LES

REPORTS

DE

Sir William Jones

CHEVALIER.

Jades Un des JUSTICES Del'

BANCK Le ROY.

Et devant un des JUSTICES del' Court de

COMMON-BANCK.

Et devant Capital Juſtice d'JRELAND.

De Divers Special Caſes cy bien in le Court de *BANCK Le ROY*, Come le *COMMON-BANCK* in *ANGLETERRE*.

Cy bien en le darreign Temps del' Reign de Roy *JAQVES*, Come en l'Anns de Roy *CHARLES*. I.

Queux fueront adjudge en les dits Courts en le Temps en que il fuit Juſtice en Ceux.

Colliges par luy Meſme, Et imprimee per l'Original South Son Maine propre in *FRANCOIS* remanent in les Maines de *DOROTHY FAVLCONBERGE*, & *LVCY JONES*, Files & Executrices del' dit JUSTICE.

LONDON,
Printed by *T. R.* and *N. T.* for *Thomas Baſſet* and *Richard Chiſwel*, at the *George* near *Cliffords Inne* in *Fleet-ſtreet*, and at the *Roſe* and *Crown* in St. *Paul's Church Yard*, Anno Domini, 1675.

To the READER.

PREFACES *and Epiſtles have been ſo Plentifully beſtowed upon the Printed* Reports *of the* Common Laws; *Some by the Writers Themſelves, as Sir* Edward Coke, *and Sir* John Davies, *who Publiſhed their own Commentaries: Others lately annexed to* Poſthumous Works; *particularly that to the Abridgement of Serjeant* Rolls, *wherein the Law is ſo Learnedly Vindicated, and the Student Inſtructed, that there needs no more be ſaid in general, only ſomething relating to the Author, and the Book, is requiſite.*

To the READER.

Sir WILLIAM JONES, *Eldeſt Son and Heir of* William Jones *Eſq; was born in the Year of our Lord* 1566. *at* Caſtelt-March *in the County of* Carnarvan, the Antient Seat of his Family.

His Education was at the Free-School at Beaumaris *in* Angleſey, *from whence at* 14 *Years of Age He was ſent to* Edmund Hall *in* Oxford, *where he continued Five Years, and then (being deſigned by his Father for the Study of the* Common Law,) *He was removed to* London, *and admitted of* Lincolns-Inne; *But before he came to reſide in that Society, He ſpent Two Years at* Furnivals Inne *according to the Courſe of thoſe Times.*

At the Age of One and Twenty Years he married Margaret *eldeſt Daughter to* Griffith John Griffith *Eſq; of* Kevenamulch

an

an Eminent Family in his own Countrey, whom he long Surviv'd, and Married afterwards Katherine *Relict of Doctor* Hovenden, *Warden of* All Souls Colledge *in* Oxford.

He left behind him by his first Wife a very numerous Issue, whereof the Male Line is now all extinct, and his Estate gone to Females. It must not be forgot that Charles Jones *Esq his second Son, was* Lent Reader *of* Lincolns Inne, *in the* 15th. *Year of King* Charles I. *where he had this singular Honour done him, that his Father (who was then a Judge,) argued his Case. But to return to our Author.*

He was Himself Lent Reader *in the* 13th. *Year of King* James, *and the Year following he was made Serjeant at Law, in order to the Chief Justiship of the* Kings Bench

in

in Ireland, *in which place he continued three Years, and then left it upon his own requeſt. In the* 19th. *Year of King* JAMES, *he was made one of the Juſtices of the* Common-Pleas *in the room of Sir* Auguſtine Nichols.

Upon the 20th. *day of* March *following, the King iſſued out his Commiſsion Special, to enquire into the State of Matters Eccleſiaſtical, and other Things relating to the Government of* Ireland, *Directed to the Lord Deputy, the Lord Chancellour, the Lord Arch-Biſhop of* ARMAGH, *and other Eminent Perſons, as well* Engliſh *as* Iriſh; *among whom Sir* WILLIAM JONES *by reaſon of his late Experience in Affairs of that Kingdom, was one of the* Quorum. *Theſe Commiſsioners having brought things to ſome perfection,*

perfection, and digeſted them into Articles, a ſecond Commiſsion was iſſued out in the 21ſt. *of King* James, *to a more reſtrained number, for putting the ſaid Articles in Execution.*

Immediately after our Author's return out of Ireland *from executing theſe Commiſsions, He was in* Mich. Term *the* 22d. *of King* James, *removed into the* Kings Bench, *where he continued the reſidue of his life, (not being ſollicitous after other Preferment, although every way qualified for the higheſt.) 'Tis Obſervable, that during the whole time He was a Judge in* England, *he never went any other but the* Oxford *Circuit.*

After he had ſat upon the ſeat of Judicature Two and Twenty Years, he died at his Houſe in Holbourn, *upon the* 9th. *of* December 1640. *in the end of the* 74th. *Year*

of

of his Age, having not added in all that time 200 *l.* per annum *to his Paternal Eſtate; and, expreſsly forbidding any Monument to be erected for him, lies buried by his own appointment under the Chappel at* Lincolns Inne.

The following Reports *contain the Caſes of greateſt Remarque which happened either in the* Common Pleas *or* Kings Bench, *during the time Sir* William Jones *was Judge in the ſaid Courts, which was from the* xviii *Year of King* James, *to the* xvi. *of King* Charles I. *Here is likewiſe Reported Three* Iter's, *together with the great Caſe in Parliament between the Earl of* Oxford, *and the Lord* Willoughby *of* Eresby, *not any where elſe Printed.* vide. P. 96.

The

To the READER.

The Learning and Judgement of the Author is ſufficiently known, and his exactneſs is ſuch, that he gives particular account where the Judges agreed, or differ'd in Opinion; and notes briefly the Reaſons upon which their Reſolutions did depend.

The Impreſsion is taken from the Judges own Hand-writing, which was very difficult to read, till maſter'd by Patience and Obſervation, and (as may be eaſily perceived) was not intended by him for the Preſs. The Manuſcript being lent to Serjeant Glinne *preſently after the Authors death, and by him appropriated to his own uſe, was the reaſon why it was no ſooner made Publick; and how he prized it, may be ſeen by the Notes made with his own Hand upon the Original Copy, and his Abridgement of the greateſt part thereof.*

Now

To the READER.

Now if it find the like acceptance with others, the Publiſhers have attained their deſired End, and the Memory of the Judge will be preſerved by this beſt ſort of Monument.

We

WE all, (Knowing the Great Learning, Wiſdom, and Integrity of the Author,) Do (for the Common Benefit) Approve and Allow the Publishing of this Book in the ſame Letter as now it is Printed.

Finch. C. S.
Matthew Hale,
Jo. Vaughan,
E. Turner,
Thomas Twiſden,
Chr. Turner,
Ri. Raynsford,
W. Wyld,
Tim. Littleton,
Hugh Wyndham,
Rob. Atkyns,
William Ellys,
Edw. Thurland,

Termino

Termino Sancti Michaelis *Anno XVIII.*
Jacobi *Regis in Communi Banco.*

Certeine

Caſes Queſtiones & Reſolves, en le *C. B.*

Et auter Courts, apres mon Re-venue de *IRELAND*,
Que fuit en le Terme de *Paſche* ; Anno

xviii Jacobi Regis,

Anno Domini, 1620.

ENter Matthew & Davies, le Caſe fuit tiel : Un Statute Marchant fuit conus en Glouceſter, en touts points accordant le Statute Savant, que nul jour de payment de l'argent fuit limit en le Statute & ceſt Statute fuit certeſie en Chancery, & ſur ceo apres returne en C. B. Et apres Extent agard hors del' Common Bank, & terres del' condition extende, & Harris move que le Statute Marchant fuit void, pur ceo que nul jour de payment fuit limit come l'Eſtatute de Acton Burnell limits: Et le preciſe forme d'Eſtatute doit eſtre obſerve, Jones dit e contra, car quant nul jour de payment eſt limit il eſt payable maintenant, & ſi l'Eſtatute ad eſtre fait deſtre paie meſme jour ceo fuit bon. Sed tout le Court e contra, que l'Eſtatute fuit void, & un Superſedeas fuit agarde d'Extent. Et ceo fuit Mich. 18 Jacobi. Sed vide puis e contra, ſur ſolemn argument, que le Statute fuit bon. Trin. 22 Jacobi. (1)

Cleabe *verſus* Wood.

(2) Action ſur le Caſe.

LE Plaintiff declare que il fuit ſeiſie d'un Meſuage & 20 Acres de terre en D. en Com. Hertford; a que il avoit common appurtenant en un Cloſe en Dale avandit, & auxi il avoit chympn per preſcription del' dit meaſon ultra le dit Cloſe en Dale avandit uſq; ville de Buntingford en dit County & ultra uſque al auter ville & Backagain & Defendant pleade non culpable & trove encontre luy & damage. Jones & Towſe move en Arreſt de Judgment, que viſne ne fuit bien agarde, il duiſſoit eſtre de Buntingford, l'auter Ville de Dale tantum, ſed tota Curia e contra pur ceo que le Defendant avoit plede non culpable, mes s'il ad traverſe le preſcription pur le chympn, dong; le viſne ſerroit de tout les villes accordant al 10 E. 4. Et Judgment done pro quer. Mich. 18 Jac.

6. 306.

William Wright *Plaintiff*, Gilbert Gerrard, Richard Hilderſham *Defendants*.

(3) Prohibition Hillary 15 *Jac. Rot.* 1510. Waller.

LE Prior & Covent de Hatfield Bradock in Com. Eſſex fuit ſeiſie in Fœ del' Rectory Impropriat de Hatfield Bradock, & de un Ferme, vocat Downall en le dit Pariſh hors de temps de memorie. Et le dit Priory eſteant un del' petit Monaſteries fuit diſſolve per le Statute de 4 Feb. 27 H. 8. & done al Roy H. 8. Le dit Roy 29 de ſon Raigne grant ceo pur le Dannor del' L. in Com. Bed. al Prioriſſa & Nunnes de Barking; apres le dit Prioriſſa & Nunnes 30 H. 8. ſurrender lour Monaſteries & lour poſſeſſions per fait enroll al Roy & donque vient le Statute de 31 H. 8. de Monaſteries, le Rectory fuit grant al Trinity Colledge en Cambridge que leſſa al Defendant. Et le Ferme fuit grant al J. que leſſa al William le Plaintiff & le Defendant ſua le Plaintiff en le Spiritual Court pur Cythes del' dit Ferme, le Plaintiff port Prohibition, & contain tout le dit matter en ſon Prohibition, ſur que le dit Defendant demurre, & ſur ſolemn argument del' Judges in ceſt Mich. Terme 18 Jac. Judgment fuit que conſultation ſerra agarde.

Hobart, Winche & Hutton argue encontre le Prohibition, ils reſolve que Impropriations fueront done al Roy per le Statute de 27 H. 8. pur divers reſons. (1.) Sont Cythes & Churches done al Roy per le dit Statute, & Church contein tout Fruits, & Profits, al ceo appendant. (2.) Mult des poſſeſſions del' petit meaſons conſiſt en Appropriation & le intent del' Statute fuit a doner le entire value & lour entire poſſeſſions al Roy. (3.) Prayres, Synodes & tiel choſes ſont reſerve al Eveſque queux ſont dueties queux belonge al Eveſque hors del' Rectory Impropriate. (4.) Il eſt un ſavant de droit de Strangers

auter

auter que les Doners, Founders & Patrons, & ſi le Appropriation ne fuit done donque le Appropriation fuit ale per diſſolution del' Corps a que il fuit appropriate & donque le Advowſon returne al primer Patron que ceo done al Priory: Et eſt un exception del' Patron & Donor que declare le entention del' Statute deſire que tiels Appropriations ne ſerront diſſolve, mes que ils ſerront done al Roy per le dit Act.

2. Fuit dit que ſi Appropriations ne fueront done al Roy per 27 H. 8. donque le Statute de 31 H. 8. ne eux helpe, mes ils ſerront diſappropriate car Appropriation eſt un Paſtoral Church que perpetually fuit done al un Spiritual Corpes. Et ceo eſteant diſſolve le Appropriation fuit ale come dit devant. Et le Eſtatute de 31 H. 8. fait tout Appropriations Lay Fee & nemy Appropriations & ils ne ſont unque preſentative neque Spiritual Function.

3. Le prochein point reſolve fuit, que un perpetuall Unity del' Eſgliſe, & terres, neſt aſcun diſcharge de diſmes per ſe, Et 27 H. 8. ne done aſcun diſcharge, mes done ſolment les poſſeſſions, come ils fueront en maynes le Abbott & ceo referre, al poſſeſſions, & nemy, al diſmes, hors de eux, queux ſont collaterall choſes; Ils ſont divers ſortz de diſcharge de diſmes. 1. Reall Compoſition, que un lay home poet aver. 2. Diſcharge per reaſon de order, come Ciſtercian ou tiels orders done al eux ſur le foundment ou apres. 3. Per Bull de Pape. 4. Per preſcription un lay Corps ne poet preſcribe deſire immunis del' payment de diſmes, & ceo eſt fait bon en Spiritual Corps per preſcription & per Hobart ſi apres le terre vient en lay maines, en ceo caſe le lay perſon prendra advantage del' dit preſcription: Et le 5. eſt un diſcharge del' payment de diſmes per 31 H. 8. Si le Statute de 31 H. 8. n'ad eſtre fait le perſonal diſcharge per reaſon de Order ou Bulls del' Pape ount eſtre diſcharge auxi pur ceo que perſons a queux ils fuerunt tye fuerunt diſſolve. Ideo a prevent ceo, le Statute de 31 H. 8. ordein, que lou aſcun Monaſteries fueront diſcharge de diſmes que en tiel Caſe le Roy tiendra les terres diſcharge auxi nient obſtant que les Corporations a que le dit privileges fueront graunt fueront diſſolve, mes il neſt aſcun clauſe al ceſt purpoſe en 27 H. 8. & ceſt Statute de 31 H. 8. ne extende al Monaſteries diſſolve per 27 H. 8. ideo ceo reſt ſur unity de poſſeſſion que neſt aſcun diſcharge per ſe de diſmes, & le reaſons q̃ le Act de 31 H. 8. ne extende al terre en queſtion eſt, pur ceo que le Statute ne intend a doner aſcun diſcharge, mes al ceux Monaſteries que vient al Roy apres 4 Feb. 27 H. 8. Et ceux terres en queſtion ne fueront al Roy deins ceſt temps. Et pur ceo que le terre en queſtion ne fueroit

done al Roy per le Statute de 31 H. 8. le diſcharge done per 31 H. 8. ne extende al eux come le Caſe de Green & Balſer Rep. Cooke Part 2. le Chanteries done al Roy per 1 E. 6. ne ſont diſcharges del' diſmes per 31 H. 8. & tout le clauſes del' 31 H. 8. que touch le poſſeſſions de Monaſteries ount relation al terres que vient al Roy apres 4 Feb. 27 H. 8. Et coment ceſt clauſe de diſcharge fuit en general tamen ceo avera relation al ditz terres queux fueront devant mention. Et auxi en ceſt clauſe il eſt parle del' dit Late Abbotts queux fueront le Abbotts mention devant en 31 H. 8. Et Juſtice Hutton cite un Judgment en Exchequer en 37 Eliz. entre Liver & Reade en le point; ſed Warberton e contra, primer il tient que impropriations ne fueront done al Roy per 27 H. 8. & ceo fuit ſupply per 31 H. 8. & ideo ceux impropriations eſteant done al Roy per 31 H. 8. le dit diſcharge extende al eux; ſecondly que le intention del' Ley del' 31 H. 8. fuit al doner equall diſcharge al l'un come al l'autre cibien al terres done per 27 H. 8. & 31 H. 8. Et ſur ceſt reaſon le Caſe de Spurlinge ſur le Statute pur le poſſeſſions de Jeruſalem fuit adjudge & 10 Eliz. reſolve accordant en Seignior Dyer; ſed conſultation fuit agarde.

Hellwayes & Archeveſque *de* Yorke & *al.*

(4) *Quare Impedit.*

SIr William Hellwayes Plaintiff, en un quare impedit verſus le Archeveſque de Yorke, Martin Taylor & Thomas Biſhop, & declare que Sir Jervaes Hellwayes ſon piere fuit ſeiſie en Fee del' Mannor de Sambley a que le Advowſon del' Eſgliſe de Babworth en Com. North, fuit append' & preſent George Turvyn, & apres fuit attaint de felony & pur ceo que le Mannor fuit tenus del' Roy il eſcheate al Roy ſur ſon mort, & le Roy per ſes Letters Patents, dated 7 Aprilis Anno Regni ſui 15 grant le Mannor & Advowſon al Plaintiff & Eſgliſe avoid per mort de Turvyn & apperteint a luy a preſent.

Le Archeveſque pleade, confeſſant le declaration, ſavant que il dit que le Roy preſent Biſhop que fuit inſtitute & induct, & traverſes abſque hoc que le Roy grant al Plaintiff ſur que le Plaintiff demurre.

Biſhop l'encumbent plede, que fuit perſona Imperſonata ex preſentatione Domini Regis, & plede que Sir Gervais Hellwayes fuit ſeiſie en Fee come en groſſe de advowſon & preſent Turwyn & confeſſe le Eſcheate al Roy, & Roy preſente luy & fuit inſtitute & induct & traverſe le appendancy & Plaintiff reply que Biſhop ne fuit eins ex preſentatione del' Roy ſur que Biſhop demurre. Martin Taylor plede que devant que Gervais Hellwayes avoit alcun choſe en le advowſon, un John Sydnam fuit ſeiſie en Fee del' Mannor & advow-

& advowſon & grant 3. prochein avoidance al un Ridney & Elenor ſa feme, & apres Eſglíſe void & Sydnam n'ayant droit preſent un Elſton & apres l'Eſglíſe devient void & George Hellwayes aiant le Mannor & Fee del' Advowſon uſurpando preſent Turvyn & apres Ridley mouſt & Elnor auri & Adminiſtration del' ſa biens committ al Martin Taylor le Defendant & Eſglíſe void & il preſent Biſhop ſur que le Plaintiff demurre, & en ceſt Terme de Michael 18 Jacobi, il fuit argue per les Juſtices, Primes, Hobart, Chief Juſtice Warburton, Winche & Hutton Juſtices tient le Plee del' Archeveſque nient bon, car al common ley le ſole Plee que Eveſque fuit a pleader; que il claime rien forſque inſtitution & deſtitution; mes il ne puiſſoit counterplede le title del' Plaintiff neque a pleader aſcun choſe al droit de Patronage car le Patronage fuit en le Patron, & le incumbent n'avoit riens en le Patronage & l'Eveſque n'avoit riens neque en Patronage neque a prender le profitz del' benefice; ſed ſolment admiſſion & inſtitution & deſtitution & ideo neque Eveſque neque le Incumbent al Common Ley puiſſoit counterplede le title del' Plaintiff neque a faire title al Advowſon, nient plus aſcun diſſeiſor in Aſſiſe ne pleadra al title del' terre & ideo il fuit miſcheivous pur le Incumbent, car ſi le Patron fuit noſme en le briet & conſeſs per covyn le Incumbent ſerroit ouſte, mes ſil ne fuit noſme l'encumbent puiſſoit abate le briet, mes lou le Roy preſent ou le Pape provide, ils ne puiſſoint eſtre noſme, ideo en ceſt caſe il ne fuit aſcun remedie pur le Incumbent, & il fuit auri miſcheivous pur le Eveſque quant il collats per laps il ne puiſſoit pleder pur defender ſon laps; ſed per l'Eſtatute de 25 E. 3. le Incumbent eſteant perſon imperſonata poet plede le title de ſon Patron & counterplede le title del' Plaintiff; Et l'Eveſque quant il collate per laps, mes en null autre Caſe il ne puiſſoit counterplede le title del' Plaintiff ou faire aſcun autre plee niſi come ordinary del' admiſſion & inſtitution, niſi il fait title a luy meſme al Patronage. Et ideo en le Caſe en queſtion, quant il counterplede le title del' Plaintiff ceo eſt pluis quam il poet faire vel per Common Ley ou Statute.

Fuit agree que l'Eveſque per le Common Ley ad poier de enquierr del' ability del' Clerke deins 6 moies & del' title & ſil ſoit doubtfull deſtre aſcertaine de ceo per jure Patronatus.

2. Touts les dit 4 Juſtices agree, que coment le Incumbent poet pleder le title del' ſon Patron quant il eſt eins de ſon Preſentation & induction, tamen quant il eſt eins al preſentment de Roy, il ne poet pleder le title del' aſcun autre Patron & ideo quant il luy inabler a pleder come perſona imperſonata al preſentment del' Roy; Et il pleder ſon title ou revera il neſt eins de ſon preſentment, le Plaintiff poet bien dira que il neſt eins de ſon preſentment

ment, & ouſter luy de ſon plea, & ideo en le caſe en queſtion le replication del' Plaintiff ſur le plea en barre del' Defendant Biſhop eſt bon.

3. Quant al plea del' Martyn le point eſt tiel; home ſeiſie d'un Advowſon appendant al un Mannor grant le 3 prochein avoidances & l'Egliſe devient void & le Grantor preſent & apres grant le Mannor & Advowſon al un auter & Egliſe void & le Grantee preſent' Et apres l'Egliſe devient void le 3 temps ou le Grantee del' 3 avoidance poet preſent ou nemy. Et Hobart, Winche & Warberton tient que il ne poet, car quant un Advowſon eſt grant pur 3 avoidances & ceſtuy in Reverſion preſent ceo eſt un uſurpation ſur le Grantee & miſte le 3 preſentment hors de poſſeſſion car eſt un entire intereſt; Et ſi 6 moies paſſe apres le preſentment le Grantee del' 3 avoidance eſt ſans remedie car il ne poet aver Quare impedit apres les 6 moies, & il ne poet aver breve de droit pur le feebleneſs de ſon eſtate & ceſt uſurpation neſt remedie per Weſt. 2. Et donque ſon droit eſteant remedileſs ſon droit eſt ale & ceſt reverſion ſeiſie en fee diſcharge del' ceſt grant & deins les 6 moies aiant uſurpe le intereſt ne continue devide en luy & s'il mourſt ſes Executors navera, mes le heire; car eſt drowne en le reverſion: come ſi Tenant pur vie ſoit diſſeiſie per ceſtuy en reverſion & devy ſeiſie ceo eſt deſcent del' Eſtate en Fee 9 H. 7. Et Huſſeys Caſe cite en Caſe Altonwood eſt, Tenant en Tayle Reverſion en le Roy & ambideux commit en le Roy, il eſt ſeiſie diſcharge del' primer Eſtate, iſſint Wyat & Auſtins Caſe 1. Marie Dyer, ou le Tenant en Tayle fiſt Leaſe pur ans, le Reverſion eſteant en Roy & apres fuit attaint del' Treaſon & le Roy avoit ambideux Eſtates le Roy tiendra en ſon prior Eſtate diſcharge del' Eſtate Tayle; & iſſint le Grantee en Reverſion eſt ſeiſie in Fee del' Advowſon & iſſint adjudge ſed Hutton e contra, car il tient que ils ſueront 3 ſeveral intereſts come ſi 3 ſeveral Grants ad eſtre fait.

Slade & Drake.

(5) Prohibition

SLade Plaintiff en Prohibition verſus Drake Defendant. Le Plaintiff en ſon Declaration ſur le Prohibition dit que le d'arrein Abbott of Newham in the County of Devon, fuit ſeiſie en fee del' certain terres deins le Pariſh de Axminſter en le dit County eſteant un Rectory appropriate de que le Defendant fuit fermour. Et que le dit Abbey tient ceo diſcharge de diſmes, & apres meſme le diſſolution vient del' Abbey per ſurrender & plede l'Eſtatute de 31 H. 8. Et que le Roy grant ceſt & vient al Seignior Peter que leſſa al Plaintiff Slade; & Drake luy ſue en Spiritual Court pur diſmes,

diſmes, ſur que Defendant demurre & adjudge que conſultation ſerra agarde: le ſole point fuit ou le declaration fuit bon ſolement a monſtrer que l'Abbot tient diſcharge de diſmes al temps de diſſolution ſans monſtrer coment, vel que il tient hors de temps de memory. Et Hobart, Hutton & Winche argue que le Declaration ne fuit bon, car il doit monſtre ou conteine coment. Car coment l'Eſtatute done diſcharge tamen pur pleading ceo eſt come fuit al Common Ley le partie doit particularment monſtre coment; ſed Warberton e contra, que ne beſoigne & Error port & pender; Quære de ceo.

Comes Clanricard *verſus* Comes Leiceſter.

LE Counte de Clanricard port brief de droit verſus le Counte de Leiceſter, & fuit returnable xv Paſche 18 Jac. & fuit return ſerve. Et pleges per le Viſcont & nemy que il fuiſt proclaim al huis d'Egliſe ſolong le forme de 31 Eliz. Al dit jour un eſſoin fuit ject pur le Tenant, & adjourne uſque xv. Michelmas, a quel jour le demandant port alias Summons al appear, & a reſponder al primer default, returnable le 15. Hill. 18 Jac. a quel jour le Tenant fuit eſſoin, & fuit move en Court per Harris que ne giſt, pur ceo que un former eſſoin fuit add car per l'Eſtatute de eſſoignes il eſt ordeine que nisi un eſſoigne ſoit allocate ſed Curia ſcilicet Warberton Winche & Hutton e contra, pur ceo que al primer jour le Tenant ne fuit compell pur appear, pur ceo que le brief ne fuit bien returne ſolonque l'Eſtatute nient plus quam ſi le Viſcont returne tarde & en ambideux les dit caſes ſi eſſoine giſt il eſt void & nient obſtant le eſſoine le demandant puis, viz. al 15 Paſche ſue Alias Summons. Et donque entant le primer Eſſoine ne fuit bien jeſt le ſecond Eſſoine eſt bien fait & per Curiam l'Eſſoine fuit adjudge & adjourne. Vide 10 E. 3. Eſſoine Fitzherbert 48. 20 E. 3. Eſſoine 24. 19. Aſſiſe. 21 E. 3. 54 & 18 Eliz. Dyer 252. (6)

Mytton & Lutwich.

JOhn Lutwich fuit ſeiſie en fee del' Mannor de Shipton en Com. Salop tenuz per ſervice de Chivalrie in Capite & de auters Hereditaments in Com. Salop & iſſint ſeiſie, per Indenture date 31 March 13 Jacobi pur un certain Summe de argent grante bargaine & vende le dit Mannor & hereditaments & reverſion del' ceo al William Ball a commencer del' Feaſt del' Annunciation darren paſt pur 3 ans, & per auter Indenture portant meſme le date Covenant ove le dit Ball & un Robert Rawlins que il levie fine al eux del' premiſes devant Pentecoſt enſuant, & que le dit fine & tout auter fines iſſint (7)

deſtre

deſtre levie per un le dit parties ſerroit al uſe John Lutwich en tayle & apres al uſe tiel perſon & perſons & tiel eſtate & limitation come il declare per ſon darrein volunt en eſcript le dit John Lutwich per Indenture date primo April 13 Jac. reherſe le dit primer Bargaine & Sale al Ball, grant & confirme al Lewis Prowde, & le dit Robert Rawlins le dit reverſion del' dit Mannor & Hereditaments en fee al uſe luy meſme en tayle & apres al uſe tiel perſon & perſons & de tiel Eſtate & ſur tiel limitation come il per ſon darrein, volunt en eſcript appoint, al quel grant le dit Ball le dit jour attorne, mes Ball ne entre en ceo; apres 15 Aprilis 13 Jacobi J. Lutwich fiſt ſon darrein volunt en eſcript & ceo publiſh in hæc verba; Whereas I have granted and confirmed to *Lewis Prowde* and *Robert Rawlins* the Reverſion, after a Leaſe made to *William Ball* ſhould be determined of, the Mannor of *Skipton*, and other hereditaments in the County of *Salop*, to the uſe of my ſelf and the heires of my Body; and, for default of ſuch Iſſue, then to the uſe of ſuch perſon and perſons, and of ſuch Eſtate, and under ſuch Limitation as I ſhould appoint by my laſt Will and Teſtament: Now mine intent is, that after my Deceaſe, without Iſſue of my Body lawfully begotten, that the ſaid Grant of the Reverſion ſhall be, and may, and the ſaid *Lewis Prowde* and *Robert Rawlins* ſhall ſtand and be ſeiſed thereof to the uſe of *Edward Mitton* for life, the remainder in taile to *Edward Weſton*, with other remainders in taile; and for default of ſuch iſſue, to *Lewis Prowde* and his heirs for ever, with power for *Edward Mitton* the Father to make Leaſes for 21 years. *William Ball* 21 *Apr.* 13 *Jacobi* did ſurrender the ſaid Indenture of Leaſe and all his Eſtate therein to *Lewis Prowde* and *Robert Rawlins*, and in Eaſter Term 13 *Jac. John Lutwich* levyed a Fine thereof al Robert Rawlins, & William Ball, J. Lutwich publiſh le dit volunt accord. 10 May, 13 Jac. J. Lutwich morust ſans heire de ſon Corps; tout ceo fuit trove per Office & le dit Tenure en Capite, & que Edward Lutwich fuit ſon Couſin & Heire & del' age de 40. ans, & ſur ceſt Office un doubt fuit conceive en le Court de Gards, & ſur ceo un Caſe fuit fait un avandit, & le Queſtion del' dit Caſe fuit ou le 2. part del' premiſſes diſcende al Edward Lutwich ou autrement tout ſoit bien convey al Edward Mitton. Et ceo fuit argue en Curia Wardorum in preſence del' 2 Chief Juſtices & Chief Baron en Mich. Term 18 Jac. per Jenkyns, pur Edward Lutwich, & per Jeffryes pro Defendant, & al auter jour per Wandisford, pro Lutwich, & per Moy Meſme pro Mitton en que le maine queſtion fuit ou quant bargaine & vende eſt fait pur ans, & devant l'entrie del' Bargainee le vendor grant le reverſion al auter en Fee & le Bargainee pur ans devant entre attorne ou ceo bon. 2. Du entant que un fine eſt levie apres le volunt & tamen il declare le uſe per le volunt ſur le grant de reverſion

ou

ou ceo fuit limitation del' uſe ſur eſtate en reverſion, ou auterment deviſe del' 2 parts del' terres, Et en ceſt terme del' Hillary le Reſolution del' Court fuit demand per Jeffryes, & Sir James Ley le Atturney deliver le reſolution del' Judges que per le Bargaine & Sale pur ans le vendee avoit un eſtate pur ans devide del' reverſion devant entre, & que un reverſion fuit en le vendor que per l'Atturnment del' vendee pur ans, & ſon grant fuit bien convey. 2. Ils reſolve que le grant del' reverſion & fine & le volunt eſteant direct per le Original agreement terrout al primer uſe, & le volunt eſt un limitation del' uſe ſur le primer conveiance & nemy deviſe del' 2 parts del' terre, & accordant al ceſt reſolution un Decree fuit fait pur Myrton que nul 3 part diſcende al Edward Lutwich & que le Roy ne fuit d'aver aſcun 3 part ou aſcun Livery del' dit terres.

Anonymus.

EN Ejectione firme peretur Leſſor de Plaintiff & alios tenants de Defendant un verdict fuit trove pur le Plaintiff pur 10 meſuages, 15 Acres de terre, 15 de pre & 20 de Paſture, & quant al reſidue non culpable, & ceſt verdict iſſint enter de Record le Judgment fuit que le Plaintiff recovera le Meſuages & greinder quantity de Acres que fuit en le verdict ſur que le Plaintiff port brief de error & aſſigne errors & ad Scire facias, & devant que le Defendant en brief d'error joine in nullo eſt Erratum, move en C. B. pur amendment del' Judgment en que 2 queſtions fueront fait, un ſcilicet que le temps apres aſſignment d'error fuit paſſe pur amendment (2.) que le Judgment eſt act del' Court & ideo ne poet eſtre amende ſed reſolve per 3 Juſtices abſente Hutton que le temps ne fuit paſſe cy long que un diminution poet eſtre alledge ou certiorari agarde ils poient amende. 2. Ceo eſt default del' Clerk que ne entre le Judgment ſolong, le verdict & ſur viewe de divers preſidents ils iſſint reſolve, ſur que le Record fuit amende.

(8) poſt. 199 421. Rolls 2 pl.

Hanſon *verſus* Norclit.

THomas Hanſon port Dett verſus Richard Ratcliffe & declare que le Plaintiff 17 Dec. 13 Jacobi demiſe al Defendant certein terres in Roſtrick in Com. Ebor. pur 9 anns rendant 40 s. Rent al Feaſt de Pentecoſt & St. Martyn, & pur 40 s. Rent arrear al Feaſt de Pentecoſt & St. Martyn 18 Jacobi il port Dett, le Defendant confeſſe le Leaſe, ſed plede ouſter que fuit un proviſo en le Leaſe que ſi rent ſoit arere al jour & per 40 jours apres, que le leas ſerroit void, & auxi il plede ouſter que rent al Feaſt de Pentecoſt 17 Jacobi

(9) Hlll. 18 Jac. C. B. Rott. 861. Gulſon

fuit arere & per 40 jours apres & ideo le Leaſe devient void & demand Judgment ſi Action. Et le Plaintiff demurre & fuit reſolve per Curiam que en ceſt caſe le Leaſe ne fuit void ſans demand coment que ne fuit pay al jour. Et 2 il beſoigne al partie que defeat le Leaſe a pleder le demand, Et le Defendant en ceſt caſe duiſſoit ceo faire; pur que Judgment fuit done pro Quer. Et auter tiel Judgment meſme Terme done en Caſe d'un Palme. Jeo fui de Counſell ove le dit Hanſon le Plaintiff.

Aubrey *verſus* Seignior Bridgewater.

(10) M. 18 Jac. Rot. 2733. Brownlowe

Aubrey & ſa feme Adminiſtratorꝛs del' biens del' Nowghton nient adminiſters ſue Judgment de 300 l. ewe per Nowghton verſus le Counte de Derby; & le Counte de Bridgewater & Anne ſa feme fueront returne terre Tenants del' Mannorꝛ de B. & Hulſe in Com. Northampton. Et ils vient eins & plede que Henry le 7. fuit ſeiſie le dit Mannorꝛ en Fee & done ceo al George Seignior Strange, & al Heirs Males de ſon Corps, & de luy deſcende al Thomas ſon Fits, Et de luy al Ferdinando q̃ apres moriant ſans iſſue male ceo diſcende al Will. Counte de Derby come iſſue male que per fine convey al Cotton & Chulbyn al uſe Seignior Bridgewater & Anne ſa feme, Et demande Judgment ſur que le Plaintiffs replie; ils confeſs le done en tayle & le diſcent al Thomas & que il eſteant ſeiſie en tayle l'Eveſque de Ely & auter port briefe de Entre verſus luy & il vouche le common vouchee & Judgment Ewe accordant que fuit al uſe le dit Thomas, & ſes heires, & ceo fuit 6 H. 8. Et plede que Thomas enter Secundum Recuperationem prædict. & fuit ſeiſie en fee, & plede le diſcent del' Thomas al Edward, & de luy al Henry, & de luy al Ferdinando en fee, le Defendant replie que le dit recovery ne fuit execute ſur que le Plaintiff demurre: & ſur motion le opinion del' Court, encounter le Plaintiff fuit car le Judgment ſans execution ne alter l'Eſtate ſed en le interim tanque execute le Tenant en tayle continue ſeiſie en tayle, & iſſint il diſcend al iſſue & l'iſſue tanque execution ſue, avoidera tout charges fait per Tenant en tayle, mes quant apres le recoverꝛ ſue execution donque le charge ſerra revive. (2) Il ne fuit aſcun bon execution plede icy, pur ceo il eſt plede que ceſtuy que uſe enter & neſt dit ou ceo fuit per le recovery, & auri il ne poet enter ſur luy meſme, & auri il eſt plede, que il fuit ſeiſie en fee, & ceo il ne poet per vertue del' recovery, ſed ſolment del' uſe eſteant devant 27 H. 8. per que le Plaintiff perceivant le opinion del' Court per licence del' Court diſcontinue ſon ſute.

Godard

Godard *verſus* Gilbert.

GOdard port Action ſur le Caſe verſus Gilbert pur diſant, Thou art a Thief, and haſt ſtollen four Cart loads of my Furzes, & trove pur Plaintiff & en arreſt de Judgment, fuit dit que Action ne gift, car coment d'appeller un Thief per ſe voloit porter Action, tamen quant le dit parol eſtjoine ove autres parols que ne import Felony, Action ne gift, & cy poet eſtre entende que le biens fueront creſſant, & iſſint null Felony, & le pluis melior ſerra priſe en deſtruction del' action & ideo per Curiam nihil capiat per billam. Vide Arys & Higgins Caſe M. 21 Jac. (11)

Sir George Savile *verſus* Thornton.

SIr George Savile port Quare impedit luy a preſenter al Eſgliſe de Barrogly alias Baroughly en Com. Linc. verſus Eveſque de Lincolne & Richard Thornton, & declare que ſeiſie en fee, & en groſſe del' Advowſon & preſent James Thornton que fuit inſtitute & induct al ſon preſentment & Eſgliſe devient voide per ſon mort per que il appertient a luy a preſenter. (12)

Eveſque claime riens mes come Ordinary & le Defendant Thornton plede come Encumbent que il fuit eins de preſentment de John Thornton exiſtens en plein vie & plede en barre que William Parla ultimus Prior de Eye in Com. Suffolke fuit ſeiſie del' advowſon & preſent Thomas Golding a ceo que fuit inſtitute & induct, & apres grant le prochein avoidance al Nich. Eveſque de Norwich & apres vient le Statute de 27 H. 8. per que le dit Priory eſteant deſouth 200 l. fuit done al Roy H. 8. per que ſeiſie del' advowſon & de luy diſcende al E. 6. & de luy al Royne Mary & de luy al Royne Elizabeth, per que ſeiſie en droit Corone & donque le Grantee des prochein avoidance preſent Dickenſon, & puis Eſgliſe devient voide & le Royne Elizabeth eſteant iſſint ſeiſie preſent Buttry, que fuit admit inſtitute & induct, & apres il fuit deprive, & donque le Royne preſent King que fuit inſtitute & induct, & Eſgliſe devient voide per ſon mort. Et Sir George Savile Plaintiff per uſurpation preſent le dit James Thornton que fuit inſtitute & induct & donque le Royne Elizabeth mort & le advowſon diſcende al Roy James, que grant le prochein avoidance al dit John Thornton, & le Eſgliſe devient void per mort James Thornton, & le dit John Thornton preſent le dit Richard Thornton que fuit inſtitute & induct. Et eſt Perſona Imperſonata ex Preſentatione John Thornton, & ideo demande Judgment.

S.C. Co: Jac: 65
Palm: 30
Winch 13

Le Plaintiff prist per protestation le seisin del' Royne Mary & discent al Royne Eliz. & son seisin & le discent al Roy James & son grant, mes confess le seisin del' H. 8. & le discent al Roy E. 6. Et son seisin mes dit ouster que le Roy Ed. 6. grant ceo en fee al Sir Thomas Wyat que grant omne jus apres al Henry Savile & sa feme & al heires Savile & apres il plede le mort del' Henry Savile, & sa feme & le discent del' Advowson a luy en fee & apres Eglise devient void per mort Dickenson. Et remaine void per 18 Moies & le Royne Elizabeth per laps present Buttry. Et Eglise esteant void per son deprivation per prædictam presentationem le Roy present luy que fuit institute & induct, & apres l'Eglise devient void per son mort & Sir George Savile present le dit James Thornton q̃ fuit institute & induct, & il mourst & l'Eglise esteant void per son mort il present & fuit disturbe Absque hoc quod le dit E. 6. mourst seisie del' Advowson modo & forma & le Defendant demurre in Ley. Primerment pur ceo que le protestation ne fuit bon; 2. que le traverse est superfluous. 3. Que le presentation del' Royne Eliz. ne fuit bien confesse & avoid. Et adjudge pro Quer. car le grant del' Roy E. 6. prove prima facie que ne mourst seisie & ideo ceo doit estre traverse, mes Vernons Case, 22 Eliz. Dyer 266. la le murrant seisie confesse & il plede devise & ne besoigne a traverse le discent. 2. Il fuit tenust per Curiam le presentation del' Roy bien confess per disant que fuit per laps, car nest alledge en certein que le Royne present come veray Patron, mes solment que est seisie en droit de Coyone & issint seisie present generalment sans dire un voy ou l'auter & donque il fuit bien avoid per disant que ne fuit per laps. 3. Il fuit move que le presentation de Sir George Savile & son mort mitter le Roy hors del' possession issint que le Roy ne poet grant le use tanque il ad re-continue le Advowson, sed le Court ne deliver aucun opinion sur cest point sed pur l'auter points le Judgment done pro Quer. & jeo fui de Counsell pur le Plaintiff & argue le Case.

I was Sworn Judge of the *Common-Pleas* October 27. Anno Domini 1621.

Grisel & Leighe.

(13)

EN Trespas perenter Grisell & Sir Thomas Leighe fuit resolve & adjudge per Curiam que si un fuit seisie d'un Mannor & le Tenants ount common en le wast del' Mannor & le Roy grant Warren al Seignior en tiel division del' Mannor, que le Seignior ne poet use sa Warren & mitter Conies en le wast en prejudice del' Commons.

Kinaston

Kinaſton *verſus* Lloyd.

(14) KInaſton ſuit Plaintiff en office de Pleas en Scaccario en Ejectione firmæ verſus Thomas Lloyd & auters Defendants pur terres en Bodley in Com. Denbigh & ſur ſpecial verdict le caſe ſuit come enſuit. Que David ap Richard fuit ſeiſie en fee de terres del' value de 20 l. per annum & in conſideration de Marriage de Margaret ſa file al John Kinaſton & 115 l. pay per John Kinaſton convey le terres al uſe luy meſme pur vie remainder al John & Margaret en tayle remainder al Margaret en tayle remainder en fee al droit heires del' David & Margaret & John ayant iſſue Andrew Kinaſton & David & John mourſt & Margaret Marie Thomas Lloyd le Defendant & ils leviont fine & Andrew Kinaſton enteroit pretendant que l'Eſtate fuit forfeit per 11 H. 7. & leſſa al Plaintiff Defendant luy ouſt; le caſe al barre fuit argue pro quer. per Glanvil & Jeffryes & del' part del' Defendant per Jones & Crooke & apres en le Terme de Mich. 19 Jacobi le Chief Baron & tout Barons una voce reſolve ceſt eſtate fuit hors del' Statute de 11 H. 7. car fuit le Terre movant del' Peire del' feme & le argument e contra fuit done l'intereſt que le Baron ad & ſans argument del' Judges Judgment fuit done pro Defend.

Joliffe & Brode.

(15) JOliffe port Action ſur le caſe verſus Brode en Banco Regis & declare q̃ le Plaintiff & Defendant fueront 2 Mercers & inhabitont en Newport en le Iſle de Weight & Plaintiff avoit bon Merchandable Wares & le Defendant ould & Male Wares en conſideration que Plaintiff ema le dit Wares del' Defendant il aſſume ne unques apres a keep Shop en le dit ville & que il ema accordant & encounter ſon promiſe Defendant Cuſtode un ſhop & il receive 40 l. & adjudge pro quer. & le Defendant Brode port erroꝛ & per tout les Juſtices (Tanfield except que ne dit vers ceo) il fuit agree que le aſſumpſit fuit bon pur ceo que per ſon volunt & pur profit home poet decede de ſon trade & ceſt ſemble al 2 H. 5. Ils auri citant le caſe de Taylours de Ipſwich, Coke pars 11. fol. 54. & ſur ceo Judgment fuit affirme.

Polhill *verſus* Cate.

(16) POlhill contre Cate en B. le Roy & apres Cate port error en Camera Scaccarii & le dit briefe fuit diſcontinue apres le record certifie & apres il port briefe de Error coram vobis reſidet in Camera Scaccarii, & per touts il fuit reſolve que ne giſt pur ceo que le briefe d'error eſt done per 27 Eliz. en ſpecial manner, ſcilicet, al affirme & reverſe le Judgment, & le execution del' Judgment eſt refer al B. le Roy. Et ideo nullum coram vobis reſidet giſt, ſed ſur diſcontinuance ou miſcontinuance le tranſcript del' Record remande al B. le Roy & fuit reſemble al caſe de briefe d'error ſur 31 E. 3. en Camera Scaccarii ſur Judgment done en Scaccario ou nul briefe ſur diſcontinuance giſt coram vobis reſidet, ſed novel briefe d'error & pur ceo vide Walſinghams Caſe.

Termino

Termino Hill. An. XX. Jacobi Regis *in* Camera Scaccarii.

S. C. Cro: Ja: 459 Palm: 46.

Child & Bailye & *auters.*

JOhn Childe Plaintiff en brief de Erroꝛ verſus Oliver Baylie & auters Defendants de reverſer Judgment vers luy done en B. le Roy en que il fuit Plaintiff & le caſe fuit come enſuiſt. William Heath fuit poſſeſs pur 76. ans del' Mannoꝛ de Allchurch en Com. Wygorne del' leaſe de Eveſq; de Wygorne confirme per Deane & Chapter, il demiſe ceo pur ans apres ſon moꝛt ſi ſa feme vivera cy long, & apres il deviſe le reſidue del' terme al William ſon fits provided que ſi William ſon fits moruſt durant vie Thomas ſon fits ſans iſſue de ſon corps que donque Thomas avera ceo; William moꝛuſt durant vie de Thomas ſans iſſue, & le ſole queſtion fuit ou le deviſe al Thomas fuit bon, & adjudge per totam Curiam en B. le Roy que le deviſe del' remainder del' terme al Thomas fuit void, & touts les Juſtices de Common Bank eſteant quatuoꝛ & Barons del' Exchequer præter Tanfield & Denham tient que le deviſe del' remainder fuit male en argument de quel Lewckners Caſe en Eſchequer fuit admit & agree deſtre leꝛ ſcilicet que deviſe de terme al un & heires males de ſon coꝛps & s'il moꝛuſt ſans heires males de coꝛps le remainder al auter que ceſt remainder fuit void & coment icy le limitation del' remainder fuit ſur moꝛt del' William devant moꝛt de Thomas ſans iſſue ceo ne fuit difference & ils diont que ils ne voilent queſtion Lampitts Caſe & Mannings Caſe neque ils voilent extende ceux al aſcun auter caſe que varie de ceux nec done aſcun latitude al ceux caſes: Sed Tanfield fuit e contra & ceo nient obſtant le priner Judgment fuit affirme iſſint que 10 fueront pur le Judgment 4 en B. le Roy, & 6 pluis en Exchequer. Denham & Tanfield ſoliment e contra. (1)

1 Salk: 225. pl: 3 Vide ſ. Cey

Sur evidence in Ejectione firme perenter Leventhorp & Aſhby pur le Rectoꝛy de en Com. Hereford le caſe fuit tiel. Leſſee pur ans deviſe ceo al ſes Executoꝛs pur 7 anns & le reſidue del' terme al Thomas Leventhorp ſon fits & al Heires Males de ſon Coꝛps

Corps & ſi moruſt ſans iſſue Vale le remainder al J. S. ſon fits & agree clærement per Jones Barkeley & Crooke que Thomas ad abſolute eſtate en le terme, & le remainder void; Et il morant ſans iſſue Vales ne done ceo al Remainder en le terme. Paſchæ 11 Caroli. B. le Roy.

Berry & Nevys.

(2) EN brief de Error in Camera Scaccarii enter Berry & Nevys Defendant ſur Judgment done verſus baron & feme de trover & converſion fuit agree per tout que le feme ne poet convert. Et ideo le Action doit eſtre verſus baron ſole & ideo ſur ceo Judgment fuit reverſe.

Fawcett *verſus* Carter.

(3) JOhn Fawcett Executor del' Henry Seint-Johns port brief de Error verſus Robert Carter de reverſer Judgment en B. le Roy. Robert ad port Action ſur le caſe verſus Henry Seint-Johns & declare que en conſideration de 4 l. pay per le dit Robert al Henry il aſſume & promiſe a deliver un obligation de 100 l. en que Carter fuit oblige al Henry & pur non-deliverance il port Action ſur le caſe verſus Executor & avoit Judgment. Et le ſole queſtion fuit ou Action ſur le caſe ſur collaterall promiſe fait per Teſtator giſt vers Executor, Tanfield inſiſt ſur preſident en temps Eliz. en B. le Roy que ne giſt ſed tout auters vers luy & divers preſidents en temps Roy Jac. ou fuit adjudge que Action giſt & accordant al ceux darrein preſidents le primer Judgment fuit affirme. Entr' Terme Mich. 19 Jac.

Vide 35 Eliz. en le Caſe de Hughes vers Robotham report per Popham fol. 20. le opinion de Popham & touts le Juſtices del' common B. & Barons de Exchequer agree ove Tanfield.

Termino Hill. XX. *Jac. in* Communi Banco.

Hovell *verſus* Augur.

(4) *Brownlowe H. 18. Jac. in C. B. Rot. 281.* NOell Hovell port Action de Treſpas vers John Augur pur enfriender ſon Cloſe en Framingham en Com. Norfolke & ſur un ſpecial verdict trove le caſe fuit que Thomas Hovell fuit ſeiſie de terres en Wemley & Framingham avandit & avoit Iſſue le Plaintiff ſon eigne fits & John ſon ſecond fits & deviſe touts les terres al ſa feme pur vie & deviſe le terre en Wenly al Plaintiff & ſes heires ſur condition enſuant & le terres en Framingham apres mort ſa feme

al John & ſes heires diſont le condition enſuant & deviſe diverſe legacies deſtre pay per le fits & apres il deviſe q̃ ſi aſcun del' dits fits mozuſt devant le Legacies paie ou aſcun entrie per eux en le terre, que ſon part alera al Survivour; & apres mozt le Plaintiff per ſon fait releaſe tout dzoit & demand al J. H. & ſes heires & que J. mozuſt devant entrie ou Legacy pay le feme mozuſt John auxi enter en le terre en Framingham en dzoit del' heire del' J. & le Plaintiff luy ouſte & John re-enter & ſur ceo le Plaintiff pozt Treſpas: adjudge que ne gilt. Fueront 2 points ſcilicet ou un Fee ſimple poet eſtre ſur limitation & per volunt auter Fee ſimple deviſe ſur ceo, a quel point tout les Judges decline adire aſcun choſe, mes en caſe il fuit condition pur q̃ l'eigne enter & eſteant condition per ſon releſ il fuit extinct. 2: Mes poſito que un Fee ſimple in contingency ſur le primer Fee ſimple al John, tamen per ſon releaſe ceo fuit extinct, car eſt title en contingency coment que ne fuit title veſted & ne differt de Lampetts Caſe Cooke pars 10. & ceo eſt pluis ſtronger, car eſt un garranty en le caſe, & ceo fuit l'opinion de touts les 4 Juſtices & deliver apartment en Court per Seignior Hobart & Judgment done accozdant.

Standen & *alii verſus* Univerſity d'Oxon & Whitton.

(5) *Quare Impedit.*

William Standen, Thomas Haward & George Duncumbe poztant Quare impedit verſus l'Eveſque de Wintone le Chancellor Maſter & Schollers del' Univerſity d'Oxon & William Whitton pur eux diſturber a preſentment al Eſgliſe de Merowe alias Marowe en Com. Surrey & ils declare que Sir Richard Weſton Chivaler fuit ſeiſie en Fee ut en groſſe del' advowſon del' dit Eſgliſe & preſent un Robert Barry que fuit inſtitute al ſon preſentment & apres que il convey ceo al uſe luy meſme pur vie remainder al Richard Weſton ſon fits en tayle & il mozuſt & ils rehers l'Eſtatute de 23 Eliz. de forfeit de 20 l. per menſem pur non aler al Eſgliſe & l'Eſtatute de 28 Eliz. que done 2 part del' terres reculant al Roy & monſtrant le forme de conviction & l'Eſtatute de 3 Jac. Cap. 4. que done poier al Roy pur refuſer le 20 l. per moies & a prender 2 parts del' terres de reculants, & ouſter que le dit Richard Weſton le fits in Jan: 11 Jac. fuit endite al Seſſions al Newgate pur 3 moies reculancy & proclaim ſolonque le Statute & q̃ al prochein Gaole delivery la tent 18 Feb. enſuant il ne rendzoit ſon Cozps ideo fuit adonque convict, per q̃ 22 Feb. 11 Jac. un Commiſſion deſouth le grand Seale iſſuiſt a certein Commiſſioners pur inquirer del' ſes terres, per q̃ fuit trove que il fuit ſeiſie inter alia de ceſt advowſon & ceo & auters terres fueront ſeiſie al uſe le Roy pur ſon 2 part & le Commiſſion returne en Terme de Paſche enſuant apres en Trin. Terme enſuant le Roy

deſouth ſon grand Seale grant l'Advowſon al un Cotton que per fait grant ceo al Plaintiff & le Eſgliſe devient void per mort Barrie per que il appertient al eux a preſent & ils averre le vie de Richard Weſton, & que il continue perpetual recuſant & auter neceſſary averments.

L'Eveſque claim riens niſi come Ordinary & le Univerſity & Whitton pleadont ſeverall Pleas tout al un purpoſe, ſcilicet, confeſſant le ſeiſin del' Sir Richard Weſton & le conveyance en tayle al ſon fits & tout le dit Statute & le conviction & le Commiſſion & Inquiſition ſur ceo; ſed ils plede ouſter le branch del' Statute de 3 Jac. Cap. 5. que diſable recuſant convict a preſenter vel a granter le prochein avoidance, & que ceo fuit done al Univerſitie d'Oxon, & ideo per mort de Barrey il appertient al Univerſity a preſent & ils preſenter Whitton l'auter Defendant que fuit inſtitute & demand Judgment del' Action & ſur ceux ſeverall barres le Plaintiffs demurront, & fuit ſolemnment argue al barre & ceſt Terme de St. Hillary 20 Jac. il fuit argue al Bench per 2 del' Juſtices ſcilicet Hutton & Jones.

Jones argue pro quer. & il devide le caſe al Declaration & al barre del' Defendant & ſur le Declaration 2 queſtions ſurdont. 1. Du un advowſon ſoit ſeiſable pur Roy per l'Eſtatutes de 28 Eliz. & 3 Jac. 2. Admitte que ſoit ſeiſable ou le ſeiſure fuit fait en bon temps & ſolonque le forme preſcribe per l'Eſtatute; & en le barre un ſole materiall queſtion, ſcilicet, un home ſeiſie inter alia d'un advowſon en groſſe devient recuſant convict, & apres le Roy ſeiſie le advowſon come part del' ſes 2 parts & l'Eſgliſe devient void ou en ceſt caſe le Roy ou ſon grantor preſentera ou auterment le Univerſity avera ceo per l'Eſtatute 3 Jac. Cap. 5. & il tient le Declaration bon & le barre inſufficient & que Judgment doit eſtre done pro quer.

Et primes il commence ove le Plee en barre, car ſi ceo fuit bon donque coment le Declaration bon non refert, car ils doit eſtre barre quomodocunq; mes coment le barre male, tamen ſi Declaration ne fuit bon le Plaintiffs doient eſtre barre.

Le matter del' barre reſt ſur 2 Statutes l'un de 3 Jac. Cap. 4. l'auter fait meſme Parliament Cap. 5. l'Eſtatute Cap. 4. done poiar al Roy al ſeiſie deux parties del' terres recuſants. Et Cap. 5. diſable recuſant a preſenter vel a granter le prochein avoidance & done ceo al Univerſity.

