 Rol. 706.
2 Cr. 29.
Ant. 41. 140. 209.
2 Cr. 29.
1 Cr. 328.

3 H. 7.

3 H 7. 1. 2. R. 3. 1. 11 R. 2 brev. 638. where a Writ of Audita Querela was brought against two, and one of them dies; It was ruled, That for this Cause the Writ would remain, and not abate. So 35 H. 6. 23. If two be Plaintiffs, and the one be non-suited, or releaſe, it ſhall not prejudice his Companion, becauſe it is ſued for the eaſe of both. And 13 Ed. 3 tit. Audit. Quer. 26. this Writ was brought to avoid a Statute for the Non age of the Conuſor, &c. where the Conuſee was returned Mortuus: Yet the Conuſor was diſcharged, and there was not any doubt, that the Writ ſhould abate. By this means alſo another miſchief might enſue, that the Party always might remain in priſon: For it may be, whereas one is returned Mortuus at one time, ſo another at another time might be returned Mortuus, and ſo infinite. A Scire fac. alſo is in nature of an Audita Querela, when one is in Execution for it ſhall comprehend all the matter. Wherefore, &c. Tanfield e contra. I agree with the Books, That in an Audita Querela againſt two, if the one dies, as long as there be any Party alive, who can be Party to the Examination, the Writ ſhall not abate, nor a new Audita Querela be brought: But there is not any Book, that where there is but one Party, and he dies, that ſaith the Writ ſhall ſtand. But the Book of 13 Ed. 3. is grounded upon another reaſon, for that better expounds 18 Ed. 3. 10. which is the ſame Caſe; where an Infant brought an Audita Querela for his Infancy, and his age was inſpected: although the Party were returned Mortuus, yet no new Audita Querela ſhould be awarded. For his Non-age being adjudged, none can contradict it, nor have any plea thereto. And therefore it would be in vain to make any new Party thereto; wherefore the Party was diſcharged. And whereas it hath been ſaid, That a Scire fac. might be brought in nature of an Audita Querela, and there needs not any new Audita Querela: True it is; but then it is meerly grounded upon a Record here, which comprehends all the matter: but it is not ſo here; for this is grounded upon the original Writ, which being abated, the Scire fac. awarded thereupon is ill. Wherefore, &c. Gaudy held, That this was but a Commiſſion, which ſhall not abate by death, and is like to a Mittimus upon a Fine, 14 H 7. and there is not any Party here, but a Commandment, quod vocatis partibus Juſtice be done, Wherefore, &c. But all the other Juſtices againſt it: For it is an Original awarded out of the Chancery. And if the Parties be dead, the Writ ſhall abate, and the Commiſſion is determined. And they agreed to the Caſes, where there are two Parties Defendants and the one dies, that there the Writ ſhall not abate; and ſo to the Caſe of an Infant for the reaſon aforeſaid. Whereupon it was adjudged, That the Writ ſhould abate, and that a new Audita Querela ſhould be purſued. And ſo it was, and the Party thereupon bayled.

Ante. 448.

The Lord Barkley *verſus* the Counteſs of Warwick.

ERror of a Judgment in the Common Bench, in a Writ of Partition. Upon the firſt Judgment quod partitio fiat, before the return thereof, and the ſecond Judgment quod partitio ſtabilis ſit according to the courſe of this Writ; a Writ of Error was brought, and the Error aſſigned: and it was alledged, That there was not any perfect Judgment yet given until the ſecond

(32) 1 Rol. 750.

Co. Litt. 168. a. Co. 11. 40. b. Judgment, and therefore the Writ lay not: but in divers Caſes, where there be two Judgments, where the firſt is the principal, There Error may lie before the ſecond; As where an Aſſize, or an Ejectione firmæ is brought, where the Land is the principal, if Judgment be given for it, although damages are to be recovered, yet before a Writ of Enquiry for them, Error lies, becauſe the damages but acceſſory. But in Treſpaſs, or in an Action upon the Caſe, where the damages are the principal; although that the Judgment be Quod recuperet, yet until damages be enquired, and Judgment thereupon, no Error lies: as it was agreed in Ruſſel and Prats Caſe, ſo in 21 Ed. 3. in the Caſe of Accompt, until the ſecond Judgment, no Writ of Error lies: for the Plaintiff might be non-ſuited before the ſecond Judgment given; as 1 H. 7. 2. is. And ſo it was adjudged in 11 Eliz. betwixt Harding and Vine. So 7 R. 2. in Formedon, where the Tenant was ouſted of Aid, Error lies not until the Judgment of the Principal: And ſo held all the Court here, That the ſecond Judgment in this Caſe is the Principal, and before that death ſhall abate the Writ. And they agreed the differences in the Caſes, where the damages are but acceſſory, &c. But becauſe it was a new Caſe, they would adviſe, Et adjournatur. *Note.* *Brownlow* the Prothonotary told me, That it had been adjudged in the Common Bench, That the death after the firſt Judgment ſhall not abate it. For where the Plaintiff died after the firſt Writ, the Heir had a *Scire fac.* upon that Judgment, & it held to be maintainable; and, if ſo, the firſt Judgment is the Principal.

Poſt. 914.

Co. 11. 38. b.

Poſt. 643.

Buskin, *alias* Living *verſus* Edmunds. Ante, Mich. 38. Pl. 7.

(33) Ant. 415. 535. DEbt in London upon a Leaſe for years, ſuppoſed to be made in London of Tythes in H. in the County of Kent, by the Aſſignee of a Reverſion againſt the Aſſignee of a Term. After Verdict upon a Nihil debet pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment; for that this Action was brought in London. For it is not grounded upon any privity of Contract; for both the Parties are ſtrangers to it: but by reaſon of the occupying the Land, and the Eſtate of either of them therein. And although peradventure the Action at the firſt might well have been brought in London by the Leſſor, for the Contract made there, yet it cannot be ſo here. Wherefore, &c. Altham and Brock moved for the Defendant, that the Action lies not: Sed non allocatur. For the Privity of the Contract is conveyed with the Eſtate. But for want of Privity, Debt lies not againſt the firſt Leſſee, becauſe he was not privy in Eſtate. But the Contract is always triable where it was made (viz. in London) and therefore the Action there is well maintainable. And it was adjudged for the Plaintiff.

Ant. 328.

Scambler *verſus* Waters.

(34) 2 Rol. 153. 1 Rol. 731. Co Litt. 3. b. 1 Cr. 50. 1 Cr. 16. Co. 10. 61. b. ACtion upon the Caſe, for diſturbing him to execute the Office of Steward of the Courts, and to take the Profits, &c. and ſhews all his Title in the Declaration. Upon Not guilty pleaded, a Special Verdict was found; That from time whereof, &c. There was a Steward of the Courts of the Biſhops of Norwich, who uſed to have 10 l. Fee by the year, as alſo an Under-ſteward, who

who had 4l. fee per annum, &c. And that the Duke of Norfolk was High-Steward, and died, and that the Biſhop of Norwich granted the Office of under-Stewardſhip to Nicholas Hare, and two of his Sons for their lives; That Nicholas Hare and one of his Sons died; and that the youngeſt Son, being within age, granted it to Waters the Defendant. And that Scambler Biſhop of Norwich granted both thoſe Offices to the Plaintiff, with the Fees; and that the Defendant diſturbed him. And it was moved by Daniel Serjeant, and by Tanfield, That this Verdict is found for the Plaintiff. For being found, that it was the Cuſtome, that he might make an Under-Steward, and he granted the Office to three; that cannot be well maintained by the Cuſtome. It is alſo againſt reaſon, that the Biſhop having the Grant of the High Stewardſhip, that he ſhould appoint the Under-Stewardſhip; for it is the Office and duty of the High Steward. An Infant alſo cannot be an Officer; for he cannot be a Judge in a Court, as a Steward is in the Leet, a multo fortiori he cannot aſſign over the Office: for an Infant cannot be Bayliff, nor Attorney for this cauſe; for he is not to be conceived to be of diſcretion to execute it. Much leſs can he execute the Office of a Judge. Wherefore, &c. Popham and Fenner held, That an Infant cannot be a Steward, for he cannot by Intendment execute it, much leſs may he aſſign it over. And Popham ſaid, That it was uſual for Biſhops to appoint great Perſons to be Stewards, and to appoint their under-Stewards alſo. But it would be hard to maintain it, unleſs they be ancient, and diſtinct Offices. Et adjournatur, Co. Littl.

1 Cr. 50.

1 Cr. 49. 259.

1 Cr. 279. 556.

Co. Litt. 3. b. 2 Rol. 153. 1 Cr. 556.

Ards *verſus* Watkin. Trin. 40 Eliz.

UPon Demurrer the Caſe was; Leſſee for thirty years of a parcel of Land called Shortwood, lets it for twenty eight years, rendring 34 l. Rent per annum, and after deviſeth 28 l. parcel of that Rent to his three Sons, ſeverally to every of them a third part; and the one of them brings Debt for his part of the Rent: And whether this Action lay, or not? was the Queſtion. And it was argued by Rydgley for the Plaintiff, and by Nichols for the Defendant. And Gawdy and Fenner held, That the Action well lay: for there is no doubt, but that Rent may be deviſed, and be divided from the Reverſion. For it is not meerly a thing in action, but quaſi an Inheritance; as 26 H. 8. Dy. Knolls Caſe is, and 24 H. 8. Ryſdens Caſe. If Leſſee grants over all his term in part of the Land, yet it is chargeable in an Action with the entire Rent: For he by his act cannot apportion it. And by the grant of part the Leſſee is not compellable to Attorn: For then he ſhould be lyable to two Actions, or two Diſtreſſes. But the Deviſe is quaſi an Act of Law, which ſhall enure without Attornment, and ſhall make a ſufficient Privity, and ſo it may be well apportioned by this means; Wherefore, &c. But Popham and Clinch e contra. For as the Leſſee by his own Act ſhall not divide the Leſſors Contract, nor apportion his Action; So likewiſe the Law favors the Leſſee, that the act of the Leſſor ſhall not charge him with divers Actions, or double Diſtreſſes, but upon his voluntary Attornment: and the Contract being entire cannot be apportioned. But Popham agreed, That the Rent was well

(35)

1 Rol. 234. Poſt. 651.

Ant. 634.

well deviſable, and by that means ſeverable from the Reverſion. And although a thing in action cannot be transferred over, nor be deviſed, yet a Contract, which ariſeth from an Intereſt in Land, or which is an intereſt, may be well transferred over. Wherefore, &c. Adjournatur. Reſidum poſtea, Hill. 41, Pl. 8.

Harvey *verſus* Wrot. Hill 35 Eliz. rot. 381.

(36) Ant 567. ERror of a Judgment in Dower. For that the Judgment was againſt him by Default before any appearance, whereas he was an Infant: and it was thereupon demurred; and the Court held it to be no Error. For if Infants would never appear, there would never be any Recovery in Dower. And Popham ſaid, That the greater part of the Juſtices in Serjeants Inn were of his opinion. Gawdy was abſent, Et adjournatur. It was afterwards moved again, and in Hill. 41 Eliz. Rule was given to affirm the Judgment. But it was afterward reverſed for the defect of Warrant of Attorney.

Holiday *verſus* Hicks. Paſch. 40 Eliz. rot. 336.

(37) Poſt. 661. 746 ACtion upon the Caſe for Trover, and Converſion of 25 l. The Defendant pleaded Not Guilty. And the Jury found a Special Verdict, that the Defendant being Servant and Factor to the Plaintiff, ſold twenty Quarters of his Maſters Corn for 25 l. and receiving it, converted it to his own uſe. Stephens moved for the Defendant, That this Verdict is found for him. For this 25 l. was never in his Maſters poſſeſſion, nor his money, and this Action lay not, but rather an Accompt. This alſo is money out of any bag. Wherefore, &c. But Fenner held, That it was found for the Plaintiff: For the poſſeſſion of the Servant is the Maſters poſſeſſion, and it is, as if he always had it in poſſeſſion. Ant. 618. And it hath been adjudged, That, the Servant being robbed, the Maſter may well bring the action. And that was the Lord Riches Caſe. Clinch doubted, Et adjournatur. Reſid. poſtea, Term. Paſch. Pl. 9.

Redſton *verſus* Eliot.

(38) 1 Rol. 59. Ant 621. ACtion for theſe Words, Thou art a Rebel and all that keep thee company, are Rebels, and thou art not the Queens friend: After Verdict it was moved, That the Action lay not for theſe words. For as to the firſt words, Thou art a Rebel, it was adjudged here in Wells Caſe, That an Action lies not. And 16 Eliz. in the Common Bench, between Buſtard and Petts, it was adjudged, That for ſaying, Thou art not the Queens friend, no action lay: wherefore they being coupled together, the action lies not. But Fenner and Clinch held, That the words were actionable: for although to ſay Thou art a Rebel, will not bear an action of it ſelf, yet being conjoyned with the other words, All that keep thee company, they are thereby much aggravated, and ſhews his intent. But cæteris Juſticiariis abſentibus, adjournatur.

Tyrrel

Tyrrel *verſus* Baſh.

TRespaſs vi & armis, For taking his Goods. The Caſe was, That a Sheriff took Goods by a Fireci fac. and, before Execution done by ſale, the Defendant took them again, and he brings Treſpaſs, and, whether it lies, becauſe he had not any property? Vid. 11. H. 4. 23. and 7 Ed. 6. Stringfellows Caſe. Fenner being only in Court, ſaid, That he had conferred thereof with the Lord Anderſon, and Periam, and they held clearly, That the Action well lay. Wherefore he commanded Judgment to be entred for the Plaintiff. (39)

Reſton *verſus* Pomfreict,

Trin 40. Eliz. rot. 1125.

ACtion for theſe words, Mrs. *Ann Reſton* (The Plaintiff innuendo) hath had a Child, it is true, for ſhe was conveyed to *B.* and there he laid her great belly. It is as true, that ſhe hath had a Child, as that you ſit here; for ſhe was ſent away with Child, and if ſhe had not a Child, ſhe hath made it away: and alledge, That, by reaſon of theſe words, ſhe loſt her Marriage. The Defendant demurred. And thereupon adjudged for the Plaintiff. (40) Co. 4. 16. b.

Hemſley *verſus* Price. Hill. 40 Eliz. rot. 103.

EJectione firmæ of a Leaſe of Gabriel Armſtrong. Upon a ſpecial Verdict the Caſe was, that Henry Stapleton, being ſeiſed in Fee of the Manor of Rempſtone, and of the Advowſon of Rempſtone in Fee, the Manor holden in Soccage, the Advowſon by Knight ſervice in Capite, deviſed all his Lands to Eliz. his wife for her life, remainder to Faith his Daughter in Tail, remainder to the eldeſt Son of William his brother in tail, remainder to his Couſen William Stapleton in tail, with divers remainders over: remainder to the right Heirs of Henry the Deviſor; Henry dies, Eliz. enters, and Lets all the ſaid Lands to Jackſon: who occupied the Entire for three years; Faith dies without iſſue; Eliz. dies, John Stapleton Son and Heir of William Stapleton enters; and that Gertrude Yeo was Couſen and Heir to Faith, and that ſhe levied a Fine to Gab. Armſtrong of the Manor of R. which Gab. Armſtrong by Deed enrolled in Chancery, bargained, and ſold the Land to Ed. Turvile for life, remainder to the Queen in Fee upon condition, if he paid 20 s. to Ed. Turvile during his life, or, after his death, to the Queen, or her ſucceſſors at the Receipt of the Exchequer, that the bargain and ſale ſhould be void; and, That the ſaid G. A. might re-enter. And they further found, That G. A. paid the 20 s. to Ed. Turvile, and entred, and demiſed three acres to the Plaintiff, who entred: and, that the Defendant, by the command of J. Stap. ejected him out of the three acres. Et ſi upon all this matter, &c. The firſt point was, If this Deviſe being void for a third part (ſo as the Deviſee ought to have had but two parts, and the third part have deſcended) the Deviſee entring generally, and letting all, and the Leſſee occupying all, whether this ſhall gain the poſſeſſion of the entire, (41) 1 Rol. 740. 1. 2 Rol. 215.

and

and deveſt it out of the Heir: ſo as, at the time of the Fine levied, he had not any thing, and ſo nothing paſſed thereby to G.A. the Leſſor. Secondly, admitting the Fine were good for the third part, when G.A. bargained, and ſold it to Ed. T. for life, remainder to the Queen in Fee upon Condition, &c. Whether by the payment of the 20s. to Ed. Turv. it ſhall deveſt the whole Eſtate, or no part thereof, without Office, or Monſtrans de droit? Coke Attorney General, and Crew for the Plaintiff; That by none of theſe acts the Heir was out of poſſeſſion: but that his Fine was good. For, firſt by the Deviſe the Heir is to be Tenant in common with the Deviſee: and if one Tenant in
Co. Litt. 199. common enters into the entire Land, his poſſeſſion ſhall be adjudged the poſſeſſion of his Companion alſo: and he ſhall not be put out of poſſeſſion. And Crew ſaid that in 26 Eliz. in the Common Bench, between Pollard and Allcock this point was in Queſtion, and Ruled: Where the Deviſee enters into the whole, and the Heir without entry Levies a Fine of his third part to a ſtranger, that it was good; for it never was out of his poſſeſſion: and, if the entry did not gain the poſſeſſion, the Leaſe for years did not alter it; for nothing paſſed thereby, but what might lawfully paſs, no more then in 26. H.8.9. Where a Tenant in common levied a Fine of the whole Land, the Moyety only paſſed, for he could not gain the entire poſſeſſion. But, if he had actually expelled his Companion, It had been a diſſeiſin in Deed: or, if he had made a Feoffment, or a Leaſe for life of the entire Land, it had been a diſſeiſin of the whole, and it had all paſſed: and when at firſt he entred generally, the Law will not impute any Tort therein; but, that he entred as lawfully as he might: and he cannot afterwards by any words deveſt his Companions poſſeſſion. But Coke ſaid,
Co. Litt. 374.a That, if afterwards he had made a Feoffment of the Entire, that had expreſſed his firſt intent to be to enter into the Entire, and to give poſſeſſion of the whole. And as to the ſecond point they held, that by this payment the entire Eſtate is deveſted without office. For, when the Free-hold is in a common perſon, and the remainder only in the Queen, by the limitation of the party and not by any ſetled intereſt, it may well be deveſted out of the Queen, by matter of Fact, and, in many caſes, by matter in Law; as in Nichols Caſe, Plow. 477. by a condition performed for the increaſe of the Eſtate: So there fol. 483. by a Remitter.
Co. Litt. 241.a So, if a diſſeiſor makes a Leaſe for Life, Remainder to the Queen, yet the diſſeiſee may enter, or have an Aſſiſe againſt the Tenant for life, and thereby deveſt the Eſtate from the Queen: and, as the Eſtate commenced by the Act of the party, ſo by his act it may be defeated. And 49 Ed. 3. 16. is, That if
Poſt. 699. one deviſe, that his Executors ſhould ſell his Land, and dies
Co. 2. 53. without Heir, the Land ſhould Eſcheat to the King; yet the Executors may ſell, and thereby deveſt it out of the King. Wherefore, &c. Tanfield, and Ge. Croke on the other ſide; that this entring generally, although he claims not the whole by expreſs words, yet entring by force of the Deviſe, which was of the whole, is, and amounts to an expreſs claim of the whole; and where two have title deſcended unto them as Co-parceners, or a title devolves, or comes to two, as Tenants in common, if the one enters firſt and claims all, before the other hath entred

entred, that ſhall gain the poſſeſſion of the entire Eſtate. But, if they were once in poſſeſſion, then the claim of the one only, or the occupying of the one only, ſhall not ouſt his Companion. And therefore Litt. 160. if the one Coparcener enters claiming the Entirety, and makes a Feoffment with Warranty, that is a lineal Warranty for the one Moyety, and collateral for the other. And if the Feoffment be a diſſeiſin, and not before, it ſhall then be a Warranty commencing by diſſeiſin. So 26 Aſſ. 2. where the one Coparcener enters, claiming the whole, and a ſtranger enters, ſhe ſolely ſhall have an Aſſiſe: And here the Caſe is ſtronger; for the Heir, and Deviſee do not claim by one Title; and therefore the entry of the one ſhall not be an Entry for the other: Eſpecially where the Deviſee pretends, that he had the Entire, and the other doth not contradict it; for otherwiſe, great miſchief would enſue. For, if the Deviſee continues divers years, and after dies ſeiſed, and a deſcent is caſt, and his Heir enters into the whole, and levies a Fine with Proclamations, and ſo more Fines or Deſcents, if it ſhould not be good for the whole after, but a long poſſeſſion be drawn in queſtion, and the Fines avoided without claim, it would be very miſchievous, that, by a ſleeping Tenure, the Deviſe ſhould be avoided for a third part, and the purchaſors diſturbed. And to that purpoſe was a preſident ſhewn, Hill. 30. Eliz. rot. 342. betwixt Reignolds, and Kingman, where, in ſuch a Caſe, the Deviſee entred into the Entirety, and made a Feoffment of the entire houſe with Letter of Attorney; the queſtion was, Whether the Entire, or but two parts of the Houſe paſſed? and it was held, That the Entire; although that, in the ſame Caſe, the Deviſe was void for a third part, by reaſon of the Tenure, &c. yet the Deviſee, entring into the whole, had thereby gained the poſſeſſion of the whole, and the whole Entirety paſſed. And, as to the ſecond point, it was moved that the Queens Eſtate cannot be Defeated without matter of Record; and that ſhall priviledge the Eſtate for life: For there cannot be a fraction in Eſtates; For he, who enters for a Condition, ought to reduce the entire Eſtate, and not part thereof: And to confirm that, the Book of 9 H. 4. 4. and Cholmleys Caſe in the Exchequer, were cited; where it was held, that by the payment of a ſum in the Country, without office, the Queens Eſtate could not be defeated; and that ſhall priviledge the Eſtate for life, that it ſhall not be defeated. Wherefore, &c. But all the Court except Fenner as to the firſt point, Reſolved, that this Entry, and Leaſe, did not gain any poſſeſſion but of the two parts; and the Heir was never out of poſſeſſion thereof, and ſo his Fine good. Secondly; they all, beſides Gawdy, held, that, by the performance of the Condition, the Entry is lawful upon the Tenant for life; and the Frank-Tenement being defeated, The Queens Eſtate is defeated: For ſhe is the Perſon, againſt whom the Free-hold was demandable, and recoverable; But if the Queen had had the immediate Eſtate, it had been otherwiſe, And Popham denied the Law to be ſo in Cholmleys Caſe, and that ſome of the Barons denied it. He denied alſo, that the Law was ſo, as it was cited in Reignolds Caſe, unleſs that the Words were, Of all the Houſe; then he ſaid, all had paſſed. Wherefore, for the matter, they reſolved for the Plaintiff,

Ant. 115. 615.

Hob. 120.

Co. Lit. 354. 6

Co. 2. 53.

and gave day to the Defendant to ſhew other Cauſe, otherwiſe Judgment ſhould be entred for the Plaintiff. At which day it was moved in arreſt of Judgment, That the Verdict was imperfect. Firſt, becauſe it is not found, that Gertrude, from whom the Plaintiff claims, was Heir to Hen. Stapleton the Deviſor, but to Faith; and it may be, that ſhe was Heir to Faith, the Daughter of the Deviſor; for a Verdict ought to be full, and perfect; and it may be, although Faith was the Daughter, the Deviſor might have a Son, or that ſhe was Heir to him by a ſecond wife: And a Verdict ought to have ſo great certainty, that no apparent intendment can be againſt it: And, if it be falſe, that an attaint may be brought. And, to that purpoſe, a Caſe was cited to be ruled in this Court accordingly, betwixt Price, and Johns, 35 Eliz. Secondly, becauſe it was found, that the Deviſe was found to be to Elizab. for life, remainder to Faith, ita prout in ultima voluntate ipſius Henrici apparet, cujus tenor ſequitur in hæc verba (wherein is mentioned, that the Deviſe was made to the Son of Will. Stap.) But it is not ſo found by the Jury. Thirdly, Becauſe the Ejectione Firmæ is brought of 400 acres of Land; and the Jury found the Defendant, Quoad all beſides three acres parcel Tenementorum prædictorum, Not-guilty, & quoad the three acres, they find all the matter ut ſupra. And, that Gabriel Armſtrong Lett the aforeſaid three Acres to the Plaintiff, & that he was poſſeſſed; and, that the Defendant ejected him out the three acres, parcel Tenementorum prædictorum; and they did not find the Ejectment of the aforeſaid three acres Lett, &c. And it may be, that the Ejectment was of the other three acres. And, for this cauſe, the whole Court held it to be ill: But to the two other exceptions, they ſpake not much. Wherefore a Ven. fac. de novo was awarded. And, at the Trial, the matter was compounded.

Riesby *verſus* Wentworth.

(42) PRohibition upon a Sute for Tythes, and grounds his Prohibition upon the Statute of 31 Eliz. cap. ſuppoſing, that the ſaid Parſon had committed Simony in coming to the Parſonage; and thereby the Church was void, and the Tithes not appertaining unto him. And it was agreed per Curiam, Glanvile abſente; that a Prohibition lay not: For the Simony might more aptly be tried in the Spiritual Court. Wherefore conſultation was awarded.

Button *verſus* Downham.

Trin. 40. Eliz. rot. 865.

(43) DEbt upon Obligation, conditioned to ſave him indempnified from an Obligation, wherein the Plaintiff and Defendant were obliged to one Wolmer, &c. and from all Sutes, and Actions concerning it. The Defendant pleaded the Statute of Uſury; and that it was corrupte aggreatum between him and Wolmer; that the Defendant for the forbearance of 20 l. for a year, ſhould give to W. 10 l. if A. his Son were then alive; And, that the Obligation was made for that cauſe, and ſo void: which

2 And. 121. Noy. 73. Moor. 398.

which the Plaintiff might have pleaded in Debt against him, by W. &c. And it was thereupon demurred. And Williams moved, that it was not any Usury; in regard the payment of the 10 l. is appointed to be upon an incertainty, viz. the life of A. &c. But Co. 5. 70. a. Anderson, Walmsley, and Owen (Glanvil absente) held it to be Usury: Post. 741. for the corrupt agreement (which is confessed by the Demurrer) makes it usury; and it is the intent makes it to be so, or not so. For, if there be a wager betwixt two, to have 40 l. for 20 l. if one be alive at such a day, that is not any Usury: for the bargain was bona fide; and not for Loan; but, if the intent hereby was to have a shift, it is otherwise. But here Ant. 588. forasmuch as the Condition was to save him harmless from all Suites, which he had not done, nor doth the Defendant answer thereto, but to the Obligation only, they held the Plea to be ill; For, although the first Obligation were void, yet the second Obligation is forfeited; because the Plaintiff had not saved him harmless from Sutes concerning it.

Anonymus.

(44) ACtion upon the Case for Words, viz. That he keeps a Bawdy-house. And ruled, that the Action lies not: For, by the 2 Rol. 295. Common-Law, he is not punishable; but by the Custome of London. And therefore this Action ought to have been sued in the Spiritual Court.

Wrenford *versus* Gyles.

(45) A Lease was made for twenty one years, if the Lessee lived so long, and continued in the Lessors service. The Lessor dies. Whether the Term was determined? was the Question. And Anderson, Owen, and Glanvil held, that the Lease continued: For there is not any Lacheſs in the Lessee, that he did not serve; but it is the Act of God, that he cannot serve any longer: And it is like to Sir Tho. Wroths Case, &c. But Walmsley strongly against it; because it is a limitation to the Estate, that it shall not continue longer, then he serves. Quære.

The Countess of Warwick *versus* the Lord Berkeley.

(46) IN a Writ of Partition, Judgment was, Quod partitio fiat. Whereupon, before the second Judgment, the Lord Berkley Co. 11. 40. brought a Writ of Error; but all the Court held, that, until Co. Lit. 168. a. the second Judgment given, Quod partitio stabilis sit, the Record Ant. 636. is not full, nor the Judgment perfect. And therefore the Record should not be removed.

Chambers *versus* Leversage.

(47) ACtion upon the Case, upon an Assumpsit; For that William Leversage, Testator to the Defendant, was indebted unto him, by Obligation, in 20 l. And the Defendant having Assets, &c. promised to the Plaintiff, in consideration, Quod daret diem solutioni pro uno anno, that he would pay it. The issue was Non

Aſſumpſit, and found for the Plaintiff; and the entire Debt given in damages; and exception taken, becauſe a day cannot be given; but the day of payment may be deferred; and the Court ſaid, True it is, a day cannot be given in proper ſenſe; but it is to be intended, according to the vulgar and common diſcourſe, as deferring the day of payment; and the Court further ſaid, that here was a great miſchief to the Defendant; for, notwithſtanding this recovery, the Plaintiff may have Debt upon the Obligation; and therefore the Jury ought to have given damages only for the non-payment at the day, and not to have given the entire debt: But, upon the Plaintiffs promiſe to deliver the Bond to the Defendant, the Plaintiff had Judgment.

Ante 67.

The Earl of Lincoln *verſus* Topcliff.

(48) DEbt upon a Bill enſealed, whereby the Defendant acknowledged, that he had received of the Plaintiff 7 l. ad emendum a pair of Bellows, and other things to the uſe of the Earl; and avers, that he had not bought the things, nor paid the Money; and thereupon the Defendant demurred: For he objected, that the Plaintiff in this Caſe, ought to have had accompt and not debt. But all the Juſtices held, that he might have neither the one or the other, at his election. Wherefore without argument, it was adjudged for the Plaintiff.

1 Cr. 142. 503.

Powel *verſus* Brazen-noſe Colledge.

(49) FOrmedon. The Writ was Præcipe quod reddat 20 acres Hedington (in being omitted) Williams prayed, that it might be amended: and ſhewed the Court, that it was only the default of the Clerk; for he had writ it out of a paper delivered him to make the Writ, wherein this word In was in (which the Curitor confeſſed, but his examination here., upon his Oath) whereupon it was amended by the order of the Court. But Walmſley firſt doubted thereof; becauſe it being an Original Writ, whether it might be here amended, where the defaults of their own Clerk are only amendable; but afterwards he aſſented to the amendment.

Ant. 119.

Darrel *verſus* Wilſon.

(50) REplevin. The Defendant avows for a Rent-charge, as Executor: And the Grant of the Rent was to his Teſtator for forty years; with a clauſe of diſtreſs in the Deed, that the Grantee and his Heirs, might diſtrain for the Rent, during the Term; yet it was ruled, that the Executor ſhould have the Rent, and diſtrain for it, and not the Heir.

Reads Caſe.

(51) ACtion for words. Whereas the Plaintiff was a Juſtice of Peace, within the County of Lincoln, that the Defendant ſpake theſe words; I heard it ſpoken, that Mr. Read was one that was at Burrels Robbery; and that four of them went to his houſe the

the next morning, *ubi revera* the Defendant never heard any ſuch words, &c. The Defendant pleaded Not-guilty; and it was found againſt him, and 100 Marks damages given; and it was moved by Harris, that the words were not actionable; for they be not ſpoken out of malice, but upon anothers report: Neither is it ſaid, that Mr. Read was one of the robbers; and it may be taken in good part, that he was one of the company of the parties robbed: And, when it ſtands indifferently, the beſt ſhall be taken. Yelverton e contra; for when he ſpeaks words upon report, whereas there was not any ſuch report, it was a ſlander in him; otherwiſe every one, by ſuch an addition of a report, would ſlander another; and it was therefore adjudged in 22 Eliz. between Meggs and Griffin, where an action was brought; A woman hath told me, that ſhe heard ſay; that Meggs his wife killed her firſt Husband: And avers, that there was not any ſuch report: And adjudged, that the action was well brought. Wherefore, &c. And the Juſtices doubted thereof; for words of ſlander ought not to be taken by implication: And willed the parties to agree; and the Plaintiff took 15 l. for all; and Judgment was entred by conſent. Ante 400.

Hale *verſus* Cranfield.

(52) ACtion upon the Caſe, for that he ſpake Quædam ſcandaloſa verba of the Plaintiff; Tenor quorum ſequitur in hæc verba, Thou art a couſening Knave, and a Bankrupt, vel conſimilia. The Defendant pleaded Not-guilty, and found for the Plaintiff; and Judgment entred for him without privity of the Court: and the Court being now moved therein, held, that an Action lies not. And Walmſly ſaid, it was by reaſon of the word conſimilia, as it was adjudged in Garters Caſe: it is not good alſo, for that it is ſaid, that he ſpake divers words Tenor quorum ſequitur. Wherefore it was commanded, that the Roll ſhould be amended.

Allen *verſus* Stear.

(53) INformation brought in London, upon the Statute 13 Eliz. cap. 5. for juſtifying apud L. of a fraudulent gift of Goods, made by Holden to the Defendant, to defraud the Plaintiff of his debt; the Defendant ſaith, that H. gave thoſe Goods unto him at Coventry, bona fide, and that he juſtified the gift there, and traverſeth the juſtifying at London. Et per curiam ruled to be no plea: for, although the Statute of 31 Eliz. cap. 5. reſtrains common Informers to bring their Action only in the proper County where the offence was done; yet, that doth not extend to a party grieved, but that he may inform in what County he pleaſe; for he is not a common informer. Wherefore the Defendant waved that plea, and pleaded Not-guilty. Poſt. 736.

Anonymus.

(54) A Traint upon a Verdict in the Exchequer. The parties were at Iſſue Quod bonum fecerunt Sacramentum. And at the day of Trial, the grand Jury appeared, and the Record of the Exchequer

Exchequer was not removed hither; and it was debated what ſhould be done: For it was agreed per Curiam, that no day ſhall be given to the Plaintiff to bring in the Record; for the Plaintiff, at his peril, ought to have brought in the Record before that time. And a preſident was then ſhewn in 26 H. 6. that the Judgment in ſuch Caſe was, Quod querens nihil capiat per Breve; Et quod tam Defendens, quam juratores eant inde ſine die; and no Fine put upon the Plaintiff. And ſo it was done here.

Anonymus.

(55) DEbt againſt two upon a Contract. The one pleaded Nihil debet per patriam. The other wages his Law. And it was held by all the Court, except Glanvile, that the one only cannot wage his Law; but he ought to plead alſo per patriam, becauſe the Debt is joynt, But Glanvile e contra; becauſe otherwiſe every one might be ouſted out of his Law, by joyning one of the Plaintiffs Friends with him in the Action. Vide 40 Ed. 3. 35. 38 Ed. 3. 27.

Gybbins Caſe.

Trin. 40. Eliz. rot. 3339.

(56) ACtion upon the Statute 1, & 2. Ph. & Mar. for the taking a Diſtreſs apud D. in Comitat. Suſſex, and giving it to S. in Comitat. Kanciæ. The Defendant pleaded Not-guilty: and it was tried by a Jury of the County of Suſſex. And this matter moved in arreſt of Judgment; becauſe the Ven. fac. ought to have been from both Counties: For the Tort conſiſted of two parts. And of that opinion was the whole Court.

Smalpeace *verſus* Smalpeace.

Hill. 40 Eliz. rot. 912.

(57) DEbt againſt the Defendant, as Adminiſtrator of F. He pleads a recovery againſt him, as Executor; and beſides, to ſatisfie that, he hath not any Aſſets. And it was thereupon demurred, and adjudged to be a good Plea; and he ſhall not be twice charged. Wherefore it was adjudged for the Defendant.

Stepney *verſus* Lloyd.

Trin. 40. Eliz. rot. 1157.

(58) DEbt upon an Obligation. The Caſe was, That Stephens, 4 Inſt. 97. Sheriff of Carmarden, by vertue of an Attachment under the Privy Seal of the Court of Requeſts, took the Defendant; and, for his inlargement, he made this Obligation, to appear before the Queens Council, attending in the Court of Requeſts at Weſtminſter. And, in Debt hereupon, the opinion of 4 Inſt. 97. 7. Poſt. 651. Anderſon Chief Juſtice, and Glanvile was, that the Proceſs was not any Warrant to the Sheriff to take the body, nor to take the Obligation; For that Court hath not any power, by Commiſſion,

Commiſſion, by the Statute, or by the Common Law: but the Sheriff ought to obey the Proceſs out of the Court of Wards, and Dutchy-Court: for they are appointed by the Statute. Wherefore they held, that this Obligation is not within the Statute of 3 H. 6. For the ſaid Statute intends only Obligations taken by ſuch who are in their cuſtody by the courſe of Law. Wherefore this Obligation was taken per Dureſs, and ſo avoidable. And although it was alledged, that this Obligation is within the Statute, in regard the Sheriff took it by colour of his Office, although he was not lawfully in his cuſtody, it was notwithſtanding adjudged for the Defendant. 2 Cr. 591. 1 Cr. 596.

Termino

Termino Hillarij,

Anno Quadrageſimo primo

ELIZABETHÆ, in Banco Reginæ.

Audley *verſus* Frank. Mich. 49, &c. Eliz. rot. 557.

(1) DEbt in Chancery (for that the Plaintiff was ſervant to the Lord Keeper) upon a Contract, and upon arrerages of Accompt. The Defendant quoad that, which was upon accompt, pleaded Nihil debet per patriam, and quoad reſiduum he waged his Law, and the whole Record was ſent hither. And the Defendant had day to wage his Law; and at the day was ready to make it. And Fenner doubted, Whether he ought to make his Law here? for none of the Clerks could remember any ſuch preſident. Wherefore he only being in Court, ſent Kemp the Secondary, into the Common Bench, to know their opinions. And they alſo were doubtful. Wherefore, de bene eſſe, he cauſed him to make his Law, &c. and would advice of the recording thereof.

Davies *verſus* Taylor.

(2) ACtion for theſe words; Thou art rotted with the Pox. And by Fenner, being only in Court, adjudged, that the Words were actionable: for it is to be intended of the French Pox.

2 Cr. 144. 430.

Beverley *verſus* Beverley.

(3) DEbt in the Common-Bench againſt John Beverley, and Joſeph Beverley, upon an Obligation; and Judgment againſt both; And a Capias ad ſatisfaciendum iſſued againſt Joſeph only: And thereupon, being Outlawed, brought Error. And, becauſe it ought to have been awarded againſt both, as 34 H. 6. 33. is; as alſo, becauſe it appears not by the return of the Exigent, that the Judgment of the Outlawry was by the Coroners, as it ought to be; as 21 H. 7. 33, is: the Court reverſed the Outlawry upon both theſe reaſons.

Razing, Scot, and others *verſus* Ruddoch.

Paſch. 39. Eliz. rot. 359. Eborum.

(4) ERror by Sir of a Judgment in the Common-Bench, in Replevin againſt them: where one of the Sir, viz. Razing, avowed in

Co. 6. 25. a.

in his own Right for an amercement in a Leet. Scot, and the other five, made Conuſance, as his Servants, and Judgment againſt the ſir, and Damages and Coſts given againſt them; and to be diſcharged of the Coſts and Damages, they ſir brought Erroꝛ. And the releaſe of Scot (hanging the Writ) of all Actions was pleaded in Barr; and it was thereupon demurred, and moved, that this was not any plea. For the difference is, where an Action is brought by divers in diſcharge of themſelves; the Act of one, as Non-ſute, oꝛ Releaſe, ſhall not prejudice his Companions to barr them to proceed in the Sute; as in Audita Querela by divers, there the Non-ſute of one ſhall not be a Bar to the reſt; as 15 Ed. 3. Severance 23. is. So of an Attaint, 16 Ed. 3. Serverance 13. and 29 Aſſ. 35. accoꝛd: but, where an Action is brought to charge another, if the Action is brought by divers, the Releaſe, oꝛ Non-ſute of one of the parties, ſhall barr his Companions: and this difference is put in 2 H. 4. 16. And the book of 26 H. 8. 3. is to be anſwered upon this reaſon, where many were Plaintiffs in an attaint upon a Verdict againſt them in treſpaſs, the Non-ſute of the one ſhould barr the others, is to be intended where they were Plaintiffs beforꝛe, and ſued to charge another; and accoꝛding hereunto is the opinion of Forteſcue 35 H. 6. 19. Gawdy held, that it was a barr; foꝛ the Writ is to be reſtoꝛed to a perſonal Duty (viz. Damages and Coſts, which they had loſt) which being perſonal, the act of the one ſhall prejudice the other: but the Caſe of Audita Querela is well to be agreed; foꝛ that is as well to diſcharge the execution of the Land, which is in the Realty, as of the Goods, and therefoꝛe 30 H. 6. barr. 59. and 256. and 18 Ed. 4. 14. in an Aſſiſe by two, the releaſe of one of the Plaintiffs is no barr foꝛ the Land, noꝛ foꝛ the Damages; becauſe they enſue the Realty. Popham; The difference is good Law, where many are actoꝛs by way of charging another, the act of the one ſhall prejudice the other. But otherwiſe it is, where they be Plaintiffs to diſcharge themſelves, foꝛ, in the firſt, The Law preſumes a folly in them to joyn with one, who might diſcharge all. But otherwiſe it is on the part of the Defendant; foꝛ it is not in him to appoint ſhall be joyned with him in the Action. And, when they are compelled to joyn in a Writ of Erroꝛ, oꝛ Attaint, to defeat a Judgment, it is not reaſon, that the act of one ſhould prejudice his Companions. And the Caſe would be moꝛe miſchievous; foꝛ the Plaintiff might bring an Action againſt one, who ſhould collude with him, and ouſt all the reſt of their Writ of Erroꝛ, oꝛ Attaint. But, if two be Plaintiffs in debt, and they be barred by an erroneous Judgment, and Coſts are taxed againſt them; and they bring Erroꝛ to avoid thoſe Coſts, the releaſe of the one ſhall barr the other: foꝛ it was their folly to joyn in the firſt Action. Whereforꝛe, &c. Afterward being moved again on another day, Popham, Clinch, and Fenner agreed, that it was not any barr, Gawdy abſente, And it was ſo adjudged, and day given to examine the Erroꝛs. 6. Co. 25.

2 Cr. 117.

Co Litt 139 a.
Ant 448.

Ant 448.
Moor 17.
Co. 6. 26. a.

2 Cr. 117.

Davy *verſus* Matthew. Hill. 40. Eliz. rot. 740.

(40)

EJectione firmæ. Upon a ſpecial Verdict, the Caſe was: Leſſee foꝛ 20 years Letts it foꝛ 10 years, rendring Rent, upon condition, That foꝛ the Non-payment the Leaſe ſhould ceaſe.

1 Rol 473. 4.

the Leſſee for 20 years by deed grants all his intereſt, and term, to the Leſſor of the Plaintiff; the Leſſee for 10 years attorns; the grantee for the Rent arrear, afterwards enters: and whether his entry were Congeable? was the queſtion: it was moved, that his Entry was Congeable by the Common-Law: for the Condition being, That for non-payment, his Eſtate ſhall ceaſe, it ſhall be without Entry, and a ſtranger may take advantage thereof; as appears 11 H. 7. 17. And, if he cannot by the Common-Law, yet he is a Grantee of a Reverſion within the Statute of 32 H. 8. to have advantage of the Condition; for the words of the Statute are, That the Grantee, his Executors, or Aſſigns ſhall take advantage of a Condition which word Executor is neceſſarily to be intended of a Grantee for years. And the caſe of Matures verſus Weſtwood, ante, Mich. 41. Pl. 2. is; That ſuch a Grantee ſhall take advantage of a Covenant. Wherefore, &c. Clinch and Fenner held that, in this caſe, he ſhall take advantage by the Common-Law: for the Eſtate ſhall ceaſe without Entry; for, beginning by Parol, it may ſo determine. And, if he cannot by the Common-Law, he may clearly by the Statute; for by that Leaſe made, the Leſſor hath the Reverſion, and the Grantee hath that Reverſion, and Rent, and is within the intent of the Statute: for he hath the entire Reverſion. And of that opinion was Gawdy; that he was within the Statute: but he doubted whether he might by the Common-Law. Wherefore, Popham abſente, it was adjudged for the Plaintiff.

Co. 214. b.

32 H. 8. c. 34

Co. Litt 215. a
Ant. 600. 617.

1 Rol. 474.
Co. Litt. 214. b.

Helier *verſus* Whytier. Mich. 40. & 41 Eliz.

(6)

Co. 6. 24. 5.

REplevin. The Defendant made Conuſance, as Bayliff of Herbert, Mr. of the Requeſts, for Damage feaſant; for that one Rich. Arch Lett the Land, where, &c. in 1 Ed. 6. to one John Arch for 80 years; that John Arch 2 Eliz. granted in to Jane Arch; and that ſhe in 35 Eliz. granted it to Sadler, who in 31 Eliz. conveyed it to Dr. Herbert his Maſter. The Plaintiff confeſſeth the Leaſe, and grant to Jane Arch, and further alledgeth, that ſhe took to Huſband one Tarr who in 9 Eliz. granted it to the Plaintiff; and traverſes the Grant 35 Eliz. to Sadler. And thereupon the Plaintiff demurred. Tanfield and Foſter for the Defendant, moved; That the Plea was ill: for he, by his firſt Grant pleaded, hath confeſſed and avoided the Grant alledged to the Defendant; and therefore he needed not Traverſe it: for where the Plaintiff conveys to himſelf Title before the Defendants Title, there a Travers is not requiſite; but otherwiſe it is, where he conveys an after-Title, there he ought to traverſe, otherwiſe his Title is not good, and in proof thereof relyed upon 33 H. 6. 28. 2 Ed. 6 Br. conſell. 65. Godfrey e contra; Here ought of neceſſity to be a travers to the Grant alledged by the Defendant, for that is neither confeſſed, or avoided by the allegation of the firſt Grant; for a confeſſing and avoiding is to confeſs it, and ſhew it to be by a defeaſeable Title; as 5 H. 7. 13. where a Feoffment is pleaded by the Defendant; The Plaintiff ſaith, that the Feoffor diſſeiſed him, and infeoffed the Defendant, &c. and therefore cited 1 Eliz. Partridge's Caſe, Dy. 171. And it may be, that here after the Grant to the Plaintiff in 9 Eliz. that Jane Arch had Title, and granted it to the Defendant. And of that opinion were Gawdy and Clinch, for this laſt reaſon alledged;

Poſt. 918.

alledged: especially as the plea is, That Jane Arch was possessed 35 Eliz. and granted it to Sadler. But Popham and Fenner e contra: For Popham said, there would be a difference, when a Feoffment is pleaded, and when a Grant of a particular Estate; for in the first Case, If the other well entitle himself by an elder Feoffment, he ought to traverse, but not in the last Case: because a man may come to a Fee-simple by divers means viz. by Disseisin, and Tort, or by lawful means; but he cannot come to a particular Estate, but by lawful means. And therefore, when one entitles himself to a particular Estate by an elder Grant, he shall not traverse the last Grant, but shall compel the other to shew, by what Title he claims it after the eigne Grant: but he agreed to the Case 1 Eliz. Dy. 171. where he entitles himself by a meer stranger, there he ought to traverse, &c. And after, upon another day, with the assent of Clinch, absent Gawdy, it was adjudged for the Defendant. 6 Co. 24. Ante. 30. Co. 6. 25. Ant. 456.

Brograve *versus* Watts.

(7)

DEtinue for Goods. The Defendant pleads, how, upon a Suit depending against the Plaintiff in the Court of Requests, a Commission under the Privy Seal was directed unto him out of that Court, being then Sheriff of London, to seise those Goods, and deliver them to the Mr. of Requests; Whereupon he seised, and delivered them accordingly. And it was thereupon demurred, and adjudged without argument for the Plaintiff: for the Commission was against Law; For if a man be sued in a Court of Conscience, and will not obey, his body is to be imprisoned, and no Commission ought to be awarded for the taking of his Goods. Wherefore, &c. Ant. 646.

Ardes *versus* Watkins. Ante, Mich. 40 & 41. Plac. 35.

(8)

THe Case was now moved again. And Gawdy, and Fenner, and Clinch agreeing with them held, that the Devise was good, and well severable: For, as to that objection, that a mischief may happen to the Tenant, that he shall be subject to two actions and distresses, that is his own fault; for, if he pays his Rent, he shall avoid it: and the same mischief is, where he deviseth part of the Reversion and Rent, which is agreed on the other part to be well enough: and although a Contract, or a thing in action cannot be transferred, nor divided, yet Rent only may be. For it is a thing in possession, for he doth not grant the action, but the Law gives it as incident to the Rent. And 10 Eliz. Dy. 326 Huntleys Case is expresly, where a devise was of a Reversion, upon a Lease for years, with the Rent to a man, and his sister, and the Heirs of their bodies: the sister dies without issue; the brother dies having issue; the Heir had the Moyety of the Rent. Popham e contra. For the difference will be, when part of a Reversion, and Rent is granted, that is good, but when the Rent is severed from the Reversion, it is otherwise. For then it is but in nature of an annuity, which cannot be granted by parcels, but entirely: but an Annuity or Rent only, are grantable over, because they are things of continuance, and are not personal. And the reason of Huntleys case is, because the Rent is divided with the Reversion. But notwithstanding, in regard three of 1 Rol. 234. Ant. 637. Post 851.

themagreed, he conſented, that Judgment ſhould be entred for the Plaintiff. Note. That in the argument of this Caſe, a Caſe was cited in this Court *Paſch.* 28. *Eliz. rot* 344. where a Deviſe was of an entire Reverſion and Rent, which was void for a third part; becauſe it was holden *in Capite*, and Debt was brought for two part of the Rent, and adjudged maintainable.

Poſt. 851.

Bonner *verſus* Stokeley. Paſch. 40. Eliz. rot. 131.

(9) ACtion upon the Caſe. Whereas he had ſued an Action of Debt againſt J. S. wherein Proceſs continued, until he was outlawed: and he thereupon ſued a Cap. Utlagatum, which was deliver-ed to the Defendant, being Sheriff of the Vill of Nottingham, by force whereof he arreſted him: that afterwards he lett him at large, the Plaintiff not ſatisfied, and therefore had brought his Action. The Defendant demurred; and after argument at the Barr for the Plaintiff, none being there for the Defendant, the Court held clearly, That the Action well lay, becauſe the Plaintiff hereby was delayed of his debt.

5 Rol. 895. Poſt. 706. Ant. 525. Co. 5. 88. b.

Anonymus.

(10) ERror of a Judgment in the Common Bench againſt three Executors: The Error aſſigned was, That one of them died, pending the Writ before Judgment. And Warburton moved, that this was Error, but when one of the Executors Plaintiffs die, this is no Error, for they might be ſevered; but the Court held it no Error. 3 H. 7. 1. 38 Ed. 3. 11.

Ant. 625.

Levett *verſus* Hawes. Antea, Mich. 41, & 42. Pl. 8.

(11) THe Caſe was now moved again. And Popham was of Opinion, that the Action ought to have been brought by the Son, and not by the Father; for the promiſe is made to the Sons uſe, and the ordinary Covenants of Marriage are with the Father to ſtand ſeiſed to the Sons uſe, and the uſe ſhall be changed, and transferred to the Son, as if it were a Covenant with himſelf; and the damage for Non-performance thereof is to the Son; and of that opinion was Fenner, but Clinch doubted, Gawdy was abſent. And Towſe of Counſel with the Plaintiff cited a Caſe adjudged in this Court between Cardinal and Lewes, where in conſideration of Marriage betwixt the Defendants Son and the Plaintiffs Daughter, the Defendant aſſumed to give a ſtock of 100 l. to his Son: and for Non-performance of that promiſe the Father brought the action, and adjudged maintainable. And the Court willed him to ſhew that Preſident, Et adjournatur. And it was afterwards adjudged for the Defendant. Mich. 43, & 44. Pl. 3.

Ant. 619.

Walker *verſus* Nicholſon.

(12) COvenant, and declares, how the Defendant by Indenture had bound himſelf apprentice to the Plaintiff for ſeven years, and had Covenanted, that he would not depart within the ſaid Term, and ſhews, that he departed within the Term, where-upon

pon he brought this Action. The Defendant pleads, that the as within the age of 21 years at the time, &c. The Plaintiff eplies, that the custom of London is, that any Infant above the ge of 12 years may bind himself to be an Apprentice, &c. And pon this replication it was demurred in Law, and the cause ewn, for that it was a departure in pleading. Flemming, the Queens Solicitor, moved, That it was not any departure, but ands well with the Declaration, and in proof thereof cited 21 l. 7. 17. and answered the book of 37 H. 6. 5. That where a cu-tome is alledged generally, that any one may devise, &c. He annot maintain it afterward by another custome, That an Infant may devise, for there be divers customes, and the Court eemed to doubt thereof, wherefore they would advise: but they aid, That, notwithstanding this custome, a collateral Cove-nant shall not bind an Infant. Et adjournatur.

Quarles *versus* Fayrchild.

PRohibition surmising, That the Church of Brian in Cornwal was a Donative, and that King Hen. 8. was seised in Fee of the Advowson thereof, and granted it to Charles Brandon, from whom he conveys Title unto himself; and, that one Ainsworth pretending it to be presentative, and that he was Patron, presented the said Fayrchild, who sued in the Court of Arches to have Induction, and cited W. Forth, who had it of the Donation from the Plaintiff, who appeared, and appealed to the Delegates, and died, and the Plaintiff comes in pro interesse suo, and pleaded this Title, That he had this Church as a Donative, and because this plea was refused, he obtained a Prohibition: and now consultation was prayed: for it was moved, that the Plaintiff was not an actor there, and the plea is determined, and therefore there is not any cause for a Prohibition. Popham held, that consultation ought to be granted, because the Defendant claimed nothing, but Induction, which cannot any way be prejudicial to the Plaintiff: For, if it be a Donative, the Induction is to no purpose; and, if it be presentative, the other can have no remedy for the profits until Induction, nor try his right; and therefore no reason to prohibit it. And although Forth be dead, the suit is not determined, as it was alledged: for it is made to the Judge, and he ex officio is to bring in the party, who pretends interest. Where-fore the Court may well grant consultation to proceed. And so was the opinion of the whole Court, and consultation was granted. (13)

Bowes *versus* Paulet.

ERror in an Assumpsit: wherein the Plaintiff declared, Whereas the Defendant was obliged unto him in 200 l. the which Obli-gation (he being indebted to the Queen) had assigned unto her; that the Defendant in consideration, that the Plaintiff would forbear to procure any process against him for the said debt un-til Hillary Term then next following, promised unto the Plaintiff to pay unto him 200 l. The Defendant pleaded Non assumpsit, and found against him, and Judgment for the Plaintiff. Whereupon the Defendant brought Error in the Exchequer Chamber, and assign-ed it, because there was not any consideration. And so held all (14)

the

the Juſtices and Barons; for by the aſſignment of the debt, it was conveyed to the Queen, & therefore the forbearance of procuring of proceſs was not any benefit or eaſe to the Defendant. For it might have been awarded againſt him for the Queen, notwithſtanding the Plaintiffs promiſe. Wherefore the Judgment was Reverſed.

Stanton *verſus* Suliard.

(15) ERor in the Exchequer Chamber of a Judgment in the Queens Bench in an Aſſumpſit, wherein the Plaintiff declares, that, he being Sheriff of Eſſex; the Defendant aſſumed (in conſideration the Plaintiff would levie an execution for the defendant) to pay unto him ſuch a ſum (which was allowed by the Statute of 28. Eliz. for a Sheriff to take) and upon Non aſſumpſit pleaded, & found for the Plaintiff, and adjudged for him; Error was brought, and aſſigned, that there was not any ſufficient conſideration, and of that opinion was Glanvile Juſtice: for, at the Common-Law, a Sheriff ought not to take any Fees, but it was extortion, and this Statute is only to diſcharge a Sheriff from extortion, if he take ſuch Fees only, as are given him by the Statute: but the Statute gives him not any means to obtain them; for he ought to execute the Writ at his peril, otherwiſe he ſhall be puniſhed; and it is not any excuſe for him to ſay, that the party would not pay him his Fees; and if he execute it, he cannot have an Action of debt, nor any other remedy: for the Fees given him by the Statute is not any debt in him, and ſo it was adjudged in the Common Bench in Sr. Stephen Some's Caſe, when he was Sheriff of London; but the other Juſtices and Barons held it to be a good conſideration: becauſe the execution was made at his requeſt, and was a benefit unto him, and by the Statute a Sheriff may lawfully take his Fees, and therefore may take a promiſe to have them paid him; and therefore they were of opinion to have affirmed the Judgment. But then another Error was aſſigned; for that the action was brought by Suliard by the name of Sheriff of Eſſex, and the Tales de circumſtantibus was returned by himſelf; & for this cauſe the Judgment was reverſed.

1 Rol. 26.
2 Cr. 103.
2 Cr. 103.
2 Cr. 103.
1 Cr. 287.
Ante 335.
2 Cr. 103. 4
Ante 335.

Clyncards Caſe.

(16) CLyncard was indicted upon the Statute of 8 H 6. The Record was ad Seſſionem pacis, &c. per Sacramentum A.B. C.D. & aliorum legalium hominum de Comitatu prædicto præſentatum exiſtit, &c. And it appeareth not, that it was per Sacramentum 12. for, if it were preſented by a leſſer number, it was clearly ill. Wherefore it was reverſed.

Crouthers Caſe.

(16) CRouther was indicted, for that a Burglary was committed in the night by perſons unknown, and I. S. gave notice thereof unto him, being then Conſtable, & required him to make Hue & Cry, & he refuſed, &c. exception was taken to the matter of the Endictment, becauſe it hath been adjudged, that an Hundred ſhall not be charged with a robery committed in the night, becauſe they be not

Ante 270.

bound

bound to give attendance; no more ought a Conſtable to do it in the night. But all the Court held the Endictment to be good notwithſtanding: for it is not like to the caſe of an Hundred; becauſe it is the Conſtables duty, upon notice given unto him, preſently to purſue. And it was ſaid, that in every Caſe, where a Statute prohibits any thing, and doth not limit a penalty, the party offending therein may be endicted, as for a contempt againſt the Statute. Another exception was taken, becauſe he did not ſhew the place of the notice: and that was held to be material. Whereupon the party was diſcharged.

Kelley *verſus* Walker.

PRohibition: and ſurmiſeth, That the Defendant was a Clerk, and made an aſſault upon his ſervant, and he coming in aid of his ſervant, and to keep the peace, layed his hands peaceably upon him; whereupon the Defendant made an aſſault upon the Plaintiff, and he defended himſelf; and afterwards ſued him in Court Chriſtian before the Delegates, pro violenta injectione manuum ſuper Clericum, where he pleaded all this matter, and that, if the Defendant had any hurt, it was de ſon aſſault demeſn. But the Court Criſtian would not allow of that plea, but proceeded to Sentence againſt him, and fined him 10 l. and awarded damages to the Clerk. Whereupon he brought the prohibition. The Defendant confeſſeth, that the Plaintiff pleaded this plea in the Spirtual Court; but he ſhews, that the Plaintiff was condemned there for Non-attendance upon that Sute: and traverſeth the refuſal of the plea, and it was thereupon demurred. Godfrey moved for a conſulation: for the Sute was well begun in the Spiritual Court, it being for the beating of a Clerk, by the Statute of Artic. Cleri. cap. 1. vid. Nat. Br. 51. And this plea pleaded there, was well triable there; as 1 R. 3. 4. and 46 Ed. 3. 32. And then the allegation, for the taking away the jurisdiction of that Court, is well traverſable; as where a Cauſe is alledged for removing of a Sute out of an Ancient-Demeſn-Court, it is traverſeable; as 6 H. 4. 1. and 27 H. 6. 4. Wherefore, &c. Gawdy held, that this Caſe was out of the Statutes of Artic. Cleri. and of Circumſpecte agatis: for here the party had good cauſe to beat the Clerk. And, as to the Traverſe it is not good; for the ſurmiſe is not traverſeable; but he agreed to the Caſe of an Auncient Demeſn: For otherwiſe the Lord ſhould loſe his Franchiſes. But it is not ſo in the other Caſes, as in the Caſes alledged to remove a Plaint in a Recordare, it is not traverſable; and of that opinion was all the Court. Wherefore it was adjudged for the Plaintiff. (18)

Lowe and Terries Caſe.

AUdita Querela. The Caſe was, Two were obliged in a Statute the Defeaſance whereof was, That they and their wives, upon requeſt, ſhould make aſſurance of ſuch Lands, as ſhould be deviſed. The breach Aſſigned was, For that a Deed of Feoffment (ſhewing what) was offered unto Terry to be ſealed, and he refuſed, &c. Whereupon the Plaintiff demurred; for it was alledged, that this Requeſt to one is void: for it is to be made to both; 30 H. 8. Condition 109. and 33. H. 8. Joynt-tenants 60. But all the Court (19) 1 Rol. 454

Court held, that the breach was well aſſigned, for although the requeſt ought to be to both, yet they needed not to be together at the time of the requeſt; for then peradventure he ſhould never find them; wherefore, if he required the one at one time to ſeal it, it was good, and he might requeſt the other afterwards, and it had been good: but when one refuſeth, it is a breach preſently, and therefore the Statute is forfeited. Secondly, it was alledged, that the plea was uncertain; for the Deed tendred was of Land in the pariſh of St. Magnus, and the deviſing of the Deed is alledged to be in Parochia St. Margaret. And the Tender and refuſal in Parochia dicta, which is uncertain; for it appears not which of the Pariſhes is intended. But the Court held it to be well enough; for it ſhall be intended the Pariſh mentioned in the Plea, and not the Pariſh mentioned in the recital of the Deed.

Ant. 101.

Walſal *verſus* Heath. Mich. 39, & 40 Eliz. rot. 3104.

(20) REplevin. The Avowry was, that J. S. ſeiſed of Lands for the life of Sibyl his wife, in right of his wife, the reverſion in Fee to the Baron; he, and his Feme made a Leaſe for years without writing, reſerving 4 l. Rent per annum: the Baron, being endebted by obligation, made the ſaid Sibyl his wife Executrix. The debtee brings debt againſt her by the name of Iſabel, and recovered, and upon a Writ of Fieri facias a Devaſtavit was returned, and thereupon an Elegit awarded, and the Sheriff returned, that Iſabel had 4 l. Rent iſſuing out of that Land, upon a Demiſe made by her, and her Husband, and delivers the moyety of that Rent, and thereupon he avows for the ſame. And it was thereupon demurred, and adjudged ill for three cauſes. First, Becauſe a Leaſe for years by Baron, and Feme, without Deed is void againſt the Feme. Secondly, the recovery againſt Iſabel is void againſt Sibyl, and the Sheriff cannot extend her Land. Thirdly, the Sheriff delivering the Rent without the Land, ſo as there is not any Reverſion, it is but a Rent ſeck, and a bare Rent cannot be delivered ut liberum Tenementum. Wherefore, it was adjudged for the Plaintiff.

Ant 438.

Andrews *verſus* Needham. Mich. 40. & 41. rot. 2421.

(21) COvenant. The breach was aſſigned in hoc; Whereas the Defendant, being Leſſee for years, covenanted at the end of the Term, to leave, and yield up the Tenements well repaired to the Plaintiff, that he had not left, &c. The Defendant pleaded, That one Blunt was ſeiſed in Fee, untill by the Plaintiff diſſeiſed, who Lett to the Defendant, and afterwards Blunt re-entred, who Infeoffed I. S. who is yet ſeiſed, &c. And it was thereupon demurred, and adjudged a good barr.

Termino Paſchæ,

Anno Quadrageſimo primo ELZABETHÆ,

in Banco Reginæ

Domina Ruſſel *verſus* Gulwel.

Hill. 41 Eliz. rot. 191.

DEbt upon an Obligation of 500 l. conditioned for the perfomance of all Covenants, Articles, and Agreements in ſuch an Indenture, betwixt the Plaintiff on the one part, and the Defendant on the other part, on the part of the ſaid Gulw. to be perfomed. And in the ſaid Indenture was contained. That the ſaid Lady Ruſſ. lett to the Defendant certain Lands, called, Eyford-Paſtures, excepting a Cloſe called Eyford-Church-cloſe. The Defendant pleaded, that he had perfomed all the Covenants, &c. The Plaintiff aſſigns for breach, that the Defendant entred into the cloſe excepted, and thereof diſſeiſed her. Et ſi, &c. The Defendant demurred in Law. Coventry for the Plaintiff moved, that it was a breach; for the Exception is an agreement, that the Leſſor ſhall retain it: For an Indenture is the Deed of every the parties, and therefore the diſturbance of the Plaintiff from the occupying thereof, is a breach of the agreement; and therefore 11 H. 7. 22 Plowd. 134. and 14 H. 8. 15. are: That an Indenture is as the words of both parties: And this Caſe is put in Plowd. 67. by Montague; That, if the Leſſee diſturb the Leſſor from enjoying the Cloſe excepted, it is a breach of the agreement. Wherefore, &c. And of that Opinion was Gawdy. For the words in an Indenture put in the Generality, ſhall bind both parties, and ſhall be taken to be the agreement of each party; and to that purpoſe cited 35 H. 8. Dyer 37. 21 H. 7. 37. That a Reſervation of Rent is as a Covenant on the Leſſees part. Popham and Fenner e contra. They agreed, That an Exception is an agreement of the Leſſee, That the Land excepted ſhall not paſs by the Demiſe: But it is not any agreement, that he ſhall not occupy. But ſome times an Exception is an agreement, that ſhall charge the Leſſee: But that is, where he agrees on his part, that the Leſſor ſhall have a thing dehors, which he had not before. As if he letts Lands, excepting a Way, or Common, or any other profit a Prender; that is an Agreement of the Leſſees, that he ſhall have the profit. And; if he be obliged to perform all the Covenants and Agreements: If he diſturb in this, he ſhall forfeit his Obligation: For there the Leſſor hath an intereſt in the thing excepted. Wherefore, &c.

(1) 1 Rol. 431. Co. 11. 50. b.

Co. 11. 51. a.

Afterwards, it was at another time moved again, and Popham ſaid, that he had conferred with the other Juſtices, and the greater part of them agreed, that this Exception is not ſuch an agreement, as is within the intent of the condition of the Obligation; and, that the Obligation is not forfeited by this diſturbance: Wherefore it was adjudged for the Defendant. And here the Plaintiff would have been non-ſuited, and could not; becauſe ſhe appeared once in this Term. And the Demurrer was argued, Wherefore, &c. Vide 11 Co. 50.

Poſt. 675.
Ante 410.

Spark *verſus* Spark. Mich. 40, & 41. rot. 387.

(2)
Poſt. 666. 840.

TReſpaſs. Upon Demurrer in Law, the Caſe was, That a Leaſe for life was made to J.D. by Indenture: And after by another Indenture, he lett it to J.S. for 99 years, after the expiration, or determination of the firſt Leaſe, Si tam diu vixerit; and further grants to I.S. ſurvivor of them; that after the death of the ſurvivor of the ſaid I.S. the Lands ſhall remain to the Executors of I. S. for twenty and one years: I. D. died, and after him I. S. dies inteſtate: Whether his Adminiſtrator ſhall have this Term? or whether it ought to have veſted in the Executor as a purchaſe, and not in the Teſtator? was the ſole queſtion, and for that Vide 11 H. 4. 34. 46 Ed. 3. 31. 16 Ed. 3. Quid Juris clamat, 22 14 Eliz. Dy. 309. But the Court delivered not any Opinion to the matter in Law: For, in regard of an Exception to the pleading, Judgment was given againſt the Plaintiff, viz. for that the Defendant pleaded his Free-hold. The Plaintiff by replication ſhews, that a Leaſe was made by Indenture to I. D. for life, and after lett to I. S. for ninety and nine years, &c. and a Grant further per Indenturam prædictam, That after the death of I. D. and I. S. that it ſhould remain, &c. And the ſecond Leaſe is not pleaded by Indenture. And prædictam refers to the firſt, whereto I. S. was a Stranger, and therefore ill. And, for this Cauſe, it was adjudged againſt the Plaintiff. Poſtea, 41 Paſch. Pl. 19.

Ante. 101.

Ewer *verſus* Heydon. Ante, Trin. 38. Pl. 4.

In Camera Scaccarii.

(3)
2 Rol. 49. 50.
2 And. 123.
Ante 476.
1 Rol. 47. 49. 50
Mo 360.

THe Caſe was now moved again, & the Error aſſigned in point of Law, and after argument, Anderſon, Walmſley, Glanvil, Savil, and Kingſmil agreed, That the Houſes in W. did not paſs by that Deviſe; for properly, Houſes will not paſs by the Name of the Lands: For they cannot be recovered in a Præcipe by that name. And when he names Houſes in the firſt part of the Deviſe of the Land in L. in the County of Oxon, and in the ſecond part of the Deviſe deviſeth only Lands, and adds thereto Meadows and Paſtures; that expounds what he intended by Lands, viz. Arable Land only: And it ſhall not be intended to paſs Meadow and Paſture, unleſs he had added them: And the addition of them excludes Houſes and Woods. And therefore it was reſembled to the Caſe 9 Eliz. Dy. 261. A Man hath Land in a Vill, & in two Hamlets of the ſame Vill; and deviſeth all his Lands in the Vill, and in one of the Hamlets; the Lands in the other Hamlet paſſeth not: But, if he had deviſed all his Lands in the Vill, the Lands

nds in both Hamlets had paſſed. But naming the one Hamlet, hall be preſumed, that he intended not to paſs any thing in the ier Hamlet. Wherefore the Judgment was affirmed. But iam and Clerk ſeemed to doubt therein.

Penruddock *verſus* Clerk. 5 Co. 101.

he Judgment was affirmed. But it was now debated, whe- (4)
ther coſts ſhould be allowed to the Defendant in the Writ of Ante 234.
ror, by the Statute of 3 H. 7. Firſt, Becauſe no coſts were overable in the firſt Action. Secondly, For that there is not any ecution to be had, but an abatement of the Nuſance. Thirdly, regard that it appears, that the Writ was not ſued for delay, t upon a doubtful matter, which hath been oftentimes argued this Court. But notwithſtanding theſe Reaſons, it was re- Ann. 617.
ved, that coſts are allowable in every Caſe, where a Writ Error is brought before Execution ſued. And, notwithſtand- g that the matter was doubtful, yet there was not any Caſe, t that coſts are allowable. But it is in the diſcretion of the ourt what coſts ſhall be allowed: But they muſt not at all de- it. Wherefore it was awarded, that the Plantiff in the Writ Error ſhould pay coſts.

Paget *verſus* Crumpton.

Rohibition; For that the Plaintiff was ſued in Court-Chriſti- (5)
an, for a Taxation towards the reparation of the Church of lbroughton; within which Pariſh he had Land in his hands, but as not an Inhabitant within the Pariſh, nor had any Houſe erein. The Queſtion was, Whether the cuſtome of a Pa- ſh (which was alledged) for taxing thoſe who had Lands in eir Manuel Occupation within the Pariſh, but inhabited elſe- here, towards the reparations of the Church, and providing Books and Veſtments be good, or not? Popham at the firſt, as of Opinion, that it was not good, becauſe they, who inha- t not within the Pariſh, have not any benefit of the Divine ervice there: There being no reaſon to charge them. But, af- rwards a Preſident was ſhewn, 33 Eliz. between Jeffries and oſter in this Court; where it was adjudged, That they who oc- Poſt. 843.
upied Land within a Pariſh, although they inhabited in another Co. 5. 66. b.
lace, ſhould be contributary to the reparations of the Church, ithout any cuſtom; becauſe, otherwiſe, all Churches would all to decay. If one might purchaſe the greater part of the Land n a Pariſh and reſide elſe-where; all the charges would fall up- Co. 5. 67. b.
n the poor of the Pariſh. But it was ſaid to be agreed in that Caſe; If he lets the Land to one, rendring a firm Rent, and he nhabits out of the Pariſh, his Leſſee ſhall pay towards the re- arations of the Church, and not the Leſſor. And to that Opi- ion all the Juſtices here agreed; Et Popham mutavit opinionem. Se- ondly, It was moved, That in this Suit, they of the Spiritual Court would try the quantity of the Land, for they were taxed Poſt. 666.
ccording to the rate of their Land. And they pretended that he ath more Land there, then in truth he hath, which is always tri- ble at the Common Law. Sed non allocatur. For the Principal be-

ing ſuable there; the Circumſtances concerning it are inquirable and triable there alſo. Wherefore a Conſultation was awarded. 5 Co. 66.

Munday *verſus* Martin.

(6) Aſſumpſit. Whereas the Plaintiff the firſt of November 31 Eliz. had deliveted to the Defendant three Cloths; that the Defendant in conſideration thereof aſſumed to pay 30 l. one moiety within a year following, the other moiety within the ſecond year enſuing. Upon Non aſſumpſit, the Jury found, that the delivery was on the firſt of Auguſt 31 Eliz. and all the reſidue ut prius. And, whether this was found for the Plaintiff or Defendant? was the Queſtion: And adjudged for the Defendant: For this is not the ſame Aſſumpſit, whereof the Plaintiff had counted, but differing from it. Wherefore, &c.

Moor. 470. Ant. 79.

Johnſon *verſus* Awbrey, Vicar of Bradfield in *Berks*.

(7) Prohibition for Tithes claimed of Hay of the latter Maths; and alledges a preſcription: That in conſideration the Occupiers of that Meadow had uſed to make the Hay of the firſt Maths into Cocks, and to ſet forth the tenth Cock for the Vicar, they had uſed to be diſcharged from the payment of any Tithes for the latter Maths. Williams moved for a Conſultation, becauſe the Suggeſtion is not ſufficient; for he doth no more then the Law requires. But the Court held it to be a good Preſcription, and reaſonable. And Coke cited one Nichols Caſe, to be adjudged in this Court, That Tithes ſhall not be paid for the Raking of Corn; unleſs it can be averred, that they were foul Rakings, and covenous, to defraud the Parſon, &c.

1 Rol. 648. 9. 2 Cr. 42. 2 Cr. 42. 1 Cr. 403. Ante 363. 1 Cr. 403. 2 Cr. 42. Poſt. 702. Ante 475. 363. 446. 2 Inſt. 652.

Keble *verſus* Brown.

(8) Aſſumpſit. Whereas the Plaintiff the twenty ſecond of January, 38 Eliz. bargained with the Defendant for all his Lands in Yarmouth; and they agreed to ſtand to the Order of one Skarborough, for the ſum, which the Plaintiff ſhould pay, and what Aſſurance the Defendant ſhould make; and, that they promiſed, the one to the other, to perform that Order made by Skarborough; and alledgeth in facto, that the ſaid Skarborough, the ſaid twenty ſecond of January, Anno 38 Eliz. appointed, that the Plaintiff ſhould pay ſuch a ſum for the Land; and, that the Defendant ſhould make an Indenture of Bargain and ſale of all the Lands, which the Defendant then had in Yarmouth: And ſhews further, that on the fourteenth of September 39 Eliz. he deviſed, and tendered to the Defendant an Indenture of Bargain; whereby he ſold to the Plaintiff all the ſaid Lands, which he then had in Yarmouth, habendum to him, and his Heirs, ſecundum Concluſionem & Agreamentum prædictum. The which the Defendant refuſed to enſeal: The Defendant pleaded Non Aſſumpſit, and found againſt him to his Damages of 300 l. And it was now moved by Godfrey, in Arreſt of Judgment: That the Indenture of Bargain and Sale

is

is not warranted by the agreement; and therefore the Defendant was not bound to seal it, because it might be, that he had other Land on the fourteenth of September, 39 Eliz. then he had at the time of the agreement, on the twenty second of January 38 Eliz. And the assurance ought to have been made of the Land only, which he had at the time of the agreement. And of that Opinion were Gawdy and Fenner; for the assurance is not drawn according to the agreement: And therefore he needed not seal it, although he had not in truth any more Land on the fourteenth of September, 39. then he had on the twenty second of January 38. and in proof hereof, was cited, Mich. 4 and 5 Eliz. Dyer 218. Strodes Case But Popham e contra. For, although the Indenture varies in words from the agreement, yet if it varies not in substance, it is not material: And therefore, if he hath no more Land then he had 22 January 38 Eliz. he ought to have sealed it: For it stands with the agreement. And if he hath, he might refuse: And it ought to be specially shewn on his part: For it is not necessarily to be intended. And always, if the Assurance drawn agrees in substance with the Covenants, although they vary in words, it is not material. As if it were covenanted to assure all his Lands in D. and the Assurance is drawn by particular Names, yet it is good. Quod *Gawdy* concessit, but said, that here it is especially appointed, that he shall make assurance of all the Lands which he had at such a time, which differs much, &c. Wherefore, &c. Et adjournatur. The matter was afterwards referred to Compromise. Post. 682. Post. 682. Ant. 344.

Holiday *versus* Hicks.

Ante, Mich. 40, & 41. Pl. 37. & Hill. 42. Placito 25.

(9) The Case was now moved again, and all the Court resolved for the Plaintiff: For by the Contract, and receipt of the money, the property thereof was in the Plaintiff. And Fenner said, That it was adjudged; where a Servant takes Gold from his Master, and changes it into Silver, that the Master should have restitution of the Silver by the Statute of 21 H. 8. cap. 11. and this was Hanberries Case. Wherefore it was adjudged for the Plaintiff: But afterwards, Error being brought thereof, it was Reversed: For all the Justices and Barons resolved, That this action lies not, for money found, unless it be in a Bag or Chest. Postea Ant. 638. Post. 746. Post. 819.

Gay *versus* Kay.

(10) TRespas. Upon Demurrer, the Case was; That a Feme recovered Dower of the Manor of Fremington, wherein were many Copyholds for life, and a Custome, quod Dominus pro tempore might demise for one, two, or three Lives in possession, or in Reversion: And upon a Writ of Habere fac. Seisinam, the Sheriff returned, that he had delivered to the Feme the third part of the Manor, viz. such several Tenements, reciting them particularly (whereof a Copyhold Tenement in the Tenure of Alice Pilcher was one) the Tenant in Dower kept Court, and granted the said Copyhold Tenement to the Plaintiff, and to two others for their Lives, Habendum post Mortem A. P. the Tenant in Dower, afterwards 1 Rol. 499.

afterward died, and then A.P. died. The Lord enters, the Plaintiff enters, and the Defendant outs him. And, Whether this Grant by Copy in Reverſion, which was not executed during the Life of the Tenant in Dower, be good or not? was the Queſtion. Williams Serjeant moved for the Plaintiff, that it was good, and ſaid, Moor. 147. that it was ſo adjudged in the Common Bench, 28 Eliz. between Brag and Bourn, and in Sir Peter Caryes, and Southcotts Caſe in this Court; and in 17 Eliz. Dyer 343 in Count d' Arundels Caſe: Wherefore, &c. And of that Opinion were Popham, and Clinch, Juſtices: They being only in Court, and were ready to have given Judgment accordingly: For Popham ſaid, That it was now without Queſtion held to be good, although it were not executed in the life of the particular Tenant, who granted, although Co. 4. 23. b. it were doubted in the E. of Arundels Caſe, Trin. 17 Eliz. For the reaſon why Tenant in Dower, or a particular Tenant may grant a Copy-hold in Reverſion, as well as in Poſſeſſion, is the Cuſtome, and thereby the Grant is warranted; and therefore there is not any difference in either of the Caſes: But one, who hath a particular Eſtate in a Mannor, cannot grant a Copy-hold by parcels, or demiſe part, and retain the reſidue himſelf. And therefore, If a Feme be endowed of ſeveral Copyhold Tene- Ante 103. ments, ſhe cannot grant part of them by Copy in Poſſeſſion, or Reverſion. Wherefore, H. Wyat took exceptions to the pleading. Firſt, Becauſe it is not alledged, that any the Services of any of the Freeholders was allotted to the Feme, but the Demeſns, and Copy-hold Tenements only: So as ſhe hath not any Mannor, nor can keep any Court, nor Grant any Copies, &c. But Popham held clearly, that ſhe might notwithſtanding: For, although ſhe, having no Services, cannot have a Court Baron; yet ſhe may have a Special Court for this purpoſe: And it is good enough. And ſo it was adjudged in Sir Chriſt. Hattons Caſe for Wellingborough, where he had twenty Copyhold Tenements, parcel of the ſaid Mannor, granted unto him by the Queen: And, becauſe ſome of them refuſed to come to his Court, they forfeited their Copy-hold. Wherefore, &c. Secondly, he moved, that the Grant is not well pleaded; for he pleads it as a Grant in Poſſeſſion, and not as in Reverſion. And the Record was viewed, and it was, that he granted Tenementa prædicta per nomen of a Meſſuage, which A.P. held for life: And it was reſolved to be an incurable default: for it is not alledged, that he granted the Tenement in Reverſion: And the per nomen will not help it. Wherefore, for this cauſe, it was adjudged for the Defendant.

Colchin *verſus* Colchin.

(11) TReſpaſs. Upon a Special Verdict, the Caſe was; Baron and Feme, Copyholders to them, and the Heirs of the Baron; the 1 Rol. 499. 2 Cr. 36. Baron dies, the Heir, in the life of the Feme, before admittance, Ante 90. ſurrenders into the hands of two Tenants, who might take 2 Cr. 36. ſurrender by cuſtome: And, whether it were a good ſurrender? Co. 4. 22. b. was the Queſtion: And without argument ruled to be good. 2 Cr. 31. And it was held by Popham, and Fenner, that if a ſurrender be to Co. 4. 23. a. the uſe of one for life, remainder in fee, and the Tenant for life Ante 504. is admitted, that is an admittance for him in remainder.

The

The Lord Hunſdon *verſus* Baker.

(12)

MOnſtrans de droit, for certain Lands in ward to the Queen, for the Non-age of John Baker; whereof an Office was found for the Queen. They were at Iſſue in Chancery, and the Record ſent into the Queens Bench to be tried: and now a challenge was made to the Array, put in by the Queens Attorney for the Queen: Becauſe Thomas Kemp, Sheriff of Kent, who returned the Panel, was Tenant to the Lord Hunſdon. And a Counter-Plea was put in thereto, that the ſaid Sheriff was Tenant alſo to the Queen: And it was thereupon demurred, and much debated, whether this challenge were good: For it was but for favor: And every ſubject is bound in obedience to favor the Queen more than his Lord; and therefore the Law will not preſume the contrary; and for this cauſe the challenge is not good; which is the reaſon, that the challenge for the other party againſt the Queen for favor is not good. And the Opinion of the Juſtices of the Common Bench was demanded, and they doubted, but ſeemed to incline that it was good; wherefore the Court adviſed until the next day; and it was then moved to be a good challenge: for this cauſe doth not concern the Queen only; but it concerns the Heir alſo for his inheritance, and he is intereſted therein: and hereunto the Court enclined: But they held the Counter-plea to the challenge to be little material: For although he were Tenant to both, yet he, who takes the challenge, ſhall have advantage thereof. And afterwards, by conſent of the Council, the Lord Hunſdon waved the Plea, and confeſſed the challenge: Whereupon the Array was quaſhed, and a new Ven. fac. awarded. id. 4. H. 7. 3. & 8. 19. Aſſ. 8.

2 Rol. 643. 5. 6.

Co. Lit. 156. a.

Co. Lit. 156. a.

2 Rol. 646

2 Rol. 643. Ant. 23.

Boughton *verſus* Gouſley.

(13)

INformation upon the Statute 21 H. 8. for Non-reſidence, The Defendant pleaded, that he was choſen Goſpeller in the Church of St. Pauls London, that he was reſident there by reaſon of that dignity; and it was thereupon demurred: And it was argued by Waterhouſe for the Plaintiff, that this was not any dignity to excuſe the Defendant. The Civilians divided Spiritual Functions into three degrees. Firſt, a Function, which hath a Juriſdiction, as Biſhop, Dean, &c. Secondly, a Spiritual Adminiſtration with a Cure, as Parſon of a Church, &c. Thirdly, they, who have neither Cure, nor Juriſdiction: as Prebends, Chaplains, &c. And they defined a dignity to be Adminiſtratio Eccleſiaſtica cum Juriſdictione, vel poteſtate conjuncta, and thereby they exclude the two laſt degrees from being any dignity: A multo fortiori, the Common Law doth ſo, and to that purpoſe Vide 27 H. 6. 5. 5 Ed. 3. 41. 24 Ed. 3. Br. Noſm. 25. That an Arch-Deacon is not a Name of dignity: And 11 H. 4. 40. That a Parſon is not a Name of dignity: 17 Ed. 3. 31. A Provoſt is not a Name of dignity: 4 H. 6. 14. A Precentor is not a Name of dignity: 27 H. 6. 3. A Chaplain is not a Name of dignity: And 27 H. 8. 10. is, That if Vicar of St. Pauls hath a Benefice with Cure, he ought to be reſident upon it: And that is a greater dignity then Goſpeller.

Where-

Wherefore, &c. And of that Opinion were Popham and Clinch, cæteris Juſticiariis abſentibus; That it was not a Dignity within the Statute: But they would adviſe upon hearing the Defendants Council. Et adjournatur. Afterwards the Defendant compounded.

Fineux *verſus* Hovenden.

(14) Co Lit. 56.b. ACtion upon the Caſe. Whereas there had been a way within the City of Canterbury, leading from St. Peters Street unto a Street called Ruſhmarket: And that all the Inhabitants of the City had uſed, time whereof, &c. to paſs that way; and, that the Plaintiff was an Inhabitant there; That the Defendant had made a Ditch, and erected a Pale croſs that way; whereby he had loſt his paſſage, &c. The Defendant pleaded Not Guilty; and by a Viſne awarded of W. in the County of Kent, by aſſent of the parties (in regard the cauſe concerned all the Inhabitants of Canterbury) it was found for the Plaintiff: And now moved in Arreſt of Judgment, that it was a miſ-trial. Firſt, becauſe it ought to have been by a Viſne of Canterbury. Vide 21 Ed. 4. 31. Co. Lit. 125.b. Dyer 299. But the Court held it to be well enough; becauſe it was by aſſent of the parties, which is entred upon Record. Et conſenſus tollit errorem. Vide 44 Ed. 3. 6. 44 Aſſ. 4. Dy. 367. And Fenner cited the Lord Cromwells Caſe to be adjudged, that an Iſſue tried by another Jury then it ought to be, yet, being by aſſent, was well enough. Secondly, It was moved by Coke Attorney General, That this Action lies not for a private perſon, becauſe it is a Common Nuſance, and is puniſhable in a Court Leet only, unleſs he can ſhew ſome ſpecial prejudice; as 27 H. 8. 27. is, and ſo it was adjudged in this Court between Serjeant Bendlows and Co. 5. 73.a. Kemp, That he might maintain an Action upon ſome ſpecial prejudice. And at S. Albons Term between Williams and Johns, it was adjudged, That where a Chappel was within a Manor, and the Parſon of the adjoyning Church uſed to read Divine Service every Sunday for the Lord and his Tenants in the ſaid Chappel: And for that the Parſon had failed therein, the Lord brought an Action upon the Caſe, and adjudged, that it lay not: For ſo every one of the Tenants might bring the like Action, which would be inconvenient, that he ſhould be liable to all their Actions; but he ought to be puniſhed by the Ordinary in this Ant. 90. Caſe. But peradventure, where there is not any other remedy to be had, then by Action, there every one may have his Action, who is grieved: And therefore it was adjudged between Weſtbury and Powel, where the Inhabitants of Southwark had a Common Co. Lit. 56.a. Watering place, and the Defendant had ſtopped it, the Plaintiff being an Inhabitant there, brought his Action upon the Caſe, and adjudged maintainable. But it is here puniſhable in the Leet. Wherefore, &c. And of that Opinion were Popham, Gawdy, and Fenner; That without a ſpecial grief ſhewn by the Plaintiff; the Action lies not. But Clinch e contra: For the ſtopping of it ſelf is a ſpecial prejudice to the Plaintiff, that he cannot go that way. Wherefore it is reaſon he ſhould maintain the Action. Sed adjournatur. Co. Littleton, fol. 56.

Some

Some *verſus* Taylor.

NOte, A Queſtion was between them for an Aſſurance of Land. *Popham* ſaid, That it had been reſolved by all the *Juſtices* That if one be obged to aſſure twenty Acres of Land, That the Acres ſhall be accounted according to the Eſtimation of the Countrey where the Land lies, and not ccording to the meaſure limited in the Statute. (15) Ant. 476.

Ferrers *verſus* Borough. Trin. 41 Eliz. rot. 831.

UPon a Special Verdict, the Caſe was, A man made a Leaſe for years, upon Conditions to be performed on the part of he Leſſor, and before the time of the performance of the Condiion, the Leſſor letts it to a ſtranger for years by Indenture, and hen performs the Condition, and enters: Whereupon the firſt eſſee brings Treſpaſs. Harris Serjeant moved, That he might ot enter; for by his making a ſecond Leaſe by Indenture, he hath iſpenſed with the Condition: But all the Court e contra. For he Eſtoppel is only between the Leſſor and the ſecond Leſſee, ſo s the Leſſor is at large againſt the firſt Leſſee to enter upon his Condition, notwithſtanding the ſecond Leaſe. Coke Attorney eneral, being in Court, ſaid, This Caſe was clear; But if one nakes a Feoffment upon Condition, and afterwards levies a fine to a ſtranger, his Condition is gone. And Judgment vas then given, that the Leſſors entry was lawful. (16)

Mature *verſus* Weſt.

ASſumpſit. Whereas the Defendant was indebted unto him in ſuch a Sum in Conſideration, that the Plaintiff would give unto him day of payment, that the Defendant aſſumed to pay it the day, and alledges, that he gave unto him ſuch a day, and hat the Defendant had not paid. The Defendant pleaded Non ſſumpſit, and found againſt him, and now moved, that this vas not a ſufficient Conſideration, for it is at the Plaintiffs iberty, what day he will give, ſo as he may give the ſame day, herein the Aſſumpſit was made, if he will, and ſo there is not any enefit to the Defendant. But the Court held it to be well enough; for it is alledged, that he forbear it for ſuch a time certain. Wherefore it was adjudged for the Plaintiff. (17) Ante 19.

Croſs *verſus* Tyrer.

ERror of a Judgment in the Common Bench. The Error aſſigned was; for that the Defendant appeared per J.S. Attornaum ſuum, that there is not any ſuch J.S. in rerum natura. The Deendant pleaded, In nullo eſt Erratum, and ſo confeſſes it; Yet the Court held it to be no Error, for it is againſt the Record; for the Court hath it upon Record, that he appeared by ſuch an Attorney, nd the party is eſtopped to ſay the contrary; but he might ave aſſigned, that J.S. had not any Warrant of Attorney. Wherefore the Judgment was affirmed. (18)

Termino Paſchæ, Anno 41 Eliz. in Communi Banco.

Spark *verſus* Spark [Antea Pl. 2.] Mich. 40, & 41 El. rot. 2215.

(19) 1 Rol. 916. 2 Rol. 47. Poſt. 840. Ante 658.

EJectione firmæ. Upon a ſpecial Verdict, the Caſe was, Nich. Spark ſeiſed in fee, by Indenture letts it to W. S. for 80 years, if he live ſo long, the remainder after his deceaſe to the Executors, or Aſſigns of the ſaid W. S. for 40 years. W. S. dies inteſtate, his wife (the now Plaintiff) takes Letters of Adminiſtration, and enters, claiming the Term. Nich. Spark the Leſſor (now Defendant outs her, Et ſi, &c. The ſole Queſtion was, Whether this remainder for 40 years veſted in W. S. or if it failed, becauſe he had not made any Executor? And all the Juſtices delivered their Opinions ſeverally, That this Term veſted in W. S. and that the Plaintiff ſhould have it as Adminiſtratrix unto him, and it ſhould be Aſſets in her hands; for the intention of the Leſſor appears, that the Executors or Aſſigns of W. S. ſhould have it; ſo by the word Aſſigns is intended, that W. S. may diſpoſe, and make an Aſſignment thereof, and therefore it veſted in him, and ſhall go to his Executors or Adminiſtrators, as Aſſigns in Law, and as a thing, which came unto them from their Teſtator, and not as a Perquiſite by themſelves. For Walmſley ſaid, It never yet was queſtioned by any, that if theſe two Terms had been in one clauſe, but that they ſhould have veſted in W. S. as if it had been Habendum for 80 years, if he live ſo long, and for 40 years after his deceaſe to his Executors. But it is here deviſed to W. S. for 80 years, if he live ſo long, remainder to his Executors for 40 years. Yet notwithſtanding, it is all one, and the Executor ſhall have it as Executor, and it ſhall be Aſſets in his hand, it being in the Teſtator diſpoſed of. And it was afterwards adjudged accordingly. *Note*, That in this Caſe *Walmſley* ſaid, The Difference betwixt this and *Cranmers* Caſe in 14 *Eliz.* *Dyer*, is, becauſe it is there limited by way of uſe, and by the Party himſelf, ſo he ſhews his own intent, that it ſhould not veſt in himſelf, but in his Executors. But here the limitation is by a ſtranger, wherein there is not any intention appears, but that it ſhould veſt in the Leſſee himſelf. And by this difference all the Books are reconciled. Vide poſtea, Tr. 43. Pl. 17.

1 Rol. 916. Co. Litl 54. b. Poſt. 841.

Moor 100. Dy. 309.

Mallary *verſus* Marriot.

(20) Ant. 595. 659. Ante 88. 2 Cr. 269.

PRohibition for ſuing for Tithe-Pidgeons. The Defendant in the Court Chriſtian pleaded payment, and offered to prove it by one Witneſs, and they refuſed to admit thereof without two Witneſſes, and he thereupon brought a Prohibition; and ruled, that it well lay; for it would be a greater inconvenience to bring two Witneſſes to prove payment of every ſort of Tithes, &c. Wherefore, &c.

Sir Walter Sands *verſus* Lane. Mich. 40, & 41 Eliz. rot. 2483.

TResp. Quare Averia cepit apud *Stockbridg*, & ad loca incognita fugavit, &c. The Defendant pleaded, That the Lord Sands was ſeiſed in Fee of twelve Acres of Paſture in Motfern, and he took the Beaſts there Damage Feſant as ſervant to the Lord Sands, and by his command, and from thence chaſed them to Stockbridg aforeſaid, and from thence to Feverſham in the ſame County, ad imparcandum, &c. Quæ ſunt eadem Captio, & Effugatio, unde, &c. And traverſes abſque hoc, quod cepit Averia prædicta apud *Stockbridg*, prout &c. And it was thereupon demurred, and after argument at the Bar, adjudged for the Plaintiff, that the Plea was ill; for the Travers is a departure from the firſt Plea, and repugnant to the matter, which inoueeth it, and, as this Caſe is, there needeth not any Travers at all; for where the matter of Juſtification is local, there he ought to ſhew the Cauſe ſpecially, and traverſ the Place: But not where it is tranſitory, as it is here; but it ſufficeth, although he juſtifies in another place, to ſay Quæ eſt eadem Captio, &c. Wherefore it was adjudged for the Plaintiff. (21) Poſt. 705. Ante 99.

Allen *verſus* Sr. Robert Salisbury.

DFbt. The Proceſs upon the Original were directed to the two Sheriffs of London, the Writ was returned by two, the one of them was Sheriff, the other not; and it was prayed, that it might be amended; for it is apparent to the Court, that it was the default in writing the Names, and the Return by one Sheriff alone had been good, and the addition of a ſtrange name thereto ſhall not make it ill. And afterwards by Advice of all the Juſticess it was amended. (22)

Meryweather *verſus* Stanton. Mich. 40, & 41 rot. 3316.

REplevin. The Defendant avows for a Rent-charge deviſed unto him, and doth not alledg the Land to be holden in Socage, and therefore adjudged to be ill. And it was ſaid, That ſo it was adjudged in Trevilians Caſe in this Court. (23)

Sr. Humphrey Ferrers, and two others *verſus* Arden. Mich. 40, & 41. Eliz. rot. 1701.

TResp. upon the Caſe, ſur Trover, and Converſion of an Ox of the Plaintiffs apud Aſhton the 10 Jun. 38 Eliz. The Defendant pleads, That at another time, viz. Termino Paſch. 36 Eliz. in the Queens Bench, the Plaintiffs, and a fourth perſon, who is now dead, brought Treſpas againſt Simon Wignal and two others of their Ox taken 11 April. 35 Eliz. that the Defendants thereto appeared, and juſtified as for an Heriot in right of the now Defendant: Upon which Bar the Plaintiffs demurred, and adjudged againſt them, and pleaded all the Record in certain, and avers, That the Plaintiff in the ſaid action, and in this action are one (24) Co. 6. 7. a.

and the ſame perſons; that the Dr in the ſaid action, and in this is one and the ſame; and, that the taking in this and in the other action be all one; and, that the Trover and converſion, ſuppoſed in this action by this Defendant only, was committed by the other Defendants with him, and they have covenously and ſubtilely omitted, and left them out, and not named them in this action, and this Defendant was omitted out of the other action ſubtilely, they being one and the ſame Treſpaſs, Thing, and Matter, and not divers, and at one and the ſame inſtant of time done. Et hoc paratus eſt verificare. Unde, ex quo, &c. they were acquitted in the firſt action, he demands Judgment, Whether the Plaintiffs to this action of the ſame Matter and cauſe ſhall be received to have, and proſecute. And hereupon the Plaintiffs demurred. And Walmſley and Kingſmil held the Bar to be good; becauſe upon the firſt Judgment, upon Demurrer, the property of the Dr was admitted in that Defendant, in whoſe right the juſtification was. Therefore the Plaintiffs ſhall not have this action without new cauſe, and although he be a ſtranger to the Record, whereby the Plaintiffs were barred, yet he is privy to the Treſpaſs; wherefore he well may plead it, and take advantage thereof. And hereto the other Juſtices agreed, that if it be intended for one ſame cauſe, that he well might take advantage thereof. But Anderſon and Glanvile conceived here, that they be not barred, for a Bar in a wrong action brought is not any Bar, where a right action is brought; as, where one delivers Goods to keep, and brings Treſpaſs againſt the Bailiff for theſe Goods, and be barred by Verdict, or Demurrer, that ſhall not be a Bar unto him in bringing Detinue or Accompt. And here theſe actions be of ſeveral natures, and a Bar in the one cannot be ſaid to be a Bar in the other. Walmſley agreed, that where it is a Bar in an action of Treſpaſs, upon Not guilty pleaded by Verdict, he may have this new action; becauſe it appears not, but that the Verdict was upon the Miſpriſal of the nature of the Action. So it is, if ſuch a Caſe appears upon Demurrer: But, where a Title is pleaded in Bar to a thing demanded, and, by reaſon thereof the Plaintiff is barred upon Demurrer, or Verdict, the intereſt thereby is bound, and the Plaintiff ſhall be barred from bringing a new action. Et adjournatur. And afterwards the matter was ended by Arbitrament.

Co. 6. 7. b.

Co. 6. 7. a.

Parman *verſus* Bowyer. Hill. 40 Eliz. rot. 259.

(25) Co. 5. 84. a. REplevin. The Defendant avows for Damage Feſant in his Free-hold. The Iſſue was upon the Free-hold, and a Special Verdict was found, that this Land is within the Manor of Porcheſter; and, that within the Manor is ſuch a cuſtom, that if any Tenant of the Manor aliens Lands, holden of the Manor by Writing or Feoffment, or deviſeth it by his Will, or ſurrenders it into the Lords hands, to the uſe of any other, that ſuch Alienation, Feoffment, Deviſe, or Surrender præſentata fuerunt, & præſentari conſueverunt at ſome Court of the Manor, there holden, within a year after ſuch Alienation, Feoffment, &c. or at the next Court of the Manor, there holden, after the year: And if ſuch alienation, &c. were not preſented in forma prædicta, tunc hujuſmodi Alienatio, &c. ſic minime præſentat. ſhould

ſhould be void by the Cuſtome of the ſaid Mannor. And they further found, that one Richard Rowle was ſeiſed in fee of that Land, holden of the Mannor, and made a feoffment of that Land to the Defendant; and, that it was not preſented within the year, nor at the next Court holden for that Mannor: And, Whether this were a good cuſtom, and the feoffment thereby deſtroyed for not preſenting of it? Was the Queſtion. And although it were not preciſely found, that a Court was holden there within the year, or after the year; yet the Court held it to be well enough: For it is found by implication, being found, that it was not preſented at the next Court after the year; which implies, that there was a Court there holden; and this is ſufficient in a Special Verdict. And if there were not a Court holden, &c. then an attaint would lie. And, as to the cuſtom, Anderſon held it to be void, unreaſonable, and againſt Law; and therefore not allowable. For here it is, that it was a good Feoffment for the time, and that afterward becomes void by not preſenting it. So where it was once good by the Common Law, it ſhall be now deſtroyed by the cuſtom, and deveſted for the Non-preſenting it. And it would be a great miſchief, if the Court-Rolls ſhould be loſt; ſo that the preſentment could not be proved, that the Feoffee ſhould loſe his Eſtate; and that it preſently ſhould be void for not preſenting it, without any other Act done, is unreaſonable, and againſt the Rules of the Common Law. Wherefore, &c. But all the other Juſtices held it to be a good cuſtom, and well allowable, and agreeable to Law: For it is good reaſon, the Lord ſhould know his Tenant; for otherwiſe a feoffment may be ſo ſecret, that the Lord, nor others ſhould know who was the Tenant: and, this being a Port-Town, it is reaſon, that it ſhould be publickly known who be Owners therein, that they may be charged with the defence of the Vill. And it is not repugnant to Law, to deſtroy the Livery, which created the Eſtate, without other Act done; for the Livery is for the publick Conuſance thereof; and this Preſentment is for the better publick notice thereof; ſo it is a corroboration to the Law, and well ſtands with it, and ſhall defeat that feoffment, if it be not ſo preſented. And, although the Livery be defeated, this may well be by ſpecial cuſtom; as the General cuſtom of the Realm is, that a feoffment cauſa Matrimonii prælocuti ſhall be defeated by marrying elſewhere; ſo a Free-hold, veſted in the Heir, ſhall be deveſted by the Executors Sale thereof, by vertue of a Will; ſo a Leaſe for years, upon Condition to have Fee, otherwiſe but a Term: If the Condition be not performed, the Fee returns without any other Act doing. So by the cuſtome of London, Baron and Feme ſells the Land of the Feme by Indenture, it ſhall bind the Feme as well as a Fine. So by the cuſtome there; a Deviſe of Lands is not good, unleſs it be enrolled within a certain time. So as, by cuſtom, a Free-hold may be transferred from one to another without Livery; ſo it may be revеſted, or defeated by cuſtome, without doing any other Act. And therefore it was adjudged a good cuſtom in Waymouth in the County of Dorſet, where the cuſtom of the Vill was (being a Port-Town) that a feoffment there, unleſs it be made in the preſence of ſome of the Maſters of the Vill, ſhall be void, was adjudged to be a good cuſtom. So here,

Co. 9. 51. b. Ante 167.

Co. 5. 84. b.

Ant. 640. Littl. Sect. 355.

here this cuſtome adds here more than the Law appoints; viz. That there ſhall be a Preſentment thereof: Wherefore it is good, and ſtands with the Law. And afterwards it was adjudged accordingly. Vide 5 Co. 84.

Leech *verſus* Cole. Trin. 40 Eliz. rot. 1703.

(26) 2 Rol. 395. UPon Demurrer, The Caſe was. Tenant for life, remainder to his eldeſt Son in tail, remainder to his ſecond Son in tail: A Præcipe is brought againſt the Tenant for life, and the eldeſt Son, Anno 12 Eliz. and they ſuffer a common Recovery, with vouching a common Vouchee. The eldeſt Son dies without iſſue; whether this Recovery ſhall bind the youngeſt Son, by the Statute of 32 H. 8. was the Queſtion; or, whether it were a Diſcontinuance? Anderſon, Walmſley, and Kingſmil held, That 2 Rol. 395, Co. 3. 6. b. it is not any Bar to the Eſtate-tail, nor to the Remainder; for the Land recovered in value ſhall be in the ſame degree, as the Land loſt is; for when a joynt Præcipe is brought againſt Tenant for life, and him in the Remainder, it ſuppoſeth them to be Joynt-tenants; and the Judgment ſhall be accordingly; and the recovery in value ſhall be according to the action. Whereupon he recovered in value joyntly, and ſo ſhall the Execution be alſo; and then the Recovery in value being accordingly, it is in the ſame degree as the Eſtate-tail was; and ſo no Bar to the Iſſue in tail, nor to the Remainder: For the cauſe of the Bar is the Aſſets recovered in value; and none ſhall be admitted to ſay, that the Aſſets recovered in value ſhall go in other manner or degree, then the Record is; As where a Recovery is had againſt a Mortgagor and Mortgagee, with a Voucher over, or againſt a Lord and his Villain, the Land recovered in value ſhall go to both joyntly; and although theſe Recoveries be but Aſſurances of Eſtates, Poſt. 828. yet they ought to go, and to be regarded, according to the Law. And the Statute of 32 H. 8. ſhall not make any alteration in this Caſe; for Walmſley ſaid, Although the Statute is, That a Recovery which is by the aſſent of him in Remainder, ſhall bind; That is to be intended a lawful aſſent, or Ant. 21. in a lawful manner, as by Voucher or otherwiſe; but not by action brought againſt him as Tenant, where he is not Tenant; that is an aſſent, but not a regular aſſent, nor ſuch as the Statute intends. And Anderſon denied the Caſe in Plowden between Ear and Snow to be Law; and yet, there where one, who hath nothing, joyns with one who is Tenant, he is but Tenant by Eſtoppel; and a Tenant by Eſtoppel ſhall not draw a Recompence in value. Wherefore, &c. *Glanvile* e contra; That the Recovery is a good Bar; and that this Caſe here is all one with the Caſe of Ear and Snow, which was adjudged by good advice. Vide Dyer 152. And although the Caſe of Sir William Cordal is cited to the contrary, that is not ſufficient to controul ſuch a Judgment. Afterwards a Rule was entred, that Judgment ſhould be entred according to the Opinion of the three Juſtices. But the Parties accorded, and no Judgment was entred. 3 Co. 6. b.

Knot

Knot and Knot executors of Knot *verſus* Barlow.

Paſch. 40 Eliz. rot. 1945.

DEbt upon an Obligaiton made to the Teſtator. The Defendant pleaded a Releaſe made by one of the Plaintiffs. The Plaintiff replies, that this Releaſe was made without any Conſideration; and he, who releaſed, was within Age at the time of the Releaſe made. And it was thereupon demurred, and adjudged for the Plaintiff, that it was a void Releaſe, being by an Infant without Conſideration, (27) Ant. 43. Co. 5. 27. b.

Knight *verſus* Lodg. Hill. 40 Eliz. rot. 607.

EJectione firmæ of a Leaſe made by Edmund Nevel, who called himſelf Lord Latimer. The Defendant pleaded, That long time before the Leſſor of the Plaintiff had any thing, Queen Mary was ſeiſed thereof in Fee in jure Coronæ ſuæ Angliæ; and by her Letters Patents gave it to Sir Thomas Haſtings, and Winifred his Wife, and to the Heirs of the body of Winifrid; that Sir T. H. died, that Winifrid took to Husband Sir Tho. Barington; that the Reverſion deſcended to the Queen, who now is; that Sir T. B. lett it to the Leſſor of the Plaintiff for life, who lett it to the Plaintiff; that afterward Sir T. B. died; and, that the Defendant, as Servant to the ſaid Win. entred, and ouſted the Plaintiff. Et hoc, &c. The Plaintiff replies, that the Leſſor of the Plaintiff demiſed unto him for years, prout, &c. And that the Defendant ejected him. Abſque hoc, that Sir T. B. lett to the Leſſor for life, prout, &c. And hereupon the Defendant demurred; becauſe he takes a Traverſe without making any Title, and without any Inducement. But the Court held it to be well enough; for the Defendant hath avoided the Plaintiffs Title: And the Plaintiff traverſeth the chief Matter, which avoideth his Title; and it is not neceſſary to make a Title in an Ejectione firmæ, or in Treſpaſs: But where Land is demanded, it is otherwiſe. Yet the better way had been to ſay, that he was ſeiſed in Fee, and demiſed, &c. But it is well enough as it is. (28) Poſt. 891. Ante 288.

Veal and others *verſus* Road. Mich. 39, & 40 rot. 1187.

QUid Juris clamat. The Defendant pleaded, that he tempore Levationis notæ prædictæ was ſeiſed in Fee of the Gift of *R. R.* abſque hoc, Quod ipſe tempore Levationis notæ prædictæ held Tenementa prædicta pro termino vitæ ſuæ tantum, &c. And thereupon they were at Iſſue: And it was found, that he held them as Lands entailed, after poſſibility of Iſſue, &c. And hereupon they prayed the diſcretion of the Court. And the Court reſolved for the Defendant; becauſe it appears to the Court, that the Defendant hath an Eſtate privileged from Attornment, to be made by him: And the inducement of the Traverſe, is not any Cauſe of forfeiture. Wherefore it was adjudged for the Defendant. (29) Co. 11. 80. b. Co. 11. 80. b. Co. Lit. 27. b. Mo. 211.

Morris

Morris *verſus* Lutterel

Paſch. 40 Eliz. rot. 1304.

(30) DEbt. Upon an Obligation, conditioned for ſaving harmleſs from another Obligation made to C. and H. for the payment of 100 l. at a day and place, &c. The Defendant pleads, That at the day of payment, he was going ad ſolvendum the ſaid 100 l. to the place, to the ſaid C. and H. and that the Plaintiff, by Covin betwixt him and another ſtranger, cauſed the Defendant to be impriſoned, and to be detained in priſon, until after Sunſet of the ſame day, to the intent, the ſaid 100 l. ſhould not be paid; and that the Obligation, by reaſon thereof, ſhould be forfeited, And therefore he could not come to the ſaid C. and H. to pay them the ſaid 100 l. Et hoc, &c. And it was thereupon demurred, and adjudged for the Plaintiff, that ſuch a bare Surmiſe was not any Barr.

Poſt. 694.

Poſt. 997.

Scryven *verſus* Dyther.

Hill. 41 Eliz. rot. 1721.

(31) DEbt. Upon an Obligation, made to a Sheriff, conditioned, If the ſaid *R. D.* perſonally appeared before the *Queens Majeſties Juſtices* at *Weſtminſter, a die Paſchæ in quindecim dies*, to anſwer to J. H. as ſhall appertain, and further to do, and to receive, as the Court therein of him ſhall conſider in that behalf, That then, *&c.* The Defendant pleaded the Statute 23 H. 6. And this Bond was adjudged to be void: And it was there cited, That in Sir William Druries Caſe it was adjudged, That, if a Sheriff takes but one Surety, it is good enough.

Co. 10. 101. b.

Co. 10. 101.

Ant. 624.

Slade *verſus* Allen.

Hill. 41 Eliz. rot. 730.

(32) ACtion for theſe words, Thou art a Murtherer, and a bloody Fellow, and I am afraid of thee. Upon demurrer adjudged actionable.

Anonymus.

(33) ACtion for words, *Viz.* The *Plaintiff* was one of them, that brake *Mr. Phillips*'s houſe, and did take, and carry away part of the money, that was ſtoln. Walmſley held, That an action lay not for theſe words. For, where words are ambiguous, ſo as they may be expounded in good, or ill part, no action then lies; for they ſhall be expounded in the beſt ſenſe, and it may be here intended, that he brake the houſe upon juſt cauſe, and brought the money to another place upon juſt cauſe. Wherefore, &c. And ſo was the Opinion of the other Juſtices.

Stephens

Stephens *verſus* Lewis.

A Fine was levied of a Rent to the uſe of another in Fee; Ceſty que Uſe avowed without attornment, and ruled, That he well might. Exception was then taken to the avowry, becauſe he pleaded, That I. S. who was the Grantor, was ſeiſed of the Rent in Fee; and that he and all his anceſtors had uſed to diſtrain for that Rent in the ſaid Land, &c. and ſo preſcribes in the Diſtreſs, and not in the Rent it ſelf. And for this cauſe Anderſon and Glanvile held clearly, that the avowry was ill: For the Preſcription ought to have been in the Rent: And that the Law was clear herein. Williams Serjeant cited a Caſe 14 Eliz. to be ruled; That a Preſcription alledged in the Diſtreſs was good. (34)

Termino Trinitatis,

Quadrageſimo primo ELIZABETHÆ,

in Banco Reginæ.

Woodden *verſus* Osbourn.

(1) EJectione firmæ. A Special Verdict was found, wherein the Caſe was: One Biſhop being ſeiſed of divers Lands, called Hayes-Lands, which extended into two Vills, Cokefield and Cranfield, deviſed all his Lands in Cokefield, called Hayes-Lands, to J. his youngeſt Son, and his Heirs, and after, in another part of his Will, he willeth; that if J. his Son died without Iſſue, that his Wife ſhould have Hayes-Lands, and dies. J. dies without Iſſue. And, whether the Feme ſhall have Hayes-Lands in Cranfield, or only that in Cokefield? was the Queſtion. And it was reſolved by the whole Court, that ſhe ſhould have that only, which is in Cokefield, becauſe there was no more deviſed to the youngeſt Son. But Popham ſaid, If the Deviſe had been to the eldeſt Son; and that, if he died without Iſſue, that his Wife ſhould have Hayes-Land; there peradventure ſhe ſhould have all, becauſe the eldeſt Son had all; the one part by deviſe, the other part by deſcent. And ſhe ſhould have all which he had. Wherefore it was adjudged accordingly.

Nokes *verſus* James. Paſch. 40 Eliz.

(2) DEbt Upon an Obligation, conditioned for the performance of all Covenants and Agreements in ſuch a Leaſe by Indenture, whereby the Defendant had lett to the Plaintiff, by the words Demiſe and Grant, an Houſe in London, and covenanted, That he and his Aſſigns ſhould enjoy it without Eviction by him or any by his procurement, &c. The Defendant pleaded performance of Covenants generally: The breach was aſſigned, For that the Plaintiff had granted his intereſt to one A. and one Savery entred upon A. and lett it to one Duck for years; A. re-enters, Duck brings an Ejectione firmæ, and recovers by Verdict. Wherefore, &c. And upon this breach aſſigned, it was demurred in Law. Godfrey, for the Plaintiff, moved, That the ſole Queſtion was, Whether the Defendant be bound by the Covenant in Law (which is by the words Demiſe and Grant) to warrant it againſt all perſons, or that it be taken away by the expreſs Covenant; That he ſhall hold it without Eviction of the Leſſor, &c.

Co. 4. 80. b. Ant. 214.

Ant. 214.

&c. And he held, that he was bound by the Covenant in Law, that the Leſſee ſhould have his Action of Covenant upon Eviction, as 9 Eliz. Dyer 257. And ſo it was adjudged in this Court between Cheyney and Langley. And this is not taken away by the Expreſs Covenant, vide 31 Ed. 1. Voucher 289. But Foſter, not being of Counſel in the Caſe, put the Juſtices in mind of one Hammonds Caſe in this Court, to be ruled; that an expreſs Covenant ſhall take away the Covenant in Law. And to this Opinion Popham inclined: But the other Juſtices did not deliver any Opinion therein: But they all held the breach to be ill, becauſe it is not averred, that Savery entred upon a good Title: For, otherwiſe, there is no Cauſe of Action. And, although it be pleaded, that Duck recovered by Verdict; yet that is not material; for it may be upon falſe Verdict, and without Title. Wherefore, they all reſolved, That Judgment ſhould be entred accordingly. But it was then prayed for the Plaintiff, that he might diſcontinue his Sute, and ſo he was permitted. 4 Co. 80.

Co. 4. 80. 1.
Ante 213.
Ant. 544.
Ant. 179.
Poſt. 917.
Co. 4. 80. c.
Ant. 558.

Colliers Caſe.

(3)

PRohibition by Collier, Vicar of Bromble, to ſtay a Sute in the Spiritual Court, the Caſe was, The Church of B. in the time of H. 3. was appropriated by the Biſhop of Sarum, and the Vicar was then endowed. And, upon the Endowment, the Biſhop made an Ordinance by theſe words, Statuimus, & Ordinamus; That the Vicar ſhall pay annually 20 l. de Fructibus Vicariæ to the Precentor in the Church of Sarum, to the uſe of the Vicars Chorals within the ſame Church. And for this Penſion a Sute being depending in the Spiritual Court, and a Prohibition thereupon brought, Conſultation was now prayed; becauſe it is a meer Penſion ſuable in the Spiritual Court. 11 H. 4. 85. Fitz-H. N. Br. 51. Tanfield e contra, That it is an Annuity, and, that Annuity lies properly for it in the Kings Courts, and in proof thereof was cited 19 Ed. 3. Juriſdiction 28. that Annuity lies for a Penſion by Preſcription: And, that the Statute of Circumſpecte agatis, Prohibition third, is but an Ordinance, as there it is ſaid. So Ed. 4. 12. of an Annuity granted for Compoſition for Tithes, and 20 Ed. 3. Annuity 32. a Writ of Annuity was brought for ſuch a Penſion, as ours is. Wherefore, &c. But all the Court reſolved, That the Sute was well brought in the Spiritual-Court. For Popham and Fenner ſaid, That there would be a difference, where the Ordinary ordains ſuch a payment as Judg; there the Sute ſhall be in Court-Chriſtian: And where the Patron and Ordinary make a Grant in the time of the Vacation. For there they charge as an Intereſt. And Gawdy ſaid, that for ſuch a Penſion Sute might be either in this, or the Spiritual Court: And that it is not denied by 20 Ed. 3. And ſo is Nat. Br. Whereupon Conſultation was granted.

Poſt. 810.
2 Inſt. 487.
2 Cr. 217. 269. 666.

Sparks Caſe.

(4) Ejectione firmæ. Upon a ſpecial Verdict it was found; That a Copyholder made a Leaſe for a year, excepting one day, which was warranted by the cuſtome. The Leſſee being ouſted by a Stranger, brings an Ejectione firmæ. And, Whether it lies
69. or not? was the Queſtion. And all the Court held clearly, that it well lies. Popham ſaid, If there were not any cuſtom, yet it ſhould be good againſt all, but him, who had the Inheritance, and the Freehold: So it is, if a Leſſee for will at the Common Law had made a Leaſe for years. Quod *Gawdy* conceſſit. For the Tenant at will is only Diſſeiſor, and the Leaſe is good againſt him; as 12 Ed. 4. 12. is. And Fenner ſaid, that antiently an Ejectione firmæ was but in nature of a Treſpaſs, and no Term was recovered; and therefore it is not reaſonable, but that it ſhould lie for the Leſſee. But Popham ſaid, If a Copy-hold be granted for years by Copy, he ſhall not maintain an Ejectione firmæ at the Common
Ant. 469. Law. Wherefore, &c. And, afterwards, it was adjudged for the Plaintiff.

Withers *verſus* Drew. Paſch. 40 Eliz.

(5) Debt upon an Obligation. Upon a Special Verdict, The Caſe was: An Obligation was endorſed to ſtand to the Arbitration of four Arbitrators, ſo as the Award be made in writing, ready to be delivered to the parties, before the ſixth day of January then next following. The Arbitrament was made the fifth of January, betwixt the hours of eight and nine in the night. And whether the Defendant be bound to perform it or not? was the queſtion. And after Argument by Flemming the Queens Solliciter, for the Plaintiff, and by Tanfield for the Defendant, the Court reſolved, That it was well enough for the time: And, that the Defendant ought to perform it; for it is made before the ſixth day. And, although it be made in the ninth of the fifth day, it is well enough: For this done in the night, where perſonal at-
Ant. 423. tendance of another is not requiſite, are good: But here is not any perſonal attendance neceſſary, but to have notice of the Arbitrament given him, which may at any other day after, being demanded and delivered. And an Arbitration is a judiciall act, which may be well done in the night. And then one Sparrows Caſe, 33 Eliz. was cited to be ruled accordingly. But afterwards, upon another day, Tanfield moved another Exception againſt the Arbitrament, that it was of a thing out of their ſubmiſſion; for the ſubmiſſion was about an Incloſure between Barton-Down and North-Down. And the Arbitrament was of an Incloſure betwixt the Defendants Down, and the Down of J. S. and it is not averred that they be all one. And then, although the Iſſue was nul tiel Arbitrament, yet the breach not being well aſſigned, there cannot be any Judgment for the Plaintiff. And this was held to be a material Exception by Clinch and Fenner, cæteris Juſticiariis abſentibus. Whereupon the Judgment way ſtayed.

Sir

Sir Richard Lewſon *verſus* Redleſton.

ERror of a Judgment in the Common Bench, in Treſpaſs of Battery. First, Becauſe the Writ of the Roll of Enquiry of Damages was awarded to the Sheriff of London in this manner; Ideo præceptum eſt Vic. London. quod inquirat; where it ſhould be Inquirant. But it was ordered by the Court to be amended, for it was but a default in the Clerk, which is amendable. And it was moved, that the Writ was good, and therefore the Roll ſhould be amended: But it was held, that there was not any Cauſe; for the Writ ſhall oftentimes be amended by the Roll, but not e converſo. A ſecond Error aſſigned was, for that the Writ is, Præcipe, &c. quod inquirant per Sacramentum proborum, &c. de Civitate prædicta. And there is not any mention of any City before. But it was held to be well enough; for it refers to the Margin. And it is ſometimes de Civitate, ſometimes de Balliva. Wherefore the Judgment was affirmed. (6) Poſt. 709.

Arundel *verſus* Arundel. Trin. 40 Eliz.

ERror to reverſe a Fine levied 21 Eliz. Tanfield aſſigned three Errors. First, Becauſe the Writ of Covenant, whereupon it was levied, bare Teſte the ſecond of January 21 Eliz. and the Dedimus poteſtatem to take the conuſance bare date the ſame ſecond day of January, reciting Quod cum Breve conventionis pendet, &c. whereas it was not depending until the return, which was Octab. Hillarii. Vide 18 H. 8. 5. and 2 Ed. 4. 11. Secondly, Becauſe the Writ of Dedimus poteſtatem was directed Rogero Manwood Militi, whereas he was not then Knight; and that was now confeſſed by pleading in nullo eſt erratum. Thirdly, Becauſe the Concord is entred to be made before three Juſtices of the Common Bench, when as Rog. Manwood was the fourth Juſtice there, and not named. But, on the other ſide, it was thereto anſwered, to the firſt, that it was not Error; for the Writ of Covenant is pendant, when it is purchaſed, Vide 9 H. 6. 54. To the ſecond, that it is contrary to the Record, and it cannot be aſſigned for Error, Dyer 89. To the third, that it is not Error; for a Fine may be levied before three Juſtices, omitting the fourth. Wherefore, &c. Gawdy and Fenner only in Court, held as to the firſt, that it was not Error; for the Writ is pendant preſently upon the purchaſe thereof. For if a Stranger purchaſe the Land, before the return thereof, it is Champerty; as 30 Ed. 3. 18. So 10 Ed. 4. 13. if an Appeal be purchaſed within the year, it ſufficeth, although it be not returned within the year. To the other two Errors they ſpake not, nor ſeemed much to regard them. Et adjournatur. (7) 1 Rol. 757. 794. 2 Cr. 11. Yelv. 33. Ant. 275. F.N.B. 146. C. Ant. 468. 1 Rol. 757. 2 Inſt. 514. 5. F.N.B. 146. S. Co. 5. 47. b.

Madox *verſus* Dawſon. Mich. 40 & 41 Eliz. rot. 555.

ERror of a Judgment given in Shrewsbury in an Aſſumpſit. The Error aſſigned was, becauſe the Entry of the Verdict was, Quod Juratores aſſidant Damna occaſione Aſſumptionis prædictæ, whereas it ought to have been occaſione non performationis Aſſumptionis prædictæ. And that was held to be a manifeſt Error; and a Judgment cited accordingly betwixt Pain and Pie, where, in a Writ of Covenant, (8) Poſt. 781.

Covenant, the Verdict was entred, Quod aſſidant damna occaſione Conventionis. And the Judgment thereupon was awarded to be erroneous. But now Tanfield moved, that the Note, given by the Jury to the Clerk, was well, viz. That they found for the Plaintiff, Et Aſſident damna tantum. And that, which was added thereto, was the miſ-entry of the Clerk, and may be amended. And ſo it was done here in Brome and Hares Caſe, and therefore he prayed a Writ to the Mayor there to certifie it, and had it by the Dyer of Clinch and Fenner, being only there. Note, That this was after In nullo eſt erratum pleaded. But this Error was not aſſigned upon the Record, but ore tenus, &c.

The Biſhop of Gloceſter *verſus* Veal.

(9) 1 Rol. 751. ERror to reverſe a Judgment in a Quare Impedit. The firſt Error aſſigned was, for that the Plaintiff declares, that a Stranger was poſſeſſed for years, and deviſed it to the Plaintiff; and ſo by aſſent of the Executor had it: And he doth not ſay Virtue Legationis prædictæ. Vide 8, & 9. Eliz. Dy. 254. Secondly, Becauſe he ſhews how the Church is void by the deprivation of the Incumbent: And he doth not ſhew for what cauſe; for it may be for ſuch a Cauſe, as the Queen ſhould have the Preſentation; as if it were for Simony by the Statute of 31 Eliz. Thirdly, Becauſe the value of the Church is found to be 40 l. per annum. And the Judgment is, Quod recuperet damnum, *viz.* Medietatem dicti valoris dictæ Eccleſiæ per dimidium unius anni, quæ ſe attingunt ad 20 l. which is not according to the Preſidents. Yet none of theſe Errors were allowed; but the Court being full, the Judgment was then affirmed.

Pigot *verſus* Garniſh.

(10) Poſt. 734. EJectione firmæ. Upon a ſpecial Verdict, the Caſe was ſuch; Anthony Poulter ſeiſed in fee of this Land, deviſed it to Anthony his Son in Tail, with divers Remainders over, and made one Beſt Overſeer of his Will, and willed, That he ſhould have the Education of his Son, untill he attained to his age of one & twenty years; and to receive, ſet, and lett, for the ſaid *Anthony*, the ſaid Lands ſo given to him, and thereof to accompt to the ſaid *Anthony*. And the ſaid *Beſt* to be allowed all his Charges, which he ſhould expend about his bringing up. *Beſt* makes a Leaſe for ſeven years in his own name, which was to continue half a year after the full age of Anthony. And, Whether this were a good Leaſe for any part of the Term? Was the Queſtion: For it was found, that the ſaid Anthony, the Son, was not yet of the age of twenty one years; and, that Beſt was dead. Foſter moved for the Plaintiff; that this was not a Leaſe by vertue of the Authority; becauſe he made it in his own name, reſerving the Rent to himſelf: And he hath exceeded his Authority in letting it beyond the age of Anthony. And he hath not any Intereſt to lett; for it is appointed, That he ſhall be accomptable, which he ſhould not be, if he had any Intereſt in the Land. Gawdy held, That Beſt had an Intereſt by this Deviſe, and ſo the Leaſe is good, during the Minority, and to that purpoſe

Co. 6. 67. b. Ant. 252.

purpoſe cited. Dyer 28 H. 8. fol. 26. And the intent of the Deviſor here ſhall be conſtrued; That he gave unto him ſuch an Eſtate, as he might lett, and not that he ſhould make Leaſes in the Infants name: For then the Infant might avoid them. And whereas the words are, That he may let and ſet for *Anthony*: It is thereby to be intended, That Leaſes ſhall be made for his benefit; and not that they ſhall be in his Name. And this Leaſe is void for the remainder after Anthonies full age, and for no more. Fenner and Clinch held, That whereas he hath authority to let and ſett, it is only at will; for there is not any other certain time appointed: and he is not otherwiſe authorized, then in nature of a Bayliff, to accompt: Wherefore he cannot make any Leaſes but at will. Popham held, That he had not any authority, nor could have any to lett in the Infants Name; for ſuch an authority cannot be given him. For, if one deviſeth Land, he cannot appoint that another ſhall make a Leaſe for years in the name of the Deviſee; and it is not any intereſt. But if he had deviſed, that one ſhould make a Feoffment, or a Leaſe for life, that is an intereſt in the Deviſee; for otherwiſe he cannot make Livery. But to deviſe, that he might bargain and ſell, or lett for years, it is otherwiſe: For thoſe may be without an Intereſt: For, when the Leaſe is made, he ſhall be in by thy Will. And ſo he conceived here. And, that this Leaſe was good, and void only for ſo much as exceeds the age, &c. Sed adjournatur. Hill. 42. Placito 2. 1.

Baker *verſus* Brent & Robinſon.

(11) PRohibition in Chancery, to ſtay a Suit in the Court-Chriſtian: For that R. ſued againſt the Plaintiff to be admitted to the Church of C. in the County of Somerſet: And B. as Patron came in there pro intereſſe ſuo; and in the Chancery it was pleaded to iſſue, Whether the Church of C. was void by the death of one Durſton late Incumbent there, which was ſent into the Queens Bench to be tried; where a Special Verdict was given to this effect: That J. S. was ſeiſed in fee of the Advowſon of the ſaid Church, and preſented thereto the ſaid Durſton, Anno 16 Eliz. who was admitted, inſtituted, and inducted, but read not the Articles according to the Statute of 13 Eliz. cap. 12. And the General Pardon in 18 Eliz. was found. And, That afterwards Durſton was deprived by Sentence Declaratory, for not reading of the Articles, Whereupon he appealed, and, that depending, Baker obtained a Preſentation thereto by the Queen, and was admitted, inſtituted, and inducted, and afterwards Durſton died: And then Brent the Defendant, having the Advowſon, preſented Robinſon the other Defendant, who ſued in Court-Chriſtian to be admitted. Et ſi, &c. Tanfield for the Plaintiff. This Iſſue is found againſt the Defendant. For, by his not reading of the Articles, The Church was preſently void without any Deprivation. Then, when the Queen preſented Baker, the Plaintiff, who was admitted, &c. and in for ſix

Moneths,

Monethe he is Incumbent, and the Church is not void by the death of Durſton. And, Whether the Plaintiffs Preſentation be right, or Tortious, The Defendant ought not to ſue in Court-Chriſtian to remove him, and 23 Eliz. Dyer 377. where a Parſon took a ſecond Benefice, and did not ſubſcribe to the Articles, the firſt Benefice was never void: And ſo it was Adjudged in this Court 31 Eliz. between Morrice and Eaton, where a Parſon ſued for Tythes; The Defendant pleaded, That he never read his Articles, and ſo not Parſon: And Adjudged in a Prohibition, That the Church was void for this Cauſe. Wherefore, &c. Doderidg for the Defendant; This Benefice is not void, until Deprivation in facto. And the Incumbent continues Parſon until then: 18 Eliz. Dyer 346. That notice ought to have been given of the Deprivation: Or, otherwiſe there ſhall not be any Preſentment for Lapſe. And, although the words of the Statute be, That the Church ipſo facto is void; it is to be intended upon Deprivation, and not without Sentence. And this word Deprived requires the hand of the Spiritual-Court thereto: For it is a Spiritual Act. And 10 Eliz. Dy. 275. upon the Statute of 5 Ed. 6. for ſtriking in the Church; That ipſo facto he ſhall be Excommunicated, is to be intended, He ſhall be Excommunicated, after Sentence, or due Trial and Conviction, and not before. Then here, if this Church be not void until Deprivation, This offence of not reading his Articles, is then pardoned by the Act of 18 Eliz. And the Deprivation afterwards is void. And if it were not void, but good, yet, by reaſon of this Appeal, it remains as Null until the Appeal be decided, and in proof hereof, Vid. 2 R. 2. Quare Impedit. 143. 2 H. 6. 25. 27 H. Gard: 118. 12 Ed. 4. 14. Dyer 105, and 240. Wherefore, &c. But all the Juſtices, Popham abſente, reſolved; That this Church became void preſently by the not reading of the Articles, and there needed not any Deprivation. For, otherwiſe, the Statute ſhould be defrauded, at the Ordinaries pleaſure, if he would not deprive. And the Pardon works nothing. For the Church being once void for not reading, &c. he cannot by the Pardon be reſtored. And the Pardon ſhall never reach to it, becauſe it was not a Contempt, whereof he might be endicted; but his Puniſhment is to loſe his Benefice. Wherefore it was adjudged for the Plaintiff, Quod Prohibitio ſtet.

Co. 5. 102.
Co. 6. 29. b.
Co. 6. 29. b.
Yelv. 27.
Poſt. 919.

Waſhington

Waſhington *verſus* Murden Executor of Light.

DEbt upon an Obligation of 1000 l. made 7 Eliz. conditioned for the performance of Covenants betwixt the Plaintiff and the ſaid L. The Defendant pleaded performance of Covenants generally. There were in the Indenture two Special Covenants: Firſt, That Light, after Licence of Alienation by him purchaſed, ſhould enfeoff two perſons to be named indifferently by Light, and the Plaintiff, of all his Lands and Tenements, to the uſe of himſelf for Life; the Remainder of the one moiety to the uſe of Urſula the Wife of Light, for her Life, if ſhe lived ſole: And if ſhe married, that then the uſe limited unto her ſhould ceaſe, and that it ſhould remain to the Plaintiff and his Wife (the Daughter of L.) in Tail. And for the other moiety, that preſently after the death of L. it ſhould be to the uſe of the Plaintiff and his Wife in Tail. Secondly, He covenanted, that he pro ulteriori aſſurancia dicti Status would make all ſuch Acts and Aſſurances as ſhould be deviſed by the Plaintiff, or his Counſel, at the coſts of L. the Covenantor. The Breach aſſigned was, that in 7 Eliz. at the time of the Covenant made L. was ſeiſed of an Houſe, and two Acres in D. and of divers Lands uſually occupied with them; and, that in 39 Eliz. the Plaintiffs Counſel deviſed a Deed of Feoffment, whereby L. ſhould enfeoff J. S. of the ſaid Houſe, and two Acres of Land, with the woods of all Lands, Tenements, and Hereditaments, uſually lett with that Houſe, to the uſe of L. for Life, Remainder to the Plaintiff and his Heirs, on the body of his Wife engendred; Which Deed he tendred to L. to ſeal and execute, and he refuſed; and avers, that at the time of this Aſſurance deviſed and tendred, that both the Plaintiffs Wife and the Wife of L. were dead. The Defendant traverſeth the tender, and it was found againſt him: And it was now alledged in Arreſt of Judgment by Yelverton Serjeant, and Tanfield; That the Breach was not well aſſigned: Firſt, In regard the Covenant is to make Aſſurance of all his Lands and Tenements; and the Aſſurance is tendred of an Houſe and two Acres, &c. and he doth not aver, that they were all the Lands and Tenements of L. which he then had; for, if he ſhould compel him to make Aſſurances for every ſeveral parcel, it would be inconvenient; eſpecially, the Aſſurance being to be made at the coſts of the Covenantor, which would be a great trouble and charge unto him. Popham and Gawdy held it to be well enough: For, if the Aſſurances are to be made at the coſts of him, to whom they ought to be made, he may well require the Aſſurance to be made by parcels; for it is not any prejudice, or diſadvantage to the other: But, when the Covenantor is to be at the charges, it is otherwiſe; yet there, if the party requires an Aſſurance of parcel, the Covenantor is bound to do it: But then he is diſcharged from making any Aſſurance of that which remains. The other Juſtices ſpake not to this point. Secondly, Becauſe it is not averred, that L. purchaſed Licence; and he was not to make the Aſſurance till after Licence. Popham, There will be difference, where the firſt act is to be done by a Stranger, and where by the Covenantor himſelf; As where I covenant after the Marriage (12)

of J. S. and A. D. to make ſuch an Aſſurance, I am not bound to make the Aſſurance until after Marriage. But where the firſt act is to be done by the Covenantor himſelf, although by his Laches it be not done, yet that ſhall not impeach the Covenant for the Remainder. And here the Licence is to be purchaſed by the Covenantor. Wherefore, &c. Thirdly, Becauſe the Aſſurance is deviſed, and tendred 39 Eliz. of all the Lands, which were then occupied with the Houſe: And it may be he occupied more Lands
Ant. 661. to the Houſe, then he had in 7 Eliz. and ſo variant. But Popham and Clinch held, that it ſhall not be intended, that he had more Land. And the Aſſurance is well tendred; and that the Defendant ought to ſeal it, unleſs he can ſhew, that he had more Lands afterwards purchaſed. Gawdy held, it ſhall be intended, that he
Ant. 661. had no more Land, but he doubted, whether he was bound to ſeal it, becauſe it is variant from the Covenant.

Wilford Chamberlain of *London*

(13) DEbt upon a Recogniſance, acknowledged to the ſaid Plain-
Ant. 464. tiff in London, according to the cuſtom there, for Orphanage Money, and alledgeth the cuſtom, that they had uſed there to take ſuch Recogniſances, and the Queſtion was, Whether Debt lieth in this Court, or was to be brought in London only, where it is maintainable by the cuſtom? And all the Court reſolved, That it was a good Recogniſance; and, the Debt lieth for it in this Court. And Coke, the Queens Attorney, who was of Counſel in the Caſe, ſaid, That it hath been ſo adjudged in this Court
Co. 4. 64. 5. between Sharington, and Fulwood.

Shuckborough *verſus* Biggen.

Antea, Mich. 40, & 41 Plac. 27.

(14) THe Caſe was moved again, and Popham and Clinch held; That
Ante 632. this Sute is a Sute of the Party, and the burning of the hand cannot be pardoned. And Popham ſaid, If one is attainted of Forgery in an Action upon the Statute of Forgery, the Queen cannot pardon the puniſhment: But the Caſe in 15 Eliz. Dyer, 323. when one was convicted in the Star-Chamber for Forgery, and the Queen pardoned the puniſhment, was good Law; for the Sutes in that Court are by Information, which is properly the Queens Sute, and not the parties; and therefore the Queen may pardon it, but not when he was convicted in an Action at the parties Sute, and ſo he ſaid was the Opinion of divers Juſtices, with whom he had conferred. But Gawdy and Fenner held, That the Queens Pardon was ſufficient to diſcharge the burning in the hand, and to that purpoſe cited 3 Eliz. Dyer 202. And upon this diverſity of Opinion, they moved for a compoſition between the parties; and the Defendant gave forty Marks, and the Plaintiff accepted thereof, and then diſcontinued her Sute, and the Defendant was diſcharged by the Pardon, the parties Sute being determined. 5 Co. 50.

Sanders

Sanders *verſus* Norwood.

Hill. 41 Eliz. rot. 747.

WAſt brought in the Tenuit againſt the Grantee of a Term, by the Aſſignee of the Reverſion, in ſodendo carbones. The Defendant pleaded, That Willoughby, the firſt Leſſee, had digged, and opened a Mine of Coles, and afterwards granted unto him all his intereſt in the Land, excepting to him and his aſſigns, all the benefit and profit of the Cole-mines there, and of all Trees there; and that afterwards Willoughby digged the Coles there. And upon this Plea it was demurrd, and argued by Williams for the Defendant, that this Exception is of the Mine it ſelf, and of the Land; and then the Grantee is not puniſhable for this waſt done by him. But all the Court, after argument at the Bar reſolved for the Plaintiff, that the action is well brought by the Aſſignee; for this Exception is void, becauſe he hath excepted that which he had not to except; for, although he hath opened the Mine, he hath no more intereſt therein, then he had before, nor any intereſt in the Mine, which is but a profit a prendre out of the Soyl; and therefore the Exception void: And thereupon Kingſmil ſaid, If the Leſſee ſells the Trees growing upon the Land, and afterwards aſſigned the Term, and the Aſſignee cuts down the Trees, an action lies againſt the Aſſignee: For the Grant is void againſt him. Glanvile, If the Exception had been of the Mine it ſelf, I conceive that there the Soil had been excepted, and it had been good, and he ſhould have had it againſt the Leſſee thereof. But, when the Exception is of the profits of the Mine, that is void, the Term being granted in the Land: And a Caſe 28 Eliz. rot. 820. in this Court was cited to be adjudged, where Leſſee for years granted all his Eſtate, excepting the Trees, and the firſt Leſſee cuts down the Trees, Waſt was brought againſt the Aſſignee, and adjudged maintainable; for the Exception was adjudged void, for the Trees were not lett at firſt, but the Soyl; ſo as he excepted a thing which he had not to except, and therefore the Exception void. And the Court ſaid, There was not any difference betwixt theſe Caſes; wherefore here, the Exception being of a thing wherewith he had not any power to meddle, it is void. And therefore it was adjudged for the Plaintiff. 5 Co. 12. (15) Poſt. 690.

Brocks *verſus* Phillips. Paſch. 41 Eliz. rot. 1704.

DEbt as Adminiſtrator of one Box upon an Obligation. The Defendant pleaded, That the Plaintiff was an Alien nee under the obedience of Philip King of Spain, Enemies to our Sovereign the Queen, and demands Judgment, whether he ſhould be anſwered, and it was demurred thereupon, and adjudged, that he ſhould anſwer. (16) Co. Littl. 129. 1 Cr. 9. Ant. 242. Moor. 431.

Eaton *verſus* Allen.

(17) Co. 4. 16. b. ACtion for theſe words, He is a Brabler, and a Quarreller, For he gave his Champion counſel to make a Deed of Gift of his Goods to kill me, and then flie out of the Countrey; but God hath preſerved me. The Defendant pleaded Not guilty, and found againſt him, and now alledged in Arreſt of Judgment, that an Action lies not for theſe words. And all the Juſtices (beſides Glanvile) held, that the words were not actionable: For theſe words, He is a Brabler and a Quarreller, will not bear an action: And the words ſubſequent For, &c. be but to confirm them, or to ſhew the reaſon why he ſpake ſo; becauſe For is not any affirmative Slander, nor an expreſs Affirmation, but rather qualifies the force of the words ſubſequent, and they relate to the firſt. But, if the words touch a mans Profeſſion, that which comes after the For, that may aggravate the matter, and maintain the action; as Anderſon ſaid; As if a man ſhould ſay of a Lawyer, He is a Knave, For he hath dealt on both ſides. So if one ſaith of a Chirurgion, He is a Knave; for he hath murthered ſuch a man with his Plaiſters. In theſe Caſes an action lies, for they touch them in their Profeſſion and Reputation, and expound what he intended by the firſt words. And Walmſley ſaid, He had conferred with the Juſtices of the Queens Bench, and they were of Opinion alſo, that the action lay not. Wherefore it was adjudged for the Defendant. 4 Co. 16.

Norwoods Caſe.

(18) PRohibition was brought to ſtay a Sute in Court-Chriſtian for Defamation upon theſe words, If Maſter *William Norwood* had not gone out of Town, he ſhould have anſwered for the two Baſtards he begot upon two ſuch women. He there pleaded the General Pardon, which would not be allowed. And thereupon the Prohibition was brought, ſurmizing this matter, and now Conſultation was prayed. And all the Court beſides Glanvile held, That it is well grantable: For they all reſolved, That a General Pardon doth Co. 5. 51. b. not aid him for the ſtaying a Sute in Court-Chriſtian, which is for & ad inſtantiam partis: But, if it were ſued there ex officio Judicis, the General Pardon would then diſcharge him. But Glanvile held, That for this Slander an action lies at the Common Law: for the begetting of Baſtards is puniſhable by the Statute of 18 Eliz. And the Statute having given a remedy, takes away from the Spiritual Court its power. But all the other Juſtices againſt him herein; for, where a remedy for a puniſhment is given by a Statute, that ſhall not take away the puniſhment that was before. And queſtionleſs there is not any puniſhment by the Common Law, where one is injuriouſly ſlandered in this Caſe. Wherefore a Conſultation was awarded.

Anonymus

Anonymus, Hill. 41 Eliz. rot. 358.

COvenant. The Breach aſſigned was in two Covenants, and it appeared, That for the one he had no cauſe of action, and for the other a good cauſe; and iſſue was joyned upon both, and found for the Plaintiff in both, and Damages intirely aſſeſſed. The Plaintiff could not have Judgment. (19) Co. Lo. 130. b.

Anonymus.

PRohibition, To ſtay a Sute in the Admirals Court, The Caſe was, That a Frenchman had his Goods taken from him (viz. Salt) upon the Sea, which was afterwards ſold to the Plaintiff, being Owner of the Ship (the Party incharged in the journey, but not preſent at the taking) at Plymouth. And he ſued him for the Salt in the Admirals Court, and had Sentence againſt him, who brought the Prohibition; becauſe the Contract for the Salt was upon the Land, and ſuable at the Common Law: And there ought not to have been a Sute for it in the Court of the Admiralty: But all the Court reſolved: That the Sute in the Admirals Court was well brought; for when the Good are tortiouſly taken upon the Sea by Piracy, it gaineth not any property in them againſt the Owner. And being ſold upon the Land, unleſs it were in a Market-overt, doth not alter the property: And when the Owner found them in his poſſeſſion, he may well ſue in the Admirals Court; for, although the Court of Admiralty hath no authority to meddle with things upon the Land, yet when the original cauſe ariſeth upon the Sea, and other matters happen upon the Land, depending upon the original cauſe, thoſe Matters, although done upon the Land, ſhall be tryed in the Admirals Court: As 19 H. 6. 7. So an Obligation to appear, and anſwer in the Admirals Court, or to ſtand to a Sentence in that Court, is ſuable there; Eſpecially in this Caſe, this Sale, although it were in a Market overt, being void, becauſe it was made to the Owner of the Ship, and Party to the Charge thereof, and ſo to be intended to be Party to the Tort. Wherefore a Conſultation was awarded. (20) Hob. 78. Hob. 79. Rol. 533. Yelv. 135.

Smith *verſus* Shelbourn.

Paſch. 41 Eliz. rot. 1001.

PRohibition. The Caſe was, a Parſon being ſick, the Father of Smith came with his Son to the Patron, and contracted with the Patron in the preſence of his Son, for the next avoydance of the Church, and agreed to give unto him for it 100 l. who thereupon made a Grant unto him of the next Avoidance accordingly. The Parſon dies, the Father preſents his Son, who was admitted, inſtituted, and inducted, and now was ſued in the Spiritual Court, to be deprived for Simony upon this Cauſe, and Smith brought a Prohibition, alledging therein the General Pardon of 35 Eliz. which was after his preſentation, admiſſion, inſtitution, and induction, wherein Simony is not excepted; and it was thereupon demurred, and, after argument at the (21)

the Bar reſolved, that the Prohibition well lay; and firſt the whole Court reſolved, that, although the General Pardon diſcharged the Puniſhment for Simony, yet, if the Parſon comes in by Simony, it is examinable by the Ordinary; for he ought to provide, that the Church be not ſerved with corrupt perſons; and if he finds Simony in any, he may well deprive him for that cauſe. And that made, that the Church was never full of him, and made him no Parſon ab initio; and the Pardon doth not enable him to retain it. But all the Juſtices, beſides Anderſon, held, that in this Caſe there is not any Simony: For the Father might buy the advowſon, and preſent his Son: And it is not Simony in any to buy an advowſon. And, although the Son here was privy thereto, yet it is not material; for it being no offence in the Father, who was the principal, it cannot be an offence in the Son, who was but acceſſary; for there cannot be a particeps criminis, where there was not any Crime committed. But if the Parſon himſelf had contracted for a Benefice, to the intent another ſhould preſent him, that is Simony. But the Father is bound by nature to provide for his Son, and therefore his buying an advowſon, with an intent to provide for him, is not any Simony; therefore the Prohibition is well granted: Otherwiſe, under colour hereof, every Preſentment might be drawn into Queſtion in the Spiritual Court. But Anderſon held, that a Conſultation ſhould be granted in this Caſe, becauſe this Contract by the Father, with an intent to preſent his Son, being in preſence, and with the Sons privity, made it Simony in him, and he is depriv-able: And, although the Law is, that if ſuch a Simoniacal Contract be proved, and the Incumbent be deprived, that the Church is quaſi always void, and that there ſhall be a Preſentment by Lapſe to the Queen; yet that doth not make the Right of Patronage to come into Queſtion; becauſe the Deprivation ariſeth from the Patrons offence: Wherefore, &c. But if in this Caſe the Father had bought the Benefice, with an intent to preſent the Son, if it were without the privity and conſent of the Son, it had not been any Simony. Wherefore, as the Caſe here is, he held it to be Simony, and the Conſultation grantable. But, notwithſtanding, the other three Juſtices being againſt him, it was adjudged, that the Prohibition ſhould ſtand.

Poſt. 789. Cr. 353.

Poſt. 789.

1 Cr. 353.

Poſt. 789.

Windſor *verſus* the Arch. Biſhop of Canterbury, Loveday and Fletcher, Paſch. 41 Eliz. rot. 513.

(22) Moor. 558. Co. 5. 102. a.

QUare Impedit. For the Church of Buſcot in the County of Berks, and Counts, How Loveday the Defendant was ſeiſed in Fee of the Manor of Buſcot, whereunto the Advowſon of two parts of the Church of Buſcot (viz. to preſent to the ſaid Church at two Turns together) was appendant: And, that one Stonechurch was ſeiſed in Fee of the Manor of S. whereto the advowſon of the third part of the ſaid Church (viz. to preſent at every third Turn) was appendant: And ſhews how the ſaid Stonehurſt preſented one Parry to that Church in his Turn: And that afterwards Parry, in the time of Queen Mary

Mary was deprived; and then Loveday preſented in his firſt Turn one Akres; and, that Akres died: And, that afterwards Loveday preſented in his ſecond Turn one Pullen, who died; and, that he, who had the Grant of the next Avoidance, by Grant from Stonehurſt, was to preſent: And, that the Defendant had diſturbed him, &c. The Arch-Biſhop pleads, that he claims nothing but as Ordinary. Loveday the Patron pleads, that Stonehurſt preſented Parry, who died Incumbent; and, that afterwards he preſented Pullen in his firſt Term, and he died; and then he preſented the Defendant in the ſecond Turn, Abſque hoc, That the Church became void by the Deprivation of Parry. Fletcher the Incumbent, pleaded, confeſſing the Preſentment of Parry; and ſhews how he was deprived in Queen Maries Reign, Quia Conjugatus, and becauſe he was a favorer of the Religion profeſſed in the time of Edward 6. and, that Loveday the then Patron preſented Akres, as is before alledged: And, that in 1 Eliz. this Sentence of Deprivation of Parry was by the high Commiſſioners repealed, and Parry reſtored, who afterwards died Incumbent, and then Loveday preſented Pullen, &c. And, that after his death he preſented the Defendant, as in his ſecond Turn, and traverſeth, Abſque hoc, that the Church was void by the death of Akres. And it was thereupon demurred in Law. And, after argument at the Bar, the Court reſolved for the Defendant. The point in Law was, Whether this Preſentment of Akres, upon the Deprivation of Parry (this Deprivation being afterwards repealed, and Parry reſtored) ſhall be ſaid to be a ſufficient Preſentment for one Turn; ſo as he afterwards may not have his ſecond Turn? And all the Court reſolved, That it was not: For when the Sentence of the Deprivation was repealed, and Parry reſtored, it is as if he never had been deprived, and the Preſentation in the interim meerly void, and as none, and as if a Preſentment had been when the Church was full. And now A. is adjudged, as if he never had been Incumbent, but an Intruder. And ſuch illegal Preſentment can never make a Turn in the Patron. But, if the Incumbent preſented be afterwards deprived for incontinency, or other ſuch cauſe, it is otherwiſe. And as to the Travers, which was alledged to be a principal cauſe of the Demurrer, for that the Preſentment ough to have been traverſed, and not the manner of the Avoidance, it being unuſual in a Quare Impedit, all the Court held it to be well enough; for it is the ſubſtance of the matter, as this Caſe is, and not the Preſentation, and therefore it is traverſable. And if the Preſentment of A. in this Caſe had been traverſed, it ſhould have been found againſt the Defendant: And therefore of neceſſity the Defendant ought to traverſe the manner of the Avoidance. And the difference is betwixt an Aſſiſe of Darraigne Preſentment and a Quare Impedit. For in an Aſſiſe of Darraigne Preſentment the laſt Preſentation is traverſable: But in a Quare Impedit the Traverſe ſhall only be upon the matter, as appears in 6 Ed. 3. Wherefore, &c. But the whole Court held the Declaration to be ill; in that he declares, that one had the Advowſon of the third part of the Church, and another two parts thereof: For it appears, That the one had the entire Church for the time, when he was to preſent Sole: And then when he declares, that one had the Advowſon of two parts of the

Co. 5. 102. b.

Co. 5. 102. a.

the Church, viz. to preſent to two Turns, it is repugnant in it ſelf; for, by his own ſhewing, it is to two parts of the Advowſon, and not to the Church: For the moyety, or third part of the Church is, where Parcenery, or Joynt-tenants preſent joyntly; every one hath a part of the Church: But where two Churches are united, and conſolidate, and the Patrons agree to preſent the one two Turns, the other a third Turn, as this Caſe is, there either of them hath the entire Church for that time. And, as Walmſley ſaid, the difference is well expreſſed in 31 Ed. 3. Droit 68, and 69. Wherefore it was adjudged for the Defendant. 5 Co. 102.

Smith *verſus* Warren. Hill. 41 Eliz. rot. 417.

(23) DEbt upon an Obligation, conditioned for the performance of certain Covenants in an Indenture, wherein W. had lett Land to S. for years, and covenanted, That he ſhould enjoy it during the Term. Upon Demurrer, the Caſe was; That Tenant for Life levied a Fine to him in Reverſion in Fee Sur conuſance de droit come ceo, &c. and the Uſes of that Fine were limited to the Conuſee, and his Heirs, upon Condition, that he ſhould pay to the Tenant for Life annually, during his Life, 4 l. per annum. And, if there were any Default of payment thereof, that it ſhould be to the uſe of the Conuſor for his life, and for one year over. The Conuſee made a Feoffment to W. who made that Leaſe for years to the Plaintiff. The 4 l. was not paid, nor demanded, the Tenant for Life entred upon the Plaintiff. And, Whether this were a Breach of the Covenant? was the Queſtion: Firſt, Whether this Fine levied be a Surrender? And if ſo, Whether Surrender may be to an Uſe? And it was held, that it was not any Surrender; for the Fine implies a Gift in Fee-ſimple: And every one, who is Party to a Fine, ſhall be eſtopped to ſay the contrary. But it was ſaid, that if it were a Surrender, yet it well may be to an uſe: for it is a Conveyance, tried, and charged with this limitation of an Uſe. Secondly, Whether there was any Breach of the Condition, without Demand of the Rent? And it was held, that it was: For it is not properly Rent; but quaſi a Co. Lit. 211. b. Sum in Groſs, and is not iſſuing out of the Land. For there is not any place appointed for the payment thereof; and therefore the Conuſee is bound to ſeek out the Conuſor, to pay him. Thirdly, In regard it being a thing, wherewith the Eſtate is charged, and the Leſſee might have paid it (although he be not Tenant of the Free-hold) becauſe it is in ſalvation of his Eſtate (as it was agreed by all the Juſtices, that he might) this default of payment being quaſi in him, he being Tenant in poſſeſſion, Whether it be a Breach of the Covenant, whereof he himſelf may take advantage? And all the Juſtices (beſides Glanvile) held, that it was: Becauſe there is not any Covenant, nor, apparent intent, that the Leſſee ſhould diſcharge it And the Covenant is abſolutely, that he ſhall enjoy it: And this Condition is properly to be performed by him, who hath the Free-hold. Fourthly, Whether this Feoffment hath deſtroyed the future Uſe, which is to ariſe for Non-performance of the Condition? For, if ſo, the Entry of the Tenant for

Life

Life is not Congeable. And it was reſolved, that it had not; for it is a Charge or Burthen upon the Land, which goes along with the Land, in whoſe ſoever hands it comes. And, being limited to the Conuſor himſelf, Glanvile conceived it to be a Condition unto him; But if it had been to a Stranger, to have ariſen upon ſuch a Condition, the Non-performance thereof had been a ſpringing Uſe unto him; for now it is meerly a Tye and Charge upon the Land, which is not deſtroyed by the Feoffment: and, although it be a future Uſe, it may be well raiſed upon Non-performance of the Condition; as it was adjudged in Plowden, Bracebridges Caſe. Wherefore it was adjudged for the Plaintiff.

Deans Caſe.

(24)

DEan Citizen and Merchant of London, had called one Garret Alderman of London, Fool and Knave upon the Royal Exchange, in the preſence of divers, and was therefore committed, by the Mayor unto Newgate, becauſe he would not find Sureties for his good behavior. And he, by an Habes corpus cum cauſa, procured himſelf to be removed into the Common Bench; and there all this Cauſe was certified; and, that the Cuſtom was, upon ſuch a Misdemanor, to commit any Citizen to priſon, &c. Walmſley; The Juſtices of Peace uſe, under colour of their Authority, to require the good Behaviour of every one at their pleaſure, and, if they refuſe, to commit them to priſon. But, I conceive, if they have not good Cauſe to require Sureties for the good behavior, and the party refuſe, and is committed to priſon, Faux Impriſonment lies; for the Statutes of 34, & 35 Ed. 3. which gave unto them that Authority, is principally for vagrant perſons, and ſuch like; and it is not intended for every private abuſe. Anderſon; There be divers Statutes, That for private diſcourteſies one ſhall not be impriſoned; and therefore I ſee not how this Cuſtom can be maintained. A man may be impriſoned for a Contempt done in Court, but not for a Contempt out of Court: and therefore he ought not to have been committed for ſuch a private abuſe. And, by Aſſent of the whole Court, he was diſcharged.

St 35. E. 3. c. 1

Ant. 78.

Piper *verſus* Wyder. Paſch. 36 Eliz. rot. 83.

(25)

FOrmedon. The Tenant vouches the Heir of one John Godfrey within age, and prayed, That the Parol Demurrera. The Demandant counterpleads, that neither the ſaid John Godfrey, nor any of his Anceſtors, ever had any thing in Tenementis prædictis, &c. And hereupon they were at iſſue. And the Jury found, That the ſaid John Godfrey was joyntly ſeiſed in Fee with another, who infeoffed the Father of the Tenant, &c. And it was clearly holden by the whole Court, That this Verdict was found for the Tenant. For, if this Joynt-tenancy had been pleaded by way of Counterplea, it had not been a Counterplea; as appears 8 H. 7. 5. wherefore a fortiori being found by Verdict: For there ſhall not be any Counter-plea, but where it is thereby proved, that he, who is vouched, had not ſuch an Eſtate, whereof he could make a Feoffment: but a Joynt-tenant may make

Ant. 506.

Co. Litt. 186. a. a Feoffment of the Entirety with Warranty; for he is ſeiſed per my & per tout. And, although it be a Diſſeiſin of the Moyety, yet the Feoffment is good, and the Warranty well annexed; and when they joyn in a Feoffment with Warranty, every one warrants the Entire; and that may here be a Counterplea to the Warranty, but not to the Voucher. Wherefore it was ruled accordingly.

Ant. 17.

Luſhford *verſus* Sanders. Paſch. 41 Eliz. rot. 2592.

(26) WAſte by the Heir againſt the Defendant, Executor of a Leſſee for years. The Caſe, upon Demurrer, was; One made a Leaſe for years by Indenture, wherein was this Proviſo, Provided always, and it is agreed between the Parties *Quod licitum foret, & eſſet* to the Leſſor, and his Heirs, at any, and every time, during the term, to Fell, Sell, Shrub, Cut down, and carry away all the Wood, and Trees, and all the Timber, Growing, Standing, or Being upon any of the Premiſes. And, Whether this were any Exception out of the Leaſe of the Trees, or but a Covenant? was the Queſtion: for if it were an Exception, they never were lett; and then Waſte lies not. And, after Argument at the Bar, all the Court reſolved, That it was not an Exception of the Trees, but a Covenant only. Wherefore it was adjudged for the Plaintiff. Vid. 3 H. 6. 45.

Ant. 683.

Armiger *verſus* The Biſhop of Norwich and Holland.

Paſch. 41 Eliz. rot. 619.

(27) QUare Impedit for the Advowſon of North-creak in the County of Norfolk. Upon Demurrer, the Caſe was, That the Biſhop of Norwich, after the Statute of primo Eliz. cap. which made Leaſes and Grants by Biſhops of their Poſſeſſions void (unleſs Leaſes for Twenty one years, where the Ancient Rent was reſerved) granted that Advowſon to the Plaintiff for Twenty one years, which was confirmed by the Dean and Chapter: The Advowſon being appendant to the Mannor, which he had in right of his Biſhoprick. The ſaid Biſhop was afterwards tranſlated; and, during the time that the Temporalties were in the Queens hands, the Church became void; another Biſhop was afterwards elected: the Queen preſented Holland the Defendant, who was admitted, inſtituted, and inducted: againſt whom, and the Biſhop, the Plaintiff brought a Quare Impedit. And they pleaded the Statute of primo Eliz. And, Whether this Grant of the Advowſon be within the Statute of primo Eliz. (becauſe it is not ſuch an Hereditament, whereof there can be any annual profit, nor any Rent reſerved) was the Queſtion. Secondly, Whether this Grant be void againſt the Queen as well as againſt the Biſhops Succeſſor? And, after Argument at the Barr, it was reſolved by the Court, That this Grant was void by the Statute; becauſe it is parcel of the Poſſeſſions and Hereditaments of the Biſhoprick; and therefore void, as well againſt the Queen as againſt the Succeſſor; for the Statute made it void to all purpoſes: but yet it is not ſo made void, but that it is good during the time, that, he who granted it, continues Biſhop; and it ſhall bind

Ant. 601.

Co. Litt. 44. b.

bind himſelf, ſo as he ſhall not avoid it. Wherefore it was adjudged accordingly for the Defendant.

Humphrey *verſus* Barns. Paſch. 41 Eliz. rot. 752.

DEbt upon a Bill Obligatory of 13 l. 13 s. 4 d. The Defendant pleaded a Forain Attachment in Barr, made in London by one Moulton, to whom Humphreys was indebted, of 13 l. in his hands, after the Original Writ purchaſed, and before the Return of the Exigent, or Appearance thereupon, and before he had any notice of the Sute in the Common Bench. And it was thereupon demurred, and adjudged to be no Plea. First, Becauſe it appeareth not, that the 13 l. attached was parcel of the ſaid 13 l. 13 s. 4 d. now in demand. Secondly, Becauſe this Attachment was made, whilſt the Sute was depending in the Common Bench; and the Queens Court being poſſeſſed of a Cauſe, it is inſufficient, and cannot be: for, as Walmſley ſaid, The Sute depending in the Queens Court, the ſaid Court is intereſſed therein; and it is againſt the dignity thereof to have an inferior Court meddle with it: alſo, whilſt the Sute is depending, it is quaſi in cuſtodia legis, and cannot be meddled with by another: As the Law is, where one is to be attached by his Goods at the Common Law, if the Goods be diſtrained and impounded, they cannot be attached. Wherefore it was adjudged for the Plaintiff. (28) Ante 157.

Cropwel *verſus* Peachy, Paſch. 41 Eliz. rot. 947.

DEbt upon an Obligation, conditioned for the performance of Covenants within a certain Indenture, whereof ſome of the Covenants were in the affirmative, and ſome in the negative. He pleaded the Indenture, & performance of all the Covenants therein generally. And it was thereupon demurred, and without argument adjudged for the Plaintiff. (29) Poſt. 749. Co. Litt. 303 b

Termino Michaelis,

Quadrageſimo primo & Quardrageſimo ſecundo

ELIZABETHÆ, in Banco Reginæ.

Barker *verſus* Bourn. Hill. 41 Eliz. rot. 487.

(1) ERror; for that in Debt againſt the Heir, upon an Obligation made by his Father, the Judgement being againſt him by nihil dicit, execution was awarded by a Capias ad ſatisfaciendū, whereas the Lands only deſcended unto him, ought to have been put in Execution, and not his body, nor his other Lands. And Error for this Cauſe was brought, Tam in redditione Judicii, quam in redditione Executionis. And now Towſe moved, that is was Error; for the difference is where the Heir pleads a falſe Plea, there his body, and all his Lands are liable to the Execution, as for his own Debt; but if he be condemned by default, or acknowledgeth the action, the Execution ſhall only be of the Lands deſcended unto him; & ſo is 6, & 7 Ed. 6. Dyer 81. Gawdy held it not to be Error; for the Judgment and Execution ſhall be general, unleſs the Heir acknowledgeth the action, and ſhews that he hath ſo much by deſcent; as it was in Trewinnions Caſe, Plowd, 440 & Dyer 344. But when the Heir will not ſhew, that he hath ſo much by deſcent, and ſo loſeth the benefit, which the Law gives unto him, it ſhall be intended, that he hath Aſſets to ſatisfie. Clinch agreed with him. Popham and Fenner were abſent. Wherefore Rule was given, that Judgment ſhould be affirmed, unleſs other Cauſe was ſhewn by ſuch a day. And Tanfield ſaid to the Court, that in 19 Eliz. in the Common Bench, in one Lyons Caſe, upon ſearch of all the Books and Preſidents, it was reſolved, That in this Caſe Execution ſhall be awarded againſt the Heir, as for his proper Debt. And Gawdy ſaid, That, in this Caſe, the Error is well aſſigned in the Judgment; for, if it be Error, it is in the Judgment.

Wakefield *verſus* Hodgeſon and others.

(2) ERror to reverſe a Fine. The firſt Error aſſigned was, That the Fine was levied of a Reverſion of divers Tenements in London in Golden-Lane. The Conuſee brought a Quid juris clama, and, hanging that, died. The Heir brings a new Quid juris clamat. And the Defendant in part claimed Fee; and, for the other, was

was ready to attorn; and the Plaintiff accepted thereof, And, to the Remainder it was awarded, that the Defendant eat inde sine die; and the Fine was engrossed, and the Proclamations made. The first Error assigned was, for that the Conusee only is to have the Election, whether he will levy the Fine with Proclamations or not; and, he being dead, the Fine ought not to be with Proclamations at the Heirs Sute; as 8 Eliz. 254. is. But all the Court resolved to the contrary; for the Heir hath as well Election to have it with Proclamations, as the Ancestor; for it is for his benefit, and the Statute doth not restrain it. And the reason of 8 Eliz. 254. is, why the Proclamations there made were stayed, was, because a Formedon was depending; and that was only in the discretion of the Court. A second Error assigned was, because the Judgment in the Quid Juris clamat is, That the Fine be engrossed for part onely. But here it is engrossed for the whole. But the Court resolved, it was well enough; for the bringing of the Quid Juris clamat is not material; for the Conusee might have had the Fine engrossed, without suing a Quid Juris clamat; and the suing thereof is only for his advantage; for without suing thereof he could not have had any Attornment: Wherefore although the Judgment thereby is, that the Fine shall be engrossed for part; yet the party, if he will, may have all the Fine engrossed; and the Proclamations in the time of the Heir, after the engrossing, are well enough. A third Error assigned, ore tenus, was; for that the Fine is levied of Tenements in Golden-Lane in London; and there is not any Vill, Hamlet, or Parish mentioned. Sed non allocatur: for the Court said, that it appeared not unto them, but that might be a Vill, or Hamlet; and it may well be so intended, unless it had been so alledged, that the party might have answered thereto. Wherefore the Judgment was affirmed.

Co. 3. 86. b.

F. N. B. 147. a.

Foxley *versus* Annesley.

ACtion sur Trover, and Conversion of twenty Sheep. The Defendant pleaded, That the Queen was, and yet is seised of the Mannor of Newport-pannnel in the County of Bucks; and that malefactores ignoti stole those Sheep from the Plaintiff, and brought them within the same Mannor, and there waved them; whereupon the Defendant, as Bailiff to the Queen of his said Mannor; seised them as the Queens Goods, to the Queens use, which is the same Trover, and Conversion, and prays in Aid of the Queen. Whereupon the Plaintiff demurred specially. Crew for the Plaintiff moved, That the Plea was not good. First, Because it concludes with an Ayde prier in this Action, which being personal, and possessory, and for a Chattle only, is not good, and herein Ayd is not grantable. Vide 11 H. 4. 14 H. 6. 5. Secondly. He justifies for a Seisure, and answers not to the Conversion, which is the chief matter in this Action: And the Seisure is not any Conversion; and therefore he ought to have answered or traverse it; as 7 H. 6. 13. in conspiracy he justifies, that he gave Evidence to the Jury by command of the Justices, and it was ruled to be no Plea; for that is not any Conspiracy. Thirdly, the Plea is not good; For, when one justifies a Seisure of Goods, as waved, he ought

(3) Co. 5. 109. a.

to

to ſhew, That purſuit was made after the Felon, and that he waved them; for otherwiſe they be not waved. Brook Eſtrays 9. 29 Ed. 3. 29. 44 Ed. 3, 19. and ſo is 37 H. 8. Wherefore, &c. Gawdy and Popham held, that the plea was not good; for that the Converſion was not anſwered: He alſo ought not to have Aid, becauſe it is but a Chattle; and he hath not alledged, that he hath anſwered for them to the Queen; but, that he needed not to have alledged any purſuit of the Felon. For Popham ſaid, it ought to be alledged, that the Felon fled, for that he was in fear to be apprehended, and for that Cauſe waved them. For, if a Felon carries away Goods which he ſtole within a Manor, and leave them there, and at another times goes away, the Goods are not waved; for waving ſhall be, where he hath the Gods, when he flies for fear to be apprehended for them; and the reaſon of the forfeiture is, becauſe there was a default in the Party robbed; that he did not purſue him, to have taken the Gods from him; and therefore the Law gives them to the Queen. But it is not neceſſary, that he be purſued for the Felony, when he leaves the Goods, ſo that he flies for this cauſe. But afterwards, becauſe the Plea was not in Bar, but concludes, Si Regina inconſulta, &c. They all reſolved, that the Judgment could not be in matter of Bar: and, becauſe Aid was not grantable in this Caſe, it was awarded, that he ſhould anſwer without Aid. And ſo it was adjudged. 5 Co. 105.

Yelv. 199.

Blandford *verſus* Andrews.

(4) DEbt upon an Obligation of 80 l. conditioned, that if the Defendant procured a Marriage to be had between the Plaintiff, and one Bridget Palmer, at or before the Feaſt of St. Bartholomew then next following; that then &c. The Defendant pleaded, that the Plaintiff, before that Feaſt, came to the ſaid B. P. and called her Whore; and told her, that if he married her, he would tie her to a Poſt; and uſed other opprobrious words unto her; by reaſon whereof the Defendant could not procure the ſaid Marriage before the ſaid Feaſt. Whereupon the Plaintiff demurred. *Williams* Serjeant moved, That this was not any Plea; for he hath not ſhewn, that he uſed his endeavor to procure the Marriage, for it may be, that, notwithſtanding theſe words, they would have entermarried. And of that Opinion was all the Court; for the Defendant ought to ſhew, that there was not any default in him; and, that he did as much as in him lay to procure it; otherwiſe he doth not ſave his Obligation: and theſe words ſpoken before the day, at one time only, be not ſuch an impediment, but that the Marriage might have taken effect. Wherefore it was adjudged for the Plaintiff.

Co. Litt. 206.

Co. 8. 91. b. 2.
Ante 361. 672.

Watts *verſus* Brayns.

(5) APpeal of the Murder of her Husband at Feverſham (which is within the Cinque-Ports) the Writ was directed to the Lord Cobham, Warden of the Cinque-Ports; who returned the Writ, which was Filed, and the Body of the Defendant brought to the Bar. The Plaintiff declares againſt him. And

Yelv. 13.
Jones 425.
1 Rol. 536.
2 Rol 596. 7.

ind Godfry for the Defendant, demanded Oyer of the Writ, and Return, which was read; and then he excepted unto it, in regard it should have been directed to the Sheriff of Kent, who is the immediate Officer to the Court, and not to the Warden of the Cinque-Ports. Tanfield moved, That if the Writ were not well directed, all was void, as if it had been directed to J. S. Wherefore because he is informed, that the Murder was apparent, and the Prisoner at the Bar, he prayed, that he might be committed to the Marshalsey, and that he might declare against him in custodia Mareschalli; for this Writ is as none, and void: and therefore differs from the Case of the Writ of Appeal against the Servants of Sir George Fearmor, directed to the Sheriff of the County of N. which was ill, for a defect therein. But, the Writ being such as it was, the Parties appearing thereupon, it was held, that they should not be committed, nor a Declaration against them in custodia Mareschalli; but here this is not a Writ at all: wherefore the Justices would advise hereupon. And the next day, Tanfield, at his peril, declared against him in custodia Mareschalli. And the Defendant maintenant pleaded in Abatement of the Writ, that the Plaintiff had a Writ of Appeal depending against him; and pleaded it in hæc verba. And, by the Opinion of the Court, he was compelled to plead over to the Felony; for so are all the Presidents of the Court. And, upon this Plea, it was demurred in Law. Resid. post. 778.

Post. 910. 2 Inst. 557. Ant. 605. 2 Inst. 557. 1 Rol. 536.

Lewen *versus* Cox. Ante, Mich. 37, & 38 C. B. Pl. 62.

Pasch. 41 Eliz. rot. 270.

(6)

UPon a Special Verdict, The Case was; Lewen devised Lands to his two Sons equally, and their Heirs; Whether it were a joynt Estate in the Sons, or, That they were Tenants in common? was the Question. *Coke* Attorney General, shewed That they were Joynt-tenants. For first, It is to be agreed, That a Devise to two and their Heirs, is a joynt Estate in them, notwithstanding the Opinion in 30 H. 8. and so it hath been oftentimes agreed: And it is as clear, that this word equally, by the Rule of the Common Law, unless it be in a Will; alters not the Estate; but the intent of the Devisor is to be searched: and, as to that, he conceived, that it cannot make a Tenancy in Common in the Devisors intent; for it signifies only an Unity, and Identity of Estate; and there cannot be a more equal Estate, then to them joyntly: and when the words of a Devise do not shew any apparent intent to change the Estate, which the Law limits, it would be violence to the words to extort them to another sense. The manner also of placing the word equally is to be observed: but, if it had been to them, and their Heirs equally, so as the intent might have been collected, that their Heirs should have it equally, it would peradventure have been stronger: for then their Heirs might not both have had it, if it were a joynt Estate. And therefore 29 Eliz. betwixt Pettywade and Coke in this Court, where one had three Houses, and three Sons, and devised to every of his three Sons an House in tail; and if any of them died without Issue, that the two Survivors should have his part, equally to be divided betwixt

Ante. 443. 2 Rol. 89. Ant. 443. 4. Ant. 431. Co. 6. 16. b. Ant. 52.

betwixt them: It was doubted what Eſtate the two ſhould have in that part, after the deceaſe of one of them without iſſue: and it was ruled, for Life. For the word part doth not enlarge the Eſtate; and that by theſe words, equally to be divided, they were Tenants in Common, and not Joynt-tenants. But there the words ſhewed the Deviſors intent, that they ſhould be ſeveral, and divided Eſtates. And it was ruled there, that equally divided and equally to be divided, are all one. And ſo it was ruled here, in a Caſe betwixt Dickons and Marſh. And ſo alſo in 17 Eliz. where a Deviſe was made to two equally, it was held to be a joynt Eſtate. But Shepheards Caſe in 18 Eliz. is good Law, that a Deviſe to two equally, and to the heirs of their Bodies, made a Tenancy in common: for, as the Inheritance is in common, ſo his intent ſhall be collected for the particular Eſtate (Quod *Fenner* conceſſit) but it is not ſo here. Wherefore, &c. *Altham* e contra; for, if they be not Tenants in common, this word equally ſhould be vain; and no word in a Deviſe or Grant ſhall be void, if it may have any good Expoſition. And in 2, 3, & 3 Philip. and Mar. Bendloſe; it is ruled, that a Deviſe to two, part and part like, made a Tenancy in common; for there be no parts betwixt Joynt-tenants; and therefore his intent appears, that they ſhould be Tenants in common: for there is not any word in a Deed or Will, which ſhall be idle, if it may be taken to any reaſonable intent: and to that purpoſe cited Bolds Caſe 28 H. 8. Dyer. 14. Wherefore, &c. Fenner held, That they were Joynt-tenants; for Joynt-tenants have an equal Eſtate, and equal Profit. And a Will is to be expounded after the Judgment of the Common-Law, when the intent appears not to the contrary. And therefore a Deviſe to Baron and Feme, and a third Perſon æqualiter, they be Joynt-tenants, as by Purchaſe, during the Coverture, and the Baron and Feme have but a Moyety. Wherefore, &c. *Popham* e contra; for the word equally hath two ſignifications; in the one it refers to the Eſtate, in the other to the Quantity of the Land: And here, to which of them this ſhall be referred? was the Queſtion. If one deviſe his Goods equally to two, there is not any Joynt-tenancy; for equally ſhews his intention to give to either of them an equal proportion. So of a Deviſe of a Term to two equally, they be Tenants in common; for otherwiſe there ſhould not be any equality in property, if all ſhould go to the Survivor. But a Deviſe of Land to two equally, they are Joynt-tenants; for there is not any inequality, or loſs, although the Survivor ſhould have all: for the other can have it but during his life. But if a Deviſe were to two and their Heirs equally, or part and part like, there is a Tenancy in common; for every one of their Heirs ſhall have it: And, if the one ſhould have all by the Survivorſhip, it is not equal, as to their Heir. And ſo here, they be Tenants in common; and there is not any difference betwixt this and Shepheards Caſe. Wherefore Clinch agreed with him in omnibus. And afterwards, it was adjudged accordingly, that it was but a Tenancy in common, and affirmed in a Writ of Error in the Exchequer, upon the Opinion of four verſus three.

Ant. 53.
Poſt. 729.
Co. 3. 39. b.
Ante 330.
1 Cr. 75.
Co. 6. 16. b.
Poſt. 743.
Ante 330.
Co. 3. 39. b.

Bold

Bold *verſus* Steers. Mich. 40, & 41 Eliz. rot. 508.

(7) Fjectione firmæ. And declareth of a Leaſe, to begin Poſt Mortem of Thomanſine Chapman, and of Thomas Chapman, and alledges Quod prædict. Thomaſine Chapman, and Thomas Champman were dead, and ſo miſtakes Champman for Chapman: And for this cauſe Error was aſſigned: For the Leaſe is not then begun. But the Court held, Quod prædictus Thomas was ſufficient, and the addition of his Sirname was vain. And it ſhall be intended to be the ſame perſon. Wherefore it was affirmed.

Hayford *verſus* Andrews.

(8) DEbt upon an Obligation, Conditioned for the payment of 20 l. at a day certain. The Defendant pleads, that before the day, the Plaintiff, in reſpect of a Treſpaſs made by his Beaſts in the Defendants Land, gave unto him a longer day of payment, which is not yet come. And it was thereupon demurred, and argued at the Bar, that in regard it was before the day, the Plaintiff might well by word defer it, and in proof thereof were cited 31 Aſſ. 17. 12. R. 2. Barr. 243. 26 H. 8. 9. But all the Court without Argument held it to be no Plea. For an Agreement by Parol cannot diſpence with an Obligation. But the Caſe of 12 R. 2. is good Law. For there the Agreement at the day to retain, is as a payment, and thereby the Obligation is diſcharged. Wherefore it was adjudged for the Plaintiff. Ant. 455. 672. Co. Lit. 213 b.

Hunts Caſe.

(9) HUnt and others were endicted before the Mayor and Aldermen of Hereford, being Juſtices of Peace and Goal Delivery, upon the Statute of 5 Eliz. of Forgery, for forging the Will of one Davies. Exception was taken, becauſe by the Statute they had not any power to take ſuch Endictment. But the power of inquiring thereof is given to the Juſtices of Oyer and Terminer, and of Goal-delivery only. And ſo it was ruled in 31 Eliz. in Smiths Caſe. Wherefore, for this cauſe he was diſcharged. Ante 87.

Edens Caſe.

(10) EDen and others were endicted upon the Statute of 8 H. 6. cap. 9. of Forcible entry. For that he, and divers others in the Endictment named, forcibly entred, and diſſeiſed Alice Knotſford. Firſt, Exception was taken, for that the Statute is recited, That if any be Expelled or Diſſeiſed; whereas it ought to have been Expelled and Diſſeiſed. But it was ſaid, That the Printed Books, and alſo the Parliament Roll, is in the Diſjunctive, and therefore Non allocatur. Another Exception was, Becauſe the Statute is, If any Feoffment or diſcontinuance thereof be made, &c. And the Statute, reciting this word Thereof, was left out: And for this cauſe held to be ill: For there is not any ſuch Statute. And the miſrecital of a Statute is cauſe to avoid it. It was then moved, That it was a good Endictment for Riot, although it were void upon the Statute of 8 H. 6. Sed non allocutur. Ant. 307. Ant. 231. Ante 307.

For, being void for the Principal, it cannot be good for the reſidue. Wherefore they were diſcharged. 2 H. 7. 10. 6 H. 7. 5. 11 H. 4. 41. 18 Ed. 4. 10. 11 H. 7. 22.

Steverton *verſus* Scrogs.

Trin. 40 Eliz. rot. 1139, vel 1132.

(11) REplevin. The Defendant made Conuſance, as Bayliff of Oliver Scrogs for that the place, where, &c. is within the Juriſdiction of the Leet of the Manor of Renold, whereof the ſaid O. S. is, and tempore quo, was Lord, and ſhews, that at a Leet holden there, ſuch a day, and year, it was preſented by the Jury, that there was not within the Vill any Pillory or Tumbrel to puniſh Offendors; and therefore the Vill was amerced to 20 s. and ſhews, that the Plaintiff, at the time of the taking, was an Inhabitant there: and becauſe he did not pay that amercement, but utterly refuſed to pay the 20 s. therefore the Defendant, as Bayliff of the Manor, diſtrained, &c. And it was hereupon demurred. Winch for the Plaintiff: This Plea is not good, neither for the matter, nor manner thereof; for the Inhabitants of a Vill are not bound to provide either Pillory or Tumbrel; but the Lord of the Leet only; for they are neceſſary for the Execution of Juſtice, which the Lord is to ſee to be executed. And, if he doth not provide them, it is cauſe of ſeiſure: As 8 H. 4. 17. the Abbot of St. Albons was to procure a Gaol-delivery of the priſoners within the Liberty; otherwiſe, it was a forfeiture. And the Statute of 18 Ed. 2. which ſets down what things ſhall be inquired in Leets, doth not appoint this to be inquired of there; and it is inquirable only in the Eyre. It is not good for the manor alſo: Firſt, Becauſe it is alledged, that the Plaintiff did not pay the amercement; and he doth not aver, that any other of the Vill had not paid it. Secondly, He doth not alledg, that the Plaintiff was an Inhabitant there at the time of the amercement; but at the time of the taking, &c. Wherefore, &c. And for theſe defaults, the Court held clearly the Plea to be ill, and adjudged it for the Plaintiff. But Popham, Gawdy, and Fenner (Clinch abſente) held, that it was not good for the matter: For, the Pillory and Tumbrel ought to be provided by the Lord of the Liberty, and not by the Vill, unleſs there be a Preſcription to the contrary, which ought to be ſpecially alledged; for they being for the Execution of Juſtice within the Liberty, he ought to ſee it to be done. And Popham ſaid, that the Defendant as Bayliff of the Manor cannot diſtrain for an amercement by reaſon of his Office without an Eſpecial Warrant from the Steward or Lord, no more than a Sheriff may levy amercements of this Court without Warrant. But Gawdy e contra; that he may diſtrain for lawful amercements, by reaſon of the Office; but he cannot enter for a Condition broken: As 5 Eliz. 222. is. But for the principal matter it was adjudged ut ſupra for the Plaintiff.

Poſt. 748.

Luffer *verſus* Legar.

ERror of a Judgment in Lyme. The Error aſſigned was, be- (12)
cauſe that in Debt the Defendant was acquitted for part, and for the reſidue the Plaintiff recovered, and there was not any Judgment, Quod querens ſit in miſericordia, &c. and for this cauſe it was reverſed. And at the ſame time another Judgment in Worceſter between Cheſold and Wyot was reverſed for this cauſe. Ante 257. b.

Harris *verſus* Jays.

TReſpaſs. Upon a ſpecial Verdict, the Caſe was; That the (13)
Queens Auditor and Surveyor for the County of Northam- Co. 4. 30. a.
pton, appointed a Steward for one of the Mannors pro illa vice. He kept the Court, & in plena Curia granted by Copy Land, which anciently had been Copyhold, and eſcheated to the Queen for felony, to the Defendant and his Heirs, and received a Fine for it, which was anſwered to the Queen. And, Whether this were a good Grant by Copy? Was the Queſtion. Firſt, it was reſolved, that a Copy-hold eſcheated, and which hath been kept in the Lords hands for divers years, may be granted over by Copy by the Lord himſelf: But, whether it may be granted by the Steward? was the doubt: And it was reſolved, that it well may be granted: For he is in place of the Lord, if he be very Steward. Secondly, Whether this appointment of a Steward by the Auditor and Surveyor be good or not? And reſolved, that it was not: For they have not any authority to appoint Stewards, the one being to take the Accompts, the other to ſurvey the Land. Thirdly, Admitting he is not Steward in right, yet he ſitting in Court, and granting this Copy, and admitting him, and the Fine being anſwered to the Queen, whether it be good or not? Bacon moved, that it was good: For acts done by an Officer in facto, and not de Jure are good; as 9 Ed. 4. 1. Acts done by a King an Uſurper are good; ſo if one being created Biſhop, the former Biſhop not being deprived nor removed, admits one to a Benefice upon a Preſentation, or collates by Lapſe, theſe are good, and not avoidable: Quod Curia conceſſit. For the Law favours acts of one in a reputed authority, and the inferior ſhall never inquire if his authority be lawful: and 2 Ed. 6. Br. Copy 26. it was held, that Grant by Copy by one in Court who hath no authority to hold Court, is good. Gawdy, The Grant is void; for it is not a thing of neceſſity: But things of neceſſity done by one, who is but in a reputed authority, is good. And here this new Grant is in prejudice to the Queen, who is Lady of the Mannor: And relied upon 4 H. 7. Popham, Acts done by one, who keeps Court as Steward, without authority; if they come in by Preſentment from the Jury, or of neceſſity, are good: As an admittance of the Heir upon a Preſentment, or Admittance by a Surrender to an uſe, and a Preſentation of Nuſances before him are good: But Acts Voluntary, as the Grant of a Copy-hold, is not good. And if a Lord commands his Steward, that he ſhall not grant ſuch Lands by Copy; if he grants it, it is void. So if he diminiſh the Ancient Rents and Poſt, 755.

Services, it is a void Copy. Fenner agreed with them in omnibus. Wherefore it was adjudged for the Plaintiff. 4 Co. 30.

Morning *verſus* Knop.

(14) 1 Rol. 18. ASſumpſit. The Caſe was; An Infant being bound in a Bond for the payment of 17 l. at his full age, in conſideration that the Plaintiff the Obligee will ſtay the Sute, which he hath begun againſt him by Original; and not cauſe him to be arreſted thereupon; He aſſumed, that he would pay the 17 l. at a certain day after. Upon Non-Aſſumpſit pleaded, it was found for the Plaintiff, and alledged in Arreſt of Judgment, that this was not any Conſideration to ground an Aſſumpſit, and in proof thereof the Caſe of Stone *verſus* Withipole, Anno 31 Eliz. was cited; for the Bond not being ſufficient to bind him, there is not any cauſe for him to make this Aſſumpſit. And of that Opinion was Fenner; but Clinche contra. Et, cæteris Juſticiariis abſentibus, adjournatur. Ante 126.

Sherwood *verſus* Woodward.

(15) 1 Rol. 12. ASſumpſit. Whereas he ſold to the Defendants Son certain weights of Cheeſe; The Defendant, in conſideration the Plaintiff would deliver the ſaid Cheeſe to his ſaid Son, aſſumed, that if the Son did not pay for them, then he would. And for Non-payment the Action was brought. Upon Non-Aſſumpſit pleaded, and found for the Plaintiff, it was moved by Godfrey in Arreſt of Judgment, that this was not any Conſideration: For it is no more than what the Law appoints, to deliver that which he ſold; the property whereof is in the Son by the ſale. But Gawdy and Fenner held it to be a good Conſideration: for it is an eaſe to the Bargainee to have them without ſute, which peradventure, otherwiſe he could not have had. And although the Bargainee may take them in this Caſe, the Bargainor is not bound to deliver them. And there is a new act done by him upon this agreement, and it is an eaſe to the Vendee, and 12 H. 7. is, that to deliver the Goods of the party himſelf at another place, is a good Accord. Wherefore, cæteris Juſticiariis abſentibus, they adjudged it for the Plaintiff.

Brereton *verſus* Evans. Mich. 41 & 42 Eliz.

(16) 1 Rol. 294. 1 Rol. 872. 7. 1 Rol. 877. 1 Rol. 872. DEbt by Brereton and his Wife againſt the Defendant for Arrearages of a Rent upon a Leaſe for years made by the Feme and her firſt Husband, to the Defendant by Indenture. The Defendant pleaded, that the Anceſtor of the firſt Baron was ſeiſed in Fee; and that it deſcended to the firſt Baron, and he was ſole ſeiſed, and ſo the Feme had nothing at the time of the Leaſe made. And thereupon the Plaintiff demurred in Law. Warberton Serjeant, for the Plaintiff moved, that this was not any Plea: For, the Leaſe being by Indenture, the Feme hath the Reverſion by Eſtoppel againſt the Leſſee, and the Defendant cannot contradict it, and ſay, that ſhe hath nothing; and in proof thereof was cited 11 H. 4. 1. and 2 H. 5. 7. but all the Juſtices Reſolved, that it was a good Plea; for they ſaid, there was a difference betwixt 11 H. 4. 1. and this Caſe: For when two joyn in a Fine, or

matter

matter of Record: He, who accepts of them, is concluded to say, but that both gave it; but where it is by Deed, it is otherwise: for that cannot enure from one by way of Interest, and from the other by way of Estoppel, For one Deed cannot so enure to two intents: Also when two joyn in a Deed, and the one only hath the Interest, it enures by way of Confirmation from the other, and not by way of Estoppel. But here, this can neither be an Estoppel, nor a Confirmation; for the Deed is utterly void, as to the Feme, she being Covert, as 45 Ed. 3. 11. 48 Ed. 3. 12. and 29 H. 8. Br. Faits enrolled 14. And it cannot be an Estoppel, because an Estoppel ought to be mutual on both parts; and a Deed of a Feme Covert cannot estop her, and the Deed cannot bind her to any effect. Wherefore it was adjudged for the Defendant. Co. Lit. 45. a.

Hogobert *versus* Hokeley, and Spike.

(17) ACcompt against two. The one of the Defendants acknowledged the Action. The other pleaded Nunques son Receiver, &c. And Judgment was presently given against him, who acknowledged the Action. And Issue joyned upon the other, and found against the Defendant, and Judgment was also given against him. And Kemp said, that in the time of Wray, it was adjudged, that where one of the Defendants acknowledged the Action, that it should bind his companion, and the entire Judgment should be given against both. Then Daniel, Serjeant moved, That one of the Defendants was dead, and so the whole Bill should abate, although it were after the Judgment: And to that purpose cited 21 Ed. 3. 32. and 22. Ed. 3. 8. But Gawdy conceived, it should not abate the Writ, but against that Defendant only, who was dead. Vid. 1 H. 7. 2. 22 Ed. 3. 87. 1. 4 H. 4. 1. Et adjournatur.

Marsh *versus* Vaughan and Veal.

(18) COnspiracy. The Defendants pleaded Not Guilty, and the one was found Guilty, and the other not. And it was hereupon moved, that the Bill should abate; for it ought to be against two, and the one cannot conspire alone: And the one being acquited, the other sole cannot be attainted: And so is 11 H. 4. 2. 8 H. 4. 6. 22 Rich. 2. Bre. 888. 22 Ass. 77. 28 Ass. 12. Br. 115. And of that Opinion was the whole Court here; that a Writ of Conspiracy lies not, nor is maintainable upon this Verdict: But an Action upon the Case in nature of a Conspiracy might have been brought in this Case. Wherefore it was adjudged for the Defendant. 1 Lol. 111.

Williams *versus* Whytney.

(19) EJectione firmæ of a Lease of Henry Vaughan at Mockas of Lands in Lower Mockas. The Defendant pleaded Not Guilty, and found against him; and it was moved to be a Mis-trial: For the Ven. fac. was awarded from Mockas, where it ought to have been from Lower Mockas; the Issue being Not Nuilty. But, if the Lease had been

been traverſed, it had been otherwiſe. And of that Opinion was the whole Court. Wherefore the Judgment was ſtayed.

Umble *verſus* Fiſher.

(20) 2 Rol.520.1. DEbt. for Rent, upon a Leaſe for years payable at four Terms, viz. the Annunciation, Midſomer, Michaelmas, and the Nativity: and ſhews, that the Rent was arrear pro uno Anno integro, ſcilicet a Feſto Annuntiationis 40. uſque Feſtum Annuntiat. 41. a retro fuit, & adhuc exiſtit. The Defendant pleaded Non debet, and found againſt him. And it was now moved in Arreſt of Judgment, that it appears by the Declaration, that there are but three Rent Days arrear, for A. excludes the firſt Feaſt of the Annuntiat. and Uſq; excludes the laſt. But Foſter moved, that the viz. ſhould be void, becauſe it is declared, that it is arrear pro uno Anno integro. But the Court held the Declaration to be ill: For if the viz. ſhould be void, it would not appear when the year ſhould begin. But Gawdy ſaid, If it had been, that it was arrear a Feſto Annuntiationis 40. pro uno Anno *viz.* Uſq; ad Feſtum Annuntiat. 41. There the viz. ſhould be void; but not here. Wherefore it was adjudged for the Defendant.

Green *verſus* Hun.

(21) Moor.278.910. 1 Rol.645. PRohibition for ſuing for Tithes of the Rakings of Barley. And alledgeth a Preſcription to make the Barley into Cocks, and to pay the Tenth Cock in ſatisfaction of the Tithes of the Barley, and of the Rakings minus voluntarie diſperſed. And it was hereupon demurred, becauſe he doth not aver, that thoſe Rakings were minus voluntarie diſperſed. For Bacon, who moved it, ſaid, that in 31 Eliz. it was ruled in the Common Bench in Moor.278. one Adams Caſe; that a Preſcription to pay the Tenth Cock generally, in ſatisfaction of all Rakings, was not good. For he might leave the greater part of the Corn in Rakings: But all the Court held, that the Preſcription was good, and there needed not any Averment: But that ought to come on the other part, Moor.910. 1 Rol.645.660. if he would. Secondly, He ſued for Tithe of Wooll, and alledgeth a cuſtome to pay it every year at Lammas-Day; and that he ſet Ant.475.5. it out, &c. And it was thereupon moved, that it was not good; for this is not a Modus Decimandi: But for the time only, which is to be tried in the Spiritual-Court. But the Court held Moor.910. it to be good: for it is due de Jure, when it is clipped: But by Preſcription it may be ſet out altogether at another day, and that is good. And if the Spiritual-Court will not allow thereof, as it is here alledged, that they will not, it is fit to prohibit them. Thirdly, he preſcribed, that for young Cattle reared for the Payl to be Milch-Kine, or for the Plough, no Tithes have been accuſtomed to be paid: And it was thereupon demurred, and adjudged Moor.910. a good Preſcription. For they be for the Publick Weal; and the Parſon is to have benefit of them in another kind: And it was held, that for Paſtures of ſuch Cattle no Tithes are due for Moor.910. the reaſon aforeſaid. Fourthly, He preſcribed, that for all Wood combuſtible he uſed to pay a peny, called an Hearth-peny, in ſatisfaction for all Tithes thereof: And it was thereupon demurred. And it was adjudged to be a good Preſcription. For other kind of Tithes he alledged alſo other ſuch payments of

the

the like Sums, &c. Et quod omnes,& ſingulæ Perſonæ,Rectores de,&c. have uſed to accept thereof, &c. And the Defendant traverſeth; Quod omnes,& ſingulæ, &c. had not accepted. And it was thereupon demurred; for he ought to have traverſed the Cuſtome alledged: and not, Quod omnes, & ſingulæ, &c. did not accept. For then, if any of them did not accept, he overthrows the Preſcription, which is not reaſonable. And ſo was the Opinion of the Court. Wherefore it was adjudged, Quod Prohibitio ſtet.

Wichals *verſus* Johns. Paſch. 41. rot. 528.

(22) Moor. 574. 1 Rol. 29.

Aſſumpſit and declares; That in conſideration that the Plaintiff at the inſtance of the Defendant had promiſed to pay 120 l. to one Rogers; wherein the Defendant was endebted to the ſaid Rogers, that the Defendant aſſumed he would pay to the Plaintiff this 120 l. when he ſhould be required. After Verdict for the Plaintiff, it was moved, that this is not any Conſideration: For it is not any benefit to the Defendant, becauſe he is not thereby diſcharged of his debt. And it is not alledged, that he paid it to Rogers, nor is the promiſe alledged to be made to Rogers. And, if it had been made to Rogers, he could not thereupon have maintained an action againſt the Plaintiff: For there was not any Conſideration between them. And of that Opinion were Gawdy and Fenner upon the firſt Motion: For Gawdy ſaid, If one be indebted unto me, and another comes unto me, and promiſeth, that he will pay it; this is void, and nothing to purpoſe. But if he promiſe in Conſideration, that I will forbear my debt, that he will pay it at ſuch a day, if the Debtor doth not pay it, this is good. Wherefore, &c. But it was moved again at another day, and Popham and Clinch held it to be well enough; for there is a mutual promiſe, the one to the other: So that if the Plaintiff doth not pay it to Rogers, the Defendant may have his action againſt him: And ſo alſo the Defendant ſhall be charged as to him; and a promiſe againſt a promiſe is a good conſideration. But it was moved, That the Declaration is not, that the Plaintiff promiſed to any, to the Defendant, or any other, and therefore it is not good. But that was not well apprehended by the Court as it ſeemeth) But Judgment was given for the Plaintiff.

1 Rol. 29. Ante 543. Poſt. 848. 889.

Scrogs *verſus* Sir John Spencer.

(23) Moor. 548.

Error of a Judgment in Debt in the Common Bench. The Error aſſigned was; for that upon a Habeas corpora Juratorum directed to the Coroners, they returned the Writ and endorſed the Writ, writing their proper names, but added not their name of Office (viz. Coronatorum) but the Ven. fac. was returned by them, and their names writ, viz. A. and B. Coronatores, and upon the Hab. corpora the names of A. B. were written; but not the name of Coroners. And after the Verdict and Judgment for the Plaintiff, Error was brought, and it was the ſole Error aſſigned. Yelverton, Serjeant moved, that it was not any Error. For before the Statute of York, cap. 5. which was made 12 Ed. 2. The Sheriff needed not to have put his proper name, nor of his Office to his return. And this Statute extends only to the Sheriffs

riffs, and Bayliffs of Franchesſes. So the Coroners to this day are out of the Statute. And at the Common Law it is well enough, for it was not uſual to put the Sheriffs name to Returns: And, in
Ant. 310. proof thereof, divers Preſidents were ſhewn by Agar, Deputy-Chamberlain of the Exchequer, many of which were Writs of Aſſiſe, The one was in 5 Ed. 2. Aſſiſe againſt the Abbot of Abington, and one J.S. his Commoigne. And in none of the Writs the Sheriffs proper name, or Office was returned. And upon theſe Preſidents ſhewn, the Court conceived it to be well enough, and
R. 756. no Error: For when a Writ is returned, it is intended to be by
Ante 310. the Very Officer of the Court, who ought to do it; which is the reaſon, that at the Common Law the Sheriffs name needed not to
Ant. 310. be put to any return: And this reaſon holds here. But they all held, that if their names ought to have been here, then it is not aided by the Statues 32 H. 8. nor 18 Eliz. And they held, that the Statute of 12 Ed. 2. did not extend to Coroners. But they would adviſe.

Yates *verſus* Clincard.

(24) Ant. 16. EJectione firmæ. For certain Lands in Aſton Clinton in the County of Bucks. Upon Evidence to a Jury, a Deviſe was ſhewn of an Houſe with the appurtenances: And thereby Land in the field was claimed. And Popham doubted, Whether it ſhould paſs. But Fenner ſaid, that it well might paſs. And that upon Demurrer in 28 Eliz. it was adjudged accordingly. The Defendant then to make it clear ſhewed, that the Houſe was Copy-hold, and the Land Free-hold: And the whole Court thereupon conceived, that it could not be ſaid appurtenant, although it had been uſed with it. Wherefore the Plaintiff was Non-ſuited.

Crouch's Caſe.

(25) CRouch, Copyholder of Inheritance of the B. of Winton, ſues a Prohibition for ſtaying of a Sute for Tithes, ſurmiſing, that he, and all the Copyholders of ſuch a Manor, of the Biſhops, from time, whereof, &c. had held their Lands diſcharged of Tithes. Tanfield moved, that this Preſcription was too general, and it could not be good to preſcribe in non decimando by the Tenants. Godfrey; it is as good, as for the Farmors of a Biſhop to preſcribe to be diſcharged. And that was ruled in a Caſe in this
Ante 512. Court, between Wright and Wright, Popham; It was allowed onely for his Demeſnes. And that was in regard, It is to be intended; That the Biſhop at firſt retained the Tithes to himſelf of his own Demeſns; but it would be miſchievous to allow it to all
Poſt. 785. his Copyholders. Clinch and Fenner agreed with him. Wherefore without permitting any Declaration or Demurrer thereupon they awarded a Conſultation. Unleſs other Cauſe be ſhewn by ſuch a day. (Gawdy abſente.)

Dobſon *verſus* Crew.

DEbt upon an Obligation conditioned, That the Obligor ſhould be always ready to give Evidence, and to teſtifie the truth in any of the Queens Courts in all things, which ſhould be demanded of him, on the part of the Obligee, upon reaſonable requeſt, and his Charges born: and that he ſhould not hurt, or endanger, or moleſt the Obligee in his Lands or Goods, ratione alicujus rei cujuſcunque. And hereupon the Defendant demurred, ſuppoſing the Condition to have been againſt Law: but all the Court held it to be good, and not againſt Law: for, as to the firſt part, if he had not been obliged thereto, he is compellable by the Law; and the laſt part ſhall be intended, that he ſhall not hurt, &c. tortiouſly, but not to reſtrain him from purſuing the Obligee for Felony, or upon any other juſt cauſe. Whereforе, without Argument, it was adjudged for the Plaintiff. (26)

Peacock *verſus* Peacock. Trin. 41.

TRelpas of Aſſault and Battery in London. The Defendant pleaded, That the Plaintiff entred into his Houſe in Waltham, in the County of Eſſex, and he molliter manus impoſuit upon him to put him out of his Houſe, Quæ eſt eadem Aſſault, Battery, and Male-Tractation, whereof the Plaintiff complains: and Travers abſque hoc, that he is culpabilis extra Waltham; and it was thereupon demurred. Towſe for the Plaintiff moved, that this was not any plea; for this Treſpaſs being tranſitory, the place is not traverſable: and admitting the place to be traverſable, yet he ought not to conclud his Plea, Quæ eſt eadem, &c. But all the Court held the contrary: for the cauſe of the Juſtification being local, viz. the maintaining of the poſſeſsion of his Houſe, he may well juſtifie there, and he cannot juſtifie in another place; and he may traverſe every other place: as where one juſtifies as Conſtable, or by force of a Warrant: And therefore Popham ſaid, the difference is betwixt this Caſe and the Caſe of Patridge, which was adjudged in this Court, That where one juſtifies by reaſon of an aſſault in another County, and traverſeth the County in the Declaration; that is not good, becauſe the Juſtification is perſonal and tranſitory: and might be alledged in any place, as well as the Battery. But where it is local, as here, it is otherwiſe, and the concluſion, Quæ eſt eadem Tranſgreſſio, &c. is good enough; for it concludes, that it is the ſame cauſe of Action, but with a Travers, as it ought to be of neceſsity: but if the Averment, Quæ eſt eadem Trangreſſio, had been omitted, it had been good enough. Whereforе, upon the firſt Argument, it was adjudged for the Defendant. (27) Ante 667. Ant. 667.

Leighton *verſus* Garnons. Hill. 41 Eliz. rot. 114.

1 Rol. 895. 810 Moor 566. Co. 5. 88. a.

DEbt upon an Eſcape againſt the Defendant, as Sheriff of Hereford, and declares, That he recovered in the Common Bench, Mich. 38 & 39 Eliz. againſt one Ely Walwin 3081. and upon the 9. Octob. 38 Eliz. purſued upon this Judgment a Capias ad ſatisfaciendum, whereupon he was outlawed: after which, viz. 22 Junii 39 Eliz. W. brought a Writ of Error, and the Record was removed into this Court, and there he aſſigned not any Errors: Whereupon 13 Februarii 40 Eliz. the Plaintiff ſued a Capias Utlagatum, unde convictus eſt, directed to the Sheriff of Hereford, which was delivered to the Defendant, being Sheriff the 2. of March following, by force whereof, upon the 30 of March following, he took W. and had him in his cuſtody, and afterwards let him at large; the Plaintiff not being ſatisfied, &c. The Defendant pleaded Non debet, and all this matter was found by ſpecial Verdict. And whether, upon this matter W. was in Execution for the Plaintiff, when he was taken by the Capias Utlagatum, was the ſole Queſtion. And after Argument at the Barr, by Thomas for the Plaintiff, and by Atkinſon for the Defendant; the whole Court reſolved, the ſaid W. being taken by the Capias Utlagatum; although it were after the year and day, & although the Record be removed into another Court, he ſhall be ſaid to be in Execution for the Plaintiff: for there is not any default in the Plaintiff; for he purſued him, until the Proceſs was determined, viz. until he was outlawed: and he could not have had other Proceſs, then a Capias Utlagatum: and that had been his remedy, if the Record had remained in Court: and the removal of the Record, it being no default of the Plaintiff, ſhall not prejudice him, nor alter his Execution. And the common courſe here is, If the party be taken upon a Capias Utlagatum, and brought into Court, to commit him to the Marſhalſey for the Outlawry, and alſo in Execution for the party. But if he had not been outlawed at the Sute of the party in the Common Bench, although the Record be removed hither, within the year, at which time he might have had in the Common Bench a Capias ad ſatisfaciendum, yet being here, he cannot have a Capias, but only a Scire fac. per Fenner. But he agreed the Proceſs being determined in the Common Bench by the Outlawry, he ſhall not here have any other Proceſs, then a Capias Utlagatum, and the Party taken thereupon ſhall forthwith be in Execution: and the Sheriff at his peril ought to keep him in Execution. For the Writ gives ſufficient notice unto him, that he ſhould be in Execution by the Words, Unde convictus eſt. Wherefore, &c. But Atkinſon for the Defendant ſhewed, that this could not be an Execution for the party, becauſe the Record is removed into another Court: And it is a Rule, That a Record being removed, there never ſhall be Execution upon that Judgment, but by a Scire fac. For the Court cannot know whether ſatisfaction be made; and this appears by 6 Ed. 6. Dyer. 76, & 81. 21 Eſſ. 14. 14 H. 7. 15, & 19. The Party alſo being Outlawed, the Proceſs is determined againſt him by the Party; ſo as the Party is put to his new Action of Debt, as 13 H. 4. 1. Kemp the Clerk ſaid, That is true, where the party

Poſt. 850. Ant. 467. 2.

1 Cr. 364.

Ant. 416.

Ant. 652.

Ant. 416.

is

is outlawed upon an Original, and mean Proceſs before Judgment, if he be afterwards taken by a Capias Utlagatum, the party cannot declare againſt him, but he ought to have a new action of debt. But, where it is an Outlawry after Judgment, it is always uſed, that the party, being taken upon a Capias Utlagatum, is in Execution for the party. And the courſe of the Court is, If one be outlawed after Judgment in debt, if he brings error, and doth not aſſign his errors, to award a Capias Utlagatum, which is execution for the party. But, if he be not outlawed, to award a Scire fac. quare Executionem habere non debet. And if, he being outlawed, brings error, and comes to aſſign errors, Committitur. And then to find bail, body for body, for the outlawry, and to ſatisfie the party for the execution: ſo no other execution ſhall ever be againſt him. And he ſaid, if he brings error where he is not outlawed, and the Judgment is affirmed, the courſe is here to award a Capias upon this Judgment, or a Fieri facias, or an Elegit, as the party will, and not to award a Scire fac. And for this cauſe all the Juſtices held here, that this is a good execution for the party. And Wingate, Clerk, ſaid, that he was acquainted with two Caſes, which were adjudged, that if a Sheriff takes one by a Capias Utlagatum after Judgment, and ſuffers him to eſcape; although he returns not the Writ, yet he was charged in debt upon the eſcape: and the one was 17 Eliz. Auſtreys Caſe, who was Sheriff of Bedford. And it was ſaid by the Court, that if a Capias be erroneouſly awarded, yet the Sheriff ſhall not avoid it for this cauſe. And ſo it was ſaid to be ruled in 30 Eliz. in Sir Clement Paſtons Caſe in the Common Bench. Vide 3 Ed. 6. Dyer, 67. & 14 Ed. 3, Eſcheat 6. Wherefore they reſolved, ut ſupra, for the Plaintiff. But the matter was referred to Compromiſe. And this Rule given, that if it were not finiſhed before the next Term, that Judgment ſhould be Tunc pro nunc. 5 Co. 88.

Ante 416.

Poſt. 910.

Ante 165.

Mallet *verſus* Mallet.

(29)

ERror of a Judgment in the Common Bench in Replevin. The Defendant avows for Rent, for that Hugh Mallet was Tenant in tail, and lett that Land for three Lives, rendring rent; and, that this Reverſion deſcended unto him, as heir in tail, wherefore he avows and avers, that at the time of the Demiſe, & diu antea, this Land was demiſed, &c. And, that this Rent reſerved is verus, & antiquus redditus, &c. The Plaintiff replies, Quod bene & verum eſt, that Hugh Mallet was Tenant in tail, and made the Leaſe prout, &c. and that by force thereof he was ſeiſed of the Reverſion in Tail. But he pleaded a Fine of thoſe Lands, by the name of the Manor of North-peverton. The Iſſue was Nient compriſe, and thereupon a Special Verdict found, that this was Land lately purchaſed, which with other Land was given in tail, and reſerved Sute to the Court of North-peverton; and that this was known by the the name of the Manor of North-peverton, and afterwards a Fine was levied thereof, by the name of a Manor: And, whether theſe Lands paſſed, or not, by the Fine? was the Queſtion. And it was adjudged in the Common Bench for the Avowant, that it was

Poſt. 874.

Ante 524.

Co. 6.64. b. not a Mannor, and that thoſe Lands were not compriſed within the Fine: for it was there held, that by a Fine levied of a Mannor nothing but a Mannor in truth ſhall paſs, and not a Mannor in reputation; and this not being a Mannor in truth, nothing paſſed thereby. And Error being brought thereof, the matter in Law was moved for Error: but the Court here clearly held, that this making of the Leaſes cannot gain it a name to be a Mannor, much leſs ſhall make it to be ſo: and therefore the Land cannot be compriſed within the Fine. Secondly, It was aſſigned for Error, for that it is alledged, that the Land in tail was lett for three Lives: and, if it were not according to the Statute, it is a diſcontinuance; ſo as the reverſion deſcended to the Heir at the Common Law, and not to the iſſue in tail: for the averment, that it was demiſed formerly, is not ſufficient: but it ought to have been averred, that it had been ſo demiſed for eleven years at the leaſt, next before the making of this Leaſe. The averring alſo, that this Rent was verus & antiquus redditus, is not ſufficient: for it may be the ancient Rent, which was twenty, or an hundred years ſince, but it ought to have been averred, that it was the ancient Rent which had been reſerved for the greater part of twenty years, next before the Leaſe. And of that Opinion were all the Juſtices, that theſe averments were inſufficient for theſe reaſons: for theſe averments might be true, and yet the circumſtances of the Statute be not obſerved: and that this had been good cauſe to have demurred upon the avowry: but on the other ſide it was moved, that the Barr to the avowry is a Confeſſion, that this Leaſe was made for three Lives, and that the Reverſion thereof was intailed, and deſcended in tail, and it ſhall help theſe imperfections: for it ſhall be then intended to be a Leaſe, according to the Statute, and that all Circumſtances were obſerved; otherwiſe, the Reverſion could not be in tail: and of that opinion was Gawdy, and relied upon Dyer 352. and therefore ſaid, that if partition be pleaded between Joynt-tenants, and it is not pleaded to be by Deed, or, if a Leaſe be pleaded by Baron and Feme, and acceptance of the rent by the Feme, and no Deed pleaded, which is not good, if the Plaintiff, in the Replication confeſs them, and pleads other matter in avoidance of them; this makes the Barr to be good: for, it ſhall be intended to be a lawful partition, and Leaſe. Popham agreed to thoſe Caſes; but he conceived otherwiſe in the principal Caſe: for the Leaſe here pleaded appears not to be warranted by the Statute, and then the confeſſion of the party ſhall not help it. As where he pleads a Feoffment to the uſe of himſelf, and his Heirs, by force whereof he was ſeiſed in tail: although the other will confeſs, that he is ſeiſed in tail, it is a void confeſſion; and the acknowledgment of the party ſhall never help a matter, which appears in Law to be contrary to his confeſſion. And of that Opinion was Fenner. Et adjournatur.

32 H. 8. c. 28.

Co. Litt. 44. b. R 42. 103.

Ant. 438.

Sir Andrew

Sir Andrew Nowel *verſus* Smith.

TRreſpaſs. The Defendant pleaded an Exchange betwixt him, and the Plaintiff, of certain Lands, which were adjoyning; and, that upon the Exchange concordatum fuit between the Plaintiff and Defendant, that the Plaintiff ſhould make the Fences betwixt them, and ſhould always maintain it; and, that the Fence of Long Goſscloſe, which was aſſigned unto the Defendant, againſt the Plaintiffs Cloſe, called Thirty-leas-Cloſe, was in decay, whereby his Beaſts eſcaped through the ſaid Plaintiffs Cloſe; &c. And thereupon the Plaintiff demurred. Gawdy, Clinch, and Fenner held, that the Plea was ill for the matter thereof: for his agreement cannot be a Barr in this action: but the Defendant is put to his action upon the Caſe, upon the promiſe, if he performs is not. And, if the Agreement had been by Deed, it had not been a Barr: but he only ſhould have been put to his action of Covenant. But Popham e contra; for by this agreement, he is bound in Right to make the Fence, as much as by Preſcription: for every Preſcription to make a Fence is intended to begin by Grant, or Conſent of thoſe, who ought to do it. And if, upon Partition between Co-partners, it be agreed betwixt them that the one ſhall make the Fence, it is good. But all the other three Juſtices againſt him for this cauſe; as alſo for a default in pleading: for that the Fenſure is ſuppoſed to be in decay in a Cloſe of the Defendants, which was not the agreement, that he ſhould make up. And this was held to be ill by the whole Court; and it was adjudged for the Plaintiff. (30)

Sir Rich. Lewſon *verſus* Riddleſton.

ERror of a Judgment in the Common Bench in Treſpaſs of Battery. The firſt Error aſſigned was; for that the Writ of Inquiry of Damages, directed to the Sheriff of London, was Inquirat, when it ſhould have been Inquirant, there being two Sheriffs. But it was ordered to be amended. Secondly, Becauſe the Entry was, Quod Inquirant per Sacrament. probor. & Legalium hominum de civitate prædicta. And there is not any City mentioned before. Sed non allocatur: for it was certified by the Prothonotaries of the Common Bench, that their courſe was to make their Entries, that it ſhould be inquired, &c. de Comitatu tuo, ſometimes de balliva tua, ſometimes de civitate. And Kemp ſaid, the Common Courſe is to award, to be inquired de balliva tua. The Court thereupon held it to be well enough, and the Judgment was affirmed. (31) Ante. 677.

Spencer *verſus* Shory.

ACtion for theſe words, Thou are a Perjured Knave; For thou ſwareſt this day at the *Leet*, That I bake Bread in my Houſe, where I did not. After Verdict for the Plaintiff, upon Not guilty pleaded, it was moved, that an action lay not for theſe words: for perjury cannot be in a Leet, whereof the Law takes any notice: but all the Court held, that the words were actionable: for, although it be not a Perjury puniſhable by the Statute of 5 Eliz. (32) Poſt. 720.

5 Eliz. yet it is a diſcredit, for which an action lies. Wherefore it was adjudged for the Plaintiff.

Leverſage *verſus* Smith.

(33) ACtion for theſe words, John Leverſage (*innuendo* the Plaintiff) would have robbed the Houſe of *J. S.* if *J. D.* would have conſented unto it: He perſwaded *J. D.* unto it, and told him he would bring him, where he ſhould have Money enough: After Verdict for the Plaintiff, it was moved, that theſe words were not actionable: for there is not any act done by the Plaintiff, whereby he can be called in Queſtion: nor is it ſuch a Slander, whereby he can have any prejudice. But all the Court held them to be words of great diſcredit, and ſlander, and concern him much in his Credit, and that the action well lay. And it was adjudged for the Plaintiff.

Poſt. 747.

Smith *verſus* Shephard.

(34) TReſpaſs for the taking of one hundred Sheep apud *Melton-Mowbray*, in Regia via ibidem. The Defendant to all, beſides one, pleaded Not guilty, and Quoad that he pleaded, that the Lord Berkeley was ſeiſed of the Manor of Melton-Mowbray in Melton-M. aforeſaid; and, that he, and all thoſe, &c. had uſed from time, whereof, &c. to have Toll, viz. two pence for every twenty Sheep of any Eſtrangers brought, or driven per, & trans the ſaid Will by any Eſtranger. And, if he were denied by any ſuch Stranger driving them per & trans the ſaid Will, then they had uſed time whereof, &c. to diſtrain for the ſaid Toll one Sheep ſo driven; and alledgeth in facto, that two hundred and twenty Sheep of the Plaintiffs, being a Stranger, and not inhabiting there, were driven by one Ludfield, per, & trans the ſaid Will, by the Plaintiffs command. And becauſe he refuſed to pay this Toll, he that one Sheep cepit & abduxit, and detained untill the Toll was paid. Et hoc, &c. And it was hereupon demurred in Law, and it was moved, First, That this plea was not good for the Matter: for this Toll is claimed as a Toll-Through, which cannot be claimed by any Preſcription; for it is againſt Law, and in oppreſſion to the people, and to that purpoſe was cited 22 Aſſiſ. 58. Secondly, Although he might preſcribe to have this Toll, yet he cannot preſcribe to diſtrain for it in via Regia: for that is againſt the Statute of Marlbridge, cap. 15. and in proof thereof vouched, 17 Ed. 3. 1. 43 Ed. 3. 40. 11 R. 2. Avowry 87. 17 Ed. 3. 43. That, where a Lord diſtrained in an High-way, the Tenant might have Treſpaſs, or might make Reſcous. And againſt a Statute one cannot preſcribe; as 9 H. 6. 56. & Dyer 233, & 273. But this exception was not allowed: for it was holden, that this Statute did not intend but for diſtreſſes for Rents or Services; and not for thoſe things, whereof no Diſtreſs can be, but in the High-way. Thirdly, It was moved, that this plea was not good for the Manner of the pleading: Firſt, Becauſe the Cuſtom is alledged to be, That if the Sheep of any Foreigner be driven through, a Toll ſhall be paid. And, if it be denied by any Foreigner, who drives them through, that a Diſtreſs may be taken. And it is not averred, that he, who drove them through, was a Foreigner,

2 Rol. 522. Moor 574.

2 Inſt. 131.

Foreigner, but only that the Maſter was a Foreigner. Sed non allocatur: for the diving of the Servant is the diving of the Maſter, and if he be a Foreigner, that ſufficeth. Secondly, Becauſe he juſtifies, Quod cepit, & abduxit, and doth not ſay by Diſtreſs, nomine Diſtrictionis: for otherwiſe he cannot juſtifie. And this was held by the whole Court, to be a material Exception: For otherwiſe it meets not with the Preſcription: For the Matter, it was moved for the Defendant, that Toll-Through may be well taken by Preſcription; for it is one of the Tolls which the Law allows. And as a Toll-travers is where Toll is claimed for going over the proper Soyl of another man; ſo Through-Toll is for paſſage through a Mill, and both are by Preſcription. And, notwithſtanding the Opinion of Thorpe, in 22 Aſſ. It hath been always allowed to be good, as appears 50 Ed. 3. & 20 Ed. 3. Toll 2, & 3. 5 H. 7. 10. & Bro. Quo warranto 3. It is held, That Turn-Toll is allowable, and 21 H. 7. 16 Toll was taken by thoſe of Gloceſter, for paſſage by the River, and this was by Preſcription, and allowed; and, that a Diſtreſs might be taken for it: wherefore, &c. Popham, One may have Toll-travers by Preſcription, and ſo he may have Toll-through; but it ought to be for ſome reaſonable cauſe, which muſt be ſhewn, viz. That he is to maintain a Cawſey, or to repair a Way, or a Bridge, or ſuch like. And the Queen at this day may grant ſuch Toll, being but a petite thing, in reſpect it ſhall be a greater benefit, or eaſe to the people, for the repairing of a dangerous way, or the like. So a Preſciption to have a Toll for Murage is good; becauſe it is to repair the Walls of a Mill, whereto the people may flie in time of War. But here for that there was not any cauſe alledged, ſo as it might appear to the Court to have a lawful Commencement, he conceived the Plea to be ill. Gawdy and Clinch held the Plea to be well enough, notwithſtanding: For, being by Preſcription, the cauſe thereof cannot by Intendment be known why it began: But in reſpect it might have a lawful beginning, it is well enough without ſhewing it. But Gawdy doubted, upon the reaſon of the Book of 22 Aſſ. 58. whether ſuch a Toll may be claimed by Preſcription. Fenner delivered not any Opinion herein. But, for the Default in the pleading, it was adjudged for the Plaintiff.

2 Rol. 522.

2 Rol. 522.

Ante 559.

2 Rol. 522.

Body *verſus* Hargrave.

Paſch 41 Eliz. rot. 425.

DEbt againſt the Defendant, Adminiſtratrix of Thomas Hargrave her Husband, upon a Leaſe to the ſaid Thomas Hargrave by Indenture for years, and how the Defendant is Adminiſtratrix unto him. And for Rent Arrear after his death the Action was brought in the Debet & detinet; upon Not guilty pleaded, it was found for the Plaintiff: And now moved in Arreſt of Judgment, that the Declaration was not good: For that he declared upon an Indenture, and doth not ſay, Hic in curia prolata. For, although he might have declared, without mentioning any Deed, yet when he mentions it, and grounds his Action thereon, he ought to ſhew it. But Gawdy and Fenner (being only

(35)

1 Rol. 603. Moor 566.

only in Court) held, that it was good: for the Leaſe is the the Effect of the Declaration, and not the Indenture, and a variance between them is not material; as 44 Ed. 3. 402. is. Wherefore Non allocatur. At another day it was moved again, that this Co 5. 31. b. Declaration ought to have been in the Detinet, and not in the Debet and Detinet, becauſe ſhe hath the Term as Adminiſtratrix, and is not charged by her own Contract, but by an act of the Teſtator; and to that purpoſe was cited, 19 H. 8. 8. 10 H. 7. 5. And a Preſident was ſhewn in the Common Bench, between Barker and Kelſay, where the action was brought in the Detinet only. And Godfrey affirmed, that in one Fenns Caſe in this Court, it was ruled, that the action ought to be brought in the Detinet. Gawdy, The action is well brought in the Debet: for this Rent, though arrear after the death of the Inteſtate, began, firſt, in the Adminiſtratrix, and therefore the action well lies againſt her in the Debet; for the reaſon why the action againſt an Executor 1 Rol. 603. ſhall be in the Detinet is, for that the debt grew due by the Co. 5. 36. a. Teſtator: and therefore it cannot be ſaid, that the Executor Debet. But in an action againſt the Heir, it ſhall be in the Debet and Detinet, becauſe he is bound by ſpecial words in the Obligation. And here the debt, which incurred in the time of the Adminiſtratrix, is her debt. And in Dyer 6 Ed. 6. 81. the action is brought in the Debet and Detinet, for Rent arrear in the time of the Executor, and admitted to be good. Popham accord, for ſhe being 2 Cr. 238. charged with the Rent in her time, it accrues by reaſon of the profits of the Land, which ſhe her ſelf received, and therefore ſhe is charged, having Quid pro quo; for if an Executor hath a Leaſe for years of Land of the value of 20 l. per annum, Co. 5. 31. b. rendring 10 l. per annum Rent, it is aſſets in his hands only for 10 l. over and above the Rent. Fenner agreed to this Opinion, and to that purpoſe cited 10 H. 6. 11. That the Husband ſhall be charged after the death of the Feme, for Rent arrear in his own time, becauſe he received the profits of the Land: ſo as the Rent grew due in reſpect of the Occupation and taking of the profits. And therefore ſhe is chargeable, and not meerly as Adminiſtratrix. Clinch agreed with them. Wherefore it was then adjudged for the Plaintiff. Note, That afterwards this Judgment was reverſed in the Exchequer-Chamber for the point in Law: for all the Juſtices of the Common Bench, and Barons of the Exchequer held, That ſhe ought to be charged in 1 Cr. 226. the Detinet; becauſe ſhe is charged only by the Contract of the 2 Cr. 546. Inteſtate. 5 Co. 31.

Leuknor *verſus* Huntley.

Ante, Mich, 39, & 40 Placito 34.

(36) Ante 593. ERror of a Judgment in the Common Bench, The Caſe was, that Lewknor brought debt againſt the ſaid Huntley, who pleaded how one Joh. Jaques affirmed a pleint of debt in London againſt the ſaid Lewknor; and by the Cuſtom there attached that debt now demanded in the hands of the ſaid Huntley, and pleaded the Recovery and Judgment there. Whereto the Plaintiff replied, that, before the attachment, Jaques brought debt in the Queens

Queens Bench againſt the ſaid Leuknor, for the ſame Debt: Whereupon he made an Attachment, whilſt that Sute was depending. Et hoc, &c. And upon this Plea Huntley there demurred in Law, and it was adjudged there for Huntley: whereupon Leuknor brought Error. The firſt Error aſſigned was, becauſe the Cuſtome is alledged, That the Plaintiff did ſwear his Debt by Attorney: And Popham held, That it was againſt Law, that one ſhould ſwear his debt by Attorney. Secondly, becauſe the debt is attached in Huntleys hand, before the day of payment upon the condition, and ſo before it was due. And Popham ſaid, That it could not be a good Cuſtom: But it was moved, that herein the Cuſtom ſhould be reaſonable, becauſe it is not to be paid before the day of payment. But in regard that the leſſer ſum in the condition is a preſent duty, it might be attached preſently; and by the Judgment in the Attachment, the Debtor is diſcharged againſt his Creditor, and become chargeable to the Plaintiff in London; ſo, that after the day of payment he ſhall have his Execution againſt the Debtor, and not before, Vide 22 Ed. 4. 30. But Popham ſaid, That the Judgment herein was unreaſonable: for the Creditor hath not above one year diſrationare Debitum. And if the debt might be attached a full year, or more, before the day of payment, he may never hear of it before the year be paſt, and ſo be defrauded of his debt. But Daniel Serjeant, ſaid, That the time diſrationare Debitum, is a year after the Execution ſued, and not forthwith after the Judgment. And Execution cannot be had until after the day of payment. Popham demanded, Whether this Queſtion were moved in the Common Bench. Daniel anſwered, That it was not. But the ſole Queſtion there was, In regard Jaques had begun a Sute in the Queens Bench againſt L. for his debt, whether, whilſt this Sute was depending, he might make an Attachment in London, by the Cuſtom there of another debt due to Leuknor? And it was adjudged, That notwithſtanding this, the debt in the hands of Huntley might be attached: For there was not any Sute commenced for it in any Court. Popham and Clinch, and Fenner, abſente Gawdy, agreed, that this attachment was good notwithſtanding, but they all held, that the attachment of this debt before the day of payment cannot be; although it were moved, that the Cuſtom in this point is good, and reaſonable, and ſo it hath been always allowed: And this is to be intended betwixt Citizens and Merchants: And if it be not there allowable, there ſhall never be an Attachment. For if it cannot be before the day of payment, the Defendant before that time may be out of the City, or elſewhere, againſt whom there cannot be any attachment. Wherefore, &c. And afterward, at another time, another Error was moved, that the Cuſtom is alledged, that the Plaintiff ſhould ſwear his debt, and John Jaques was Plaintiff, and the Record is, That Tho. Jaques ſware the debt, who was a Stranger, and not the Plaintiff. And that was held to be Incurable, and could not be amended. Wherefore the Judgment was reverſed.

Ante 157.

Ante 184.

Skelhorn *verſus* Harriſon.

(37) 1 Rol. 102. ACtion upon the Caſe, and declares, how he brought a Plaint of debt in London againſt one Ridly; and that the Cuſtom of London is, that if any be arreſted there upon ſuch a Plaint, that he ſhould remain in priſon until he found two Mainpernors for his appearance de die in diem quouſq; placitum determinetur. And that if he were condemned, he ſhould render his body, or pay the Condemnation: Or, otherwiſe the Plaintiff might take his Execution againſt the Mainpernors, and alledgeth, that the Defendant and one Peter Houghton became Bayl for this action in London; and, that the Defendant with an intent to defraud and hinder the Plaintiff in the ſaid Sute, procured an Habeas Corpus out of the Exchequer to remove the Cauſe thither: and that he procured and hired one Price and one Pit whom he knew to be inſufficient, for 20 s. given unto them, to be bayl there: and, that he informed the Court, that they were ſufficient: whereupon Price, and Pit were received as bayl in the Exchequer: and thereby the Defendant, and Huntley were diſcharged of the bayl in London; and that afterwards the Plaintiff procured a Procedendo, and had Judgment in London; and, that the ſaid Ridley, upon a Capias ad ſatisfaciendum, was returned Non eſt Inventus, and that Ridley went beyond Seas. So that by this Fraud he could not have Execution againſt him, nor againſt his Mainpernors; whereupon he brought this action. The Defendant pleaded Not guilty, and was found Not guilty, quoad the procurement of the Habeas Corpus. Et quoad Reſiduum, that he was Guilty. And it was moved by Tanfield, and 2 Cr. 602. Doderidg, That upon this Verdict the action is not maintainable: for the hiring of the bayl is not material, nor is any prejudice to the Plaintiff. But the allowing thereof in Court, which is the act of the Court. Wherefore an action lies not; as 21 Ed. 4. 22. is. And here, the Information of the Defendant is no cauſe to accept them. But the Court uſeth to examine them upon Oath, which was the Cauſe of allowance: and therefore the Defendant is not puniſhable. And what is done judicially cannot be puniſhed; as 9 H. 6. 60. 12 H. 6. 3. 2 R. 3. 10. And Tanfield moved, that of ſome things put in the Declaration nothing is found at all, and therefore all is ill. But becauſe it appeared upon the Dorſe of the Writ, that the Jury had found him Guilty of all, beſides the ſuing of the Hab. Corpus; it was held, that the Record was miſ-certified, and, that it ſhould be amended, and it was ſo ordered accordingly. Altham for the Plaintiff, moved that the action well lay; for although the bayl was allowed by the Court, that proceeded upon miſ-information of the party, who is puniſhable for that falſe Suggeſtion, becauſe he had deceived the Court. For the Statute of Weſtm. 1. cap. 29 provides, that deceipts to Courts ſhall be puniſhed, by whomſoever they be, by Impriſonment, yet that doth not hinder, but that an action upon the Caſe may well lie; as 11 H. 6. 8. and Ant. 629. 21 Ed. 4. 22. So where a Protection is caſt Quia profecturus, and he doth not go beyond Sea, action of deceit lies, as 20 H. 6. 10. and 44 Ed. 3. 27. Wherefore, &c. Gawdy and Popham held, that Ant. 629. this action well lay for this falſity. But, becauſe the Verdict 2 Cr. 602. was not fully certified they ordered that it ſhould be amend-

ed

ed: and then they would diſpute the matter. Et adjournatur. And afterwards it was fully certified and adjudged for the Plaintiff.

Riggs *verſus* Bullingham.

(38)

ASſumpſit. Whereas he was ſeiſed in Fee of the Advowſon of Beckingham in the County of Lincoln, In conſideration, that he, at the Defendants requeſt, by his Deed, dediſſet & conceſſiſſet to the Defendant the firſt, and next Avoidance of the ſaid Church, the Defendant 22 Auguſt 37 Eliz. aſſumed to pay to the Plaintiff 100 l. &c. Upon Non Aſſumpſit pleaded, it was found for the Plaintiff, and damages aſſeſſed to an 100 l. and, after Verdict, it was moved in arreſt of Judgment, that this Conſideration is paſt, and therefore not ſufficient to ground an Aſſumpſit: for there is not any time of the Grant alledged: and it might have been divers years before the Aſſumpſit made. And being a thing executed, and paſt, no Aſſumpſit afterwards can be good, and in proof thereof Dyer 272. Hunt and Bates Caſe was cited: but all the Court reſolved to the contrary: for, the Grant being made at his requeſt, it is a ſufficient Conſideration, although it were divers years before, eſpecially being to the Defendant himſelf, the Conſideration ſhall be taken to continue. But, if the Grant had been to a Stranger, and not at the Defendants requeſt, it had peradventure been otherwiſe. Secondly, The Declaration is not good, becauſe there is not any time, or place alledged, where the Grant was made. Sed non allocatur. For it is but an Inducement to the Action, and therefore needs not to be ſo preciſely alledged. Wherefore it was adjudged for the Plaintiff. Vide 29 Eliz. Marſh and Rainsfords Caſe.

1 Rol. 13.

Poſt. 885.

Poſt. 880.

1 Cr. 409.

2 Cr. 18.

Ante 59.

Ant. 59.

Marrow *verſus* Turpin.

Paſch. 41 Eliz. rot. 2485.

(39)

DEbt againſt the Defendant, as Adminiſtrator of George Turpin for Rent arrear upon a Leaſe to the Inteſtate, incurred after his death. The Defendant pleads, that before the Rent incurred, for which the action is brought, he aſſigned over the Eſtate, and Term to a Stranger, who entred. And the Plaintiff, knowing of that Grant, had afterwards accepted of the Rent from the Stranger, he being then poſſeſſed, &c. And demanded Judgment, &c. And it was thereupon demurred. The Sole Queſtion was, Whether an Adminiſtrator ſhall be charged for the Rent Arrear after the Grant? and it was clearly reſolved, that he ſhould not. For, if he ſells the Term for the payment of debts, it is not reaſon, that afterwards he ſhould be charged with the Rent alſo: eſpecially in this Caſe, where the Leſſor had knowledge of the Grant, and accepted the Rent from the Grantee. And the Caſe adjudged in the Queens Bench Anno 29 Eliz. between Walker and Harris, was denied by Anderſon, Walmſley, and Glanvile to be Law. For the Leſſee himſelf is not chargeable with the Rent after the granting over his Eſtate. And they held it to be unreaſonable, that the Grantor ſhould be always charged for the Grants inſufficiency. Wherefore it was adjudged for the Defendant. 3 Co. 24.

Moor 600.

Co. 3. 22. b.

Manhood *verſus* Crick. Trin. 41 Eliz. rot. 1209.

(40) DEbt upon an Obligation of 8 l. being a ſingle Obligation. The Defendant pleaded in Barr, that, after the Obligation made, He entred into another Obligation of 14 l. unto the Plaintiff for the payment of 7 l. at ſuch a place, and day, as was yet to come, which the Plaintiff accepted in diſcharge of the ſaid Bond of 8 l. And it was thereupon demurred. And without Argument adjudged for the Plaintiff, that the Plea was ill, and not any Barr.

Poſt. 727.
1 Cr. 86.
Co. 6. 44. b.
Ant. 455.

Lamb, Executor of Drables, *verſus* Brownwent.

Trin. 41 Eliz. rot. 3252.

(41) DEbt upon an Obligation, conditioned, That if the Defendant in Mich. Term then next enſuing, in the Prerogative Court of the Arch-biſhop of Canterbury at London, ſhould give to the ſaid Drables his Executor, or Adminiſtrator, ſuch a Releaſe, and Diſcharge from, and againſt him and his Children, for Receipt of an 100 Marks, as by the Judge of the Court ſhould be thought meet; that then, &c. The Defendant pleaded, that the ſame Term one Such was Judge there, and that the ſaid Judge did not deviſe, or appoint any Releaſe or Diſcharge, &c. And it was thereupon demurred, and adjudged to be no Plea: for that it is not alledged, that he cauſed a Releaſe to be drawn, and tendered to the Judge to be allowed: for it is on his part in diſcharge of his Obligation, to draw ſuch a Leaſe as the Judge ſhould allow. Wherefore it was adjudged for the Plaintiff 5 Co. 23. b. Mich. 43 & 44. C. B. Pl. 42.

Co. 5. 23. b.
Co. Litt. 209. a
Co. 6. 31. a.
Poſt. 864.

Brownlow *verſus* Lambert.

Trin. 41 Eliz. rot. 1630.

(42) ACtion ſur Trover, and Converſion of a Cow apud Salop. The Defendant pleaded, That the Queen was ſeiſed in Fee of ſuch a Mannor, and demiſed it, and all Eſtrays therein, &c. to J. S. for Life, and conveys it by mean Conveyances to himſelf; and, that this Cow came thither as an Eſtray. Whereupon he ſeiſed her, and cauſed her to be proclaimed in two Market-Towns next adjoyning. And the Plaintiff claimed property, and the Defendant demanding of him to pay for her Feeding, that he refuſed, and thereupon he denied to deliver the Cow, and traverſes, that he is Guilty of the Converſion apud Salop. And it was thereupon demurred. First, becauſe he alledged not the Letters Patents. Secondly, becauſe he alledged not, that the Proclamations were made in the Pariſh Church. Thirdly, becauſe he traverſeth the Vill. And it was adjudged for the Plaintiff.

Ante 99.

Eriſh

Eriſh *verſus* Rives.

EJection Firmæ, for Copy hold Land; Parcel of the Mannor of Thiſtleworth. Not Guilty being pleaded upon Evidence, theſe Queſtions were debated: First, Whether there may be a tenancy in tayl of Copy-hold Land, without a Special Cuſtome. And all the Juſtices agreed, that there could not, unleſs it had been ſo uſed there from time, whereof, &c. And to that purpoſe Walmſley cited, that in Haſting and Greys Caſe, in the Dutchy-Chamber, it was debated before all the Juſtices, and reſolved by them, that there ſhould not be an Eſtate-tail of Copy-hold Land, unleſs there be an eſpecial Cuſtom within the Mannor to warrant it: Secondly, They all agreed, admitting it were an Eſtate-tail, that a Surrender thereof is a diſcontinuance to put the iſſue to his action: for he ought to take it ſubject to all the inconveniencies which an Eſtate-tail at the Common Law is ſubject unto. For that is the Cuſtomary Conveyance, and there is not any other means to diſcontinue it, and it is as ſtrong as a Livery by Tenant in tail. And the Alienee is in by the Tenant in tail, although he come in by Grant of the Lord. And there is no Queſtion, but that a Formedon may be brought, ſuppoſing the Entry by the Tenant in tail, and not by the Lord; and ſo a Feme ſhall have a Cui in vita: where one is alſo in by the Lord by his Admittance, his Eſtate ſhall not be avoided without a Recovery in the Lords Court; for the Lord ought to have Conuſance of his Tenant. And therefore an Eſtate given by Surrender in the Lords Court cannot be avoided without a Recovery there, and not by Entry. Thirdly, admitting, that the Surrender of a Feme Covert, being ſole examined, ſhould bind her by the Cuſtome, whether ſuch a Surrender upon her examination made before two Tenants of the Mannor, ſuch Surrenders before them being uſed to be made, be good. And all the Court agreed, that by Eſpecial Cuſtom to warrant it, it may be good, otherwiſe not. Becauſe it is a Judicial Act more proper to be done in Court. And ſo it was adjudged, as Walmſley ſaid, upon a Demurrer, in a Lancaſhire Caſe, where ſuch a Cuſtome was pleaded, and adjudged good. Fourthly, whether a Surrender made to the Steward, to the uſe of the Steward himſelf be good? And all the Juſtices held, that it was. For the Entry is Quod ſurſum reddidit in manus Domini. And the Steward is but the Lords Servant, and the Surrender is to the Lord, and not unto him. And therefore Glanvile ſaid, If one makes a Recogniſance to J. S. to my uſe, it may be well acknowledged before my ſelf. So if an Obligation be made to J. S. to my uſe, it may be delivered unto me to the uſe of J. S. And although it was here offered to prove by Witneſſes, that by the Cuſtom of the Mannor, a Surrender could not be made to the Steward himſelf to his own uſe. The Court rejected it; for it is againſt Law. Fifthly, where a Copy-holder makes a Leaſe for years according to the Cuſtom of the Mannor, whether ſuch a Leſſee upon Ouſter may maintain an Ejectione Firmæ at the Common Law? Glanvile ſaid, that it had been ſo reſolved in this Court, that an Ejectione Firmæ lies, making mention in the Declaration of the Cuſtom to demiſe, &c. But Walmſley ſeemed to doubt thereof.

(43)

God. 368.
Ant. 391.
Poſt. 907.
Co. Litt. 60. b.

Poſt. 907.
Co. Litt. 60. b.
Pl. C. 233. a.

Poſt. 907.
Co. Litt. 60. b

Ante 469. 2.

Milles

Mills *verſus* Wood. Trin. 41 Eliz. rot. 3002.

(44) AUdita Querela. The Caſe was, That Edward Mills and Thomas were obliged in a Statute of 700 l. to W. The Defeaſance was, That if Edw. M. and his Wife, before the firſt of May next following, ſhould make ſuch good aſſurance of an Houſe to W. with ſuch Covenants, which he ſhould accept, and ſignifie under his hand to be reaſonable; or ſhould pay unto him upon the firſt of Auguſt enſuing 350 l. That then the Statute ſhould be void: and he ſurmiſeth, that he, and his Feme were always ready to have made the Aſſurance; and, that W. the Conuſee had not ſignified what aſſurance he would accept, nor required any: and yet had ſued Execution, &c. And it was thereupon demurred; and, after argument adjudged for the Defendant. For he is not bound to deviſe any Aſſurance, or Eſtate, but it is at his Election to accept an Eſtate tendered, or the Mony. And there cannot be an acceptance, but where there is a tender on the other party; and therefore the Conuſor ought to have deviſed the Eſtate, and to have procured the Conuſee to accept thereof: otherwiſe he ought to pay the Mony. Wherefore it was adjudged accordingly.

Poſt. 804. Ant 539. Moor 545.

Pledgard *verſus* Lake.

(45) TEnant for Life, remainder in tail, he in remainder letts for years, to begin after the death of the Tenant for Life; the Tenant for Life afterwards ſuffers a recovery with Voucher of him in remainder in tail, and dies; whether this Leaſe were deſtroyed, and gone? was the Queſtion. And all the Juſtices held, that it was not: but that the Leſſee might well falſifie this recovery by the Common Law, and alſo by the Statutes. But if the Tenant in Tail, who had the Inheritance, had ſuffered a Common Recovery, that ſhould have deſtroyed all the remainders, and reverſions thereupon depending, and all the Eſtates derived out of ſuch a remainder. But Tenant for Life hath not any ſuch power: and the recovery is had againſt Tenane for Life with the Voucher of the Tenant in Tail. And it would be very inconvenient, if, by ſuch recoveries of reverſions, Leaſes for years ſhould be deſtroyed. Wherefore, &c.

Ant 284. 2 Co. 62. b.

Price *verſus* Simpſon. Hill. 41 Eliz. rot. 1097.

(46) TReſpaſs. Upon a Special Verdict, The Caſe was, Jackſon Leſſee for years by ſeveral Leaſes of divers Lands, ſome of them in the Dioceſs of York, ſome in another Peculiar within the ſame Dioceſs, deviſed all thoſe Leaſes to his Son, and made his Daughter within age his Executrix; the Mother takes adminiſtration, durante minore ætate of the executrix in (F. the peculiar, where the Teſtator died) ad commodum, & proficuum Executricis, the Adminiſtratrix ganted this Term, durante min. ætate of the Executrix, to the Plaintiff; Whether this Grant was good, or not? was the principal

Co. 5. 29. 30. 2 And. 132.

Principal Queſtion. And the Court reſolved, that it was not good. For ſuch an Adminiſtration hath but a ſpecial property ad proficuum Executoris, but not a general property, as another Executor or Adminiſtrator hath. And therefore his ſale of Goods, unleſs they be bona peritura, or it be for neceſſity for the payment of debts, which he is chargeable to pay, it ſhall not bind. But he may ſue, and be ſued, and yet his authority is but a limited authority; and therefore like as if Letters ad colligendum bona defuncti were granted to one: there he may ſell bona peritura, as fruit, or the like. Secondly, it was moved, whether the aſſent of an Adminiſtrator, durante minore ætate, to the Deviſe of a term, or the aſſent of the Executor himſelf during his Minority to ſuch a Deviſe be good. Anderſon ſaid, that an Executor at the age of eighteen years may aſſent. But whether the aſſent by ſuch an adminiſtration be good or not, they doubted. Thirdly, it was moved, whether adminiſtration ſhould in this Caſe be granted at two places, viz. The one within the peculiar, the other by the Arch-biſhop of York, Ordinary of the Dioceſs: or, whether he ſhould have the Prerogative in both, as he had where bona notabilia were in divers Dioceſſes, And it was reſolved, that there ſhould be two Letters of adminiſtration granted: for the Arch-biſhop ſhall not have any Prerogative here: Becauſe this peculiar was firſt derived out of his Juriſdiction. Wherefore, &c. 5 Co. 29. 1 Cr. 490. Ant. 602.

The Queen againſt Page, and the Biſhop of *London*.

(47) Quare Impedit. And made her Title by Lapſe, by the Statute 21 H. 8. For that the Incumbent had taken a ſecond Benefice. The Defendant pleads, that he is, and was Chaplain to the Lord Morley, and pleads a Diſpenſation from the Arch-biſhop of Canterbury, according to the Statute, and the Confirmation, &c. And upon Oyer demanded thereof, and entred in hæc verba, it was demurred in Law, becauſe that in the Letters of Diſpenſation the words were, mentioning the two Benefices to be of ſmall value, Unimus, annexímus, & incorporamus the ſecond Benefice to the firſt, without the words of Diſpenſamus for the taking thereof. And whether theſe words ſhall enure to a Diſpenſation? was the Queſtion. And, after Argument by the Serjeants, it was argued by Doctors, Steward, Day, and Farrington, that it cannot enure to be a Diſpenſation. For the purpoſe of him, who made it, was to make an Union; and, that this ſhould enure as an Union: and it cannot be an Union. For that ought to be always by the Ordinary of the Dioceſs, and the Patron. And when it fails in the Principal intent, it is void in all. And the purpoſe to make it an Union appears: for that the words are incorporamus, &c. which is not uſed in a Diſpenſation: and, that he ſhould hold it ſine licentia Dioceſana. And that, after the Incumbents death, it ſhould revert to his proper nature: which are not the words of a Diſpenſation. And although he hath power to make a Diſpenſation; that will not enure thereto: for voluntate, & poteſtate, repugnantibus, all is void; and an Union, and Diſpenſation are of divers natures: for an Union makes of two Churches Hob. 159. Ant. 500.

Churches one: but a Diſpenſation leaves them as before. And ſuch Diſpenſation of Pluralities are called in the Civil Law Gratiæ & ſtricti Juris, Quia odioſæ ſunt. And therefore, where a Diſpenſation was to retain a ſecond Benefice de donatione, diſpoſitione, ſeu præſentatione cujuſcunque; and a Colledge had an Advowſon, which became void, and they uſed by Election to make a Nomination thereto, and they choſe him, who had this Diſpenſation: who being preſented was inſtituted and inducted; this Diſpenſation was not ſufficient to retain, becauſe he had not the word Election therein. But on the other ſide, it was argued by Doctors, Crompton and Fountain, that this is a good Diſpenſation; for there is difference between a perpetual Union, and a Temporary pro vita Incumbentis. For, in the Firſt, It cannot be without the Patron, and Ordinary, becauſe thereby a loſs accrues unto them. But in the Second, it may be without them by the Metropolitan: For there they be not at any loſs: for the one had his Preſentation, the other his Admiſſion before that Union: And after his death, it ſhall revert to the firſt Eſtate. And ſuch an Union in their Law is called Pall ata Diſpenſatio. And, that ſuch an Union may be, appears by the expreſs words of the Statute of 21 H. 8. That one ſhall not retain a ſecond Benefice, Any Licence, Union, or Diſpenſation to the contrary, &c. And there it is not intended a perpetual Union. For by ſuch an Union two Churches are but one; and in ſuch a Caſe he may take a Second Benefice without a Diſpenſation, &c. And afterwards, All the Juſtices, beſides Anderſon, Reſolved, That it was a ſufficient Diſpenſation. For it is not of neceſſity, to have the word Diſpenſation. But the matter is, Whether it be in effect a Diſpenſation: And if the Circumſtances prove it, it is ſufficient. And although Union is properly where there is an annexion of one Benefice to another perpetually; yet it is alſo when there is an Unity of them in one perſon, which is temporary, & that is here, although not ſo properly as the other. Wherefore it was adjudged for the Defendant.

Marſhal *verſus* Dean.

(48) Ant. 709. ACtion upon the Caſe for theſe words, That the Plaintiff was a Forſworn Knave. The Plaintiff demanding of him, where he was forſworn; He anſwered, In Ilſton Court (innuendo a Court Leet there holden) and it was moved, That an action lies not for theſe words: For the calling one Forſworn Knave, unleſs he ſaith in Court, is not actionable, which was agreed per Curiam. Then the Court here cannot know that Ilſton Court was any Court of Record, and the innuendo cannot help that which was imperfect. And therefore Williams ſaid, It was adjudged That for ſaying, Thou wert Forſworn in White-Church-Court, an Action lay not. But Note, This Caſe was ſhewn to the Court in writing 28 Eliz. between Hern and Hix, and the Opinion of the Court there was, That the Action lay, and the Defendant

Defendant gave to the Plaintiff 3l. and he releaſed his Sute, and no Judgment was given. And all the Court here held, That the Action will lay; for this Action is given by reaſon of the diſcredit of ſuch words amongſt the neighbors, and when he ſaid, That he was forſworn in ſuch a Court, it cannot be intended, but that it was a Court of Juſtice. And a Preſident was ſhewn Paſch. 37 Eliz. rot. 370. in the Queens Bench, between Wildam and Copman, that for theſe words Thou art a falſe forſworn man, and wert forſworn in ſuch a Court adjudged, that the Action lay. Ant. 492.

Thomſon *verſus* Butler.

(49)

IN a Writ of Annuity, the Caſe was. That one granted an Annuity, to be paid at the houſe of the Grantor, upon Requeſt, at the four uſual Feaſts; the Grantee brings a Writ of Annuity for Rent due at ſuch a Feaſt. The Defendant pleaded Non Requiſitus at the Feaſt; and it was thereupon demurred. The ſole queſtion was, whether the Annuity be loſt for that time, becauſe there was not any requeſt made? And all the Court held, that it was not: For, by the granting of the Annuity, it is a duty, and the limitation to be paid at four Terms of the year, is a Limitation of the payment, and if it were not a duty, the Requeſt is not material; as in the caſe between Lancaſter and Capps, where a ſingle Bond was made ſolvendum upon Requeſt, the Defendant pleaded Non requiſitus, and adjudged to be no plea; for it was a duty without requeſt. So here. Ant. 548.

Crawleys Caſe.

(50)

REplevin. The Caſe was, A Rent was granted to two during the Life of J.S. to his uſe: Whether, if the two die, living J.S. the Rent were gone, or no? Was the queſtion; for it was agreed, that there cannot be an Occupancy of a Rent Dy. 186. And it was held that it was not gone, eſpecially in this Caſe, the Rent being granted to the uſe of J.S. veſted in him by the Statute 27 H. 8. ſo as he had an abſolute Eſtate, during his life: And the lives of the Grantees is not material, the Eſtate being transferred from them, otherwiſe it had been of a Grant to an uſe before the Statute. 2 And. 130. Owen 126. Poſt. 901. Dy. 67. a.

Coward *verſus* Marſhal.

(51)

TReſpaſs. Upon a ſpecial Verdict, the Caſe was, One by his Will deviſed his Lands to J. his youngeſt Son, and his Heirs, and afterwards remarried, and by another Will in writing deviſed the Land to his Feme for life, paying annually to J. his youngeſt Son, and to his Heirs, ſuch a Rent: Whether this ſecond Will was a revocation of the former? Was the queſtion. And Anderſon and Glanvile held it to be no revocation, but that both may ſtand, although they be by ſeveral writings, unleſs it be manifeſtly contrary to the firſt Will, or that there be an expreſs revocation therein; but they ought to ſtand together, if they may, as made by, and in one, and the ſame writing: And here his intention appears, That he had not any purpoſe to alter it as to his Son, but only to provide for his Feme, whom he afterwards 1 Cr. 24. 2 Cr. 49. 691.

eſpouſed; and by the appointing of the Rent to his Son, It appears, that his intent was, that the Reverſion ſhould be to his Son; the matter was afterwards ended by Arbitrament.

Greenfield *verſus* Walter Dennis, and his Wife.

(52) 2 And. 131. WAſt by Rich. Greenfield againſt Walter Dennis, and his Wife, late wife of G. Greenfield. The Writ was general, That the ſaid wife held the Lands ex dimiſſione G. G. and the Count was ſpecial, that G. G. infeoffed divers, to the intent a Recovery ſhould be ſuffered againſt them, wherein they ſhould vouch G. G. who ſhould vouch the common vouchee, which ſhould be to the uſe of G. G. for life, and after to the uſe of Alice his Feme, (the now Defendant) and after to the uſe of G. G. in tail, remainder to his right Heirs, which was executed accordingly. After Nul waſt pleaded, and found for the Plaintiff, this Matter was alledged in arreſt of Judgment, that this Writ did not warrant the Count: For the Writ ought to be ſpecially, and to have recited all the matter, or it ought to have ſuppoſed the demiſe of the Feoffees; for, as this caſe is, the Land, and the Uſe are in the Feoffees, until the Recovery, which is as a limitation of the Uſe by them, and not by the vouchee; it being alſo his own Feoffment, (wherein his Feme cannot take by an immediate Conveyance from her Baron) it ought always to ſuppoſe the Gift and Demiſe to be from the Feoffees. Vid. Dy. 93. And although it was moved, That this, being after Verdict, is holpen by the Statute of 18 Eliz. which helps, where there is not any Writ; and this is as if there were not any Writ. Yet all the Court held, That this was not aided, but where there is not any Writ at all, but where there is a good Writ, as here, but it warrants not the Declaration; Or if it be an ill Writ, they be not holpen by the Statute.

2 Cr. 185.

Buſhwood *verſus* Pond. Mich. 40, & 41 Eliz. rot. 1043.

(53) TReſpaſs of his Beaſts taking 22 Nov. 39 Eliz. The Defendant juſtifies for damage Feſant in his Free-hold. The Plaintiff replies, That long time before the Treſpaſs, the Parſon of D. was ſeiſed of ſuch Land in Fee, and of Common for one hundred ſheep thereto appertaining, and 4 Nov. 39 Eliz. Lett that Land, and Common to the Plaintiff for years, and therefore put in his Beaſts, &c. The Defendant traverſeth the Preſcription to the Common alledged, and found for the Plaintiff. And it was moved in arreſt of Judgment, that this replication was not good; for the Plaintiff entitles himſelf by a Leaſe 4 Nov. 39 Eliz. which was long time after the Treſpaſs ſuppoſed in the Declaration: (Queen Elizabeth beginneth her Reign upon the 17 Nov.) and ſo a departure from it, and no title: And the whole Court held it to be ill, for which the Defendant might have demurred: but in regard he had paſſed that advantage, and had taken Iſſue, which is found for the Plaintiff it is now helped by the Statute of Jeofails; for it is but a miſ-pleading, and therefore adjudged for the Plaintiff. *Note*, the Jury found here, That the Parſon had Common for one hundred ſheep, and ſix Cows; and yet it was held *per Curiam*, That the Plaintiff had not failed in his Preſcription alledged.

But

But it was ſaid by *Walmſley*, If the Jury had found, that he had Common for one hundred and twenty Sheep, and ſo more of the ſame kind, then he had alledged, he had failed.

Watſon *verſus* Smith.

(54) ACtion for Trover, and converſion of an Obligation. Walmſley, Glanvil, and Kingſmil held, that it lies not; for if he finds the Obligation, and cancels it, Treſpaſs, Vi, & Armis, lies; For he deſtroys the thing found; and if he receive the money, and deliver the Obligation to the Obligor, Accompt lies, and not this Action. Vid. Regiſt. 106. 1 Cr. 262.

Cardinal *verſus* Hesket. Paſch. 41. Eliz. rot. 251.

(55) DEbt upon an Obligation Conditioned, If Robert Hesket (who was bound Apprentice to the Plaintiff) ſhould embeſel any of his Maſters Goods, and if within twenty days after notice thereof given to the Defendant, and one Thomas Hesket, and proof thereof made unto them, the Defendant ſhould pay to the Plaintiff ſuch ſums of Money, as the Goods embeſelled were worth, that then, &c. The Defendant proteſtando, That there were not any of the Plaintiffs Goods embeſelled, pro placito dicit, there was not any notice given to the Defendant, and Thomas Hesket. The Plaintiff replies, That ſuch a day Robert Hesket became bound his Apprentice, and that he cepit extra poſſeſſionem of the Plaintiff ſuch Goods: And ſold them to perſons unknown; and that he gave notice thereof unto them, ſhewing that Paper unto them under the Apprentices own hand, wherein he confeſſeth it, and thereupon the Defendant demurred. Firſt, Becauſe he doth not ſhew, in what place he became an Apprentice, which is material, and it was held to be a good exception per totam Curiam. Secondly, Becauſe he ſhews not, that he was ſuch a perſon, who might be an Apprentice by the Statute of 5 Eliz. and this was alſo held to be a material Exception, and although the Statute is not pleaded, yet he ſhall take advantage thereof; becauſe it is a general Statute. Thirdly, That this notice and proof were not ſufficient; for it ought to have been given to them both together, and being given to one at one time, and to the other at another time, it is not ſufficient; and this proof alſo is not ſufficient in it ſelf, being only upon the Apprentices own confeſſion, who is not Fide dignus. Wherefore, for theſe, and other exceptions, it was adjudged for the Defendant. Vid. 7. R. 2. Barr. 241. 33. Aſſ. 14. 10 H. 4. how proof ſhall be made. 2 Cr. 381.

The Queen *verſus* Drury.

(66) UPon demurrer, The Caſe was. The Counteſs of Kent had retained two Chaplains, and afterwards took a third Chaplain, and the third obtained a Licence, and diſpenſation to retain a ſecond Benefice, and took it accordingly; and, whether he were ſuch a Chaplain, as might obtain a plurality by the Statute of 21 H. 8. cap. 13. becauſe the other two Chaplains were not advanced? was the queſtion. And Walmſley held, That he was, becauſe the Co. 4. 89. b. Moor. 561. Poſt. 839.