En que eſt a conſider ou per l'expreſſe parolls del' Statute Cap. 5. ceſt preſentation ſoit done al Univerſity ou nemy. 2 admit que fuit done per expreſſe parolls tamen ou ceo per intention del' Statute fuit done.

Le

Le primer point devide luy meſme al 2 parts ſur 2 branches del' Statute, l'un diſable le reculant a preſent, l'auter diſable reculant pur grant prochein avoidance.

Le primer branch fiſt le diſability cy longe que le Patron ſerra reculant convict ſed que le Roy ſeiſie le advowſon ou le Patron neſt reculant, car le Roy eſt Patron pro tempore, ideo per parolls del' Statute le Univerſity navera ceo; car il tient que ſi home fuit Patron d'un Eſgliſe & devient reculant que en ceo caſe ſi le reculancy fuit remove del' dit Patron per ſon conformity vel ſi le Patronage fuit remove de luy coment il continue reculant en ceſt caſe per les parolls del' Statute le Univerſitie ad perde lour preſentment, car le Statute done ſolment un limited eſtate al eux, ſcilicet, cy longe que reculant ſerra Patron, ou que le Patron ſerra reculant, que eſt tout un & convertible; ideo ſi le Patron reculant grant le Patronage en fee al auter, en ceo caſe le Univerſitie navera le preſentment iſſint en meſme le manner s'il grant en tayle pur vie ou pur ans durant le continuance del' grant il neſt Patron en poſſeſſion ideo le Univerſitie per tiels parolls del' Statute ne preſentera. Et le 2 branch del' Statute ceo proove, ſi un Patron grant prochein avoidance eſteant reculant per le primer part del' Statute le Univerſity ne poet preſent, ideo a ceo preſent le 2 branche del' Statute fuit fait que ceſt grant de avoidance ne eux barra ſed eſt fait void vers eux, & ſi per le primer branch le Univerſity puiſſoit preſent guard un grant de prochein avoidance eſt fait per reculant ceſt 2 branch ad eſtre ſuperfluous, ſed le feſoys del' Statute intende que le primer part ne voilt ſerve ideo ils adde ceſt 2 branch; & eſt un auter branch en 3 Jac. cap. 5. que ſi un fuit ſeiſie en Chivalry & deveignant reculant en ceo caſe ſi Guard eſchies le Seignior eſt diſable eſtre Guardian, mes s'il grant le Seigniory al un nient eſteant reculant le grantee avera ceo, car le cauſe remove, & la un reculant neſt Gardein quant le Seigniory eſt remove al un auter.

2. Ceſt caſe eſt hoys del' 2 branche vi Termini ſcilicet que fiſt grant de prochein avoidance void & done le preſentment al Univerſity; primerment un grant en fee eſt hoys del' ceſt branche, car ceo eſt pluis quam grant de prochein avoidance, iſſint grant de advowſon pur vie ou pur ans eſt auri hoys del' parolls del' ceſt branche, car poet eſtre que mult avoidance eſchue devant les ans ou vie & poet que null; ideo neſt expreſſe grant del' alcun avoidance ſi un advowſon fuit grant pur ans, le Patronage pur ans eſt en le grantee & il poet accept un releaſe en fee del' Patron en fee, mes ſi un ou deux ou trois avoidances fueront grant le Patronage neſt lever neq; poet tiel grantee accept d'un releaſe en fee del' Patron en fee, ſed admit que grant pur ans d'un advowſon fuit deins les pa-

rolls del' ceſt branche tamen en le caſe en queſtion eſt auterment, car le ſecond reſon eſt valde fort, ſcilicet ceſt ſeiſure que le Roy fiſt del' ceſt Advowſon pur le recuſancy del' Patron neſt aſcun done ou grant del' recuſancy ſed un forfeture que le Roy ad per ceſt Statute; ideo ſi un ad Advowſon & grant al un pur vie ſur condition que il ne grant le prochein avoidance il devient recuſant & le Roy ſeiſie ceo neſt breach del' condition, car neſt grant & ceo prove 17 Eliz. Dyer. Seignior Arundells caſe done en tayle ſur condition que le grantee ne alienera; il commit Treſon & eſt attaint & le Roy ne ceo ſeiſie ceo neſt breach del' condition; Et en noſtre caſe ſi un recuſant fuit attaint de Treſon ou Premunire ou utlage en perſonall Action neſt grant del advowſon & le Univerſity ne preſentera.

Le 2 maine doubt; admitte que ceſt ſeiſure per le Roy fuit deins les parolls del' 3 Jac. cap. 5. & per les parolls done al Univerſity, tamen per equitie & intention del' Statute il ſerra hors del' Statute & nemy done al Univerſity.

Le intention del' keſors del' Statute & le miſchiefs queux ils intend a remedie ſont les rules per que choſes ſont deſtre interpret deſtre aſcun foits deins l'Eſtatute, coment le parolls ne extende & aſcun foites deſtre hors del' Statute, coment deins le letter del' ley.

Le inteution del' Statute 3 Jac. fuit a ſupply l'Eſgliſe ove un Incumbent nient Popiſh ideo ils intendant que un recuſant non voilet preſent cy bien affect en Religion ou que ſon grantee de prochein avoidance voilet preſent tiel que il appoint. Et a preſenter ceo ils diſable recuſant a preſenter tiel ou grant le prochein avoidance.

Si ceſt miſchief fuit remove donque il eſt hors del' intention del' Statute ideo quant le Patronage fuit remove del' recuſant al auter en fee, ou en tayle, ou pur vie que neſt recuſant ceo eſt hors del' intention del' Statute & per conſequence hors del' Statute niſi ceo fuit per covyn del' recuſant; ſed ſi tiel grant fuit per covyn il done ceo al Univerſity, ſed un covyn ne ſerra intende niſi fuit averre.

Come en le caſe de Chancellor d'Oxon report Cook pars 10. ou home grant prochein avoidance & apres devient recuſant le Univerſitie preſent, mes ſi devient recuſant per covyn eſt auterment; ſed ceo doit eſtre averre iſſint e contra ſi l'Advowſon fuit grant en fee il eſt hors del' Statute, mes ſi ceo fuit per covyn il ſerra done, car eſt en equall miſchief.

Et en meſme caſe il eſt cleere hors del' Statute pur 6 ſeverall reſons.

1. Grant

1. Grant le Roy ſeiſie le advowſon pur le Recuſancy del' Patron ceo eſt hors del' intention pur ceo que le Roy eſteant le Defendor du foy & Supreme Teſte del' Eſgliſe doilt aver meliox cure que aſcun auter a preſenter home pure en Religion ideo le ſeiſure del' Roy ſerra hors del' intention del' Statute.

Si ſon recuſant fuit Seignior en Chivalry & apres le Roy ſeiſie le advowſon come part del' ſon 2 part la prochein amy navera le guard que autrement il averoit per ceſt act s'il ad remaine en maines de recuſant, car eſt hors del' intention del' Act.

2. Reaſon, l'intention del' ceſt act fuit pur reſtrainer le voluntary act del' recuſant ſcilicet a preſenter ou pur granter prochein avoidance ſed ceſt ſeiſure neſt le voluntary act del' recuſant ſed il eſt Patiens potius quam Agens, car coment le recuſancy fuit le voluntary act del' partie tamen le conviction & le ſeiſure pur le Roy ſur ceo neſt ſon act, ideo auxi hors del' intention del' Statute.

3. Reaſon, ceſt Statute diſable recuſant convict a preſenter iſſint le title del' Univerſity ne commence tanque apres le conviction, mes title le Roy commence ſur le recuſancy de aler al Eſgliſe & 20l. per mois done a luy & le conviction eſt ſubſequent, & en lieu del' 20 l. per moies le ſeiſure done al Roy & iſſint le title le Roy eſt eigne al title del' Univerſity vel al meines commence a meſme le temps, ideo title le Roy ſerra preferre. Dame Hales caſe Comment' Plowden Baron & Feme fuit tenant pur ans le Baron deveignant felo de ſe, le Roy avera tout le title del' Feme per mort ſed comment le title del' Roy fuit per le ſtroke done uncore il commence al meſme temps ſcilicet le mort.

4. Reaſon le title del' Roy eſt done per Act de Parliament, ſcilicet 3 Jac. cap. 4. ideo ceſt title ne ſerra devell de luy per auter Act de Parliament niſi fuit expreſſe mention del' title del' Roy & per expreſſe termes done al auter.

Sed voier eſt ſi Roy fait done en tayle ſon ſucceſſor eſt lie per Statute de Weſt. 2. come eſt tenus en Wilts & Barkleys caſe en le Commentaries Plowden iſſint en caſe de Magdalen Colledge Reports Cook pars 11. Le Roy en lie per Statute de 13 Eliz. car la le Roy eſt barre a faire tort, mes lou le Roy eſt in title al aſcun intereſt en property ceo ne poet eſtre toll de luy ſans ſpeciall mention en le Statute & ceſt diſtinction eſt allowe en le dit Caſe de Magdalen Colledge.

L'Eſtatute de Weſt. 2 ordein que plenarty per 6 moies barra le partie que ad droit ſed ceo ne barra le Roy, car neſt expreſſe noſme en le Statute iſſint nul Statute de limitation barra luy, car ſon prerogative nullum tempus occurrit Regi, ne ſerra toll per un generall Statute.

5. Ceux

5. Ceux deux Statutes ſont fait al meſme Parliament & null de eux avera prioity del' auter, car ſoint fait al un jour & inſtant & ont relation cheſcun del' eux al primer jour del' Parliament coment en deux Chapters & ſerront iſſint conſtrue ſi come tout ad eſtre comprehende en un meſme Act de Parliament. Et ſi per un Act de Parliament il ad eſtre enact que le Roy ſeiſera & que Univerſity preſentera tiel conſtitution ſerra fait que ambideux eſtoieront que le Univerſity ne preſentera niſi le Roy ſeiſera, mes ſi le Roy ſeiſie auterment en conveyances ſi fuit aſcun contrariety en eux tiel conſtruction doiet eſtre fait iſſint que tout le conveyance poet eſtoier enſemble, Carter & Ringtends Caſe in Cur. Ward. 32. Eliz. un fuit ſeiſie del' Mannor del' Staple in Odiham, & de auter terres en Odiham il covenant de eſtoier ſeiſie del' tout ſes terres en Odiham al uſe luy meſme pur vie remainder al ſon fits & del' Mannor de Staple al uſe feme pur vie remainder al fits & tiel conſtruction fuit fait que tout eſtoiera.

6. Admit que ceſt Statute de Cap. 5. ſerra priſe ſubſequent al auter Statute tamen ceo ne fiſt riens, car coment le rule Leges Poſteriores abrogant priores tenet in theſi, , tamen non tenet in Hypotheſi, ſi le darrein Act neſt contradictory ou contrary al primer, mes ſi ſolment diverſe & diſſentanious & que per aſcun conſtruction l'un & l'auter poient eſtoier enſemble ceo eſt auterment, & ceo eſt un rule in 18 Eliz. Dyer 343. & 21 Eliz. Trudgins Caſe in Foſters Caſe Reports. Co. l. 11. Tenant en tayle per Weſt. 2. ne forfetera terres 16 R. 2. Enact que home attaint de Premunire forfeit terres ne ſerra extende, mes al terres en fee & pur vie & nemy al terres en tayle & touts deins les parolls. Le dit caſe de Foſter eſt direct al point l'eſtatute de 23 Eliz. done 20 l. a Month, ſur recovery deſtre devide enter le Poore, Roy & Informer, l'Eſtatute de 28 Eliz. done ſeiſure al Roy & 35 Eliz. done liberty al Roy a purſuer per Bill Plaint, ou Information ceo ne toll le teirce part del' Informer iſſint icy tiel conſtruction ſerra fait, ſcilicet, ſi Roy ne ſeiſra ceo remaine en recuſants, mes la le Univerſity preſentera, mes ſi le Roy ſeiſra eſt auterment; il ad eſtre mult queſtion en ceſt caſe quel intereſt le Univerſity ad ſcilicet, ou il avoit aſcun Eſtate en luy ou nemy il ad eſtre dit q̃ le Univerſity ad ſettle eſtate ou intereſt, ſcilicet, cy long q̃ Patron ſerra recuſant & ſi iſſint donque le Roy per ſon ſeiſure ſubſequent ne ceo deveſtra ſed ſemble que le recuſancy ne done aſcun eſtate, ſed ſolment a preſenter quant Egliſe eſchye deſtre void, car le parolls ſont que le Patron diſable a preſenter ſed le Patronage nient remove del' luy & il ſerra Patron a confirme Leaſe del' incumbent.

Le

Le Univerſity ad ſolment intereſt come un Eveſq; ad a preſenter per laps ſi le Patron reculant ad eſtre ſolment diſable ia; Le Eveſq; preſent apres 6 moies per laps, & ceſt poiar eſt ſolment transferre al Univerſity, ſc. que devant les 6 moies ils preſent, ou Eveſq; apres 6 moies preſentera.

Le Statute de Proviſ' de 25 E. 3. done le preſentment al Roy ou le Pape provide, ſed ia le Roy n'ad aſcun intereſt ou eſtate, mes ſolment liberty a preſent quant Egliſe devient void iſſint ſur l'Eſtatute 31 Eliz. de Simony le Roy ad null intereſt ſed liberty a preſenter ſolment.

2. Admitt que le Univerſity ad intereſt tamen eſt come ad eſtre dit devant ſub modo cy longe que reculant ſerra Patron, mes quant le Roy ſeiſie le Patronage determin en le reculant & iſſint le intereſt determine en le Univerſity; come ſi home ſoit utlage le Roy preſentera, mes ſi utlage grant le advowſon ſon intereſt eſt determine per que ſur tout le barre il tient le barre deſtre inſufficient & que le Roy & ſon grantee preſentera niſi tout ceo fuit per covyn & ne ſerra intende niſi fuit plede ſpecialment.

Le ſecond maine point ariſe hors del' Declaration que devide en deux partes come eſt avandit, & al primer ou le advowſon fuit forfeit il dit que il eſt car les parolls del' Statute ſont, tout terres & hereditaments, & hereditaments comprehende advowſon, car primerment en grant del' Roy per paroll hereditament un advowſon paſſe Whiſtlers Caſe Cooke pars 10. & 18 Eliz. Dyer fol. 350. 2. en Statutes le paroll hereditament include advowſon ſur le Statute de 32 H. 8. & 34 H. 8. de Wills que parolls de tout hereditaments ſi home convey ſon terres al ſon fits ou feme & eſt ſeiſie d'un advowſon le Roy avera le tierce part del' advowſon ſur le dit Statute & ceo eſt le common practiſe del' Court de Wards, iſſint Stamford Prerogative, ſi home tient terres en capite & un advowſon en groſſe le Roy avera ceo auxi coment tenus en Soccage per paroll de tout tenements.

Les Objections ſont deux, primes que advowſon en groſſe & eſteant nul valuable per intendment del' Statute nient done al Roy. 2. Eſteant choſe nient valuable, ne poet eſtre extende & ceſt ſeiſure eſt en nature d'un extent.

Quant al primes un advowſon eſt valuable 5 H. 7. fol. 3. il ſerra aſſets en formedon, ſcilicet, pur cheſcun 20 l. Tar 20 s. Et que ſerra aſſets 9 H. 6. fol. 57. eſt a meſme purpoſe 3 E. 2. Fitz. Recovery en value home port droit de advowſon & le Tenant vouche & recover en value, ſcilicet, pur cheſcun 20 marks. 20 s.

Advowſon per l'Eſtatute de 32 H. 8. de Wills eſt deviſable come hereditament valuable, & iſſint tenus, 36 Eliz. en Sir Edward

ward Cleres caſe Co. li. 6. & 4 Jac. en C. B. en Caſe Taverner & Gooch quod vide en novell liver de entries en title Quare Impedit, auter reſpons admitt que nient valuable tamen eſt choſe de pleaſure pur ſon Chaplyn & come en le caſe de 32 H. 8. devant move, le Roy avera 3 part d'un advowſon iſſint il avera cy per le generall paroll de hereditament.

Quant al ſecond queſtion, ſcilicet, que un advowſon en groſſe neſt extendable, ideo le Roy navera en ceſt caſe, il poet eſtre bien dit que un advowſon neſt extende ſur l'Eſtatute de Acton Burnell & de mercatoribus, car ceux parle ſolment de terres & nemy d'un advowſon & l'Eſtatute de Weſt. 2. de elegit parle auxi de medietate terre, mes ſi les parolls ad eſtre tout hereditament il ad eſtre autrement per caſe, le Statute de 33 H. 8. que fait touts hereditaments d'un dett le Roy liable al extent pur dett le Roy ſi un dettor ad advowſon en groſſe ceo eſt extendable come tenuit en Exchequer en caſe Sir Chriſtopher Hatton & touts les advowſons de Sir Chriſtopher Hatton extende & ſur meſme le reaſon ſur ceſt Statute de recuſants per paroll hereditament il ſerra extende maxime come noſtre caſe eſt car le Statute ne done le 2 part come un extent que per le value ſerra al temps del' extent, mes eſt done al Roy ſolment come un penalty cy longe que le Patron ſerra recuſant, & auxi le Roy avera le ſecond part de touts choſes (except le Manſion meaſe) de que le recuſant avera le tierce il avera le 2 part de l'advowſon le Roy avera le 2 part de ceo. 2. Le darren queſtion ſur le declaration eſt en tant que le conviction fuit 18 Feb. Anno 11 Jac. & le Commiſſion fuit 22 Feb. 11 Jac. & returne en Eaſter Terme, ou le Statute de 29 Eliz. & iſſint auxi 3 Jac. dit que devant le fine de Eaſter Terme enſuant le ſumme en le conviction ſerra pay, ideo tanque default le Roy ne ſerra aſcun ſeiſure come eſt object, ſed ceo eſt reſpond voier eſt ſur le Statute de 29 Eliz. le Roy ne poet ſeiſer tanque default de payment; car le election eſt done al recuſant a paier al fine de Eaſter Terme ou autrement le Roy donque a ſeiſir, mes le Statute de 3 Jac. ad eſtre alter le Statute de 29 Eliz. en 2 points l'un ou ſur le Statute de 29 Eliz. le Roy avoit le 2 part de terris nomine diſtrictionis tantum, & il avoit 20 l. per moies auxi come tenus 3 Jac. al Ruſſellhouſe per tout les Judges nunc per l'Eſtatute de 3 Jac. le Roy ſi preindera le 2 parts eſt a aver ceo come ſatisfaction del' 20 l. per moies & ceo eſt en diſadvantage del' Roy. 2. Ou le recuſant avoit Election per 29 Eliz. a paier le 20 l. per moies devant le fine del' Terme paſt ou Michaelmas apres ſon conviction nunc per ceſt Statute ceſt election fuit toll & done al Roy, ſcilicet, le Roy puiſſoit extende le terre pur le 20 l. per moies ſed admitte que 20 l. fuit tender tamen le Roy poet ſeiſie les 2 parts, & en ceſt point le Statute

Statute eſt fait en favour & advantage del' Roy & in diſadvantage del' Recuſant; & ideo entant que le Roy poet refuſe les 20 l. per moies coment fuit tender a quel purpoſe ſtaiera le Roy avoier ou al fine del' Eaſter il voilt paier le 20 l. per moies, ideo ſemble le Roy ſil voilt poit ſtoier avoyr ou il paiera le 20 l. al fine del' Terme ou pur accepter ceo vel il poet preſentment forfet; maxime quant ceſt ſeiſure eſt done en lieu del' 20 l. per moies & en ſatisfaction, car ſur 23 Eliz. le Roy poet ſeiſure le terres preſentment pur le 20 l. per moies iſſint il ſerra ſur ceſt Statute de 3 Jac. eſtant un ſatisfaction pur les 20 l. & le Statute de 3 Jac. parle que payment ſerra fait al Exchequer en fine de Eaſter Terme niſi ou le Roy poet ſeiſure per le dit Statute; ideo le Roy grant poier a ſeiſure per ceſt Statute & ayant fait un ſeiſure ceo eſt hors del' parolls del' Act ideo ſur tout le matter il conclude que le Declaration eſt bon en tout points & les barres ſont male & ideo que le Judgment doit eſtre done vers le Defendant.

Hutton e contra, il primes conſider le branche del' Statute le reculant diſable a preſent apres fine del' Parliament al un advowſon que eſt void ſed ceo done al Univerſity. 2. Le reculant diſable a faire grant de aſcun avoidance. 3. Le Univerſity averont tout preſent' queur eſcheue durant le temps que il ſerra reculant.

Il primes tient que ceſt choſe que eſt done al Univerſity per le dit Act de Parliament eſt un intereſt en eux, & ſur ceo il dit que en leiures divers intereſts ſont que ne ſont reguler & ordinary eſtates come 43 E. 3. le Seignior avera terre tanque ſatisfie de Marriage il eſt intereſt en le Seignior; ſur le Statute de Acton Burnell il eſt un eſtate en le conuſee, que il avera aſſiſe tamen ne va al Executors 27 H. 8. eſtate done al un tanque 100 l. pay opinion que eſtate pur ans eſt ſur payment 4 part Coke Corbets Caſe al meſme purpoſe & en Mannings Caſe Reports 8 Cooke, Sir William Cordells Caſe, deviſe al Executor, pur payment ceo eſt un intereſt que va del' Executor al Executor & iſſint Quatermaines Caſe a meſme purpoſe & ſur entrie tiel particuler eſtate periſh a multo fortiori en advowſon, car advowſon eſt hereditament incorporate & poet eſtre divide per fraction un avera nomination & auter le preſentation & le nomination poet eſtre appendant al un Manor al un home & le preſentation en comen al auter come tenuſt en caſe Sir George Shirley iſſint Rent eſt un Hereditas incorporata il poet faire a leſſer durant un temps & apres deſtre revive come eſt tenus 22 E. 7. & le Statute ey dit que le Univerſity avera le nomination & preſentation, ideo averont tout le advowſon en intereſt durant le reculancy.

Sed il agree que le dit eſtate fuit en truſt & un fiduciary eſtate, ſc. ils fueront en truſt ove le preſentment del' incumbent tout temps durant le recuſancie.

2, Il conſider ou le ſeiſure del' Roy deveſt ceſt intereſt ſettle en le Univerſity (come il tenuit il fuit) ou nemy & il ſemble que nemy & un reaſon fuit que ceo eſt pur maintenance de Religion & ſi fuit iſſint, il ſyera le Roy come tenuit en caſe de Magdalens Colledge, le Statute diſable le recuſant a faire grant de prochein avoidance ſi recuſant fiſt ceo al Roy il eſt male iſſint pur le ſeiſure que eſt tout un.

2. Reaſon il done que lou choſe eſt done ou limit per l'Eſtatute en particuler ceo per generall parolls del' Statute ne ſerra toll. Come eſt tenus en Foſters Caſe pars 11. R. Cooke & Grayes Caſe part 5. Et un Statute doit eſtre expound iſſint tout le parts de ceo eſtoiera ſemble per les ſeiſit de tout hereditament eſt en generall done al Roy, mes pur le 2 Statute le advowſon in particuler eſt done al Univerſity & Judges ount expound conveyances coment al un inſtance come ſeverall a faire tout de eſtoier en ſemble come tenuit en St. Saviours Caſe Reports Cooke pars 10. ou ſurrenderont en ley per accept' del' 2 leaſe del' Roy ſerra conſtrue deſtre precedent & ideo en noſtre caſe le commencement de avoidance de advowſon en aſcun manner eſt void vers le Univerſity il eſt adjudge en le Chancellor d'Oxons Caſe pars 10. Cooke que home grant le prochein avoidance & apres devient recuſant tunc le Univerſity avera ceo; iſſint ſi un fiſt leaſe pur ans d'un advowſon & apres deveignant recuſant le Univerſity avera le preſentation come future intereſt done al eux. 6 Eliz. Le Abbot de Ramſie grant prochein avoidance & apres ſeaſant le Statute le grand Suit fait void en , il eſt come reall intereſt que ne poet eſtre devest per future grant ou ſeiſure come leaſe pur vie ſur attainder ou grant ne ceo tollera, ſi home conus un Statute Merchant & apres deveignant recuſant convict le Statute eſt extend le Univerſity nient obſtant avera le preſentment, ſi recuſant ad 3. advowſon & le Roy ſeiſura le 2 part le Univerſity avera tout 3 advowſon, & perſon attaint de Felony ou Premunire le intereſt del' Univerſity ne ſerra devest, & ideo primes il tient le barre bon. 2. Il dit que Declaration n'ad done bon title al Plaintiff pur ceo que le Statute ne entende a doner al Roy le choſe que le recuſant meſme ne poet aver ſi nul ſeiſure. 2. Le ſeiſure neſt done al Roy tanque returne fait en Exchequer de conviction & le default de payment. 3. Le Roy avoit election a ſeiſie ou nemy, & ne appiert que il fiſt aſcun election,

& 4 le

& 4 le Commiſſion eſt a ſeiſer biens & eſt ſur le Statute de 28 Eliz. & nemy ſur le Statute de 3 Jac. & ceo fuit l'effect de ſon argument, & apres les 2 arguments, Duncombe un del' Plaintiffs cauſe un diſcontinuance de ſon ſuit apres le Seignior Hobart fuit demand de quel opinion il fuit, il dit pur le maine matter il fuit pur Plaintiff, ſed il ne dit riens del' matter de forme & iſſint mon frere Winch a moy privatement.

Termino Paſch. An. XXI. Jacobi Regis *in* Communi Banco.

Sparrow *verſus* Sowgate.

Hutt: 47,

William Sparrow port Action de Dett pur 70 l. vers Giles Sowgate & declare q̃ le dit Pl't port dett en Banck le Roy vers Robert Sowgate & declare ſur un Obligation de 70 l. & que le Defendant devient Bayle pur le dit Robert & lie luy en 70 l. al Plaintiff ſur condition quant contingit le dit Robert deſtre convict en le dit Action que ſi le dit Robert ne paya le dit condemnation ou render ſon Corps a priſon que il voilet ceo pay, le dit Plaintiff recover en Banck le Roy vers le dit Robert & il declare que il ne ad paie le condemnation ne render ſon Corps al priſon per que actio accrevit. (1) *Walter. Paſchæ 19. Jac. Rot. 973.*

Le Defendant plede en barre; confeſſe tout le Declaration & dit que apres le Judgement & devant aſcun Capias ad ſatisciendum ſue vers le dit Robert, le dit Robert Sowgate morust, ſur que le Plaintiff demurre, & apres ſeverall arguments Judgement fuit done vers le Plaintiff. Hobart fuit e contra, le Judgement un foits quant fuit move pur ceo que il prist que le dit party (ſcilicet) Robert, doit en convenient temps apres le Judgement offer luy meſme auterment le recogniſance fuit forfeit; ſed les 3 auters e contra, pur ceo que le dit Statute eſt diſjunctive, ſcilicet, a render le Corps a priſon ou a paier, & l'un per mort del' partie eſteant Act de Dieu deveignant impoſſible (& ceo devant aſcun Capias ſue que fuit un demande en ley; & le courſe de Banck le Roy) il eſt diſcharge del' auter part & auter jour done a veier preſidents, & ceo fuit en Hillary Terme & en Eaſter Terme quant le Seignior Hobart fuit abſent divers preſidents fuerunt view en Banco Regis. Hill. 4. Eliz. Enter Hobbs & Tadcaſtle en Judgement done vers le partie, & il port brief d'Error devant Capias & morust pendant

pendant ceo & record remand & ſur 2 nichils recovery vers le Bayle. Et ils port Audita Querela & pur ceo que il mourſt devant aſcun Capias adjudge que Audita Querela giſt la, ſemble caſe 4 Jac. Rot. 975. enter Timperly & Coleman & en Terme Paſch. Judgement ſur view del' dit preſidents fuit done pur Defendant.

Termino

Termino Trin. An. XXI. Jacobi Regis *in* Communi Banco.

Godfrey *verſus* Wade *& alios.*

LE Caſe perenter William Godfrey Plaintiff, & Thomas Wade, Chriſtian Porter & Henry Porter Defendants, ſur ſpeciall verdict fuit tiel Henry Macke-Williams fuit ſeiſie del' Mannor de Babthorne, alias Bathorne in Com' Eſſex, & 15 Eliz. fiſt feffment al uſe luy meſme pur vie remainder al Dame Mary ſa feme pur vie remainder al heires males de lour Corps engenders, remainder al heires males de Corps le dit Henry engenders & apres al heires de lour Corps engenders remainder al droit heires le dit Henry, & ils aiant iſſue Henry, & 5 fils & le Pere morust, apres ſon deceaſe le dit Henry le fits per Indenture fiſt Leaſe al un Edward Whitehead pur 30 ans a commence apres mort ſa mere, & apres le vie fine pur Confirmation de ceſt Leaſe, & apres morust ſans iſſue. Apres ſon deceaſe un common recovery fuit ewe vers Dame Mary que vouche 3 del' fils & lour barons & le baron ſolment de 4 file & le fits & heire del' 5 file que fuit mort que eſteant enfant appeere per Gardein & il vouche le common vouchee & ceſt recovery fuit al uſe Dame Mary, pur vie remainder al dit 4 ſoers, & al fits del' 5 ſoer en tayle; apres Dame Mary morust & le Executors de Whitehead enter en parcell del' dit Mannor & fiſt Leaſe pur ans al Plaintiff, & il fuit ouſte per Defendant en droit les ſoers. Et ſi l'entrie del' Defendant fuit legall fuit le Queſtion, ceſt caſe fuit ſovent foits argue al barre & apres en le Terme de St. Trinity Anno 21 Jac. argue ſolemnment per les Juſtices, ſcilicet, per Hutton & Jones le 2 Saturday en Terme & per Hobart & Wynch al Saturday enſuant, & touts 4 Juſtices argue encontre le Plaintiff ſed ils ne agree en un meſme reaſon, & ideo le argument eſt miſe pluis large de cheſcun de eux per que le difference poet appeere. (1)

(1) *In Termino Mich.* 15. *Jac. Rot.* 785.

Jones

Jones devide le caſe en 2 points, le primer eſt ſur le Statute de fines de 4 H. 7. & 32 H. 8. & le ſecond ſur le Statute de 11 H. 7. de Jointures.

Le primer queſtion eſt Henry Macke-Williams le fits eſteant iſſue male del' Corps Mary & iſſue generall auxi en vie ſa mere que fuit Tenant en tayle jointment ove ſa Pere & Survivor auxi levie fine & mozuſt ſans iſſue, & ſes ſoers fueront iſſue & heirs en tayle pur virtue del' dit en tayle ou ils ſerront lie per le dit fine. Et donque le point eſt feme eſt tenant en tayle, & ad iſſue fits & file, & le fits en vie pere levie fine & mozuſt ſans iſſue & apres le Tenant en tayle mozuſt ou ceſt fine barra le file ou nemy.

Et ceſt queſtion depende ſur 2 parolls en le dit Statute de 4 H. 7. & 32 H. 8. ſcilicet, ſur le expoſition del' paroll privy en 4 H. 7. & heires en tayle en l'Eſtatute de 32 H. 8. & ſur le conſideration de ambideux les dit Statutes il penſa que le file ne fuit barre.

Quant al paroll privy; il appiert per Whitinghams Caſe pars 8. Coke, (enter auter privies la mention) que ſont 3 privies; l'un privie in ſank tantum, ſed nemy en eſtate: le 2 privitie, privie en eſtate ſed nemy privie come heire al Common Ley: le tierce privie en ſanke & en eſtate le primer fuit l'ou home eſt heire al Common Ley al un ſed tamen claime l'eſtate per purchaſe ou del' auter anceſtor il ne fuit privie deins le Statute de 4 H. 7. le ſecond eſt ou home eſt iſſue en ſpeciall ou heire en Gavel-Kinde ou Burrough Engliſh ou de part de mere, & iſſint neſt merement, ſed heire per formam doni ou cuſtomary heire & ad l'eſtate, & le 3 eſt ou il ad heire al Common Ley & ad l'eſtate auxi; & iſſint ſur l'eſtatute de 32 H. 8. ils ſont 3 heires en meſme le manner & le primer neſt heire ou privie deins aſcun del' dit Statutes come ſi terres done al fits per aſcun & le pere levie fine il neſt heire neque privie deins aſcun del' dit Statutes, mes l'un home claime come heire al Common Ley & en eſtate ou per formam doni al un partie que levie fine ceux 2 privies ſont privies & heires deins 4 H. 7. & 32 H. 8.

Et ſur ceſt difference jeo agree que ſi eigne fits ſurvive ſon pere & fuit en poſſeſſion en fait, vel en Ley, vel en remainder ou reverſion, vel ſi le pier diſcontinue & mozuſt, & le eigne fits ſurvive & en aſcun de ceux Caſes levie fine & il mozuſt ſans iſſue ſon frere ou ſoer que claim per force del' dit en tayle ſerra barre per le dit fine car tout iſſues del' Corps fil avoit, & en default de eux ſon frere ſerra barre, iſſint ſi terres ſoint done al eigne fits & heires males de ſon Corps remainder al heires males de Corps pere & l'eigne fits levie fine & il mozuſt ſans iſſue ſon frere ſerra lie per ſon fine, iſſint ſi Tenant en tayle fuit diſſeiſe ou diſcon-

tinue

tinue, & ad iſſue 2 fits & mozuſt & l'eigne levie fine al diſcontinuoz ou diſſeiſoz ceo barra ſon frere immo ſi levie fine al aſcun que n'ad riens en le terre come reſolve en le caſe de Fines, Report Cooke part 3. fol. 90. & Beamonts Caſe pars 9. fol. 141.

Sed le caſe de Zouche & Bamfield mile en le dit caſe de Fines & auxi Sir George Brownes Caſe Reports Cooke pars 3. fol. 51. & auxi caſe d'Archer Reports Cooke pars 3. cite en le dit caſe de Fines da ouſter, ſcilicet, ſi fuit Ayel Tenant en tayle pier & fits, & le pier en vie Ayel levie fine & mozuſt en ceſt caſe le fits ſerra lye per le dit fine car l'iſſue eu tayle meſme, ſcilicet, le pere & ſes iſſues de ſon Coꝛps que ſerront lineall diſcent per luy ſerront barre per concluſion.

Mes couient que l'iſſue en tayle & ſes iſſues ſoient barre tamen le Ayel le Tenant en tayle meſme neſt conclude ſed nient obſtant ceſt fine il continue Tenant en Tayle a tout temps & ſil levie fine al eſtranger en ceo le conuſoꝛ del' pere (ſon fits) eſt barre a claimer aſcun choſe, mes ſi Tenant en Tayle ou feoffe de luy levie fine al fits & mozuſt le fits ſerra claime per le Ayel Tenant en Tayle vers le conuſoꝛ de ſon pere.

Car fine levie per l'iſſue en tayle en vie (n'aiant aſcun eſtate) ſi ſoit al un que n'ad riens en le terre va ſolment per voy de concluſion vers le iſſues & ſes lineall iſſues & vers touts ceux queux veignont en le poſt.

Mes nemy vers eux queux aiant eigne title come le Tenant en Tayle meſme.

Mes ſi l'iſſue ad le reverſion come en noſtre caſe ſi il levie fine vel ſi il levie fine al celuy en reverſion la le fine execute per voy d'extinguiſhment del' eſtate tayle & le conuſoꝛ ſerra eins per force del' reverſion diſcharge del' eſtate tayle quod vide en le dit caſe de Sir George Browne, & eſt ſemble al Caſe de Huſſey, adjudge en ceſt Court 40 Eliz. & cite en caſe Altonwoods Reports Cooke pars 1.

Tenant en tayle bargaine & vende al ceſtuy en reverſion vel ſi Tenant en tayle levie fine al reverſioner, en ceo caſe le tayle eſt extinct & bargaine ſerra eins de ſon reverſion diſcharge del' eſtate tayle.

Et hactenus il fuit agree del' barre pur argument ſake, mes noſtre caſe ne vient deins ceſt compaſs, car en tout le caſes avandit le iſſues queux fueront lie per le dit fines, claime per le iſſue & derive title en luy, mes en le caſe en queſtion il eſt auter, car le ſoers (quant le frere mozuſt en vie pere) ne claime per le frere ſed ferrant immediate diſcent del' pere, ſans ſeſans mention del' frere.

Car ſur le livers principalment, Fitz. Nat. B. en formedon, & 11 H. 4. 12. ſi home ad iſſue 2 fits & eſt Tenant en tayle, ſi Tenant en tayle morust & leigne luy ſurvive en formedon le puiſne ferra mention de luy & ferra diſcent del' droit.

Iſſint ſi ſoit Ayel, pere & fits coment le Ayel ſurvive le pere tamen pur ceo que eſt lineall diſcent le fits ferra mention del' pere & derive le title & diſcent de luy.

Mes en le caſe de 2 ſoers ſi le eigne morust en vie pere ſans iſſue vel fil ad iſſue que morust en vie le pere, en ambideux caſes le puiſne ſoer ne ferra mention de eigne fits vel ſes iſſues ſed ferra luy immediate diſcent del' pere meſme.

Et ceo eſteant clære que en noſtre caſe que le 5 ſoers ne ferront alcun title come heire al frere il eſt fort que ils ne ſont lie per les parolls neque intention del' ley de 4 H. 7. vel 32 H. 8. car hors de parolls il eſt clære, car come appiert devant coment le ſoers ſont heires, tamen ils ne ſont heires al eſtate a luy ſed derive immediatement del' pere.

20 E. 2. Fitz. Tit. diſcent & 32 H. 8. Dyer fol. 48. home ad iſſue 2 fits l'eigne eſt attaint en vie & morust ſans iſſue & pere luy ſurvive & morust le puiſne enheritera & ferra lineall diſcent & claime del' pere ſans faire mention del' eigne frere, mes ſil ad ſurvive pere ou avoit iſſue que ſurvive auterment eſt.

Et ſi home ſeiſie en fee ad iſſue deux fits & l'eigne en vie pere levie fine & morust ſans iſſue & pere morust le puiſne ne ſerra lie, car le puiſne ferra lineall diſcent del' pere a multo fortiori lou le pere fuit Tenant en tayle car quant iſſue en tayle ne claime l'eſtate per ceſtuy que levie fine ſed per auter coment que il ſuit l'eire en ſanke al ceſtuy que levie le fine tamen il neſt heire ou privy al eſtate, & ideo ne ſerra lie per ſon fine.

Et 2. il neſt deins l'entention del' dit Statute, car le Statute intend ſolment de barrer les iſſues en tayle que claime l'entayle come heire del' parte que levie le fine, car ſi auter conſtruction, ſcilicet, que heire ſerra lie coment il clayme l'entayle d'un auter Auncеſtor donque ſi home ad eſtate tayle a luy & heires females, & ad iſſue fits & file, & le fits levie fine ceo barra le file car el eſt heire al fits ſed nemy al entayle, & ideo ne ſerra lie, en meſme le manner ſi home Tenant en tayle ad iſſue deux fits & puiſne levie fine ceo barre le eigne & nul voilt maintaine ceo, & eſt null difference car en l'un caſe auribien come l'auter, null claime eſt fait al eſtate tayle per ceſtuy que levie le fines.

Aiant parle tant per voy de confirmation del' point il reſtat pur reſponder alcun objections del' auter parte, queux jeo reduce al 5 Objections: Le primes eſt le force & vigor d'un fine queux ſont conſtrue favorablement pur les purchaſors eſteant common aſſurances

rances & ſtrictment vers le heire; come tenuſt en Stowell & Zouches Caſe en le Comentaries.

2. Que ceſt Statute de 32 H. 8. eſt un Statute d'explanation & Statutes d'explanation ſerra priſe ſtrictment come tenuſt en Butler & Bakers Caſe; ſolonque en les parolls, & les parolls del' Statute de fines ſont claymant come heire per force d'entayle.

3. Quant l'eigne fits levie fine en vie pere, ſon frere ne poet avoider ceſt fine per diſant partes ad finem nihil habuerunt, come reſolve en Zouche & Bamfields Caſe pars 3. en Caſe de Fines.

4. Lou le garrantie eſt lineall la le fine del' barre del' meſme parte que fiſt le garrantie barra touts a que le garrantie ſerra lineall & en noſtre caſe come appiert per Littleton garrantie del' frere ſerra lineall al ſoers pur ceo que ils per poſſibilitie puiſſoint aver conveiance al entayle per luy.

5. Sont divers caſes & authorities cite devant en le point come eſt dit del' auter parte. A que un brief reſpons ſerra fait.

2. Quant al primer; ſcilicet, Authority de fines & favor del' purchaſors, tamen null violent ou strained conſtruction ſerra fait. Farmers Caſe pars 3.ª ſi fine ſoit per covyn come pur leſſee pur ans, il ne barra le reverſion coment le fine fuit levie al purchaſor.

Et Tacker & Lacies Caſe 33. & 34. Eliz. Si Tenant pur vie levie fine al un purchaſor tamen en favor del' ceſtuy que ad droit il avera deux quinte ans l'un apres fine levie l'auter apres mort del' Tenant pur vie.

Et ſerra done conſtruction cy a faire le fine a barre le ſoer coment heire quant el ne claime per le frere. Et pur ceſt objection un reaſon fait Fine de tout, Et quant al 2d. Objection le caſe en queſtion eſt hors del' parolls del' Act; car ſont 2 heires l'un en eſtate l'auter en ſanke & ceſtuy en eſtate il liera ceſtuy que claime l'eſtate come heire, ſed heire que n'ad l'eſtate, mes deins les parolls, car heires ſecundum formam doni ſont deins les parolls, ſcilicet, Si Tenant en tayle ſoit & ad iſſue 2 fits per divers venters, & l'eigne apres morust pere levie fine & morust ſans iſſue ceo barre le puiſne & tamen vi Termini neſt heire ſed eſt heire ſecundum formam doni & claime per luy. Et come en le dit caſe le 2 frere eſt lye coment ne fuit heire revera pur ceo que il eſt heire ſecundum formam doni iſſint e contra cy que eſt heire revera ſed ne claime l'eſtate de luy ne ſerra lie per le Fine.

Et voier eſt que Statutes del' explanation ne ſerront conſtrue en tout le expreſſe parolls & entent del' Statute, mes lou le Statute d'explanation eſt doubtfull il poet aver tiel expoſition que ſerra priſe de eſtoier ove ſcope & intention del' Act & que ſerra reaſonable.

Car ceſt Statute parle de fines levie per Tenant en tayle en poſſeſſion, reverſion, remainder, ou uſe; ſed come en Bamfields Caſe, ſi Tenant en tayle en poſſeſſion (& n'ad l'eſtate en poſſeſſion reverſion ou uſe) levie fine il barra per intention del' ceſt Act.

Iſſint le caſe de Grant 31 Eliz. cite en Lampitts Caſe deviſe de terres al home en tayle quant veignant al 25 ans il levie fine ceo barre l'iſſue & tamen n'ad l'eſtate en poſſeſſion, reverſion ou uſe ſed en poſſibilitie les parolls del' Statute ſont que le fine ſerra barre vers le partie que levie fine & tout claymant al ſon uſe & al heires de ſon corps ſi home ad iſſue 2 fits & eſt Tenant en tayle en uſe, & mozuſt & l'eigne apres mozt del' pere levie fine & mozuſt ſans iſſue ceo per parolls del' Act ne barra le puiſne, car ceſt iſſue de corps celuy que levie fine ſed conſequence falſam.

Et le caſe de fine levie per 2 frere ne ſerra barre al eigne que ſerra ſi tiel expoſition ſerra fait come l'auter parte voilt.

Le 3 objection q̄ ne poient dire que partes ad finem nihil habuerunt.

Pur melioz ſcience del' force del' dit Objection & le reſpons a ceo; il eſt deſtre conſider que fueront 2 queſtions mult debate en le livers apres l'eſtatute de 27 E. 1. & de finibus, & 4 H. 7.

Le primer queſtion fuit ou home averra continuance de poſſeſſion al temps de fine levie & ante & poſt.

2. Ou l'iſſue en tayle dirra que partes ad finem nihil habuerunt tempore levationis finis.

Et ſur conference del' tout le livers, ſcilicet, 40 E. 3. 30. 1 E. 3. 30. 42 E. 3. 9. 15 E. 4. 15. 13 Aſſ. pl. 8. 22 Aſſ. 54. 33 H. 6. 18. 32 E. 3. Fitz. Tit. Voucher 96. 22 E. 3. 17. 17 E. 3. 53. 13 E. 3. Fitz. Replication 62. 8 H. 4. 11. 4 E. 3. 13. 14. 16 Eliz. Dyer, & auters livers.

Jeo teigne le ley deſtre come enſuiſt, primes ſi home levie fine ſur Conuſans de droit come ceo, pur que eſt un fine que ſuppoſe tranſmutation del' poſſeſſion que en ceo caſe ne privies neque privie neque eſtranger poient averr continuance de poſſeſſion.

Ideo ſi Tenont en tayle ou pur vie levie tiel fine ſur Conuſans de droit come ceo & repriſt eſtate arere null poet aver que continuall ſeiſure de meſme eſtate, car il eſt feoffment de recorde & diſplace le reverſion & paſſe le poſſeſſion al conuſor, & null dira encontre ceo come eſt reſolve en 16 Eliz. fol. 334. 335.

2. Si fine ſur grant & render & auter Executorie fine fuit levie le partie meſme & cy que fuit heire & claime le fee ſimple ne poet averre continuance de poſſeſſion, come ſi Tenant en fee-ſimple fuit & fine fuit levie a luy pur vie, en ceſt caſe il meſme ou ſon heire ne poet averre continuance de poſſeſſion, & ceſt fine eſt per concluſion liera le party & ſes heires que claime le fee-ſimple, mes ceo liera eſtranger & ils poient averre continuance de poſſeſſion aſſets bien.

3. Et

3. Et come eſtranger poet iſſint puiſſoit l'iſſue en tayle, car ſi Tenant en tayle accept un fine pur vie & continue poſſeſſion l'iſſue en tayle ſerra remitte & averra le continuance del' poſſeſſion, car fuit un eſtopple tantum & n'ad force del' aſcun Statute & ideo eſteant eſtopple ne barra l'iſſue en tayle.

2. Mes le 2 queſtion que ad force del' Statute de 27 E. 1. que dit que partes ad finem & lour heires ne avoid fine per diſant partes ad finem nihil habuerunt, & fuit grandment debate en les livers, & aſcun priſe que l'iſſue en tayle ne ſerra conclude, car il ne fuit properment ſed ſecundum formam, ſed le melior opinion fuit tanque que il ſerra lie iſſint que ſi tenant devant 4 H. 7. eſteant hors de poſſeſſion levie fine ceo fiſt diſcontinuance, & l'iſſue ne puiſſoit enter, & ne poet avoid le fine (quant al diſcontinuance) per diſant partes ad finem nihil habuere, & per 4 H. 7. il neſt ſolment reſolve le fine del' Tenant en tayle fait diſcontinuance ſed barre, & come reſolve en le dit caſe de Bamfield l'iſſue en tayle ſur l'eſtatute de 27 E. 1. na poet avoider fine per diſant partes ad finem nihil habuerunt, &c. Et Nota quant ad partes ad finem & neſt difference devant l'eſtate ou apres, car devant fine fuit diſcontinuance per Tenant en tayle, & apres il eſt barre & en l'un caſe & l'auter l'iſſue ne poet avoid le fine per le dit plee come tenuſt en le dit caſe.

Sed coment le heire en fee-ſimple & auxi le heire en tayle que claime l'eſtate del' cy que levie fine fuit barre a ceo avoid per diſant partes ad finem; tamen Strangers, & auxi Heires que fueront en manner come Strangers, ſcilicet, queux ne claime l'eſtate del' party que levie fine puiſſoit avoid le fine per diſant que partes ad finem nihil habuerunt. Et ceux point eſteant explaine il eſt oze a voier ceſt caſe & le reſpons eſt que ceſt done devant que coment heire tamen il ne claime l'eſtate per le partie que levie fine, car ſi pere & fits fait & le pere eſt tenant pur vie remainder al fits; & pere eſteant hors de poſſeſſion levie fine, en ceo caſe le fits poet dire partes ad finem nihil habuerunt, car coment que heire, tamen il ne claime le remainder per cy, & iſſint icy le ſoer meſme claime terre per le frere: ideo ils averont plee. Et le ſoer en ceſt caſe ne beſoignement pur avoider ceſt fine per diſant que partes ad finem, &c. mes a dire que le fine fuit levie en vie pere, car ſi l'eigne fits ad diſſeiſe le pere & ad levie fine & mozuſt ſans iſſue iſſint que il fuit ſeiſie, tamen quant le pere mozuſt apres ceſt fine ne barra car il ne claime per luy.

4. Le reaſon del' lineall eſt ſur l'eſtatute de Gloſt. C. 3. & Weſt. 2. & en favour del' iſſue il eſt terme lineall garrantie pur ceo que eſt le melior pur l'iſſue.

5. Quant al caſes de Sir George Browne & Archers Caſe la eſt un barre de claime & del' iſſues del' partie que levie fine ſed nemy dit del' collaterall heire.

Et

Et a conclude il ne remember aſcun direct authority en le point ſed Periam & Rhodes fueront de opinion en le argument del' caſe de Bamfield que le fine ne barra le frere ſil morust en vie pere, contra ſil ſurvive & Rhodes cite un Stamfords Caſe al meſme purpoſe & ceſt Caſe de Stamford vous trovers enter le Caſe del' Reports de Dalyſon en libro Aſhe.

Donque le ley eſteant iſſint que le fine ne barra le ſoers donque ſont ils paramount al Tenant en tayle, & le leaſe pur ans ne eux toucha ſed depend ſur le reverſion en fee que le frere ad, & auxi le feme continue Tenant en tayle nient obſtant le fine & come Beaumonts Caſe & avoit poier ſil n'ad eſtre Jointreſs pur barre l'entayle & reverſion per le recovery ſed eſteant Jointreſs il ne poet faire aſſent. Et le 2 point eſt ou aſſent bon & teignoit que cy, car l'eſtate tayle eſteant diſcharge del' leas pur ans, le aſſent del' iſſues en tayle eſt bon; ſed admitte que l'entayle fuit iye donque le queſtion fuit ou le aſſent fuit bon a barre le leſſee pur ans a que il parle nemy poſitive ſed per voie de argument que lour aſſent bon pur ceo que le ſoers avoient le enheritance, & coment leſſee pur ans per le Statute poet enter ceo eſt lou cy que ad enheritance ne done ſon conſent. Quant a ceo que eſt object que le aſſent neſt bon pur ceo 3 barons & femes aſſent ſed le baron ſolment del' 4. & le 5 fuit enſeint il tient que liera pur 3 parts, & ſerra bon aſſent clærement & pur le part del' baron liera durant ſon vie & quant al infant il tient que le recovery al meines eſt ſolment voidable & tanque ceo ſoit reverſe, el eſt bon deins le Statute pur que il conclude q̃ Judgment ſerra done vers le Plaintiff.

Hutton a meſme intent & il argue mult a meſme purpoſe, ſcilicet, que le ſoer ne claime l'eſtate del' frere ſed del' pere & mere ideo neſt heire deins le Statute deſtre barre, imo il ſemble a luy que le caſe ale pere & fits neſt clære que le fine del' pere en vie le ale barra le fits en lineall diſcent, a multo fortiori en le caſe queſtion, & il dit que coment l'eſtatute de 32 H. 8. ſoit Statute d'explanation tamen doit aver expoſition reaſonable, & ſi ceſt confirmation come il fuit devant ne ſoit receive, donque le fine del' puiſne frere barra l'eigne que neſt reaſonable.

Quant al 2 point entant que le Leaſe pur ans ne touche l'eſtate ſed veſt ſur le reverſion en fee ne aſſent del' iſſues en tayle, ſcilicet, le ſoer bon, & ſerra bon nient obſtant le recovery, car le recovery bon al meſme tanque reverſe.

Winche argue encontre le Plaintiff ſed ſur le primer point il varie del' auter Judges, car il tient que le ſoers ſont barre per fine le frere coment il morust en vie mere il parle mult en advancement del' fines & diſcourſe ſur l'eſtatutes queux fueront devant 4 H. 7. & le intention del' 4 H. 7. & 32 H. 8. fuit clærement a barre l'iſſues en

tayle

tayle per aſcun fine levie per ſon auncеſtor & icy il eſt levie per ſon auncеſtor, & il eſt ſon heire & eſteant deins le parolls il ne ſerra expound per equity eſteant Statute d'explanation & ideo, & auxi bien (come Archers Caſe eſt) que le fits ſerra barre per fine pere levie en temps le Ayel iſſint liera le ſoer ſed il argue que le fine del' puiſne ne barra leigne, car il ne luy puiſſoit faire diſcent per luy.

Sed ſur 2 point il fuit encontre le Plaintiff, car leſſee pur ans come il conceive en ceſt caſe ne entra pur ceo que il touch ſur le reverſion & que le reverſion lie leaſe pur ans auxi. 2. Il doubta ou leſſee pur ans omnino deins le Corps del' Statute. Et 3 admitt que deins le Corps del' Act, tamen quant ceux queux ount l'enheritance done conſent ceo per le proviſo barra leſſee pur ans, tamen il tient le recovery vers l'infant void.

Hobart argue auxi encontre le Defendant & il inſiſt mult ſur le primer pointe que pur melior underſtanding il ſingle: Tenant en tayle ad iſſue fits & file, & fits levie fine en vie pere & morust ſans iſſue en vie pere ou ceo liera le file; & il teigne que le fine ne liera le file; il fuit marvelous fight parenter Entayles & Fines, car l'Eſtatute Weſt. 2. que fiſt entayle dit que finis ipſo jure ſit nullus a barre le entayle ſed tamen ſerra diſcontinue. Sed l'eſtatute de 4 H. 7. & 32 H. 8. fiſt ceo abſolute barre al entayle null caſe adjudge ſur 32 H. 8. mes que poet eſtre adjudge ſur 4 H. 7. & eſt diſcretion en Judges a prender ambideux Statutes enſemble; l'eſtatute de 32 H. 8. Weakens l'eſtatute de 4 H. 7. 2. en le caſe; ou entayle per Act de Parliament; 2 ou reverſion en le Roy que fuit lie per 4 H. 7. come appiert en 28 H. 8. & nemy reſtraine per 32 H. 8. mes leſt ſicome le dit Act n'ad eſtre fait ideo ſur le Statute de 34 H. 8. common recoveries ou reverſion en le Corone fuit helpe per le parolls ou otherwiſe.

L'Eſtatute de 32 H. 8. parle de fine devant & apres & eſt ſi come expoſition ſur 4 H. 7. & 4 H. 7. eſt le text & 32 H. 8. eſt le Paraphraſe & ſi ceſt caſe neſt conclude per 4 H. 7. il neſt per 32 H. 8.

Null Statute ley doit exclude tout equity ſed doit eſtre reſort touts foites a litera ad ſenſum, & come eſt dit quid eſt in Civitate legis habere niſi ſunt qui poſſunt legem reddere, & tantum habit de lege quantum de juſtitia.

Et ideo doit eſtre reaſonable equitie coment que fuit Statute d'explanation.

L'Eſtatute de 4 H. 7. liera en le preamble Privies & Strangers null help pur Privies ſed eſt ſavant pur eſtrangers & niſi puiſſoit ſavant le ſtatute n'ad ſtood al aſcun purpoſe; & ideo cy que eſt deſtre lie per fine doit eſtre le partie meſme ou privie, & ideo le file en ceſt caſe, ſil ſoit lie doit eſtre priſe privie deins 4 H. 7. ſi ne ſoit privie il eſt Stranger.

Tenant

Tenant en tayle remainder en fee al fits le Tenant en tayle le-vie fine le fits come prive ſerra lye quant al entayle come eſtranger il ne ſerra lie quant al remainder.

GrantsCaſe deviſe al un entayle quant il vient al 25 ans il levie fine ceo barre ſans queſtion, car la l'iſſue ſil ſerra claime doit faire come prive & heire al pere, Tenant en tayle per diſcent & apres le vie del' pære il barra ſans queſtion per 4 H. 7. car le heire eſt prive en ceſt caſe & le fits eſt iſſue de perſon que ad l'eſtate tayle.

18 Eliz. & 16 Eliz. en Beamonts Caſe pars 9. & Greenlies Caſe pars 8. fol. 72. baron & feme Tenants en ſpeciall tayle baron attaint ou levie fine l'iſſue barre pur ceo come prive il doit claime del' pere & tamen le mere continue Tenant en tayle & poet faire leaſe pur 3 vies ou ans & le conuſor n'ad riens en ſon vie come eſt tenus en dit caſe.

Archers Caſe pars 3. fol. 90. fits en vie pere levie fine null ſcruple ſil ſurvive, mes que ſerra lie per 4 H. 7. car il come prive & heire al pere doit faire claime.

Le fits auxi eſt lie per 4 H. 7. & le fits done ſon eſtate per extinguiſhment en le reverſion, & ceſt expectation de intereſt apres mort pere eſt done per le fine en benefit del' cy que ad le reverſion & come 32 H. 8. expound 4 H. 7. iſſint 4 H. 7. expound 32 H. 8. & ſi nemy prive deins 4 H. 7. neſt deins 32 H. 8. car doit eſtre prive en ambideux caſes que ſerra lie 32 H. 8. parle que il doit eſtre heire & claime come heire ſed ceo doit eſtre expound claimant come heire al partie que levie fine aut equity en ceſt caſe aut non omnino ſi null omnino donque le fine le 2 fits barra l'eigne fits, il agree ove Jones en lineall diſcent le fits ſerra lie coment le pere que ne ſurvive le Ayel, car le partie doit faire ſon claime come heire al pere, & il eſt heire en blood & ley & ſerra ſon claime deſouth luy & through him, & ideo en le caſe devant de 16 & 18 Eliz. le heire barre pur ceo que poet faire ſon claime del' pere coment auxi come heire a ſa mere. Sed ore al heire collaterall home ad fits & fille, & le fille mourſt ſans iſſue en vie pere il neſt prive neque heire quant al eſtate tayle, mes ſil ad ſurvive auterment il ad eſtre donque il ad eſtre prive & lye per le fine ſed quant il mourſt en vie pere le fits n'ad null helpe a luy a claimer l'eſtate 32 H. 8. Dye: Tenant en ſæ. ſimple ad iſſue 2 fits l'eigne eſt attaint en vie pere & mourſt, & pere mourſt le puiſne avera le terre, car il ne ſerra claime per eigne fits, mes ſil ſurvive pere auterment eſt & ſi le ſoer neſt lye per le fine donque le leaſe void & donque ceo fuit fine del' caſe.

Quant al 2 point il tient le conſent bon pur le 3 freres admitt que deux ne conſent, ſed il dit auxi que le conſent le baron lyera durant ſon temps & le conſent del' enfant al meſme tanque reverſe, & ou le leſſee pur ans ſerra lye per le conſent del' reverſioner en tant

que

que le primer point fuit fine de ceo ne voilcit deliver ſon opinion; iſſint ſur le matter Hobart, Hutton & Jones agree en un que le ſoer ne ſerra lie per fine le frere & Hobart & Jones tient que ſi pere levie fine & moruſt en vie Ayel ceo barre le fits en lineall diſcent ſed nemy le collaterall heire; ſed Hutton e contra que ne barra le fits, & Winch tient que auribien heire collaterall come lineall ſerra lie; ſed pur le 2 point il tient pur Defendant, ideo ils tout agree que Judgment ſerra done pur Defendant & iſſint fuit.

Bleverhaſſet *verſus* Homberſtone.

LE caſe perenter Ralph Bleverhaſſet Plaintiff ut leſſor John Bleverhaſſet vers John Homberſton Defendant in Ejectione firmæ ſur ſpeciall verdict fuit tiel Edward Linſie fuit Copy-holder en fee de terres en queſtion parcell del' Mannor de Pockethorpe in Com. Norfolke, le dit Mannor belong al Dean & Chapter de Norwich, & Thomas Woodhouſe & Henry Woodhouſe fuerunt leſſees pur ans de dit Mannor, & le dit Edward eſtant ſeiſie de terres en fee auri in Pockethorpe le Jurie trove que le dit Edward Linſie per Indenture bargaine & vend al dit Thomas & Henry, & lour heirs omnes terras & tenementa ſua tam libera quam nativa prout in Indentura continetur in hæc verba, This Indenture witneſſeth, that Edward Lynſie doth Bargain and Sell to Thomas and Henry Woodhouſe, and their Heirs, all his Meſſuage in Pockethorpe, and all Hereditaments as well Free as Copy-hold thereunto belonging, or reputed parcell thereof, which the ſaid Edward Lynſie bought of John Culpepper, & per Jurie & Homage del' dit Mannor apres mort le dit Edward il fuit trove que il obiit ſeiſie del' dit Copyhold terres & que un Edward Lynſie fuit ſon heire, qui quidem Edward in Curia prædict. Manerii petiit admitti eo quod idem Edwardus le pere obiit ſeiſitus, & prædictus Edwardus ad eandem Curiam admiſſus eſt ad terras cui liberata fuit inde ſeiſina per virgam tenere ſibi & heredibus ſuis ad voluntatem Domini ſecundum conſuetudinem Manerii; Et que le dit Edward Lynſie en le dit Court ſurrender ceo al maines del Seignior del' Mannor al uſe un Everard, & ſeiſin fuit fait al luy ſolonque le cuſtom del' Mannor, & que apres il al auter Court ſurrender al uſe le dit leſſor & que ſeiſin fuit fait a luy que enter & fiſt Leaſe al Plaintiff, & que le Defendant per command del' dit Thomas Woodhouſe & Henry Woodhouſe luy eject, & apres ſeveral arguments al barre il fuit adjudge pro Quer. & les quater Juſtices deliver lour opinions ſeveralment & apartment, & ils primerment agree en un que le bargaine & ſale per Indenture del' Copyhold al Seignior del' Mannor le Copyhold fuit extinguiſh, car coment un Co-

(2)

holder ne poet transferre al auter nisi per consent Seignior, & surrender en Court & le admittance del' Seignior tamen il poet estre release al Seignior del' Mannor, car ceo nest prejudice al Seignior, car al common ley il nest que tenant al sufferance, & en regarde del' Seignior il poet estre determine per ascun act que poet determine le volunt del' tenant per Copy a tener ultra per Copy, & quant il release determine son volunt: mes 2 en le case al barre le bargain & sale nest bien trove destre del' Copyhold en question, car le Jurie trove l'indenture in hæc verba, scilicet, que le dit Lynsie bargaine & vende tout terres & tenements suse, & Copy que il avoit achate de Culpepper, & ceo esteant generall & null averment q̃ les terres fuerant achate de Culpepper ideo male & dong; il nest trove q̃ le Copyhold fuit extinct per le dit bargaine & sale, & 3 admitte que ceo ad estre bien trove tamen il est trove q̃ Seignior del' Mannor fist admittance & novell grant sur ceo al Copyhold, & apres al Everard & Lynsie; & donque come un novell grant, & ideo Hasset ad le best title al Copyhold & le Lease al Plaintiff bon. Et ideo sur tout le matter Judgment done pro Quer.

Termino

Termino Mich. An. XXI. Jacobi Regis *in* Communi Banco.

Arys *verſus* Higgyns.

ARys port action ſur le caſe vers Higgyns pur diſant, Arys is a Thief, he hath ſtollen my Corne, and hath given me no ſatisfaction; & fuit move en arreſt de Judgment que Action ne giſt ſed per Winch, Hutton & Jones abſente Hobart les parolls voilent maintain Action, car le parolls que he had ſtollen Corne, ſerra intende prima facie Corne ſevered; & ſur ceo rule done pur Judgment vide ante Tr. 17. Jac. Godard & Gilberts Caſe. Et apres al auter jour le Court eſteant pleine il fuit move arere. Et Hobart tient q̃ Action ne giſt ſed l'auter 3 e contra, & per Jones admit que les parolls, thou haſt ſtollen Corne ne voloint maintainer Action pur ceo que ambiguous tamen le primer parolls Thief, voloint maintain, & ceux ambiguous expreſſions ne voloint extenuate ceo, mes ſil ad fait plein expoſition autrement come ſi il ad dit, Thou art a Thief and haſt Stollen my Corn growing in the Field, il ad fait pleine expoſition & action ſur le caſe ne giſt & Judgment fuit abſolute done pro Quer. (1)

Trahearne *verſus* Cleabrooke.

TRahearne port Action de debt en London vers Cleabrooke & declare que John Trahearne ſon Grandpere fuit ſeiſie de divers Meſſuages en Southwerk en le Countie de Surrey & demiſe pur ans al Defendant rendant annualment 43 l. rent al 4 uſual Feaſts. Et apres per ſon volunt deviſe le reverſion al Plaintiff & mort en October 16. Jac. & le Plaintiff port debt pur rent arere al ann enſuant, & le Defendant plede non debet, & un ſpecial verdict trove & eſteant argue per Harris ceſt Terme apres ſon argument Jones prift exception al giſt de Action que le Action eſt port en (2) *Intratur. Mich.* 17. *Jac. Rot.* 600. Waller.

London, ou doit estre en Southwark, & son reason fuit que Dett sur privitie de contract sur Lease pur anns poet estre port en auter Countie quam ou le terre gist, mes sur privitie d'estate ceo doit estre ou le terre gist, & cy il est port per devisee de reversion sur privitie de estate & esteant port en London ou le terre gist en Southwark il nest bon; & de mesme opinion fueront Winch & Hutton (absente Hobart in Cancellaria) per que Judgment done quod nichil capiat per billam, vide le Report de Humble & Glover 36 Eliz. en le banck de Roy accordant. Et issint Pasch. 6. Caroli per totam Curiam il fuit adjudge en brief d'error en Case Sir Stephen Bourne.

(3) Prohibition

UN libell fuit mise per Bincke en Spiritual Court vers Veluett Wood pur disant, Thou art a Whore and a Bawd, and keepest a Bawdy-house, & il move pro Prohibition & fuit grant per totam Curiam pur disant, Thou art a Bawd, and keepest a Bawdy-house, ceo est punishable per le Common Ley & pur disant, Thou art a Whore, sans fesant mention en particular nest destre punished en Spirituall, & un president fuit monstre Mich. 3. Jac. Nicholls Case Rot. 1005. que Prohibition gist pur disant, Thou art a Whore, a Tainted Whore, and a Dirty Whore.

Termino

Termino Mich. An. XXII. Jacobi Regis *in* Communi Banco.

Dalton *verſus* L'eveſq; *de* Ely.

(1) *Intratur. Paſch.* 17. *Jac. Rot.* 1784.

Michael Dalton port Quare Impedit vers Lancelot adonque Eveſq; de Ely & Pamphlyne incumbent pur Eſgliſe de Abingdon en le Countie de Cambridge, & declare que il meſme fuit ſeiſie en fee del' advowſon come de groſſe & preſent un Marcke Holdred que vient void per ſon reſignement & iſſint append a luy a preſenter.

L'Eveſque plede en barre que Nicholas Weſt Eveſq; de Ely ſeiſie en fee de ceo come en groſſe en temps H. 8. & collate Nicholas Pellis que fuit incumbent, & Weſt morust & Richard Coxe fuit Eveſq; & tempore Eliz. Reginæ quando l'Eſgliſe devient void per mort de Pellis, & Ferdinando Parris per uſurpation preſent Robert Clearke que fuit inſtitute & induct per Eveſq; de Ely ordinary del' lieu, & apres il morust & Parris iterum preſent Thomas Lancaſter que fuit inſtitute & induct, & per ſon reſignation devient void & l'Eveſq; de Ely come Ordinary de lieu per l'apps collate Thomas Goodman, & apres Coxe morust & Eaton fuit Eveſq; & Goodman morust, & collate ceo al Marcke Holdred que fuit induct & Michael Dalton le Plaintiff n'ayant aſcun droit a preſent port Quare impedit vers Eaton, & le dit Holdred & ad Judgment per default, & pur briefe al Eveſq; fiſt title que Ferdinando Price ſeiſie del' Rectory de Abingdon a que le dit Vicarage append & preſent le dit Lancaſter que fuit inſtitute & induct, & apres devient void per ſon reſignation & per laps que Coxe collate ceo al Goodman, & donque il conveye le Rectory per meane conveyance de Price a luy meſme. Et que Eſgliſe eſteant void per mort Goodman il apperteine a luy pur preſenter, & ſur ceo il avait brief al Eveſque & devant que aſcun brief iſſuiſt le dit Holdred eſteant collate per Eaton reſigne & apres Dalton luy preſent arere & Holdred ſur ſon preſentment fuit inſtitute

tute & induct, & le dit Defendant plede ouster que le dit recovery fuit ewe sans title & per consent de Eaton adong; Evesque. Et le dit Martyn Eaton Evesque mourust, & le oyr Defendant fuit fait Evesque & il plede le Statute de 1 Eliz. pur alienations de possessions de Evesques: Et il dit que le Vicarage en son temps devient void per resignation de Holdred & que il apperteint a luy a collate, & il collate ceo al dit Pamphlyn le auter Defendant que fuit induct, & demand Judgment si Action: Pamphlyn ne dit riens sur que Judgment sur nihil dicit vers luy, & le Plaintiff demurre en ley sur le plee en barre del' Evesque.

Le case brief sur le recorde est que Nicholas West Evesque de Ely, seisie en fee del' Vicarage de Abingdon in Com. Cambridge come en grosse presents Nicholas Pellis que tempore H. 8. mourust. Richard Coxe fuit Evesque l'Esglise devient void en temps le reigne Eliz. (sed ne appiert per le pleding quando) & Ferdinando Price per usurpation presente Clearke que fuit institute & induct per le dit Coxe, il mourust, & il presente arere Lancaster que fuit institute & induct & il resigne & Coxe per laps presente Goodman, Coxe mourust l'Esglise devient void per mort Goodman & Eaton Evesq; presente Holdred, vers eux Dalton recover per default sans title, & devant brief al Evesque Holdred resigne, & Dalton luy presente arere, & il fuit institute & induct, Eaton mourust, Holdred resigne, & le oyr Defendant Evesque presente Pamphlyn le auter Defendant, sur que le Plaintiff port quare impedit.

Les Justices conferre enter eux mesmes apres several Arguments al barre, & ils unement accorde que Judgment serra done encounter le Plaintiff, & ceo pur le reasons ensuant queux en cest Terme de St. Michael le Seignior Hobart apartment deliver en Court. Primes ils agree que un usurpation ewe apres 1 Eliz. sur un Evesque lyera l'Evesque que ceo suffer pur son temps demesne, sed son successor serra admitt, scilicet, al prochein avoidance a presenter & sil soit disturbe il avera quare impedit, & ne serra mise a son brief de droit de advowson come le party que suffer le usurpation serra sed coment le successor poet presente & avoyer un quare impedit sil soit disturbe tamen il serra hors de possession del' advowson (per le usurpation) tanque il ad re-continue ceo per presentment ou recovery en quare impedit issint que si il grant le advowson devant ceo le grant nest bon come 16 E. 3. Fitz. quare impedit un usurpation vers Infant esteant eins per discent ne luy barra, mes si l grant le advowson (devant re-continuance del' ceo) le grant nest bon, & pur le principal point le reason fuit que cest usurpation est un act suffer per le Evesque del' enheritance del' Evesque que est fait void per le Statute de 1 Eliz. come sil suffer fine & non claime. Magdalen Colledge Case pars 11. vel suffer disseisin

cap: 19

diſſeiſin & diſcent ceo eſt helpe per le dit Statute; & per Hobart, ſi Eveſque ſuffer uſurpation al un advowſon que il ad per purchaſe devant que il ad preſentation ceo ne lyera le Succeſſor, mes que il poet porter quare impedit, & alleage preſentment en le grantor, & ceo ſerra bon per ceſt Statute, mes il ne poet aver brief de droit pur ceo que il ne unque avoit ewe ſeiſin iſſint ſi recovery fuit ewe vers Eveſque en ceſſavit ſur covyn ceo eſt deins ceſt Statute contra ſi ſans covyn & ceo ſemble a moy deſtre bon ley.

2. Come le caſe fuit plede per le Defendant il appiert aſſets bien que le uſurpation fuit apres le Statute de 1 Eliz. car il eſt plede que le uſurpation fuit ewe le Reign Elizabeth, & l'Eſtatute fuit deins 2 moies apres le commencement de ſon Reigne iſſint admitt que le uſurpation fuit devant le Statute tamen le 6 moies ne poet paſſe devant l'Eſtatute & ideo ceo eſt helpe, car ſi uſurpation fuit devant l'Eſtatute, & apres le Statute fait devant le 6 moies, & le Eveſque ſuffer le 6 moies de paſſer ceo eſt helpe per l'Eſtatute, ſcilicet, ſon temps paſſer pur non porter del' quare impedit deins le 6 moies pur avoider le uſurpation ſed le partie meſme n'avera benefit ſed le ſucceſſor ſolment.

3. Il fuit reſolve auxi que un recovery ewe ſans title en quare impedit per default vers un Eveſque eſt aide vers le ſucceſſor per ceſt Statute ſpecialment ſil fuit un aſſent del' Eveſque.

4. Le pleding eſt aſſets bon, car coment il alledge que Eveſq; collate & mozuſt devant que il fuit loci illius Ordinarius, & ideo le collation void, tamen eſt bon car quant dit que collate il ſerra intende que eſt Eveſque del' dit lieu, & 2 il appiert en diverſe auter parts del' pleding que il fuit Ordinarie, car collation eſt alledge per luy & brief awarde vers Pamphlyn l'incumbent al Metropolitan pur ceo Eveſque fuit party. Et ideo per conſent del' 4 Juſtices Judgment fuit done vers le Plaintiff & pur Defendant.

Il fuit un auter point que fuit argue al barre, ſcilicet, ſi uſurpation fuit ewe ſur Eveſque, & il mozuſt ou le Succeſſor ſoit aide per Weſt. 2. iſſint que il poet preſent al prochein avoidance ou auterment ſoit miſe al ſon brief de droit de advowſon les Juſtices ſur conference ne agree ſur ceſt point, ſed ſemble a moy que il neſt aide per Weſt. 2. ſed eſt left al common ley a ſon recovery ſuper brief de droit del' advowſon al common ley; come appiert per l'Eſtatute ils fueront 2 miſchiefs. 1. Un quant l'Eſgliſe devient void & un eſt que n'ad droit preſent, & ſon Clerke fuit inſtitute & induct il ne fuit aſcun remedy pur recover le preſentment il ſolment puiſſoit aver droit de Advowſon, pur recover ſon advowſon, mes nemy le preſentment, & ceo caſe diverſe foites puiſſoit eſtre ſur laches del' party meſme. 2. Il fuit auter

miſchief

miſchief ſi Tenant en dower, Tenant pur vie per le curteſie pur ans ou gardein en Chivalry ſuffer uſurpation quant l'eſtate determin le heire & reverſioner ſur prochein avoidance ne preſentera, ſed ils fueront miſe a lour briefs de droit de advowſon, & tamen ne fuit aſcun laches en eux.

Pur le primer il fuit un remedy done ſub modo ſi deins 6 moyes apres le inſtitution del' Clerke del' uſurper le veraypatron port quare impedit deins 6 moyes le plenarty ne fuit aſcun plee vers luy, & il recover ſon preſentment, mes ſi deins les 6 moyes il ne port quare impedit il & ſon heire fueront miſe a brief de droit de advowſon come fuit al Common Ley.

Quant al 2. il fuit un droit remedy done que ceſt preſentment & uſurpation durant le particuler eſtate ne prejudicera le Reverſioner, mes que il al prochein avoidance puiſſoit preſent, & ſil ſoit diſturb il deins 6 moyes apres puiſſoit aver quare impedit & recover ſon preſentment.

Mes ceo n'extende al tout reverſions, ſcilicet, al eux queux ount reverſion per diſcent come Fitz. Nat. 34. & Boſwells Caſe pars 6. & lour reaſon eſt ground ſur les parolls del' Statute que done remedy al heires & que il avera eandem Actionem qualem ultimus Anteceſſor habuit.

Tamen en 33 H. 6. 13. en caſu Humf. de Bohun ceſt point ſub ſilentio fuit auterment, ſcilicet, que reverſioner meſme ad aide, & 2, 34 H. 6. 27. le Prior de Clearkenwell grant 2 avoidance & grantee preſent un & mozuſt, & heire preſent ou l'Executor duiſſoit al 2. que fiſt uſurpation & que l'incumbent mozuſt al prochein avoidance le Prior meſme que fiſt le leaſe fuit aide.

Sed ceux livers poet eſtre reconcile, ſcilicet, que ſi un purchaſe terre & leſſe pur ans ou pur vie ceſtuy en reverſion ne ſerra aide, car avoit ceo per purchaſe, mes ſi heire ad terre per diſcent & fiſt Leaſe pur ans ou vie tiel reverſioner ſerra aide, car il avoit le terre per diſcent.

Iſſint del' caſe del' Prior ſil fuit purchaſor & leſſor pur vie il neſt aide, mes ſil avoit ceo per ſucceſſion & fiſt Leaſe il eſt remedie, car ſucceſſion & diſcent en equall remedy.

Noter eſt que ceſt Statute en diverſe caſes ad eſtre priſe per equity, car lou l'eſtatute parle d'eſtate pur ans tamen en 34 H. 6. 27. devant cite il extende al grant de prochein avoidance per equity iſſint que uſurpation ſur luy le reverſioner ſerra aide. 2. Ou le Statute parle del' heire en guarde tamen ceo extende al toũt heires queux ont advowſon per diſcent, ſed nemy ou il ad ceo per purchaſe & ceo eſt 16 E. 3. Fitz. quare impedit 67 & 35 H. 6. 3. l'ou l'eſtatute parle del' heire reverſioner tamen ceo per equity extende al ſucceſſor in reverſion come poet eſtre collect hors de 8 H. 6. 33. & 34 H. 6. 27. devant cite.

Tout

Tenant en tayle in poſſeſſion ſuffer uſurpation ceo neſt deins les parolls (car Tenant en tayle en reverſion eſt ſolment deins les parolls) tamen ceo eſt deins l'equity come 43 E. 3. 24. 25. & 46 Aſſ. 4. 8 E. 2. Fitz. quare impedit 167. & Boſwells Caſe pars 6. & la expreſſment dit que eſt per equity, car apres l'Eſtatute de Weſt. 2. il ne poet aver brief de droit de advowſon & ſil ne fueroit relieve per equity de ceſt Statute il fueroit ſans remedy.

Del' auter part aſcun foites ceſt Statute prise pluis ſtricte que les parolls, car l'Eſtatute parle de Hereditate uxoris que extend al purchaſor auxibien come diſcent, tamen l'Eſtatute eſt conſtrue que ceo extende al advowſon per diſcent & nemy purchaſe iſſint que ſi un uſurpation ſerroit ſur feme covert al advowſon que el avoit per purchaſe el neſt remedy quod vide en Boſwells Caſe & 35 H. 6. & Fitz. Nat. Brevium.

Per ceux Caſes il appiert que ceſt Statute ad eſtre prise per equity plus quam parolls en aſcun caſe, & en aſcun caſe pluis ſtrict quam les parolls & ceo fuit ſur conſideration del' entention del' Statute.

Nunc a deigner al point en queſtion ſil fuit deins l'Eſtatute il eſt deins les parolls vel 2 deins l'entent & equity: deins les parolls il neſt, car ceo parle ſolment de uſurpation ſur Eccleſiaſtick Perſons en le vacation.

2. Secunde que neſt deins le entent, car ceo helpe perſons queux ount defect del' poier ou intelligence de prevent uſurpation. 1. Del' poier come le reverſion feme covert & uſurpation durant le vacation 2. del' intelligence come enfant deins Age, mes Eveſq; ad poier & auxi intelligence pur prevent uſurpation quant il eſt ſeiſie en poſſeſſion del' advowſon.

Le Objection eſt que le Eveſque n'ad poier de alienation ſans conſent de Deane & Chapter ideo ſerra relieve auxibien come l'iſſue en tayle ſed differt, car le iſſue en tayle ne poet aver brief de droit de advowſon ideo ſerra auterment ſans remedy, ſed Eveſq; poet aver brief de droit de advowſon.

Et le ſucceſſor d'un Eveſq: remaine en meſme le predicament come heire del' Patron en fee, ſcilicet, ils ne fueront conclude per plenarty nisi fuit per 6 moies, mes per uſurpation il ſerront come al Common Ley quant ſont Patrons en poſſeſſion, mes ſi Leaſe pur vie ou ans fuit ou le reverſion eſt per diſcent heire ſerra relieve iſſint le ſucceſſor, & ceo eſt un reconciliation de tout.

Le rule pur equity de ancient Statute eſt, come moy ſemble que ſi ne fuit prise per equity deins convenient temps apres le Statute il ne ſerra omnino, car eux que fueront pluis prochein al Statute ſciont melior le entention del' Statute & miſchief entende deſtre relieve quam nous, & come Littleton dit del' Sta-

tute de Merton ſi Action voilt giſer pur le heire pur diſparagement il ad eſtre part devant oꝛe, iſſint ſi ſucceſſoꝛ ad eſtre relieve per ceſt Statute il ad appiert en le livers del' temps E. 1. a oꝛe ſed entant que n'appiert ceo priſe que ne ſerra relieve.

Et eſt un maine argument que neſt aſcun relief per ceſt Statute per le expreſſe mention del' uſurpation durant le vacation, & null mention del' uſurpation ſur predeceſſoꝛ.

Et neſt aſcun authoꝛity al ceſt purpoſe; mes un opinion obiter Fit. preſentment 14.

Sed ſont divers authoꝛities al contrary 8 H.6.33. le Pꝛioꝛ ne fuit relieve niſi per reaſon del' Leaſe pur vie a quel purpoſe diſpꝛove ils ſur le liver 21 Quare impedit. En Quare impedit vers pꝛioꝛ pur Eſgliſe en Gales & allege preſent'en luy meſme, & apꝛes quant l'eſgliſe fuit void le preſent' que le Plaintiff ſuppoſe fuit fait quant void Pꝛioꝛ & iſſint void & ideo, & le Plaintiff dit que il fuit quant le Pꝛioꝛy fuit plein & iſſint appiert que ſi plein le ſucceſſoꝛ nient helpe.

19 H. 6. 4. per Aſcue ſur uſurpation ewe ſur perſon ſucceſſoꝛ ſerra & pluis car il ne poet aver jus advocationis.

18 E. 2. quare impedit 175. le Defendant eſteant Pꝛioꝛ dit que ſon pꝛedeceſſoꝛ preſent & le preſentment ſur que le Plaintiff ground ſon title fuit apꝛes en temps ſon pꝛedeceſſoꝛ en temps de guerre, & iſſint que en temps del' peace per que appiert que ſi fuit en temps del' peace le ſucceſſoꝛ neſt aide per ceſt Statute.

2. R. 3. Fit. quare impedit 102. un Pꝛioꝛ poꝛt quare impedit vers Eveſque le Defendant dit que il & ſon pꝛedeceſſoꝛ avoyant le nomination al Pꝛioꝛ & Pꝛedeceſſoꝛ & il a preſent & que le pꝛedeceſſoꝛ del' Eveſque nominate (le preſentæ del' Plaintiff) & il preſent ouſter, & Eſgliſe eſt void & arere il nominate & le Abbot refuſe de luy preſent per que il collate, le Plaintiff reply, & travers e nomination del' pꝛedeceſſoꝛ Defendant del' preſenter del' Plaintiff & ſur ceo al iſſue, & la tenuſt que ſi luy que ad preſent ſine nomination ceo mitter luy que ad le nomination hoꝛs de poſſeſſion ideo le nomination eſteant travers ceo ad gain'd title al Plaintiff, niſi relieve per ceſt Statute quant al ſucceſſoꝛ, mes entant que le traverſe fuit tenuſt bon ceo pꝛove que le dit preſentation ſi fuit ſans nomination ne fuit relieve, & en Boſwells Caſe avandit tout cales relieveable per ceſt Statute ſont nominated ſed la uſurpations ſolment durant vacant nomination & nemy ceſt uſurpation ſur pꝛedeceſſoꝛ.

Et darrenment Fitz. Nat. 38. eſt direct en le point, ſcilicet, il fiſt expꝛeſs definition que ſi uſurpation fuit ewe durant vacancy il eſt aide per ceſt Statute, mes ſi durant le temps del' pꝛedeceſſoꝛ il neſt relieve.

Ideo

Ideo ſur tout le matter moy ſemble que ceſt uſurpation ne fuit aide per Weſt. 2.

Sir Giles Bray *verſus* P ul Tracy *Milit.* & *Baron.*

SIr Giles Bray port brief de Waſt vers Sir Paul Tracy, & le caſe ſur ſpecial verdict fuit que Sir Edmonde Bray ſeiſie en fee de te.res en Ruſſington in Com. Glouceſter leſſe pur ans al un Ophiell, & ceo per meane aſſignement vient al Sir Paul Tracy. Sir Edmond Bray convey le reverſion per fine al uſe luy meſme pur vie ſans impeachment de Waſt remainder al ſon fits & ſa feme, & al heires males del' fits del' corps feme remainder ouſter reverſion al ſon droit heires, le fits ad iſſue per ſa feme le dit Sir Giles Bray, Sir Paul Tracy commit Waſt, & apres Sir Edmond Bray, & le mere mouſt, & Sir Giles Bray l'iſſue del' luy en remainder en tayle port Waſt vers Sir Paul Tracy: Le Queſtion fuit home fiſt Leaſe pur ans & apres convey reverſion al uſe luy meſme ſans impeachment de Waſt remainder al ſon fits en tayle fits mouſt Waſt commit le Grandpere Tenant pur vie en reverſion mouſt, & l'iſſue del' fits port Waſt & apres argument al barre Judgment ſans argument al Bench per conſent del' tout 4 Juſtices fuit done pro quer. Primes ils agree que ſi Tenant pur vie ou per ans fuit reverſion ou remainder pur vie remainder en fee & le particular Tenant commit Waſt & Tenant en reverſion ou remainder pur vie mouſt que coment durant ſon vie le Waſt fuit diſpunishable tamen apres ſon mort ceſtuy en remainder en fee avera Action de Waſt & accordant il eſt adjudge en Pagetts Caſe pars 5. Reports Cooke. (2)

2. Ils reſolve quant un fiſt Leaſe pur ans & apres convey le reverſion al uſe luy meſme ſans impeachment de Waſt remainder en Fee & Leſſee pur ans commit waſt il n'avera le priviledge deſtre diſpunier de Waſt ceo extende al reverſion quant al Tenant en poſſeſſion, & ideo apres le mort le reverſion pur vie il ſerra punishmes ſi Tenant pur vie ſans impeachment de Waſt fiſt Leaſe pur ans ou auterment, & leſſee pur ans commit Waſt en ceo caſe ceſtuy en remainder en fee n'avera Action de Waſt, car ceſt Leaſe fuit derive hors del' eſtate pur vie priviledge, & ſi Waſt giſoit il ſerroit port vers le Tenant pur vie que fiſt le Leaſe & il fuit diſpunishable.

Maskelyne *verſus* Higford.

(3) *Audita querela.*

Edmund Maskelyne fuit Plaintiff en un Audita querela vers John Higford, & le caſe fuit que un Davies 43 Eliz. devant le Viſcounts & Clerks del' Statute de Glouceſter conus un Statute de 500 l. al un John Machyr le Statute fuit formall in touts points accordant al Statute de Acton Burnell & Mercatoribus ſavant que null jour de payment fuit appoint ou limit en le Statute; John Machyr fiſt ſa ſeme ſon Executrix & mourſt, & el mourſt inteſtate & le Adminiſtration del' biens del' Machyr nient Adminiſter fuit commit al Higford, & il ſue Execution ſur l'eſtatute vers Davies & non eſt inventus returne & ſur ceo il ad extent del' terres de conuſor, & terres que fueront le dit Davies fueront extende & le dit terre fueront demiſe per Davies al un Maskelyne que ceo aſſign al Plaintiff & ſur le extent un motion fuit fait pur ſtayer del' extent, & prima facie il ſemble adonque al Court que l'eſtatute ne fuit bon pur ceo que null jour de payment, & ſur ceo Liberate fuit ſtay pur certain temps ſed apres ſur motion le Court direct luy a porter Audita querela & donque il ſerra judicialment trie. Warburton mourſt & le Plaintiff port Audita querela reherſant le dit 2 Statutes de Acton Burnell & Mercatoribus, & que ceſt Statute ne fuit bon pur ceo que il n'avoit aſcun jour, & ſur ceo le Defendant demurre & ceſt Terme apres diverſe arguments al barre les 4 Juſtices deliverent lour opinions briefment & 3, ſcilicet, Hobart, Winche & Jones fueront de opinion encontre le Plaintiff & que le Statute fuit bon & Hutton e contra. Il inſiſt que le jour de payment fuit un materiall choſe & mention ſeveral foits en le dit Statute fuit del' jour de payment, & ideo le omiſſion del' ceo fait le Statute male ſed les 3 autres diſont que en ceſt Statute aſcun choſes fueront matters de forme & le omiſſion del' eux ne fiſt Statute Merchant male; aſcun choſes de ſubſtance come de mitter del' 2 parts del' ſeale & Hujuſmodi, & tiel omiſſion de choſe de ſubſtance fiſt l'eſtatute male.

2. Jls touts agree ove Hutton que jour de payment eſt matter de ſubſtance pur ceo que ſi ne appear al Major per ſon rolle ou Statute que le jour eſt paſſe il ne poet faire execution ſed ils direre que un jour come tiel jour del' moyes vel ſimile n'eſt material tout temps deſtre nominat' ſed ſi per l'eſtatute il appiert quant le argent eſt deſtre pay coment null jour en certain ſoit miſe ceo eſt aſſets bon & deins l'entention del' Statute, & icy quant null jour eſt limit en Statute pur payment de l'argent il

eſt

eſt payable maintenant, come livers ſont vide 44 E. 3. 29. 4 E. 29 per Curiam, 39 E. 3. 12. 14 H. 4. 27. Et le ley eſtant iſſint il eſt auſi certain jour de payment come ſi il ad eſtre mention en particular deins le Statute, & de ceo le Bajor eſt de prender conuſans pur agarde execution & ideo null miſchief, & ſur ceo Judgment fuit done encontre le Plaintiff & ove le Defendant, & il avoit ſur ceo un Liberate al Aiſcount de Worceſter pur faire levy del' terres extende.

I *Received my diſcharge for the* Common-pleas 18 Octobris 1624. 22 Jacobi; *and the ſame day Sworn Judge of the* Kings-Bench, *and afterwards the ſame day, my Brother* Whitlock *was Sworn Judge of the ſame Court, and alſo afterwards the ſame day my Brother* Harvy *was Sworn Judge of the* Common-Pleas.

Reports

Reports de Caſes reſolve & adjudge & comence en Bank le Roy apres monvenue deſtre Juſtice la.

Termino Mich. An. XXII. Jacobi Regis *in* Banco Regis.

Euſtace *verſus* Scowen.

DEux joint-tenants pur vies l'un grant ſon moiety per Fine per paroll conceſſit al auter Habend' a luy & ſes heires durant vie le conuſor, & le conuſor morust & le queſtion fuit quid operatur per le fine? Et per les 4 Juſtices fuit reſolve & iſſint adjudge que un jointenant n'ad aſcun eſtate, mes pur ſon vie demeſne, mes ſolment poſſibilitie de ſurvivor pur le part de ſon companion, & quant il grant outter ſon eſtate ou fiſt partition ſur ſon mort ſon part reſortera al reverſion & le poſſibilitie de ſurvivor ale, & le grantee n'ad forſq; eſtate pur ſon vie; & l'un jointenant ne poet enfeoff ſon companion ſed poet releas & ſil grant ſon part per paroll dedi ou conceſſi al ſon companion ceo ſans fine levy enuere al ſon companion per voy de releas & nemy grant, & le paroll concedi eſt tantamount come al direct done al auter, & eſt tantamount come relaxavi; & en meſme le manner ſerra per voy de fine il inuerera come releas & Judgment fuit done accordant. (1)

Lowe & Kirby.

(2) HOme promiſe en conſideration que J. S. ad deliver a luy un chivall a deliver al J. S. un chivall vel ſumme de argent ſur requeſt, J. S. port Action ſur le caſe ſur aſſumpſit, & dit que le Defendant licet ſepius requiſit' ne deliver le argent neque le chivall, & ſur non aſſumpſit trove pur le Plaintiff il ad Judgment en le Court de Rocheſter, & error port, & le Judgment fuit reverſe pur ceo que un preciſe requeſt ne fuit alledge, car ceo eſt paroll del' contract, mes ſi un preciſe requeſt ad eſtre alledge & null lieu del' requeſt, & non aſſumpſit plede, & ceo trove pur le Plaintiff ceo ad eſtre actets bon, ſed ſi le requeſt ad eſtre travers autrement il fuit, car donque null viſne appiert pur le triall.

Walter Foy *verſus* William Hyrde.

(3) WAlter Foy port Ejectione firme verſus William Hyrde, & declare ſur demiſe de Richard Keyly de terres en Countie de Dorſet, parcell de Manor de Lillington en Com. præd. & le Jury trove ſpeciall verdict, l'effect fuit come enſuiſt, Martyn Keylwey ſeiſie en fee inter alia del' dit Manor fiſt ſon darren volunt in hæc verba: For the good will I bear to the Name of the *Keylweys*, and alſo I deſire that my Lands may have continuance in the Name of the *Keylweys*, I give and bequeath all my Lands and Hereditaments unto the Heires Males of my Body; and for default of ſuch iſſue, I will, and my mind is, to Intayle, Deviſe and Bequeath by this my Will, all the ſaid Lands to *Henry Keylwey* my Nephew, and to the Heires Males of his Body lawfully begotten, and for default of ſuch Iſſue, to *Thomas Keylwey*, and the Heires Males of his Body lawfully begotten, with diverſe remainders over to others of his name, and to the Heirs Males of his body lawfully iſſued, To have and to hold to the Heirs Males of my Body, and for default of ſuch iſſue, to *Thomas Keylwey* and the Heirs Males of his Body, and ſo for the reſt of the remainders, *&c.* in tayle, to the only entent and true meaning of this my laſt Will and Teſtament, and ſo long as they and every of them do obſerve, perform, and keep the true meaning thereof touching entayling of my Lands in manner and form following, and not otherwiſe; And therefore I do by this my Will, give and bequeath all my Lands, after the deceaſe of the Heirs Males of my Body, to *Henry Keylwey*, and to the Heirs Males of his Body, untill ſuch time as the ſaid *Henry Keylwey*, or the Heirs Males of his Body begotten, ſhall effectually and expreſly aſſent, conclude,

conclude, do, or go about to do and make, appoint, alter, discontinue or change the Estate Tayle, or any part thereof, or shall expresly and directly go about to alter or change the true meaning of this my last Will and Testament, other then to make their Wives a Jointure, or Leases pur 3 Lives or 21 Years, That then my Will is, and I do devise and give the said Lands to *Thomas Keylwey* and the Heirs Males of his Body, with the liberty, limitation, *&c.* of the rest in remainder. Martyn morust sans issue de son corps Henry Keylwey le primer devisor esteant son Cousin & Heire. Thomas Keylwey morust aiant issue Richard Keylwey le lessor Henry Keylwey lessa le dit Mannor al son fits pur 500 anns que assigne al William Hyrd le Defendant, que assigne ouster al William Hyrd Junior & al's, queux enter & fueront possess, apres Henry Keylwey per endenture perenter luy, & Defendant agree de levy le fine a luy, & pur ceo Covenants a levie fine a luy que fuit levie accordant sed null proclamation trove Richard Keylwey enter & lessa al Plaintiff, & le Defendant luy ouste sur que le lessor port Ejectione firme. Cest case fuit several foits argue devant que jeo sea sur le Bench, & apres mon venue il fuit argue cest Terme, & apres touts les 4 Justices deliver lour opinion seperatim & tout assent en un que Judgment serroit done vers le Plaintiff, en cest case 3 points fueront move; primes, ou Thomas ad per le volunt un setled remainder ou solment un contingent estate sur le alienation ou discontinuance del' entayle per le proviso? Le 2 point, si Thomas navoit ascun setled remainder sed solment un contingency, & il morust devant que ceo happen ou ceo vestera en son fits ou nemy? 3. Ou Heire del' Thomas sur levier del' fine poet enter ou nemy per virtue del' proviso admit que il avoit setled remainder ou que le remainder esteant en contingency vestera en luy.

Et les 4 Justices agree en un pur le primer point, scilicet, que Thomas avoit un remainder en point de estate setled en luy per le volunt, & ceo appiert sur consideration de primer part de volunt, & le primer part sans le 2 fuit sufficient de faire le remainder pur divers reasons, car il appiert que l'entent del' partie fuit de faire continuance del' terres en son nosme, etsi ne fuit remainder donque il ne fuit ascun entayle, mes pur Henry solment & il esteant Heire al devisor avera le reversion en fee, & sil morust sans Heire Male son Heire Female averoit ceo que ne fuit l'entent del' devisor, & 2 si issint serroit Henry Keylwey ad pluis benefit quam heire del' corps de devisor averoit, car le Heire Female de corps del' devisor navera rien & ne fuit entent del' devisor a doner pluis large estate al Henry quam al Heire de son corps demesne. 3. Auxi en le primer part de volunt il est Habend' a Heires Males

de corps remainder al Henry en remainder le remainder ouster, & en joinant del' les Heires Males de son corps ove Henry, & auter en remainder son entent fuit a doner equal estate, & ides les Heires Males demeine, & Henry ad estate fetled issint serra pur tout les remainders, & le addition del' 2 clause ne fuit pur abridge l'estate, mes solment pur lier les primer estate ove un proviso que fuit absolute devant per premisses del' volunt.

2. Tout resolve en un que cest fine ne doner ascun cause de entry en remainder, car primes il est clære q̃ est difference enter limitation & condition, car condition defeat l'estate & tout remainders depend aut sur ceo & le party, & son heire avera benefit de ceo solment; limitation determin l'estate, & le remainder continue sur ceo; ideo si home fuit tenant pur vie remainder en fee sur condition que le tenant pur vie esteant feme sole continue Widow si le feme marrie le heire enter & defeat l'estate del feme & le remainder auri: mes si Estate fuit fait al feme durante viduitate remainder ouster, le feme marrie estate determin per limitation & remainder ouster serra bon; sed in limitation il est un caution, sc. que si fuit un estate de enheritance ou freehold limit' ove remainder ouster, & cest estate fuit destre determin sur un collaterall limitation (pur ceo que estate de enheritance ou freehold ne cesse neque determin sans entrie, & null poet enter, mes cy que est en privity d'estate le heire ou party mesme que fist l'estate) en ceo case limitation est male; come si done en tayle fuit fait remainder ouster provided que si tenant en tayle alera al Rome son estate cessa & remain al cestuy en remainder si le donee vaer a Rome son estate ne cessera; mes semble a moy un difference en limitations, car si terres soient done al un & al heires males de son corps durant ses issues aleront al Rome, remainder ouster la fils aleront al Rome, lour estate cessera & remainder bien come en le case del' Lease durante viduitate remainder ouster, car en ambideux les dit cases le limitation est lie al estate sur le creation come si done en tayle fait cy longe q̃ tiel arber cresse, ou le primer determin sur le mort del'arber. Nunc a vier al case en question si le conveyance ad estre sur condition q̃ tenant en tayle ne discontinue per fesfment ceo ad estre bon come Littletons Case est car est trust al estate tayle & al reversion, & le fesor ou donor enter & defeat le fesfment & l'estate que le donor done al son fesee, mes si estate fuit done al un en tayle tanq; que il discontinue come semble a moy sil discontinue, l'estate ne determin, car il ad convey son estate al auter, & donque il vient trope tarde pur determin l'estate, & en nostre case quant le donee fuit en tayle a luy il discontinue, & donque remainder ouster ceo est repugnant, car quant le donee discontinue il done son estate al auter ceo pient perenter luy & le remainder, & ceo est le case de Plesyton

6 R. 2.

6 R. 2. Fit. titulo quid juris clamat, & ceo fuit reſolve auxi en Germine & Arſcotts Caſe en C. B. ideo tout agree ſi le conveyance ad eſtre tanque il ad diſcontinue & donque remainera ouſter ceo ad eſtre void & repugnant, mes les parolls icy ſont ouſter tanque il effectually go about to alter; primes, tout le Court agree q̃ doet eſtre actuall & perfect act de alteration ou diſcontinuance del' eſtate fait devant q̃ l'eſtate ceſſera, car eſt un effectuall going about & ne eſt bare endeavour, ideo ſil ad eſtre un abſolute concluſion pur faire feffment ou a levy fine ſi le feffment ne fuit fait ou fine ne fuit levie le limitation eſt enfriender, & ſi le ley fuit iſſint donque le diſcontinuance per levy del' fine ſans proclamation doet precede le enfriender del' limitation, & le ceſſor del' eſtate & ceo eſt trop tarde, & tout un obe le dit caſe de Pleſington, & fiſt fine del' ceſt caſe oze en queſtion: Tout les Juſtices auxi parlont en generall de perpetuities que ſont encontre ley, & encontre le policy del' eſtate & le bon del' Common-weale, & nemy deſtre favour, & ils ount eſtre condemn en tout caſes quant fueront en queſtion, etſi ceſt perpetuitie en ceſt caſe ſerroit allowe il ſerroit woꝛſe quam les auter perpetuities; Quant al tierce point il ne fuit mult inſiſt ſur pur ceo que le reaſons avandit ad fine le caſe ſed aſcun choſe fuit dit Argumenti Gratia, & les Juſtices ne agree en ceo, car ſemble al Dodridge & Seignior Chief Juſtice que le remainder ne poet veſter en le Heire pur ceo que le contingent ne fuit perſoꝛn en vie del' pere, ſed ſemble a moy que il veſtra Brett & Rigdens Caſe ceo agree deſtre bon ley, ſi deviſoꝛ moꝛuſt devant le deviſee le heire prendera riens, vel ſi feffment ſoit fait & devant livery feffee moꝛuſt vel ſi grantee del' reverſion moꝛuſt devant attornment, car le conveyance ne fuit perfect, mes ſi home deviſe al J. S. ſur contingent, & deviſoꝛ moꝛuſt & donque J. S. moꝛuſt devant le contingent, & apres le contingent happen ſemble que heire prendera, car le volunt que fuit le conveyance fuit perfect per moꝛt deviſoꝛ, & nemy deſtre alter per aſcun, mes come le caſe 1 Mariæ Brooke, home covenant de eſtoier ſeiſie ſur contingent al uſe J. S. & J. S. moꝛuſt, & apres contingent perſoꝛne il veſtra en heire, iſſint de fine executoꝛy ou conveyance nient execute come Shellys Caſe, Rectoꝛ de Chedyngtons Caſe leſſee pur terme ſur contingent, & il moꝛuſt devant contingent il eſt la tenuſt q̃ ne veſtra en Executoꝛ, ceo eſt contra al caſe de Welcden & Elckingtons Caſe coment, & ceo ad eſtre controll per Lampetts Caſe pars 10. per totam Curiam, & Leukenthorps Caſe en Exchequer, ſcilicet, que terme veſtera en Executoꝛ, & apres les Juſtices ount deliver lour opinion Judgment fuit pur Defendant encontre le Paintiff en le principall caſe.

Termino Hill. An. XXII. Jacobi Regis, *in* Banco Regis.

Crocker *verſus* Kelſey.

BAron & feme Tenants en ſpeciall tayle reverſion al baron & ſes heires ount iſſue fits, & le baron mozuſt; le fits levie fine al uſe luy meſme & ſes heires, le feme fiſt Leaſe pur 21 anns nient garrant per 32 H. 8. & mozuſt le heire enter & le queſtion fuit ou le heire avoidera le Leaſe ou nemy, & ceo fuit move en Michaelmas Terme devant & donque reſolve per Ley adonque Chief Juſtice, Dodridge, Jones & Whitlock que l'iſſue en tayle ne avoidera le Leaſe, & apres ceſt Terme Ley eſteant remove, & en le abſence del' dit Chief Juſtice le caſe fuit move anew & donque adjudge accordant que le Leaſe continue bon vers le iſſue en tayle.

En que primes fuit reſolve que ceſt Leaſe eſteant fait per Jointreſs pur 21 ans (nient garrant per 32 H. 8.) ne fuit deins l'eſtatute de 11 H. 7. car ne fuit aſcun diſcontinuance & ne fuit fiſque pur un ordinary terme, & nient ſemble al caſe miſe en Sir George Brownes Caſe del' fine levie al feme Jointreſs en tayle, & el demiſe pur 1000 ans ceo neſt bon, car eſt pur longe & unuſuall terme, & per deviſe pur avoider le Statute, ideo il fuit remedy per equity del' Statute.

Et il fuit conſider quant l'iſſue en tayle levie fine en vie del' Tenant en tayle quid eſt fait per ceo, & fuit reſolve que nient obſtant le fine del' iſſue le pier contimie Tenant en tayle a touts purpoſes come il eſt agree en Beamonts Caſe pars 9. & ſi Tenant en tayle levie fine ou ſuffer recovery ils ſont bon, & le comiſe ou recoveroz tiendra ceo apres mozt Tenant en tayle vers le conuſoz del' iſſue en tayle, & fuit adjudge en le Common Bank, Trin. 21 Jac. en caſe Godfry & Wade, que ſi Tenant en tayle ad iſſue fits & file, & fits levie fine en vie pere & mozuſt ſans iſſue en vie pere, en ceo caſe le terre diſcende en tayle al file, & el ad bon droit vers conuſoz del' iſſue en tayle, car el claime immediate del' pere, &

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ne ſerra aſcun diſcent per ſon frere, pur ceo que le eſtate en droit ne fuit unque en luy. Et le fine del' iſſue en tayle levie en vie pere neſt forſque per voy de concluſion a barrer luy meſme, & tout que vient en claime deſouth luy, videlicet, ſon iſſue ou ſon 2 conuſor, come ſi fuit Ayel Tenant en tayle pere & fits, & le pere en vie le Ayel levie fine & morust, & Ayel morust ceſt fine lie ſon iſſue auxibien come luy nemy iſſint ſi apres mort le Ayel le pere levie un auter fine ad eſtrange lie primes conuſor tiendra le terre vers le 2 conuſor; mes quant al conveyance fait per le Ayel ceux ſont paramounts, ideo ſi en ceſt caſe le Heire ad levy fine ou ſuffer recovery apres le fine del' pere ceux ſont bon: & defence vers conuſor del' pere, etſi le Tenant en tayle (apres fine levie per fits come en ceſt caſe eſt) fiſt Leaſe pur ans & morust le conuſor ne ceo avoidera, car tiel Leaſe al Common Ley fuit bon vers l'iſſue & l'eſtatute de Weſt. 2. ne aidera null, mes l'iſſue en tayle, & apres l'iſſues en tayle extinct le reverſioner, etſi le privitie del' eſtate tayle fuit determin el ne poet avoid ceo, car le Tenant en tayle ne avoidera ſon charge ou ſon Leaſe neque feffee del' Tenant en tayle come eſt tenus en Hunt & Caples Caſe pars 2. Cooke. & en 33 H. 8. Dyer 19. ſi l'iſſue en tayle ad levie fine apres mort pere devant ſon entre ſur leſſor pur ans le conuſor ne ceo avoidera car null privity, & ſi en ceſt caſe le Tenant en tayle ad fait Leaſe pur ans primes, & l'iſſue levie fine en vie le Tenant en tayle, & le Tenant en tayle morust le conuſee del' iſſue ne ceo avoidera, car l'eſtate tayle & le privity del' ceo eſt determin, & null difference quant le fine eſt precedent al Leaſe, & ou ſubſequent car le Leaſe eſt bon vers tout, mes vers ceux queux fueront aide per Weſt. 2. & ceo eſt l'iſſue en tayle meſme & quant leſſor per ſon act ad extinct l'eſtate tayle & deſtroy le privity le Leaſe continue bon, & nient avoidable per aſcun cy longe come aſcun iſſue del' Tenant en tayle continue en vie, mes quant l'iſſues en tayle ſont extinct donque ceſtuy en reverſion avoider le Leaſe aſſets bien. Et fuit dit per Jones, que ſi Tenant en tayle (apres fine levie per l'iſſue) fiſt feffment & morust que le feffee tiendra le terre vers l'iſſue, & ſon conuſee, car ſi l'iſſue port formedon le feffee plede ſon fine vers luy, & l'iſſue ſerra conclude de avoider le fine per diſant parties ad finem nihil habuerunt, & le conuſee ne poet aver un formedon neque aſcun auter action ne entre pur recover le terre; & iſſint come il dit le feffee tiendra le terre quitment tanque tout l'iſſues ſerront extinct & donque ceſtuy en remainder ou reverſion avera formedon en remainder ou reverſion pur recover le terre que non fuit dedit per aſcun.

3. Il fuit debate ou fuit aſcun difference en le caſe en queſtion, & il fuit urge cy, car l'iſſue en tayle ad le reverſion en fee-ſimple expectant ſur l'eſtate tayle, & donque quant il levie fine, ceo paſſe

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ſon reverſion en fee, & l'eſtate tayle extinct en le reverſion en fee per voy de concluſion, & pur confirmation de ceo ils tout relie ſur le Caſe de Sir George Browne pars 3. Reports de Cooke, & donque ils urge que ſi l'eſtate tayle fuit extinct donque le conuſee del' fits fuit eins del' ancient reverſion, & per conſequence avoidera tout charges fait per Tenant en tayle, & pur ceo cite Auſtins Caſe miſe en Walſinghams Caſe.

Sed fuit reſolve per Curiam & adjudge que le conuſee cy long que ſont aſcun iſſues en vie del' Tenant en tayle ne avoidera le leaſe, mes quant l'eſtate tayle per mort del' tout iſſues ſerra extinct donque le conuſee avoidera le leaſe, & nemy devant, car ils diſont coment enter l'iſſue en tayle & conuſee l'eſtate tayle per voy de concluſion ſoet extinct tamen quant al touts eſtrangers queux ont droit il ſerra en eſſe, car ſi Tenant en tayle fuit, & il fiſt Leaſe pur ans, & apres levie fine al ceſtuy en reverſion, & morust aiant iſſue en ceo caſe coment ceſtuy en reverſion ſerra eins del' ſon ancient reverſion tamen il ne avoidera le Leaſe durant le vies del' iſſues en tayle, car quant al eſtrangers l'eſtate tayle en droit continue; come ſi tenant pur vie grant rent charge & ſurrender l'eſtate pur vie enter leſſor & leſſee eſt extinct, mes nemy quant al grantee del' rent iſſint en Lillyngtons Caſe Coke p. 7. ſi home ad rent, & enter en Statute & releas al tenant del' terre quant al tenant del terre, & le grantor le rent extinct quant al conuſee nemy iſſint le caſe de Seignior Abergavenny 2 Jointenants l'un grant rent, & releaſe al ſon companion quant al dit Jointenants que releaſe eſt eins per primer feſſment, mes quant al grantor del' rent il ſerra eins per ceſtuy que releaſe iſſint icy quant al leſſee pur ans l'eſtate tayle continue & ceſtuy en reverſion en regarde de ſon reverſion ne avoidera le leaſe tanque l'iſſues ſont ſpent, & en privity del' eſtate tayle il ne poet ergo non omnino; mes quant al auter purpoſes il ſerra eins de ſon eſtate en fee; Et apres les Juſtices ount ſeveralment deliver lour opinion a ceſt purpoſe Judgment fuit done pur le leſſee pur ans. Ceſt caſe fuit affirm ſur error in Exchequer per touts les Juſtices & Barons una voce.