Statute reſtrains not the number of Chaplains, which a Countes may have, but the number who are to have Qualifications; So he, who firſt obtains the Qualification to a Benefice, ſhall retain it; and the Arch-Biſhop, when he makes a diſpenſation, examines not, who is firſt retained, but who is moſt worthy, and he will diſpenſe but with two: So they, who firſt obtain a Benefice by diſpenſation, ſhall retain it, and the retaining of his Lord, or Countes, conferrs nothing upon him, but enables him only to the obtaining of a diſpenſation; and ſo is 14 Eliz. Dy. 312. And Hearn Serjeant, ſaid, That it was ſo reſolved in the Queens Bench, in the Caſe of the Lady Bridges, in an Information. Wherefore, &c. And to that opinion Anderſon and Kingſmil firſt enclined. But Glanvile e contra: Becauſe the Statute of 21 H. 8. ſhews what perſons ſhall be enabled to take Benefices by diſpenſation, viz. the Kings children, or thoſe of his Counſel, or the children of Noble men, &c. which is by reaſon of the Dignity of their perſons; ſo of Doctors or Batchelors of Divinity, &c. which is by reaſon of their Dignities; and then follows, That Counteſſes, &c. ſhall have two Chaplains, who may obtain diſpenſations, &c. which is as much as to ſay, that they are perſons dignified to have this privilege, being Chaplains to ſuch Noble perſons. Whereby it is neceſſarily to be intended, That none, but they two, are to have that Dignity, and when ſhe hath advanced two, who have that privilege to take a ſecond Benefice when they will by diſpenſation, that privilege cannot be taken from them, as long as they remain her Chaplains; and the retaining of a third is more then the Statute allows, and therefore he ſhall not have the benefit of that Statute. And a Preſident of one Skifflings Paſch. 34. Eliz. rot. 728. which was adjudged in the point: And another 34 Eliz. rot. 805. where iſſue was taken by rule of Court, that he was the firſt Chaplain retained; and Paſch. 35 Eliz. rot. 1508. between Archer and Conqueſt, where the ſame iſſue was taken. Whereupon Anderſon and Kingſmil changed their opinion, and agreed with Glanvile, that this third Chaplain was not to have benefit of this Statute, to obtain a diſpenſation, Wherefore it was adjudged for the Queen. 4 Co. 89. b. Vide poſtea. Trin. 43. Pl. 15.

Sherington *verſus* Ward. Trin. 41. Eliz. rot. 454.

(57) ACtion Upon the Caſe, in Nature of a Conſpiracy, for procuring him to be endicted for perjury, pro eo quod, in an Action of debt in London betwixt one Johns, and the Defendant, and recites the Action, and iſſue (but the Action in London was an Action upon the Caſe) the ſaid Plaintiff was produced, as a witneſs, and ſwear falſly, and ſhews his Oath, but he ſhewed not, that it was coram Judice, nor that it was coram Jurator', &c. The Defendant pleaded, That he was an illiterate Man, and delivered all the pleading in London to the Clerk to draw the Endictment, who, drew it, and therein miſtook the Plaint in London, alledging it to be an action of debt, whereas it was an Action upon the Caſe, and delivered it to the Defendant, and read it unto him, as truly drawn, and he, believing the ſame, delivered it to the Grand Jury, and took his Oath, Quod Billa fuit vera, And, becauſe it was falſe by reaſon of this Miſ-priſion,

The

The Plaintiff was found Not-guilty; and thereupon the Plaintiff demurred: And the barr was held to be ill. But, notwithstanding, it was adjudged against the Plaintiff, That the Declaration was not good; because he doth not shew, that the Oath was taken before some Judge. And, then the Endictment was vitious, and an Action lay not: For this Action is not maintainable, but where a conspiracy lies upon a conspiracy between two. Secondly, they held, That this Action lies not against any, who prefers an Endictment, and swears it to be true; for it is for the Queen, and the Commonweal: And, if it should be allowed, no Endictment would be preferred: So one shall not be punished for preferring any Bill into the Starr-chamber, by an Action upon the Case, although the matter be false, and contains great slander; as it was ruled in the Earl of Lincolns Case. The Endictment also was not sufficient by reason of this Bis-pision of the Action; So, as the Defendant might have pleaded Nul tiel Record, and he needed not to have said Not-guilty, so he never was legitimo modo acquietatus, any perjury supposed. Wherefore it was Adjudged of any for the Defendant. Ante 248.

Parker *versus* Combleford. Trin. 41 Eliz. rot. 1849.

TRespas for the taking of an House. The Defendant justifies, as Lord of the Mannor of D. by reason of a custom there, That the Lords of the said Mannor had used from time, whereof, &c. to have after the death of every one dying within his Mannor the best Beast of such a person so dying, in name of an Heriot, which is found within the Mannor, and to seise, and retain them, as his proper Goods; and alledgeth, That the Testator of the Plaintiff dyed, within his Mannor, possessed of that House, and therefore he seised them, and it was hereupon demurred, and, after argument at the Bar, resolved by Anderson, Glanvil, and Kingsmil for the Plaintiff, That this custom was not good to bind a stranger; for consuetudo est ex certa causa rationabili, &c. And, if it be not grounded upon such a reasonable cause, it is void: And here to have the best beast of any one, who dies within his Mannor, cannot have a lawful or reasonable beginning betwixt the Lord and a Stranger: But betwixt the Lord and his Tenants, it is good; for it may be intended to begin with their Tenures, by their agreement, and by reason thereof, they had their Lands upon reasonable Fines: But between Lord and Stranger it cannot be, or be intended, upon what cause, or when, it should begin: But it is meerly by Extortion, and therefore like to the Case 11 H. 7. 14. and 21 H. 7. 40. where the Lord prescribes to have 3 l. of every stranger, who breaks his Pound, and ruled to be void, but to bind his Tenants only: And so is the reason of the Case in Doctor and Student, where a Lord prescribes to have any Purse lost within his Mannor, It is void; but the Case in 5 H. 7. prescription to have the Beasts of any Estranger, which are lying upon his Land all the day, to fold upon his Land in the night, is good; because the Estranger hath a Quid pro quo. So the Case of 2 R. 3. 15. Custom for Swans, That the owner of the Land shall have a Ground-bird, is good, for the ease, which they have to make their nests there. So here, (58) Mo. 16. Dy. 200. a. 1 Ro. 561. Co. 7. 17 a.

It

It is not grounded upon any reaſonable cauſe, nor hath the ſtranger any recompenſe. Wherefore, &c. But Walmſley e contra; for, it being a cuſtome, and uſed from time, whereof, &c. It ought to be maintained, if by any wit, or cauſe to be imagined, it may be intended to have any lawful beginning; for it is a cuſtome, which hath been allowed, and uſed in many places; and it may be upon this reaſon, for that he had his Reſidency within the Mannor, at the time of his death, and had the help, and comfort of the Lords Tenants in his ſickneſs, and after his death had their attendance to his Funeral; and therefore for the time, which the Lord loſt in the ſervice of his Tenants, as alſo for that he had a place to reſt his bones; therefore it is reaſonable, and like to the Caſe of Swans, and a Mortuary allowed by Cuſtom: For they be not due of Common Right, and he hath a Quid pro quo by his Reſidency within the Mannor at the time of his death. Wherefore, &c. Glanvil, If this be a general cuſtom, which goes to the whole County, it might be ſo intended, and peradventure would be maintainable; but not as a private cuſtom within the Mannor. Wherefore, notwithſtanding, by the aſſent of Walmſley, it was adjudged for the Plaintiff. And in Trin. 42 Eliz. rot. 446. in the Queens Bench Error was brought of this Judgment, and the Error aſſigned in point of Law. And the Judgment was affirmed.

Emery *verſus* Emery.

(59) DEbt upon an Obligation conditioned for the performance of an award to be made, &c. The Defendant pleaded, Quod nullum fecit Arbitrium. The Plaintiff ſheweth an award, that the Defendant ſhould releaſe all Actions, &c. ut talis adviſaret, &c. And adjudged to be a void Arbitrament to refer it to the act of another, and that the Defendant is not bound to perform it.

Ant. 432

Brook *verſus* Wheeler.

Hill. 41. Eliz. rot. 2041. Trin. 41. Eliz. rot. 1764.

(60) DEbt upon an Obligation. The Defendant pleaded a Releaſe of all Actions, and Demands in Barr. The Plaintiff demands Oyer thereof, and an exception of one Bond was therein contained. And the Plaintiff replies, That that was the Bond in Sute, and that the ſum excepted, and the perſon mentioned to be excepted, were all one. And thereupon the Defendant demurred: For Actions and Sutes being releaſed, although he excepts the Obligations, yet it ſerves to no purpoſe. But the Court reſolved. That, the Obligation it ſelf being excepted, all Sutes, and Actions concerning it, are alſo excepted; and, that the Defendant having pleaded a releaſe generally, without any exception, and upon Oyer demanded, a Deed is ſhewn without an Exception. The Plaintiff might have pleaded Non eſt factum generally. Vid. 39. H. 6. 15.

Norwood *verſus* Grype. Trin. 41 Eliz. rot. 1209.

DEbt upon a ſingle Obligation for the payment of 8 l. The Defendant pleaded, That after this Obligation, he, and one J.S. made an Obligation unto the Plaintiff of 14 l. for the payment of 7 l. at a day to come, in diſcharge of the ſaid Bond of 8 l. which the Plaintiff accepted in diſcharge thereof. Whereupon the Plaintiff demurred: And, without argument, it was adjudged for the Plaintiff; for one Deed cannot determine a Duty upon another Deed. (61) Ant. 706.

Whyte *verſus* Geriſh. Paſch. 41 Eliz. rot. 1557.

REplevin. Upon demurrer, the Caſe was, That Whyte, and Geriſh levied a Fine of the place, where, &c. ſur Conuſance de Droit come ceo, &c. and the Conuſee rendred Tenementa prædicta to W. in tail, reſerving a Rent, and by the ſame Fine conceſſit, Quod Tenementa prædicta integre remanebunt to G. in Fee, if W. died without Iſſue of his body; and, whether the reverſion, and Rent hereby paſſed, being all by one Fine without naming them? Was the queſtion. And it was reſolved, that the Reverſion and Rent paſſed, being by Fine, and that it ſhould enure, as ſeveral Fines. But if one makes a Gift in tail rendring Rent, remainder over in Fee: This, being by Deed, is a good reſervation of the Rent to the Donor, and the remainder onely ſhall go to the ſtranger; but it was ſaid to be otherwiſe in a Fine, and that ſo is the courſe of Fines. Wherefore it was adjudged for the Avowant. Vide poſtea, Mich. 42, & 43. C.B. Pl. 36. (62) Co. 1. 76. b. Owen 126. Moor. 575. 2 And. 131.

Lane *verſus* Golman. Trin. 41. Eliz. rot. 1417.

DEbt upon an Obligation conditioned; That if C. payed to L. at ſuch a place, within a moneth after demand, 20 l. when, and at ſuch a time as the ſaid L. had a Son, that ſhall, or can ſpeak the Lords Prayer in Engliſh, that then, &c. The Defendant pleaded, that the ſaid L. the Plaintiff had not, after the Obligation made, any Son, qui loquutus fuit, aut loqui potuit, the Lords Prayer, &c. The Plaintiff replies, that ſuch a day he had one H. filium ſuum, qui potuit loqui the Lords Prayer in Engliſh, &c. & alledgeth a demand of the 20 l. &c. The Defendant demurs, becauſe this allegation, quod habuit filium, qui loqui potuit, &c. is not ſufficient for an iſſue to be taken, and tryed upon it; For that it is but a power, and not reduced to an Act, and it is not triable: In regard the power is ſecret, and cannot be known, if it never were reduced to Act. But the whole Court held it to be a good replication, and a good iſſue, and well triable; for the condition being in the diſjunctive, he may alledge the one, or the other at his election; and his power of ſpeaking &c. ſhall be proved upon the evidence by thoſe who had heard him recite it: but the moſt apt, and proper iſſue had been; that he had a Son, qui loquutus fuit and ſo have tryed a thing actually done. And a Caſe was cited, That in a Quare impedit, a Biſhop pleaded a refuſal; for that the Preſentee to a Church in Wales (where all the Pariſhioners were Welſh-men) could not ſpeak any Welſh, and Iſſue (63) Poſt. 792. Owen 127.

ſue was taken, that the Preſentee could ſpeak Welſh; and upon demurrer, it was adjudged to be a good iſſue. And another Preſident was cited in an information by Broughton againſt Price; upon maintenance in pleading of a Cauſe, he pleaded, that he was peritus legibus, &c. and ſo juſtifies; and adjudged upon demurrer to be no plea; for the Jury cannot try whether he be peritus legibus, or not: But he ought to have pleaded, that he had been a Student in ſuch an Inns of Court, and called to be an Utter Barriſter,

Hampton *verſus* Bartholomew. Trin. 41 Eliz. rot. 1514.

(4) DEbt upon an Obligation againſt the Defendant, as Adminiſtrator of John Bartholomew. The Defendant pleaded a Recovery in debt againſt him in London, Et quod nihil, &c. præter ad ſatisfaciendum, that Judgment, &c. The Plaintiff replies, confeſſing the Recovery, but ſhews, that, before this Action brought, the Plaintiff there confeſſed ſatisfaction upon Record; and thereupon the Defendant demurred: Becauſe he doth not allege, that the Judgment is entred upon that confeſſion; nor that Judgment was entred, quod defendens eat ſine die; nor that he had Goods over and beſides thoſe, which ſatisfied the recovery, and it was adjudged for the Plaintiff: For, ſatisfaction being acknowledged, he cannot plead, that he had nothing, &c. becauſe the Judgment is diſcharged by this ſatisfaction acknowledged, without any other Judgment.

Kenſey *verſus* Richardſon. Trin. 41 Eliz. rot. 140.

(5) EJectione firmæ. The Defendant pleaded, that the Leſſor of the Plaintiff was Copy-holder in Fee of that Land, parcel of the Manor of H. which is in the Queens poſſeſſion, by reaſon of the Wardſhip of one B. and that the Leſſor ſurrendred to the uſe of the Defendant in Fee, who was admitted accordingly; and that afterwards the Leſſor entred upon him, and expelled him, and Let it to the Plaintiff, prout in the Declaration, and the Defendant re-entred, as lawfully he might, &c. And hereupon the Plaintiff demurred; and it was adjudged for the Plaintiff, that the plea was ill: For there is not any confeſſion, and avoydance of the Leaſe alledged by the Plaintiff; for the Action is brought, as of a Leaſe of Land at the Common-Law: and this plea proves, that the Land is Copy-hold-Land, and a Copy-holder cannot make a Leaſe for years, unleſs by cuſtom, Ante 469. or by Licence of his Lord, which ought ſpecially to be ſhewn; and the Defendant here hath pleaded a Leaſe by an intruder upon the Queens poſſeſſion, which is not good: Nor any confeſſion of the Leaſe alledged. Wherefore it was adjudged for the Plaintiff.

Shaw *verſus* Sherwood.

Paſch. 41 Eliz. rot. 2504.

DEbt as Adminiſtrator to Rob. Shaw for 20 l. and counts, that the Defendant by his Bill Obligatory (here ſhewn in Court) acknowledged Se recepiſſe 20 l. of one Thom. Pretty, to the uſe of the Inteſtate Solvendum at ſuch a time, Quod videretur opportunum pro proficuo *R.S.* the Inteſtate. And ſhews, That at ſuch time videbatur to *R.S.* the Inteſtate opportunum to have the ſaid Money, and he demanded it, *&c.* The Defendant demands Oyer of the Bill which was in this manner, viz. This Bill witneſſeth, That I *Rob. Sherwood* have received of *Th. P.* 40 l. to the uſe of *Rob. Shaw*, and *Jane Shaw* his Siſter, Children of *John Shaw* deceaſed, equally to be divided between them; which ſum I confeſs to have received to the uſes abo veſaid, and the ſame to repay again at ſuch a time as ſhall be thought beſt for the profit of the ſaid *R.S.* & *J.S.* which ſum of 40 l. is the full Bequeſt of their Father, in witneſs, *&c.* The Defendant demanded Judgment of the Writ, and Count, as not being warranted by this Bill; and it was thereupon demurred. First, Whether this ſhould be ſaid to be a Bill Obligatory; becauſe the words be quaſi in nature of an acquittance, teſtifying a receipt of Money, But the Court held it to be a good Bill, and ſhall be intended to be delivered to the uſe of the Plaintiff; for ſo the Plaintiff hath ſuppoſed by his Declaration; and the Defendant hath admitted it; otherwiſe he ought to have pleaded Non eſt factum, *&c.* As alſo becauſe debt well lies for it, and not accompt upon the lending. Secondly, whether this repayment ought to be made of this 40 l. to R.S. and J.S. for whoſe uſe it was received, or to T. P. who delivered it. And it was held, that it ſhould be to R. S. and J. S. For although the word repay is properly to him, who delivered it, yet by the words, To have received to the uſe, and to be repayed when ſhall be thought beſt for their profit, *&c.* Shews the intent to be; that it ſhall be paid unto themſelves, when they require it. Thirdly, If ſo, then whether this were a joynt, or ſeveral debt of 20 l. to both of them For, if it were joynt, it ſhould ſurvive, and the Adminiſtrator of R.S. could not have it. And if they were alive they ought to joyn in the Action; and it cannot be a Bill for the 20 l. only but it was reſolved, that it ſhould be ſeveral Bills to them in one Deed, and they ſhould be divided debts, by reaſon of the words equally to be divided, *&c.* and it was afterwards adjudged for the Plaintiff, that he ſhould recover his debt and damages. Note, this Judgment, how that the Plea is to the Writ, and Count. (66) Moor. 667. Yelv. 23. Owen 127. 1 Rol. 597. Co. Lit. 198. a. Ant. 14. An. 690.

Hawkins *verſus* Mildmay.

Mich. 41, & 42. Eliz. rot. 1506.

ACtion Upon the Caſe againſt the Defendant; for that upon a Capias directed unto him againſt J. S. He, being Sheriff of Eſſex, directed his Warrant to ſuch a Bailiff of a liberty, to Arreſt the ſaid J.S. who arreſted him accordingly. And, that the Defendant well knowing thereof, had notwithſtanding upon the day of (67)

return, returned a Non eſt inventus. And upon this Count the Defendant demurred. And it was reſolved by the whole Court, that the Writ well lay for this matter. And Anderſon ſaid, If the Sheriff in this Caſe had returned, that he had ſent unto the Bayliff of the Liberty, &c. who had given him anſwer, that he had arreſted the body, it had been good, and the Sheriff ſhould have been diſcharged, and Proceſs ſhould have iſſued againſt the Bayliff of the Liberty to bring in the body. But here in the principal caſe the Writ abated by the death of the Plaintiff before Judgment.

Ireland *verſus* Goodale.

(68) ERror of a Judgment, given in the Queens Bench Hill. 42 Eliz. in an Action for words againſt Goodale. The Plaintiff there declared, whereas there was a Sute between Ireland, and one J. S. in the Queens Bench, which was tryed by Niſi prius, and the Plaintiff was produced, and ſworn as a witneſs before Sir John Popham, &c. That the Defendant ſpake theſe words of the Plaintiff to Eſtrangers, &c. I will prove him (innuendo the Plaintiff) forſworn (innuendo before Sir John Popham Chief Juſtice) And it ſhall coſt me 20 l. but I will make his ears afraid. After Verdict, it was adjudged for the Plaintiff, and now aſſigned for Error; that the words are not actionable. But all the Juſtices and Barons held, that the action was well brought, becauſe the words are very ſcandalous. For to ſay, that he will prove him forſworn, ſtrongly
Ant. 222. imports that he affirmed, that he was forſworn. For otherwiſe he cannot prove it: And in ſaying, That he was forſworn before ſuch a Judge, *Tant amount*, as if he had affirmed, that he was perjured. A ſecond Error aſſigned was; becauſe the Defendant pleads juſtification, and the Plaintiff replies de Injuria ſua propria, &c. And the Jury found, that the Defendant ſpake the words modo, & forma, Prout the Plaintiff had declared, which is not a good Verdict upon this iſſue; for the Juſtification is part of the iſſue; and a greater part of the Judges, and Barons conceived it to be an Error; but, becauſe it was informed, that the Record was not well certified, they would adviſe thereof.

Cockeyn and J. S. *verſus* Dame Hawkins.

(69) ERror. For that in debt in the Queens Bench by Dame Hawkins, againſt one Anton, The Plaintiffs in the Writ of Error were Mainpernors, where the ſaid D. Hawkins recovered againſt Anton, and upon two Scir. facias's againſt the Mainpernors, had Judgment to recover againſt them: They brought Error, and aſſigned for Error; that there was not any cap. ad ſatisfaciendum awarded againſt the
1 Cr. 464. principal, before theſe Scir. fac. And it was moved by Snig, That
Poſt. 733. this Writ of Error lay not by the Statute 27 Eliz. For it gives not Error upon a Judgment in a Scir. fac. For the Statute gives a Writ of Error to the parties in the Action, and not to the Mainpernors. But it was held by all the Judges, and Barons (beſides Periam and Glanvile) that a Writ of Error well lies for the Mainpernors. For this Sute againſt them is a Sute within the intent of the Statute of 27 Eliz. and is in nature of an Action of debt.

Debt. For, as Littleton is, a releaſe of all actions is a bar. Where- Ant. 581.
fore being certified upon a Writ of Diminuitur that a capias ad ſa- Sect. 505.
tisfaciendum had been before awarded, the Judgment was affirmed.

Prices Caſe.

(70) ERror of a Judgment in the Queens Bench. The Error aſ-
ſigned was; Becauſe one of the parties were dead before the
Judgment; and it was moved, Whether they had authority to
examine ſuch Errors. And it was held by all the Judges, and Ba-
rons, that they had: And if it were denied, it ſhould be tried 1 Cr. 514.
by a Jury in the Exchequer-Chamber. And it was moved, That
the party being in execution might be Bailed. But it was held,
that they had not any authority to do it. For they have authority
only ad examinandum Errores.

Harpool *verſus* Miller. Hill. 38 Eliz. rot. 363.

(71) ERror brought, and aſſigned; for that an Action upon the Caſe,
upon an Aſſumpſit brought againſt Harpool by Bill, being
an Attorney in the Queens Bench, and not in Cuſtodia Mare-
ſchalli; He being an Attorney at large, and not any of the Clerks
of that Court. For ſuch an Attorney is not upon Record there,
and cannot ſue, nor be ſued there; and divers Preſidents
were ſhewn, that where they were ſued or did ſue by priviledge,
it was as Clerks of the chief Preignotary, or other Clerks of
other Offices, and not otherwiſe; and for that, Vide 1 H. 7. 12.
And it was ſaid, That this was not any matter concerning the
jurisdiction of the Court: And divers of the Juſtices held it to
be Error; and the ſecond Error aſſigned was, becauſe the Plain-
tiff declares in an Aſſumpſit; whereas there was a ſute in the Star-
Chamber, between one Coldwel, and the ſaid Miller the Plaintiff.
Wherein Harpool was Solicitor for him; that Harpool the Defen-
dant, in conſideration of a quart of Wine, aſſumed to ſave him
harmleſs from all Coſts and Charges, which ſhould be awarded
againſt him in the ſaid ſute: And alledgeth in Facto, That the ſaid
cauſe was afterwards diſmiſſed, and that 8 l. coſts were then ad-
judged againſt Miller the Plaintiff and that thereupon a Subpæna
was awarded to pay theſe coſts, which he had payd, &c. It was
moved, That this is a void conſideration: For it is maintenance,
and therefore unlawful. And of this opinion was Walmſley, and
ſome other of the Juſtices: But Anderſon and Periam held, That
it is not any Maintenance, for he doth not aſſume to expend the coſts
in ſute, but to ſave him harmleſs from thoſe, which ſhall be a-
warded, after that they be awarded: which may be lawful. Where-
fore, &c. But the cauſe was afterwards compounded, in regard
the priviledge of the Queens Bench ſhould not be drawn in
queſtion.

William Forth *verſus* Thomas Harriſon.

Trin. 40 Eliz. rot. 359.

(72) DEbt upon an Obligation of 200 l. dated the thirteenth of September 39 Eliz. conditioned for the payment of 100l. at his houſe in Cheapſide on the twenty firſt of January next enſuing the date hereof; the Defendant pleaded, That he on the twenty firſt of January, then next following the date of the Condition of the Obligation aforeſaid, paid the ſaid 100 l. at the Plaintiffs houſe in Cheapſide ſecundum formam, & effectum Conditionis prædictæ, Et hoc, &c. And it was thereupon demurred in Law; becauſe there is not any Pariſh or Ward mentioned, where the ſaid Houſe ſhould be: So that, if iſſue be taken, there cannot be any Venue, Secondly, becauſe he alledgeth payment upon the twenty firſt of January Poſt datum Conditionis, &c. And the Condition hath not any date; and for theſe cauſes the plea was adjudged to be ill, and the Plaintiff recovered, and Error thereof brought: and the Error was aſſigned in matter of Law, and argued divers times before the Judges, and Barons; and all of them beſides one agreeed, that the ſecond exception was not material, For the Condition and Obligation are but one Deed, and the date of the one is the date of the other; and when he pleads, that he paid it ſecundum forman Conditionis; it ſhall be intended to be well enough poſt datum Obligationis, and the other is void. But for the firſt exception, Anderſon, Savil, and Glanvile held the plea to be good enough; for the payment alledged apud London, in his houſe at Cheapſide, is good; and it is not of neceſſity to alledge a Pariſh or a Ward: No more then where a thing is alledged to be at Briſtow or any other City; and all the Writ of Right, and Peæcipe's are of a meſſuage in London, without naming any Pariſh or Ward. Wherefore, &c. But Periam, Clerk, Walmſley, and Kingſmil, held the plea to be ill, for this cauſe. For it ought of neceſſity to be alledged in what Pariſh or Ward the houſe is, for the trial. As where payment is alledged at his houſe in any County; it ought to be alledged in what Vill it is, for the Venue to have a trial: And ſo is 7 H. 6. 36. That a Pariſh and Ward in London, are as a Vill or Hamlet in other Counties, and what hath been always uſed, and obſerved, is to be taken for Law. And of thoſe Pariſhes and Wards, the Court may well take Conuſance: and the Prothonotary of the Common Bench, and Kemp Secondary of the Queens Bench certified, that their courſe always hath been to plead any Act done in London, to be done at ſuch a Pariſh and Ward, for the Venue, &c. And, for this defect, they held the plea to be ill, and that the firſt Judgment ought to be affirmed, and the Judgment was affirmed. And afterwards (ut audivi) Savell agreed to that opinion, &c.

Ante 160.

Price *verſus* Price. Paſch. 41 Eliz. rot. 199.

ERror by the Bail; for that Judgment was given againſt him upon a Scir. fac. where no Capias was awarded againſt the Principal before the Scir. fac. awarded againſt him. And it was held, that the Writ of Error well lay in this Caſe for the Bail. And the Judgment in the Scir. fac. was reverſed; and the like Writ was allowed between Coles and Babington. (65) Ant. 730. Ant. 597.

Termino

Termino Hillarii, Anno Quadrageſimo ſecundo ELIZABETHÆ, in Banco Reginæ.

Pigot *verſus* Garniſh. Ante, Trin. 41. Pl. 10.

(1) Ante 678. THe Caſe was now moved again, and Popham held, That if the Deviſe had been, that he ſhould make Leaſes in the Infants name, it had been void; for it ſhould in Law then be the Leaſe of the Infant, who cannot make any: And none may authorize any to make Leaſes in the name of another, but of him, in whoſe name the Leaſes ought to be made; but it ſeemeth as the Deviſe is in this Caſe, that he is but a Guardian for Nurture, and is not to make any Leaſe at his pleaſure. For he might then make them for an hundred years: And here he cannot make but Leaſes at will. And of that opinion were Fenner and Clinch. Wherefore, Abſente Gawdy, it was adjudged for the Plaintiff, that the Leaſe was void.

Bereblock *verſus* Read.

(2) 1 Rol. 926. Poſt. 822. UPon Demurrer, the Caſe was; That Bereblock having recovered in debt in the Common Bench; a Writ of Error was brought, and whilſt it was depending, he acknowledged a Statute, and died. Adminiſtration was committed to the Defendant, who brought a new Writ of Error, and whilſt it was depending, Execution was ſued upon the Statute, and afterwards the Judgment affirmed in a Scir. fac. upon that Judgment, the Defendant pleaded all this matter: And at the day of this Scir fac. brought, he had not alia bona, then thoſe Goods Delivered to the Conuſance; and thereupon the Plaintiff demurred. Tanfield, for the Plaintiff, moved, That this was not any plea for the matter thereof; for the Judgment being firſt, and the Adminiſtrator having Conuſance thereof, as he had by bringing the Writ of Error, it ought to be firſt ſatisfied; and although the Goods were taken in execution upon the Statute, yet the Defendant (although he could not have pleaded it, becauſe he had not day to plead) might have remedy for it by Audita Querela, and ſo help himſelf. And the firſt Judgment is always to be firſt ſatisfied; as 2 H. 4. 21. 6. and 7 Eliz. Dy. 232. & Dy. 80. The plea alſo is not good for the Form. For he pleads an Extent of the Goods and,

and delivered to the Conuſee; and he doth not ſay per Sacramentum, &c. As it ought to be, as Dy. 100. is. He pleads alſo, that he had not aliqua alia bona præter, &c. which is repugnant to the plea after, that the Sheriff had taken all the goods, ſo he had not any Goods at all. Vide for this 4 Ed. 4. 13. 20. H. 7. 27. Wherefore, &c. But againſt that was moved, that this plea was good for the matter: For both are debts upon Record, although the one be Puiſne to the other: For as a Puiſne Obligation may be paid before an Eigne; ſo it is of Records. And in 20 Eliz. between Truxſton and Verney, it was ruled; that a Statute ſhall be paid before an Obligation, for it is a debt of Record; and here he could not have time to diſturb the Execution, and therefore it is not reaſon, but that he ſhould be helped by pleading it here; and it ſhall not be ſaid to be a Devaſtavit when there is not any fault in him. And although it was ſaid, that he might have an Audita Querela to help him: That is but a ſmall remedy, that he ſhould anſwer of his own proper Goods, and be put to ſeek his remedy againſt a ſtranger, who peradventure is not able to ſatisfie him, which would be miſchievous to an Executor. Wherefore, &c. Fenner held the plea to be good; for, although where two Judgments are againſt a Teſtator, the Executor ought firſt to ſatisfie the firſt Judgment, for it may be pleaded in barr againſt the other: Yet it is not ſo for a Statute, for the Execution thereof is againſt the Executor without anſwer: And therefore it is not any Devaſtavit in him, in regard he could not have prevented it; and an Audita Querela lies not, becauſe the Conuſee hath not done any act to diſcharge the Execution. Wherefore, &c. Popham held, That an Audita Querela lies, becauſe the Statute happened not to be put in execution againſt the Adminiſtrator. And if he will not ſue it, it is his own default, and he ſhall be charged; and it is clear, That the Execution upon the Judgment ought to be before the Execution upon the Statute. And there is not any default in the Plaintiff, and he hath not otherwiſe any remedy; and if he will not help himſelf when he may, it is reaſon he ſhould be prejudiced: As touching the exception of per Sacramentum proborum, Popham, Gawdy, and Fenner held the plea to be ill. But as to the matter. Gawdy ſpake not. Et adjournatur. Vid. poſtea, Paſc. 43. Pl. 20. Co. Enteries 157. Ant. 584. Ant. 584.

Pomfreit *verſus* Brownſal.

(3)

DEbt upon the Statute 32 H. 8. cap. 9. and demands 10 l. for himſelf, and the Queen, and alledgeth, how one Ann Reſton brought an Action upon the Caſe in this Court, and had Judgment to recover, and a Writ of Enquiry of damages awarded, and the Sheriff empanelled a Jury to enquire: And the Defendant at Crompton in the County of Cambridge imbraced the jurors of the ſame Inqueſt, &c. The Defendant pleaded Non debet. The Jury found a ſpecial Verdict; that the Defendant in the County of Bedf. ſolicited the jurors to appear, and ſhewed unto them a preſident, where in ſuch a Caſe great damages were given. Et ſi, &c. Godfrey for the Plaintiff moved, That this was direct Maintenance. For one, who is not learned in the Law, ought not to meddle to give, or ſhew an evidence to the jurors, as appears 32 H. 8. c. 9.

pears 22 H.6.5.28.H.6.6.And Imbracery is the labouring of a Jury to appear,as 13 H. 4.16.is, & Vide 37 H. 6. 21. what is Imbracery. Wherefore, &c. But it was moved, in regard it appears, That this Action was not brought in the proper County,where the Fact was done, (which is found to be in the County of Bedford) The Bill ought to abate by the Statute of 31 Eliz. cap. 5. And of that opinion was the whole Court. For the Statute is in the Negative, That Actions upon penal Statutes Popular ſhall not be brought out of their proper County. And when it appears to the Court, That the Plaintiff had brought his Action againſt the Form thereof, although the Defendant did not take any advantage thereof by Plea; the Bill ought to be abated. Wherefore it was adjudged, Quod querens nihil capiat per billam.

Ant.645.

Auſten *verſus* Pigot.

(4) PRohibition for Suing for Tithes. Wherein was ſuggeſted, that P. Proprietor of the Rectory of B. wherein thoſe Lands are, and all his predeceſſors have had twenty acres of Paſture, and another Cloſe containing twenty acres of wood, in ſatisfaction of Tithes; and his witneſſes being examined, according to the Statute of 2 Ed. 6. proved, that he had the twenty acres of Paſture, but not of Wood. And thereupon Coke, Attorney General, prayed Conſultation: For the ſuggeſtion is not ſufficient, that he had the Cloſe, &c. without ſhewing of what Eſtate, or how. The ſuggeſtion alſo is not proved as it is alledged: But all the Court held it to be well enough: For it is ſufficient that he had it, and the other cannot ſhew how. And ſo Doctor Cottons caſe was ruled accordingly. The proof alſo in a prohibition ought not to be ſo preciſe: But it appears, That the Court-Chriſtian ought not to hold plea thereof, it ſufficeth; and therefore, If there be a preſcription, that the Parſon holds an hundred acres of Land, in ſatisfaction of Tithes, and the proofs be, That he holdeth ſixty acres only in ſatisfaction of them, It is well enough. So here the ſubſtance is proved, that he held Land in ſatisfaction, &c. Wherefore it was agreed, That the Plaintiff ſhould declare, and, That the Defendant ſhould plead to iſſue.

Moor.911.
2 Cr.501.
2 Cr.501.
Yelv.55.
Ant.587.
Ante 307.
Yelv.55.
Moor.911.
Poſt.819.

Sibley *verſus* Crawley.

(5) PRohibition for Tithes. The Defendant ſhews, that, before that time, The Plaintiff had ſued in Chancery, to ſtay it by Engliſh Bill, and afterwards brought a Prohibition there, & a conſultation was there granted; and, that this Prohibition is for the ſame cauſe, viz. for matter of diſcharge: Wherefore he prayed a conſultation upon the Statute of 50 Ed. 3. cap. 4. which is, That conſultation being once duly granted, there ſhall not be another Prohibition. But the Court held, That this conſultation was not duely granted according to the intent of the Statute, becauſe the Prohibition was not duly grantable there, and ſo out of the Statute; for it was not duly granted upon an Engliſh Bill. And by Popham, The Statute is to be intended where the conſultation is granted upon the examination of the matter; and not for the inſufficiency of the proceedings. Quod fuit conceſſum. Whereupon it was awarded, That the Prohibition ſhould ſtand.

2 Inſt.603.
Ante 277.
1 Cr 208.
Yelv.102.

Rudd

Rudde *verſus* Tucker. Mich. 36, & 37 Eliz. rot. 136.

TRespaſs. Upon a ſpecial Verdict, The Caſe was, That Rudde the Plaintiff, and one Giles Tucker, were Joynt-tenants for life, Reverſion in Fee to Sir John Arundel, of the Land in queſtion. Sir John Arundel grants by Deed this Reverſion in Fee to Edward Tucker the Defendant, to whom G. T. Attorned, and afterwards ſurrendred his Eſtate unto him, and died. Rudde the Plaintiff occupied all: The Defendant entred, claiming the Moyety: The Plaintiff brought Treſpaſs. It was argued by Clerk for the Plaintiff, That this Attornment and Surrender, by one Joynt-tenant, was void againſt his ſurviving Companion; for he cannot prejudice his Companion by taking from him the acquital, and other priviledges: And in proof hereof relied upon 39 H. 6. 2. 19 H. 6. 21. 32 Ed. 3. Quid Juris clamat 5. Wherefore, &c. *Doderidge* e contra; who agreed, That, upon a Grant of a Reverſion by Fine, the one Joynt-tenant ſhall not be compelled to Attorn, nor ſhall his Attornment prejudice his companion. But, upon a grant of a Reverſion by Deed, the Attornment by one of them, is good for his part, and ſhall bind his Companion, but not for the other Moyety; and although it binds, yet it ſhall not prejudice him, as to the acquital, becauſe it is by matter in fait. Wherefore, &c. Gawdy held, That the Attornment was not good for any part; and yet he agreed to Littletons Caſe of a Signiory granted, becauſe it is entire; but a Reverſion is not entire. So 32 Ed. 3. is good Law; For one Executor may prejudice his Companion; But a Reverſion ought not to be made to paſs in another manner, then the Statute intends. Popham accord. For, if the Attornment ſhould be good, it would prejudice his companion, which a Joynt-tenant cannot do in things real: And a Reverſion cannot be divided. Wherefore, &c. Fenner doubted thereof. Wherefore adjournatur. Vide poſt. Hill. 43. Pl. 1. 2 Co. 66. b. (6) Poſt. 802.

Barnabee *verſus* Goodale.

ERror of a Judgment in Bury, upon an Information upon the Statute of 5 Eliz. cap. 4. for exerciſing a Trade wherein he was not Apprentice for ſeven years. The Error aſſigned was; becauſe an information upon a Penal Statute, ought to be brought within one of the principal Courts at Weſtminſter, and not elſewhere, unleſs it be otherwiſe expreſly provided by ſome Statute. And ſo it was adjudged here betwixt Gregory, and Blaſhford. And of that opinion were Gawdy, and Fenner, cæteris Juſticiariis abſentibus. Wherefore, for this cauſe, it was reverſed. Vide Dy. 236. (7) Co. 6. 19. b.

Penſon *verſus* Hodges. Trin. 41 Eliz. rot. 1024.

ERror of a Judgment in the Common Bench, in debt upon an Obligation. The Error aſſigned was; becauſe the Plaintiff declares, That the Defendant per ſcriptum ſuum obligatorium conceſſiſſet ſe teneri, &c. without ſaying, Sigillo ſuo ſigillat. as the courſe is in the Queens Bench. as Kemp ſaid, that all their (8)

preſidents there were; but it was moved on the Defendants
R. 402. part, and ſo certified by the Prothonatories of the Common Bench, that they were never uſed to mention the ſealing of a Bond. And Gawdy ſaid, that the Declaration was well enough; although it were not good by preſidents (but as it is, it is clear)
2 Cr. 420. for when he ſaith, Per ſcriptum ſuum obligatorium conceſſit ſe teneri, &c. all neceſſary circumſtances are intended to concur, viz. the ſealing and delivering of the Deed; for otherwiſe it is not a writing Obligatory; and delivery is never alledged: Which proves, that it is not neceſſary to alledge the ſealing; for that it is as neceſſary as the other. Wherefore it was adjudged accordingly, that the Judgment ſhould be affirmed.

Alyſon *verſus* Byſton.

(9) A Capias ad ſatisfaciendum iſſued againſt one upon a Recovery in debt. And a Non eſt Inventus was returned. Whereupon a Scir. fac. was awarded againſt the Mainpernors, which was Returned Nihil. Afterwards, upon a ſecond Scir. fac. awarded, they brought in the principal, and prayed, that he might be in execution. And Kemp ſaid, That antiently the Courſe of the Court was, (and ſo alſo in the Common Bench) That if a Capias ad ſatisfaciendum were returned Nihil, the Principal ſhould not be afterwards received to render his body. But they had of late uſed ſometimes, That, if the Mainpernors upon the firſt Scir. fac. brought in the body, it had been received. But now
Ante 618. the Court ordered, and appointed it to be obſerved for a Rule, that a Capias be awarded returnable at the next Term, whereon Nihil is returned, the principal ſhall not afterwards render his body. But if it be awarded returnable de die in diem, as the Courſe of the Court is here, that it may be ſo done; then if upon the firſt Scir. fac. the Mainpernors bring in the body, he ſhall be received: And that there ſhall be fifteen days between the Teſte, and the return of the Scir. fac. ſo as he may have convenient time to ſeek the principal: And ſo it was appointed to be obſerved for a Rule. Note, Paſch. 42 Eliz. between Manning, and Pack. It was ruled accordingly.

Ludlows Caſe.

(10) Ludlow was Endicted upon the Statute of 8 H. 6. cap. 9. Exception was taken, becauſe the Endictment was, Ad ſeſſionem pacis tent. apud *B.* and ſhews not in what County *B.* was; but the County was in the Margent. Secondly, Becauſe it was not ſhewn before what Juſtices of Peace it was taken. And, for theſe Cauſes, it was ruled to be ill: And he was diſcharged.

Cottons Caſe.

(11) Cotton, Attorney of the Queens Bench, was Endicted, for that he ſuch a day, year, and place, having an Ax covertly in his hand, feloniouſly ſtruck one Margaret Spencer whereof ſhe the ſame day, and year died. Exception was taken to the Endictment; becauſe there was not any place alledged, where

he

he ſtruck her, nor where ſhe died. Popham; for the firſt, it is all one with Lewis Caſe, in this Court, which was ruled to be ill for this cauſe; for there it was, that he, ſuch a day, year, and place, having ſuch a weapon in his hand, feloniouſly ſtruck the party, dans ei unam plagam mortalem ſo there was not any place alledged where he ſtruck; but only where he had the weapon in his hand. Wherefore it was reſolved to be ill. It is alſo ill for the other reaſon, becauſe it is not ſhewn where ſhe died.

Wingfields Caſe.

WIngfield was Endicted, for that he 22 January 40 Eliz. percuſſit J.S. ex malitia, &c. at B. dans ei plagam mortalem, of which wound he languiſhed until the 23 Feb. 40 Eliz. at which day, at B. aforeſaid, he died; and ſo the ſaid W. die & loco prædict. murdered him, Exception was taken, becauſe it doth not ſhew at what day he murdered him, there being two days mentioned before. Popham; It hath been reſolved here lately in a Brecknockſhire Caſe, by advice of the Juſtices, That if it be ſaid, that he murdered him, the day of the ſtroke, or the day of the death, both ways are good: For it is true, that he killed him, the day that he ſtroke him, and the other day alſo: But here die & loco prædict. is uncertain, to which it ſhall refer; wherefore I doubt thereof. But Gawdy held it to be well enough; and that it ſhall refer to the day of the death, which is laſt mentioned. (12) Ant. 196. Ant. 101.

Holland *verſus* Dauntzey, and others.

ERror to reverſe a common recovery in Lancaſhire. The Error aſſigned was; for that the Vouchee was within age, and appeared by Attorney, where it ought to have been by Gardian; and, he being dead, the Writ of Error was brought by thoſe in remainder. And all the Court held, That it well might be aſſigned for Error after his death; for it is not like to Error brought to avoid a Fine; for here it ſhall not be tried by Inſpection: For the point of Error is, That, he being within age, appeared by Attorney. And the Plaintiff had a Scir. fac. againſt the Heir of the Recoverer, and the Terr-Tenants; and the Heir appeared & nihil dicit; and four Terr-Tenants being returned warned, they pleaded, That two of them were Tenants of ſuch Land jointly with A. and B. who were not warned, nor named; and demanded Judgment of the Writ, &c. And thereupon the Plaintiff demurred. And this plea, being pleaded in Mich. Term laſt, the Entry is Dies datus eſt partibus prædictis, until this Term. And it was now moved by Coke, Attorney-General, That this joynt-Tenancy is no plea. Firſt, That joynt-Tenancy of parcel ſhall not abate all the Writ, but only of that parcel; As 22 Ed. 3. 10. 7 R. 2. joynt-Tenancy, 8. 11 H. 4. 16. 14. Aſſ. 7. 19 Aſſ. 14. Dy. 291. Copleys Caſe. But Non-Tenure of part, at the Common Law, had abated all the Writ, for that the Demandant ought to have Conuſance, who occupies the Land, and another Writ ought to be brought: But of joynt-Tenure he cannot know; for the one joynt-Tenant may occupy the whole. Secondly, The plea is not good for them all, but for him only, who is (13) Poſt. 774. Bridg. 69.

Tenant for that parcel; as 5 Ed. 4. 56. & 29 Aſſ. Pl. 70. one cannot plead Miſnoſmer of another. Thirdly, this plea of Joynt-tenancy in this Scir. fac. is no plea; for it is not to the Writ: For there is not any Tenant ſpecially named, but they are only named in the Sheriffs return, And when a Scir. fac. names Terr-tenants, there peradventure, he, who is named, and comes in by garniſhment, ſhall plead his plea; but not where the Writ doth not name any ſpecially. Vide 46 Ed. 3. 29. 20 Ed. 3. Scir. fac. 121. 8 H. 4. 18. where in a Scir. fac. the Tenants ought to be named; And there is not any reaſon the Writ ſhould abate through the Sheriffs default, where the party himſelf is blameleſs. And 11 H. 4. 16. is good Law, where in a Scir. fac. Joynt-tenancy was pleaded, and adjudged, that it ſhould abate the Writ, for the Writ was not general. Tanfield moved, That this Plea was good, and ſhould abate all the Writ; For it is not like to a Præcipe quod reddat: For there the Writ is ſeveral; but the Writ is here founded upon a Record, which is entire.
Moor. 524. And it was adjudged in Chancery between Cavendiſh and Morgan, that in a Scir. fac. upon a Reconuſance; Joynt-tenancy was pleaded; and it was adjudged, That it ſhould abate the Writ; and ſo is 17 Ed. 3. 27. But it was thereto anſwered, That the reaſon there is, becauſe all ſhall be contributary to the Execution: And afterwards, all the Juſtices held, That Joynt-tenancy is a plea in this Writ, but only to that parcel. And Gawdy held; That the joyning in plea by the other two doth not make all the plea vitious, but it is only of thoſe two, who could not take advantage of the Joynt-tenancy with the other two. But Popham, Clinch, and Fenner held, That all the plea was vitious for this cauſe. It was then moved, That here was a diſcontinuance of the whole; for the Heir here Nihil dicit; So Nihil ought to have been entred againſt him, and not any continuance: But the day, which is given partibus prædictis, is intended only to thoſe Tenants, upon whoſe plea it was demurred, and not to the Heir, ſo all is diſcontinued. But Coke ſhewed, that it was continued as well to the Heir, as to thoſe, who pleaded; for it is partibus prædictis inde, &c. which is, That day is given of adviſing to all, whether they ſhall anſwer to the Error: And, if it be not a continuance, it is amendable, becauſe it is the default of the Clerk; And all beſides Gawdy held, that the continuance was well enough, and needed not to be amended. But Gawdy held it to be a diſcontinuance, and not amendable, becauſe there ought to have been ſeveral continuances; but if it had been a continuance given to all, and the Clerk had entred it for one, and not for the others, it ſhould be amended; as 22 Ed. 4. 3. is. But, the three others being againſt him, they awarded the plea to be ill, and that they all ſhould anſwer to the Error. Wherefore, &c.

Goburn *verſus* Wright.

(14) Ant. 275. ERror to reverſe a Fine in Cheſter. The Error aſſigned was; becauſe the Writ of Covenant bore Teſte after the Teſte of the Dedimus poteſtatem; and it was held to be a manifeſt Error. And the Fine was reverſed for this Cauſe.

Termino

Termino Hillarii, Anno 42 Eliz. in Communi Banco.

Bedingfield *verſus* Aſhley.

COvenant. Upon Evidence, The Caſe was; One Gower delivered to Aſhly, Anno 26 Eliz. 100 l. who, by Indenture, Covenanted with Gower, that he would pay to every of the Children of Gower, which were then alive, and ſhould be alive at the end of ten years, 80 l. Gower having then five Daughters. And, for aſſurance hereof, Mortgaged his Manor of Wimbourn, and was bound in a Statute of 500 l. And, whether this were Uſury, or not? Was the queſtion. And all the Juſtices reſolved, That it was not; for it is a meer caſual bargain; and a great hazard but that in ten years, all the Daughters, or ſome of them will be dead; and, if any of them be not alive, he ſhall ſave thereby 80 l. But if it were, that he ſhould pay 400 l. at the end of ten years, if any of them were alive, it were a greater doubt: Or if it had been, that he ſhould pay at the end of one or two years, 300 l. if any of the ſaid Children were alive, that had been Uſury; for, in probability, one of them would continue alive for ſo ſhort a time: But in ten years are many alterations. (15) Ante 643.

Barker *verſus* Haliſax. Trin. 41 Eliz. rot. 1234.

ASſumpſit. Whereas the Defendant, ſuch a day and year, in conſideration that the Plaintiff, by the Defendants appointment, and for his debt, paulo ante tunc ſolviſſet to R.S. 60 l. That the Defendant aſſumed to repay it upon requeſt, &c. The Defendant pleaded Non Aſſumpſit, and it was found againſt him; and, after Verdict, upon a motion in arreſt of Judgment, the Judgment was ſtayed, becauſe the payment of the 60 l. being a conſideration paſt, was not ſufficient to maintain the Action. But Walmſley ſaid, that an Aſſumpſit in conſideration, that you had married my Daughter, to give unto you 40 l. was good; for the affection and conſideration always continues. (16) Ant. 442.

Tho. Smith *verſus* Smith.

PRohibition. The Caſe was; That the Wife of one Stock was excommunicated for Adultery before the High Commiſſioners, whereupon they ſent out a Purſevant with Letters Miſſive to apprehend her, and bring her before them: By color whereof he, with the Conſtable, in the night, brake open the Houſe where the Woman was; and, whether, it were juſtifiable? was the queſtion. And all the Court held clearly, That it was not; for neither upon a Capias Excommunicat. nor for any other cauſe, unleſs for Felony or Treaſon, is it lawful for any to break an Houſe in the night. As alſo for another cauſe the whole Court held, that it was not juſtifiable; for they of the Spiritual Court, by reaſon of Excommunication, or by reaſon of any other matter, are not to meddle with the perſon of any man, or to ſend any Proceſs to have the body before them: And therefore, if any, for any cauſe whatſoever, be Excommunicated, and ſo continues in contumacy for forty days, they ought to certifie (17)

certified it into the Chancery, and from thence to have an Excommunicato capiendo but they of themſelves cannot award any proceſs to take him; and, if they might, the Writ of Excommunicato capiendo ſhould be vain. And the Statute of primo Eliz. which gives the Authority to the High Commiſſioners, doth not alter the Law in this point; for that ordains only, that their proceeding ſhall be according to the Spiritual Law, which is no otherwiſe, then as before is expreſſed. Wherefore, &c.

4 Inſt. 331.

Wotton *verſus* Shirt. Hill. 41 Eliz. rot. 625.

(18) REplevin. The Defendant avows for a Rent-Charge, and ſhews how the Plaintiffs Father was ſeiſed in Fee of the place, where, &c. And granted a Rent-charge to Sir John Wotton, younger Brother to the Plaintiff, of 100 Marks per annum in Fee; & that Sir John Wotton granted it in Fee to Luke Cobham, whereto the Tenant Attorned; and that L. C. was indebted to the Avowant by Judgment, and two parts of that Rent was extended by a Fieri fac. and delivered unto him in Execution; and ſo avows for two parts of the Rent. The Plaintiff replies, That at the time of the Extent L. C. was poſſeſſed of the Entire Rent, which might have been extended; and thereupon the Avowant demurs: The ſole queſtion was, Whether an Extent of two parts of the Rent were good? And all the Court held, That it was; For, although by the Act of the party, the Tenant ſhall not be liable to two diſtreſſes; yet by Act in Law he may: And this Act of the Sheriffs is an Act in Law; and his delivery of two parts was good.

Co. Lit. 164. b.

Taylor, and Joan his Wife *verſus* George Sayer.

Trin. 41. Eliz. rot. 522.

(19) PArtition. Upon Iſſue Non tenuit inſimul, & pro indiviſo, a ſpecial Verdict was found. The Caſe was; Thomas Seyer, ſeiſed in Fee of the Lands in queſtion, holden in Soccage, Deviſed them to his Wife for life; And, that after her death, the ſame ſhall remain to my Iſſue. And it was found, That at the ſame time he had iſſue two Sons, (viz.) Robert and George the now Defendant; and two Daughters (viz.) Alice and Joan the now Plaintiff: And deviſed to his two Daughters, to either of them 10 l. ſolvend. at their age of eighteen years; and that one of them ſhould be heir to the other of their Legacies, and died. Robert, the eldeſt Son, died without Iſſue; Alice, the Daughter, died without iſſue; the Wife of the Deviſor died: And George the now Defendant, and Taylor, who married Joan, entred with him, and brought partition, Et ſi ſuper totam, &c. And, after argument, it was adjudged for the Defendant, That he did not hold inſimul, & pro indiviſo; for they held; That this Deviſe of the remainder to his Iſſue, is certain what iſſue he intended, he having divers iſſues; and it ſhall not be extended to all his iſſue; for a Will ſhall be conſtrued according to the intent of the Deviſor, where a certain intent may be collected; but where it is incertain, it is void, And therefore a Deviſe to his Son, where he hath two Sons, is void; becauſe it appeareth not which of them

them he intended; and it ſhall not be conſtrued to be to the eldeſt more then to the other. But Chapmans Caſe in 16 Eliz. may have a good conſtruction, becauſe it is to the moſt worthy of blood; and the intent of the deviſor ought to be collected upon plain words, and not upon words, which engender confuſion; and, if it may not be collected by the words, it is void. As a deviſe to two & hæredibus, ſo a Deviſe melioribus hominibus in D. is void, For it cannot be known whom he intended to be the beſt men. And, as Walmſley ſaid, it is a good way, when the words in a Will are imbiguous, ſo as the intent may not be collected, to expound the Will according to the Law, ſo there ſhall not be any prejudice. And here they all held, If by the Deviſe to the iſſue it ſhould be extended to all the iſſues, they ſhould have it for life only; and when the Reverſion deſcended to one Joynt-tenant for life; or the one Joynt-tenant for life purchaſed the Reverſion; the Joynture is ſevered, and the Eſtate for life drowned: And not like where two purchaſe to them, and the Heirs of one of them; for there the agreement at the beginning was, that the Eſtate for life ſhould continue; and it was cited to be ſo ruled 33 Eliz. in the Lady Morgans Caſe, in the Court of Wards; and in 37 Eliz. to be ſo adjudged in this Court. And between Portley and Portley, it was ruled, that it was all one, where the one purchaſeth the Reverſion, and where the Reverſion deſcends to the one Joynt-tenant. And an Exception was taken to the Writ, becauſe it was general againſt the Defendant as Joynt-tenant, which is intended a Joynt-tenancy in Fee; whereas it ought to have been ſpecially framed upon the Statute of 32 H. 8. and to have ſhewn the ſpecial matter, how it was a Joynt-tenancy for life. Sed non allocatur: Becauſe the preſidents are, That always in ſuch Caſe, the Writ is general. Wherefore it was adjudged for the Defendant.

Ante 696. Co. 6. 16. b. 17. b. Ante 53. 696 Co. Lit. 182. a. Ante 470. Ant. 470. Poſt. 760.

Baldry *verſus* Johnſon. Trin. 41. Eliz. rot. 1702.

(20) ACtion upon the Caſe, againſt the Defendant, Goaler of the priſon in Bury. For that a Plaint being before the Bayliffs of the ſame Will, according to the Cuſtome there, they directed a Warrant to the under-Bayliffs, to take the party, Ita quod habeant corpus ejus coram Ballivis ad proximam curiam ibid. tenend. viz. ſuch a day; and the under-Bayliffs arreſted him, and committed him to priſon, ſub cuſtodia of the Defendant; and, after Verdict for the Plaintiff, it was moved in arreſt of Judgment, that this Action lies not againſt the Defendant; for the priſoner was not committed unto him by any lawful authority: For the under-Bayliffs had authority to take him Ita Quod; but not to commit him to any other priſon, for that it is on their own head: And into whatſoever place they ſhall commit him, they ſhall retain him, but as the ſervants to the under-Bayliffs; and it is as the under-Bayliffs houſe, and an Action lies againſt them, if they have him not at the day, &c. and not againſt any other.

Ant. 26.

Southcoat

Southcoat *verſus* Manory.

Mich. 40, & 41 Eliz. rot. 3329.

(21) TRespaſs. Upon a ſpecial Verdict, the Caſe was; That one White and his Wife, were ſeiſed of thoſe Lands, to them, and the Heirs of White: They, by Indenture, bargain, and ſell it to Paſton in Fee: Wherein was a Proviſo, That if White, or his wife, or the Heirs of W. paid 100 l. to P. at ſuch a day; that then it ſhould be lawful to them, and to the Heirs of W. to enter, and to re-have, and enjoy, as in their former Eſtate, this Indenture notwithſtanding; and that then, after ſuch a payment, this Indenture, and all other Fines, and Aſſurances, to be paſſed between the ſaid parties, ſhould be to the uſe of White, and his Heirs, (leaving out there the wife) And laſtly it is agreed, That all Fines, and Aſſurances, to be made between the parties within ſeven years following, ſhould be to the Uſes, Intents, Conditions, Grants, and Agreements, before here expreſſed, and to no other Uſe, Intent, or Purpoſe, &c. The Deed was not Inrolled; White, and his wife, within ſeven years, levied a Fine, according to that Indenture, to P. afterwards White died, and his wife, at the day paid the 100 l. and entred, and took the Plaintiff to Husband. The Defendant entred, by command of the Heir, pretending, that by the payment of the 100 l. the Fine was to the uſe of the Heirs of White, and not to the Feme, Et ſi, &c. And all the Court after argument at the Barr, Reſolved for the Plaintiff; that the Feme ſhould have an Eſtate for life: For ſo is the Condition, and the firſt part of the Clauſe; and, that the other part of the Clauſe, or middle Clauſe, is not repugnant, but ſtands well with it, that it ſhall be to the uſe of the Baron, and his Heirs, and doth not control the limitation to the Feme for her life; and when both Clauſes may by any conſtruction ſtand together, it is to be conſtrued accordingly; and the laſt Clauſe expounds this fully, That all aſſurances ſhall be to all the uſes contained in the Indenture, whereof this is one; and that, if all the Clauſes cannot ſtand together, the firſt ſhall ſtand, rather then the laſt. And they held, that an uſe cannot be raiſed by bargain and ſale, by it ſelf; but upon the Fine it might well be limited. Wherefore it was adjudged for the Plaintiff.

Shailard *verſus* Baker, and his Wife.

Paſch. 41 Eliz. rot. 1043.

(22) EJectione firmæ of a Leaſe of Bearcroft. Upon a ſpecial Verdict the caſe was; That one Robert Hunt was ſeiſed in Fee of the Land, where, &c. and had iſſue three Sons, viz. William, the elder Son

Son, by one Center, and James, and Francis, and a Daughter Amie (who was the Wife of Baker the Defendant) by another Center, and deviſed thoſe Lands to James and Francis his ſons, And if either of them, or their Heirs do ſell the ſame, the gift of it ſhall ſtand void, and ſo return to the whole Heirs again. And in another part of his Will he willed, that *James* and *Francis*, his Sons, ſhould pay, annually to *William Hunt* his eldeſt Son, and his Heirs 3 l. Robert the Deviſee died: James and Francis enter, and died without iſſue. And, whether this were an Eſtate Tail in them, which determined by their death without iſſue, or were a Fee, which ſhall go to their Siſter of the entire blood? Or, whether it were an Eſtate for life only in them? Was the queſtion. And all the Court after argument at the Barr, reſolved, That it was an Eſtate in Fee; becauſe it appears, that the intent of the Deviſor was, That the Heirs of the Deviſee ſhould have it by the words, If he, or his Heirs alien; alſo by the Words, reſerving Rent of 3 l. to his eldeſt Son, and his Heirs: So as they gave a conſideration for it: So of neceſſity it is to be intended, that he gave more than an Eſtate for life, and it cannot be an Eſtate-Tail: For, firſt, it is a Fee-ſimple by the intent of the Will; for ſo the Will ſhall be conſtrued, according to the intent of the Deviſor, if it may be collected, when the words are Satis apta, although they be not Conſulta. And the intent alſo plainly appears, That he purpoſed, the Heirs of the Deviſee ſhould have it, which makes a Fee; and to have it an Eſtate tail cannot be: For his intent appears not by any expreſs words; and as Walmſley ſaid, a Will ſhall not be conſtrued by intent upon an intent; for then it ſhould be uſque Infinitum: And although the words be, Provided, that if they, or their Heirs alien, &c. that their Eſtate ſhall be void, and that the Land ſhall Revert; That is a void Condition, being annexed to a Fee: And a Fee cannot be limited upon another Fee. And the word Revert ſhall not be conſtrued, that it ſhould be an Eſtate tail, when it doth not appear, that his intent was to make it an Eſtate tail, but a Condition: For otherwiſe, by the alienation of the one the Eſtate of the other ſhall not be determined; and this was his intent: And ſuch a Condition cannot be annexed to an Eſtate in Fee by the Law. And therefore it is void, and thereupon Adjudged for the Defendant. Apt. 378.

Brown *verſus* Adams. Trin. 41 Eliz. rot. 1125.

DEbt upon an Obligation conditioned, that if one Tovie appeared before the Juſtices of the Common Bench, &c. that then, &c. the Defendant pleaded, That one Whyſtler purſued a Capias out of the Common Bench, which was delivered to the Plaintiff, being Sheriff of Oxford, who made a Warrant to the Bayliff of the hundred of H. to arreſt the ſaid T. and one J. S. put in his own name, as a ſpecial Bayliff to arreſt the ſaid T. And that the ſaid J. S. by colour of that Warrant arreſted the ſaid T. at D. in the County of Oxon, and carried him to W. in the County of Berks, and there detained him until the Defendant, and the ſaid T. entred a Bond to the Plaintiff, as Sheriff of the County of Oxon, for the appearance of T. So the Bond is void by the Statute of 23 H. 6. and hereupon the Plaintiff demurred, and it was adjudged, that the plea was ill: For although this Bond (23)

2 Cr. 187. was made by Dureſs, as all the Court agreed, and that the Defendant might well have pleaded it, and relied upon it, yet it is not within the Statute. And the Defendant is not aided thereby: For T. was never in the Sheriffs cuſtody after the arreſt: And the Bond taken out of the County is by Dureſs, but not within the Statute. Wherefore it was adjudged accordingly.

Hillarij 42 Eliz. in Camera Scaccarij.

Ball *verſus* Bridges. Hill. 41 Eliz. rot. 1100.

(24) ERror of a Judgment in an Action upon the Caſe for theſe words of Bridges, He is a maintainer of Thieves, & keepeth none but Thieves in his houſe, and I will prove it, &c. The Error aſſigned was, That the words were not actionable: For he doth not ſay, and averr, that he knew them to be Thieves, whom he maintained. And one may have Thieves in his houſe and maintain them, and not know them to be Thieves, and then it is not any offence, And ſo was the opinion of all the Juſtices and Barons, and the Judgment was reverſed.

Ant. 52.

Higgs *verſus* Holiday. Ante Paſch. 41. Plac. 9.

(25) ERror was brought of a Judgment, and aſſigned in the point of Law. Anderſon, The property of the Money was never in the Maſter, but in the Servant: For if a man delivers Money to another, the property thereof is in the Baylee, becauſe it cannot be known, and he can maintain accompt only: Quod omnes alii præter Clerk, & *Walmſley* conceſſerunt: For the Writ of Accompt proves the property of the Money to be in him: For it ſuppoſeth, that he is Receptor denariorum of the Plaintiff. But here the Plaintiffs Declaration is not good, for it is alledged, That he caſualiter perdidit the Money. And when he had loſt the poſſeſſion thereof he had loſt the property alſo, becauſe it cannot be known. And hereto all the Juſtics and Barons agreed, and that it ſhould be reverſed.

Poſt. 781.

Winchcomb *verſus* Shepheard.

(26) ERror of a Judgment in the Queens Bench in an Action upon the Caſe for cutting down the bank of a River, whereby his Medow, adjoyning, was ſurrounded. The Defendant juſtifies by preſcription, for the reparation of his (the Defendants) Mill; and thereupon the Plaintiff demurred, and adjudged againſt him, that the preſcription was good, and the manner of pleading. And now Error thereof brought, and the Error aſſigned for the manner, viz. becauſe he preſcribes to cut down the banks between the River, which runs to the Defendants Mill, and the River called Old Charwel, and ſaith, That he cut down the banks of the ſaid River, and ſaith not between the Old Charwel; and ſo not purſuant the preſcription, & it was holden to be an incurable fault. But it was moved, That the Declaration was not good: For that he declares, that he is Leſſee at Will of Lands, & averreth not the life of the Leſſor. Sed non allocatur. Becauſe the Declaration is, that by vertue of the ſaid Leaſe, at the time of the

the cutting, and of the action brought, he was poſſeſſed, whereby is neceſſarily to be implied, that the Leſſor was alive. Wherefore the firſt Judgment was reverſed, and the Record remanded. And the Court of Queens Bench, againſt their former judgment, awarded a Writ of inquiry of damages. Poſt. 751.

Paſſie *verſus* Mondford. Trin. 41 Eliz. rot. 1088.

(27) ERror of a Judgment in an action for theſe words, Mrs. *Margaret Paſſie* (innuendo the Plaintiff) ſent a Letter to my Mr. and therein willed him to poiſon his wife. The error aſſigned was, That the words were not actionable: For there is not any act done, and ſo not like to the Caſe, where one ſaid, That J. S. lay in wait to commit ſuch a Murder, &c. But all the Juſtices and Barons, beſides Kingſmil, reſolved, that the Action lay; for it is a great ſlander to will one to do ſuch an Act, which is ſo odious. Wherefore it was adjudged accordingly, and the firſt Judgment was affirmed. Ant. 710. Ant. 49.

Glaſcock *verſus* Duffield. Mich. 40, 41 Eliz. rot. 60.

(28) ASſumpſit, in conſideration he would ſell to the Defendant three Cows for 10 l. that the Defendant promiſed to pay the 10 l. at the Feaſt of Eaſter following. And if he failed, that he would pay unto him 100 l. cum requiſitus eſſet. And alledgeth in facto, That he ſold the Cows unto him accordingly: And that the 10 l. was not paid at the ſaid Feaſt; whereupon he brought this action for the 100 l. wherein he recovered. And in a Writ of Error it was alledged, That it was not a ſufficient conſideration for the 100 l. But all the Court held it to be good, and affirmed the Judgment.

Termino Paſchæ, Anno Quadrageſimo ſecundo ELIZABETHÆ, in Banco Reginæ.

Rowleſton *verſus* Alman. Paſch. 42. Eliz. rot.

(1) TRespaſs for the taking of a Gelding, and two Spoons of the Plaintiffs in Rowleſton: The Defendant pleaded, that he was the Queens Bayliff of her Mannor of Burton extra, and that at ſuch a Court holden before one J. Stanford Steward there, it was preſented, That the Plaintiff being Tenant of the ſaid Mannor, had ſurcharged the Common, for which he was amerced to 6 s. 8 d. which was affirmed by J. N. and J. D. Tenants there; whereupon he, as the Queens Bayliff, diſtrained that Gelding in Burton, for that amercement: And, that the Plaintiff himſelf delivered unto him thoſe two ſpoons, in redemption of the ſaid Gelding, which he detained until the amercement was paid unto him: And traverſeth the taking in Rowleſton: And hereupon the Plaintiff demurred in Law, and it was argued by Coventry for the Plaintiff, and by Godfrey for the Defendant. Firſt, Becauſe it is pleaded, Quod præſentatum fuit, that he ſurcharged the Common, &c. And doth not alledge in facto, that he ſurcharged: But the Court held it to be well enough pleaded by the Bayliff, to whom it ſufficeth to take Conuſance of the preſentment, and no more, & non refert, as to him, whether it be true, or not; 41 Ed. 3. 27. 24 Ed. 3. 26. Secondly, Becauſe the amercement ought to be by the Sutors, being in a Court Baron, they being Judges there, and not by the Steward: A diſtreſs alſo cannot be taken for it, unleſs there had been a ſpecial Cuſtom alledged: But the Court reſolved, that it was well enough: For it is the common courſe throughout the Realm, that the amercements are aſſeſſed by the Steward; and the diſtreſs in ſuch caſe is incident, and lawful. Thirdly, it was moved, That this diſtreſs by a Bayliff, not having any Warrant to do it by Eſtreat, or otherwiſe, is not lawful; for he cannot diſtrain ex officio. And of that opinion was Popham, but the other Juſtices conceived otherwiſe; 9 Ed. 4. 40. 28 H. 6. 4. 33 H. 6. 2. Book of Entries, 507. Wherefore they would adviſe, and afterwards, for this laſt cauſe principally, it was adjudged for the Plaintiff. Note, It was held, that a common perſon cannot diſtrain for ſuch Amercements, in a Court Baron, without preſcription. But the Queen here by her prerogative might, as Popham held.

Ant. 698. Co. 11. 45. a.

Hill *verſus* Langley.

DEbt upon the Statute of 1 R. 3 cap. 3. For that the Plaintiff being impriſoned upon ſuſpition of Felony, the Defendant took his Goods, before he was convicted or attainted, contra formam Statuti, &c. and demanded the double value: Upon the iſſue, Non debet, it was found for the Plaintiff, and moved in arreſt of Judgment, that the Declaration was not good: For that it is not alledged, that they were ſeized for this cauſe: For if he took them as Treſpaſs, an action lies not upon this Statute. Sed non allocatur: Becauſe it ſhall be intended, that he ſeiſed them for this Cauſe, when no other cauſe is ſhewn: And the addition, contra formam Statuti, explains it and makes it good, if it had been before ambiguous: As in 14 Eliz. Dyer 312. in an Action for diſtraining averia carucæ contra formam Statuti, although it be not averred, that he had other Goods ſufficient for the diſtreſs, it is well enough: For contra formam Statuti, implies as much. Wherefore it was adjudged for the Plaintiff. (2) 1 R. 3. cap. 3.

Mints *verſus* Bethil. Hill. 42 Eliz. rot. 777.

DEbt upon an Obligation conditioned, That, if the Defendant at all times, upon requeſt, delivered to the Plaintiff all the Fat, and Tallow of all Beaſts, which he, his Servants, or aſſigns ſhould kill, or dreſs before ſuch a day, that then the obligation ſhould be void. The Defendant pleaded, That, upon every requeſt made unto him, he delivered unto the Plaintiff all the Fat and Tallow of all Beaſts, which were killed by him, or any of his Servants, or aſſigns before the ſaid day. And hereupon the Plaintiff demurred. Stephens for the Plaintiff moved, that this plea was not good in ſuch a generality. But he ought to have ſaid, that he had delivered ſo much Fat, or Tallow which was all, &c. or, that he had killed ſo many Beaſts, whereof he had delivered all the Fat. So as the Plaintiff might have aſſigned a breach certain: For it lies in his proper Conuſance, and therefore he ought ſpecially to have pleaded it; as 12 H. 8. 7. & 9 Ed. 4. 4. are. And Hillar. 37 Eliz. between Sands and Maleverer in this Court, where the Condition of an Obligation was, that the obligor who was Bayliff of the Mannor of the Obligee, ſhould render a juſt accompt, before ſuch a day, of all the Rents of the Mannor, which he had received: In debt upon this Obligation he pleaded, that before the ſaid day he had made an accompt of all the Rents, which he had received. And becauſe he did not ſhew what ſums he received it was adjudged to be ill. Wherefore, &c. Popham, and all the Court held here, that the plea was good, For when the matters to be pleaded tend to infiniteneſs, and multiplicity, whereby the Rolls ſhall be encombred with the length thereof, the Law allows of a general pleading in the affirmative, and by that reaſon allows of the Rule, that he who pleads in the affirmative, ſhall alledge performance of Covenants generally. And it hath been reſolved by all the Juſtices of England, That in debt upon an Obligation to perform the Covenants in an Indenture, it ſufficeth to alledge performance generally. So where one is obliged (3) Poſt. 916. Ant. 691.

liged to deliver all his evidences, or to aſſure all his Lands: it ſufficeth to alledge, that he had delivered all, &c. or aſſured all his Lands. And it ought to come on the other ſide, to ſhew the contrary in ſome particular. And Popham ſaid, that he doubted of the Caſe of Maleverer before cited: But it may ſtand with reaſon, becauſe the Rents of the Manno are certain, and may be collected into a ſhort Sum. Wherefore they all reſolved for the Defendant. Whereupon the Plaintiff by the Defendants aſſent, gave 40 s. for coſts, and waved his demurrer, and aſſigned a breach. Vide 13 H. 7. 19. 6 Ed. 4. 2. 39 H. 6. 21.

Ann Laſingtons Caſe.

(4) ANn Laſington was endicted by the name of the wife of J.L. of D. Yeoman; and Execution was taken, becauſe ſhe had not any addition. Sed non allocatur. Vide 31 H. 8. Dyer, 46. and ſhe was Endicted of Petit Larceny, and another was Endicted as acceſſary. And becauſe one cannot be acceſſory in this Caſe, no more then in Treſpaſs, the acceſſary was thereupon diſcharged.

Miller *verſus* Eaſtcrowe.

(5) DEbt for Money upon ſale of Land; the Defendant tendred his Law. Gawdy held, That he ſhould not be admitted thereto: For it is a real contract, but all the other Juſtices e contra: Whereupon it was ruled, That he ſhould make his Law, &c. Vide 22 H. 6. 44. 34 Ed. 1. 18 Ed. 2. 31 Ed. 3. 34 H. 6. tit. Ley. 28. 45. 72. 73.

Dingley *verſus* Moor.

(6) INformation upon the Statute 33 H. 8. cap. 16. for buying of Woolſted-Yarn, within the County of Norfolk, not being a Weaver, and recites the Statute of 33 H. 8. and the Statute of 1 Ed. 6. cap. 6. whereby it is made perpetual; and that this offence was contra formam Statuti 33 H. 8. &c. Fenner held, that for this cauſe the Information was not good: For the Statute of 33 H. 8. is not now as an Act by it ſelf; but it is a Noun Adjective, and it ought to be coupled with the Statute of Prince Ed. 6. and the information ought to conclude contra formam Statutorum, &c. As it was in Sheltons Caſe, where one was endicted for recuſancy, contra formam Statuti, it was awarded to be ill: For it ought to have been contra formam Statutorum of 1 Eliz. & 33 Eliz. Popham; true it is, that it was ſo ruled, becauſe the Statute of 23 Eliz. depends upon 1 Eliz. For it is, that every one, who refuſeth to go to Church againſt the form of the Statute of 1 Eliz. ſhall forfeit ſo much, &c. But the Caſe in queſtion differs from it; and therefore there ought to be a difference obſerved, when a Statute is made to endure for a certain time, and is afterwards made perpetual by a new act, or made perpetual in part, and where it is continued with a new addition: For where a Statute is made perpetual in part, or in whole, without any new addition or alteration, the offence may well be ſuppoſed againſt the Form of the firſt Statute: For that Act is made to continue: and here in this Caſe, this Statute of 33 H. 8. is made to continue for Yarn ſpun upon Rocks, but not for other Yarn; and the Information might

might well be contra formam Statuti of 33 H. 8. But Popham held, That this Information was not good; because he did not shew, that it was Yarn spun upon the Rock, for otherwise it was not any offence, as they all held. Wherefore, &c.

Hamond *versus* Dominam Reginam.

(7) ERror to reverse a Judgment given upon an an Endictment. The first Error assigned was, because the Record is, Quod per Sacramentum J.S. &c. it was presented, and these words, proborum & legalium hominum, were left out, And for this cause the Court held it to be ill; and, to that purpose, Gawdy cited 11 H. 4. 41. where an Endictment was discharged, because that some of the Endicters were Outlawed of Felony: So they were not probi & legales homines. Another Error assigned was, because it appears not in what County the place was, where the Endictment was taken. But a County was named in the Margent of the Record. And therefore it was held also to be ill, and Rule was given for the Reversal thereof, unless, &c. 2 Cr. 41.

Leeds *versus* Shakerley.

(8) ACtion upon the Case, supposing, whereas he was seised in Fee of a Mill in Snodeland, and that he, and all those, whose Estate, &c. from time, whereof, &c. had had a Water-course running by three Mills, viz. A. B. & C. to the said Mill, that the Defendant cut the banks of the water-course in A. whereby he lost the profits of his Mill. The Defendant pleaded Not-guilty, and found against him. And it was now alledged in arrest of Judgment, that this Ven. fac. was awarded only from A. where the cutting was, whereas it ought to have been from all the three Mills, and from the Mill where the Mill is. Sed non allocatur; because the issue is Non Culp. but if the issue had been upon the prescription, it had been otherwise. Another exception was, because it was not alledged, that he was seised of the Mill at the the time of the cutting. But Hearn, Serjeant, answered, that the Declaration was good: For it supposeth that the Plaintiff seisitus existit of a Mill, Ipseque, & omnes illi, whose Estate he hath in the said Mill, have used to have a Water-course, &c. And that is a sufficient averment of the Seisin at the time, &c. And this Exception was taken in Dame Browns Case, 14 Eliz. Dyer. 320. and yet the Plaintiff had Judgment. But all the Court (absente Popham) held, That the Declaration was insufficient for this Case. And Gawdy said, That in the said Case of 14 Eliz. the opinion of the Lord Dyer was, that the Count was insufficient, and Error is there brought of the said Judgment, Wherefore it was here adjudged for the Defendant. Ant. 427. Ant. 747. Aost. 754.

Middleton *versus* Baker.

(9) EJectione firmæ. It was held by all the Court upon evidence to a Jury, That if the Plaintiff in an Ejectione firmæ, or other action, gives in Evidence any Matter in Writing or Record, or a sentence in the Spiritual Court (as it was in this Case) and the Defendant offers to demurr thereupon, the Plaintiff ought Co. 5. 104. a.

to

to joyn in the demurrer, or waive the evidence, becauſe the Defendant ſhall not be compelled to put a matter of difficulty to Lay gents, and becauſe there cannot be any variance of a matter in writing; but if either party offers to demur upon any evidence given by Witneſs, the other, unleſs he pleaſeth, ſhall not be compelled to joyn, becauſe the credit of the teſtimony is to be examined by a Jury, and the evidence is certain, and may be enforced more or leſs; but both parties may agree to joyn in demurrer upon ſuch evidence. And in the Queens Caſe, The other party may not demur upon evidence, ſhewn in Writing, or Record for the Queen, unleſs the Queens Counſel will thereto aſſent. But the Court in ſuch Caſe ſhall charge the Jury to find the matter ſpecial, as appears 34 H. 8. Dyer 53. But this is by Prerogative.

Co. 5. 104. a.

Plowmans Caſe.

(10) PLowman was Endicted, for that, he being a Conſtable, arreſted J. S. for Felony, and voluntarily let him go at large. Exception was taken to the Endictment, becauſe he doth not ſhew for what Felony: For the other may traverſe it. Vide 8 Ed. 4. 3. Secondly, He doth not ſhew when the Felony was committed: For it may be it was before the general pardon, and then the permitting him to go at large is no Felony. Wherefore for theſe reaſons, the Endictment was held to be inſufficient, by Clinch, and Fenner, cæteris abſentibus,

Anonymus.

(11) ERror of a Judgment in an Action upon the Caſe. The Error aſſigned was, Becauſe the Ven. fac. was Quorum quilibet habet 4 libratas terræ, &c. where the Form, preſcribed by the Statute, is Quorum quilibet habeat 4 libras terræ, &c. But it was ſaid, That librata terræ is as good Latine as libra terræ. And the Statute intends not a preciſe Form, but that every one ſhould have 4 l. terræ; and the courſe in Fines is, by libratas; and the Prothonotaries of the Common Bench certified their courſe to be always after the Statute, to make their Writs quatuor libratas. Wherefore it was held to be no Error, and the Judgment was affirmed.

John Coſton *verſus* Thomas Coſton.

(12) TRespaſs of Battery. The Defendant pleaded de ſon aſſault demeſn, &c. The Plaintiff replies, That the Defendant Thomas Coſton beat him, de ſon Tort demeſn ſans tiel cauſe, per ipſum *John Coſton* ſuperius allegatum; and ſo to iſſue, and found for the Plaintiff. And it was moved in arreſt of Judgment, that this was a default in the Plaintiffs Replication, and not helped by any Statute: For it is ſubſtance, and there is not any iſſue at all joyned: For he traverſeth matter alledged by J. C. whereas it is alledged by T. C. But all the Court held it to be but a Miſpriſion, and the Court being full, they awarded, that it ſhould be amended.

Ant. 435.

Anonymus

Anonymus.

HArris, Serjeant, moved this Caſe to the Court (which he ſaid was then depending before Sir Rich. Leuknor, Juſtice of Cheſter, who deſired their opinion therein) viz. If an houſe be robbed in the day, and the Felons eſcape, Hue and Cry being made; whether the Hundred ſhall anſwer for that robbery, by the Statute of Winton. And he ſhewed to the Court a Caſe written by Juſtice Windham, 30 Eliz. rot. 2415. That a Mercer inhabiting within a Will not walled, was robbed in the night in his houſe: and in the morning his ſervants perceived it, made Hue and Cry, and, becauſe the Felons were not taken, the Hundred ought to be charged, by the opinion of all the Juſtices of the Common-Bench. And Gawdy ſeeing the Caſe, ſaid, That he well knew it to be the hand-writing of Juſtice Windham: but he, and all the Court held it to be no Law. For it hath been oftentimes reſolved, That for a Felony done in the night the Hundred ſhall not be charged; and he, and Popham conceived, That in the Principal Caſe the Hundred ſhall not be charged: For the Statute of Winton extends onely to robberies done to the perſon: and was principally made for the ſafeguard of travellers: but every one ought to keep his houſe at his peril; for it is his Caſtle, and no other ought to meddle there; and therefore it is not reaſon, that any ſhould be charged, if he be robbed there: and Coke, Attorney-General, ſaid, That it was ruled ſo about 31 Eliz. in the Common Bench, in a Caſe, wherein he was of Counſel. And Popham ſaid, if beaſts be ſtoln out of a Cloſe, and Hue and Cry is made, yet the Hundred ſhall not be charged, for the Hundred ſhall not be charged but where the party robbed gives notice in convenient time; which cannot be done by Intendment, when the beaſts are ſtoln in his abſence; and in the particular Caſe, Fenner and Clinch delivered not any opinion. *Note*, The Statute is, becauſe that Roberies, Homicides, Arſons and Larcenies, &c. The which Arſons is to be extended to Houſes. (13) St. 13. E. 1. Co. 76. a.

Love *verſus* Prin.

PRohibition; For that P. Libelled againſt L. before the High Commiſſion, that the ſaid L. beat him, or at leaſtwiſe aſſaulted him with a Bill, and would have ſtrucken him being a Clerk, and called him Gooſe and Woodcock, with many ſuch words; whereas ſuch pleas of Aſſault and Battery appertain to the Court Temporal. And now Conſultation was prayed; for being done to a Clerk, the Court-Spiritual might examine it. But all the Court held, That a Prohibition well lies: for although, for violenta manuum injectione in Clericum, The Sute ought to be in the Spiritual-Court, as appears by Articul. Cleri. cap. 1. yet for an Aſſault only, it is clear, That the Sute ought to be at the Common Law, and for theſe words, they be not actionable. Wherefore it is not reaſon he ſhould be vexed for them. And it was ordered, that the Prohibition ſhould ſtand. (14) Moor. 607. 2 Inſt. 492.

Lanes Caſe

(15) LAne, and Lane were Endicted, Eo quod Felonice duas centenas caſei cepit, & aſportaverunt, becauſe Centenas is incertain, what weight, viz. Libras, or Uncias, or any other. As alſo becauſe it was Cepit in the ſingular number, And it was ruled, That the Endictment was ill for both cauſes.

Stansbies Caſe. Paſch. 42. Eliz. rot. 27.

(16) STansby was Endicted upon the Statute of 8 H. 6. And Exception was taken to the Endictment, becauſe it was tali die, & uno, &c. in meſſuagio, &c. exiſtent. Liberum Tenementum J. S. intravit, & ipſum J S. expulit, & diſſeiſivit. And he doth not ſay, Adtunc exiſtent. liberum Tenementum. For otherwiſe, Exiſtent. liberum Tenementum may refer to the time of the Endictment taken. And for this Cauſe he was diſcharged.

Ant. 751.

Coverts Caſe.

(17) REplevin. The Defendant avows for Damage-Feſant, by reaſon of a Copy granted unto him of the place, where, &c. by Cooper, Biſhop of Winton, Lord of the Mannor, &c. The Plaintiff ſaith, That, before Cooper was Biſhop, one Horn was Biſhop of Winton, by whoſe death the Temporalities came into the Queens hands; and this Copy-hold, during the time, that the Temporalities were in the Queens hands, Eſcheated, and the Queen, granted it to the Plaintiff in Fee, by force whereof he put in his Beaſts, and traverſeth the Grant by Cooper, &c. And thereupon the queſtion was, Whether this traverſe were good, or not? and the whole Court held, That the Traverſe was good. And firſt they held clearly, that the Grant by the Queen of the Copy-hold Eſcheated was good: And, that this Traverſe ought to be: for there is not any confeſſing, and avoyding; becauſe he doth not confeſs the Seiſin, and grant by Copy; but if, he had confeſſed, that the Biſhop had entred, and granted it by Copy, then there needed not any Traverſe. So where one juſtifies by Leaſe from J. S. the Plaintiff ſaith, that J. S. infeoffed him before, it is not good without Traverſe. Or to ſay, That the ſaid J. S. after the Feoffment entred, and diſſeiſed him, and made the Leaſe, and afterwards re-entred. So thereby he confeſſeth, and avoideth the Leaſe alledged. Wherefore it was ruled accordingly.

Co. 6. 24. b.
Ant. 288.

Ante. 30.

Huiſh *verſus* Philips.

(18) AUdita Querela, and ſhews; That he was obliged in a Statute Merchant of 600 l. to the Defendant, to the uſe of one Jo. Buſh; and that a Defeaſance was made thereupon: that if he paid ſuch ſums, at ſuch days, to John Buſh, that the Statute ſhould be void; and ſhews, that at every of the days and places, he was Paratus to pay the ſaid ſums, & obtulit them, and the ſaid J. B. was not there to receive them. The Defendant pleaded, That at ſuch a day John B. was at the place, where, &c. and demanded

2 Cr. 13.
Yelv. 38.

manded the Sum, and neither the Plaintiff, nor any for him, were there for to pay it, Abſque hoc, that the Plaintiff obtulit the ſaid ſum at the ſaid day, &c. And thereupon the Plaintiff demurred; and it was moved for the Defendant, That upon this matter an Audita Querela lies not: for John Buſh is a ſtranger to the Statute: and although he tendred to a ſtranger, who refuſed, yet the Reconuſance is forfeited; for it is at his peril, to procure the ſtranger to accept it, when the act is to be done to a ſtranger. But all the Court held, that the tender was a ſufficient performance, the defeaſance of the Statute being made to the uſe of J. Buſh; but if he had been a meer ſtranger, and was not to have any benefit thereof, it ſhould be otherwiſe; and therefore Glanvile ſaid, that it was adjudged betwixt Carne and Savery; that where one was obliged to another man, to the uſe of a third perſon, to deliver a Cheſt to the ſaid third perſon, who refuſed to receive it upon the tender at the day: that the Obligation was ſaved, becauſe the obligation was to the uſe of the third perſon: for he ſhall not take advantage of his own act. Secondly, It was alledged, That this Declaration was not good: for that it is therein ſurmiſed, That J. Buſh was not there to receive it, and he doth not ſay, nor any for him; for if any other was there to receive it for him, it ought to have been paid unto him. And of that opinion was Glanvile; That for this cauſe the Declaration was not good, but all the other Juſtices held it to be well enough. For it ſhall be intended, that neither he, nor any other by him lawfully authorized was there to receive it: for if ſo, it had been, as if he himſelf had been there, and ſo it ſhall be intended upon the pleading. Thirdly, It was held, That the traverſe was not good; for there being an expreſs affirmative before, Quod paratus fuit, & obtulit, &c. And Non obtulit being an expreſs Negative, there ſhall not be any traverſe; for when a matter is expreſly pleaded in the affirmative, which is expreſly pleaded by the other party in the negative, there a traverſe is needleſs, becauſe there is a ſufficient iſſue joyned; as 36 H. 6. 15. is. Wherefore it was adjudged for the Plaintiff.

Co. Litt. 208. b.

2 Cr. 14.

R. 528. 2 Cr. 13.

Cotton *verſus* Sir Gervaſe Cliſton.

DEbt upon an Obligation. It was held, That where an Obligation is made, and afterwards a defeaſance is made thereof, if he pays a leſſer ſum, &c. there, if he pleads, the defeaſance, and the tender of the leſſer ſum, he need not to ſay Tout temps priſt. For by the tender he was diſcharged of all. But otherwiſe it is of an obligation with a condition to pay a leſſer ſum. (19)

Co. Litt. 207. Co. 9. 79. b.

Bret *verſus* J. S. and his Wife.

ASſumpſit. The Caſe was; That William Dracot, firſt Husband to the Feme, ſent his Son to Table with the Plaintiff for three years, and agreed to give unto him for every year 8 l. and died within the year. The Feme during her Widow-hood, in conſideration of her natural affection to the Son, and in conſideration, that the Son ſhould continue during the reſidue of the (20)

time with the Plaintiff, promiſed to the Plaintiff to pay unto him 6 l. 13 s 4 d. for the Tabling of the Son for the time paſt, and 8 l. for every year after, that he ſhould continue there with the Plaintiff; afterwards ſhe married the Defendant, and the Plaintiff brought his Action as well for the 6 l. 13 s. 4 d. as for the Tabling for the two years following. And warberton moved. That this action lay not. Firſt, Becauſe it was an entire Contract by her firſt Husband for the entire year, which cannot be apportioned. Secondly, Becauſe natural affection is not ſufficient to ground an Aſſumpſit without Quid pro quo. Thirdly, That this is a Contract, for which action of debt lies, and not this action. But all the Court held, that it was well lay. For as to the firſt, it is well apportionable, becauſe it being for Tabling, which he had taken, there ought to be recompenſe, although he departed within the year, or that the Contracter died within the year. To the ſecond, they agreed, that natural affection of it ſelf is not a ſufficient conſideration to ground an Aſſumpſit, for, although it be ſufficient to raiſe an uſe, yet it is not ſufficient to ground an action, without an expreſs Quid pro quo. But it is here good, becauſe it is not only in conſideration of affection, but that her Son ſhould afterward continue at his Table, which is good as well for the money due before, as for what ſhould afterwards become due. And as to the Third, True it is, That, if the Contract had been only for the Tabling afterwards, then debt would have lain, and not this action; but in regard it is conjoyned with another thing, for which he could not have an action of debt (as it is here for this 6 l. 13 s. 4 d.) an action upon the Caſe lies for all. (as debt with other things may be put into an arbitrament) Wherefore it was adjudged for the Plaintiff.

Pl. C. 302. a.

Co. 4. 93. a.

Humphrey *verſus* Harneage, Mich. 40 Eliz. rot 2605.

(22) AUdita Querela, to avoid the Execution upon a Statute, wherein is ſurmiſed; That W. Humphrey the Conuſor (his Father) was ſeiſed of divers Lands in Fee, and levied a Fine of them to the uſe of himſelf for life; and after part of them to the Plaintiff in tail, and of the reſidue to the Conuſee in Fee, and died. And becaſe the Conuſee afterwards ſued Execution, he brought this Audita Querela; and upon demurrer, it was adjudged, That this purchaſe in this manner was a ſufficient diſcharge of the Statute; but the demurrer was upon the pleading in default of a Traverſe, which was adjudged not to be material.

P. L. C. 72.

Willoughby *verſus* Brook. Mich. 41, & 42 Eliz rot. 1704.

(23) DEbt upon an Obligation, Conditioned, Whereas *Edward Willoughby* hath before this time commenced divers Sutes in the Court called the Kings Bench at *Weſtminſter*, againſt *William Hutchinſon*: if the ſaid *W. H.* ſhall without delay, by his lawful Attorney, appear, and make anſwer to all Actions, and Declarations commenced againſt him; that then, &c. The Defendant pleaded, That poſtea, *viz.* ſuch a day W. H. appeared, & paratus fuit reſpondere, &c. But there were not then any actions there depending: and it was thereupon demurred.

And

And all the Court held it to be an ill plea: for the obligation eſtopps him from ſaying, that there were not any actions there depending. As if a man be obliged to perform the Covenants in an Indenture, on his part to be performed, It is not any plea to ſay, there were not any Covenants therein on his part to be performed. Vide 3 Eliz. Dy. 196. & 279. Wherefore it was adjudged for the Plaintiff. Ant. 362. Poſt. 769.

Thornhil & Adams *verſus* King & his Wife.

Mich. 41, & 42 Eliz. rot. 1901.

(24) DEbt upon an Obligation, conditioned for the performance of Covenants within an Indenture of a Leaſe, Whereof one was, That the Leſſee, his Executors, or Aſſignes, nor any other, who ſhall come to have the Eſtate, or intereſt in the Term, or any part thereof, ſhall not alien their Eſtate, without Licence of the Leſſor, but only to his Wife, or Children. The Leſſee deviſes it to his Wife, and makes her his Executrix, who enters therein, as Legatee, & takes King the Defendant to Husband: they alien the Eſtate, the Leſſor brings debt upon the Bond; they pleaded, that they had not alienedContra formam Conventionis. The Plaintiff ſhews the alienation abovesaid: And thereupon it was demurred, and held by Anderſon, Glanvile, and Kingſmil, that the Covenant is broken For the Feme is reſtrained from aliening, by expreſs words thereof, as well as the Leſſee himſelf: for it extends to the Leſſee, and his aſſignes; and ſhe is aſſignee. So although there was once an alienation by Licence, yet that aſſignee cannot alien without Licence: but Walmſley doubted thereof; becauſe the words are, that the Leſſee or Aſſignee ſhould not alien but to his Wife, or Children; and the wife is not within thoſe words, for ſhe cannot alien to her ſelf; So ſhe is not intended to be within them; but he ſaid, it had been adjudged here, That where a Condition within a Leaſe was, That neither he nor his his Aſſignes, ſhould alien without licenſe; the Leſſee died inteſtate; the Adminiſtrator was bound by this Condition. Vide Dy. 152.

Holt *verſus* Liſter.

(25) TEnant for life, remainder for life. He in remainder for life reciting, that he had the Eſtate in Fee, Levies a fine ſur Conuſance de droit come ceo, &c. The Conuſee brings a Quid juris Clamat. The Tenant for life made default, whereby he was adjudged to Attorn, which afterwards he did. The queſtion was, Whether both their Eſtates were forfeited? the one by the Fine, the other by the Attornment thereupon. And all the Court agreed, That the firſt Eſtate was not forfeited, becauſe the Attornment was by compulſion of the Court, upon his default of appearance, and not upon his meer motion. And walmſley, and Kingſmill held; that the ſecond Eſtate is not forfeited by this Fine; becauſe the Fine is not any diſcontinuance. And nothing paſſed thereby, but what he might lawfully paſs. But Anderſon, and Glanvile e contra, becauſe the Forfeiture is not only where there is a diſcontinuance, but where he doth act in a Court Owen 146. Co. Litt. 252. a Ant. 671. Mo. 211.

of

of Record, whereby his will may appear to diſ-inherit him in reverſion; as where he prays in aid of a Stranger, or in Waſt
Co.Litt. 252.a. brought by a Stranger, he pleads Nul waſt fait, and ſo admits the reverſion in him. Whereforе, &c.

Johnſon *verſus* Morgan.

(26) DEbt upon a Bill, which was by theſe words; Be it known, *&c.* That I, *William Morgan*, do acknowledge my ſelf to be indebted to *J. Johnſon*, for all ſuch ſums of Money, as *A. D.* my Brother in law did owe the ſaid *J. Johnſon*: and avers in facto, That then A. D. owed unto him 45 l. &c. Walmſley, and Kingſmil held it to be a good Bill, and the Action well grounded thereupon, with this averment; for it is thereby reduced to a certainty; and although it be uncertain in the words of the Bill, yet when it may be reduced to a certainty, it is well enough: but Anderſon and Glanvile e contra, becauſe it ought be certain, what, and to whom he owed it. And here to ſay, That he owed that, which his Brother in law owed, is void; for he cannot be indebted for his Brothers debts: for the debts of his Brother are not thereby diſcharged notwithſtanding. But Walmſley ſaid, That the words Tant amount, that he is indebted in ſuch a ſum, as his Brother in law owed, and yet thereby the debt of his Brother is not determined. And the like Caſe was adjudged in this Court, Paſch. 29 Eliz. Whereforе, &c. Adjournatur.

Bretton *verſus* Prat. Hill. 42 Eliz. rot. 408.

(27) DEbt upon an Obligation, conditioned for the performance of the award of J. S. to be made, &c. The Defendant pleaded Nullum fecit arbitrium. The Plaintiff ſhews, that ſuch an award was made, That he ſhould make an eſtate of ſuch Lands to the Plaintiff for life, remainder to J. S. a ſtranger in Fee: and it was thereupon demurred. Et per Curiam, although this award be void, as to the remainder to a ſtranger, yet it is good for the particular eſtate, and ought to be performed; but, becauſe there was not any place mentioned in the Replication, where this Arbitrament was made, and which is iſſuable, it was adjudged againſt the Plaintiff upon general demurrer; for it is matter of ſubſtance.

Ford *verſus* Rider.

(28) DOwer. After Verdict for the Plaintiff, it was moved in arreſt of Judgment, That the Ven. fac. by the Roll was awarded returnable 15 Paſch. but the Writ it ſelf was made returnable 15 Trin. and ſo no Ven. fac. warranted by the Roll; and, that it was not aided by the Statute of 18 Eliz. But all the Court held it to be within the Statute; and that for ſuch a Miſpriſion Judgment ſhould not be ſtayed after a Verdict.

Tiſdales Caſe.

(29) ASſumpſit. The Caſe was, That Tiſdale, Adminiſtrator, had a Judgment againſt him for a debt of the Inteſtates; and promiſed to the recoverer thereof, in conſideration, that he would

would forbear to sue Execution against him until Octabis Mich. That he would pay unto him the Sum recovered at Mich. and at Mich. he failed of payment; and after, & before Octab. Mich. he brought an Assumpsit. And, this matter being shewn to the Court, it was moved, First, That this consideration is not sufficient to maintain the Action. For the forbearnce betwixt Mich. and Octab. Mich. is void. But all the Court held it to be well enough: for, if part of the consideration be good, it sufficeth: and he ought to alledge performance of that part of the consideration which is material, and valuable. But where a consideration consists of two or three parts, and every one of them is valuable, there of necessity he ought to shew performance of every part thereof. They also held: That the consideration to forbear to sue Execution for a time certain was good cause to ground that action. But it hath been adjudged, That a consideration to forbear Paululum temporis is void, for it is not certain: and Paululum tempus is not temporis pars. And the Sute after Mich. before Octabis was well, because the Assumpsit was not performed by the Non-payment at Mich. But of that was the greatest doubt.

2 Cr. 110. 127. Ante. 149. 2 Cr. 503. 4. Ante 19.

Biscop *versus* White. Mich. 41, & 42 Eliz. rot. 408.

(30)

TRespas for breaking his house: The Defendant justifies his Entry into the house virtute of a warrant of the Sheriffs upon a Fieri. fac. awarded to levy such a debt de bonis, & catallis, quæ fuerunt *Philip Biscop* Testatoris, tempore mortis in manibus *Lucretiæ Biscop* his Executrix; and saith, That the Executrix was in the Plaintiffs house cum bonis suis, and there abided. And for that the door of the house stood open, he entred to Levy that Debt, &c. And it was thereupon demurred, and adjudged to be an ill Barr; because he doth not alledge, that Bona Testatoris were in the House, but bona propria Executricis, which were not liable to Execution. But, if bona Testatoris had been there, it was conceived that the Entry had been justifiable. Wherefore it was adjudged for the Plaintiff.

Post. 909.

Sir George Moor, & Francis Brown *versus* Onslow.

Hill. 41 Eliz. rot. 1558.

(31)

PArtition. The Writ was general upon the Statute of 31 H. 8. That they did hold Insimul, & pro Indivis. Manerium de *D.* & Terras, & Visum Franci Plegii in *D.* And, that the Defendant denied partition Contra formam Statuti, &c. The Declaration was according to the Writ; & that the Plaintiffs held to them, and their Heirs the one Moyety: and to the Defendant, & his Heirs pertained the Moyety. The Defendant pleaded, Quod non tenuit insimul prout, &c. And the Jury found a special Verdict, that the Plaintiffs held in Fee, and that the Defendant was Tenant in Tail, Remainder to his right Heirs of the other Moyety. Et si &c. And it was moved first, that this general Writ was not good. For it ought to have been a Writ specially founded according to the Case: For so the Statute appoints; that every one shall have his Writ according to his Case, to be framed by the Clerks of the Chancery. And of that Opinion was Anderson, That for this Cause, the Writ was not good. But all the other Justices held, that this general Writ was good, for the Statute doth not prescribe a Form, but leaves it to the Clerks

Clerks of the Chancery to be framed. And they have deviſed this writ upon this Statute generally, adding only theſe words, Contra formam Statuti, which ſhews it to be grounded upon the Statute. And it hath been the uſual practice ever ſince that Statute, That ſuch Writs between Joynt-tenants, and Tenants in com-
Ant. 743. mon of an Inheritance have been allowed, but a Writ founded upon the Statute of 32 H. 8 betwixt joynt-tenants, and tenants in common of a particular Eſtate, ought to be ſpecial, ſhewing their particular Eſtates: wherefore it was ruled accordingly, that the writ was good. Secondly, Exception was taken; becauſe Partition was demanded of the view of Franckfield, which is not ſeverable: but it was holden to be well enough: for although it be not ſeverable by it ſelf; as Anderſon, and Glanvile held, (but Walmſley and Kingſmil e contra) Yet the profits thereof may be divided: Or, it may be divided, that the one ſhall have it at one time, and the other at another time; yet being demanded to have Partition thereof, with the Manor, and other things, it well lies, for it may be entirely allotted to the one, and Land in recompenſe thereof, allotted to the other. Thirdly, Becauſe this Declaration ſuppoſeth, that they held joyntly in Fee; whereas it is found by the Verdict, that the Defendant held in tail, and ſo the Eſtate miſtaken. And the Court held it to be ill. For although the one needed not to take
Ant. 743. Conuſance of the others Eſtate: yet when he will take upon him the knowledge thereof, and miſtakes it, he fails, and his Writ ſhall abate. Fourthly, Becauſe the Ven. fac. is awarded de vicineto Manerii de D. where it ought to have been alſo from the Vill. And, for this cauſe, it was holden to be ill. But the parties compounded.

Osbourn *verſus* Eden. Trin. Trin. 41 Eliz. rot. 1322.

(32) ASſumpſit. Upon retaining him to be his Sollicitor, for the proſecution, and defending his Law-cauſes, and promiſed to give unto him ſo much, &c. The Defendant thereupon demurred, ſuppoſing it to have been unlawful. And it was adjudged
1 Cr. 160. for the Plaintiff, that the Action was maintainable; and in
Ante 459. 2. Trin. 22 Eliz. rot. 1210. the like Caſe was adjudged accordingly.

Wolley *verſus* Moſely.

Mich. 40, & 41 Eliz. rot. 592. & Paſch. 41 Eliz. rot.

(33) ERror of a Judgment in the Queens Bench. Upon demurrer
Moor. 711. in an Aſſumpſit, The firſt Error aſſigned by Tanfield was, For that the Writ of Inquiry of Damages was awarded by the Roll returnable Die Martis poſt Tres Trinit. And the Writ was returnable Die Mercurii poſt tres Trinit. And the Writ was returned ſerved, and the inquiſition taken 26 Junii, which was Die Martis poſt tres Trin. So the Writ varied from the Roll, and therefore ill, and Error, and the Judgment erroneous, but it was thereto ſaid, that it was the default of the Clerk to award it returnable upon another day, variant from the Roll, which is the warrant thereof: and therefore prayed, that it might be amended. And as to the book of 4 Eliz. Dyer 211. where an Exigent was awarded

awarded by the Roll returnable Oct. Mich. and the writ was returnable menſe Mich. which was ruled, that it could not be amended. It was thereto anſwered, that the reaſon thereof was; becauſe it was in caſe of an Outlawry not amendable; as alſo becauſe the fifth County was held between Oct. Mich. & menſe Mich. which the writ could not warrant, if it ſhould have been amended, and therefore it could not be amended. And as to the book of 2 R. 3. 11. where a Diſtring. Jurat. was awarded by the Roll, returnable 3 Paſch. and the writ was returned 15 Paſch. and at the day, by the writ, the party, and Jury appeared, and Verdict, and Judgment was for the Plaintiff: And thereupon Error brought and ruled to be ill, and not amendable; it was anſwered, That the reaſon thereof was; becauſe, if there ſhould have been any amendment, it ſhould have been of the Writ by the Roll, and not of the Roll by the Writ; and if there the writ ſhould have been amended, then the Verdict which was taken 15 Paſch. had been without warrant, and none of the parties had day of appearance, at the ſaid day. Wherefore, &c. But againſt thoſe books 9 Ed. 4. 15. was urged, where a writ of Hab. Corp. with Niſi prius was awarded by the Roll returnable 15 Mich. and the writ was returnable menſe Mich. & at the day, in the Countrey, the Juſtices took the Enqueſt; and at the day in Banco this matter was moved in arreſt of Judgment, and ruled, that the writ ſhould be amended by the Roll; for the Enqueſt was well taken at the day in the Country, and the amendment is not prejudicial to any, and it is well warranted by the Roll. A preſident alſo was ſhewn Paſch. 30 Eliz. rot. 392. in the Queens Bench, between Jeff, and Wilſon, where in Covenant, the Judgment was upon Non ſum informatus; The writ of Enquiry of damages was awarded by the Roll returnable 15 Paſch. & the writ was there returnable menſe Paſch, and the Inquiſition was taken before 15 Paſch. and being returned, the Plaintiff had Judgment in the Common Bench, where the action was brought; and Error thereof being brought, and this matter aſſigned for Error, and after good deliberation, it was awarded, that the Writ ſhould be amended by the Roll, and the Judgment was affirmed. And afterwards all the Juſtices, and Barons, upon view of this Record, and conſideration of the books held, that it was amendable, and ſo awarded, that the writ ſhould be amended. Vide 46 Ed. 3. 1. 9. 11 H. 6. 11. A ſecond Error aſſigned was, that although this writ ſhould be amended, it then appears, it was not well ſerved; for the inquiſition was taken the ſame day, it was returnable by the Roll, and ſo too late; for it is the day of the returning of his writ, and not of executing it. But all the Juſtices and Barons held, that it might well be executed the ſame day of the return; for it is ſufficient, if he hath it in Court the ſame day to return it. Wherefore the Judgment was affirmed. Vide, 31 H. 6. 13. 33 H. 6. 45.

Ant. 677. Poſt. 767. Ant. 677. Ant. 468.

Woodyard *verſus* Dannock, and Trundle. Trin. 40 Eliz. rot. 835.

DEbt Upon an Obligation of 600l. dated 4 Septemb. 37 Eliz. conditioned, That if he were ſeiſed in his Demeſn, as of Fee, the day of the Obligation made, of ſuch Copy-hold Lands in Sybton-Docking, and if the ſaid Lands be diſcharged of all Incumbrances, made by him, except the Eſtate, and title of Joynture of his wife (34)

Elizabeth, that then the Obligation ſhould be void. The breach is aſſigned in hoc, that the Defendant, before the Obligation made, had ſurrendred thoſe Lands apud Sybton prædict. to the uſe of Eliz. his wife for life. The Defendant pleaded, that he did not ſurrender it modo, & forma. The Plaintiff ſur-rejoyns, Quod ſurſum reddidit apud Sybton-ddocking, modo & forma, &c. And thereupon a Ven. fac. was awarded to Sybton, and tried for the Plaintiff, and Judgment accordingly. And now Error thereof brought. The firſt Error, becauſe the Ven. fac. is from Sybton, where it ought to have been from Sybton-ddocking; for ſo is the Sur-rejoynder, which makes the iſſue. But the Juſtices, and Barons held, that in regard the ſurrender is alledged in the replication to be at Sybton, and the Rejoynder agreeth therewith, the iſſue is thereupon; and the naming of Sybton-ddocking in the ſur-rejoynder is but ſurpluſage, and ſhall be well amended: Whereupon it was awarded, that ddocking in the ſurjoynder ſhould be ſtricken out, and they were ready to have affirmed the Judgment. But then another Error was aſſigned in the matter, that there was not any breach aſſigned; for the ſurrender to the uſe of Eliz. his wife is excepted, and ſo no breach. But it was moved by Houghton, That this Exception doth not extend to the firſt Clauſe, but only to the diſcharging from incumbrances. But the Court held, That it extended to both, and ſo appears to be the intention of the parties. Wherefore the Judgment was reverſed.

Ant. 44.

Green *verſus* Charnock, & Starnel. Trin. 40 Eliz. rot. 1127.

(25) TReſpaſs, Clauſum fregit; they imparle, and at the day Starnel did not appear, whereupon a Nihil dicit was entred againſt him. Charnock pleaded in Barr; and thereupon the Plaintiff replied; and demurrer joyned upon the replication, and day given over to the next Term, and then adjudged for the Plaintiff. And at the ſame Term a Nolle proſequi was entred againſt Starnel, and a Writ of Enquiry of damages awarded againſt Charnock, and upon return thereof adjudged againſt him. And thereupon they brought Error: And the Error aſſigned, becauſe this Nolle proſequi is againſt one, where Judgment is entred againſt both, being that a Retraxit againſt the one is as ſtrong as a releaſe to the one, the which being to one of the Defendants, is a good diſcharge for both, and then this Judgment againſt Ch. is erroneous. And of that opinion were all the Juſtices, and Barons. Wherefore it was reverſed. But, Note, I heard of another reaſon of the Reverſal of this Judgment: *viz.* Becauſe there was not any Judgment entred againſt *Starnel* for his *non*-pleading; nor day given, and ſo a diſcontinuance of the Sute. And the *Nolle proſequi* againſt him came too late; and the diſcontinuance againſt one was a diſcontinuance againſt both, and of the entire Sute. Therefore, *&c.*

Termino

Termino Trinitatis, Quadrageſimo ſecundo ELIZABETHÆ, in Banco Reginæ.

Pigot *verſus* Sympſon, and others

Vide ante, Hill. 40. Pl. 5. Hill. 42 Eliz. rot. 758.

ACtion ſur Trover. Upon Demurrer, the Caſe was; The Plaintiff being owner of the Rectory, of Evingham, in the County of Northumberland, brought his Action ſur Trover, of 20 loads of Wheat in Harlow, being the Tithes of the Rectory ſet out from the nine parts. The Defendant pleaded, That Harlow was a member of the Manno̅r of Pridhoe, both which are within the Pariſh of Evingham, and conveys the Manno̅r to the Earl of Northumberland; and preſcribes, That the E. of N. and all thoſe whoſe Eſtate he had in the ſame Manno̅r, from time whereof, &c. had paid to the Parſon of E. Six pounds annually, in ſatisfaction of all Tithes within the ſame Manno̅r; and further, that the ſaid E. and all thoſe, whoſe &c. had uſed to have, in reſpect of the ſaid ſix pounds, the tenth part of all the Corn within the ſaid Manno̅r; and ſo theſe Tithes within the ſaid Manno̅r, being ſevered from the Nine parts, he took by Title under the ſaid Earl. And it was thereupon demurred, and argued for the Plaintiff, That this was not any plea; for a Lay-man is not capable of Tithes, and therefore no continuance of time can give him any Title to that, whereof he is not capable; for, by the antient courſe of our Law, he cannot ſue for them: And the Civil Law did not permit a lay man to ſue for them there, and ſo he had not any remedy, and therefore not any right. There is not any alſo can preſcribe in a thing in groſs per que Eſtate, and here he preſcribes, as for a thing in groſs: And he cannot preſcribe, as to a thing appurtenant to a Manno̅r; for a Spiritual thing cannot be appendant to a Temporal; and for that purpoſe cited a Caſe to be ruled in this Court betwixt Shirwood and Winchcomb, 36 Eliz. Wherefore, &c. But all the Court, upon the firſt motion, reſolved to the contrary, That it is a good Preſcription; For when the Lord hath uſed, from time whereof, &c. to pay this ſum, &c. And in reſpect thereof to have all the Tithes within his Manno̅r, it ſhall be intended, That, at the beginning, the Lord had all in his hands, and then might preſcribe to pay a ſum in diſcharge of all the Tithes within the Manno̅r, & when he gave the Tenancies to hold of him, & always afterwards uſed to have the Tithes of thoſe

(1) Ante 599.

Ant. 293.

Lands and Tenements, it is a very reaſonable preſcription: for now he hath no more, then what he had before, for he had them before by retainer, and how he takes the Tithes themſelves. And Gawdy ſaid, it may be, that the Parſon before time of memory granted thoſe Tithes to the Lord of the Manor, rendring Rent, which was confirmed by the Patron, and Ordinary, and this, being before time of memory, may well be ſo intended, Quod Popham conceſſit, and ſaid, That, that was their principal reaſon of the Judgment, between Pigot, and Hearn. And they ſaid, that in this Caſe, the Lord might have good remedy at the Common Law, or in the Spiritual Court; Wherefore they intended to have adjudged it for the Defendant: But then Exception was taken to the pleading, that the Converſion was ſuppoſed 10 Sept. 40 Eliz. and the Defendant ſaith, That he found them the 20 Sept. 40 and converted them the 10 of Sept. which is repugnant in it ſelf, which the Court held incurable, Vid. 1, & 2 Ph. and Ma. Dy. 3.

Ant. 599.

Grygg *verſus* Moyſes. Hill. 42 Eliz. rot. 118.

(2) EJectione firmæ. Upon a ſpecial Verdict, The Caſe was; One lett Lands for years, rendring 50 s. Rent per annum, at the four Feaſts, viz. Mich. &c. Proviſo, That, If the Rent be arrear by the ſpace of a year, after the day of payment, it being lawfully demanded, and no diſtreſs to be found there, per totum tempus prædict. he might re-enter; the Rent was arrear for a year; the Jury found a Demand, and that there was not any diſtreſs upon the laſt day of the year upon the premiſes, and that the Leſſor entred, and lett to the Plaintiff; and whether the Leſſors Entry was lawful? Was the Queſtion. And, without argument, the Court reſolved for the Defendant, that the Condition is not broken, if there be a diſtreſs there at any time of the year; for per totum tempus prædict. ſhall be taken for any part of the year; and a condition ſhall be taken moſt favourably for the Leſſee: But here the words are plain, Wherefore it was adjudged for the Defendant.

Wood *verſus* Reignold. Paſch. 41 Eliz. rot. 370.

(3) EJectione firmæ of a Leaſe of the Lady Ruſſel the wife of Sir J. Ruſſel. Upon a ſpecial Verdict, the Caſe was; Sir Jo. Ruſſel ſeiſed of the Land in Fee, 15 Maii, 15 Eliz. by Indenture Covenanted with Ralph Sheldon, in conſideration of a Marriage to be had betwixt him, and the ſaid Lady Ruſſel, (daughter of Sheldon) to ſtand ſeiſed to the uſe of himſelf, and his Heirs, until Marriage; and after, to the uſe of himſelf, and the ſaid Dame Ruſſel, and the Heirs of his body, with other remainder over; and afterwards in Decemb. 16 Eliz. Sir Jo. Ruſſel lett that Land to the Defendant for 31 years to commence after the end of a former Term; afterwards in Jan. 16 Eliz. the Marriage took effect; the firſt Term expires; Sir J. R. dies, the Lady R. enters, and letts to the Plaintiff, who, upon Entry by the Defendant, brings this Action, Et ſi. &c. Godfrey for the Plaintiff moved, That this Leaſe could not barr, nor deſtroy the contingent Uſe, or Eſtate to the Feme, but that it would well riſe, for the Fee whereout the Uſe is derived, continues, and is not touched by this Leaſe; as a deſcent ſhall not bind a Leaſe, becauſe he may have his Leaſe, and not touch the

Co. Lit. 249. a.

the Freehold; So 1 Ed. 3. 5. it is ſaid, if a Termer for years be ouſted by Fine of Lands in ancient Demeſn, he ſhall avoid that by Deceipt, during his Term, and no longer: And if a Covenanter be bound in a Statute, after the Covenant before Marriage, that ſhall not be extended upon the Feme; and the Caſe Hill. 42 Eliz. between Leigh and Burton in the Court of Wards was not againſt this opinion; for there the Caſe was, that a man made a Feoffment to the uſe of himſelf for life, remainder to his Feme for life, remainder to his right Heirs, with a Proviſo; That, if his Son interrupted his wife, that it ſhould be to the uſe of his wife, and her Heirs; the Father made a Leaſe for years, to begin after his deceaſe; the Son diſturbed the Feme; Whether it now ſhould be to the Feme in Fee? Was the queſtion; and reſolved, that it ſhould not, by the opinion of the two Chief Juſtices, That the Uſes ſhould not riſe; but I conceive the reaſon thereof to be, in reſpect, that the uſe limited to the right Heirs was the antient Reverſion, and no new Eſtate, and there could not be a Condition annexed thereto. Wherefore, &c. Tanfield; the point is double; Firſt, Whether the Leaſe ſhall deſtroy the future Uſe? Secondly, If it ſhall not deſtroy it, whether it ſhall not bind the future Uſe? For it ought to ariſe out of the Eſtate, which the Covenanter had at the time of the Covenant, which Eſtate ought to continue without alteration, till the time, that the Uſe ſhall ariſe, which is not here, for this is a Term in reverſion. To the ſecond, this Leaſe, made upon good conſideration, before the Uſe did ariſe, ſhall bind it; for the Uſe ſhall not otherwiſe be executed, then if it had been at the Common Law. And a Leaſe, made bona Fide to one, who had not notice thereof, ſhall bind it. Popham; The Statute executes only Uſes in Eſſe, and not any contingent Uſes, until they happen in Eſſe; then this Uſe was meerly void until marriage: For there was not any new Eſtate in him; and, if he, after that Covenant had made a Feoffment, or a Gift in Tail to one, who had not any notice thereof, it would queſtionleſs never have ariſen. And, as at the Common Law Feoffees might deſtroy Uſes in Eſſe, ſo now may he out of whole Eſtate a future Uſe is to be raiſed; for the Freehold is deſtroyed, out of which it ſhould ariſe. And, whether the Leaſe for years ſhould altogether deſtroy the ariſing thereof, is not in this Caſe material: But clearly it ſhall bind the contingent Uſe, and ſo reſolved in Strangwiches Caſe. And at the Common Law it is clear, that Ceſty a que ſhall not avoid ſuch a Leaſe made by the Feoffees, upon a good conſideration, no more then a contingent Uſe at this day. Fenner agreed, That if a Free-hold be conveyed to one upon conſideration, the future uſe ſhall not riſe; for there is not any perſon ſeiſed to that Uſe, when it ſhould ariſe. But this Leaſe will not deſtroy, nor hinder it; for the ſame Free-hold remains, and the Uſe is annexed to the Leaſe, and therefore the Leaſe ſhall not diſturb nor bind it. Clinch agreed with him for this laſt reaſon. Sed, Gawdy abſente. Adjournatur, Poſtea, Mich. 43, & 44. Pl. 17.

Poſt. 827.

Poſt. 827.

Douglaſs *verſus* Shank.

Mich. 41, & 42 Eliz. rot. 221.

(4) FJectione firmæ. The Plaintiff declares of a Leaſe for years, habendum a die Datus, virtute cujus Dimiſſionis he entred, and was poſſeſſed, until ejected by the Defendant. The Defendant pleaded Not-guilty; and after Verdict for the Plaintiff, it was alledged in arreſt of Judgment, that the Declaration was not good, becauſe the time of the Entring is not alledged; for, if he entred on the day of the demiſe, he is a diſſeiſor, and the Action not maintainable. But Tanfield and Coventry moved, That it was good; for when it is ſaid virtute cujus Dimiſſionis fuit poſſeſſionatus, it cannot be intended, but that he entred after the beginning of the Term; & therefore it was ruled in 15 Eliz. in Bracebridges Caſe, that there needed not any Entry at all to be alledged, but the uſual pleading ſhall be virtute cujus fuit poſſeſſ. and ſo were all the antient preſidents; for it neceſſarily implies an Entry in due time, otherwiſe he could not be poſſeſſed virtute Dimiſſionis: for, if he entred before the Term began, he is a diſſeiſor, and if after the Term began; he brings an Ejectione firmæ, declaring that he entred before, although he ſaith virtute cujus, &c. It is ill; For it is againſt the expreſs allegation; and ſo it was adjudged here betwixt Clement and Fuller. And of that opinion were Popham and Clinch; becauſe the Declaration cannot have any other intendment; and if it were not good at the Common-Law, it is aided by the Statute of 18 Eliz. being after Verdict, which hath found him guilty, which cannot be, if the Plaintiff were not poſſeſſed by vertue of the Leaſe. But Gawdy, & Fenner e contra; for the ſtrongeſt ſhall be taken againſt the Plaintiff, viz. That he entred the day of the Leaſe made, and that is not ſupplied by the words virtute cujus, &c. For Fenner ſaid, That 7 H. 7. that virtute cujus, or prætextu cujus, nec auget, nec minuit. Popham; True it is, where there is any expreſs allegation, which croſſeth the concluſion. And Gawdy relied upon Cliffords Caſe, Dy. 96. which he ſaid is all one. Adjournatur. Vide 1 H. 6. 6. 2 H. 4. 13. 12 H. 7. 19. *Note. Trin.* 43 *Eliz.* it was moved again & it was then reſolved, That the Declaration was ill for this cauſe, and adjudged for the Defendant.

Co. Lit. 201, a.

Wortley *verſus* Herpingham.

(5) DEbt. The Plaintiff being Farmer of the Rectory of Kirk-burton in Comitat. Ebor. brought debt againſt the Defendant upon the Statute of 2 Ed. 6. for carrying away his Corn, the Tithes not being ſet out, and demanded the treble Value. The Defendant pleaded Not-Guilty. Coke, Attorney General, moved, That it was not any iſſue in this Action. But all the Court reſolved, That it was well enough; for it was not for a Non-feſance, but for a Male-feſance, wherein the Tort is ſuppoſed; And in an Action upon the Statute, which prohibits a thing, upon which a penalty is demanded, the iſſue may be Non Culp. or Non Debet, and ſo it hath been oftentimes ruled in this Court. Wherefore the iſſue was joyned accordingly.

St. 25. 6. c. 13.

Ante 621.

Dalſton

Dalſton *verſus* Thorp. Mich. 41 & 42 Eliz. Eborum.

ERror of a Judgment in the Common Bench in debt upon an eſcape. The Error aſſigned was; for that the Original Writ had not the Sheriffs name to the return thereof according to the Statute of York, 12 Ed. 2. And for this cauſe it was moved, that it was Error, and the Judgment reverſable. But in regard the Defendant had appeared, and the Plaintiff had counted againſt him upon the Record of the recovery, and the Defendant had pleaded Nul tiel Record, it was holden not to be material, although the writ had not been returned; for he ſhall never take advantage (after appearance, and pleading) of ſuch a Miſpriſion, nor of the Mis-warding of mean proceſs. Wherefore the Judgment was affirmed. (6) Ant. 165.

Parks *verſus* Jackſon.

ERror of a Judgment in the Queens Bench, in an Ejectione Firmæ. The Error aſſigned, That the Plaintiff after Verdict, betwixt the day of the Niſi prius, and the day in Banco, had entred, whereby his Bill was abated; and it was thereupon demurred, and without hearing any argument reſolved, that it could not be aſſigned for Error; for it proves that the Bill is abateable, but it is not abated in fait; and although it was alledged, that this being meſne between the day of Niſi prius, and the day in Banco, ſo as he had not day to plead, and therefore ſhould aſſign it for Error; the Court notwithſtanding held, that it was not material to aſſign it for Error; for upon ſuch ſurmiſe, which goes only in abatement, the Judgment ſhould not be examined. A ſecond Error aſſigned was, That the Ven. fac. was awarded returnable upon the Roll die Sabbathi, poſt quindena Martini and the writ it ſelf was returnable die Jovis, poſt quindena Martini, ſo as it varies from the Roll, & is not warranted thereby. Wherefore, &c. But the Court held it to be no Error; for in regard a ddiſtringas was awarded upon it, and the Trial is upon the ddiſtringas, the Verdict is good: And if not, it is holpen by the Statute of 18 Eliz. of Mis-awarding of proceſs. Wherefore the Judgment was affirmed. (7) Ant. 761. Poſt. 820.

Hertford *verſus* Gernon.

ERror of a Judgment in the Common Bench. The Error aſſigned was; becauſe the Plaintiff bought his Action upon the Caſe againſt the Sheriff, for ſuffering one ſuch, who was in Execution for debt due to the Plaintiff, to eſcape. Whereas in this Caſe he ought to have debt, and not action upon the Caſe. But the Court held clearly, That it is at the Plaintiffs Election to have the one action, or the other. Whereupon the Judgment was affirmed. (8)

Taylor *verſus* Wilbore.

(9) ERror of a Judgment in the Common Bench, in an Ejectione firmæ. The Error aſſigned, becauſe the Judgment is, Quod Defendens capiatur; whereas the Ejectment is alledged to be before the pardon of 33 Eliz. and ſo pardoned by the general pardon. Sed non allocatur; for, if he would have had advantage thereof, he ought to have prayed it, and pleaded it: For non conſtat curiæ, but that the Defendant might be one of the parties excepted in the pardon, unleſs that he avers it. Secondly, Becauſe the Defendant was found not guilty quoad a third part, and the Judgment is entred thereupon, Quod defendens eat inde ſine die, & querens in miſericordia, &c. Whereas it ought to have been Quod Le Plaintiff nihil capiat per billam for that third part. Sed non allocatur: for all the courſe of Entries, when part is found for the Plaintiff, and part againſt him, is to enter only, Quod Defendens eat ſine die, quoad, &c. whereof he is acquitted. Wherefore they would have affirmed that Judgment, but, becauſe the Plaintiff had not appeared that Term, they cauſed him to be Non-ſuited.

Poſt. 778.

Dowdenay *verſus* Oland. Trin. 41 Eliz. rot. 1169.

(10) ERror of a Judgment, in the Common Bench, Trin. 40 Eliz. rot. 2716. Aſſumpſit, whereas he was obliged to the Defendant by an Obligation in 40 l. for the payment of 20 l. at a day mentioned in the Condition: And whereas the Plaintiff intending to exhibit a Bill in the Chancery againſt the Defendant pro eo, that he confeſſed, that he was ſatisfied of the debt, took forth a Writ of Sub pena out of Chancery returnable at a day certain; that the Defendant, in conſideration the Plaintiff would deſiſt from his Sute in the Chancery, aſſumed to the Plaintiff to reſtore that Bond upon requeſt, and alledgeth in facto, That he required the re-delivery of that Bond, and his deſiſting from the ſaid Sute, and that the Defendant had not delivered it, but proſecuted Sute thereupon, &c. The Defendant pleaded Non aſſumpſit, and found againſt him, and, after divers motions in the Common Bench in ſtay of Judgment; becauſe the conſideration is not ſufficient, being only to ſtay a Sute in Chancery, which is matter of conſcience, and not at the Common Law, it was held to be good enough, and adjudged for the the Plaintiff. And now Error being brought, the Judgment was affirmed. Mich. 43, & 44. Pl. 1.

Poſt. 848.

Trin. 42. in Communi Banco.

Whyte *vreſus* Geriſh.

(11) REplevin. The Caſe was, That one made a gift in Tail, reſerving Rent, Tenant in Tail ſuffers a recovery. Whether the Rent were gone, or not? Was the Queſtion. Anderſon

derſon and Kingſmil held, That it was; For otherwiſe the Land ſhould be holden of two, viz. of the Donor, and of the Lord Paramount. And Anderſon ſaid, there was not any difference betwixt this Caſe, and the Caſe reſolved, where he in reverſion granted a Rent-charge, and Tenant in tail ſuffered a Recovery. But Walmſley and Glanvile e contra, for he in reverſion is in poſſeſſion of the Rent, and it cannot be taken from him by a Recovery againſt another, and he hath not any recompenſe for it, upon the Recovery, in value: for the recompenſe goes only to the Eſtate-tail, and the reverſion, and he hath not any recompenſe for the Rent; and it is not like to the Caſe, which was put of a Rent-charge; for that was never executed after the Grant, and the Grantee was never in poſſeſſion thereof at the time of the Recovery. But it is here executed; as where Tenant in tail Grants a Rent-charge, and after ſuffers a common Recovery, the Rent remains; and as to the Tenure of two, Walmſley held, That it well might be, as in the Caſe, where a Meſnalty is created after the Statute of Quia Emptores Terrarum. And the Donor here ſhall have all the ſervices, which he had before the Recovery. Wherefore Adjournatur. Reſid. poſt. Poſt. 793.