KIng *James* dyed 27 *Martii* 1635. in the entrance to the 23*d.* year of his Reign, and that day King *Charles* was Proclaimed. The Judges had their Patents renewed; the two Chief Juſtices and Chief Barons Patents, dated 29 *Martii*, and Mr. *Baron Bromley*: the reſt had it by precedency, as they were in Ancienty; and mine

mine is dated 3 *Aprilis*. The King had 5 Serjeants when he dyed, *Davies*, *Finch*, *Hitcham*, *Richardſon*, and *Crew*; they had their Patents renewed, and Sir *John Walter*, and Sir *Thomas Trevor* had Writts to be Serjeants retornable immediate in the Vacation, and were Sworn by the Lord Keeper in the Vacation, and had Patents to be Kings-Serjeants. And then before the Term, Sir *Henry Yelverton* had a Writ to be Serjeant the firſt day of the Term, with intention to be Sworn that day, and immediately to be Sworn Judge of the *Common-Pleas*. And the Juſtices conceiving theſe courſes to be irregular, had a meeting, and upon conference, reſolved, That it were fit that Sir *John Walter* and Sir *Thomas Trevor* ſhould have new Serjeants Writts retornable the firſt day of the Term, and that all three ſhould then appear in Chancery; and Sir *Henry Yelverton* could not be Sworn Judge untill they joyntly performed the ordinary ceremonies for Serjeants, and accordingly they all three appeared upon the firſt day in the Chancery, and were Sworn: And upon *Tueſday* following all came to *Serjeants-Inn* before the two Chief Juſtices, and moſt of the other Judges, and rehearſed their Pleadings, and had the Coifs and Hoods put on by the Chief Juſtices and Mr. *Baron Denham*, after the Chief Juſtice had made a Speech to them, and then they went to *Weſtminſter*, and were preſented at the *Common-Pleas*, Sir *John Walter* firſt, Sir *Henry Yelverton* ſecond, and Sir *Thomas Trevor* laſt, and all returned to *Serjeants-Inn Fleet-ſtreet*, and made a Feaſt, whereat all the Judges of both Houſes were, and the Lord Treaſurer & the Lord *Mandevill*; and they gave Rings: The poſie of Sir *John Walters* and Sir *Thomas Trevors* Ring was, *Regi legi ſervire Libertas*, and of Sir *Henry Yelvertons*, *Stat lege Corona*. And upon Thurſday following Sir *Henry Yelverton* was Sworn Judge of the *Common-pleas*, and afterwards the ſame day Sir *John Walter* Sworn Chief Baron, and *Sir Thomas*

Thomas Trevor fourth Baron of the Exchequer, and upon Monday following they went in their Robes to *Weſtminſter*.

In the beginning of this Term of *Eaſter*, *primo Caroli* *Serjeant Aſhley* was ſworn Kings-Serjeant, and afterwards the ſame Term *Serjeant Davenport* was ſworn Kings-Serjeant, and there are now in all 7 Serjeants to the King. The Kings Funerall was performed the ſecond *Saturday* in this Term: the Judges had Mourning given, and went in their Mourning in their Ancienties before the Corps to *Weſtminſter*, and the Kings-Serjeants, and *Serjeant Davenport*, being not then Kings-Serjeants, had precedency of the Maſters of the Chancery.

Termino

Termino Paſch. An. I. Caroli Regis *in* Banco Regis.

Badow *verſus* Salter.

SAlter port Action de Dett en C. B. vers J. S. & ſue luy al utlarie, & il priſt un Capias utlagatum vers J. S. direct al Viſcount de Salop, Salter ſur conference ove Badow aſſume que ſi Badow per ſon travel procure le dit Capias deſtre execute que donque il paiera al Badow 10 l. & ſur ceo Badow travel de London al Salop; & il obtain un ſpeciall Warrant direct a luy meſme donant a luy meſme poier come ſpecial Bailiff pur arreſt J. S. & per virtue del' garrant le dit Badow arreſt J. S. & Badow port Action ſur le Caſe vers Salter pur le 10 l. & apres verdict il fuit move en arreſt de Judgment que le conſideration ne fuit bon, ideo le Action nient maintenable, & tout le Court, ſcilicet, Crewe, Dodridge, Jones & Whitlock una voce agree, que Judgment ſerra done vers le Plaintiff, car un promiſe fait al Viſcount ou ſes Miniſters a doner aſcun choſe que ne fuit ſon due fee fuit un extortion, & quant le Plaintiff devient ſpecial Bailiff al viſcount pur le temps, il fuit ſon Officer, & ſon arreſt fuit le arreſt del' Viſcount, & ſil ſuffer le priſoner de eſcaper Action giſt vers le Viſcount, & ſi le priſoner fait reſcous le returne del' reſcous ſerra q̄ il fuit fit al Viſcount meſme, ideo le promiſe fait al luy ne differt aſcun choſe quant le promiſe eſt fait al Viſcount ou ſon Deputy ou ſon Bayliff juruſt & conuſt per que Judgment fuit done vers le Plaintiff que nihil Capiat per billam. (1)

Crowch & Haynes.

(2) ENter Crowch & Haynes le caſe fuit tiel home recover en Common B. en Ejectione firmæ, & apres Defendant port Erroꝛ en B. R. & le Judgment affirme, & Plaintiff en brief d'erroꝛ port erroꝛ en Parliament, & ſur ceo le roll mand & port en Parliament, & apres remande al B. R. & tranſcript leſſe ſolong; le courſe, & ad Superſedeas pur ſtayer execution, & apres le Parliament fuit diſſolve per moꝛt le Roy, & le Defendant en brief d'erroꝛ prie Execution en B. R. & l'auter partie urge que ne doit aver Execution, car le brief d'erroꝛ ne abate en ſon default ſed per Act de Dieu, ſcilicet, moꝛt le Roy que diſſolve le Parliament, & coment il n'ad port ſon novell brief tamen ceo ne turne a ſon prejudice, car il ne poet aver brief d'erroꝛ tanque le Parliament commence, ſed Crew, Dodridge & Jones e contra, que Execution ſerra agard, car voyer eſt que brief d'erroꝛ abate nemy per negligence del' party, ſed per Act de Dieu, ou Act en ley come moꝛt del' party ou demiſe le Roy la en ceo caſe en 2 brief d'erroꝛ il averra Superſedeas, ſed en ceux caſes ſi Execution fuit grant & fait devant le 2 brief d'erroꝛ donque il vient trope tarde, & le Court ne ſerra ſtay en ceſt caſe d'execution en expectation que le Plaintiff voloit porter un novel brief d'erroꝛ, ideo en ceſt caſe quant le brief abate per moꝛt le Roy Execution eſt grantable, & le Court ne voyle ſtay Execution en expectation que il voyle port brief d'erroꝛ al prochein Parliament, ſed coment Execution fuit fait tamen il poet porter novell brief d'erroꝛ, & eſtre reſtoꝛ al tout que il perde ſi Judgment fuit erronious, & per conſent del' Court Execution fuit agarde & Whitlock dit a moy que il fuit del' meſme opinion. Vide 23 Eliz. Dyer 375. pur foꝛme d'erroꝛ en Parliament.

Eveſque *de* Norwich *verſus* Cornwalleys.

In Termino Hill. 22. *Jac. Rot.* 92.

(3) SAmuel Eveſque de Norwich port dett ſur Obligation vers Sir Charles Cornwalleys & declare que le dit Defendant 30 Novembris, 30 Jacobi per ſcriptum ſuum obligatorium gerens Dat' die & Anno ſupradictis cognovit ſe teneri & firmiter obligari ad Plaintiff in 1000. ſolvend' eidem cum inde requiſit' fuiſſet le Defendant demand oier del' condition q̃ fuit a perfoꝛmer le arbitrement d'un Richards concernant tout matters tunc dependant enter eux.

Ita

Ita quod le dit arbitrement ſerroit fait, & deliver al parties devant Feaſt de Pentecoſt eſteant primer jour de June prochein enſuant le date del' dit Obligation, &c. & il plede quod il cauſe le dit ſcript deſtre ſcribe le dit 30 Martii Anno 20. ſupra dit, & que il poſtea, ſcilicet, 28 Aprilis Anno 21 Jacobi ſupra dit ſigillavit & ut factum ſuum proprium deliberavit le dit ſcript al dit Plaintiff, & plede ouſter quod 28 die Aprilis Anno 21. ſupradit & ante prædict. primo die Junii le dit Richards fait arbitr' abſq; hoc quod præd. Defendant per præd. ſcriptum obligatorium cognovit ſe teneri & firmiter obligari prædict. quer. modo & forma prout il declare ſur que le Plaintiff demurre & oſtend pur cauſe de demurrer que le traverſe ne fuit bien priſe, & que le dit plee eſt inſufficient & repugnant, & Judgment fuit done pro quer. per Crewe, Dodridge & Jones (abſente Whitlock en Cancellaria) car le jour del' delivery del' fait neſt traverſable neque materiall ſi non que un ſpeciall cauſe ſoit monſtre, ſed ſur un ſpeciall cauſe il eſt traverſable come ſi un ſoit lye per un Obligation date primo Octobris a payer 10 l. al Feaſt Al-Saints, prochein apres le delivery del' Obligation, & le Obligation neſt deliver tanque 2 Novembris en Dett ſur Obligation le Plaintiff declaring de fait deliver primo Octobris le Defendant plede que primo deliver 2 Novembris, & que il tender le 10 l. al Feaſt All-Saints tunc prochein enſuant abſq; hoc que le fait fuit deliver primo Octobris, mes icy null cauſe ſpecial eſt monſtre, & auſi le traverſe ne doit eſtre abſq; hoc quod cognovit ſe teneri modo & forma, car ceo eſt un vain traverſe al Obligation, ſed le traverſe doit eſtre abſq; hoc que deliver tiel jour come le Plaintiff avoit declare, car le feſans ou non feſans del' Obligation neſt en queſtion, car eſt agree que le fait fuit le fait del' Defendant, mes le queſtion eſt ſur le delivery, ou il fuit deliver 3 Octobris come le Plaintiff declare ou le 28 Aprilis come le Defendant ad declare, ideo ceo eſteant le difference doit eſtre traverſe, ſcilicet, le jour del' delivery ſuppoſe per le Plaintiff, ideo le general traverſe que non cognovit ſe teneri per ſcriptum prædict. modo & forma prædict. neſt bon. 2. Le plee en barre neſt bon pur ceo que le agard & arbitrement fuit deſtre deliver poſt confectionem ſcripti prædict. que fuit come Defendant ſuppoſe xxviii. die Aprilis, & devant primer jour del' June, & il dit que null arbitrement fuit fait poſt xxviii diem Aprilis, & ante primum diem meſme Aprilis excludant xxviii. & poet eſtre que fuit fait meſme jour del' xxviii. apres le delivery del' Obligation, & en tant que ne dit que poſt confectionem ſcript. prædict. & ante primum diem Junii null arbitrement fuit fait ideo male, & pur le dit 2 reaſons un rule done pur Judgment ſi null novell matter oſtende. *Vide* 18 H. 6. 8.

Sir Simon Clarke *verſus* Loggin.

(4) Action ſur le Caſe.

SIr Simon Clarke port Action ſur le caſe vers Loggin pur diſant, Sir Simon Clarke maintained Fawkener a Jeſuite, knowing him to be a Jeſuite, & trove per verdict al Aſſiſes en County de Warwick, pur luy al damages 100. l. & en arreſt de Judgment il fuit move per Bawtry que Action ne giſt, car poet eſtre que le Jeſuite fuit un Alien, & nemy nee en le Dominion le Roy, & donque il ne fuit deins 27 Eliz., poet auſi que il fuit un Jeſuite fait devant le temps del' Royne Elizabeth, & donque auſi fuit hors del' dit Statute, & poet eſtre que le reſceit, & maintenance del' Jeſuite fuit devant 27 Eliz. & donque il ne fuit Felony pur luy a receiver luy, ſed ceo nient obſtant Judgment fuit done pur le Plaintiff per tout 4 Juſtices, car primes il ſerra entend prima facie deſtre un Jeſuite Angleys & nee en Angleterre come en Cawderyes Caſe pars 5. ſur l'eſtatute de 2 Eliz. commiſſion Eccleſiaſticall doit eſtre grant al ſubject nee en Angleterre la il fuit trove que commiſſion fuit al diverſe parties, & nient trove que nee en Angleterre tamen bon, car iſſint entende prima facie tanque contrary prove; & iſſint il ſerra entende per common preſumption que le maintenance fuit apres 27 Eliz. & que le Jeſuite fuit fait en temps le Royne Elizabeth, ou le Roy James, car parolls pur Action ſur le caſe ne doint eſtre parle cy preciſe come en pleding, car ſi ſont al common preſumption, & pluis violent d'un part deſtre ſlander quam e contra ceo ſuffice, & un caſe Hill. 9. Jac. Rot. 1429. fuit cite enter Flynt & Smith le Defendant parle que le Plaintiff harbour un Seminary Prieſt, & un auter dit you do not ſay that he knew him to be a Seminary Prieſt, le Defendant reſpond, Yes that I do, and his Father and Mother did the like, Car coment le Defendant parle en Arreſt de Judgment tamen Judgment fuit done pro quer. & le dit roll fuit view & lie en Court & fuit accordant, per que Judgment en le caſe en queſtion fuit done pro quer.

Ward

Ward *verſus* Kedsgrove.

LE Plaintiff port Action ſur un Bill, & fuit ove precipe quod reddat al Plaintiff 100 l. Hamborough Coine quas ei injuſte detinet, & declare que le Defendant apud London en Ward de Cheap per ſon bill promiſe a payer al Plaintiff 100 l. Hamborough argent & le Bill fuit entre en hæc verba, & fuit date apud Hamborough, & fuit demurre & Germin dit que Action ne giſt, car primes quant un fait eſt fait ultra mare, & iſſint date null Action giſt icy, & ideo entant que le fait eſt date al Hamborough le Action neſt bien port. (2) Le Action eſt en le detinet, ou doit eſtre pur argent en le debet & detinet, ſed per Crewe, Dodridge & Jones (abſente Whitlock) le Action bien giſt, primes voier eſt ſi un fait port date al D. en partibus tranſmarinis, & iſſint mention en le Bond null Action giſt ſur ceſt fait en Angleterre, mes quant il eſt date apud Hamborough, & ne dit en Germany, ou partibus tranſmarinis ceo poet eſtre alledge deſtre fait en Angleterre, & Action bien giſt & icy coment que il neſt alledge que fuit fait al Hamborough en Angleterre ſed que en London ceo eſt bon, car poet eſtre fait al un lieu en London appell Hamborough come ſont meaſons en London appell Venice & Antwerp, & Amſterdam, & ſimilia (3) Hamborough Money nient eſteant current eſt quaſi Bullion, & nemy argent current en ceſt Royalme, ideo l'Action port en le detinet ove ad valenciam eſt bon come de aſcun auter Chattell ou Plate, & ideo Judgment command deſtre enter pro quer. & Dodridge dit que le Action poet eſtre port en le debet & detinet vel en le detinet tantum. (5)

In Camera Scaccarii.

Sheffield *verſus* Roger Radcliff.

ROger Radcliff port Monſtrans de droit en Exchequer vers Edmund Seignior Sheffield, & ſur un ſpeciall verdict trove, le caſe eſt tiel. (6)

John Mawley Parſon de Baynton done le Mannor de Mulgrave en Com. Yorke al Peter Mawley, & al heires de ſon corps engenders, & ceo per mean diſcents vient al un Conſtance que marrie ove John Bigod & ceux vient per diverſe auter diſcents al Ralph Bigod que 6 H. 8. fiſt feoffment al uſe luy meſme & ſes heires,

heires, & apres ſon mort ceo diſcende al Sir Francis Bigod ſon Grandchild. Le dit Francis 21 H. 8. fiſt feffment al uſe luy meſme & Katherine ſa feme, & al heires de lour corps engenders 28 H. 8. il fuit attaint de Treaſon ayant iſſue Ralph & Dorothy per le dit Katherine. 29 H. 8. il fuit executé. 31 H. 8. per un Act de Parliament le atteinder confirme, & enact que il forfeit tout les terres, tenements & hereditaments, & droits que il avoit en fee ou en tayle jour del' Treaſon committ. (2) Et il fuit un Act de Reſtitution del' Ralph, & del' Dorothy en ſanke ove ſavant de title del' aſcun terres que vient al Roy per attainder Francis Bigod, Ralph mourſt & Roger Radcliff marrie, Dorothy mourſt 5 Eliz. & 8 Eliz. Katherine ſa mere mourſt per cujus mortem le eſtate tayle en poſſeſſion diſcende al Francis Radcliff que fuit iſſue en tayle de corps Peter Mawley auri, apres Francis per ſon pere enter, & il ceo enjoy tanque 30 Eliz. & donque ſon pere mourſt, & il ceo enjoy tanque 33 Eliz. a quel temps un office fuit trove pur entitle le Royne Eliz. al tout que grant ceo al Edmund Seignior Sheffield en tayle rendant Rent, & Francis Radcliff mourſt le ore Plaintiff eſteant ſon fits & heire; & apres ſeveral arguments al barre le caſe fuit argue per Denham pur Defendant & per Bromly & Tanfield pro quer. & Judgment fuit done en Exchequer pro quer. ſur que le Seignior Sheffield port briefe d'error en Camera Scaccarii, & le caſe fuit argue al barre per Glanvile & Crooke pro Radcliff, & per Sir Henry Yelverton, Serjeant Henry Finch, & Atturney Generall pro Seignior Sheffield, apres Tanfield Chief Baron briefment deliver le reaſon del' Judgment; le Seignior Keeper, & le Treaſurer adviſe le Judges de aver conferance, & ſils agree il ne beſoigne aſcun aver argument; & les Juſtices eſteant 8. ſcilicet, Ley, Hobart, Winch, Dodridge, Haughton, Hutton, Chamberleyne & Jones, conferre enſemble al Serjeants-Inn Fleetſtreet, & ils fuerent de un temps Ley, Hobart, Dodridge & Chamberleyn pro Seignior Sheffield, & les auters 4 pro Radcliff; ſur que il fuit reſolve que ils ſolemnment arguera le caſe, mes devant que il vient al lour ſeveral arguments Haughton & Winch mourront, & Ley fuit fait Treaſurer, ſed le caſe fuit argue per l'auter 5 al 5 ſeveral jours, & Jones commence & donque cheſcun en courſe, & Jones & Hutton argue pro Radcliff, & les auter 3 encontre Radcliff; l'effect del' Argument del' Jones & Hutton fuit come enſuiſt.

Le caſe fuit devide al 2 points per tout: Le primer fuit ou per le attainder de Francis Bigod le droit del' ancient entayle fait per John Mawley Parſon de Baynton, fuit forfeit al Roy per l'eſtatute de 26 H. 8. ou per le Statute de 31 H. 8. (2) Le ſecond point fuit per voy de admittance, ſcilicet, ſi le droit ne fuit forfeit ou Radcliff fuit remitt ſur le mort Katherine (eſteant iſſue al ambi-

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deux en tayle) ou nemy, & ſi remitter un foits ou le relation del' office avoidera le remitter, car conſequence fuit agree, ſcilicet, ſi fuit un remitter, & nient defeat per relation donque Monſtrans de droit fuit bien port, car Radcliff fil ad eſtre ouſte per un common perſon averoit Aſſiſe, ideo eſteant ouſte per office il avera Monſtrans de droit per 2 Ed. 6. coment le Roy entitle per 2 matters de recorde, mes ſi Radcliff ne fuit remitte ou le remitter avoid per relation donque Radcliff fuit miſe al un formedon vers common perſon, & a ſon petition de droit vers le Roy, en ceſt caſe diverſe auters choſes fueront agree. Primes tout (ſavant Chamberleyne) agres que le feoffment del' Francis Bigod eſteant ceſtuy que uſe en fee, & ayant le droit del' ancient entayle fait cy fort en ley vers Francis Bigod ſicome il ad eſtre Tenant en tayle en poſſeſſion; car eſteant ceſtuy que uſe il n'ad ſolment un authority a diſpoſe le terre per 1 R. 3. ſed auxi un intereſt. (2) Il fuit affirme per Jones & Hutton, & nient deny per Dodridge & Hobart que ſi null ſavant ad eſtre en l'eſtatute de 26 H. 8. ou en le dit Act de 31 H. 8. del' droit de l'eſtrangers tamen le droit de Stranger n'ad eſtre done, car ſi un Act de Parliament done forfeture de terre J. S. & il eſt diſſeiſor le droit del' diſſeiſee neſt forfeit coment il ne fuit aſcun ſavant, ſed Chamberleyne argue fortment al contre ſur ambideux les points, ſed vide pur confirmation del' opinion Hutton & Jones 24 E. 3. 65. le caſe del' Sir Hugh de Spenſer, & le caſe de Duke de Suffolk en le liver de Entres & Harpers opinion en caſe de Nicolls, & auxi eſt bon reaſon pur ceo que home ne poet perder ou forfeit, mes ceo choſe que il ad & auxi le forfeiture eſt done en nature d'eſcheat al Common Ley, & ſur eſcheat al Common Ley null forfeiture del' droit d'un eſtranger accruera al Roy. (3) Il fuit agree per tout que droit de Action en groſſe ne fuit forfeit per 26 H. 8. ou 31 H. 8. (4) Il fuit reſolve & agree per tout que ſi un Tenant en fee ſimple ou en tayle fuit attaint de Treaſon que durant le vie de perſon attaint riens eſt veſte en le Roy niſi fuit un office trove, mes ſil mourſt le terres en fee ſimple le Roy avera ſans office, ſed per Jones & Hutton le terres tayle diſcendera al iſſue tanque office trove come eſt tenus en Doughties Caſe pars 3. Cooke fol. 10. mes ſur office trove le Roy avera ceo per 26 H. 8. & apres 33 H. 8. le Roy ſerra en actuall ſeiſin ſur le attainder ſans office, ſed Hobart dit que niſi pur le dit opinion in Doughties Caſe il cenſera que le Roy avera le terre ſur mort de Tenant en tayle, & ne deſcendera al iſſue, car al Common Ley l'eſtate tayle fuit forfeit al Roy, & ſur mort Tenant en tayle ſans iſſue le Roy devant office ſerroit en poſſeſſion, ſed per Weſt. 2. Tenant en tayle ne forfeit le terre ſed le terre deſcendera al ſon iſſue, & quant 26 H. 8. done les

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terres en tayle ſur attainder al Roy ceo revive le Common Ley, & pur le dit reaſon le Roy ſerra en poſſeſſion per mort le Tenant en tayle devant aſcun office trove de ceo. Sed Dodridge & Chamberleyne nient parlant al ceſt point. Hutton & Jones pur le maine diſont que le droit d'entayle ne fuit forfeit pur 3 reaſons; Le primer fuit pur ceo que le Tenant en tayle per ſon feffment ad exclude luy meſme de ſon droit, & entant que il n'ad aſcun droit il ne poet forfeit, car ils frame ceſt argument, home ne poet perder ou forfeit aſcun choſe, mes ceo que il ad al temps de forfeiture, ſed ceſt droit il n'avoit al temps de forfeiture, car privatio præſupponit habitum, ideo il ne forfeitera meſme, & l'eſtature ne donera le droit de null, mes del' party meſme come eſt dit devant ſil fuit diſſeiſor ne forfeitera le droit de diſſeiſee admit que ne fuit aſcun ſavant, & per meſme reaſon il ne forfeit le contingent droit del' iſſue que fuit de eſchier ſur le mort del' Tenant en tayle ils prove que Tenant en tayle n'ad aſcun droit apres le feoffment fait per luy per diverſe particular reaſons.

Primes, Home per ſon feoffment excludera luy meſme de tout droit entries Actions, Titles, poſſibilities & conditions, & pur ceo encounter ſon feoffment de meſme il ne poet claime riens.

2. Droit remedileſs neſt aſcun droit, car le Tenant en tayle apres ſon feoffment n'ad aſcun means de recover le poſſeſſion del' terre ou ſon droit, ideo n'ad droit vide 12 E. 4. 14. & Marqueſs de Wincheſters Caſe, ſi un diſcent caſte per diſſeiſor vers Tenant pur vie remainder en fee il eſt ſans remedy, & ad perde ſon droit, & ſil vient arere al terre per Act en Ley, il ne ſerra remitte iſſint ſi uſurpation ſoit ewe vers un purchaſer d'un advowſon, & 6 moies poſſeſſion ſon droit eſt ale pur ceo que il n'ad remedy de ceo recover.

3. En Nicholls Caſe tout les kinds del' droits ſont mention, Recuperandi, Intrandi, habendi, poſſidendi, percipiendi, & retinendi. Le Tenant en tayle apres ſon feoffment n'ad aſcun de ceux droits, ergo il n'ad aſcun droit niſi ſuit en imagination ſes nemy revera.

4. Darrenment ils diſont que al Common Ley le alienation & feoffment del' Tenant en tayle auxibien apres come devant iſſue ceo fuit bon vers l'iſſue en tayle, & vers le reverſioner apres iſſue al Common Ley, & null droit fuit en Tenant en tayle apres ſon feoffment, le Statute de Weſt. 2. ne regarde le Tenant en tayle meſme & coment il ne regarde le Tenant en tayle iſſint neque ſon feoffee neque aſſigne, car ils tiendront le terres ſubject al charge del' Tenant en tayle nient obſtant le Statute de Weſt. 2. feoffee del' Tenant en tayle tiendra le terre ſubject al charge del' Tenant en tayle, mes le Statute regarde l'iſſue, & ceſtuy en reverſion il

Hunt & Capells caſe, Co. 1.

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ordain que le Tenant en tayle non habeat poteſtatem alienandi quo minus terra poſt mortem Tenant en tayle remainera al iſſue, & deficiente exitu ad donatorem revertat, & le Tenant en tayle durant ſon vie il eſt come devant, & null novell droit per ceſt Statute done al Tenant en tayle ſil ad droit il ad per Common Ley ou Statute il n'ad per Common Ley neque per Statute (car Statute ne create en luy aſcun novell droit) ergo il n'ad droit, omnino; & neſt plus quam ſi fuit un act fait que nient obſtant le alienation Tenant en fee-ſimple ſon heire avera Action de ceo recover apres alienation le Tenant en fee ſimple n'ad aſcun droit l'eſtatute de 11 H. 7. fait l'alienations de Jointrels Tenant en tayle void vers iſſue, mes ſi feme levie fine ceo luy barra, & el n'ad aſcun droit, & uncore per le Statute le droit ſurgera en le iſſue, iſſint de alienation fait per Tenant en tayle reverſion en le Roy apres 34 H. 8. ils durant lour recovery ou fine n'ad droit ſed l'iſſue avera apres ſon mort iſſint ſur l'eſtatute de 2 Eliz. le alienation de Eveſque 19 H. 8. 6. eſt un direct authority, ſcilicet, que l'iſſue avera 5 ans apres mort ſon pere ſur diſcontinuance pur avoider le fine del' diſcontinuee, & le reaſon neſt pur ceo que Tenant en tayle ne puiſſoit faire claime luy, meſne que l'iſſue avera 5 ans, ſed pur ceo que le droit primerment veſt en luy apres le fine, ergo ne fuit aſcun en le Tenant en tayle, & ils conclude ove Littleton que le droit n'eſt en aſcun homine, & ove Lampitts Caſe part Co. 10. fol. 49. que Tenant en tayle n'ad droit apres ſon feoffment & Butler & Bakers Caſe fol. 31. Tenant en tayle apres feoffment n'ad jus in ſe neque ad rem neque non omnino.

Hobart, Dodridge & Chamberleyne fueront de opinion que il fuit droit en le Tenant en tayle apres ſon feoffment il fuit droit come Hobart dit en luy a preſerver pur ſon iſſue, & per Dodridge droit ne poet mozier, & en l'iſſue en vie pere il ne poet eſtre, & en abeyance il ne ſerra, car abeyance neſt que Fictio legis, & ſont 5 Fictions en ley abeyance, remitter, relation, Preſumption & Repreſentation. Et ne ſerra aſcun Fiction neque abeyance niſi ubi eſt neceſſarium, & pur avoider abſurdity ou inconvenience, & pur benefit de eſtranger, & a preſerver ſon droit, & Hobart dit que l'eſtatute de Weſt. 2. dit que Tenant en tayle per ſon feoffment non habit poteſtatem alienandi, ideo ne poet paſſer le droit, & il que n'ad poteſtatem alienandi habet poteſtatem retinendi.

Ils fraime diverſe arguments: Primerment le Declaration en le formedon dit diſcendit jus, & neſt aſcun diſcent de jus niſi fuit en le Tenant en tayle, & come Dodridge dit il eſt terminus a quo, & terminus ad quem; a quo deſcendit jus eſt Tenant en tayle, & ad quem eſt l'iſſue en tayle.

Hutton & Jones reſponde ceſt objection q̄ le declaration neſt que forme de pleder que ne ſuppoſe verity a tout temps Ayel, pere & fits Tenant en tayle le pere mozuſt en vie le Ayel la l'iſſue en formedon dirra deſcendit jus, & tamen il ne unque avoit alcun jus.

2. Fuit dit per eur, ſcilicet, Hobart, Dodridge & Chamberleyne, que Tenant en tayle quant il enter en voucher apres feoffment fait per luy ſerra eins del' primer eſtate tayle, ergo il n'ad droit, & reſponde per Hutton & Jones que ſi Tenant en tayle levie fine & barre l'iſſue tamen ſil vient eins come voucher il ſerra eins come en privity del' Eſtate tayle a barre le remainder, & tamen nuill voilt dire que encounter ſon fine ove Proclamation il ad droit.

3. Il fuit dit per Whitlock ſi baron & feme fueront Tenants en tayle & baron alien & repriſt eſtate a luy meſme, & ſa feme ils ſont remitte, & null remitter ſans droit Hutton & Jones ceo reſponde, ſcilicet, que le remitter fuit en regarde del' feme, & il ne poet eſtre al feme niſi al baron auxi, mes ſi Tenant en tayle apres ſon feoffment veignant al terre per Act en ley il ne ſerra remit, & tamen il eſt un rule ou eſt droit, & le party veignant al terre per Act en ley il ſerra remitt.

4. Sur le caſe de Trebony 48 E. 3. 9. il fuit urge que un droit fuit en le Tenant en tayle, car la le avowry fuit fait ſur le donee per le donor apres feoffment, & releaſe a luy eſt bon de tout ſur terres, ergo droit remaine a luy, & il eſt Tenant en droit al donor.

Hutton & Jones ceo reſponde primes le caſe de Trebony ne fuit del' avowry ſur le donee meſme, ſed ſur l'iſſue apres feoffment fait per le pere & donque il fuit droit en l'iſſue & releaſe a luy eſt bon come tenuit 14 H. 4. 38.

Sed voyer eſt que le donor poet avower ſur le donee ſi voilt nemy pur neceſſity, car auterment il ne poet avower ſur le feffee car null privity enter eur, & iſſint eſt Lampetts Caſe pars 10. Co. fol. 49. ſed nota la dit que coment fuit privity pur avower enter doner & donee, & releas del' rent a luy eſt bon tamen il eſt la dit que il n'ad alcun droit en le terre, & ergo il nihil probatur per le dit argument que le dit droit en terre remaine en le Tenant en tayle.

5. Ils urgeont Walſinghams Caſe en Plowden, ſed reſpond per Hutton & Jones que la le reverſion fuit en le Roy, & ideo ne poet eſtre alcun diſcontinuance, & le dit caſe ne fuit affirme en erroz pur le matter en ley, ſed pur un point in pleding, & fuit Judgment en le Common Bank en Auſtyns Caſe e contra al meſme temps.

Et

Et ceo fuit le opinion de ambideux parties quant al ceſt point de Hobart, Dodridge & Chamberleyne, que Tenant en tayle ad droit, & de Hutton & Jones le Tenant en tayle n'ad le droit, & ideo ne poet ceo forfeit.

Le 2 maine reaſon de Hutton & Jones, que ceſt droit ne fuit forfeit per le Statute de 26 H. 8. fuit per voy de admittance que le droit fuit en le Tenant en tayle apres le feoffment, & ils conſideront coment le droit come ceo eſt pris fuit apres mort de Francis Bigod, le dit Francis Bigod avoit le dit droit d'entayle, & avoit joint eſtate tayle en poſſeſſion ove ſa feme, & puis il morust le feme avoit l'eſtate en poſſeſſion ſalve a luy per le Statute durant ſa vie, & el continue Tenant en tayle a tout purpoſes come tenuſt en Beamonts Caſe per Cooke pars 9. mes apres ſa deceaſe l'eſtate tayle en poſſeſſion ſerra forfeit al Roy come tenuſt en 18 Eliz. Dyer pur ceo que l'iſſue en tayle fuit barre per l'eſtatute de 26 H. 8. de claime come iſſue al ſon pere, mes durant le vie le feme le Roy n'avoit riens mes unpoſſibilitie, & null eſtate en intereſt veſte en luy imo coment un Office ad eſtre trove, & iſſint fuit le condition del' Eſtate tayle en poſſeſſion. Le droit del' auter en tayle fuit al pere de Mawley per mort de Francis Bigod deſcend al ſon fits Ralph, & apres ſon mort al Dorothy le file del' dit Francis, & iſſint le dit droit d'entayle fuit deveigne droit en groſſe in Action de formedon vers le mere que fuit eins del' 2 eſtate tayle, ſur q̃ ils urgeont q̃ ceſt droit eſteant ore devеigne en groſſe, & un meere & bare droit & ad perde ſon coate q̃ il avoit durant le vie del' Francis; neſt forfeit, car droit de Action neſt done al Roy neq; per Statute de 26 H. 8. neq; per 31 H. 8. come fuit agree per tout, & ſi l'iſſue del' Francis Bigod ad port un formedon apres mort ſon pere, & ad recover le recovery ad eſtre bon & prevent le poſſibility de Roy ſur mort le mere iſſint en meſme le manner ſi le mere ad enfeoff l'iſſue en tayle eſteant deins age, en ceo caſe l'iſſue ad eſtre remitte, & en le formedon per l'iſſue vers le feme el ne poet pleder le attainder en barre, car el fuit eſtranger al ceo; ſi un Office ad eſtre trove durant le vie Francis Bigod le Roy avera l'eſtate tayle en poſſeſſion, mes apres ſon mort le feme avera l'eſtate tayle en poſſeſſion, & le ancient droit ſerra revive en le iſſue en tayle, & nemy en le Roy, car donque le Roy averoit droit de Action vers le feme, ſc. per ſcire facias pur recover le terre, & ne fuit unque l'entention del' Statute al done al Roy un bare droit de Action a deſtroy le poſſeſſion del' feme, & auxi le droit del' feme, mes le Roy eſt ſalve per l'eſtatute de 26 H. 8. ſed null Office eſteant trove le Roy n'ad aſcun poſſeſſion omnino tanque le Office apres mort le feme, & en interim le droit remaine come iſſint & nient forfeit ſed fuit turne al un poſſeſſion, & iſſint remitte per le mort del' feme quant

l'eſtate en poſſeſſion diſcende ſur l'iſſue ayant le primer droit tayle en luy; ceux ſueront les 2 maine reaſons de Hutton & Jones, le primes que le Tenant en tayle n'ad aſcun droit, ideo ne poet ceo forfeit. (2) Ceo fuit un droit d'un Action en groſſe per le mort le dit Francis, & ceſt droit d'Action en groſſe ne fuit forfeit per l'eſtatute de 26 H. 8. ou 31 H. 8. Et un tierce reaſon fuit move per eux, ſcilicet, que le droit d'entayle ne fuit extinct en le ſecond entayle en Francis Bigod, car fuit un poſſibilitie deſtre ſeiſie arere ſi le poſſeſſion vde un voy, & le droit un auter voy, & il continue come un ſuſpend droit del' Action durant vie Francis, & donque le Statute de 26 H. 8. done ſolment l'eſtate, & nemy un droit car l'eſtatute eſt, que forfeit terres en que il ad eſtate d'enheritance, & ceo neſt plus quam ſi diſſeiſet il forfeitera l'eſtate d'enheritance que il ad en aſcun terres ideo en Nevills Caſe Cooke pars 7. eſt tenuſt que ſi Tenant en tayle fuit diſſeiſie, & eſt attaint de Treaſon ceſt droit neſt forfeit per le dit Statute, car le liver dit que eſtate ſolment eſt forfeit, & nemy droit; ideo per 26 H. 8. ceſt droit eſteant nient confound en le terre neſt forfeit, & ne ſerra forfeit per 31 H. 8. que parle de droit, car ceo eſt droit d'entre ſolment come tenuſt en le caſe de Doughtie & Marqueſs de Wincheſter, & il eſt droit de Action nient confound iſſint coment l'eſtate en poſſeſſion fuit forfeit tamen le droit del' ancient entayle deſtre recover per Action ou remitter neſt forfeit, & a prove que le droit tayle continue nient confound, Jones miſt ceſt caſe, Tenant en tayle diſcontinue, & apres reprift eſtate a luy & ad ceo en tayle, & eſt diſſeiſie & diſſeiſor levie fine, & 5 ans paſſe l'iſſue port formedon pur le 2 en tayle il ſerra barre per le fine, mes ſil port formedon pur le primer en tayle il ne ſerra barre, car il avera 5 ans del' mort ſon pere.

Si ſoit Ayel Tenant en tayle pere & fits, & pere diſſeiſie le Ayel ou ſi le Ayel enfeoff, & apres le pere eſt attaint de treaſon, & le Roy ad le terres ſur un Office, le pere eſt pardon & le Ayel morust, & le pere morust, le fits avera petition de droit vers le Roy pur le droit del' ancient entayle, car ceſt poſſibilitie del' entayle que fuit en le pere quant il fuit attaint ne ſerra forfeit coment l'eſtate in poſſeſſion fuit forfeit; & ſur bon conſtruction del' Statute, & conſideration del' authorities ils penſont que il eſt hors del' Statute 26 H. 8.

Car ils diſont que ceſt Statute eſteant pœnal Ley en un high degree ne ſerra priſe ſtrictment vers le ſubject, ſed ſtrictment vers le Roy, & iſſint hont les Judges a tout temps apres le dit Statute expound ceo & auters Statutes, le Statute de 26 H. 8. dit que il forfeiter touts ſon terres & hereditaments en que il ad eſtate d'enheritance il ne forfeitera droit, Nevills Caſe pars 7. le Statute

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de 26 H. 8. parle de hereditaments tamen ceo ne extende al conditions, ideo a supplier le dit Statute per 33 H. 8. droits & conditions fueront done, tamen per le general paroll de droit il fuit resolve en le dit case de Marques de Wincheſter Reports Cooke pars 3. que droit de Action de formedon ou errour ou autiel Action ne fuit done al Roy ; & per le paroll conditions ; tout manner de conditions ne fueront done, car en Englesfields Case pars 7. le case de Duke de Norfolk fuit dit deſtre reſolve que condition que fuit en privity de revoker uſes deſouth le maine & ſeale del' feoffor ne fuit forfeit, & le Statute de 26 H. 8. parle de attainder pur treaſon ſur verdict utlagary ou confeſſion, mes ceo n'extende ou un eſtoit mute, ou ſur nient dedire, & pur ceſt cauſe ceſt defect fuit supply per 33 H. 8. come tenuſt en Doughties Caſe.

Et quant al Statute de 31 H. 8. ils diſont que ceo neſt pluis fort coment le paroll droit fuit enſert, car primes le Tenant en tayle (come ils teignont devant) n'avoit aſcun droit apres ſon feſſment.

2. Secondment l'eſtatute de 31 H. 8. fuit fait apres mort del' Francis a que temps le poſſeſſion per virtue del' ſecond entayle fuit en le feme, & le droit del' ancient tayle fuit en l'iſſue de Francis, & il ne puiſſoit enter ſed fuit miſe al ſon formedon, ideo ceſt droit del' Action de formedon eſteant un droit merement en poſſe, & un nude droit ne fuit done al Roy per le general proviſo de droit en 31 H. 8. Et ſur touts les dits reaſons ils concludont q̄ le droit del' ancient entayle ne fuit forfeit al Roy, ſed continue en les iſſues de Francis Bigod.

3. Ils tient que quant le droit del' ancient entayle per mort del' Francis Bigod diſcend al iſſue, & l'eſtate in poſſeſſion per mort del' feme Francis Bigod diſcend al meſme iſſue, & fuit remitte en vie le feme il puiſſoit recover le terre vers le feme come dit devant, & ſur ſon recovery il ſerra remitte, & quant per ſa mort le poſſeſſion deveignant al iſſue ceo eſt un remitter, & recovery en ley ſur neceſſity que ne fuit aſcun auter encounter que fuit que il portera ſon Action ſi le feme ad enfeoff un eſtranger, & mourſt l'iſſue per formedon recover a le terre vers eſtranger, & le diſcent eſt merement en luy a tout.

Deux maine Objections fueront fait encontre ceſt remitter 1. Pur ceo que l'eſtate in poſſeſſion que Francis Bigod avoit joint-ment ove ſa feme fuit forfeit al Roy, & coment null Office trove en vie le feme tamen le droit d'entayle lye, & ideo ceo prevent le diſcent ; ceo eſt voyer que le diſcent ad ceo prevent ſi un Office ad eſtre trove, mes null Office eſteant trove en ſon vie l'eſtate en poſſeſſion diſcendera al iſſue quia l'eſtatute de Weſt. 2. preſerbera le corruption de ſanck perenter le Tenant en tayle, & l'iſſue & il

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moꝛera Tenant en tayle & diſcend al ſon iſſue tanque un Office trove come dit devant; le caſe que fuit mitter de auter part a pꝛover que ne ſerra aſcun remitter pur ceo que le eſtate iye fuit ſi un common recovery ſuffer vers Tenant en tayle ove recompence ceo iyera l'eſtate tayle, & ſi Tenant en tayle moꝛuſt devant execution tamen le recovery poet eſtre execute vers l'iſſue en tayle, ſed ceo fuit reſponde que verum eſt que recovery eſt executoꝛy vers l'iſſue en tayle, mes tamen devant execution l'iſſue ad l'eſtate tayle per diſcent, & per execution ſur ceo ſerra defeat, mes ſi Tenant en tayle diſcontinue & repꝛiſt eſtate en tayle arere, & recovery ewe vers luy ove ſingle voucher le vouchee en tayle eſt iye, ſed ſil moꝛuſt devant execution la iſſue en tayle fuit remitt, & donque null execution poet eſtre fait vers l'iſſue en tayle iſſint cy ſil ne riens pluis ad eſtre, mes un eſtate tayle en poſſeſſion, & le Tenant en tayle fuit attaint, & moꝛuſt devant Office la ſur Office le Roy avera le terre & defeatera le diſcent en le interim, mes en noſtre caſe il fuit un diſcent del' eſtate tayle en poſſeſſion al un que avoit auter ancient dꝛoit al un auter en tayle per que il eſt remitt devant le Office trove.

Le 2 maine Objection fuit que le Office veſtera l'eſtate que le feme avoit en le Roy ſur ſon moꝛt per relation ſans aſcun inſtance, & iſſint per relation pꝛeventera le diſcent & remitter admittant que le pꝛimer entayle ne fuit foꝛfeit per l'eſtatutes avandit.

Hutton & Jones reſponde ceſt Objection, car ils diſont que ſi fuit un foits un remitter ſur le moꝛt le feme le Office que vient apꝛes ne ceo defeatera, & Jones dit que fueront 3 relations d'un Office ſur atteinder, ſi home fuit ſeiſie de terres & commit Treaſon, & apꝛes eſt attaint & moꝛuſt, & donque Office trove la le Office avera relation pur avoider le mean conveyances, ſcilicet, le feffment al temps del' treaſon, mes nemy pur le meſne pꝛofits. 2. Pur le meſne pꝛofits il avera relation al temps del' atteinder ſed nemy pur veſter l'eſtate, & 3 pur veſter le franktenement & freehold en le Roy al temps del' Office trove, car un franktenement eſt ponderous, & ne ſerra maintain per fiction (come l'auter parties diſont en le pꝛimer point del' caſe) & doet eſtre un tenant del' freehold en le interim vers que ceſtuy que ad dꝛoit poꝛteroit ſon Action, & ſi en mean temps le diſſeiſee recover vers le diſſeiſoꝛ le Roy ne ceo avoidera, car auterment il ſerroit inconvenient ſi Roy apꝛes 20 ans ou pluis ſur Office trove defeatera recoveries ewe per ceux queux ount dꝛoit, & ils ſerrount ſans remedy ſil ne puiſſoit en le interim aver legal recovery, car ils ne poyent ſuer le Roy per petition tanq; un Office trove, & le dit difference come Jones dit poet eſtre collect hoꝛs del' livers 27 H. 8. Brooke Office printe in Altonwoods Caſe Cooke pars 2. Pages Caſe pars 5. Nicholls

Caſe

Caſe, Plowden Com' Tourſons Caſe pars 8. & 3 E. 4. 25.

Et il rely mult ſur le caſe de Altonwoods pars 2. le Counte de Warwick avoit un reverſion, & il fuit attaint, & enact que il forfeitera ſes terres en temps H. 7. & null Office trove tanque al temps de H. 8. & le Counte ſurvive le Roy H. 8. la il fuit plede que le Roy Henry 7. fuit ſeiſie del' reverſion, & ceo diſcend al Henry 8. Quod fuit per Curiam agree deſtre impoſſible, car le Office ne veſt l'eſtate en H. 7. ſed ſi fuit un relation al temps del' attainder il veſtera l'eſtate en H. 7. iſſint en noſtre caſe ſi le relation del' Office ſerroit al temps del' attainder l'eſtate veſtera en H. 8. que eſt impoſſible come fuit en le dit caſe, car le Office ne veſtera le Eſtate, mes en le Royne Elizabeth, & ſo fuit obiect que Nullum tempus occurrit Regi, & ſi Office ad eſtre trove en vie le dit feme le remitter ſerroit prevent, ideo le dit laps & negligence ne prejudicera le Roy; il fuit reſponde que il ne prejudicera luy de ſon droit, mes icy il eſt a faire tort, ſcilicet, a defeater le remitter, & a veſter le tortious eſtate en le Roy que fuit defeſible per un petition de droit ſi le ancient entayle ne fuit forfeit, & tout que ad eſtre dit al purpoſe eſt per admittance que le primer entayle ne fuit forfeit.

Les Objections devant mention fueront fait al barre, & ideo ils fueront reſponde primes per Hutton & Jones, & lour reſponſe eſt icy inſert coment que Hobart & Dodridge urgeont le meſmes Objections apres, & ideo ſur tout le matter Hutton & Jones pur amvideux le points concludont ove Radcliff, & que le Judgment doit eſtre affirme.

Hobart, Dodridge & Chamberleyne argue al contre, ſcilicet, que le Tenant en tayle apres ſon feffment n'ad exclude luy meſme de tout ſon droit, ſed le droit remaine en ley & eſt preſerve pur ſon iſſue l'effect del' meſme reaſons eſt devant recorde, & ceſt droit remaine en le tayle, & il ayant eſtate en poſſeſſion jointment ove ſa feme en tayle per ſon attainder il ad forfeit ſon eſtate en poſſeſſion & le ancient droit fuit extinct en le poſſeſſion, car icy il ne fuit un nude droit de Action per le eſt in groſſe quel droit ils agree nemy deſtre forfeit, ſed icy il & un poſſeſſion que clothe le droit, & le droit eſt bound en le poſſeſſion, & ſont conjoine, & per le forfeiture done al Roy. Primes le Statute dit que le Tenant en tayle forfeitera tout terres tenements & hereditaments al Roy Heires & Succeſſors per que le Roy tiens en droit que il ad le terre & icy il ad le terre deſouth le droit del' entayle. (2) Eſt un ſavant de droit de eſtrangers, ſed le heire del' Tenant en tayle que eſt l'iſſue neſt pris le ſavant, car il eſt except hors del' ſavant, & Dodridge dit que exceptio firmat Regulam in caſibus non excluſis, & ideo le exception del' iſſue hors del' ſavant include luy en le purview

purvieu del' Acts. Il dit auxi q̃ droit eſt deins 26 H. 8. car il eſt hereditament, & le Seignior Hobart dit q̃ eſt deins 31 H. 8. & Hobart dit auxi q̃ le paroll en tayle eſt deins 31 H. 8. & Hobart dit q̃ ſi fuit aſcun droit imo ſi fuit ciel droit de quel le Tenant en tayle ne aveca benefit ſed a preſenter ſon iſſue tamen le Roy avera benefit de tiel droit, car le Roy 6 E. 3. ne ſerra lye per collateral garranty, come common perſon ſerra Altonwoods Caſe ſi ne ſerra lye per eſtoppel, & 3 E. 6. Stringfellows Caſe, terres & biens in cuſtodia legis ſerront ſubject al execution de Roy per prerogative Cint 17 E. 3. en le caſe del' Deane de York, Roy preſent al Deanery ſans aſcun Election.

Et il dit ouſter que il ne fuit bien dit per un al barre que l'eſtatute de 26 H. 8. fuit ewe per circumvention, car l'eſtatute fuit fait ſur grand advice, & ſont divers branches en ceo concernant Treaſons, & le manner del' tryal del' ceo, & que ſerra bon attainder & al fine le Statute conclude quel choſe ſerra forfeit, ſed del' auter part il poet bien eſtre dit que l'eſtatute de Weſt. 2. fuit obtain ove grand ingeny, car neſt aſcun paroll en l'eſtatute que terres tayle ne ſerront forfeit par Treyſon, mes entant que l'eſtatute reſtrain le alienation del' Tenant en tayle deſouth le paroll alienation, les Judges ount include forfeiture pur Treaſon ou Felony, pur ceo que il eſt alienation auſſibien come feffment, & ſi ad eſtre conus al E. 1. que il ſerroit exclude per le dit Statute pur forfeiture pur Treaſon il ne voloit aſſent, & dit ouſter que per 31 H. 8. & 33 H. 8. que done droits al Roy, que touts droits d'enter ſont done, ſi fuit un diſſeiſe que eſt attaint ceo eſt done iſſint ſi baron alien terres le feme l'entry del' feme legal apres mort le baron, per 32 H. 8. ſi le feme fuit attaint de Treaſon ceo eſt forfeit, iſſint ſi un diſſeiſor mort deins les 5 ans, & le diſſeiſee eſt attaint, pur ceo que ſon entre eſt legal ſur le heire per 32 H. 8. le Roy avera ceſt droit d'enter, mes il agree que droit de Action generalment neſt done, ſed en aſcun caſe il ſerra done, ideo ſi le Roy ad le terre en poſſeſſion, come ſi un diſcontinuee del' Tenant en tayle enfeoff le Roy, & apres le Tenant en tayle eſt attaint, le Roy tiendra le terre diſcharge del' droit en tayle, iſſint ſi Tenant en tayle diſſeiſie le diſcontinuee, & apres diſſeiſee eſt attaint de Treaſon le Roy avera le terre diſcharge del' droit d'entayle vers le Tenant en tayle & ſes iſſues, mes nemy vers le diſcontinuee, car il ſur petition avera le terre hors de maines le Roy, mes ceſt diſcharge del' droit d'entayle ou del' Action ne ſerra pluis longe quam durant le temps que le Roy ad le terre, ideo ſi Tenant en tayle diſcontinue, & apres diſcontinuee fait Leaſe pur vie al Roy & remainder en fee al auter, & le donee eſt attaint de Treaſon le Roy durant ſon eſtate tiendra le terre diſcharge, mes nemy cieux en remainder car l'iſſue en tayle per formedon reco-

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ver le terre vers luy, mes ſi le diſcontinuee ad fait leaſe pur vie al J. S. remainder en fee al Roy, & le Tenant en tayle eſt attaint J. S. auxibien come le Roy tiendra le terre diſcharge del' droit autrement le remainder le Roy ſerroit diſtroy.

Tout les 3 Juſtices done 2 auter reaſons, l'un fuit que Tenant en tayle apres ſon feffment avoit poier per recovery fine en garranty ove aſſets, a barre ſon iſſue ideo ad droit en Ley, & ad poier de forfeit ceo, ſed ceſt Objection fait fuit al barre, & reſponde per Hutton & Jones que en mults caſes home poet barre l'iſſue, ou ne poet forfeit come en Doughties Caſe pars 3. Ayel Tenant en tayle pere & fits, le pere attaint en vie le Ayel, & mourſt le fits avera le terre, & tamen ſil ad levie fine le fits ad eſtre barre come Archers caſe eſt.

Darrenment ils tout conclude ceſt point ove l'inconveniency que enſuera al Roy, & Hobart dit que eſt nobile officium judicis a preſerver & defender le prerogative le Roy, & le Roy ad tout Juſtice en ſon perſon, ideo il eſt reaſon que il avera tout droit fait a luy pur ſon poſſeſſions, l'inconvenience fuit que per ceſt means, ſcilicet, per feffment le Tenant en tayle tout entayle poet eſtre prevent de forfeiture ſi Tenant en tayle fiſt Leaſe pur vie nient garrantable per l'eſtatute: ſed ceſt Objection eſteant fait al barre fuit auxi reſponde per Hutton & Jones, ſcilicet, que ſi tiel conveyance fuit fait per fraud, & a purpoſe a defeater le Roy, ceo ne ſerra bon vers le Roy, & ſi nemy pur q̃ ceo ne ſerra bon vers le Roy (ſi le ley ſerv̄a) auxibien ſicome un fait conveyance a luy meſme pur vie remainder al ſon fits, & committ Treaſon null forfeit vers l'iſſue ſerra mults auters conveyances poient eſtre fait q̃ ſerra auxi prejudicial al Roy ſi come le feffment del' Tenant en tayle, & ſi ſoet inconvenience ceo doit eſtre ſupply per un Act de Parliament, & nemy a preſſer le Statute ultra l'entention del' ceo, & Hobart inſiſt ſur Walſinghams Caſe.

2. Quant al point de remitter ils relyont ſur les 4 reaſons devant mention, ſcilicet, que le droit fuit forfeit, & ſi le droit fuit, l'iſſue en tayle ne poet eſtre remitt quant ſon droit forfeit. 2. L'Eſtate en tayle en poſſeſſion fuit forfeit, & ceo lye le diſcent del' iſſue en tayle vel que il ne deſcendera omnino a luy come le opinion del' Hobart fuit come l'eſtaute dit expreſs ou auterment come Chamberleyne & Dodridge tient le eſtate tayle en poſſeſſion eſt iſſint lye ove le forfeiture que l'eſtate tayle eſt ſubject al forfeit en maines l'iſſue come Button & Savadges Caſe 29 H. 8. & Dyer 25 H. 8. 302. deux freres le puiſne diſſeiſie l'eigne, & grant Rent charge que l'eigne port aſſiſe, & eſt barre per faux verdict & il mourſt ſans iſſue, le puiſne tiendra charge, & nient ſerra remitt car le droit del' eigne fits fuit lye per le faux verdict, & Hobart

done un reaſon admitt que l'eſtate tayle en poſſeſſion diſcendera devant Office, & le ancient droit ne fuit forfeit, & que fuit un foits remitter tamen apres quant le Office vient le remitter ſerra defeat, car il neſt deſtre ſuffer que negligence d'un clerke prejudicera le Roy en ſon title, & le Office neſt en point de relation ſed en point de perfection del' title le Roy ſicome ſi fuit conye al Roy, & apres eſteant trove il deſtera l'eſtate ab initio en le Roy, & il rel'e ſie 3 E. 4. 25. per que en auter points ils conclude vers Radcliff; & Hobart argue le darren; & rule done ſi riens fuit dit al Samady enſuant quod Judgment ſerroit reverſe, & dit jour riens eſteant dit Judgment fuit reverſe, & le Seignior Treaſurer dit que ſon reaſon fuit pur ceo que le droit fuit en le Tenant en tayle, & le Seignior Keeper dit que il conceive tout fuit forfeit per l'eſtatute al Roy.

Nota, en ceſt caſe ſur le conference il fuit 4 vers 4 del' Judges, ſed 2 moiant devant argument queux fueront pro Radcliff, & les Judges que argue en Exchequer pro Radcliff fueront 2, Tanfield & Bromley, & en Exchequer Chamber Hutton & Jones, & en Exchequer pur Sheffield Denham, & icy Hobart, Dodridge & Chamberleyne, & ſur le matter ils fueront 4 encounter 4 que arguont preter le 2 queux moiant.

Blakeſtons *Caſe.* In Banco Regis.

(7) *Audita querela.*

UN Blakeſton Prebendary de Durham ſue un Audita Querela de avoider un extent ſur ſon terre ſur Statute de Staple, & ſon ſurmiſe fuit que le conuſor fuit ſeiſie en fee al temps del' Statute de terres en le County Palatine de Durham, queux ne fueront extended, ideo il eſteant un feffee del' auter terres del' conuſor, & extende ſue ceſt Audita Quuerela deſtre diſcharge del' ceſt extent, & de faire l'auter terre equalment contributory al extent: & ils fueront al iſſue que le conuſor ne fuit ſeiſie del' terres en le County Palatine de Durham, ſur que un briefe hors Chancery fuit emitt al Eveſq; de Durham ou ſon Chancellor pur triall iſſue, & apres le triall a mitter le record en Bank le Roy, per que le dit iſſue fuit trie devant les Juſtices del' Aſſiſe de Yorke eſteant Juſtices al dit Eveſque pur le dit County Palatine, & trove pur le Plaintiff, & ſur ceo le Eveſque mitte le record en B. le Roy, & en arreſt de Judgment fuit move que le record duiſſoit eſtre tranſmitt al B. le Roy devant aucun proceſs deſtre emitt al Eveſque, & apres que le record fuit en le Bank le Roy ils duiſſoint eſcrie al County Palatine pur trier l'iſſue, & del' ceo opinion fuit Crew, Dodridge & Whitlock. Sed Jones doubt ou le Record doit eſtre primes tranſmitt ou nemy ſed il agree que le record ne fuit bien miſe en Bank

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le Roy, car come ſemble a luy le proceeding en Chancery ſerra tout temps niſi que fuit un trial per verdict, mes pur ceo que ils ne poient trier per verdict donque ils avera venire facias returnable en le B. le Roy, & deliver le recorde propriis manibus al B. le Roy, mes ſi proceeding fuit ſur demurrer en Chancery, ou ſur un iſſue nient triable per Jury come ſur certificate d'Eveſq; ou de record de London d'un cuſtom de London la le Chancery ne mitte le record en B. le Roy ſed le certificate doit eſtre returne en Cancellaria, & la Judgment ſerra done, ideo ils eſcriont directment al County Palatine pur trier l'iſſue, & quant il eſt trie come il penſe ceo doit eſtre returne en Cancellaria, vel ſi ne fuit fait iſſint, donq; le record duiſſoit eſtre tranſmit devant proceſs al Eveſq; ou autrement ſe proceſs al Eveſq; hors de Chancery le returne ſeroit la, & Jones cite 14 E. 4. fol. 6. ou iſſue ſur traverſe d'un Office fuit miſe en Bank deſtre trie, & pur ceo que le Tenant a que le terres miſe a ferme ne fuit garnye ceo fuit remande al Cancellaria, & 24 E. 3. 35. un Scire facias ſur recogniſance, & fueront al iſſue ſur releaſe, & ſur ceo miſe al Bank le Roy, & le Plaintiff la fuit nonſue, & ceo nient obſtant il port novell Scire facias en B. le Roy & bene, auter exception fuit priſt pur ceo que il fuit direct al Eveſque vel' Cancellario ſuo. Vide pur ceo 1 E. 4.9. que eſt aſſets bon, Vide poſtea Termino Hillarii 2 Caroli Regis.

Termino Trin. An. I. Caroli Regis, *in* Banco Regis.

CEſt Terme in Octabis Trinitatis fuit adjourne per un brief de adjournment uſq; tres Septimanas, ſcilicet, les 2 returnes del' Octabis Trinitatis & quindena Trinitatis fueront adjourne, & al primer jour del' Octabis eſteant le jour d'eſſoigne, les Juſtices ſtay tanq; 11 del' Clock, & oyant motions & al meſme jour ils receive le brief de adjournment, & ceo fuit lye per Mr. Broom, & apres Proclamation fuit fait pur adjournment del' Terme, & un Proclamation fuit date 18 Junii eſteant ſamady apres Trin. Sunday donant notice del' ceſt adjournment.

Termino Mich. An. I. Caroli Regis *in* Banco Regis.

CEſt Terme Octabis Michaelis fuit adjourné uſq; menſem Michaelis, & adonques le dit Terme fuit adjourne a Weminſter, uſq; Readyng en Com' Berk. uſq; craſtinum animarum enſuant, & leſſoignes fueront obſerve al ambideux per Whitlock, & al Readyng le dit Terme ſcilicet, leſſoigne jour fuit commence al dit returne del' craſtino animarum, ſed le plein Terme ne commence tanq; le 4 die poſtea, & donq; le plein Terme incept & continue tanq; al 28 Octobris, & donq; per brief adjourne al ville de Weſtminſter in Octabis Hillarii, & al ceſt Terme un caſe en ley ſolment fuit adjudge que fuit come enſuiſt.

Pecke & Mithwolde.

WIlliam Mithwolde port Action ſur le caſe vers William Pecke, & declare que le Plaintiff, & un auter fueront oblige al Defendant per obligation de 100 l. ſur condition a payer 52 l. 10 s. ſur jour paſſe, & que en conſideration que le dit Plaintiff ſolveroit al un William Playford al uſe de Defendant le dit 52 l. 10 s. le dit Defendant promiſe a deliver al Plaintiff le dit obligation ſur requeſt, & il alledge que le dit Plaintiff pay al dit Playford al uſe le Defendant, le dit 52 l. 10 s. & que Defendant licet ſepius requiſit' ne deliver le bond al Plaintiff, & le Defendant plede non aſſumpſit, & trove pur le Plaintiff, & que Judgment fuit done en le C. B. pur le Plaintiff, & le Defendant Pecke port brief d'error. Le queſtion fuit ou le Judgment fuit erronious entant q̃ null ſpecial requeſt fuit alledge per le Plaintiff en le primer fuit pur deliver le obligation, & tota Curia agreé en un & iſſint reſolve que le Plaintiff duiſſoit aver alledge ſpecial requeſt, & le general allegation de licet ſepius requiſit' ne fuit ſufficient, car ils diſont quant un requeſt eſt materiall ceo doit eſtre alledge en certain, car le requeſt fuit traverſable, en quel reſpect un ſpe-

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cial

cial requeſt doit eſtre ſpecifie en le Declaration, mes lou null requeſt fuit material la le general allegation de licet ſepius requiſit' fuit ſufficient, & coment le Defendant ad pleſt iſſue en le caſe en queſtion ſur le aſſumpſit, & nemy le requeſt tamen ceo ne aide le matter pur ceo que le requeſt eſt le ſubſtance, & part del' matter del' contract, & ceo eſteant omitte null iſſue poet faire ceo bon, & accordant al ceſt reſolution il fuit ſeveral foits reſolve en Common Bank, vide pur ceo Mich. 22. Jacobi Regis enter Howe & Kyrby, & 28 Eliz. Banke & Thwaites, & 31 Eliz. enter Olde & Eaſtgreen, & un Judgment reverſe pur le dit reaſon, & que le Judgment en le caſe en debate fuit reverſe.

Termino

Termino Hill. An. I. Caroli Regis, *in* Banco Regis.

Bowyer *verſus* Rivitt.

SIr William Bowyer port dett vers Thomas Rivitt, & recover 200 l. Il fist sa feme & Robert son fits ſes Executors & mourust, le feme mourust, & Thomas Rivitt mourust, Robert le fits port Scire facias ſur ceo Judgment vers Thomas Rivitt (fits & heire le dit Thomas Rivitt vers que le recovery fuit ewe) pur aver execution del' dit Judgment del' terres que il avoit per diſcent de ſon pere, le Defendant plede riens per diſcent, & trove que il avoit 2 Acres per diſcent, & le queſtion fuit ou le Plaintiff avera Judgment del' moiety de touts les terres del' Defendant ou ſolment del' moiety del' terres per diſcent, ou auterment de entrie terre que il avoit per diſcent; Et apres argument al barre per Goldſmith pro quer., & per Banks pur Defendant; Les 4 Juſtices declare lour opinion accordant en un, que le Judgment ſerra del' moiety del' terres que fueront en maines le Defendant, & que fueront ſon piers al temps le primer Judgment, ou aſcun temps apres, & ils touts agree que en Action de dett vers le heire ſur obligation ſon pere en que le heire eſt oblige, le heire ſerra charge en le debet & detinet, & tout terres que il ad per diſcent del' ſon pere ſerra miſe en execution, niſi que le heire plede faux plea de riens per diſcent; en quel caſe il ſerra charge per ſon faux plea del' moiety de tout ſes terres auribien per diſcent come auterment en meſne manner ſicome ceo ad eſtre ſon proper dett, ſed per Jones, le Plaintiff ad election en ceo caſe de prender execution del' moiety del' tout les terres Defendant generalment ou de entire terres que il ad per diſcent al ſon election auterment le Plaintiff per faux plee del' Defendant poet eſtre prejudice quod non fuit contradict per l'auter Juſtices, & Jones & Dodridge diſont que fuit difference, ou le heire fuit charge per garranty ſon pere & lou per obligation, car lou fuit charge ſur garranty ſon pere, & il plede riens per diſcent, & trove encontre luy que il ad per (1)

per diſcent ſed nemy aſſets en ceo caſe Execution ſerra del' terres per diſcent ſolment, mes en le caſe del' Obligation auterment, & ceo ne fuit contradict per l'auter Juſtices; Auxi ils diſont que tout manner del' heires ſerront charge ſur Obligation le pere; heirs ſur part pere, & mere en Gavilkynd, Burrough Engliſh, & touts heires immediate, ou mediate: Mes ils tout reſolve que lou le heire eſt deſtre charge ſur Judgment ewe vers le pere que en meſme caſe coment que il plede riens per diſcent, & trove encontre luy que nemy pluis ſerra done en execution, mes le moiety del' terres en maines le heire que fueront ſon pere al temps le Judgment ou pius, car le heire fuit charge nemy come heire, ſed come terre Tenant, & null Action de dett giſt vers le heire ſur Judgment vers le pere ſed un Scire facias tantum, come eſt tenuſt 10 Eliz. fol. 271. Dyer 27 H. 6. Execution 135. 15 E. 3. Tit. age 45. 4 Eliz. Dyer 207. Fitz. N. B. 267. Herberts Caſe pars 3. Cooke, que le heire ſur Judgment eſt chargable come terre Tenant ſolment, & l'execution que eſt done vers le heire ſur recovery ewe vers le pere eſt done per le Statute de Weſt. 2. cap. 18. de Elegit, & ceo lye le moiety del' terres del' recoveree ſolment, & ceo ne poet eſtre enlarge ou alter per aſcun plee del' heire ou terre Tenant, & a ceo ils cite 33 E. 3. Fitz. Execution 162. Scire facias ſur un Judgment fuit ſue vers un come terre Tenant, & il plede faux plee & trove contre luy, Et la reſolve le Judgment ſerra ſur un moiety del' terres queux fueront le recoveree tantum, & per null plee del' terre Tenant le Judgment ne poet eſtre de auters terres quam de ceux terres queux fueront le recoveree, & a ceo purpoſe null difference enter purchaſor & le heire, ſed voyer eſt come tenuſt en Herberts Caſe, le heire n'avera contribution vers un purchaſer nient pluis quam le pere, mes vers auter home il poet aver contribution, & ſolong le dit reſolution Judgment en le primer caſe fuit done. Semble a moy que al Common Ley (devant l'eſtatute de Weſt. 2. cap. 18.) ſi le heire ad plede riens per diſcent en Action de Dett ſur Obligation le pere port vers luy que le Judgment ne ſerroit de aver Execution del' moiety del' terres del' heire, pur ceo que ſi fuit ſon proper dett null Execution del' terres poet eſtre (mes ſolment del' terres per diſcent) ſed apres l'eſtatute entant que il ad plede un faux plee, l'execution ſerra, come ſi fuit ſon proper dett, ſcilicet, del' moiety del' terres demeſnes, mes ſil ſoit ſur confeſſion ou nihil dicit, ou non eſt informatus donque le Judgment ſerra del' aſſets diſcend ſolment; quod vide 6 E. 6. Dyer fol. 81. Et Henninghams Caſe, Dyer 17 Eliz. coment que Davies & Pepys Caſe en le Coment' fuit al contrary.

Beverly

Beverly *verſus* Powell. In Camera Stellata.

JAmes Beverly exhibit un bill en Camera Stellata vers Robert Powell & Mary Beverly conteynant divers matters, quel cauſe apres examination del' Witneſſes fuit oie apud Reading le darren Terme de St. Michael, & pur part del' bill le Defendants fueront cenſure, & fine in 200 l. & le reſidue de bill fuit tenus deſtre ſcandalous, & nient examinable en le dit Court, pur que le Court agree de cenſure le Plaintiff in 500 l. al Roy, & 500 l. pur damages al Defendant, & devant le ſentence, & apres le Bill exhibit la fuit un general pardon, & fuit un queſtion en le dit Court, ou le dit pardon extend pur diſcharger le dit fine & damages, & Crew Chief Juſtice fuit de opinion que le pardon diſcharge le fine & damage, ſed Hobart & Harvy eſteant adonque en Court le contra, & ove eux le Treaſurer & Keeper accord, & apres en meſme le Terme ſur motion le dit matter fuit referr al tout les Juſtices, ſur que en ceſt Terme fueront aſſemble al Serjeants-Inn Fleet-ſtreet, eſteant 12 en number, & 11 de eux fueront de opinion que le fine & damages fueront diſcharge per le pardon, car primes ils diſont que ne fuit deins le exception del' pardon, car coment il fuit bill dependant conteynant le Scandal, tamen ne ſerra dit dependant en regard del' Plaintiff pur charger luy ove l'offence, car ſon bill demeſne ne poet eſtre dit un bill dependant vers luy meſme. 2, ſi ſoit iſſint que le fine eſt diſcharge, donque null damage poet eſtre done al partie, niſi ſoit un fine pur le Roy, ſed Harvy tient ſon former opinion deſtre Report al Court per le Chief Juſtice. (2)

Et Paſchæ 3 Caroli un caſe perenter le Seignior Mounteagle & Seignior Morley Plaintiffs, & Eveſque de Chicheſter Defendant, fuit referre al Seignior Chief Juſtice hors del' dit Court a conſiderer ou ceſt cale differt del' caſe de Beverly, & il avoit conference ove tout les Juſtices abſentes les Barons, & ils agree en tout ſavant pur les damages done vers le Plaintiff un jour fuit done ouſter al eux a monſtre cauſe pur que ne fuit iſſint order, & ceo nient obſtant les Juſtices fueront de opinion, que le pardon ceo fait idem, a que les Barons apres agree.

Mountford *verſus* Sedley.

MOuntford fuit Plaintiff en Action de Treſpaſs pur priſal de 3 Loads de Woad vers Sedley, le Defendant plede que il fuit un Copyholder en fee per grant del' Seignior del' Manor de T. d'ont le lieu en &c. fuit parcell, & il prift ceo damage feſant, & le Plaintiff reply que il fuit Parſon del' Pariſh de T. deins que le (3)

dit lieu fuit parcell, & que le Defendant demiſe locum in quo, &c. al un H. pur ans, & il ſeina le terre in quo &c. ove Woad, & ſever ceo & apres priſt le 3 load de Woad come diſmes ſur le dit terre & que le Defendant ceo repriſt, le Defendant traverſe le demiſe modo & forma ſur que le Plaintiff demurre ſpecialment, pur ceo que le traverſe ne fuit material, & le reſolution del tout una voce fuit que le Plaintiff recover, car primes ils agreeont que le ſeverance del' diſmes per aſcun que ad intereſt en terre (imo ſi fuit un diſſeiſor, & il emblea le terre & ſever les diſmes) ceo fuit fait bien, ideo le demiſe ne fuit material, & ſolment un inducement & nemy traverſable, per que Judgment fuit done pro Querente.

Blakeſton *verſus* Martyn.

(4) William Blakeſton Clerke port un Scire facias en Cancellaria, en nature d'un Audita Querela vers Roger Martyn, & per ceo il monſtre que il fuit ſeiſie unius Capit' Meſſuag' & divers auters terres en Blakeſton en le County de Durham, & que un William Blakeſtone Chivalier & un Jamſon conuſt un Recognizance en nature de Statute-ſtaple de 400 l. al dit Martyn & ſa feme, & que le dit Martyn extende le dit terre & ſue un liberate del' ceo nient obſtant que Sir William Blakeſtone fuit ſeiſie en fee al temps del' dit Recognizance del' dit terre, & auxi del' auters terres en le dit County que fueront omitt en le extent, & ſur ceo il prie relief, & le dit Martyn veignant eins, & plede que William Blakeſton Chivalier ne fuit ſeiſie del' dit terres omitt ſur que ils fueront al iſſue, & ſur ceo le Record fuit deliver per Seignior Gardein de Grand Seal al Court de Bank le Roy, & ils ſi ſont mandate al Eveſq; de Durham, pur trier le meſme, & le Eveſque remand ceo arere, & q̄ trove fuit pur le Pl't vide principium ante, Termino Paſchæ 1. Caroli, & en arreſt de Judgment fuit move per Banks que il doit eſtre un audita querela & nemy Scire facias, ſed ceo fuit over-rule per Curiam, & le party put al ſon election a aver Audita querela ou Scire facias quod vide 16 Eliz. Dyer fol. 331. & 332. & Reports Cooke pars 3. in Herberts Caſe, & tout le preſidents en le Chancery ſont accordant. 2. Il move que le Scire facias eſt tenens premiſs. & ne dit que fuit tenens al temps de liberate, & ſi iſſint donque il ne poet aver Scire facias ſi un auter fuit Tenant al temps de extent & liberate, & il paſſa ſon eſtate al Plaintiff il ne poet aver Audita querela, ſed tout les 4 Juſtices accord, car il ſerra intend que il fuit tenens auxi al temps del' liberate, & divers preſidents fueront offend, que prove ceo eſtre le common courſe & form, ſed ils tout agree que ſi un ſoit lye en

Recog-

Recognizance, & apres fuit ſeiſment de parcell de ſon terre, & le conuſee ſue extente & liberate vers le conuſor del' terres en ſes maines ſolment. Et apres il convey les terres extend al J.S. q̃ J.S. ne poet aver aſcun remedy pur contribution, vers le primes feffee, car ſon feffor, ſcilicet, le reconuſor meſme, ne poet aver contribution iſſint neque ſon feffee que vient deins apres l'extent & liberate. 2. Ils teignont que ſi un fuit ſeiſie de 2 Acres en fee & conuſt un Statute, & il enfeoff 2 ſeveral perſons del' 2 Acres, & l'un Acre ſolment eſt extend & deliver en execution, & apres enfeoff J. D. que J.D. ne poet aver Audita querela vers l'auter feffee, car ceo fuit choſe en Action en ſon feffor que ne poet eſtre transfer al un auter, ſicome ſi Seignior encroach ſur un Tenant, & il fiſt feſſment ouſter le feffee n'avera ne injuſte vexes, & 7 R. 2. Fitz. admeaſurement. Guardian en fait n'avera admeaſurement del' ceux choſes faont devant ſon grant, mes per Crewe & Jones ſi un extent fuit ſolment & ſans liberate & apres devant liberate le feſſment eſt fait, & donque le liberate vient en ambideux les primer caſes avera Audita querela, car per extent null tort fuit fait neque aſcun cauſe de Action, ſed l'eſtate remaine en le conuſor tanque liberate, mes ſi liberate fuit fait auterment eſt come eſt dit devant quod les auters Juſtices non contradicont, mes entant que tenens premiſs. en un brief eſt tantamount & per intendment ſuppoſe le party deſtre ſeiſie al temps del' liberate & extente, & ſil fuit auterment il viendra del' part del' Defendant per voy de plee, ideo ceux points fueront hors del' caſe, & Judgment fuit done pro quer. nient obſtant le dit exception.

Veale *verſus* Gateſdon.

VEale port Action de Dett ſur Obligation vers Gateſdon come Executor, le Defendant plede recovery ewe vers luy per J. S. ultra quod il n'ad aſſets, le Plaintiff reply, confeſſant le Judgment ſed dit ultra que J. S. & le Defendant compound pur ceo pur 20 l. que fuit pay en ſatisfaction del' Judgment, & que le Defendant nient obſtant per covyn kept ceo a foot a defrauder Creditors, & le Defendant traverſe le compoſition modo & forma, & le Plaintiff demurre ſpecialment & monſtre cauſe q̃ le Defendant duiſſoit traverſe le covyn, & nemy le compoſition vel le doner de 20 l. en ſatisfaction del' Judgment, & il fuit adjudge pro quer. per totam & plenam Curiam. (5)

Primes ils reſolve que ſi un recovery ſoit ewe vers Executor ſans bon cauſe, & per covyn a defrauder Creditors en ceſt caſe le Creditor ſi le dit recovery ſoit plede vers luy poet generalment dire que ceſt recovery fuit ewe per fraud ſans bon cauſe pur de-

fraudet Creditors. (2) Si recovery fuit ſans cauſe coment ne fuit covyn perenter le recoveror & le Executor, mes per fainte pleder ou negligence, le Executor ſuffer le Judgment, en ceo caſe le Creditor en Action de Dett vers Executor poet adire, que ceo fuit ſans cauſe & per feint pleder.

3. Si recoverie fuit ewe vers Executor ſur covyn, ſed ſur bon cauſe en ceo caſe le Creditor ne poet avoider le recovery per diſant que ceo fuit per covyn a luy defrauder; pur ceo que le party avoit bon cauſe, & lou le recovery eſt ſur legal cauſe il ne poet eſtre dit covynous, coment que fuit ſur conſent, & al entent a preventer auter de ſon Dett.

4. Si recovery fuit ewe vers Executor ſur bon cauſe, ſoit ceo per covyn ou ſans covyn, & apres l'Executor compound pur ceo pur meinder ſumme, & ceo nient obſtant l'Executor ne procure Judgment deſtre diſcharge, ſed ſuffer ceo de continuer en force al intent de pleder ceo vers auter Creditor, en ceo caſe le Creditor en Action de Dett port per luy vers Executor (& tiel recovery plede vers luy) poet pleder le dit agreement, & que le dit recovery fuit kept a foote per covyn al intent al defrauder luy & auters Creditors, & ceo eſt bon replication; car ne riens pluis ſerra dit deſtre bien adminiſter vers Creditor quam ceo que revera il done en ſatisfaction del' Judgment, & ceux differences appear per Turnors Caſe pars 8. & per Meriel Treſham pars 9. Cooke, & tout le Court en le debate del' caſe en queſtion reſolve ſur ceo ſans aſcun difficulty.

5. Ils reſolve que coment que le Plaintiff en ſon replication ad alledge un particular compoſition & ſatisfaction per payment del' 20 l. tamen ceo neſt traverſable, ſed que (nient obſtant le dit compoſition) le Judgment fuit tenus aſſet per covyn, car cheſcun Creditor ne poet aver conuſans del' agreement en particular; ideo il ſerra dure que il ſerra trice ſur traverſe del' ceo, & le allegation del' ceo neſt forſq; inducement que neſt traverſable. Et coment 20 l. done per Executor en ſatisfaction de 100 l. ne poet eſtre aſcun legal ſatisfaction del' Judgment, neque poet eſtre plede en barre del' execution del' Judgment tamen quant tiel compoſition ſoit ewe perenter le recoveror & recoveree, le Creditor poet pleder ceo bien ove averment que le recovery fuit per covyn contrive nient diſcharge pur defeater luy & auters Creditors le lour Dett.

Et accordant al ceſt reſolution Judgment ceſt preſent Terme fuit done pro quer.

Smith

Smith *verſus* Cranſhaw & *alios*.

RAlph Smith port Action ſur le caſe vers Thomas Cranſhaw, Thomas Spratt & Ralph Warde. Le Plaintiff declare que le Defendants conſpire & combine de luy accuſer pur Treaſon falſo & malitioſe, & ſur ceo ils cauſe le Conſtable de luy arreſter, & a porter luy devant Juſtices del' Peace, & la ils falſo & malitioſe accuſe luy de Treaſon. Et ſur ceo les Juſtices luy committe al Priſon, & la il remaine tanque al prochein Gaole-delivery, & adonque le dit Defendant ſur conſpiracy avandit, & per mandate del' Juſtices de Gaole-delivery preferre un Bill de Indictment de Treaſon verſus luy, & ſur ceo ils jure que le dit Bill fuit voier, & ſur ceo il remaine en Priſon pur certain temps, & apres fuit baile de appear al prochein Gaole-delivery, & adonque il appear, & fuit acquite per Proclamation al damages de 500l. Spratt fiſt default, Ward plede non culpable, & Cranſhaw fiſt un ſpecial Plee, ſcilicet, que Spratt dit a luy que le Plaintiff ad parle treaſonable parolls, & ſur ceo il adviſe Spratt a dire tant al aſcun Juſtice de Peace, & ſur ceo ils alont al Juſtice del' Peace, & la Spratt luy informe del' dit matter ſur que les Juſtices agarde lour precept & le Plaintiff fuit arreſt, & ils preferre Bill al grand Jury al Aſſiſes per mandate del' Juſtices, & ils fuerunt Juruſt ſur ceo & traverſe le conſpiracy, & le falſo & malitioſe acculation modo & forma, & ceo fuit trove pur le Plaintiff, & en arreſt de Judgment il fuit move que le Action neſt maintenable. (1) Si le Acculation fuit pur Felony null Action giſt. Et (2) que coment Action pur tiel Acculation pur Felony eſt bien maintenable tamen pur Acculation pur Treaſon il ne giſt, & le matter fuit divers temps move & debate, & en fine al Michaelmas Terme en Readyng, Les 4 Juſtices deliver lour opinion, & ils agreeant que le Action fuit bien port, & que le Plaintiff doit recover. (1) Ils reſolve que ſi un home ou pluſors preferre un Bill de indictmene de Felony falſo & malitioſe vers un auter home, & le Jury done ignoramus ſur le Bill que en ceo caſe le partie poet aver Action ſur le caſe. (6)

Car falſe Accuſations & Conſpiracies concernant le vie d'un home al Common Ley fuit offence & injury al party coment null Indictment fuit preferre; & le Statutes fait en ceſt point fueront en affirmance del' Common Ley. 33 E. 1. fiſt un deſcription ou definition de Conſpirators, videlicet, ils ſont Conſpirators

ſpiratorꝛs queux conſpire enter eux meſme per bond, covenant ou auter alliance que cheſcun de eux aide & aſſiſt le auter de fallment indicter aſcun perſons ou a maintener quarrels per queux ils ſont impriſon ou grieve, & ayant define Conſpiracy il ne done aſcun remedy, ſed ceo eſt referre al Common Ley per que appiert que l'eſtatute conceive ceo deſtre tort & punishable per Common Ley, autrement il ad done remedy, & le Statute ſolment determin quel choſe ſerra dit Conſpiracy que peradventure fuit ambiguous devant, & le Statute de 28 E. 1. Articuli ſuper chartas Cap. 10. que fuit fait devant ne controll ceo, car ceo dit que fuit remedy devant per proviſion del' Roy pur le party grieve, mes ceſt Statute done remedy pur le Roy, ſcilicet, que il ſerra inquire auxi come offence vers le Roy, & ſemble al Jones que le brief que le Roy ad provide & mention en le dit Statute fuit brief de Conſpiracy que fuit forme per le Clerks del' Chancery per mandate le Roy.

Et touts diſont que ſont 2 briefs ou Actions pur Conſpiracy, l'un le brief de Conſpiracy enſerte en le Regiſter, & l'auter eſt un Action ſur le caſe, & ſi home port brief de Conſpiracy mention en le Regiſter il doit eſtre indicte & Acquitte, & ſi ne ſoit acquitte null Action giſt.

2. Il doit eſtre Conſpiracy, ideo un brief de Conſpiracy ne giſt vers un, car un ne poet ſolment conſpire, car le brief de Conſpiracy ayant un preciſe forme ne poet eſtre extende ultra le forme, ſed le Action ſur le caſe neſt lye al aſcun preciſe forme, mes eſt deſtre frame come le matter require ideo giſt, coment que un ſolment fait, & coment que null acquitall, ſed un endeavour falſo & malitioſe d'indicter home per que eſt grieve per impriſonment ou autrement coment que fuit un Ignoramus ſur ceo 27 Aſſ. 44. Combinations & Conſpiracyes fueront inquirable per le Eyre, coment ne riens fuit miſe en Act 19 R. 2. Fitz. Br. 926. il eſt tenus que Action ſur le caſe giſt pur Conſpirer de endite home coment revera il ne fuit endite, Poulters Caſe pars 9. Cooke, la tenuſt que Conſpiracy de enditer home coment un Ignoramus ſoit trove fuit punishable ideo le difference eſt ſi home port le brief de Conſpiracy il doit eſtre acquitte. 2. que ſi 2. conſpire al indite. 3. Que ceo fuit falſo & malitioſe, ſed ſi home port Action ſur le caſe il eſt ſufficient coment que null acquitall. 2, Et coment que ne ſoit niſi un tantum, ſed 3 il doit eſtre falſo & malitioſe Proſecution & Conſpiracy, ſed ſi le proſecution ſoit falſo ſed nemy malitioſe, ſed tamen voyer, null Action giſt car malice, & bon informe & falſe information ſi malicious null punishment, mes lou contra cognitam veritatem falſo & malitioſe proſecute un pur ſon vic, & il receive loſſe pur ceo Action giſt.

2. Ils

2. Ils reſolve que il neſt aſcun diverſity perenter le caſe de Felony & de Treaſon, ſi le accuſation ſoit falſo & malitioſe; car le dit Statute de 28 E. 1. & 33 E. 1. ne font aſcun difference, ſed ils parlont indefinite de Conſpiracy, & auxi Fitz. en le bziefe de Conſpiracy parle de Conſpiracy del' inditer generalment, Dyer fol. 116. Auxi come Crewe & Jones, l'eſtatute de 8 H. 6. & 18 H. 6. done Action de Conſpiracy de inditer home en auter Countie pur Treaſon, & come le offence eſt greinder ſi fuit Treaſon, & voyer, iſſint le crime eſt griever del' accuſer home de Treaſon, ou neſt voyer, & le Objection que fuit fait neſt de force, ſcilicet, que cheſcun eſt lye pur revealer Treaſon, car il poet reveale ſi fuit voyer, & il poet doner notice del' ſon conuſans ou ſuſpition, ſed null eſt tenuſt de reveal ceo, que neſt voyer neq; de accuſe aſcun de Treaſon malitioſe ſans verity, & ſur tout le matter, ils donont Judgment pro quer. vers Cranſhaw.

Ceſt

Ceſt enſuant Report en Parliament jeo receive de *Seignior Crew* Chief Juſtice.

Die Mercurii primo die Martii, 1625.

To the Kings Moſt Excellent Majeſty.

The humble Petition of Robert *Lord Willoughby of* Eresby.

Sheweth,

THat *Henry de Vere*, late Earl of *Oxford*, Lord *Bulbeck Sandford*, and *Badleſmere* deceaſed, the day wherein he dyed was ſeized of the ſaid Earldom and Baronies, and of the Dignities and Pre-eminencies to them appertaining, and of the Office of the Great Chamberlain of *England*; with divers other Priviledges and Profits belonging to the ſaid Office as of Fee and Right. And the ſaid late Earl being ſo ſeized thereof, dyed ſeized without Iſſue the Six and Twentieth day of *May*, in the firſt year of Your Majeſties happy Reign: And after his Death, the ſaid Earldom, Baronies, and Office, deſcended to the Petitioner as Cozen and next Heir to the ſaid late Earl, that is, Son and Heir of *Mary*, late Wife of *Peregryn*, Lord Willoughby of *Cresby* deceaſed, Siſter of *Edward de Vere* late Earl of *Oxford*, deceaſed, Father of the ſaid *Henry* late Earl of *Oxford*, deceaſed. And the Petitioner ought in right to bear the Name of Earl of *Oxford*, Lord *Bulbeck Sandford*, and *Badleſmere*; and enjoy as well the ſaid Earldom and Baronies, with the Dignities and Pre-eminencies to them appertaining, as the ſaid Office, with the Priviledges and Profits to the ſame belonging, and therein ſerve Your Majeſty. Yet nevertheleſs, ſo it is, may it Pleaſe Your Moſt Excellent Majeſty, *Robert de Vere* Eſq; without Right doth call himſelf in publick manner, by the Name of Earl of *Oxford*, and doth pretend that the ſaid Earldom,

Earldom, Baronies, and Office doth appertain unto him, to the wrong of your Suppliant.

For Redreſs wherein, your Petitioner humbly prayeth that the ſaid *Robert de Vere* may be called before Your Majeſty, or ſuch others whom Your Majeſty ſhall be Graciouſly pleaſed to appoint, to anſwer the Premiſſes; and that the ſaid Earldom, Baronies, and Office may be declared, as of Right they do, to belong to the Petitioner and his Heirs. And he ſhall pray for Your Majeſties Happy and Long Reign, *&c.*

To the Kings Moſt Excellent Majeſty.

The humble Petition of Robert Vere, *Earl of* Oxford, *Sheweth unto Your Majeſty,*

THat whereas according to Your Gracious Direction, the Lord *Marſhall*, aſſiſted by the Lord *Duke*, the Lord *Privy Seal*, the Lord *Chamberlain*, the Earl of *Leiceſter*, the Earl of *Totnis*, and the Lord *Conway*, on the Five and Twentieth of the laſt Month, gave a hearing to the pretences of the Lord *Willoughby* then opened and preſſed by his Councell learned in the Law; whereupon your Petitioner conceived that his Lordſhip, to whom it moſt properly belongs, would have Sollicited the ſaid Honourable Perſonages to have made Report of his Claim, and ſo have become a Suiter to Your Majeſty for the final expediting of the Cauſe.

Foraſmuch as your Petitioner herein finds no ſuch forwardneſs in the Lord *Willoughby*, as in reaſon from a juſt pretender ought to be expected; and for that your Petitioner is in the mean time ſuſpended from his lawfull Inheritance upon a bare Petition. It is Humbly beſeeched that Your Majeſty would be Graciouſly pleaſed to call the ſaid Honourable Perſonages before you to make their Report, whereby your Petitioner is very confident that Your Majeſty will receive good ſatisfaction that the Lord *Willoughby* hath no juſt Cauſe further to proſecute his Pretence; and that Your Majeſty in Your Royal Inclination to Juſtice, will thereupon Graciouſly receive this Petitioner to that Honour which is deſcended upon him; or if the Lord *Willoughby* doth deſire to decline that way of Deciſion wherein Your Majeſty was pleaſed to put his

Claim, and ſo would avoid the Report of the ſaid Honourable Perſonages, apprehending (as upon hearing the Cauſe he juſtly may) that it will make nothing for him, as your Petitioner in that cauſe was in all Humble Conformity content to ſubmit himſelf. So clear and confident is he ſtill, that as formerly he hath, ſo doth he now humbly beſeech Your Majeſty, That the Title of the Earldom and Office of Great Chamberlain may be determined by the Lords in Parliament. And his Anceſtors of the ſame name have for many years been Peers of this Realm, and approved themſelves Loyall and Faithfull Subjects to Your Majeſties Royall Progenitors; ſo ſhall he be always ready to lay down his Life for the happy preſervation of Your Majeſties Sacred Perſon, Your Crown and Dignity.

Then was read His Majeſties Anſwer, Signed with His Royall Hand, and endorſed on each of the ſaid Petitions alike, in manner following, *viz.*

Charles REX,

SEeing theſe Petitions concern ſo great Honour and Office of Inheritance, and that it falls out ſo opportunely during the Sitting of Our High Court of Parliament, we think it fit to take the Advice of Our Lords and Peers of our High Houſe of Parliament, who have the Judges with them for their aſſiſtance in any point of Law which may ariſe; Therefore Our Pleaſure is, That their Lordſhips call the Competitors before them, and examine their Titles, and Certifie what they find, and their Opinions thereof, whereupon we ſhall do that to either party which ſhall be Juſt.

This being thus read, it is Ordered that the Councell of both parties ſhall be heard here at the Barr on Saturday *next at Nine of the Clock in the Morning. And that both parties ſhall have warning given them thereof.*

Die

Die Lunæ Viceſimo die Martii, 1625.

The Petition of William Earl of *Derby was read* in hæc verba, (*viz.*)

To the Kings Moſt Excellent Majeſty.

The Humble Petition of William *Earl of* Derby, *and the Lady* Elizabeth *his Wife.*

WHereas your Majeſty has been Graciouſly pleaſed to refer to the hearing of the Lords in Parliament the Claims and Right of *Robert Vere*, and the Lord *Willoughby* to the Earldom of *Oxford* and Office of Great Chamberlain of *England*: And the Lords for clearing of Doubts in Law, have deſired the Opinions of the Judges before they proceed to give their Voices and Report to your Majeſty. Your Petitioners (who in Honour to the Name of *Veres* have hitherto been ſilent) do moſt Humbly deſire your Majeſty to give Order to the Lords, That upon the hearing the Judges Opinion, they forbear to give their Votes for the Lord *Willoughby* in any thing that ought to deſcend upon the Heir General, your Petitioners conceiving that their Title in right of the ſaid Lady *Elizabeth*, eldeſt Daughter of *Edward* late Earl of *Oxford*, Father of *Henry* laſt Earl of *Oxford*, ought to be preferred before the Title of the ſaid Lord *Willoughby*, being more remote,

And your Petitioners ſhall daily pray for your Majeſties Long and Happy Reign over us.

The which Petition being read, the Lord *Keeper* ſignified to the Houſe, That His Majeſty hath referred this Petition to their Lordſhips in ſuch manner as he did refer the other Petitions:

Report was this day made by the Lord Chief Juſtice, That Himſelf, the Lord Chief Baron, Mr. Juſtice *Dodridge*, Mr. Juſtice *Yelverton*, and Mr. Baron *Trevor* have according to the Order of this Houſe (11 *Martii*) conſidered of the Competitors to the Earldom of *Oxford*, the Baronies of *Bulbeck*, *Sandford* and *Badleſmere*, and the Office of Great Chamberlain of *England*.

And their Opinion is, That the Honour of the ſaid Earldom of *Oxford* was intailed upon *Awbrey de Vere* and his Heirs Males, by the Parliament of 16 *Rich.* 2. and that an Eſtate therein to the Heirs Males was ſufficiently raiſed and created thereby, and ſo reputed and enjoyed by many diſcents of the Earls; which could not have been, as the ſame is limited, if the ſame had only been an Ordinance in Parliament: Aud that the ſaid Honour is deſcended, and now of right belongeth to *Robert de Vere*, one of the ſaid Competitors, as Heir Male unto the ſaid *Awbrey*, by virtue of the ſaid Intail. And as touching the ſaid Baronies of *Bulbeck*, *Sandford* and *Badleſmere* their Opinion is, That the ſame deſcended to the General Heirs of *John* the fourth Earl of *Oxford*, who had Iſſue *John* the fifth Earl of *Oxford*, and three Daughters, one of them was Married to the Lord *Latiner*, another to *Wingfield*, and another to *Knightley*, which *John* the fifth Earl of *Oxford*, dying without Iſſue, thoſe Baronies deſcended upon the Daughters as his Siſters and Heirs, but theſe Dignities being entire and not dividable, they became incapable of the ſame, otherwiſe then by gift from the Crown; and they in ſtrictneſs of Law reverted unto, and were in diſpoſition of *King Henry* the Eighth: And yet nevertheleſs they find, That four ſeveral Earls of *Oxford* ſucceſſively, after the deſcent to the three Daughters as Heir Male of the ſaid Earldom, aſſumed and took upon them thoſe Honours and Titles in their Writings, Leaſes and Conveyances, and their Eldeſt Sons have been ſtiled in the Life time of their Fathers by the Name and Title of Lord Viſcount *Bulbeck*, and ſo reputed to be, the which they humbly leave to your Lordſhips conſiderations,

And as touching the Office of Great Chamberlain, the Lord Chief Juſtice further reported, That the major part of the Judges, (*viz.*) three of the five Judges were of Opinion, that the ſame did belong unto the Heir General, the now Lord *Willoughby*; but when they had peruſed divers Notes and Grants of the ſaid Office, ſome *ad placitum*, and ſome for Life; unto others who were not of the Name of *Vere*, by *Richard* the Second, and divers other Kings; They all thereupon deſired time to peruſe the Records, and to ſearch upon what Cauſes the ſaid Grants were made, and further to inform themſelves of the ſaid Cauſe, before they deliver any reſolute Opinion therein.

Ordered alſo, That the Judges ſhall have time till *Tueſday* next week, to deliver their Opinions touching the Office of Great Chamberlain, and if they do not then agree in Opinion, to be heard ſeverally.

Ordered alſo, That the Title of the Earldom of *Oxford*, and the Baronies ſhall be decided on *Wedneſday* next.

The

The Reſolution delivered by *Crew* Chief Juſtice in Parliament, concerning the Earldom of *Oxford*, *Walter* Chief Baron, *Dodridge* and *Yelverton* Juſtices, and *Trevor Baron* adviſing with him together therein.

My Lords,

THis great and weighty Cauſe, incomparable to any other that hath happened in any time, requires great deliberation, and ſolid and mature Judgment to determin it; And therefore I wiſh all the Judges of England had heard it (being a Caſe fit for all) to the end we altogether might have given our humble advice to your Lordſhips herein.

Here is repreſented unto your Lordſhips Certamen Honoris, and as I may well ſay, Illuſtris Honoris, Illuſtrious Honour.

I heard a great Peer of this Realm and a Learned ſay, when he lived, there was no King in Chriſtendom had ſuch a Subject as Oxford.

He came in with the Conquerour Earl of Gwynes, ſhortly after the Conqueſt made Great Chamberlain of England, above five hundred years ago, by Henry the firſt the Conquerours Son, Brother to Rufus; by Mawd the Empreſs Earl of Oxford, confirmed and approved by Henry fitz Empreſs, Henry the Second Alberico Comiti, ſo Earl before.

This great Honour, this high and noble Dignity hath continued ever ſince in the remarkable Sirname of de Vere, by ſo many Ages, Deſcents and Generations, as no other Kingdom can produce ſuch a Peer in one and the ſelf ſame Name and Title.

I find in all this length of time but two Attainders of this Noble Family, and thoſe in Stormy and Tempeſtuous times, when the Government was unſetled, and the Kingdom in Competition.

I have laboured to make a Covenant with my ſelf, that Affection may not preſs upon Judgment; for I ſuppoſe there is no man that hath any apprehenſion of Gentry or Nobleneſs, but his Affection ſtands to the continuance of ſo noble a Name and Houſe, and would take hold of a twig or twine-thread to uphold it: And

yet

yet time hath his revolution, there muſt be a period and an end of all temporal things, Finis rerum, an end of Names and Dignities, and whatſoever is terrene, and why not of de Vere?

For where is Bohun? where's Mowbray? where's Mortimer? &c. Nay, which is more and moſt of all, where is Plantagenet? they are intombed in the Urnes and Sepulchres of Mortality.

And yet let the Name and Dignity of de Vere ſtand ſo long as it pleaſeth God.

This Caſe ſtands upon many parts.

Subtile diſputants may perturb the beſt Judgments; there have been many thick and dark Fogs and Miſts raiſed in the face of this Cauſe.

But magna eſt veritas & prevalet, Truth lets in the Sun to ſcatter and diſperſe them.

Robert de Vere Duke of Ireland and Earl of Oxford, was as the Caſe is put, by the Lord Willoughbyes Counſell, undecimo of Richard the Second, by Judgment upon an Appeal in Parliament, and adjudged to forfeit all his Caſtles, Seigniories, Lands, Tenements, Franchiſes, Liberties, and all the Poſſeſſions he had when the Appeal began, in the 10th. of R. 2. ſaving rights of Intayle, &c.

Note the Judgment and what he is adjudged to loſe, no word of his Honour but goeth lower, no word of Hereditament.

But in the Act of 14 E. 4. the name of Dignity is given and forfeited by ſpecial name.

Poſſeſſions cannot do it, for poſſeſſio eſt pedis poſitio, which hath reference to Land, not to Honour.

By the Act of 16 R. 2. it appears that Sir Awbrey de Vere ſhewed Intayles of Land, but none of the Dignity; yet the King graciouſly, for that they had been Earls of ancient times, and being willing the Eſtate and Name of Earl of Oxford (though it were ſo that they were forfeited by the Judgment) ſhould not ceaſe, but ſhould continue in future time to the Honour of the Kings of this Realm, hath reſtored, given and granted by aſſent of Parliament to Awbrey de Vere, and his Heirs Males for ever, the Eſtate and Honour of Earl of Oxford, and in full Parliament he took his ancient place, and did his Homage.

Note, though it were ſo that the Honour were forfeited by the Act of 11 R. 2. yet the King granteth by this Act of 16 R. 2. and makes him Earl by way of admittance.

Then

Then the Caſe is but this:

Tenant in Fee-ſimple of an Honour takes it by an Act of Parliament in Tayle to the Males (for I hold this of 16 of R. 2. to be ſo) then Robert de Vere the Competitor is entituled to the Honour; and the Acts of attainder in the time of R. 2. and H. 4. do nothing in the Caſe,

For then the Caſe is but this.

A Noble Peer ſeized in Fee of an Earldom, takes an Eſtate thereof to him and his Heirs Males by Parliament, ſo long as the Male lyne continueth, there it reſts, and then there is no uſe of (dependents nor ſubſequents) mentioned in the Act of 21 R. 2. for the attainder of 11 R. 2. hurts not.

And by the Act of 21 R. 2. which annulleth the Act of 11 R. 2. there is reſtitution of Land but no word of Honour, which argueth that there was no Honour loſt, and if it were, yet it was ſetled and eſtabliſhed by 16 R. 2.

But admitting the Earldom were loſt by the Bill of attainder 11 R. 2.

Yet the 16 R. 2. hath the force of an Act of Parliament, and is not taken away by the Act of 21 R. 2. as a dependant upon the Act of 11 R. 2. See the Acts themſelves.

And an Eſtate tayle to the Heirs Males of Awbrey de Vere is given by that Act of 16 R. 2.

Wherein this difference may be taken between an Ordinance in Parliament, which may be in either houſe, and an Ordinance by aſſent of Parliament, which is by both Houſes, and where the King conſents unto it.

There was variety and difference in penning Acts of Parliament in ancient times.

Rex per conſilium fidelium ſubditorum ſuorum ſtatuit,

Dominus Rex de conſilio ſuo ſtatuit:

Dominus Rex ſtatuit. And all theſe Acts of Parliaments.

In the Caſe in queſtion, the Earldom is given, granted and reſtored by aſſent of Parliament to Awbrey de Vere, and his Heirs Males for ever, which is a ſpecial limitation to the Males by Parliament, and out of the ordinary Rules of Law; for the limitation ſubſiſts by Parliament.

He did homage to the King, and was placed by his Peers in pleno Parliamento, even in the ſame Parliament, per aſſenſum Parliamenti, is as much as by the aſſent of King, Lords and Commons.

For of them the Parliament is compounded.

1. Per

1. Per aſſenſum Parliamenti, involves all the States and a concurrence of all.

2. Per aſſenſum Parliamenti, is as much as Authoritate Parliamenti.

For by Aſſent of Parliament is by Authority of Parliament, and by Authority of Parliament is by Aſſent of Parliament; for the Aſſent makes the Authority.

And this is a qualified reſtitution, and a gift of another Eſtate.

3. If it were but an Ordinance in Parliament it could not properly make him Earl, nor give him this eſpecial Eſtate tayle, the Parliament intended,

So as of neceſſity it muſt work as an Act of Parliament, and be ſo taken as appeared by the Prince's Caſe concerning the Dutchy of Cornewall.

4. The Charter of the Earldom is merely but an exemplification, and of that nature it is totidem verbis with the Act.

The Charter is dated after the Parliament ended; for it is dated the 12th of February, two days after the end; but the Earl ſate as Earl in the Parliament of 16 R. 2. before the Charter was dated.

Ergo not Earl by the Charter, but by the Act of 16 R. 2. and Earl without Summons.

5. If an Ordinance only be entred in the Parliament Roll, and it hath the reputation and uſe of an Act Parliament, that makes it an Act of Parliament.

The rule is poſitive for this in the Prince's Caſe.

This is entred in the Roll, and hath ſtill had that reputation and uſe.

That it hath been ſo uſed.

He ſate and was placed as Earl in the ſame Parliament, and not by Writ.

In the Parliament of 17 R. 2. he was ſummoned, being Earl, before by the Parliament of 16 R. 2.

In the Parliament of 20 R. 2. ſo likewiſe.

And both theſe before the Act of 21 R. 2. which was an Act of Reverſall of the Act of 12 R. 2.

So as the interim, betwæn the Act of 16 R. 2. and 21 R. 2. he ſate as Earl by 16 R. 2.

For while the Act of 11 R. 2. ſtood, which it did till the 21 R. 2. the Earl had no Title to ſit there but by the 16 R. 2. And it is a forreign intendment, and hath no probability of truth, that he would be an Earl only by the Summons, and not by the Act,

(as

(as hath been objected) when the Act of 16 R. 2. was entred upon the Parliament Roll and exemplified under the Great Seal of England.

And that was the Title which was notum notorium.

He began to ſit by it in the ſame Parliament of 16 R. 2. and without Writ, and ſate afterwards in 17 & 20 R. 2.

If the Act of 1 H. 4. took off and made a nullity of the Act of 21 R. 2. (which ſee at large) then the attainder of 11 R. 2. ſtood, and he could not ſit by his old title of fee-ſimple, which was loſt by 11 R. 2. but he ſate only by 16 R. 2. and the Earls continued ſtill to ſit by 16 R. 2. till the Act of 3 E. 4. which reſtored 21 R. 2. being a time of ſixty years diſtance; ſo likewiſe did the Earls ſit after the 18th year of H. 8. in Parliament, in which year John Earl of Oxford dyed, having three Siſters, and Heirs, and an Heir Male, which could not be, but by the Act.

What Eſtate is given by 16 R. 2. whether an Intayle or a Special Eſtate to the Males?

It is plain, that in the Caſe of a Common perſon, it were a fee-ſimple, if a common perſon made ſuch a gift.

If the King make ſuch a Grant by Patent it is void in Law, it is ſo in the Kings Caſe.

But in Acts of Parliament, the intent is conſiderable, and the purpoſe of the Law-makers; for an Act of Parliament is not Regulated by the ſtrict Rules of Law in the limitation of Eſtates.

Teſtaments, Acts of Parliament, and Arbitrements are interpreted according to intent, as appears by our Books, more particularly by the Chancellor of Oxfords Caſe.

And that the Act of 16 R. 2. intended an Eſtate to the Males, is moſt clear by the words thereof:

For it recites, that where the Earl ſhewed the Land was Intayled, but ſhewed no Intayle of the Earldom, Yet the King of his Grace, for the continuing of the Name and Houſe and Honour of the Kingdom, gives it to Awbrey and his Heirs Males per aſſenſum Parliamenti.

What is the Patern? the Land was Intayled before, now the Earldom, by 16 R. 2. and ſo one and the ſame Eſtate in both.

And if there had not been an Intayle thereof, then when John the fourth Earl of Oxford dyed 18 H. 8. without iſſue, having three Siſters and Heirs, the Earldom being before anciently in Fee-ſimple, had returned to the Crown again.

Quia dignitas non eſt diviſibilis, it is integrall and intire, and cannot be divided.

But optima legum interpres conſuetudo.

John the 5th, Earl John the 6th, Edward and Henry ſate in Parliament by the Intayle of 16 R. 2. elſe they had no Title at all to ſit by, and they could ſit by no other Title after the death of John the 4th, Earl without Iſſue.

And to ſuppoſe that they ſate as Earls, only by the Summons, and not by the Act of 16. Inrolled and Exemplified is too forreign to think of and could not be. John Earl of Oxford, the Heir Male of the Family, was found to be Earl by the Office in 18 H. 8. when Knightley, who married the eldeſt Siſter of the Heirs Generalls claimed the Earldom.

That John ſate as Earl in the Parliament of 21 H. 8. before King H. 8. his award in 23 H. 8. made upon a ſubmiſſion of the Heir Male and Heirs Generall of their Titles to the King; for the Act 16 R. 2. carryed it to the Male.

By which the King meant not by any thing in it, or by the word Hereditament mentioned in it to quit any Title of his own (if any he had) but the Titles pretended on each ſide by the parties which only were compromitted to the King.

By the award of 23 H. 8. he is called Earl, by the Act of Parliament confirming it, allowed to be Earl.

Object. The Honour of Earl being loſt by the Act 14 E. 4. which attainted him, yet in the Parliament of 1 H. 7. the Earl was called by Writ before he was reſtored, and therefore the Earls from 21 R. 2. ſate in Parliaments by virtue of the Writ of Summons and not by the Act of 16 R. 2.

Reſp. He was in 1 H. 7. ſummoned by Writ, for that the King meant at that Parliament to reſtore him, but he ſate not till the Act of Reſtitution paſt, as appears evidently, and if it had been fit or uſual to have made him an Earl by a Writ only, then he might have been ſo in 16 R. 2. and there needed no Act.

Admit the Act of 16 R. 2. be an Act of Parliament, and an Eſtate Tayle or a Special Eſtate to the Males raiſed thereby, whether 21 R. 2. annulling 11 R. 2. by which the attainder grew and all the dependents upon it, takes not off 16 R. 2. as a dependant, and thereby the old Fee-ſimple reſtored, and then a deſcent to the Lord Willoughby as Generall Heire ſince 18 H. 8.

An Act of Parliament cannot be taken off, but by an Act of as high nature, viz. another Act of Parliament, and not by inference, but by expreſs words.

The

The Act of 21 R. 2. mentions 11 R. 2. and takes it off and the Dependents thereupon; but the word Dependent cannot Repeal an Act of Parliament, it is too heavy and of too high a nature to be ſhaken of, it admits no diſpute, and there can be no remitter againſt an Act of Parliament.

The Act of 21 R. 2. nullifies 11 R. 2. and reſtores the Lands by expreſs words, a fortiori it would have reſtored the Honour, which was more worthy, if the Parliament had not conceived it had been firmly ſetled by 16 R. 2. and if 16 R. 2. were taken off by 21 R. 2. & 3 E. 4. then had the Earldom been loſt. In 18 H. 8. when John Earl of Oxford dyed without Iſſue Male, having three Siſters and Heirs that could not have it, the Earldom being then in Fee-ſimple, and it had reſted in the diſpoſition of the Crown, which could not be, the poſſeſſion and uſe ſtill going the other way: and thereupon Crew Chief Juſtice delivering his own ſence and the ſence of his Brethren, gave their humble advice to the Lords in behalf of the Earl of Oxford the Heir Male, againſt the Lord Willoughby the Heir Generall.