Shipwith *verſus* Steed. Trin. 41 Eliz. rot. 1951. or 951.

(12) DEbt upon an Obligation, conditioned for the performance of Covenants, in an Indenture between William Steed, and Ann his wife on the one part, and the Plaintiff on the other part. The Defendant pleaded the Indenture, as an Indenture of W. S. and Ann his wife, whereas in truth the Feme never ſealed. The Plaintiff replies, That the Indenture ſhewn by the Defendant non fuit facta inter William Steed, and Ann his Wife on the one part, and the Plaintiff on the other. And thereupon they were at iſſue, and the Jury found, That the Baron ſealed it, but the Feme did not. And all the Court held, that this Verdict is found againſt the Defendant, who pleaded it as to the Deed of the Feme. And Anderſon, Glanvile, and Kingſmil held, That the Plaintiff is not Eſtopped to ſay, that the Deed ſhewn is not the Deed of the Baron, and Feme. But he is Eſtopped by the Condition to ſay, That there is not any ſuch Indenture; as 3 Eliz. Dy. Smiths Caſe. And Glanvile and Kingſmil held; That if the Baron had ſealed and delivered it in name of the Feme, it had been the Deed of the Feme, during the life of the Baron. And if they by Indenture bargained, and ſold the Land of the Feme, rendring Rent, it had been a good Deed of the Feme, becauſe ſhe afterwards might have accepted the Rent, and affirmed it as her Deed. Wherefore it was adjudged for the Plaintiff. Ant. 362, 757.

Barham *verſus* Dennis.

(13) TReſpaſs. Quare vi & armis in *Annam* filiam ſuam inſultum fecit, & ipſam cepit, & impriſonavit, *&c.* The Defendant pleaded Not guilty, & found againſt him, and damages aſſeſſed for the taking 10 s. and for the Impriſonment 6 l. 13 s. 4 d. Williams moved, That this Action lay not; For the Father ſhall not have the action, unleſs for the taking of his Son, and Heir, or of his Daughter and Heir, which is by reaſon that the marriage of them appertains

Ant. 55. unto him, and not of any other of his Sons and Daughters: and the Writ ought to ſuppoſe Quare filium, & hæredem, &c. Vide 9. Ed. 4. 53. and 33 H. 6. the Writ alſo is for the impriſonment, which makes it altogether vitious; for none ſhall have remedy for the impriſonment, but the party to whom the injury is done; and that is to the Daughter her ſelf. The Writ alſo is Cepit & impriſonavit, & he ſaith not Cepit, & abduxit. And if ſhe were not carried from him, the Father hath not any injury. And for theſe Cauſes Anderſon, Walmſley, & Kingſmil held, that the Writ was ill for the form: And that the action lies not for the matter. For as to the form, it ought to have been abduxit, for ſo is the Regiſter, and ſo it ought to be: For otherwiſe ſhe might be taken and impriſoned in the ſame place, and never carried out: And then there is not any Tort which is puniſhable by the Father. They held alſo, That the Father ſhould not have an Action for the taking of any of his Children, which is not his Heir. And that is, by reaſon the marriage of his Heir belongs to the Father, but not of any other his Sons, or Daughters; and, by reaſon of this loſs only, the Action is given unto him: And the Writ in the Regiſter is for the Son, and Heir, or Daughter and Heir only: Which proves, that the Law hath always been taken, that the Action lies not for any other Son or Daughter. And although it hath been ſaid, that a Writ of Treſpaſs lies for divers things, whereof none of them are in the Regiſter. And it hath been adjudged, That it lies for a Parret, a Popinjay, a Thruſh; and as 14 H. 8. is for a Dog. The reaſon whereof is, Becauſe the Law imputes, That the Owner hath a property in them; And although they were not known at the time of the compiling of the Regiſter, yet there be like Writs there for things, whereof the owner hath a property. And therefore being upon the like reaſon, the like Writ lieth: But for the taking of a Son, or Daughter, not Heir, it is not upon the ſame reaſon, and therefore not alike. And here the Father hath not any property, or intereſt in the Daughter, which the Law accounts may be taken from him. And in the other Caſes, if Treſpas ſhould not lie; a Tort ſhould be committed, and be diſpuniſhable. It is clear alſo, that for the impriſoning of the Daughter, the Action is not given to the Father, but to the Daughter her ſelf. Wherefore, &c. But Glanvile e contra. For the Father hath an intereſt in every of his Children to educate them, and to provide for them; and he hath his comfort by them. Wherefore it is not reaſonable, that any ſhould take them from him, and to do him ſuch an injury, but that he ſhould have his remedy to puniſh it. And although it hath been ſaid, that there is a reciprocal courſe between the Father, and Heir, more then between the others; as the Heir ſhall have an Appeal, &c. and not any other of the Sons: That is by reaſon, the action cannot be given, but to one. And although this is not warranted by the Regiſter, it is not material; For in novo caſu novum apponendum eſt remedium. Wherefore, &c. Et adjournatur. Note, That here a Caſe was cited to be adjudged, that a Father brought his Action upon the Caſe for ſlandring of his Daughter; by reaſon whereof ſhe loſt a convenient marriage, which he had provided, and he was enforced to be at a greater charge in providing of another Marriage, which was Trin. 40 Eliz. rot. 1225. between Roſs, and Parret. But Glanvile denied it to be Law, and ſaid, That the Action was there brought

brought by the Daughter her ſelf. Afterwards this matter was ended by arbitrament.

Anonymus.

DEbt for 50 l. and declares upon a Bill, which was in this manner; Be it Known, That I *T.D.* do owe unto *A.B.* 50 l. to be paid unto him 10 l. at ſuch a day, and ſo at five ſeveral days 10 l. until 50 l. were paid. And for payment hereof I bind me, &c. in 10 l. *nomine pœnæ*. The Obligee after all the five days paſſed, brings debt for the 50 l. And Anderſon, Glanvile and Kingſmil held, that the action well lay, for it is a ſeveral bill for the 50 l. and a bill alſo for the 10 l. And he may well maintain two actions thereupon. But Walmſley held it to be one Entire bill; and cannot be ſaid to be ſeveral bills, being all by one ſame Deed. But if he had written in one Deed; Be it known, that I owe 10 l, &c. In cujus rei Teſtimonium &c. and had after written, Be it known alſo, That I owe 10 l. in cujus rei, &c. and put his ſeal thereto: This had been ſeveral bills, Whereto the other Juſtices agreed, and ſaid, That ſo it was here, &c. (14)

Ewer *verſus* Moyle. Hill. 41 Eliz. rot. 108.

THe Caſe was; One Tho. Moyle was ſeiſed in Fee of a Manor, whereof the one moiety was holden in Soccage, & the other moiety by Knights-Service; and of a Parſonage appropriated, and lett the Manor, and the Parſonage to the Plaintiff for years, rendring 77 l. 6 s. 8 d. per annum; and deviſed the Manor to Thomas Moyle, his eldeſt Son, for life, remainder in Tail to John Moyle, his younger Son now Avowant, and died. Thomas Moyle ſurrendred his Eſtate to John Moyle, who diſtrained; and in his Avowry ſhews all this matter; and that the Parſonage was worth Twenty Marks per annum; and for five parts of the reſidue of the Rent being divided into ſix parts, as for Rent due for five parts of the Manor, he Avows; the Plaintiff ſaith, That the Parſonage was worth 20 l. per annum; but ſhews not of what value the Manor was, and demanded Judgment of the Avowry. And hereupon the Defendant demurred, becauſe he doth not ſhew the entire value of the whole demiſe; and it was much debated, whether there could be any apportionment in this Caſe; For although there ſhould be an apportionment in caſes at the Common Law, as in caſes where Land at the Common Law, and Land in Burrough Engliſh, are lett for years, and the reverſion of the one deſcends to the Heir at the Common Law, and of the other to the Heir by the Cuſtom; and ſo of a deſcent of a reverſion to Coparceners, and a partition made betwixt them: Yet if it ſhould be ſo upon a deviſe, which is the act of the Leſſor, eſpecially as this Caſe is by the ſurrender of the Tenant for life, for until then, there was not any apportionment to be made, the Court much doubted, and were of ſeveral opinions, and if there ought to be an apportionment, how it ought to be made. Whether the Tenant ſhould not ſhew what is due, and plead a tender thereof? For, whether the Avowant ought not at his peril to ſhew the value of the Entire? Whereupon the Court moved the parties to agree; and they thereup-

1 Rol. 235. 2 Inſt. 504. Yelv. 140. Mo. 665. 2 Cr. 160. Dyer. 5. a. Co. Lit. 164. b. Co. Lit. 148. a.

on put the matter to arbitration. Vide for the apportionment 28 H. 8. Rushdens Case, 6, and 7 Eliz. Dy. 82. and 4 Ass. 5, 30 Ass. 12, 7 H. 6, 3. 12 H. 4. Note, That afterwards in Hill. 43 Eliz. the Case was argued again; and all the Court then agreed, That there should be an apportionment, in regard it was not a division by the Act of the partie, but by the Law, viz. The Statute of Wills, as in 34 H. 6. where the Lessor grants the Reversion to the Lessee, and a stranger; they also held, that the barr to the Avowry was not good; because, that all was not valued, but part. And this is matter to be tried by a Jury. Wherefore it was adjudged for the Avowant.

Post. 851.

Termino

Term. Mich. Quadrageſimo ſecundo & tertio ELIZABETHÆ, in Banco Reginæ.

Hall *verſus* Matthew Denbigh, and others.

Hill. 42 Eliz. rot. 930.

EJectione firmæ, of a Leaſe of Francis Fulliamb, by Indenture dated 1 Novemb. 39 Eliz. Habendum a conſectione Indenturæ prædictæ. and the Ejectment is ſuppoſed 2 Novemb. 39 Eliz. The Defendant pleaded Not guilty; and found againſt him. And, after Verdict it was moved in arreſt of Judgment, that this Declaration was not good. For it doth not appear when the Leaſe was ſealed, and delivered; for it might bear date at one time, and be afterwards delivered; and a Declaration ought always to be certain; and therefore the common courſe is to ſay, That ſuch a day and year demiſit per Indenturam dated the ſame day, and year. But all the Court, after divers arguments, reſolved for the Plaintiff, that it was well enough. For when he declares that he lett by Indenture of ſuch a date, it ſhall be always intended to be delivered at the ſame time, whereon it bare date, if it be not ſhewn with a primo deliberatum at another day; and he, who pleads a Deed of ſuch a date, cannot by replication, or other pleading, maintain it to be delivered at another time, for it would be a departure; as 5 H. 7. 26. Dy. 167. 221. Wherefore it was adjudged for the Plaintiff. (1) Poſt. 890.

Howel *verſus* Johns. Paſch. 42 Eliz. rot. 364.

ERror of a Judgment in Gloceſter, in a Court of Pyepowders, in an action upon the Caſe for words; where the preſcription was to have a Market every Saturday, and a Court of Pyepowders every Market-day. The firſt Error aſſigned, was; That a Court of Pyepowders cannot be to a Market, but only to a Fayr. But the Court held, That it well might be to the one, or other. Secondly, Becauſe this action is for words not ariſing in the Market; for the Market was holden 8 Junii, and the words (as appears by the Declaration) were ſpoken 5 Junii. And it was holden by the whole Court to be Error; For they cannot meddle with any matter in that Court: But with what happens in the Market the (2) Moor. 823. 4 Inſt. 272. Co. 10. 73 b. 1 Rol. 544. 4 Inſt. 272.

the ſame day. They alſo held, that this was not an action proper for that Court: For it is only for matters of Contracts, and for matters ariſing within the Market, and by occaſion of the Market, as Batteries, or diſturbances, happening there; but, if the words were by occaſion in the ſame Market, it might peradventure be otherwiſe. A third Error aſſigned was, Becauſe a Writ of Inquiry of Damages was awarded, and no day given to the Plaintiff. And that was held to be Error. But, upon view of the Record, it was well enough. But for the two firſt Errors, it was reverſed.

Collins Wills and his Wife.

(3) Moor.468. Ow.63.

Aſſumpſit. And declares; That, whereas the Defendant Wills was a Suitor to the other Defendant (his now Wife, and the Plaintiffs Daughter) and the Plaintiff offered to give with her in Marriage 80 l. and would give no more: And Wills the other Defendant required 90 l. and without that would not marry, and the Feme before marriage, in conſideration that the Plaintiff would give the other 10 l. at her requeſt, to make the 80 l. 90 l. aſſumed, and promiſed to repay it within a Month after ſhe ſhould be required, and alledged in Facto, that he thereupon gave 90 l. to the Defendant Wills in marriage, &c. and alledgeth requeſt after marriage, &c. The Defendant pleaded Non Aſſumpſit, and found againſt him; and Judgment entred accordingly without privity of the Court; and it was now alledged, That this was an inſufficient, and unlawful conſideration to ground this action, and made only in deceipt of the Defendant, who was her Husband. And of that opinion was the whole Court, for, as well as ſhe may promiſe the repayment of 10 l. ſhe may promiſe the repayment of all, or more; ſo as her husband ſhould be defrauded of all; And that, which is given in marriage, cannot be a conſideration to ground a promiſe, eſpecially to charge the Baron with that promiſe: Wherefore in regard the Judgment was entred this Term, and the Record is yet in their hands, It was adjudged, that it ſhould be altered, and made Quod querens nihil capiat per Billam. And a Superſedeas was awarded to ſtay Execution.

Holland *verſus* Dantſey and others.

(4) Moor.622. Ant.739.

Error to reverſe a common Recovery in Lancaſhire, in a Writ of Entry, and whilſt that was depending, a Writ of Eſtreapment was awarded, and an Attachment thereupon. And now the Defendants who came in by the Attachment, moved, That this Writ of Eſtreapment was not grantable in this Court upon this Writ of Error. Firſt, Becauſe that in the firſt Writ, wherein damages were recoverable, it was not grantable. Vide 14 H. 7. 10. But the Court held, notwithſtanding this reaſon, That it was well granted; for more damages may be done by the Waſte, than may be anſwered. Secondly, That in a Writ of Error, Eſtreapment lies not. For he is here to be reſtored to all what he loſt. And therefore there is not any cauſe to ſtay him. Thirdly, For that he comes in by conveyance of the party. For a common Recovery is accounted but a Conveyance in Law. But of thoſe laſt the Court would adviſe. Et adjournatur.

Co.5.115.b. Ant.484.

Coſtard.

Coſtard *verſus* Winder. Paſch. 42 Eliz. rot. 127.

(5)

DEbt upon an Obligation, conditioned for performance of Covenants in a Leaſe; upon demurrer, the Caſe was; That one Doctor Longhem, being Doctor of the Civil Law, and never any Spiritual perſon, was admitted, inſtituted, and inducted to a Benefice, and afterwards made a Leaſe for years of the Rectory: The Patron and Ordinary, before 13 Eliz. confirm it: And he was afterwards deprived by Sentence declaratory, quia mere Laicus. Whether this Leaſe ſhould bind the ſucceſſor? Was the queſtion. Doderidg for the Defendant argued, That it ſhould not bind. For, being a Lay-man, he was never capable, and ſo the inſtitution meerly void; and he never was Incumbent. And of that opinion was Gawdy; that ſuch acts, which he was not capable to do, ſhall not bind the ſucceſſor; becauſe upon the matter he was never Incumbent: And in proof thereof was cited, 4 H. 7. and 28 H. 8. Dyer. But Popham, and Fenner e contra. For in regard he was Parſon de Facto, and ſuch an one, whereof the Law takes Conuſance by his Induction, and the people cannot take notice of any other, all acts done by him, during that time, ſhall bind as well, as if he had been rightful Parſon. For it would be miſchievous, if all the acts by ſuch averments ſhould be drawn in queſtion. And every one agreed, That all Spiritual acts as Marriage, the Adminiſtration of the Sacraments, &c. by ſuch an one, during the time that he is Parſon, are good: By the ſame reaſon, theſe temporal acts, and this Leaſe being confirmed by the Patron, and Ordinary ſhall well bind the incumbent ſucceſſor. Wherefore they, by Aſſent of Gawdy, reſolved to have adjudged it accordingly, Clinch abſente. But for other defects the Judgment was ſtayed.

1 Rol. 476. Moor. 606.

Co. 5. 105.

Dyer 293. a. b. Ant. 699.

Agard *verſus* King.

(6)

DEbt for Rent upon a Leaſe made to the Teſtator of the Defendant, and declares of a Leaſe made de anno in annum, quam diu ambabus partibus placeret, and that the Teſtator occupied it for two years, and paid the Rent, and part of the third year occupied it, and died. And for Rent of the third year the Action was brought. The Defendant pleaded Non debet; and found againſt him, and now moved in arreſt of Judgment, That this was but a Leaſe at Will, which determined by his death. And ſo the action lay not for this third year. But Gawdy, and Fenner held, although, at the firſt, it was a Leaſe certain but for two years, yet when he occupies, and enjoys it part of the third year, it is then a Leaſe certain for that year alſo; ſo as neither the one, or the other can determine the Will during that year, which he had begun to occupy. Wherefore the Action well lies for the Rent of that year. Popham held, That it was a Leaſe at Will for the other years after the two years. And then it determined by the death of the Leſſee. Et adjournatur.

Co. Lit. 45. b.

Yelv. 74.

Bolles

Bolles *verſus* Hewit.

(7) DEbt upon an Obligation, made to the Sheriff. The Condition was, That, if ſuch an one, who was arreſted upon a Latitat appeared perſonally, and anſwered, &c. The queſtion upon demurrer was, Whether this were a good Obligation within the Statute of 23 H. 6. for he might appear by Attorney, and anſwer, which peradventure would be accepted. But it was reſolved, That in regard his appearance is neceſſary to put in ſpecial Bail, if the party requires it; therefore the Bond is good, and ſo ruled in the Court, between Woolverſton, and Sackford. And of that opinion was the Court here, but they would adviſe.

Co. 1 c. 101. a. Poſt. 800.

Foſter *verſus* Taylor.

(8) ASſumpſit. For that the Defendant, upon ſuch a conſideration, aſſumed to pay to him 100 l. viz. 50 l. at one day, and 50 l. at another day, and failed on the firſt day, and before the ſecond day the Plaintiff brought an Aſſumpſit, and whether it lay, or, not? Was the doubt. And the Court held, viz. Clinch and Fenner (cæteris Juſticiariis abſentibus) that it well lay; but they would adviſe.

Ante 118. Poſt. 807.

Robert King *verſus* Mary King. Hill. 42 Eliz. rot. 249.

(9) ERror of a Judgment in the Common Bench in an Ejectione firmæ. The Error aſſigned was, becauſe the Ejection ſuppoſed was of a demiſe of Thomas Bull, and Ann his wife. The Defendant pleaded Not Guilty. In the Record of the Niſi prius, the demiſe was alledged to be by Thomas Bull, and Agnes his wife: So Agnes for Ann, and ſo not warranted by the Record. And the Verdict, and Judgment thereupon erroneous; and it was moved on the other part, That Ann, and Agnes are all one name. And if they be not, yet in regard ſhe is named the Wife, &c. although ſhe be miſnamed, it is not material. And if it were material, that yet it is amendable; becauſe it is the default of the Clerk, That the Record of Niſi prius varied from the principal Record, which is the warrant thereof. But all the Court reſolved, That Ann and Agnes are ſeveral names. And that it is not amendable after Verdict: Becauſe it is a matter in fait, and may be to the prejudice of the Jury, to make them give a falſe Verdict. For if it ſhould be amended, it ſhould be to make it agreeable to the firſt Record, and that peradventure would be falſe. For Thomas Bull and Ann his wife did not demiſe, and ſo the truth was, that the Leaſe was by the name of Agnes, and, if the Record of the Niſi prius had been agreeing with the principal Record, The Defendant could not have been found Guilty of this Leaſe, and this alteration ſhould be to alter the Verdict in matter of fait, which never ought to be. Vide 10 H. 7, 25. 11 H. 6, 11. 20 H. 6, 15. Dy. 260. 2 R. 3. 11. And Gawdy, and Fenner held clearly, That this Miſnoſmer of the Feme made it material, and avoided the whole Leaſe. And it is not the ſame Leaſe whereof the Plaintiff declares. But Popham doubted thereof, becauſe the naming her wife was ſufficient, and the naming the Chriſtian name is idle, and not material. Vide 11 Aſſ. 11. & Dy. 299. Et adjournatur. Afterwards Mich. 43 & 44. Eliz. It was reverſed for the Error aſſigned.

1 Rol. 202. 2 Rol. 135. 2 Cr. 425. 2 Rol. 135.

The

The Counteſs of Salop *verſus* Crompton.

Mich. 41, & 42 Eliz. rot

(10) ACtion upon the Caſe, whereas the Plaintiff 26 Febr. 34. Eliz. Let unto the Defendant an Houſe, a Stable, & three Barns in Shirland, Habendum to him at Will, and the Defendant Entred accordingly; And afterward 20 January, 36 Eliz. being ſo poſſeſſed, tam negligenter, & improvide kept his fire in the ſaid Houſe, That through default of good keeping the reof the ſaid Houſe, Stable, and Barns were burned down, to her damage, &c. The Defendant pleaded Not guilty, and after Verdict it was moved in Arreſt of Judgment, That this Action lies not againſt a Tenant at Will, who burns the Houſes by negligence: For againſt a Tenant for Life or years, or other particular Tenant, who comes in by Demiſe of the party, an Action lies not for Waſt at the Common Law: But by the Statute an Action is given againſt Tenant for life, or years; But Tenant at Will remains, as at the Common Law. And there is not any remedy againſt him for voluntary, or negligent Waſt. But on the other Part it was ſaid, That although Waſt lies not for a negligent, or permiſſive Waſt (for it is not given by any Statute, becauſe the Eſtate of Tenant for Will is uncertain, and by reaſon of the uncertainty he is not bound to repair it) yet for a voluntary which deſtroys the thing demiſed, or for a voluntarie negligence, whereby the thing Demiſed is loſt, an Action well lies; As Litt. fol. 15. is, That Treſpaſs lies where tenant at will cuts down the trees, as it lies againſt a Shepherd, who deſtroys the Sheep committed unto him: So 12 Ed. 4. 18. Bayliff of Goods waſt them, Action upon the Caſe lies, and 14 H. 8. & 48 Ed. 3. 25. Brook Action ſur le Caſe 25. And Mich. 3 H. 8. rot. 755. The Earl of Oxford *verſus* Marning; Action upon the Caſe was brought, ſuppoſing that the Plaintiff was Tenant for life, Reverſion to the King in Fee: And the Defendant was Tenant at Will to the Plaintiff, and cut down fifty Oaks, and carried them away, by reaſon whereof the King recovered the Place waſted, and treble Damages againſt the now Plaintiff: But no Judgment can be found therein. And another Preſident was cited, Mich. 22. H. 7. rot. 320. Cricoſt *verſus* Nichols, where Tenant for years made a Leaſe of Parcel thereof, for a Leſſer term of years, to the Defendant, An Action upon the Caſe was brought againſt the Defendant, for negligently burning his Houſe: But there is not any Judgment to be found therein. Wherefore, &c. But all the Court held in this Caſe, That for the negligent burning, this, nor any other Action lies: For he comes in by the Act of the Party, and it was his folly, that he did not provide for his remedy. But Popham and Fenner agreed, That if Leſſee at Will cuts down Trees, an Action of Treſpaſs well lies, Becauſe he voluntarily deſtroyed the thing Demiſed: So where a Shepherd kills the Sheep. But for this negligent keeping of his fire, whereby his houſe was burned, no Action lies. Wherefore it was was adjudged for the Defendant. 5 Co. 13. b. Vide poſtea, Plac. 22.

Poſt. 784.

Ant. 461.

Ant. 481.

Dighton *verſus* Bartholomew. Mich. 41, & 42 Eliz. rot. 354.

(11) Paſt. 881. 1 Rol. 225.

ERror of a Judgment in the Common Bench, in Treſpaſs of Aſſault, Battery, and Impriſonment. The firſt Error aſſigned was, for that the Defendant pleaded there in Barr a Concord, But it was not with ſatisfaction, and ſo no Plea; alſo as it was pleaded it was not for the ſame Treſpaſs, and ſo void. And yet the Iſſue is taken thereupon, and found for the Plaintiff, and Judgment given upon the Verdict, where it ought to have been given for the Inſufficiency of the Plea: And an Iſſue taken upon a void Plea is meerly nugatory, and idle, and the Verdict there void. As if in Debt the Defendant had pleaded Not Guilty, and Iſſue be taken thereupon, and a Verdict is found, yet it is void, and Judgment ought not to be given. But all the Court held, that although this Plea was ill, ſo as the Plaintiff have Demurred thereto, yet it is not meerly void: For Concord is a good Plea in this Action; And although it be not ſufficiently pleaded, The Defendant ſhall not now, after Verdict, take advantage thereof: But it is aided by the Statute of 32 H. 8. of Iſſues miſjoyned. And to that purpoſe a ſtronger Caſe was Cited to be adjudged in the Exchequer-Chamber, upon a Writ of Error out of this Court, where the Defendant in Debt upon a ſingle Bill pleaded payment, without acquittance, which made not any colour of Plea: Yet Iſſue being taken thereupon, and found for the Plaintiff, Becauſe, although it was an Iſſue miſjoyned, yet it was a proper Iſſue in this Action, Judgment was here given for the Plaintiff, and that Judgment was affirmed. And when a proper Iſſue is joyned in an Action, although it be upon an ill Plea, And it is found by Verdict, it is holpen by the Statute. A ſecond Error aſſigned was, becauſe the offence is alledged to be before the Pardon of 39 Eliz. and thereby the offence to the Queen is Pardoned; yet the Judgment is Ideo capiatur, where it ought to have been a Nihil only for the Queen. And the Entry is uſual in ſuch Caſe to ſay de miſericordia nihil, or non capiatur, Quia pardonatur. But Kemp, and the Clerks ſaid, That ſometimes they uſe to enter it accordingly, and ſometimes not. And the Court held it to be no Error, Quia non conſtat, That he was not a perſon excepted. Wherefore the Judgment was affirmed.

Ante 495.

Ant. 768. 1 Rol. 225.

Wats *verſus* Brains.

(12) Ant. 695. Noy 171.

APpeal of Murder for the death of her Husband. The Defendant pleaded Not Guilty, And upon evidence at the Barr it appeared, That two days before her Husbands death, He, and the Defendant fighting upon a Quarrel then betwixt them, The Defendant was hurt in that Fray; and the third day after the Plaintiffs Husband, paſſing by the Defendants Shop, the Defendant purſued him ſudainly, and the Husbands back being towards him, ſo as he perceived him not, the Defendant ſtroke him upon the calf of his Leg, whereof he inſtantly died. The Defendant to excuſe himſelf affirmed, That he, who was ſlain, when he came by his Shop, ſmiled upon him, and wryed his mouth at him; and therefore for this mocking of him, he purſued him. And it was much inforced by the Defendants Council, That it was a new

R. 189.

cauſe

cauſe of Quarrel; and ſo the ſtroak is not upon any Precedent Malice, and therefore it is not Murder. But all the Court ſeverally delivered their Opinions, that if one make a wry, or diſtorted mouth, or the like countantnce upon another, and the other immediately purſues, and kills him, it is Murder: For it ſhall be preſumed to be Malice Precedent: And that ſuch a ſlight Provocation was not ſufficient ground, or pretence, for a Quarrel; and ſo delivered the Law to the Jury, that it was Murder, although what the Defendant pretended had been true. Whereupon the Jury going from the Barr, notwithſtanding the Evidence was pregnant againſt the Defendant, Eight of them agreed to find him Not guilty: But the other four withſtood them, and would not find it, but to be Murther: And on the next day morning, two of the four agreed with the eight, to find him Not-guilty: And afterwards the other two conſented in this manner, That they ſhould bring in, and offer their Verdict Not-guilty; And if the Court diſliked thereof, That then they all ſhould change the Verdict, and find him Guilty, And upon this Agreement they came to the bar, and the Foreman pronounced the Verdict, that the Defendant was Not guilty. And the Court much miſliking thereof, being contrary to their direction, Examined every one of them by the Poll, Whether that was his Verdict, And ten of the firſt Part of the Pannel, ſeverally, affirmed their Verdict, That the Defendant was Not guilty: But the two laſt affirmed, How they agreed, and diſcovered the whole manner of their agreement: Whereupon they were ſent back again, and returned, and found the Defendant Guilty. And for this practice, Harris, the Foreman, was afterwards Fined 100 Mark, And the other ſeven, who agreed with him at the firſt, every of them was fined 40 l. And the other two who agreed with the eight, although they affirmed, That it was, becauſe they could not endure, or hold out any longer; yet, for that they did not diſcover the Practice, being examined by Poll, but affirmed the Verdict, were Fined each of them, at 20 l. and all of them Impriſoned: But the other two were diſmiſſed, yet blamed for ſuch a manner of conſenting in abuſe of the Court. And afterwards the Defendant was adjudged to be hanged. R. 670. Ant. 695.

Dalton *verſus* Hamond.

(13)

EJectione firmæ. Upon a Leaſe of Hoberts, the Defendant being Tenant to one Luther, a Copy-holder of the Mannor of Stanſted, it was holden per Curiam, that if the Lord demands an unreaſonable Fine of his Copy-holder, where the Fine is incertain, if he denies it, it is not any Forfeiture of his Copy-hold; and it was Ruled, as it was cited in one Hoddeſdens Cauſe. It was alſo holden, That where the Fine is certain, the Heir ought to tender it upon his prayer to be admitted, otherwiſe, the Lord is not bound to admit him: But where the Fine is incertain, he needeth not to bring it, becauſe he knoweth not what he ought to bring; But the Lord ought to Aſſeſs a Fine, and admit him, and he ought to have convenient time for the payment thereof: And if he pays it not, the Lord may Seiſe all as forfeiture. It was alſo reſolved, That, if divers Copy-holds deſcend to one Heir, the Lord cannot demand one Fine for them all; But he ought to demand ſeveral Co. 4. 27. Moor. 622. Co. Lit. 59. b. 1 Rol. 507. Ante 351.

Fines: For, peradventure, the Heir may accept of the one, at the Fine Aſſeſſed, and refuſe the others upon ſuch Fines. Wherefore, &c.

Wigley *verſus* Blackwal.

(14) TReſpaſs. The Defendant pleaded a Feoffment from the Plaintiff: The Plaintiff ſhews, that it was upon Condition, that if he payed 200 l. at ſuch a day, and 10 l. for every Fodder of Lead, which ſhould be delivered unto him, by the Feoffee, or his means, and ſhould make a ſufficient Leaſe for one and twenty years of Bl. Acre, parcel thereof, that the Feoffment ſhould be void: And ſhews the payment of the 200 l. and that the Feoffee had delivered ſo many Fodders of Lead, and that he had paid 10 l. for every Fodder: And that Bl. Acre was parcel of the Land, whereof the Feoffment was made, wherein the Feoffee yet continued in poſſeſſion, and ſo he could not make a Leaſe thereof. And that, having performed all the conditions, he entred, &c. Whereupon it was demurred. Firſt, becauſe it is not ſhewn, that he paid for the Lead delivered him by the Feoffees means; For, That he ought to have done as well, as for the Lead delivered him by the Feoffee himſelf, which was holden to be a manifeſt Fault. Secondly, Becauſe it is not alledged, That the Leaſe of Bl. Acre was made, &c. For although he cannot make a good Leaſe, yet he ought to make a Leaſe by Indenture, which ſhould be good by Eſtoppel. But Popham, and Clinch held, That he needed not to alledge the performance of that part of the Condition, for it is impoſſible to be performed: And if he perform that Part, which is poſſible to be performed, it ſufficeth. For when a Condition conſiſteth of two parts, and the one Part is poſſible to be performed, and the other not, this is a good Condition: If he performeth that Part of the Condition, which is poſſible, ſufficeth: But if the Condition be altogether impoſſible, it is void. And here he cannot make a ſufficient Leaſe, for the Feoffee is always ſeiſed. And it is not intended, that he ſhould make a Leaſe by Eſtopel, the Words being, That he ſhould make a ſufficient Leaſe, Wherefore, &c. But for the firſt point it was adjudged againſt the Plaintiff.

Co.Let. 206.a.

Griffiths Caſe.

(15) ACtion for theſe Words, Thou haſt ſtoln my Mare, or conſenteſt to the ſtealing of her. The Defendant pleaded Not guilty, and found againſt him, and after Verdict it was moved, That an Action lay not for theſe Words, For they are in the Diſjunctive: And as to the laſt Word, it lies not; For he may be ſaid to be conſenting, becauſe he did not contradict it. And of that Opinion were Fenner and Clinch, being only in Court, and awarded, Quod Querens nil capiat per Billam.

The Lady Ruſſel, and Woods Caſe.

(16) THe Lady Ruſſel and Wood, were returned by the Sheriff of Berks to have made Reſcous upon ſuch a Bailiff, to whom he directed his Warrant to Execute his Writ. Williams, Serjeant, moved,

moved, That this Return was Inſufficient, becauſe it doth not appear, That the Bayliff had Returna brevium, which ought always to be mentioned upon the Sheriffs Return; As 33 H. 6. 20. 9 Ed. 4. 19. & 2 H. 4. And all the Court agreed, That it ought to have been ſo, if he returned it as a Return of the Bayliff of a Liberty, But he here returns it in his own name, wherefore it ſhall be intended, that it was his own Bayliff: And although he names him in his Return, Bayliff of a Libertie, that is but a void addition. And then it was prayed, That they might be admitted to Travers this Return, becauſe it is falſe, according to 4 Eliz. Dyer, 212. And a Preſident was cited in this Court, 13 Ed. 4. rot. 3. and that in the Common Bench it is uſual to admit a Travers in ſuch Caſes. But the Clerks ſaid, That the courſe of this Court hath always been to reject ſuch traverſes, and that the Preſident of 13 Ed. 4. which is cited, could not be found. Wherefore Popham, and the Court commanded, that Preſidents ſhould be ſearched, whether a travers had been admitted in ſuch Caſe And if it could not be found before theſe times to have been admitted, then it ſhould not be allowed. Wherefore, &c. Jones 261. Dier 212.

Gumbleton *verſus* Grafton.

(17)

ACtion upon the Caſe, ſuppoſing, that he delivered to the Defendant certain Wools to keep, and the Defendant had converted them to his own uſe. The Defendant pleaded Not guilty, and found againſt him. Godfrey moved in arreſt of Judgment: For that the Ven. fac. and Diſtringas, bare Teſte upon one and the ſame day. But Gawdy, and Fenner held, that it is aided by the Statute of 32 H. 8. of Jeofails. Secondly, He moved, that the Declaration is not good, becauſe he alledgeth not that he loſt them; and the converſion doth not take away the Propertie from him, but that he always may have a Detinue; as 18 Ed. 4. 23. But Gawdy and Fenner held, that the Action well lies: For the converſion takes away the property from him, and it is an offence, for which this Action lies; as 2 H. 7. 2. & Dyer, 22. Cores Caſe. Wherefore, cæteris Juſticiariis abſentibus, it was adjudged for the Plaintiff. Mo. 623. Ant. 183. Ant. 745.

Harriſon *verſus* Nowel.

(18)

ERror of a Judgment in Doncaſter. The firſt Error aſſigned was, For that in this Aſſumpſit the Jury found for the Plaintiff, and aſſeſs Damages, occaſione Aſſumptionis, whereas it ought to have been occaſione non performationis Aſſumptionis. Secondly, Becauſe in the Judgment it was omitted, that the Defendant ſit in miſericordia. And for both Cauſes, Fenner being only there held, that the Judgment was Erroneous and it was Reverſed. Ant. 677.

The Earl of Pembroke *verſus* Syms.

(19)

TReſpaſs upon Demurrer. The Caſe was, the Earl of Pembroke was Seiſed of the Manor of Stoke-Triſter, whereto the Lieutenantſhip of the Foreſt of Fromeſet-wood appertained, and ſhews, that within the ſaid Foreſt were two Walks; the one called Staverdalle-walk, the other called Brewcombe-walk, and Preſcribes; That

That the Lieutenants of the ſaid Foreſt, for the time being, had uſed always, from time, &c. to grant thoſe Walks in Fee, or Fee-tail, &c. And that William Earl of Pembroke, his Father, was ſeiſed in Fee of the ſaid Manor, and Lieutenancy, &c. and granted that Walk, called Brewcompe-Walk, to Sir Maurice Barkley in Tail, and died, and that the now Earl of Pembroke confirmed that Grant, and further granted unto him the Cuſtody of Staverdale-Walk in Tail, Proviſo, &c. That he ſhould not cut down any trees ſuper præmiſſa. And becauſe he had cut down trees growing in Brewcombe-Walk, he entred. And the Defendant, as Servant to Sir H. Barkleigh, the Son of Sir Maurice Barkleigh, reentred, whereupon the Action was brought. And upon this matter diſcloſed by the Replication, it was demurred in Law: Firſt, Becauſe the Condition, That he ſhall not cut down Trees ſuper præmiſſa, is void: For there is nothing granted but the Walks, and Trees cannot be ſuper præmiſſa, which refers only to the Things granted. And therefore it is impoſſible, and void: For a Condition is to be taken ſtrictly, according to the words, and not by intendment: And therefore it is not good, As where one grants Rent, Iſſuing out of the Manor of D. upon condition, that he ſhall not cut down Trees ſuper præmiſſa. So a grant of a Warren, with ſuch a Condition is a void Condition for the impoſſibility. And of that Opinion was Gawdy. Secondly, Admitting it ſhould be taken to extend to the Trees growing within the Walks; yet it ſhall not be intended by this Word præmiſſa, to extend to Brewcombe-Walk, which is only confirmed; But to Staverdale Walk ſolely, which is thereby granted. But they all reſolved for the laſt Point, That this Word Præmiſſa extends as well to that, which is confirmed, as to that, which is granted: For that extends in this ſence to præmentionata, and to avoid his entire Grant. And, as to the firſt, all the Juſtices, beſides Gawdy held, That here ſuper præmiſſa ſhall not be intended of the Office of the Walks it ſelf: For that would be inſenſible, and impoſſible, and therefore it ſhall be conſtrued, as reaſonably it may be, to the Trees growing within the Walks. And although præmiſſa hath properly relation to the Thing it ſelf, which is granted, yet when it cannot have ſuch conſtruction, it ſhall be as it may well ſtand with reaſon. And he, who hath the Cuſtody of the Walk, hath Quaſi the Cuſtody of the Soyl it ſelf, and of the things growing thereupon, viz. the Herbage, and Pawnage for the Deer, which is the reaſon, That, if the Keeper of a Park cut down the Trees, it is a forfeiture of his Office, for it is an hurt to the Game. And therefore this Condition is neceſſary, and reaſonable. And they denied the Caſes of the Grant of a Rent, and the Cuſtody of a Park: For if ſuch a Condition were annexed, it were good. Wherefore it was adjudged for the Plaintiff Vid. 11. Co. 51.

Co. 11. 51. a.

Ante 125.

Heath

Heath *verſus* Pole.

ACtion for Words: Whereas he was Goaler of Maidſton, That the Defendant ſpake theſe Words, Heath hath let forth Priſoners out of the Goal, and had his part, and Shares with them: And by that means he came to his Goods: He had not a Sheet to his bed, before he let them out of the Goal to ſteal them. After Verdict for the Plaintiff it was moved, That an Action lies not for theſe Words: For as to the firſt, He may let Priſoners out, being acquitted, and to have Fees of them, and thereby he may have ſhare, and get his goods by that means. And for the laſt Words an Action lies not: For it doth not appear that he had any Sheets at all, nor is it averred, that they ſtole any Sheets for him. And of that Opinion was the whole Court. Wherefore it was adjudged for the Defendant. (20)

Duncomb *verſus* Reeve and Green.

TReſpaſs. For the taking of certain Raw Hydes. The Defendant Juſtifies as Bayliff of Ipſwich, by Cuſtom there, That, if any Butcher kills any Beaſt within that Town, and ſells the Fleſh within the Market, He is to pay two pence for every Hyde; And that the Bayliffs may diſtrain the Hyde for the two pence, if it be denied: And ſo Juſtifies for that, &c. The Plaintiff replies, that after the Diſtreſs the Defendants Tanned the Hydes, and ſo converted them to their uſe, &c. The Defendants by Rejoynder ſay, That they Tanned them, becauſe otherwiſe they would have rotted. And thereupon the Plaintiff Demurred, and all the Court held it to be an ill plea: For the Cuſtom to diſtrain doth not enable them to Tan: For that is Tortious, becauſe thereby the Property is Quaſi altered, and the Marks to know them are taken away from the Owner, ſo as he cannot have them again. And although one may in ſome Caſes medle with, and uſe a Diſtreſs, where it is for the Owners benefit, as Popham ſaid: As where one diſtrains Armor, he may cauſe them to be ſcoured to avoid Ruſt: So if one diſtrains Raw-cloth, he may cauſe it to be Fulled, for it is for the Owners benefit But here this Tanning is not for his benefit: For it takes from him the notice of the thing, and ſo is a means of taking away the thing it ſelf: For he cannot have any knowledge thereof, to have it again. This Preſcription alſo for the payment of two pence for every Hyde, where the fleſh is ſold within the Town, cannot be maintained that Toll ſhould be paid for that, although the Hyde it ſelf be ſold elſewhere, The Rejoynder alſo is a departure from the Barr. Wherefore it was adjudged for the Plaintiff. (21)

1 Rol. 568. 9.
2 Rol. 562.
Dy. 121. b.

Counteſs

Counteſs of Salop *verſus* Crompton. Ante, Plac. 10.

(22) Ante 777. Co. 5. 13. b. Littl. Sect. 71.

THe Caſe was now moved again, and all the Juſtices reſolved, That the Action lay not for this negligent Waſt. But Gawdy ſaid, he allowed, That, if Tenant at will burnt, or pulled down the Houſes voluntarily, that Treſpaſs lay, becauſe, the privity of the Leaſe is determined by this Act done; which his eſtate permits not, which is the reaſon of the Caſe in 2. & 3 Ph. & Mary. & 121. & 15 Ed. 4. 20. & 2 H. 7. 11. That if a Bayliff deſtroys the thing delivered, Treſpaſs lies. And where a Shepheard will not keep his Sheep, but ſuffers them to be drowned, Action upon the Caſe lies, becauſe he there took upon him the charge. But here he takes not any charge upon him, but to occupy, and pay his Rent, and none will affirm, if a Leſſee at will ſuffers his houſe to fall down, that an Action ſhould lie againſt him: For he is not bound to repair it. Wherefore, &c. And to this difference of voluntarie, and permiſſive Waſt, Popham, Clinch, and Fenner agreed. And Popham ſaid, There was difference betwixt an Intereſt, and an Authority: For if a man hath an Authority to do a thing in general, Action of Treſpaſs lies: But where a man hath an Intereſt, during that time his Miſkeſance ſhall not be puniſhed by a general Writ of Treſpaſs. But as it hath been ſaid, If a tenant at will cuts down the Trees, or pulls down the houſes, a general Action of Treſpaſs lies. For thereby his Intereſt is determined, and he is become a ſtranger, for that he voluntarily had done ſuch an Act, which could not be done by his Intereſt and determines the Will. Wherefore Judgment was given accordingly.

Crouch *verſus* Fryer.

(23) Moor. 618. Yelv. 2. Mo. 51. 1 Rol. 653. Noy. 132.

PRohibition for ſuing for Tithes, &c. wherein is ſurmiſed, That the Biſhop of Winton was ſeiſed in Fee of the Manno of Biſhops-Walton, whereof the Plaintiff is a Copy-holder in Fee: And that he, and his Predeceſſors, from time, whereof, &c. had been Patrons of the Church of E. whereof the Defendant is Parſon; And that he, and his Predeceſſors, from time, whereof, &c. and all his Farmors, and Copy-holders of the ſaid Manno, had been diſcharged of Tithes, &c. and ſhews, That this Land is ancient Copy-hold of the manno Demiſable, from time, whereof, &c. And becauſe the Parſon ſued for Tithes, and the Court-Chriſtian would not allow of that Plea in diſcharge, he brought the Prohibition. And upon this Surmiſe the Defendant Demurred. Tanfield for the Defendant moved, That the Surmiſe is not ſufficient to ground this Prohibition. For, although the Biſhop himſelf, being a Spiritual Perſon, may Preſcribe to be diſcharged, &c. Becauſe by Intendment, they might be ſo before the Councel of Laterane, by reaſon whereof their Farmors for years, or Tenants at Will might be ſo diſcharged, becauſe they be the Poſſeſſion of the Biſhop himſelf; as it hath been adjudged in Wrights Caſe:

Poſt. 814. Ant. 512.

yet

yet it is not ſo for Copyholds, which are alſo grounded by Cuſtome, before time of Memory; ſo it cannot by Intendment be the Poſſeſſion of the Biſhop, at the time of the ſaid Council: But had continued in the hands of the Copy-holders a long time before, For otherwiſe it could not be Copy-hold. And in 29 Eliz. It was ruled, by Advice of all the Juſtices, upon a Caſe depending in the Exchequer; That, although the Queen ſhall not pay Tythes for her own Poſſeſſions, becauſe ſhe is Perſona mixta and ſo might well retain them, yet if ſhe Grants them by Patent, in Fee, or her Copy-holder of Inheritance, They ſhall pay Tithes; for they do not participate of the Queens Prerogative therein: And this Copy-holder, who was before time, &c. cannot preſcribe; for then there would be two times of Memory, which is repugnant in it ſelf. Wherefore, &c. Coke e contra; For although a lay Perſon, at the Common Law, could not preſcribe to be diſcharged of Tythes, becauſe he is not capable of ſuch Spiritual things; yet, as being Tenant to a Spiritual Corporation, he may preſcribe in them, but not in himſelf: For all thoſe Copy-holds are derived out of the Mannors, which were the Poſſeſſions of the Biſhop; And the Free-hold yet abides in the Biſhop. For this Preſcription is for the Biſhops benefit: for thereby he ſhall have the greater Fines from his Copy-holders; eſpecially the Lord of the Mannor, who hath the Advowſon, may ſo preſcribe: becauſe, it may be, it was ſo at the Foundation, that he, and his Copy-holders, ſhould be diſcharged. Which is the Reaſon, in Cottons Caſe, that the Lord of a Mannor, in reſpect of a Recompenſe given to the Parſon, ſhall have the Tithes of his Tenants. And ſo Pigot and Herns Caſe was Ruled. Wherefore, &c. But Popham, and Fenner held, that this Preſcription is ill. Becauſe the Copy-holders are intended to be before the Council of Laterane, at which time every one might give his Tithes where he would; And Spiritual perſons might preſcribe to retain them to themſelves: But they ought to preſcribe in themſelves, and their Predeceſſors, and not in a Que eſtate of the Mannor. And then a Copy-holder cannot preſcribe, to retain them himſelf, and ſo, by conſequence, he cannot preſcribe to be diſcharged: But a Biſhop may preſcribe to have the Tithe of his Copy-holders, which ſhall be good againſt the Parſon: And upon the Erection of the Patronage it could not be allowed, that Copy-holders ſhould retain their Land diſcharged, which always ſhould be out of the Lords Poſſeſſion; and they ought to be appointed how they ſhall go by him, who had then the Poſſeſſion before the Council made, and that was intended to be the Copy-holder himſelf. But of Leſſees for years, it is otherwiſe; for they ſhall be intended to be the Poſſeſſions of the Biſhop himſelf, at the time of the Council. Wherefore, &c. Gawdy, and Clinch doubted thereof: Wherefor Adjournatur, 8 Ed. 4. 13. Note, That Paich. 44 Eliz. This Caſe was Argued again; And then Gawdy, Fenner, and Yelverton Reſolved, That this Preſcription was good: For all Copy-holds are derived out of the Mannor; And it ſhall be intented, That this Preſcription had its Commencement at ſuch time, when all was in the Lords hand; And the one Preſcription is not contrariant to the other, although both were from time, whereof, &c. For the one ſhall give place to the other:

Ant. 511. 1 Cr. 94.

Ante 511. 1 Cr. 94. Jones 387.

Ant. 587.

Ante. 599.

Co. 2. 45. a. Ant. 512.

Ant. 704.

And this Objection may be, where a Copy-holder preſcribes for Common, or the like, which is uſual. But Popham held his former Opinion: yet notwithſtanding, it was adjudged for the Plaintiff.

Yelw. 3.

Royal *verſus* Peckham.

(24) ACtion for theſe Words; Whereas he was Endicted of ſuch a Felony, for Robbing of the Defendant, and was arraigned, and acquitted thereof before the Juſtices of Peace of the County of Norf. That the Defendant ſaid of him, If Mr. Haſſet, and one A. (Juſtices of Peace of the ſaid County) had done Juſtice, Royal had been hanged for Robbing me. The Defendant pleaded Not-Guilty, And after Verdict, it was moved, that an Action lay not for theſe Words; becauſe it is not a direct Affirmative, That he Robbed him; and, being acquitted, he cannot be endangered by them, and therefore no loſs: And the Slander is rather to the Juſtices of Peace, then to the Plaintiff. But the Court held, that the Action well lay, For, although he were acquitted, yet he thereby ſlandered the Plaintiff; wherefore the Action lies: And they be quaſi a preciſe Affirmative, that he was the Party, who Robbed him. And it was adjudged for the Plaintiff.

Poſt. 834.

Symcock *verſus* Payn.

(25) ASſumpſit. For that the Defendant, in conſideration that the Plaintiff had Lett unto him ſuch Land for a year, promiſed unto him ad tunc & ibidem, to pay pro firma terræ predictæ at the years end 20 l. The Defendant pleaded Non Aſſumpſit, and found againſt him. And it was alledged in Arreſt of Judgment, That the Action lay not; For it appears to be for the Rent, for which Debt lies. But all the Court (Popham abſente) held, That the Action was maintainable; for it is not a Rent, but a Sum in groſs; for which he, making a promiſe to pay it, in conſideration of the Leaſe, the Action lies: And it was adjudged for the Plaintiff. But afterwards, becauſe it was but a meer Debt, for which an Action of Debt lies, and it is but a Contract, it was reverſed.

Ant. 242.
Poſt. 859.

Ingolsby *verſus* Johnſon.

(26) PRohibition, for Suing for Tythes of dry Cattle, and ſurmiſeth, That he uſed to pay the tenth Sheaf of Corn, the tenth Cock of Hay, the tenth Fleece of Wool, the ſeventh Calf, and the Parſon to pay 1 d. ob. and the eighth Calf, if he had eight, and the Parſon to pay 1 d. & ſic uſque 10. And if he had under the number of ſeven, to pay onely an half penny for every one, and ſo after that rate for Lambs, and Colts; and that it was in ſatisfaction for the Tithes of all dry Cattle, and for all other Tithes of Corn, Hay, and Cattle. And it was thereupon moved, That this Surmiſe is not ſufficient: For that, which he uſed to pay, is but the Tythes in kind; and therefore cannot be in ſatisfaction for the Tithes of other things, then themſelves. And this was the Opinion of the whole Court. But, if he had made this Preſcription

Ant. 446.

Preſcription only for his dry Cattel, for his Plough, or to Manure his Soyl, it had been otherwiſe: But this general Preſcription cannot be good; for then thereby he would excuſe all Feeding Cattle, although he kept 500, or more, which is not reaſonable. Whereupon Conſultation was awarded.

Holwood *verſus* Hopkins.

ACtion for theſe Words, ſpoken to the Plaintiffs Servant, viz. Thy Miſtreſs is an arrant Whore, and would have lain with me ſeven Years ſince, and I would not, unleſs ſhe would go to the Hedg. And it was alledged in the Declaration, That ſhe was in communication of Marriage with J. S. who was ſeiſed in Fee of Land worth 200 l. per annum: And that, by reaſon of theſe Words, ſhe loſt her Marriage. The Defendant pleaded Not Guilty, and found againſt him. And it was now moved, in Arreſt of Judgment, by Warberton, that an Action lies not for theſe Words; for the words are ſpiritual Slander and Defamation, and puniſhable there, and not by our Law; for our Law cannot take Conuſance, nor try whether one be a Whore, or not: which is the reaſon in 27 H. 8. That for calling one Whore, or Heretick, an Action lies not in our Law. And of that Opinion was all the Court. But they held, That, if the Words had been ſpoken to him, who was in communication to have married her, ſo as it had appeared, that he purpoſely intended to hinder the Marriage, the Action had been maintainable for the loſs, which ſhe ſuſtained; but when they be ſpoken generally, although peradventure an hinderance comes by reaſon of them, yet Non conſtat. And therefore for ſuch collateral hinderance it is not reaſon the Action ſhould lie. And it is not like to Anne Davies Caſe; for there they were ſpoken, as appears by the Record, to him who was in communication with her to Marry her: And theſe words were, Will you marry her, ſhe hath had a child, or two? And the having a Baſtard is triable by our Law, and puniſhable, And ſo not like to the Caſe in Queſtion. And for the calling one Baſtard an Action lies; for Baſtardy is triable by our Law: And to ſay, Such a Tavern, or Inn, is a Bawdy-Houſe, an Action well lies, for the Temporal loſs, which they ſuſtain by reaſon thereof. And here, the Words being a ſpiritual Defamation, and there puniſhable, the Damages ſuſtained by reaſon thereof are but acceſſory, and, by conſequence, ſhall not alter the nature of the Action. Wherefore, after divers Arguments at the Barr, and upon view of the Preſident of Anne Davies Caſe, it was adjudged for the Defendant, that the Action lay not. (27) Co. 4. 17. a.

Thaxbie *verſus* Smith, Paſch. 42 Eliz. rot. 939.

ACtion for theſe Words, Thou art forſworn in the Carpenters-Hall, and didſt rob the Hall, and deceive the Compay of 20 l. The Defendant pleaded Not-Guilty, and found againſt him; And now alledged in Arreſt of Judgment, that an Action lies not for theſe Words: For the Plaintiff declared, That the Company of the Carpenters, in London, were Corporated, from time, &c. and conſiſted of Maſter, Wardens, and the Company; And that the Plaintiff was elected Maſter; and that he had the- (28)

Goods, and the Money appertaining to the Company, delivered unto him, and was ſworn to render an Accompt at the end of the Year: And ſo he could not rob himſelf, but it is only a deceiving of the Truſt committed unto him; For which Words an Action lies not. Sed non allocatur: For it is not affirmed, That he was Maſter at the time, when he robbed the Hall, but ſhall be intended the contrary; wherefore the Action well lies for thoſe Words. But for the firſt Words, Thou wert forſworn in Carpenters Hall, they be not Actionable; And although one properly cannot rob an Hall, yet, in common Parlance, it is well underſtood what he intended thereby; For loquendum ut vulgus, &c. And all the Court held, when any of the Words are Actionable, the Plaintiff ſhall have Judgment; and ſo it hath been oftentimes adjudged. Wherefore Judgment was given for the Plaintiff.

1 Cr. 328.

Wyſon *verſus* Fenton.

(29) ACtion for theſe Words; Thou art a forſworn Bayliff, and wert forſworn this day. After Verdict for the Plaintiff, upon Not-Guilty pleaded, It was moved in Arreſt of Judgment, That an Action lies not for theſe Words; for he doth not ſhew, that he was forſworn in any Court; It is not alſo ſhewn, that he was a ſworn Bayliff at the time of the ſpeaking. And the Opinion of the Court was, that the Action lay not, upon the firſt Reaſon principally.

Ante 135.

Baker *verſus* Rogers. Mich. 42, & 43 Eliz. rot. 3333.

(30) PRohibition. Upon Demurrer, The Caſe was; That one Broughton, ſeiſed in Fee of the Advowſon of Barby, the Church being void, Thomas Baker contracted before the Pardon 39 Eliz. with Broughton for this Avoydance, who for 180 l. granted it to Tho. Baker, who, by colour of that Grant, peſented Walter Baker his Brother (now Plaintiff) who was admitted, inſtituted, and inducted thereto: and after his Induction, and before the Pardon, Thomas Baker acquainted the Plaintiff, what he paid for that avoidance, requiring him to have conſideration thereof: and after the Pardon of 39 Eliz. Walter Baker was uſed in the Spiritual Court, before the High Commiſſioners, for Simony; and (the proof there being no more then as before is ſhewn) he was ſentenced, that this was Simony; and that Walter Baker was as an Intruder, and his Admiſſion and Inſtitution utterly void, and as if he never had been Parſon; For ſo is their Courſe there, when one is deprived as Simoniacus: and thereupon he brought the Prohibition, comprizing all this matter, and the Pardon, and that he was not a Parſon excepted. The Defendant pleaded the Act of primo Eliz. which gives Authority to the High Commiſſioners, and the Sentence before them, and prayed a Conſultation; But miſpleaded the Act in the Date, viz. 25 January, for 23 January, &c. And it was thereupon Demurred. Firſt, It was moved, That this Preſentation was not by Simony; For although the Contract was Simoniacal for the avoydance, yet it was a meer void Grant; for, the Church being void, the avoydance cannot be granted, becauſe it is a thing in Action (Quod fuit conceſſum) then, when he preſents, he gains

Moor 914.

Moor 753.
Co. Litt. 120. a.
3 Inſt. 154.

4 Inſt. 7. 2.

gains it by Uſurpation; and the Preſentee is in, by that Preſentment, by Uſurpation, and not by the Simoniacal Contract. Secondly, although this be Simony in the Preſentor, yet this acquainting of the Preſentee therewith, after the Induction, makes it not to be any Simony in him; but he is quaſi acceſſory thereto; which offence is not excepted in the Pardon, although Simony it ſelf is excepted: And the Expoſition of a Pardon belongs to the Common Law, and not to the Spiritual Court. And in 27 Eliz. in this Court, in the Caſe of one Fox, who was deprived, during the Parliament, for Incontinency, before the Pardon, and another Admitted, Inſtituted, and Inducted; and afterwards the Pardon diſcharged the Offence, it was adjudged, that this Deprivation, and the others Admiſſion alſo were both of them utterly void. Wherefore, &c. But all the Court held, that the Prohibition lay not; For as to the firſt, although the Preſentee come in quaſi per Uſurpation; yet becauſe it is by means of a Simoniacal Contract, which is the cauſe thereof (For otherwiſe it is to be intended, That he would not have permitted that Preſentment) It was held, that it was as well Simony, as if the Grant had not been void. And as to the ſecond, They held it to be Simony; For there be not any Acceſſories in Simony; but all are principal therein, as well as in Treſpaſs: and it appertains to the Spiritual Court to determine it, and not to this Court to meddle therewith; And when the Spiritual Court hath ſo ſentenced it, This Court ought to give credence thereto, and ought not to diſpute, whether it be Error, or not? For this Court cannot take Conuſance of their proceedings, whether they be lawfull, or not? which is the Reaſon, that in this Court, it ſufficeth to plead a Sentence, out of the Spiritual Court, briefly, without ſhewing the manner thereof, or of their proceedings. And, as the Caſe is in the Lord Dyer, if the Spiritual Court will certifie the eſpecial matter upon a Certificate of Matrimony, or Baſtardy, or the like, it is not good; but they ought to certifie preciſely the one way, or other; For this Court cannot adjudge of that ſpecial matter, but it appertains to their Law to determine it. And although it were ſaid, that in the Spiritual Court, they ought not to have intermedled, to diveſt the Freehold, which is in the Incumbent after the Induction; true it is, They ſhould not meddle, to alter the Free-hold; But they meddled only with his manner of obtaining his Preſentment, which, by conſequence, deveſted the Free-hold from him, by the diſſolution of his Eſtate, when his Admiſſion, and Inſtitution is avoided. And, as to the miſrecital of the Statute, it is not material, becauſe it is in Barr, and the Prohibition it ſelf lies not. And they all held, That it was Simony in the Incumbent, although he were not privy thereto at the firſt; And Simony was defined to be Voluntas, ſive deſiderium emendi, vel vendendi ſpiritualia, vel ſpiritualibus adhærentia. And Warberton ſaid, that, if one be preſented by Simony, and he, who is preſented, is party, or privy to the Simony, he ſhall be deprived, and always diſabled to take any other Benefice: But, if he be preſented by Simony between two Strangers, whereto he is not privy, he is deprivable, by reaſon of the corruption, but not diſabled to take any other;

Ante. 41.

3 Inſt. 153. Moor. 914.

Ant. 686.

Ante 686.

Moor. 753. 914 Co Litt. 120. a.

3 Inſt. 154.

Ant. 686. 2 Cr. 534. 3 Inſt. 154.

And

and that is the Rule of the Civil Law. Wherefore they all, after ſeveral Arguments, agreed. That the Prohibition lay not: and Conſultation was Awarded. Note, No Conſultation awarded upon the Roll.

Sir Robert Baſſet *verſus* Gee.

(31) QUare Impedit, Supposing, That his Anceſtor was ſeiſed in Fee of the Advowſon, and Preſented, and afterward granted the next Avowance to Manwood, That the Church became void, and Manwood preſented H. that the Church became void by the death of H. and it belongs to him to Preſent. The Defendant pleads, that H. was created a Biſhop in Ireland, whereby it appertained to the Queen, by her Prerogative, to Preſent, who preſentend him (the Defendant.) And it was Ruled to be no Plea, without Traverſing the Avoydance by death; and this creation of the Incumbent a Biſhop of Ireland was admitted to be a Cauſe of Avoydance; and that the Queen ſhould have it by her Prerogative. And it was held per totam Curiam, That if the Queen doth not take the benefit of the firſt avoydance, but ſuffers a Stranger to Preſent, and the Preſentee dies, ſhe ſhall not have her Prerogative to Preſent to the ſecond avoydance.

2 Cr. 691. Ante 527. Ante 44. 2 Cr. 54. Ante 119.

Shyfield *verſus* Barnfield.

(32) ACcompt againſt the Defendant, as Bayliff of certain Goods to Merchandize. The Defendant tendered his Law; and the Court ſaid, That it had been oftentimes adjudged here, and in the Queens Bench, that a Bayliff cannot wage his Law, but a Receiver may. Whereupon he pleaded to Iſſue.

Ant. 579. Co. Litt. 295. a.

Williams *verſus* the Biſhop of Lincoln, and the Mayor, and Burgeſſes of Bedford.

Mich. 42, & 43 Eliz. rot. 3614.

(33) QUare Impedit, To Preſent to the Hoſpital, or Pariſh-Church of Bedford. Upon Demurrer upon the Count, The Caſe was; That the Corporation of Bedford was ſeiſed of the Advowſon, and granted the firſt, and next Preſentation to Scriven, & afterwards Granted primam & proximam advocationem to the Earl of Bedford, who granted it to the Plaintiff. The Church afterwards became void, and Scriven preſented his Clerk, who was Admitted, Inſtituted, and Inducted; and then the Church became void again, and the Plaintiff Preſented; and, being diſturbed, brought a Quare impedit. And, after Argument at the Bar, It was Reſolved by Walmſley, Kingſmil, and Warberton, that this ſecond Grant was void, ſo as the Plaintiff had not any Title;

2 And. 173.

Co. Litt. 378. b.

For

For when they had granted primam, & proximam Præſentationem to one, they had not any Authority to grant it afterward to another. But peradventure, if the firſt Deed had been loſt, before he had taken the benefit thereof, and that it could not be pleaded, the ſecond Grant might have been good; And ſo it was not void to all Purpoſes, but he can never have the ſecond Preſentment; For it is againſt the expreſs words of the Grant, which is; That he ſhould have primam, & proximam Præſentationem, which cannot be altered by any Intendment; and in the Pleading he ought to Averr, That it was the firſt, and next Avoidance. But Anderſon held, That he ſhould have the ſecond Preſentment; for ſo was the Intention of the Grantor, when he had granted the firſt before, and it may well ſtand with the Law, as where two Coparceners make Compoſition to preſent by turn, the eldeſt firſt, and the younger afterward, if the youngeſt grant primam, & proximam Advocationem, it is in Law but the ſecond only, and yet the Grant is good enough; So 15 H. 7. 3. where one granted the third Preſentation to an Advowſon, and died, his Feme was endowed of the third Preſentment, the Grantee ſhall have the fourth Preſentment. So here, the Grantee ſhall have the firſt, and next which belongs to the Corporation; He conceived alſo, that the Writ, which was in the Diſjunctive, was ill. But all the other Juſtices were againſt him therein: wherefore it was adjudged upon the matter for the Defendant. Vide Dy. 26, & 35 & 20 H. 8. Preſentm. Bro. 54. Co. Litt. 379. a.

Temple *verſus* Temple.

(34)

Debt The Caſe was; A Rent was granted to Baron and Feme for their lives, the Rent was Arrear, the Baron dies, another Rent is Arrear, the Feme dies Inteſtate, and her Adminiſtrator brings Debt for the Arrearages due in the Life of the Baron, and after. And all the Court reſolved, That it well lay; becauſe the Arrearages ſurvived to the Feme, as well as the Rent it ſelf. But an Exception was taken to the Declaration; For that it is alledged, That Adminiſtration was committed by the Dean of Lichfield, and it ſhews not by what Authority he committed it, nor that he was Loci illius Ordinarius; and for this Cauſe the Court held the Declaration to be ill, for the Court intends not his Authority, being ſpecial, without ſhewing it. But the pleading of Adminiſtration committed by a Biſhop is good enough, without ſaying, that he was Loci illius Ordinarius, for ſo it ſhall be intended, and ſo the Preſidents warrant it, but in a Barr, or Replication it is vitious. Vide 35 H. 6. 46. Wherefore, &c. Ant. 431. 2 Cr. 556. Poſt. 838. 879. 907.

Pill *verſus* Towers. Paſch. 42 Eliz. rot. 1332.

(35)

Replevin. The Defendant made Conuſance, as Bayliff to Sir Fulk Grevil, for the Amercement of a Free-tenant within his Mannors, and ſhews, That Sir Fulk Grevil was ſeiſed in Fee of the Mannor of D. and that he, and all thoſe, whoſe, &c. have had a Court Baron within the Mannor before his Steward of the Mannor, tenendum from three weeks to three weeks, and alledgeth a Cuſtom to have Sute of Court from all his Free-tenants of the Mannor; and that, if any of them made Default, and his Default

fault was preſented by the Homage, they had uſed there to amerce him, and the Amercement to aſſer, and the Lord had uſed to diſtrain ſuch a Tenant for ſuch an Amercement per aliqua bona, vel catalla ſua within the Mannor; and for an Amercement for this cauſe the Diſtreſs was taken, &c. Upon this Conuſance, thus made, the Plaintiff demurred. And, after Argument at the Barr, It was Reſolved by the whole Court, that the Avowry was inſufficient. Firſt, Becauſe he preſcribes to have a Court-Baron within his Mannor, whereas it is of Common Right, and cannot be by Preſcription; for it is incident to a Mannor: For Walmſley ſaid, Uſage is not, but where there is a Defect of Common Right, but here it ſtands with Common Right, and therefore it is not good; And whereas it is ſaid, that it ſhall be maintained by Cuſtom, in regard the Preſcription is to hold it before the Steward of the Mannor, which is againſt Common Right (for of Common Right it ought to be holden before the Sutors) yet it is not good; For a Court Baron cannot be holden but before the Sutors, and ſometimes before the Bayliff, and Sutors, as by Writ; And by Plaint, it ſhall be before the Sutors only, but in no Caſe without the Sutors. And one cannot have a Court by Preſcription, but where he cannot have it otherwiſe; And all the Juſtices agreed with him, that he could not have a Court-Baron by Preſcription, but he may by Preſcription inlarge the Authority thereof, as to hold Plea above 40 s. and the like. Secondly, Walmſley held, that the Preſcription to diſtrain the Goods of the Offendor in any Part of the Mannor is not good, for thereby he may diſtrain in the Lands of one, who did not offend: But ſome of the other Juſtices held, that it might be good by Preſcription. Thirdly, He preſcribes to diſtrain the Beaſts, or Goods of the Free-tenant, who made Default of Sute, and here the Diſtreſs is taken of the Beaſts of his under-Tenant, who is not within the Preſcription. Wherefore it was adjudged for the Plaintiff.

Co. Litt. 58. a.

White *verſus* Weſt. Trin. 42 Eliz. rot. 3417.

(36) 2 And. 170. Ant. 727. 68. Noy. 9.

REplevin. The Defendant made Conuſance, as Bayliff of one Geriſh. Upon Demurrer, the Caſe was; that one Baynton ſeiſed of the Land in Fee, he and White, levied a Fine thereof to Long, who rendered it to White in Tail, rendring Rent: And by the ſame Fine it is limited, That, if White died without Iſſue, Tenementa prædicta integre remanebunt to Baynton, & his Heirs. Afterwards Baynton, by Indenture Enrolled, Bargains, and Sells his Reverſion & Rent to Geriſh in Fee; White ſuffers a Common Recovery; And afterward, for this Rent, Weſt Diſtrained: And, Whether the Rent was gone by this Recovery? was the Queſtion. Two points were moved; Firſt, Whether this were a Reverſion, or a Remainder, limited to Baynton, being all by one Fine? For, if it be a Remainder, the Reſervation of the Rent is void. Secondly, Admitting it to be a Reverſion, and to be bound, and taken away by the Common Recovery, Whether the Rent alſo be extinct? And, after Argument at the Bar, it was Reſolved for the Defendant. Firſt, That this is a Reverſion; For, being one Fine, it enures, as if it had been at ſeveral times; and it ſhall be intended, as rendring the Tail at one time, and rendring the Reverſion

Reverſion at another time; and ſo in the uſual courſe of Fines; and ſo it hath been always expounded; But it is not ſo in Grants by Deed. Secondly, (which was the moſt doubtful point) They Reſolved, that the Rent was not extinct, becauſe the Grantee was always in poſſeſſion thereof; and it is diſtinct from the Land. And that, whereof one is in poſſeſſion, cannot be Diveſted by a Recovery againſt another man. And here is not any recompence for the Rent, for that goes only for the Land: And it is not like the Caſe of a Rent Granted out of Remainder, becauſe that never was in poſſeſſion; nor a thing executed: And it is as if Tenant in Tail himſelf had granted a Rent, and afterwards ſuffered a Common Recovery: That Rent which was in eſſe ſhall not be gone by this Recovery. No more ſhall this Rent which is annexed to the Reverſion, although the Reverſion it ſelf be gone. And where Tenant in Tail diſcontinues the Land, yet the Donor ſhall always have his Rent, and it ſhall not be taken from him; As 48 Ed. 3. and 31 Ed. 3. Title Guard So it ſhall be in the Caſe of a Common Recovery: For it is all one in effect, And not like to a Recovery by Title, which defeats the Eſtate utterly. And the manner of pleading it ſhews always when it is a Common Recovery, and when not. Wherefore it was adjudged for the Defendant. Vid. Mich. 41 & 42. C. B. Pl. 62. Ante 769.

Littleton *verſus* Hibbins, &c. Mich. 42 & 43 Eliz. rot. 627.

(37) Scire fac. againſt Executors; Upon a Judgment againſt their Teſtator in Debt: They pleaded, that before they had any Conuſance of this Judgment, they had fully Adminiſtred all their Teſtators Goods in paying of Debts upon Obligations. And it was thereupon demurred, and, after Argument at the Barr, adjudged for the Plaintiff, that it was not any Plea. For they at their peril ought to take Conuſance of Debts upon Record, and ought firſt of all (unleſs for Debts due to the Queen, wherein ſhe hath a Prerogative) to ſatisfie them. And although the Recovery was in another County, then where the Teſtator and Executors inhabited, it is not material. But if an Action be brought againſt them in another County, then where they inhabite, and before their knowing thereof, they pay Debts upon Specialties; that is allowable. Wherefore it was adjudged accordingly. Vide 4 H. 6. 8. 21 Ed. 4. 21. Moor. 678.

Perren *verſus* Bud.

(38) Action upon the Caſe. Whereas Bud had brought Debt in the Common Bench, upon a Bill of 40 l. againſt the Plaintiff. And upon Examination, it appeared to the Court, that all beſides 28 s. was paid; whereupon they in Trin. Term. Ordered, that if the Plaintiff would not accept of the 28 s. with ſuch damages as the Court ſhould Aſſeſs, then the now Plaintiff ſhould Imparl until Octabis Mich. That the Defendant knowing of this Order, had procured a Nihil dicit to be Entred, and upon this Deceipt he brought this Action: And it was thereupon demurred. Firſt, in regard of the manner of the pleading, becauſe he doth not aver, that he tendred the 28 s. for otherwiſe the Plaintiff (then Defendant) was not to have the benefit of the Order. Secondly,

This Action lies not in reſpect of the matter. For this Entring of the Nihil dicit is the Act of the Court, whereof none can take advantage, nor any Actions lies for it; and in proof thereof was Cited 26 Aſſ. Pl. 46. and 21 Ed. 4. 22. where a Writ of Priviledge was Granted without Cauſe, no Action lies, But all the Court held, That the Action for the matter would well lie for procuring a Nihil dicit to be entred in abuſe of the Court, whereby the Party Defendant in the Action ſuffered prejudice. And therefore, if one procures another to Sue me without Cauſe, an Action lies not againſt him, who ſued without Cauſe: But for this Falſity in procuring my vexation an Action well lies. So where one caſts a Protection in delay of my Action: And likewiſe for every Falſity an Action upon the Caſe is maintainable. But here this is not good for the manner, becauſe there is not any Tender, or Refuſal in the other to accept of the 28 s. alledged: For, without that, there is not any breach of the Order in the now Defendant; And his then procuring of the Nihil dicit was lawful. Wherefore, &c.

Ant. 629. 2 Cr. 223. Poſt. 836. Ante 629. Poſt. 838.

Dotter *verſus* Ford. Trin. 42 Eliz. rot. 541.

(39) Noy. 33. ACtion upon the Caſe for words: Whereas he was of good Name, &c. & per multos annos jam retroactos fuit Mercator, and uſed the Trade of Merchandizing tam infra Regnum, quam extra, That the Defendant ſpake of him theſe words; Thou art a Beggerly Knave, and a Bankrupt, and thou art not able to ſhew thy face. It was moved, That an Action lay not for theſe words, unleſs it had appeared by the Declaration, that he was a Merchant at that time. For being ſpoken of a Gentleman, or any, who uſed not the Trade of Merchandizing, an Action lies not. And of that Opinion was the whole Court: But the Queſtion was, Whether by alledging, that he uſed the Trade of a Merchant per multos annos jam retroactos, It ſhall be intended, that he was a Merchant at the time of the words ſpoken: And the Court ſeemed to doubt thereof, becauſe it is not preciſely alledged. For it may be he uſed that Trade for a time, and left it afterwards. Wherefore they would adviſe thereof.

Worledg *verſus* Kingſwel. Paſc. 40 Eliz. rot. 1418.

(40) 2 And. 168. REplevin: Upon Demurrer, the Caſe was; That a Copy-hold of a Mannor, which had Common by Preſcription in ſixty Acres, parcel of the Demeaſns of the Mannor, Eſcheated; And the Lord by Deed Granted it to another in Tail per nomina, &c. Communiarum quarumcunque, dicto Meſſuagio, ſive Tenemento ſpectant. ſive in aliquo modo pertinent. vel cum eodem Meſſuagio dimiſſo uſitat. Whether by theſe words, the Grantee ſhall have Common in thoſe ſixty Acres? was the Queſtion. And after Argument, it was Reſolved by all the Court, That the Donee in Tail ſhould have ſuch Common, as the Copyholder had. But the ancient Common, which was by Preſcription, is determined by the Unity of Poſſeſſion in the Lord. But the Grant Enures as a new Grant of the ſame Common. As Grant to Iſlington of the like Liberties, which London hath, is a new Grant of the like Liberties. Wherefore it was adjudged for the Plaintiff.

Co. 9. 30. b.

Cowper

Cowper *verſus* Temple. Hill. 42 Eliz. rot. 1434.

REplevin. The Defendant avows for Damage-Feſant, by reaſon of a Copy-hold Granted to the Defendant, and one Godfrey, and three others; and that the three died; and afterwards Godfrey died, whereby he was in by the Survivor, and is ſole ſeiſed, and took the Beaſts Damage-Feſant. The Plaintiff confeſſeth the Copy granted, and that the third died; And the Defendant, and Godfrey ſurvived, prout, &c. But he further alledgeth, that afterwards Godfrey ſurrendered his part to a Stranger, who conveyed it to the Plaintiff, who put in his Beaſts: And Traverſeth Abſque hoc, that the Defendant was ſole ſeiſed, prout, &c. tempore Captionis. And it was thereupon demurred. For the ſole Seiſin is not Traverſable, but the Survivorſhip only: And the Joynt-tenancy, and Survivorſhip, are here confeſſed, and avoided, and therefore the Travers is double. But the whole Court were of Opinion, that the Travers is well taken; for the ſole Seiſin being alledged by way of Bar preciſely, and materially, it ought to be Traverſed; as 2 Ed. 4. 28. But where it is alledged only in the Count by way of Suppoſition as in Mordanceſter, or Dower, or the like, Joynt-tenancy may be pleaded againſt it without a Travers. And here the Sole Seiſin had not been fully confeſſed without a Travers. Wherefore it was adjudged for the Plaintiff. Vid. 6 H. 7. 5. (41)

Woodcock *verſus* Woodcock.

Hill. 42 Eliz. rot. 1339.

PArtition. Upon a ſpecial Verdict, the Caſe was; That one Jamey Woodcock, Father of the Plaintiff and Defendant, was poſſeſſed of a Leaſe for years, of an Houſe called Paradiſe, and of divers other Leaſes, and had Iſſue J. W. the Plaintiff, and Samuel W. the Defendant, and Thomaſine a Daughter: And by his Will deviſed, that his Daughter ſhould have the ſaid Houſe for her Life, And if ſhe chanced to die before Samuel my Son, Then I will, That Samuel my Son ſhall have it upon ſuch reaſonable Compoſition, as ſhall be thought fit by my Overſeers, allowing to my other Executors ſuch reaſonable rates, as ſhall be thought meet by my Overſeers. And he Deviſed all his other Lands and Goods to his Executors: And made the Plaintiff, and Defendant his Executors, and J. S. and R. D. his Overſeers, and died. Thomaſine Entred by the Aſſent of the Executors, and died, during the Term, Samuel W. Entred, claiming it as Legatee (without any Compoſition made with the Overſeers, and no ſum being appointed by them to be paid) and brings a Writ of Partition againſt the other Executor: Suppoſing, That they held jointly as Legatees. And upon a Non Tenet pro indiviſo pleaded, all this matter was found. Et ſi, &c. The firſt Queſtion moved, was, Whether the Daughter by this Deviſe had the Entire Term; ſo as it ſhould go to her Adminiſtrators? or Whether the Remainder of the Term limited to Samuel were good, to give the reſidue of the Term unto him? Secondly, Whether this Eſtate limited to Samuel be upon a Condition Precedent, ſo as he ought firſt to have compounded with the Overſeers; and to pro- (42)

cure them to ſet down what Rate he ſhould pay? Or, Whether it were a Condition ſubſequent; that, if he ſaid not what they ſet down, it ſhould be a determination of his Eſtate? Warberton for the defendant argued, that as to the firſt, it is a good limitation of the Remainder to Samuel, according to the Intent of the Deviſor. For it is a particular limitation to the Daughter: and therefore, Paſc. 33 Eliz. rot. 607. It was adjudged, that where
Co. 8. 96. b. one deviſed a term to his Feme for Life, and after to his Children not provided for, and the term was afterwards ſold upon an Execution for the Debt of the Feme, and afterwards the Feme died during the Term; it was adjudged, that notwithſtanding this alienation, The Children of the Deviſor ſhould have the Reſidue of that Term. But as to the ſecond point he moved, that this Eſtate is veſted in Samuel, and the Condition is Subſequent: And the Eſtate is not defeated, until the Overſeers appoint what he ſhall pay, and he fails in payment thereof. Wherefore, &c. Walmſley; It is a Strange Caſe, that the Deviſe of a
Co. 8. 95 a. Term for life, Remainder over, ſhould be a good Remainder by the Expoſition of a Will, to make the firſt Deviſee to have ſo many of the years as ſhe ſhall live, and he in the Remainder the Reſidue. For every one, who hath a Term, ought to have a certainty of Eſtate in the beginning, and end thereof, and beyond ſuch bounds it ought not to extend: And thoſe bounds to be ſuch, as he may claim it certainly. In Waſte, the Leſſor ought to Count, that he hath the Entire Eſtate: So he hath the Entire Term, and then a Remainder over is void. As a Deviſe in Fee the Remainder over, the Remainder is void: So a Deviſe of a Term to one, and his Heirs, the limitation of the Heirs is void. So here, when he deviſeth the Entire Term to the Daughter, He hath nothing left in him thereof to deviſe to another. And whereas it is ſaid, That it is but a ſpecial Property in the firſt Deviſee, and the general Property remains in the Deviſor to Deviſe over; the Remainder notwithſtanding is not good. For then it is a Deviſe of the Term of the daughter, which is not good; becauſe the term deviſed unto her is uncertain, and becauſe the Law will not preſume, that there ſhould be a continuance of the Term after the death of the daughter: And here is not any ſpecial limitation to the daughter; Wherefore the Remainder is void. But there be divers Judgments againſt my Opinion, but upon what reaſons I underſtand not. And as to the ſecond part, he conceived, that the Eſtate is Precedent in Sam. and the Condition ſubſequent. And the Condition is extinct, becaue Sam. is one of the Executors, who ſhould take advantage thereof: Wherefore Partition lies not. Anderſon; By the deviſe the whole
Co. 8. 95. a. Term is to the daughter. And, although a deviſe ought to be expounded according to the Intent of the Deviſor, Yet his Intent ought to be guided by the Law. And, if ſuch a deviſee be ouſted, and is to bring his Action, he ought to ſhew the certainty of his Eſtate, which is the entire Eſtate: And then, if the daughter hath the entire Eſtate, the deviſe to him in Remainder is void. As if a man ſhould grant ſo much of his Term, as ſhould be after his death; Or, if a man ſhould deviſe ſo much of his Term, as ſhould be to come after the death of J. S. It is void: So here. Wherefore, &c. And of that Opinion was Kingſmil. For that he deviſed the Term to his daughter for her Life, That is the entire

tire

tire Term, and the Remainder is void. And they agreed, that the Eſtate is Precedent, and that the Overſeers might make Agreement with him at any time. And therefore Partition lies not Et adjournatur.

Dean *verſus* Executors of Sir Francis Hinde.

A Udita Querela. Upon demurrer, the Caſe was; The Plaintiff was Conuſee of a Statute, and Sir Francis Hinde was Conuſee of an elder Reconuſance; The Conuſor had Lands in the Counties of Cambridge and Middleſex, The Plaintiff ſues Execution firſt, and had the Lands in the County of Cambridge delivered unto him in Execution. The defendant ſued Execution upon the Reconuſance, and had the Moyety of the Lands in the County of Cambridge delivered unto him in Execution, and nothing in Middleſex. And thereupon the Plaintiff ſued an Audita Querela, Comprehending all this matter. And upon demurrer, it was adjudged for the Plaintiff, That this Audita Querela well lies upon this Surmiſe. For the Reconuſee ought to have ſued Execution as well of the Lands in the one County, as in the other whereby the money ſhould the ſooner have been levied. And the not Suing Execution according to the Law is a prejudice to the Plaintiff, as much as if he had purchaſed Parcel of the Land of the Conuſor, and this Land only had been extended. Wherefore it was adjudged for the Plaintiff. Vide Cokes Entries, 236. (43) 2 And. 170. Noy. 47. Yelv. 12. Moor. 535. Co. 4. 14.

Block *verſus* Palgrave. Hill. 42 Eliz. rot. 1539.

DEbt upon an Obligation, Conditioned for the performance of the Award of one Doctor Talbot; So as the ſame Award be in writing delivered to either of the Parties before Mich. The Defendant pleads Nullum fecit arbitrium. The Plaintiff ſhews an award, and that it was delivered unto him, and doth not alledge, that it was delivered to the Defendant alſo: And for this cauſe the Defendant demurred. And, after Argument, it was adjudged that this Delivery ought to have been to both. For ſo is the ſence of this word Either in this place, becauſe the Intent of the Condition was, that every of them might have Conuſance thereof. Wherefore it was adjudged for the Defendant. (44) Co. 5. 103. a. Poſt. 885.

Sicklemore *verſus* Simonds.

DEbt. The Caſe was; That the Plaintiff Let to the Defendant by Indenture certain Lands for years: And the Leſſee Covenanted to pay, for the firſt year ſix pounds, and afterwards eight pounds for every year: And for the eight pound, being Arrear, brought Debt. And it was demurred, Whether this Action, or an Action of Covenant ſhould have been brought: And without Argument it was adjudged, that the Plaintiff might at his Election bring either of them; for both are maintainable. (45)

Fawkner

Faukner *verſus* Powel. Trin. 42 Eliz. rot. 1528.

(46) EJectione firmæ. The Defendant pleaded, That before the Leſſor of the Plaintiff had any thing, &c. The Father of the Leſſor of the Plaintiff was ſeiſed in Fee, and Let to the Defendant for Life, and died ſeiſed of the Reverſion, which deſcended to the Leſſor, who entred, and diſſeiſed the Defendant, and Let to the Plaintiff. The Plaintiff ſaith, that the Father of his Leſſor was, ſeiſed in Fee, and died ſeiſed, and it deſcended to his Leſſor, who entred, and Let to the Plaintiff, &c. and traverſeth, Abſque hoc, That the Father of his Leſſor Let to the Defendant, prout, &c. and it was thereupon demurred; becauſe he traverſeth the diſſeiſin, and not the Leaſe, which is but a conveyance. But, after Argument, it was adjudged for the Plaintiff, that the Travers was good; and, that he might Travers the one, or other at his Election. For when both Parties make their Conveyance from one and the ſame perſon, there always the mean Conveyance is traverſable. Wherefore it was adjudged accordingly. Vid. 4. H. 7. 9.

Ant. 288.

Stapleton *verſus* Morſe. Trin. 42 Eliz. rot 3432.

(47) REplevin, de Captione unius Equi, unius Spadonis, duarum Vaccarum, &c. The Defendant avows for Damage Feſant. The Plaintiff in Bar to the Avowry ſhews, that he is ſeiſed in Fee of ſuch Land, and Preſcribes to have Common Appurtenant thereto, in the place where, &c. pro omnibus Equis, Vaccis, & Porcis ſuis, &c. And hereupon the Defendant demurred; becauſe he did not Preſcribe for Geldings. So the Preſcription doth not maintain his Declaration. And of that opinion was Anderſon. For Stone-Horſes, and Geldings are ſeveral, and there ought to have been a ſeveral Preſcription, And by ſuch a Preſcription he cannot put in a Mare. But the other Juſtices e contra, For the word Equus is a general name, and compriſeth both as well Horſes, as Geldings: And Geldings are called Horſes in general ſpeech. But for Mares, it is not ſo: Wherefore they held, that the Declaration was well maintained by the Preſcription. And they ſaid, that all the Juſtices of Serjeants-Inn, with whom they had conferred about it, except one, were of the ſame Opinion. Wherefore it was adjudged for the Plaintiff.

Noſe *verſus* Bacon. Mich. 42 & 43 Eliz. rot. 283.

(48) DEbt upon an Obligation of 100 l. Condition for payment of 50 l. and no day limited for the payment of the leſſer Sum, It was Reſolved upon Demurrer, that the 50 l. was payable maintenant upon requeſt, and he had not any time after to pay it: For it is part of the Bond. And the purchaſing of the Original Writ is a requeſt in it ſelf. And the Obligee is not bound to make a ſpecial demand. And it is not like to the Condition of an Obligation to make a Feoffment; for that is Collateral, and the Obligor without requeſt ſhall have time to make it, during his Life, and ſhall have a convenient time after Requeſt to make it.

Co Lit. 208. a.

But

But here it is a Duty preſently, and part of the greater Sum. Wherefore it was adjudged accordingly. Vide 20 Ed. 4. 1. 14. H. 8. 17.

Lewes *verſus* Bucknal. Trin. 42 Eliz. rot. 1128.

REplevin. The Iſſue was, Whether the Plaintiff held of the Defendant ſuch Lands by Fealty, Rent of 3 s. 4 d. and Sute of Court: And the Avowry was for the Rent. The Jury found a Special Verdict, that the Plaintiff held by the Fealty, and Rent only, and not by Sute of Court, &c. And, if by this Verdict the Defendant ſhall have Return, was the Queſtion. And the Court held, that it was found againſt the Avowant. For in an Avowry, all the tenure alledged is material. But in Treſpaſs, or Reſcous, if any part of the tenure be found, it is ſufficient. (49) Co. 9. 36. a.

Simons *verſus* Wenlock.

REplevin. The Caſe was ſuch: One had a Leaſe of two Granges for eighty years, & takes a ſecond Leaſe of them for ninety years, to begin after the Expiration of the firſt Leaſe. And afterwards in 21 H. 8. Deviſed all his Leaſes to the Church-wardens of ſuch a Church, paying Annuity to the Abbot of D. and his Succeſſors 5 l. and giving yearly to a Prieſt, to ſing for his Soul 5 l. And further willed, that when the Prieſt died, his Son ſhould have the Nomination of another, And, that his Son ſhould have the Letting, and Setting of the Land, una cum omnibus proficuis, exceptis Redditibus prædictis: and died. The Rents were employed accordingly, until 1 Ed. 6. The firſt Leaſe ended in 34 Eliz. All this matter was diſcloſed in Bar to the Avowry. And he entitles the Queen thereto by the Statute of 1 Ed. 6. of Chanteries, and that he put in his Beaſts, &c. and prayed ayd of the Queen, and yet derives not any Title to himſelf from the Queen, nor as her Bayliff, nor otherwiſe: and it was thereupon demurred. And all the Court held, that this ſecond Leaſe was not within the Statute. For that Statute gives nothing to the King, unleſs it were converted and imployed to Superſtitious uſes. And this Leaſe began not until 34 Eliz. So although the firſt Leaſe was converted, this cannot be converted until it began, and ſo out of the Statute. It is alſo out of the Statute, becauſe nothing is given, and converted, but the Rent of 5 l. to the Abbot, and 5 l. to the Prieſt; and the Land it ſelf is not given. For the profits of Letting and Setting thereof are limited to his Heir; and therefore the Queen hath nothing to meddle with the Land. And here the Plaintiff ſhall not have ayd from the Queen; For here is a meer Intruder, who is not accomptable to the Queen; as 35 H. 6. Wherefore it was awarded, that he ſhould anſwer without ayd. (50) 1 E. 2. cap. 14. Co. 4. 110. a.

Copſey

Coſpey *verſus* Turner. Hill. 42 Eliz. rot. 1659.

(51) DEbt upon an Obligation. The Defendant pleaded Quod Factum prædictum was made, and delivered without Date, and that afterwards the Plaintiff put a Date thereto, and ſo not his deed. And it was thereupon demurred, becauſe the Defendant firſt confeſſeth, that it is his Deed, and then concludes, that it is not his Deed. And of that Opinion was all the Court; that the Plea was ill for this Cauſe. For he firſt confeſſeth the Deed, by ſaying Factum prædictum, and afterwards denies it: Whereas he might have ſaid, Non eſt Factum generally. Wherefore it was adjudged for the Plaintiff. Vid. 9 H. 6. 37.

Ant. 627.

Guybon *verſus* Whitetoſt.

Trin. 42 Eliz. rot. 720.

(52) DEbt upon an Obligation, made to the Sheriff; upon arreſting one upon mean Proceſs. The Writ was ad Reſpondendum *H. Guybon*, nuper Vicecom. *Norff.* And the Count thereupon was, Quod conceſſit ſe teneri præfato *H. Guybon* in prædict. 20 l. and he doth not ſay prædicto *H. Guybon* tunc Vicecomiti *Norff.* exiſtent. and for this Cauſe after demurrer upon the Bar (wherein the Statute 23 H. 6. cap. 10. was pleaded in avoydance of the Bond, becauſe the Condition was, that he perſonally ſhould appear, &c.) The Count was adjudged inſufficient, and the Writ abated.

Noy. 33.

Ant. 776.

Blackbourn *verſus* Laſſels.

(53) EJectione firmæ. Upon a Special Verdict, The Caſe was ſuch; John Molineux Covenanted to ſtand Seiſed of ſuch Land to the uſe of himſelf for Life, and after to the uſe of his Daughters, who ſhould be unmarried at the time of his death, until every one of them Succeſſive ſhall, or may have Levied 500 l. Remainder to his eldeſt Son for Life, with divers Remainders over. And it was found, that he had four Daughters unmarried at the time of his death; and, that the Land was worth 100 l. per annum; and that the Father died in 30 Eliz. and that the eldeſt Son entred immediately, and diſturbed the Daughters of Entring; and that the eldeſt Daughter did not Enter until 42 Eliz. who then entred, and made the Leaſe to the Plaintiff. And Whether her Entry, and Leaſe were Lawful; Or, Whether ſhe had not ſurceaſed her time, was the Queſtion. And all the Court held, that ſhe had overpaſſed her time, and could not Enter. For then ſhe ſhould prejudice her other Siſter: So as they never ſhould Levy their Portions. But they held, that ſhe had remedy for her Portion againſt the eldeſt Son, who had received the Profits in diſturbance of her.

Noy. 33.

Williams

Williams moved, Whether ſuch a Contingent Uſe might be raiſed out of a Covenant, although out of an Eſtate executed by Feoffment it might well be raiſed. Anderſon doubted thereof. But the other Juſtices held, That it well might be raiſed; becauſe it ariſeth out of the Poſſeſſions of the Covenantor. Et Adjournatur.

MEmorandum, That the laſt Day of this Term *Peter Warberton* was made *Juſtice* of the *Common Bench*.

Termino Hillarii,

Anno Quadrageſimo-tertio ELIZABETHÆ, in Banco Reginæ.

Rud *verſus* Tucker. Ante, Hill. 42. Pl. 6.

(1) Ante 737. Co. 2. 66. b. Littl. Sect. 566.

THe Caſe was now moved again. And all the Juſtices, beſides Clinch, reſolved for the Defendant, That the Attournment by one Joint-tenant was good, and ſhould ſettle the Reverſion in the Grantee, and is as well, as if both had Attourned; For Gawdy ſaid, there was not any difference betwixt the Caſe of an Attornment upon Grant of a Seignior (as Littleton is) and the Grant of a Reverſion: For both are entire: For if a Reverſion of Land be granted, which the one jointly holds, it is void, becauſe there is not any ſuch Reverſion, as 13 Ed. 3. Title Grants is. But if he grants the Reverſion of the Moyety of the one, that is good by ſuch expreſs words; And the Caſe of 28 H. 8. Dy. 12. put by Baldwin is all one with this Caſe, where a Reverſion is granted to the one Joint-tenant, & he accepts the Deed, it is good. And there is not any difference between an expreſs Attornment, and an Attornment in Law, & the Attornment ſhall bind all, for they be ſeiſed per my, & per tout, and an Attornment doth not paſs any Intereſt, but an Aſſent only, which ought to be upon true notice of the Grant, and then his Attornment to part of the Grant is good for the whole; And an Attornment ought to be good for all, or void for all. And Fenner agreed with him in omnibus, and ſaid, That the reaſon, why one Joynt-tenant in a Quem Redditum reddidit, Quid Juris clamat, or a Per quæ Servitia ſhall not be compelled to attorn, is; Becauſe it ſhall be according to the Grant of the Record, and according to that which the Plaintiff demands, and that it might not be variant from it; and an Attornment is a lawful Act, and is not any Prejudice to his Companion, and therefore ſhall bind him, and if he in Reverſion had diſſeiſed the two Joynt-tenants, and made a Feoffment, and the one had re-entred, there is no doubt, but that it had been an Attornment for both in Law, and had ſetled the Eſtate for Life in both, and the Reverſion in the Grantee; a multo fortiori, an expreſs Attornment ſhall do it. Popham accord, and ſaid, That to examine the reaſon hereof, is to examine

mine what Acts of the one Joynt-tenant ſhall bind his Companions, and what ſhall be avoidable by the others: It is clear, that every Act by the one Joynt-tenant for the Benefit of his Companion ſhall bind, but thoſe Acts, which prejudice his Companion in Eſtate, ſhall not bind; as the Default of the one, the Surrender of the one, &c. And therefore if two Joint-tenants have the benefit of a Condition to increaſe their Eſtate, and the one will attorn in a Quid Juris clamat without ſaving it, it ſhall not hurt his Companion, but himſelf only: But in the matter of the Profits of the Land, the one may damnifie the other, for there is quaſi a Privity betwixt them, and it was his folly to joyn with one, who would prejudice him; As where the one takes the entire Profits, the other hath not any remedy. So where two Joynt-tenants be of a Signiory, and a Wardſhip happens, if the one will diſtrain for the ſervices before Election of the Wardſhip, it ſhall bind his Companion. And here, This is but a Conſent, which, being given by the one, ſhall bind the other, by reaſon of the privity of their Eſtates. But if the Attornment had not been good, the Surrender had not helped the Caſe; For that cannot be, unleſs there had been an Attornment before, which if it were not a good Attornment to veſt the Reverſion, he cannot accept of a Surrender. Wherefore it was adjudged for the Defendant.

The Wardens, and Corporation of Weavers in London *verſus* Brown.

(2) ACtion Upon the Caſe. Suppoſing, that the Plaintiffs from time, whereof, &c. were a Corporation in London, &c. paying for it twenty ſhillings, eight pence, to the Queen, per annum, &c. And that the Cuſtome there is, &c. that none ought to intermeddle with their Guild, nor with their Art within London, or Southwark, but thoſe of the Guild; And that the Defendant, being none of their Guild, had bought forty pounds worth of Silk of one R. to be woven, and had weaved it, &c. The Defendant pleaded Not-guilty, and a ſpecial Verdict found theſe Cuſtoms, &c. and that the Defendant, being a Stranger, had received of R. forty pounds worth of Silk to be woven, and had carried it to Hackney, and there had woven it, and had brought it back to London, & received his Salary, &c. Et ſi, &c. And hereupon all the Court reſolved, That it was not any offence; for although it were a good Cuſtom, as they all allow it was, being uſed time, &c. yet this contracting for it in London, and working of it in the Country, is not Intermedling with their Trade in London; No more, then if a Taylor ſhould buy Cloth, or receive any other thing in London, and make a Garment thereof in the Country; and although it be a Contracting in London, yet it is no Intermedling with the Trade. Wherefore it was adjudged for the Defendant.

Co. 8. 125. a. R. 687.

Peck *verſus* Loveden.

(3) R. 571. ASſumpſit. Whereas T. L. the Defendants Brother was indebted unto him in 8 l. and made his wife Executrix, and died, leaving Aſſets to his Executrix for the payment of all Debts, and he intended to ſue the Executrix to recover the 8 l. ſecundum debitum Legis curſum; That the Defendant, in Conſideration he would forbear the Executrix, promiſed to pay, &c. After Verdict, It was moved, That this was not any Conſideration; For this Debt is to be intended moſt ſtrong againſt the Plaintiff, to be a ſimple Contract, with which the Executrix is not chargeable, and to ſtay this Sute is not any Conſideration. And of that opinion was all the Court; for the Sute intended is to be intended an Action of Debt, which lies not, and ſo no Conſideration; Ant. 459. But if he had declared, that he intended to ſue an Action upon an Aſſumpſit againſt the Executrix (as this Declaration doth not warrant it, becauſe he intends to recover the Debt it ſelf, which cannot be in an Action upon the Caſe) or that he intended to ſue in chancery for it (which is not intended here, becauſe he declares, that he intended to recover it per debitum Legis curſum) Then peradventure this Action would have lain, for the Conſideration of ſtaying the Sute was good. But, as it is here, it is not good. Wherefore it was adjudged for the Defendant.

Kerchever *verſus* Wood.

(4) ERror of a Judgment in the Common Bench. The Error aſſigned was; For that in Debt upon an Obligation Payment was pleaded apud domum manſionalem Rectoriæ de *Much-Hadham* in *Hertfordia*; And Iſſue thereupon, and a Venire facias was awarded de Vicineto de *Much-Hadham*; Whereas it ought to have been de Vicineto Rectoriæ de *Much-Hadham*. But all the Court (abſente Popham) held, That Much-Hadham is here intended a Vill, and the Rectory of Much-Hadham, and the Vill of Much-Hadham be all one, wherefore the Venire facias was well awarded. And the Judgment was affirmed. Vid. 39 H. 6.

Gawen *verſus* Ramtes.

Mich 42, & 43 Eliz. rot. 333.

(5) Moor. 625. REplevin. Upon Demurrer, the Caſe was; That one Knowls ſeiſed of Lands in Fee granted a Rent-charge to James Huiſh, and his Heirs for the Life of one Hilderſham. James Huiſh deviſed that Rent to William Huiſh, The Rent was arrear; And Hilderſham dieth, and for the Rent arrear in the life of Hilderſham the Defendant made Conuſance, as Bayliff of William Huiſh. All which being diſcloſed by pleading, It was demurred in Law. The firſt Queſtion

ſtion was, Whether the Grantee of this Rent hath ſuch an Eſtate, as that he can make a Deviſe thereof by the Statute of 34 H. 8. Secondly, Whether this Diſtreſs be maintainable by the Statute 32 H. 8. cap. 37. To the ſecond all the Juſtices agreed, That this Diſtreſs is maintainable by the ſaid Statute; becauſe the Eſtate, in the Rent, is determined, and the Rent was due before; and it is within the Intent of the Statute, although it were not Rent for his own, or anothers Life, but quaſi a Fee. But, as to the firſt, Gawdy, and Fenner held, That it is Deviſeable by the Statute of 34 H. 8. for the Deviſor hath a Fee therein, although not an abſolute, yet a baſe Fee; for this Eſtate is deſcendable to the Heir, although the Heir upon ſuch a Deſcent of the Land ſhall not have his Age; Nor is it ſuch a Deſcent, as ſhall toll the Entry of him, who hath right; nor that the Feme of ſuch a Grantee ſhould have Dower; yet the Grantee, having ſuch an Eſtate, which is diſpoſable by him, whereof if he diſpoſeth not, the Heir is to have it quaſi by deſcent, but not by deſcent, but by limitation. And as 33 Ed. 3. Title Deviſe 21 is, That, at the Common Law, where Land is Deviſable by Cuſtom, he, who hath ſuch an Eſtate, might Deviſe it; A multo fortiori now. Et in 8 Eliz. 253. a. Dyer, It is allowed to be Deviſable. Wherefore, &c. Popham, and Clinch e contra; For the Statute of 34 H. 8. expounds the Statute of 32 H. 8. and ſhews the Intent of the Words, That he who hath a Fee, might Deviſe it, to be meant of a Fee-ſimple, and that it ſhall not be expounded to extend to a Fee-tail; and therefore much leſs to extend to an Eſtate which is but pur auter vie; But peradventure, a Fee-ſimple, derived out of an Eſtate for Life, is well Deviſeable; As where Tenant for Life Grants a Rent to one, and his Heirs, or if Rent be reſerved upon an Eſtate for Life, and is Granted over, ſuch Rent, it may be, may be Deviſable; For ſuch a Grantee hath a Fee: But when in the ſame Deed (although the Heir ſhould have it by limitation) it is, That an Eſtate per auter vie is Granted, the Statute doth not intend, That ſuch a Rent ſhould be Deviſable. And the Caſe of 33 H. 3. may be Law; For the Cuſtom is there general, That every one, ſeiſed of Land, might Deviſe; But ſo is not the Statute. And Popham ſaid, that this Caſe had been put to the Juſtices at Serjeants Inn, in Fleet-ſtreet, and many of them were of Opinion, That it was not Deviſeable. Et adjournatur.

Co. Lit. 162. b.

Co. 10. 96.

Payn *verſus* Malory.

(6)

UPon a ſpecial Verdict, The Caſe was; That one made a Leaſe for years, reſerving Rent; and that, if the Rent be Arrear, and Diſtreſs taken for it, and not Redeemed within ſix weeks, That the Leſſor might enter: The Leſſor Grants this Reverſion by Fine; The Conuſee Grants it over; The Leſſee for Years attorns to the ſecond Grantee; the Rent is Arrear; He Diſtrains; The Leſſee Sues a Replevin, and had the Beaſts delivered unto him: But made not any other Redemption of them within the ſix weeks: The Grantee re-enters for the Condition broken; And, Whether his Entry was congeable? was the Queſtion. For, admitting that the Rent,

Co. 5. 111. Poſt. 832.

Rent, and the Reverſion be ſetled in the Grantee, by the Attornment of the Leſſee; ſo as he might Avow for it, although the Conuſee, who was his Grantor, could not; Whether he may take advantage of this Condition, becauſe the Conuſee, who was his Grantor, could not, becauſe there was not any Attornment made unto him: And the Statute of 32 H. 8. gives the ſame Remedy to the Grantee of a Reverſion, as his Grantor had. Secondly, Admitting he might; Whether this Redemption of the Diſtreſs, by Replevin ſued, which is not abſolute, be a Redemption thereof within the Intent of the Condition? Quære, For the Juſtices delivered not any Opinion therein. Sed adjournatur, poſtea 832.

Williams *verſus* White.

Hill. 42 Eliz. rot. 57.

(7) 1 Rol. 776. Winch. 5. ERror of a Judgment in Briſtol, in Accompt, where the Plaintiff declares againſt the Defendant, as his Bayliff, for divers Goods, to the value of 100 l. The Defendant pleaded Nunques ſon Bayliff, &c. and found againſt him. Whereupon he was Adjudged to Accompt; and Auditors were Aſſigned, who preſixed a day of Accompt unto him; at which day he made Default. Whereupon it was Awarded, Quod Querens recuperet valorem bonorum prædictorum, viz. 92 l. 10 s. The Error Aſſigned was; becauſe the Court had Awarded Quod recuperet valorem, and doth not award a Writ to enquire of the value. Ant. 536. But it was thereto anſwered, and held by the Court, That upon Default of the Accomptant, the Court may Order that the Plaintiff might recover the value, as the Plaintiff had Counted; As 14 Ed. 3. Accompt 109. & 10 Ed. 3. 37. But then the Judgment ought to be, Quod recuperet, and according to what the Plaintiff had counted. But here it is Quod recuperet valorem, viz. 92 l. 10 s. which is not as the Plaintiff counts. It is alſo erroneous, becauſe Day is given him to Accompt, he not being preſent to take Conuſance thereof, ſo as he is condemned by Default without Notice. Wherefore for theſe two Errors the ſecond Judgment was reverſed. But, becauſe there 1 Rol. 776. was not any Error found in the firſt Judgment, it was affirmed. And it was ſaid, That a Capias ad Computandum ſhould Iſſue out of this Court to bring him in to Accompt.

Taylor *verſus* Foſter.

(8)

ASſumpſit. Whereas the Defendant in Conſideration, that the Plaintiff would marry his Daughter, aſſumed to pay for him to J. S. to whom he was indebted, 100l. viz. 50 l. at ſuch a day, and 50 l. reſidue at the end of the year enſuing. And becauſe the firſt 50 l. was not paid, he within the year brought the Action; and after Verdict, upon Non aſſumpſit, It was moved, that the Action lay not until the laſt day, as it is in Debt upon an Obligation payable at two days. Se non allocatur; For true it is, ſo it is that in Debt upon an Obligation, where the entire Debt is to be recovered; But not in this Action, or in Covenant, where Damages only are to be recovered. It was alſo held, that the Action well lies for the Plaintiff, although the 100 l. had been to be paid to a ſtranger, and not to himſelf; becauſe the promiſe is unto him. Wherefore it was adjudged for the Plaintiff.

1 Rol. 29.
Ante 776.
Ante 118. 776.

Philips *verſus* Turner.

(9)

ERror of a Judgment in Coventry, in an Aſſumpſit, wherein the Plaintiff declares; Whereas there was Communication betwixt him, and one Archer, concerning the ſale of certain Beaſts, that the Defendant aſſumed unto him, in Conſideration he would deliver to Archer ſuch Beaſts, as he ſhould buy, that if the ſaid Archer bought of him any Beaſts for ſuch a Sum of Money to be paid ad aliquod tempus, vel tempora tunc futura inter eos concordand. and did not pay it accordingly, that he would pay it: and alledgeth, That he ſold, and delivered to the ſaid Archer 20 Beaſts for 38 l. whereof 20 l. to be paid in hand immediately, and the other 18 l. at a day to come, and that A. had not paid the 18 l. the Defendant pleaded Non Aſſumpſit, and found againſt him, and Judgment for the Plaintiff. The firſt Error aſſigned was, That the Conſideration is not alledged to be performed, for he aſſumes only to pay for thoſe, which are ſold to be paid at a future day, and here it is not ſold to be paid at a future day, but part in hand, and part at a day to come. And of that Opinion was Popham, That for this Cauſe it was Error. But all the other Juſtices e contra; For when any part is to be paid at a day future, it is within the Aſſumpſit, for otherwiſe he would not have given credit for any part; and the Promiſe is not, if he ſells for payment at a future day, but tempus futurum, which is, although part be paid immediately. A ſecond Error aſſigned was; for that the Ven. fac. is awarded de civitate, whereas it ought to be de vicineto civitatis. Sed non allocatur. For ſo are all the Preſidents for Trials in Cities, where no Pariſh, or Ward is alledged. Vid. 7 H. 4. 13. 8 H. 5. 10. Thirdly, For that it is awarded ſervientibus ad Clavam Ballivis, & Miniſtris Curiæ, and one of them only returned it; But becauſe the award was eis, & eorum cuilibet, It was held to be well enough, Wherefore the Judgment was affirmed.

1 Cr. 164. 165.

Hillarii, 43 Eliz. Reginæ, in Communi Banco.

Child *verſus* Low.

(10) EJectione firmæ. Upon Evidence Warberton cited one Bridgwaters
2 And. 190. Caſe to be reſolved by adviſe of the Judges in the Court of
Mo. 131. Wards, That where the Queen had Let Lands, and granted the Reverſion to one, miſ-reciting the name of the Tenant, and afterwards made a new Grant to another with a true recital of the name of the Tenant; And, after that, the Statute 18 Eliz. of Patents was made, That it ſhall not revive the firſt Grant, becauſe
Ant. 231. it was utterly defeated before the Statute. And all the Juſtices here affirmed it to be good Law. Vid. 27 H. 8. Parliament. Br. 77.

Sir George Clyſton *verſus* Web.

Hill. 42, & 43 Eliz. rot. 607.

(11) DEbt upon an Obligation made unto him, as Sheriff of the County of Cambridge, conditioned for the Appearance of one arreſted upon a Capias. The Defendant pleads, that the Plaintiff took the Obligation of him, and a ſtranger, and the ſtranger had nothing, and did not inhabit within the ſaid County, and pleaded the Statute of 23 H. 6. and pretended, That for this cauſe the Obligation was void. And it was thereupon demurred; and, after Argument, it was reſolved, that the Obligation was good: For the Statute hath two parts; The one for the benefit of the
Poſt. 852. 862. Sheriff, viz. That he ſhall take Obligation with Sureties, which is for his Indempnity, that, if he be amerced for Non appearance of the Party, that he ſhould have his Remedy; And the Statute preſcribes the Form, viz. That it ſhall be made unto him by the name of his Office, and with a Condition, that the Party ſhall appear at the day, &c. And it preſcribes, that, if the Obligation be made in any other Form, it ſhall be void: and this Clauſe is for the benefit of the Party, that the Sheriff, under color of his Office, ſhould not oppreſs the Party to make him any other manner of Obligation, ſo as the Statute makes the Obligation void only, for not purſuing of the Form, preſcribed in the manner thereof, but not in the matter thereof, and that is for his own Indempnity, which he may relinquiſh, if he pleaſeth, & it is nothing to the Party, Plaintiff, or Defendant; For if he, after he hath taken the Obligation, will releaſe it, it is nothing to the Plaintiff, or the Party arreſted. And it hath been adjudged in the Caſe
Ante. 624. 672. of Sir William Drury, That if a Sheriff takes an Obligation with one Surety only, it is good enough, and not void by the Statute. Wherefore it was adjudged for the Plaintiff.

Nuby

Nuby *verſus* Sabb. Mich. 42, & 43 Eliz. rot. 1337.

DEbt upon an Obligation, conditioned for the performance of an Arbitrament of all the Actions and Quarrels betwixt them, until the day of the Date, ſo that it be delivered up before the laſt of Auguſt then following. The Defendant pleaded, Quod nullum fecerat arbitrium. The Plaintiff ſhews an Arbitrament, which was 30 Auguſt, whereby they awarded, that the one ſhould pay to the other 40 s. in recompence of all Treſpaſſes, at ſuch a day and place, if the other would come thither in perſon to receive it; and that the one ſhould releaſe then, and there, to the other all Actions and Demands, unto the day of the date of the Arbitrament; and it was thereupon demurred. And all the Court reſolved, That the Arbitrament was good for the firſt part, and void for the laſt part; and that he ought to perform the firſt part. Wherefore it was adjudged for the Plaintiff. (12) Poſt 839.

Proctor *verſus* Johnſon. Paſch. 42 Eliz. rot. 1711.

DEbt upon an Obligation, Conditioned for performance of the Articles, Covenants, and Agreements, compriſed in ſuch an Indenture. The Indenture recites, that whereas the Arch-Biſhop of York had demiſed, by Indenture, to the Defendant, and to one Windſor, ſuch Lands and a Mill for years; and that Windſor died, whereby he had all by the Survivorſhip; that he granted, bargained, and aliened the ſaid Land and Mill, & totum jus, & titulum ſuum in præmiſſis to the Plaintiff, to have, and to hold, during the years. The Breach aſſigned was, that Windſor, in his life-time had granted his Eſtate to a Stranger, who, after this Grant entred and evicted the Plaintiff out of a moyety. And it was thereupon demurred. The Queſtion was, whether this word Grant implies an expreſs Warranty againſt this Title, without any other expreſs words of Warranty? Walmſley and Kingſmil, held, that it did not. *Warburton* e contra. *Anderſon* abſente, adjournatur. (13) Co. 5. 80. b.

Forreſt *verſus* Ballard. Mich. 42, & 43 Eliz. rot. 2880.

AUdita Querela to avoid a Statut-Merchant, acknowledged before the Mayor of Nottingham, ſurmiſing in his Writ, two Cauſes to avoid the Statute; the one, that the Mayor there, had not any Authority to take ſuch a Statute: The other, Quod ſcriptum recognitum, &c. non fuit ſigillatum cum ſigillo Reginæ de duabus peciis, proviſo pro ſigillatione Statut. Mercator. And, upon this Writ, the Plaintiff counts, and alledgeth theſe two matters to avoid the Statute. And it was thereupon demurred, and held by all the Court, that, for this Cauſe, the count was double and vitious; for although a Writ of Audita Querela may comprehend divers Cauſes for the avoidance of the Statute, yet the Count ought to comprehend but one Cauſe; or if it alledgeth divers Cauſes, yet it ought to relie upon one only, to which the Plaintiff ought only to anſwer; for doubleneſs is incertainty, and inveigles the Court. And therefore it hath (14) Owen 142.

been adjudged in Gaſcoyns Caſe, that a double Plea is vitious in ſubſtance; and, if there be a demurrer, it needs not be ſhewn for Cauſe, notwithſtanding the Statute of 27 Eliz. but he may well take advantage thereof, without ſhewing it. And it was held by all the Court, that either of theſe Cauſes alledged was ſufficient to avoid the Statute; and an Audita Querela lieth in ſuch Caſe: and he ſhall not be put to ſue a Writ of Error to avoid it. And although the Statute is not enrolled in two places, nor writ with the hand of the Clerk, which is a Circumſtance appointed by the Statute; yet the omitting of them is not a Circumſtance to avoid the Statute. Wherefore it was adjudged for the Defendant.

Ant. 319.

Trinity Colledge in Cambridge *verſus* Tunſtal, Parſon of Sharinford, in the County of Leiceſter.

(15) Ant. 675. ANnuity by Preſcription for a Penſion, iſſuing out of the Church of S. it was reſolved, without Argument, That it lay againſt the Incumbent, as well for the Arrearages due in the time of his Predeceſſor, as in his own time; for the Church it ſelf is charged, in whoſoevers hand it comes. Wherefore it was adjudged for the Plaintiff.

Bethel *verſus* Edw. Stanhope. Hill. 41 Eliz. rot. 939.

(16) Owen 132. 2 And. 172. SCire facias againſt him, as Executor of Francis Vaughan, Upon a Judgment given againſt the Teſtator of 220 l. He pleaded payment of 40 l. debt due to the Queen; and, beſides that, he had riens in ſes mains. And thereupon they were at Iſſue, whether he had Aſſets? And it was found by Special Verdict, that the Teſtator was poſſeſſed of divers Goods, to the value of 250 l. and, by Covine to defraud his Creditors, made a gift of his Goods to his Daughter, with a Condition upon payment of 20s. that it ſhould be void, and died. The Defendant entermedled with the Goods; and afterwards the Daughter by this gift, took the Goods; and after that adminiſtration of the Goods of Fr. Vaugh. was committed to the Defendant; and, whether, upon this matter, he ſhall be charged as Executor, and that theſe Goods ſhould be Aſſets in his hands? Was the Queſtion. And after Argument, it was adjudged for the Plaintiff: For firſt, when he medled with the Inteſtates Goods, although he were neither Executor, nor Adminiſtrator; and afterwards Adminiſtration was committed unto him, a Creditor hath election to charge him as Executor, or Adminiſtrator; eſpecially here, when he pleads as Executor, the finding by the Jury, that he is Adminiſtrator, is not to purpoſe, 9 Ed. 4. 53. 2 R. 3. 20. 21 H. 6. 8. Secondly, All the Court held, that this Gift of the Goods is in it ſelf fraudulent, as appears by the Condition; and the Covine is expreſſly found by the Jury; and then it is utterly void againſt the Creditors, by the Statute of 13 Eliz. and the Inteſtate died poſſeſſed of them; and when the Donee afterwards took them, it is a Treſpaſs againſt the Adminiſtrator; for which he hath his remedy, and they are always Aſſets in his hands: But if a Treſpaſſer takes Goods from a Teſtator in his life-time, ſo as they never were but a choſe in Action

Ante 102. 565.

Ant. 292.

Action to the Executor or Administrator, they be not Assets until they be recovered. Wherefore, notwithstanding this taking of them by the Donee, yet they always remained as Assets in the hands of the Administrator; and therefore he is chargeable for them as Executor de son tort, by his intermedling with them before Administration committed; and the Goods, by Law, remained always in his possession. Wherefore it was adjudged for the Plaintiff.

Francis Leak *versus* Episcopum Coventry, and Doctor Babington. Mich. 42, & 43 Eliz. rot. 317.

(17) Owen 131.

Quare Impedit; And counts, how one Langford was seised in Fee de medietate Ecclesiæ de S. viz. ad præsentandum ad eandem Ecclesiam qualibet prima vice, ut in grosso; and that one Bushy was seised of the other moyety Ecclesiæ prædictæ, viz. &c. ut in grosso; and that Langford presented his Clerk in the first turn, who was admitted, instituted, and inducted; and afterwards the Church became void; and Bushy presented in his turn, whose Clerk was admitted, instituted, and inducted, and afterwards deprived; and that the Bishop, without giving notice of the deprivation; collated: and that afterwards Langford granted this Advowson to the Earl of Salop in Fee, who granted it to the Plaintiff in Fee; and that the Clerk collated by the Bishop, died; and the Defendant, in right of Bushy, claimed the turn, and presented, and disturbed the Plaintiff. And it was thereupon demurred; and, after argument adjudged for the Defendant; for when Langford had right to present upon the Deprivation, as in his turn, although the Collation by the Bishop, without notice, was not good, nor ousted him, but that he always might have presented, and ousted the Incumbent, by his bringing of a Quare Impedit; yet it is but a thing in action; and when he hath granted the Advowson over, the Grantee cannot have this thing in action, nor the Grantor cannot have the action; but he hath destroyed it, so as none can now have it. Secondly, All the Court held, although that this Grant is sufficient to pass the Advowson in fee (as they all agreed that it was) And although this Title to present had been transferred to the Grantee, yet this Collation by the Bishop is good against all, but against the very Patron; and this only through defect of notice: So as he might have removed the Incumbent by a Quare Impedit; but when he doth not remove him, so that he dies Incumbent, this is a serving of his turn, and as a Presentment in his turn; so as Bushy shall not be prejudiced by his negligence, but shall have it now as in his turn. And it is a good Plenerty, and Incumbency against him; so as he now may present, and well say, that the turn of the other was served: So as they all held, for the matter to be against the Plaintiff. And Anderson & Warberton here held, that the Declaration was not good, because it is not shewn, how the Presentment by turn began: But the other Justices held it to be well enough. And they all held, that the Collation never gained the Church, but a Usurpation gained it, so that the Advowson cannot be granted over. Wherefore it was adjudged for the Defendant.

Ante 119. Co. 5. 102. a.

Ante 241. Co. Lit. 233.

Prettyman *verſus* Lawrence.

(18) TReſpaſs; Quare domum & clauſa ſua fregit. The Defendant pleaded, that the Houſe is called Crable-houſe, and one of the Cloſes is Black-Acre, and the other is White-Acre; and pleads, that they are his Freehold, and ſo juſtifies. The Plaintiff ſaith, that the Treſpaſs done was in the Houſe called Crable-houſe, and in Black-Acre, which are his Free-hold; Abſque hoc, that they be the Free-hold of the Defendant; and that the Treſpaſs was done in another place, containing 20 Acres, aliasquam White-Acre, &c. And it was thereupon demurred. For it was ſaid, When the Plaintiff makes a new Aſſignment, ſo that the Defendant hath not agreed to him, and hit every parcel intended in the Declaration, this new aſſignment is as a new Declaration, to which the Defendant ſhall have a new anſwer in all, and is a waver of the former pleading in all; wherefore he ought to have omitted his Traverſe: And of that Opinion was Walmſley. But all the other Juſtices e contra; For in regard that the Defendant hath hit ſome of the places, wherein the Plaintiff intended the Treſpaſs, and pleaded thereto, the Plaintiff may well anſwer to that part, and the Defendant ſhall have no other anſwer; as if the Defendant had hit one place, and had confeſſed the action therein, the Plaintiff needed not make any anſwer thereto; and the Defendant ſhall not wave his anſwer, and anſwer to all de novo. Wherefore it was adjudged for the Plaintiff.

Whitnel *verſus* Cook. Mich. 42, & 43. Eliz. rot. 3346.

(19) REplevin. The Defendant, as Bayliff to one Pyne, who was ſeiſed of the third part of the place where, &c. juſtifies for Damage-Feſant. The Plaintiff ſaith, That a Stranger was ſeiſed of the other two parts, and, by his Licence, he put in his Cattle. The Defendant ſaith, De injuria ſua propria abſque tali cauſa, &c. And the Plaintiff demurs, and it was adjudged to be no Plea; but he ought to anſwer to the ſpecial matter in the Barr.

Ante 539.

Termino

Termino Paſchæ,

Quadrageſimo tertio ELIZABETHÆ,

in Banco Reginæ.

Pilkington *verſus* Haſtings, & Meacock. Hill. 43 El. rot. 381.

REplevin. Haſtings avowed for Damage-Feſant in the place, where, &c. as in his Free-hold. Meacock made Conuſance, as Bailiff unto him. The Plaintiff ſaith, that after the taking, and before delivery of them, viz. &c. he tendered to the ſaid Meacock 2 s. which was ſufficient amends for the damage; the which he refuſed to accept, &c. and deteined his Cattle, Quouſque, &c. And hereupon the Defendant demurred. Godfrey for the Defendant, moved, that the Plea was not good: Firſt, Becauſe the tender of the amends was not inſtantly upon the taking, but after Impounding, which is too late; as 13 H. 4. 7. 27 Ed. 3. 88. Secondly, That the tender of amends to the Servant is not good; for he hath not any authority either to accept, or refuſe it; but it ought to have been made to the Maſter, eſpecially as this Caſe is, where the Maſter diſtrained. Thirdly, Becauſe he doth not ſhew to the Court, what the damages were; ſo as the Court might have adjudged, whether there were ſufficient amends tendered, or not: But, as to this laſt, all the Court reſolved, that it was not material; for, having averred that the 2 s. tendered was ſufficient for the damages, this averment is ſufficient. And, as to the firſt, all the Court held, that the tender came too late, after the Impounding; for, being lawfully Impounded, they were in cuſtodia legis; and the party, who diſtrained, had not any intereſt in them, nor authority to deliver them. And, as to the ſecond, they all held, that the tender to the Servant was not ſufficient, eſpecially the Maſter being preſent at the diſtreſs. But if the Servant had only diſtrained, Gawdy ſaid, that then the tender unto him might have been more colourable. And Popham ſaid, that if the tender had been to the Bayliff of the Mannor, it might peradventure have been good; but not to a Servant, who joyned in the diſtreſs only. Wherefore it was adjudged for the avowant. But a Preſident was cited in this Court, that the tender of amends, after the impounding, was good; which was Trin. 33 Eliz. rot. 327. between Bardſey and Segrave. But the Court had not much regard thereto, becauſe they were reſolved upon the laſt point, That the tender to the Servant was not good. 5 Co. 76. a.

(1) Co. Entr. 602. b.

Poſt. 820.

Ante 332.

Co. 5. 76. a.

Ant. 332.

Sir Henry

Sir Henry Linleys Caſe.

(2) Sir Henry Linley, who was indicted of Treaſon, being brought to the Barr, and demanded, whether he could ſay any thing, why the Court ſhould not proceed upon the Endictment, which was before Commiſſioners of Oyer and Terminer? He produced the Queens Pardon, without any Writ of allowance thereof. And Pope, ſecond Clerk of the Crown, informed the Court, that the Preſidents were, that, in Caſe of Treaſon, it was uſed to allow of the Pardon, without Writ of allowance; but not in Felony. Whereupon the Pardon was allowed.

Sands *verſus* Drury.

(3) 1 Rol.498. Action ſur Trover of 20 Loads of Hay. Upon Not Guilty pleaded, a Special Verdict was found, That this Hay was parcel of the Tithes ſevered from the nine parts, pertaining to the Rectory of Hackley, and demiſed, and demiſeable, time, &c. ſecundum conſuetudinem Manerii de Hackley; and that the Prior of Newbury was ſeiſed in Fee of the Manor, and Rectory of H. and in 27 H. 8. demiſed thoſe Tithes, by Copy, to H. under whom the Defendant claimed; and afterwards, by the diſſolution, &c. the Manor and Rectory came to the King Henry 8. who conveyed it to the Arch-biſhop of York, who lett that Rectory to the Plaintiff; who claimed thoſe Tithes; and the Defendant, under pretence of that Copy, carried them away. Et ſi, &c. The ſole Queſtion was, whether thoſe Tithes were grantable by Copy, &c. And it was moved for the Plaintiff, that they were not. Firſt, In reſpect of the nature of Tithe, wherein none could have any propriety before the Council of Laterane, which was in the time Ante 784. of King John; for, before that time, every one might have paid them to whom he pleaſed; but, by thoſe Conſtitutions, they are annexed to the Rectory: It is then impoſſible, that there ſhould be any Cuſtom to demiſe them by Copy, from time, &c. when as none had intereſt in them, but within time of memory. Tithes alſo cannot paſs, unleſs by Deed; and therefore to grant them by Copy of Court-Roll cannot be good. There cannot alſo any thing paſs by Copy, but that, which is parcel of the Manor; but it hath been adjudged, that Tithes cannot be parcel of a Manor; Wherefore, &c. And of that Opinion was Popham, for the firſt and laſt Reaſons; For although, Common, and prima veſtura Prati may be granted by Copy, becauſe they be parcel of the Manor, yet Tithes cannot 1 Rol.498. be ſo, becauſe they cannot be parcel of a Manor; for a Manor, and Tithes are of ſeveral natures, although they be united in one mans hand; and then it is not poſſible, that that which is not parcel of a Manor, can be demiſed ſecundum conſuetudinem Co.Lit.58.a. Manerii. And therefore it was adjudged in the time of Queen Mary, in the Caſe of the Duke of Suff. that where one had two Manors, and granted a Copy-hold of the one Manor, at the Court of the other Manor, that it was a void Grant; for it Ante 413. cannot be a Copy-hold, according to the Cuſtome of a Manor, whereof it is not parcel. But Gawdy doubted thereof, and conceived it had been well enough, if it had been ſo uſed, from time whereof, &c. But, becauſe upon the Verdict it did not appear, that

That it had been granted by Copy, from time, whereof, &c. It was held, that there was not any Title found for the Defendant; and therefore adjudged for the Plaintiff.

Southcot *verſus* Bennet.