For the Baronies of Bulbeck Scales and Badleſmere, they conceived that by the Death of Earl John in 18 H. 8. without Iſſue, having three Siſters, thoſe Honours returned to the Crown in the ſtrict conſtruction of Law, but the Crown diſpenſed therewith, as it ſeems; for after the Death of that John, being John 4. John 5, John 6, Edward and Henry aſſumed thoſe Titles nominally in all their Leaſes and Conveyances, and the Eldeſt Son called ſtill by the name of Lord Bulbeck.

Die Mercurii 22 *Martii* 1625.

The Kings Reference to the Houſe of the Competitors for the Earldom of Oxford, &c. *being read,*

It is agreed upon the queſtion, That the Earldom of *Oxford* is deſcended, and ought of Right to come unto the Heir Male, *Nemine diſſentiente.*

It is agreed alſo upon the queſtion, That the Baronies of *Bulbeck*, *Sandford*, and *Badleſmere* are in His Majeſties diſpoſition,

And as touching the Office of Great Chamberlain of *England*, it is agreed that the Judges ſhall conſider, and report to the Houſe,

Whether the Earl of *Oxford*, who made the Intayle of the ſaid Office, were at that time ſeized of the ſaid Office.

Admitting that he were ſeized of it, then whether ſuch an Office may be conveyed by the way of limiting of uſes.

And the Judges are to demand of Mr. *Wright* a Deed which he hath in his cuſtody of an Intayle of the ſaid Office made by an Earl of *Oxford*, in which Deed the ſaid Earl is Stiled Lord Great Chamberlain of *England*.

And the Judges are to deliver their Opinion on *Tueſday* next to the Houſe.

Die Martis 28 *Martii* 1626.

The Lord Chief Juſtice reported unto the Houſe, that according to the Orders of 20 and 22 *Martii*, he and his Brethren have again conſidered of the Title unto the Office of Lord Great Chamberlain; and that three of them are of one mind, and two of them of another; Wherefore they are ready to deliver their Opinions ſeverally, and their reaſons for the ſame.

Whereupon Mr. *Baron Trevor* began, and delivered his Opinion, That the ſaid Office of Lord Great Chamberlain, doth of Right belong unto the Lord *Willoughby*, and gave his Reaſons for the ſame.

Mr. *Juſtice Yelverton* delivered his Opinion, That the ſaid Office of Lord Great Chamberlain of *England* doth belong unto the Lord *Willoughby* as Heir General unto *Henry* laſt Earl of *Oxford* deceaſed, and gave his Reaſons for the ſame.

Mr. *Juſtice Dodridge* delivered his Opinion, That the ſaid Office is deſcended and doth belong unto the Heir Generall of *Henry* the laſt Earl of *Oxford* deceaſed, and gave his Reaſons for the ſame.

The Lord *Chief Juſtice* delivered his Opinion, That the ſaid Office of Lord Great Chamberlain of *England* is deſcended, and ought to belong unto the Heir Male of *Henry* the laſt Earl of *Oxford*, (viz.) unto *Robert de Vere*, the now Earl of *Oxford*, and gave his Reaſons for the ſame.

The Lord *Chief Baron* delivered his Opinion, That the ſaid Office is deſcended, and ought to belong unto the ſaid *Robert de Vere* now Earl of *Oxford*, as Heir Male unto *Henry* the laſt Earl of *Oxford* deceaſed, and gave his Reaſons for the ſame.

It is Ordered alſo, That Councell ſhall be heard here at the Bar next *Thurſday* morning, upon the Petition of the Earl of *Derby*, and the Lady *Elizabeth* his Wife, for the ſaid Office of Lord Great Chamberlain of *England*; and that the Lord *Willoughbyes* Councell ſhall be then heard alſo, and then if time will permit, the Houſe will give their reſolution touching the ſaid Office.

The

The Heads of the Argument of *Crew* Chief Juſtice.

JOhn de Vere Earl of Oxford in 4 Eliz. being ſeized of the Office of Great Chamberlain of England, and of divers Honours, Caſtles, Mannors, Lands and Tenements in Fee-ſimple, in conſideration that the premiſſes had of long time remained and continued in the Name of the Veres, and holding himſelf tyed in Conſcience to provide that the ſame may remain and continue in the Name and Blood of the Veres, from Heir Male to Heir Male for ever, if it might pleaſe God ſo to permit and ſuffer the ſame, by his Deed Covenanteth with the Duke of Norfolk, the Earl of Leiceſter, and others, that he and his Heirs and Aſſigns will from thenceforth ſtand ſeized thereof to the uſe of himſelf for Life, the remainder to the Lord Bulbeck his Son, and the Heirs Males of his Body, with other remainders to the Males of his houſe, the remainder to his right Heirs.

Robert de Vere is a pretender and Competitor to this Office, by virtue of that Intayle, as Heir Male thereof, and the Lord Willoughby claimeth the ſame as Heir Generall.

His Lordſhip declared his Opinion for the Heir Male.

First he held,

That the Office of Great Chamberlain of England, being a Miniſterial Office of Skill or Science, howbeit it be an Office of Confidence, and holden by Grand Serjeantie, yet being granted to Awbrey de Vere and his Heirs (in which generaltie Aſſigns are included) is not ſo individually appropriate and inherent to his immediate lyne of Blood, but that although it be an Office in groſs, it may nevertheleſs be alienated to another Sir-name by Licence from the Crown, or without Licence, if the King diſpence with it after, elſe there were a perpetuity of an Office in Fee-ſimple, which the Rule of Law and Reaſon in no wiſe admitteth.

Secondly, admit it could not be transferred to a ſtrange Blood, yet it may be to a de Vere, eſpecially being the Heir Male of the Houſe (as this caſe is) without any Violation or Breach of Truſt, as to the Original Gift or the intention of the King that gave it.

And Laſtly, The Indenture of Covenants of John Earl of Oxford in 4 Eliz. to ſtand ſeized of this Office to the uſe of him-

ſelf for Life with Remainder to the Lord Bulbeck his Eldeſt Son, and the Heirs Males of his Body, with other Remainders to the Lyne Male, and ſo to his right Heirs doth eſtabliſh a good Eſtate Tayle to the Heirs Males, although it be a perſonal Office, and follows the perſon. as in point of Tenure ſuch an Office of truſt follows the Land, and the perſonal ſervice be in groſs or by tenure is the thing to be performed, and is one and the ſame in both caſes, and conſequently Robert de Vere as heir Male of that John is inheritable to this Office.

In the Firſt,

He conſidereth the nature and amplitude of an Eſtate in Fee-ſimple to one and his heirs, which is the vaſt and indefinite Eſtate of the Law, comprehending in it Males and Females, having in them any perſonal defects or deformities of body or mind whatſoever, and conſequently by the generality of the perſons comprehended in ſo general and abſolute a grant, Offices of confidence may be granted over, and it is improper to fix a Truſt upon ſuch an Eſtate in Fee-ſimple, and upon perſons that a man cannot foreſee in the future to be capable thereof, or be fit to manage ſo great an Office.

That if a Woman happen to be the heir of that great Houſe, and marry ignobly with a mean and unworthy perſon, as a Yeoman or Mechanick, and he have a Son by her, and ſhe dye, the Husband in her life time is ſeized of this Office in her right, and after her death ſhall be Tenant by the courteſie thereof.

That this Office may be thereby transferred from the name of de Vere to any obſcure and mean ſurname and Family, which is fitter to be repoſed and preſerved in a more eminent name and perſon.

That a Condition knit to this abſolute Eſtate of Fee-ſimple, not to Alien, is a void condition in the caſe of a Common Perſon, for it is againſt the freedom and abſoluteneſs of this Eſtate; yet the King may annex ſuch a condition, but then it muſt be expreſſed in the Charter, which is not in this caſe.

Proofs hereof.

18 E. 3. 27. J. S. was ſeized in Fee-ſimple of the Office of Serjeanty in the Cathedral Church of Lincoln, and gave the ſame in tayle to C. whoſe Iſſue brought a Formedon in the Deſcender of this Office, this was an Office in groſs and of Truſt and yet grantable, and ſuch a Free-hold as a Formedon did lie thereof.

That

That there is no inference in Law to be made of any implied or involved Trust in an Estate in Fee-simple of such an Office, but only that it may not be transferred to an unworthy Name and Blood, which is prevented and provided for in this Case, by setling the same upon the heirs Males of this Noble Family, and to concur with the Earldom, which is entailed by Parliament to the Males.

That in divers Kings times before 20 H. 3. a man might alien Lands held of the Crown in Capite, without any Licence of Alienation; for it was then thought to be too great a check and curb to an Estate in Fee-simple to be restrained, that it might not be alienedwithout licence.

That it appears by the Statute of Prerogativa Regis, and by other Authorities in our Books, Grand Serieanties may by Licence of the King be alienedbut the Corporal Service of one man, cannot be altered into the Corporal Service of another man, without the Kings privity and allowance; and by the Common-Law it was a forfeiture to alien Lands holden by Grand Serjeanty (which is Regale Servicium, Service Royall) without Licence, but it is no forfeiture at this day, as doth clearly appear in my Lord Cromwells case in the second Reports: For that it is remedied by the Act of 1 E. 3. cap. 12. which (as appears by that book, extends to Lands and Tenements holden in chief (which all Grand Serjeanties be) that be alienedwithout Licence, a reasonable Fine is therefore to be taken, which is in this particular Case (the alienation being made to the Heirs Males of the House) is only fineable, and may be pardoned and dispenced with; and no doubt the word Tenement doth include Offices; for if an Assize be brought of an Office, it is quare disseisivit eum de libero Tenemento, and ever after this Statute, when any thing held by Grand Serjeanty is alienedwithout Licence, a Fine is taken, and never any seisure, for a forfeiture, as is plain by experience in the Exchequer at this day. 14 E. 3. 46 E. 3.

That King H. 2. granted to one Waynfort and his Heirs, Ministerium de Magistratu hostiariæ de Scaccario Libere & Honorifice, with divers Fees of value belonging to it; part of this Office which extended into the Common-Pleas was sold, and the Grantee being interrupted in the execution thereof, as appears in 7 Assisar. brought an Assize, and produced the Deed, and upon the Deed Issue was taken, and the Sale allowed as good by the rule of that Book; And that Case, the Sale being made without Licence, the King afterwards approved and confirmed the same, by which it appears, that betwixt a personal Office and Land holden by Grand Serjeantie, there is no difference, and that it is This Office is held by Grand Serjeantie, *Dyer fol.* 2. 13. 7 E. 3. *fo.* 57. 7 Ass. p. 12. 36 & 37 Eliz. Rot. 134. A Common Recovery suffered of this Office.

is transferable in both cases, and he observed that the word Honorifice, which hath been insisted upon by some that argued before, was applyed to this inferior Office.

That if there needed any Licence in the case in question, the Office being setled by the Deed in 4 Eliz. upon the Heirs Males in Blood, out of the Estate of Earl John without transmutation of possession, that offence was pardoned by the general pardon of 5 Eliz. for as the King may grant a Licence to one to Alien, so may he dispence with an Alienation without Licence, after the Alienation made, and the Alienation is good between the parties, howsoever the King might impeach it.

That John Earl of Oxford dyed in August 4 Eliz. the Deed of Covenants being made in June before, and that after his death, that Deed of 4 Eliz. that raised the Estate to the Males, was found by Office in hæc verba in 5 Eliz. and Edward Earl of Oxford sued Livery thereupon in 14 Eliz. whereby the Deed and Alienation was found of Record; and the Queen being so informed thereof allowed it, and he then had a special pardon granted unto him by Queen Elizabeth, by which all Alienations made by John his Father, and all Forfeitures committed by the said John, or any his Ancestors were pardoned; and it is above sixty years since this Conveyance was made; and since that time, this Office enjoyed by that Title in several descents. Hereby it appears plainly, that this Conveyance made in Anno 4 Eliz. hath been Judicially resolved in the Court of Wards, to be good as well for the Office of Great Chamberlain, as for the Lands; for the Deed being found in the Office in hæc verba, the King was answered, but of the third part of all contained in the Conveyance according to the values found in the Office, where the King if the Deed were void for any part, ought to be answered for the whole of that part; and upon that Office Earl Edward had Livery accordingly, and no doubt this Conveyance in Anno 4 Eliz. was made by great advice, and the Office likewise found by like advice, and the same judicially allowed by the Court of Wards, so as he conceived it to be a strong case, notwithstanding any thing objected to the contrary, that this Office may be granted to another person by Licence of the King, for he is informed what the Person is, and approved of him, and so may it be done without Licence, when the King knoweth the Person afterwards and alloweth or dispenceth with the Grant.

Nota.

That

That in the Caſes of 11 E. 4. 1. the Office of Chamberlain of the Exchequer, and the Office of the Marſhal of the Kings-Bench in 39 H. 6. were both given in tayle to the Heirs Males only, and neither of them could be then aliened but were reſtrained from alienation by the Statute of W. 2.

The Original Grant of the Marſhals Office is intayled to the Males, and not in Fee, as *Brook* conceived it.

That an Eſtate in Fee-ſimple hath not ſuch a tye or reſtraint upon it, being a free and an abſolute Eſtate, and in the caſe in queſtion Tenant in Fee-ſimple gave an Eſtate in tayle to the Heir Male of his houſe, being an hereditary Eſtate, and not a particular Eſtate for Life.

That an Office of Truſt granted to one and his Aſſigns for Life, may be aſſign'd over, as appears in the caſe of 11 E. 4. & 21 E. 4. 41. of the Eſquire for the Body; for in a Grant only for Life of ſuch an Office, which is but a particular Eſtate, it cannot be granted over nor deputed, except Deputy or Aſſignee be in the Patent, but an Office of Truſt granted to a Man and his Heirs may be granted over, for Heirs includes Aſſigns, and is as much as if it had been granted to a Man and his Heirs and Aſſigns.

That Jus Baculi hath no relation to Jus Gladii, as to dignifie the Blood, Cinguntur gladiis Proceres, the Staff is but matter of Formality, and holden in the hand of more inferiour Officers, and the Record vouched was no more but to ſhew the firſt Guilding of the Earl Marſhals Staff, which was matter of Story, not conducing to the caſe in queſtion, and the two caſes put of the Founderſhip and Gift of Frankalmoigne, have no reſemblance with this caſe, but moſt apparantly differ from it.

18 E. 3. 27. Preſtatute 51 H. 3. Statute de Scaccariis, a Deputation of great Office of Truſt.

The Statute of 5 E. 6. which prohibits ſelling of Offices, concerning adminiſtration of Juſtice, or concerning the Kings Revenue, or keeping Forts or Caſtles which have confidence and attendance annexed to them, doth except Offices in Fee-ſimple, whereby it appears that they be transferable.

And it is to be preſumed no Stranger of Blood would enterpriſe to contract for this Office, without the privity and conſent of the King, nor any other but a great and eminent Peer of the Realm, would be ſo ambitious as to deſire it, or ſhould be tollerated by the King to exerciſe the ſame, ſo as the ſetling of this Office upon the Heir Male of the Family, is an Honour to the Office, and to the Crown that gave it; and he cannot find that the Eſtate of this Office was ever granted to any under the degree of a Duke or an Earl, only in 1 H. 4. the then Earl of Oxford being in diſgrace with the King, was not ſuffered to perform his Office at the Coronation, but Sir William Eppringham for that time only was appointed by the King to do it.

The Second Point.

Admitting this Office could not be transferred to a Stranger, yet no doubt it may be transferred to the Heir Male of the House that hath the Dignity of an Earl, and that such assignation is no breach of Trust, but a reinforcing and advancement of the Trust.

And if King H. the First, that gave the Office, or the Kings that afterwards confirmed it, were alive and asked the question, whether they would allow such a Conveyance as this is, by which means a Woman being a general Heir, that might marry not so worthily, should be excluded and the Office go with the Earldom in the Lyne Male, they would commend and cherish the Earl for so setling it, as doing that which was most suitable with their Royal Inteneions.

18 Ass. pl. 18 & 18 E. 3 That in 18 E. 3. the Lord Clifford by licence of alienation gave the Sheriwalty of Westmerland, which he had in fee, to two Chaplains, to the end to give it to him back again, and the Heirs Males of his body, and allowed to be good by the rules of that Case, and this is a great Office in Confidence, and of Trust Personal and Corporal, and holden by Grand Serjeanty, as appears in my Lord Cromwells Case, Ergo it may be done in the Case in question to the Heir Male of the Family, And he knew not what answer can be made to this Case.

Note, a descent of the Office to 3 Daughters. That upon the Death of John Earl of Oxford 18 H. 8. having three Sisters and Heirs, upon whom the Office of Great Chamberlain descended, yet howbeit one of them was marryed to a great Baron, the King to whom the Heir Male, and General Heirs submitted their Titles, for the possession of that Earldom, did nevertheless for the continuance of this great Office in the name of de Vere award it and other Offices to John the Heir Male, and his Heirs giving something else in lieu thereof to the General Heirs, not holding it fit it should go to them, from the Sir-name of de Vere, Therefore it is transferable.

Examples. The Earl of Arundell being seized in fee of the Castle and Mannor of Arundell, being held by Grand Serjeanty (as all ancient Earldoms and Baronies were) did by fine levyed 21 E. 3. convey this to the Heirs Males of his name, and howbeit he was then Tenant in fee-simple thereof, and it was inherent in the Blood, yet the Earldom went with that entayle.

So did the Lord Berkley his Castle and Mannor of Berkley in 23 E. 3.

So did Thomas Beauchamp convey the Castle and Mannor of Warwick, to the Heirs Males, being then seized thereof in fee.

So

So likewiſe the Counteſs of Derby the Barony of Grooty to a ſecond Son.

The Baron of Kilpeck, the Caſtle and Mannor of Kilpeck to a Siſters Son, one Plantagenet, and theſe held theſe Earldoms and Baronies, and were Earls and Barons accordingly, having the Caſtles and Mannors, and being of the Blood. And the Heirs Generalls by ſuch Conveyances were excluded; but if theſe Caſtles and Mannors being local, had been conveyed to ſtrangers of Blood, they ſhould not have been Earls and Barons.

And therefore this great Office may be well conveyed to the Heir Male, which is the more Honourable and Eminent Blood, And the Record produced of Humphrey de Bohun is nothing to this caſe, for he being Sick, and unable to exerciſe the Office of Conſtable of England, did grant that Office to William Bohun Earl of Northampton his Brother, and a Mannor and certain Lands in Norfolk, only for the Life of William, this he did without Licence of the King for ought appears by that Record; nevertheleſs the King afterwards approved and confirmed it; as was done in the Caſe of 7 E. 3. cited before de Hoſtiario de Scaccario; but the Earl of Northampton had not any of the Mannors conveyed unto him, whereunto the Office of Conſtable was tied by tenure; but the Mannors ſtill remained in Humphrey de Bohun, as appears by the Caſe of 6 H. 8. vouched on the other part, and lye in Glouceſter-ſhire, and not in Norfolk; ſo as the Office being granted per ſe, and but for Life, it was fit to procure a Licence, and the Kings approbation thereof; for the Earl of Northampton was as it were but a Deputy or Subſtitute for a time to exerciſe the Office: For, the Mannors whereunto the Office was tyed, and the Office it ſelf, did both deſcend to the Daughters and Heirs of Humphrey de Bohun after his death; and if Humphrey de Bohun had ſold the Land by which the Office was holden to a Stranger, the Purchaſor ſhould have been Conſtable de Jure without all queſtion; whereupon he inſiſted ſtrongly, that this Land and Office, albeit it be an Office of Truſt, may be ſold away by Licence; and by Licence to a Stranger. So likewiſe without Licence, if the King pardon or diſpence with the Alienation afterwards; for then he knows what is done, and to whom the Alienation is made, and diſpenceth with it, as was done in this great Caſe in queſtion; wherein there was a generall Pardon, and a ſpecial and particular Pardon and Livery ſued upon the Alienation, as is before mentioned.

2 Part 12 E. 3. 21 in *Tur'*

Nota.

And there is no difference betwixt an Office by tenure of Grand Serjeanty, and in groſs, in reſpect of the Perſonal Service and Dignity thereof, but in point of Transference or Execution it is one and the ſame; but ſuch a Perſonal Office is no way to be reſembled to an Earldom: which without queſtion cannot be granted over per ſe, for that is fixed to the Identity of the perſons, and inherent in the Blood nobilitated by the King.

The Third Point.

That an Eſtate Tayle to the Males, by the Deed of Covenants of 4 Eliz. was well raiſed and eſtabliſhed. In which Caſe there is no tranſmutation of Poſſeſſion, but the uſe is raiſed out of the immediate poſſeſſion of the Earl, who hath an Eſtate for Life limited unto him by this Conveyance in the Office, and ſo continued the immediate Tenant thereof.

And it is by him ſetled in the Blood, ſo as in this Caſe there is no change of poſſeſſion, as upon an Alienation to Strangers; And howſoever it be, yet by the Statute of 1 E. 3. there was but a Fine to be paid, and the Alienation without Licence doth not avoid or impeach the Conveyance as betwixt the parties.

For in this Caſe there is no Feoffee to an uſe, out of whoſe Eſtate an uſe ſhould ariſe; but the uſe ariſeth out of the immediate Eſtate of the Earl, which as ſoon as the Deed is ſealed the uſe paſſeth, and *ipſo momento* is executed in poſſeſſion; ſo as the Earl was never out of poſſeſſion, but uſe and poſſeſſion concurred.

And the only queſtion now is, whether the particular uſes expreſſed in the Deed of 4 Eliz. to the Heir Male of the Family, ſtand good in Law or no, and not what uſes be inconvenient or unlawful, for that is not the queſtion, but whether this that is done be well done or not.

That the ſuppoſed Truſt involved in the Original Gift of this Office is no other, but that the Office may not be beſtowed on mean Perſons and unworthy Families, which here it is not, nor yet to Executors, which ought not to be, nor to the uſe of his Will, nor to a younger Son (both which as the Caſe may be improper in an Office of this nature, the circumſtances conſidered) but to the Heir Male of this Noble Family, that inherits the Earldom, which anſwers the forreign Objection made, that there cannot be a Truſt upon a Truſt.

But for the better underſtanding of this point, he conſidered the nature of an uſe at the Common Law.

A Grant to an uſe, was a confidence repoſed by the Grantor in the Grantee, that notwithſtanding the Eſtate was in the Grantee.

Yet

Yet nevertheleſs he would ſuffer the Grantor to take the profits of the things granted.

As for example, in this particular Caſe, to ſuffer the Earl to exerciſe the Office, and to take the profits thereof, notwithſtanding the Grant, and now ſince the Statute of 27 H. 8. which knits the uſe and poſſeſſion together, that confidence is taken away, and the uſe, and poſſeſſion in the inſtant of time unite and incorporate together, and the Eſtate of all the great houſes England, ſtand or fall upon limitation of uſes at this day; and therefore beware how you enervate or weaken ſuch Aſſurances, by any nice or tranſcendent Conſtruction.

That the Statute of 27 H. 8. of Uſes is general, and extends to any Honours, Caſtles, Mannors, Lands, Tenements, Rents, or other Hereditaments, wherein this word (other) is very ſignificant, and reacheth to this Caſe; for no man can doubt but this Office is an Hereditament, and other then that was mentioned before, and ſuch an Hereditament whereof an Eſtate Tayle may be created by the Statute of W. 2. and whereof an Aſſize lyeth, and can have no reſemblance with an Annuity, which is merely perſonal, and cannot be entayled by that Statute.

Nota. If it may be Intayled, it may be conveyed to an uſe.

That an Aſſize may be brought of this Office, ſo as there is a ſeiſin thereof, and ſo conſequently there may be a ſeiſin to Uſe.

It is exercibile in Palatio Regis in the Kings Grant, and is granted cum liberationibus & Hoſpitiis Curiæ, ſo as there is a place of the exerciſe thereof.

It is an Office of profit and revenue, having great fees and and regards belonging to it upon reſpits of Homage, Liveries and Reſtitution of Temporalties, and the annual profit thereof is received in the Office of the Pettibag, beſides the great Fees belonging to it at the Coronation; ſo as there is a place to be put in view by the Recognitors of the Aſſize, if the Aſſize be brought, and the Judgment is quod recuperet ſeiſinam.

That howbeit the Office be perſonal in Execution, yet it is real in perception of Profits, and therefore an uſe may be raiſed thereof, eſpecially in this Caſe, to the Heirs Males of the Family.

That a Seigniory conſiſting of Homage and Fealty, the Service being merely perſonal, and to be performed by the perſon of a Man, and reſting in reſſaunce, may be granted to an uſe in reſpect of the poſſibility that the Tenancy may eſcheat, which perhaps will never be; a fortiori in this Caſe, where there is a preſent profit and revenue of this Office to a good value.

That a Stewardſhip or Bailywick in fee-ſimple of a Mannor, may be granted to an uſe being perſonal Offices in point of ſervice.

So

So a liberty of Retorna Brevium, which is perſonal conſiſting in execution of proceſs, as it was ruled in the Counteſs of Warwicks Caſe, 42 Eliz. in the Kings-Bench.

So likewiſe a Rent in eſſe, or an Advowſon in groſs, or a Common for ſo many Beaſts, which is to be taken by the month; which be harder Caſes then the Caſe in queſtion.

And in the third of King James the Earl of Cumberland being ſeized of the Office of Sherivalty of the County of Weſtmerland in fee, did covenant to ſtand ſeized of all his Mannors, Lands, Tenements and Hereditaments in the County of Weſtmerland, to the uſe of himſelf and the Heirs Males of his Body, The remainder to the now Earl of Cumberland, and the Heirs Males of his Body; and after by his laſt Will, reciting that Conveyance, did for further ſecurity, devile all the ſaid Mannors, &c. and the Sherivalty of Weſtmerland to the now Earl of Cumberland, and the Heirs Males of his Body, by virtue whereof he enjoyeth it, and the Counteſs Dowager had the Mannors and Lands in Weſtmerland aſſured to her for her Jointure; but the Sherivalty went with the Earl.

And where it hath been ſaid that a Truſt cannot be raiſed out of a Truſt, and therefore a bargain and ſale by Deed indented and inrolled cannot be limited to an Uſe, becauſe an Uſe cannot be limited to an Uſe, yet notwithſtanding, when a man is ſeized of an Eſtate of Inheritance of an Office holden by Grand Serjeanty, wherein there is required Truſt in the perſon, yet may an Uſe which is a pernancy of the profits belonging to that Office be raiſed of the Eſtate of Inheritance, otherwiſe no Land holden by Grand Serjeantie could be transferred to an Uſe, nor any Uſe raiſed out of the ſame.

Therefore the diverſity is manifeſt between a mere and naked Truſt, wherein he that hath it, hath neither Jus in Re, nor Jus ad Rem, nor remedy by the Common Law, but only a meer perception of the profits by the permiſſion of the terre Tenant, and an Eſtate of Inheritance, wherein the Owner hath both Jus in Re, and Jus ad Rem, by the rule of the Common Law, and for the profit whereof the Law giveth the Owner remedy by Writ of Aſſize, and a precipe quod reddat, as the Caſe requireth; and the confidence required in the perſon for the executing the Office may be an Objection (though a weak one) that it cannot be transferred over, but not that an Uſe, that is, a pernancy of the profits cannot be raiſed out of the Eſtate, the Truſt in the perſon is no objection at all; for the Uſe reſpecteth the Eſtate of Inheritance, and not the Perſon.

So

So as in the examination of this Caſe throughout, he could not ſee or find any inconvenience herein, either in the point of Licence or Limitation of the Uſe, there being no change of poſſeſſion nor of blood, but an Eſtate ſetled by this Conveyance of the Earl in the Heirs Males of the noble houſe; whereupon Kings and States have their Eyes, as upon the moſt eminent and worthy blood.

And this noble Office, being ſo long ſince granted to Awbrey de Vere, and in the great Revolution of time ſince, never fixing it ſelf in the Female Lyne, he ſaw no cauſe now in the great declination of the Houſe, to take away any means to ſupport it, or Honour from it.

And therefore he concluded ſomewhat confidently, and ſo gave his humble advice, That this great Office by Licence of the King, was transferable to a Stranger at this day, or without Licence if the King did afterwards diſpence with it, as was done in this caſe, and admitting that it were not transferable to a Stranger, yet it might be to the Heir Male of the blood, & that only is the Caſe now in queſtion; and that at the moſt there was but a Fine to be paid for it. And Laſtly.

That it might be done by this form of Conveyance, by way of Covenants to raiſe the Uſe, Therefore in as much as this Office never went to a general Heir, but while it remained in this Family remained ſtill with the Heirs Males of the Houſe,

And for that Earl John by this Conveyance which hath been judicially allowed did affix and ac-couple together this great Earldom and Office ſixty years and more ago, and gave the Office as a Bride and a Spouſe to the Earldom, being formerly ſetled by Act of Parliament upon the Heirs Males of the Family; and the Office by this Conveyance to the Males likewiſe,

Since they were thus joyned together (and this only Flower left in the Garland of the Earldom) he could not by his advice divorce or put them a ſunder, but humbly ſubmitted his opinion to their Lordſhips great Judgments; And in the end of his Argument, prayed their Lordſhips in reſpect the Caſe was ſo great and weighty, of ſo noble a Family, and was merely Queſtio Juris of Inheritance, that their Lordſhips would be pleaſed to take the Opinion of all the Judges of England herein, all of them being Aſſiſtants to this Court, and all their Advices being (as he conceived) neceſſary to be had, in ſo important, and ſo noble a Caſe.

See the Statute of 51 H. 3. Statutum de Scaccariis, the Conſtable, Marſhal, Chamberlain, and other that are of Fee in the Exchequer, ſhall from henceforth preſent to the King ſuch as they put in their places to do their Offices, which muſt be good and ſufficient; for whoſe Acts themſelves will anſwer; ſo a ſupply by a Deputy. Nota.

Dodridge

DODRIDGE his Argument.

THere do concurr in this Case three Circumstances of worthy consideration.

First, It is a Case of great consequence; for it concerneth the disposition and ordering of this Honourable Office of Lord High Chamberlain of England.

Secondly, It is a rare Case; for this question, for any thing that I know or can learn, came never in any age in question heretofore.

Thirdly, It is a Case of great difficulty, and intricasie, which hath set us in division; as you see: We are no Judges of that, for that is out of our Sphear; We are called in to advise only, and our advice must needs be distracted, because we are divided in opinion: Mine opinion and advice is with my two Brethren that spake before me, That this Conveyance by way of Use, is not sufficiently made in 4 Eliz. to transfer this great Office of High Chamberlain from a fee-simple, to a State Tayle, from the Heir General to the Heirs Males. Every man aboundeth in his own sence. And we cannot but deliver the reasons that move us, and so to lay them at your Feet, and leave them to your most Honourable Considerations.

My opinion and advice is carryed, and led by the Consideration of four Principles and Heads, whereunto, and under which, all that may be spoken, in this discourse may be referred.

1. The first shall be drawn and deduced from the great Trust and Confidence which King H. 2. for him and his Heirs did repose in Awbrey de Vere and his Posterity, for the performance of this honourable Charge and Duty.

2. The second reason shall be drawn from the consideration of the Estate given, which was a Fee-simple, which nevertheless as this Case is, cannot be transferred over to any other Blood, notwithstanding the general amplitude of an Estate in Fee-simple; And herein I shall endeavour to remove such doubts and ambiguities, as I conceive may arise in the debate hereof.

3. The third reason shall be deduced from the consideration of the nature of this kind of Inheritance, which is an Honourable Personal

ſonal Eſtate, and Corporal Service, full of dignity and reſpect, and no way to be compared to Lands and Tenements, which are local and real.

The fourth reaſon will be drawn from the conſideration of the nature of an Ale, wherein the queſtion will be, whether a man ſeized of ſuch an honourable Office as this, may convey that by way of Ale; which although that be the main and principal queſtion now to be debated, yet are there other reaſons and heads exceedingly conducing thereunto. 4.

The firſt Reaſon: This is an Office of great Truſt and Confidence.

An Office of Truſt and Confidence, may not be transferred over, by him in whom the Truſt is repoſed, without the aſſent and and privity of him and his Heirs, that did repoſe that Truſt and Confidence.

But this is an Office of great Truſt and Confidence, ergo not to be transferred over.

The Major of this Argument is proved by theſe Circumſtances.

Firſt, The King and his Poſterity are the eminent Perſons that do repoſe the Truſt, and Awbrey de Vere and his Poſterity are the Perſons Truſted; and therefore they that will Alien the ſame, do break the firſt primary and radical Truſt included in the firſt Grant, for ſo that might be conveyed unto one, in whom the King repoſeth no Truſt, or unto a man unworthy of the Kings preſence, or unto a man unknown.

That this Office containeth great Confidence and Truſt, who can deny? Is it not a great Truſt to be ſo near unto a Kings Sacred Perſon, as to bring unto him his inmoſt Garment, to Apparrel him in his Royal Robes, and Ornaments, to give him water to waſh at the high Solemnity, and day of Coronation, the day of Jubilie and Joy of the Kingdom? And how can the King be ſecure in his thoughts, if this Truſt and Confidence were broken or brought to any other?

It is ſaid in our Books, that if a Man of State would give unto another and his Heirs an Office to be his Carver, and to Carve to the Grantor and his Heirs, that this is an Office of Confidence and Truſt, and cannot be granted over. 21 E. 4. 84. a.

That this Office of Lord High Chamberlainſhip hath a Truſt deſcending from the Auncetor to the Heir is apparent; for every Heir, at every Coronation, performeth or claimeth to perform the

ſame Duties of Truſt that his Anceſtors did; Therefore a Confidence and Truſt deſcendable.

But it may be objected, how can a man put Confidence in thoſe whom he knoweth not? The Heirs of a man are unknown, and in all Ages, God maketh Heirs, and Heirs are perſons not of preſent, but of future times.

To this I anſwer, that Confidence and Truſt, may be put in the poſterity as well as in the firſt Grantee; for when the King advanceth a man and his heirs to Honour and Dignity, and to perform ſuch an honourable imployment, he alſo truſteth, that the Poſterity will be mindful of this Bounty and Benevolence, and ſtrive to perform that Confidence, that Truſt, which was repoſed in their Auncеſtours, with a grateful remembrance, ſince they are to perform the ſelf ſame honourable Duty that their Anceſtors did.

Tull. pro Seſtio. Omnes nos boni ſemper nobilitati favemus & quia utilis eſt Reipublicæ, Nobiles eſſe homines dignos Majoribus ſuis, & quia valere debet apud nos clarorum virorum de Republica bene meritorum memoria etiam mortuorum.

So that we honour dead Anceſtors which live in their worthy Poſterity, and we honour Poſterity for both.

35 H.6. Fit. Supp. 22. An Uſe which is nothing but a Confidence, deſcendeth from the Feoffee in Uſe to his Heirs.

And here the Original Charter is, pro me & heredibus meis dicto Alberico & heredibus ſuis.

The ſecond Reaſon, drawn from the Eſtate in Fee-ſimple.

If the Truſt may deſcend it is not material, whether the Eſtate be Fee-ſimple or otherwiſe; for the Eſtate in Fee-ſimple is as well ſubject to Truſt as any other Eſtate.

Here two Objections are to be removed, Firſt, It may be ſaid, that when the Grant is in Fee-ſimple of an Office, that the Grantee may grant that over to any other, and the intent of the Grantor may be ſo conceived, by reaſon of the generality of the perſons comprehended in the generality of the Eſtate in Fee-ſimple; for that may deſcend as well to Females as to Males, Ideots, Lunaticks, Infants, or other perſons unfit as well in mind as in body; and by the ſame reaſon that may be granted unto Strangers.

I anſwer, and deny the conſequence; for we ſee rather then it ſhould deſcend unto ſuch unable perſons, the Grantors and his Heirs hath ſuch a Power over the grant, by reaſon of the Confidence, that he and his heirs, and none other, ſhall make a Subſtitute

ſtitute or an Aſſignee, as we ſee the Kings of England have done, not only in this Honourable Office, but in like Honourable Offices of like nature, as ſhall appear hereafter more at large.

And the ſame man in our Books, that holdeth this opinion, that an Office granted in Fee-ſimple, may be granted over, holdeth that in the Caſe of a Common Perſon; but excepteth it in the Kings Caſe, for he ſaith, That if the King do grant unto another the Office of Conſtableſhip of any of his Caſtles, that ſuch Officer ſhall forfeit the ſame in the Kings Caſe; And whether it be by way of tranſmutation of the Officer or diſcharge of the Office, all is of one effect.

Another Objection may be made thus, That a man cannot have a more ample Eſtate in the Law, then Fee-ſimple, nor have a more free diſpoſition for any Eſtate then Fee-ſimple, he cannot be checked in his power of Alienation; And if a man grant in Fee-ſimple upon condition, the Grantee ſhall not Alien, this condition is void, as contrary to the amplitude of the Eſtate in Fee-ſimple.

To this I Anſwer, That there be many things granted in Fee-ſimple, which cannot be alienes, as, a Founderſhip.

L. 5. E. 4. 118. 22 H. 6. 28. a. and many other things, as Homage Anceſtrell, Litt. 21 E. 4. 84. a. Pigot. 21 E. 4. 84. a. Suyliard.

And it is agreed by ſome opinion in our Books, that if a Common Perſon will give Lands to one in Fee-ſimple, upon condition he ſhall not alien, this condition is void; yet if the King by his Letters Patents will give Land to a man and his heirs, with condition he ſhall not alien, this is a good condition, and we are now in the Kings Caſe, where the King was the giver, 21 H. 7. 8. a. Vaviſor.

The third Reaſon drawn from the Nature of this kind of Inheritance.

If a man be created Earl to him and to his heirs, all men do know, that although he have a Fee-ſimple, yet he cannot alien or give away this Inheritance, becauſe it is a perſonal Dignity annexed to the Poſterity, and fixed in the blood, it may be ſaid, that an Earldom is a Dignity, and ſo is not this Office of great Chamberlainſhip.

The Anſwer, it is a Perſonal Dignity, as the Earldom is, for the words of the firſt Original Patent is, Quare volo quod ipſe & heres ejus cum jure hereditario teneant cum omnibus dignitatibus libertatibus & honorificentiis ad eam pertinentibus;

And therefore no doubt but this Office is an Honourable Dignity.

It may be ſaid that an Earldom eſt jus gladii quod in alium transferri non debet Cincto gladio, as the Earldom is jus gladii, ſo is this Honourable Office jus Baculi, jus Togæ, he hath Clamidem & Baculum, the Robe and the Staff, the ſame Enſigns of Honour, that the ancient Roman Conſulls were adorned with Toga prætexta & Scipione eburneo, ſo there is the Robe and the White Staff.

This Honourable Office is a corporal and perſonal Service, holden of the Kings moſt Royal Perſon in Grand Serjeanty; the words of the Charter be, Tenendum de me & heredibus meis.

If this be a perſonal Dignity, as is the Earldom; if the Earldom cannot be alienedd, I know no reaſon that this ſhould be alienedd.

It may be ſaid that this Honourable Office is an Office of Profit, for it hath ſundry Fees belonging unto it, and therefore in reſpect of that it may be alienedd.

Diſtinguendum eſt, where the profit is the principal, there perchance ſome Alienation of the profits may be, eſpecially in the ſpecial Offices, where the Fee is the principal thing regarded.

But here this honourable Service is the greater, and the Fee is but concomitant, and an incident to the Office, and the Fee dyeth with the death of the Officer, which is the Magis dignum.

If the King create a Duke or an Earl, and doth give him an annual Fee, he cannot give this annual Fee to any other, 6 H. 8. 2. a. Dyer. 2.

Ex Rot. Patent' 12 E. 3. part 2. m. 25. The Office of High Conſtable did diſcend by many diſcents,

In the blood of the Bohuns, Earls of Hereford and Eſſex, the Caſe in 6 H. 8. if that deſcend to Daughters, they may make their Aſſignees, and if the eldeſt be married, her Husband ſhall execute the Office,

But this muſt be underſtood with the Kings Licence and his diſpoſition,

For Humphrey de Bohun High Conſtable would have transferred this Office unto William Bohun his Kinſman, the Earl of Northampton, for term of his Life, but could not, he made his Petition to King Edward the Third, that he might ſo do; and this was the manner of the proceeding, he did alien by the Kings Licence, the Mannors whereby this Office was holden to his ſaid Cozen William, the Earl of Northampton for Life, and after the ſaid William had the grant of the ſame Office of Conſtableſhip from the King, by the Kings Grant, which if Humphrey de Bohun

hun might have done of himſelf, that long, chargable, and tedious Suit and Means needed not.

The Office of the Earl Marſhal of England, deſcended long in the blood of Bigott Earl of Norfolk, untill 30 E. 1. at what time Roger de Bigott ſurrendred and releaſed it to the King, who the ſame year granted it to the ſame Bigott; but afterwards King E. 2. granted the ſame unto Thomas de Brotherton his brother. Brotherton dyed, having his Heir Margaret, Counteſs of Norfolk; during whoſe Life, King E. 3. & R. 2. diſpoſed this Office to divers others, ſometimes for Life, ſometime during pleaſure, untill at laſt King R. 2. in 20 R. 2. gave it by his Patent in Parliament, to Thomas Mowbrey Earl of Nottingham, who was the Grand-child of the ſaid Margaret, and ſo it came to the blood of Brotherton again, in the name of Mowbrey.

I do alledge this Patent, becauſe it is a large Patent, and containeth many things worthy of knowledge, and to the purpoſe in hand; for by this Patent are reſtored to the Earl of Nottingham divers petty Offices which were belonging to this great Office of Earl Marſhal; as the Marſhal of the Kings-Bench, the Marſhal of the Exchequer, and the Cryers Office of the Marſhalſie of the Kings Honourable Houſhold, which were diſpoſed by the former Kings unto other men, and doth give power to the ſame Earl, to make aſſignment unto others of the ſaid Office for Life,

Which is the cauſe that the Judges, as well in H. the Sixths time, as in E. the Fourths time, are of clear opinion, that the Earl Marſhal could not have aliened or made an Eſtate for Life to any other, of any of the ſaid Petty Offices, had he not had word and power ſo to do, given him by his Patent, of which I do infer, that if he could not have made an Aſſignee in thoſe petty Offices which were but incidents, much leſs might he have aſſigned the Office of Earl Marſhal himſelf, which was the great and principal Office.

And becauſe I have ſhewed before, that as well the Staff was an Enſign of Honour, as well as the Sword to the Earl; that Charter hath ſomething worth knowledge concerning the ſame, the words be theſe, Conceſſimus pro nobis & heredibus noſtris eidem Comiti quod ipſe & heredes ſui maſculi Mareſcalli Angliæ ratione Officii ſui prædicti habeant gerant & deferant tam in preſentia noſtra quam in abſentia noſtra & heredum noſtrorum quendam baculum aureum circa utrumq; finem amulatum nigro cum ſigno Armorum noſtrorum in ſuperiore fine dicti baculi & cum ſigno Armorum ipſius Comitis in inferiore finis ejuſdem baculi ornatum, non obſtante quod idem nunc Comes tempore ſuo ſeu prefati nuper Comites aut aliquis alius qui dictum Officium Mareſ-

calli Angliæ ante hæc tempora habuerunt baculum ligneum portare seu deferre consueverunt.

Now as this Office of Earl Marshal hath been diversly granted over, as you have heard, so hath this Office of Great Chamberlain, been diversly granted, not only in tempestuous times, but in Halcion days, and in times of Peace and Tranquility.

After the Award made by King H. 8. which he caused to be confirmed by Act of Parliament, and after the Death of John Earl of Oxford, party to the Award, and John his Son, Father of Edward; either for that he was not so fit to exercise this great Office, or upon some other occasion, King H. 8. gave the said Office in the 32d. year of his Reign to Robert Earl of Sussex for Life, with all Fees, &c. which formerly the same King, had granted unto Thomas Cromwell Earl of Essex, Pat' 32 H. 8. 6 part. 3. Aug.

King Edward the 6th, granted the same Office afterwards to John Earl of Somerset, Viscount Lisle during his Life, which Office formerly, as by the recital appeareth, was granted by the same King to Edward Earl of Hertford, and was by him formerly surrendred to the said King, Pat' 1 E. 6. part 6.

The same King E. the 6th, in the Fourth year of his Reign, granted the said Office unto William Marquess of Northampton, Earl of Essex, and Lord Parr, during Life; which he had formerly granted unto John Earl of Warwick, as by the recital appeareth, who had surrendred the same before unto the said King, Pat' 4 E. 6. part. 1. 4. Feb.

What Queen Mary and Queen Elizabeth did herein, it is unknown, and whether that John, that made this Deed in 4 Eliz. was in possession or no, is matter in fact; but we do suppose him in possession; for the Copy of the Exemplification was untrue: for it is not late Lord High Chamberlain in the Original Deed it self, which we saw.

So that you have well understood, that when this Honourable Office came into the hand of one not so fitting, it came to the disposition of the Kings of this Realm, as the Original Founders thereof; but we cannot find that any of the said Officers, made themselves any Assignment thereof.

The Fourth Reason drawn from the nature of an Use, wherein the question will be, whether a Man seized of such an Honourable Office in Fee, may convey it over, or Covenant to stand seized thereof to an Use.

First, I must shew what an Use is.

An

An Uſe, by the conſent of all our Books, is a Confidence and Truſt which Ceſtuy que uſe, that is, he that maketh the Eſtate, hath for him and his Heirs, in the other and his Heirs to whom the Eſtate is given, and there muſt be a privity of Eſtate between them.

For there be ſundry perſons that cannot ſtand ſeized to an Uſe, eſpecially where this privity faileth.

This Confidence and Truſt, which maketh the Uſe, is not iſſueing out of the thing given, but is collateral, and annexed to the perſon.

For the Uſe is Uſus fructus, which is reſerved to the giver when he hath given away the property to another; for he hath neither Jus in Re, neq; jus ad Rem, but only a Confidence, which if it be broken, he hath no remedy but a Subpæna in Chancery.

There were two inventers of Uſes, Fear and Fraud, Fear in time of Trouble and Civil War, for ſaving their Inheritance from Forfeiture, and Fraud in time of Peace, to defeat Debts, Wards, Eſcheats, Mortmains, &c.

The Feffee or Grantee in Uſe might deſtroy the Uſe by granting the thing to one that had no notice of the former Uſe.

Theſe things I am driven to ſet forth by way of Introduction, to be the better apprehended.

All Lands and Inheritances local, as Rents in eſſe, Liberties, Franchiſes, viſible or local, may be conveyed by way of Uſe.

But Inheritances perſonal, which have no relation to Lands or local Hereditaments, cannot be conveyed by way of Uſe, as Annuities.

And this Inheritance is only a perſonal and corporal Service, and therefore cannot be conveyed to an Uſe.

Again, Uſes cannot be raiſed of ſuch things, quæ ipſo uſu conſumuntur, as Commons, Ways in groſs, Authority granted to a man and his heirs to Hunt in any Park, Chaſe or Foreſt.

As touching the inconveniencies that would enſue thereof.

He may Covenant to ſtand ſeized to the uſe of others, as Joint-Tenants, and ſo may bring in as many Officers as he pleaſeth.

So he may Covenant to ſtand ſeized to a future and contingent Uſe, and ſo bring in an Office incontingently.

So he may Covenant to ſtand ſeized to the Uſe of his laſt Will.

Or with power of Revocation, and ſo make, and unmake this Officer at his pleaſure.

Here be two diſtinct Confidences, which juſtle one another, the Kings Confidence, and the Ceſtuy que uſe, his Confidence.

The queſtion is not, what he hath done, but what he may do.

Die

Die Jovis 30 *Martii*, 1626.

The Councell for the Earl of *Derbies* Claim to the Office of Great Chamberlain is to be heard to morrow Morning.

Die Veneris 31 *Martii* 1626.

The Councell for the Earl of *Derby*, and the Councell for the Lord *Willoughby*, being called for to be heard this Morning, according to the Order made yeſterday, the Lord Keeper declared, That he is informed by the Lord *Strange*, that his Fathers Councell are of the Houſe of Commons, and cannot be permitted to come thence at this time: Whereupon the Houſe was moved to reſolve of the Competition to the Title of the Office of Lord Great Chamberlain of *England*, between the Heir Male and the Heir Generall.

And after much debate, and long conſiderations had, of the Opinions and Arguments of the Judges; It was upon the queſtion agreed, That the ſaid Office of Lord Great Chamberlain, is come and diſcended unto the Heir Generall of the laſt Earl of *Oxford*.

The Duke of *Buckingham* thereupon ſignified unto the Houſe, That the King requires his Councell may be heard, touching his Title and Claim to the Gift of the ſaid Office.

And it was Ordered and Agreed, That the Councell of the Earl of *Derby*, and of the Lord *Willoughby*, ſhall be heard to morrow Morning, if they can be here, if not, then in the afternoon of the ſame day peremptorily.

Die Sabbati primo die Aprilis, 1625.

The Councell for the Earl of *Derby*, and *Elizabeth* his Wife, and the Councell of the Lord *Willoughby*, did this Afternoon argue the ſeveral Titles of the ſaid *Elizabeth*, and of the ſaid Lord *Willoughby*, unto the Office of Lord Great Chamberlain of *England*, and they being withdrawn, It was agreed upon the Queſtion, That the ſaid Office is deſcended unto the Lord *Willoughby*, as Cozen and next Heir unto *Henry* the laſt Earl of *Oxford*, deceaſed.

And

And whereas the King hath required that his Councell be heard for his Claim and Right unto the ſaid Office, It was further ordered, That Mr. *Serjeant Richardſon*, and Mr. *Serjeant Crew* ſhall confer with Mr. *Atturney* thereof, (who is now Sick) and they to be heard for the ſame on *Tueſday* next, at 9 in the Morning, which day is peremptorily appointed for the ſame.

Die Mercurii Quinto Die Aprilis, 1626.

The Certificate to be delivered the King, touching the Earldom of *Oxford*, &c. and the Office of Great Chamberlain of *England* was read *in hæc verba*, viz.

May it pleaſe your Moſt Excellent Majeſty,

WHereas upon the humble Petition of *Robert* Lord *Willoughby* of *Eresby*, and *Robert Vere* Earl of *Oxford*, ſeverally preferred to your Majeſty concerning the Titles of the Earldom of *Oxford*, Baronies of *Bulbeck*, *Sandford*, and *Badleſmere*, and Office of Great Chamberlain of *England*, ſeverally Petitioned for by theſe Lords; by the one as Heir Male, and by the other as Heir Generall to *Henry* late Earl of *Oxford* deceaſed.

Your Majeſty was Graciouſly pleaſed upon each of their Petitions to make this Anſwer, *That ſeeing theſe Petitions did concern ſo great an honour and Office of Inheritance, and fell ſo oppertunely during the ſitting of the High Court of Parliament, Your Majeſty did think fit to take the Advice of Your Lords and Peers of Your Higher Houſe of Parliament, who having the Judges with them for their Aſſiſtance in any point of Law which may ariſe. And therefore Your Majeſties pleaſure was, That we Your Lords and Peers in Parliament, ſhould call the Competitors before us, and examin their Titles, and certifie Your Majeſty what we ſhall find, together with our Opinions thereof, whereupon Your Majeſty would do that to each party which ſhould be Juſt.*

And whereas the Right Honourable *William* Earl of *Derby*, and the Lady *Elizabeth* his Wife, in Right of the ſaid Lady, Eldeſt Daughter of *Edward* late Earl of *Oxford*, by their Humble Petition preferred to Your Majeſty, deſired their Title to the ſaid Honours and Dignities, might alſo be taken into conſideration. And Your Majeſty was alſo pleaſed to refer that Petition alſo to this Houſe, in ſuch manner as the other Petitions were before referred.

According to Your Majeſties Pleaſure thus ſignified unto us, we called all the ſaid Lords Competitors, and at ſeveral days,

heard their Councell learned on either ſide, and after long debate, we finding there did ariſe ſome points of Law of difficulty, worthy the Conſiderations of the Learned and Reverend Judges, we deſired their advice therein; And they taking theſe Points of Law into their ſerious Conſiderations, after deliberation of Ten days, returned unto us this Anſwer.

That for the Title of Earldom of *Oxford*, they were all of Opinion, it doth belong to *Robert de Vere* as Heir Male of the Ancient and Honourable Houſe of *Vere*.

That for the Baronies, they are wholly in Your Majeſties Hand, to diſpoſe at your own Pleaſure.

And the greater number of the Judges did reſolve, That for the Office of Great Chamberlain of *England*, it doth belong to the Lord *Willoughby*, as Heir General to *Henry* Earl of *Oxford*, who was laſt ſeized of the ſaid Office.

Upon which Opinion of the Judges, and upon deliberate conſideration of all which had been offered unto us on each party; We offer unto Your Majeſty our humble Opinions and Advice, That the ſaid Earldom may be declared by Your Majeſty to appertain to the ſaid *Robert de Vere*, and that he may be accordingly eſtabliſhed in that Honour, to Him, and to his Heirs Males, according to an Act of Parliament made *Anno Decimo Sexto* R. 2.

That the ſaid Office of Great Chamberlain of *England*, may be declared by Your Majeſty, to appertain to the Lord *Willoughby* and his Heirs, with a *Salvo jure* nevertheleſs to Your Majeſty,

All which we humbly ſubmit to Your Majeſties Wiſdom and Judgment.

This being read and allowed of, theſe Lords were appointed to deliver the ſame unto His Majeſty, (*viz.*)

The *Duke* of *Buckingham*.
Lord Preſident.
Lord Steward.
Lord Chamberlain.

Termino

Termino Paſch. An. II. Caroli Regis *in* Banco Regis.

Millen *verſus* Fawtrey.

MIllen poyt Action de Treſpaſs vers Fawtrey pur enchaſer ove un chiene ſes Barbits al Dale en un Cloſe appell B. Cloſe, le Defendant plede en barre que il ad un eſtate en Whitecloſe en S. Pariſh adjoinant al dit B. Cloſe, & que le dit Barbits fueront damage feſant en W. Cloſe, & il ove un petit chiene enchaſe le dit Barbits al B. Cloſe, & tam cito que il vient a le dit chiene il luy recall & revoke, que fuit meſme le Treſpaſs, & ſur ceo le Plaintiff demurre en Ley. Et ceſt Terme il fuit reſolve per tout le Court, ſcilicet, les 4 Juſtices; que le Action ne giſt, car il fuit legal al party per luy meſme, ou per un chiene a chaſer ſes Barbits hoyrs de ſon terre eſteant la damage feſant, & coment le chiene eux enchaſe en le Cloſe d'un auter, tamen quant il luy recall tam cito que poterit, ceo ne fait luy Treſpaſſer; Et per tout les Juſtices auxi fuit agree, que ſi le Plaintiff fuit owner de B. Cloſe il ne poet aver Action de Treſpaſs pur le Cloſe enfriender, car le party que ad damage fait a luy per le Barbits poet enchaſer eux hoyrs del' terre demeſne, al terre del' Plaintiff, & iſſint ſi le chiene eux enchaſe hoyrs del' terre al dit Cloſe, & auxi ſi le chiene eux enchaſe hoyrs del' terre en q̃ ils fueront damage feſant al Cloſe de Stranger, & le party fiſt ſon endeavour a recall le chiene null Treſpaſs giſt, mes per Jones il neſt legall a party meſme a que damage eſt fait a chaſer les Barbits al terre d'un eſtranger, mes ſolment al un hault hoy, ou al un Common, ou al terres del' owner ſolment & nemy al terres del' Stranger, & le principal caſe fuit adjudge accordant, que null Action giſt. (1)

Termino Trin. An. II. Caroli Regis, *in* Banco Regis.

Hungerford & Havyland.

Intratur Mich. 22. *Jac. Regis.*

(1) Action ſur le Caſe.

THomas Hungerford port Action ſur le caſe vers John Havyland, & declare que il fuit ſeiſie en fee del' Manor de Wynſton en le Countie de Glouceſter, & que le cuſtom del' dit Manor eſt q̃ cheſcun liber tenens del' dit Manor paiera ſur cheſcun alienation de lour Tenancy tant, que lour Rent per annum amount per voy del' relief, & que un Thomas Smith fuit Tenant en Fee d'un Meſſuage, & le moiety d'un virge de terre, & ceo tenoit del' dit Manor per Fealty, ſuit al Court 5 s. Rent, & per relevium quando accederit ſecundum conſuetudinem Manerii prædicti. Et que le dit Rent fuit arere pur 20 ans, & que Thomas Smith alien en fee al John Havyland Clerk, que deviſe ceo al Defendants & mourſt, poſt cujus mortem un fuit communication enter Plaintiff & Defendant concernant le dit Rent, & pur 2 reliefs due ſur les dit alienations, le Plaintiff aſſerendo que le Rent fuit arere pur 20 ans, & due, & que le dit reliefs fueront due, & que il voilt ſuer le Defendant pur ceo, & le Defendant en conſideration que il forbearera a ſuer luy, tanque le prochein Court del' dit Manor deſtre tenus circiter Michaelmas enſuant, & ſil ferroit appear adonque al Freres del' dit Defendant modo Thomas Havyland ſon frere & Webb & Daffy, ſes freres en ley que le dit tenements fueront charge ove Rent avandit, & que le dit reliefs fueront due, donques il voloit payer le dit reliefs, & le dit areres part del' Rent, & il monſtre que il fait appear al dit freres per preſentment del' homage, al dit prochein Court, & que le dit homage preſent ſur lour ſerement, que le dit terre fuit charge ove le dit Rent & auxi per monſtrans del' Court Rolls, que le dit reliefs fueront due, & que le Plaintiff, coment requeſt ne ceo payer, & le

& le Defendant fuit condemn ſur nihil dicit, & un brief d'enquirie de damages agard, & en arreſt de Judgment 2 maine points fueront move ; que le ground del' conſideration in part fueront le reliefs, & ceux fueront per Cuſtom, & ſans Cuſtom de diſtrein null remedy, & ſi null remedy dong; null relief due, & iſſint part del' conſideration fail, & ſil fail in part, il fail en tout, & le Action ne giſt. 2. Pur ceo q̃ neſt monſtre en certain, & en particular coment il fuſt appear, iſſint q̃ le Court poet adjudger ou ſil fuſt un ſufficient cauſe, & ceo ſoveient foits debate al barre & bench, & al primer Samady ceſt Term, les 4 Juſtices ſeparatim deliver lour reſolutions, & ils tout agreé, que Judgment ſerra done pur le Plaintiff, ſed ils tout ne agreéont pur meſme cauſe. Primes tout agreé que proprement un relief eſt due ſur le mort del' Tenant, & pur tenure en Socage ceo eſt tant come le Rent extend, & il neſt part del' tenure, ſed un incident pur que le Seignior diſtreinera de comen droit, mes ſur ſucceſſion null relief due, niſi ſoit per ſpecial reſervation en point de tenure, ou per cuſtom auxi. Ceſt relief ſur alienation neſt proprement un relief, coment il fuit iſſint appell en divers livers, come en Manxil & Redſoales Caſe Coment Plowden 91. & auters livers ſed eſt proprement un fine pur alienation, & ceo poet eſtre, vel per tenure, per ſpecial reſervation, vel per Cuſtom ; ſi per tenure donque diſtreſs incident al ceo de comen droit, mes ſi per Cuſtom null diſtreſs giſt, niſi eſpecial Cuſtom pur ceo garrant, & ceo appiert per le Report Cook pars 11. en Bulloyne & Godfreys Caſe null diſtreſs pur Certo letæ niſi fuit Cuſtom a ceo garrant, & ideo en ceſt caſe come Dodridge dit le relief fuit claime per Cuſtom, & ideo doit eſtre per preſcription pur diſtreſs. Sed les 3 auters tient que come declaration eſt, il ſerra intend un relief per tenure, & nemy per Cuſtom, car coment il fuit en primer part del' declaration averre, que tiel relief fuit due per le Cuſtom del' Mannor tamen quant il vient al particular, il dit que Smith tient le Meſſuage, & moyety del' virge del' terre per fealty, Rent de 5 s. & ſuit de Court, & relief quando acciderit, & ideo un expreſs tenure alledge & donque Cuſtom a diſtrein neſt requiſite & coment fuit alledge, & adde ſecundum conſuetudinem Manerii, ceo ne altera le caſe, car ſerra intende q̃ tient per relief quando acciderit ſecundum conſuetudinem Manerii, ſcilicet, a payer quant un alienation fuit fait, come le Cuſtom fuit pur le reſidue del' Mannor, & auxi Dodridge dit, & iſſint direrunt tout les auters, que entant que il ad alledge que il fait appear, ceo affirme que ſi ceo fuit per Cuſtom que donque il fait appear que un diſtreſs fuit incident per Cuſtom. Et 2. touts agree, que le pleder pur le 2 point fuit bon, car les freres fueront fait Juſtices del' proves, & il auxi oſtend en certain coment per preſentation del' homage & Rotul.

Curiæ

Curiæ. Vide 10 E. 4. 11. R. 2. Fitz. barre 241. 15 E. 4. 24. & accordant al ceſt reſolution, Judgment fuit done pur le Plaintiff.

Warner *verſus* Hardyn.

(2) Silveſter Warner port Ejectione firmæ verſus John Hardyn pur terres parcel del' Mannor de Wolſton & Marſton en Com' Warwick, & ſur ſpecial verdict le caſe fuit come enſuiſt: William Shelly Ar' fuit ſeiſie del' dit Mannor en fee, 23 Eliz. il covenant per Indenture enter luy & Anthony Hungerford, & auters de convey ceo al uſe luy meſme pur vie, remainder al ſes fits deſtre engender en tayle, remainder al John Shelly ſon frere en tayle, remainder ouſter al divers en tayle, remainder en fee al William Shelley, & per dit Indenture il fuit provide que ſi le dit William Shelley durant ſon vie done & deliver ou tender al dit parties ou aſcun de eux, ou aſcun de lour heirs un annule de Or, ou un pair de Chyrothecis prec. xii d. ou ultra ou xii d. en Argent ipſe William Shelley expreſſment & declare que ceo fuit tender pur avoider le dit Indenture, & les uſes en ceo contain que donque les uſes ceſſont, & les parties ſerront ſeiſie al uſe William Shelley en fee. Un fine fuit levie al ceux uſes, & apres William Shelley commit Treaſon 25 Eliz. & fuit attaint 28 Eliz. & ſon attainder confirm per Parliament, & tout les terres Hereditaments & conditions done al Royne, & veſt en actual poſſeſſion del' Royne, apres le Royne fiſt Commiſſion al Sir John Fortiſcue pur tender un annule ſolonque le dit condition, & il ceo tender al Sir John Hungerford le heir del' dit Anthony, & il n'accept, & ceo returne en Exchequer, le Royne grant le terres en queſtion parcell del' dit Mannor al William Hardyn, William Hardyn, & le Defendant pur 3 lyes ſucceſſive le primer William Hardyn mozuſt, William Shelley mozuſt, le Roy James grant le dit Mannor en fee al Sir John Carill, & auters en truſt pur Sir John Shelley (fits del' John Shelly le frere que fuit mort devant) Sir John Shelley ſue monſtrance de droit en Scaccario, & ad les terres hors de maines le Roy; Sir John Shelley, Carrill & les auters Patentees en truſt conveyont le dit Mannor al George Warner, que leſſe les terres en declaration al Plaintiff, & fuit ouſte per le Defendant, en droit le dit William Hardyn, & ſur ceo le dit Silveſter port Ejectione firmæ, & ceſt caſe fuit ſovents argue al barre per Yelverton, Hedley, Crew & Hitcham pur Defendant, & per Davenport, Noy & Calthrop pro querente, & le primer lunday del' ceſt Terme, le caſe fuit argue per les Juſtices, & ils fueront devide en opinion, Whitlock & Jones argue pur Defendant, & Dodridge & Crew pro querente. Le ſubſtance del' argument del' Whitlock & Jones fuit, que ceſt condition eſt done al Roy, & neſt

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un perſonal, & individual condition, tye & annex al perſon del' William Shelley, car ſi le condition ad eſtre ſolment pur le tender d'un annule (ſans addition del' iſſue de William tunc expreſs que le tender fuit pur faire les uſes void) ceo ſans queſtion ad eſtre done al Roy, car il puiſſoit faire Attorney pur faire le tender, & coment ne riens pluis ad eſtre dit tamen le tender neſt bon en ley, niſi ceſtuy que tender le annule declare, que le annule fuit tender pur faire les uſes void; & donque le addition de ceo, que fuit implie devant eſt void & ſuperfluous come Burroughs Caſe Report Cook part 4. Littleton, addition de diſtreſs ſur le leaſe pur ans rendant rent. 16 Eliz. deviſe al Executor pur payment de Detts & Legacies void, & divers auter caſes fuerent miſe al ceſt purpeſe. Et Jones dit que le declaration del' intent ne referre a determiner & alteratione del' uſes, mes al payment, ſcilicet, q̃ il declare que il tender le argent a faire les uſes void, & il fuit difference (come il dit) lou le declaration del' entent eſt referre al payment, & lou il eſtoit ſur luy meſme, come ſeveral & diſtinct clauſe, en le primer il neſt plus quam le party duiſſoit faire ſi null mention ad eſtre fait del' declaration del' ſon intent, mes ſil fuit que ſil paya le argent ou tender le annule a faire les uſes void, & auxi adonque declare ſon entent que les uſes ceſſont, ceo eſt auterment, car la le intent n'ad relation al payment, ſed eſt un diſtinct clauſe de luy meſme, ideo la ſi Shelley ad deliver le annule & ad declare pur quoy ſcilicet, pur fair les uſes void, ceo ne ſuffiſt, mes il doit adder auxi un expreſs declaration, que ſon intention fuit que les uſes ſerront revoke, & ceſt intention & declaration eſt diſtinct & ſeparate del' Act de payment, & nemy include en ceo, ſemble que ceo fait difference. Et ils juſtefie le dit reaſon, & lour argument ove divers caſes & inferences, queux pur brevity ſont omitte, & ils agree al caſe del' Duke de Norfolke de revoke per ſa ſeal & ſignature, que null poet faire, ſed le party meſme, mes icy Shelley puiſſoit faire le tender per ſon Attorney, & ils relie ſur le caſe del' Shelley, que eſt auxi cy fort come ceſt caſe ou potius pluis fort. Sed Crew & Doderidge e contra ils agree que ſi les parolls ipſo declarant ount eſtre omitte, & ſolment un tender d'un annule, ad eſtre mention que ceo puiſſoit eſtre fait per Attorney, & auxi que ceo ad eſtre forfeit al Roy. Ils auxi agree que condition de payment ou tender d'un annule a faire uſes void ad tacite un neceſſity de expreſſer ſur le tender, le cauſe pur quoy le argent fuit pay, ou le annule tender, & ſi fuit un bon tender ou offer ſans expreſſer a quel purpoſe ceo eſt void, & a null purpoſe & uncertain, & ceſt declaration doit eſtre que le tender fuit per vertue del' proviſo en le Indenture, ou que ceo fuit tender a faire les uſes en le Indenture void: Et en ceux points ils agreeont ove Jones & Whitlock, ſed ils diſont ouſter

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que il fuit conſeis del' auter part que conditions perſonal & individual knit al perſon de un que ne poient eſtre transferre al auter ne ſont done al Roy come le caſe del' Duke de Norfolk fuit. Et ceo caſe, & le caſe en queſtion ſont tout un, car la le ſignature fuit proper al perſon del' Duke, & ideo le maines del' null auter, poet ceo faire, iſſint icy quant il eſt adde que doit eſtre tender del' annule, Et ipſe William Shelley tunc declarant que ſon intention fuit a payer ceo a faire les uſes void, ceo fait le declaration cy perſonal al perſon de Shelley, come le ſignature en le primer caſe, & un fuit appropriate al maine del' Duke, & l'auter al la maine del' Shelley, & null langue mes del' Shelley poet faire le declaration, & ils feſont difference enter le general tender & le declaration imply en ceo quant eſt ſpecialment limit: Et Dodridge dit que ipſo declarant eſt tant come ſi ad eſtre ſi ipſe declaroit que les uſes fueront void, & a ceo purpoſe il cite Martyn Dockwrayes Caſe 27 H. 8.

Et ceſt entention & declaration fuit choſe referre al minde & pleaſure de Shelley, que ne poet eſtre transferre al aſcun auter. Crew & Dodridge mult relie ſur le Judgment done en l'Exchequer, & auxi en le Common Banke en ceſt caſe, & ambideux diſont que ceſt caſe differt del' caſe de Englefield, car la le tender per expreſs parolls fuit per luy ou per ſon Attorney, ideo la le Attorney poet bien declare les uſes deſtre void & faire le tender, & Dodridge fiſt un auter reaſon, ſcilicet, il eſt un election en le caſe, ſcilicet, a deliver un annule ou gloves, ou xii d. & ceo fuit en Election a payer al aſcun del' conuſors ou tout, ou aſcun de lour heirs, & eſteant un election en le caſe ceo ceſt lye al William Shelley, iſſint que ne poet eſtre transferre al aſcun auter, & ſur ceo il mitter le diffinitione de election 10 & 11 Eliz. en Bullocks Caſe, & divers auters caſes de election, queux ne poient eſtre forfeit neq; transferre al aſcun auter, & Crew touch le dit reaſon, ſed ne mult inſiſt ſur ceo; & ceo fuit le ſubſtance de lour argument, ſed fuit enlarge ove divers inferences & caſes; ſed ſemble a moy que le point de Election move per Dodridge neſt de aſcun force; car ſi home fiſt feffment ſur condition a payer xii l. ou a deliver un annule d'or & eſt attaint, en ceo caſe ſemble clærement que le condition eſt done al Roy, & la il ad election a performer ceo l'un voy ou auter iſſint ſi feffment fuit fait al divers perſons (come en noſtre caſe eſt) ſur condition que ſil pay al feffées ou lour heirs, & eſt attaint, le Roy ad le condition, & ayant le condition avera le election pur performer le condition l'un voy ou l'auter, vide pur ceo Sir Rowland Haywards Caſe, Report Cooke 2. quant un choſe eſt done & un election done, coment ceo poet eſtre transferre al auter, & diſcende al heir, vide Southwell & Wades Caſe 37 Eliz.

B. Roy,

B. Roy, & cy le condition eſteant done le Roy il avera election per quel means a ceo perfoꝛmer.

Et pur le maine point, ſcilicet, le addition de ipſo declarante fuit plus quam le ley dit, ſemble a moy, que il neſt nient obſtant aſcun choſe que ad eſtre dit al contra, car ſi les parolls ount eſtre omitte, William Shelley ſur le tender d'annule doit declare, & parle tantamount, quam il ferra per le addition, car il duiſſoit dire q̃ il tender le annule al intent a defeater les uſes, & ceo ſur le temps del' tender, Ergo le addition done ne poet faire aſcun matter. Vide mon argument de-meſme at large, ſur le liver de ceſt caſe, & ideo jeo omitte ceo icy.

Daniel *verſus* Ubley.

Intratur Hill. 22. *Jac. Rot.* 720.

JOhn Ubley fuit ſeiſie en fee d'un Meſſuage en Com' Surrey tenus en ſocage & deviſe ceo en hæc verba; I give and bequeath to Agnes my Wife, my Houſe, &c. to diſpoſe at her will and pleaſure, and to give to ſuch of my Sons ſhe thinks beſt, Il ad iſſue John & William, Marie, Roger, Thomas, & moꝛuſt, le feme per fait rehearſant le dit deviſe enfeoffe William le ſecond fits en fee, & fiſt livery, le eigne fits releaſe ove garranty al ſon frere William, & baron releaſe al William touts demands, le feme come feme ſole levie fine al William, le baron enter le feme moꝛuſt, John le fits moꝛuſt ayant iſſue John deins age, William moꝛuſt ayant iſſue Nicholas, John eſteant deins age enter & leſſa al Lionell Daniel pur ans que fuit ouſte per Margaret Ubley mere del' dit Nicholas, & en ſon droit, ſur que le dit Daniel poꝛt Ejectione firmæ vers le dit Margaret, & tout ceo trove per ſpecial verdict apres divers arguments al barre ceſt Terme il fuit argue al Bench per tout les Juſtices deux ſeveral jours, & una voce les quater Juſtices fueront de opinion encontre le Plaintiff. Ils agree que le ſole point reſt ſur les parolls del' volunt, car le releaſes ne fueront bon, car null poſſeſſion trove en William, & le fine fuit avoide per entry le baron. Jones, penſa que le feme avoit un eſtate pur vie a faire diſpoſition del' ceo al ſon pleaſure, & un poier a doner le reverſion al aſcun del' fits le deviſoꝛ, & ſi ne fuit iſſint donque el avoit fee-ſimple conditional, iſſint que el conveyera ceo al aſcun del' fits del' deviſoꝛ, & ſil ne ferra donque le heir del' deviſoꝛ poet enter pur condition enfriender, & ideo en tant que ſon eſtate fuit ſur condition, le conveyance del' feme per feffment fuit bon, en meſme le manner ſi le feme avoit un poier ſolment, & a ceo purpoſe eſt 34 E. 3. Fitz. cui vita, & 10 H. 7. 20.

& de meſme opinion fuit Crew Chief Juſtice, & Whitlock & Dodridge fueront de opinion que le feme avoit un Fee-ſimple en intereſt, ſcilicet, al un truſt a conveyer ceo al aſcun del' fits del' deviſor & ayant l'eſtate ſubject al truſt el poet conveyer ceo aſſets bien durant le coverture, & il fuit tout agree, que le conveyance al William fuit bon, & que le Defendant ſoit barre, & accordant Judgment fuit done pur Defendant. Semble a moy que le opinion de Dodridge neſt garrantable per le dit livers de 34 E. 3. ou 10 H. 7. voyer eſt come dit devant, que ſi feme covert ad authority a diſpoſer terre per volunt, el poet ceo faire nient obſtant que el ſoit feme covert, & auxi ſi terre fuit deviſe al feme ſur condition que el conveyera ceo al un auter, la el ad intereſt conditional, ideo pur ſafeguard del' condition el poet durant le coverture conveyer ceo, come feffment fuit fait al feme covert ſur condition de enfeoff J. S. el poet faire ceo durant le coverture, mes ſi feffment fuit fait al feme ſur truſt & confidence a conveyer ceo al J. S. el ne poet faire feffment, car l'eſtate fuit abſolutement en le feme nient ſubject al condition, mes en truſt & confidence, iſſint ſi le feme en le caſe en queſtion avoit intereſt en fee per le deviſe, nient ſur condition, ſed ſur truſt & confidence ſemble que durant le coverture el ne poet conveyer ceo niſi per fine ioynder ove ſa baron & ſi el fait autrement eſt void ſi fuit, per feoffment aut voidable per le baron ſi fuit per fine; ideo quære bien de lour opinion.

Calfe *verſus* Dingley & Davies.

Intratur Termino Hillarii 22 *Jac. Rot.* 951.

(4) JOſias Calfe & Benjamin Calfe Executors Jocelyne Calfe recover en Action de Dett 150 l. & coſts vers Richard Hall (John Dingly & Nevill Davies eſteant ſon bayle) Hall port error en Exchequer Chamber, & pende le brief d'error Hall render luy meſme al Marſhal del' Court en exoneration del' Sureties, & ceo devant aſcun capias agarde vers luy, & le dit Executors port Scire Facias vers le Bayle, & ils plede tout le dit matter (ſavant ils ne diſant que null capias fuit agarde) & conclude lour plee, & hoc parati ſunt verificare. Sur que le Plaintiff demurre pur ceo que le plee fuit double: ſur ſeveral arguments al barre per counceil del' ambideux parties fuit adjudge pur Defendant. Primes fuit reſolve, que le partie poet render luy meſme al priſon en diſcharge del' Bayle (pendant le brief d'error) car coment pendant le brief d'error, le Plaintiff ne poet priſe luy en Execution, tamen ceo diſcharge le Bayle, & ſi le Defendant pendent le primer plee, ou pendant le brief d'error, ou al aſcun temps devant le capias agard render

render luy meſme ceo ſuffiſt pur diſcharger le Bayle. (2) Il fuit auxi reſolve per le Chief Juſtice, & les auters 3 Juſtices, que al aſcun temps devant le Capias agard, ſi le Defendant mozuſt ceo diſcharge le Bayle, car le Recogniz ance eſt conditional, ſcilicet, a render ſon cozps al pziſon ſi fuit condemn, vel a payer le condemnation, & devant Capias (come dit devant) il neſt teigne a render ſon cozps, ideo eſteant impoſſible per act de dieu per ſon mozt de render ſon cozps, le ley luy diſcharge del' auter, & il eſt clear que devant le Capias agard, le Defendant neſt teigne a luy meſme render, car le Plaintiff ad Election a pzender execution per Elegit ou fieri facias ou Capias devant que il ad fait ſon election per pzendant de Capias; il eſt en vain pur le Defendant a render luy meſme, & accozdant al ceſt reſolution il fuit adjudge en le Common Bank, Termino Paſchæ 21 Jacobi, in caſu Styles & Sowgate quod vide antea en le Reports de C. B.

Auxi il fuit reſolve en ceſt caſe que il ne beſoigne al Defendant pur pleder que il mozuſt devant Capias agard, car ſil mozuſt apzes le Plaintiff duiſſoit per voy de replication a pleder ceo; Auxi il fuit reſolve que le plee ne fuit double, pur ceo que le pzimer part del' plee, ſcilicet, ſon render al pziſon, doit eſtre trie per recozde, & le Defendant ne conclude prout patet per recozde, ideo ne fuit aſcun plee en barre. 2. Tout le plee eſt purſuant l'un al l'auter, & le render al pziſon neſt fozſque inducement al auter part del' plee, ſcilicet, que il mozuſt. Darrenment il fuit dit per Broome, & iſſint agree per tout, que ſi Defendant fuit in vye, le Bayle poet luy pozter al aſcun temps devant le ſecond Scire Facias. Et auxi divers ans du Royne Elizabeth, ſur enſaver del' Bayle ils fueront allowe a pozter eins le Defendant, ſur le return del' ſecond Scire facias, ſed ceo fuit ex gratia Curiæ; ſed il fuit reſolve que ſi apzes le Capias return, & devant aſcun Scire Facias pozt, le Defendant mozuſt donque le Recogniz ance del' Bayle fuit fozfeit, & tout ceux points fueront move en ceſt caſe, ſed quid ſi apzes le Capias agard, & devant le return del' ceo, le Defendant mozuſt, oyes ceo caſe le Recogniz ance de Bayle ſoit fozfeit? & ſemble que nemy, car il ad temps a tout temps a bener al Court, & a luy render devant les temps del' return, ideo ſil mozuſt devant ceſt temps, le Bayle eſt diſcharge.

Weaver & Felton.

WEaver pozt Dett vers Felton, & alios come Executozs, ils plede ne unq; Executozs, le Action fuit alledge apud Bridgenorth en Com' Salop. Et Plaintiff replie, que ils adminiſter apud Salop. & venire facias fuit agarde de Bridgenorth, & (5)

trove pur le Plaintiff, & Judgment done accordant, & Defendant port erroz, & apres aſſignment de erroz, & Scire Facias ſue, le Defendant joyne en nullo eſt erratum, & le Plaintiff alledge diminution del' venire facias, & prie Certiorari que fuit grant a luy, ſur returne del' ceo il alledge pur erroz que venire facias ne fuit bien agarde de Bridgenorth, & duiſoit eſtre de Salop, apres view del' preſident del' caſe de Byſhop Reports Cooke pars 5. que eſt in Termino Paſchæ 13 Jacobi, Rot. 361. Il fuit reſolve que le Certiorari ne fuit bien agarde, car apres in nullo eſt Erratum plede, neque le Plaintiff neque le Defendant poient alledge diminution, car per le joinder ils allowe recorde, & ove ceo agree 20 H. 6. 10. 7 E. 4. 25. & 9 E. 4. 32. & 8 E. 4. Tit' Error. Et le dit caſe de Byſhop, ſed voyer eſt que le Court (ſi leur pleiſt) poet agarde un Certiorari de informer lour Conſcience del' verity de Recorde en C. B. & ove ceo agree le dit caſe de 9 E. 4. & Byſhops Caſe, & ceo auribien pur reverſer un Judgment, come pur affirme Judgment, & le forme d'entry eſt quia il ſemble al Court deſtre expedient pur veier le original brief, ou auter part del' recorde, ideo ils agarde Certiorari quod vide Cooke preſidents fol. 242. en caſu del' Marqueſs de Wincheſter, & le caſe de Downell & Catisby ibidem fol. 254. & caſe de Love & Lancaſter ibidem fol. 267. Sed nota que le caſe de Byſhop en Seignior Cooke ne agree ove le recorde del' ceo, car la le Defendant n'ad joyne in nullo eſt erratum, ſed ne dit riens, ideo remanet inde indefenſus, & en le caſe en queſtion en tant que le Certiorari fuit agarde al prayer del' party, & nemy per agarde del' Court un roll appell Riding Roll de ceo ne fuit receive, ſed reject, ſed ſur motion del' party un Certiorari fuit agarde per le Court ex Officio, ideo novell brief del' venire facias, & le entry ſerra que fuit agard per le Court, & nemy per prayer del' party, le Court auti done order, que null tiel certiorari enapres ſerra grant niſi ſur motion al Court, car il reſt en diſcretion del' Court de ceo granter, ou pur ceo denier.

Jiggon *verſus* Purchaſe.

(6) EN Action de Dett port per Jiggon verſus Purchaſe, le Defendant demand oyer, que fuit a payer Argent 31 die Septembris, lou revera ne ſont tants jours en Septembre, & il plede ſolvit ad diem, ſur que ils fuerent al iſſue, & trove pur le Plaintiff, & fuit move per Andrews en arreſt de Judgment que il fuit un jeofaile, & un impoſſibility, ſed ceo nient obſtant Judgment fuit done pro querente. Car le condition eſteant impoſſible le obligation fuit due

due maintenant, & ſuit un iſſue ſur inſufficient barre que eſteant trove pur le Plaintiff ceo eſt helpe per le Statute, come reſolve en Nicholls & Chamberleynes Caſe en payment plede en barre d'un ſingle obligation, & trove pur le Plaintiff il avoit Judgment: & apres ſuit move quant le Court fuit plein, & ceo nient obſtant per tout le Court Judgment fuit done.

Keymer *verſus* Hallet.

WIlliam Keymer port Action ſur le caſe vers un Hallet Parſon del' ſon paroche pur ſcandalous parolls vider't, William Keymer hath gotten A. B. late his Maid-Servant, with four Children, and afterwards he Killed them; Et il averre que ne unque fuit incontinent neque committ aſcun felony, & trove pur le Plaintiff. Noy & Germyn move en arreſt, que les parolls ne ſont actionable, car a dire que il avoit un Baſtard null Action gift, & auri poet eſtre que el fuit un foits ſa Servant, & Marry luy apres, & que il begot les Children apres Marriage, & a dire que il killed eux ne ſont actionable parolls, car poet que il fiſt ceo en courſe de Juſtice, ou loyall, ſed le Court tient que ſur conſideration del' tout parolls enſemble il appiert deſtre un Scandal al Plaintiff pur que il doit aver Action, car il eſt dit en le declaration & expreſſe A. B. fuit barrein ſa Servant, & modo le feme de J. S. 2. Per Jones a dire que un ad un Baſtard ne voyle maintain un Action, niſi il declare que fuit aſcun particular damage a luy, come en Anne Davyes Caſe pars 4. Cooke, que el fuit hinder en ſa Marriage, & 3. a dire que il tue les Children ceo ad pluis violent intendment que ceo fuit ſans authority, & que fuit felonice; & le Defendants Counſell prift un auter exception pur ceo que il dit que ne unque fuit incontinent, & ſi ne fuit incontinent ne poet aver fits Baſtard, & ſil n'avoit aſcun fits Baſtard il ne poet eux tuer, ſed Curia e contra, car neſt aſcun apparant contrariety, mes ſi home declare que J. S. dit que Plaintiff murder J. D. ubi revera J. D. eſt en vie, la null Action gift per Jones, car un apparant cauſe en le Declaration que ceo ne poet eſtre Sclander al party. (7)

Hamon

Hamon *verſus* White.

(8) HAmon port Action ſur le caſe vers White, & declare que il & J. S. tient pur ans come Tenants en Common un Tenement en Com' Berk's, a que un Common fuit appendant, & que le Defendant avoit ayre le dit terre per que ſes avers communable, & luy meſme receive damage, & apres verdict en arreſt de Judgment fuit move, que il appiert per le Declaration, que le Plaintiff fuit Tenant en Common de terres a que ove un auter, doient joine, & un ne poet aver Action ſole, & de ceſt opinion le Court fuit, mes ſil fuit un particular loſſe al Plaintiff, vid. que ſes avers fueront diſtrein, ou enchaſe del' Common, là un poet aver Action ſolment. Vide 13 H. 7. 35 H. 6. & Littleton en Chapter Tenant en Common.

Termino

Termino Mich. An. II. Caroli Regis, *in* Banco Regis.

Ranolph Crew Chivaler Chief Juſtice, ſur vendredy le 10 jour del' November en ceſt Terme & an, receive ſon brief de diſcharge de eſtre Chief Juſtice.

November 28. 1626, *my Brother* Richardſon *was ſworn Chief Juſtice of the* Common-Pleas. *Upon Thurſday night very late, the* 7th *of December, my Brother* Davies *dyed ſuddenly in his Bed.*

Indictment del' Doctor *Lambe.*

JOhn Lambe communement appell Doctor Lambe en le quadrageſime, anno 19. le darrein Roy, al Gaol-delivery tenus devant Wynche & Jones al Wigorn en Com' Wigorniæ fuit indite que il 16 Dec' anno quinto Jacobi apud T. in Com. prædict. felonice exercuit quaſdam malas, diabolicas & exexecrabiles artes vocat' Witchcrafts, Inchantments, Charms & Sorceries in & ſuper Prænobilem Thomam Dominum Windſor, & contrive ad debilitandum, infirmandum & conſumandum Corpus & Virilitatem prædicti Domini Windſor vigore ac prætextu prædict. diabolicæ artis le dit Dominus Windſor poſtea ſcilicet, prædict. die Decimo Anno ſupradict. apud Tavandel, & diverſis aliis vicibus & diebus tam antea quam poſtea fuit tabidus & conſumptus in corpore & virilitate ſua, contra formam Statuti, &c. Sur que il fuit arreigne al dit Gaol-delivery, & trove culpable, & fuit repreive per les Juſtices ſans Judgment, pur ceo que ils doubt del' inditement, & auri en lour opinion le evidence ne fuit ey pregnant, & devant les Aſſizes enſuant, il fuit remove per Habeas Corpus al Bank le Roy, apres que il fuit convict de Rape & avoit Judgment, & ceſt Terme il vient en Court de B. le Roy, & portant ſon par-

(1)

don

don pur le Rape priant allowance de ceo, & auxi il prist exception al cest Inditement per son Councell, & pur allowance del' son pardon, jour fuit done pur scire fac' q̃ le Attorney le Roy pusſoit dire encontre luy, auxi pur le Seignior Windsor jour fuit prie a parler en defence del' Inditement, apres en cest Terme ne rien esteant dit per Attorney le Roy, le pardon fuit allowe, & al auter jour apres Lambe appear, & Athowe prist 3 exceptions al Inditement. Primes pur ceo que fuit quasdam malas Artes Anglice Witchcraft, &c. (2) Que fuit ea intentione, & intention ne poet estre scire ou trove. (3) Il est dit que eodem die & antea il fuit consume en son Corps, & il est impossible que serroit consume devant Act fait, & tout le Court agree en un que Inditement fuit male pur le primer exception, car males artes est trope generalment ou l'estatute parle particularment de Witchcraft, Sorcery, Charms & Inchantments, & malas artes nest Latyn pur ceux, sed Veneficium, Incantatio, Sortlegium, & les parolls Anglois ne voilent server, car Inditement doit estre en Latyn, tamen ils agree si un chose n'ad alcun Latyn, la si un Latyn parolls que vient cy-prees al ceo ove Anglice vocat' serra bon, come pur Shooting en un hand Gunn, tozment Anglice a hand Gunn ceo est bon, car null proper Latyn paroll pur hand Gunn; quant al second exception ils agree que ne fuit material, car entention joyne ove overt act poet estre trove bien, auxibien come en Treson, intent est prove per overt Act, & pur le 3 exception Jones doubt, pur ceo que ne poet estre construe per subsequent, sed Dodridge & Whitlock pense que le residue est sufficient, & sur le primer reason le Inditement fuit quashe.

Harvey *versus* Reynell.

(2) HArvey port Action sur le case vers Sir George Reynell, Marshal de Bank le Roy, & declare que il recover dett & damage vers J. S. & que il fuit committe en execution pur le dit dett al Defendant, & que il luy suffer d'escape apud D. en Com. Hertford, le Defendant confesse le Judgment, & que le dit J. S. fuit en custody apud Southwark en Com. Surrey, apres que le dit J. S. apud Southwark prædict. escape hors de son custody encontre son volunte, & que il fist fresh suit, & sur le dit fresh suit postea, scilicet, ante diem exhibit' Bille prædict. scilicet, 8 die Maii, Anno 21 Jacobi Regis, il luy prist, & il fuit en son custody, & demand Judgment sur que le Defendant demurre, Nota que le Bill fuit exhibit en Hillary Term devant le dit 8 jour de May. Dodridge, Jones, & Whitlock, esteant le pleine Court resolve, que coment le Plaintiff alledge, l'escape apud D. in Comitat' Hertford, & le Defendant confesse l'escape apud Southwark en Com. Surrey, que ceo

fuit

fuit bon ſans aſcun traverſe del' eſcape en Com. Hertford, car il eſt eſcape en cheſcun County quant il ale al large, Vide Plats Caſe Comment' Plowden pur ceo. (2) Ils reſolve que ſi Priſoner eſcape encontre le volunte le Gaoler, que ſi le Gaoler fiſt freſh purſuit ſur le dit eſcape devant aſcun Action comence pur l'eſcape, & il eſt priſt; que en ceo caſe le Gaoler ſerra excuſe de aſcun Action Vide Ridgwayes Caſe Report Cooke pars 3. (3) Mes ſi devant le party fuit repriſt, le Plaintiff port Action vers le Gaoler, donque coment que le party ſoit priſe, pendant Action & devant aſcun plee plede per le Gaoler, tamen en ceo caſe, ils reſolve que le Gaoler ne poet pleder ceo en barre del' Action, car per l'eſcape il fuit un injury fait al Plaintiff, & done a luy cauſe d'action vers Gaoler, & quant il commence ſon Action il avoit bon cauſe, & ceo fuit legalment commence, & le ſubſequent act de repriſal ne ferroit ceo illegal, & ils compare ceo al caſe de Action de Waſt, ſi devant Action port le Defendant repair le Waſt, ceo eſt bon plee, & diſcharge le Waſt, mes ſi le Action fuit commence la coment le Waſt fuit apres repair, ceo ne poet eſtre plede en barre, Vide Purſlows Caſe Report Cooke pars 3. en caſu de Fines que ſi Proclamation paſſe pendant foremedon ceo poet eſtre plede en barre, iſſint pars 4. Caſe Wroth & Wiggs en appeal conviction ſur inditement pendant le appeal devant le plee pleaded poet eſtre plede en barre, ſed ceux caſes ſont ground ſur le letter de Statutes, ſcilicet, 4 H. 7. & l'eſtatute de 3 H. 7. & differ del' caſe en queſtion. (4) Auter Queſtion fuit fait, que le Defendant plede que poſtea & ante diem exhibic' Billæ, ſc. 8 die Maii 21 Jac. il luy priſt, que le ſcilicet, ſerra priſt come void, & donque le plee bon, car il ad dit que fuit ante diem exhibic' Billæ priſe, & ſur ceo Curia adviſare vult uſq; auter jour.

Shewry *verſus* Pigott.

SHewry port Action ſur le caſe vers Pigott & alios, le Plaintiff declare que il fuit poſſeſſe pur divers Anns venture del' Rectory impropriate de Marſham en Com' Berks, & que un Meſſuage fuit parcell del' ceo, & un ewe currebat hors de memory al curtilage del' dit meaſon, & que le Defendant a tiel lieu en Marſham ad eſtopper ceo al ſon damage, le Defendant plede un long plee, l'effect fuit que H. 8, fuit ſeiſie en fee del' Rectory, & del' lieu in que le diſturbance fuit fait, & que per unity de poſſeſſion le Watercourſe fuit extinct, ſur que le Plaintiff demurre en Ley, divers Exceptions fueront priſe al declaration que fueront over-rule, & pur le matter en ley le ſole queſtion, ou unity de poſſeſſion legal, & en fee del' ambideux terres extinct le Watercourſe, & fuit reſolve per le plein Court (ſcilicet) Crew, Dodridge, Jones & (3)

Whitlock, que le Watercourſe ne fuit extinct, pur ceo que il eſt le nature de ewe pur currer, & pur eſtopper choſe natural eſt contra naturam, & il eſt choſe de neceſſity, ſine que un ne poet viver, & il continue ſon courſe en meſme le manner, come devant quant le unity del' poſſeſſion fuit, & le preſcription eſt que le Watercourſe hors de temps de memory fuit a tiel lieu tanque al Cartilage, & ceo eſt voyer coment il fuit unity de poſſeſſion, & accordant Judgment fuit done pro querente, vide 11 H. 4. 14 E. 4. 3 H. 6. 31. 21 E. 3. 2 & 3 21 H. 7. 25. pur le Gutter en London, & Sir John Davies Reports, Caſu de Proxies. 16 Eliz. le caſe de purlieu de Sir John Forteſcue.

Vere *verſus* Delavall.

(4) VEre port Action ſur le caſe vers Delavall, & declare que il fuit un Taylor, & que le Defendant ad port a luy un piece de Satyn a faire un Suite pur le Defendant, & deſire le Plaintiff a ceo faire, & a provide choſes neceſſary pur ceo faire compleat come lace & auters choſes, & en conſideration del' ceo il promiſe payer a luy tant que il diſburſe, & auri tant que le feſance del' Suit deſerve, & after, que il provide Lace al value de 16 l. & auters choſes, & que il deſerve tant pur feſance del' ceo, & que le Defendant n'ad perform ſon promiſe al damage de 30 l. le Defendant plede que il fuit deins Age al temps del' promiſe, & en garde al J. S. abſque hoc, quod aſſumpſit modo & forma, ſur que le Plaintiff demurre generalment, & ſur divers motions & arguments, al barre il fuit adjudge pro querente: Primes il fuit reſolve que Action ſur le caſe giſt per un Taylor pur feſans d'un Suit ſur le contract en ley auribien come Dett. (2) Action ſur le caſe giſt vers Infant ſur contract en ley pur feſans de neceſſary Apparel. (3) Il fuit tenuſt que le barre fuit void, pur contrariety que il dit que fuit deins Age al temps del' promiſe, & tamen traverſe le promiſe. (4) Admitt que le plee en barre ad eſtre voyer, ſcilicet, ſil ad plede que il fuit Infant al temps de promiſe, & ne riens pluis, le Plaintiff viendra aſſets pur le temps en replication a monſtre que le choſe fuit convenient Apparel, & de neceſſity pur le Defendant, & ne beſoigne al Plaintiff en ſon Declaration al primes pur ceo expreſſer, & accordant al ceſt reſolution Judgment fuit done pro querente.

Wyndſor

Wyndſor & Inhabitants de Farnham ſur Bill de Review.

ANdrew Wyndſor fiſt un deviſe d'un Rent iſſuant hors de terres en Buſcote en Com. Berk's, pur Charitable uſes en le Ville de Farneham, & apres ſon mort un Commiſſion iſſuiſt, & un Inquiſition priſe per virtue de ceo per, que le dit deviſe fuit trove, & le Commiſſioners feſont un Order & Decree pur le payment del' dit Rent al Charitable uſes accordant, & ſur divers Exceptions priſe encontre ceſt Decree ceo fuit confirme per Williams Seignior Keeper, apres Andrew Wyndſor Couſin del' Deviſor encontre que le Decree fuit fait port un Bill de Review en temps Coventree Seignior Keeper, ſur que le Inhabitants de Farneham demurre, que fuit referre al Seignior Chief Juſtice Crew, Walter Chief Baron, Jones & Crooke Juſtices, & ils una voce reſolve, que nul Bill de Review giſt en ceſt caſe, pur ceo que l'eſtatute eſt introductory d'un novell ley en le caſe de Charitable uſes, & done un appeal (ſur un Decree fait per Commiſſioners) al Seignior Keeper en Cancellaria, & apres que il ad affirme ceo ſon affirmation eſt peremptory, & null review de ceo poet eſtre fait per luy meſme, ou ſon ſucceſſor, & ils 4 certifie deſouth lour maines lour dit reſolution al Court de Chancery en ceſt Terme de Michael. (5)

Markham *verſus* Cobb.

JErvaiſe Markham port Action de Treſpaſs vi & armis vers William Cobb pur enfriender de ſon meaſon, & pur priſel de 3000 l. in pecuniis numeratis, le Defendant plede en barre que le dit Plaintiff procure luy deſtre indite & convict devant les Juſtices de Gaol-delivery del' County de Notingham de eo quod prædict. Defendant burglayer enfriender le dit meaſon, & priſt 3000 l. felonice hors de ceo que fuit meſme le Treſpaſs, ſur que le Plaintiff demurre, apres divers arguments al barre, Judgment fuit done per Dodridge, Jones & Whitlock en abſence del' Chief Juſtice pro querente, pur default de pleding, & nemy ſur le matter en ley, & le default en pleding fuit, pur ceo que il ne dit preciſement, que le Defendant fuit indite & convict, ſed ſolment que il procure deſtre indite de eo quod, &c. & ne dit que il procure, le Defendant eſtre indite, que fuit un groſs fault. 2. Il priſt averment que fuit meſme le Treſpaſs & Burglary, & Treſpaſs ne poet eſtre meſme Treſpaſs; ſed pur le matter en ley, les Juſtices ne agreeont in opinion, Dodridge & Whitlock prima facie fueront de Opinion, que coment le Defendant fuit convict de Felony, pur priſell de biens felonice, tamen le owner del' biens poet aver (6)

Action de Treſpaſs vers le party auri, & recover ſes damages, ils citont Bracton, que vide cite en Stamford fol. 28. que ſi home pill les biens de J. S. il poet luy civiliter queſtion per Action de Treſpaſs, vel per voy de appeal de Felony criminaliter, mes ſil pill Action vers luy criminaliter per appeal, & ſoit non-ſuit, le partie ne poet aver Action de Treſpaſs apres; Jones prima facie e contra, primes il dit que offence de Felony eſt double, un eſt private al party que biens ſont pill, l'auter al Common-wealth, & Roy pur male example, & enfriender del' ley & peace; le party poet aver ſon Action per voy de appeal & luy convict, & ſur ſon attaint il avera ſes biens arere, & Roy auri poet proceed vers luy per voy de inditement & conviction, & attainder ſur ceo, & ſi le Roy cauſe un deſtre indite & convict, & attaint, vel ſi ſur ſuit le Roy il ſoit acquitt ceo eſt barre en appell de Felony, en meſme le manner ſi le party ſoit acquitt, convict, ou attaint al ſuit le partie en appeal, ceo eſt barre en arreignment ſur inditement; & al Common Ley ils uſe a ſtayer proceedings ſur inditement tanque l'an & jour ſuit paſſe, pur ceo que ne ſerroit barre al appeal, mes pur ceo que en le dit temps divers foits, le evidence pur le Roy perie ou fueront conceal, ideo apres le courſe change, & ne uſont pur ſtayer; & a prevent miſchief que enchuera al partie per reaſon, que per ceſt means il ſeveral foits perde ſon appeal, ideo le Statute de 21 H. 8. fuit fait a doner reſtitution al partie de ſes biens, ſil done evidence.

Il dit auri que al Common Ley le ſuit per voy de appell fuit tickliſh, car doit eſtre ſur freſh ſuit. (2) Doit eſtre conviction al ſon ſuit. (3) Si le party moyuſt devant conviction null remedy pur les biens. (4) Si interlaſe aſcun choſe en ſon appeal ceo fuit perde. 45 E. 3. Corone Fitz. 100 l. vel ſi ſoit convict primes al ſuit Roy, null appell pur recover ſes biens come dit devant. Et (5) en appell il ne recovera aſcun biens, ſed le biens emblea, & nemy auters biens en lieu de eux, & en tout ceux caſes le propertie del' biens fueront perde & alter, & le owner ne puiſſoit reſeiſer biens emblea, & vende en Market overte: Auri il dit que coment arere le owner done evidence ſur inditement, tamen le partie n'avera reſtitution niſi de biens emblea, & nemy del' auters biens del' felon en lieu de eux ex rigore Juris, coment aſcun foits le contrary fuit uſe, & ſi le biens ſont vende en Market overt il ne poet aver reſtitution de eux, a tout ceo, les auters Juſtices agreeont.

Le ſole difference eſt ſur ceſt point, quant home eſt indite pur pliſel de argent de J. S. & ſoit indite & convict al ſuit le Roy ſans evidence, ou proſecution del' J. S. ou en ceo caſe J. S. avera treſpaſs: Dodridge & Whitlock, tient come avant eſt dit que J. S. poet aver Treſpaſs coment il ſuit barre de ſon appeal, car le owner al primes

primes avoit election a porter Treſpaſs ou appeal, & entant que il n'ad port appeal, ideo il avera Treſpaſs, & le conviction al ſuit le Roy que ne ſuit al ſon proſecution, & a que il ne ſuit partie ne luy liera, & ils diſont que ſi J. D. ſoit attaint de Felony, ceo neſt aſcun barre vers Creditors a demand lour Detts, ou luy ſuer en Actions de Treſpaſs pur auter Treſpaſſes, car ceo ſuit ſeveral foits adjudge, come en Truſſells Caſe, & auters cáſes quod vide novell livers de entries en Audita Querela, ad quod Jones conceſſit, pur ceo que ſuit pur auter choſe quam ceo pur que il fuit attaint, & ideo Jones differt de eux en dit concluſion, ſcilicet, pur meſme choſe pur que home ſuit convict ne ſerra ſubject al Action de Treſpaſs del' owner del' biens ſur les reaſons, & authorities en ley e contra apres remember, & cite.

Primes il dit quant biens ſont priſe d'un encontre ſon volunt, le difference pur ceo faire felony ou Treſpaſs eſt l'entent del' partie que eux priſt, car ſil eux priſt animo furandi donque il eſt felony, ſi ſans animo furandi, il ſerra Treſpaſſer, car in cheſcun del' dit caſes eſt contrectatio rei alienæ Domino invito, mes ſi ſoit animo furandi donque eſt Felony; Et il confeſſe, que ſi l'owner port Treſpaſs vers le felon que priſt eux animo furandi, il ne poet pleder encontre le owner que il eux emblea, ou que il priſt eux animo furandi, car il ne ſerra exponer de ſon intent de meſme, ſed la, come Bracton dit, il poet appear vers luy civiliter, & 12 E. 4. 5. J. S. ſeiſie biens J. N. come biens waive deins un franchiſe, & J. N. port Treſpaſs vers luy, J. S. dit q̃ le biens fueront emblæ & waive, J. N. travers que ils ne fueront emblee & bene, car la il ne fuit aſcun affirmance de recorde que ils fueront emblee, mes ſi aſcun affirmance ſoit de recorde que ils fueront emblæ, la J. N. ne poet travers que ne fueront emblee, ideo il eſt tenus 8 E. 3. 11. 3 E. 3. Fitz. Corone; que ſi home emblea biens, & eux waive, & apres vient devant Crowner, & fiſt abjuration, vel ſil fuit endite, & il confeſſe le felony, vel ſi fuit utlage ſur le inditement en touts ceux caſes les biens ſont forfeit, & la en Action de Treſpaſs port per le owner del' biens vers Seignior de franchiſe, & il plede que ils fueront emblee, & le partie ceo confeſſe & abjure la le owner ne poet travers le felony vel affirme que ils fueront priſe per voy de Treſpaſs & nemy per voy de felony; en meſme le manner ſi owner del' biens port appeal, & trove per verdict que les biens ne fueront emblee, ſed priſt per voy de Treſpaſs tamen le owner fuit barre a port Treſpaſs apres, come eſt reſolve 3 E. 3. Crowne 367. (& ceo agree ove Bracton) vel ſi fuit attaint en appeal il ne poet reſort al Treſpaſs, car la eſt un affirmation de recorde que les biens fuerent emblee, & que il ne unque dira encounter ceo que ils fueront per voy de Treſpaſs, & coment en le caſe en queſtion, le partie

meſme

meſme ne affirme de recoꝛde neque per voy de evidence, neque per voy de exhibition d'un inditement tamen quant per verdict de xii homes il eſt trove que il eux pꝛiſt felonice il ne poet apꝛes encontre ceſt verdict (coment il ne fuit partie) d'alledge que il pꝛiſt les biens per voy de Treſpaſs, & nemy animo furandi, 11 H. 4. 94. 49 E. 11. & 7 E. 4. 21. Si J. S. enfeoff J. D. & apꝛes il eſt indite de felony, & que ceo fuit fait devant le temps del' feoffment, & il ceo confeſſe, & ſur ceo attaint, vel ſi ſoit utlage (ſi revera le felony fuit fait apꝛes ou revera null felony fuit fait) la J.D. traverſera le felony ou dira que ne fuit fait apꝛes le feoffment, mes ſi le party fuit trove culpable per verdict de xii homes J. D. ſerroit conclude, & n'avera traverſe, & a multo fortiori en caſe de biens (queux ne ſont tant regarde come terre) il ſerra eſtopple, car en caſu del' biens come appiert en le caſe miſe avant de 3 E. 3. & 8 E. 3. 11. coment ne fuit aſcun verdict, ſed confeſſe ſur abjuravit ou inditement, le owner n'avera travers encounter ceo; a concluder, le main reaſon de Jones fuit que ſil ad poꝛt appeal, & ad eſtre barre ou non-ſue il ne ſerra convict en Treſpaſs, & coment le conviction ſur inditement ne fuit ſon Act, tamen eſteant trove per verdict que les biens fueront embleæ il ne dira que ils fueront pꝛiſe per voy de Treſpaſs ſans animo furandi; & ſi le inditement & conviction ſoit ſur pꝛoſecution del' owner del' biens il eſt pluis foꝛt, ſed ſemble a moy que ſi home ſoit indite de felony, & eſt acquitte, que la le partie poet aver Action de Treſpaſs, car il nèſt aſcun verdict encontre luy neque aſcun affirmation del' partie de recoꝛd, neque aſcun confeſſion & attainder del' felony, ceo que il dit a ceſt point fuit argumenti gratia, ſed nemy come ſon abſolute opinion, iſſint diſont les auters Juſtices. Quære bien, car eſt un point de grand conſequens de l'un part, & del' auter.

Termino

Termino Hill. An. II. Caroli Regis, *in* Banco Regis.

Ceſt Terme null demurrers fueront argue neque aſcun cauſe deaſcun ambiguity reſolve pur ceo que Sir Nicholas Hyde *Chief Juſtice ne fuit fait tanque lunday apres purificat' a quel jour ſon brief port date.*

Upon Tueſday the 30th. of January, Sir *Nicholas Hyde* of the *Middle-Temple* appeared in Chancery, and was Sworn Serjeant at Law, and had a Patent to be Kings-Serjeant; And upon Thurſday the firſt of February, he was preſent at the *Common-pleas*, and kept his Feaſt that day at Serjeants-Inn *Chancery-Lane*, becauſe the ancient Judge, the Lord *Richardſon*, was of that Houſe, and there his Coif was put on by the Lord *Richardſon*, who made a Speech to him, and he rehearſed his pleading; then being preſent all the Judges of the *Common-Pleas*, and Juſtice *Dodridge* being of that Houſe, and no more. Upon Monday the fifth of February he received his Writ to be Chief Juſtice of the *Kings-Bench*, and was upon Thurſday the 8th of February by the Lord Treaſurer, Sworn in Court by virtue of a Commiſſion under the Great Seal, the Lord Keeper being Sick, and upon Saturday following he came to Court in his Robes.

Dominus Rex *verſus* Sir Charles Howard.

IL fuit un information ou Anglois Bill exhibit en le Exchequer Chamber en noſme le Attorney le Roy vers Sir Charles Howard, pur ceo que il claime deſtre Cuſtos del' Puttenham Parke, & pur aver divers priviledges en le dit Parke, pur ceo que le Parke fuit vende per le Roy al Sir Richard Weſton Chancellor del' Court d'Exchequer. Le dit Sir Charles per voy de reſpons, monſtre, que le Roy James ad grant a luy durant ſon vie le cuſtody del' dit Parke, & tout dotards Trees & Windfalls, & ove (1)

& ove touts profits a ceſt Office pertinen', & un fee de 20 l. deſtre iſſuant hors de auters terres pur exerciſer de ceo, & le Seignior Treaſurer move ceo al Judges pur lour opinion, & ils aſſemble eux meſmes al Serjeants-Inn en Chancery Lane del' quel' meaſon Seignior Richardſon fuit, que fuit le ancient (null Chief Juſtice adonque eſteant) & al jour de lour mæting, le Seignior Treaſurer vient la, & ſur debate del' matter tout les Juſtices & les Barons del' Exchequer, agree en un que le patentee poet bien diſcharger le dit patentee del' dit Office, & quod n'avera aſcun fee, ſed le dit fee del' 20 l. & le Chief Baron fuit de opinion que il n'avera le 20 l. & le Seignior Treaſurer certifie lour opinion accordant al Roy.

Le Counte de Lincolns *Caſe en* Camera Stellata.