DEtinue of Goods and Counts, that he delivered them to the Defendant, to keep ſafely, &c. The Defendant confeſſeth the delivery, and that afterwards J.S. feloniouſly robbed him of them. Wherefore, &c. The Plaintiff replies proteſtando, that J. S. did not rob him, for Plea ſaith, that the ſaid J. S. was Servant to the Defendant; and it was thereupon demurred. And, after argument at the Barr, Gawdy and Clinch, cæteris abſentibus, held, that the Plaintiff ought to recover; becauſe it was not a Special Baylment: That the Defendant accepted to keep them as his proper Goods, and not otherwiſe; but it is a delivery, which chargeth him to keep them at his peril. And it is not any Plea in a Detinue to ſay, that he was robbed by one ſuch: For he hath his remedy over by Treſpaſs, or Appeal, to have them again. And that is the Reaſon of 33 H. 6. 1. That if a Gaol be broke open by Thieves, and the Priſoners let at large, yet the Gaoler is chargeable; becauſe he hath his remedy over: But if it be broken by the Queens Enemies, it is otherwiſe. And although it was moved, that the Replication was vitious, for that the Proteſtation is repugnant to the matter confeſſed; and then, the Replication being ill, although the Barr be vitious, the Plaintiff cannot have Judgment; as 2 El. Dautries Caſe is; yet it was held to be but a default of form, and not of ſubſtance; and, the Demurrer being general, no advantage can be taken thereof. Wherefore it was adjudged for the Plaintiff Vide for the principal Caſe 3 H. 7. 4. 6 H. 7. 12. 9 Ed. 4. 40. 29 Aſſ. 28. 8 Ed. 2. 24 Detinue 59. 4 Co. 83, & 84. (4) Dyer. 184. a. b.

Dumper *verſus* Syms. Paſch. 40 Eliz. rot. 361.

TReſpaſs. Upon a Special Verdict it was found, that the Preſident & Scholars of Corpus Chriſti Colledge in Oxford, were ſeiſed in Fee, and Anno 10 Eliz. lett it by Indenture to one Bold for 30 years; Proviſo, that the Leſſee and his Aſſigns ſhould not alien the Premiſes, or any part thereof, without Licence of the Leſſors, rendring 33 s. 4 d. per annum, &c. In 15 Eliz. the Preſident and Scholars, by their Deed, licenſed Bold to alien the Premiſes, or any part, for the entire term, or for part thereof, to any perſon, whom he pleaſed. Bold aſſigns the entire term to one Tubb; Tubb deviſes the entire term to his eldeſt Son, and made him his Executor, and died: The Executor entred generally; and they find, that the Teſtator was not endebted to any: That afterwards the Son died inteſtate; and adminiſtration of his Goods were committed to J. S. who entred, and aliened to the Defendant; that afterwards in 38 Eliz. the ſaid Preſident, and Scholars, by the name of the Preſident and Scholars of Corpus Chriſti Colledge in Oxon, in Comitatu Oxon, made a Leaſe thereof to the Plaintiff, rendring 22 s. Rent per annum; and that they made a Warrant to one Englesfield, to enter, and deliver the Leaſe upon the Land (but it was not found, that this Warrant was by writing under their Seal) and that Englesfield entred in their name, and delivered the Leaſe upon the Land to the Plaintiff, (5) 1 Rol. 429. 514. 2 Rol. 699. 700. 1 Rol. 514.

tiff, upon whom the Defendant re-entred; whereupon this action was brought. Et ſi, &c. Firſt, and which was the principal Queſtion in the Caſe, it was moved, Whether this Licence to the firſt Leſſee to alien (who alienedaccordingly) be a Diſpenſation onely, or a total Determination of the Condition? Moor, for the Defendant, moved, that, at the firſt, the words do not extend to Alienations by Aſſignees in Deed; but the word Aſſignees in the Condition, extends only to Aſſignees in Law, as Executors, or Adminiſtrators, and for that vide Dy. 6. As alſo, that by this Licence to alien the Condition is determined, that it ſhall not bind any other; and in proof thereof vide Dy. 152. that the Reſtraint is determined by the alienation. And when a Condition is diſpenſed with in part, it is diſpenſed with in the whole; and to that purpoſe he cited a Record of a Judgment in the Common Bench, Trin. 28 Eliz. rot 256. between Lylds and Crompton, where the Lord Stafford made a Leaſe to three, upon Condition, that they, nor any of them, ſhould alien without his Licence: and the one, by Licence, alienedhis part; and afterwards the other two alienedtheir parts, without Licence; it was adjudged, that the Leſſor could not enter: For the Condition was diſpenſed with before. And, as to that point, Gawdy, Clinch, and Popham delivered their Opinion ſeverally, that the Condition was gone, and diſcharged, by this Diſpenſation to alien to the Leſſee himſelf; for the Condition being once diſpenſed with, it is utterly determined: For it cannot be diſcharged for a time, and in Eſſe again afterwards; 28 H. 8. Dy. 13. And for that Popham ſaid, he held the Law to be againſt the Opinion in 16 Eliz. Dy. 334. where Leſſor licenſed his Leſſee to alien part, that he might alien the reſidue without Licence; for the Leſſor cannot enter, becauſe, if he ſhould enter for the Condition, he ſhould enter upon the Entire, as it was limited: and if he ſhould enter upon the Entire, he ſhould deſtroy that which he had licenſed to be alienedd, which he cannot do; and therefore the Condition is intirely gon: for it cannot be in Eſſe for part, and deſtroyed for the reſidue. Secondly it was moved, admitting this condition to continue, this Devile being to his Executor, and he entring generally, whether he ſhall be in, as Legatory? For then clearly, by the Devile, the Condition is broken. And Gawdy ſaid, that he had it as Legatory, and ſo the Law would repute him to be in accordingly: as 22 Eliz. Dyer 367. is. But to that point the other Juſtices ſpake not. Thirdly, It was moved, that although this Condition remained, yet this Leaſe to the Plaintiff is void for the Miſnomer of the Corporation by the addition in Comitat. *Oxon.* But the Court over-ruled it, and that it was not a material variance. Fourthly, That this Leaſe is void to the Plaintiff; becauſe the ancient Rent is not reſerved; for the antient Rent was 33 s. 4 d. and the Rent now reſerved is but 22 s. and no Corn, according to the Statute of 18 Eliz. And therefore void by the Statute of 13 Eliz. and 18 Eliz. And of that Opinion was the whole Court, That, for this Cauſe, the Leaſe was void againſt the Leſſor himſelf; and that they are general Laws, whereof the Court ought to take Conuſance, although they be not found. Fifthly, It was held, that the ſecond Leaſe was not good; becauſe it was not found, that the Attorney had any Warrant by writing. Wherefore (but principally for the firſt Cauſe) it was adjudged for the Defendant. 4 Co. 119, 120.

Co. 4. 120. Mo. 205.

1 Rol. 429. Ante 348.

2 Rol. 700. Am. 292.

Preſton

Preſton *verſus* Perton. Mich. 42, & 43 Eliz. rot. 441.

(6) UPon Demurrer. The Caſe was; A Scire fac. was brought in Chancery, upon a Reconuſance there. The Defendant pleaded to Iſſue, which was ſent hither to be tried, and found for the Plaintiff, and Judgment for him here. Afterwards he brought Debt in the Common Bench upon this Judgment, and had Judgment there to recover, and afterwards brought a Scir. fac. here to have Execution upon the Judgment in this Court, and the Defendant in Barr of that Execution pleaded this Recovery. And thereupon the Plaintiff demurred. And it was moved for the Plaintiff, that this was not any Plea; for both the Records are equal, and the one cannot determine the other: But the Plaintiff, may ſue Execution upon what he will. But Godfrey for the Defendant moved, that by the new ſuing of this Original and Recovery had, he hath waved the Benefit of having Execution of the firſt Judgment: and in proof thereof relied upon 13 Eliz. Dy. 300. Puttenhams Caſe. But the whole Court held it not to be any Plea: becauſe the one Judgment cannot determine another Judgment, which is of equal nature; no more then one Obligation can determine another; as 11 H. 4. is. But Gawdy ſaid, that if a man recover upon an Obligation in Debt, during that Judgment in force, he cannot have a new Action of Debt upon that Obligation, becauſe it is reduced in rem judicatam. Whereupon Judgment was given, that Execution ſhould be for the Plaintiff, unleſs other matter were ſhewn the third day of the next Term. At which time, it was moved, and Exception taken, becauſe he began at the Judgment, and did not recite the Entire Record. Sed non allocatur. Wherefore the Plaintiff had Judgment.

Yelv. 133.

Dyer. 299. 34.

Ant. 608.

Wood *verſus* Smith.

(7) ACtion ſur Trover of Goods. The Defendant pleaded Not Guilty, and found againſt him. And it was now moved in arreſt of Judgment to be an ill Declaration; for he counts, that he was poſſeſſed of ſuch Goods, ſhewing what they were in ſpecie, cum aliis Implementis ad valentiam 3 l. but expreſſeth not what they were; and that he was alſo poſſeſſed of other parcels (particularly declaring what) cum aliis neceſſariis; but mentions not what they were: and that he was alſo poſſeſſed de ſuibus, but ſetteth not forth their number. The Defendant by Verdict was found Guilty of all contained in the Declaration; and damages entirely aſſeſſed for all, which being ſo incertain, the Court cannot give Judgment for thoſe parcels, which are incertain. And of that Opinion was the whole Court for the incertainty in the Declaration. But Gawdy held, that in regard the Defendant hath admitted it, he cannot now after Verdict take advantage thereof; as 20 Aſſ. 3. is: but the other Juſtices e contra; becauſe there is not any certainty at all pro Implementis & neceſſariis: but where there is a reaſonable certainty, although upon Demurrer, becauſe it is not altogether certain, Judgment ſhall be againſt the Plaintiff for the incertainty: yet, after Verdict he ſhall not take advantage, if there be any covenient certainty. But here is not any certainty. Wherefore it was adjudged for the Defendant.

Poſt. 819.

Biſhe *verſus* Walford.

(8) DEbt againſt the Defendant for money for his Tabling. The Defendant tendered his Law, and was ready to have made it at his day: but Gawdy being then only in Court, conceived, that Ley gager lay not in this Caſe. Wherefore, by aſſent of the Parties, the Defendant waved his Law, and pleaded al pais. Vid. 9 Ed. 4. 1. 1 Ed. 4. 5.

Co. Litt. 295 a.

Hill *verſus* Giles.

(9) EJectione Firmæ was brought of a Cottage. After Verdict it was moved, that an Ejectione Firmæ lay not thereof; no more then a Præcipe quod reddat. Sed non allocatur. Wherefore it was adjudged for the Plaintiff.

1 Cr. 555.

Goodwin *verſus* Cornelius Mountenaigh an Alien.

(10) EJectione Firmæ. The Defendant pleaded to Iſſue, and a Ven. Fac. was awarded de medietate Linguæ upon the Defendants Suggeſtion, that he was an Alien. And at the Niſi prius a Tales de Circumſtantibus was awarded, and found for the Plaintiff. And now moved in Arreſt of Judgment; for that the Tales was not awarded de medietate Linguæ, for it ought to purſue the Ven. fac. Kemp, Secondary, ſhewed alſo, that the Ven. fac. was not well returned, becauſe Aliens and Deniſens were returned together, whereas there ought to have been twelve Deniſens by themſelves, and twelve Aliens by themſelves returned; and there ought to have been on Deniſen and one Alien, and ſo another Deniſen, and another Alien in their turns ſworn upon the Jury, which could not be done here, becauſe it appears not by Panel, who is a Deniſen, and who an Alien, & ſo non conſtat which of them were ſworn. And of that Opinion was Gawdy and Clinch, cæteris abſentibus. Whereupon Judgment was ſtayed. Vide poſt, Trin. 43. Pl. 18.

Poſt. 841.

Poſt. 841.

Poſt. 841.

Green *verſus* Roſs.

(11) ERror. For that Judgment was given by default againſt the Defendant, being an Infant: Iſſue was taken, that he was of full age. And Godfrey moved, Whether the Trial ſhould be in Norff. where the Land was? Or in Middleſex, where the action was brought? and the Court held, that it ſhould be tried in the County where the Land lay. And Tanfield ſaid, it was ſo adjudged in this Court between Throgmorton and Burfind. 46 Ed. 3. 7.

Draycot *verſus* Piot.

(12) ACtion ſur Trover of divers Goods, & inter alia de decem Capſis, & Ciſtis, Anglice, Cheſts and Coffers, and of a Bag, and 20 l. therein. The Defendant was found Guilty de quatuor Ciſtis, & Capſis, and of 13 l. parcel of twenty pound, and of divers other particular parcels: and of the Reſidue Not Guilty. And Exception was taken in Arreſt of Judgment, that the Declaration.

That

that he converted 10 Capſas & Ciſtas, and doth not ſhew how many of Cheſts or how many of Coffers, was incertain and ill; and therefore the Verdict alſo was ill: but the Juſtices Gawdy and Fenner held them to be all one. But if Cheſts and Coffers ſhould be ſaid to be diſtinct things, it then ſhould be ill. Secondly, It was moved, that this Trover and Converſon of Money out of a bag, cannot be good, becauſe it cannot be known. And when he is found Not Guilty of the bag, and Guilty of the Money, that as much as if he had declared of the Trover and Converſion of Money out of a bag, which was ruled to be ill in Hicks and Holydays Caſe. But they held, that an action of Trover and Converſion of Money only was good enough, and an action well maintainable for it. Wherefore, cæteris abſentibus, it was adjudged for the Plaintiff. Ant. 817. Ant. 661. Poſt. 841. 870 1 Cro. 89.

Beal *verſus* Web.

(13)

PRohibition for Tithes againſt the defendant, Farmor of the Rectory of Frit-tender in the County of Eſſex, and ſurmiſeth, that from time, whereof, &c. he had uſed to pay 4 s per annum, in diſcharge of all tythes; and his proofs were, that he uſed to pay 4 s. 6 d. per annum. And upon this variance, a Conſultation was prayed. And becauſe it appeared, that there were not any tythes due in kind to the Parſon, as he hath ſued; but it is a Modus decimandi, although not in ſuch manner as the Plaintiff ſurmiſeth, the Court held, that the defendant ſhould not have Conſultation: for he had not any cauſe for tythes of that Land, and it was ruled accordingly. Vide 2 Eliz. Dy. 171. Ant. 307. Ant 736 Moor. 911.

Baſſet *verſus* Maynard.

(14)

ACtion ſur Trover, and converſion of certain loads of wood. Upon a Special Verdict, the Caſe was, Sir Tho. Palmer was ſeiſed of a great wood, and bargained and ſold to one Cornford and his aſſigns, as many trees, as would make ſix hundred coards of wood, to be taken by the aſſignment of Sir Tho. Palmer. Cornford aſſigns over his intereſt to the Plaintiff. Afterwards, Sir Tho. Palmer granted to the Defendant ſo much of his wood, as would make four thouſand coards of wood, to be taken at the Defendants election. The Plaintiff afterwards by the aſſignment of Sir Tho. Palmer cut down the trees in queſtion, to make ſix hundred coards: and the Defendant claiming them by vertue of his Grant took them. And it was found that there was ſufficient wood left for the Defendant to take his four thouſand coards. Et ſi, &c. And upon this Verdict, it was moved, that here was not ſufficient title found for the Plaintiff. For firſt, it is not found, that the bargain and ſale was for any ſum of Money; nor upon any Conſideration. Sed non allocatur. For it is intended to be ſo, being found by the Verdict. But, if it had not been ſo found, it might peradventure have been otherwiſe; as primo Mariæ, Dy. 91. is. Secondly, It was alledged, that this Grant to the Plaintiff is void: for, untill the aſſignment made by Sir Thomas Palmer, no intereſt veſted in Cornford himſelf, ſo as he could not make any Grant thereof over. But all the Court held the Grant to be good: for being made to 2 Rol. 699. Noy 32. Moor 661. 2 Rol. 699.

him, and his Aſſignes, he may make an Aſſignee, which ſhall enure as a nomination to one, who is to have by the appointment of Sir Thomas Palmer. And it may well veſt in him, as the Intereſt alſo. And here he hath an Intereſt before the Aſſignment made by Sir Tho. Palmer; inſomuch as if Sir T. P. will not aſſign it in convenient time, he himſelf might take them. And therefore he may aſſign this intereſt; as 44 Ed. 3. 43. is. But, admitting the Grant to the Plaintiff had been void; yet Popham ſaid, that the Action was maintainable, becauſe by the cutting down of them he had Poſſeſſion and a good Title againſt the Defendant and every Stranger: and, being cut down, it was not lawful for the Defendant to take them: for if one ſells a thouſand Coards of Wood to be taken at the Vendees Election; and afterwards, the Grantor himſelf, or a Stranger, cuts down ſome of the Wood, the Vendee cannot take that which is cut down: but he ought to make his Grant good out of that which is growing. As if Eſtovers were granted unto him, to be taken in a great Wood, and the Owner of the Wood cuts down ſome of the Wood, the Grantee cannot take that which is cut down; but he muſt take his Eſtovers out of the reſidue: and if all be cut down, he hath not any remedy, but an action upon the Caſe. So here, although the Plaintiff had not a good Title, yet his having Poſſeſſion of them being cut down, ſufficeth. Quod Gawdy & Clinch conceſſerunt. Wherefore it was adjudged for the Plaintiff. 5 Co. 24. b.

Carew *verſus* Merler.

(15) ERror of a Judgment in the Common Bench in Debt, The Error aſſigned was; becauſe the Ven. fac. was awarded, bearing Teſte after the Judgment, as in truth it was dated a year after. But it was held, that in regard it was after Verdict, and the Trial is upon the Diſtringas with the Niſi prius: ſo as if there had not been any Ven. fac. at all, the Statute would have helped it: and it ſhall not be intended, that this Ven. fac. which bare Teſte after the Judgment, was the Ven. fac. in this Sute: and although it were certified to be the ſame Ven. fac. the Court would not take it ſo; but rather, that there was not any Ven. fac. at all, the Trial and Judgment thereupon are good. But they held, that the Teſte of a Ven. fac. can never be amended, but the Return thereof may be amended, becauſe the Roll warrants it. And this being variant from the Roll may be amended. But the Rolls make not any mention of the Teſte thereof; as 2 Mar. Dy. 121. 11. Wherefore the Judgment was affirmed.

Ante 767.

Cubit *verſus* Harriſon.

(16) TRespaſs de Herbis depaſcend. cum Averiis, &c. The Defendant pleaded Tender of ſo much for amends to the Plaintiff, who refuſed it, being ſufficient. And it was held to be no Plea, according to 21 H. 7. 30.

Ant. 813.

Butcher & Aldworths Caſe.

DEbt upon a Recovery in Briſtow. And it was traverſed, and a Certiorari iſſued out of this Court to certifie it, which was certified under the Seal of Briſtow. And it was moved, that this Certificate was not good. But it ought to have come in under the Great Seal: but it was held to be well enough: for ſo is the courſe upon ſuch Certioriari directed to have it certified under the Seal of the Inferior Courts. And it was adjudged for the Plaintiff. (17)

Chadwick *verſus* Sprite.

ASſumpſit. Whereas one Baily was indebted unto him in 5 l. and being poſſeſſed of two Obligations, made by two Strangers of 20 l. delivered to the Plaintiff the ſaid Obligations to receive the Money due upon them, or to ſue them in the name of Baily; and of that, which he recovered, to ſatisfie himſelf, and the reſidue to return back to Baily; that Baily died, and the Defendant being his Wife, in conſideration, that the Plaintiff would deliver unto her the ſaid bonds, promiſed to the Plaintiff to pay unto him the ſaid 5 l. upon the firſt payment of any ſums of thoſe bonds: and alledgeth, that the Defendant had received thoſe ſums contained in the bonds, &c. After Verdict upon Non Aſſumpſit pleaded, and found for the Plaintiff; it was moved, that this is not any Conſideration, becauſe by the death of Baily, who delivered them, the authority, which he gave to the Plaintiff to ſue them, is determined; and the Plaintiff hath nothing to do with them. And the Defendant hath not any benefit by the receipt of them, unleſs ſhe were Executrix, which is not alledged. And if ſhe were Executrix, the receipt of them by her is not any Conſideration: for ſhe receives but her own, and therefore there is not any Conſideration for the making of this promiſe. And of that Opinion was Fenner, and relied upon 12 H. 7. 14. and 6 Ed. 4. 19. but Gawdy and Clinch e contra: becauſe by this delivery and gift of the Obligations, the intereſt in the Deeds is given unto him; although the debts themſelves, which are things in action, paſs not, and he had authority to diſpoſe of them. And this delivery of them to the Defendant, and by her acceptance, and promiſe upon this Conſideration, whether Executrix, or not, is ſufficient to bind her. Wherefore it was adjudged for the Plaintiff. (18) 2 Cr. 442. 2 Cr. 343.

Gardeners Caſe.

GArdener having Judgment in debt againſt St. John Juſtice of Peace in the County of Bedford, procured a Writ of Execution directed to the Sheriff of Beford; who made a Warrant to Gardeners own brother, to be a Special Bailiff to ſerve that Execution, who going to ſerve it, and fearing a Reſcouſe to be made, carried with him a Dagg; whereupon the ſaid St. Johns cauſed one of his ſervants to go and ſearch him, and finding him armed with a Dagg, brought him before his Maſter, being the next Juſtice of Peace, who, by colour thereof, committed him to (19) St. 33 H. 3. c. 6.

Goal;

Goal, until he paid 10 l. according to the Statute of 33 H. 8. cap. 6. Whereupon he removing himſelf by an Hab. Corp. and all this matter being diſcloſed to the Court, they all held it to be no offence againſt the Statute, for a Sheriff or his Miniſters in Execution of Juſtice, to carry ſuch an Hand-gun: for otherwiſe no Juſtice would be adminiſtred. And in this Caſe, and for this purpoſe, it is lawful. Vide 3 H. 7. 1. And they all held that a Dagg
5 Co. 72. a. was an Hand-gun within the Statute, although it be not named therein. Wherefore they commanded a Plea to be drawn, compriſing all this matter, which was done, and then it was confeſſed, and the Partie diſcharged. 5 Co. 71, 72.

Bearblock *verſus* Read. Ante, Hill. 42. Pl. 2.

(20) THe Caſe was now moved again. And Popham, Gawdy, and
2 And. 160. Clinch (Fenner abſente) delivered their Opinions; that the
Yelv. 29. Plea was not good, but that the Plaintiff ſhould have Judge-
Ante 734. ment, becauſe a Judgment is higher than a Reconuſance, or
1 Brownl. 39. 81. Statute, and therefore ought to be firſt ſatisfied: and the Exe-
1 Rol. 926. cutor is put to his Audita Querela, to diſcharge himſelf againſt the
Co. 4. 50. b. Conuſee. And whereas it was ſaid, That the Statute is Eigne
Ant. 575. to the Judgment, that is not material: for there is not any regard to the priority of the Judgment, or Statute acknowledged by the Teſtator, but only to the equality of the manner of the debt: for that, which is higheſt, ought to be firſt ſatisfied: but the Judgment is higher; for a Reconuſance is but an aſſurance by conſent of the parties, and is but a Bond recorded, and therefore not to be compared to a Judgment. And there is no reaſon, that an Executor, by bringing a Writ of Error, ſhould make the Judgment to come after the Statute: and therefore the Execu-
Yelv. 29. tion upon the Statute ſhall not prejudice it. Whereupon Rule was given, that Judgment ſhould be entred for the Plaintiff. But afterwards, becauſe Popham ſaid, that he had conferred with the Juſtices and Serjeants at Serieants Inn, and many of them were of Opinion, that this Execution upon the Statute was to be allowed as a good Barr againſt the Judgment, they would adviſe. Et adjournatur. Note, in Mich. 44, and 45 Eliz. the Caſe was moved again (Gawdy abſente) and Popham ſaid, that he had again conferred with the other Juſtices at Serjeants-Inn, and the greater part held the Plea to be good; and that the ſatisfying of the debt upon the Statute was not any Devaſtavit; becauſe he could not
Ant. 575. withſtand it, and he ſhall not be put to his Audita Querela. Wherefore it was adjudged for the Defendant.

Gray *verſus* Chapman.

(21) EJectione Firmæ. The Plaintiff declares, that Prudence Cozen
Noy 32. by Indenture apud S. lett unto him an Houſe and twenty Acres of Land by the name of all her Tenements in S. And, after Verdict, it was moved by Foſter in Arreſt of Judgment, that the declaration was not good, becauſe it is not alledged in what Will the Tenements were. And of that Opinion was the whole Court. Wherefore it was adjudged for the Defendant, for the naming of the Will in the per-nomen was not material.

White

White *verſus* Ewer.

COvenant. After Verdict for the Plaintiff, Tanfield moved, That (22)
the Declaration was ill. Firſt, Becauſe the Plaintiff brings this action as Aſſignee, and doth not name himſelf Aſſignee (but afterwards in the Declaration ſhews how he is Aſſignee) as where a man brings an action as Heir or Executor, he ought to name himſelf ſo; and of this Opinion was Fenner: but Popham Clinch, and Gawdy e contra, in regard that in the body of the Declaration he ſhews how he is Aſſignee, for the naming himſelf Aſſignee is but matter of form, which is not material after Verdict. Secondly, becauſe the Covenant is, that the Leſſee and his Aſſignes ſhall enjoy it without the interruption of Francis Ewer, and all other claiming under the ſaid Fran. and the breach aſſigned is, becauſe he was ouſted by J. S. who claims under the title of the ſaid Francis Ewer, and doth not ſhew how he claims under his intereſt, nor by what Conveyance. But all the Court held it to be well enough: for he is a Stranger thereto, and cannot ſhew it certainly. Wherefore it was adjudged for the Plaintiff. Note in Paſch. 44 Eliz. this Judgment was reverſed upon this ſecond Exception by the Opinion of all the Juſtices and Barons in the Exchequer-Chamber. Poſt. 899.

The Earl of Hutington *verſus* Hall.

ERror of a Judgment in the Common Bench, in Debt upon (23)
an Obligation, Conditioned for the payment of 300 l. within ſix Moneths after the death of the Earl of Huntington. The Defendant pleads, that 1 Maii 39 Eliz. the E. of H. died, and that within ſix Moneths after, viz. 1 Decem. 41 Eliz. he paid that Sum, &c. the Iſſue was, that he did not pay it modo & forma. The Jury found for the Plaintiff, and Judgment was given accordingly. And the Error aſſigned, becauſe the Jury found, that he did not pay it 1 Decem. 41 Eliz. which is void. For it ought to have been inquired, whether he had paid it within the ſix Moneths. And the payment alledged the 1 Decemb. 41 Eliz. which is a year and a quarter after, is void, and to no purpoſe. And Gawdy held, that the Judgment ſhould be given upon his Confeſſion, that it was not paid within the ſix Moneths; for by his own ſhewing, it was paid long after. But upon motion another day, all the Court agreed, that this Confeſſion of Non-payment within the ſix Moneths is no Expreſs, but an Implicite Confeſſion; whereupon no Judgment can be obtained: and the Judgment here is given upon the Verdict, which is void. Wherefore the Judgement, by the Defendants own deſire in the Writ of Error, was reverſed. Poſt. 883. R. 585.

Talbot *verſus* Caſe.

ACtion for theſe Words Thou haſt killed my Wife. After Verdict (24)
for the Plaintiff, upon Not Guilty pleaded, It was moved, That an action lay not for theſe words, becauſe it is not ſaid with what intent he killed her; violently, or otherwiſe. And he doth not

not aver that his Wife is dead. But notwithſtanding, it was adjudged for the Plaintiff, for it is to be intended, if the contrary be not ſhewn by the Defendant, that his Wife is dead. And it ſhall be taken in the worſt ſenſe, viz. violently.

Biſhop *verſus* Viſcounteſs Montague.

Paſch. 42 Eliz. rot. 733.

(25) 2 Cr. 50 ACtion ſur Trover, and Converſion of five Oxen. The Defendant pleaded Not guilty; And by Special Verdict it was found, that one J. S. as Bailiff to the Defendant took thoſe Beaſts as for Hariots due to the Defendant, where there were not any due, and without any command from the ſaid Viſc. Montague: but that afterwards ſhe agreed thereto, and converted them; and after that, the Bailiff died. And, whether this action lies, or that he ſhould have brought a general action of Treſpaſs? was the Queſtion. And Walmſley and Kingſmil held, That this action lies not: for when the Bailiff took them Tortiouſly, the property is diveſted out of the Plaintiff, and the Poſſeſſion: ſo that he cannot ſuppoſe that he was poſſeſſed of them, until he loſt them, and until they came to the Defendants hands. And the Defendant, by aſſenting to the taking, is a Treſpaſſer ab initio; as 38 Aſſ. 9. 38 Ed. 3. 18. and 40 Ed. 3. 20. are: Wherefore where he might have had a General Writ of Treſpaſs, he cannot have any other manner of action; eſpecially not this action, which differs from it in nature and quality. But Anderſon & Warberton e contra. They agreed, that an aſſent before, or after the taking of the Goods made her Treſpaſſer ab initio, and to be puniſhed as a Treſpaſſer: but not an aſſent after to a Battery formerly done; or to that, which is a Tort, and puniſhable by the Statute-Law, as an aſſent to a Riot, or forcible Entry, after it be done, ſhall not make him puniſhable. But although Treſpaſs lies, yet he may have this action if he will: for he hath his Election to bring either. And as he may have Detinue or Replevin for Goods taken by a Treſpaſs, which affirms always property in him at is Election: So he may have this action: for one may qualifie a Tort, but not increaſe a Tort. So he hath Election to make it a Tortious Priſal, or not: which is the reaſon that if Goods be taken by a Treſpaſſer, yet if the Party from whom they were taken, be attainted of Felony, he ſhall forfeit them. For the Right and Property remains in him, and the Law ſhall adjudge them in him, until he makes his Election to the contrary, by bringing of a Writ of Treſpaſs. Wherefore here he might maintain the one Writ, or other at his Election. Wherefore, &c.

2 Cr. 50.

John

John Davies and Ann his Wife *verſus* Selby.

DOwer and demand the third part of Lands, whereof her (26)
firſt Husband was ſeiſed in Fee. The Iſſue was, Whether Mo. 260.
it were the Cuſtom in Gavelkind, that if the Husband alien his Land, that his Wife might demand the third part for her Dower, or the Moyety, at her Election? And upon the evidence it was ſhewn for the Defendant, that the Cuſtom of Gavelkind preciſely is, that ſhe is to have the Moyety: And this Cuſtom there is the Common Law of the place, which cannot be waved by demanding a third part. Vide Book of Entries 228. 2 Ed. 4. 18. And a preſident was ſhewn, 30 Eliz. betwixt Hunt and Gilburn 1 Ante 121.
where it was reſolved, that ſhe cannot wave this Dower, and Moor. 260.
demand that Dower by the Common Law: And becauſe the demandant could not ſhew any Preſidents, nor Proofs, that there were any other Dower there, then Dower by the Cuſtom: And it appears by the Statute of Conſuetudinibus Kantiæ, quod vide in Lafter Lamberts Perambulation of Kent, where the Cuſtome is cited, that the Feme is to have the Moiety, ſo no other kind of Dower is ſhewn to be there: And it is for the benefit of the Tenant of the Freehold, that ſhe ſhould have the Moyety; for thereby ſhe is to have it only during the time that ſhe lives ſole and chaſt, and it is a reſtraint unto her; and Cuſtoms are as the Laws in the places where they are uſed. Therefore all the Court reſolved, that ſhe was bound by this Cuſtom, and cannot wave it: And in ſuch Caſe ſhe ſhall have it by Aſſignment in Severalty, and cannot hold in Common. Wherefore, after Evidence, the Plaintiff was non ſuited.

Swan *verſus* Gateland. Mich. 42, & 43 Eliz. rot. 3267.

RAviſhment de Gard. The Caſe was, that a Feme took Baron, (27)
and had Iſſue a Son by him, the Baron dies: She takes 2 Rol. 40.
another Baron ſeiſed in Fee of the Lands holden in Socage, & hath 2 And. 171.
Iſſue by him another Son; the Baron dies, the Feme dies, the Owen 128.
ſecond Son within the age of fourteen years, whether the eldeſt Moor 635.
Son of the half-blood, or the Mothers brother ſhall be Guardian? 2 Inſt 88. b.
was the Queſtion. Walmſley and Kingſmil held, that the Brother ſhould have it, for he is the neareſt of kin, to whom the Inheritance cannot deſcend.

Stutfield *verſus* Somerſet. Hill. 43 Eliz. rot. 1358.

DEbt upon an Obligation. The Condition was, that after (28)
Marriage of the Plaintiff, and having a Son by his Feme, that if he conveyed Lands to the value of 40 l. per annum in tail to the Son to enjoy, after the death of the Obligor, that then, &c. The Defendant ſhews the day of the Marriage, and the having of a Son: And that he made a Feoffment to a Stranger to the uſe of himſelf for Life, and after to the uſe of the Son in tail. The Plaintiff ſaith, Quod non Feoffavit, &c. The Defendant demurs. Firſt, It was held, that although the Barr, as here, is ill, yet when the Plaintiff replies thereto, he hath by the Replication loſt the advantage of Exception to the Barr: And here the

Barr is ill; for it is not any performance of the condition by this Feoffment, as it is pleaded; becauſe the Infant was not made party to the conveyance, nor had any deed or aſſurance to prove his Eſtate: So is he not ſure thereof, nor peradventure can have any knowledge of ſuch an Eſtate, nor means to prove the Uſes limited, which was not the intent of the condition: And therefore ſuch an aſſurance made is no performance of the condition, and to that purpoſe, vide 20 Ed. 3. Audita Querela: One is obliged to make a Releaſe to the Obligor; it is not ſufficient to make it, and deliver it to a Stranger to the uſe of the Plaintiff. It was alſo held here, that the Plaintiff having admitted the Barr to be good, he may travers the Feoffment, or the Uſes at his Election.

Smith *verſus* Arden. Hill. 43 Eliz. rot. 1807.

(29)

2 And. 178. EJectione firmæ. The Defendant pleads ancient demeſn, and it was thereupon demurred. And Walmſley and Kingſmil held it to be a good Plea; for at this day Poſſeſſion is recovered, ſo it is a medling with the Land, and a tranſmutation: And if it were allowed, that ancient demeſn ſhould be no Plea in this action, all titles in ancient demeſn would be tried at the Common Law: and this toucheth the reality, and for this cauſe is a Plea, as in Replevin, or Waſt, as it was ruled in Greens Caſe, becauſe they concern the Land. Wherefore, &c. But Warberton e contra, becauſe the action is meerly perſonal, and in Treſpaſs ancient demeſn is no Plea, and this action is in nature of Treſpaſs, and where the Action is vi & armis, ſo that the King is to have a Fine, it is holden, that ancient demeſn is no Plea. Anderſon was abſent, and afterwards the demurrer was waved, and the Defendant pleaded the general Iſſue. Vide 7 H. 6. 55. 8 H. 6. 34. 3 Ed. 3. 42. 21 Ed. 3. 10. 22 Aſſ. 55. 28 H. 8. Dyer 40 Ed. 3. 4. 5 Co. 105. a.

Ante 104. 1 Rol. 323. Co. 5. 105. a.

Greſwold *verſus* Holms, and his Wife.

(30) FOrmedon. The Tenant pleaded Non-tenure, and found for the Demandant. And now the Feme, after Verdict, prayed to be received upon the feint Plea of her Baron, becauſe he had pleaded Non-tenure, where ſhe might have traverſed the Gift, and he brought a Writ out of Chancery de Attornato recipiendo for the Feme. Et per Curiam it was received: For a falſe pleading is a feint-pleading, and a feint pleading is within the Statute. And here there needs not any new Declaration, becauſe the Feme is party to the Sute; otherwiſe it is, where he in Reverſion is not party to the Sute, and is received.

Wells *verſus* Fenton. Hill. 43 Eliz. rot. 1106.

(31) EJection firmæ. Upon a Special Verdict, the Caſe was ſuch; Mo. 634. Sir Ralph Egerton ſeiſed in Fee, levied a Fine to the uſe of himſelf for Life, and after to the uſe of his Wife, who ſhould be at the time of his death, for Life, remainder to Edward Egerton in Tail. Sir Ralph takes to Wife Alice, he, and Alice his Wife, by Fine, reciting that he is Tenant for Life, remainder to the ſaid

ſaid Alice for Life, give it to a Stranger in Fee, who renders it to the Baron for life, remainder to Fenton for fifty years, remainder to the right Heirs of the Baron; the Baron dies, the ſaid Alice being then his Feme ſurvives, and diſclaims to have any thing in the Land; Edward Egerton enters, and lets to the Defendant; ſhe takes another Baron, and they make a Leaſe to the Plaintiff. Upon all theſe Matters diſcloſed, three Points were moved: First, Whether this contingent remainder to his Wife, who ſhould be, &c. were good? For, although ſuch a contingent remainder may be by way of Limitation of an Eſtate of Land in Eſſe; yet it cannot be of an Uſe: For the Statute of 27 H.8. doth not execute Uſes, but thoſe only, which are in Eſſe, and preſerves not any contingent Uſes; for no Seiſin continues to preſerve them. And of that Opinion was Anderſon. But Walmſley and Warberton e contra: for it was good at the time of the Limitation, and ſtood with the Rules of the Common Law, and for the benefit of the Common-Wealth, that ſuch Limitations for Joyntures ſhould be good; and therefore the Law preſerves, and regards them, unleſs there be ſome mean act afterwards done to deſtroy them. But an Uſe limited to J.S. until a Præcipe be brought, and then to the uſe of J. D. this contingent Uſe to J. D. is againſt Law and Juſtice, to defraud a Præcipe, and therefore is void. Secondly, Whether by the Joynder in this Fine the Feme hath given her poſſibility, ſo as ſhe cannot afterwards claim it? Walmſley held, that ſhe had not: For ſhe hath not any Eſtate nor was there any certain perſon, who might have it; for it is unto her, who ſhall be his Wife at the time of death; and it is not known who that ſhall be. But where the Perſon is certain, although the Eſtate be but in poſſibility, there peradventure ſhe might have excluded her ſelf thereof. Thirdly, Whether by this Waver in the Country, ſhe hath excluded her ſelf to have the Eſtate? To theſe two matters the other Juſtices ſpake not, by reaſon of a default in the pleading: Wherefore the Demurrer was waved, and the parties pleaded to Iſſue, that there might be a Special Verdict. And a Special Verdict was found and adjudged for the Plaintiff. Ante 765. Ant. 439.

Peck *verſus* Channel. Hill. 43 Eliz. rot. 1709.

(32) EJectione firmæ. Upon a ſpecial Verdict, the Caſe was ſuch, One William Burley was ſeiſed in Fee of divers Lands in Shalford, holden in Socage; and by his Will deviſed all his Lands in S. to his Feme for life; and further deviſed All thoſe my Lands in *Shalford*, called *Somorsby*, to *William Burley* his Cozen in Tail, Remainder to his right Heirs, and died; the Feme, and William Burley, who was in Remainder, entermarry, and levy a Fine to a Stranger, ſur Conuſance de droit come ceo, &c. who renders it to the Feme for Life, the Remainder to the Baron, and his Heirs. Afterward, Anno 12 Eliz. the Baron and Feme ſuffer a Recovery with ſingle Voucher to the uſe of the Baron and his Heirs: The Feme dies, the Baron dies without Iſſue. The right Heir of the Deviſor enters within the five years after the death of the Baron, and letts to the Plaintiff, who is ouſted by the Heir of the Baron, and thereupon he brought this Action, Et ſi, &c. The firſt Queſtion was, Whether this Fine levied by the Tenant for Life, and Moor. 129. Moor 634.

him in remainder in tail, be a Diſcontinuance: And all the Court reſolved (nor would ſuffer it to be argued) that it was not any Diſcontinuance: for when he, who hath a remainder in tail, or a Reverſion in tail expectant upon an Eſtate for life, levies a Fine by himſelf, or joyns with the tenant for Life in the Fine; this is not any Diſcontinuance, but paſſeth that only, which he might lawfully grant, and none ſhall make a Diſcontinuance, but he, who is ſeiſed of an Eſtate tail in poſſeſſion, as Littleton ſaith. Secondly, Whether this recovery be any Barr to him in remainder in Fee, or a Diſcontinuance thereto to take away his Entry? And all the Juſtices delivered their Opinions ſeverally, that it was not any Barr, or Diſcontinuance: It cannot be a Barr, becauſe that he, who ſuffered the recovery, was not ſeiſed of the ſame Eſtate tail at the time of the recovery ſuffered: for by the Fine levied the Eſtate in Fee paſſed, although there was not any Diſcontinuance of the remainder in Fee: And by the Render a new Eſtate is given back, and they are in of a new Eſtate, ſo that the recompence upon the recovery ſhall go to that new Eſtate, and not to the ancient remainder. And Walmſley ſaid, although there was not any diſcontinuance of the Eſtate tail, nor of the remainder by the Fine; yet he conceived, that by the Fine levied by Tenant for Life, with him in remainder in tail, the remainder in Fee was diveſted, and it was a forfeit of the Eſtate for Life: And therefore there is a difference between a Fine levied by Tenant for Life, and him in remainder in tail, and a Fine levied by Tenant for Life, and him in remainder in Fee, who hath the entire Eſtate. For in the firſt Caſe it is a forfeiture, but not in the other: and then recompence ſhall never go to an Eſtate, which is not in Eſſe at the time of the recovery; and a recovery ſhall never take away an Entry, which is by conſent, and Quaſi a conveyance: And therefore it ſhall not bind the Entry of him, who hath right, and is not like to a recovery againſt Tenant for Life by Title, and without conſent; as 5 Ed. 3. Entry congeable, 5 Ed. 4. 2. 44 Ed. 3. 45. 10 H. 6. 2. 34 H. 6. 2. 24 H. 8. Entry congeable 115. And here this recovery is out of the Statute of 32 H. 8. becauſe that he in remainder joyned with the Tenant for Life: Wherefore they all agreed for the matter in Law with the Plaintiff. But Anderſon took an Exception to the Verdict, that it was not good, becauſe it was not found, that theſe Lands in the action are called Somersby: For nothing is given in remainder, but thoſe Lands. But all the other Juſtices held, that forasmuch as the contrary is not found, it ſhall be intended that he had not other Lands in Shalford, then thoſe, which were called Somersby, although that name be not at firſt given them. Wherefore it was adjudged for the Plaintiff.

Co. 1. 76. a.

Sect. 615.

Co. 3. 3. b.

Ante 670.

Ante. 670.

Speccot *verſus* Sheres. Paſch. 42 Eliz. rot. 106.

(33) Debt upon an Obligation. The Caſe was, that the Defendant granted a Rent-charge out of his Land to the Plaintiff, of 20 s. per annum for ten years, and was obliged in 10 l. with a Condition, that if he performed the Covenants, and Agreements in the ſaid Deed, Ita quod the Obligee might have, and enjoy the Annuity, according to the intent of the Deed, that then,

Moor. 636.

then, &c. The Annuity was arrear at ſuch a Feaſt; but not demanded by the Grantee, nor tendred by the Obligor: And if hereby the Obligation be forfeited, was the Queſtion. And it was holden, that it was not: For the Obligation being for the performance of Covenants generally, &c. ſhall not alter the nature of an Annuity: But that it is payable, as if there had not been any Obligation. Vide 12 Ed. 4. 10. 22 H. 6. 57. 6 Ed. 6. Tender Br. 11. But becauſe the Defendant had pleaded generally Quod perimplevit omnes conventiones, &c. Which implies a payment of the Annuity. And the Plaintiff aſſigns for breach, that it was arrear ſuch a day: And the Defendant thereupon demurred, whereby he confeſſeth, that it was not paid, and ſo contradicts his Plea, all the Court (abſente Anderſon) held the Plea to be ill: For if one covenants to make ſuch aſſurance of Land, as the Plaintiffs Counſel ſhall adviſe, and he pleads performance of Covenants, he cannot afterwards ſay, Quod Conſilium non dedit Adviſamentum: Wherefore, &c. But no Judgment was given: But the Plaintiff, by motion of the Court, accepted the arrearages of the Annuity with Coſts. Note, That for this cauſe it was afterwards adjudged for the Plaintiff, and entred in the Roll.

2 Cr. 76. 77. Ante 332. Hob. 8.

1 Cr. 76. Hob. 8.

Norton *verſus* Palmer. Paſch. 42 Eliz. rot. 1316.

(34) ACtion upon the Caſe; for that he was poſſeſſed of an Houſe and Garden for twenty years, and the Defendant being a Butcher, had a Slaughter-Houſe and Yard next adjoyning to the Plaintiffs Garden, that the Defendant had exalted his Yard, and made a Ditch, whereby he conveyed the Filth and the Offal of his Beaſts which he ſlaughtered, into the Plaintiffs Garden. Wherefore, &c. After Verdict, upon Not guilty pleaded, it was found for the Plaintiff, and now moved in Arreſt of Judgment, that the Writ was variant from the Declaration: For the Writ was only for the raiſing of the Yard, and the Declaration is for the exalting of the Yard, and for making a Gutter therein: And ſo there is more compriſed than is in the Writ. Wherefore, &c. And for this cauſe the Court held it to be ill, and not aided by the Statute of 18 Eliz. for that helps only, where there is not any Writ, but not where the Writ and Declaration varies in Subſtance: For then it is out of the Statute.

Scavage *verſus* Tateham. Hill. 43 Eliz. rot. 1831.

(35) FAux Impriſonment in London from the 10 September unto the 29. of September. The Defendant juſtifies, for that he was Mayor and Juſtice of Peace in Pomfrait. And that Robbery was done there, and the Plaintiff was thereof ſuſpected, and brought before him. Et quia videbatur ſuſpectuoſus, he detained him in his Houſe, during that time in the Declaration mentioned, to examine him and one Pole, who was not apprehended, concerning the ſaid Robbery: And afterwards upon the 29 of September delivered him over to the new Mayor, and traverſeth the Impriſonment in London. And it was thereupon demurred, and adjudged, that the Inducement to the Travers was not good; for a Juſtice of Peace cannot detain a Perſon ſuſpected in Priſon, but during a convenient time, only to examine him, which the Law

Law intends to be three days: And within that time to take his Examination, and ſend him to Priſon: For he ought not to detain him as long as he pleaſeth, as he here did eighteen days; neither ought he to detain him in Priſon in his own houſe, but he is to commit him to the Common Gaol of the County: For otherwiſe, when the Juſtices come to deliver the Gaol, he is not in the Gaol, and may not be delivered, and ſo ſhould lie longer than is reaſonable. Vide Statute 5 H.4.cap. 10. 2 Ed.4. 8. and here he took not any Examination, but delivered him over to the new Mayor, without Examination, which was not lawful. And therefore it was adjudged for the Plaintiff.

Sir Thomas Treſham *verſus* Ford. Hill. 43 Eliz. rot. 1706.

(36) ACcompt, ſuppoſing him to be Receiver of 120 l. of his Money, by the hands of Vavaſor, ad compotum reddendum. The Defendant pleaded, Nunques Son Receiver, &c. and the Jury finde, that he was Receiver of ſuch a Sum. The Defendant before the Auditory pleaded, that he was poſſeſſed of divers Obligations, wherein Francis Tr. Son and Heir of the Plaintiff, was obliged unto him in 400 l. and that the ſaid Vavaſor paid unto him this 120 l. in ſatisfaction of thoſe Bonds, and thereupon he delivered unto him the ſaid Bonds, to the uſe of the Plaintiff, which he accepted. And thereupon the Plaintiff demurred, and it was held by the whole Court to be no Plea: For it is contrary to the Verdict, which found him to be Receiver to render, &c. And the Plea amounts to no more, but that he was not Receiver to accompt.

Coke *verſus* Brainforth. Paſch. 43 Eliz. rot. 1405.

(37) DEbt upon an Obligation. The Defendant pleaded, that the Plaintiff was endebted unto him, & conceſſit ſolvere, and pleadeth a Forein Attachment in London. The Plaintiff proteſtando, quod non habetur tale Record. pro placito dicit, that he pro diverſis Denariorum Summis per ipſum præfatum R. prius debitis, non conceſſit ſolvere the ſaid Sum, modo, & forma, prout, &c. whereupon the Defendant demurs, and adjudged to be a good Bar, for the Debt is well traverſable. Wherefore it was adjudged for the Plaintiff.

Shaw *verſus* Barbor.

(38) IN Ejectione firmæ, upon Evidence it was agreed per totam Curiam, and ſo delivered for Law to the Jury, that if Tenant at will makes a Leaſe for years, and the Leſſee enters, he is only the Diſſeiſor: And a Releaſe or Confirmation to the Tenant at will afterwards is void, becauſe the Privity is determined. And Walmſley ſaid, that ſo it had been reſolved againſt the Opinion in 12 Ed.4.12.

R.354. Co.Lit.57.a. 1 Cr.304. Ante 306.

Cutler *verſus* Brewſter. Mich. 42, & 43 Eliz. rot. 1255.

(39) DEbt upon an Obligation upon an Indenture. The Conditions were of three Parts: Firſt, If he well ſerved the Plaintiff, Secondly, If he duly accompted. Thirdly, If he ſhould make

make ſatisfaction within three Moneths, after notice of all loſſes, which he ſhould ſuſtain by the apprentiſhip, and that then, &c. the Defendant pleads performance ſpecially. The Plaintiff aſſigns for breach, becauſe upon accompt he was found in arrearages 60l. of Poliſh-Money, which he received, and converted to his own uſe: And ſo he had not well ſerved him, &c. and thereupon the Defendant demurs, For it is a breach of the third part of the condition, and therefore he ought to have alledged notice, and no ſatisfaction after it, and this Enducement tends to it, and not to the firſt part. Sed non allocatur; for every part is ſeverally by it ſelf: and although he might have alledged it as a breach in the third part, yet he may alledge it alſo, as an ill ſervice in converting it to his own uſe. And although it be not alledged, that he received it as Apprentice, yet it may be very well intended; for it is Marchandize. Whereſore it was adjudged for the Plaintiff.

Termino

Termino Trinitatis

Quadrageſimo tertio ELIZABETHÆ,

in Banco Reginæ.

Pain *verſus* Malory. Mich. 42, & 43 Eliz. rot. 586.

(1) Ant. 43. Pl. 6. p. 805.

THe Caſe was recited to be; The Abbot of Sawtry made a Leaſe for 120 years of the place, where, &c. inter alia, rendring rent annually, during the term, to him, or his Succeſſors at ſuch Feaſts, upon ſuch conditions, ut antea; and afterwards the reverſion of the places where (inter alia) was conveyed to J. S. who granted it by Fine to Doctor Belay, who, before any Atturnment, granted it to Thomas Belay his Son, to whom the Leſſee atturned, and afterwards for the Condition broken entred, ut ſupra; and after a Diſtreſs for Damage Feſant, the Leſſee brings a Replevin. Et ſi, &c. And hereupon two Queſtions was moved, Firſt, Whether this Reſervation of this rent to the Abbot, or his Succeſſors (being in the disjunctive) ſhall go to the Abbot and his Succeſſors, or that it ſhall be void to the Succeſſors, becauſe there was not any Election by the Abbot, who made the Reſervation, how it ſhould go? And all the Court reſolved, that it ſhould be to the Abbot and his Succeſſors in the Copulative: For when it is reſerved annually during the term, that cannot be unleſs it goeth to both: And then the expreſs intention, and reſervation at the firſt, ſhall not be deſtroyed by the ſubſequent words, but they ſhall be conſtrued that both may ſtand together. As in Hill and Granges Caſe, a Leaſe made upon the 10. of Auguſt for years, reſerving rent annually during the term, at the Annuntiation and Michaelmas, yet it ſhall be firſt paid at Michaelmaſs, otherwiſe it cannot be paid annually during the term: So if one covenants, that he, and his heirs ſhall aſſure ſuch Lands, this Covenant is always taken in the disjunctive, that he, or his heirs ſhall aſſure it: for they cannot aſſure it together, and therefore it ſhall be conſtrued, that the one part may ſtand with the other. Secondly, Whether the Grantee can take advantage of this Condition, for that his Grantor might not? And they held, that he ſhould; for the Statute is, that he ſhall have ſuch advantage, as the Leſſor, or Grantor might have had: And here the Leſſor might have had advantage thereof, as alſo the Grantor, if he had had Attournment: but in defect thereof he could not have it, which defect is ſupplied by the Atturnment, which gave advantage to the Grantee, to have the advantage of the Rent, and by conſequence of the Condition.

Pl. C. 171.

And

And Popham ſaid, That it was reſolved in one Knotsfords Caſe three years ſince; where a Reverſion was granted by Fine, and he before Attornment bargained, and ſold the Reverſion by Deed enrolled; that without Attornment the Bargainee ſhould not have advantage of the Condition, for he ſhall not be in better condition than his Grantor, without expreſs Attornment. Wherefore they reſolved to give Judgment accordingly for the Defendant. But it was then moved, that the Avowant had not entitled himſelf to the entire Reverſion, and ſo could not take advantage of the Condition; for the Leaſe is pleaded of the places where (inter alia) &c. And that the Reverſion is granted unto him of the places, where (inter alia) ſo he doth not plead that the Reverſion of all the things lett was granted unto him. And of that Opinion were all the Juſtices, beſides Popham, who ſaid, that it ſhould be intended accordingly. Et Adjournatur. 5 Co. 111. b.

Haynſworth *verſus* Pretty. Hill. 41 Eliz. rot. 1060.

(2)

TReſpaſs. Upon a ſpecial Verdict, the Caſe was; One ſeiſed of Lands holden in Soccage, had Iſſue two Sons and a Daughter, and deviſed to his ſecond Son and Daughter, Legacies of 20 l. to be paid by his eldeſt Son, and deviſeth his Lands to his eldeſt Son in fee, upon condition, that if he paid not thoſe Legacies, that his Land ſhould be to his ſecond Son and Daughter and their heres. The eldeſt Son fails of payment; Whether the younger Son and Daughter ſhall have the Land: was the Queſtion. And, after Argument, It was reſolved by the Court clearly, that they ſhould have it; for the firſt Deviſe to his Son and heirs in fee, being no more than what the Law gives, is void: and it is but a future Deviſe to the ſecond Son and Daughter, upon the eldeſt Sons default of payment. And the Caſe is no other, but as if one had deviſed, that if is eldeſt Son did not pay all Legacies, that his Lands ſhould be to the Legatories, and there is no doubt, but that in default of payment the Land ſhould veſt in them. And Gawdy and Fenner held, that if it were a good deviſe to the eldeſt Son, yet this Condition is a Limitation of his Eſtate, and ſhall give it to the ſecond Son and Daughter, upon default of payment. Wherefore it was adjudged accordingly for the Plaintiff.

1 Rol. 411. Mo. 644. Poſt. 919.

Ant. 205. R. 693. 1 Rol. 411.

Lane *verſus* Hodges. Mich. 40, & 41 Eliz. Rot. 406.

(3)

FRror of a Judgment in the Common Bench, in debt upon an Obligation for performance of Covenants. The Error aſſigned was; Becauſe there was not any breach of the Covenant: for one by Indenture bargains and ſells to the Obligee all his Lands in Upminſter, and covenants, that he will make further aſſurance of all his Lands. The breach aſſigned was, becauſe he did not make further aſſurance of thoſe Lands. And it appears by the pleading, that the Bargainor had enfeoffed the Bargainee before of all his Lands there, ſo as he had not any Lands at the time of the bargain and ſale; and, if he then had not, the breach is not well aſſigned; and ſo held all the Court But if one enfeoff another of his Lands, and afterwards bargains and ſells them by name, and covenant to make aſſurance,

Poſt. 45. 1 Rol 427.

he is bound to make aſſurance accordingly. Wherefore they were of Opinion to reverſe the Judgment. But the Matter was referred to Compromiſe.

Lovet *verſus* Hawthorn.

(4) ACtion for theſe words; I am ſure, that *Jomes Loves* did burn my Barn (*innuendo* a Barn full of Corn) I will have a Bout with him for it; if my *Lord Chief Juſtice* would have done me right, I had hanged him for it. After Verdict, it was moved, that an action lay not for theſe words: and of that Opinion was Popham, Clinch, and Gawdy; for if the words without the Innuendo were not ſufficient to maintain the action, this will not help, and the burning of a Barn, unleſs there be Corn in it, is not Felony, and the laſt words be not ſufficient to enforce that he had burned a Barn with Corn. And therefore Popham ſaid; If one ſaith J. S. hath broken my houſe, I will hang him for it; this will not maintain an action. But Fenner conceived, that although it was not Felony, unleſs the Barn was with Corn, yet the wilful buring of any Barn is an odious act, and a great ſlander to any, if it be not true, and therefore the action maintainable. But the other Juſtices ſaid, It was clear, that, if the words did not charge him with Felony they were not actionable. Et adjournatur. 4 Co. 20. a. Barhams Caſe.

1 Rol. 73. 83. Ante. 786.

Eaſt *verſus* Thoroughgood. Hill. 43 Eliz. rot. 397.

(5) ERror of a Judgment in Bedford, in an Aſſumpſit, where the Plaintiff declares; That there was Communication betwixt him and the Defendant, concerning the Sale of certain Land to be made by the Defendant unto him, whereupon he delivered to the Defendant 20 l. in conſideration whereof, the Defendant promiſed to the Plaintiff, that, if he liked not the Land, he would repay that 20 l. within a fort-night; and alledgeth in facto that he did not like the Land, and the Defendant had not repaid unto him the ſaid 20 l. &c. And Judgment being there given for the Plaintiff, Error was aſſigned, that the Declaration was not good for three cauſes. Firſt, Becauſe that here he ought to have had an action of debt, and not an action upon the caſe. Sed non allocatur, Secondly, Becauſe it is not alledged, that he gave notice of the diſlike within a fort-night, for that is a thing ſecret to himſelf, whereof the Defendant cannot take notice to pay the mony. But the Court held, that he ought to take notice thereof at his peril, for he hath bound himſelf thereto by his expreſs promiſe. Thirdly, Becauſe it is not alledged, that he diſliked thereof within the fort-night, for otherwiſe the Defendant is not bound to pay it. But the Court held, that, it being alledged generally, it is well enough; for it ſhall be intended to be within the time, unleſs it be ſhewn to the contrary; and if it were otherwiſe, the Defendant ought to ſhew the diſlike to be after the time, and have traverſed the diſlike before, &c. And to that purpoſe Gawdy cited the Caſe 22 H. 6. 11. where an Obligation was made to two, and the one brought the action, and alledgeth, that his Companion was dead, that ſufficeth without ſhewing, that he was dead before the Writ purchaſed. So 16 Eliz. Dy. 338. between Wotton and Coke. Wherefore the Judgment was affirmed.

Dormer

Dormer *verſus* Smith.

INformation for him, and the Queen againſt Smith, upon the Statute of Liveries for retaining in his ſervice twelve men who were not his domeſtick ſervants, nor officers, giving to every of them a Livery; and that he retained them in his ſervice for twelve months, viz. from the 12 Decemb. 42 Eliz. unto the 10 Decemb. 43 Eliz. The Defendant pleaded Not guilty, and the Jury found him guilty for 12 months. And it was now moved in arreſt of Judgment, That if the months ſhall be accounted at 28 days to the month, then within the time of the Information are 13 months, and the Jury hath found him guilty but of 12 months; And it appears not for which of theſe they excuſe him, ſo there cannot be any Judgment; and if the months ſhould be otherwiſe accounted, as twelve months in the year, then there wants two dayes of the year, and ſo the Information is inſufficient. But the Court held, that it ſhould be taken at 28 dayes to each month, and ſo there be 13 months in the year; and it is not material, although it be not found in which of the months he offended not in year. But they would adviſe thereof. Et adjournatur. (6)

Hawkſland *verſus* Gatchel, Poſch. 42 Eliz. rot. 522.

DEbt upon an Obligation. The Defendant pleads, that he delivered that Obligation to the Plaintiff, as an Eſcrow to be his deed, if he performed ſuch a Condition, viz. to permit him to enjoy ſuch Corn, and alledgeth, that the Condition was not performed, and ſo not his deed. And hereupon the Plaintiff demurs. Clerk for the Plaintiff argued, that one cannot deliver a deed to the Party himſelf, to be an Eſcrow, and to that purpoſe cited the 19 H. 8. 43 Ed. 3. 28. where it is ſaid, that this Condition cannot be averred upon the delivery to the Party himſelf in avoidance of the deed, without ſhewing a deed thereof. Gawdy; There is not any difference, where it is delivered to the Party himſelf, as an Eſcrow, and where to a Stranger; And the Caſe of 19 H. 8. is ſo: becauſe the deed was delivered to the Party himſelf firſt, as his deed upon Condition, &c. in which Caſe the deed is abſolute, and takes effect, as his deed, upon the firſt delivery, and it cannot be avoided by the Condition. But when it is firſt delivered, as an Eſcrow, although it be to the Party himſelf, it is clear, that it is not his deed, until it be performed. And ſo is 29 H. 8. Dy. 34. in Morris, and Leighs Caſe. Popham accord; for if upon the delivery the words ſpoken by the Obligor purport, that it ſhall not be his deed, it is clear, it is not: as where one cauſeth an Obligation to be written, and ſealed in my name, and brings it unto me, and prays, that I would deliver it as my deed, and I ſay Do you ſuch a thing, and take it as my deed, otherwiſe not, It is clear, that it is not my deed until the thing performed. So if the Obligor ſaith, Take it to you, I will not deliver it, as my deed. It is not his deed: Wherefore in the principal Caſe, when the Obligation is delivered, as an Eſcrow, by expreſs words, it is not poſſible, that it ſhould be his deed, for the words are not ſufficient to make it ſo, until the Condition be performed; But, if it be once delivered as his deed, It cannot afterwards be defeated by a Condition, if (7) Co. 9. 137. 2 Rol. 27. Ant. 520. Co. Litt. 36. a

the Condition be not in writing: But here the Condition is precedent, ſo as it was not his deed, until it were perfoꝛmed, and theꝛefoꝛe a Conditional delivery may be averred without writing. Wheꝛefoꝛe, &c. Fenner to the ſame intent; foꝛ although difference hath been taken, that a deed ſhall not be delivered to the party himſelf, as an Eſcrow, but to a ſtranger, and the reaſon hath been alledged, becauſe, when it is delivered to the party himſelf, there cannot be a ſecond delivery, whereupon the writing ſhould take his effect, as a deed, that ſeemeth to be no difference: Foꝛ when it is delivered to the party, as an Eſcrow, the woꝛds be not ſufficient to make it to be his deed, until the Condition be perfoꝛmed. Wheꝛefoꝛe, &c. And of that Opinion was Clinch. Wheꝛefoꝛe it was adjudged foꝛ the Defendant. Vide ante, Whyddons Caſe, Mich. 38, & 39. Placito 47.

Poſt. 884.

Co. 9. 137. b.
Poſt. 884.

Bray *verſus* Patrid.

(8) ACtion ſur le Caſe. Whereas the Defendant was Vicar of Lanham, and the Plaintiff a Pariſhioner there, and the Tithes appertained to the Defendant, the Plaintiff had paid him his Tithes in the preſence of two witneſſes, the one of thoſe witneſſes being dead, the Defendant had again ſued him foꝛ thoſe Tithes paid unto him, well knowing, that the pꝛoof of payment by one witneſs is not ſufficient in the Spiritual Court, &c. The Defendant pleaded Not guilty, and found, that the Plaintiff had paid his Tithes, but one of the witneſſes named was dead befoꝛe they payment, &c. and found all the reſidue, ut ſupra; Et ſi, &c. And all the Court held, That upon this matter the Action lies not; foꝛ an Action lies not foꝛ pꝛoſecuting at the Common Law without cauſe, the ſame Law is foꝛ pꝛoſecuting a Sute in the Spiritual Court. Foꝛ Popham ſaid, when a man complains in Court, which hath powꝛ to give him remedy foꝛ the ſame cauſe, although his Sute be without cauſe, yet the Plaintiff ſhall not be puniſhed by an Action upon the Caſe: But if a man libels in the Spiritual Court foꝛ a tempoꝛal matter, there peradventure an Action upon the Caſe will lie; So it is where a man bꝛings an Appeal in the Common Bench, Action upon the Caſe lies: whereto Gawdy, and Fenner agreed, and ſaid, how 8 Ed. 4. 13. is, that an Action upon the Caſe lies, where he ſues one foꝛ Tithes, who ought to be diſcharged; yet that is not like to this Caſe; foꝛ by the ſame reaſon, if one hath paid a debt upon an Obligation, & is ſued foꝛ it again, an Action upon the Caſe lies, which is not Law. Wheꝛefoꝛe they all agreed againſt the Plaintiff. Sed Adjournatur.

Noy 23. 37.
1 Rol. 102.
Ant. 197.
Hob. 206.
Ant. 794.
2 Cr. 134.
Hob. 267.
1 Rol. 34.
Hob. 267.
Ant. 197.

Winchcomb *verſus* Goddard.

(9) ERꝛoꝛ of a Judgment in the Common Bench. After Aſſignment of the Eꝛꝛoꝛs, and In nullo eſt Erratum pleaded, Walter moved, That there was a manifeſt Eꝛꝛoꝛ in the awaꝛding the Ven. fac. and pꝛayed a Certiorari to certifie it. Popham held, That it was not grantable; Foꝛ although ſometimes in affiꝛmance of a Judgment it is uſed in ſuch Caſe to awaꝛd a Certiorari to infoꝛm their Conſciences, becauſe they would not reveꝛſe a Judgment, if it could be helped, yet never was it grantable to avoid a Judgment;

ment; For it is the folly of the party, that he did not procure it to be removed before the Errors assigned. But the other Justices held e contra, That it is grantable, as well in the one Case, as the other. Wherefore, at another day being again moved, it was awarded accordingly, and the Writ removed thereupon. Then Error was assigned in hoc, That in the Replication the place, where, &c. was alledged to be forty Acres in Henwick Parsonage infra manerium de Thackam in Parochia de Thackam. And the Issue was, whether the Plaintiff was Demurrant at Henwick Parsonage? and the Ven. fac. was awarded de vicineto de Thackam; Where it was alledged That it ought to have been from Henwick Parsonage, which is the place known, and and a Hill per se. But the Court held it well enough, for it shall be intended, that Henwick Parsonage is a place known, and the Hill of Thackam, & Parish of Thackam be all one in Intendment; As 39 H. 6. is for the Parsonage of Stoke. And if a thing be alledged to be done at the Manor in a Hill, the Visne shall be from the Hill, which is the most notorious. Wherefore the Judgment was affirmed. Ante 84. Post. 898. 2 Cr. 263.

Middleton *versus* Trot. Hill. 41 Eliz. rot. 872.

(10) ERror of a Judgment in the Common Bench in Debt. The Error assigned, for that the Plaintiff declares, That he sold twelve dozen of Stockings for such a Sum, and shews not what stuff the Stockings were; viz. Silk, Woolen, &c. As where one brings Debt, supposing that he sold forty quarters Frumenti, or forty yards of Cloth, and shews not of what kind, it is not good. But Gawdy and Fenner held it to be well enough, and yet agreed to the Cases before; For when a Contract is made for a thing, which never was converted out of its nature, he ought to shew of what nature it is. But when it is for a thing converted out of its kind, it is otherwise. As if an Action be brought upon a Contract for so many loaves of bread, he needs not shew of what Corn they were made. So of an Action for the taking of Shooes. And therefore, cæteris absentibus, the Judgment was affirmed. Co. 5. 34 b.

Gage *versus* Shurland.

(11) SCire facias of a Judgment. The Defendant pleads, That before the Judgment, and hanging the Sute, the Plaintiff covenanted with him by the Deed now shewn, That if he obtained Judgment, and the Defendant upon such a day paid unto him one hundred pound, that he would not sue Execution, and the Judgment should be void, and pleads, that he had paid the one hundred pound accordingly, and demanded Judgment. And thereupon the Plaintiff demurred. And the Opinion of the whole Court was, That it was not any Plea; For he cannot make a Defeasance of a Judgment, before it be given. Vid. 19 H. 6. 62. Wherefore they said, his Remedy is only by Writ of Covenant upon his Indenture. And it was adjudged accordingly.

Chard

Chard *verſus* Bird, Hill. 41 Eliz. rot. 939.

(12) ERror of a Judgment in the Common Bench. The Error aſſigned was; For that the Plaintiff brings Debt, as Adminiſtrator, and ſuppoſeth the Adminiſtration committed unto him by ſuch a Biſhop, and doth not ſay Loci illius Ordinarius, nor cui Adminiſtratio pertinet. And it was holden to be no Error; for in a Declaration it is well enough, but not in a Bar; for in the end of the Declaration the Letters of Adminiſtration are ſhewn. Wherefore the Judgment was affirmed.

Ant. 791.

Kenton *verſus* Wallinger.

(13) ACtion Upon the Caſe. Whereas Sentence of Excommunication was againſt one Harris, the Inſtrument whereof was delivered to the Defendant, being Curate of the Pariſh, where the ſaid Harris, and Plaintiff inhabited, to publiſh in the Church; that he maliciouſly had razed out the name of Harris, and put in the Plaintiffs name, and read it in the Church, whereupon he was inforced to be abſent from Divine Service, and to be at the Expence to procure a diſcharge for himſelf. The Defendant pleaded Not-guilty, and found againſt him: And it was moved in arreſt of Judgment, that an Action lay not for this matter: For it is Spiritual, whereof the Temporal Law takes not any regard. But the whole Court reſolved, that the Action was maintainable; for although the Excommunication be Spiritual, and ſo is the denouncing thereof, yet the Razing, and Alteration thereof, is meerly Temporal, for which an Action well lieth at the Common Law. Wherefore it was adjudged for the Plaintiff.

Ante 794.

Riſden *verſus* Inglet. Paſch. 42 Eliz. rot. 519.

(14) DEbt Upon an Obligation of 100 l. conditioned to ſtand to the Award of T. R. and J. L. for, and concerning ſeven ſeveral things, So as the ſame Award be made, and delivered in writing before ſuch a day, &c. The Defendant pleads, That the Arbitrators made ſuch an Award before the day, and ſhews in certain what, and that they made not any other Award. Et hoc, &c. The which Award for ſome of the things comprized within the Submiſſion was void, becauſe it was not purſuant to the Submiſſion, and for others, they were directly according to the Submiſſion; And becauſe he did not plead performance of that part of the Arbitrament, which was according to the Submiſſion, the Plaintiff demurred; for it was moved for the Plaintiff, That although the Award be not made of all the things ſubmitted, yet becauſe the words be not, So that the Award be made of the Premiſes, there the Arbitrament ought to be made of all; or otherwiſe, the Defendant is not bound to performance, becauſe it is a Conditional Submiſſion tied to all the Premiſes; As 4 Eliz. Dy. 216. 15. But the words not being a Conditional Ty to all, he ought to perform that, which was well awarded; As 17 Ed. 4. 5. An Arbitrament, that he, and two Sureties ſhall be bound, is void to compel him to find Sureties, but he himſelf ought to be bound.

But

But all the Court held, as this Caſe is, that he is not tied to perform any; for it is all one, where the words are, So that that award be made of the Premiſſes, &c. And, So as the ſame award be made before, &c. For the words The ſame award refer to all the things before mentioned, ſo that if any part be omitted in the award, it is void for all. And Popham ſaid, that this very point was adjudged within a year after he was Chief Juſtice; where the difference was agreed, that if a man be bound to ſtand to the award of J. S. concerning divers things, ſo as the ſame award be made before ſuch a day, here, if the award be not made of all the things, the Obligor is not bound to perform it in any part. But if the Condition be to ſtand to the award of J. S. of divers things to be made and delivered before ſuch a day, if he makes an award of any parcel, and not of the remnant, the Obligor ought to perform that which is awarded; for the ſubmiſſion is not conditional, as in the firſt Caſe. Wherefore it was adjudged for the Defendant. Ant 809. Co. 8. 98. b. Ant. 809.

Drury *verſus* Dominam Reginam.

Mich. 42. & 43 El. rot. 213. Vide antea, Mich. 41, & 42 Pl. 56.

(15)

Error of a Judgment in the Common Bench. The Error aſſigned was in point of Law. But all the Court reſolved after argument to affirm the Judgment: for they all agreed, that although an Earl or Baron by the Statute may have two Chaplains, which ſhall have the privilege to have two Benefices, yet he may retain as many Chaplains as he will, but the firſt two are only the Statute-Chaplains, who ſhall have that privilege by the retainer, that they are enabled to take a ſecond Benefice, which ſhall not be taken from them, as long as they remain Chaplains, nor any others retaining afterwards ſhall not prevent them. But it was then moved, that in regard the Lives of the two firſt Chaplains be not averred, it ſhall be intended that they be dead, or that the one of them was dead at the taking of the ſecond Benefice, for it is averred, that they were alive at the time of his retainer, but not at the time of his taking the Benefice, and then he is a Chaplain enabled to take a ſecond Benefice. But Popham, Clinch, and Fenner held, that it is ſufficient to avert the lives at the time of the retainment; for when he is not enabled at the time of the retainment, the death of the others afterwards ſhall not help him; for he hath not the privilege by his retainer, and the retainment as to this purpoſe is meerly void: for without a new retainer, after the death of the other two, he ſhall not be enabled to have this privilege. But Gawdy held, that the retainer was ſufficient to give unto him the privilege to have a plurality, after the death of the other two, but not before: wherefore their lives ought to be averred. But, notwithſtanding his Opinion, the other three reſolved, ut ſupra. And it was adjudged accordingly, and the Judgment affirmed. Co. 4. 89. Ante 723 4. 21 H. 8. c. 13

Brown *verſus* Holland.

(16) DEbt upon an Obligation. The Defendant pleaded, that he made it per minas de vita, &c. The Plaintiff ſaith, that he did it ſpontanea voluntate, and traverſeth the minas, &c. And at the Niſi prius the Defendant confeſſed the Action. And the Entry is Quod non poteſt dedicere, but that he made it being at large. And it was aſſigned for Error; becauſe he ought to have confeſſed, that he did it not per minas, &c. For he doth not allegg, that he did it per Dureſs de Impriſonment. But all the Court held, that in regard, that it is entred Quod cognovit Actionem, all which was pleaded, before it was waved, and it is not neceſſary for him to acknowledge the Point in Iſſue, and that which comes after the Cognovit Actionem is but ſurpluſage. And Kemp ſaid, the antient courſe was to enter, Quod, relicta verificatione, cognovit Actionem, nec poteſt dedicere quin debitum, &c. & not to acknowledge the Point in Iſſue. Wherefore the Judgment was affirmed.

Yelv. 97.

Spark *verſus* Spark.

Ante, Paſch. 41. Pl. 19. Hill. 43 Eliz. rot. 503.

(17) DEbt. Upon Demurrer, the Caſe was Grace Spark, as Adminiſtratrix of William Spark her Husband, brings Debt againſt Nicholas Spark for Rent reſerved upon a Leaſe for years by the Inteſtate; and declares, that one Robert Spark was ſeiſed in Fee, and lett it by Indenture to Wilmot Jule for Life, and afterwards by another Indenture lett it to William Spark the Inteſtate for 99 years, if he ſhould live ſo long, to begin after the death of Wilmot Jule, who was Tenant for Life; and further by the ſame deed vult & concedit, that after the deceaſe of the Survivor of the ſaid Wilmot Jule and William Spark, or other determination of the ſaid Eſtates, that the ſaid Land ſhould remain to the Executors and Aſſigns of William Spark for forty years. Afterwards Wilmot Jule died. Will Spark enters, and lett it to the Defendant for years, to begin after his death, and died; and for Rent arrear the Plaintiff brings this action in the Detinet. And, all this matter being diſcloſed by the Declaration, the Defendant demurred. And none being preſent there on the Defendants part, Doderidg for the Plaintiff moved, that there were two matters to be conſidered. Firſt, Whether this action may be brought in the Detinet by the Adminiſtrator, or it ought to have been in the Debet and Detinet; becauſe it never was an action given to the Inteſtate, nor did the Term commence in the time of the Inteſtate? And as to that all the Court reſolved clearly, that the action ought to be brought in the Detinet; for the title to the action is derived from the Inteſtate, and by the Inteſtates Contract only, and he is to have it in his Right: and when he hath recovered, it ſhall be Aſſets in his hands; and in proof hereof was cited 19 H. 8. 8. 11 H. 6. 36. and 9 H. 6. 11. Secondly, Whether this Leaſe for forty years did veſt in William Spark the Inteſtate, or not? or whether it ſhall veſt in his Executors or Aſſigns by purchaſe? for if ſo, it is clear, that the Adminiſtrator cannot claim this remainder.

Yelv. 9. 1 Rol. 603. 916 Mo. 666. Noy. 32. Ante. 658. 660.

Co. Litt. 31. b.

As

as to that it was moved, That this was an Eſtate, and Intereſt veſted in the inteſtate himſelf: ſo that he had authority to diſpoſe thereof and in proof thereof ſee 19 Ed. 2 Covenant 25. 16 Ed. 3. 20 Ed. 3 Quid Juris clamat, 22. 31. 17 Ed. 3. 29. 11 H. 4. 34. The Court did not deliver any opinion certainly herein, becauſe none was there to argue on the other part. But they all agreed, That if the Caſe were, as it was put at the firſt; that the Leaſe was made to W. Sp. for ninety nine years, if he lived ſo long: and if he died within the term, that it ſhould be to his Executors, and Aſſigns for forty years, that in this caſe this Term for forty years ſhall not veſt in W. Sp. but in his Executors by purchaſe, becauſe it is a Conditional limitation, and a meer poſsibility to veſt. For there is a Condition precedent, that it ſhall not be a Leaſe, unleſs that he died within the term, which peradventure ſhould not be, for he might ſurvive the term. And Popham ſaid, That a ſtronger Caſe was adjudged 17 Eliz. where a Leaſe was made to two for life, remainder to him, who ſhould ſurvive of thoſe two, and to his Executors for forty years; they both joyned in a Grant of this, yet the Grant was meerly void, becauſe the term was not veſted in any of them. But in the principal Caſe Gawdy ſeemed to incline, That this term did not veſt in the Inteſtate. But it was to be to the Executor as a purchaſe, and relied upon the reaſon in 3, and 4 Ph. & Mary, Dy. 150. Graveners Caſe, & 14 Eliz Dyer. 309. 10. And he ſaid, That in many of the books the term was given to him, and his Executors; ſo it firſt veſted in the Teſtator. Et adjournatur, Ant. 666.

Goodwin *verſus* Cornelius Mountenaugh Ante, P. 33 Pl. 10.

(18)

THe Caſe was now moved again, as to the matter, That the Tales being awarded de circumſtantibus generally, it was held to be well enough; for there being no exception afterward by the Defendant, it ſhall be intended to be well awarded. And it was ſaid to be ſo reſolved in the Caſe of Doctor Ceſar againſt Curſiny, and eſpecially as this Caſe is: for Eleven of the Principal appeared, and but one of the Tales was ſworn. And it was not poſſible to have it de medietate Linguæ. Wherefore, &c. A ſecond Exception was taken, that the Ven. fac. was Quorum quilibet habet 4 l. Sed non allocatur. For ſo is the Form. And although one of the Parties is an Alien, and cannot have Land, yet the courſe is all one, and ſhall not be changed for ſuch a ſpecial cauſe. Thirdly It was moved, That the return was not good, becauſe it appears not who were Aliens, and who Deniſens. And all the Juſtices, beſides Fenner, held it to be inſufficient for this Cauſe: but that it was a miſ-return only, which was aided by the Statute of 18 Eliz. Wherefore, upon Affidavit made, that ſix Deniſes, and ſix Aliens were ſworn, the Plaintiff had Judgment. Ant. 818. Ant. 305. Co. 10. 104. a Ant. 273. Ante 272. 305. Ant. 305. Ante 818.

Hall *verſus* Dean, Wood, and his Wife. Trin. 42 Eliz. rot. 1812.

(19)

ACtion ſur Trover, and Converſion of 40 l. by the Feme, dum ſola fuit. The Defendants pleaded Not guilty, and found againſt them. And it was moved in arreſt of Judgment, that the Action lay not; becauſe it was for the converſion of Money out of a Bag. But notwithſtanding, after divers motions, it was adjudged for the Plaintiff. Own 131. Ant. 819.

Gaulin *verſus* Simonds. Mich. 42, & 43 Eliz. rot. 109.

(20) Co. 8. 88. b. FOrmedon in Deſcender. The Tenant pleads in abatement, that the Donees had iſſue a ſon, who after their death entred, and was ſeiſed by force of the Tail, who is not named in the Writ: and the Plaintiff demurred. Quære the cauſe. And, without argument, it was adjudged to be a good plea; and the Writ was abated.

Purſet *verſus* Hutchings. Paſch. 43 Eliz. rot. 728.

(21) TReſpaſs of Battery in London. The Defendant pleads, that the Plaintiff aſſaulted him at D. in the County of Suſſex. Et ſi quod Damnum, fuit de inſultu ſuo proprio, and in his defence; & traverſeth, that he is guilty in London. And it was thereupon demurred. For, this Treſpaſs being Tranſitory, he ought to have juſtified in London; and ought not to have traverſed the County. And of that opinion were Anderſon, and Warberton; for, if he will juſtifie at another place in the ſame County, he cannot traverſe the place alledged. So when he juſtifies in another County, unleſs the cauſe of his juſtification be local, as if he be a Juſtice of Peace, or Conſtable, or becauſe the Defendant offered to enter into his houſe, or ſuch like, which are local, and cannot be pleaded in another place; there he may juſtifie in the place, where it was, and travers every other place, or County; but a Battery in his defence is not local, but may be juſtified in every place, and therefore he cannot plead it in another place, and traverſe the place, where it was alledged. And Warberton ſaid, it was ſo adjudged Hill. 32 Eliz. rot. 317, between Alder and Walden. And 26 Eliz. between Patridge and Pool. Vid. 21 H. 6. 9. 21. H. 6. Treſp. 46. Wherefore, &c. Walmſley and Kingſmil e contra; who agreed, That al auter lieu was no plea in the ſame County; for, being all in one County, he ought to agree with the Plaintiff: And he ought not to traverſe the place, unleſs the juſtification be local in the ſame County; but being in another County, the Plea is good, and he ſhall traverſe the County. For thoſe of the one County need not take notice, but at their election, of things done in another County; and if they will not, there lies not any attaint againſt them; as Primo Mar. Bro. Attaint. 104. Wherefore he well may plead this Juſtification, where the Cauſe aroſe. Vid. 34. H. 6. 15. But afterwards it was adjudged to be no plea, for the reaſons before alledged.

Poſt. 860. Co. 6. 47. a. b.

Ante 99.

Kettle *verſus* Piddington, Mich. 42, & 43 Eliz. rot. 1230.

(22) Co. Lit. 35. a. THe Caſe was; J. S. ſeiſed of two houſes, and Land, having a Feme, alieneth all, and dies. The Alienee aliens part, and aſſigns a Rent out of the reſidue to the Feme for her Dower of the whole, and afterwards ſhe brings Dower againſt the ſecond Feoffee. And, whether this Rent were a barr? Was the queſtion. Quære 31 Ed. 3. Scir. fac. 99.

Robiſon

Robinſon *verſus* Mellor.

ACtion for theſe words, Thou art a Bankrupt Knave, a Vagabond, and Rogue. After Verdict for the Plaintiff, it was moved in arreſt of Judgment, that an action lies not for theſe words. And it was held clearly by all the Court, That none of them were actionable, but only the words Bankrupt Knave, and of thoſe they doubted. (23)

Stephenſon *verſus* Caſe.

PRohibition. The Queſtion was; If one, who hath Lands in a Mill, but doth not inhabit there, ſhould be compelled to be contributary to the reparation of that Pariſh-Church. And it was reſolved, That he ſhould: Whereupon, Conſultation was awarded. (24) Ant. 659.

Hodges *verſus* Cox. Paſch. 43 Eliz. rot. 1905.

DEbt by an Adminiſtrator, upon an Obligation of 26 l. made to the Inteſtate. The Defendant pleaded, That he had commenced an action of debt of 30 l. againſt the Plaintiff, by the name of Adminiſtrator to her Husband, before the Sheriff of London, and upon Nihil returned, &c. that debt was attached in his hands, and pleaded all the Cuſtom of foreign Attachments in London, and that by Judgment this debt was attached in his hands, &c. And it was thereupon demurred, and adjudged to be no plea. Firſt, becauſe the Plaintiff ſues here as Adminiſtratrix to her Husband. Et non conſtat by the barr, that the debt recovered in London was the Inteſtates debt, but only that ſhe was ſued there by the name of Adminiſtratrix: And that might be, although ſhe were ſued for her proper debt; as the book is, that one may be ſued by the name of Heir for his proper debt, and then the Inteſtates debt cannot be attached for the proper debt of the Adminiſtratrix. Secondly, it is not ſhewn, that the debt recovered in London, was a debt by Specialty. Otherwiſe, it is not demandable againſt an Adminiſtrator. Thirdly, It is not ſhewn, that the cuſtom is, that if the Inteſtate was endebted to the Plaintiff there, and the Plaintiff was endebted to the Inteſtate, that by an Action brought by the Plaintiff there againſt an Adminiſtrator, that this debt might be attached in the hands of the Plaintiff there: But it is ſhewn, That if it be teſtified, that the Plaintiff was indebted to the ſame perſon whom he ſued; that then he might attach: But here the Defendant, now being Plaintiff in London, was not indebted to the Plaintiff here, who was there Defendant, but was endebted to the Inteſtate. Fourthly, the Judgment in London was de bonis propriis, which cannot extend to bonis Inteſtati. Wherefore it was adjudged for the Plaintiff. (25) R. 98. Ant. 409.

Blackwels Caſe.

PRohibition. The Caſe was, That a Pariſhioner ſevered the Tithes from the nine parts; but being in a cloſe, the Gate was locked, ſo as the Parſon could not come at them, and he (26)

ſued in the Spiritual Court: And there the queſtion was, whether the Gate were locked or open; and thereupon a Prohibition was brought, ſuppoſing this to have been a temporal matter; for the Tithes being ſevered are Lay Chattels. But the Court ſaid, That although the Tithes be ſevered, yet by the Statute they remain ſuable in the Spiritual Court; and then the other is but a conſequent thereof, and therefore is there triable: And if they refuſe to allow his proofs, as it was ſurmiſed, (but not within the Prohibition) it was ſaid, That he ought to appeal.

Ant. 607.

Butler *verſus* Delt. Trin. 42 Eliz. rot. 2818.

(28) DEbt, for debt, and damages and coſts recovered by Butler, and his wife modo ſuperſtite, againſt the Defendant in this Court. and becauſe the Feme was not named in this Action, the Defendant demurred, and adjudged for the Plaintiff without argument, that the Action well lay.

Green *verſus* Walter Dennis and his Wife.

(29) AFter Iſſue joyned, the Plaintiff tendered a Challenge; that the Defendant was Cozen to the Sheriff, and prayed a Ven. fac. to the Coroners, the Defendant denied the challenge. And how the Plaintiff might have an indifferent trial, the Challenge being true, was the queſtion. And the Juſtices ſaid, That the challenge lies not on the Plaintiffs part: But if he miſ-doubts the Sheriff, he ought to ſtay until he were out of Office.

Mo. 895. Co. Lit. 157. b.

Downing *verſus* Bayward.

(30) ERror, For that in Faux-impriſonment in Suff. the Defendant juſtifies, That a Commiſſion of Rebellion iſſued out of the Chancery in Midd. againſt the Plaintiff, directed to one B. and the Defendant, as his ſervant, and by his Command, arreſted the Plaintiff, &c. The iſſue was joyned de ſon Tort demeſn. And it was tried in Suff. and thereupon Error aſſigned; becauſe this Iſſue ought as well to have been tried by a Jury of Midd. as of Suff. For one principal part of the Cauſe; viz. the awarding of the Commiſſion is here in iſſue, for the root of the Juſtification ariſeth from thence, and without that the Command is of no value. And for this cauſe all the Juſtices and Barons held it to be an ill Trial. For although the Commiſſion be matter of Record yet it is part of the Cauſe, and the Jurors, who tried it, ought to take Conuſance thereof, but the moſt apt iſſue had been to Travers the Record, or the matter in fait, and not both together. Wherefore the Judgment was reverſed.

Co. 7. 1. b.

Ant. 574.

Walker *verſus* Hancock. Trin. 41 Eliz. rot. 304.

(31) ERror, For that in debt the Defendant pleaded the Plaintiffs Releaſe, and the Plaintiff denied it to be his Deed. And it was found to be none of his Deed, and the Judgment was, Quod ſit in miſericordia: Where it ought to have been Quod capiatur. But all the Juſtices, and Barons held it to be well enough; becauſe it was the Deed of another, which he pleaded, which although

thought it be falſe, he ſhall not be impriſoned: But where he denies his own Deed, it is otherwiſe. Wherefore it was affirmed. Co. 8. 60. a.

Cantrel *verſus* Church.

ERror. For that in action upon the Caſe; the Plaintiff declares, that he was ſeiſed in Fee of an Houſe and Land in D. whereto he had common appurtenant in ſuch a place. And that he, and all thoſe, whoſe, &c. had had a way from the ſaid place, wherein, &c. And that the Defendant toraliter hath ſtopped up his way, whereby he could not come to his Common, but had altogether loſt the uſe thereof, &c. The Defendant pleaded Not guilty, and found againſt him, and Judgment given for the Plaintiff: And Error aſſigned, becauſe he ought not to have had an action upon the Caſe, but an Aſſiſe of Nuſance; in regard the Inheritance is in queſtion; And ſo upon the firſt motion held divers of the Juſtices, and Barons: But after divers Motions and Conſiderations had of the books of 8 Eliz. Dy. 250. b. 11 H. 4. 2 H. 4. and others. They reſolved, That the Action was well brought; for he hath Election to bring either the one, or the other. For although there had a difference been taken, where the way is ſo ſtopped up, that he loſeth the uſe thereof altogether, and thereby his Common; there an Aſſiſe ſhall lie: But where it is eſtopped but in part, and not totally; that there an Action upon the Caſe lies, and not an Aſſiſe: They conceived it not to be any difference; for he hath election to have either the one or the other Action; eſpecially as this Caſe is, where it appears not, that the ſtopping was made by him, who is the Tenant of the Free-hold; but it might be done by a ſtranger, who hath nothing to do with the Land; or by one, who hath but a Term therein. Wherefore they all reſolved, that the Action was well brought; thereupon the Judgment was affirmed. (32) Ante 466. 520.

Gages Caſe.

MEmorandum, Upon an Order entred in the Exchequer 12 Maii, reciting, That two parts of Lands of Thomas Gage a Recuſant were ſeiſed into the Queens hands; for Non-payment of 20 l. per menſem, and he, being dead, Thomas Gage his Heir ſuggeſted, that part of that debt due by his Father was levied of the two parts of the Land; and that he had payed the reſidue thereof ſince his Fathers deceaſe, and thereupon obtained the Order above-mentioned; ſurmiſing, that other Preſidents were in the ſame manner in Court; that part of the debt being diſcharged with the profits of the Land (viz. of the two parts) and the reſidue being paid in; that the debt was entirely diſcharged, and that the Heir ſhould have his Land again, Hereupon complaint being made betwixt Felton and Gray, and referred to the Chief Juſtices, and to Periam chief Baron to certifie their opinions therein, they reſolved, that this Order was not warranted by the Law, and was againſt the Statute, for the Queen ſhall have the two parts forfeited for Recuſancy, as a Pledge, and a Nomine pœnæ, and the profits thereof ſhall not be accompted to go to the payment of any part of the debt, but ſhall be retained until the debt of 20 l. by the Moneth ſhall be ſatisfied (33) Lit. Sect. 527.

ſatisfied in ſome other manner, and ſo they delivered their opi-ons under their hands. And Periam ſaid, That the Law had been taken to be ſo, upon former conference amongſt the Juſtices; and that he was not privy to the entring of this Order. Note alſo, That at the ſame time, it being queſtioned, whether if a Recuſant, Tenant in tail, doth not pay his 20 l. for the Moneth, and two parts of his Intailed Land be ſeiſed for that cauſe, and he afterwards dies; whether his iſſue in Tail ſhall have the Land out of the Queens hands, before that debt be ſatisfied? And the ſaid Juſtices conceived, that he ſhould not. But that he ought to be charged with the ſaid debt. Sed dubitatur.

Termino

Termino Michaelis.

Anno Quadrageſimo tertio & quarto

ELIZABETHÆ, in Banco Reginæ.

William Coulſton *verſus* Edw. Carr.

Trin. 41. Eliz. rot. 202.

(1) Noy. 38.

Aſſumpſit by the Plaintiff, as Executor of Tho. Coulſton. Whereas the Defendant 9 Octob. 16 Eliz. was obliged to one Ann the Wife of William Carr; by the name of Agnes Carr, the Wife of William Carr. in 300 l. with condition for the payment of ſuch an Annuity, not exceeding 20 l. per annum, unto the ſaid Ann (which William Carr Granted, or Deviſed unto her for her life) at ſuch days as ſhe ſhould appoint; and whereas the ſaid William Carr deviſed unto her a Rent of 20 l. per annum for her life, payable at ſuch Feaſts, and died; and the ſaid Ann married with Tho. Coulſton the Teſtator; and they (in regard the Defendant knew, that he was not chargeable with the Penalty of that Bond, becauſe that Ann was therein miſ-named Agnes, refuſed to pay that Annuity) exhibited their Bill in Chancery againſt the Defendant, upon this matter: And whereas in 33 Eliz. by decree made in Chancery, it was ordered; That, notwithſtanding this Miſnoſmer, The Defendant ſhould pay the arrearages of the Annuity of 20 l. per annum, with the Annuity it ſelf, until the arrearages were paid which were due for eight years, and the Annuity it ſelf, during her life, at the days mentioned in the Will; and whereas the Defendant had failed of the performance of this decree within two years after the decree made, and the Teſtator thereupon intended to have taken forth an Attachment for this contempt: That the Defendant 7 Maii 25 Eliz. in conſideration that the ſaid Tho. Coulſton would not take forth a Writ of Attachment for this Contempt; and in conſideration that he promiſed unto him on the behalf of the ſaid T. C. and Ann his Wife, That no advantage ſhould be taken of an Obligation of 200 l. agreed to be made by the Defendant for the payment of that Annuity, as long as the ſaid Annuity ſhould be paid according to the Will; and that the ſaid T. and A. had conſented to convey her Title of Dower to ſuch perſons, as the Defendant ſhould appoint, if by the Law it might

might be: That the Defendant ſuper ſe Aſſumpſit, that the arrearages of the Annuity ſhould be paid modo, & forma ſequente, viz. That the Defendant with J.S. and J.D. ſhould make to the ſaid T. Couſt. an obligation for the payment of 40 l. of the ſaid arrearages to the ſaid T.C. at Chriſtmas 1594. And that he with the ſaid J. S. and J.D. ſhould be obliged by ſeveral obligations to the ſaid T. C. in ſeveral ſums of 20 l. until the arrearages were paid; and that he would be obliged in 200 l. to T.C. and Ann for the payment of the ſaid Annuity during the life of the ſaid A. and alledges in facto, that neither the ſaid T.C. in his life, nor the Plaintiff after his decеaſe, had not purſued an attachment for the ſaid contempt; and that the Defendant was not obliged for the payment of the ſaid 40 l. &c. nor for the 20 l. &c. And hereupon the Defendant demurred. Firſt, it was moved, That none of theſe conſiderations were of value, and that none of them were certainly alledged: As to that, that he would not proſecute an Attachment, it is not material; for it is but matter in Conſcience, whereof the Common Law takes not any regard. For the ſtaying of a Sute in Chancery, or in Court of Equity, is no conſideration at the Common Law, whereupon to ground an Action. Vid. Dy. 356. But after divers arguments, and upon the Preſident
Ante 768. betwixt Dowdenay, and Oland, in Trin. 42. Plac. 10. in this Court, it was held; That forasmuch as the cauſe was well examinable, (as it was agreed by them, that it was) and for the breach whereof the party is puniſhable, which is to be done at the Sute of the party grieved, and by the non-proſecution of this Contempt, he had eaſe, and benefit: That it was a good conſideration to ground this action. Secondly, they all agreed, that if two, or three conſiderations be alledged in a Declaration, and there be one of them ſufficient, although the others be inſufficient in
Ant. 759. Matter, or Form, yet the one being ſufficient, it is well enough.
Ante 149. But if two Conſiderations be alledged, and one of them is found falſe by the Jury, the Action fails. Thirdly, it was reſolved, That whereas the Declaration is, That the Defendant ſuper ſe Aſſumpſit, and mentions not to whom, nor faith & eidem Querenti fideliter promiſit, as the uſual courſe is: Yet, it being to enter into Bond to the Teſtator, it is as ſufficient a promiſe to the Teſtator, as if it had been Super ſe Aſſumpſit prædicto T.C. For it is tant amount. And ſo it was reſolved in the Caſe between Wichhal,
Ant. 703. and Johns. But if it had been Super ſe Aſſumpſit to be obliged in 20 l. and ſhews not to whom, there peradventure all had been incertain, and void. Fourthly, The Aſſumpſit is, That the arrearages ſhall be paid, modo & forma ſequenti (viz.) That he with two others ſhould be obliged, &c. It was held, That it was a ſufficient Aſſumpſit to be obliged, although it came after the viz. But Fenner e contra therein. But, notwithſtanding theſe Exceptions, it was adjudged for the Plaintiff.

Brown *verſus* Street.

(2) ACtion upon the Caſe for words, Whereas the Plaintiff was the laſt year Sheriff of the County of Northampton, and being diſcharged from his Office, a Writ iſſued out of the Exchequer directed to the Sheriff of the County of North: to attend & execute certain

certain Services for the Queen; which Writ was delivered to the Defendant, to deliver to the said Sheriff: Which he not delivering, the Plaintiff thereupon sent one White-acres (his Servant) unto him, for the Writ, to deliver it unto him, or that he himself would deliver it to the Sheriff: That the Defendant said unto him, Your Master must not look to have such Hudling and Shuffling up of Matters this Year, as he had the last Year. After Verdict, upon Not Guilty pleaded, it was found for the Plaintiff: And, upon motion in Arrest of Judgment, resolved, that the Words were not actionable; and adjudged for the Defendant.

Rippon *versus* John Norton.

(3)

Assumpsit. Whereas there were debates betwixt the Plaintiff, and one Rich. Norton Son of the Defendant; and the said R. Norton had assaulted the Plaintiff, and beat him at N. in the County of Northampt. whereupon he complained to Sir Anthony Mildmay, a Justice of Peace there, and required the Peace, and made Oath, &c. That the Defendant knowing thereof, in consideration the Plaintiff would desist his complaint, and that his said Son should not be vexed for that cause, assumed to the Plaintiff, that the said R. N. his Son should keep the Peace against the Plaintiff, and Walter Rippon, the Plaintiffs Son; and alledgeth in facto, that he thereupon desisted his Complaint; and that the Defendants Son was not vexed, &c. And yet notwithstanding that the said R. N. the Defendants Son had assaulted the said W. R. his Son, and beaten and wounded him, whereby he lost his service, and was at great charges in his Cure, whereupon he brought this action. The Defendant pleaded Non Assumpsit, & found against him, to his damage of 20 l. and it was now alledged in Arrest of Judgment, that an Action lies not for the Father; because the Battery of the Son is not any ground of action to the Father, unless he had shewn, That he was his Servant which is not done. And to this purpose was cited the Case betwixt Levet and Haws, Hill. 41. Plac. 11. where one promised to the Father, to give 100 l. to his Son in Marriage with the Defendants Daughter, in consideration of a Joynture assured by the Plaintiff. The action being brought by the Father for non-payment of the 100 l. to the Son, it was adjudged not to be maintainable. So here, because there is not any damage to the Father, by the Battery to the Son, an action lies not for the Father. And although it were objected, that the Father was at the charge for the curing the Son of his Wounds, yet because it was a thing he was not compellable unto, it is no cause why he should maintain this action. Wherefore by all the Justices (it being moved at several times) it was adjudged for the Defendant. Vide postea Pasch. Plac. 13.

Yelv. 1. 2. Post. 881.

Ant. 369. Ant. 619. 652. Ant. 369.

Post. 881. Yelv. 1. 2.

Hutton *versus* Hun.

(4)

Trespas. At the Nisi prius fifteen Jurors appeared, and all were challenged propter Hundred. And thereupon Tales de circumstantibus was awarded, and upon it four Hundredors were sworn. And then it was resorted to the Principal Panel, and eight of them were sworn, and found for the Plain-

tiff. And it was now moved in arreſt of Judgment, that this Trial was ill: For by the Statute 27 Eliz. there needeth not above two Hundredors, then the Trial, by more of the Tales then it ought to be, there being ſufficient of the principal Panel, is ill. And of that Opinion were Gawdy and Clinch. Fenner doubted thereof. Popham was abſent: Wherefore Adjournatur, and in Paſch. 44 Eliz. and it was moved again, and for this cauſe reſolved to be an ill Trial. And a Ven. fac. de novo was awarded.

Michel *verſus* Woodroff. Hill. 41 Eliz. rot. 449.

(5) ERror of a Judgment in Lynn-Regis. The Error aſſigned was; becauſe the Court was holden before J. S. Mayor, and John Harvard, and two other Capital Burgeſſes. And, the Parties being at Iſſue, it was tried by Verdict, and found for the Plaintiff. And this John Harvard who was one of the Judges, was one of the Jurors alſo. And the Defendant pleaded In nullo eſt erratum. And all the Court, abſente Popham, held it to be erroneous, being confeſſed, by pleading In nullo eſt erratum, to be one, and the ſame Perſon. Wherefore, by the aſſent of Defendant in the Writ of Error, it was reverſed for this cauſe.

Shaw *verſus* Cutteris. Trin. 41 Eliz. rot. 1158.

(6) DEbt againſt an Adminiſtrator, upon a Judgment againſt the Inteſtate in the Common Bench. The Defendant pleaded, That after the Judgment the Plaintiff ſued there againſt the Inteſtate a Capias ad ſatisfaciendum, and thereupon an Exigent, ſo as the Inteſtate was outlawed, and that afterwards he ſued a Capias Utlagatum, and thereby he was taken, and died in Priſon. Et hoc, &c. And hereupon the Plaintiff demurred. Firſt, It was moved, whereas the Inteſtate was taken by a Capias Utlagatum, whether it ſhould be ſaid to be an Execution for the Plaintiff, without the Plaintiffs Prayer to have it ſo? And Popham and Fenner held, that it was not: For it is a Writ for the King, and the Writ is Ad recipiendum quod Curia conſideravit. So although the Plaintiff ſues it out, yet it is not any Election in him to have the party in execution, until he prays it, and the Court awards it. But, before his Prayer, he is in Execution at the Plaintiffs Election: So that if the Sheriff ſuffer him to go at large, before the Plaintiff hath determined his Election, it is an Eſcape againſt the Plaintiff, if he will, and he might have Debt thereupon. Gawdy doubted thereof, for he conceived, that in regard the Plaintiff hath purſued his Capias Utlagatum, although it be a Writ for the Queen, yet, being at his Sute, the Law ſhall adjudge it to be an Execution for him without other Prayer. Secondly, It was moved, admitting, That it was an Execution for the Plaintiff, without other Prayer, whether, the party in Execution dying before ſatisfaction made, he may now have a new Execution of this Judgment? And all the Court held, that he could not: For although it were ſaid, that he had his Body in Execution, but as a pledge for his Debt, and the party dying, the Debt is never a whit the more ſatisfied; and if two be taken in Execution, and one of them dies, the other ſhall remain in Execution: For the Debt is not ſatisfied by his death;

2 Cr. 136. 143
1 Rol. 895. 902.
3. 4. 12.
2 Rol. 806.

Co. 5. 88. b.
Poſt. 910.
Ant. 706.

Co Lib. 5. 87. a.
Hob. 59.
2 Cr. 143.
1 Rol. 903.
1 Cr. 75.
2 Cr. 143. 338.
136.
Hob. 59.
F.N.B. 246. b.
136.
Ant 478.

As

As 33 H. 6. 48. is, and it was ſo cited to be adjudged 26 Eliz. in the Common Bench, betwixt Jons, and Wilcoks: Yet they held, That in regard the Plaintiff hath elected this Execution (which is the higheſt Execution) and the Defendant died therein, The Law will adjudge it as a ſatisfaction, when there is but one, who is taken. But where two are condemned, the taking of one in Execution, and his death, is no diſcharge for the other. Vide N. Br. 246, 47 Ed. 3. Execution 41. Thirdly, it was moved by Doderidge for the Defendant (which he only inſiſted upon) That for as much as the Inteſtate is pleaded to be Outlawed at the time of his death, which is yet in force, as it was averred, and as by the Demurrer it is confeſſed, that the Adminiſtrator is not chargeable, for he cannot have any Goods to ſatisfie any Debt: Yet all the Court reſolved, that it was not any Anſwer; for he might well be Adminiſtrator to a Perſon Outlawed, who might have Goods, which were not forfeited; as Debts upon Contracts, or Goods taken for Treſpaſs before Outlawry, he may have Treſpas, and Recover the value of the Goods, which ſhould be Aſſets in his Hands. Wherefore they reſolved, that the Plaintiff ſhould have Judgment, unleſs other matter were ſhewn, &c. Co. 5. 86. 6. 1 Rol. 903. 2 Cr. 143. 1 Rol. 912. Ante 575.

Weſt *verſus* Laſſels. Trin. 43 Eliz. rot. 243

(7)

Debt upon a Leaſe for years, and Declares, That one Remington was ſeiſed in Fee, and Lett it to the Defendant for years, rendring Rent of 40 l. per annum, and held it of the Queen by Knights Service in Capite, and that he deviſed it, and died, his Heir within age. Whereupon the Queen, under the Seal of the Court of Wards, granted unto him the third part of the Reverſion, and Rent, durante minore ætate of the Heir; And for three years Arrear he brought the Action. And upon this Declaration it was demurred: Firſt, Whether a Leaſe for years durante minore ætate, may be under the Seal of the Court of Wards, or ought to be under the Great Seal. And the Court held it to be well enough under the Seal of the Court of Wards, and ſo hath ever the practiſe been ſince the erection of the ſaid Court: And they held, That a Leaſe of the Land might well be before Office; But of the Body it cannot be granted, but under the Great Seal, and after Office: But an Office finding the Tenure in one County ſufficeth; And for the other Counties, it ſufficeth, to add them by Survey, for it is only for the Governance of the Land. Secondly, It was held, That the Rent might well be apportioned, and divided; For it is a Contract real, which is well apportionable: For if the third part of a Reverſion be granted of a Leaſe for Life, or years, and the Tenant atturns, the Rent is apportionable, and he chargeable to two Diſtreſſes by his own Act; As 5 Ed. 3. Quid Juris clamat is. So upon the Queens Grant, where Atturnment is not neceſſary: For the Law is as if there had been Attornment. Vide 9 Eliz. Dyer, 263, & 326, where a Rent ſhall be apportioned by Act in Law, and Collings, and Hardies Caſe, quod vide ante, and Bracebridges Caſe in Plowd. Wherefore Rule was given, That Judgment ſhould be entred for the Plaintiff, unleſs, &c. But at another day, for an Imperfection in the Declaration, the Judgment was ſtayed. Note, It was held in this Caſe, that a Leaſe of the Wards Land made by Ant. 652. 772. Cot. Litt. 148. a. 2 Inſt. 504. Ant. 651. Ant. 606. 7. 772. Ant. 651.

the Queen, before Office found, was good: The Statute of 8 H. 6. & 18 H. 6. is, That thoſe Eſtates do not extend to Leaſes under the Seal of the Court of Wards, by vertue of the Statute of 32 H. 8. And ſo the Law hath been conſtrued to be ſince the Statute.

Boles *verſus* Laſſels. Trin. 42 Eliz. rot. 107.

(8) Noy. 59. 1 Rol. 807. 8.

ACtion upon the Caſe againſt a Sheriff. Whereas he had ſued a Latitat againſt J. S. directed to the Sheriff of the County of Nott. which Writ was delivered to the Defendant, being then Sheriff to execute, by force whereof he arreſted the ſaid J. S. and let him at large, and yet notwithſtanding returned Languidus in Priſona, whereby he was delayed in his Sute, &c. The Defendant confeſſeth the Receipt of the Writ, and the Arreſt: But that he afterwards let him at large upon Bail, according to the Statute of 23 H. 6. Et hoc, &c. And hereupon the Plaintiff Demurs; becauſe he anſwers not to his falſe return, that he was Languidus, &c. But the Court held it to be well enough: For when he executed the Writ, and took Bond according to the Statute, (which he was compellable to do) and returned, that he took him, it is not material to the Plaintiff, although he returns Languidus, &c. For that is only for his excuſe, that he had not the Body, and he is only Finable by the Court, if he brings not in the Body, and the Party ſhall not have any remedy againſt him. Wherefore it was adjudged for the Defendant.

Ant. 624.

Blackbourn *verſus* Michelbourn. Mich. 42, & 43 Eliz. Rot. 1073.

(9) Noy. 39.

DEbt upon an Obligation of 40 l. made to the Plaintiff, as Sheriff of Norwich. The Defendant pleaded the Statute of 23 H. 6. and that by vertue of a Latitat, at the Sute of J. S. he was arreſted, and this Bond was made to the Plaintiff for the appearance, according to the Writ by the Defendant, and one May; The Defendant, nor May, having any thing within the County; nor being Inhabitants within the County, and ſo the Bond void: Wherefore, &c. And it was thereupon demurred, and now argued for the Defendant, That this Bond is not according to the form of the Statute, and therefore void: For it ought to be of Perſons, having ſufficient within the County; for that it is as well for the benefit of the Party Plaintiff, as of the Sheriff; For otherwiſe the Plaintiff ſhould never have any appearance, and of that Opinion was Montague, in Dive and Mannings Caſe. But all the Court held the Bond to be good enough, notwithſtanding this Exception: For the Statute doth not make void any Bonds, but what are made in other manner, in oppreſſion to the People, which the Statute appoints ſhall be void. And the Words, In other Manner, and Form, are to be intended of the Matter of the Bonds, as to the Sheriff, and not for the ſufficiency of the Sureties: And therefore, if he takes Bond with one Surety, it is good enough, and not againſt the Statute, and to that purpoſe the Preſident of Sir Gervaſe Cliftons Caſe (quod vide ante) was ſhewn, which the Court held to be all one with this Caſe: For there one of the Sureties was inſufficient, and here both. Wherefore Rule was given to have Judgment entred

Ante. 808.

for

for the Plaintiff. Sed poſtea adjournatur until the next Term, and afterwards adjudged accordingly, Mich. 43, & 44. C. B. Plac. 38.

Dighton *verſus* Bartholomew. Paſch. 42 Eliz. rot. 269.

(10) ERror of a Judgment given in Nativo habendo. The Error aſſigned was; Becauſe the Plaintiff, tempore judicii rediti, was an Infant, and appeared by Attorney, and not by Gardian, or Prochine-amy, and the Defendant pleaded thereto In nullo eſt erratum. And the Court doubted, whether it could not be aſſigned, the Plaintiff at preſent being of full age, ſo as his Nonage could not appear upon view. A ſecond Error aſſigned was; Becauſe Judgment final was given, whereas the Plaintiff never declared, but was Non-ſuited before the Declaration. Quære.

Perkinſon *verſus* Bowman.

(11) ACtion for theſe Words, Thou haſt made falſe Writings thereby to get my Land from me. After Verdict it was moved, That an Action lay not for theſe Words: For it is not an expreſs Averment, That he forged any Writings; And falſe Writings may be Miniments without Seals, for which one is not puniſhable as a Forgerer. And of that opinion were Gawdy, and Clinch: But Fenner e contra; Becauſe he cannot get Land by them, unleſs they be forged Writings. Adjournatur. Poſt. 881.

Bond *verſus* Tricket. Trin. 43 Eliz. rot. 564.

(12) REplevin. Upon Demurrer the Caſe was; That a Parſon, having a Benefice of the value of 8 l. per annum, took a ſecond Benefice without any Diſpenſation, and the Queen preſented by Lapſe. And all this being diſcloſed by pleading, the principal Queſtion was; it being averred, that it was of the annual value of 8 l. and not averred, that it was of ſuch value in the Queens Books, Whether that were ſufficient? Popham, Gawdy, and Clinch held, That it was ſufficient to averr it to be of the annual value of 8 l. which ſhall be taken to be according to the true value thereof. Although it was ſaid, that there hath been two Carations of Benefices: The one in the time of Ed 1. The other in Anno 26 H. 8. where the Tenths, and firſt Fruits were given to the King, and according to this Taration the value ſhall be adjudged. But the Court ſaid, They took not only Conuſance thereof, but regarded only the true value Vide 7 Eliz. Dyer 237. Secondly, It was moved, that the Statute of 21 H. 8. is miſrecited: For it is recited to be made at Weſtminſter, whereas it was begun in London, and ſo it ought to have been pleaded, unleſs there had been divers Seſſions, wherein Bills had been Signed; as 33 H. 8. B. Parliam. 86. The Court ſaid, That as to that they would adviſe, and ſee the Roll, whether it were ſo, Et ideo Adjournatur. Noy. 38.

Percival Willoughby *verſus* Egerton.

(13) ERror of a Judgment in Cheſter. The Errors aſſigned, Firſt, becauſe, the Parties being at Iſſue, a Ven. fac. was awarded to the Sheriff: And at the Day of the return it was entred, Quod Vicecomes non miſit Breve. And then the Plaintiff prayed a Ven. fac. to the Coroners, for Couſinage betwixt him and the Sheriff which was awarded accordingly: And, at the day of the Trial, the Defendant made Default, and Judgment was given, &c. The firſt Error; Becauſe, that after the Plaintiff had admitted the Sheriff to Execute the Writ, he could not pray a Ven. fac. to the Coroners, without ſome cauſe de puiſne temps. Sed non allocatur; be- 3 Cr. 35.

cauſe

cauſe there was nothing done upon the firſt Writ, and it is not now material, having made default. A ſecond Error was becauſe the Judgment appears to be in a Formedon, upon Default of the Tenant: And yet the Entry is not, Ideo recuperet per defaltam as the courſe is, that it ought to be: And as to that the Court would adviſe, Et adjournatur.

Geeve *verſus* Copſhil. Mich. 41, & 42 Eliz. rot. 85.

(14) ACtion for theſe Words, Thou art as Cozening a fellow, as any is in the Country: The laſt time thou wert Under-Sheriff, as now thou art, thou didſt ſerve an Execution for a neighbor of mine, and didſt keep the Money in thy hands. Hereupon the Defendant Demurred, and, after Argument at the Bar by Snag for the Plaintiff, it was adjudged Maintenant, That the Words were not Actionable: For, for calling one Cozening fellow an Action lies not. Then the laſt Words be not Actionable; For it is not expreſſed how long time he kept the money in his hands, and it may be he kept it only but until return of the Writ, or by aſſent of the Party Plaintiff. Wherefore it was adjudged for the Defendant.

Wright *verſus* Wheatley.

(15) EJectione firmæ de pomario. After Verdict it was moved, That an Noy. 37. Ejectione firmæ lies not thereof, no more then a Præcipe quod Reddat. Sed non allocatur; For this Action is but perſonal, wherein Dammages are the principal: And although it is uſual in this Caſe to award an Hab. fac. poſſeſſionem, yet it is well enough, and Ant. 622. compriſeth ſufficient certainty. Wherefore it was adjudged for the Plaintiff.

Burper *verſus* Baker. Trin. 42 Eliz. rot. 1308.

(16) TRespaſs of aſſault, Battery, and Wounding. The Defendant Quoad the Wounding pleaded Not guilty: Quoad reſiduum juſtifies by Warrant to Arreſt. The Iſſue was de ſon tort Demeſn; and as to that the Jury found, That he aſſaulted, Beat, and Wounded him de ſon Tort demeſn, and finds not any thing upon the Iſſue Not Guilty by it ſelf, but included it in the former Verdict. And whether it were a good Verdict, or not: Was the Queſtion: And reſolved to be good enough.

Poſt. 866.

Wood *verſus* Reignold. Ante, Trin. 42. Plac. 3.

(17) THe Caſe was now moved again, and Gawdy, Popham, and Clinch held, That the Leaſe made (whereout the Uſe did ariſe) was good, and ſhould bind the future uſe, as a Leaſe by Feoffees made upon good conſideration ſhall bind ceſtuy que uſe at the Common Law, but it ſhall not deſtroy the whole future Uſe: But ſhall ſtand for the Free-hold, becauſe the Seiſin is not changed. And Popham ſaid, That he had conferred with divers of the other Juſtices at Serjeants Inn, who agreed in this Opinion. But Fenner e contra; Becauſe the Leaſe did not diſturb the Free-hold, when the Uſe is executed, this ſhall relate to the Limitation, and ſhall bind all mean acts, and therefore ſhall not bind the Feme, as to her Joynture. Wherefore it was adjourned.

2 Rol. 793. 4. Ante 764. 2 Cr. 168. 2 Cr. 169.

Burſty (an Atturney of this Court) *verſus* Challenor.

(18) TRespaſs of an Ox taken at D. in Comitatu Kanciæ. The Defendant Juſtifies, becauſe the Land is holden of him, as of his Mannor of Walſted in the County of Suſſex; and that the Cuſtom there is, that every Tenant ſhould pay the beſt Beaſt for an Heriot, and that the Lord might Seize it in any place, &c. The Iſ-

ſue

ſue was upon the Cuſtom, and a Ven. fac, was de vicineto of the Mannor, and found for the Plaintiff; and now Exception taken: becauſe it ought to have been awarded as well from the Land holden, as from the Mannor. Sed non allocatur: For the Iſſue being upon the Cuſtom, the Venue ſhall be from the Mannor only, and it was thereupon adjudged for the Plaintiff. Ant. 620.

Parſlow *verſus* Corn. Trin. 42 Eliz. rot. 641.

(19) TResp aſs. Upon a Special Verdict it was found, that the Queen made a Leaſe for Life to the Plaintiff of an Houſe and Land in D. in Comitatu Salop, rendring Rent to the hands of the Bailiff of the Mannor, or to the Receiver for the County, with a Condition upon non-payment of the Rent within forty days, &c. that it ſhould be void: And that a Commiſſion under the Exchequer Seal was awarded to Commiſſioners of the County of Middleſex, to enquire there of the payment of this Rent; reciting therein the Leaſe to be of an Houſe cum pertinentiis, and mentions not any Land. The Jury found, that the Rent was not paid by the Leſſee; and that the Queen, upon this Inquiſition returned, made a new Leaſe to the Defendant, who entred. Etſi, &c. Firſt, It was moved by Harris for the Plaintiff; that this Commiſſion to enquire of a Rent reſerved upon the Leaſe of an Houſe cum pertinentiis, is not ſufficient to enquire of this Leaſe made of an Houſe and Land, &c. Secondly, it is found, that the Leſſee did not pay it: And it may be, that it was paid by his Aſſignees; and ſo it is not preciſely found, as it ought to be: For, if it were paid by his Aſſignees, the Eſtate is ſaved. Thirdly, This Inquiſition found in Middleſex, and by Commiſſion under the Exchequer Seal, is not ſufficient to find a Condition broken of Lands in the County of Salop, upon a Leaſe for Life, as the better Opinion was in a Caſe, Paſch. 27 Eliz. rot. 127. in the Common Bench, between Knight and Breech; wherefore, &c. Popham; Clinch, and Fenner, (abſente Gawdy) agreed, for all the Exceptions with the Plaintiff, and principally for the laſt: For, it being a Leaſe for Life the Queen cannot be entituled thereto, unleſs by Office found in its proper County to avoid it. But ſuch a Condition reſerved upon a Leaſe for years may be found by Office in another County, and it is but an Office to inform the Queen, which in whatſoever County found is ſufficient. And this difference was agreed by all the Juſtices in the Caſe of Sir Thomas Hennage. Whereupon it was adjudged for the Plaintiff. Mo. 199. Co. 5. 54. b. Ant. 221.

Kilbourn *verſus* Trot.

(20) ERror of a Judgment in the Common Bench, in a Scir. fac. upon Bail. The Error aſſigned; becauſe the action was brought for 23 l. 18 s. and the bail was bound in a Recognuſance of 23 l. 18 s. according to the courſe of the Court. The Judgment being againſt the principal, and he not rendring his body, a Scir. fac. iſſued againſt the bail; ſuppoſing it to be for 23 l. 10 s. 8 d. and ſo miſtook the Sum. And for this variance it was held to be a manifeſt Error, and not amendable. Wherefore it was reverſed.

Atwaters

Atwaters *verſus* Birt.

(21) 1 Rol. 331. Noy. 38. EJectione firmæ. Upon a Special Verdict the Caſe was; One Robert Stanton, ſeiſed in Fee of the Land in Queſtion, infeoffed thereof Thomas Molyns and three others, to the uſe of himſelf for Life, and after to the uſe of Richard his ſecond Son in Tail, Remainder to George his eldeſt Son in Tail, Remainder to his right heirs; with a Proviſo, That if he paid 12*d.* at any time to the ſaid T. M. and the three others, and good, and ſufficient cauſe was ſhewed unto them by the ſaid R. S. the Father, of the abuſes by *Richard* the Son, and that ſo by the ſaid T. M. and three others (reciting their Names) ſhall be thought convenient, That then the foreſaid uſes ſhall ceaſe, and then to be to the uſe of him and his Heirs. The one of the four Feoffees died, He paid the 12 d. to the other three, and ſhewed cauſe of abuſe by Richard his Son, which was approved by the three: And then declares by a new Deed, that the ſaid T. M. and the other two Feoffees, for good conſideration expreſſed in the Deed, ſhould ſtand ſeiſed of the ſaid Land, to the uſe of himſelf for Life, and after to new uſes, &c. And, whether theſe uſes ſhould take effect, or not? Was the Queſtion. Firſt, Whether this be a good revocation of the firſt uſes, one of the Feoffees being dead? Secondly, admitting, that they be revoked, whether it be a good new limitation of the laſt uſes? And as to the firſt all the Court reſolved, that it was not a good Revocation: For it is but an authority, which is given to revoke, and it is to be done by the aſſent of the four, and any of them being dead, the authority is determined, and ſhall not ſurvive, And for this reaſon, as Popham ſaid, the Common Law before the Statute of 21 H. 8. was, that if one deviſed his Land to four to ſell, and one of them dies, the Survivors, becauſe they have an Intereſt, may ſell: but if he had deviſed, that three ſhould ſell his Land, and one of them dies, the Survivors, becauſe they have but a meer authority, cannot ſell. Vid. 49 Ed. 3. 16. 2 Eliz. Dyer 177. 189. 217.

Ant. 26.

R. 604. Dyer 96. a. Secondly, Admitting, that the firſt uſes are well revoked: yet they held, that this ſecond Indenture is not a ſufficient Limitation of the new uſes, and raiſing of them: For, although the conſideration therein be ſufficient (viz. blood and affection) yet he doth not covenant to raiſe them out of his own poſſeſſion: But that his Feoffees ſhall be ſeiſed, &c. and none other, but they ſhall ſtand ſeiſed, And he hath not any Feoffees, and therefore no uſe can ariſe. And although it were ſaid, that it ſhall be expounded as a Will, according to the intent of the parties, forasmuch as he hath not Feoffees, that he himſelf ſhall be ſeiſed, &c. It ſhall not be ſo in Conſtruction of Deeds: and ſo there did not any uſes ariſe, and therefore the Leſſor of the Plaintiff hath not any Title. Whereupon it was adjudged for the Defendant.

Purſand-

Purſand *verſus* Whytier.

DEtinue for an Obligation of 200 l. The Defendant pleads, That the Obligor and Obligee delivered it unto him ſub certis conditionibus cuſtodiend. and he knows not whether they be performed, and prays Garniſhment, &c. The Plaintiff Traverſes, that it was not delivered ſub certis conditionibus, &c. And they were thereupon at Iſſue, and found for the Plaintiff. It was moved in arreſt of Judgment, that the Trial was ill; for the Iſſue ſub certis conditionibus is uncertain: As alſo, becauſe there was not Garniſhment before the Trial of the Iſſue. Sed non allocantur. For, as to the Iſſue, it is helped by the Statute of Jeofayls. Wherefore Rule was given, that Judgment ſhould be entred for the Plaintiff. (22)

Robins *verſus* Franks, Trin 43 Eliz. rot 2061.

ACtion for theſe words; Thou art a Rogue, and a Thief. After Verdict, it was moved in arreſt of Judgment, that an Action lies not for theſe words; for they are too general. But the Court held, that for the word Thief, it is maintainable, unleſs it be coupled with other words, which prove it to be no Felony intended. Wherefore it was adjudged for the Plaintiff. (23)

Garford and his Wife *verſus* Clerk and his Wife.

ACtion; For that the Defendants Wife ſpake of the Wife of the Plaintiff quædam falſa, & ſcandaloſa verba, quorum Tenor ſequitur in hæc verba; Thou art an arrant Whore, & an old worm-eaten Jade, & one of thy ſides hath been eaten out with the Pox. The Defendants pleaded Not-Guilty, and found againſt them. And it was moved in arreſt of Judgment, that the words ſhould not maintain an Action, and that the Declaration was not good; becauſe it is not an expreſs Allegation, that ſhe ſpake the ſame words. And for this Cauſe, the whole Court held the Declaration to be ill; for ſome thing might be ommitted in the Quorum Tenor, &c. which was within the words which would cauſe the words not to be Actionable; and although it be an uſual Courſe to plead a Deed, or Record, Cujus Tenor, &c. That is, becauſe the Deed, or Record might be viewed, whether it agrees with the Recital. Wherefore the Judgment was ſtayed. But as to the words themſelves, the Court held them to be Actionable. (24)

Riddleſden *verſus* Cicely Wogan, *alias dict.* Cicely, late Wife of John Inglebert, Trin. 43 Eliz. rot. 145.

DEbt upon an Obligation. The Defendant pleaded, that at the time of the making of the Bond ſhe was wife to John Inglebert, who as yet in plena vita exiſtit; Et ſic non eſt factum, &c. The Plaintiff ſhews, how that after this Bond made, there was a Sute in the Spiritual Court, concerning the Marriage (25)

between the ſaid Inglebert, and the Defendant; And, for that he had another Wife alive at the time of the Eſpouſals with the Defendant, the Defendants Marriage was by Sentence adjudged void, and to be Null, and averrs the Life of the firſt Wife at the time of the ſecond Marriage with the Defendant. And it was hereupon demurred, and adjudged for the Plaintiff; For this Divorce is but Declaratory, becauſe the Marriage was meerly void, and therefore there needed not any ſuch ſentence of Divorce; for it was void ab initio, and ſhe always ſole. Wherefore it was adjudged for the Plaintiff.

Barnes *verſus* Greenwel. Trin. 43 El. rot. 1447.

(26) DEbt upon an Obligation conditioned to ſtand to the Award of certain perſons, of all Sutes, Quarrels and Controverſies ſtirred, and depending, untill the day of the date of the Bond (which was 4 Sept. 42 Eliz.) ſo as the Award be made of the Premiſes before ſuch a day. The Defendant pleaded, Quod nullum fecit Arbitrium, &c. The Plaintiff ſhews, that they made an Award of all matters untill the third day of Sept. And hereupon Iſſue was joyned, that no ſuch award, &c. and found for the Plaintiff. And it was now moved in Arreſt of Judgment, that this Arbitrament was void; becauſe they had not purſued their Authority, which was to make an end of all matters, untill the fourth day of Sept. and they made their award only of matters until the third day of Sept. And there is not any Averment taken, that theſe were all the matters depending at the time of the Obligation made. But the Court held it to be well enough; for Now depending cannot be, unleſs they had been in Sute before the fourth day; for it cannot be ſaid to be begun, and depending, all upon the ſame day; And it ſhall not be intended, that there were any other matters depending, unleſs they had been ſhewn. But if Arbitrators award for one thing, and ſay, that they will not meddle with the reſt, all is void, becauſe they have not purſued their Authority. Wherefore it was adjudged for the Plaintiff.

1 Rol. 257. Hob. 190. 1 Cr. 216. Ant. 301. 1 Cr. 216. Ante. 344. 301. Hob. 199. Mo. 885. Mar. Arb. 186. 7. Co. 8. 98. a. 2 Cr. 353.

Godfrey *verſus* Woodward and Woodward, Exe-

cutors.

(27) DEbt upon an Obligation of 100l. The one of the Defendants was outlawed, the other pleaded, that he, who was outlawed, was made Executor, and ſolely proved the Will, and Adminiſtred, and that the Defendant, as ſervant unto him, took divers of the Teſtators Goods by his delivery, and by his Appointment had ſold them, Abſque hoc, that he adminiſtred, as Executor, or in any other manner. And it was thereupon demurred, and adjudged to be an ill Plea; becauſe he doth not ſay, that he refuſed before the Ordinary, nor confeſſeth any Adminiſtration; for that, which he confeſſeth, is not any Adminiſtration, and ſo no anſwer to the Plaintiff. Wherefore it was adjudged for the Plaintiff.

Clerk

Clerk *verſus* Palady. Trin 40 Eliz. rot. 544.

ASſumpſit. In Conſideration, that he would permit the Defendant to enjoy ſuch Land for a year, the Defendant aſſumed to give 10l. unto him for that year, and alledgeth in facto, that the Defendant enjoyed it by his Permiſſion, &c. After Verdict, it was moved in arreſt of Judgment, that the Action lay not; becauſe it is not ſhewn what Right or Title he had to the Land to Lience the Defendant to enjoy it, otherwiſe there is not any Conſideration or cauſe of Action; and for this cauſe the Court held it to be ill: As alſo, for that if it had been ſufficiently alledged, then it had been a Demiſe, and an action of Debt, and not an Aſſumpſit had then lain upon it. Wherefore the Judgment was ſtayed (28) Ant. 242. 786.

Harvy *verſus* Newlyn, Trin. 43 Eliz. rot. 1842.

ACtion upon the Caſe. Whereas Sir James Allington was ſeiſed in Fee of the Mannor of Milbourn, and of another Mannor, and granted to the Plaintiff by Deed to be his Bayliff of the ſaid Mannor for his Life, and that the Defendant had diſturbed him in the ſaid Office, viz. in his Collecting of Rents, viz. of the Rents of J. and D. &c. The Defendant confeſſeth the Seiſin of Sir James Allington, and his Grant to the Plaintiff, but that afterwards he ſold the ſaid Mannor to J. S. who appointed the Defendant to the Bayliff there, whereupon he collected the Rents, &c. And it was thereupon demurred, and all the Court were of Opinion, that the Purchaſer of the Mannors might diſcharge the Plaintiff, and revoke that Grant, although it were for Life: becauſe he ſheweth not that there was any Fee granted for the Execution thereof, nor that he had any other Profits by exerciſing of it; For without Profit it is but an Office of Trouble, and then the Plaintiff hath not any cauſe to complain, when he hath not any Loſs: but if he were to have had a Fee, or other Profit in certain for executing thereof, it had been otherwiſe. Wherefore it was adjudged for the Defendant. (29) Ante 335. 6.

Gybſon *verſus* Brook Executor of Brook.

Trin. 43 El. rot. 1822.

DEbt. Upon Demurrer, the Caſe was; Gybſon had a Judgement againſt Brook, as Executor, to recover 60 l. de Bonis Teſtatoris, and 6 l. for Damages de Bonis Teſtatoris, ſi, &c. Et, ſi non de Bonis propriis. Whereupon a Fieri fac. was awarded, and the Sheriff returned Nulla habet Bona. And afterwards upon a Teſtatum, that the Executor had Aſſets in London the day of the Writ purchaſed, which he had ſince waſted, a ſpecial Fieri facias was awarded to the Sheriff of London to enquire thereof, who returned an Inquiſition, whereby it was found, that he had Aſſets upon the day of the Writ purchaſed, and that he had waſted them, whereupon a Scire facias was awarded againſt the Executor. (30) Owen 132. Poſt. 886. Ann. 530. 1 Cr. 519.

Quare Executionem habere non debet de Bonis propriis Defendentis. The Defendant quoad the 6 l. for the Damages confeſſed, the Plaintiff ought to have Execution; And quoad the 60 l. Quod plene Adminiſtravit before the day of the firſt Writ purchaſed, Et quod non convertit bona, &c. ad uſum ſuum proprium. And it was hereupon demurred, and reſolved, that this Return and Inquiſition taken by the Sheriff ſhall not conclude him, but that he may well travers it: for otherwiſe he ſhould be without remedy; For he cannot have an Action upon the Caſe againſt the Sheriff, for he returned but that which was found by the Jury. And an Attaint lieth not; becauſe it is but an Enqueſt of Office, and he is brought in by a Scire facias to Anſwer, and other anſwer he cannot have. And as to the doubleneſs of the Plea, whereto Exception was taken, it was held to be ſingle enough; for there be two matters objected unto him, both which he ought to anſwer. And the Plaintiff hath Election to take Iſſue upon any of them. Wherefore it was adjudged for the Defendant. Note, That the Caſe of Waſtney, and Whitmore, in 33 Eliz. in *Banco Reginæ* was cited to be adjudged accordingly.

Poſt. 872. 48.

Johnſon *verſus* Burton, & Shut.

Trin. 43 Eliz. rot. 1041.

(31) TReſpaſs of Battery in ſuch a Pariſh, and Ward in London. The Defendant Juſtifies in the County of Cambridge, and arreſting him there by Warrant from the Sheriff there, and Traverſeth the Battery in the Pariſh, and Ward in the County mentioned: And for this cauſe it was demurred, and adjudged for the Plaintiff, that the Travers was ill to Travers the Place, but he ought to have Traverſed the County.

Ant. 842.

Auſten *verſus* Willward, and two others.

Hill. 43 Eliz. rot. 1694.

(32) TReſpaſs of Battery. Two of the Defendants plead de ſon Aſſault Demeſn. The third pleaded Not-guilty. Both Iſſues were found for the Plaintiff, and ſeveral Damages found againſt them, who pleaded ſeverally, and Ruled to be ill: For it is one joynt and entire Offence by the Plaintiffs Action; And when all are found equally guilty, the Damages ought to have been entire. But if in Treſpaſs againſt divers, the one be found guilty in part, and the others in all, there the Damages ſhall be ſeveral. 2 H. 4. 11.

Co. 11, 7. a.
2 Cr. 118.
1 Cr. 243.
Co. 11. 7.
1 Cr. 55.

Monnop *verſus* Thomas. Paſch. 43 Eliz, rot. 837.

(33) SEcond Deliverance upon a Diſtreſs taken for an Amercement in a Leet. The Parties were at Iſſue, whether C. and H. were Afferratores Curiæ prædictæ, and tried per pais. And for this Cauſe Exception taken; For it was ſaid, that it ought to have been tried by the Record: And of that Opinion was the Court

Court upon the firſt Motion; becauſe a Lete is a Court of Record. Vid. 27 H. 6. Trial 11.

Taylor *verſus* How.

(34)

ACtion for theſe Words, He (innuendo the Plaintiff) is not worthy the Office of a Conſtable; For he, and his Company, the laſt time he was Conſtable, ſtole five of my Swine, and eat them. After Verdict for the Plaintiff, It was moved by Yelverton, That the Declaration was not ſufficient; For the words, He is not worthy, &c. may be ſpoken of any other, and the innuendo will not help it; Alſo he doth not ſay, that he ſpake the words, in præſentia, & auditu aliorum, and if it were otherwiſe, it is not any ſlander. But all the Court held, that the Action well lay; For hic & ille make a Demonſtration, what perſon he intended; and it is alſo alledged, that he ſpake de Querente thoſe Words, &c. The word alſo Quod palam, & publice promulgavit, imply, quod fuit in præſentia, & auditu, &c. For it is not palam, unleſs it be in in præſentia, & auditu aliorum. Wherefore it was adjudged for the Plaintiff.

Johnſon *verſus* Barley.

(35)

GRantee for life of a Rent takes a Leaſe for five years of the Land, the five years expire. The Queſtion was, Whether the Grantee might afterwards diſtrain for the Arrearges incurred during the five years? And all the Court held, that he could not.

Sir Hugh Portman *verſus* Sir Gervaſe Cliſton.

(36)

IT was held by the whole Court, That upon a Warranty againſt Feoffor, and his Heirs, or J. S. and his Heirs, or the Grandfather, or great Grandfather of the Feoffor, and his Heirs, no Warrantia Chartæ lies, unleſs that Dedi be within the Deed, which implies a general Warranty, Poſt. 864.

Goodman *verſus* Fountain. Hill. 43 El rot. 2709.

(37)

ASſumpſit. Whereas on the ſecond of July, 42 Eliz. in Conſideration of 6. pence given by the one to the other, they aſſumed, &c. to ſtand to the Award of J. S. for all Matters and Controverſies depending between them, ſo as the Award be made before the laſt day of Septemb. following. And alledges in facto, That J. S. 20 Septemb. 42 Eliz. made an Award de, & ſupra præmiſſis, viz. That all Actions and Controverſies betwixt them ſhould ceaſe and the one ſhould pay to the other 40 s. &c. Upon Non aſſumpſit, pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, that this Arbitration was void; Becauſe the Award is made of more, then was ſubmitted; For nothing was ſubmitted, but the Actions, and Controverſies depending at the day of the Submiſſion, and they have made an Award for Controverſies depending at the day of the Award, which is long time after. But without Argument (abſente Anderſon) it was reſolved to be good; Becauſe it is de, & ſupra præmiſſis, which were the things, whereof the Submiſſion was; And although the Award ſeemeth to extend 1 Rol. 258. Ante 13. 344. Co. 10. 132. Ant 344. 2 Cr. 353.

to

to moze then the Submiſſion, yet the woꝛds, de & ſupra præmiſſis, reſtrain it to the thing ſubmitted. Wherefoꝛe it was adjudged foꝛ the Plaintiff.

Cotton *verſus* Wale. Hill. 38 Eliz. rot. 1603.

(38) Moor. 636. 2 And. 175. St. 23 H. 6. c. 19. Debt upon an Obligation of 40 l. made unto the Plaintiff, Sheriff of the County of Cambridge, foꝛ the appearance of a Stranger arreſted upon a Capias out of the Common Bench. The Defendant pleaded the Statute of 23 H. 6. cap. 10. and, that he had not ſufficient within the ſame County, and therefoꝛe the Bond was void. And it was thereupon demurred, and, after Argument, the Obligation was adjudged to be good enough; foꝛ at the Common Law the Sheriff was not compellable to take Bayl of any; And the Statute compells him to Lett to Bayl, ſo as Sureties ſufficient within the ſame County be tendꝛed him. But that is foꝛ his own Indemnity, that he may have the body of the Priſoner at the day, otherwiſe he is amerceable, and he by this means may have recompenſe againſt the Sureties; ſo the ſufficiency of the Sureties is only foꝛ his benefit, which he may wave, if he pleaſe, and may take what other Surety he thinks fitting; and therefoꝛe it hath been adjudged, that if he takes but one Surety, it is well enough, and that is the benefit of the Party arreſted: And therefoꝛe it is not reaſon, that the Obligation ſhould be void foꝛ this cauſe; and the Statute is, That any Obligation, taken in any other foꝛm then is there preſcribed, ſhall be void foꝛ this cauſe; & within the Statute are thꝛee foꝛms to be obſerved. Firſt, That it ſhall be made to the Sheriff himſelf. Secondly, That it ſhall be made unto him by the name of his Office. Thirdly, That it ſhall be only foꝛ appearance at the day. But here the ſufficiency of the Surety is Matter, & not Foꝛm; Foꝛ defect whereof the Statute wills not, that the Obligation ſhould be void, Wherefoꝛe it was adjudged foꝛ the Plaintiff. Vide ante, Ante 808. 852 Sir Gerveſe Clyſtons Caſe *verſus* Web, and Blackbourn *verſus* Michelbourn, Mich. 43 & 44. B. R. Pl. 19.

Ant. 808.

Cooper *verſus* Gooderich, Trin. 40 El. rot. 1259.

(39) Replevin. Upon a ſpecial Verdict, the Caſe was; The Defendant, as Bayliff of the Maſter, and Fellows of Emmanuel Colledge, made Conuſance foꝛ Rent granted unto them in Fee by Indenture; Where the Iſſue was Non conceſſit, and the Jury found, that the Grantoꝛ granted it by the Deed, and delivered that Deed to a Stranger to their uſe, and they ſealed the Conter-part of that Indenture. The Queſtion was, Whether a Stranger, without Letter of Attoꝛney from them to receive it, might receive the Deed to their uſe? And it was held by all the Court, that he might, and that this Enſealing of the Counter-part was a ſufficient Argument, and as well as if they had made a Letter of Attoꝛney; And if they had not ſealed the Counter-part, but had brought an Action upon it, that had made the Grant perfect. Wherefoꝛe it was adjudged foꝛ the Defendant.

Lewes *verſus* Ridge. Trin. 43 El. rot. 3401.

COvenant. The Caſe was ſuch; The Defendant, being ſeiſed of Land in Fee, Lett it for Life, Remander for Life, rendring Rent, and afterwards acknowledged a Statute, and after that by Indenture bargained, and ſold the Reverſion, and Covenanted with the Bargainee, his Heirs, and Aſſigns, that it ſhould be diſcharged within two years of all Statutes, Charges, and Incumbrances, excepting the Eſtates for Life. The Statute is extended, and thereupon this Reverſion, and Rent was extended. The Bargainee grants this Reverſion to the Plaintiff, who, for not diſcharging of this Statute, brings Covenant. And, all this matter being diſcloſed by the Count, it was thereupon demurred. The Queſtion, principally moved, was, Whether the Plaintiff, as Aſſignee, ſhall have benefit of this Covenant made to the Bargainee by the Common Law? or by the Statute of 32 H. 8. But, becauſe the Covenant was broken before the Plaintiffs Purchaſe, the Land being then in Extent, and ſo a thing in Action, which could not be transferred over, it was adjudged for the Defendant, that the Action was not maintainable againſt him. And here the Court held clearly, that the Statute of 32 H. 8. doth not extend to Covenants upon Eſtates in Fee, or in Tail, but only upon Leaſes made for Life, or for Years, and therefore this Aſſignee was out of the Statute. But for the other matter principally, it was adjudged ut ſupra. (40) 32 H. 8. c. 34. Co. Litt. 215. a.

Brome *verſus* Carr. Hill. 42 El. rot. 621.

EJectione Firmæ upon a Leaſe of one Thimblethorp. Upon Not guilty pleaded, a ſpecial Verdict was found, that it was Covenanted by Indenture, that a Fine ſhould be levied of ſuch Land to the Uſe of Thimblethorp, upon Condition, that if he paid not ſuch a Sum, upon ſuch a day, that it ſhould be to the Uſe of Chetham, and his Heirs. The Fine was levied, and before the day of payment Chetham releaſed to Thimblethorp all his Right in the Land and all Demands. But they found, that the Releaſe it ſelf was not ſhewn unto them, but a Copy thereof. And whether the finding of this Releaſe by the Jury in this manner (it not being ſhewn unto them) were good, or not? was the principal Queſtion. And all the Court held, that this Releaſe might well be found in this manner to defend a Poſſeſſion; As Tenant in Dower may plead a Releaſe to her Baron without ſhewing it; and the Jury in Aſſiſe may find a Condition for the avoiding of a Free-hold without Deed. A ſecond Queſtion was, Whether this Releaſe by Chetham, before the Condition broken, be ſufficient to diſcharge the future Uſe to Chetham? Quære 7 H. 5. 5. (41) Co. Litt. 225. b. 227. b.

More

More and Baker, *verſus* Morecomb.

Trin. 43 Eliz. Rot. 1159.

(42) Moor. 645. DEbt upon an Obligation, Conditioned to deliver to the Plaintiff, before ſuch a Feaſt, ſuch a Ship, and all the Tackling thereto, or in default thereof, to pay at the ſame Feaſt ſuch a Sum, as John Norris, and J. S. ſhall value them to be worth. The Defendant pleaded, that before the ſaid Feaſt, the ſaid J. N. and J. S. did not make any valuation of them. And it was thereupon demurred, and reſolved by all the Court for the Plaintiff; for, although he hath Election to do the one, or the other, yet, the Condition being for his benefit, he ought to provide that the value ſhould be aſſeſſed, otherwiſe he is to deliver the Goods themſelves; for if one be obliged to make ſuch an aſſurance of ſuch Land, as the Counſel of the Obligee before ſuch a day ſhall adviſe, or to pay there, and then 100 l. if the Counſel deviſe not any Aſſurance, he ought to pay the 100 l. For, it being to his advantage, when it is performed, he ought to provide, that he performs the one. And Walmſley ſaid, if one be obliged to pay 20 l. before the firſt day of May, or to marry A. S. before the firſt day of Auguſt next enſuing, if he doth not pay the 20 l. before the firſt day of May, and A. S. dies before the firſt day of Auguſt, ſo as the Condition is become impoſſible by the Act of God in this part, yet the Ante 399. Obligation is forfeited, becauſe he hath undertaken to perform the one of them, and it was his folly, that he did not perform it when it was in his power and election to have done it. Wherefore, &c. And afterwards it was adjudged for the Plaintiff. Vide Ant. 716. ante, Mich 41 & 42 Eliz. Lamb *verſus* Brownwent. Pl. 41.

Rant *verſus* Cock. Mich. 43 & 44 Eliz. rot. 226.

(43) WArrantia Chartæ. And counts upon the Warrant of Dedi, & Conceſſi tantum. The Defendant demanded Oyer of the Deed: And it appears, that in the Deed there is alſo a ſpecial Warranty againſt the Feoffor, and his Heirs, and againſt the Heirs and Aſſignes of the Father of the Feoffor. And it was demurred upon the Count. The Queſtion was, Whether the ſpe- Ante 861. cial Warranty ſhall control the Generality, and expound it, or Co. Litt. 384. a. not? And it was reſolved, that it ſhould not. Wherefore it was adjudged for the Plaintiff.

Mich. 43 & 44 Eliz. in Camera Scaccarii.

John Morgan Wolf *verſus* Stepney.

Hill. 42 Eliz. rot. 693.

(44) Hob. 327. EEror of a Judgment in an Action upon the Caſe for Words. The Error aſſigned was, Becauſe the Action was brought

verſus

verſus John Morgan Wolf, and the Judgment was, Quod recuperet *verſus* prædictum Morganum, whereas that was neither his Chriſtian, or Surname: For Johannes Morgan is his Chriſtian name, and Wolf is his Surname. But all the Juſtices beſides Anderſon and Walmſley (who held it to be Error for this Cauſe) reſolved it to be well enough: For it is his name whereby he is known, and parcel of his Surname, or his entire Surname; and Wolf is but an addition, and therefore good enough, and Judgment well given: and if it were not good, it is clear that it is amendable; for it is but the fault of the Clerk, which is amendable by the Common Law, or at leaſt wiſe by the Statute of 8 H. 6. And to that purpoſe Preſidents were ſhewn, where in point of Judgment there had been the like amendments, viz. Hill. 39 Eliz. rot. 103. betwixt Ognel, and Joyner; where the Judgment was Quod Henricus Joyner recuperet 10 l. aſſeſſed per Juratores, & 5 l. eidem Henrico Skinner de incremento: So his Surname miſtaken, and it was amended by order. Alſo Mich. 33 & 34 Eliz. rot. 236. betwixt Thomas Wylde, and John Wheeler, The Judgment was Quod prædictus Tho. recuperet verſus prædictum Thomam, where it ſhould have been Johannem, and it was amended. And Mich. 32 & 33 Eliz. rot. 2140. Maſſy *verſus* Read Stafford. Wherefore upon theſe, and other Preſidents ſhewn, it was awarded to be amended, and the Judgment was affirmed. 2 Cr. 632. Hob. 327. 2 Cr. 632. Ant. 49-. Hob. 327. Ant. 497. Hob. 327.

Price *verſus* Jenkings.

(45) ACtion for Words, and declares, that the Defendant ſpake theſe words in Welſh (reciting them particularly) ſignifying hæc Anglicana verba, Thou haſt murdered thy Wife. After Verdict, & Judgment for the Plaintiff, Error was brought, and aſſigned in hoc, that it is not averred, that the words were ſpoken in the company of Welſhmen, or of ſuch, who underſtood the Welſh tongue. But it is alledged, that they were ſpoken in præſentia, & auditu quamplurimorum ſubditorum Dominæ Reginæ. And the Action was brought in the County of Monmouth, which was once parcel of Wales, but was now an Engliſh County. And all the Juſtices, and Barons held, that for this Cauſe it was erroneous: For it ſhall not be intended that any there underſtood the ſaid Tongue, unleſs it had been ſhewn, & then it was not any ſlander, no more then if one ſpake ſlanderous words in French, or Italian, an Action lies not, unleſs it be averred, that ſome there preſent underſtood thoſe Languages, as it was held in the Caſe betwixt Johns, and Daux, Mich. 38 & 39 Eliz. in B. Reginæ, quod vide ante, Plac. 16. But becauſe the Damages were found to 50 l. and if the Plaintiff ſhould begin de novo, he might not have peradventure ſo great Damages, they moved him to accept of 10 l. & to make an end without further Proceedings; And ſo it was done, and no Judgment entred. Ant. 496. 7.

Gramvel *verſus* Rhobotham.

(46) ACtion ſur Trover of divers Goods, &c. The Defendant pleaded Not-guilty: And after Verdict, and Judgment for the Plaintiff, Error was thereof brought. And the firſt Error aſſigned was, Becauſe he declares inter alia de uno quater, grani, Anglice

Milne corn, where it ought to have been Quarterium: for Quarter is not any Word. Secondly, he alledgeth, that he was poſſeſſed de una parcella piſcium Anglice Lings, and it is not alledged what parcel: And for theſe Cauſes it was held to be ill. And Damages being intirely given reverſable in all. Thirdly, becauſe the Iſſue being Not-guilty, the Jury did not find that he was Guilty: But Quod detinet, and converted them to his uſe, which Tant amount, but becauſe it is not found according to the Iſſue; It was held to be ill: But it was conceived by ſome of the Juſtices, that it was amendable, if it might appear by the examination of the Clerk of Aſſiſe, that the Verdict was found generally for the Plaintiff. But they would adviſe.

Co 5. 34. B.

Ant. 854.

Comb *verſus* Carew, and Day. Trin. 42 Eliz. rot. 806.

(47) TReſpaſs of Battery: One of the Defendants pleaded Not guilty: The other Juſtified. The Iſſue againſt him was de ſon Tort Demeſn, and one Ven. fac. was awarded to try theſe Iſſues: And it was found for the Plaintiff, and Judgment accordingly, and Error thereof brought: The firſt Error aſſigned was, becauſe but one Ven. fac. was awarded to try theſe two Iſſues. Sed non allocatur: For it is uſual, &c. Secondly, becauſe the Plaintiff declared to his damage of 40 l. and the damages aſſeſſed by the Jury were 35 l. and the Coſts increaſed by the Court, were 6 l. So the Plaintiff had Judgment to recover 41 l. which is more, then whereof he declares. Sed non allocatur: For the Damages found by the Jury, being leſs then he counts, although the Coſts amount to more, it is not material. Thirdly, becauſe a Juror was returned in the Ven. fac. and Diſtringas, John Weſcot: And in the Nomina Juratorum who were ſworn at the Niſi prius, he was named Philip Weſcot, ſo another Perſon then was returned upon the Ven. fac. And this Error was aſſigned ore tenus, and it was held to be a manifeſt Error: And that it is not examinable, whether he were one and the ſame perſon, or not, there being a Miſpriſion in the Chriſtian name. Wherefore it was Reverſed.

Ante 544.
Ante 57.

Wright *verſus* Wright.

(48) EJectione firmæ, Of a Leaſe made apud Abingdon of an Houſe in Burgo de Abingdon. The Defendant pleaded Not-guilty, and a Ven. fac. was awarded de vicineto de Burgo de Abingdon, and thereupon a Trial had, and Judgment for the Plaintiff: And the Error aſſigned, becauſe the Ven. fac. ought to have been de Abingdon. Sed non allocatur; for it ſhall be intended to be all one. Wherefore the Judgment was affirmed.

R. 43.

Batemans Caſe *verſus* Elman. Trin. 39 Eliz. rot. 416.

(49) DEtinent, and Counts, That he 16 Febr. 36 Eliz. delivered to Defendant divers parcels of Plate, viz. a Baſon and Ewer, a ſilver Bowl, and divers other parcels to be reſtored upon the 17 May, enſuing. And that the Defendant detained them, &c. The Defendant plead Non Detinet. The Jury find a ſpecial Verdict, That the Plaintiff was poſſeſſed 16 Febr. 36 Eliz. and by Indenture betwixt him, and the Defendant, bargained, and ſold to the Defendant

Defendant divers parcels of Plate, modo & forma, prout in the Indenture, cujus tenor ſequitur in hæc verba, and found it verbatim, wherein the Baſon and Ewer, the ſilver Bowl, and all the parcels expreſſed in the Declaration are mentioned upon Condition, That if he paid ſuch a Sum upon the 17 May following, That the bargain and ſale ſhould be void. They found payment of the Money at the day; but that there was then a Memorandum indorſed upon the Indenture, by the aſſent of them both; that if the Plaintiff payd ſuch a Sum the 1 June 36 Eliz. that he ſhould have them again: But the payment of the Sum upon the 1 June 36 Eliz. was not found. And they found, that the Defendant had the Goods. Et ſi ſupra, &c. The firſt Error aſſigned was, That the Ven. fac. was in Placito Debiti. Sed non allocatur. For ſo is the uſual courſe to enter Warrants of Attorney, or Eſſoyns upon this Writ in Placito Debiti, which proves it to be all one. A ſecond Error aſſigned was upon the matter in Law, becauſe here is not any delivery by Bailment, but by Bargain and Sale. But it was held to be well enough: For, the Condition being performed, he ought to have them again, and then deteining is a Tort. A third Error was, becauſe the Jury did not find the Parcels in the Declaration to be the ſame with the Indenture, but only that he ſold divers parcels, which, although they be all one in name, may notwithſtanding be ſeveral, and intendment will not help it: And of that Opinion was all the Court. Wherefore the Judgment for this cauſe was reverſed.

Savil *verſus* Roads.

(50) DEbt upon an Obligation in London, againſt John Savil of Wakefield in Comitatu prædicto, Conditioned for the payment of 100l. at Wakefield. The Defendant pleaded payment of the 100l. at Wakefield prædict. in Comitatu Eborum. The Plaintiff ſaith, Non ſolvit. And thereupon they were at Iſſue, and the Tryal was de vicineto de Wakefield in Comitatu Eborum. And for this cauſe the Error was aſſigned, for that he is named of Wakefield in Comitatu prædicto, which is to be intended in London: And when he pleads payment at Wakefield prædictum, It is to be intended at Wakefield in London: And when he adds in Comitatu Eborum, they be idle, and void Words, becauſe repugnant to the firſt. Wherefore the Tryal is ill, and for this cauſe it was Reverſed.

Termino Hillarii,

Quadrageſimo quarto ELIZABETHÆ,

in Banco Reginæ.

Waldo *verſus* Lambert.

Paſch. 43 Eliz. rot. 276.

(1) Noy. 40. 2 Cr. 419. Moor. 852.

ACtion upon the Caſe againſt the Defendant, Sheriff of South-hampton; For that, whereas the Plaintiff had ſued a Latitat againſt one Arthur Lake, who was indebted unto him in ſuch a Sum by Bond, to the intent that he being arreſted, and having put in Bail, according to the courſe of the Court, he might declare againſt him for that Debt; And that this Writ being delivered to the Defendant, being Sheriff of the County of Southampton, for that intent, and he arreſted him, and afterwards at Weſtminſter, in the County of Middleſex, ſuffered the ſaid Lake to eſcape. The Defendant pleads, That he arreſted him according as the Plaintiff hath declared: But that afterwards in the ſame County, he reſcouſſed himſelf there per gents de County, abſque hoc, that he ſuffered him to Eſcape at Weſtminſter. And it was hereupon demurred, and adjudged to be no Plea: For the Sheriff at his peril ought to keep his Priſoner, and may take ſufficient power of his County, to Arreſt any one upon mean Proceſs: And although it was allowed a good return here, and Proceſs ſhall be awarded againſt the Reſcouſſers to puniſh them; Yet this is no anſwer in an Action brought againſt him for ſuch an eſcape: Alſo the Traverſing of the Place of the Eſcape is not good; For he cannot by the Travers make the place material. Wherefore it was adjudged for the Plaintiff. Nota, Hill. 14 Jacobi, *Mays* Caſe adjudged, that where the Sheriff returneth Reſcous upon a mean Proceſs, this is a good Plea in an Action upon the Caſe.

2 Cr. 419. 1 Rol. 807. Moor. 852.

2 Cr. 420. Ante 99. 2 Cr. 419.

Dell *verſus* Fereby.

(2) Ante 561.

ERror of a Judgment in Norwich in an Aſſumpſit. The firſt Error aſſigned was for that the Conſideration is not ſufficient to maintain the Action: For it was, whereas the Plaintiff had proſecuted ſuch a Sute in Norwich; and they were at Iſſue, That in conſideration he would ſtay ab ulteriori proſecutione Sectæ prædictæ. The Defendant promiſed him to pay all his Charges, and Expences laid out therein. And alledgeth in facto, That he no further proceeded in that Sute: And that he had expended there-

in

in ſuch Sums, and that the Defendant had not paid them. It was moved, That this matter was not ſufficient to ground an Action: For, although he hath not proceeded in the Suit, yet he may when he pleaſe, ſo there is not any cauſe to bind the Defendant to pay any thing for it. And to that purpoſe cited a Caſe to be adjudged, Trin. 36 Eliz. rot. 52. in the Common Pleas, between Morſe, and Roſs, That ſuch a Conſideration was adjudged inſufficient to ground an Action: But all the Court here held it to be good enough; For the ſtaying of the Tryal of a Cauſe is ſufficient to ground an Action, eſpecially for the Charges expended, and denied the Law to be ſo in the Caſe before cited. Secondly, It was moved, that the Declaration was ill, becauſe there was not any Place ſhewn, where the Expences were laid out. Sed non allocatur: For, it being in proſecutione ſectæ prædict. It ſhall be intended to be in the ſame Court. This alſo is but an inducement to the Action, wherefore the Judgment was affirmed.

Ante 261.

Ant. 561.

Heyward *verſus* Lypſon.

(3)

ACtion upon the Caſe againſt the Defendant, naming him Mercatorem extraneum. The Parties were at Iſſue, and a Ven. fac. awarded, and all Deniſens returned, becauſe the Defendant did not pray it to be de medietate linguæ. And at the Niſi prius in London, before Popham, Chief Juſtice, Exception was taken to this return for this Cauſe: And he held it to be good cauſe of Exception, and therefore would not try it. And it was now moved in the Queens Bench; And Gawdy and Fenner held clearly, that the Ven. fac. was well awarded, and returned of all Indigenis: Becauſe the Defendant, in whoſe advantage the de medietate linguæ ſhould be awarded, did not except thereunto at the awarding of the Writ, nor prayed, that it might be awarded de medietate linguæ; for the Court without his prayer cannot take Conuſance, that he is Alienigena. But Popham held that it was not well awarded, becauſe the Plaintiff in his Declaration hath named him Marcator extraneus: So as he, having taken Conuſance, that he is a Stranger, ought at his peril to take his Ven. fac. accordingly, as it is where a Baron, or Peer of the Realm is ſued, if no Knight be returned, he may take advantage thereof at the time of the Trial: And peradventure the Defendant here did not know of the manner of the return, until the time of the return; wherefore it is reaſon, that he now ſhould take advantage thereof. But Gawdy and Fenner held, That the Caſes were not alike: For there the Defendant might not pray ſuch a return: And the Plaintiff might take Conuſance, how the return ought to be, and that it is a privilege for the Defendant, whereof he may take advantage at the time of the Trial. And the naming of him Merchant Stranger is not material, if it ſhould not have been ſo done, if ſuch Addition had not been. Wherefore they awarded the Ven. fac. to be good, and the Trial, to be thereupon. And Gawdy ſaid to the Defendants Counſel, That if they conceived the Law to be otherwiſe, they might try it in a Writ of Error, ſo as the Law might be certainly known. And it was ordered accordingly. Vide 19 Eliz. Dyer, 357.

Co. Lit. 156. a.

Waller

Waller *verſus* Croot, Trin. 43 Eliz. rot. 674.

(4) DEbt upon an Obligation Conditioned, That if the Plaintiff injoyed ſuch Land until the full age of J. S. and if J.S. within a Moneth after his full age, made an Aſſurance to the Plaintiff of the ſame Land, that then, &c. The Defendant pleads, that J.S. is not yet of full age: And becauſe he did not anſwer, whether he had enjoyed it in the mean time, and the Condition is in the Copulative; it was adjudged for the Plaintiff.

Clerk *verſus* James, Hill. 43 Eliz. rot. 455.

(5) ERror of a Judgment in the Common Bench, The Error aſſigned was, becauſe in an Action of the Caſe for Words, for calling him Thief, apud D. in Com. Eſſex. The Defendant Juſtifies, becauſe the Plaintiff had committed a Robery apud Worthington within the ſame County. The Iſſue was de ſon Tort demeſne ſans tiel cauſe. And the Ven. fac. was awarded from D. where the Words were ſpoken, and a Trial thereupon, and held to be ill: And a new Ven. fac. awarded from the Vine of W. where he Juſtified, and a Verdict thereupon for the Plaintiff, and Judgment thereupon: And now Error thereof brought, becauſe the Ven fac. was as well to be awarded from D. as from W. Sed non allocatur: For by the Juſtification the Words are confeſſed, and the Iſſue is only upon the Cauſe. Wherefore the Trial is good, and the Judgment was Affirmed.

Yelv. 49. 2 Cr. 43. Ant. 195.

Ledeſham *verſus* Lubram, Hill. 40 Eliz. rot. 116.

(6) ACtion ſur Trover of ten Angels, and converting them. The Defendant pleads, That there was a Wager betwixt the Plaintiff, and one Currance, concerning the Quantity of Yards of Velvet in a Cloke: And the Plaintiff, and the ſaid Currance, each of them delivered into his hand ten Angels, and each of them agreed, That if there were ten Yards of Velvet in the Cloke, that then they ſhould be delivered to the ſaid Currance. and if not, to the Plaintiff: And alledgeth in facto, that upon meaſuring of the Cloke, it was found that there were ten Yards of Velvet therein: Whereupon he delivered them to the ſaid Currance, which is the ſame Converſion, &c. And it was thereupon demurred, and agreed; Firſt, that an Action of Trover lies of Money out of a Bag, or Cheſt: But for the Plea, Gawdy held it to be good enough; For the meaſuring thereof is the fitteſt way for the trying it: And when it is ſo found by the meaſuring, he had good cauſe to deliver them out of his hands to him, who had won the Wager. But Fenner and Popham held, that the Plea was not good: For it may be, that the meaſuring was falſe, and therefore he ought to have averred in facto, that there were ten Yards, and that it was ſo found upon the meaſuring thereof. And he might well have pleaded the General Iſſue, and given all the matter in Evidence; For it is but Evidence: And when he delivered it according to the intent of the Bargain, it is not any Converſion. Wherefore by the aſſent of Gawdy (abſente

Ant. 319.

te Clinch it was ruled, That Judgment ſhould be entred for the Plaintiff, unleſs other matter were ſhewn, &c.

Pain *verſus* Rocheſter, and Whitfield.

Trin. 41 Eliz. rot. 379.

(7) COnſpiracy for procuring him falſo, & malitioſe, to be endicted of ſuch a Robbery, and to be deteined in Priſon until he were acquitted, &c. The Defendants pleaded, that they were robbed upon the High way by perſons unknown, whereof one of them rode upon a Brown Gelding; and that they made Hue, and Cry and could not find them: And that afterward, Whitfield, one of the Defendants, came to ſuch a Town, where the Plaintiff was, and he well obſerving him, ſuſpected him to be the Felon, who was upon the Brown Gelding, and went to the other Defendant Rocheſter, and ſhewed him his Suſpition: And he coming, and ſeeing him, had the ſame Suſpition: Whereupon they repaired to one Sams a Juſtice of Peace adjoyning, and obtained his Warrant to bring the Plaintiff to be examined, who having notice thereof, abſented himſelf, ſo as he could not be apprehended, and that afterward Juſtice Gawdy, upon complaint unto him by ſome of the Plaintiffs friends, examined the matter, & thereupon committed the Plaintiff to Gaol in Eſſex, and adviſed the Defendants to exhibite a Bill of Endictment for that Robbery. Whereupon they exhibited the Endictment in the Declaration, upon which he was Endicted, &c. Quæ eſt eadem conſpiratio & procuratio de Endict. &c. And it was thereupon demurred. Hobart for the Plaintiff moved, that Pl.C.46.a. the Plea was not good: Firſt, becauſe they do not alledge any ſufficient cauſe of Suſpition, but their own Jealouſie. Secondly, becauſe it is not ſhewn, what Evidence was given to the Endictors (viz) whether it was more then was ſhewn before. Thirdly, becauſe in their Plea they ſpake nothing of the Impriſonment. But all the Court reſolved it to be good enough: For their cauſes of Suſpition, and abſenting of himſelf, after notice of the Warrant, are cauſes ſufficient, and he need not ſhew what Evidence was given: And the Impriſonment need not be anſwered, when the Endictment is grounded upon good Cauſe. But Gawdy doubted whether it were a Plea, becauſe it amounts to a Non Culp. For it is not any Conſpiracy at all. But the other Juſtices held, that it was a good Plea per doubt del lay gents: For that he confeſſed the procurement of the Endictment, and avoided it by matter in Law; eſpecially the Demurrer being general, he ſhall not take advantage thereof. Wherefore it was adjudged for the Defendant. Mich. 44, & 45. Plac. 4.

Colgate

Colgate *verſus* Bacheler.

Mich. 43 & 44 Eliz rot. 3217.

(8) Owen. 143. DEbt upon an Obligation Conditioned, That if R. B. Son of the Defendant do at any time on this ſide, or before the Feaſt of St. John Baptiſt, which ſhall be in the year 1604. either as Apprentice, or Servant, or for himſelf as Maſter, or otherwiſe, uſe the Trade of an Haberdaſher, within the County of Kent, Cities of Canterbury, or Rocheſter, if then the within bounden R. B. do upon requeſt pay unto the Plaintiff 20 l. That then the Obligation ſhall be void. The Defendant after Oyer of the Condition pleads, that the Obligation and Condition were againſt the Law, where-
Co. 11. 53. b. upon it was demurred in Law, and after argument it was reſolved by the Court, that this Condition is againſt Law, to prohibit or reſtrain any to uſe a Lawful Trade at any time, or at any place: for as well as he may reſtrain him for one time, or one place, he may reſtrain him for longer times, and more places, which is againſt the benefit of the Common-wealth; For being Freemen, it is free for them to exerciſe their Trade in any place. And although it were alledged, that here he is not prohibited or obliged abſolutely, that he ſhall not exerciſe the Trade of an Haberdaſher: but that if he exerciſe it, that he ſhall pay to the Plaintiff 20 l. And ſo it differs from the Caſe 2 H. 5. 5. b. Yet the Court ſaid, it was all
Co. 11. 53. b. one: For he ought not to be abridged of his Trade, and Living. Wherefore it was adjudged for the Defendant.

Flud *verſus* Penington.

Mich. 43 & 44 Eliz. rot. 834.

(9) Ant. 860. SCire fac. Upon a Judgment in Debt againſt Terr-Tenants, The Sheriff returns, Quod Scire feci J. B. tenenti unius Meſſuagii, &c. And the ſaid J. B. comes, and pleads, That he is not Tenant, againſt the return of the Sheriff. And it was thereupon demurred, and adjudged for the Plaintiff, that it was not any Plea, and that the Plaintiff might have taken Execution at his Peril.

Sir

Sir William Clerks Caſe,

ACtion upon the Caſe; for that one J. S. being Out-lawed at the Plaintiffs Sute, and a Capias Utlagatum awarded againſt him, directed to the Defendant, Sheriff of the County of Bucks, returnable at ſuch a day, &c. And becauſe he did not return the Writ, The Action was brought, and Judgment againſt the Defendant, by Non ſum Informatus; and upon a Writ of Inquiry of Damages, Damages found to 40 l. And now Williams moved in Arreſt of Judgment, That an Action lies not for not returning of the Writ: But he ſhould be only amerced for his contempt. And of that Opinion were Walmſley, and Warberton. For in not returning this Writ the Queens Command is neglected, which ſhe ought to puniſh. But by Walmſley, if the party, who ſues that Writ, ſhews to the Sheriff the party, who is to be arreſted, and delivers unto him the Writ, requiring him to make the Arreſt: If he doth it not, an Action upon the Caſe lies againſt him. But here Non conſtat, whether the Party was Arreſted, or that the Sheriff could find him. Wherefore, &c. Kingſmil; although the Queen may puniſh the contempt; yet the Party, having loſs by not returning of the Writ, may have his Action alſo. And the Clerks ſaid, there were many Preſidents, that ſuch Actions have been brought. Wherefore, abſente Anderſon, Adjournatur. (10) Ant. 624. 5. Ant. 624. & 5.

Robinſon, Vicar of the Church of Kimbolton, *verſus* Bedel.

TRespaſs, For taking of certain Loads of Wood, ſet out for Tithes: The Defendant pleaded Not-Guilty. The Plaintiff for Evidence ſhews, that in the time of King Ed. 3. the Rectory was Impropriated, and the Vicarage then Endowed, and (inter alia) the Tithes of Wood were allotted to the Vicar. The Defendant ſhews, that for 160 years laſt paſt, there had not been any Vicar preſented there, until the Plaintiff obtained a Preſentation from the Queen by color of Lapſe. And ſo pretended, that in regard it had continued ſo long in this manner, That it reunited again to the Rectory. But the Court informed the Jury; That although a Vicarage is always taken out of the Parſonage, and for the neceſſity thereof may be reunited to ſupply the Parſonage, yet by continuance of time in not preſenting a Vicar, which is the Default of the Parſon himſelf, it ought not to be adjudged to be a diſcontinuance of the Vicarage: But ſomewhat ought to be ſhewn of the reuniting thereof, Wherefore by the Courts direction the Jury found for the Plaintiff. (11)

Mellows *verſus* May, Trin. 43 Eliz. rot. 402.

TRespaſs upon a Special Verdict, The Caſe was; Ralph Mellows and his Wife were Tenants for Life. Afterward the Leſſor by Indenture betwixt him, and the ſaid Leſſees, and J. their Son, Dated 30 July 21 Eliz. Lett it to the ſaid Baron, and Feme, and their Son Habendum a die Datus Indenturæ for their Lives, and made Livery 23 Eliz. ſecundum formam Chartæ. And whether this be a good (12) Moor 636.

Leaſe, or void? And if it be void, Whether, notwithſtanding, it be a Surrender of the firſt Leaſe? Were the Queſtions. And it was reſolved by all the Court, That the ſecond Leaſe was void: For as much as it is Habendum a die Datus. And the Livery made ſo long time after it will not help it: But yet they held, that it was a Surrender of the firſt Leaſe: For the acceptance of the Indenture in the Contracting, and agreement to have a new Leaſe, made a Surrender of the firſt Leaſe: As if Leſſee for Life, or years, takes a Leaſe at Will of the ſame Land; and, (as Walmſley ſaid) if Leſſee for Life, or years, takes a Grant of a Rent-charge to be Iſſuing out of the ſame Land to begin preſently, it is an Immediate Surrender of the Eſtate, according to 21 H. 7. 7. And it was adjudged accordingly.

Ant. 585.

The Biſhop of Hereford *verſus* Scory.

Trin. 43 Eliz. rot. 1039.

(13) SEcond Deliverance. The Defendant avows for Dammage-Feſant; for that the Biſhop of Hereford, Predeceſſor to the Plaintiff, Lett the place where, &c. 14 Eliz. to the Defendant, and two others, for three Lives, rendring 13 l. 6 s. 8 d. Rent, and that this Leaſe was the ſame year confirmed by the Dean, and Chapter: And avers, That it was the uſual, and ancient Rent, and the Land uſually demiſed, &c. The Plaintiff replies, That this Land was parcel of the Demeſns of ſuch a Manor, and uſually before that Leaſe, retained in the hand of his Predeceſſors for Hoſpitality, and confeſſes the Leaſe, and how his Predeceſſor died, and himſelf created Biſhop, &c. And Traverſeth Quod fuit magis uſualiter dimiſſa, &c. modo, & forma, &c. prout, &c. And it was thereupon Demurred. For it was alledged by the Defendant, That the Travers is to a matter not material: For by the Common Law a Biſhop, with the confirmation of the Dean, & Chapter, may demiſe any Land without reſerving any Rent. And the Statute of 32 H. 8. takes nothing from the Common Law, but adds more, (viz.) That the Biſhop only may demiſe Land uſually demiſed, rendring the auncient Rent, and that it ſhall be good without Confirmation, &c. And the Statute of primo Eliz. reſtrains the Common Law; That no Leaſe, or Grant, &c. by Biſhops (unleſs to the Queen) except Leaſes for twenty one years, or three Lives, whereupon the Ancient Rent is reſerved, ſhall be good. And this Statute is not a Reſtraint to any Land: And therefore it is not neceſſary by this Statute, that the Land ſhould be uſually demiſed, & therefore it continues as at the Common Law; it being then a Leaſe confirmed, is good, and the Travers ill. But all the Court reſolved to the contrary. For although at the Common Law any Leaſe by a Biſhop with the Confirmation of the Dean & Chapter were good: And the Statute of 32 H. 8. makes Leaſes good by the Biſhop only, which are made according to the Statute without any Confirmation. Yet the Statute of primo Eliz. ordains, that no Leaſe ſhall be good, unleſs it be warranted by the Statute of 32 H. 8. and outſts all Grants and Leaſes at the Common

R. 52. 103.

R. 41.

Co. Lit. 45. a.

mon

mon Law, and is a Prohibition against them. And whereas the Statute appoints, that the ancient Rent shall be Reserved, It is thereby Limited, and Intended, That the Land should have been usually Demised; for otherwise the ancient Rent cannot be paid for it. Wherefore the Travers is good, and to a point material. And Rule was given, That Judgment should be entred accordingly. Unless, &c.

Termino Paſchæ,

Anno Quadrageſimo quarto ELIZABETHÆ, in Banco Reginæ.

Bellew *verſus* Langdon, Paſch. 43 Eliz. rot. 434.

(1) Owen 114. 1 Rol. 405.

TRespaſs for breaking his Cloſe, and killing there two hundred Conies. The Defendant Juſtifies; For that he there had Common Appurtenant to ſuch an Houſe by Preſcription. And becauſe the Conies were there Damage-Feſant, he killed them: And it was thereupon demurred. Godfrey for the Plaintiff, That it is not any Plea. For the Owner of the Soil hath Intereſt in them againſt all Eſtrangers, and the Commoner hath nothing to do, but to take his Common with the feeding of his Cattle there, and he ought not to deſtroy the profit which the Owner hath therein. And as the Owner of the Soil may have other Cattle there; ſo may he have Conies, and may make Fiſh-ponds, and the Commoner cannot deſtroy them, 22 H. 6. 59. 3 H. 6. 55. And for this point in Queſtion, It was adjudged 29 Eliz. betwixt Old, & Cony in this Court; That a Commoner cannot juſtifie the killing of Conies there, &c. *Wyat* e contra, & that it is a good Plea. For the Commoner hath no other means to help himſelf but by killing them, for they be harmful to his Common, and dig, and undermine the Soyl, and take from him all the benefit of his Common, if he ſuffer them to encreaſe; And they are ſuch Creatures, whereof no man hath a property; and being eſteemed as harmful Beaſts, the Commoner may well kill them, as he may kill Foxes, or other Vermine. Wherefore, &c. But all the Court, (Popham abſente) reſolved, that the Plea was not good; for the Cony is a Beaſt of Warren, and profitable, as Deer are, and are not to be compared to Vermine. And therefore the keeping of them by the Owner of the Soyl is lawful, and the killing them unlawful, and not Juſtifiable. And it was adjudged for the Plaintiff.

Ant. 548.

Yelv. 105. 2 Cr. 195.

Holdringſhaw *verſus* Rag, Trin. 43 Eliz. rot. 1295.

(2) Owen 114.

TRespaſs for entring into his Houſe, and taking of his Goods. The Defendant pleads, Quoad the taking of his Goods, Not Guilty; Quoad Reſiduum, that the Plaintiff was indebted unto him in ſuch a Sum; And by Licence of the Plaintiffs Servant, the Dor being open, he entred to demand his Debt, which is the ſame Treſpaſs: Whereupon the Plaintiff demurred, and adjudged to be no Plea; For the Servants Licence is not to any purpoſe, and one cannot enter into another mans Houſe by color to demand his Debt, eſpecially it being not averred, That the

Ant. 246.

the Maſter, who was the Debtor, was then within the houſe. But Gawdy conceived, That if it had been averred, That the Maſter was then within the Houſe, the Plea had been good; As in the Caſe of 19 H. 6. where one entred into the Plaintiffs Park, to ſhew him his Evidence to avoid a Sute betwixt them, it was there allowed to be a good Plea. Wherefore it was adjudged for the Plaintiff. Pl.C.71.

Eden *verſus* Lloyd.

(3) ERror of a Judgment in the Common Bench. Action upon the Caſe tam pro Regina, quam pro ſeipſo; For that whereas he had a Judgment to Recover ſuch a Debt againſt J.S. And upon a Capias ad ſatisfaciendum he was out-Lawed, and upon a Capias Utlagatum the Defendant, being Sheriff, took him, and after ſuffered him to eſcape, the Plaintiff not being ſatisfied, &c. The firſt Error Aſſigned was, becauſe the Action is brought by him and the Queen, whereas it ought to have been brought by himſelf only. Sed non allocatur. For, the perſon out-lawed being ſuffered to Eſcape. It is as well in contempt to the Queen, as in prejudice to the Plaintiff, and therefore the Action brought by them both Warrantable, 30 Aſſiſ. 27 Aſſiſ. Secondly, Becauſe he recites not the whole Record, but begins at the Judgment, Quod cum recuperaſſet, &c. Sed non allocatur. For it is but a Conveyance to the Action, and therefore not neceſſary to ſhew the whole Record: But it ſufficeth to begin at that, which is the Cauſe of the Action, 19 H. 6. 34 H. 6. Thirdly, Becauſe the Action is brought in Suff. againſt the Sheriff of Suff. for Arreſting the Defendant in the firſt Action, upon the Cap. Utlagatum, and ſuffering him to eſcape: And the Defendant in the firſt Action is named of S. in the County of Norff. and the Arreſt is ſuppoſed apud S. prædict. So the Arreſt is ſuppoſed in the County of Norff. and then it is Tortious, and there cannot be any Eſcape thereupon: And this was held to be a manifeſt, and incurable Error. And therefore the Judgment was Reverſed. 1 Rol. 1.

Cox *verſus* Humphries, Hill. 44 Eliz. rot. 349.

(4) ACtion for theſe words ſpoken of the Plaintiff; His Boy (innuendo one Ambroſe Latham, the Plaintiffs Wives Son) hath cut my Purſe, and he, knowing it, hath received it. It was moved, That an Action lay not for theſe words. But adjudged, That it was maintainable, Vide Poſtea, Trin. 44 Pl. 4. Poſt. 889.

Sir Edward Cleer *verſus* Parker, Mich. 42 & 43 El. rot. 96.

(5) ERror of a Judgment in an Aſſiſe, upon a ſpecial Verdict in Suff. The Caſe thereupon was, One having three Mannors, conveyed two of them for a Joynture to his Wife, and for the preferment of his Children. And afterward made a Feoffment of the third Mannor, to the uſes and limitations of his laſt Will; All the Mannors being of equal value, and holden of the Queen by Knight-ſervice in capite. And afterwards by his Will deviſed this Mannor. And, whether it were a good Deviſe of the Entire Mannor, or of no part thereof? Was the Queſtion. And it was Reſolved, That it was a good limitation of the Entire Man- Moor 746. 2 Cr. 51.

Ant. 442. Co. Lit. 111. b. 12. a. 271. b. Moor. 567. Ant. 442.

Wannoꝛ, and that he ſhall take it not as Deviſee by the Will; But, the Feoffment being to the uſe of his Will, he ſhall take it by the limitation, and not by the Deviſe. Foꝛ he cannot Deviſe any part, having beforꝛe limited two parts in Joynture. And thereforꝛe (the Caſe being beforꝛe Popham and Clerk Juſtices of Aſſiſe) Popham took this difference, if he had made a Feoffment of all his Land to the uſe of his laſt Will, and after had deviſed that Land by his Will, the Land being holden in Capite, it is a good deviſe foꝛ two parts, and the Deviſee ſhall take by the Will, & the Law ſhall conſtrue it as a diſpoſing thereof by his Will, as Owner, and it ſhall be good foꝛ two parts, and no moꝛe; Foꝛ when the Will may be conſtrued to take effect in any part, it ſhall be good foꝛ that part. But when a Will is utterly void to convey an Intereſt, (as it is in the Caſe in Queſtion) becauſe he had beforꝛe diſpoſed of two parts by an Act executed foꝛ the benefit of his Wife, and Childꝛen, and the Statute doth not give him authoꝛity to diſpoſe of moꝛe by his Will, the Conſtruction ſhall be, that the Will ſhall not be altogether void; But that it ſhall be a limitation of the uſe upon the Feoffment, and the Deviſee ſhall take by the Feoffment; foꝛ otherwiſe he ſhould not take at all. Wherefoꝛe it was reſolved, and adjudged accoꝛdingly againſt Sir Edward Cleer. And he bꝛought a Writ of Erroꝛ, and Aſſigned Erroꝛ in this matter in Law: And it being moved, and no other Erroꝛ opened then this matter in Law, Popham, Fenner, & Yelverton (Gawdy abſente) held, that the firſt Judgment was good, and gave Rule accoꝛdingly; That the firſt Judgment ſhould be affirmed, unleſs other matter were ſhewn by ſuch a day. At which day Snig moved other Cauſes, and it thereupon was adjourned, Vide poſtea, Trin. 2. Jacob. f. 31. & 6 Co. 17. b.

2 Cr. 31.

Fountain *verſus* Rogers.

(6) Ante 621. ACtion foꝛ theſe woꝛds, Thou art a Rebell. It was demurred upon Declaration, and without Argument adjudged foꝛ the Defendant, That the woꝛds be not Actionable.

Brook *verſus* Wiſe. Mich. 43, & 44. Eliz. rot.

(7) ACtion foꝛ theſe woꝛds, Thou art a pocky Knave, Get thee home to thy pocky Wife, her Noſe is eaten with the Pox. It was moved after Verdict, that the woꝛds were not Actionable; Foꝛ it ſhall not be intended by them, that he is infected with the French Pox, and otherwiſe the Action lies not. But all the Court held the Action was maintainable: Foꝛ the woꝛd cannot be otherwiſe intendable, but that he hath the French Diſeaſe; Foꝛ it is to be intended he is accuſed to have the ſame Diſeaſe, which his Wife hath: And that the woꝛds purpoꝛt, that he hath the French Diſeaſe, by ſaying, that his Wives Noſe was eaten with them. Wherefoꝛe it was adjudged foꝛ the Plaintiff.

Pays Caſe.

(8) Noy. 43. UPon a ſpecial Verdict, the Caſe was; That one deviſed his Land to J. S. from Mich. following foꝛ five years, Remainder after to the Plaintiff, and his heirs: He died beforꝛe Mich.

The

The Question was, whether this were a good Remainder: Because it could not Enure instantly by his death? For it may not begin until the particular estate, which was not to begin till after Mich. And a freehold cannot be in expectancy. But all the Court held, That it very well might expect; For, in Case of a Devise, the Freehold in the mean time shall descend to the Heir, and vest in him. Wherefore without argument it was adjudged accordingly, and that the Remainder was good,

Skidmore *versus* Winston.

DEbt by an Administrator. After Verdict, it was moved in Arrest of Judgment, That the Declaration was not good; because he counts, That administration was committed unto him by the Bishop of St. Davids, And he saith not Loci illius Ordinarius, nor Cui Administratio pertinuit, Sed non allocatur. For it is intended, that he is the Ordinary, and so is the Common course of Declarations, unless the Administration is alledged to be committed by one, who hath a peculiar Jurisdiction. Secondly, it was moved, that the Ven. fac. is awarded to Richard Hancock Coroner, where a Challenge was put in against J.S. another Coroner there. And it may be there be more Coroners there besides him, who is challenged. So it ought to be awarded Coronatoribus generally, with a Clause, that the Coroner, who is challenged non se intromittat. Sed non allocatur. For it shall not be intended, there were any more Coroners besides them two, unless it were shewn, and then the Writ awarded unto him by his proper name is good. (9) Post. 907. Ant. 791. Pl. C. 277. a. Pl. C. 77. a.

Baspool *versus* Long, Trin. 42 Eliz. rot. 289.

UPon a Special Verdict, The Case was found; That the Custom of the Manor of N. was, That if any Copy-holder surrendred to the use of another, and his Heirs, and he, to whose use the Surrender was made, did not come at the next Court before three Proclamations made thereof, to take it; That he should be barred, and that the Lord should Seise it as Forfeited. And they further find, That one L. was Copyholder in Fee, and surrendred it to the use of himself for Life, and after to the use of the Plaintiff, and his Heirs; And that at the next Court there were three Proclamations made, &c. and none came to claim it; whereupon the Lord seised it as forfeited: And at the next Court granted it to the said L. in Fee, who was admitted accordingly, and died seised; and that it descended to the Defendant, upon whom the Plaintiff being admitted, as in his Remainder entered. And if, &c. The sole Question, Whether this Custom to barr an Estate in Fee for default of claim after Proclamations, shall extend to barr an Estate where the Remainder is expectant upon an Estate for Life? And the whole Court, without any great Debate, held clearly, That this Custome, which goes in Deprivation, or in barr of an Estate shall be taken strictly; And that the Non-claim of the Tenant for life shall not prejudice him in Remainder, nor shall make a forfeiture of his Estate. But Popham said, That a Custome, which goes in making, and maintenance of a Copy-hold Estate, shall be taken favourably. And therefore it was Resolved, That where the Custome was, that he might (10) 1 Rol. 568. Yelv. 1. Noy. 42. Godb. 369. Co. 9. 107. a.

might Surrender to the uſe of one and his heirs; a Surrender there to the uſe of himſelf for life is good enough. For it is for the benefit of his Eſtate, to which the Cuſtom may well extend,
Ante 598. And another Caſe was cited, Trin. 39 Eliz. rot. 413. betwixt Redſal, and Lacon, That, if a Copy-holder for Life commits Waſte, it ſhall not forfeit the Eſtate of him in Remainder. Wherefore it was adjudged for the Plaintiff.

The Lady Shandois *verſus* Simpſon, Trin. 43 Eliz. rot. 587.

(11) Error of a Judgment in the Common Bench, where the Plaintiff declared in Debt for 256 l. upon ſeveral Retainers to embroyder divers Gownes. The firſt Error was, That the Plaintiffs Declaration was not good, becauſe he Declares (inter alia) That the Defendant Retained him ſuch a year, day, and place to embroyder a Satten Gown for a Maid-Servant of her Daughters, and to take for the ſame 40 s. And the Embroydering of anothers Gown is not a good Conſideration. Sed non allocatur. For in as much as he did it upon her Requeſt, it is a ſufficient Conſideration. Secondly, it was alledged, That Debt lies not in this
Ant. 715. Caſe, but an Aſſumpſit only. For here is not any contract betwixt them, Nor Quid pro quo; and therefore Nelſons Caſe 28 Eliz. was cited, That where one Retained Nelſon to be Attorney for another in ſuch a Sute, and agreed that he ſhould have ſo much for his labour: And he brought Debt againſt him, who retained him, and not againſt him, for whom he was retained; and it was adjudged, That it lay not, for it is not any contract between them; but an Aſſumpſit lies only becauſe he became at his Requeſt the other mans Attorney, Sed non allocatur. For here the Embroydering of the Gown at her Requeſt is ſufficient, and it is at his Election to have Debt, or Aſſumpſit; As 37 H. 6. 8. 3 Ed. 4. 21. 7 Ed. 4. 26. Dyer 347, and 337. Woottons Caſe. Thirdly, becauſe there is not any place alledged, where he ſhould embroyder it; Nor that it was done before the Action brought. And it was Traverſable, That he did not embroyder it; And then there is not any place for the Venue. Wherefore the Declaration is not good. Sed Son allocatur. For he cannot Travers, but ought to have pleaded Non Debet. And he need not alledge the place, where he did it. For it may be done in divers places: And it ſhall be intended to be done, where the Retainment was. And it is not requiſite, that the time of the Embroydering thereof ought to be preciſely alledged. For it ſhall be intended to be before the Action brought; Otherwiſe he could not have had his Action. And the Prothonotaries of the Common Bench certified, that it was not their courſe to alledge the day or place of the performance of a contract. Wherefore the Court held it to be well enough; eſpecially as the Caſe is here, where the Party Defendant did not take Iſſue thereupon; But let paſs the advantage thereof, and is condemned by a Nihil dicit, as here ſhe was. Fourthly, becauſe he declares, That the Defendant retained him ſuch a day, year, and place, to embroyder a Gown of Black Velvet, taking for it 10 l. and he alledgeth, That he embroydered it, but ſaith not that it was the Defendants Gown, or what Gown he made. And it may be, that it was the Plaintiffs Gown, and then there is not any cauſe of Action. Sed non allocatur. For the Plaintiff need not take notice whoſe Gown it was;

was: But it ſufficeth for him to Embroyder the Gown ſhewn him. And it ſhall never be intended, That it was the Plaintiffs Gown, which he was hired to Embroyder. Wherefore the Judgment was affirmed.

Dighton *verſus* Bartholomew, Paſch. 42 Eliz. rot. 269.

(12) Yelv. 2. Ante 778. 853.

ERror of a Judgment in Nativo habendo. The Error aſſigned was; for that the Plaintiff ſued a Nativo habendo, & after a Pone facias Loquelam; and, at the day of the return thereof, the Plaintiff appeared not, and a final Judgment was entred againſt him, and that the Defendant ſhould be quit for ever, where it ought to have been only a Miſericordia, where the Plaintiff is Non-ſuited before Appearance, and ſo be the Preſidents Hillarii 12 H. 6. rot. 317. where the Judgment in ſuch Caſe was In miſericordia only, and not Final. And of that Opinion were the whole Court. Wherefore for this it was Reverſed, Vide 6 Ed. 2, 12 Ed. 2, & 19 Ed. 2. tit. Villanage, 26, 28, 32.

Rippon *verſus* Norton.

(13) Yelv. 1. Ante 849.

ASſumpſit. Whereas one J. N. the Defendants Son aſſaulted the Plaintiff, and offered to Stab him; and alſo aſſaulted one Richard the Plaintiffs Father, and offered to beat him, whereupon the Plaintiffs Father complained to Sir Anthony Mildmay, Juſtice of the Peace, and required the Surety of the Peace, and offered his Oath, That he feared bodily harm, &c. That in conſideration the Plaintiff, and his Father would deſiſt from any further complaint, and that the Defendants Son ſhould no further be troubled concerning it, the Defendant aſſumed, that his Son ſhould keep the Peace towards the Plaintiff, and alſo towards his Father. And alledgeth in Facto, that they, truſting to this promiſe, did not proceed in their complaint; And that notwithſtanding the Defendants Son had aſſaulted the Plaintiff, and beaten him, and wounded him. Upon Non Aſſumpſit pleaded, and found for the Plaintiff, It was now alledged in arreſt of Judgment, That the ſtaying, and forbearance of the complaint was not a ſufficient Conſideration. As alſo that the complaint was made by the Father, and not by the Plaintiff, and therefore he had not any cauſe of Action; and that the Defendants promiſe for his Son ſhould not bind him. But all the Court Reſolved, that the Declaration was good. For there being cauſe to procure the Surety of the Peace, the ſtaying thereof is a ſufficient Conſideration: and the complaint of the one is ſufficient for the other. And that the Father hath good cauſe to make that promiſe for his Son. And Co. 9. 94. a. if a meer Stranger had made ſuch a promiſe in behalf of the Defendants Son, the Plaintiff relying thereupon, did forbear the proſecution of his complaint, and he is afterwards damnified, it had been good cauſe of Action: A multo fortiori, againſt the Father, who made the promiſe for his Son. Wherefore it was adjudged for the Plaintiff, Vide Antea, Mich. 43, & 44 E. R. Pl. 3.

Eaton *verſus* Ap-Harry.

(14) ERror of a Judgment at the Seſſions apud Denbigh. The Error was aſſigned in hoc, That in an Ejectione Firmæ of Land in Denbigh Lewelling, and Iſtred-Canon, Not-guilty being pleaded, a Ven. fac. was awarded de vicineto of all the Vills; And the Sheriff returned it in this manner, Executio iſtius Brevis patet in quodam Panello huic Brevi annexa, and the Panel was made in this manner, Nomina Juratorum de vicineto de Denbigh-Lewelling, & Iſtred (omitting Canon) inter, &c. And it was alledged to be an ill return. For from one of the Vills (viz. from Iſtred-Canon) no Juror is returned. But Gawdy, and Yelverton held it to be well enough: For when the Writ is Endorſed, Executio iſtius Brevis, &c. It ſhall be intended to be duly Executed in all points; and Iſtred, and Iſtred-Canon ſhall be intended to be all one. The Addition alſo of the Viſnes upon the top of the Pannel is not uſual, and it is but Surpluſage, and ſhall not hurt: But Fenner e contra. For although, that if there had not been an addition upon the top of the Pannel, the Writ ſhould have been intended to be well returned, by reaſon of the words Endorſed thereupon; Yet when now it appears to the Court, of what Vills he returned it, and he did not do it according to the Writ; It is as ill, as if he had omitted one altogether. And Iſtred ſhall not be taken for Iſtred-Canon, but for another Vill. Wherefore he conceived it to be ill. Et adjournatur.

Chambers *verſus* Hubberd.

(15) ASſumpſit. In Conſideration, That he, with J. S. would become bound for the payment of 10 l. to the Defendant, That the Defendant aſſumed to do ſuch an Act, and alledgeth in Facto, That he with J. S. became bound in 20 l. cum Conditione Subſcripta, pro ſolutione decem librarum. The Defendant pleaded, Non devenerunt Obligati modo & forma, &c. The Jury found, Quod devenerunt Obligati in this manner, Noverint Univerſi nos, &c. obligari to the Defendant in decem libris Solvend, &c. Et ſi defecerimus in ſolutione, tunc obligamus nos in 20 l. &c. So it is quaſi a Condition inſcribed in the Obligation it ſelf; and not ſubſcribed. And whether it was found for the Plaintiff, or not? Was the Queſtion. Popham and Gawdy held, that it was found for the Plaintiff: For the Subſtance of the Declaration is found, and the Modo, and the Forma be not much material, although it be alledged in the Declaration, They were obliged in Conditione Subſcripta: As where the Condition of an Obligation is, that he ſhall not commit Waſte, In Debt brought, &c. The Waſte was aſſigned in ſuccidendo 20 Quercus. The Iſſue was, Non ſuccidit 20 Quercus, modo, & forma, &c. and the Jury found, Quod ſuccidit 10 Quercus; It is found for the Plaintiff. And the Subſtance being, whether they were obliged to pay 10 l. That being found, it is well enough. Wherefore, &c. But Fenner and Yelverton e contra. For in an Action upon the Caſe he ought to Declare the Truth of the Caſe, and not to vary there-from in any point: And if he varies, he fails. And there is not here any ſuch Obligation as he Declares, for that Inſcribed was parcel of the Obligation it ſelf. But the Condition Subſcribed, or Endorſed is no parcel thereof. Wherefore it is not the ſame Obligation, whereof he Counts. Et adjournatur.

Dyer 115. b.

Co. 10. 131. a.

Chicheley

Chichely *verſus* Barker.

(16) ACtion for theſe words, Thou haſt forged a Reconuſance taken before Fiſher, and others: And adjudged, That the Action lay. For Forged ſhall be intended Falſly certified, And Taken ſhall be intended for Acknowledged. And, the Plaintiff being a Juſtice of Peace, who had authority to take Reconuſances, it is a great ſlander unto him. And adjudged for the Plaintiff.

The Lord St. John *verſus* Brandring.

(17) DEbt; as Executor to the Lord St. John, who is dead, againſt the Defendant Executor of the Heir, who was to pay a Relief. Noy. 43. After Verdict, the Iſſue being upon the Tenure, and found for the Plaintiff, it was moved in arreſt of Judgment, that the Executor of the Lord, neither by the Common Law, nor by the Statute of 32 H. 8. may maintain an Action of Debt for a Relief due to the Teſtator. Co. Lit. 162. b. But the Court held clearly, that he might by the Letter, and Intent of the Statute; it being a duty to the Teſtator, although it be not an Annual Service. Secondly, it was moved, That Debt lies not againſt the Executor of the Heir, it being a Perſonal duty by the Teſtator, no more then Debt lies not againſt the Executor of the Warden for an eſcape of the Wardens. But the Court held, that the Action well lay; and the Caſes be not alike. For in the one Caſe the Teſtator was chargeable for a perſonal wrong, which died with his Perſon, and is chargeable by the Statute Law: Which charge ſhall not fall upon his Executor. But in this Caſe the Teſtator was charged as for a duty due by him, for which he might not have waged his Law. Wherefore his Executors are alſo chargeable. And it was adjudged for the Plaintiff. Vide 26 H. 7. 1. 28 H. 8. Dy. 24. 7 H. 6. 13. 11 H. 6. 15.

Cox *verſus* Crapnel, and his Wife.

(18) ACtion ſur Trover againſt them, ſuppoſing the Trover by both, during the Coverture, and the Converſion by the Feme only. Noy 45. 2 Cr. 5. The Defendants plead, Quod ipſi non ſunt inde culpabiles, & after Verdict for the Plaintiff, it was moved in arreſt of Judgment, That, in as much as the Declaration doth not charge the Baron with any Tort, but only the Feme, The Iſſue ought to have been, Quod ipſa non eſt inde culpabilis. And of that opinion was all the Court. Wherefore it was awarded, that the Iſſue was ill, and that they ſhould Replead: And ſo they did. Note, a Repleader after a Verdict. R. 585. Ant. 823. Ant. 318.

Riches *verſus* Bridges.

(19) ASſumpſit. For that he was indebted to J. S. in twenty Combs of Barley, to be delivered unto him at ſuch a day, in Conſideration that he would deliver it to the Defendant before the day, the Defendant aſſumed, and promiſed to deliver it at the day to J. S. and alledgeth in facto, That he delivered it to the Defendant; and the Defendant had not delivered it to J. S. It was moved in arreſt of Judgment, that this was not any Conſideration to deliver the ſame Corn, which he had received, for he cannot have any uſe of it, nor any benefit by it. But the whole Court held it Yelv. 4. 2 Cr. 667

to be a good Conſideration; for in regard he received it, and made ſuch a promiſe, it ſhall be intended that he had ſome benefit thereby, viz. That he had the better Credit to retain it in his hands: or, otherwiſe he would not make ſuch a promiſe. And if by any Intendment it can be, the Law will well intend it. Wherefore it was adjudged for the Plaintiff. Note, afterwards upon a Writ of Error in the Exchequer-Chamber, it was reverſed for this Cauſe; For that there was not any ſufficient Conſideration, whereof the Law takes any regard.

2 Cr. 668. Ant. 218. Ant. 380. Yelv. 128.

Devent *verſus* Popham, Trin. 43 Eliz. rot. 157.

(20) TReſpaſs of Battery, wherein he Declares againſt the Defendant nuper de C. in Comitatu S. Chandler. The Defendant pleads in abatement of the Writ, That he, the day of the Writ purchaſed, was a Gentleman, &c. Et hoc, &c. And it was thereupon demurred; and held by all the Court, that the Plea was ill, becauſe he did not Traverſe, that he was a Chandler. For if a Gentleman will occupy any Trade, he may be called and written by the name of his Trade, and not Gentleman. Wherefore it was adjudged for the Plaintiff.

Williams *verſus* Green, Trin. *or* Paſch. 43 Eliz. rot. 1431.

(21) DEbt upon a Bill. The Defendant pleads That the ſaid Bill was delivered to the Plaintiff as a Schedule upon Condition; That if the Plaintiff delivered unto the Defendant an Houſe upon ſuch a day, That then it ſhould be his Deed, otherwiſe not. And that the Plaintiff had not delivered the ſaid Houſe unto him, and ſo Non eſt Factum. And it was thereupon demurred, and reſolved by the whole Court, to be no Plea: For a Deed cannot be delivered to the Party himſelf as an Eſcrow, becauſe then a bare averment without any writing would make void every Deed. Wherefore it was adjudged for the Plaintiff.

2 Rol. 27. Moor 642. Co. Lit. 36. a. 2 Rol. 26. 2 Cr. 86. Ant. 836.

Gravenor *verſus* Mete, Trin. *or* Paſch. 43 Eliz. rot. 431.

(22) ACtion of the Caſe upon Deceipt. For that he ſold unto him two Oxen, and warranted them to be ſound, & abſque infirmitate, ubi revera non fuerunt, &c. The Defendant pleaded Not-Guilty, & the Jury found him Guilty for the one, and not Guilty for the other. And it was now moved in Arreſt of Judgment, becauſe the Warranty alledged was joynt, and now he is found Guilty but of the one, and therefore it is not the ſame Warranty. But the Court held it to be well enough; for the Action is not founded upon the Contract, but upon the Deceipt. Wherefore it was adjudged for the Plaintiff.

Colbrook *verſus* Forſter, Paſc. 44 Eliz. rot. 3012.

(23) DEbt upon an Obligation of 200 l. The Defendant pleaded, That after the day of the Writ purchaſed (viz. ſuch a day) apud D. He paid unto the Plaintiff 60 l. Parcel thereof, which he received. Judgment de brief, &c. And a ſpecial Demurrer was thereupon; Becauſe he ſhewed not any Acquittance, or Releaſe teſtifying it. And, without Argument, it was adjudged for the Plaintiff.

Ant. 455.

Hungate

Huntgage *verſus* Meaſe, & Smith, Trin, 42 Eliz. rot. 1804.

DEbt upon an Arbitrament. The Caſe was, that the Plaintiff on the one part, and the Defendants on the other, ſubmitted themſelves to the Arbitration of J. S. ſo as the Arbitrament be made, and publiſhed utrique partium prædict. before ſuch a day. And it was made, & publiſhed to the Plaintiff, and to Smith, one of the Defendants; but it was not delivered and publiſhed to Meaſe. And whether this were a ſufficient Publication thereof? Was the Queſtion upon a ſpecial Verdict. And the whole Court held it to be no ſufficient Publication of the Arbitrament according to the ſubmiſſion: Becauſe it ought to have been delivered Omnibus partibus; for it ought to be performed by every Party. And this word Utrique ſhall be expounded Separatim, and not Conjunctim. Wherefore it was adjudged for the Defendant. 5 Co. 103. (24) Moor. 642. Ante 797.

Docket *verſus* Voyel. Mich. 43 & 44 Eliz. rot. 954.

ASſumpſit. Whereas the Defendant 10 Maii, 40 Eliz. in Conſideration, that the Plaintiff at a certain day, then paſt, at the Defendants Requeſt, had lent unto him 30 l. for ſuch a time; That the Defendant aſſumed to lend unto the Plaintiff upon requeſt 30 l. for a year, or otherwiſe to give him 40 s. The Plaintiff alledgeth, that the Defendant did not lend him 30 l. licet requiſitus, &c. nor pay the ſaid 40 s. And it was thereupon demurred; becauſe the Conſideration was paſt, and executed, and the Conſideration and Promiſe ought to go together: Or elſe it ought to be a Conſideration continuing. Wherefore for this Cauſe it was adjudged for the Defendant. (25) Moor. 643. Owen 144. Ant. 715. Ant. 442.

Parham *verſus* Norton. Mich. 43, & 44 Eliz. rot. 915.

REplevin. The defendant made Conuſance as Bailiff of Sir Fulk Grevil, for 10 s. for an Amercement, and for 20 s. for Rent, and for 20 s. for a Relief. The Plaintiff Quoad the 10 s. for the Amercement ſaith De injuria ſua propria, & Traverſeth the Preſcription to hold Court, and to Amerce. And Quoad the 20 s. for the Rent, Quod paratus fuit, & obtulit J. S. Ballivo Dni. F. G. who refuſed it, and that he yet was ready. And Quoad the 20 s. for a Relief he ſaith, that the Tenant died ſeiſed, and the Land deſcended unto two Daughters, who together with their Husbands enfeoffed the Plaintiff; And that the Lord, knowing of that Feoffment, had accepted the Rent from the Plaintiff at ſuch a Feaſt, and demanded Judgment whether now he ſhould have a Relief. The Defendant Quoad the firſt Plea for the Amercement demurs. Quoad the ſecond Plea for the Rent, Traverſes the Refuſal, and Iſſue was joyned thereupon. Quoad the third for the Relief he demurred. And all the Court Reſolved, That the barr for the Relief was inſufficient; And that the acceptance of the Rent was not any Concluſion to have the Relief: Becauſe the Relief is not any Service; but a Fruit ancient, and adhering to the Services. And the Court held, That the Avowry for the Amercement was inſufficient; becauſe it was not alledged in facto, that the Plaintiff did not appear after (26) Moor. 643. Co. 3. 66 a.

after Summons; But Quod præſentatum fuit per Homagium, That he did not appear: And that the Iſſue Joyned upon the refuſal was ill; but it ought to have been joyned upon the Tenure. Wherefore a Repleader for that point was awarded.

Hardman, Executor of Agnes Hardman, *verſus* John Hardman, Hill. 44 Eliz. rot. 427.

(27) DEbt upon a Bill Obligatory; for that the Defendant Cognovit ſe debere, & promiſiſſet ſolvere eidem Agneti 10 l. at any time after the Feaſt of Saint Bartholomew, which ſhould be in Anno 1600. quandocunque the ſaid A. ſhould require it, if the ſaid A. ad tunc. eſſet ſuperſtes & that the Defendant, licet ſæpius requiſitus by the ſaid A. after the ſaid Feaſt, viz. ſuch a day, &c. had not paid it. The Defendant demanded Oyer of the Bill, which was; *Memorandum*, That I *John Hardman* the yonger, do acknowledge my ſelf to owe, and do promiſe to pay to my Mother *Agnes Hardman* the Sum of 10 l. at any time after the Feaſt of S. *Bartholomew*, whenſoever ſhe ſhall require the ſame, if my ſaid Mother ſhall be then in Life: For the payment whereof, I bind my ſelf, my Heirs, Executors, & Adminiſtrators to *John Hardman* the Elder my Father, by theſe preſents, &c. In witneſs, &c. And it was thereupon demurred, and adjudged for the Plaintiff; and that it was a good Bill to Agnes by the words in the firſt part of the Bill; and the words, which oblige him to John Hardman Senior, in the laſt part of the Bill, are void.

Gibſon *verſus* G. Brook, Executor of Will. Brook. Hill. 44 Eliz. rot. 1324.

(28) SCire facias; Upon a Judgment given againſt an Executor in Debt, & Damages de bonis Teſtatoris, ſi, &c. Et ſi non, pro Damnis, de bonis propriis. The Defendant pleaded, Quod alias poſt primum Judicium redditum, the Plaintiff had ſued a Fieri facias againſt him upon that Judgment, upon which Writ, the Sheriff had returned Nulla bona Teſtatoris, &c. nec aliqua bona propria. And afterwards, upon averment made to the Court, Quod devaſtavit bona in London, a Special Writ of Fieri fac. was awarded to the Sheriff of London, to enquire ſi devaſtavit, and the Sheriff returned the Inquiſition, Quod bona Teſtatoris devenerunt to the hands of the Defendant after the Teſtators death, to the value of 100 l. which he had converted to his proper uſe. Whereupon a Scire fac. was awarded againſt him to ſhew cauſe, Quare Executionem, &c. And he appeared upon it, and pleaded quoad Damna, Quod non potuit dedicere Executionem, & Judicium ſuper inde. Et Quoad the Debt, Quod Riens enter mains. And it was thereupon demurred & adjudged for the defendant (Quod vide ante, fol.) Ant. 859. prout per Recordum prædictum remanent' in ſuo robore minime reverſat. plenius apparet. And avers the Debt in this Record, & in the ſaid Record, & the perſons to be all one. Et quod nulla alia bona, quæ fuerunt Teſtatoris, after the day of the purchaſe of the firſt Writ of Scir. fac. huc uſque devenerunt unto his hands. And it was thereupon demurred, & held by the whole Court, That this general Scire fac. upon the firſt Judg-

Judgment was not good; for it is barred by the Judgment in the firſt Scir. fac. But if that afterwards any Goods had come to his hands, he ought to have had a Special Writ reciting this matter; That after this Judgment Aſſets had come to the Defendants hands, and to have prayed Execution of them: As upon pleinment Adminiſtravit Aſſets is found for part, and afterwards Aſſets came unto them. Wherefore it was adjudged for the Defendant. Ante 592.

Termino

Termino Trinitatis, Quadrageſimo quarto ELIZABETHÆ, in Banco Reginæ.

Dawes *verſus* Bolton, Hill. 44 Eliz. rot.

(1) Yelv. 4. 2 Rolle R. 201.

ACtion upon the Caſe for theſe Words; Thou art a Knave, and haſt received ſtoln Swine, & haſt received a ſtoln Cow, and thou kneweſt they were ſtoln. The Defendant pleaded Not-guilty; and after Verdict it was moved, that the Action lay not: And of that Opinion was the whole Court, abſente Popham; for the receiving of ſtoln Goods, knowing them to be ſtoln, (unleſs he receives them to maintain the Felon) is not Felony: And although it were objected, that it is a great Slander, and a cauſe of binding him to the good Behaviour, if it were true, that he received ſtoln Goods, and therefore cauſe of Action; as it hath been adjudged for ſaying, Thou layeſt in wait to murder one, although he were not charged with Felony, yet the Action lay; Quod fuit conceſſum per Curiam: Yet the Court held here, that the Action lay not; for it may be he received them, as Bayliff, or Lord of a Mannor, who had Liberty to have Waifs, and Felons Goods, and then it is not any Offence, and it ſhall not be taken in the worſt ſence, when it may have any other Conſtruction; As in Doctor Stanhops Caſe, Thou getteſt thy living by ſwearing, and forſwearing, an Action lies not; for he might have the Fines of ſuch as commit Perjury; and although it were urged, That the Conſtruction ſhall be as of words in the worſt part, ſpoken malitiouſly, when he ſaith, Thou art a Knave, and haſt received, &c. Yet the Court regarded it not; But, upon the firſt Motion, adjudged it for the Defendant.

Ante 6.

Co. 4. 15. a. b.

Lea *verſus* Exelby.

(2) ASſumpſit. Whereas the Defendant was poſſeſſed of ſuch a Leaſe for years, the Inheritance being the Plaintiffs, in Conſideration the Plaintiff promiſed to pay unto him ſuch a Sum of Money ſuch a day, and place, that the Defendant promiſed ſuper ſolutionem inde to ſurrender unto him his Leaſe, and alledgeth, That he at the day, and place tendred the Money, and that the Defendant had not ſurrendred his Leaſe. The Defendant

Defendant pleaded Non Aſſumpſit, and found againſt him; and it was moved in Arreſt of Judgment, that the Defendant was not to make the Surrender, but upon the payment of the money, or an expreſs tender, and refuſal. And the Plaintiff here hath alledged Quod obtulit, but he ſaith not, that the Defendant refuſed; which is material, and Iſſuable; and he might have taken Iſſue upon the Refuſal, if it had been alledged: and although he hath pleaded Non Aſſumpſit, yet, the Declaration being ill in Subſtance, the Defendant may well take advantage thereof. Coke, Attorney General, moved, That the Declaration was good, and there needed not any Tender and Refuſal to have been alledged; for it ſufficeth to alledge, that in conſideration he aſſumed to pay ſuch a Summe, the Defendant aſſumed to ſurrender: ſo, there being an Aſſumpſit againſt an Aſſumpſit, it had been well enough. But all the Court held, that if the promiſe had been, in conſideration he aſſumed to pay ſuch a Sum, that the Defendant had aſſumed to ſurrender, that had been ſufficient; for then he is to make his ſurrender, and he ought to take his Remedy againſt the other for the Non-performance of his promiſe; But here it is, that he aſſumed to pay, and the other aſſumed to ſurrender it upon the payment, ſo as he would not truſt to his promiſe, but when he had paid, he would then ſurrender it. And in the firſt Caſe, he needed not alledge the performance of the promiſe; But here in this he ought. And when he ſaith Quod obtulit, and ſaith not, that the other accepted it, or refuſed it, his Allegation of the Tender is not to any purpoſe; for he ſhall never ſay, Quod obtulit only, but he ought to plead further, that none was there to receive it, or that he refuſed; Or he ought to alledge payment, and here it is matter of Subſtance, for want whereof, the Declaration is not good. Wherefore it was adjudged for the Defendant. And afterwards Coke ſaid, that Willenhalls Caſe was adjudged, That Tender without alledging a Refuſal was not good. Antt 703

Brown *verſus* Saint John.

ACtion for theſe Words; You have committed Burglary in breaking his Houſe, (innuendo the houſe of one Bennet) & ſtealing his Goods. (3) After Verdict, it was moved, that an Action lay not; for the breaking of an Houſe may be as a Treſpaſs, and not Felony. And he doth not ſay whoſe Houſe he brake, but by the Innuendo, which is not ſufficient; So it is uncertain, and therefore adjudged, that the Action was not maintainable.

Cox *verſus* Humphrey. Quod vide ante, Paſch. 44. Pl. 4.

IT was now moved again by Williams, Serjeant, and the words alledged to be ſuch; Thy Boy (innuendo Ambroſe Latham, the Plaintiffs wives Son) hath cut my Purſe, and thou haſt received it, knowing it, and haſt the Rings, & Money, that were there, in thy hand, therefore I charge thee with Felony. And adjudged, that the Action lay not; for it doth not appear, that the Purſe was cut Feloniouſly; And then the receiving of the Boy, and of the things which were in the Purſe, is not Felony. Wherefore it was adjudged for the Defendant. (4) Poph ad 210 Ante 877

Latham *verſus* Humphrey.

Hill. 44 Eliz. rot. 350.

(5) ACtion for theſe words; Thou haſt cut my Purſe, therefore I charge thee with Felony. After Verdict, it was adjudged, that the Action lay not; for to ſay Thou haſt cut a Purſe, without ſaying Feloniouſly, it appears not, that he had committed any Felony, wherefore not Actionable.

2 Cr. 315.
2 Cr. 312.

Blofield *verſus* Grymes.

(6) SCire facias upon a Judgment in Debt. The Defendant pleaded in Barr, that the Plaintiff, upon that Judgment had at another time, brought a Scire facias againſt the Bayl, and that afterwards he releaſed to the ſaid Bayl all Actions and Demands, &c. And it was thereupon demurred; And, whether this Releaſe to the Bayl ſhall be a diſcharge to the Principal. Quære; Quia Curia adviſare vult.

Houſe *verſus* Laxton.

(7) EJectione Firmæ of a Leaſe from Serjeant Heal; And declares, that he 16 Jan. 44 Eliz. by Indenture dated 2 Jan. demiſed, &c. The Defendant pleads, that long time before that the Leſſor of the Plaintiff had any thing, the Queen was ſeiſed in Fee, and by her Letters Patents conveyed it to one T. who Lett it to the Defendant for years, whereby he was poſſeſſed, until the Leſſor of the Plaintiff entred, and expelled him, and diſſeiſed T. and Lett to the Plaintiff, upon whom he re-entred. The Plaintiff ſaith, that his Leſſor was ſeiſed in Fee, and Lett to him, prout. &c. Abſque hoc, that he diſſeiſed the ſaid T. And thereupon the Defendant demurred. Harris, Serjeant, for the Defendant moved, that the Declaration was not good; becauſe it is, that he demiſed 16 Jan. by Indenture dated 2 Jan. & he doth not ſay primo deliberat. 16 Jan. For otherwiſe, it ſhall be intended to be delivered the day whereon it bare Date. And of that opinion was Gawdy. But all the other Juſtices held, that notwithſtanding the Declaration was good; For, although a Deed ſhall be intended to be delivered when it bears date, unleſs the contrary be ſhewn, yet when it is ſaid, that he demiſed ſuch a day, by Indenture dated ſuch a day before, it is neceſſarily to be intended, that it was not delivered the ſame day it bare Date, but upon the day of the Demiſe, as it is alledged. Secondly, it was moved, that this Replication was not good, without making Title to the Leſſor; And it is not ſufficient to ſay, That the Leſſor was ſeiſed in Fee, and Travers the Diſſeiſin; For when a ſpecial Title is ſhewn in the Barr, and by that he deſtroys the Title of the Leſſor of the Plaintiff intended in the Count,

Ante 373.

Count, confeſſing, that he had not any Eſtate, but by diſſeiſin: he ought to make a ſpecial Replication thereto; and it is not ſufficient to ſay, that he was ſeiſed in Fee, for ſo the Defendant hath confeſſed: But he ought to ſhew how he had a lawful Title in Fee, and by what means he came thereto. And in proof thereof 5 H. 7. 33 H. 6. and 22 H. 6. were cited. But all the Court held it to be a good Replication; for the material matter in the barr alledged is the Diſſeiſin, for thereby the Title of the Leſſor of the Plaintiff is confeſſed, and avoided, and it ſufficeth the Plaintiff to maintain a lawful ſeiſin in Fee in the Leſſor, and to Travers that which deſtroys his Title: And he need not make an higher Title; As 22 Eliz. Dy. 366. a. Wherefore Rule was given, that if other cauſe were not ſhewn upon the third day of next Term, that Judgment ſhould be entred for the Plaintiff, tunc pro nunc. And afterwards Judgment was given accordingly, and affirmed in a Writ of Error. Ante 671. 1 Rol. 751.

Andrews *verſus* the Lord Cromwel.

Trin. 43 Eliz. rot. 49.

(8) Noy 44. Yelv. 3. 2 Cr. 94. Co. 2. 69. b.

ERror to reverſe a Judgment given in the Common Bench in an Aſſiſe againſt Andrews, and nineteen others. The Writ being brought by all of them returnable Hill. 43 Eliz. which Record was then returned, but nothing done therein, in the ſaid Term. Quindena Paſch. 43 Eliz. the Lord Cromwel ſued a Scire facias, Quare Executionem habere non debet, returnable quinque Paſch. at which day Andrews appeared, & the others exacti non venerunt, & in that Term nothing more was done againſt Andrews, and the reſt. But a Rule in Court given to Andrews to aſſign his Errors the fourth day of the next Term, at which day Andrews only aſſigned divers Errors in the Record. And the Lord Cromwel pleaded thereto In nullo eſt Erratum. And now, upon reading the Record, Coke, the Queens Attorney, moved, that they ſhould not proceed to the Examination of Errors, becauſe the Writ of Error was not good; for it is directed to the Chief Juſtice of the Common Bench, and ſuppoſeth, that the Aſſiſe was ſummoned before ſuch, and taken before ſuch, &c. Et Recordum coram vobis reſidet, ideo vobis præcipimus, Quod ſi Judicium redditum ſit, Quod tunc, &c. & the Writ mentioned not, who this Record came into the Common Bench, viz. by Adjournment pro difficulate, as a Preſident was ſhewn in 10 Eliz. where the Writ made mention, Quod coram vobis venire fecimus propter difficultatem; Or how it was ſent thither; for it was ſaid, that a Record may by there by adjournment before Judgment, or removed by a Mittimus before Judgment, or by a Certiorari after Judgment; for, for the ſafety of the Record, it is removed oftentimes to remain in the Treaſury, and how it comes in, the Writ ought to mention. And ſo is the Writ in the Regiſter de Recordo mittendo, & in Fitz. H N. B. And, becauſe this Writ did not make any ſuch mention, all the Juſtices, beſides Fenner, reſolved, That the Writ was not good, and it ſhould abate; And although in 5 Ed. 6. Dy. where a Judgment was in a Quare Impedit before the Juſtices of Niſi prius, by the Statute of Weſtm. 2. and Error thereof being

brought, Exception was taken; becauſe he doth not ſhew in the Writ where the Judgment was, and yet held to be good: for there the Record began, and remained in the Common Bench, and where the Judgment was, was not material. But, in this Caſe, the Record was not at firſt in the Common Bench, and therefore he ought to ſhew, how it came thither. But all the Curſitors of the Chancery ſaid, that the Writ in the Regiſter, and Fitz-Herberts Natura Brevium is, where the Record comes into the Common Bench by Writ: but when it comes thither by Delivery to the hands of the Chief Juſtice of the Common Bench, as here, they have not any ſuch Writ. But Popham, Gawdy, and Yelverton ſaid, that, for as much, as the Expreſs Preſident in Fitz-Herberts Natura Brevium is that this Writ lies, where the Record is brought in the Common Bench for Difficulty; And no Preſident can be ſhewn, that any other Writ had been ever allowed in any other manner, they held, That this was not now allowable. And Gawdy ſaid, when the Record begins in one place, and is finiſhed in another, there of neceſſity in a Writ of Error the proceedings in both places ought to be mentioned. And Andrews ſhewed Preſidents, Paſch. 4 H. 5. rot. 109, and Paſch. 5 H. 5. rot 41. That the Writs there were in ſuch Caſes, as they be here. But, the Preſidents being viewed were directly to the contrary; Wherefore they held, in regard the Preſidents be ſo, and none to the contrary, That this Writ varying from them was not good, nor allowable. But Fenner conceived, That, forasmuch as this Writ is but a Commiſſion to examine the Errors, although it be not here ſo formal, as it ought to be, yet, having ſubſtance, it was well enough; And the Defendant, having admitted it by pleading In nullo eſt Erratum thereto, he may not now take advantage thereof. But all the other Juſtices held, that the Writ not being good, they ex officio ought to abate it. Secondly, they held, that this Aſſignment of Errors by Andrews only per ſe, without ſuing a Summons, and ſeverance of the others, is as Nul, and void: And therefore although the Writ be good, yet they would award Execution: for the Writ of Scire facias, Quare Executionem habere non debet, is as a Spur to cauſe the Plaintiffs to aſſign their Errors; And when it is returned Scire feci, and nothing done thereupon, (For this Aſſignment of Errors by himſelf oneiy, is as if nothing had been done) Execution ſhall therefore be awarded; And although there was now a year paſſed after the Return, and at this time no Judgment is, That there ſhall be execution, nor that any continuance was entred, yet it is not material; For there never ſhall need any other Scire facias to be awarded, but Execution ſhall be taken when there is an apparent default in the Plaintiff, that he would not aſſign his Errors. Wherefore the Writ was abated, and Execution awarded.

Act. 448.

Yelv. 7.

Colſton

Colſton *verſus* Roſs, & Levet.

ACtion of the Caſe againſt the Defendants, late Sheriffs of York; For that, whereas according to the Cuſtom of the City of York, he levied a Plaint of Debt of 15 l. againſt one Leyton, before the ſaid Sheriffs in the Court of Guild-hall, according to the Cuſtom there and thereupon had Summons awarded returnable at the next Court there, which was returned Nihil; and afterwards had a Capias awarded returnable at the next Court, before the foreſaid Roſs and Levet. At which Court ſuch a day holden the Serjeant returned Cepi corpus, & paratum habuit, &c. At which Court holden before the ſaid Roſs, and Levet, then Sheriffs, the ſaid Leyton was committed unto the Queens Gaol under the Cuſtody of the ſaid Defendants, there to remain, untill he ſatisfied the Debt, or the Plaintiff ſit inde præcluſus: whereupon he there remained from 17 Jan. 43. uſque 18 Jan. 43. at which day the Defendants ſuffered him to go at large, the Plaintiff not being ſatisfied his Debt, and ſo went into places unknown, whereby he is deprived of his Debt, unde Actio accrevit. The Defendants plead, that they Let him at large by reaſon of a Writ of Priviledge awarded by the Council of York, &c. And it was thereupon demurred, becauſe they did not alledge the Authority of the Council there, &c. And it appears not to the Court, that he might be Priviledged there; for it doth not appear, that they had Authority to hold Plea in Debt, ſo as the Plaintiff might have Juſtice there, and for that, and other cauſes, it was held, that the barr was not good, and that the Sheriffs, although they Let him at large by Colour of the Writ of Priviledge, yet the Writ not being a good Warrant, they are reſponſible to the Plaintiff: for they at their peril are to take heed what Warrant they had to let him out of their Cuſtody. But then divers Exceptions were taken to the Declaration by Coke, the Attorney General. Firſt, becauſe a Capias is awarded returnable at the next Court, which ought not to be ſo, but there ought to be a day certain of the Return. Sed non allocatur. For the Proceſs at the moſt is but erroneous, whereof the Sheriffs ſhall not take advantage: and the Plaintiff is to declare according to the Record, and he cannot vary from it. Secondly, becauſe the Capias is awarded returnable before Roſs, and Levet, which is not good; For it may be they ſhould die, or be removed before the Writ returned; and therefore it ought to have been awarded returnable before the Sheriffs, without naming their proper names, as of Proceſs awarded out of this Court, or Common Bench are always returnable before the Juſtices of the Bench without their proper names for the Reaſons before. But all the Juſtices ſaid, it was well enough notwithſtanding, when it appears, that they were Sheriffs at the time of the Return as it appears here by the Record that they were; So, although a Writ awarded to the Sheriffs without their proper name is the ſureſt way; for that it may be he may be removed before the executing thereof, but if it be awarded unto him by his proper name, and he be Sheriff at the time of the executing, and return thereof, it

(9) Noy 45.

Ante. 165.

is

is well enough; So of Proceſs awarded out of this Court returnable before the Juſtices by their proper names, it is well enough in Law, although not ſo in Policy, for the Reaſon aboveſaid. Thirdly, Becauſe it is not alledged, that the ſaid Leyton was arreſted, and if he were not arreſted, there cannot any Action be brought for his Eſcape. Sed non allocatur. For when the Serjeant returned Cepi corpus, & paratum habeo, It is to be intended, that he is arreſted; but, if he were not arreſted, yet the Record is, that he is committed per Curiam to priſon, which is ſufficient, the party being preſent in Court, without an arreſt. Fourthly, The Commitment is ibidem remanſurus quouſque the Debt be ſatisfied, or the Plaintiff barred, which is not a lawful commitment, for then he ſhould not be bayled, which is againſt Law, and the Courſe of all Courts. But the Court held it to be well enough; For that is the manner of Commitments in all Courts, for the Court is not to demand Bayl, but yet, if he can find Sureties, he ſhall be bayled, for it is ſo intended in the commitment. Wherefore, notwithſtanding theſe Exceptions, it was adjudged for the Plaintiff.

Elwyn *verſus* Montford.

(10) ERror in the Exchequer-Chamber of a Judgment in the Queens Bench. The Error aſſigned, was becauſe there was not any bayl filed for the Defendant. And it was agreed to be clearly an Error, and the Judgment therefore reverſed.

Corn *verſus* Paſlow.

(11) Yelv. 15. ERor in the Exchequer-Chamber of a Judgment in the Queens Bench. The Error aſſigned was, becauſe upon a Challenge to the Sheriff, the Ven. fac. was awarded to the Coroners, and returned by them, and at the Niſi prius a Tales was returned by the new Sheriff de Circumſtantibus. And it was held to be a manifeſt Error, and that it was not ayded by the Statute of miſconveyance of Proceſs; for it is a Miſ-trial.

Ant. 586.

Grice *verſus* Chambers.

(12) ERror upon a Judgment in Norwich in debt upon an Obligation, Where the Defendant confeſſed it to be his Deed, but, according to the Cuſtome there, prayed, Quod inquiratur de debito: And thereupon the Court awarded a Precept to the Serjeant to make an Inqueſt to enquire thereof, which Inqueſt was returned, and found it to a certain Sum, for the which Sum the Plaintiff had Judgment to recover. And this matter was aſſigned for Error; And, becauſe it was done according to Cuſtome, it was not reverſable. And thereupon the Judgment was affirmed.

Bendloſs

Brendloſs *verſus* Philips.

DEbt. The Plaintiff declares, That the Defendant, in Conſideration of 100 l. paid, granted unto the Plaintiffs Father an Annual Rent of 60 l. Iſſuing out of the Mannor of Dale, for forty years; with a Nomine pœnæ for Non-payment; And that his Father deviſed the Rent unto him. And for Arrearges of the Rent and Nomine pœnæ, he brought the Action. The Defendant pleaded the Statute of Uſury, and Iſſue thereupon, and found againſt him. And now Godfrey moved in Arreſt of Judgment. Firſt, That an Action of Debt lies not for this Rent; But a Writ of Annuity, as long as it continues. Secondly, that this Nomine pœnæ was not deviſed unto him, and therefore it paſſed not. But Yelverton, Juſtice, held, that an Action of Debt well lay; And that there was a difference where a Rent for years is granted Originally, and where a Rent or Annuity is granted in Fee, and out thereof a Grant is made for years, there no Action of Debt lies, during the years; But in the firſt Caſe it well lay. And in the laſt point he held, that the Nomine pœnæ paſſed is incident to the Rent, And of that opinion was Fenner, as to the laſt point; But he doubted of the firſt. Whereforе, cæteris Juſticiariis abſentibus, Adjournatur. (13) Co. 449. Co. Litt. 162. b

Gaſcoyn *verſus* Longvile, in the Court of Wards.

IT was Reſolved by the two Chief Juſtices, the Surveyor, and Attorney of the Court of Wards; That an Office finding, That one ſuch was ſeiſed in Fee at the day of his death; although he doth not find his dying ſeiſed, it is ſufficient: for that anſwers well the words of the Writ of Diem clauſit extremum. And it ſhall be intended, that he died ſeiſed. But Danbies Caſe was reſolved, that an Office finding that one ſuch held of the Queen the day of his death, without finding the Seiſin, or Eſtate, was void. And it was ſaid, that according to theſe Reſolutions there be many ancient Preſidents. (14) Noy 45.

Bedingfields Caſe, in the Court of Wards.

TEnant in Tail Covenants to ſtand to ſeiſed to the uſe of himſelf for Life, and after to the uſe of his eldeſt Son, and his Heirs; And after Covenants with a Stranger, to Levy a Fine to the uſe of the Stranger, and his Heirs; and levies a Fine accordingly, and dies. Whether the Son ſhall have this Land by the firſt Covenant, and that the Fine doth ſtrengthen it, or not? was the Queſtion. And it was Reſolved, that the Son ſhould not have it. For when Tenant in Tail Covenanted to ſtand ſeiſed to the uſe of himſelf for Life; That is as much as he could lawfully do, And the limitation over is void, and he remained ſeiſed as before. And ſo the ſaid Juſtices and Counſel of the Court reſolved accordingly. (15) Noy 46.

Penſion

Penyſton *verſus* Lyſter, in the Court of Wards.

(16) Noy 46. IT was alſo then reſolved at the ſame time, that where Tenant in Tail bargained, and ſold Lands in Fee, the Bargainee levies a Fine with Proclamations, five years paſs in the Life of the Bargainer, and afterward he dies, that this Fine ſhall not barr the Iſſue in Tail, but that he ſhall have a new five years after the death of his Father; for the Father by his Bargain and Sale had given all his Right, and againſt that he could not enter to avoid the Fine; And then, when he died, his Iſſue is the firſt to whom the Right deſcended, wherefore he is within the ſaving of Co. 3. 87 b. the Statute. But if Tenant in Tayl had been only diſſeiſed, and the Diſſeiſor had levied a Fine, and the Tenant in Tail had ſuffered the five years to paſs without claim, that ſhall bind his Iſſue; for the Tenant in Tail had a Right at the time of the Fine levied, and therefore the Iſſue is not within the ſaving. Wherefore it was Reſolved, upon the firſt Motion, ut ſupra.

Trin. 43 El. in Communi Banco.

Walter *verſus* Pigot. Trin. 44 El. rot. 1031.

(17) Moor 645. Hob. 116. 2 Cr. 147. Yelv. 96. DEbt upon an Obligation de ſeptingenta, & quinquaginta libris. The Defendant demands Oyer of the Obligation, which was conceſſit ſe teneri in ſeptuagentis, & quinquagintis libris. The Condition was for the payment of 500 l. at a day, &c. The Defendant pleads variance betwixt the Writ, and Bond. And the Court reſolved, Co. 10. 123. a. that the Plea was inſufficient; For Septuagenta ſhall be well taken for Septingenta, as Wiginti for Vigenti; Eſpecially the Intent of 1 Cr. 418. 2 Cr. 147. the Parties appearing, as it doth by the Condition. Wherefore the Defendant was ordered to anſwer. And the Plaintiffs Counſel recited a verſe to prove it, Ginta ſignat decem, ſed Genta dat tibi centum. And the Defendant pleaded Non eſt factum. And it was found by ſpecial Verdict, and adjudged for the Plaintiff.

Ward *verſus* Lavile. Mich. 43, & 44 Eliz. rot. 1207.

(18) Moor 678. Hob. 16. REplevin. The Plaintiff counts of the taking apud Dale, without alledging any certain place, as the uſual courſe is to ſay in quodam loco vocat', &c. And for this cauſe the Defendant demurred, and the Count held to be ill; for the place is put in the Count to Hob. 16. give notice to what the Defendant ſhould make his Title, and anſwer, that the Will is too general, and uncertain. Wherefore the Count being againſt the general form, was adjudged to be ill.

Sir Chriſtopher Heydons Caſe. Trin. 44 Eliz. rot. 1307.

(19) SCire facias upon a Judgment in Debt againſt Sir William Heydon was ſued againſt Sir Chriſt. Heydon, and his Terr-tenants. Sir Chriſt. Heydon, and four others were Terr-tenants returned, and thereupon Sir Chriſt. pleaded, That he was Son and Heir of Sir Will. and pleaded in Abatement of the Writ; becauſe a Scire facias was not ſued againſt him as Heir, pretending that a Scire facas 1 Cr. 29, 6. ſhould Iſſue firſt againſt him as Heir, before the Writ ſhould Iſſue againſt the Terr-tenants. And the whole Court held the Plea to be ill. And the Writ was adjudged good.

Tuke

Tuke, Adminiſtrator of Rich. Tuke, *verſus* Cheek, & Caſtrel. Trin. 44 Eliz. rot. 1445.

(20) DEbt for the Arrearages of an Annuity. The Defendant pleaded a releaſe of all Actions before the day of payment, and after Oyer of the Deed, it was Demurred thereupon, and held to be no Plea, becauſe a releaſe cannot diſcharge a Duty, which was not then in being. Wherefore it was adjudged for the Plaintiff. Co. Lit. 292. b.

Stebs *verſus* Bennet. Trin. 44 Eliz. rot. 502.

(21) REplevin of the taking of his Beaſts in a Place called S. in Warminſter. The Defendant avows the taking of Damage-Feſant in ſixteen Acres of Paſture, and made Title to thoſe ſixteen Acres. The Plaintiff ſaith, That the Place, where the taking was, contains two Acres of Paſture only, and ſhews the Buttals of thoſe two Acres, and made Title unto them: And that the Defendant de injuria ſua propria took the Beaſts there, Abſque hoc, that he took the Beaſts in prædicto loco vocato S. in Warminſter, containing ſixteen Acres, prout, &c. And it was thereupon demurred, and adjudged, that the Travers was ill.

Field *verſus* James Winlow, *alias dict.* John W.

Paſch. 44 Eliz. rot. 718.

(22) DEbt, and Counts, Quod cum prædictus Jacobus per nomen Johannis Winlow, ſuch a day, and year, per quoddam ſcriptum ſuum Obligatorium conceſſit, &c. The Defendant demanded Oyer of the Bond, whereby it appeared, That the Defendant by the name of John Winlow fecit ſcriptum, &c. And the Condition was, If James Winlow payed, &c. Whereupon the Defendent demurred, Quod Breve prædict. & Narratio minus ſufficien. in lege exiſtunt, &c. And all the Court held, that the Action lay not: For John cannot be James. 2 Cr. 558.

Termino Michaelis,

Anno Quadrageſimo-quarto & quinto ELIZ.

in Banco Reginæ.

The Lord Sands *verſus* Pinder.

Trin. 44 Eliz. rot. 90.

(1) TReſpaſs; Quare clauſum fregit vocat. *Cadbury*-grounds apud Mottesſont. The Defendant pleads, That ante tempus quo, &c. & prædicto tempore, quo, &c. he was, & adhuc eſt Clericus, & ſeiſitus de, & in rectoria Eccleſiæ Parochiæ de Mottesſont prædict. in Motesſont præ. ac de, & in uno meſſuagio vocat. the Parſonage, parcel Rectoriæ prædict. in Dominico ſuo, ut de feodo in jure Eccleſiæ ſuæ prædict. And that he, & all his Predeceſſors, Rectores Eccleſiæ prædictæ, & all thoſe, whoſe Eſtate he hath had in the ſaid Houſe, have had from time, whereof, &c. a Way from that Houſe over the Place, where, &c. to an Hamlet, called Lockerly, infra Parochiam de Mottesſont prædict. to carry his Corn and Tithes growing in the ſaid Hamlet, to the ſaid Houſe, from the ſaid Hamlet, &c. The Iſſue was upon the Preſcription, and found for the Plaintiff, And it was moved in arreſt of Judgment, that this Plea was not good: For he alledgeth a Preſcription in himſelf, and all his Predeceſſors, parſons of the ſaid pariſh, and ſheweth not that he was Parſon there, and ſo he doth not enable himſelf to the Preſcription. But becauſe it was alledged, That he is a Clerk, and ſeiſed of the Parſonage in jure Eccleſiæ, although he doth not ſay, that he is Parſon, yet it is good enough: For he cannot be ſeiſed in jure Eccleſiæ, unleſs he were Parſon; So it Tant amounts, and therefore well enough. Secondly, Becauſe it is not alledged in what Vill the ſaid Houſe is, whereto he claims the way; For it may be it was in another Vill. Sed non allocatur. For the Parſon ſhall be always intended to be Reſident within his Parſonage: Wherefore it is intended, That the Parſonage-Houſe is within the ſaid Vill, where the Pariſh is alledged to be, (viz. in Mottesſont.) Thirdly, For that the Ven. fac. is only of Mottesſont, and not from Lockerley alſo, it was therefore alledged, That it was a Nil-Trial: Wherefore, &c. But all the Court held, That forasmuch as Lockerley is mentioned as an Hamlet, infra Parochiam de Mottesſont, it ſhall be intended, That the Pariſh, and Vill of Mottesſont be both one, and then it ſhall be taken to be the Hamlet of Mottesſont: For although a Pariſh may be extended to many Vills, yet it ſhall not be conceived to be ſo, unleſs it be ſhewn. And to that purpoſe Gawdy cited Long 5 Ed. 4. That where

Ante 426.
Ant. 837.

one

one is named of a Parish, it is a good Addition. Wherefore it was adjudged for the Plaintiff.

Clerk *versus* Penkeven.

(2) ACtion for Words, Thou art a lewd Fellow, for thou hast drawn such a man to Perjury. After Verdict, it was adjudged in the Queens Bench, That the Action lay, and Error brought, and assigned, that the Words were not Actionable; and all the Justices, and Barons agreed, that the Action was maintainable: For it is all one, as if he had said, Thou hast Suborned a man to Perjure himself; wherefore the Judgment was affirmed.

Baylie *versus* Taylor, Hill. 44 Eliz. rot.

(3) DEbt upon an Obligation of 100 Marks, Conditioned; Whereas the defendant, by his Deed of the same Date, had given, and granted to the Plaintiff, and his Heirs, a close of Pasture in Awsterby near Gowby; And whereas the defendant by his Indenture of Mortgage hath already Mortgaged to Jeremy Smith divers Lands, & Tenements in the County of Lincoln, whereby the said Close is either Mortgaged, or supposed to be Mortgaged for a sum of Money, to be paid at a day yet to come: If therefore the said Close be at the day mentioned in the said Indenture redeemed, & set free, & discharged of Incumbrances, that may grow by the said Mortgage. And if the defendant, during the said Mortgage, defend the said Close to the plaintiff, and his Heirs, against the said Jeremy Smith, That then, &c. The defendant pleads, that the said Close was not Mortgaged to J. S. and so he was discharged, &c. The plaintiff saith, that the said Close, Tempore confectionis Scripti Obligatorii prædict. pignoratum fuit prædicto Jeronymo Smith, Et hoc petit, quod Inquiratur, &c. And thereupon they were at Issue, and found for the Plaintiff, and it was moved in Arrest of Judgment, that the Replication was not good: First, because he saith Pignoratum fuit, and he shews not to the Court, how pignoratum fuit, viz. by Indenture inrolled, or Feoffment, so as the Court might judge thereof: As 22 Ed. 4. 40. Sed non allocatur, For the plaintiff is a stranger thereto, and he need not shew it. And the defendant having pleaded Non pignoratum fuit, it sufficeth the plaintiff to say Pignoratum fuit generally, without shewing how; as if the Tenant pleads Joynt-tenancy on the part of the plaintiff, he needs not shew, of what gift, or how, because he is a stranger thereto, but if he pleads it on his own part, it is otherwise, and therefore this Exception was disallowed. Secondly, because the plaintiff in his Replication saith, Quod pignoratum fuit, and he doth not say, That it was not redeemed: For although it were pignoratum, yet if he doth not shew that it was not redeemed, he shews not any breach sufficient: For the Condition is, Whereas it is Mortgaged, or supposed to be Mortgaged, if it be redeemed, that then, &c. so as if he will entitle himself to the breach, he ought to shew, that it was Mortgaged, and not redeemed, as Long 5 Ed. 4. 188 is; In Debt upon an Obligation, conditioned for the performance of an Arbitrament, The defendant pleads, Nullum fecerunt Arbitrium The plaintiff saith, Tale fecerunt arbitrium: That is not sufficient, without shewing in what point it is broken, so as the Court may

Yelv. 24. Ant. 823. R. 69. 2 Cr. 221. Ante 320. Yelv. 24.

ſee whether he hath juſt cauſe of Action. And although the defendant by pleading Quod non pignoratum fuit, implies, That there was not any redemption, yet it is not material: For ſo it is done in Caſe of an Arbitrament, it is implied, that he did not perform it. And of that Opinion was Gawdy; For the plaintiff ought always to ſhew to the Court, that he hath cauſe of Action: And therefore if in a Replevin the Parties be at Iſſue upon the Place, yet the Avowant ſhall not have Return, unleſs he ſhews to the Court good cauſe in his Avowry to have Return. Wherefore, &c. But Popham, Fenner, and Yelverton to the contrary: For when the defendant pleads Non pignoratum fuit, and the plaintiff ſaith Pignoratum fuit, it is a perfect Iſſue in it ſelf: and therefore the plaintiff concludes his Plea, Et hoc petit, quod inquiratur per patriam, &c. But in the Caſe of the Arbitrament alledged, he ſhews it, and the defendant ought to rejoyn thereto, before they be at Iſſue. And Popham ſaid, it differed from the Caſe here: For there he, who pleads it, is privy to the Arbitrament, and is privy to the Aſſignment of the Breach: But here the Redemption lies only in the knowledge of the defendant, and not of the plaintiff: and therefore the Plaintiff ſhall not be enforced to ſhew that, whereof by Intendment he hath not any Conuſance. Wherefore it was adjudged for the plaintiff.

2 Cr. 442.

Chambers *verſus* Taylor.

(4) ACtion upon the Caſe in nature of a Conſpiracy; For that the Defendant falſo & malitioſe procured him to be Endicted at the Seſſions of the Peace in the County of Middleſex of Felony for ſtealing a Cloak, and other Goods, &c. and to be impriſoned, until he were acquitted, &c. The Defendant pleaded, That he was poſſeſſed of the Goods mentioned in the Endictment, and they were ſtoln from him by perſons unknown, out of his Houſe in High-Holborn in the County of Middleſex, whereupon he made ſearch for them, and found them in the Plaintiffs Houſe, and demanded of him how he came by them; and becauſe he would not reſtore them, nor ſay how he came by them, He for the Examination thereof complained to J. S. Recorder of London, and Juſtice of Peace in London, and Middleſex, and obtained his Warrant to bring the Plaintiff before him, to be examined concerning thoſe Goods, by vertue whereof he was brought before him, and examined, &c. and becauſe he gave various and uncertain Anſwers, The ſaid J. S. greatly ſuſpected him of the ſaid Felony, whereupon he bound the Plaintiff in a Recogniſance of 40 l. to appear at the next Goal-delivery of Newgate, and bound the Defendant in a Recogniſance of 40 l. to proſecute, and give Evidence againſt the Plaintiff concerning the ſaid Felony: Whereupon he at the next Seſſions for the County of Middleſex preferred the ſaid Bill of Endictment, prout in the Declaration, &c. and delivered to the Jury upon his Oath all the ſaid Circumſtances, whereupon they found the Bill, for which the Plaintiff at the next Goal-delivery at Newgate was committed to Priſon, prout, &c. in the Declaration, and there acquitted: No Evidence being given againſt him, Quæ ſunt eadem Indictament. procuratio, & in priſona detentio, unde ſe queritur; & hoc, &c. And hereupon the Plaintiff demurred. And now this Term it was argued by Bacon for the Plaintiff,

Plaintiff, that this Plea is not good, because it is not alledged; that the Plaintiff stole them, nor doth he shew any sufficient cause of suspition, as common Fame, or that he was taken with the manner, or the like. And although he gave Evidence upon his Oath, That shall not excuse him. It is also alledged in the Declaration, That he falso & malitiose exhibited the Bill, which he ought to have Traversed: But all the Court resolved, that the Plea was good, and needed not any Travers; for when he shews that the Goods were stoln, and found in the House of the Plaintiff, and he would not shew by what lawful means he came by them, That made a good cause of suspition, and when he was examined thereof before a Justice of Peace, and gave various and uncertain Answers, That aggravated the Suspition, and was just cause of binding him to the Sessions: And when the party is bound by Recognisance to give Evidence, and he exhibits a Bill, and gives Evidence, that it is a good cause of Justification: For otherwise every one, who exhibits a Bill of Indictment, and gives Evidence against a Prisoner, shall be drawn in question for a Conspiracy. And Popham said, There is no Dettion but that a Justice of Peace, in furtherance of Justice for the examination of a Felon, may send for any to examine circumstances to prove it. And they all resolved, that the Allegation in the Declaration, that he falso & malitiose procured him to be endicted, is not Traversable, when he alledgeth the especial matter of procuring the Indictment, which the Plaintiff hath confessed by his Demurrer, which, if it were false, the Plaintiff might well have traversed it. Wherefore, without further argument, it was adjudged for the Defendant. Vide 27 Ass. 22. 8 H. 4. 6. Fitz-H. Conspiracy 7, 27. H. 8. 2. and Pains Case ante, Hill. 44. Plac. 7. Ante 871.

Salter *versus* Butler. Pasch. 44 Eliz. rot. 361.

(5) ACtion of Trover and Conversion of Goods in London, The Defendant Justifies: For that one one Robert Bash was seised in fee of twenty Acres in Stansted in the County of Hertford, and granted a Rent-charge to Robert Bash, his Executors, and Assigns of 16l. per annum during the Life of Frances, the Wife of Robert Bash, which Robert Bash died intestate, and Frances his Wife was Administratrix unto him: And the Defendant, as her Servant, took a Distress in the said twenty Acres, for the said Rent, by the command of the said Frances, and impounded them there; And Traverses the taking, and Conversion of them, in any other place: And it was thereupon demurred, and all the Court held the Plea to be ill: For the Inducement to the Travers (which ought always to be good) is not sufficient cause of Justification for the taking of the Distress; for this Rent was determined by the death of Robert Bash, because there cannot be an Occupant of a Rent. And the Feme is not Assignee by her taking of Administration: For none can make Title to a Rent to have it against the Terr-tenant, unless he be party to the Deed, or conveys a sufficient Title under it. Wherefore it was adjudged for the Plaintiff. And whereas Exception was taken to the Plea, because he traversed the County, the Court did not speak thereto: For that they resolved the substance of the Plea to be Insufficient. Noy. 46. Moor. 664. Yelv. 9. Ante 721.

Bustard

Buſtard *verſus* Coulter. Mich. 43, & 44 Eliz. rot. 247.

(6) Yelv. 8. Moor 665. Poſt, 917.

TRespaſs. Upon Demurrer the Caſe was, That Jaſper Dormer being ſeiſed of the Moyety of the Mannor of Ilbury, to him, his Wife, and his Heirs, Levied a Fine thereof to Buſtard (the now Plaintiff) who conveyed it to W. Gregory in Fee, who conveyed it to Darſton, and Shelton in Fee; and they exchanged this Moyety with the Plaintiff for the fourth part of the Mannor of Barton in Fee. This Exchange was executed, afterward Jaſper Dormer died; Juſtina the Wife of Jaſper entred into the Moyety of the Mannor of Ilbury, and defeated the Exchange for her Life. The Plaintiff enters into the ſaid fourth part of the Mannor of Barton, given in Exchange, and being Duſted brings Treſpaſs. And, Whether this Entry were Lawful? Was the Queſtion. And all the Court held, that he might enter, for the Exchange was totally and utterly Defeated, as well where parcel of the Eſtate is defeated (eſpecially being a Free-hold) as it ſhould be where parcel of the Land given is defeated; As 13 Ed. 4. is. For it would be very hard, where one gives a Poſſeſſion in Exchange, and that ſhould be defeated by an Eſtate for Life, or by a Leaſe for 100 years of the one part, and a bare Reverſion ſhould only be left him; that he ſhould content himſelf therewith, and have nothing during the time of the Eviction. Wherefore in regard the Exchange was intended for the mutual benefit, and advantage of either Parties; and one of them hath it not where part of the Eſtate is defeated, and a dry Reverſion only left him; Therefore the Exchange is defeated for ever. And although it be clear, that an Acre in Poſſeſſion may be given in Exchange for the Reverſion of another expectant upon a Leaſe for Life, or for years, where no Rent is reſerved, and that it ſhall be good; For they ſo took it, and no Party was deceived, Yet it is not like the Caſe in Queſtion; For here he took it as in Poſſeſſion, not knowing of any ſuch Title of Eviction. But if he had recited, That he had a Reverſion expectant, and gave it in Exchange, and the other had accepted thereof, it had been good. And therefore Popham ſaid, if he in Reverſion exchange his Reverſion for a Poſſeſſion, it is good. But if he in Reverſion diſſeiſe his Tenant for Life, or Duſts his Tenant for years, and makes an Exchange in Poſſeſſion for Lands in Poſſeſſion; if afterwards Tenant for life, or years, Re-enter; the entire Exchange is defeated: So if Tenant in Tail, Reverſion to his right Heirs, bargains and ſells the Land in Fee (whereby the Bargainee hath a Fee for the time) If he exchange with another for Lands in Poſſeſſion, and afterwards the Tenant in Tail dies, and the Iſſue in Tail Enters, and Defeats the Exchange for his time, There is no doubt but that the entire Exchange is defeated. Quod Coke, Attorney General (who was of Counſel with the Defendant) agreed unto. For a Reverſion expectant upon an Eſtate Tail is eſteemed of no value. For it may be cut off by a Common Recovery, which was the reaſon, that it was adjudged in Doilies Caſe, that ſuch a Reverſion is not aſſets in debt, or Formedon. And in Billing, & Trapps Caſe 13 Eliz. that a Reverſion upon an Eſtate Tail is not Aſſets in a Formedon. But he ſaid, That for a Reverſion upon an Eſtate for Life it is otherwiſe,

Yelv. 8.

1 Rol. 812.

and

and therefore an Eviction for Life, or years, ſhall not Defeat the entire Exchange; becauſe the Law accounts the greater part of the Exchange to remain, and in proof thereof he cited 42 Aſſ. Pl. 22. That where part of one Parceners part is Evicted for Life, That ſhall not defeat the entire Partition, which is like to the Caſe of an Exchange. But the Court denied it to be Law; For they all held, that the entire Exchange was defeated, and gave Rule to enter Judgment for the Plaintiff by ſuch a day, unleſs other Cauſe were then ſhewn. And then Coke moved for the Defendant, That the Replication was not good; becauſe the Eſtate was conveyed by Fine with a Render to Juſtine the Feme. And it is not ſhewn, That this Fine was executed by Entry. And it is clear, That this Fine is always Executory, and therefore a Scir. facias lies upon it: And for that Cauſe, until it be Executed by Entry, nihil operatur. And although it be alledged, by force whereof ſhe was ſeiſed, &c. yet that helpeth not. Secondly it is pleaded, Quod per quandam Indenturam, &c. he bargained and ſold the Moyety of the Manor of Ilbury, Habendum the ſaid Moyety to W. Gregory in Fee: So in the Premiſes of the Deed, the bargain and ſale is not to any perſon; and then although the Habendum is to W. G. yet that ſhall not help. For the Office of an Habendum is only to limit an Eſtate, and not to give any thing: And there ought to be Grantor and Grantee in the Premiſſes of the Deed, otherwiſe it is void. And although it be pleaded, that the Indenture is between Buſtard on the one part, and W. Gregory on the other part: Yet that ſhall not help; for Intendments avail not: but it ought to be expreſly ſhewn in the Deed, to whom the Grant was made. Thirdly, becauſe it is pleaded Virtute cujus he was ſeiſed, and ſaith not Vigore Statuti de uſibus, &c. as the Common pleading is. And all the Court delivered their Opinion ſeverally; That for the matter in Law they held, that the Exchange was entirely defeated by the eviction of the Eſtate for Life, becauſe that part of the conſideration is defeated. And although it were alledged, that he had notice of the Eſtate for Life by Intendment, becauſe he was the firſt that purchaſed from Jaſper, and that the Land by that means came unto him; yet that is not material; becauſe Non conſtat at the time of the Exchange made unto him, but that the Eſtate for Life might have been determined by Releaſe, or otherwiſe. But if it had been particularly mentioned, it migh peradventure have been otherwiſe. But as to the pleading they held, that it was not good: For firſt, He cannot be ſaid ſeiſed upon a Fine ſur Render, without an Entry alledged: And the pleading by force whereof he was ſeiſed, &c. doth not ſupply the entry; But upon a Fine ſur Conuſance, &c. come ceo, &c. it is otherwiſe: For that is executed. Secondly that the Bargain, and Sale by Indenture, without expreſſing to whom, although it were Habendum to W. G. who was Party to the Deed, was not good for the reaſons before alledged. As to the third Exception, They held the pleading to be well enough: For although the uſual manner is to ſay vigore Statuti, yet it being a general Statute, the Court ought to take Conuſance thereof, and therefore good: but, becauſe the Record was not in Court, and it appeared not, how theſe Exceptions came to the end of the Caſe, they would adviſe, Et adjournatur. Vide 4 Co. 121. & poſtea, Hill. 45. Plac. 9

Yelv. 8.

Poſt. 917.

Poſt. 918.

Thomas

Thomas Ruſſel *verſus* John Grange.

(7)

ASſumpſit. Upon Non Aſſumpſit pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, becauſe the Record is entred, Et prædictus Thom. venit per Attornatum ſuum, Et prædictus Joh. per Attornatum ſuum, Et prædictus Thom. deſendit vim, & injuriam, &c. & dicit, quod ipſe non Aſſumpſit. Et de hoc, &c. Et prædictus Thom. ſimiliter, &c. So John the Defendant never pleaded, but Thomas the Plaintiff, and ſo no Iſſue joyned between the Parties: And it was moved, that this Plea was Vitious, and not alike, as where the Parties had once pleaded well: But it is a Miſpriſion in the concluſion, as in the Caſe of 11 H. 7. 2. Peningtons Caſe: But all the Anne 435. Court (being full) held, That it was a meer Miſpriſion of the Clerk, and well amendable after Verdict: for it ſhall be intended to be the Defendants Plea, and but the Miſ-entry of the Clerks. Wherefore it was ordered to be amended, and was adjudged for the Plaintiff.

Colſton *verſus* Harris.

(8)

ASſumpſit. Whereas Sutes were depending betwixt the Plaintiff and Defendant in the Spiritual Court for Tithes, and they had put themſelves in award to J. S. concerning the Premiſes, and in Conſideration of 6 d. given the one to the other, The one aſſumed to the other to ſtand to the award of J. S. or to pay 10 l. and alledgeth that J. S. awarded, That the Defendant ſhould pay to the Plaintiff for the Tithes 40 s. at ſuch a day, and that he had not paid it, per quod Actio accrevit After Non Aſſumpſit pleaded and found for the Plaintiff, it was moved, That this Arbitrament was void; becauſe it is awarded, That the Defendant ſhould pay 40 s. and there is not any thing awarded for him to have, or to be freed from Sutes, ſo as he hath not any advantage thereby. And Co. 8. 98. a. of this Opinion was the whole Court, and, that the Arbitrament being void, the Aſſumpſit ſhall not bind him to perform it. Wherefore it was adjudged for the Defendant.

Willymote *verſus* Wetton.

(9)

2 Cr. 331. ACtion upon the Caſe for theſe Words uſed of the Plaintiff by the Defendant to one Street; Go follow Sute againſt Willymote (innuendo the Plaintiff) for ſtealing thy two Kine, and hang him, or I will hang thee. And on his further malice offered unto him, If he would Exhibit a Bill of Endictment for ſtealing the Kine, That he would procure him the value of two Kine; & that he Exhibited a Bill againſt the plaintiff, &c. After Verdict for the plaintiff upon Not-guilty pleaded, it was moved, That the Action was not maitainable. But Fenner, and Yelverton (being only in Court) held, That the Action was well brought: For the bidding him follow Sute againſt him for ſtealing thy Kine, and hang him, imports as much, as that he had Feloniouſly ſtoln them, otherwiſe he could not hang him. Wherefore it was djudged for the Plaintiff.

Moyl *verſus* Ewer.

TRespaſs. Upon Evidence, it was moved by Coke Attorney General, where an Indenture of Bargain and Sale between J. S. on the one part, and J. D. on the other part, and in the end thereof a Letter of Attorney to J. N. to make Livery, was produced in Court, that it ſhould be void, becauſe the Attorney was not party to the Deed. But all the Court held it to be good enough: For in many ſuch Indentures are ſuch Letters of Attorney made, and it is a common aſſurance, and therefore good. Secondly, it was moved upon an Indenture of Feoffment, made by the Prior of Burceſter to John Langſton of the Moyety of the Mannor of Caverfield, and all his Lands in Caverfield, That he having a Mannor in Caverfield, That the Moyety of the Mannor only ſhould paſs: And for the words, And all his Lands in Caverfield, That extends but to other Lands, not parcel of the Mannor, and not to make the whole Mannor to paſs: And, if he had not any other Land, thoſe words were void. And of that opinion was Popham. But, in regard it was ſhewn on the Plaintiffs part, that this Deed being an ancient Deed, viz. 3. H. 7. and therein a Rent of 53 s. 4 d. reſerved: And all the Land of the Prior there had been enjoyed under that Grant: And that this Grant was ſo made, becauſe Langſton before had a Mannor in that Vill, and the Prior another Mannor, which peradventure in an ancient time were both but one Mannor, and afterwards divided; So peradventure the Mannor, which the Prior had, was named the Moyety of the Mannor; For theſe Cauſes Gawdy, and the other Juſtices held, That the entire Mannor ſhould paſs: But they adviſed the Jury, if the Caſe was ſo, That it ſhould be ſpecially found. But the Jury gave a general Verdict for the Plaintiff. (10) Noy. 49. Co. Lit. 52. b. 2 Rol. 8. Co. 9. 28. a.

Gore *verſus* Moorton.

Trin 44 Eliz. rot. 783.

ACtion for theſe Words, Thou art a forſworn Knave, and that I will prove; for thou waſt forſworn in the Hundred-Court (innuendo Stiverton-Hundred-Court) After Verdict for the Plaintiff it was moved, That the Action lay not: For it doth not appear, that it was a Court of Record, nor any Court, whereof the Juſtices ſhould here take any Conuſance. And of that Opinion was the whole Court. (11) Yelv. 27. Mo. 73. Ant. 135.

Waller *verſus* Campian.

DEbt for Rent reſerved upon a Leaſe for years, Suppoſing, Quod apud Caſton, 16 Aprilis Anno 42 Eliz. he Demiſed ſuch Lands, excepting one Acre, jacent. & exiſtent. in Hodeſdon in Comitat. prædict. Habendum, from the Annunciation laſt paſt, for years, &c. Virtute cujus intravit, & habuit Tenementa prædicta, from the ſaid Annuntiation, &c. After Verdict it was moved in Arreſt of Judgment. (12)

That the Declaration was not good: For there was not any Will named, where the Land lay: For the Jacent. & exiſtent. &c. extend only to the Land excepted. But all the Court held, that it refers to both. Secondly, it was moved, that it was alledged, Quod habuit, & occupavit, from the Annunciation laſt, &c. which was before the beginning of his Leaſe: And he was thereby a Diſſeiſor, and ſhall not be ſaid to be in by the Leaſe; as in Cliffords Caſe, 7 Ed. 6. Dyer. But all the Court ſaid, that it was well enough: Ant. 169. for it ſhall be intended, that he occupied before the Leaſe by Agreement: And it is not like, where a Leaſe is made to have a future Commencement, and he enters before the day of the Leaſe made. Wherefore it was adjudged for the Plaintiff.

Garnons *verſus* Hodges.

(13) Yelv. 11. Ant. 888. ASſumpſit, in conſideration the Plaintiff ſhould uſe his endeavor, to procure the Defendants Father to aſſure ſuch Land, that he would give to the Plaintiff 20 l. if he procured the Father to make the aſſurance; and alledgeth in facto, that he procured, &c. And that the Defendant had not paid, &c. The Defendant pleaded Not Aſſumpſit, and found for the Plaintiff, and after Verdict it was moved in Arreſt of Judgment, that the Declaration was not good, becauſe he doth not alledge the place, where the Procurement was. Sed non allocatur: For the promiſe is in conſideration he ſhould uſe his endeavour: And now Iſſue is taken upon the Aſ- 2 Cr. 125. ſumpſit, which is Collateral; Wherefore it is good enough. And Moor. 702. it was adjudged for the Plaintiff.

Dog *verſus* Penkeven.

(14) Ante 899. ERror in the Exchequer-Chamber, of a Judgment in the Queens Bench, in an Action for theſe Words, Thou art not ſo honeſt a man, as thou takeſt thy ſelf; for thou haſt drawn ſuch a man to Perjury. The Error aſſigned was, That an Action lay not for theſe Words: For it is not ſaid, that he had ſuborned any. And it may be ſaid Drawn, becauſe he was examined upon Interrogatories in a Sute, wherein he was Perjured. But all the Juſtices and Barons held, that the Action well lay; for the Words are of the ſame Sence, and ſhall be taken on the worſt part, Wherefore the Judgment was affirmed.

Proctor *verſus* Fitz-Williams, in the Exchequer.

(15) 1 Cr. 135. ACtion for theſe Words to J. S. the Plaintiffs ſervant, Thou haſt a Traytor to thy Maſter (innuendo the Plaintiff) adjudged, That the Action lay, it being moved after Verdict in Arreſt of Judgment.

Woodward *verſus* Thompſon.

(16) ERror in the Exchequer-Chamber of a Judgment in the Queens Bench. The firſt Error aſſigned was, becauſe in Debt by an Adminiſtrator he ſuppoſed Adminiſtration committed unto him by the Archbiſhop of Canterbury; and doth not alledge, that he was loci illius Ordinarius, or that he had goods in divers Dioceſſes. Sed non allocatur; For it is well enough, and to be ſo intended, that he had ſufficient Authority to commit it. Secondly, becauſe Adminiſtration is alledged to be committed, and he ſaith not poſt mortem inteſtati. But it was held to be good enough: For it is alledged to be committed de bonis inteſtat' tempore mortis ſuæ, & therefore it is neceſſarily to be intended to be after his death. Wherefore the Judgment was affirmed. Ant. 879. Anté 791.

Poultney *verſus* Wilkinſon.

(17) ACtion for theſe Words, Thou art thrice Perjured in thy Anſwer in Chancery to my Bill; innuendo a Bill exhibited there by the Defendant againſt the Plaintiff, and an Anſwer to that Bill. The Defendant demurred, becauſe he alledged not any Perjury in any Particular. And, without Argument it was adjudged for the Plaintiff. 1 Cr. 322.

Gurrey *verſus* Sanderſon.

Paſch. 44 Eliz. rot. 171.

(18) TReſpaſs Upon a ſpecial Verdict, The Caſe was, a Copy-holder in Fee ſurrendred his Copy-hold to the uſe of one in Tail, with divers Remainders over, who was admitted accordingly, and afterwards ſurrendred to the uſe of another in Fee, againſt whom a Recovery was had in the Copy-hold Court, with Voucher of the Tenant in Tail, who Vouched a Common Vouchee, and died. Whether that was a Diſcontinuance, or bar to the Eſtate-Tail? Was the Queſtion; Firſt, it was doubted, whether an Intail might be of a Copy-hold, there being no Cuſtom found either one way, or other? Secondly, Admitting it to be an Eſtate-Tail, whether a Surrender by it ſelf be a Diſcontinuance of the Eſtate-Tail: Thirdly, Whether there may be a common Recovery of a Copy-hold, to bar the Iſſue in Tail, and thoſe in Remainder? Popham ſaid, That all theſe Points ought to be well conſidered, they concerning many Subjects, and therefore they would be well adviſed, before there ſhould be any Reſolution of them. And it was therefore adjourned. Ante 717. Ibid.

Stephens *verſus* Frances Totty, *nuper uxorem* Henrici Totty.

(19) PRohibition. The Caſe was ſuch, Frances Totty was divorced from her Husband, cauſa Adulterii in the Husband, and the Sentence of divorce was accordingly. And the Feme ſued Stephens in the Spiritual Court for a Legacy, given her by a Stranger. And he pleaded the Releaſe of the Baron, made after the Divorce: which being diſallowed in the Spiritual Court, he brought a Prohibition. And it being argued by Doctors, Crompton, & Hudſon, they affirmed the Civil Law to be, that ſuch a Divorce is not a Diſſolution a vinculo Matrimonii, ſo as that any of them may marry again; But, it is a ſeparation only, and they be not compellable to Cohabit: But, if they will, they may without any new marrying. And it was ſaid, that if one of them be in dread of the other, for poyſoning, or ſuch like cauſe, it is a good ground for ſuch a Separation by Sentence, &c. And all the Juſtices held, that in regard this Separation doth not avoid the Marriage abſolutely, but they ſtill remained Man and Wife, that this Releaſe of the Baron was good to extinguiſh the Duty: And that the Books, which ſpake that, that the Feme ſhall have again her Goods after Divorce, are to be intended of an abſolute Divorce ab initio. But becauſe the Releaſe was obtained by Fraud, without any due conſideration, as they conceived, they adviſed them to a Compoſition. Et adjournatur.

1 Rol. 343. Noy 45. 2 Rol. 301. Moor 665. 1 Cr. 463. Co. Lit. 235. a. 1 Cr. 463.

Seyman *verſus* Greſham.

Hill. 44 Eliz. rot. 650.

(20) ACtion upon the Caſe, ſuppoſing, That one G. Berisford was Indebted unto him by a Statute Staple in 200 l. and that he ſued Execution, and that the Sheriffs of London, by force of that Writ, Impannelled a Jury to enquire what Goods, &c. And that there were divers Goods of the ſaid G. Berisford in ſuch an Houſe in London: And that the Sheriff came with the ſaid Jury, to have a view of them, and to appraiſe, and ſeiſe them for this Debt; and that the Defendant, præmiſſorum non ignarus, ſhut the door, and diſturbed him to make Execution, &c. The Defendant entitles himſelf to the Poſſeſſion of the Houſe, by reaſon of a Joynt Leaſe made unto him, and one G. Berisford, and that he had it by Survivorſhip, and that he ſhut the door for the Salvation of his Poſſeſſion. The Plaintiff Replies, that the ſaid G. Berisford mentioned in the Bar, and he, who was obliged in the Statute, were all one perſon. And it was thereupon Demurred. The principal Queſtion was, Whether this Shutting of the door was a diſturbance of the Execution? And whether the Plaintiff might thereupon maintain this Action? And firſt, it was agreed by the whole Court, That upon a Capias ad ſatisfaciendum the Sheriff may not break open any mans Houſe, to make Execution, but he is puniſhable for doing it: But upon a Capias Utlagatum he may well enter any mans Houſe to apprehend him. For no place ought to protect him againſt the Queen:

Yelv. 28.

And

And he being out of the Law ſhall not have the Protection of the Law. And this Caſe Tanfield ſaid was reſolved by all the Juſtices of the Common Bench, in Sir Thomas Keimies Caſe. But whether he might upon a Fieri facias, or Extendi fac. enter the Houſe of any to take Execution of the Goods, and to break the Parties Houſe to make Execution, they doubted. Vide 18 Ed. 2. Execution, 250. 13 Ed. 4. 9. 18 Ed. 4. 4. But if the Door be open, there is no doubt, but that the Sheriff might enter to do Execution: For the Law gives him authority thereto, as an Executor may enter to take Goods left there by the Teſtator. And for this Cauſe Gawdy, & Popham held, that the Action here well lay; becauſe by the Shutting of the Door, the Party was diſturbed to have his Execution. But Fenner, and Yelverton e contra, For the Goods being in the Defendants Houſe, who is a Stranger to the Execution, he is not bound to take Conuſance of the Sheriffs intent, in coming to make Execution; and his Shutting the Door was lawful. And although there were loſs to the Plaintiff, yet it is Damnum ſine injuria. And it appears not by what means, that the Goods of the Conuſors, which are in the Defendants Houſe, came thither. And if they were taken by the Defendant, as a Treſpaſſor, the Party, whoſe Goods they are, or the Sheriff upon Execution, may come within the Houſe, if the Door be open, to ſeiſe them, becauſe the Defendant had them by unlawful means. But if the Defendant had them by lawful means, viz. by Bayl-ment, or otherwiſe, neither the Party himſelf, nor the Sheriff can come within the Houſe to ſeize them. And therefore the Shutting of the Door is no cauſe of Action for the Plaintiff. And therefore the Action lieth not, &c. Et Adjournatur. Note, That afterward, Term. Mich. 2 Jacobi. this cauſe was argued again. And that Williams agreed with the Opinion of Yelverton, and Fenner, in omnibus; and that the Sheriff might not break any mans Houſe to take Execution, unleſs in the Queens Caſe, or for a contempt, &c. Wherefore according to their Opinions, it was adjudged for the Defendant. 5 Co. 91.

Ant. 759.

Ant 759.

Jennings *verſus* Harley.

(21)

Yelv. 19.

Aſſumpſit. Whereas one Baſſet was indebted unto him in 50 l. and that he brought Debt, and had Judgment to recover, and thereupon ſued a Capias ad ſatisfaciendum, and an Exigent, and the ſaid Baſſet was thereupon Outlawed, and that he intended to ſue a Capias Utlagatum; That the Defendant, in conſideration the Plaintiff would forbear to proceed upon the Capias Utlagatum, which he had ſued out uſque ad terminum Paſchæ proxime ſequent. Aſſumed, That if Baſſet did not pay the Debt, that he would pay it, and alledged in facto a non-performance of the promiſe. The Defendant pleaded non Aſſumpſit, and found againſt him, and after Verdict it was moved by Bacon in Arreſt of Judgment, That the Action lay not: For this conſideration is againſt Law, and alſo void, becauſe this Proceſs is at the Queens Suite, and not at the Parties. But Gawdy, Fenner, and Yelverton held, That the Conſideration was good: For it is the Parties Suite, as well as the Queens; for the Party is

the

the means to entitle the Queen thereto, and the Party hath the
Yelv.20. eſpecial carriage thereof: And if the Sheriff ſuffer the Party
Ant.707. 850. arreſted upon ſuch a Capias Utlagatum to eſcape, It is an Eſcape againſt the Plaintiff; as it was adjudged in Shaw, and Cutteries Caſe. Popham e contra: For the Sute is meerly now the Queens Sute, and a means whereby the Party may have his Execution. So as the Queen is Entituled thereto by the Party, ſo after the Outlawry, the Party is thereto by the Queen, and that iſſueth for the contempt to the Queen: And, if the Party will not take it, the Queens Attorney may ſue it out, and the Queen is not of right bound to ſatisfie the Party out of the Goods which are ſeiſed by this Writ, although ſhe doth it out of Grace many times. But a Petition of Right lieth not in ſuch Caſe: And although the Plaintiff hath advantage thereof, in regard of the Party, who is taken thereby to be in Execution (which is the reaſon, that he may have Debt upon the Eſcape) yet he cannot ſtay the Execution of this Writ, ſo the Conſideration is void. But, notwithſtanding, the other Judges gave Rule, that if other Matter were not ſhewn before ſuch a day, That Judgment ſhould be entred for the plaintiff: And, that the Defendant might bring his Writ of Error. And no cauſe was afterwards ſhewn, &c.

Criſp *verſus* Verral.

(22) APpeal of Murther againſt the defendant, late of Sandwich in Co-
Yelv.12. mitat. Kanciæ, of the death of his Brother apud Sandwich in Comi-
1 Cr.247.248. tat. Kanciæ. And upon a Capias directed to the Sheriff of Kent, he re-
Ant.695. turned a Non eſt inventus, And the Defendant appeared to the Writ, and ſaid, That Sandwich prædict. is Parcel of the Cinque-ports, ubi Breve Reginæ non currit; Quiq; quidem les Cinque-ports, nec eorundem aliqua parcella, are within the County of Kent, and demanded Judgment of the Writ. Et quoad the Felony, and Murther Not-guilty. And thereupon the Plaintiff Demurred. Tanfield for the plaintiff, That the Plea is inſufficient in matter, and manner: For, as to the mat-
1 Cr.247.8. ter, if it ſhould be a Plea, by this means Murther would be diſ-puniſhed: For he, who did it, would fly out of the Cinque-ports, and they had not any remedy to purſue him, for they cannot award Proceſs of Outlawry, for that ought to be proclaimed in open County, which they have not any Authority to do. And although
4 Inſt.223. R.181. that in matters, which concerns the Realty, it is a good plea to ſay, it is within the Cinque-ports: Yet in debt, or treſpaſs tranſitory againſt one, who is not a Baron of the Cinque-ports, that it was within the Cinque-ports is no plea: For if a Stranger ſhould commit Treſpaſs there, and depart from thence, and ſhould not be puniſhable, there would be a faileur of Juſtice, which ſhould not be by reaſon of any Grant of Franchiſe, and to that purpoſe, vide 49 Ed.3.24.50 Ed.3.5.21 Ed.4.33 Ed.3. Juriſdiction 80. 22 H.7.90. So here, as this Caſe is, the Party not being Demurrant there, if this ſhould be a Plea to Ouſt the Juriſdiction of this Court, the Plaintiff ſhould be without remedy there, and there would be a faileur of Juſtice, wherefore the plea is not good for the Matter. The plea alſo is double; for if this be a plea, that

Sandwich

Sandwich is within the Cinque ports, Then when he ſaith, that the Cinque-ports are not within the County of Kent, that makes the Plea double: For the Murther is local, and being laid to be at Sandwich in the County of Kent, to ſay, that Sandwich is not within the County of Kent, is a good Plea by it ſelf: For, if he had pleaded Not-guilty, he might give in Evidence, that the Fact was not done in the ſame County. Wherefore the Plea is double. Coke and Godfrey e contra; That the Plea is good, for it appears not to the Court, that if this Plea were allowed, there would be any faileur of Juſtice: But he well might have his appeal there. But if it were ſo that Juſtice ſhould fail, that peradventure might be a cauſe to diſallow of this Plea, but that ought to appear by the Replication, viz. That the Party was fled out ſo, as there was not any remedy againſt him there. And by the Demurrer it is confeſſed, That the place where the Murther was committed, is out of the County of Kent: So by his confeſſion the appeal ought to abate. And for the doubleneſs, he cannot take advantage after a general demurrer, but he ought to have ſhewn it for cauſe. Vide 14 H.8.24. 37 H.6.5. And afterwards all the Juſtices delivered their opinions ſeverally, that the Plea was not good for the matter, becauſe this Action of appeal is higher then an Action Real, or Perſonal, and in ſome ſort concerns the Queen. And in thoſe Caſes which concern the Queen, that it is within the Cinque-ports, it is not any Plea, as in a Quare impedit. 4 Inſt. 223. 1 Cr. 247. 2 Cr. 543.

Wolverſton *verſus* Meres.

Hill. 43 Eliz. rot. 977.

(23) ACtion for Words, Edmund Wolverſton is a Bankrupt Knave. It was adjudged, that the Action lay, he ſhewing, that he was a Merchant. And it was affirmed in a Writ of Error, although it was alledged, That he did not ſay, that he was a Bankrupt, but a Bankrupt Knave, which is an Adjective, and it may be a Bankrupt in Knavery.

Downing

Downing *verſus* Seymour.

Mich. 44, & 45 Eliz. rot. 402.

(24) Co. Lit. 338. b. TReſpaſs Upon Demurrer: The Caſe was; Leaſe was made to Baron, and Feme for years: who enter; the Leſſor afterwards Infeoffs the Baron, who died Seiſed. The Feme Survives, and claims the Term, and betwixt the Feme, and the Heir of the Baron, the debate was, Whether this Term was extinguiſhed? And it was held per totam Curiam, That by the acceptance of the Feoffment the Baron hath ſurrendred the Term, and it is Extinguiſhed. But if the Conveyance had been by Bargain, and Sale Inrolled, or by Fine, it had been otherwiſe. And it was adjudged for the Plaintiff.

Termino Hillarii,
Quadrageſimo quinto ELIZABETHÆ,
in Banco Reginæ.

Law *verſus* Thom. Sanders.

(1)

ASſumpſit. The Declaration was in this manner; *Robertus Law* queritur de *Thom. Sanders* in cuſtodia Mareſchalli, &c. pro eo videlicet; Cum in conſideratione, quod idem *Le* Plaintiff ſhould take to Wife the Daughter of the ſaid Thom. Super ſe Aſſumpſit, & eidem *Roberto* promiſit to pay unto him 100l. &c. The Defendant pleaded Non Aſſumpſit, & found for the Plaintiff. And it was moved in arreſt of Judgment, that the Declaration was not good; becauſe it was not alledged, that the Defendant Aſſumed: But it was thereto anſwered at the Bar, that it is neceſſarily to be intended, that the Defendant Aſſumed: becauſe it is Queritur verſus, &c. & he is there named. And in Conſideration the Plaintiff would Marry his Daughter, Super ſe Aſſumpſit, it is of neceſſity to be intended, that the Defendant did Aſſume; And now he having pleaded, the Jury hath found, that he did Aſſume, &c. But all the Court held it to be ill: For a Declaration ought to contain the Subſtance; otherwiſe it is not good. And no matter of Subſtance ſhall be ſupplied by Intendment, nor ſhall the Verdict help it. Wherefore it was adjudged, Quod Querens nihil capiat per billam. Noy 59.

King *verſus* Hobs.

(2)

ASſumpſit. The Plaintiff Declares: Whereas a Capias againſt the Defendant was directed to the Sheriff of the County of N. to Arreſt the Defendant; And the Sheriff had made his Warrant to four, & eorum cuilibet, to Arreſt him, whereupon he was Arreſted by two of them: That the Defendant Aſſumed in Conſideration, the Plaintiff would diſcharge him from that Arreſt, to pay ſo much, &c. and alledgeth in facto, Quod exoneravit eum from the ſaid Arreſt; and that the Defendant had not paid, &c. After Verdict, and Judgment in the Common Bench, Error was thereof brought. Firſt, becauſe that this Arreſt (the Warrant being made to four, & eorum cuilibet) being made by two, and not by the four, or by one of them only, is not good. But Gawdy, and Yelverton held it to well enough. For being but an Authority Noy 47. Yelv. 25. Hutton 127. Co. Litt. 181. b

to make an Arreſt, and to Execute ſuch a Warrant: It is not ſo ſtrictly to be purſued, as an Authority to make Livery, whereby an Eſtate is Conveyed. For it is made here to four, for the greater aid one of the other; and therefore three, or two may Execute it very well. But otherwiſe it is of a Letter of Attorney to make Livery. But Fenner held, That in regard, it is but an Authority, it ought to be preciſely executed by four joyntly, or by one only. A ſecond Error aſſigned was; becauſe he ſaith Exoneravit eum of the Arreſt, and he doth not ſhew how: But the Court held it to be well enough. For it needs not to be pleaded as a diſcharge of a Bond, or Rent, which ought to be ſhewn; for they cannot be diſcharged unleſs by Deed, and it ought to be a perpetual, and abſolute diſcharge; But the Diſcharge of an Arreſt may be by Compoſition with the Party for a time, or with the Sheriff, and by divers other means. Wherefore it need not be ſhewn. And for this Cauſe it was Reverſed.

Co. Litt. 181. b

Poſt. 616. Pl. C. 7. b. Co. 9. 25. a.

King *verſus* Shore.

(3) Yelv. 32.

ERror of a Judgment in the Common Bench, in an Action for words; Whereas the Plaintiff being an Attorney, the Defendant ſpake theſe words of him, He is a paultry fellow, his Credit doth begin to crack, he doth deal on both ſides. Judgment being given for the Plaintiff, The Error aſſigned was, that an Action lay not for theſe words. But all the Court Reſolved, that it was maintainable: for the laſt words, He doth not deal on both ſides, touch him in his Profeſſion, and are very Slanderous. As if one ſaith to a Lawyer, He is an Abmodexter, there cannot be a greater Slander. Wherefore the Judgment was affirmed.

Chantflower *verſus* Prieſtly, & Doctor Waterhouſe, Executors of John Montfitſhet.

(4) Yelv. 30. Noy 50.

COvenant, For that the Teſtator Sold to the Plaintiff twenty Tun of Copperice, and agreed with the Plaintiff, That if he failed of the payment of ſuch a Sum at ſuch a day, That he might quietly have, and enjoy the ſaid 20 Tun of Copperice, and alledgeth in facto, That the money was not paid at the day; Et quod non potuit habere, & gaudere the ſaid 20 Tuns of Copperice; whereupon he brought the Action, and Judgment was againſt the Defendant by a Nihil dicit, and a Writ of Enquiry of Damages awarded, and 260 l. Damages found, and returned. And it was now moved in Arreſt of Judgment, that the Declaration was not good, in that he Aſſigns not a ſufficient breach of the Covenant, Quod non potuit habere, & gaudere, &c. without ſhewing how, & by whom he was diſturbed, is not ſufficient. For it ought to appear to the Court, that it was a lawful diſturbance, otherwiſe there is not any Cauſe of Action; For the Goods being ſold unto him, if he be illegally diſturbed, he hath a ſufficient remedy, and is not to maintain an Action of Covenant. And of that Opinion was the whole Court. Vide 26 Hen. 8. 33 Ed. 3. Covenant 6. But Atkinſon moved, that the Defendant came too late to alledge this matter, in regard Judgment was given againſt him by Nihil dicit. But they all held, he came well enough for the time; For until the laſt Judgment he may well inform the Court of the inſufficiency of the Declaration: And the Court, ſeeing it to be inſufficient, ſhall abate it. Wherefore it was adjudged for the Defendant.

Ante 219.

Ant. 636.

Fitz-Williams

Fitz-Williams Caſe.

Fitz-Williams was Endicted upon the Statute of 8 H. 6. For that he Entred into ſuch an Houſe, and Diſſeiſſed J. F. injuſte & ſince Judicio, and yet detains the Poſſeſſion with force. And, this being found at the Quarter-Seſſions in Eſſex, They awarded Reſtitution. But the ſame day, after the Seſſions ended, a Certiorari to remove this Endictment was brought, and delivered to Sir Tho. Mildmay, Cuſtos Rotulorum there, praying him to award a Superſedeas, which he refuſed to do: And the next day after, The Sheriff, by this Writ of Reſtitution awarded by the Juſtices of Peace, made Reſtitution. And now the Endictment, being removed by Vertue of this Writ, it was much debated, whether this Endictment were ſufficient, and whether the Reſtitution were well made; Exception was taken to the Endictment, becauſe it was not purſuant to the Statute. For the Statute is, If any be Diſſeiſed, & Ouſted with force, or Diſſeiſed peaceably, & held out with force, &c. And here the Endictment mentions, that he Entred, & Diſſeiſed: But he ſaith not pacifice, or with force. So it is not purſuant to the Statute. Wherefore it is ill. But Tanfield thereto anſwered it is well enough, if it be found that he entred with force, or held with force, and it is here found That he yet detains the Poſſeſſion with force, and to that purpoſe he ſhewed a Preſident, Hill, 15 H. 7. rot. 206. where, in an Action upon the Statute of 8 H. 6. the Declaration ſuppoſeth the Entry, and Diſſeiſin to be with force, and the Defendant pleaded Not-Guilty, and the Verdict found, That he entred peaceably, but detained with force, and the Plaintiff had Judgment upon it, ſo the finding of any of them ſufficeth. Gawdy; They be not alike: For the Declaration there is ſufficent. And although the Verdict find it to be falſe in ſome part, yet that is not material. For here the Endictment is not ſufficient; becauſe it is ſuppoſed, that he entred, and diſſeiſed, &c. And he doth not ſay, whether he Entred pacifice, or manu forti. So it is uncertain: and an Endictment ought always to be certain, and preciſe in every point. And for that Cauſe Gawdy, and Yelverton held the Endictment inſufficient. But Popham, and Fenner conceived it to be well enough notwithſtanding. For when it is found, That he Entred, and Diſſeiſed (no force being found) it is intended to be peaceably, and not otherwiſe. And as touching the Reſtitution made after the Writ of Certiorari delivered, Gawdy, and Yelverton conceived it to be void, and ill: becauſe by the Certiorari delivered the hands of the Juſtices of Peace were cloſed, For the Writ is an expreſs Prohibition unto them, viz. ulterius terminari coram vobis nolumus. So every Act done by their Authority after its Delivery is void. And although the Writ of Reſtitution was awarded by all the Juſtices of the Seſſions; yet the Writ of Certiorari being delivered to any of them, he ought to have allowed thereof, and awarded a Supreſedeas; Quod Popham conceſſit. That any Juſtice of Peace might have awarded a Superſedeas But he conceived, there was a difference betwixt Miniſterial Acts, and Judicial Acts. For Judicial Acts miſ-done, or not done (as he ſaid) are but Erroneous, and not void; But it is otherwiſe of Miniſterial Acts. And therefore, If a Judgment be given in the Common Bench, and a Writ of Error be brought unto them,

(5) 2 Cr. 19. Yelv 32. 8 H. 6. c. 9.

(6)

R. 219.

Moor 667.

It

It is a Superſedeas in it ſelf, yet if they award Execution, or had Awarded it before, and do not award a Superſedeas as they ought, and Execution is done, That is but Erroneous: So if an Habeas Corpus out of this Court be delivered to an inferior Court to remove the Cauſe, or if, being delivered after Judgment, they proceed to Execution, it is but Erroneous and not void. But if Execution be awarded out of his Court, and delivered to the Sheriff, and he makes a Warrant to his Bayliff to Execute it, and afterward, before it be Executed, a Superſedeas is Awarded, & delivered to the Sheriff, and he doth not Counter-mand his Bay-
Poſt. 918. liff, But he (not having notice thereof) Executes it, this is void; becauſe it is a Miniſterial Act: So here in the Principal Caſe. And of this Opinion was Fenner, Juſtice. But afterwards, becauſe they ſaid, The Awarding of Reſtitution was but matter in the diſcretion of the Court: and it appears, there was a former Endictment of a forceably Entry found, and removed into this Court, and (this depending) remained here undiſcuſſed; That Endictment being found contrary to the direction of the Juſtices of Aſſiſe, who gave other Order for the peaceable Trial of the Title which the Court conceived to be an abuſe to the Juſtices of Aſſiſe, and of this Court: Wherefore, with the conſent of all the Juſtices, Reſtitution was awarded.

Braban *verſus* Bacon. Mich. 43 & 44 Eliz. rot. 336.

(6) DEbt upon an Obligation, Conditioned to diſcharge, and ſave harmleſs from all Obligations, which he had Entred into for him. The Defendant pleads, Quod exoneravit, & indemnem conſervavit from all the Obligations, &c. One Exception was taken, becauſe he ſhewed not from what Obligations. Sed non allocatur.
R. 47. Ante 749. Becauſe there might be very many of them, wherefore, to avoid Prolixity in pleading, the Law allowed this Plea to be ſufficient.
Another Exception was, Becauſe he pleaded not Quo modo exone-
Ant. 914. ravit, &c. but generally: And for that Cauſe it was held to be ill. Et adjournatur.

Lanning *verſus* Lovering.

(7) COvenant. For that the Defendant 35 Eliz. Lett unto him the Barton of B. for ſix years, and Covenanted, That he ſhould enjoy it during the Term quietly, without interruption, and diſcharged from Tithes, and other duties; and further Covenanted, That if the Tithes were demanded, and recovered againſt him during the Term, That he ſhould Recoupe in his hands ſo much of the Rent as the Tithes amounted unto. And for breach hereof, he ſheweth, That in 42 Eliz. the Parſon ſued him for the Tithes of Corn growing there in the years 38 & 39 Eliz. And therefore he brought the Action: Whereupon it was demurred. And it was held by all the Court, That this Sute after the de-
Ant. 77. termination of the Term was a breach of the Covenant; For he did not enjoy it diſcharged, &c. which is not intended of a real diſcharge: For that appears not to be the intent of the Parties, becauſe it is agreed, That, if he were ſued, he ſhould Recoupe as much of the Rent in his hands: but their meaning was, He ſhould be freed from Sute, and payment of it; and he is as great-

ly

ly prejudiced by a Sute after the Term, as if he had been Sued before the Expiration of the Term, wherefore he is within the Intent of the Covenant. But because it was not alledged, that the Sute was lawful, or that the Cityes were due, (For he was not bound to discharge him from Illegal Sutes) So the breach was not well assigned. It was therefore adjudged for the Defendant. Ant 675.

Wilmote *versus* Knowls.

(8)

EJectione firmæ. Upon a Special Verdict, The Case was: One White, and his Feme, were seised of the Land to them, and the Heirs of the Baron; They by Indenture Bargain, and Sell the Land upon Condition, That if they paid such a Sum, before such a day, That they should Re-enter, and have the Land again in their first Estate, with Covenants in the same Indenture for further Assurance; And that all Assurances to be made should be after the Money paid, to the use of the Baron, and his Heirs. The Baron and Feme Levy a Fine accordingly: The Indenture is afterwards Enrolled within the six Months; The Money is paid at the day limited: The Baron Re-enters, and dieth. And, Whether the Feme shall have again this Land during her Life, or the Heir of the Baron? (who was Lessor in this Action) was the Question. And it was moved for the Plaintiff, that the Heir of the Baron should have it; For although by the first part of the Judgment it be limited, that they both should Re-have it after the payment, &c. yet in another part it is limited, That all Assurances shall be to the use of the Baron, and his Heirs after the payment. Then this Fine being levied to the Bargainee, before the Enrolment of the Indenture, He is in by the Fine, and not by the Bargain, and Sale, Then the Fine is to the use of the Baron only. And in proof hereof were cited 6 R. 2. Title Estoppel. 15 Eliz. Bracebridges Case. That a Feoffment to Bargainee after Enrolment, he is in by the Feoffment, and not by the Enrolment. And that 34 Eliz. betwixt Lybb, and Hinde, It was adjudged, That where a Reversion was bargained and sold by Indenture, and before Enrolment, a Fine was Levied by the Bargainor to the Baragainee, and afterwards the Deed was Enrolled; That yet the Bargainee should not have it without Attornment; because he is in by the Fine, and not by the Bargain and Sale. Et ad adjournatur. Moor 819. Co. 4. 71. a.

Bustard *versus* Coulters. Quod Vide ante, fol. 902. Mich. 44 & 45. Pl. 6.

(9)

IT was now moved against. And all the Court Resolved, that the Exchange was altogether defeated by the Eviction of the Estate for life; and for the Exceptions to the pleading they held them not to be material, as the Case is upon the Record: For as to the first Exception; That the Entry is not pleaded upon a fine ove Render, which is Executory, They held, That it was well enough. For when it is pleaded, Virtute cujus he was Seised in Fee, It is to be intended, That he Entred: For otherwise he could not be Seised, which is the usual pleading in such cases upon Fines ove Render, and have been always admitted to be good, As appears in Plow. Grendons Case, fol. 503. and so are all the Presidents. Wherefore this Exception was disal- Ante 902. Ante 903.

lowed. To the ſecond Exception, it was held, it was helped by the Rejoinder. For although in the Replication he ſaith not to whom the Bargain and Sale was made; but by the Habendum: Yet the Defendant himſelf in his Rejoynder ſaith, Quod been & verum eſt, The Bargain and Sale was made to W. G. who was the Party to the Indenture. And he mentions not the Habendum: So as it Aſcertains the Court, to whom the Bargain and Sale was. Wherefore it was good enough, notwithſtanding theſe Exceptions; And was adjudged for the Plaintiff.

Ante 903.

Prince *verſus* Allington.

(10) Moor. 677.

FAux Impriſonment: For Impriſoning him 20 Junii, and detaining him in Priſon for eighteen dayes, &c. Upon Demurrer, The Caſe was; One recovered in Debt: and had a Capias ad Satisfaciendum delivered to the Sheriff, who made a Warrant to his Bayliff to do Execution. Afterward a Superſedeas was awarded, and delivered to the Sheriff. The Defendant, being his Bayliff, not having notice of that Supreſedeas upon 16 Junii Arreſted the Plaintiff by Vertue of the ſaid Capias ad Satisfaciendum, who afterwards Eſcaped. And upon the 20th of June, the Defendant Re-took hem, and detained him in Execution. And, Whether this ſecond Impriſonment were lawful, or not: was the Queſtion. And all the Court held, that it was not. For although the firſt Impriſonment was Legal, he having been taken by vertue of a Warrant, made by the Sheriff before the Superſedeas awarded, and delivered; he (not having notice of that Superſedeas) was therefore excuſable, and the Law will not puniſh him; Yet the ſecond Arreſt, and Detainment in priſon afterwards, was a wrong, and not excuſable. For he being the Sheriffs Servant, and by Intendment having time ſufficient given him, to have notice from his Maſter, ought at his Peril to take notice thereof, and therefore his Act afterwards is not excuſable, wereupon (all this matter being diſcloſed by pleading) it was adjudged for the Plaintiff. Vide 2 H. 7. fol. ultimo, Grathams Caſe. 8 H. 4. 7. an Outlawry after a Superſedeas awarded is void. 6 H. 7. 15.

Ante 916.

Wilmote *verſus* Carn.

(11)

REplevin of his Beaſts taken in ſuch a Cloſe in D. The Defendant Avows, for that one Bidwel was ſeiſed in Fee of an Houſe in D. and of divers Lands in D. whereof the place, where, &c. is Parcel, to that appertaining. And he, and his Feme by Indenture Lett the ſaid Houſe and Lands thereto appertaining to I. S. for years, Rendring Rent: Afterward the Feme died. And Bridwell 2 Junii, 26 Eliz. by his will in writing, deviſed that Land to the defendant in Fee, and died, whereupon he avows for the Rent, &c. The Plaintiff ſaith, that the ſaid Bidwell by his Will 3 Junii 26 Eliz. deviſed it unto him in Fee, Abſque hoc, That he deviſed it to the Defendant. And it was thereupon demurred; becauſe by this Plea he Confeſſeth, and avoydeth the deviſe to the Defendant. For he pleads it to be by his laſt Will, which is an Avoydance of the former, and then he ought not to Travers it. Vide 2 Ed. 6. Title, Confeſs, and Avoyd 66, And to this Opinion the Court Enclined. But then two Exceptions were taken to the Avowry. Firſt, becauſe he pleads, That the Baron was ſeiſed in Fee, and that he, and his Feme Lett, &c. which cannot be. Secondly, Becauſe he pleads, That B. was

Ante 650.

ſeiſed

Seiſed in Fee of an Houſe, and Land thereto appertaining, &c. Which ought not to be in pleading: For Land cannot properly be ſaid to be appertaining to an Houſe, although it may paſs by ſuch words in a Deed, by the Reputation, and Common Parlance, and Intent of the Parties. But in pleading, it ought to to be ſo alledged; But that he was ſeiſed of ſuch an Houſe, and of ſuch Lands in D. and Lett them by the name, &c. and Aver their uſage together. And all the Court held, that for theſe two Cauſes the Avowry was ill, and therefore ſpake not to the Travers. And thereupon Rule was given, that Judgment ſhould be entred for the Plaintiff, unleſs other matters were ſhewn, &c. Pl. C. 170.

Goodrichs Caſe.

(12)

ACcount of the Receipt of 10l. by the hands of the Plaintiffs Wife. Defendant wages his Law, and at the day he had to wage his Law, it was doubted whether it lay; becauſe the Receipt is ſuppoſed to be by anothers hand. But becauſe a Receipt by the hands of the Wife of the Plaintiff, or Defendant, is all one Receipt by their own hands, He was received to wage his Law. Co. Litt. 295. a.

Sonham *verſus* Trundle.

(13)

TRespaſs of Battery. The Defendant pleaded Excommencement in the Plaintiff ipſo facto, for that he had ſtricken in the Churchyard, by the Statute of 5 Ed. 6. without ſhewing an Excommencement by the Ordinary, or under his Seal. And for this Cauſe it was Ruled to be ill. For although the Statute ſaith, that he ſhall be Excommunicated ipſo facto, yet that is to be intended after a Sentence Declaratory, or Conviction. For, otherwiſe, there were not any means for his Abſolution. Wherefore the whole Court Reſolved it to be no Plea, Popham abſente. And gave Rule, that it ſhould not be received. But that a Nihil dicit be entered, unleſs other ſufficient Plea be pleaded by ſuch a day. St. 5. E. 6. c. 4. Ante 680.

Hainſworth *verſus* Prety. Hill. 44. & 45 Eliz. rot. 1060.

(14)

TRespaſs. Upon a Special Verdict, The Cauſe was found to be; One Thomas Pretty was Seiſed in Fee of the place, where, &c. and had Iſſue Richard, Robert, John, and Michael, Sons, and Parnel a Daughter. And by his Teſtament deviſed to Robert, John, and Michael his Sons, and the ſaid Parnel, to every of them 20l. to be paid unto them, when they attained to the age of twenty one years. And further deviſed to the ſaid Rich. his eldeſt Son all his Lands, Habendum to him, and his Heirs, Upon Condition he ſhould pay to his other Children the ſaid Sums appointed unto them according to the Intent of his Will; And if he refuſed the payment of the ſaid Sum, or Sums of Money, That then neither he, nor his Heirs ſhall have, or enjoy the ſaid Lands, any Deviſe, Title, Deſcent, or Intereſt to the contrary notwithſtanding; But that the ſaid Sons, and Daughters ſhould have it to them, and his Heirs. And it was further found, That Thomas Pretty the Deviſor died, the ſaid younger Children being within age; And that Richard Pretty Entred, and afterwards Robert attained to his age of twenty one years, and demanded the ſaid 20l. of R. P. who refuſed to pay it. And that afterwards Rich. Pretty died Seiſed, having Iſſue Thomas his Son, under whom the Plaintiff claims. And that the Defendant in his own Right, and of the ſaid Robert, Entred. Et ſi ſupre totam materiam, &c. Vid Ante, Trin. 43. Noy. 51. Ante 833.

But

But because by the Defendants negligence no Judgment was then Entred, it was now argued again at the Barr, and all the Justices (the Court being full, viz. Popham, Gawdy, Fenner, and Yelverton) Resolved, that the Defendants Entry was lawful. For this Devise to the Eldest Son, and his Heirs, is void by way of Devise; But it is an immediat Devise, or Limitation to the younger Children, if the Eldest Son performs not the Condition which may well be: as a Devise, that his Executors shall sell his Land, if his Heir pays not unto them such a Sum; in the Inteim the Freehold shall descend to his Heir. Secondly, they held, that for Non-payment of any of the Sums, all the Land is forfeited, and all the Children may enter. Thirdly, That notwithstanding this refusal of payment, and Rich. P. dying Seised, and the Descent to his Son, (For so it was pretended, that it was a Descent which
Co. Litt. 240. b. should Toll the Entry of the Devisees) That this Descent shall not hurt them. For it is not as a Descent by a Stranger after a Devise, before the Entry of the Devisee, which peradventure might take away their Entry; because it is not here an immediate Devise, but it is Quasi a Devise upon a Limitation, or upon a Condition broken, which no Descent shall take a way, or prejudice: As it is in Scolastica's Case. Wherefore it was adjudged for the Defendant.

(15) Ryles Case.

RYle, and others were Endicted of Burglary. Godfrey took Exceptions to the Endictment, Because it was Burgalariter fregerunt, &c. where it ought to have been Burglariter. For there is not any such word as Burgalariter. And it hath been adjudged, that an Endictment, Quod Murdervait, where it ought to be Murdravit, was held to be naught for this Cause. Quod Gawdy concessit, and said, That he remembred such a Case to be so Resolved here, since he came to the place. But the Court held, that the Cases were not alike. For Burgalariter is as good a word as Burglariter, and as often used in Endictments as the other, and divers Presidents were shewn to that purpose. Wherefore it was Resolved to be well enough. 4 Co. 39. b.

Ayliff *versus* Archdale. Mich. 44 & 45 Eliz. rot. 1660.

(16)

Moor 679. THe Case upon Demurrer was; The Plaintiff had paid certain Money for the necessary Meat and Drink of the Defendant being an Infant, and took an Obligation in the double Sum for the payment thereof: And Whether this were good, or voidable?
1 Rol. 729. was the Question. And the whole Court held it to be void. But
Co. Litt. 172. a. if he had taken an Obligation of the very Sum, which he laid out for his necessary maintenance, it had been otherwise.

FINIS.

A PERFECT

TABLE

Referring to the ſeveral Points of Law, Argued and Reſolved in this Bok.

Abatment Page.

Batement of Writ. See Aſſiſe, 559

By the Court *Ex officio*, and upon what Matter alledged, 22,121

The benefit thereof loſt by Pleading, Not guilty, 554

Formedon in the Diſcender, the Tenant pleads an Iſſue in tail ſeiſed, not named in the Writ, good in Abatement, 842

Of Accompt againſt two, one dies after Judgment abates only againſt him, 701

Acceptance.

Where the Acceptance of one thing is a good Bar, and Waiver of another, 128

Of a leſſer ſum, *Pendente lite* a good Plea, 253,260

Of Rent by Iſſue in Tail, where it makes an Eſtate good created by Tenant in Tail, 252

Of Rent after the Condition broken, barreth Entry, but not if a Collateral Condition by ſome, 528,529

Of Rent by the Leſſor after the Condition broken, no Bar of Entry if no notice; good Differences agreed by the Court, 553,572

Acceſſary.

For ſtealing his own Goods, not in Petit-Larceny, or Treſpaſs, 507,572

Accompt.

For what Matters and Receits one ſhall be ſaid Accomptable for, for what not 82,83

The Form of a Writ of Accompt, 83

If one pays money upon a Judgment, if none due, Accompt lieth againſt an Executor of an Accomptant to the King for Moneys received by the Teſtator, although paid by order from the Lord Treaſurer, 545

Where maintainable, a very good Caſe, 614

Upon default, the Court may order that the Plaintiff may recover the value as he hath counted, upon notice given; and if the ſecond Judgment be Reverſed by Error, and the firſt affirmed, the Court above may iſſue a *Capias ad compatandum* againſt the Accomptant, 806

Nunques ſon Receiver pleaded, and Verdict for the Plaintiff, a Plea after before Auditors contrary thereupon, is not good, 830

Of Twelve moneths, how to be made upon the Statute of *Liveries*, in an Information, 835

Action upon the caſe

For what ſort of Injury an Action on the Caſe will lie, 10

For what ſort of Miſdemeanor an Action of the Caſe will lie, and where for a negligence, *ibid.*

Where an Action on the Caſe may be brought by one for a wrong done, though at preſent he is not chargeable, 53

Where an Action on the Caſe lies againſt an Officer for an Injury, 130

Where the Plaintiff muſt declare upon the truth of his Caſe, and not vary from it, 147

To ſave the Bail harmleſs, 458

If an Arreſt be made by Proceſs, though without cauſe, it is no falſe Impriſonment, 459

Againſt the Sheriff for not appearance of the party arreſted at the day, 460

Againſt Leſſee for years for burning the Houſe, 461

For ſtopping a way to his Freehold, or an Aſſiſe at Election, 466,845

Upon a falſe Return, 512

For keeping a Bank in a Brook, ſo that it overflowed his Land, not good, for a *Quod Permittat* lieth, 520

Not maintainable where there is a proper Writ for it, *ibid.*

Againſt a Witneſs for ſwearing a falſe Oath, lieth not, 520

Lies not for damage done by Coneys, becauſe *Feræ naturæ*, and none can have them in his own Land, but by Patent, or Preſcription; and none can erect a Dove-houſe, but a Lord of the Manor, otherwiſe Puniſhable in a Leet; but an Action lies not for a private Man, 548

Againſt the Sheriff upon an Eſcape, who pleads good Security taken, good; although upon a *Hab. Corpus* he returns *Parat' Habeo*, that is finable by the Court, but no advantage to the party, 624

By a Bail for a Covinous contriving Execution againſt him, good, 628,629

For Goods delivered and converted, 781

Lies not for ſuing without cauſe in a proper Court, otherwiſe improper, 836

Againſt a Curate for razing Sentence of Excommunication, and inſerting the Plaintiffs name, maintainable, 838

Tam pro Regina, quam pro ſeipſo againſt the Sheriff for an eſcape of a man Outlawed, and good, 877

The full truth muſt be therein declared, 882

Action upon the Caſe for words.

What ſort of words will bear an Action on the Caſe, 78,171

Thou haſt taken a falſe Oath in the Conſiſtory Court at *E.* good, 185

Tibbot and one *Gough* agreed to have hired a man to kill me; and that *Gough* ſhould ſhew me to the hired man to kill me, 191

It is well known, That I am a true Subject, but thou ſerveſt no true Subject, and that thy own Conſcience doth accuſe thee, *ibid.*

Page.

Thou doſt ſerve falſe Warrants, and deceiveſt the people, 192
You make falſe Records, and juſtifie them for true, *ibid.*

Thou art a Papiſt, and not the Queens friend, and ſeveral other Caſes there cited *Argumenti Gratia ib.*
I will prove *Farmer* a perjured Knave, 222
Thot haſt ſtoln a load of Hop-poles, 225
She is as very a Thief, as any that robs by the High-way ſide, 224
For exhibiting a Bill in courſe of Juſtice, no Action lies, otherwiſe if maliciouſly, not examinable, 230,247
I have ſerved thee with the Queens Letter, for ſtealing goods out of my Mothers Houſe: Thou waſt cubbed up for forging of Writs, 234
Coles hath ſtrained a Mare, *Innuendo carnaliter cognovit*, 250
Words ſpoken in *Præſentia diverſorum*, as good as in *Auditu*, 487
An *Innuendo* will not make general words underſtood of the Plaintiff, without Averment to make it certain, 496
That one hath delivered untruths in his Anſwer in Chancery, not good, 500
That a Perſon was an Adulterer, and had Children by another Mans wife; not actionable, becauſe puniſhable in the Spiritual Court, 502
Words againſt a Juſtice of Peace, maintainable, 537,883
Againſt a Merchant, not actionable, but good counſel, 541,911
Againſt a Shoomaker, he is a Bankrupt, maintainable, 268
Words by way of Interrogation, if actionable, 273
Thou art a Witch and a Sorcerer, mainteinable, 571
Againſt an Attorney actionable, 589,602,914
Thou art an enemy to the State, lies, 602
Thou waſt perjured in thy Anſwer in the Star-Chamber, good, 609
By a Commiſſioner to examine Witneſſes, good, 623
That he keeps a Bawdy-houſe, lies not, 643
Action for words in the Diſ-junctive, not good, 780
For words, and Judgment reverſed in Error, 746
For words, and Judgment affirmed in Error, 747
For words, Thou art a Bankrupt Knave, *Quære*, 843
Againſt a late High Sheriff 848,849
Againſt an Under Sheriff, not maintainable, 854
Thief, where it bears a Action, where not, 857
Actions upon this Subject being numerous, you may finde more, 251, 268, 279, *ibid.* 281, 334, 400, 403, 424, 239, 250, 459, 470, 471, 487, 492, 554, *ibid*, 563, 564. *Curia Dividatur*, 569, 572, 573, 582, 583, 589, 607, 609, *ibid.* 618, 620, 621, 629, 638, 639, 645. Compounded 648, 672, 684, 520, 521, 783, 786, 787. Much learning, *ibid.* 794, 823, 824, 834, 848, 849, 853, 854, 861, 865, 877, 890, 878, 883, 888, 889, 899, 900, 904, 905, 906, 907, 911, 914, 421, 429, 433.

Action upon the Statute. See Statute.

Of 8 *H.* 6. *Contra Pacem* left out, and good, 186
Where a Miſ-recital in an Action upon a Statute ſhall hurt, *ibid.*

Page.

What ſhall be ſaid a Miſ-recital of a Statute, and although general, and ſo not neceſſary, yet avoids all, 236
See more in Title Statutes.

Action upon the Caſe, for ſtandering his Title.

Where, and how it lies, 296
For ſaying to an Intended Purchaſor, I know one that hath two Leaſes of his Lands, who will not part with them at any reaſonable rate, the Defendant juſtifies of two Parol Leaſes made to himſelf, maintainable, 427

Action upon the Caſe, in nature of Conſpiracy.

Lies not againſt one, but Action upon the Caſe, 701
For procuring a man to be indicted of Robbery, 871,900
Againſt *A.* becauſe he procured the Plaintiff to be indicted as a Common Barretor, and that he was thereof acquitted before *B.* and *C.* Juſtices of Aſſiſe, not good, becauſe it was before them as Juſtices of *Oyer* and *Terminer*, but for the Matter, *Curia Dividatur*, 564

Action upon the Caſe, upon Aſſumpſit. See Conſideration.

Where it lies, 63,64
Where an Aſſumpſit binds an Infant, 126,127
A Promiſe upon a voidable Act only where good, where not, *ibid.*
Upon what conſideration it binds, upon what not, 137,138,67
Where it lies upon a conſideration executed, 131 94
Where ſeveral conſiderations are alledged, and be void; yet if any be good it is good cauſe for a recovery in an Aſſumpſit, 149
Where a general Aſſumpſit may be aſcertained by the Plaintiffs Declaration and Reference, *ibid.*
Where a conſideration to do no more then the party is bound unto, is good, where not, 193
Where part of the conſideration is void, it avoids the whole, 199
Conſideration to forbear a Suit, where the party is not chargeable, is not good, 206
What ſhall be ſaid a good perſormance of a conſideration, 229
Lies upon a promiſe to pay money due by bond, 240
Not for Rent due upon a Leaſe for years, 242
To pay coſts of Suit, and ſaith not what he had expended, count not good if he had demurred, but taking iſſue, he hath loſt the advantage thereof, 276
A conſideration upon a Matter paſt, is good, 282
What is good conſideration to ground it upon, 460,477
To make Aſſurance by Advice of Council, how performed, 465
Not guilty, no good iſſue; but after Verdict holpen by the Statute of *Jeofails*, 470
Where a promiſe is made in conſideration of ſomething to be done by the Promiſes who fails therein, the Promiſe is diſcharged, 477
What ſhall be ſaid a good performance of a Promiſe, 487,488
Of a Surrender to be made, this muſt be a Surrender in Deed; 488
One conſideration good, the other not, yet entire coſts, 537

Page:

Aſſumpſit by the Bail who paid the conſideration and the Plaintiff in *Conſideratione inde*, aſſumed to the Bail to deliver him the Bond, and a Letter of Attorney to ſue it, no good conſideration 538

A Promiſe againſt a Promiſe, good ground for an Action, 543

Aſſumpſit againſt an Executor having Aſſets, who upon a day given for payment (which could not be, but only deferred) aſſumed, *&c.* and all the Debt given in damages; but the Bond being delivered, Plaintiff had Judgment. 644

Aſſumpſit, and declares upon a deliverey of Goods 1 *Novemb.* 31 *Eliz.* and the Jury found the delivery 1 *Auguſt*, not the ſame Aſſumpſit, 660

Aſſumpſit upon a Contract joyned with other Matters, 756

By a Sollicitor for retaining him to proſecute his Law Cauſes, and promiſed to give him, *&c.* The Action maintainable, 760

To pay one hundred pound at two payments, Action lies upon failer at the firſt day, and ſo of a Covenant, becauſe damages only to be recovered; otherwiſe in Debt upon a Bond, where the Debt is to be recovered, 776, 807

It lies not for Debt or Rent upon a Contract, 786

To enter into a Bond, and ſaith not to whom, where good, 848

Aſſumpſit alledged to be made *Apud H.* in *Com. Prædict. & Suff.* is in the Margent, and there Action is brought; *H.* ſhall be referred to the County in the Margent, and not to the County mentioned by way of recital onely: *Quære*, if not otherwiſe in an Endictment, the County being mentioned in the body thereof, 436

Againſt an Executor upon a promiſe by the Teſtator, and Judgment for the Plaintiff reverſed in Error, 454

Conſideration to aſſign a Debt, or Recognizance to a ſtranger, is void and illegal, otherwiſe if to the Ter-tenant, 552

Action upon the Caſe upon Trover. See Trover.

Action.

Where it lies againſt a party that did not the wrong, that party hath an Action over againſt him who did the wrong, 462

A right of Action where it may be divided, 469

Addition upon the Statute of 1 H. 5. cap. 5.

Where an Addition of place in any Writ or Proceſs muſt be inſerted, where not, 148

Of Trade, or Myſtery, if it come after the *alias dict.* it is not good. 198

Where an addition of Myſtery muſt be given to a *Feme Covert*; in an Endictment or other Proceſs, *ibid.*

Garter, King at Arms, being endicted, his addition muſt be inſerted, 234, 542

Of *Chandler*, he pleads he was a Gentleman, he muſt Traverſe, 884

Adminiſtration, and Adminiſtrator.

Where one ſues as Adminiſtrator, muſt ſhew the quality and power of him that commits it, 6

What act ſhall in it ſelf be accounted an Adminiſtration, 114, 115, 120

Where Adminiſtation ſhall be granted, notwithſtanding an Executorſhip. 92.

For what Matters an Adminiſtration may be charged, 102

Page.

Committed to an Executor, no Adminiſtrator to the firſt Teſtator, 211

Where in a Count or Bar, the place where Adminiſtration was granted, muſt be ſhewn, where not, 283

Where an Adminiſtrator may by cuſtom pay a Debt upon ſimple Contract, as ſoon as Debt upon a Bond, 409

The original of Adminiſtrations, *ibid*

Adminiſtration committed by *A. V. D. D.* not good, becauſe not ſhewed to be Biſhop or Ordinary, 431

Adminiſtration by the Archbiſhop of *Canterbury*, without ſhewing he was Ordinary, or that the Inteſtate had Goods in divers Dioceſſes, not good, as well as in caſe of a Biſhop, but void, not voidable, 457

Adminiſtrator *Pendente lite* of a citation to repeal, ſells Goods, good; for he hath lawful power to diſpoſe; otherwiſe in a Appeal 460

Recovery againſt one upon a Bond by *Nihil dcit*, and ſo *Riens inter mains*, a good Plea *Prima facie*; but if Covinous, the Plaintiff muſt aver it, and ſo falſifie, 471

Adminiſtration, Debt is where the Bond is; but upon a Contract it follows the perſon of the Debtor, where two Adminiſtrations muſt be granted, 472

Adminiſtrator brings a *Scire facias* upon a Recognizance, not mentioning therein *Quod profert literas Adminiſtrationis*, good, becauſe founded upon a Record, 592

Adminiſtration *Durante minori ætate* ceaſeth at the age of ſeventeen years, 602

Adminiſtrator in Debt againſt him, pleads a Recovery againſt him as Executor *ultra quod, &c. Non habet &c.* a good Plea. 646

Adminiſtratrix brings *Ejectione firmæ*: The Caſe, A Leaſe was made to the Inteſtate for eighty years, if he liveth ſo long, remainder to the Executors or Aſſigns of the Leſſee, who died Inteſtate; adjudged for the Plaintiff, and that it veſted in the Leſſee, and aſſets in the Plaintiffs hands, 658 967, 840. But Judgment againſt the Plaintiff for defect in pleading, 658

Adminiſtratrix, Debt againſt her due in her own time, muſt be in the *Detinet*, 712

Adminiſtrator, Debt lies not againſt him for rent due after the Aſſignment of the Term; and *Walkers* Caſe denied to be Law, 715

Adminiſtratrix Special cannot grant a Term *Durante minori ætate* of the Executrix, nor ſell Goods except *Bona peritura*, or for neceſſity for payment of Debts, but may ſue and be ſued, 719

If ſuch an Adminiſtratrix may aſſent to a Legacy *Dubitatur*, *ibid*,

Adminiſtration muſt be in two places, if the *Inteſtate* died in a Peculier within the Province of *York*, having Chattels in both, *ibid.*

Adminiſtration by a Biſhop, good, without ſaying *Loci illius Ordinarius*, but in a Bar or Replication, vicious, 791, 879, 838, 907

Admiral, and Admiralty.

Suit lies there for Goods taken by Piracy, although ſold in a Market overt, eſpecially to the owner of the Ship, in reſpect the original cauſe did ariſe upon the Sea, and the reſt depends thereupon, 685

Page.

Obligation to appear, or abide Sentence in the Admirals Court, is ſuable there,

Admittance. See Copihold.

Admittance of Tenant for Life, is good for him in Remainder, 662

Advowſon.

The difference between a Viccaridge, and an Advowſon, 163

Agreement and Diſagreement.

Agreement in Exchange for one to make the Fences, no Plea in Treſpaſs, but Action of the Caſe lies; and if by Deed, an Action of Covenant, 709

Dower of a Moity of *Gavelkind* cannot be waved, and ſhe ſhall hold it in Severalty, and not in Common, 825

Aide Prayer.

Where the Writ of *Domino Rege inconſulto* ſhall be granted, although in a Perſonal Action, and the King not immediately concerned, 417

Not grantable in a Perſonal Action for a Chattel onely, 693

Alien.

Who ſhall be looked upon as an Alien, 3

Alien nee enemy may ſue as Adminiſtrator, 683

An Alien being Defendant *Tales de circumſtantibus* is good, no Exception being taken, and eleven of the principal appearing, 818, 841

Amendment.

Where a Verdict may be amended by the *Dorſe* of the *Poſtea*, 149, 150

Where a Matter, though the default of the Clerk, is not amendable, 70, 71

Where a Verdict returned, may be amended. 111 (112

Where a *Venire facias* may be amended, 203

Record upon the File amended by the Paper-Copy, 258

Debt by *Thomas*, and the Judgment entred for *Johannes*, Reverſed, 400

Adderbye for *Adderlye*, amendable in the Declaration, and Judgment, being the default of the Clerk, 459

Diſtringas with no Return indorſed the ſame Term in *Banco Regis*, nor in another Term, 466

In Ejectment, *Sex Acras parturæ* in the *Niſi prius*, after Verdit, amended *Paſturæ* according to the Record *ibid.*

Venire facis, leaving out the word (*Juratorum*) amended, 407

Error in the Entry of the Judgment, not amendable, 497

Diſtrictionem for *Deſtructionem* in Waſte, not amendable, becauſe in the Original Writ 462

Judicial Writ amendable, 543

Of a *venire facias*, which upon the Roll was *Quod ſint hic*, and a ſpace left for the day of the Return, but expreſſed in the *Venire facias*, 553

Habes corpora amended, but Twenty three Jurors returned, Twenty four being named in the *Venire facias*, 586

Of a *Præcipe* of Twenty Acres *Hedington* (omitting *in*) 644

Amendment of Writs, 677

Of a Writ of *Inquiry* to the Sheriff of *L. Quod Inquirat*, and not *Inquirant*, and their Entries ſometimes *De Balliva tua*, *De Comitatu tuo*, and ſometimes *De Civitate*, 709

Of a Replication for Miſpriſion, 752

Of a Writ of *Inquiry* returnable by the Roll *Die Martis poſt tres Trinitatis*, made *Die Mercurii*, &c. but not ſo of an exigent, and the Inquiſition may be taken the ſame day, it is returnable, many Preſidents cited, 761

Amendments of Judgments, divers Preſidents cited, 865

Amendment of the Clerks miſ-entry after Verdict, 904

Amerciaments and Fines.

Where an Amerciament ſhall be, though the party comes in the firſt day, 68

Upon what Matter a Steward in a Leet may aſſeſs a Fine, upon what not, 241

The Jury finding for the Plaintiff only for part, he muſt be amerced as to the reſidue; a good difference agreed, 257

Amerciament in a Court-Baron may be aſſeſſed by the Steward, and a Diſtreſs for it is incident, and lawful by ſome, 748

Ancient Demeſn.

If a good Plea in Ejectment, as in Replevin or Waſte, 826

Annuity.

Debt lies for the Arrearges thereof, granted for year 268

Annuity payable at the *Annunciation*, or within twenty days after, and the original brought 8 *April*, an apparent fault, 565

For a penſion by Preſcription iſſuing out of the Church of *S.* the Incumbent is liable for all arrears; for the Church it ſelf is charged into whoſe hands it comes, 820

Appearance. See Infant and Condition.

Appeal.

The death and ſtroke being in different places, where in an Appeal the murder ſhall be ſaid to be committed, 196

Where in an Appeal of Felony, the Plaintiff in the Replication muſt conclude over to the Felony, 234

Where in an Appeal of murder, the evidence being clear to acquit him of the murder, but full to find him guilty of Man-ſlaughter; the Jury muſt find him guilty of Man-ſlaughter, 276

The Plaintiff was nonſuited upon a tryal againſt one, it is a nonſuit againſt all; but the others not tried, may be arrainged upon this Declaration at the Queens ſuit, 460

Of murder againſt *J. S.* who is found guilty of Homicide, and good, and they might have found him not guilty generally; the Defendant pleads the Queens pardon, and by the better opinion allowable (although an Appeal be at the parties ſuit) being found guilty of Homicide 464, (469)

In an Appeal of *Mayheme*, a man cannot plead in Abatement, and in Bar, *alias* in Appeals of Felony in *Favorem vitæ*, 495

Appeal of murder againſt divers, one as Principal, the others as Acceſſories before, and after, the Principal found guilty of man-ſlaughter only: Acceſſories before the fact, are diſcharged, but not after: and they ought to be tried by ſeveral *Venire facias*'s in an Appeal, but not upon an Indictment. And if the Principal had his Clergy, or Pardon before Judgment, Acceſſory is diſcharged, otherwiſe after Judgment 541

Againſt four of murder, they appeared, the Plaintiff cannot declare againſt them in *Cuſtodia Mareſchalli*, becauſe no Record of a *Committitur* and Nonſuit

of Law argued and reſolved in this Book.

Page.

Nonſuit before Appearance, is peremptory, 605

Of murder, and found guilty of Man-ſlaughter, the Plaintiff may pray he ſhall not be put to have Clergy. 632,682

Appeal directed to the Warden of the Cinque Ports, not good; for it ought to be to the Sheriff, who is immediate Officer to the Court: but the piſoner being at the Bar, Declaration was againſt him in *Cuſtodia Mareſchalli*, and he to plead over to the Felony, 695

Appeal lies for not allowing proofs in the Spiritual Court, 844

Appendant and Appurtenant.

Where a Matter appendant will paſs without the word *Cum Pertinentiis*, 18

Where Matters appendant, may by the King or a common perſon, be created at this day, 39

What Matters paſs by way of Appurtenances, 113,114

Where a Curtelage may paſs as an appurtenant to an Houſe, without *Cum Pertinentiis*, 89

Apportionment.

A Leaſe being made of Lands and Goods, the Lands being evicted, an apportionment ſhall be as to the rent upon the Goods, where, 256

Of rent by the act of Law, but not by the act of the party. 771,772

Of a Rent-ſervice, good, 851

Appropriation. See Tithes, 578,579

Apprentice.

where the ſon being an Apprentice, the Father notwithſtanding ſhall be ſaid to have an authority over him, 55

Apprentice. See Condition 723

Arbitrement and Award.

The manner of pleading an Arbitrement. 66

What Matter ſhall avoid an Award, *ibid.*

What Matters ſhall be ſaid awarded within a Submiſſion, 77

What words in an Award will work a Condition, and what advanatge muſt be taken of it, and if only Debt maintainable, 211

Where it gives a power in a Leaſe for years to have a Term, if it gives an Intereſt, or Authority, 223

What Matters lie in Arbitrement, 422

That the Defendant ſhould enter in Bond, not ſaying in what ſum, is void, becauſe uncertain, 432

In writing, Debt thereupon againſt an Adminiſtrator, not good; for the Inteſtate might have waged his Law, 600

In the night good, if within the Submiſſion, 676

An Award to releaſe all Actions, *&c. Ut alias adviſaret*, void, 726

To make an Eſtate to the Obligor for Life, Remainder to a Stranger in Fee, good for the particular eſtate, and void for the Remainder, but the place where the Award was made, muſt be ſhewed, 758

Arbitrement, the firſt part being good, muſt be performed, although the latter part be void, 809,

Where well-made, the difference is where the Submiſſion is Conditional, there if not made of all, the Obligor not bound to perform any part, otherwiſe if the Submiſſion be not Conditional, 839

Page.

Award of all Suits until the third of *September*, the Submiſſion being till the fourth, good, 858

De & ſupra præmiſſis reſtrains it to the things ſubmitted, 861

To be publiſhed *utrique partium prædict.* muſt be to all, 885

Nothing awarded on the one part, not good 904

Aſſent.

Where it may be abſoute, and where conditional, 252

To a Treſpaſs before or after, makes a man Treſpaſſor *ab inito*; but not to a Battery done, Riot, or forcible Entry, 284

If Adminiſtrarrix, during minority, may aſſent to a Legacy, 719

Aſſets.

Where in a Count againſt Executors, the Party muſt allow Aſſets, 59

What Matter ſhall be adjudged Aſſets, 43

Where the Goods of the Party made over upon a fraudulent Conveyance, ſhall, though coming into the hands of a ſtranger, be Aſſets, 405 810

Aſſize

Erroneous, becauſe after Iſſue and Return of the *Habeas Corpus*, the Entry was *Quidam recognitorum venerunt, & quidam non, ideo diſtringas & decem tales.* 509

Before 18 *Eliz. cap.* 4. in Aſſize it was Error, that the Sheriffs name was not to the return of the *Habeas Corpus*, *ibid.*

Againſt *A.* and *B.* of a Portion of Tithes, *A.* pleads *Nul-tenant de Frank-tenement Tenementor. prædict. in viſu poſitorum & in Querela Specificat'* *B.* pleads *Nul-Tort. A.* was found not Tenant of &c. and not guilty, and a Diſſeiſin by *B.* but no Tenant being found, the Writ abates; *quære* by the Reporter, becauſe C. found a Diſſeiſor 559,

Aſſignee.

What Matter ſhall go to the Aſſignees, 621

Aſſignment.

Where Leſſee for years being ouſted, yet may aſſign over his term, 275

Aſſurance.

By Bond, looked upon better in Law then a Rent-charge, 147

If it argrees in ſubſtance with the Covenants, although it vary in words, is not material, 661,

If it be to be made at the coſts of the Covenantee, it may be done by parcels; otherwiſe, if at the coſts of the Covenantor: Yet if then required he is bound to do it, but is diſcharged for the reſidue, 681

Ought to be deviſed by the Conuſor, and to procure the Conuſee to accept thereof in ſalvation of his Eſtate, 718

Of Acres of Land to be aſſured, ſhall be according to the Countreys eſtimate, 665

Attachment and Foreign Attachment.

What Matter is attachable upon a Foreign Attachment, 63

Where it ſtops a Matter in the Kings Court, 157

Where a Foreign Attachment may well be for a Matter, though pending in the Kings Court, 101

Where

A Table referring to ſeveral Points

Page.

Where in a Foreign Attachment, Judgment of Diſcharge muſt be given, 172

What things are attachable, and by whom to be kept, 230

Of a debt in *London* according ro the Cuſtom, and affirming a Plaint there; and the difference, 593

Attachment in *L.* the Defendant pleads he oweth him nothing, good againſt the Cuſtom there, 598 (599

In C. pleaded in Bar in Debt, and traverſed, is a good Bar to the Attachment pleaded, 830

Attachment in *L.* much good learning touching that cuſtom there, 843

Attachment by the Cuſtom, lies not after a Suit de pending in the *Common Pleas*, for it is *Quaſi in cuſtodia Legis.* 691

Attachment in *L.* the Plaintiff cannot ſwear his debt by Attorney, nor attach a debt before the day of Payment. 713

At what time it may be, and if of a debt recovered in a higher Court, 184,186

Attainder.

A man attainted ſhall be liable to actions, 516

What acts a man attainted may do, *ibid.*

Attaint.

The parties were at Iſſue, but the Record not removed, Judgment *Quod querens nil capiat per breve &c.* but no Fine upon him, 646

Attorny.

To deliver a Leaſe for a Corporation without writing under their Seal, not good 826

May bring Debt for Fees in the *Common Bank*, not for ſolliciting in the *Kings Bench*, 425,429

Attornment.

Where a Conuſee of a Fine may diſtrain without Attornment, 164

Where it ſhall be countermanded by marriage, 270

To what Matter Attornment is requiſite, 284

Where it muſt be pleaded, or otherwiſe ſhall be intended, 400

Not neceſſary for *Ceſtuy que uſe* in Avowry for Rent, 673

By one Joyntenant to a Grantee of the Reverſion, is ſufficient, 737,802

Audita Querela.

Where the priſoner that eſcapes, may upon his own eſcape, have an *Audita Querela*, 44

Where that onely, or where a Writ of Error lies upon a Statute, 233,319

By two to avoid an Execution, Outlawry of one pleaded, good. Summons and Severance lies for the other by the better opinion, adjourned, 448

Upon a Defeazance, the Defendant pleads another Defeazance, not good; for he ought to have pleaded the general Iſſue, *Non eſt factum* 532

A. and *B.* bound in a Bond, and Judgment againſt them. *A.* being in Execution, was diſcharged by the Sheriff, and *B:* ſued to be diſcharged, largely argued, but adjourned, 555,573

Againſt *J. S.* and upon a *Scire facias* awarded, the Sheriff returns *J. S. Mortuus*, the Writ ſhall abate; but if againſt two, and one dies, it is otherwiſe; ſo of an Infant after Inſpection, 635

Two bound in a Statute, defeazanced, that they and their Wives upon requeſt ſhould aſſure ſuch Lands, &c. The breach was, that a Feoffment

Page.

was offered to one, and he refuſed, well aſſigned; for requeſt to both at ſeveral times, is good, 656

The Plaintiff ſhews he was bound in a Statute of Six hundred pounds to the Defendant to the uſe of *J. B.* Defeazanced for the payment of ſuch ſums at ſuch days to *J. B.* and that he was *Paratus* to pay, *& obtulit*, and *J. B.* was not there; the Defendant pleads *J. B.* was there, and demanded, &c. and the Plaintiff was not there to pay it, *abſque hoc* that the Plaintiff *obtulit* the ſaid ſum, &c. Reſolved, the tender was good; becauſe Defeazanced to the uſe of *J. B.* otherwiſe, if a meer ſtranger, and although he ſaith not *J. B.* nor any for him for ſo intended, 755

To avoid Execution upon a Statute, becauſe the Conuſee purchaſed part of the Lands, 756

The Conuſor having Lands in the Counties of *M.* and *C.* the latter Conuſee hath the Lands in *C.* delivered in Execution, the former Conuſee ſued Execution, and had the moity of the ſame Lands delivered, and nothing in *M.* adjudged for the Plaintiff, the later Conuſee, 797

To avoid a Statute, the Writ may comprehend divers cauſes, but the Count ought to contain but one cauſe, or rely only upon one; for doubleneſs inveigles the Court, 809,252

Where an Executor ſhall not be inforced to ſue it, an excellent Caſe, and well argued, 734,822

Authority.

Where one that hath but an Authority, may act according to diſcretion, 48,49

Where by a Deviſe one hath an Intereſt, where but an Authority, 190,810

Acts of neceſſity done by colour thereof, good, but not acts voluntary, as grants of Copihold by a reputed Steward, 699

To four, *Et eorum cuilibet* to arreſt *J. S.* done by two, is good: but otherwiſe, if to make Livery, 913,914

Averment.

Where the life of Tenant in tail, in pleading muſt be averred after his Diſcontinuance, 226

Where the Plaintiffs count muſt be averred 256

Where it lies againſt the Return of the Sheriff, who returns the party ſummoned, where it was not done, 397

Where Pleas may be good without an Averment, and what is a ſufficient Averment, 418

Averments within 32 *Hen.* 8. of Leaſes by Tenant in tail, where not good, 708

Avowry.

May be for Rent of a Copiholder in the *Common Pleas*, but not an *Ejectione firmæ* that demands the poſſeſſion, 524

Iſſue if the Freehold of the Avowant, and found to be the Wives Freehold, Iſſue found againſt the Avowant, *ibid.*

Good by one Tenant in Common, although it be by way of Action; for one may take a Diſtreſs, 530

For Rent upon 32 *Hen.* 8. *c.* 37. how to be made, 547

By an Executor for a Rent charge for years, although the clauſe of Diſtreſs be to the Grantee and his Heirs, 644

For a Rent-charge deviſed to him, without ſaying The Land was holden in Soccage, not good, 667

Iſſue

Page.
Iſſue if the Plaintiff held by Fealty Rent, and Suit of Court; Verdict found it to be by Fealty, and Rent only againſt the Avowant, for all the Tenure is material; but in Treſpaſs, or Reſcous, it is otherwiſe, 799
For an Amercement, not good, becauſe he ſaid not the Plaintiff appeared, nor upon ſummons, but ſo preſented by the Homage, 885,886
Avowry, not good, becauſe he pleads the Baron was ſeiſed in Fee, and that he and his wife lett, &c. And alſo that *B.* was ſeiſed in Fee of an Houſe and Land thereunto appertaining, &c. which is not good in pleading, although by ſuch words it may paſs in a Deed by Reputation and Intent of the parties, 919
Avowry upon a perſon certain, where good enough, 146

B.

Bail.

Where when the party renders himſelf in diſcharge of his Bail, the Plaintiff may be demanded, 22
Where one may be taken in Execution, but, not by Cuſtom without anſwer 185
Where they may plead the death of the Principal before Judgment, 192
Entred by another name, then according to the proceedings, vitiates all, 223
If pulled off the File, the party is without remedy, *ibid.*
Where the Bail may plead ſatisfaction without ſhewing a Record of it. 132,233
At the Suit of *Adderley*, not liable to the condemnation at the Suit of the ſame perſon by the name of *Adderby*, 458
Not liable to Coſts aſſeſſed in the *Exchequer Chamber*, upon affirming a Judgment in Error there, 587
Not liable to the Judgment, until a *Capias* iſſue againſt the Principal, and a default thereupon 597
Diſcharged, if the Principal render himſelf before Judgment againſt them upon the ſecond *Scire facias*. 618
Inſufficient accepted by the Court upon miſ-information; an Action upon the caſe lies for ſuch falſity, 714
If a *Capias* be awarded returnable at the next Summons, and *Nihil* returned, the Principal ſhall not be received; but otherwiſe, if returnable *De die in diem* and upon the firſt *Scire facias*, the Mainperners may bring in the body, and fifteen days ſhall be between the *Teſte*, and the Return, for time to ſeek the Principal; 738
Scire facias againſt them, miſtaking them ſum, not amendable, 855
Want of Filing thereof, Error. 894

Bayliff.

Cannot wage Law in an Accompt, 579
Of a mannor, whether he may diſtrain for an Amercement, without a Warrant from the Steward or Lord, 698,748
May enter a ſtrangers houſe, the door being open to levy Execution of Goods in the hands of an Executrix there, 759
For life with a Fee, or other profit, cannot be diſplaced by a purchaſor of the Mannor. 859

Bankrupt.

What act ſhall make one be adjuged a Bankrupt 13

Bargain and Sale.

Where the Deed ſhall be ſaid to paſs by Bargain and Sale, where not, 166
What ſhall be a good Conſideration to paſs an Eſtate thereby, 394
By Tenant in tail, Bargainee levies a Fine, and five years paſs, iſſue ſhall have five years after his Fathers death; otherwiſe if diſſeiſed, and the diſſeiſor levies a Fine. 896

Baron and Feme.

Where the Land moves from the Husband, but yet a Remainder of the Eſtate is to a ſtranger; ſo as it could be no prejudice to the Heir of the Husband, the Alienation of the Wife ſhall be no forfeiture, 224
Where an Act being done by Baron and Feme joyntly, yet being dubious ſhall be intended as iſſuing, or being done upon the Wifes inheritance onely, 129
Where the Husband may prejudice the Wife, where not, 149
Where a Feme-Covert may do an act without her Husband, 72
Where an act done by a Feme-Covert, ſhall bind the Huſband, *ibid.*
What ſhall be ſaid a good diſpoſition of a term by the Baron to veſt the Intereſt in his Executors, 278
A Term in truſt, not the uſe thereof, ſhall not go to the Baron ſurviving, neither by Law nor Equity, 466
Where the act of the Baron, ſhall not prejudice the Wife, 459
Whether an Action for Tort done to the Freehold of the Feme, ſhall be brought by the Baron only, or by both, 461
Bring Debt due before Coverture, and the Baron being a Clerk of the Court, it was entered *Querens in propria perſona*, and well; for every Plaintiff, if he will, may be in *propria perſona*, 537
Poſſeſſed of Tithes in right of the Feme, they muſt joyn in the Action, becauſe the Feme is proprietor, 608,613
A Leaſe by them without Deed, void againſt her, 656
Bring Debt for Rent upon a Leaſe made by her and a former Baron, the Defendant pleads, that Baron was ſole ſeiſed, and good; for a Feme-Covert cannot be ſtopped by Deed, but otherwiſe by Fine or matter of Record, 700,701
Baron ſeiſed in Fee and the Feme for life, they Bargain and Sell in Fee. *Proviſo*, That if either of them pay One hundred pound then to be void; and that all Aſſurances ſhould be to the uſe of the Baron and his Heirs (leaving out there the Wife) the Baron dies, the Feme pays the One hundred pound, Adjudged the Wife ſhould have an Eſtate for life, 744
The Baron pleads an Indenture made by them both, whereas the Feme never ſeiſed it, not good; and the Plaintiff is not Eſtopped to ſay ſo; but if the Baron had executed it in the name

of

Page.

of the Feme; it had been good, during the life of the Baron, 769
Debt lies by the Baron only, for Debt, Damages, and Coſts, recovered by them both, 844
Trover againſt them, but Converſion by the Feme only, iſſue muſt be, *Quod ipſe non eſt inde culpabilis*, for no Tort in the Baron. 883

Bar.

In a wrong Action, no Bar in a right Action, 658
Where made good by the Replication, or Confeſſion of the adverſe party. 708

Baronage

Where no Error in a Judgment in debt againſt him *Ideo capiatur*, becauſe a Fine is due to the King, and he hath no priviledge againſt him. 503

Battery.

In *London*, the Defendant pleads *De ſon Aſſault Demeſn* in S. and ſo not guilty in *L.* not good; for it is tranſitory, and he ought to have juſtified in *L.* except the cauſe had been local. 842

Benefice.

Induction into a ſecond, avoids the firſt by the Common Law without ſentence of Deprivation 601

Bill for Debt.

What words amount thereunto, and equally to be divided, makes it ſeveral, 729
Good in the firſt part, and void in the laſt part 886
Where one muſt ſue by Writ, where by Bill. 101

Burgage.

What Land ſhall be ſaid to be held in Burgage. 120

C

Certiorari.

Certiorari, as well to Reverſe as affirm a Judgment, 836,837
Certiorari, and reſtitution made after by the Juſtices, 915,916
Of a Recovery in an inferior Court under that Seal, good, Traverſable here. 821

Challenge.

Where it ſhall be ſaid to be good cauſe of challenge, though both parties are equally of kin, 23
Where a Juror hath once given a Verdict, though that proves to be null, it ſhall be a principal cauſe of Challenge, 33
After iſſue joyned, lies nor for the Plaintiff, 844
One being challenged as to the principal Inqueſt, ſhall not be allowed to ſerve in the *Tales*, 188 (429,430
What ſhall be ſaid ſufficiency of Freehold for a Juror in a cauſe between the King and *J.* S. and what not, 413
Where he who firſt takes it, ſhall have advantage thereof, 603

Charters.

Charters Ancient expounded according to that time, *ibid*

Page.

Cinque Ports.

Their Juriſdiction touched, 695
An Appeal of Murder lies there, becauſe it is higher then an Action Real and Perſonal, and the Queen is concerned; and in ſuch Caſes it is no Plea, as in a *Quare impedit.* 910,911

Claim. See Fine

What time he in the Reverſion ſhall have for making Claim upon a Fine by Tenant for life. 254

Common.

Where a Tenant that hath Common to his Freehold, may have an Aſſiſe, or Action upon the Caſe, for depriving him of his Common, 198
Within a Leet, putting Geeſe there, not puniſhable, 448
Being extinct by Unity of poſſeſſion, the Houſe and Lands were lett to *J. S.* with all Commons, &c. thereto belonging, *Vel occupat', vel uſitat', cum prædict', &c.* A good Grant of a new Comon for the time, if the uſing thereof had been averred by the Leſſee, 570
Releaſed in part of the Land, is extinct in the whole; for it is intire thorough the whole Land, 594
Commoner cannot juſtifie the killing of Coneys of the owner in the Common, becauſe profitable, and not like Vermine 876

Concord.

Where a good Plea in an Action of Debt, 193

Condition.

What ſhall be ſaid to be a Condition, what a Limitation, 16
What ſhall be ſaid to be a Condition Precedent, what not, 60
He that enters for a Condition broken, defeats all Eſtates whatſoever, 239
Where the word (*Proviſo*) makes a Condition, and where but a Covenant, 242
What ſhall be within a Condition to ſave harmleſs, 264
Any part thereof becoming impoſſible by the Act of God, it ſaves the Bond, 277,396
A Leaſe being made by theſe words, *Sub hac tamen conditione ſi tam diu vixerit ſola, & inhabitaverit*, if a Condition or Limitation, 414
Deviſe of Land *Reddend' & ſolvend' 20 s. annuatim*, makes a Condition, 454
Of a Sheriffs bond to appear at *Weſtminſter*, and before the return of the Writ, the Term is adjourned to *H.* and there the Defendant appeared; notwithſtanding the Adjournment, he muſt appear at *Weſtminſter*; but the Plea was not good, becauſe he concluded not *Prout patet de Recordo*, 466
To do a Collateral act, cannot be diſpenſed with by accepting another thing, 458
Of a Bond to pay 5 *l.* at *M.* next, and ſo yearly untill *H.* be promoted to a Benefice; the firſt 15 *l.* muſt be paid, although *H.* be promoted before *M.* 549
Of a Bond to elect Arbitrators, where performed *ibid*
Diſpenſed withal by admittance or the Lord *Quære* 582
In a Leaſe for years for non-payment of Rent to ceaſe, Grantee of the Reverſion may take advantage by the Common Law 650

In

# of Law argued and reſolved in this Book.

Page

In a Leaſe for years on the part of the Leſſor, who Leaſes to a ſtranger, and then performs it and enters, adjudged lawful, 665

Of a Bond to procure a marriage, the Defendant muſt ſhew he uſed his endeavor therein, and no default in him, 694

Of a Bond to give Evidence when required, and not to moleſt the Obligee in his Lands or Goods, good; for intended Tortiouſly, otherwiſe for Felony, or other juſt cauſe, 705

Of a Bond to give ſuch Releaſe as the Judge of the Prerogative ſhould allow, he ought to draw the Releaſe, and tender it to the Judge, 710

Of a Bond of an Apprentice, if Goods embezled within twenty days after notice, to make ſatisfaction; the Plaintiff muſt ſhew where he became an Apprentice, and ſuch a perſon as might be by 5 *Eliz.* And notice muſt be given to the Apprentice, and his Surety both together, and the Apprentices own confeſſion is no good proof therein, 723

Of an Obligation being in the Diſ-junctive, the Plaintiff may alledge the one, or the other at his election, 727,728

Condition or Covenant to do divers things, the Law allows of a general pleading in the Affirmative, to avoid Infiniteneſs and Multiplicity 749

Of a Bond, if he where ſeiſed in Fee at the making of the Bond of Copihold in *S.* free from incumbrances, except his wives joynture, &c. Breach aſſigned; that before the Bond he had aſſured a joynture to his wife, no good Breach, for it was excepted, 762

Of a Bond to a Sheriff to appear perſonally, is good, 776

If it conſiſt of two parts, the one poſſible, the other not; if he perform that which is poſſible, it ſufficeth, 780

To perform an Award ſo as the ſame be delivered to either of the parties before *M.* it ought to be delivered to both, 797

For payment of 50 *l.* upon a Bond of 100 *l.* and no day limited, it is payable preſently upon Requeſt and the Originals is a Requeſt 798

That the Leſſee or his Aſſigns ſhall not alien without Licence, the Leſſor licences the Leſſee to alien, no more Licence neceſſary; for the Condition is determined abſolutely, 815

Of a Bond to convey Lands to his ſon, a Conveyance to a ſtranger, to the uſe of his ſon, not good, becauſe not party 826

Of a Bond to perform Covenants in a Grant of an Annuity, which was Arrear, and no demand made; the Bond is not forfeited.

Of a Bond of three parts: 1. If he will ſerve the Plaintiff; 2. If he duly accompt; 3. If he ſatisfie within three moneths after notice, all loſſes, &c. Performance pleaded ſpecially, a breach aſſigned in converting 60 *l.* of Poliſh money to his own uſe; and ſo that he had not well ſerved him, &c. good, and Judgment for the Plaintiff, 831

In the Copulative, performance muſt be pleaded of it, 870

To reſtrain a man to uſe a Trade at any time, or place, is againſt Law, and the benefit of the Common-wealth, 872

Of a Bond to ſave harmleſs from all Bonds, the Defendant pleads *Exoneravit* from all Bonds, good; but he muſt ſhew how, 916

Page

Commiſſion.

Of Rebellion out of the *Chancery*, and Arreſt thereupon in falſe Impriſonment, the tryal muſt be in *Middleſex.* 844

To entitle the King to a Free-hold, the Office muſt be in the County where the Land lies; otherwiſe of a Leaſe for years. 855

Common Law.

What properly is ſaid to be Common Law. 10

Common Recovery.

Common Recovery, an Infant by his Guardian, being vouched, 472

Againſt Tenant for life, wherein he in Remainder in tail is vouched, bars the Remainder in Fee expectant. *Walmſley contra totis viribus*, 652

570

Againſt Tenant for life, and him in Remainder in tail, is no Barr to the tail, nor him in Remainder. *Anderſon* denied *Eyre* and *Snows* caſe in *Plowden*; but the parties accorded, and no Judgment was entred, 670

By Tenant for life, with Voucher of him in Remainder in tail, deſtroys not a Leaſe made by him in Remainder; otherwiſe if the Tenant in tail himſelf had ſuffered a Common Recovery, 718

Bars not a Rent in poſſeſſion, becauſe diſtinct from the Land, and no recompenſe for it 727,793

Not good, becauſe the Vouchee within age, and appeared by Attorney, and not by Guardian, and being dead, they in Remainder brought Error, and good, for it ſhall not be tried by Inſpection, 739,774,853

Confeſſion.

Confeſſion implicite of non payment in debt, no Judgment can be given, 823

At the *Niſi prius* the Defendant confeſſes the Action good; for all pleaded before is waved, and he need not acknowledge the point in iſſue, 840

Confirmation.

Where a man cannot apportion an Eſtate by his Confirmation, 472

Confirmation of an Union of two Churches above eight pound *per annum* made by the Ordinary, and confirmed by the Patron, 500,501

By the Biſhop, Dean, and Chapter of *S.* made of a Leaſe of a Parſonage in the Dioceſs of *W.* annexed to a Prebendary in *S.* good. 587

Concluſion of a Count or Plea.

Where it ſhall not vitiate all before, but the Court ſhall judge upon the wole matter. 247

Conſideration.

To accept four pounds, five pound being recovered, and to acknowledge ſatisfaction, good; for without charge, and Error may be in the Record, 429

Conſideration paſt, not good in an Aſſumpſit. 442,885

To forbear to ſue *B.* the Defendant aſſumed, &c. No requeſt neceſſary where a time certain is limited; but the conſideration not good becauſe not ſhewn for what time he did forbear, &c. 455

That the Defendant ſhould exerciſe the Office of Clerk of the Fines in a Welſh Circuit, to pay

Page.

to the Plaintiff, &c. not good; for no ſuch Office and Tryal muſt be in the County next adjoyning, 465,466

If the Plaintiff and two witneſſes would *deponere* before the Major of *L.* the truth of a debt, that then he, &c. good and lawful, and therein much learning of Oaths, which are either compulſary or voluntary by conſent, and both lawful. 470

To aſſign a Debt or Recognizance to a ſtranger, is void and illegal; but otherwiſe to the Ter-tenant by way of diſcharge 552

To relinquiſh ſuch a Suit, not good; for he may relinquiſh and begin again, the Defendant promiſed to diſcharge him againſt all Suits of *J. S.* it muſt be averred that they were actionable, 561

To make a Leaſe of Land, not good; becauſe general, and it might be at will, 566

Of Marriage betwixt the Defendants ſon, and the Plaintiffs Daughter, the promiſe made to the Father, he may bring the Action, 619,652, (849,881

For payment of money, not good, the debt by conſent being aſſigned to the Queen, 653

To a Sheriff to levy an Execution, to pay as the Statute of 28 *Eliz.* allows, it good, being upon Requeſt; but the *Tales* being returned by the Sheriff himſelf, was erroneous, 654

To give a day of payment, day being given, is good, 665

For ſtaying a Suit againſt an Infant, upon a Bond made by him payable at his full age, not good. *Quære*, adjourned, 750

Upon a promiſe, where good, the promiſe being made to no body, (not well apprehended by the Court, as it ſeemeth) 703

Executed, being made at the Defendants Requeſt is good, otherwiſe peradventure if to a ſtranger, and not at his requeſt, 715

Conſideration paſt no ground for an Aſſumpſit, except in caſe of Marriage, 741

Of natural affection, no ground for an Aſſumpſit, 756

Good, for part ought to be performed, and if of ſeveral parts, and all good, all muſt be performed; an excellent, but doubtfull caſe, 759

To ſtay a Suit in *Chancery*, good in an Aſſumpſit, 768,848

To ſtay a Suit againſt an Executrix, where good, and where not, 804

That if the Plaintiff delivered Cattle to *A.* for Money to be paid *Ad aliquod tempus vel tempora tunc futura inter eos concordanda*, and did not, the Defendant would; part of the Money was payable in hand, and the reſt in future; conſideration good, 807

That the Plaintiff delivered to the Wife two Bonds which her Husband had delivered to him in ſatisfaction of a debt, and he dying, it is good; for he had intereſt in them, and power of diſpoſition, 821

If divers alledged in a Count, and ſome inſufficient, yet good for the ſufficient, otherwiſe if found falſe by the Jury. 848

To enjoy Land for a year, to give ten pound, the Plaintiff muſt ſhew what right he had, and debt lies, not an Aſſumpſit, 859

To ſtay a Tryal of a cauſe, is good cauſe of an Aſſumpſit, 869

Page.

To do a thing to a ſtranger upon requeſt, and debt or Aſſumpſit lies; but the day, or place of performance needs not be ſhewed, eſpecially no iſſue being taken there upon, 880

Not good, where no benefit, 884

If the Plaintiff paid ſuch Money, the Defendant upon payment promiſed to ſurrender a Leaſe. the Plaintiff ſaith he tendered the money, not good; for he ought to ſay, the other accepted, or refuſed it, for it is ſubſtance, 889

To forbear to proceed upon a *Capias utlagatum* is good, although the Queen be concerned in it 909.

Conſpiracy.

Lies not againſt one, but an Action upon the Caſe, 701

For procuring one to be indicted of Robbery, 871,900

Conſtable.

Where he may impriſon one for refuſing to watch 204,

Conſultation.

Where granted in one Court, for the ſame cauſe it ſhall be granted in another, 277

Where the party grounding his Prohibition upon a Preſcription, and failing in it, or any part thereof, is good cauſe for a Conſultation 206

Conſultation granted, a Donative being in queſtion, 653

Contingency. See uſe.

Contingent, Remainder or Uſe to a Wife that ſhall be at his death, good; and not deſtroyed by her joyning in a Fine, becauſe incertain, 827

Continuance.

If it ſhould be to two, and is but to one, amendable; but if no continuance at all to the party, not amendable. 619

Contract.

Where apportionable, 756

For a thing continuing in his nature, the nature thereof muſt be ſhewed; otherwiſe, if altered from his nature, 837

Copihold and Copiholder.

Copiholder without a ſpecial Cuſtom, cannot take Houſe-boot, Hedge boot Cart-boot, &c: as Tenant for life or years may do, 5

The Lord letting a Leaſe of his Copihold-Tenements, and the Court-Baron, whether the Leſſees may hold Courts, 394

What ſhall be a good purſuit of a Licencce made for the granting of Copihold, and making Leaſes upon it, *ibid.*

If Tithes, Under-wood, or a Market, may paſs by Copy, 413

Copiholder ſurrenders to the uſe of himſelf for lies, Remainder to his ſon for life, and after to the uſe of his laſt Will; the ſon dies, the Father ſurrenders it to *J. S.* in Fee, and dies without Will, good to *J. S.* by the better opinion, but adjourned, 442

A Mannor extends to *C.* and *B.* and other Villages, and divers Copiholders for life, being in *B.* a Recovery is ſuffered of the Mannor, excepting that part in *B:* and at a Court at *B.* a Copihold for life was granted, the Grant is void; for no ſuch Mannor as *B.* before, nor now; and no Surrender can now be made of it, for it muſt be in the Court of the Mannor, and cannot be to the Lord himſelf, or out of Court, 443

Copiholder

Page.
Copiholder for life hath Licenſe to leaſe for three lives, if he live ſo long, he leaſeth abſoluteley, good; otherwiſe of a Copiholder in Fee, 462
A Leaſe of Copihold by the Baron, or Tenant for life of a Mannor, deſtroys not the Cuſtom againſt the wife, or other Reverſion, 459,598
Surrender of a Copihold in tail, is a Diſcontinuance, 483
The Lord may enter for a forfeiture before Preſentment, 499
A Leaſe for years, though to commence in future, is a preſent forfeiture, if not warranted by the Cuſtom, *ibid.*
Leſſee of a Feoffee of the Inheritance of Copihold Land, may take advantage of a Forfeiture by the Copyholder, *ibid*
Cutting of Trees with intention to repair, is no Forfeiture, although the Trees are not employed in five years afterwards, *ibid.*
Surrender to *A.* for life, remainder to *B.* in Fee; the admittance of *A.* is alſo an admittance of *B.* and but one Fine is due, 504
The Lord demanding his Rent upon the day, if the Copiholder be not there to pay it, if it be a Forfeiture, two againſt one; and adjourned, 505
If the Copiholder after a ſpecial Summons to come to Court, do not come, it is a Forfeiture, *alias* after a general Summons in the Church, 506
Copihold granted in reverſion by Tenant in Dower, although ſhe die before it be executed, is good; and although ſhe have no Services, yet ſhe may keep a ſpecial Court; but being pleaded as a Grant in poſſeſſion *per nomen* of a Meſſuage which *A.* had for life, ill, and not helped by the *per nomen*, 662
Copihold eſcheated and in the Lords hands for many years, may be regranted by Copy, by the Lord, or his very Steward, 699
Fines certain muſt be paid upon admittance; and uncertain muſt be reaſonable, and time given for payment thereof, 779
Copiholds, if divers deſcend to one heir, there ought to be ſeveral Fines; for he may accept of ſome, and refuſe others, 779,780
Copiholder having Common by Preſcription in the Demeſns; it eſcheated; the Lord grants it in tail with all Commons therewith uſed, the Donee ſhall have ſuch Common as the Copiholder had, for it enures as a new Grant, 794
It cannot be of Tithes, otherwiſe of Common, 814
If Intailable, no Cuſtom being found if diſcontinued by a Surrender; and if Barrable by a Common Recovery: all adjourned, 907

Coroners.

See Venire facias, 574,586,582

Corporation.

Capacity to take, but not to grant to one another, 35
A Writ by *Cuſtos Collegii*, muſt conclude *Jure Collegii*, and where intended, 232
Where an Obligation ſhall go in Succeſſion, where not, 464

Coſts. See Damages.

Coſts ſhall not be paid by an Infant, if he be nonſuited, 33
Coſts for an Executor-Defendant upon Non-ſuit, but if Plaintiff, ſhall pay none, 503
Page.
Coſts for the Defendant upon a ſpecial Verdict, as was upon a general; for Judgment is the ſame, 465
Aſſeſſed in the *Exchequer Chamber* upon affirming a Judgment there in Error. *Quære*, if that Court can do it, 588
Amount to more than the Plaintiffs Counts in Damages, not material, 866

Covenant.

Where a Covenant from doing an act, reſtrains all to the parties act, 43,44
At what time an Action of Covenant lies; or a Covenant broken, 78
To ſave harmleſs againſt a particular perſon, where ſhall bind, although his Entry be Tortious, 213
Where an Action may be brought for Covenant broken, although the Deed of Covenant becomes void before the Action brought, 245
What ſhall be a breach of a Covenant for not moleſting, 421
Lies not upon Aſſignment of an eſtate by Eſtoppel, 437
Upon Surrender of a Leaſe to make another, the Covenantor levies a Fine to *J. S.* tender of a Surrender needs not; for the Covenantor hath diſabled himſelf, 450
Breaking the Seal of one of the Obligors, ſhall avoid the Deed onely againſt himſelf; otherwiſe if the Deed be razed in a clauſe which concerned them all, or in the date, 470,546
Where it binds the Aſſignee not named, where not, 457
To make further Aſſurance by advice, ought to be performed, though the party requeſt it without advice, 465
Where when the Covenant hath diſabled himſelf to perform, the Action lies immediately, 479
To aſſure Lands at the coſts of the Plaintiff how expounded, 517
For quiet enjoyment againſt all, but the Queen, her Heirs and Succeſſors, is broken, if diſturbed by the Queens Patentee, 518
In an Indenture, ſome void, ſome good, 529
By the Leſſor, the Leſſee quietly to enjoy; if the Leſſor ouſt him, a breach, 544
Covenant which runs with the Land, lies for, or againſt an Aſſignee, although not named, and ſo againſt an Executor, except it be perſonal, 457, 553
By Leſſee for years, at the end of the Term to leave it ſufficiently repaired, Aſſignee of the reverſion of the Term may maintain Covenant for beach thereof, 600
That the Leſſee ſhould have Houſe-boot, Hay-boot, &c. without doing Waſte upon pain of Forfeiture, vain; for the Law appoints as much, and ſo all ſubſequent is vain, 604
By Tenant for life to Leſſee years, that he had not done any act to prejudice the Leaſe, Tenant for life dies, the Covenant is not broken, 615
By Grantee of the Reverſion, if it lies againſt Leſſee after Aſſignment; by *Gawdy* it doth: *Quære*, but Judgment againſt the Defendant, becauſe no place pleaded of the Grant. 617
To leave the Tenements well repaired, &c. the Defendant pleads that *A.* was ſeiſed in Fee, until by the Plaintiff diſſeiſed, who let to the Defendant, and *A.* re-entred; a good Bar, 656

A Table referring to ſeveral Points

Page.

Covenant, a Bond conditioned to perform Covenants and Agreements, and the Plaintiff let *Eyford* Paſtures, excepting one Cloſe called *E.* Cloſe: into which the Defendant entred, and adjudged no breach of the Condition or Agreement; yet ſtrongly argued, *Contra*, 657,658

Covenant in Law, and by Deed to enjoy, &c. Covenant in Law, if taken away by the expreſs Covenant, but the Eviction muſt be upon good Title, 436,675

To aſſure Lands at the coſts of the Covenantee, may be done by parcels; otherwiſe if at the coſts of the Covenantor: Yet if then required, he is bound to do it, but then he is diſcharged for the reſidue, 681

Breach aſſigned in two; one well, the other ill, and damages intirely aſſeſſed; but the Court would not give Judgment, 685

For the Leſſee to enjoy, where he may have advantage thereof, 688

Some in the Affirmative, and ſome in the Negative, Pleading performance of all generally, not good, 691

That the Leſſee, his Executors or Aſſigns, ſhould not alien without Licence, but to his wife or children. Leſſee deviſes to his wife, who enters, and marries *J. S.* and they alien; by the greater opinion the Covenant is broken, 757

By *A.* to ſtand ſeiſed to himſelf for life, and after to the uſe of his daughters, unmarried at his death, until they *Succeſſive* levy Five hundred pound, remainder to the heir for life, &c. The Father died 30 *Eliz.* the heir entred, and the eldeſt daughter entred not until 42 *Eliz.* Adjudged ſhe had ſurceaſed her time, but that ſhe might have remedy for her portion againſt the heir, who received the profits in diſturbance of her, 800

By *A.* to aſſure all his Lands to *B.* whereas *A.* had infeoffed *B.* of all before, ſo as he had none left no breach of Covenant; otherwiſe, if particularly named, but ended by Compromiſe, 833

(834

By Tenant in tail to ſtand ſeiſed to his uſe for life, is as much as he can lawfully do, 895

To enjoyn no breach without lawful diſturbance, which may be ſhewed after Judgment by *Nihil dicit*, and Enquiry of damages, 914

To enjoy, diſcharged from Tithes, Suit for them muſt be legal, 917

Count and Declaration. See Debt Sparſim.

Where in a Count by ſeveral, one muſt comprehend in his Count the others Title, 64,65

Where in a Count the Conveyance to the Action muſt preciſely be alledged, 112,113

In an Action brought by the Maſter or Servant, after what manner the Count muſt be, 83,84

Counts in inferior Courts, what is requiſite for them to do, 185

Quod cum Teſtatum exiſtit, where it is good, 191

Where in a Count in Treſpaſs, the place muſt be alledged 202

Where in the a Count or Bill, the inſufficiency of the Premiſſes ſhall be helped by the Concluſion, 201

Where in a Count upon an Aſſumpſit, for payment of a ſum of money upon an act to be done before, the Plaintiff muſt ſet forth he is ready to do it, 249

Page.

Where in a Count for Matter in a City, and ſaid in a Ward, the Pariſh muſt be laid in the Count, as well as the Ward, 260

Where the Plea of the Defendant will help the the defects of a Count that is vitous, where not, 416

In what Count one muſt ſhew the quality of his eſtate, 419

If a Bond be alledged to be made in *Comitat. Prædict.* thoſe words ſhall not refer to the next Antecedent, but to the County where the Action was brought, 465

In Aſſault, the Plaintiff declared *Quod cum*, which is *quaſi* a Recital, and not an expreſs Affirmation, it was erreoneous, 507

After Imparlance a ſecond Declaration was entered, and they proceed, Judgment is entered upon the firſt, *ibid.*

It may vary from the Writ of *Warrantia Chartæ*, as that the Defendant infeoffed him of two Meſſuages and twenty Acres *Per nomen unis Toſti, & duas virgat. terræ*, becauſe may be builded ſince, therefore good, 611

J. S. declares that the Defendant *Per Scriptum Articulorum convenit*, not good; otherwiſe perhaps, if *Per Scriptum ſuum factum, &c.* 571

Of a Leaſe made the 20 of *Auguſt* for twenty years from *Michaelmaſs* laſt, *Ante datum hujus Indenturæ*, good, and thoſe words void, 606

That the Defendant *Per Scriptum ſuum obligatorium conceſſiſſet ſe Teneri, &c.* without ſaying *Sigillo ſuo ſigillat.* good, and the reſt intended, 737

Not good, becauſe he ſaith not he was ſeiſed at the time of the cutting of the Watercourſe, 751

Upon a Leaſe for years *Habendum a die datus, virtute cujus dimiſſionis* he entred, not good, becauſe no time when he entred; and if on the day of the Demiſe, he is a Diſſeiſor, 766

Of a Leaſe dated the firſt of *November*, 39 *Eliz.* good, without ſaying when it was ſealed and delivered, becauſe intended at the date, 773

Of a Leaſe made by *T. B.* and *Anne* his wife, where her name was *Agnes*; after Judgment reverſed for Error, 776

That Adminiſtration was committed by the Dean of *L.* not good, becauſe not ſhewed by what Authority, 791

Upon a Sheriffs Bond, and doth not ſay *Tunc vicecomiti Norf. exiſtent.* not good, although the Writ was ſo; yet it was abated, 800

That he was poſſeſſed of ſuch Goods *in ſpecie, cum aliis implementis, & neceſſariis*, and intire damages, but no Judgment; for the incertainty and advantage may be taken of it, although after Verdict, and admitting of it by the Defendant, 817

Not good in Ejectment of the Vill in the *per nomen*, 822

If it compriſe more than the Writ, is not aided by 18 *Eliz.* otherwiſe, if no Writ at all, 829

Declaration; three quaint Exceptions to it, yet affirmed in Error, 834

For words *Quorum tenor ſequitur, &c.* not good; 857

In Detinue of a Deed of Sale of divers parcels of Plate, the Jury muſt finde them to be the ſame ſold by the Deed, 867

Declaration, the ſubſtance being found, *Modo & forma*, not material by ſome, but adjourned, 882

Againſt

# of Law argued and reſolved in this Book.

Page.

Againſt *J. S.* Chandler, who pleads he was a Gentleman, not good, without a Travers, that he was a Chandler, 884

Declaration, that 16 *Jan.* by Indenture dated 2 *Jan.* he demiſed, &c. without ſaying *Primo deliberat'* 16 *Jan.* and good, 890

Upon a Plaint for debt in *York*, the *Capias* returnable at the next Court; if erroneous, the Sheriff ſhall not take advantage thereof in an Eſcape: And if before *R.* and *L.* well enough, if they were Sheriffs at the return; but to the Sheriffs generally, is the ſureſt way; and commitment until the debt be ſatisfied, is good; for the Court is not to demand Bail, but he ſhall be bailed, finding Suretics, for ſo intented, 893 (&c.

Obligation by the name of *John*, and the Condition by the name of *James*, and counts that *James per nomen Johannis* became, &c. not good; for *John* cannot be *James*, 897

Declarations, and divers Exceptions taken to them but diſallowed, 906

Declaration, not good, becauſe not alledged that the Defendant did aſſume, which is Subſtance, and not ſupplied by Intendment, 913

Counterplea.

Lieth not, but where he who is vouched, had no ſuch eſtate whereof he could make a Feoffment, 689

Counterplea: A difference where to the warranty, and where to the Voucher, 690

Courts.

Within what time a Leet muſt be held, 245

Within what time a Court of Py-powders muſt be holden, 256

Of the *Marſhalſea*, whether it can hold Plea of Actions, ſuppoſed to be within the Virge, the Defendants not being of the Kings Houſhold, 502

Jugdment of things there, not within their Juriſdiction are void; yet a Writ of Error lies of them, *ibid.*

The Cuſtom of a Court, is the Law of that Court, but it muſt be pleaded; yet ſometimes the ſuperior Courts may be informed thereof by Certificate, 503

In the pleading of any thing done in the *Kings Bench*, you ought to ſhew where it fate, becauſe that Court is removable, 504

Court of Requeſts hath not any power by Commiſſion, Statute, or Common Law, 647

Court of Conſcience, no Commiſſion awardable from thence to ſeiſe the Defendants Goods, but onely impriſonment for not obeying, 651

Court-Baron cannot be by Preſcription; for it is incident to a Mannor, 792

Corporation-Courts muſt ſhew their ſtile and authority to hold Pleas, 489

Court of Py-powders, Information and Judgment there, only voidable by Error, 530

Cuſtom.

The Form of Pleading thereof, 185

To what perſons a Cuſtom may extend to bind, 187

For a common Bakehouſe is good, and reſtrains any others within a particular place, 203

What ſhall be ſaid a Cuſtom Conditional, *Et ſub modo*, and what a Cuſtom, for which a collateral recompence is only given. 405

That the Parſon of *Q.* at all times had uſed to keep a Bull and a Boar for the uſe of the Kine and Sows there; and that for three years he had kept none, not guilty pleaded: which is not good for a Non-feaſance, but otherwiſe for a Miſ-feaſance, as here; and that every Inhabitant prejudiced thereby, may bring his Action againſt him, 569

That a Copiholder in Fee ſhould have the Loppings of the Pollingers; the Lord cannot cut them down, although he leave the Loppings for the Tenant, 629

That if any Tenant of the Mannor of *P.* aliens his Land by Writing, Feoffment, Deviſe, or Surrender, that it ought to be preſented at the Court there, adjudged good; for it adds more Ceremony than the Law appoints, and it is reaſon the Lord ſhould know his Tenant, 668, (669

Of *London*, Recognizance taken there for Orphanage-money, is ſuable in the Court of *Common Pleas*, 682

Of *London*, for calling an Alderman upon the Exchange, Fool and Knave, and commitment thereupon, not good, 689

Of Attachment of a debt in *London*. See *Attachment*.

Of the Mannor of *Thiſtleworth*, and of the Copiholders there; ſeveral Queſtions debated, and Reſolutious of the Court thereupon, 717

Of a Mannor, to have after the death of any dying within his Mannor, the beſt Beaſt of the deceaſed, as Heriot; a void and unreaſonable Cuſtom to bind ſtrangers, otherwiſe of Tenants, 725, 726

Of the Corporation of Weavers, that no ſtranger ought to intermeddle with their art within *L.* or *S.* A Stranger contracts for Silk in *L.* and weaved it at *Hackney*, no offence, nor cauſe of Action, 803

To bar an Eſtate in Fee for Default of Claim after Proclamations, extends not to a Remainder Expectant upon an Eſtate for life, but ſhall be taken ſtrictly, 879

Cuſtom of *Norwich*, to inquire of a Debt upon a Bond, good, 896

D.

Damages.

Where the Jury may aſſeſs what dammages they will, and in what Actions, 67

How they ſhall be given in a Writ of Accompt, 84

Where the Court may increaſe damages aſſeſſed againſt the Abettors in an Appeal, 223

In what ſort of Avowries, Coſts and Damages ſhall be awarded, 258

In what Actions Baron and Feme joyning, the Jury ſhall aſſeſs damages to both, 259, 329

Intirely given, where no Action lies for part, makes the Judgment void in all, but doubted, if not made good by the Plea, and admittance of the Defendant, who might have demurred, 425

More

A Table referring to ſeveral Points

Page.

More cannot be given then the Plaintiff counts, but the Court may increaſe them at pleaſure. 544

Damages and Coſts aſſeſſed by the Jury and the Court, trebled by 8 *H.* 6. 582

Damages joyntly, although the Iſſues be ſeveral, 860

Day in Court

Where the party hath day in Court to alledge the death of the party after the *Niſi prius* day, 202

Where upon a Writ of Enquiry, day ſhall be given in Court, 75

Death of the Party.

What Matter ſhall be diſcharged by the parties death, 10,11

Debt.

Where it lies by Leſſee for life againſt Leſſee for years, created out of the eſtate of Leſſee for life after the Surrender of Leſſee for life, 264

Where the Delivery of Land in Extent upon an *Elegit*, ſhall a good Plea for Leſſee for years in Debt, brought againſt him by the Leſſor for the Rent, 398

Upon an Obligation (wherein three are joyntly bound) againſt one of them, he muſt plead that two other now alive were likewiſe bound, and delivered the Bond; and ſee much excellent learning there touching an Action of Debt, and where it is maintainable upon a Statute or Recognizance, and where not, 494

It lies in the *Kings Bench* for damages recovered in Dower in a Court Baron, 426

Debt to the Queen, the Defendant took Beaſts upon a *Fieri facias* out of the *Exchequer*, and ſold them, not good, but diſtrainable, 431

Upon a Bond, and demanded 47 *l.* 8 *s* 8 *d. Monetæ Flandriæ attingent' ad valenciam* 40 *l.* 2 *s.* 6 *d.* Judgment ought to be *Quod recuperet* the 47 *l.* 8 *s* 8 *d.* Flemiſh, and a Writ awarded to inquire of the value thereof; and becauſe it was not ſo done, it was reverſed in Error, 536

Upon a Bill Obligatory of 14 *l.* and upon *Oyer* it was, that *W.* owed him 14 *l. ſolvendum una cum* 6 *l.* upon Accompt between them, yet good; for that which comes after the *Solvendum* is void, as after an *Habendum*, 537

Upon a Bond of 20 *l.* the Defendant pleads that *J. S.* ſurrendred a Copihold to the Plaintiff in ſatisfaction, which he accepted, no Plea, becauſe *J. S.* a meer ſtranger, 541

It lies upon a Statute not ſealed, as upon a Bond, and againſt one Obligor, though the words be joynt, becauſe perhaps the other are dead; the Plaintiff appeared *Per attarnat' ſuum* without name; yet if he declare *Per J. S. aturnat' ſuum*, it is good enough, 461,544

Upon a Bill payable upon demand, actual demand not neceſſary, becauſe a duty preſent, 548

It lies not againſt an Executor of Leſſee for years for rent due after an Aſſignment made, 555, 556

Lies not againſt an Executor upon an Arbitrement made in the Teſtators life, becauſe Law-wager lies therein, 557

Upon a Bill, *Memorandum* that I *T. J.* bind my ſelf to *J. M.* to pay unto him all ſuch moneys as my Brother oweth him; and the Plaintiff avers, that the Brother then owed him forty pound, and Judgment for the Plaintiff, 561,758

Page.

It lies for a Fine impoſed in a Leet by the Steward, 581

Upon a Counter-bond as ſurety, the Defendant pleads the principal Bond was made upon an uſurious contract, not good; for the Surety could not take notice thereof, 588,643

Lies upon a Recognizance after execution ſued thereupon by *Elegit*, becauſe certain, otherwiſe where damages onely, 608

Debt, the Judgment was, *Quod prædict. Georgius capiatur*, where it ſhould be *prædict. Elias*, not amendable, becauſe the Act of the Court, and part of the Judgment, 609

Upon a Bill ſealed of 200 *l.* and the Evidence was, that this Obligation was written in a Book, and the Defendant ſigned and ſealed it, good by the uſual courſe in *London*, 613

Lies by the Grantee of the Reverſion againſt Leſſee after an Aſſignment made of part by him, 633

Lies in *London* upon a Leaſe there made of Tithes in *Kent*, by Aſſignee of a Reverſion againſt Aſſignee of a Term, becauſe triable there, 636

Leſſee for thirty years, lets for twenty eight years, rendring thirty four pound, and deviſeth twenty eight pound thereof to his three ſons, part alike, one brings Debt for his part thereof, and maintainable: Much good Learning, 637, 651

Lies upon money delivered to buy things, as well as an Accompt, 644

Againſt two, one onely cannot wage his Law, 646

Debt, and declares upon a Bill of fifty pound payable at five ſeveral days, and in ten pound *nomine pœnæ*, it is one Bill, being by one Deed, 771

Upon a Bond, the Defendant pleads *Quod factum prædict.* was made without date, and the Plaintiff dated it, and ſo *Non eſt factum*, not good, for he confeſſed it before, 800

Upon a Bond in *London*, againſt *J. S.* of *W. in Com. prædict.* payment at *W. prædict. in Com. Eborum*, is idle and repugnant, 867

If it lies for arrears of a Rent charge for years, 895

Deed.

What Act ſhall be ſaid a good Delivery of a Deed, what not, 7

Where the date of a Deed ſhall be ſaid material, and not the Delivery onely, 14

What Matter may be by Parol without Deed, and what by Deed onely, 22

Where one named after the *Habendum* ſhall take in a Deed, 58

The manner and form of pleading a Deed, and where he muſt ſhew where the Deed was made, 187

Where a Compoſition by the Parſon with his Pariſhioners, may be without Deed, and where not, 188

Where the latter part of a Deed ſhall correct the firſt, and avoid it, 208,269

Where a Deed indented, ſealed and delivered of one part only, ſhall be good to charge that party that delivered it, 212

Where an *Habendum* in a Deed will controul, and deſtroy a Deed, 254

Where

Page.
Where a Deed ſhall be ſo conſtrued, that all the parts may ſtand together. 420
Where the Seal of one of the parties being broken off in a Deed, the other ſhall avoid the Deed upon it, 908
It ſhall not be avoided by breaking the Seal of one of the Obligors if the Covenants be ſeveral but againſt him onely, otherwiſe of a Razure in a clauſe which concerns them all, 546
Where a Deed-Poll delivered by one to the other, and by him re-delivered, is the Deed of both, 483
If it be delivered to be cancelled, and be not cancelled, it remains a good Deed ſtill, *ibid.*
Where one out of poſſeſſion delivers a Leaſe of Land to the uſe of *J. S.* and after makes a Letter of Attorney to deliver it upon the Land, the laſt Delivery is void; 483
Delivery of the Deed to the party, cannot be as an Eſcrow. 520,835,884
It may be delivered to a ſtranger without Letter of Attorney, to the uſe of a Colledge, and the ſealing of a counterpart confirms it, 862
Avoided by inſerting words after ſealing and delivery by the Obligors conſent, and for his benefit; well and largely argued. 626

Deceipt.
Where it may be alledged, and it what matters, 79,80
Action upon the Caſe, for warranting two Oxen ſound, one found ſound, and not the other, yet good, for grounded upon the deceipt, 884
Where it lies for procuring a *Nihil dicit* to be entred in abuſe of the Court, or for other falſity. 794

Defeaſance.
Upon a Bond to pay a leſſer ſum, tender is good without *Tout temps priſt*, otherwiſe of a Bond with a Condition. 755

Demand.
At what time a demand of Rent muſt be, 63
A demand of Rent muſt be certain as to the time, and what is due, and the finding of the Jury of all then due, is not material, 209
It muſt be at the place of payment, although out of the Land, 415,536
Not neceſſary where it is *quaſi*, a ſum in groſs 688
Demand of a debt may be by entring into a houſe if the Maſter be there, and ſo averred in the Plea. 877

Demurrer.
Where ſome Covenants are Negative, and ſome Affirmative, and the party pleading performance generally and a Demurrer general, ſhall be aided as onely formal, 232
If the Plaintiff gives in evidence, matter in Writing, Record, or Sentence in the Spiritual Court, (as there it was) and the Defendant offers to Demur, the Plaintiff muſt joyn or wave the evidence, but not in the Kings Caſe, or upon evidence by witneſſes, 752
Demurrer after a Plea of Covenants performed, and a breach aſſigned, contradicts his Plea, and confeſſeth non-payment. 829

Departure.
Departure, where, and where not, 653,722
Departure by Rejoynder, 783

Page.
Deputy.
What Offices may be executed by Deputy, 187
Who ſhall be ſaid a ſufficient Deputy within the Statute of 1 *Eliz.* 19. 534

Detinue.
Lies not for Money out of a Bag or Box, 457
No Plea therein to ſay the Bail was robbed, otherwiſe of a ſpecial Bailment to keep them as his own, 815
Detinue, the *Venire facias* was in *Placito debiti*, and good. 867

Devaſtavit.
And how execution thereupon, 530
Payment of a Statute after Judgment in the *Common Pleas*, no *Devaſtavit*. 734,822

Deviſe. See Teſtament.
By the words all other my Lands, Meadows, and Paſtures in D. &c. his Houſes there ſhall not paſs, 476
To *J. R.* and his Heirs-males lawfully ingendered, if a Fee-ſimple, 478
Of all my Land in *A.* if it paſs Land afterwards purchaſed there, if I declare it to a ſtranger, that they ſhall go as the reſt, 493
What words in a Deviſe ſhall paſs a Fee-ſimple or Tail, 498
A. deviſeth to his two Daughters, his Heirs, to them and their Heirs, they are thereby Joynt-tenants, 431
Of Land to *R.* for life and after to the next Heir-male of *R.* who infeoffeth *J. S.* with Warranty, the Remainder is deſtroyed by this Feoffment and Warranty, 453
Of Land in Poſſeſſion, and in reverſion upon a life to three Executors, to ſell, to pay debts; one Executor dies, Tenant for life dies, ſale by the ſurvivors of all, is good, 525
A. deviſes Lands to *R.* his Son, and his Heirs, and if *R.* die within age, or without iſſue, the Lands to be equally divided amongſt his other ſons: *R.* had iſſue, and died within age, the limitation of the Remainder void, and the iſſue hath a Tail, 525,526
Deviſe pleaded, he muſt ſhew what Eſtate the Deviſor had, 530
To the ſon in Tail; and if he died without iſſue to the next of his name; the Daughter married ſhall not have it, for ſhe hath loſt her name, 532, 576
To his Wife untill his Daughter attain Twenty one years of age, and then to them for their lives, they are immediate Joyntenants of the Freehold, by the better opinion, 533
Being void for a third part, the Deviſee enters generally and lets all, and the Leſſee occupies all, by the greater opinion he gains poſſeſſion onely of two parts, but the matter was compounded, 641
A. ſeiſed of Houſes and Lands in *L.* and alſo in *W.* in another County, deviſes all his Meſſuages and Lands in *L.* and all his Lands, Meadows, and Paſtures in *W.* adjudged the Houſes in *W.* paſſed not, 476, 658, &c.
Of Lands in *A.* (the ſame being in *A.* and *B.*) to his youngeſt ſon in Fee, and if he die without iſſue, his wife to have the Lands; ſhe ſhall have onely the Lands in *A.* but if to the eldeſt ſon, ſhe ſhall have all, becauſe he had all, part by Deviſe and part by Deſcent, 674

Overſeers

A Table referring to ſeveral Points

Page.

Overſeer therein impowred to ſet and let, can make Leaſes onely at will; but varionſly argued 678,734

Of Lands by the Father to his to his two ſons equally and their heirs, after various Arguments, and Error brought, adjudged, they were Tenants in Common, 443,695,696

Of a Houſe with the Appurtenances, the Houſe being Copihold, the Lands Freehold, the Land although uſed with it, paſſeth not, 704

A. deviſeth Land to his life, and that after her death, the ſame ſhall remain to hjs iſſue, he having iſſue two ſons and two daughters; the Deviſeof the Remainder adjudged void for the Incertainty, 742,743

A. having *B.* by one venter, and *C. D.* and *E.* a daughter by another venter, deviſed Lands to *C.* and *D.* And if either of them, or their heirs ſell it, the gift to be void, and that *C.* and D. ſhould pay to *B.* and his heirs three pound annually, and died; *C.* and *D.* die without iſſue, and adjudged a Fee, and to go to their ſiſter of the intire blood, 745

Of a Term to one, the Remainder to another, not good, 796

Of a Rent by a ſpecial Occupant, or Grantee to him and his heirs *Pur auter vie*, if good by 34 *H.* 8. Two againſt two, and adjourned; But for the Rent arrear, during the life of *J. S.* Diſtreſs may be by 32 *H.* 8. 37. 805

Of Lands, to the eldeſt ſon, upon condition, that if he pay not the Legacies to the younger children, then to them in Fee, he fails in payment, the Lands ſhall go to them accordingly, 833 (919

Of Land as owner without reference to his power, and where with reference, or act executed, a difference, 878

Of Land to *A.* from *M.* for five years, remainder to *B.* and his heirs, *A.* dies before *M.* the remainder is good; for the Freehold in the *interim* veſtr in the heirs, 879

Of a Rent-charge *in eſſe* for years, if a *Nomine penæ* paſs as incident thereunto, 895

Diſcontinuance of Lands.

Fine levied by Tenant for life, and him in remainder in tail', no diſcontinuance, but it is a forfeiture; otherwiſe, if with him in remainder in Fee, 828

Diſcontinuance of Proceſs.

Upon what Act a Diſcontinuance of proceſs may be entred againſt the Plaintiff, 19

There being a Declaration, and an Imparlance for two Terms without a continuance after, and after that a new Declaration without an *alias prout*, or a reference to the former Declaration; if this be a Diſcontinuance by the courſe of the *Common Pleas*, 412

Of Action, where, and where not, 740

Diſpenſation.

For a ſecond Benefice, the words were *Unimus anneximus & incorporamus*, the ſecond Benefice to the firſt, without the word of *Diſpenſamus*: adjudged good, 719,720

Diſſeiſin.

Diſſeiſee leaſes for years, and delivers it as an Eſcrow to *J. S.* to enter, to deliver it as his Deed, who did it, if good, adjourned, (446 483

Page.

Diſſeiſee upon his Re-entry, ſhall have Treſpaſs againſt all Meſn-occupiers, although by Title, 540

If Tenant at will leaſe for years, and the Leſſee enters, he is onely the Diſſeiſor, 830

Diſtreſs.

Where two Diſtreſſes may be for the ſame duty 13

Where well taken, and where not; good matter, 550

Where it may be in the High-way, as for Toll, 710

It may be uſed for the owners benefit, but not uſed, or altered to his prejudice, 783

In a Court-Baron by Preſcription in any part of the Mannor for an Amerciament; good by ſome *contra* by others. But of an under Tenant is not within the Preſcription, 792

Tender of amends after Impounding, comes too late, and void alſo to a Servant, perchance good to the Balliff by ſome, 813

Divorce

If another Wife living, the marriage with a ſecond void *ab initio*, 858

Donative.

Donative, and the nature thereof, 653

Dower.

Damages of fifty pound recovered in Dower in a Court Baron, debt lies for them in the *Kings Bench*, 426

The Tenant pleads a Grant of a Rent out of the Lands in lieu thereof, the Demandant replies it was upon Condition, if not paid within a moneth, to be void. Reſolved not good by way of Grant, but muſt be *Aſſignavit*, and not upon Condition, no more then Dower, and no demand neceſſary, 451,452

Of Lands in one County, the Summons may be made at a Pariſh Church Porch in another County, 472

Judgment therein againſt an Infant by Default and Error brought, and depending: the Demandant died, and new Error brought againſt her Executor, who ſued a *Scire facias* for Two hundred and forty pound damages: the Plaintiff in the Error demanded Judgment *Si pendente brevi de Errore indiſcuſſo Executionem habere debet*: and variouſly argued, and ſo adjourned, 557,567

The Tenant made Default upon Default, and *B.* prayed to be received for his Term made before Covertue, and he was. Judgment muſt be general, and Execution ſpecial, not to ouſt the Termor, but to come upon the Land, and demand Seiſin for her, 564

Judgment by Default againſt an Infant before Appearance, good, 638

Of a molty of Gavelkind Land, cannot be waved, and ſhe ſhall hold it in Severalty, and not in Common, 815

Dum fuit infra Ætatem.

Where it lies for a Privy to avoid the act of an Infant, or he may otherwiſe avoid it, 90

Dureſſe,

Where a Matter of Record ſhall be avoided by it, 88

Ejection

E.

Ejectione firmæ.

Page.

De uno Meſſuagio, ſeu Tenemento not good, 186
Where the content of the Acres muſt be mentioned, though a name be given to the particular land contained in it, 235
Judgment for the Plaintiff upon his primer poſſeſſion, no Title being found for the Defendant, 438
Lies for Leſſee for three years of a Copyholder, but he muſt ſhew the Cuſtome, 469
Lies of a Cloſe without containing the acres, 458
Upon a Leaſe by Baron and Feme without Deed adjudged good, 481
It lieth not upon a Leaſe made by a Copyholder, 483,535,676
Judgment *Quod defendens capiatur*, although before the Pardon of 33 *Eliz.* good, for he ought to plead it, 768,778
Lies of a Cottage, but not a *Præcipe quod reddat*, 818
It lieth *de Pomario*, although not a *Præcipe*, 854

Election.

The ſecond husband ſole brings Reſcous upon a diſtreſs for arrears of a Rent-charge due to his Wife *durante Viduitate*, and good, for he hath election to joyn his Wife, or not, 459
To ſue *J. S.* as Executor or Adminiſtrator, if he meddle, and after adminiſter, 810
Debt, or Action upon the Caſe lies for an Eſcape of one in Execution, 767

Emblements.

Where an uncertain Eſtate is determined by Act of Law, or of the party, to whom the Emblements ſhall belong, 460
Tenant for life, remainder for life, leaſes for years to *J. S.* who is ouſted, the diſſeiſor leaſes for years to *J. N.* who ſowes the Land, Tenant for life dies, *J. S.* ſhall have the Emblements, 464, 465

Elegit & Extent.

If the Sheriff ſells a Term, and miſrecites the date, it is not good, but otherwiſe if he ſell a Leaſe for years yet continuing, 584
The Sheriff delivers Rent without Land, or reverſion it is a Rent-ſeck and cannot be delivered *ut liberum Tenementum*, 656
If Lands be delivered, and a *Liberate* awarded, the party may enter without the Sheriffs delivery of poſſeſſion, 463
After half the Land is taken in Execution upon a Judgment, a moyety only of the moyety remaining ſhall be extended upon the next, 482, 483
Extent of two parts of a Rent-charge is good, 742
Two condemned in Debt, and one is taken in Execution by a *Capias*, an *Elegit* or *Fieri Facias* cannot be awarded againſt the other, 574

Endictment.

Where *Vi & Armis* muſt be inſerted in an Endictment, 90
Where being uncertain in reſpect of the County, ſhall be good, where not, 184
Without the word (Felony) where good, 193
Before a Coroner, and not ſhewing of what Liberty, or by what Authority, *ibid.*
Without place, where good, 195,
Two places being requiſite for a Venue, both muſt be alledged, as of an Endictment of a Conſtable upon an Eſcape, both the place of the Arreſt, and the Eſcape muſt be alledged, 200
Upon a Statute, and not reciting it, nor relating thereunto ſhall be quaſhed, 231
Though an offence, as to an Endictment upon a Statute will not hold, yet may be puniſhed at the Common Law, *ibid.*
For ſtealing a piece of Cloath of *A.N.* was reverſed, becauſe theſe words of the Goods and Chattels of the ſaid *A. N.* were wanting, 490
General exceptions to that Endictment at a Seſſions in *Norwich* diſallowed, *ibid.*
Where Clergy is allowed, and the party burnt in the hand becauſe no Judgment is entred, the record ſhall be removed by *Certiorari*, and reverſed not by Error, but by Exception, *ibid.*
Upon reverſal of the Endictment, a writ of reſtitution ſhall iſſue, *ibid.*
For Felony which is not ſo, is good for Treſpaſs, 494
Void becauſe no addition before the *alias dictus*, 583
Of Forgery before Juſtices of Peace upon 5 *Eliz.* not good, 601
Upon 5 *E.* 6. for ſtriking in a Churchyard void, without ſaying *in Comitatu prædict.* although it was in the margent. 606
Of Forgery of a will upon 5 *Eliz.* not good before the Major and Bailiffs of *H.* but it ought to be before the Juſtices of *Oyer* and *Terminer* and Goal Delivery only, 697
Of Forcible Entry quaſhed for divers Exceptions, cannot be a good Endictment for a Riot, 697,698
Upon 8 *H.* 6. *Cap.* 9. Exception becauſe it was *ad ſeſſionem pacis tent. apud*, B. and no County expreſſed, but in the margent, nor before what Juſtices and for theſe cauſes reverſed, 738
Of Murder, no place mentioned where he ſtruck her, nor where ſhe died, ill for both cauſes, 738,739
Of Murder, the day of the ſtroke, or the day of the death, being expreſſed, good either way: and ſo *die & loco prædict.* murdered him, good, for it refers to the day of the death laſt mentioned, 739
Of *Ann L.* wife of *I. P.* of *D.* Yeoman good, 750
Reverſed in Error for want of *Proborum & legalium hominum*, and for that a County was named only in the margent, 751
For ſuffering a Felon to eſcape, quaſhed, becauſe not ſhewn for what Felony, nor when, and it may be before the general Pardon, 752
Eo quod L. & L. Felonice duas centenas caſei cepit, & aſportaverunt, quaſhed, becauſe *centenas* is certain, and for *cepit* in the ſingular number, 754
Upon 8 *H.* 6. quaſhed for want of *ad tunc exiſtent, &c.* *ibid.*
For Burglary, *quod Burglariter fregit*, good, but not

A Table referring to ſeveral Points

Page.

not an Endictment *quod murderavit* for *murdravit*, 920

Upon 8 *H.* 6. muſt be *per Sacramentum* 12, 654

Of a Conſtable for refuſing to purſue *Hue* and *Cry* for a Burglary in the night, and good, *ibid.*

Entendment.

Where the Law ſhall intend one was the laſt actually ſeiſed, from whom he makes Title to, though it be not expreſſed; 24

Where the Court ſhall intend a thing according to any Statute or Common Law, unleſs otherwiſe averred, or ſhewn by the party, 187

Intendments, much good matter, where the Law ſupplieth them, 229

Where one pleads a *Diſcent* to a ſon and Heir, and yet not pleading a dying without iſſue, it ſhall be intended. 245

When a Conſideration is to deliver a Bond at the inſtance and requeſt of the Defendant, and the Plaintiff counts, of a Delivery, but not at the Defendants inſtance, it ſhall be intended, 247

Where the Court ſhall intend an Aſſignment without pleading, 255

Where a conſideration being for the forbearance for a week following, and the Plaintiff in an Aſſumpſit ſays a forbearance, but ſays not whether for the week following, whether it ſhall be intended, 272

Where when one pleads in the whole courſe of his pleading concerning a Thing or Perſon, and after comes with a *Cuidam*, not tying it up to the ſame perſon with words of relation, it ſhall be intended to referr to him, 401

Every obligation to perform an Act generally ſhall be intended to be *cum effectu* unleſs the contrary be pleaded, 460

It ſhall be ſupplied by law, in a Declaration, if it want ſubſtance. 913

Entrie.

Where one may grant, or do an Act before Entry, 15

Where by the ſame Deviſe one being both Executor and Legatee, and generally enters into Land; how ſhall it be conſtrued, 223

Deviſe being void for a third part, the Deviſee enters generally, and lets all, and the Leſſee occupies all, by the better opinion he gains poſſeſſion only of two parts, but the matter was compounded, 641

Entring into a houſe to demand a debt, may be if the maſter be in the houſe, and ſo averred in the Plea. 877

Between the day of *Niſi prius* and the day in *Bank* no cauſe to abate the Bill, and if Judgment, no Error. 607

Entry ad Communem legem.

Where in that Writ it muſt be ſhewed that the tenant by the Curteſie that aliened is dead, or where it ſhall be intended, 400

Error.

Upon what matter one may have a Writ of Error, upon what not, 3, 4

Where variance between the *Venire* and *Diſtringas* in the name, ſhall make all erroneous, 57

What errors may be alledged after an *in nullo Erratum* pleaded, and where a Diminution, 83

Upon a Writ of Error what part of the Record is certified, 84

Where Executors may have a Writ of Error to reverſe the Attainder of the Teſtator, Page.

The manner of aſſigning of Errors upon the Record, 281

Where the Plea in Bar, being good, and the Replication ill, and the Defendant putting in no Rejoynder but Judgment paſſes by *nihil dicit*, the Defendant may aſſign the bad Replication for Error, 289

Where Error lies upon a grand Cape awarded, Summons being returned by the Sheriff, where in truth there was no ſuch thing, 397

The Record being *quod obtulit ſe in placito debiti* Ten pounds, and declares of a debt of Twenty pounds, 434

Where the return was not indorſed upon the *Diſtringas*, yet a verdict paſſed, Judgment may be arreſted, 466

What is Error in the *Venire facias*, and what not, 467

To reverſe a Fine and Bar in it, 468

Where Error lies by him in remainder to reverſe a Judgment againſt Tenant for life, 509

Corporation Courts muſt ſhew in their ſtile, what authority they have to hold Pleas, otherwiſe it is Error, 489

And that the Defendant came in by proceſs, and was in *Cuſtodia*; elſe 'tis erroneous: *quære tamen* whether not aided by the Statute of *Jeofayls*, *ibid.*

Error lies becauſe the Sheriff returning not Summoners or Veyors in an Entry upon a Diſſeiſin, for he is thereby deprived of his Writ of decepit, 557

Error depending the Plaintiff therein was taken in Execution, in *Com. Dorſet*, Error well brought in *Middleſex*, for there the *Capias* was ſued out, but adjourned, 574

Divers practical Errors aſſigned and reſolved, 616

Error lies not in partition before the ſecond Judgment, 635

Error by ſix and one releaſes no Bar, 649

For that the Defendant appeared by *J. S.* his Attorney, but no ſuch in *rerum natura*, not good againſt the Record, but he may ſay, he had no warrant of Attorney, 665

Error of a Judgment in *aſſumpſit quod Juratores aſſidunt damna occaſione aſſumptionis*, where it ſhould have been *occaſione non performationis aſſumptionis.*

Error of *prædict. Tho. Champman* for *Chapman* ſufficient, for the Sir-name might be omitted, 697

Becauſe the Judgment was not, *quod ſit in miſericordia*, the Defendant being acquitted for part, 699

Error lies upon 27 *Eliz.* for mainperners in a Judgment againſt them by *Scire facias*, for it is in nature of an action of debt, 730

Error alſo lies upon that Statute, if one, of the parties die before Judgment, and if denied, it is triable in the *Exchequer Chamber*, but they have no power to Bail the party in Execution, but only *ad examinandum Errores*, 731

Error lies for the Bail upon a Judgment againſt him in a *Scire facias* where no *Capias* was awarded againſt the principal before, 733

Error maintained becauſe damages aſſeiſed *occaſione aſſumptionis*, where it ought to have been *occaſione non performationis aſſumptionis* and for omiſſion of the Defendant in *miſericordia*, 781

Becauſe *J. H.* both Judge and Juror alſo, 850

Errors

Page.
Errors divers aſſeſſed upon Judgment in *Trover*: the Court will adviſe, 866
By 20 men to reverſe a Judgment in the *Common Bench*, not mentioning how the Record came there, not good, and the Court *ex officio* ought to abate it, and aſſignment of Errors by one only without Summons and ſeverance of the others, is void, and Execution was awarded, 892

Eſcape.

Where the Sheriff is chargeable in eſcape though the proceſs was Erroniouſly awarded, 183
Where an Action of the caſe lies againſt the Priſoners at the Sheriffs ſuit for an Eſcape, 337
Where the Priſoner eſcaping and before the Sheriffs ſuit, for an Eſcape; the Debt being ſatisfied, and it appears not by whom, an Action yet will lie for the Sheriff upon that Eſcape, *ibid*
Where the Sheriff diſcharging one after the Arreſt, upon an execution, though the money be paid, ſhall be looked upon as an Eſcape, 404
Eſcape lies not, if the priſoner be taken upon a freſh ſuit, but if an Action be brought before, it ſtands good, 436
The Conuſor being in Execution upon a *Capias* Eſcaped, the Debt lies, though Erroneouſly awarded, 576
Againſt two Sheriffs, and after the return of the *Venire Facias*, and before trial one of them dyed, the bill abates not, for he can have no other Action but againſt the ſurvivor, no more then in Treſpaſs, or in Replevin, 625
Lies againſt the Sheriff upon Arreſt in outlawry; 652
Lies againſt the Sheriff upon a *Capias utlagatum*, 707
Where it lies not againſt the Gaolar, but againſt the Officers that Arreſted the party, 743
Of one in Execution, Debt or Action upon Caſe lies, 767
For a man outlawed lies againſt the Sheriff in the Queens name, and the Plaintiffs, 877
Againſt the Sheriffs of Y. who plead they let him at large, by a Writ of priviledge from the Council of Y. not ſhewing their Authority, the Bar is not good, 893

Eſtopel.

What *Eſtopel* will bind, Diverſity of good learning, 36,37
Where the Conuſee having ſued out an Execution, as upon a Statute, as a Statute Merchant, ſhall be eſtoped, to ſay it was an other Statute, 233,319
Not good againſt a Feme covert by her Deed otherwiſe by Fine; or matter of Record, 700 [701

Eſtray.

Proclamations ought to be made in the Pariſh Church, 716

Eſtrepment.

Where it lies *pendente lite* in Waſte, 393
Where it lies as well againſt the ſervant as the party himſelf, *ibid.*
Granted to the Demandant in a Writ of entry Surdiſſeiſin, 484
If it lie in Error to reverſe a common Recovery, 774

Evidence.

What ſhall be ſaid to be good evidence to maintain the Count or Writ, 13
Where a Witneſs examined by an inqueſt, after examined at Bar, ſhall avoid the Verdict, 189
What ſhall in Debt upon a Leaſe for years be a good Evidence to give Reparations of the Houſes though upon a general Iſſue, 222
Where Deeds or other matters, though given in Evidence in Court, though ſhewn to the Jury after they be gone from the Bar, ſhall avoid the Verdict, 411

Examination.

Where a Court may examine a Returne of a Sheriff, 10
Where the Court or the Clarks ſhall examine the Summoners and Veyers, 42
In matter of the defamation, the party himſelf ought not to be examined upon his oath in the *Spiritual Court*, but otherwiſe in cauſes Teſtamentary and Matrimonial, 201

Exception.

Where in the Queens Grant, an Exception may be of that which before is expreſly Granted, 244
Leaſe of a Mannor *Exceptis omnibus boſcis & ſubboſcis*, the ſoil is thereby excepted, but it remaines parcel of the reverſion, and will paſs by a Grant of the Mannor, 522
Exception of that which he had no power to except, is void, 683
In a Releaſe of one bond, all actions, and Suits touching the ſame are alſo excepted, 726
Condition of a bond, if he were ſeiſed in Fee, at the making of the Bond, of Copihold in S. free from incumbrances except his wives Joynture &c. Breach Aſſigned, that before the Bond he had aſſured a Joynture to his wife: no good Breach, for it was excepted, 762
Exceptions divers taken, to Declarations but diſallowed, 898, 194, 900

Exchange.

See agreement, 709
Is totally defeated by an Eviction of an Eſtate for Life, 903, 917

Excommunication.

Excommunicato capiendo, A houſe cannot be broken open in the night for the executing thereof, but after 40 days contumacy, upon Certificate the Chancery is to iſſue that Writ, 741
Excommunication of the Plaintiff for ſtriking in the Church-yard pleaded upon 5 *E.* 6. not good without Sentence Declaratory, or conviction, 619
Razing a Sentence thereof, and altering the name, an Action upon the caſe Lieth, 838

Execution.

Where an Executor being once ſatisfied, yet by the Removal of the Sheriff or other Officer before the return of the Writ, the party ſhall be compelled again to pay it, 208
A Writ of diſcharge delivered to the Sheriff, the ſame day Execution made, if before notice, good, and the Under-Sheriff cannot be reſtrained in Execution of all Writs, and a deed of gift of the Goods dated the day of the *Scire facias* is not good, 440
The Eſcape of one in Execution doth not diſcharge the other, 478
Where after half the Land taken in Execution upon a Judgment a moity only of the moity remaining, ſhall be extended upon the next, 482, 483

Page.

The Sheriff upon a Writ of *Fieri facias* cannot deliver the Defendants goods to the Plaintiff, in ſatisfaction of his Debt; 504

How Execution ought to be awarded upon a Statute, 509

Execution by *Fieri facias*, and the Sheriff ſeiſed good, and before ſale, the Record removed by Error, and a *Superſedeas* awarded, a Seiſure returned, a *Venditioni exponas* may be awarded upon the return of the *Fieri facias* which is filed, 567,568

Execution for the Plaintiff, if the Defendant be taken by *Capias utlagatum*, and if Judgment be affirmed in Error, a *Cap as* or other Execution lies without *Scire facias*, although in another Court, 706,851

Several uſeful differences taken in point of practiſe, 707

Payment of Debt upon a Statute by an Executor, after a Judgment in the *Common Pleas*, no *Devaſtavit*, becauſe he could not withſtand it; and it is not therefore reaſon he ſhould be put to his *Andita querela*, by the greater opinion of, &c. 734, 822

Death therein a ſatisfaction, if but one, otherwiſe if two, and one die in Execution. 851

The Sheriff cannot break any mans houſe to make Execution, unleſs the King be party, or for a contempt, &c. 909

Upon a *Capias* after a *Superſedeas* delivered to the Sheriff, not good; otherwiſe upon a Warrant to the Bailiff before the *Superſedeas*, that is excuſable. 918

Executor.

Judgment againſt him upon Demurrer, and Execution upon it, the Sheriff cannot returne *Nulla habet bona Teſtoris*, but a *Devaſtavit*, as if found againſt him by Verdict, 102

Where ſhall have an Action for a wrong done in the Teſtators life, 207

Where they ſhall be charged in debt, where their Teſtator was not, 232

What an Infant may do as an Executor, and good, 354

Where a promiſe by an Executor concerning the goods of the Teſtator, joyned with a promiſe concerning his own goods, ſhall be ſufficient to charge him *de bonis propriis*, and not *Teſtatoris*, 406

Executor admits and pleads to an erroneous Writ, whether the Court *ex Officio* ſhall abate the Writ nevertheleſs, 425

Debt againſt him, and hanging that Action, he confeſſeth another Action brought againſt him for a true Debt, 462,463

Writ againſt them in the Court *Chriſtian* for 200l. Legacy, they there plead, the Teſtator was Keeper of *L.* and died poſſeſſed of 320 l. and no more; and was bound in a 1000 l. to the Sheriffs of *L.* to indemnifie them from eſcapes, &c. And that Judgment was given againſt them for an eſcape of one Outlawed after Judgment, and ſo the Bond forfeited, and *Riens inter mains*; *&c.* no good Plea; for the Judgment was in 20 *Eliz.* and the *Cap. utlagat*, was in 25 and returnable 37. So meerly void, and the Plaintiff can have no benefit by it, and then no eſcape and ſo the Bond not forfeited and the going at, large lawful, and the impriſonment unlawful, Page

although perhaps excuſable in Faux impriſonment, 467

Executor *de ſon tort*: if he detain any Part or (as the Verdict there found) *bonam partem bonorum* in his hands, 472

Where Executor gives a Bond of the Teſtator to a ſtranger & dies, the ſurviving Executor ſhall not have Detinue for it, 478,496

Where one Executor may prejudice his companion, 496

In debt againſt an Executor, he had coſts upon the Nonſuit, otherwiſe where the Executor was Plaintiff, 503

He pleads *Riens inter mains*, but certain goods diſtrained, and impounded, adjudged, no Aſſets to charge him, 23

Executors three, or any of them impowered to ſell, one dies, the two ſurvivors may ſell. 525

A *Scire facias* againſt Executors, ſhall not be awarded to have Execution *De bonis propriis* upon a ſurmiſe, nor in any ſuch caſe, unleſs it be upon the return of the Sheriff of a *Devaſtavit*, 530

Executor declares upon an Aſſumpſit, and did not ſhew in Court the Teſtament, not good, becauſe matter of ſubſtance; and thereupon the Judgment was reverſed, 551

Executor *de ſon tort* cannot diſcharge himſelf by delivering the goods to the Adminiſtrator, although before Action, 565

Executor alledges in Trover, That he was poſſeſſed of 40 l. *ut de bonis propriis*, and that the Defendant converted them *in Retardationem Executionis Teſtamenti*, and good, and although the Damages ought not to be aſſeſſed more then the Plaintiff counts, yet the Suit may long depend, Coſts may be added; but if he had been intirely aſſeſſed, not good, 568

Executor pleads Outlawry in the Teſtator nor reverſed, if a good Plea; the Court divided, and ſo adjourned. 575,651

Executor pleads *Riens enter mains*, and aſſets found for part, Judgment for the entire, and in Error *Curia adviſari vult*, 592

Executor *de ſon tort* cannot retain goods to pay himſelf, 630,631

Three Defendants, if one die before Judgment, no Error, 652

After ſatisfaction acknowledged, cannot plead that Judgment in Bar, and hath nothing, &c. 728

Executors muſt pay Judgments firſt, although in another County; but not ſo of Actions in another County before notice, 793

Executor neither pleads refuſal before his Ordinary, nor confeſſeth an Adminiſtration, not good, 858

Expoſition of Words.

The Expoſition of the words *Erexit* & *Exaltavit*, and how they differ, 59

What words will carry property from the party, 39

Where ſingular words will be conſtrued for Plurals or *E converſo*, 70

The Expoſition of the word (*licet*) in pleadings or other Deeds, 75

Expoſition of the word (*tales*) 90

Where the word *Talis* ſhall be taken for *Idem*, and ſo *E converſo*, 197,240

Per and *in* in the ſame ſence, 193

Where

Page

Where *ad* and *in* are of the ſame effect, 229
Where the word *Eleemoſyna* muſt be with a double *ee*: 232
What ſhall paſs by the word (Lands,) 476
Terra in Writs taken in proper ſignification, but otherwiſe in Wills or Deeds, 476
Secundum uſum mercatorum, how intended, 229
Of the words *videlicet* and *uſque*. 702,422

Extendi facias.

At what time it may iſſue upon a Statute, 46, 47

Extinguiſhment.

Where one having a Rent-charge, and purchaſing a remainder, a recovery ſhall extinguiſh the Rent, 226
Extinguiſhment, Baron and Feme leſſees for years, the Baron accepts a Feoffment, the Term is extinct; otherwiſe by Bargain and Sale inrolled, or by Fine. 912

F.

Falſifying of Recoveries.

Where Leſſee for years may falſifie a Recovery, and in what matter, 41,284
Where Leſſee for years may by the Common Law, and alſo by the Statute. 718

Falſe impriſonment.

Where an Arreſt is made by Proceſs, though without cauſe, it is no falſe impriſonment. 459

Fair.

Toll not incident thereunto, and therefore paſſeth not by general words in the Kings Grant, 558,592

Fees.

Debt lies for them by an Attorney of the *Common Pleas*, but not for ſoliciting Suits in the *Kings Bench*, 425,459

Felony.

A man may be acceſſary for ſtealing his own goods, and procuring another to ſteal them. 537

Feoffment.

Of the moity of the Mannor of *C.* and of all his Lands in *C.* having a Mannor there, 3 *H.* 7. all the Mannor paſſeth. 905

Fines levied.

A Fine carrying Rent and Land to the perſon, the Law ſhall martial it, and how? 226
Where the Conuſance of a Fine is by one, and the *Dedimus* to him and another, ſhall be avoided, 240
Where the *Dedimus* and Writ of Covenant bears *teſte* after the Conuſans, Caption ſhall make the Fine void, 275
Where the Fine ingroſſed, and the Caption are not all one in words, though in ſenſe, ſhall be avoided, *ibid.*
Where a Fine being of Lands and Rent, the Rent muſt be mentioned, where not, *ibid.*
For what cauſe it may be reverſed, 468
To what purpoſes a Fine is a Fine, before entry of the Kings ſilver, and what not, 469
Where a man ſhall be admitted to ſay againſt the Conuſans of a Fine, where not, 468, 469

Page

Where a Fine may be reverſed in part, where not, 469
A Feoffment of the Land, or a releaſe of his Right, is a good Bar in Error to Reverſe a Fine, *ibid.*
A Fine Reverſed by a Writ of Diſceit, is void likewiſe between the parties, 471
A Fine levied by practice in another mans name of his Land, may be annulled by entring a Vacat upon the Roll: A difference where the Fine is levied by one of the ſame name, that may be avoided by Averment, but not if by a ſtranger, and ſo of other Matters of Record; but the fraud appearing, by a Vacat upon the Roll 531
Fine levied, and a friend of him who had right entred to his uſe without his appointment: Conuſee re-enters, five years paſs, the Fine is good; but if the agreement had been within the five years after entry, *Quære*. 561
Fine taken by a *Dedimus* for four, returne a Conizance of three only, may be made good ſeveral ways, 5;6,577
If an Eſtate-tail, bound thereby, 589
By *J. S.* of a remainder by the name of a Reverſion good, 595
Fine levied by a Diſſeiſor of Donee in Taile of the Kings gift, and five years paſs, if the Iſſue be barred, *Quære*, *ibid.*
Fine levied by one to whom the Land was intailed, is a Bar to the Iſſue, although he had no preſent intereſt, 610
The Writ of Covenant, *teſte* 20 *Jan.* and the *Dedimus* the ſame day, and good; and if a ſtranger purchaſe before the return, it is Champerty; other Errors aſſigned: which ſee there, 677
The Heir as well as the Anceſtor, may elect to have it with Proclamations, 693
Conuſee renders in tail to one Conuſor reſerving Rent; and if he die without iſſue, the Remainder to the other, and his heirs, the Tenant in tail ſuffers a common Recovery. Reſolved, It is a Reverſion, being by Fine; but not ſo in grants or Deeds. And that the Rent is nor extinct, becauſe the Grantee was always in poſſeſſion of it; and it is diſtinct from the Land, and no recompence for it; although the Reverſion it ſelf be gone, 727, 792
Fine Reverſed, becauſe the Writ of Covenant bore *teſte* after the *teſte* of the *Dedimus poteſtatem*, 740
By Tenant for life, and him in Remainder in tail, is no Diſcontinuance, but it is a forfeiture; otherwiſe if with him in Remainder in Fee; 828
Fine or render, Entry muſt be pleaded, or ſome act Tantamount, as *Virtute cujus* he was ſeiſed in Fee, &c. 903,917
To a Bargainee before enrolment he takes by the Fine. 617

Fines.

Impoſed in a Leet, recoverable in Debt. 581

Fines to the King.

Tenant in *Capite* aliens for life, Remainder in Fee, but one Fine is due, 504
A Peer that loſes by Judgment, by pleading *non eſt factum*, is finable to the King, 503

Forcible Entry.

Indictment of forcible Entry in a Cloſe, without naming the quantity, is good, 458

Page.

It muſt be *manu forti*, as well as *Vi & armis*, otherwiſe it is inſufficient, 461

Upon 8. *H.* 6. after a *Certiorari* Reſtitution awarded; a difference by ſome between acts Judicial, and Miniſterial; theſe are void, the other erroneous only, 915,916

Foreſt.

Wherein are two walks *A.* and *B.* grantable by the Lieutenant in Fee or Tail. *A.* is granted in Tail, Grantor dies, the Succeſſor confirms that Grant, and alſo grants unto him *B.* in Tail, *proviſo* he ſhould not cut any Trees *ſuper præmiſſa*: Reſolved, *Premiſſa* extends as well to that which is confirmed, as which is granted, and as *præmentionata*; and not to the Office, but to the Trees, Herbage, &c, 782

Forepriſe in Writs.

Where a Forepriſe is not neceſſary in real Writs. 234

Forfeiture, See Copiholds.

Tenant for life having but a Right, levies a Fine, it is a Forfeiture, 451

What is a forfeiture, and who may take Advantage within the Statute of 11 *Hen.* 7. *cap.* 20, 613

Where a Leaſe by Fine for a thouſand years, is within the Equity of the Statute, *ibid.*

Tenant for life, Remainder for life, he in remainder levies a Fine to *A.* who brings a *Quid juris clamat*, Tenant for life, after default Attorns, no forfeiture in him, being by compulſion, but the other forfeited, two againſt two, 557

Forgery.

An Indictment thereupon before Juſtices of Peace, ill, 601

Freehold.

Where words of Demiſe on the Land without Livery, ſhall not paſs a Freehold. 482

Page.

If the word imply an expreſs warranty againſt an Eviction by Title without expreſs words, 809

A. ſeiſed of a great wood ſold to *C.* and his Aſſigns, as many Trees as would make 600 Coards, to be aſſigned by *A. C.* Grants his intereſt to *J. S.* before aſſignment made, and good; and if *A.* will not aſſign in convenient time, *J. S.* may take them; and if *A.* cuts down all, no remedy but an Action upon the Caſe; and a primer poſſeſſion is good againſt all ſtrangers, 819 (820

Grant of the King.

The King letteth Lands, and Grants the Reverſion, miſ-reciting the Tenants name, and after grants to another, with a true recital; and after 18 *Eliz.* is made, the firſt is not revived, 808

Of a Wards Lands, during minority under the Seal of the Court of wards, good before Office, but of the body muſt be under the Great Seal, and after Office, 851

Of all Lands concealed, and unjuſtly detained from the Queen, 507

No Lands can be concealed, after they are revealed to the Queen by Record, only they come to her again by a new Title, *ibid*

The cauſe and extent of theſe words in Patents, *injuſte detent.* *ibid.*

What is a concealment, 508

Where a Liberty is reſumed by a Statute, and the King Grants all Liberties, &c. *Non obſtante aliquo Statuto*, the Liberty reſumed ſhall not be revived without ſpecial words, 513

Where a Grant of Lands by the King, wherein he hath two eſtates ſhall be good, 519

The Queen grants Land, reſerving Rent, with a Re-entry for non-payment, and after grants the Rent to *J. S.* which is not paid, ſhe ſhall not Re-enter and defeat her own Grant, for that would be a wrong to the Grantee. 69

G.

Guardian in Socage.

Shall be the elder Brother of the half blood; for the Inheritance connot deſcend to him 825

Grant.

Where the Grantee of *underwood* ſhall exclude the Grantor, or that he may take the ſame Priviledge, and as much as the Grantor, 413

Of a Prochein Avoidance to *A.* and *B.* and *A.* releaſeth to *B. B.* only may preſent, or bring a *Quare impedit*; otherwiſe, if void, at the time of the Releaſe, 600

Of the King how to be epxounded, as to the quantity and quality of the Eſtate, good Learning, 632,633

By the King of a Copihold Eſcheated, the Temporalities being in his hands, is good, 754

Of the firſt and next Preſentation to *S.* and after a Grant of *Primam & proximam advocationem* to *B.* the ſecond Grant is void; for he muſt aver it to be the firſt and next, 791

H.

Habendum.

A Leaſe is made to *J. S. Habendum* to him and his Aſſignees, for his own life, and for the life of *A.* And *B.* he hath an Eſtate for three lives, and it is not determined by his death, but *occupanti conceditur*, 182

After a former Term in being, ſhall commence, not when the Term is run out in time only; but alſo when it is expired *Per Surrender*, or other means, 199

Tenant for life Leaſes for four years, and grants the Reverſion *Habendum* from *M.* next, after *M.* Leſſee Attorns, Grant is void, 551

Habendum a Freehold *in futuro* void, good matter, 585

Termor grants the Land to *A.* for life (no Livery made) the Term paſſeth; but perhaps otherwiſe if a Letter of Attorney were in the Deed to make Livery, becauſe of the intent, *ibid.*

# of Law argued and reſolved in this Book.

pege.

Heir.

Where they ſhall take by way of Limitation, and where by Purchaſe, 243

Judgment againſt him by *Nihil dicit* upon his Fathers Bond, and a *Capias ad ſati faciendum* awarded againſt him, and good; for the Judgment and Execution ſhall be generall, unleſs he confeſs the action, and ſhew what he hath by deſcent, 692

I.

Jeofails.

WHere an abſurd Surpluſage in the Iſſue is not Error; but an Iſſue miſ-joyned by the Statute, 457

Where the *Venire* bares date out of Term, or on a Sunday after verdict it is aided by the Statute of *Jeofails*, 467

A miſ-joyning of Iſſue holpen by thoſe Statutes, 470

Thoſe Statutes aid all Diſcontinuances both before, and after Verdict, 489

Jeofails thoſe Statutes aid after Verdict, and Miſpleading, 722

Jeofails, where aided, 446

Infant.

Where he muſt ſue by Guardian, and where by Attorney, 424

Infant by his Guardian, vouched in a Common Recovery, 471,472

Infant if adminiſtrator, may ſue by Attorney, 541

Infant appearing by Attorney, and Judgment againſt him, is Error; and upon two *ſcire facias*; two *Nihils* were returned, and Judgment reverſed, although of full age when Error brought and tryable *per pais*; otherwiſe in a Fine or Statute returned, it is as a Confeſſion, 570 853

Infancy pleaded in debt for Appeal for a gentleman, the Court ſhall adjudge what is neceſſary, 583

Infant cannot be a Steward, nor Bailiff, nor Attorney, neither can he aſſign it over, 637

Infant, whether he may by Cuſtome bind himſelf Prentice, and what Covenants binde him, 653

Infant, Executor releaſe by him void, without conſideration, 671

Infant, if bound by a conſideration to ſtay Suit upon a Bond by him, 700

Infant, Judgment againſt him by default, Iſſue thereupon in Error, Tryal ſhall be where the Land lieth, 818

Infant, Defendant appears by Attorney, and at full age brings Error; *Quære*, becauſe his nonage cannot appear upon view, 853,881

An Obligation from him, for his neceſſarie meat & drink, for the very mony diſburſed for him, is good, but not in the double ſum, by the whole Court. 920

Page.

Information.

When an Information ſhall be ſaid to be pending, 161

An Information with an Averment, that it is for the ſame matter, though it ſuppoſes the fact done at another time; and another pleaded to be pending againſt him, abates the firſt, 261

Information in a Court of *Py-powders*, and Judgment thereupon, is not void, but voidable by Error, 530

Information upon 1 *Eliz. cap.* 12. and 19. and ſeveral matters upon grand debated reſolved, 1, That for Goods taken by way of Repriſe, Subſidy ought to be paid: 2. The Agreement with the Deputy of a Deputy, being in exerciſe of the place, is good within the Statute. 3. The agreement being to anſwer all Cuſtoms found due upon view, was good becauſe taken by way of Reprize, and therefore ignorant (by intendment) of the parcels; with ſeveral other important matters in Law, and upon the pleadings, 535

Informations upon 13 *Eliz.* of *Fraud*, although 31 *Eliz.* reſtrains informers to the County, where, &c. yet the party grieved, may informe where he pleaſeth, 645

Information upon Penal Statutes, ſhall not be brought out of their proper Counties; by 31 *Eliz. cap.* 5. 739

Information upon 5 *Eliz.* for uſing a trade, ought to be brought in one of the Courts at *Weſtminſter*, unleſs otherwiſe expreſſly provided by the ſame Statute, 737

Information upon the Statute of Liveries, how twelve moneths ſhall be accounted therein, 835

Information upon a penal Statute, before Plea, the Informer dies, the Queen may proceed, ſo *Via verſa* if ſhe will pardon, 583

Innuendo.

Helps not unleſs the words precedent have a Vehement preſumption, 428,429

Inn-keeper.

Action upon the Caſe againſt him, he pleads he was ſick, and of *non ſane memory*; by reaſon thereof, not good. 622

Joynder in Action.

Where the Dean and Chapter ſhall joyn in an Action, 202

Where an *Audita querela* ſhall be brought jointly, and where ſeverally, 473

Joynt-tenants.

What things ſurvive in Caſe of Joynt-tenancy, 33

Where by the purchaſe of the Reverſion by one Joynt-tenant for life, the Joyncture is diſſolved, 470,481

A. deviſeth to his two daughters his heirs, to them and their heirs, they ſhall be Joynt-tenants, 431

Where two Joynt-tenants were hanged in one Cart, who was the Survivor, 503

Two

Page.

Two Joynrenants in Fee, one acknowledges a Statute, and both convey over: the Conuſors die, the Lands as to one moity is ſubject to this Statute, 506

Joyntenants in Fee inter-marry, and levy a Fine; the Conuſee renders in tail, iſſue three daughters; Feme takes a ſecond Baron, they levy a Fine, & retake in ſpecial tail; the firſt tail is within 11 *H.* 7. *cap.* 20. for one moity only, but not the Eſtate in Fee; for the Statute provides only for the Heir in tail, 524

Joyntenants of the Freehold. See *Deviſe*

Joynt-tenancy in a *Scire facias*, where a good Plea, and where not; much notable learning. 739,740

Iſſue.

What Plea ſhall be ſaid to amount only to the general iſſue, what not, 262

Iſſue joyned upon a point not material, after Verdict (as in debt upon a ſingle Bill, payment without acquittance) is aided by the Statute, 455,456,458

Iſſue proper, although joyned upon an ill Plea, is holpen after verdict, by 32 *H.*8 as payment without acquittance upon a ſingle Bill, 778

Iſſue if *A.* and *B.* were Affeerors in a Leet muſt be tried by the Record. 860

Where the finding of a matter not in iſſue, ſhall not be regarded. 506

Judgment.

Where Judgment ſhall be given againſt the party, as if the iſſue were found againſt him, 42

Where part being found for the Plaintiff, and the reſidue found againſt him, Judgment ſhall be given for him, 79

Judgments, one in the *K. B.* and another in the *C. P.* the Plaintiff may ſue execution upon which he pleaſeth, for both equal, 817

Judgment cannot be defeaſanzced before it be obtainded, 837

Judgment, *Quod ſit in miſericordia*, if the Plaintiff deny another mans Deed; but if his own, *Quod capiatur*, 844,845

Judgment confeſſed upon an Uſurious Contract, in a *Scire facias* thereupon, not avoidable upon ſuch ſuggeſtions, 588

Jury.

Severally fined and impriſoned for giving Verdict in an appeal of Murder, by practice contrary to pregnant evidence, and the direction of the Court, 779

Juſtices of Goal-delivery.

Their authority, and what they may do. 90

Juſtices of the Peace.

Cannot detain a ſuſpected perſon in priſon, but a convenient time for his examination, which is three days; and he ought not to keep him in his houſe, but to ſend him to the Common Goal, 830

Page.

K.

King.

THe King cannot by his Grant prejudice the Subjects intereſt, 463

No Lands can be ſaid concealed, which are revealed once to him by Records, 508

He is never out of poſſeſſion of his Right, and therefore may bring an account againſt him who takes the profits of his Lands. *ibid.*

Tenant in tail (Reverſion in the King) is attainted of Treaſon, the King is in of his old Reverſion, and hath not a baſe Fee, the Reverſion over, 519

King, remainder in him defeated by performing the Condition, the Eſtate for life being defeated, 664

L.

WHere a word no *Latine* not explained in an Indictment, ſhall quaſh it, 231

Leaſe.

Leaſe if a man hath power to make Leaſes for One and twenty years, rendring the old Rent, he cannot make Leaſes in Reverſion, 5

Ejectment, the Plaintiff declares of a hundred Acres, and gave in evidence only of forty Acres, it is good for ſo much as in the Leaſe, 13

Leſſee for years, to commence after the end of a former Leaſe; which expiring a ſtranger enters, the Leſſee may grant his Term; otherwiſe if once in poſſeſſion, 15

Leaſe of a houſe rendring Rent, and for non payment, &c. if the door be open, the Leſſor muſt enter into the houſe and demand it, *ibid.*

Of a Mannor, to which an Advowſon is Appendant, and ſaith not *Cum pertinentiis*, the Advowſon doth not paſs, 18

A Leaſe made to *A. B.* and *C.* for their lives, *Habendum* to *A.* for life, the Remainder to *B.* for life, the Remainder to *C.* for life, and they ſhall take according to the *Habendum*, 25

What words amount to a Leaſe by Parol, 33

By the Queen, to the Aldermen of *C.* they have capacity to take, but not to grant to another, 35

To a man of his own Lands by Deed, where an Eſtoppel, and how long it continues, 37

Leſſee for years, if he be ſued in *Court Chriſtian* for Tythes, he in the Reverſion may have a Prohibition, 55

To *J. S.* for life, *Habendum* to him, and *A. B.* and *C.* his three ſons ſucceſſive, the ſons ſhall not take neither in poſſeſſion, nor by way of Remainder, 58

Tenant in tail leaſes to *A. B.* and *C.* by Indenture, to them for their lives; *Proviſo*, and it is covenanted, &c. that the ſecond ſhall not occupy during the life of the firſt, and the third during the life of the ſecond; they have a joynt Eſtate, and the *Proviſo* ſhall not ſerve it, 89,107

By

Page

By a Parſon for 21 years after the Statute of 13 *El.* rendring the ancient Rent, the Patron and Ordinary confirm it, the Parſon dieth, the Leaſe is void by his death, as well as by non-reſidency, or reſignation, 123

To *B.* to commence two years after; the two years being expired *B.* before Entry may grant it although the Leſſor continue poſſeſſion, 127

Where a Leaſe made of two Meſſuages, with ſeveral parcels of Lands, *habendum & tenendum*, the ſaid Meſſuages and Lands, and *Necnon* the ſaid parcels of Land *à tempore mortis ſurſum-redditionis, foris-facturæ, aut determinationis ſtatus & Termini prædicti*, and the Eſtate in the parcels determining firſt, whether the Term ſhall begin from that time, 199

How the words of a Leaſe ſhall be expounded, as to that which ſhall paſs by it, 474

What ſhall be a good leaſe for life, what not, 482

Where Articles of Agreement ſhall be conſtrued a leaſe for years, 486

Wherein a Leaſe for years provided ſhall be both a Reſervation, and Condition, *ibid.*

A leaſe to *A.* and his Aſſigns, for his life, and the lives of *B.* and *C.* is a good leaſe for three lives, 491

Leaſe of a Mannor, *exceptis omnibus boſcis & ſubboſcis*, the ſoil is thereby excepted, but it remains parcel of the reverſion, and will paſs by a Grant of the Mannor, 522

Leſſee for 20 years accepts a leaſe *in futuro*, the leaſe for 20 years is ſurrendred preſently, *ibid.*

Leaſe by the Dean and Chapter of *P.* of a houſe in *London*, the houſe being then in Leaſe to another for ten years, it is void both by 13 and 14 *Eliz.* 564

Leaſe for years made at *N.* of Lands in *D.* in the County of *N. nihil debet* pleaded in debt, the *Ven. fac.* may be *de N.* becauſe the contract there, if the leaſe traverſed, it muſt be ſo alſo, 565

Leaſe for twenty one years, if the Leſſee live ſo long, and continue in the Leſſors ſervice; the Leſſor dies, Leaſe continues: *Quære.* 643

Leaſe by an Intruder upon the Queens poſſeſſion, not good, and where there ought to be a confeſſion, and avoidance of the Leaſe pleaded by the Plaintiff, 728

Leaſe made *de anno in annum quamdiu ambabus partibus placeret*, Rent paid for two years, and enjoyed it for part of the third year, it is a Leaſe for that year alſo, 775

Leaſe by Eſtoppel no ſufficient leaſe within a Condition. 780

Leaſe to *A.* for 99 years if he live ſo long, and after to the Executors and Aſſigns of *A.* for four years: *Quære*, if this Leaſe veſted in *A.* or in the Executors by purchaſe, 666,840

Leaſe for life, *habendum à die datus*, void, and a Livery after will not help it, yet it is a ſurrender of a former leaſe, and ſo is the acceprance of a Rent-charge to begin preſently, 874

Leet.

A Fine impoſed there, recoverable in debt in the Kings Bench, 581

Letter of Attorney.

Either to take Livery, or make Livery, void, if the Date of the Charter of Feoffment be miſ-recited therein, 603

To *J. M.* to make Livery, he being no party to the Deed of Bargain, and Sale, is good, 905

Page

Legacy.

A Legatory by the Civil Law muſt enter into Bond to make Reſtitution, if a Bond be after recovered; but a Statute, or Bond to perform Covenants, or a collateral Act, is no plea, until breach made, 467

Licenſe.

To a Copyholder to leaſe for twenty one years, a leaſe for three years is thereby warrantable, 535

London.

A Citizen of *London* ſued another Citizen in the *Common Pleas*, and the Major and Aldermen would have him put the matter to a compromiſe, and he refuſed, they did disfranchiſe him: all thoſe that were parties to the disfranchiſement, were fined an hundred Marks apiece, and the party was reſtored to his Franchiſe, 33

Where a Bond or Recogniſance to the Chamberlain of *London*, ſhall go to his Succeſſors, 464

Cuſtom there, to commit to priſon for abuſing an Alderman upon the *Exchange*, not good. 689

Livery and Seiſin.

Livery good after a Traverſe, and Judgment given againſt the Queen, before an *Amoveas manum* executed, becauſe the Queen never had Title, but the party. 523

M.

Maintenance: See *Statute.*

LIes not for a Suit in the *Spiritual Court*, 594

To expend Coſts in Suit, but not to ſave harmleſs from Coſts to be awarded.

Manor.

J. S. ſeiſed of a Manor, which extended unto the Towns of *A. B. C.* and *D.* and in each of them *J. S.* had Demeſns and Services, bargained and ſold to *J. N. totum illud manerium ſuum de A.* in *A. J. N.* hath a divided Manor in *A.* and may keeps Courts there, & therein much good Learning concerning Manors, their creating and dividing, 19,38,39

In reputation will not paſs in a Fine, or common Recovery; otherwiſe in a conveyance, 524

Marſhalſea.

Where it can hold Plea of Actions ſuppoſed to be within the verge, and not of the Kings houſhold: *videtur quod non*, 502

Their Judgments of things not within their Juriſdiction are void, yet a Writ of Error lies of them 502

Marriage.

In what caſe an Action lies by the Father for the loſs of marriage of his Son, 55

What marriage, though not expreſly within the *Levitical* degrees, is lawful. 228

Miſnomer.

Of the Corporation of Cordwainers, a Deviſe to them good notwithſtanding, 106

Recovery againſt *Iſabel* is void againſt *Sibyl*, 656

Of a Corporation by addition *in Comitatu Oxon.* no material variance, 816

Miles.

How *Miles* ſhall be conſtrued, 212

Miſpriſion.

Striking by the *Court of Wards* Stairs, what Judgment therein, 405

N.

Name. Page

A Man can have but one Name of Baptiſm, but two Sir-names, 57

Where the name of the Attorney, muſt be entred, or where the party muſt name the Attorney, 75

The Queen by her Letters Patents created *Dethick* King at Arms, *Et nomen ei impoſuit, quod nuncupetur* Garter, *principalis Rex armorum*, and by that Name to ſue, and be ſued: A difference, where as a private perſon, and where concerning his Office, there according to his Patent, 224, 542

Where the Names of the Jury are to appear on Record, where not, 281

New Aſſignment.

Is a waver of the Bar, ſo that the Defendant cannot rejoyn, that the Lands in the new Aſſignment are the ſame with them in the Bar, 493

If the Defendant hit ſome of the places of the Treſpaſs he ſhall not wave that, and anſwer all *de novo*, 812

Night.

What Acts may be done in the night, 43

Nomine pœnæ.

If it paſs in a Deviſe of Rent as incident, 895

Non eſt factum.

Where it may be pleaded, 726

Non-Reſidency.

If inhabiting within the Pariſh, and ſerving the Cure, and not in the Parſonage-houſe, be within 21 *H* 8. *cap.* 13. 590

Information upon 21 *H.* 8. he pleads, he was choſen Goſpeller of Saint *Pauls*, and there reſident by reaſon of that Dignity; no Dignity within the Statute: and what are Dignities within that Statute, much matter there, 663

Non-ſuit.

In an appeal before appearance is peremptory, 605

Before appearance in a *Nativo habendo* Judgment ſhall not be final, but *in miſericordia*, 881

Non-Tenure.

Where, in Plea of Non-Tenure, the Infeoffing of parties before the Writ purchaſed, yet taking the profits after, ſhall be good to make him Tenant, 233

Notice.

Where the Kings Court ſhall take any notice of Recoveries in inferior Courts, 31

And the place thereof muſt be ſhewed, 655

Where it muſt be given, and where not, 834

Nuſance.

The manner of laying a Nuſance, and where it muſt only be to the Kings High-way, 63

Where one may have an Action for a Nuſance done before his title commenced, and what Action, 199

Where the form of a Writ of Nuſance *proſternere domum*, 234

Where a Mill-Dam, being erected upon ones own Land and the Land of another, and the party pulling down that which is upon his own Land, whereby all the water runs in, is juſtifiable, 269

What ſhall be ſaid Nuſance, as the Leet may enquire of, and puniſh, 919

What Action lies for a Nuſance to a Free-hold 466 (520

Nuſance, Action lies not for it by a private perſon without a ſpecial Damage, but it is puniſhable in a Leet: but if no other remedy then by Action, peradventure otherwiſe, 604

O.

Oath.

Page

IN what Caſe the *Eccleſiaſtical Court* may adminiſter an Oath, 262

Obligation.

To perform Covenants, and breach, 479

Conditioned for performance of Covenants in an Indenture, ſome whereof are void, by 5 *E.* 6. *c.* 16. of Offices, although others be good, yet the Bond is intirely void, but for the good peradventure Covenant may be a Bond void in part, 529

Obligation diſcharged by an Indenture of *Defaiſance ſubſequente*, which is a good Plea in Bar, 623

To appear, or abide ſentence in the *Admirals Court*, is ſuable there, 685

Agreement by Parol cannot diſpenſe with it; but an agreement to retain at the day of payment is good, 697

Obligation ſingle, not diſcharged by a penal Bond ſubſequent for the ſame Debt, 716, 727

Obligation, Trover and Converſion lies not for it: See *Trover.* 723

Obligation and Condition are one Deed, and the date of the one is the date of the other,

Obligation conditioned to appear, & anſwer all actions depending againſt him; he is eſtopped to ſtay, there were no Actions depending, 796, 757

Obligation, one cannot determine another; but after Judgment upon a Bond being in force, new debt lies not, becauſe reduced *in rem judicatam*, 817

Obligation, debt thereupon, payment of parcel without acquittance no Plea, 884

Obligation *de ſeptingenta & quinquaginta libris*, conditioned to pay 500 l. good. 896

Obligation by the name of *John*, and the Condition by the name of *James*, Count, that *James per nomen Johannis* became, *&c.* not good, for *John* cannot be *James*, 897

Obligation to the Sheriff for appearance without Surety, ill, 672

Occupancy.

In what Caſes an Occupant may be, in what not, 58

Cannot be of a Rent-charge; for none can make title to it, unleſs party to the Deed, or by title under it, 721, 901

Where the limitation is to Heirs, it excludes Occupancy, 407

Office.

Finding a Seiſin in Fee at the day of his death, good 895

Officer.

What matter ſhall be ſaid to diſcharge an Officer 12, 13

Outlawry.

A *Capias* thereupon muſt be returnable the Term enſuing, 467

Outlawry reverſed, becauſe the *Capias* was *Eſte Edmundo Anderſon*, 592

Outlawry againſt Baron and Feme, Error to reverſe it muſt be by both of them in perſon, 611

Outlawry reverſed in Debt againſt *A.* and *B.* and Judgment given, and a *Capias* againſt *B.* only, becauſe it ought to have been againſt both, 648

Outlawry before Judgment determines the Proceſs, and the Plaintiff muſt bring new Debt: otherwiſe, if after Judgment, 706, 707

Pleaded of the Teſtator, by an Executor, 571, 851

P.

Payment of Money.

Page
How payment of Money muſt be, whether according to the mind of the payer, or receiver, 68

Pardon.

General will not ſtay a Suit in Court Chriſtian, *ad inſtantiam partis*; otherwiſe, if ſued there *ex officio Judicis*, 684
Diſchargeth the puniſhment for Simony, yet the Simoniſt is deprivable by the Ordinary, for the pardon doth not enable him to retain it, 686
Pardon allowable in Treaſon without Writ of Allowance, otherwiſe in Felony, 814

Partition.

The Sheriff ought to execute the Writ upon the Land in perſon, as in Waſte, and re-Diſſeiſin; but after Returne made, and the Writ filed, the party can have no Averment againſt it, nor Error, 9,10
In the Writ the title ought to be ſhewed, and releaſe of Errors by one, no Bar to the reſt, 64
Tenants in Common of a Houſe, and Land, make Partition thereof within the Houſe, the Land not being within the view, good for the Houſe, but not for the Land, 95
A Fine is levied to *J.S.* to the uſe of *B.* for life, and after to the uſe of the Children of *C. procreatis*; *C.* at the time of the limitation had two ſons, and before the death of *B.* had Iſſue two daughters; adjudged, the daughters ſhall not take, 334
Upon 31 *H.*8. the Writ general is good, and the Declaration was accordingly; and that the Plaintiff had one moyety in fee, and the Defendant the other moyety in fee, and the Jury found the Defendant held in tail, not good; and held, that Partition may be of view of Frank-pledge, becauſe the profits may be divided, eſpecially being joyned with a Manor, and other things, 760
By one Executor againſt another, 795

Perambulation.

The Pariſhioners may juſtifie the going over any mans Land by uſage, and may abate Nuſances, but they cannot preſcribe in matters of Eaſement or Intereſt, 441

Penſion.

By a Vicar ſuable in the Spiritual Court, and a difference, where ordained by the Ordinary, and where by the Patron and Ordinary, in time of Vacation, 675

Perjury.

Not puniſhed in the Common Law, but in caſe of Attaint, 521
By a Jury-man, or Homage, muſt be *ſciens*, that it was falſe, and in an Action within the Juriſdiction of the Court, 492
How Perjury in a Witneſs is puniſhable, 520,521
The Oath muſt be before ſome Judge: but one Action of Conſpiracy lies not againſt one, who prefers an Indictment, and ſwears it to be true, becauſe for the publick; and ſo of a Bill in the Star-Chamber, 725

Per nomen.

And the operation thereof,
The naming a Vill therein not good, *Ejectione firmæ*, 822

Pillory, and Tumbrel.

Ought to be provided by the Lord of the Liberty, and not by the Vill, unleſs by preſcription, 698

Page

Pypowders Court.

May be to a Market, as well as to a Fair, & that Court cannot meddle but with what happens in the Market the ſame day, and an Action for Words is not proper for that Court, but in matters of Contracts, and Batteries, and words there during the Market, and by occaſion thereof, 774
What the concluſion of a Plea, pleaded ſince the *darrein* continuance, muſt be, 49
The manner of pleading the Sheriffs Warrant, 53
Where one may plead the general Iſſue, as to part, and Juſtifie as to the reſidue, 87
Where a Plea muſt fully anſwer the Count, 187,268
Where in a Plea upon a Statute it muſt be recited, and if divers how to be recited, 187
What ſhall be ſaid to be a good Plea, in abatement of the Writ, and what in Bar, 202
What ſhall be ſaid a good Plea to a Condition 213,253,393
Where many Words contain one Signification, and the party anſwers all in Subſtance, though not in the Words, it is good, 255
In what Action *Not guilty* is a good Plea, 257
What ſhall be a good Plea in an Action of Debt for Rent, payable at *M.* or ſixteen days after, 268
Where the Sheriff in an Eſcape may plead or alledge any matter of Fault in the Proces, upon which it is grounded, 271
Where to a Condition a Plea of performance, *ſecundum formam & effectum Conditionis*, anſwer all the Condition, though to be performed at ſeveral days, 281
Where the party comes in by limitation of an Uſe, his Plea muſt be, that he entred only *Virtute Statuti*, 407
Where it was pleaded, that Lands were delivered a day before the *Liberate* awarded *Virtute Brevis*, the Words, that import the contradiction, ſhall be Adjudged void, 464
Where a falſe recital of a Statute makes the Plea vitious, 490
Pleading the Special Matter in Bar muſt be anſwered, 812

Prebends.

A Lay man may be preſented thereunto, for *non habent curam animarum*, and *de mero jure*, they do pertain to the Biſhops, 79

Plenarty.

What ſhall be within the Statute of *Weſtminſter*, 207

Prerogative.

Where the Queen ſhall have the ſame prerogative in right of the Dutchy of *Lancaſter*, as ſhe hath in right of her Crown, 240
Where, when an intire Thing comes to the Queen, ſhe ſhall have all, although to the prejudice of another, 265
Where an Extent is of Land to a common perſon, at a certain value, after coming to be extended by the King, and found more, if the King by prerogative ſhall be anſwered of the Surpluſage, *ibid.*
Preſentment to a Church belongs to the King by his prerogative, if the Incumbent be created a Biſhop 527
The Queen, by her Prerogative, may licence a new Biſhop to retain his Parſonage in *Commendam*, notwithſtanding negative Words in the Statute of 25 *H.*8. becauſe not expreſly named therein, 542,601
Prerogative for the King to preſent, by creating the Incumbent a Bp. in *Ireland*, but it muſt be to the

A Table referring to ſeveral Points

Page

first avoidance, 790

Preſcription.

Where a Preſcription in a ſingle perſon is good, 71

The Plaintiff ſaith that the Land was demiſeable by Copy in Fee tail, or for life, *&c.* and let to him in Fee, and ſo found, but never in tail, Judgment for the Plaintiff, for that is the ſubſtance of this Title, 431

The Defendant intituleth himſelf thereby as Tenant to dig, and carry away in *B.* for neceſſary uſe, that is, what himſelf dig, not what is digged by a ſtranger, 435

That every Occupier, *&c.* had uſed to repair the Fences between, *&c.* is too general: for ſo is Tenant at Will, Sufferance, or a Diſſeiſor; for it ought to have been, that he, and all they, whoſe Eſtate, *&c.* but ſuch Preſcription in diſcharge of Tythes by Occupiers is good, 446

For Shops in *London*, to be a Market-overt, muſt be of the ſame Trade, and not in a Back-ſhop, 454

Of a fair may be alledged generally, and not in any perſon, 485

To have Common to his Houſe, and twenty Acres, if he hath a leſſer parcel only, yet good: otherwiſe, if ten Acres were Freehold, and the reſt Copy-hold: ſo if part were Copy-hold an hundred years ſince, and now is Free-hold, 531

To have Common, the Jury found the Preſcription *prout, &c.* paying yearly a peny to the Plaintiff: the Plea not good, for the payment of the peny is parcel; otherwiſe, where one Preſcription for the Commoner, another for the Lord, 546, 593

For a Parſon to have Land, part of the Mannor of *D.* in lieu of all Tythe-wood within the Pariſh: good, 587, 599

For a *Modus* by the Lord for himſelf, and his Tenants, and to have *decimam garbam*, is good, but not *decimas garbarum*, for one is Temporal, and the other Spiritual, 599, 763

The word *Garba* may extend to Hay, 633

To make the Hay of the firſt Months into Cocks, and to ſet forth the tenth to be diſcharged for the Latter Months, good. 660

In Avowry for the diſtreſs for Rent, and not for the Rent it ſelf, not good, 673

For Tithes, and ſeveral other things, where good, and where not, and where the Preſcription is traverſable, 702, 703

For Copy-holders of a Biſhop, *in non decimando*, not good, otherwiſe for the Farmers of the Demeſns, 704

Preſcription for Toll-through, if good, 710, 711

To have Common for an hundred ſheep, the Jury find for a hundred Sheep, and ſix Cows, good; otherwiſe, if for one hundred and twenty, or more of the ſame kind, then he had alledged, 722, 723

That the Parſon holds an hundred Acres of Land, in ſatisfaction of Tythes, and the proof is only for ſixty, it is good, for the ſubſtance is proved, 736

Not obſerved in pleading of it not good, 746

Preſcription for a Water-courſe, running by *A. B.* and *C.* if diverted in *A.* only, & *Not guilty* pleaded, a *Ven. fac.* from *A.* only is good, otherwiſe if iſſue upon the Preſcription, 751

For Copy-holders of a Biſhop to be diſcharged of Tythe, good, 784, 785

For paying Tythes for dry Cattel, where not good, 788

Preſcription cannot be for a Court Baron, for it is incident to a Mannor, and cannot be holden without Suitors, but by Writ before the Bayliff, and them: but a Preſcription is good to hold plea above 40 *s.* *&c.* and to diſtrain for an amercement in any part of the Mannor, is good by ſome, *contra* by others: but diſtreſs of an Under-tenant is not within the Preſcription: adjudged for the Plaintiff in *Replevin*, 792

For Common *pro omnibus equis, &c.* extends to Geldings, 728

By a Parſon for a way to carry his Tythes to the Parſonage houſe, and ſaith he was ſeiſed *in jure Eccleſiæ*, good, and he ſhall be intented to be Reſident, 898

Preſentment.

By one who hath the third turn, whoſe Incumbent is deprived, & after reſtored, any Preſentation in the *interim*, is meerly void, and no turn: otherwiſe if deprived for incontinency, 687

Preſentment according to a mans turn, is to one part of the Advowſon, but by Parceners, or Joint-tenants to one part of the Church, 688

A. hath the firſt Fee, and *B.* the ſecond, *A.* his turn is ſerved, *B.* his Clerk is deprived, the Biſhop without notice collates, *A.* grants in Fee to the Plaintiff, the Church voids, the Defendant in right of *B.* preſented, Judgment for the Defendant, for *A.* might have removed the Biſhops Clerk, for want of notice, and becauſe he did not, it is as a ſerving of his Turn, and the Defendants Title therefore good, 811

Preſident.

And the want thereof a good Argument, 521

Priviledge.

For Clerks to be ſued in their own Court, who ſhall have the benefit thereof, 731

Privity.

Continues, if the Leſſee grants but part of the Land 633

Proceſs.

Returned by one, not Sheriff, helped by appearance, 582

Prohibition: vide *Tythes:*

For what matter a Prohibition lies, 71, 88

To the Court Eccleſiaſtical, where it would make the party upon Oath accuſe, or diſcover himſelf, 201

For Tythes of Corn, and the Pariſhoner ſets forth a ſetting out of his Tythes in ſatisfaction, and a refuſal of the Parſon, it is good, 206

Where, becauſe the Spiritual Court would not ſuffer the Tenant of the Land to plead to the right of Incumbency, 228

Where he that is Parſon of another Pariſh, comes in *pro intereſſe ſuo*, a Prohibition lies, 251

What is a ſufficient cauſe to grant a Prohibition, 271

Where a Prohibition may iſſue upon a Suit for Tythes of Lands in *Capite*, and out of what Court, 393

Without a ſurmiſe, that the Court-*Chriſtian* refuſeth the Plea, no Prohibition, 511

A Surmiſe, that taketh away Juriſdiction, is traverſable, *ibid.*

Except where a *Modus decimandi* is in queſtion, *ibid.*

If one be ſued in the Spiritual Court, and a Plea pleaded, which is triable at Law, if they allow it, he may try it, and no Prohibition after Sentence, 595

For

Page

For Tythes, ſurmiſing the Parſon came in by Simony, it is more proper for the Spiritual Court, and lies not, 642

To the Delegates, for beating a Clerk, where there was good cauſe, and good, 655

Prohibition lies, if one witneſs for proof be refuſed, 666

What manner of proof is requiſite thereof, 736

Proof.

Where a matter reſts upon Proof, how it muſt be made, 236

Proviſo.

Where Repugnant, and Void, 107

Where it makes a Condition, and where not, 242

In a leaſe for years, if the Rent be arrear for a year, and demanded, and no Diſtreſs there, *per totum tempus prædictum*, then a re-entry, the Condition is not broken, if a Diſtreſs there at any time of the year, although none the laſt day of the year, 764

Q.

Quare Impedit.

UPon a recovery therein, any Incumbent that cometh in *pendente Placito*, ſhall be removed, 44,45

Although the Biſhop claimeth nothing but as Ordinary, yet he ſhall joyn in the *Quare Impedit*, 65

If that Writ be within the Statute of 4 *E.* 3. 141, 207

General without mentioning, that the Queen had the Advowſon, in right of the Dutchy of *Lancaſter*, 240,241

By four a Releaſe, by one was a bar only againſt himſelf, 518

The Plaintiff may lay the Preſentment in a Grantee, and good, *ibid.*

Whether two Uſurpations do put the Queen out of poſſeſſion, 519

The Plaintiff makes Title by Deviſe and Aſſent of the Executor, and ſaith not *virtute legationis*, yet good. 678

To preſent to the Hoſpital, or Pariſh Church of *B.* good in the disjunctive, 791

Amendable for want of the word *ad*, 119

Quid Juris Clam.

The Defendant pleads *tempore levationis, &c.* ſeiſed in Fee, and found Tenant in tail after poſſibility of Iſſue, *&c.* good, and the inducement of the Travers is no Forfeiture, 671

Quod ei Deforciat.

Lieth not upon a Recovery by *Nihil dicit*, but only upon Recovery upon Default, before appearance 263

Quo Warranto.

It is not ſufficient, in a *Quo warranto* of Liberties, to derive an Intereſt to a Stranger in them from the Queen, without making Title to himſelf: for the Writ is *Quo warranto* he himſelf uſeth them, 125

In a *Quo warranto* there being a Miſ-trial, it was praid, that the *Poſtea* might be certified: but being againſt the Queen, it was denied; for if it ſhould the Defendant might exemplifie the Verdict, as duly tried, and it would be an Evidence againſt Queen, which ſhall not be ſuffered, 304,305

Page.

Quæres.

A *Formedon* was brought againſt three, one being an Infant, and Judgment given by Default; if Error, the Court doubted, 51

If a Bargain and Sale enrolled, may be avoided by Dureſs of Impriſonment. 88

A Fine is levied, and an Indenture to lead the Uſe thereof is afterwards executed, *Quære* if good, 218

If a Copyholder can ſurrender his Eſtate to the Grantee of the Free-hold to the uſe of the Grantee, or if the Grantee can grant it over to another, *Quære.* 252

In an Indictment, where two Counties are named, if good, *Quære*, 436

If a Recovery in an *Aſſumpſit* be allowable againſt a Debt upon a Bond, *Quære.* 454

If the Plaintiff may be non-ſuited, or a *Retraxit* entred after a general Verdict, *Quære.* 465

A man bargains his Trees, and lets the Land to the Bargainee, they are rejoyned, and waſte lieth. *Sed Quære.* 522

A Leaſe for years rendering Rent, and if Arrear, and Diſtreſs taken, and not redeemed within ſix weeks, then a re-entry, if a Redemption by *Replevin* be within the intent of the Condition, *Quære*, 805,806

If an Aſſignment of Rent be a Bar in Dower out of the ſame Lands, *Quære*, 842

If Iſſue in tail be bound by a Seiſure for Recuſancy, if Death before ſatisfaction of twenty pound *per Menſem*, *Quære*, 846

If a final Judgment can be given in a *Nativo habendo*, if the Plaintiff be Non-ſuit before Declaration, *Quære.* 853

A Leaſe for twenty one years, if he live ſo long, and continue in the Leſſors ſervice, the Leſſor dies, if the Leaſe be determined, *Quære*, 643

If a Releaſe before Condition broken deſtroy a future Uſe, *Quære*, 863

If a Releaſe to the Bail diſcharge the Principal, *Quære*, 890

Rent to whom it belongs, 279

R

Recit.

OF the Wife for Feint pleading in the Baron without a new Declaration, becauſe Party: otherwiſe of him in Reverſion, 826

Recital.

There being a Leaſe in *Eſſe*, and a new Leaſe taken from the King, where the firſt muſt be recited,

Recogniſance.

Of what Perſons a Recogniſance may be taken, 187

Who may take Recogniſance, who by Common Law, and who by Cuſtom, *ibid.*

If a Recogniſance be not ſealed with two Seals, it is void as a Recogniſance, but Debt lies on it, as an Obligation, 494

Recogniſance may be aſſigned to the Terr-tenant to diſcharge his Land, but not to a Stranger, 552

To the Chamberlain of *London*, by the Cuſtom for Orphanage-Money, is ſuable in *Com. Pleas*, 682

Record.

Where a Bargain and Sale, ſhall be ſaid a Matter of Record,

A Table referring to ſeveral Points

Page

Record, or only a thing recorded, 88
The whole needs not to be recited in *Scire fac.* 817
Recital of part is ſufficient, where it is but conveyance to the Action, 877

Recovery.

Where a Recovery of Damages in an *Aſſumpſit* ſhall be a good Bar in Debt upon an Obligation for the ſame matter, 240
By Tenant in tail for a Fine levied, and a render in Fee, is no Bar to him in remainder in Fee: for by the render a new Eſtate is gotten, and the recompence ſhall go to the new Eſtate, 828

Recuſancy.

A Termor was outlawed upon the Statute of Recuſancy, whereby his Term was forfeited, and ſold by the Lord Treaſurer, and Barons, and then the outlawry was reverſed: adjudged the Termor ſhould have his Term again; otherwiſe, if a Sheriff ſells a Term upon an Execution, there the party ſhall be reſtored only to the Money, 278
The King ſhall have the two parts forfeited as a *nomine pœnæ*, and they ſhall not go in ſatisfaction of twenty pound by the Moneth, 845
Recuſant Tenant in tail, two parts are ſeized, and he dies before ſatisfaction of twenty pound *per menſem*, if good againſt the Iſſue, *Quære*, *ibid.*

Refuſal of a Clerk.

If the Biſhop once refuſe a Clerk for inſufficiency, he cannot accept him afterwards, 27
Where the Biſhop may refuſe a Clerk for want of his Letters *miſſive*, and Orders, 241

Relation.

Where the Words *ut præfertur* ſhall have Relation, as to make all matter to relate to that mentioned before, 247
Where a Relation ſhall be to the thing, and clauſe precedent, 286

Releaſe.

Where a Releaſe of Errors, or of other things, by the Common Vouchee ſhall bar, 2,3
The Lord grants the Free-hold of a Copyhold to *J. S.* a Copyholder in poſſeſſion releaſes to the Grantee all his right, the Copyhold is not extinct, 21
By an Executor of an Accompt, it is not Aſſets, becauſe not certain what he ſhall recover; otherwiſe, if certain, 43
What ſort of Releaſe to Tenant at Will may increaſe his Eſtate, 268
A Releaſe between parties awarded by Arbitrators 54
Where a Releaſe by one ſhall not bar another, who hath joynt intereſt in a Preſentation, 518
Of all his Right by Conuſee to a Terr-tenant before Execution ſued, is void, for the perſon only is the Debtor, and the Land in reſpect of the perſon, 40 552
Of Actions and Demands to a Bail, is no diſcharge of the Recogniſance before Judgment and Default, 580
Releaſe of Common in part extinguiſheth the whole, 590
Releaſe of a *Prochein* avoidance good, if full; not, if void, 600
Releaſe by one, where ſix bring Error, no Bar a diverſity, 649
By an Infant Executor without Conſideration, void, 661
Excepting one Bond, all Suits and Actions touching it, are excepted, and the Releaſe being pleaded generally, and a Deed produced with an Exception, the Plaintiff may plead *Non eſt factum*, 726
Found by a Jury upon ſight of a Copy only to defend a poſſeſſion good, 863
To the Bail, if it diſcharge the Principal, *Quære*, 890
Of all Actions, not good before the day of payment, 897
By the Baron, of a Legacy to the Feme after a Divorce *cauſa adulterij*, good to extinguiſh it, 908

Relief.

Debt lies for it againſt the Heirs Executor, for the Heir could not wage his Law, 883
Acceptance of Rent, no Bar thereof, 885

Remainder.

What ſhall be ſaid a Remainder certain, what not, 269
Contingent deſtroyed by Feoffment and Warranty, 453
Tenant for life, Remainder in Fee, have but one Eſtate, and the Execution of one Eſtate is an Execution of the other, 504
Tenant *in Capite*, *aliens* for life, the Remainder in Fee, but one Fine is due, *ibid.*
Remainder to the uſe of ſuch Iſſue, as he ſhall beget on *M.* and reputed his Iſſue, though unlawfully begotten, is void to his Baſtard, 509
But a remainder to a reputed Son *in eſſe* is good *ibid.*
Remainder contingent is deſtroyed by Feoffment and Fine, 630
Remainder deveſted out of the King without Office or *monſtrans de droit*, by performing a Condition, 641

Rent.

Where it is reſerved to the Queen, payable at the Receit of the *Exchequer* at *Weſtminſter*, and the Queen grants the Reverſion, the Rent ought to be tendred upon the Land, 462
Every Rent reſerved to the Queen, ought to be paid at the Receit of the *Exchequer*, or to the Receiver of the County, though no place be mentioned, *ibid.*
Rent payable out of the Land ought to be demanded, 536
Rent may be reſerved upon a Bargain and Sale inrolled, 595
Rent reſerved upon a Leaſe of Freehold and Copyhold, iſſueth out of both, and Grantee of the Reverſion (though they veſt at ſeveral times) may bring Debt, and declare upon all the matter, 606, 622
Rent arrear at the four uſual Feaſts, *viz.* the *Annunciation. &c.* and declares *pro uno anno integro, ſcil. a feſto* A. 40. *uſque feſtum* A. 41. *a retro*, not good, for *a* excluded the firſt Feaſt, and *uſque* the laſt, 702
Granted to two during the life of *J. S.* to his uſe, they die, the Rent is veſted in *J. S.* by 27 *H* 8 *Of uſes*, 721.
Rent, granted to Baron and Feme for their lives, is arrear; Baron dies, arrear again; Feme dies inteſtate, Adminiſtrator brings Debt for both, and good: for all ſurvived to the Feme, 791
Upon a Leaſe for years payable annually during the Term to the Leſſor, or his Succeſſors, expounded in the Copulative, 832

Reparation.

Of the Church, Occupier of Land in the Pariſh muſt contribute thereto, although he live in another; but, if he lets the Land, his Farmor ſhall pay, and the

Page

the quantity of the Land is inquirable in the Court *Chriſtian*, 659,843

Reputation: vide *Manor*.

Repleader.

A man avows for Rent, and makes Title as Heir of *R. videlicet*, Son of the Daughter of *R.* for Rent arrear after the death of *A.* and becauſe he made Title as Heir of *R* and avows for Rent after the death of *A.* which cannot be, they were awarded to Replead, 24

A good Difference, where a Repleader ought to be awarded, 540

Repleader after a Verdict, *Nota*. 883

Repleader awarded upon an Iſſue ill-joined, 886

Replevin.

The Defendant pleaded, that the property *tempore captionis* was in another, and good, 473

Replevin after Iſſue, one of the Defendants died, the Writ is good againſt the other, 574,575

And counts of the taking *apud D.* without alledging any certain place, not good, 896

Replication.

De injuria ſua propria, where good, and where not: an excellent Difference taken therein, 540

Replication, though ill, yet Judgment for the Plaintiff, 815

Replication to an ill Bar makes it good, 825

Which maintains a lawful Seiſin in Fee in the Leſſor, and traverſeth that which deſtroys it, is good, 891

Divers Exceptions taken to it, but diſallowed, 889, 890

Replication helped by the Rejoinder, 918

Where the dying ſeiſed, and not the deſcent, is traverſable, 29,30

Requeſt.

In *Aſſumpſit* the Plaintiff declares, that he had expended for the Defendant 25 *l.* which ſhe promiſed to repay, the Plaintiff muſt alledge the day and place of the Requeſt, 74

The Condition of a Bond was to aſſure certain Land, and upon refuſal thereof, and requeſt made to have an 100 *l.* the Obligor may requeſt at any time, 136

Where Requeſt muſt be proved, and the ſubſequent to a matter, 201

Where a Requeſt is requiſite, where not, 229

Where two things are laid, and a *Requiſitus* to the firſt, with a day and place, and only *Similiter requiſitus* to the ſecond, without any day and place, ſhall be good, 240

Requeſt not neceſſary, where a Duty maintainant, 548,721

Reſcous.

Returned by the Sheriff upon an Arreſt upon a mean Proceſs, not good in an Action for the Eſcape, yet a Judgment cited there 14 *Jacobi* to the contrary, 868

Reſcous returned by the Sheriff, is traverſable, 781

Reſervation.

Of leſs Rent by a Colledge, void by 18 *Eliz.* 826

Reſtitution. See *Recuſancy.*

Where though a Term be ſold, that is forfeited upon an Outlawry, the Party ſhall, upon the Reverſal of the Outlawry, be reſtored to his Term, or only to the Money, 228

In a *Withernam* upon ſatisfaction made, the Party ſhall have a Writ of Reſtitution for his Cattel, 162

In an Attaint in the *Common Pleas*, upon a Verdict in the *Kings Bench*, an Execution upon that Verdict, if the Verdict be diſ-affirmed, the *Common Pleas* may award Reſtitution, 372

Reſtitution of Poſſeſſion awarded upon an *Affidavit* in a *Vi laica removenda* upon ſuch ſuggeſtion, 465

Retraxit.

If it may be entred after a general Verdict, 465

Or *Nolle proſequi* againſt one Defendant after Judgment againſt both, diſchargeth both, and the Judgment void againſt both, 762

Return of the Sheriff: See *Traverſe.*

Proceſs being Summons upon the Goods, what ſort of Return by the Sheriff muſt be made, 50

Where an Execution once executed, though the writ not returned by the Sheriff ſhall be good, & pleadable by the Party, againſt any *Scire facias* upon it after, 237

A Return by a Sheriff, or others, after they are out of their Office, is void, 312

Returns of a *Venire fac.* in a *medietate linguæ*, not appearing who were Aliens, and who Denizons, aided as a Miſ-return by 18 *Eliz.* 841

By the Sheriff *Reſcous* returned upon an Arreſt, upon a mean Proceſs, not good in an Action for the Eſcape; yet a Judgment cited there 14 *Jacobi* to the contrary, 868

Return by the Sheriff upon a *Scire facias* to Terr-tenants not traverſable, but the Plaintiff may take Execution, 872

Revocation.

Authority cannot ſurvive, but an Intereſt may, 856

S

Sale.

IN pleading a Sale in Market-overt, no need to alledge Toll, 485

Scire facias.

What matter one may plead on a *Scire facias*, 283

Where an Execution on a Judgment, there being a Writ of Error brought, and the Judgment affirmed, ſhall be taken out, without a *Scire facias* though a year after Judgment given, 416

After a Fine or Recovery, reverſed between the parties to the Record, the party that reverſed cannot enter, till a *Scire facias* be ſued againſt the Terr-tenant, or two *Nihils* returned, 472

A *Scire facias* in the Queens name againſt *A.* for a Debt that came unto her by the Attainder of *J. S.* if maintainable, 325

Upon a Statute, againſt whom it muſt be brought, and what is a good Bar in it, 506

A *Scire facias* againſt the Mainpernors of *B.* they pleaded he was dead the day of the Judgment given, and good, becauſe they cannot have a Writ of Error to reverſe the Judgment, 199

Againſt Executors, to have Execution *de bonis propriis*, when to be awarded, 530

Scire facias againſt an Adminiſtratrix to have Execution, ſhe pleads *Nulla bona quæ fuerunt Inteſtati tempore mortis ſuæ, &c. nec habuit die impetrationis Brevis, nec unquam poſtea*: no good Plea; for one Judgment cannot be anſwered without another, and perhaps ſhe hath paid Debts upon Specialties or Statutes, 575

Scire facias (upon a Judgment againſt the Father) ſued againſt the Heir and Terr-tenants, without ſuing one againſt the Heir firſt, is good, 896

A Table referring to ſeveral Points

Page

Seale.

Where two men may ſeal with one Seal, 246

Seiſure.

May be of an Heriot-ſervice, 32

Sheriff.

Upon a *Capias* directs his warrant to a Bailiff of a Liberty, who arreſted the Party, and the Sheriff returns *Non eſt inventus*, Action upon the Caſe lies againſt the Sheriff, 730

After Arreſt, and Bail taken, he pleads *Languidus*, &c. Finable by the Court, but the Party hath no remedy, 852

If an Action lies againſt him for not returning a *Capias utlagat.* or an Amercement only for the Contempt; Adjourned, 873

Simony: See *Pardon.*

The Parſon being ſick, the Father (the Son being preſent) contracted with the Patron for the next Avoidance for 100 *l.* this not Simony; for the Father is bound to provide for the Son: but if the Father himſelf had contracted for a Benefice, to the intent another ſhould preſent him, that is Simony, 686

Simony what it is, Contract Simonaical, although the Grant be utterly void, yet, if a Preſentment thereupon, it is Simony; and when the *Spiritual Court* hath ſentenced it, this Court will give credit thereunto, 788,789

Statute.

Where a thing, though void as a Statute, yet ſhall be taken good as an Obligation, 319

Statute-Merchant muſt be ſealed with two pieces, otherwiſe not good, 472

Statute Staple, 494

Statute prohibiting a thing, and no Penalty limited, the Offender may be endited for a Contempt againſt that Statute, 655

Statutes penal, and Suits upon them, muſt be by Original or Information, and not by Plaint; as upon 5 *Eliz.* for Trade, 544

Statutes: Hen. 3.

Magna Charta, cap. 1. A man may preſcribe to hold a Leet of her, and at other times then are mentioned in that Statute, becauſe it is in the Affirmative, 125

Of *Marlbridge, cap.* 15. Of Diſtreſs in the Kings High-way, is intended for Rents or Services, and not for Toll, or ſuch things, whereof no Diſtreſs can be but in the Kings High-way, 710

Weſt. 2. *cap.* 5. 13 *Ed.* 1.

The Queen ſhall not recover Damages in a *Quare Impedit* by that Statute, 162

A Plenarty within that Statute muſt be *ex Præſentatione, ex non Collatione*, 207,208

Weſt. 2. *cap.* 12.

Damages increaſed againſt Abettors by that Statute 223

De Mercatoribus 13 *E.* 1.

If a Statute hath but one Seal, it is void by that Act, and alſo as an Obligation, 319

Of Wintou: 13 *E.* 1. *and* 27 *Eliz.*

Upon thoſe Statutes, the ſervant, if he be robbed, muſt be ſworn, and not the Maſter, 142

If a Robbery be committed in the Morning before day, or in the Evening after day, when men uſe to travel the Hundred is liable; otherwiſe, if at midnight, or after, 270

If an Houſe be robbed in the day, the Hundred not liable, becauſe not done to the perſon, 753

Articuli Cleri; 9 *E.* 2. *cap.* 1. *ibid.*

12 *Ed.* 2. *Stat. Ebor. cap.* 5.

That Statute extends not to Coroners, 703,704

The Original Writ ought to have the Sheriffs name to the Return, but the Defendant ſhall take no advantage after Appearance of ſuch Miſpriſion, 310,767

E. 3. 36 *E.* 3. *cap.* 15.

A Declaration in *Engliſh*, in an interiour Court, is void by that Act, 85

Upon 2 *E.* 3. *cap.* 2. The Sheriff needs not be in perſon to remove a Force, 294

Of 50 *E.* 3. *cap.* 4. is intended, where the Conſultation is granted upon examination of the Matter, and not for Inſufficiency of the Proceeding, 736

Rich. 2.

9 *R.* 2. *cap.* 3. Of Error by the Reverſioner, 509

Hen. 6.

8 *H.* 6. Indictment thereupon quaſhed for want of *ad tunc exiſtent. &c.* 754

It may be of a Cloſe, 458

Void for want of *Manu forti*, 171

Indictment thereupon quaſhed for Miſ-recital, 307

Aids Faults *per vitium Scriptoris*, or by the Clerks negligence; and extends to Records of other Courts not removed by Error, as that was in *Ipſwich*, 435

After a *Certiorari* Reſtitution awarded; a Difference between Acts Judicial, and Miniſterial; theſe are void, the other erroneous only, 915,916

23 *H.* 6. The Marſhal of the *Kings Bench* within that Act, 66

The Major of a Corporation is within that Act, 76

Whether an *Aſſumpſit* is as well included as a Bond, 199

If the Defendant die after Execution awarded, and before it be ſerved, it may be ſerved upon his Goods in the hands of the Executor, 181

The Statute well explained, 624

It extends not to Bonds of appearance upon an *Attachment* out of the *Court of Requeſts*, 646,647

A Bond for Appearance taken out of the County (although by *Dureſs*) not within that Act, becauſe not within the Sheriffs Cuſtody, 746

An excellent and learned explanation of it, 808,852

Ed. 4.

8 *Ed.* 4. *cap.* 2. Of Liveries, an information lies thereupon in the *Exchequer*, 326

Rich. 3.

Debt upon 1 *R.* 3. *cap.* 3. for taking his goods before Conviction, or Attainder, *contra formam Statuti*, and demands the double value, it lieth, 749

Hen. 7.

3 *H.* 7. *cap.* 10. Damages given thereby, although none recoverable in the firſt Action, being a *Formedon*, 617

11 *H.* 7. *cap.* 20. Baron and Feme Copyholders in Fee, the Baron purchaſeth the Free-hold to them in tail; the Baron dies having Iſſue, the Feme ſuffers a common Recovery; the heir may enter by

Page

by that Statute, 24

J. Jointureſs takes a ſecond Husband, & they convey to C. and his Heirs, *habendum* to him and his Heirs to the uſe of him and his Heirs, for the life of his Wife onely; adjudged a Forfeiture within that Act 131

A Woman being a Jointureſs make a Leaſe for life it is a Diſcontinuance and Forfeiture within this Statute, although without Warranty, 513

This Statute largely expounded, 524

Hen. 8.

7 *H.* 8, and 21 *H.* 8. In an Avowry for Eſtray, if the Defendant hath returne, he ſhall have Coſts and Damages by thoſe Statutes, as well as for Amercements in Leets, and for Heriots, although not mentioned in thoſe Acts, 257,329

21 *H.* 8. *cap.* 5. Adminiſtration committed may be revoked, notwithſtanding that Statute, 163

21 *H.* 8. *cap.* 6. Of *mortuaries*, a Prohibition granted thereupon, 151

21 *H.* 6. *cap.* 13. Two Parſons of a Church, each having the intire Cure, and both of 8 *l. per annum* value, one dies, & the other is preſented, this is a Plurality within that Act, 351,353

The Queen may retain a Chaplaine to have a Plurality by Parol within that Act, 424

That Statute is a general Law, 601

Eight pounds *per annum* ſhall be according to the true value within that Act, 853

A Counteſs retains two Chaplains, & after that a third, who obtains a Diſpenſation before the firſt two were advanced: the Diſpenſation is not good within that Statute, adjudged upon Error brought, and the former Judgment affirmed, 723,839

What is a Dignity within that Act to warrant a Non-reſidence, 663

23 *H.* 8. *Cap.* 15. Debt lies in the *Kings Bench* for 16. *s.* Coſts, recovered in an inferiour Court upon a Non-ſuit by this Statute, 96

The Defendant ſhall have Coſts upon that Act, upon a Special Verdict, as well as upon a general Verdict, 465

An Executor-Defendant ſhall have Coſts; but, if Plaintiff, ſhall pay none by this Statute, 503

25 *H.* 8. *cap.* 19. of *Appeals*, well explained, 571

By that Statute the Queen may thereby grant a *Commendam* without the Archbiſhop, 601

27 *H.* 8. *cap.* 10. That Statute transfers a Rent-charge to *Ceſtuy que uſe*. 721

27 *H.* 8. *cap.* 24 *Of Reſumptions* how far it extends: it includes the Succeſſour, although not named, 513

32 *H.* 8. *cap.* 7. *Of Tithes*, well explained, where an Action may be brought for detaining them, 607

32 *H.* 8. *cap.* 9. What Act is maintenance by that Statute, 735

32 *H.* 8. *cap.* 28. and 1 *Eliz.* Muſt be underſtood of Lands uſually demiſed, and the ancient Rent reſerved: an Explanation of them, 875

32 *H* 8. *Cap.* 30 and 18. *Eliz. cap.* 14. What is helped after Verdict by thoſe Statutes, 204,227,703 (704

Where thoſe Statute extend to help a matter that is brought within the compaſs of another Statute, & in truth, is not; 257

What ſort of *Venire* is aided by the Statute of *Jeo-fails* *ibid.*

What ſhall be ſaid an inſufficient Iſſue; to be helped by thoſe Statutes, 259

Where if the *Venire*, and Pannel being wanting, but the *Diſtringas jurat.* and Pannel annexed to it remaining, ſhall be helped by thoſe Statuts, *ibid.*

Where a Verdict taken, after the Party is Non-ſuit, is ſuch a Verdict as to help a matter within thoſe Statutes, 412

Where an Inqueſt of Damages is ſufficient within thoſe Statutes, *ibid.*

Where a *Venire facias* not Returnable, or Returnable upon a wrong Day, ſhall be aided by thoſe Statutes 422

See much more matter upon this Subject in *Ven. Fac.* and *Viſne.*

32. *H.* 8. *cap.* 34, Leſſee for years covenants to repair the houſe during the Term, & after aſſigns over his Eſtate, Covenant lies againſt the Aſſignee, although not named within this Statute; otherwiſe, if it were to build a new Houſe, 457

32 *H.* 8. *cap* 34. Extends not to Covenants upon Eſtates in Fee, or in Tail, but onely for life, or years.

32 *H.* 8. *cap.* 37. *A.* ſeiſed of Land in Fee, grants a Rent-charge for life, and after infeoffeth *B.* who made a Leaſe to *C.* for twenty one years, which expiring, *B.* leaſeth for three years to another, upon whom the diſtreſs was taken: the queſtion was, If, for the Rent incurred during the term, he may diſtrain after the expiration upon him in the Reverſion: two againſt two, & ſo it was adjourned, 332,333,547

32 *H.* 8. *cap.* 38. A Prohibition is not to be granted within that Act, except it be within the Levitical Degrees, as in that Caſe it was not; for he married his Wives Siſters Daughter, although Degrees more remote are forbidden, 228

33 *H.* 8. *cap.* 6. A Dagg is a Hand-Gun within that Statute, 822

33 *H* 8. *cap.* 16 For buying Worſted Yarn in *N.* not being a Weaver, made perpetual by 1 *E.* 6. *cap.* 6 an Information thereupon *cantra formam Statuti*, and good, becauſe no new Addition, or Alteration; otherwiſe, if one Act depends upon the other, but it was quaſhed, becauſe not ſhewn to be ſpun upon the rock, 750

34 *H.* 8. *cap.* 5. If Grantee of a Rent to him, & his Heirs, for the life of *J. S.* may deviſe it by that Act, two againſt two, and Adjourned, but for the Arrears during the life of *J. S.* Diſtreſs may be by 32 *H.* 8. *cap* 37. 805

34 *H.* 8. *cap.* 20. If a Fine bars the Iſſue, *Quære*, 595

34 *H.* 8. *cap.* 21 Of Confirmations well explained, 519

35 *H.* 8. *cap.* 17. An Information thereupon for not fencing *Copices* upon ſeveral Exceptions taken, and over-ruled, 117

37 *H.* 8. *cap.* 12: A Houſe in *London*, part of the poſſeſſions of a Priory, that was diſcharged, yet by that Act ſhall pay Tithes, 276

37 *H.* 8. *cap.* 7. A Batchelor of Law may be a Commiſſary to grant Adminiſtration by that Act, 314,315

37 H. 8. *cap.* 21. That Statute extends only to Union of Churches, that are under the Annual value of eight pounds, & both the Churches there being aboue that value, it was an Union by the Common-Law, 500,501

38 *H.* 8. or rather 28 *H.* 8. *cap.* 3. Error lies in the Kings Bench, for an erroneous Judgment given in *Denb.* in an *Ejectione firmæ*, 104

Edward 6.

1 *Ed.* 6. *cap.* 14. Leſſee for eighty years takes a ſecond

A Table referring to ſeveral Points

Page

Leaſe for ninety years to begin after the firſt, & deviſes all his Leaſes to *J. S.* paying yearly five pounds to an Abbot, *&c.* & five pounds to a Prieſt, to ſing, *&c.* & that his Son ſhould have the letting of the Lands, all continued until 1 *Ed.* 6. the firſt Leaſe ended, 34 *Eliz.* the ſecond Leaſe is not within 1 *E.* 6. becauſe not then begun, & nothing is given to the King but the two five pounds, 799

The Queen ſhall have no more by that Statute, but what is appointed for maintenance of the *obit.* 449

2 *Ed.* 6. *cap.* 13. If Land be overflown with water, & after gained by induſtry, Tithes ſhall be paid there of, and ſo if full of thorns & buſhes, & grubbed up, and made Medow, or arable; but otherwiſe, if meerly barren, & improved by Foldage, or other induſtrious means. 475

Debt lies at the Common-Law for the treble value within that Act, 608

Not-guilty, a good Iſſue therein upon debt, but it lies onely for the party grieved, & not for the King, 621

Debt thereupon for the treble value, *Not-guilty*, a good Plea, & Iſſue for it is a Male-feaſance, & no Nonfeaſance, 766

5 *Ed* 6. *cap.* 4. Striking in St *Pauls Church yard* is within that Act, 224

For drawing his Dagger in the Church of *B.* againſt *J.* S. and ſaith not to the intent to ſtrike him, not good, nor Fineable at the Common-Law 231

5 *Ed.* 6. *cap.* 16. Touching the Office of Cuſtomer of *London*, with a Bond to perform Covenants, although ſome be good, & others unlawful, yet the Bond is abſolutely void by that Act, 529

Philip and *Mary*

1 *Ed.* 2. *Ph.* & *Mar. cap.* 12 Three diſtrained ſheep, & impounded them in pounds in three ſeveral Hundreds, there ſhall be but one five pounds againſt them all, & but one forty ſhillings trebled, for it is but one offence in all, 480

For Diſtreſs in *S.* and driven into *K. Ven. fac.* muſt be from both Counties. 646

Q. Elizabeth.

1 *Eliz. cap.* 4. *A* Grant of *Prochein* avoidance by a Biſhop is void by that Act againſt the Succeſſor, 207

An Archdeacon having a Parſonage appropriate, lets parcel for fifty years, the Biſhop, Patron, and the Dean & Chapter confirm it, not within the Statute, for no parcel of the poſſeſſion of the Biſhoprick, & an aſſent only: otherwiſe if diſſeiſed, & confirms to the Diſſeiſor, 430

A Grant of an Advowſon by a Biſhop for twenty one years, & confirmed by the Dean & Chapter, is void againſt the Queen & Succeſſor by that Act, but good againſt the Grantor himſelf, 690, 691

1 *Eliz. cap.* 12, and 19. Touching payment of Cuſtoms, well explained, 534

5 *Eliz. cap.* 9. In an Indictment upon that Statute, it muſt be directly alledged, that he was ſworn. 105

Upon that Statute he ought to ſhew in what matter he ſwore falſly, & in what Action, & it muſt be in the ſame County where the Oath was; 137

An Indictment quaſhed, & that it was *falſo & corruptive depoſuere*, but not *voluntarie*, although the Indictment concluded ſo, 147

An Indictment quaſhed, becauſe not examined as a witneſs between parties, nor in *perpetuam rei memoriam*, 148

If Coſts may be given to the Defendant, upon the Statute, 21 *H.* 8. *Quære*; 177

Page

If the Perjury be alledged in a matter not concerning the cauſe in Queſtion, it is not puniſhable, & a man ſhall not be puniſhed as a Perjuror by an *Innuendo*, 428

A Bill of debt lies for the party grieved, upon that Statute, by the Act of 18 *Eliz. cap.* 5. & he is not inforced to ſue by Information, or Original, 434

If a Proceſs be ſerved upon a Feme-Covert as a witneſs, and Charges tendered, if ſhe appear not, an Action lies againſt her Husband, and her, for ſhe is within the Statute, and the tender muſt be made to her, 130, 131

Perjury in a Leet, not puniſhable thereby but good cauſe of an Action of Scandal for Words, 709

Indictment thereupon for a falſe Depoſition in Chancery, not good, if not touching the cauſe 428

A Bill of debt lies thereupon for the party grived, but for an Informer by Information, or Orginal, 434

5 *Eliz. cap.* 14. Indictment thereupon, cannot be at the Seſſions of the Peace, but it muſt be before the Juſtices of *Oyer* & *Terminer*, & Juſtices of Aſſiſe, 87

5 *Eliz. cap.* 23. That Statute is to be intended, not only of Excommunication for criminal Cauſes, but for Legacies, Probate of Wills, Tithes, or other cauſe there, 144

This Statute, and 2 *Ed.* 6. *cap.* 13 very well commented upon, 741, 742

8 *Eliz. cap.* 2. An Adminiſtrator Plaintiff ſhall not pay Coſts within that Statute, if Non-ſuited, 61

What Arreſt ſhall be ſaid within this Stat. for arreſting one in the name of another, 236

13 *Eliz. cap.* 5. fraudulent Deeds of goods void againſt Creditors, & the Donors died in Law poſſeſſed of them, and always Aſſets, 810

13 *Eliz. cap.* 8. That Statute doth not make a good Contract void, but only ſuch as are Uſurious, & if one contracts to have twenty pound for an hundred pounds, & takes nothing, he is not puniſhable otherwiſe, if he take but a ſhilling, there he ſhall render for the whole Contract, 20

One gave five hundred ſixty & ſix pounds for an Aunuity of an hundred & twenty pounds *per annum*, this is no Uſury although it be ſecured alſo by Land of an hundred pounds *per annum*, ſee other Differences there where a Communication corrupt, and where not, 27

In an Information upon that Statute, *tam pro domino Rege, quam pro ſeipſo*, although the Atturney-General enters a *Non vult proſequi*, that is no Bar to the Informer, & ſo if the Informer be Non-ſuit, that is no Bar to the King. See more in *Uſury*, 138

13 *Eliz. cap.* 8. If a Miniſter read the Articles according to that Statute in this manner, *viz.* I give my conſent unto them ſo far forth as they agree with the Word of God, that is not good: for it ought to be abſolute, 252

For not reading the Articles the Benifice is void to all intents, not withſtanding an Appeal depending 680

13 *Eliz. cap.* 20. By that Statute the Parſon ought to be abſent eighty days, *Et ultra*, 80

By that Statute he muſt abſent himſelf for a moneth voluntary, for if by reſtraint, it is out of the Statute, 100

That Statute and 18 *Eliz.* are general Laws, 816

If a Grant of the Avoidance by a Dean & Chapter bind the Succeſſor by that Act, 440

Page

18 *Eliz. chap.* 2 For Confirmation of Patents, revives not a void Grant precedent. 808

18 *Eliz. cap.* 14. Aids where no Writ, but not if a bad one, 722

18 *Eliz. chap.* 4. Aideth no purchaſor but ſuch as come in for valuable conſideration, & not upon mariage or the like, 445

27 *Eliz. cap.* 9. Two Hundredors only neceſſary, 850

27 *Eliz. cap.* 8 An Adminiſtrator may maintain a writ of Error upon that Statute, upon a Judgment given in *Scandalis magnatum*; although not therein named, & although Execution were ſued by *Elegit* becauſe privy to the Record, & the former Execution may after be avoiedd, 294

27 *Eliz. cap.* 13. By that Statute if the ſervant be robbed, he only ought to be ſworn & not the Maſter, 142

28 and 29 *Eliz. cap.* 4. Cities and Corporations may by the *proviſo* in that Act take above twelve in the pound, for ſerving Executions upon Judgments, out of other Courts as well as from their own Courts, 263

What Fees are due unto the Sheriff, & what remedy he hath for them, 335, 654

31 *Eliz. cap.* 3. If the Defendant be not ſummoned at the Church dore, although the Sheriff returns him ſummoned, whereby he loſes by default, whether he can aver againſt the return, or be put to his Action upon the Caſe, 371

In a Writ of Dower of Lands in one County the Summons may be made at the Pariſh-church-porch in another County. 472

31 *Eliz. cap.* 6. See *Simony*. Simony properly triable in the Spiritual Court, 942

Sunday.

That a Fair was holden every twenty ninth of *Auguſt* without excepting that it be *Sunday*, may be good, for the Sale then is not void, 485

Steward.

Of the Kings Mannor appointed by the Auditor, or Surveyor, is not good, for they have no ſuch Authority, 699

Steward in a reputed Authority may do things of neceſſity, as Admittances, or Preſentments of Nuſances, but not Acts voluntary, as Grants, or if he diminiſh the ancient Rents. 699

Surpluſage

Where Surpluſage ſhall not abate a Writ of Right, 231

Surrender.

A Steward having Authority *ad exequendum per ſe, vel ſufficientem deputatum ſuum*, makes A. his Deputy to take a Surrender abſolute, *& ulterius ad faciendum, & exequendum quantum in le eſt*, & he takes it upon Condion, it is good by the laſt Words, 48

What ſhall be ſaid to be a good a Surrender, 68

Where Words, & argeement between Strangers cannot amount to a Surrender, or Leaſe, excellent Matter, 173, 302

What ſort of Words are ſufficient to extinguiſh, and drown and Eſtate of Free-hold 269

Whether the joyning of Tenant for Life with the Reverſioner in a Fine be a Surrender of the Eſtate for Life, and how it operates. 284, 285

To the Lord himſelf, or out of Court, not good, 443

I cannot Authoriſe a Stranger to Surrender my Leaſe for years, to make it a good Surrender, 288

If Leſſee for years ſay he is content, the Leſſor ſhall have his Land again, it is a good Surrender. *Quere*

Page

for Life, *ibid.*

Leſſee for twenty years accepts a Leaſe in *futuro*, it is a preſent Surrender of the former Leaſe, & the Leſſor may enter preſently, 522, 605

Surrender of Copy-hold before Admittance, good by the Heir, 602

Tenant for Life levied a Fine to the Reverſioner in Fee to certain Uſes, adjudged no Surrender, but if it were it may be to an Uſe, 688

Surrender of a former Leaſe, by acceptance of a void Leaſe, 874

T.

Tales: See more *Trial.*

REturned by the Sheriff being party, not good, 654

Tryal by more thereof then ought to be, being ſufficient of the principal Pannel, is erroneous, 850

Tales to the new Sheriff, where the *Ven. fac.* was to the Coroners Error, 894

Tail.

What ſhall be ſaid an Eſtate-tail, and what but for life, 248

Where Tenant in ſpecial Tail though he hath iſſue, may be *quaſi* Tenant after poſſibility of iſſue, 513

Where the iſſue ſhall have five years for Claim, 894

Tender.

Of ſufficient amends to the Plaintiff for Treſpaſs, not good, 870

Without alledging a Refuſal is not good, 889

Tenure.

Where in a Writ of Right the Tenure muſt be expreſſed, 232

Terra

In Writs taken in proper ſignification; but otherwiſe in Will, or Deeds, 467

Teſtament.

In what Caſe a Feme-Covert may make a Teſtament 27

What ſhall amount to a new Publication of a Teſtament, 403

Where one being ſeiſed of two Mannors, the one in Tail, & the other in Fee, deviſes the two in Fee & leaves part in Tail to deſcend, it ſhall be a good ſatisfaction of the Will, 286

Tithes: See *Preſcription.*

Where payable to a Pariſh Clerk, 71

Where a Spiritual Parſon may preſcribe in *Non Decimando*, 206

What ſorts of Houſes in *London* are diſcharge from payment of Tithes. 276

What ſhall be a good *Modus* for a diſcharge of Tithes *ibid.*

A Table referring to ſeveral Points

Page

Of what things Tithes ſhall be paid, 1,276
Tithes paid for one thing, cannot be a recompenſe for Tithes of another thing, where both due in kind, and they are due for Agiſtment, 446
Where the *Modus Decimandi* of a Park ſhall be determined upon the Diſ-Parking, where not, 467
What Tithes are due to the Vicar, what to the Parſon, *ibid.*
A Spiritual Parſon may preſcribe in *Non Decimando*, 475
Whether, if ſuch Parſon leaſe Lands to a Lay-perſon that become not Tithable, *ibid*
Where Tiths ſhall be payd for Lands drained, or improved, where not, 475
A peny paid for every Milch-Cow, in ſatisfaction of Tiths of Milch-Kine, & Beaſts agiſted, no good *Modus*, or preſcription, *ibid.*
Where Tiths are due for Beaſts, where not, *ibid.*
For dry Cattle reared for the Plough, or to be expended in the Houſe, no Tithes payable, 471
What Tithe payable of Trees of twenty years growth, 477
Trees once diſcharged ſhall yeild no Tithes of their Wood, being after *aridæ & mortuæ*, *ibid.*
The Lopping of trees priviledged are diſcharged of Tithes, *ibid.*
Eccleſia Eccleſiæ Decimas ſolvere non debet. 479
Where an appopriator ſhall have Tithes of the Gleab Lands againſt his own Leſſee, 477
If Leſſee cuts Wood to make Hedges, no Tithes of the overplus, 499
A Preſcription, that a Biſhop, and his Tenants at will, *&c*, are diſcharged of Tithes in a Prohibition, good, 511,512
The King pays no Tithes, but his Leſſee ſhall, *ibid.*
The King hath the Tithes out of any Pariſh, *ibid.*
Lay-men at Common-Law not capable of Tithes; but by way of Retainer they might, *ibid.*
An Aſſignee might hold diſcharged of Tithes, *ibid.*
Tithes not due to a Vicar out of the Parſons Gleab by the words *in minutis Decimis totius Parochiæ*; otherwiſe of an Endowment by expreſs words; 578, 579
A Difference, where the Diſcharge is by reaſon of the perſons, as the *Ciſtercians, &c.* there the Patentee ſhall pay, but if diſcharged by Unity, there the Patentee ſhall not pay Tithes, 579
Tithes diſcharged by Unity at the Diſſolution, and there the Unity is Traverſable, and if by Preſcription the Preſcription Traverſable, 584
Tithes ſet forth, and after detained, Remedy lies either in the Court *Chriſtian*, or at Common Law; but againſt a Stranger who takes them, only at the Common Law, 607
Tithes not due for Fuel burned in the Houſe: but a Preſcription to pay the tenth Cheeſe in lieu of Milk, is good; but not to pay the tenth Quart of Milk except at the Parſonage-Houſe, or any other place; then good, 609
Tithes ſhall not be payd for Rakings, unleſs Covin averred, 660
Tithes for pigeons if proof of payment by one witneſs be refuſed, a Prohibition lies, 666
Tithes not grantable by Copy, becauſe no parcel of the Mannor; otherwiſe of Common, or *prima veſtura prati*, 814
A *Modus* of four ſhillings ſurmiſed, & the proof was four ſhillings ſix pence; yet good, 819
Although ſevered, ſuable in the *Spiritual Court*; & if proofs not allowed there, an Appeal lies, 844

Page

Title.

Needs not be made *in Ejectione firmæ*, or Treſpaſs; otherwiſe, where Land is demanded, 671

Toll

Where Tenants in ancient Demeſn ſhall be quit of Toll for Merchandize, 227
Toll, not of neceſſity, nor incident to a Fair; and therefore, if the King grants *Feriam annuatim cum omnibus libertatibus & liberis conſuetudinibus ad hujuſmodi feriam ſpectantibus*; By ſuch general words no Toll can be taken: but otherwiſe if it hath been uſually payd, 558,592
Toll-through, whether it may be claimed by Preſcription, 610,711

Traverſe.

Where Seiſin alledged muſt be Traverſed, 30
Where the time is Traverſable, 87,88
Where a Traverſe at another place then the Action ſuppoſeth, 184
Where, in an Action upon the Caſe the Conſideration is Traverſable; and what things in that Action are Traverſable, 201
When, in an Action on the Caſe for words, the Party ſets forth other words in his Plea, then the Plaintiff ſuppoſeth in his Count, with a Traverſe to the words ſpoken, and thoſe words confeſs no ſlander, they are void, 239
A Certificate by a Biſhop, for not payment of Tenths is Traverſable; for he doth it only as an Officer, and not as a Judge, as in Caſe of *Baſtardy*, 80
In Trover and Converſion, the Converſion is Traverſable, 97
To a Bond with another, not good, 161
The ſubſtance of the Action is Traverſable; ſo is the conveyance to the Action, if it entitle the Plaintiff thereunto, if the Defendant cannot wage his Law, otherwiſe if he may ſo do, 169
Where a Matter not alledged *in facto* is Traverſable, 241
If a Surrender be pleaded into the hands of the Steward, if the Traverſe ſhall be, whether the party was Steward, or whether a Surrender made, 260
Where a Deſcent is Traverſable, 278
Where, in an Action on the Caſe for a *Male-ſeaſans*, and the party anſwers it another way then alledged in the Count, the Defendant muſt Traverſe the matter alledged, 285
Where neceſſary; a difference where Title made by Feoffment, there a Traverſe, otherwiſe, if a Grant of a particular Eſtate; for he muſt have that by lawful means 651
Of the place where the matter of juſtification is local, but not where it is tranſitory, none neceſſary, 667
Traverſe againſt Traverſe, good, 671
A difference between an Aſſiſe of *Darreign Preſentment*, and a *Quare impedit*: in the former, the laſt Preſentation is Traverſable; but, in the later, the matter only is Traverſable, 687
A difference where the Juſtification is perſonal, & tranſitory, and where local, there he may Traverſe the place in the Declaration, 705
Good, where is no Confeſſing and Avoiding, 754
Not good, where an Affirmative & a Negative 755
If good of a *Reſcous* returned by the Sheriff, 781,868

Of

# of Law argued and reſolved in this Book.

Page

Of the ſole Seiſin, where good, & where the Joynt-tenancy, 725

When both parties convey from one perſon, the Mean Conveyance is Traverſable, 798

Of a Recovery in an inferior Court is good above, 821

A difference where the matter is local, and where tranſitory, 842

Of a *Devaſtavit* returned by the Sheriff, may be, 860,886

Of the County in Battery, and not of the Place, *ibid.*

To an Avowry, where not good, 897

Treſpaſs.

The Defendant pleads that the Treſpaſs was done by himſelf and another, & that the plaintiff ſued the other, and had Judgment and Execution againſt him: by the better opinion it is a good Bar; but it was adjourned, 30

Where, for the Battery of the Son, it lies for the Father and the Son, 55

Where it is no good juſtification in Treſpaſs for an Aſſault and Battery, to ſay, the Plaintiff came, and took away his Conies, 243

Entry into the houſe of another, & taking away goods, is Treſpaſs, and what not, 245

Where, in Treſpaſs, *de ſon Aſſault* is a good plea, & anſwers the whole cauſe of Action, 262

Franktenement of another pleaded in Bar, and Replication to it, 405

Church-wardens bring Treſpaſs for taking a Bell out of the Church in the time of their Predeceſſors & ſuppoſed it to be *ad damnum ipſorum*, not good for them; for it ought to be *ad damnum Prochianorum*: otherwiſe, if taken away in their time, 145,79

The Caſe was, A Sheriff took Goods by a *Scire facias* and before Execution by ſale the Defendant took them again; and Judgment given for the Plaintiff being Sheriff, 639

The Defendant pleads an Arbitrament in Bar, not good, becauſe no place alledged of the Submiſſion, nor performance thereof, nor any anſwer to the *Vi & Armis* 66

Where a man ought to give colour in that Action, 76

By a Dean and Chapter, for entring in the Cloſe of the Dean, not good, for the Chapter ought not to joyn, 200

Treſpaſs lies not, by the better opinion, for the taking a Son, or Danghter, which is not Heir to the Father: it was arbitrated, 769, 770

For breaking an houſe in ſuch a Pariſh and Ward in *L.* upon *Not Guilty* the Jury found the houſe was in the Pariſh, but not in the Ward, & good, for ſuperfluous, being admitted by the Parties, 283

Not Guilty pleaded, the Jury found the Plaintiff Tenant in common with others of the Land; the Defendant hath loſt the advantage of his Plea in Abatement, & the Juries finding it is not material, 554

Trial,

Where the Trial, whether a day be Sunday; and, being by the *Almanack*, is good, 227

What ought to be by Certificate, and what *per pais*, 233

Where a Trial, ſhall be *per medietatem linguæ*, 275

Six of the Jurors were challenged, and traited, & a *Diſtringas* was awarded againſt all; but the Trial was by the ſix not traited, & by others by a *Tales* good: otherwiſe, if it had been by any of thoſe that were traited, 429,430

Where the iſſue ariſes in two Counties, two *Venires* ſhall iſſue. and ſix of one County, and ſix of another ſhall try the iſſue, 471

Where ſeven of one County, and five of the other, by conſent, entred the Record, tried the iſſue, *ibid.*

Where none of the principal Pannel appear upon the *Habeas corpora*, and *Diſtringas*, a *Decem Tales* ſhall iſſue; but, if it be awarded upon the *Venire*, it is Error, 503,

Where a ſale in Market was pleaded in Bar in Trover in one County, & the iſſue was upon the ſame ſale made by Covenant in another County, the trial in the County, where the Covenant was made, was holden good, 510

Trial good, where twenty three were only returned in the *Ven. fac.* by twelve of them; but otherwiſe, if by a *Tales* awarded, 587

Payment alledged at a houſe in *Cheap-ſide*, the Pariſh or Ward muſt be alledged, and ſo ſaid the Prothonotary 732

An *Alien* being Defendant *Tales de circumſtantibus*, is good, no exception being taken, & eleven of the Principal appearing, 818,841

Of Infancy, where the Land lies not, where Action is brought, 818

Trover

The place & time of the Converſion muſt be alledged therein, 57,68

It lies for a Greyhound, and there are four kinds of Dogs which the Law regards, a Maſtiff, an Hound, which comprehends a Greyhound, a Spaniel, & a Tumbler, 525

If the Defendant do not confeſs a Converſion, his Traverſe is ill, for his plea ſhould have been *Not guilty*, and given it in evidence, 434,435

For negligent keeping of twenty barrels of Butter, it lieth not, for he is not compellable to keep it ſafely; as Apparel, or a Horſe: but if he uſe it, it is a Converſion: ſo if he purpoſely miſ-uſe it, 219

If buying of the goods, and ſelling them again before the Action brought, or notice whoſe they were, be a good Bar in Trover, 480

Where it is a good Plea, that the Defendant bought them of the Plaintiff, and ſeveral others, much good matter, 485

Whether a Trover & denial be a Coverſion, 495

Where it is laid in one County, and a Juſtification in another the other County muſt be Traverſed, 404

Where the Converſion is traverſeable, 555

Trover and Converſion of twenty 5l, that the Defendant ſold his Maſters Corn, & converted the Money to his own uſe: Judgment for the Plaintiff, & reverſed in Error; for it lies not for Money found, unleſs in a Bag or Cheſt, 638,661,746,841,870

It lieth not of an Obligation, but Treſpaſs, if he cancel it; and if he receives the Money, and deliver it, an Accompt, 723

That he converted ten *Capſas, & ciſtas*, good, for all one, but otherwiſe, if diſtinct things: and it lies for Money only, 819

It lies for goods tortiouſly taken as well as *Detinue* or *Replevin*; for the Property remains in him at his Election, 824

Brought for delivering Money depoſited upon a wager, 870

Againſt

Page

Againſt Baron and Feme, & the Converſion by the Feme only, they plead *Non ſunt inde culpabiles*, the Baron not being charged with any Tort, the iſſue ought to be *quod ipſa non eſt inde culpabilis*, & a repleader awarded although after verdict. 883

V.

Value.

OF Marriage if it belong to the Lord *de mero jure* without any Tender: two againſt two, & ſo Adjurn ed. 468,469

Variance.

Where between the Writ and Count abates, 185
In a Prohibition, variance between the Surmiſe and Declaration maketh all ill, 136
Variance between the Writ and Count, where it is helped after Verdict, 204
Where between the Indictment and the mean Proceſs, in point of Letters, avoids an Outlawry, 198
Where there is one Original, & two Declarations & they vary, where it is Error, 416
Where between the Deed & Count, avoids all 189, 256
Where the Judgment is ſuppoſed to be given before other Judges, in the Writ of Error, then in truth it is in the Judgment, 198
Where between the *Diſtringas* & *Venire* in the *Chriſtian*, or Sirname of a Juror, ſhall ſtay the Judgment, 222,256,258
What between the mean Proceſs and Original, ſhall avoid an Outlawry, 248
Where the *Venire* & *Diſtringas* vary from the very matter, and ſubſtance of the iſſue, ſhall be good, 258
Where the Action being upon a Deed, and the Bill upon the File, and Declaration vary, it ſhall be aided, 286
Between the Pleint and *Recordari*, and the Declaration *in Banco*, not material for the Pleint, is determined, 543

Venire.

Where it ſhall be *de corpore Comitatus*. 195
Where a Grant pleaded to be made at one place of a matter iſſuing out of another, & iſſue joyned upon the Deed the *Venue* ſhall come from the place where the Deed is ſuppoſed, or from the other place, 259
Where a *Venire* ſhall come from the place, where a ſurrender is ſuppoſed to be made, and not from the Mannor, *ibid.*
Where a *Venire* only *de novo* may be granted, or the party muſt begin again, 260
In what Caſes a *Venire de novo* ſhall be awarded, 261
Where in an Action for Words, the party juſtifies them in another place, then ſuppoſed in the Count, the *venire* ſhall come from the place of juſtification, or from the place, where the words are ſuppoſed to be ſpoken, 261
Where in an eſcape the *Venue* muſt be from the place where the Arreſt is alledged to be, or, from the place where the eſcape, 271
Where the Trial being *per mediet atem linguæ*, & the form of the *venire is quod quilibet habeat* four pounds Land, it ſhall be intended only to go to the *Engliſh*, 292
Where a thing is laid in a City *in alta wards* of the ſame, and the *Venire* is from the City only, it ſhall be well, and intended there be no more Wards in the ſame City, 282
Venir. fac. muſt agree with the Roll: otherwiſe, if no Writ at all; for that is aided by the Statute, 433
Where well awarded, 518
Defective upon the Roll, amended, 553
Well awarded upon the Roll, although otherwiſe returnable, may be amended, 572
Awarded to the Coroner for Conſanguinity, and a *Tales* returned by the Sheriff, erroneous, and not aided by 32 *H.* 8. or 18 *Eliz.* and ſo Judgment reverſed, 574,586
But the Coroners need not annex their name to the *tales*. 586
To the Coroners, the Plaintiff being ſervant to the Sheriff, to prevenant delay, & the Writ Judicial, 582
Venire fac. or *Diſtringas*, no return thereupon, not aided by any Statutes, 587
Venire fac. de Vicineto de D. and *S.* where it ought to have been from *S.* only, is Error, and where not 600,620
Returnable three days after the Term, & a *Diſtringas* awarded thereupon, and the Jury taken, is ill, 605
Coram Juſticiariis noſtris die Paſchæ. in 15 *dies* . 12 *liberos & legales homines*. &c. and no place where, amended by the Roll, and ſo *libras* for *liberos*, & *quod habeat* for *habeatis*, being to the Sheriff of *London*, 618
If *Not guilty* pleaded from the place, where the ſtopping is, but not, if iſſue upon the Preſcription, 619
Awarded from more Vills then ought to be, is ill, but the place where the taking was, is neceſſary; 621
Venire fac. in Indictment was *ad faciendum jurat. placito Tranſgreſſionis*, omitting *& Ejectionis firmæ*, not amendable, 622
Muſt be from both Counties upon 1 and 2 *Phil.* & *Mar.* 646
Miſ-awarded upon *Not guilty*; otherwiſe, if the Leaſe had been traverſed, 701,702
Where well awarded from one place, and where not 751
Quorum quilibet habet, 4 *libratas terræ*, as good within the Statute, as *Libras* by the *Prothonotaries*: not neceſſary, if the King Party, 413,752
Differing from the Roll, amended after Verdict, 758
According to the Replication, & Rejoinder, although the ſur-rejoinder varies, 762
Venire fac. and *Diſtringas* bare *Teſte* the ſame day, aided by 32 *H* 8. 781
Payment pleaded *apud domum manſionalem Rectoriæ de Much-Hadham*, and a *Venire fac.* awarded *vicineto de Much-Hadham*, good, 804
Venire fac. de civitate, good for Trial in Cities, where no Pariſh or Ward is alledged, 807
Ven. fac. de meditate linguæ, *quorum quilebet habet* 4 l. good, becauſe of the Form, 841
Bearing *Teſte* after the Judgment, as no *Ven. fac.* and ſo aided, and the *Teſte* thereof is not amendable, but the Return is, 820
To the Coroners, after one awarded to the Sheriff, 853
But one to cry two iſſues, good, 806
De Burgo de Abindon, and *de Abingdon* intended to be all one, *ibid.*
De meditate linguæ ought not to iſſue, but at the prayer of the *alien* Defendant; and not ſo, if a Peer be party, 869
From the place where the cauſe ariſeth, 870
If well returned by the Sheriff: adjourned, 882

# of Law argued and reſolved in this Book.

Page

Verdict.

Where a Verdict finding after the time alledged in the Count, in what Action it ſhall be ſaid to be good, 53,54,
Where a Verdict finding matter larger then laid ſhall be avoided for all, 79,80
After Verdict returned in Court, it is not amendable 112
Where a Verdict may make good a Bar, that is ill, 116
The iſſue being, if it were the Free-hold of *J. B.* & the Verdict found it was the Plaintiffs Free-hold for two Parts, & of *J B.* for the third part, & ſo a Tenancy in Common, the Plaintiff could not have Judgment in Treſpaſs, 457
In a ſpecial Verdict, the Circumſtances of every thing need not ſo ſtrictly be found, as it is to be pleaded, 167
Where a Jury finds a matter according to Law, but not according to the preciſe matter in the iſſue, it is good, 209
Where in an Action on the Caſe for words, the Jury finds the words mentioned in the Declaration, ſhall be good, 224
Where a Verdict finds an Eſtate tail, or a particular Eſtate, and ſhews no beginning of it, 407
Where a Verdict that finds not a Cuſtom directly as pleaded, is not good, nor well found, 415
Where in *Ejectione firmæ*, for thirty Acres, the Jury finds the Defendants *guilty*, for ten, & for the reſt *Not guilty*, the Sheriff ſhall take the parties information which ten Acres to deliver in Execution, 465
Where it ſhall be good in part, and void in the other part, 480,481
Where it ſhall be good by intendment, *ibid*
Where the latter words ſhall explain, & controll the former, 482
A Verdict that *J.S.* was ſeiſed joyntly with another doth not warrant the iſſue, that he was ſeiſed, 306
Where an alienation ſuppoſed in Fee is found but for life, it is good, *ibid.*
Where a Verdict ſhall be good by intendment, 505
Verdict ought not to be altered in matter of *fait* 776
Verdict good, finding nothing upon the iſſue, *Not Guilty*; 854

Vicar.

An endowment of a Vicarage of the third part of the Tithes of a Mannor was adjudged good, as well to the Tithes of the Demeſns, as of the Freholders, 462,463
Where the Vicar ſhall have the Tithes of Saffron, as his *Minutæ Decimæ*, 467
Where a Vicar endowed of ſmall Tithes, ſhall not have, Tithes of the Glebe in the Apropriators hands, *alias* in his Leſſees; 479
He ſhall not have Tithes of the Parſons Glebe, by the words *In minutis Decimis totius Parochiæ*; otherwiſe of an Endowment by expreſs words, 578 (579
Vicarage not loſt for want of a Preſentation by the Parſon; but ſomewhat ought to be ſhewed of the uniting thereof, 873

Videlicet.

(*Viz.*) Expounded, 848

Viſne.

Shall be from the place, where the ſtopping of the way is alledged, upon iſſue *de ſon tort*, or *Not guilty*; otherwiſe, if the Preſcription for the way be traverſed, 426,227
Muſt be from the place, where the Juſtification aroſe or elſe a Miſ-trial, not aided by the Statute of *Jeofails*, 468
Shall be from the Vill, & not from the Mannor, 837
From the Mannor, where Heriot-Cuſtom is in queſtion 855

Union.

By the Stat. 37 *H.* 8. *cap.* 21. may be of two Churches, either not above above 8 *l. per annum*, 500
This Statute, being in the Affirmative, toll not Unions at the Common Law, *ibid.*
At Common Law the Ordinary, with the Patrons Aſſent, United poor Churches; without the Kings Confirmation, *ibid*
The cauſes of Unions, 501

Void and Voidable.

Where a Matter ſhall be ſaid void againſt the Suceſſor, within the Statute of 1 *Eliz.* but good againſt the Biſhop himſelf, 207
Where, upon an Owtlawry reverſed, the Eſtate ſhall ſo be ſaid to be void, as againſt all perſons, as the Party to have Actions againſt them, to make them Treſpaſſors, 207

uſes.

What ſort of Covenant will alter or change an Uſe, 279
What is good Conſideration in a Covenant to raiſe any Uſe, 394
Where one may by Covenant limit an Uſe of Land he hath not, 401
Limited to one & his Heirs, but to the uſe of another for life or years, ſhall be ſaid to have the Eſtate larger then the Uſe, or that ſhall remain in the Feoffor, 407
A Feoffment to the Uſe of the Feoffor & his Wife that ſhould be after Marriage, & the heirs of their Bodies after Marriag, the new Uſe ſhall ariſe, if no intervenient Act to deſtroy it, 439
What Words in the limitation of Uſes ſhall be conſtrued a Fee-ſimple, 478
Uſe future, & in Contingency, is deſtroyed by a Feoffment, and Fine; becauſe before it came *in Eſſe*, 630
It may be upon a Surrender, 688
Uſe future, not deſtroyed by a Feoffment, 689
Uſe Contingent, if deſtroyed, or bound by a Leaſe for years, 764,854
A Covenant, that his Feoffees ſhall ſtand ſeiſed; no Feoffees, no Uſes. 15

uſury: See more upon 13 *Eliz. cap.* 8. Title, *Statutes*,

Uſury, what, and where it is, 643
A. delivers an 100 *l.* to *B.* who covenants to pay to every of the Children of *A.* which ſhould be alive at the end of ten years, 80*l.* having five Daughters, and gave Security accordingly; no Uſury, but a caſual bargain; for in ten years are many alterations: otherwiſe, if at the end of one or two years, 741

Utlawry: ſee Outlawry.

Where it ſhall be pleaded in Abatement, & where in Bar, 203
Where the Exigent & Original vary in ſome Letters of the name of Plaintiff ſhall be reveſed, 240
Where the Exigent hath the word *Blaba* & the Orignal *Blada* ſhall be reverſed, *ibid.*

Page

W.

Wager of Law.

WAger of Law lies not for a Bayliff in Accompt, 579
Upon debt in *Chancery*, *Quære*, 648
In a debt upon a Real Contract, 750
Lies not in debt for Money for Tabling, 818
Lies of Money received by the hands of the Plaintiffs Wife, 919

Waver.

Of Goods ſtoln, how to be ſeiſed and pleaded, 611
Of Goods, what it is, it may be without Purſuit, 694

Warranty.

Upon what Fine a Warranty may be created, 17
Where I have a Warranty for twenty acres & infeoff *J. S.* of one, the whole Warranty is gone, 469
Upon a Leaſe by Tenant in Tail for three lives, the Leſſor dies without iſſue, the Warranty is determined, 602
General, by *Dedi*, is not deſtroyed by a ſpecial one, 864

Warrantia chartæ.

Lies not for a general warranty, unleſs *Dedi* be in the Deed, 861

Warrant of Attorney.

Where the Entry differs from it, 201

Waſte.

A. Leſſee for years of a Park, grants all his Intereſt therein to *B.* excepting all Wood and Under-wood growing thereupon; Waſt is committed in the Trees: the Queſtion was, againſt whom the Action of waſt ſhould lie, whether againſt *A.* or *B* much debated, but no Judgment, 17,18
Where, upon a loſing by default, Enquiry ſhall be of the Waſte and Dammages; and where only of the Dammages, 18
A. ſeiſed in Fee, makes a Feoffment to the uſe of himſelf for life, the Remainder to *B.* in Fee; in waſte brought by *B. A.* pleads he was ſeiſed in Fee, *abſque hoc, &c.* the Jury found the Feoffment to the uſe of himſelf for life, without impeachment of Waſte, the Remainder *ut ſupra*, and Judgment for *B.* 40,41
The Plaintiff counts, that he was ſeiſed, & leaſed to the Defendant for years, & ſaith not of what Eſtate he was ſeiſed, but that it was *ad hæreditationem*: Judgment for the Plaintiff, 57
The Writ being in the *Tenet*, nor *Tenuit*, is not good; & the Defendant being charged in Right of his Wife, who was Tenant for life, & dead, the Action is gone, for it ſhould be *fecerunt vaſtum*: but if otherwiſe, concord with ſatisfaction is a good Plea here, for Dmmages only are recoverable, 356,357
The Plaintiff had but a third part of a Reverſion in Common with two others, & therefore could not bring waſte, 357
In cutting down three hundred Oaks, he pleads as to two hundred for reparations, as to the reſt he keeps them to imploy about repairs, *tempore opportuno*, &c. no good Plea, 533
Waſte in the *Tenuit* by an Aſſignee in the Reverſion againſt Leſſee for years, after Aſſignment, excepting the benefit of the Cole-mines, & Trees, the Exception being void, 690
Waſte againſt Leſſee for years, a *Proviſo* that the Leſſor might cut & carry away the Timber growing; *&c.* a Covenant only, & no Exception & the Waſte well brought, 690
Waſte negligent not puniſhable in Tenant at will, otherwiſe of voluntary waſte by him, 777,784

Watch, and Ward.

What ſort of perſons my be appointed to watch within the Statute of *Wincheſter*, & 5 *H.4. cap.* 3 and whether the Conſtable can commit the party to the Stocks for refuſing, 204

Wife.

The Wife cannot give Authority to enter the Husbands Houſe, 245

Will.

Where in a Will the Heirs may take, & Inherit, though the Father died before the Deviſor, & could not take, 422
The Firſt, not revoked by a Second: ended by Arbitrament 721

Writ.

Where the Count may aſcertain the Writ, 234
Where in a *Quare Impedit* the Writ ſhall be General, and the Count Special, 240
Writ Judicial amendable, 543
De ventre Inſpiciendo, and the Proceedings thereupon, 565
Writ, & Proceſs directed to the Sheriffs of L. returned by two, the one Sheriff, the other not, amended, return by one, good, 667
Writ of Enquiry amended by the Roll, but not *e converſo*, 677
Writ of Account againſt two, one dies after Judgment, it abates only againſt him, but Adjourned 701
Writ of Waſt againſt Baron & Feme, ſuppoſing the Wife held the Lands, *ex dimiſſione J. J.* her former Husband, and the Count Special, not good, for it ought to have been Special, and is not aided by 18 *Eliz.* after Verdict: otherwiſe, if no Writ, 722
Writ, and Declaration, if they vary in ſubſtance, not aided by 18 *Eliz*, otherwiſe, if no Writ at all, 829