(4) LE prochein jour apres le Terme ils fueront aſſemble en le Star-Chamber, tout les Juſtices, (except Dodridge) & le Seigniors del' Privy Councell, divers queux en tout ſelont 28, Le Seignior Keeper, Treaſurer & Preſident del' Councell, & le Duke eſteant del' number, a quel temps un motion fuit fait per le Solliciter le Roy envers de Countie de Lincoln, le effect de quel fuit que Sir Henry Fines ad exhibit un Bill vers le Counte, & le Counte ad prife un dedimus poteſtatem a faire ſon reſpons, & il returne ſon reſpons ſur ſon Honour, & nemy ſur ſon ſerement, & prie que il ſerroit oyer a faire reſpons ſur ſon ſerement, & que il ſerroit committe ſur ſon contempt, & tout les Seigniors de Privy Councell, & Juſtices una voce reſolve, & iſſint il fuit oyer, que il ferra ſon reſpons ſur ſon ſerement nemy ſur ſon Honour, & ideo un Attachment fuit agarde vers luy ad faciendum melior reſpons, pur ceo que il ad prift dedimus poteſtatem, & nota q̃ le Chief Juſtice comence & deliver ſon Opinion, & iſſint en oyer, tanque al puiſne Juſtice, & apres le puiſne Privy Councellor, & de luy en oyer tanque al Seignior Gardein del' Grand Seal. Pur melior Science del' ceſt queſtion, il eſt deſtre conſider que ils ſont en noſtre Ley divers ſorts de Serements; un eſt juramentum promiſſionis, q̃ eſt quaſi un vote fait ſur ſerement, ſcilicet, home ſur ſerement fait un promiſe que il voyle, ou nemy faire un choſe; & ne poet eſtre deny, mes que Baron & Pere del' Royalme prender ceſt Serement, come le Serement ſur ſeſans del' homage al Roy, que cheſcun Baron fift, iſſint ſi un Pere ſoit de Councell, il fift un Serement, iſſint ſi ſoit fait un Officer del' Roy, come Chancellor, Treaſurer, Preſident del' Councell, Admiral, Steward, ou Chamberlain, vel hujnſmodi, l'Eſtatute de 2 Eliz. oydein que cheſcun Juſtice de Peace prendera le Serement de ſupremacy, & coment le Statute

de

de 5 Eliz. exempt temporal Peers deſtre Jure ſur ceo ſur le penalty del' dit Statute, tamen ils ſont fait Juſtices de Peace ils doient prender le Serement de Supremacy, & auxi le Serement appertenant al Office. (2) Il eſt Juramentum purgationis quant un ſur ſon Serement, quant il eſt charge eſt miſe a reſponder, ceo il eſt uſe en mults caſes a mitter le party a reſpond ſur ſon Serement, come ſur ſuit en Chancery, Court de Wards, Exchequer Chamber Camera Stellata, & hujuſmodi, & ceo eſt le caſe en queſtion, & come fuit affirme per Seignior Guardian del' Grand Seal, & divers autres, ils ſont infinite preſidents modern & ancient, que Baron ad eſtre miſe a reſponder ſur ſon ſerement en ceſt Court & autrement, & ſi un Pere ſoit proſecute ſur common fame en Court Eccleſ. il ferra ſon purgation ſur ſon ſerement, & ſi ſue la, ou en le Court de High-Commiſſion il reſpond ſur ſon ſerement, & en noſtre ley ſil gage ſon ley il ferra ceo ſur ſon ſerement. (3) Il eſt Juramentum probationis, quant un eſt produce come Teſtis a prover ou diſprover choſe, & un Pere doit eſtre Jure, autrement il neſt competent Teſte, ſi fiſt probation ſur ſon honour, & nemy ſur ſon ſerement, il ne ferra deins le danger de perjury, vel per Common Ley ou Statute; & ſont divers preſidents ou Pers de Royalme ount eſtre examin en Court de Wards, Chancery, Exchequer Chamber, & hujuſmodi come Teſtes ſur lour ſerement. (4) Il eſt Juramentum Triationis, ou homes ſont a trier, & a trover un choſe en queſtion ou iſſue, il appeart en le Regiſter fol. 179. un briefe en hæc verba; Quia Barones regni noſtri in Aſſiſ. Jurat' ſeu Recognitionibus aliquibus poni non conſuerunt ut dicunt, niſi eorum Sacramentum adeo fuit neceſſarium quod ſine illis veritas Inquiri non poſſit: Ideo tibi precipimus, Quod dilectum & fidelem noſtrum A. B. in Aſſiſ. Jurat' ſeu Recognitionibus aliquibus non ponas, ſeu poni facias contra voluntatem ſuam, abſque mandato noſtro ſpeciali, niſi preſentia ob alia cauſa exigatur.

Per que il appiert que lour ſerement en Recognition & Jurat' n'eſt abſolute exempt, ſed ſub modo, niſi lour Juramentum ſoit neceſſary, & revera il neſt exemption del' lour ſerement, ſed exemption que ne ſoient miſe en Juroys, ſed ceo ne prove que ſi ſont miſe, mes que ils ſerront Jure, & (le ſpecial command del' Roy except) car ſi ſoit per ſpecial command le Roy ils doient Jure, & lour claime miſt non-conſtreſteant ut dicunt: 48 E. 3. fol. 30. eſt que un Baron ne ferroit ſerement en Recognition niſi ove lour volunt que eſt le exemption mention, vide Cooke part. 6. fol. 151. & part 9. fol. 49. & 35 H. 6. 46. a meſme purpoſe, ſcilicet, que ils fueront exempt de Juries, mes n'eſt prove per ceo que ſil ſont miſe ſur Juries, que ils ſerront exempt de lour ſerement ſur le Statute de 5 H. 4. Cap. 8. enact que en Action del' Dett

ſur arrerages de accompt, le Judges averont poier de examiner le Attorney del' Pl't, ou aſcun auterperſon, que eux pleaſeroit, & ſur ceo de reſtrainer le Defendant a faire ſon ley, ou auterment amitter le matter en inqueſt. 3 H. 6. 48. le Dame Abergavenny fuit Plaintiff, & ſa Attorney fuit Jure, & Defendant voloit aver le Dame examine, & per Cockein el'ne ſerra, ſed ceo ne prove riens, car fuit diſcretion del' Court pur examiner, ou nemy. D'arreinment il fuit object, que ſur Trial per Peers il eſt nemy ſur ſerement, ſed ſur honour, ſed le reaſon del' ceo fuit, pur ceo que ils ſont la come Judges, & nemy come Jurors.

6 Maii 1628. en Parliament per le vote de touts les Seigniors, il fuit ordein, que null Baron ſerra compell a Reſponder ſur ſon ſerement, le Report de quel ſequitur en ceux parolls.

Die Martis 6 Maii 1628.

THE Earl Marſhal reported, That the Committee for Priviledges met yeſterday in the Afternoon, according to the appointment of the Houſe, to conſider of the four things referred to their conſideration.

The which were theſe, (*viz.*)

1. Whether a Peer of Parliament is to anſwer upon Oath, or upon his Honour only.

2. Whether a Peer, having done his homage once to the King at the Coronation, may be compelled to pay for reſpect of Homage, in reſpect of Lands held of the King *in Capite.*

3. Whether the Goods of a Priviledged Perſon taken in Execution (during the Priviledge of Parliament) ought not to be delivered to the ſaid party by priviledge of Parliament.

4. The Bill for the delivery of ſuch priviledged Perſons as ſhall be Arreſted after the Parliament ended, and during the priviledge thereof, *&c.*

And his Lordſhip further reported, That they finding the firſt of the References to be General, they conſidered only of the Anſwers of the Peers in Courts as Defendants; And that they had peruſed all the Preſidents which are either for their Anſwers in this kind, upon proteſtation of Honour only, or for their Anſwers upon the Common-Oath: And after due and mature deliberation thereof,

thereof, they all agreed *una voce*, That the Nobility of this Kingdom, and Lords of the upper House of Parliament are of ancient Right to answer in all Courts as Defendants, upon protestation of Honour only, and not upon the Common Oath.

And as touching the second, for respect of Homage, Mr. *Attourney* desired to have time to consider thereof; and they agreed that he shall be heard in the House as soon as he shall be ready.

And as touching the third, they all agreed, That the Goods of a priviledged Person, taken in Execution, ought to be re-delivered and freed as well as the Person.

And as touching the Bill for setting at liberty such priviledged Persons as shall be Arrested, after the Parliament ended, and during the priviledges thereof, they had heard it read, and appointed Mr. *Attorrney* to draw a new Bill.

This Report being ended, the House was put into a Committee for the free debate of the first point, touching Answers upon Honour, and after long debate thereof, the House was resumed; And it was **Ordered upon the question** (Nemine contradicente) **That the Nobility of this Kingdom, and Lords of the Upper House of Parliament, are of ancient right, to answer in all Courts as Defendants, upon Protestation of Honour only, and not upon the Common Oath.**

serront lys p recogn: a vender lour Corps Leon: 4.u p.l 6.

Termino Paſch. An. III. Caroli Regis, *in* Banco Regis.

The firſt day of the Term being Wedneſday, Mr. *Warde* and Mr. *Barkeley* did appear in Chancery upon the retorn of their Writs to be Serjeants, and were then Sworn; and upon Thurſday ſeven-night they made their Feaſt at *Serjeants-Inn Fleet-ſtreet*, that day morning they came to *Serjeants-Inn Fleet-ſtreet*, where all the Judges were aſſembled; and then the two Chief Juſtices put on their Hoods and Coifs, and they rehearſed their Pleadings; but the Chief Juſtice made them no Speech. That day Mr. *Barkeley* was Kings-Serjeant; upon Monday following Mr. *Ayliffe* and Mr. *Calys* did appear, and upon Thurſday following kept their Feaſt at the place aforeſaid, and no Speech was made them when they rehearſed their Pleadings at *Serjeants-Inn*.

Bedoe *verſus* Alpe.

Mich. 20. *Jac. Rot.* 41. *en* Scaccario.

(1) RObert Bedoe exhibit un information en le Court de Exchequer vers Edward Alpe pur Ingroſſer de Butyr & caſe, encontre le forme del' Statute de 5 & 6 E. 6. & le Defendant plede non culpable, & fuit trove culpable quant al 672. libr' del' Butyr parcell al value 3 d. le pond del' Butyr, & pur 18432 l. de caſe al 11 d. cheſcun pond, & ſur ceo Judgment fuit done vers le Defendant, & il port brief de error en Exchequer Chamber, & ceo fuit referre per le Court al Hutton & Jones, & divers exceptions fueront priſe al information, & aſſigne pur error; Le primer fuit que le dit information fuit exhibit en Court 13 Octobris en Michaelmas Terme anno 20 Jacobi, & ceo fuit Sunday, & nemy dies Juridicus, ſed il fuit reſolve per Hutton & Jones, que fuit bon, car coment il ne fuit dies Juridicus pur agarde aſcun judicial proceſs, ou pur faire entrie de aſcun Judgment de record, tamen il fuit bon pur accepter de information ſur ſpecial ley, & fueront mult preſi-

preſidents monſtre que tiel informations fueront exhibit ſur die Sabbati, & bon: auter erroꝛ aſſigne, pur ceo que le information eſt que le Defendant ad ingroſs tiel quantity de Butyr & Caſe, & ideo le informer prie que il ſoit adjudge pur un illegal ingroſſer, & quod forfeit al Roy, & luy legalis monete Anglie ove Blank ad valorem prædict. Butyri & Caſe, & ceo per eux fuit tenuit bon, car il eſt ſufficient a demande le value en general ſans mention aſcun ſumme, & le value eſt deſtre inquire per le Jury, & iſſint il fuit fait en ceſt caſe. (3) Auter erroꝛ aſſigne, pur ceo que le information dit que il obtain per emption divers parcells del' Butyr, & caſe pur vender contra formam Statuti, & n'ad alledge q̄ il n'ad ceo per demiſe ou conceſs' de Terme, & ceo nient obſtant le information fuit tenus bon, car ſi fuit iſſint, le party Defendant poet doner ceo en evidence, & ne beſoigne deſtre averre en le information. (4) Exception, ou erroꝛ fuit, pur ceo que le Plaintiff en le information demand le moyety pur luy meſme, & ne parle riens del' moyety del' Roy, & ceo fuit diſallow, car tout les preſidents ſont accordant al ceſt information, & le informer miſt a prier primes ſon moyety demeſne; & al darrein mardie del' ceſt Term Hutton en l'Exchequer deliver le opinion de luy meſme; & Jones al Court de Exchequer, ſur que le Court affirme le primer Judgment, nient obſtant le dit Erroꝛs.

Aſhfeild *verſus* Aſhfield.

INfant Copyholder en fee per diſcent, fiſt Leaſe pur ans rendant Rent, & apres fuit admitte per le Seignior, & al plein Age receive ſon Rent, & enter ſur leſſee, & leſſee poꝛt Treſpaſs, & adjudge per Curiam, que le Action fuit maintenable, car le Leaſe d'un Infant Copy-holder pur ans rendant Rent ne fuit void, ſed voidable. Et coment il fuit urge, q̄ ſerroit forfeiture, quant al Seignior, quod fuit deny, nient plus, quam ſi Infant leſſee pur ans al Common Ley fiſt feoffment, ceo neſt forfeiture; & admitte que fuit forfeiture, tamen quant al eſtranger, il continue leſſee pur ans, coment le Seignior poet ſeiſer pur forfeiture, & coment il fuit admitte per le Seignior tamen ceo ne avoid le Leaſe, ideo ſon acceptance al plein Age eſt bon, & barrera l'Infant, auribien ſicome il ad fait Leaſe de terre al Common Ley pur ans rendant Rent, & apres accept le Rent al ſon plein Age, ceo eſt un barre al Infant pur avoider le Leaſe; & ſolonque ceſt reſolution Judgment fuit done. Ceſt caſe ſur brief d'erroꝛ fuit affirme, per tout les Juſtices & Barons de Exchequer, & le maine reaſon fuit, pur ceo, que Leaſe d'un Copyhold pur ans coment fuit forfeiture en regarde del' Seignior, tamen ſerra bon quant al eſtrangers.

Termino

Termino Trin. An. III. Caroli Regis, *in* Banco Regis.

Evans & Kiffins *verſus* Askwith.

Hill. 22. *Jac. Rot.* 2164.

(1) RObert Evans & William Kiffin port Treſpaſs de Cloſe debuſe en K. en Com' Yorke, & priſell del' blees ſe-ver del' ix parts vers William Askwith, & ſur ſpe-cial verdict trove; le caſe fuit tiel, Matthew Hutton Archeveſq; de Yorke, fuit ſeiſie en fee del' Rectory impropriat, vocat' Kilborne en Com' prædict. de que les choſes & les blees fueront parcell, & ceo fuit en droit de ſa Eſgliſe, & adonque John Thornborough fuit Dean del' dit Eſgliſe, le dit Dean fuit elect d'eſtre Eveſque de Limerick in Hibernia, & le Royn Eliz. per Letters Pattents 36 Eliz. deſouth le grand Seal d'Angleterre, rehearſant que il fuit Dean, & elect ut avandit, & que le dit Eveſquery fuit tenuis & exilis pur maintain ſon Epiſcopal Dignity, Ideo ex certa Scientia, &c. & ex plenitudine poteſtatis & authoritate regia ſuprema el diſpence ove luy, ut poſſit retinere durante vita ſua in commendari vel modo quocunque in Jure magis efficaci ac ſi in titulum obtuliſſet nient obſtant que il fuit elect Eveſque, & nient obſtant que il ſerroit confirme & conſecrate Eveſque dignitat' deconat' prædict, & receive tout le fruits & profits del' ceo, & que il poet facere omnia que ad decanum pertinet in tam amplis modo & forma, ac ſi ne fuit promote al dit Eveſquery nient obſtant aſcun Statute, Canon general, ou local al contrary: apres il fuit Confirme & Conſecrate Eveſque de Limerick, apres 1 Jacobi il fuit elect Eveſque de Briſtoll, & devant ſon Confirmation, le Roy James fiſt auter diſpenſation pur reteyner le Deanery, come devant, & apres il fuit confirme Eveſque de Briſtoll, & mean enter le 2 Diſpenſation, ſcilicet, 38 Eliz. le dit Eveſq; fait Leaſe pur 21 anns al Dorothy Askwith rendant uſual Rents, & ceo fuit confirme per le dit Dean, & 3 Jacobi le dit Archiveſq; fiſt Leaſe al Hewitſon pur 21 anns, que fuit confirme per le dit Thornborough, & 9 Jacobi le dit Hutton morust, & Toby Matthew create Arche-

Archeveſq; & 9 Jacobi il fiſt Leaſe al dit Dorothy & al Robert Askwith pur 21 anns, que fuit confirme auxi. Le Leaſe fait 3 Jacobi per mean conveyance veignant al Plaintiffs & l'intereſt del' Leaſe fait 9 Jacobi veignant al Defendant, & apres le fine del' primer Leaſe, ſcilicet, 21 Jacobi, le Plaintiffs enter, & le Defendant commit le Treſpais: ceſt caſe fuit ſoven-foits argue al barre, & apres per les Juſtices al 2 ſeveral jours, ſcilicet. le jour Samady per Whitlock & Jones, & lunday enſuant per Dodridge & Hyde, & ils touts pur le matter agreeont pur le Plaintiffs: le queſtion fuit ou le Leaſe fait al Hewitſon fuit bien confirme ou nemy; il fuit object que ne fuit confirme. 1. Pur ceo, que le diſpenſation ne fuit ſufficient de continue luy. 2. Pur ceo, que le diſpenſation ne vient en temps convenient. Ils urge que diſpenſation ne fuit bon, car fuit retinere Dignitatem Decanatus, & nemy Decanatum ipſum, ſed ceo fuit over-rule que le diſpenſation fuit aſſets bon, (ceſt exception nient obſtant) car Dignitatem Decanatus & Decanatus ipſe fuit tout un, & per le voyer intention del' Roy que le grant fuit bon, car en common parlance Dignitas Decanatus & Decanatus ſont tout un, ideo bon. 2. Le ſecond exception fuit, pur ceo que le paroll commendam eſt en le diſpenſation, & le nature de commendam, ne fuit a faire un de continue incumbent, mes ſolment a receiver le profits, & tiel, coment que ad le profits ne fuit Dean, neque avoit power a confirmer. Pur le ſecond Objection, admittant que diſpenſation fuit bon, tamen ceo ne vient en temps, il fuit dit que ſur tranſlation del' Eveſque le benefice devveignant void preſentment per Election, car per le Canon Ley un Eveſq; eſt deſire tranſlate per un poſtulation, que eſt come un Election, & maintenant ſur le poſtulation & acceptance de ceo le Benefice devient void.

Sed les Juſtices fueront en opinion al contra. En ceſt caſe divers choſes fueront move & agree come clearly. 1. Quant un Dean, ou Parſon en Angleterre eſt fait Eveſq; en Ireland, le Benefice devient void, cibien ſicome fuit Angleterre, car le conſtitution & counſell que fait ceo void eſt general, & nemy limit al aſcun lieu, & iſſint eſt reſolve 3 E. 3. Fitz. Triall, & iſſint il fuit adjudge 21 Jac. Communi Banco en le caſe perenter Woodley & l'Eveſq, de Exon & Manwaring. 2. Il fuit agree que le Nature de diſpenſation eſt, pur derogate & a faire void un Statute, Canon, ou Conſtitution, que prohibit quant al party, & eſt ſicome un exception ad eſtre de luy hors de Statute ou Conſtitution, Reports Cooke part. 11. il eſt dit que diſpenſatio eſt provida Relaxatio mali prohibiti neceſſitate vel utilitate penſata. 3. Auxi fuit reſolve per touts, que le Roy ad poier a diſpenſe ove Statutes, & auxi ove Canons en force en ceſt Realm: per le very Common Ley, de

Droit

doit fuit en le Roy, car les Canons ſont les Eccleſiaſtical Leys del' terre, & ne lyera ceſt Realm, niſi ſont receive en ceſt Realm, come appiert per Statute 25 H. 8. Cap. 21. & 7 H. 8. in Kelways Reports Doctor Standiſh's Caſe, & per le Statute de Bigamis que toll Clergy de Bigamis, & per le Statute de Merton pur un nee devant Marriage, coment per le Canon, il fuit legitimate tamen en noſtre ley, il neſt, & 10 H. 7. 12. il eſt dit, que le Roy poet diſpence ove un a prender deux Benefices, ſed coment de Jure il fuit en Roy, tamen voyer eſt, que le Pape defacto & per uſurpatione ad uſe a diſpencer, tanque 25 H. 8. Cap. 21. & la le power eſt auxi toll del' Pape, & conferre cumulative ſur le Roy. Vide in Caſu Cawdrye Reports Cooke part. 5. 55. & en Grendons Caſe Plowden Comment. & per le Statute de 25 H. 8. l'Archeveſque de Canterbury poet diſpencer en divers caſes, ſed ceo ne exclude le power del' Roy. Il fuit auxi agree que le manner a faire Eveſq; auxibien ſur tranſlation, come de novo al ceſt jour, fuit come enſue, quant un Eveſq; mort, & eſt tranſlate, le Dean & Chapter certifiont le Roy de ceo en le Chancery, & ils prient licence del' Roy, a faire Election, & ſur ceo le Roy done Conge d'eſlier, & ſur ceo ils font Election, & prima certifiont ceo al party elect, & ont ſon conſent, & donque certifie ceo al Roy in Cancellaria, & auxi certifiont ceo al Archeveſque, & donque le Roy per ſes Letters Pattents done ſon Royal Aſſent, & command l'Archeveſque de luy confirme, & conſecrate, & a faire tout choſes neceſſary, ſur que l'Archeveſq; examin le Election, & ability del' perſon, & ſur ceo il confirme le Election, & apres luy conſecrate; & come ſur novell creation, il eſt iſſint uſe; ſur tranſlation tout les dits ceremonies ſerront obſerve, ſavant conſecration, que n'eſt requiſite, pur ceo que il fuit conſecrate devant: Et pur intelligence del' ceo, fuit dit per tout, que devant le Conqueſt, & apres tanque le temps de Roy John, Eveſques fueront inveſt per le Roy per Baculum & Annulum, mes le Roy John grant per charter, que ſerra Canonical Election ove 3 Reſtrictions. 1. De demand Conge del' Roy devant. 2. Et ſon Aſſent apres. 3. Que il averoit les Temporalties durant le vacation, & ceo eſt mention en le Statute de 25 E, 3. de Proviſoribus, que eſt confirme per 13 R. 2. Cap. 2. Reports Cooke part. 3. en le caſe de Dean & Chapter de Norwich; & mes notes demeſnes ſur argument de le Caſe de Eveſque de Oſſery in Hibernia; iſſint ove eſt poſitive Ley en general, que en feſant de touts Eveſques, ceo ſerra per Election, & aſſent le Roy, & per 25 H. 8. l'eſtatute pur conſecration del' Eveſq; mitt ceo in pluis certainty, & ſi le Pape, apres le dit charter uſe de fair tranſlation ſur poſtulation ſans Election & Aſſent le Roy, ceo fuit un uſurpation, & encounter Ley, & reſtraine

ſtrain per 16 R. 2. & 9 H. 4. 8. & apres 25 H. 8. il ne fuit unque uſe d'aver Eveſque per poſtulation ſur tranſlation, ſed ceo eſt per Election, come le dit Statute preſcribe, & le forme de ſeſance del' Eveſque al ceſt jour eſt en le meſme manner avandit, & ſolong̃ le dit Statute.

Et pur le main queſtion del' caſe, ceo fuit devide en trois points; primes ou le diſpenſation continue Thorneborough Dean, nient obſtant, que fuit fait Eveſq; iſſint que il poet confirmer le Leaſe. (2) Du le ſecond diſpenſation eſteant fait apres Election de luy al Briſtoll, & devant ſon confirmation ſoit bon ou nemy. (3) Admitte que le diſpenſation ne continue luy Dean, ſed fait luy able ſolment̃ a receiver le profits, ou il poet confirmer le Leaſe ou nemy.

Primes il fuit tenus per Curiam una voce, que le diſpenſation continue luy Dean come devant per virtue, & vim prioris tituli, a tout purpoſes, iſſint que il poet confirme, faire Leaſes, ou aſcun act come Dean, ac ſi il ne unque fuit fait Eveſque; car devant le conſtitution, devant le Councell de Lateran per voidance d'un primer benefice per priſell d'un auter benefice ou promotion, il fuit legal, & nient prohibit, & le nature de diſpenſation eſt de luy exempt del' ceſt penalty, & il remain ac ſi le dit Canon n'ad eſtre fait, il appiert per 11 H. 4. le caſe de Eveſq; de St. Davies que tiel perſon que ad tiel diſpenſation eſteant Defendant en Quare Impedit counterpledera le title del' Plaintiff, que null poet faire per l'eſtatute de 25 E. 3. niſi poſſeſſor, & un poſſeſſor per 4 H. 8. Dyer 1. eſt un que eſt & continue incumbent per Inſtitution & Induction; Ergo en ceſt caſe le primer title & induction continue, & en meſme le caſe il eſt auxi agreé, que tiel diſpenſation neſt aſcun proviſion, car null novel choſe done, ſed le ancient title continue, Et Fitz. natura brevium en briefe de ſpoliation tiel perſon maintainera ſopoliation, & null poet ceo maintainer niſi il continue ſon inſtitution & induction, Parkhurſts Caſe 6 & 7 Eliz. tiel commendam continue luy perſon, iſſint que le benefice void per reſignation, & 21 Jacobi en quare impedit en C. B. per Woodley vers le Eveſque de Exeter & Maynwaring, il fuit iſſint reſolve & adjudge, & les parolls del' ceſt diſpenſation ſont ſufficient, car il eſt retinere ceo durant ſon vie in commendam aut modo quocunque de jure magis efficaci, & tout profits a ceo pertinen', ac cetera facere & perimplere quæ ad Decanum pertinet in tam amplis modo & forma, ac ſi ne fuiſſet promote deſtre Eveſq; ove non obſtante de tout Canons, & ideo il ad ceo en title & nemy merement, come commedatorie, car il eſt un difference, ou un ad ſolment cuſtodiam d'un Benefice, & reſceit del' profits del' ceo, coment ceo ſoit ſans account render, & quant il ad Licence a reteiner ou recipere un Benefice en titu-

lum, & iſſint pur le primer point, ils tout conclude, que le diſpenſation continue luy Dean able a confirme Leaſes del' Eveſque.

Et (2) le dit diſpenſation fait, quant il fuit elect al Briſtoll, fuit fait en convenient temps, car quant home eſt fait Eveſque, ſon primer promotion neſt void tanque il ſoit confirme & conſecrate, & ceo appiert per 41 E. 3. 5. 21 E. 3. 39. 40. 11 H. 4. Le caſe de Eveſque de St. Davies. Tempore Mariæ Brooke preſent' 61. & tout les current de noſtre livers, ſont accordant, & coment null conſecration ſoit requiſite ſur tranſlation, tamen ſur Election il neſt void, ſed doit eſtre confirme, & tout auters ceremonies (preter le conſecration) ſont requiſite, de faire le primer promotion void; & en noſtre caſe, coment il ſoit elect, n'eſt trove que il aſſent, neq; que Roy aſſent, il puiſſoit eſtre, que le Roy ne voloit accord, neq; le Archeveſq; doet luy confirme, & il n'eſtoit ove reaſon, que il perdera ſes primer promotions, tanq; il ſoit ſure del' auter. Et ideo tout le Court agree en un, que le confirmation fuit bon pur ceo, que il continue Dean per force del' dit diſpenſation.

Quant al tierce point, Whitlock parle riens; ſed per Jones il fuit tenus, que ſil fuit mere commendatory ſolment a prender les profits, & ne fuit continue Dean, dong; il fuit chapter ſans Dean, & iſſint null entire Corporation, ideo le confirmation void, a que Hyde aſſent; & Dodridge ſemble deſire al contra. 3 ou 4 jours devant le agument fuit move que le point concernant Leaſe, fuit doubtfull, & Jones parle a ceo un petit, que fuit bon, mes ne voloit arguer ceo, pur ceo que fuit iſſint reſolve en Camera Scaccarii, en Fox & Colliers Caſe, & Dodridge ne dit riens a ceo en ſon argument, neq; Hyde: Et apres Judgment fuit done pro querente.

Roy *verſus le* Corporation *de* Boſton.

(2) QUo Warranto port per le Roy vers le Corporation de Boſton, in Com. Lincoln, & ils per preſcription demande Toll through in conſideration de repairation d'un pont, & pavement de lour Street, & repairation del' Sea-banke, & per Curiam coment (come 22 Aſſ. dit) Toll through ſimplement ne poet eſtre claim, tamen quant il eſt ſur tiel conſideration, ceo eſt bon, iſſint de Toll turne; Ils auxi claime forfeiture de Forreign bought & Forreign vende, & tenus que ceo eſt bon per preſcription, coment nemy per grant, & accordant il fuit adjudge; auxi ils claime per charter, de faire order, & pur breach de ceo a committe, & quant a ceo le Court fuit de opinion que ceo ne poet eſtre, come eſt tenuſt en Caſu Clarke pars 5. ideo un Curia aviſari quant a ceo.

Termino

Termino Mich. An. III. Caroli Regis, *in* Banco Regis.

Upon the laſt day of October, Mr. *George Venner* appeared in Chancery; and upon Thurſday the Eighth day of November, he came to *Serjeants-Inn*, and there in the preſence of the Juſtices of our Houſe in *Fleet-ſtreet*, and the Lord *Richardſon*, he rehearſed his Pleading, as aforeſaid, and that day kept his Feaſt, but no Speech was made to him: Upon the Seventeenth he was called up to the Bench, to be Baron in the Exchequer; and upon the Twentieth he went from our *Serjeants-Inn* in his Robes, to the Hall, being accompanyed with many Gentlemen.

Barker *verſus* Reading.

BArker port Action ſur le caſe ſur trover & converſion vers Reading, pur un chivall, & le caſe ſur ſpecial verdict fuit, que le dit Barker ad ſon chivall priſe de luy tortiouſment, & ceo fuit vende en Smithfield per un, que enter ſon noſme en le Toll-Book & ne fuit conus a luy, que cuſtode le Liver, & un Thomas Carter fuit enter come Voucher, ou ne fuit aſcun en rerum natura, & le Sale fuit al un Stiles, que vende al Defendant. Semble a Whitlock que Action ne giſt, car coment le Sale ne fuit ſolonque le forme preſcribe per 31 Eliz. entant que null voucher fuit en rerum Natura, a que tout agree, tamen en tant que il neſt trove, que le chivall fuit emblee felonioufment, ceſt Statute n'extend al ceo, car le Title del' Act eſt, An Act for avoiding of Horſe-ſtealing. (2) Le preamble rehearſe, que il fuit inconvenient en emblær de chivall, & le purview del' Act ſerra direct per le preamble, & Sale en Market overt fuit al Common Ley allowe pur maintenance del' Trade & Commerce, & ceſt Statute eſteant fait en reſtriction del' Common Ley, que fuit pro bono publico ſerra priſe ſtricte,

(1)

auxi en le dit Act il eſt prouide, que ſi Owner viendra deins 20 jours, & claime ſon chivall eſteant emblæ, il avera ceo, payant tant que le vendæ ad pay pur ceo, que monſtre l'entent del' Statute d'extender al chivalls emblæ, & eſt un proviſo en le dit Statute que Clergy fuit toll de acceſſary al un, que emblæ chivall, ſed Hyde, Dodridge & Jones e contra; car coment al Common Ley, Sale en Market alter le property, tamen ceo avoit divers qualifications; ſi fuit vende en un lieu en Market nient uſuall. (2) Si per fraud ou covyn. (3) Si agreement hors de Market, & ceo apres ratifie en le Market; en tout ceux cafes le property n'eſt alter, & per ceſt Statute le property neſt alter, ſi non que le courſe preſcribe per l'eſtatute ſoit obſerve, que n'eſt en le caſe en queſtion, & coment que le preamble ſoit ſpecial de chivalls emblæs, tamen le purview eſt general de Sale de chivalls (nient mention que fueront emblee) ideo eſt deins les parolls del' Statute, & eſteant fait a prevent miſchief per Sale de chivalls en Marketts, il ſerra priſe largement ſolonque les parolls, car le preamble n'eſt guide pur expounder de Statutes tout foits, & il n'eſt aſcun miſchief al vendee, car il poet refuſer pur emer aſcun chival, ſil ne conus le vendor ou ſon voucher, & per Dodridge le preamble del' Statute eſt pur avoider de embler de chivall, & ceo eſt fait per ceſt Act, mes il aide touts Sales auxi; & per tout, le darren clauſe del' Statute ne fait aſcun e contra, ſed il eſt un novell purview, que le owner avera ſon chivall arere, ſil fuit emblee & vende, ſil vient en convenient temps & fiſt payment del' ſumme, que vendee ad paye pur ceo; per que Judgment fuit done pro querente.

Knight *verſus* Stone.

(2) KNight port Dett vers Stone ſur Obligation, le Defendant plede que condition fuit, que lou le Defendant & un Margerie at Stile erunt ſubmitt eux meſmes al Award de J. S. & que il performera le dit Award, & il dit que J. S. ad fait arbitrement que Defendant payera 20 l. al Margerie at Stile al ſeveral jours; & que le dit M. ſur le darren payment ferroit un releaſe al Defendant de touts Actions; & il dit que al temps del' dit ſubmiſſion, Margerie at Stile fuit deins Age & demand Judgment ſur Action; le Plaintiff replie, que il en le behalfe del' dit Margerie at Stile enter en Bond al Defendant que le dit Margerie eſteiera al Award del' dit J. S. & ſur ceo le Defendant demurre en Ley. Le maine queſtion fuit, ou Infant poet ſubmitte

mitte al Arbitrement, ou nemy, & per Curiam una voce il poet, & quant l'Infant vient al plein age ou deins age il poet agreer ou nemy a ceo; car poet eſtre pur ſon benefit, & choſe fait per ſon benefit un Infant poet faire, Vide 10 H. 6. & 13 H. 4. 13. mes un exception fuit priſe, pur ceo que le Infant fuit de releaſe ſur le darren payment, & ne appiert, que fuit adonque al plein age, & ſi iſſint donque l'un part del' Arbitrement, que fuit deſtre perform fuit void, & ideo l'auter part; de quel opinion le Court prima facie fuit, ideo le Court adviſe le Plaintiff pur diſcontinue ſon ſuit, vel a mover le Court arere pur lour opinion al auter jour.

Termino

Termino Hill. An. III. Caroli Regis, *in* Banco Regis.

Hayward *verſus* Fulcher.

(1) THomas Hayward fuit Plaintiff en Treſpaſs vers Thomas Fulcher, & auters Defendants, le caſe ſur un ſpecial verdict fuit tiel; Le Dean & Chapter Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwicen. fueront ſeiſie en fee en droit del' dit Eſgliſe del' Mannor de Tavernham en Com' Norfolke, ils per fait enroll en Chancery, grant & ſurrender al Roy le dit Cathedral Eſgliſe, & tout lour Poſſeſſions, Droits, Liberties, Priviledges, & Hereditaments, que ils ount en droit de lour Corporation, ove garranty vers eux & lour ſucceſſors, & ceo fuit 3 Junii 1 E. 6. & 7. Novembris enſuant le Roy per ſes Letters Pattents create & erect le dit Eſgliſe & ambitus del' ceo un Cathedral Eſgliſe, & ordein un Dean & Chapter de 6 Prebends, queux ſerront le Chapter del' Eveſq; de Norwich, & grant le dit Cathedral Eſgliſe, al Eveſq; & ſes Succeſſors, & eux incorporate per noſme de Dean, & Chapter Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwic' ex fundatione Domini Regis Edwardi Sexti, & apres 7 Novembris per auters Letters Pattents, il done al Dean & Chapter Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwic' (omittant ex fundatione Regis Edwardi Sexti) le dit Mannor inter alia, a eux, & lour Succeſſors a tout jours. 6 Octobris 11 Eliz. le Dean & Chapter Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwic' (omittant ex fundatione Regis Edwardi Sexti) leſſa le dit Mannor de Tavernham al Henry Richers, & tout bois & ſubbois creſſants, ou deſtre creſſants en un lieu appell Tavernham Wood. Et except touts grand arbors, & Tymber de querke, Aſh & Elm creſſants ou deſtre creſſants en aſcun parcell del' Mannor ove liberty a carrier, & re-carier le premiſſes, & a eux coupe, & a faire Saw-pitts ſur le premiſſes pur Sawer le dit Arbors & Wood, a aver a luy pur 99 ans enſuant, rendant Rent,

Rent, & re-entrie pur non payment del' ceo, & un Covenant en le Indenture que le Dean & Chapter diſchargera le leſſee de tout charges due al Roy, & Covenant de part del' leſſee de repair le premiſſes, & Covenant de part leſſor, que il avera Cimiter' ſur les premiſſes, pur faire le dit repairations. Et auri un Covenant & grant de part leſſee, ſi aſcun variance happen perenter luy, & les Tenants del' Mannor, que donque il eſtoyera al arbitrement, & order del' dit Dean & Chapter concernant ceo, & ſi le leſſee ne performe lour order, vel ſi le dit leſſee ou ſes aſſigns interrupt, hinder, ou moleſt le dit Dean & Chapter lour Succeſſors ſervants ou Aſſigns a coupe hewe rive, ou carrier aſcun del' dit boys ou ſubboys, que donque le leaſe ſerroit void, & que le leſſors poient re-enter en le premiſſes.

Le dit Leaſe fuit fait al Henry Richards, & il aſſigne ſon intereſt al Sir Auguſtin Fotherton; le Jury trove que W. & D. ut ſervi prædict. Decani & Capituli Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwic' ex fundatione Regis Edwardi Sexti, Et per virtue de Letter de Attorney fait al eux per le dit Dean & Chapter enter en 6 Acres de terre, & en 2 auters Acres de terre, que fueront parcell del' dit Mannor, & hors de Tavernham Wood, & la coupe le Branches del' deux freynes, eſteant grand Arbors & Tymber, & voilont ceo carrier, & que le Defendant per command de Fotherton eux impede ab cariando parcell del' dit Branches, & adtunc ils priſont ceo, & convert al lour uſe demeſne.

Le Dean & Chapter per noſme de Dean & Chapter Eccleſiæ Cathedralis ſanctæ & individuæ Trinitatis Norwic' ex fundatione Regis Edwardi Sexti feſont un Indenture, & ceo ſeal purportant un demiſe pur 21 ans al Plaintiff, & feſont un Letter de Attorney, al un pur enter en le dit Mannor, & a ceo deliver al Plaintiff come lour fait, & ceo fuit demeſne date ove Indenture, que fuit accordant & leſſee enter en terres ex quo, &c. Et Defendant enter per command del' Fotherton, & commit le Treſpaſs, ſur que il port Action; apres ſeveral Arguments al barre fuit argue ſolemnment al Bench, le primer Lundy & Mardy del' Terme, & ils una voce conclude que le Plaintiff ſerroit barre. Le maine queſtions fueront, ou le leaſe fait al Richards fuit bon ou nemy; pur ceo que ex fundatione Regis Edwardi Sexti fuit omitte. (2) Admitt que fuit bon ou ceo fuit deſtroy per aſcun condition lye al ceo ou nemy. Quant al primes, ils teignont, que le leaſe fuit bon, entant que le primer Corporation ne fuit extinct, & le novell Corporation fuit void, & le grant fait al Dean & Chapter per E. 6. fuit per le ancient noſme, & le leaſe fait per eux per le ancient noſme fuit bon, nient obſtant le dit omiſſion en le grant, & leaſe. Primes

fuit

fuit reſolve per tout les Juſtices que le grant & ſurrender fait per le Dean & Chapter de lour Eſgliſe Cathedral, & tout lour Poſſeſſions, Droits, Liberties, Priviledges & Hereditaments, q̃ le Corporatine fuit diſſolve, car un Corporation en general, & iſſint Dean & Chapter en particular, poet eſtre fait al commencement ſans aſcun terres ou poſſeſſions anner al eux, & poient prender denomination d'un lieu, ou place nient obſtant, que ils n'ont riens en ceo, & come al commencement un Corporation poet eſtre ſans terres, iſſint coment ils grant tout lour poſſeſſions, tamen le Corporation continue, & en particular, coment Dean & Chapter ſurrender, tout lour poſſeſſions tamen le Corporation continue, & ils continue Chapter al Eveſque, & nient obſtant que ils ſurrenderont lour Eſgliſe, tamen le Corporation continue. Et per Dodridge le Dean & Chapter, en tant que ils ſont le Councell del' Eveſque ils ne poient ſurrender lour Corporation; ſed ceo ne ſemble a moy deſtre ley, car Corporation de Dean & Chapter, coment il fuit Spiritual, en un regard, entant que ils per le Canon del' Eſgliſe ſont a doner adviſe, & deſtre a Councell ove le Eveſque, tamen ils ſont un Corporation, & enable de ſuer ou deſtre ſue, & a purchaſe, ou alien, per noſtre ley, ſcilicet, per preſcription, grant le Roy, ou Act de Parliament, en ceo regard ils poient bien diſſolve ceſt Corporation per un Act proper, ſcilicet, per reſignation de tout lour biens, vel per mort de tout le Corporation, & le Roy fuit Patron, & eſt en ſon Election, ou il collate a ceo de novo, ou nemy, car tanque il ad collate le Corporation ſerra ſuſpende; mes ſi Eveſque fuit Patron, donque il ſur le reſignation avera poier a collate, & per ceſt means a continuer le Corporation, & ils tout agree, que nient obſtant le ſurrender, & grant d'Eſgliſe, lour poier de aver vocem in capitulo & locum in choro n'eſt ale, car ceo eſt un collateral choſe al Eſgliſe, & ceſt point eſt bien reſolve accordant, en le caſe de Dean & Chapter de Norwich, & divers authorities a ceo prover ſont la remember, queux fueront remember en argument del' ceſt caſe. Le ſole caſe que ſemble a faire al
Co. pars 3. contra eſt, 12 Eliz. en Seignior Dyer fol. 282. ſed ceo fuit un private reſolution, & auxi le maine point la fuit admitt, que l'un Chapter fuit diſſolve ou l'auter Chapter poet faire bon confirmation, que fuit un doubt, quod vide en le Chapter de Litchfield en Statute 33 H. 8. cap. 30. & auxi poet eſtre, que la le Chapter fuit diſſolve per ceſſion de Dean, & tout le Chapter: Et ſi le ancient Corporation ne fuit diſſolve, donque le ſecond Corporation eſt void, car il neſt novell Corporation, quia le Roy ne fuit appriſe, que fuit un ancient Corporation, & pur ceo, Vide Altonwoods Caſe, & 8 Eliz. le caſe de Toryton faire, neque il eſt un change del' noſme del' ancient Corporation, & ideo le Leaſe fait

per

per eux, & de grant fait al eux per Ed. 6. fuit bon (nient obſtant que ex fundatione E. 6. fuit omitte) en le dit Leaſe & Grant.

(2) Quant al ſecond part del' caſe il fuit auxi reſolve per tout, que il fuit icy un condition, car nient obſtant que il fuit place enter Covenants, come eſt reſolve en Cromwell & Andrews Caſe, Reports Cooke pars 2. & nient obſtant que ils ſont parolls del' leſſee per voy de Covenant uncore eſteant per Indenture parolls de re-entry, & que le Leaſe ſerra void, ceo eſt auxi fort, ſicome il ad eſtre parolls del' leſſee meſme, & coment ceſt point ne fuit reſolve en caſu le Royne & Liſter, tamen le melior opinion eſt iſſint, & le ley ad eſtre priſe tout temps apres, que il ſerra condition. (2) Tout les Juſtices preter le Chief Juſtice tient q̄ le condition extende al grand arbors & tymber creſſant hors de Tavernham, auxibien come al bois & ſubbois en Tavernham Wood, car il eſt direct deins les parolls, car bois & ſouthbois comprehend grand arbors tymber, & auters bois, & il ne appiert que le intention fuit e contra, eo potius, il ſemble que il intende divers grand penalties pur diſturbance de prender le grand arbors, & tymber hors del' Tavernham Wood come deins; ſed Hyde fuit de opinion, que il extende al ſouthbois, & ſouthbois en Tavernham Wood ſolment, quia le condition mention le dit bois & ſouthbois, & ne ſerra bois & ſouthbois en Tavernham Wood, quia en le ſecond exception, grand arbors & tymber ſont ſolment mention, auxi il move, que l'exception eſt void, & nemy conſequens le condition, car tout bois & ſouthbois ſont demiſe, & per except ceo que eſt particularment noſme devant eſt void, & encontre les premiſſes. Sed nota que tout les bois & ſouthbois, car les bois & ſouthbois creſſant hors de Tavernham Wood paſſe, except le grand arbors & tymber de querke fræyne & elme, ideo l'exception bon; ſed le doubt fuit ou condition ſoit enfrient ou nemy. Jones penſe que ne fuit enfreint, car les branches fueront coupe per les Servants del' Dean & Chapter del' Cathedral Eſgliſe ſanctæ & individuæ Trinitatis Norwic' ex fundatione Regis Edwardi Sexti, & per letter d'Atturney fait per eux, & ne fuit aſcun tiel Corporation. Whitlock penſe que le condition ne fuit trove ſufficientment deſtre enfreint, pur ceo que le verdict trove le diſturbance ou Treſpaſs in abſcind parcell Ramorum prædict. & ceo eſt uncertain, & Dodridge fuit auxi de meſme opinion, car poet eſtre, que parcell fuit priſe de null value, poet eſtre que le branches remain ſur le terre, iſſint que ils puiſſont loyalment deſtre diſtrein damage feſant, poet eſtre que le diſturbance fuit per parolls ſolment, que neſt ſufficient ſans auter act, vide pur ceo 16 E. 4. & Francis's Caſe, Cooke pars 8. & Counte de Salops Caſe pars 9. ſed nota que il

eſt trove que al temps, quant branches fueront coupe, le dit Sothertons Servant luy interrupt a carry parcell, & prædict. ne ceo fruſtrate, & ſi fuit aſcun parcell le condition eſt enfreint, & auxi verdict, que le Defendant prift le dit parcell, & eux convert al lour uſe, ideo ceo eſt plus quam parolls, ſed a ceo point, le Chief Juſtice ne parle, car il tient que le dit condition, n'extende al ceo, come eſt dit devant, mes al bois, & ſouthbois en Tavernham Wood ſolment.

Auter point fuit move, ſcilicet, ou le novell Corporation fuit bon, ou le omiſſion ex fundatione Regis Edwardi Sexti, fuit un material variance, pur avoider le Leaſe, & Whitlock, Jones & Hyde penſe que cy, car le noſme del' foundation eſteant adde al noſme del' Corporation eſt un material choſe, & ils relie ſur le caſe de Fiſher & Bois Scholarium Merton queux ount relation al Foundatione Merton & Scholaria Collegii de Merton eſt material variance, & 38 H. 6. fo. 34. Br. tit' Condition: done ſur condition a doner al Abbeſſe, & Nunns de Sion ex fundatione Domini Regis, & done fuit al Abbeſſe & Nunns de Sion enterleſſant ex fundatione Domini Regis, ideo male, & a ceo point Dodridge ne parle, ſed ſemble a moy, que il admitte ceo, & Jones & Hyde tient que le addition de fundatione Regis Edwardi Sexti, quant lour Corporation n'eſt iſſint, mes le Dean & Chapter de Norwich, fait le Leaſe al Plaintiff void. Le darren queſtion move fuit, que Dean & Chapter eſteant hors de poſſeſſion font Leaſe per Indenture, & ceo ſeal, & a meſme temps ils font Letter de Attorney pur enter en le terre & a deliver le dit Indenture, come lour fait al Plaintiff, Jones & Dodridge penſe que le fait ne prift effect, tanque il fuit deliver ſur le terre, vide pur ceo 9 E. 4. 39. per Choke & Jenny accordant, & Carter & Cromwells Caſe 39 Eliz. en B. le Roy, vide Plowden Com. Croſſe & Howells Caſe, ou Leaſe fuit deliver come fait d'un Corporation per letter d'Attorney & bon; ſed Whitlock e contra, & Hyde ne dit riens a ceo, ſed il dit a moy, que il fuit de meſme opinion ove Whitlock, & Judgment fuit done pur Defendant.

Cole's Caſe.

(3) Richard Tracy un Juſtice de Peace de Glouceſter, ſur complaint fait a luy que un Cole Shot ove Hail-ſtone en un Hand-Gunn, & party fuit arreſt, & port devant luy, & ſur examination fuit trove deſtre voyer, il eſteant le prochein Juſtice, en le Countie de Glouceſter, ou le fait fuit fait, & il fiſt recorde de ceo, & commit le party a Priſon, tanque payer a 10 l. 5 l. al Informer, & 5 l. al Roy, & ſur Habeas Corpus ceſt recorde fuit certifie

tiſie, & per totam Curiam, ſcilicet, Hyde, Dodridge, Jones & Whitlock, il fuit tenus, que ſi le Juſtice de Peace, ne obſerve le forme preſcribe per l'eſtatute, donque ne beſoigne aſcun brief d'error, mes ceo fuit void, & coram non judice, mes ſi le Juſtice fait ſolonque l'eſtatute, donque neque Bank le Roy, neque Juſtices de Peace, poient ceo redreſs, neque mitt le party a large.

Gofer *verſus* Gregorie.

(4) HOme port Action ſur le Caſe en le Countie de Southampton, & le Jury aſſeſs damages al 38 l. & pur Coſts al 6 d. & le Judgment fuit quod querens recuperet damna ſua prædict. per Jurat' aſſeſs ad 37 l. & pur coſts de incremento 40 s. quæ in toto attingunt al 39 l. & le Defendant port error, le Court tient que le Judgment fuit aſſets bon, ſans dire ad 37 l. & ceo eſt ſurpluſage, & donque le Judgment bon, & primer Judgment fuit affirme. Vide pur ceo 38 H. 8. enter Sckewis & Trewynnyard en brief d'error.

Croſſman *verſus* Hume.

(5) UN Action fuit port en le Court del' Burrough de Lanceſton in Com' Cornubii, & ils fueront al iſſue, & le venire facias fuit agarde, de viceneto de Lanceſton, que trove pur le Plaintiff, ſur que Judgment fuit done pur le Plaintiff, le Defendant port error, & le ſole error aſſigne que le Plaintiff infra, fuit ou le venire facias fuit bien agarde; il fuit urge pur le Plaintiff en brief d'error que bicounty de Lanceſton poyet extende hors de liberty de Lanceſton, ideo le venire facias doit eſtre de Lanceſton generalment, & pur ceo ils relie ſur 8 H. 5. 8, Le opinion de Cockeyne al meſme purpoſe: ſed per totam Curiam il fuit reſolve que il ſerra intende que les Liberties de Lanceſton extende hors del' Ville de Lanceſton, ideo le venire facias bien agarde, & un preſident 15 Jacobi fuit monſtre en recorde, ou autiel Judgment done en Bank le Roy fuit affirme. Vide Arundells Caſe Report Cooke pars 6. & Proctor & Clifton 8 Jacobi Regis.

Wood *verſus* Bates.

(6) BAte fuit lie en un Obligation al Wood, le condition fuit, que ou il fuit intende que J. S. ſerroit marry al un Abigal, & ſi le dit Abigal ſurvive le dit J. S. & ſi le dit Abigal ne receive deins 2 ans apres mort J. S. 200 l. vel per ſon d'arren volunt, vel per le cuſtom de Londres, que donque le obligee payera al dit Abigal

pur portion adjuſte deins un an apres le dit 2 ans, 100 l. Le Defendant plede que le marriage poſt effect, & que Abigal ſurvive J. S. & il plede que Abigal mozuſt deins 2 ans apres ſon mozt, ſur que le Plaintiff demurre, apres divers arguments al barre, les Juſtices reſolve una voce, que le Plaintiff ſerroit barre, car le condition eſt en le diſjunctive ou ſur contingency, ſcilicet, que ſi le marriage poſt effect, & le dit Abigal ne receive 200 l. deins 2 ans apres ſon mozt, vel per ſon volunt ou Cuſtom de Londres, & le dit Abigal mozuſt deins le dit 2 ans, il deveignant impoſſible, que ceo part ſerroit perfozme per Act de Dieu, & ideo le obligoz n'eſt tenus a perfozmer l'auter part, vide 9 Eliz. Dyer & 21 E. 3. 29. & Eaton & Laughters Caſe, & Tadcaſter & Hobbs Caſe 38 Eliz. en Banco Regis, ſur un bayle, ſi le party mozuſt, le Bayle diſcharge, & iſſint en C. B. 21 Jacobi en Caſu Sowgate & Stiles, & rule done, que Judgment ſerra done accozdant.

Muſgraves Caſe.

(7) ACtion de Treſpaſs fuit pozt per J. S. vers un Muſgrave de Aſſault & Battery, en C. B. & le brief fuit contra pacem noſtram, & le Declaration fuit de Treſpaſs, & Battery en temps de Jadis Roy James, & contra pacem dicti nuper Regis, & per verdict fuit trove pur le Plaintiff & 240 l. damages done, ſur que Judgment done pro querente en C. Banco, ſur que le Defendant pozt brief d'erroz, pur le variance enter le brief & Declaration. Hyde, Jones & Whitlock, (Dodridge eſteant abſente) fueront de opinion, que ceo fuit variance en fozme ſolment, car vi & armis include contra pacem, & ideo ceo fuit helpe per l'eſtatute de 21 Jacobi, & accozdant a lour opinion Judgment fuit affirme. Vide 2 E. 4. 23. 8 E. 4. 4 H. 6. 4. 11 H. 4, &c. & accozdant al ceſt reſolution il fuit reſolve per Crew, Dodridge, Jones & Whitlock en Reading Terme, Davenport dit que en Caſu Wing en C. Banke, il fuit tenus per Curiam que ſi home declare d'un Leaſe en temps Roy James, ſur brief de Ejectione firmæ pozt, & commence en temps Roy Charles, & alledge Ejectment en temps Roy Charles, & ſur evidence il appiert, que fuit en temps Roy James, le Plaintiff per opinion del' Court fuit nonſue, car la le Defendant puiſſoit demurre ſur le evidence, ſans verdict, & null variance helpe per 21 Jac. niſi fuit un verdict.

Le

Le Maſon *verſus* Dixon.

LE Maſon come Executor de J. S. port Action ſur le Caſe vers Dixon, & declare que J. S. en ſon vie ſue un latitat vers J. N. al entent a declarer (quant il fuit arreſt & ad trove Bayle) vers luy en Dett, ſur que le Viſcount de Middleſex fiſt un warrant al Dixon Baylie del' Libertie del' Seignior Wentworth, que returne cepi corpus, & apres luy ſuffer d'eſcape, iſſint que il ne puiſſoit declare vers J. N. apres J. S. morust, & le Defendant demurre en ley ſur le Declaration; ceſt caſe fuit ſeveral temps argue al barre, & ceſt Terme il fuit debate per le Court, Whitlock & Dodridge fueront de opinion que Action giſt, Hyde & Jones e contra; ils fueront deux queſtions debate; Primes, ou Action ſur le Caſe devant 4 E. 3. al Common Ley giſt per Executor? (2) Ou le Statute de 4 E. 3. ad done remedy ou nemy? Quant al primer (& come jeo conceive) mon frere Dodridge tient, que al Common Ley Action giſt & il dit que fueront Actions ex contractu. 2. Quaſi ex contractu. 3. Ex maleficio ſolment: touts Actions queux ount lour commencement ſur contract giſt per Executors al Common Ley, come Dett Covenant, & ſimilia. 2. Ceux queux ne ſont merement ex contractu, mes ount relation al un contract, come ceſt Caſe fuit, le original Indenture fait un contract, ſcilicet, le Dett, & le Secondary cauſe fuit l'eſcape, apres le Arreſt, & iſſint il eſt quaſi ex contractu, ideo ſemble a luy que Action giſt en ceſt caſe al Common Ley, mes Actions queux merement fuerunt ex maleficio, come Treſpaſs vi & armis, Battery & ſimilia, un Executor ne poet aver per le Common Ley; ſed Hyde, Jones & Whitlock e contra, que null Action giſt al Common Ley, car ceſt Action ne ad aſcun relation al un contract, ſed eſt merement ground, ſur le tort del' Baylie, que ſuffer le Priſoner d'eſcape, & le Executor ad remedy pur le Dett vers J. N. nient obſtant l'eſcape, & come al Common Ley, null Action giſt vers Executor del' Baylie, come tenuſt 15 Eliz. Dyer, iſſint neque giſt per Executor ſur eſcape en temps le Teſtator, ſed ils diſont, que ſi biens fueront priſe de J. S. tortioulment, en ceo caſe ſi J. S. morust, le Executor, coment il ne poet aver Treſpaſs al Common Ley, tamen ſi les biens, ne fueront conſume, l'executor puiſſoit aver replevyn, come 34 E. 2. Tit' Avowry 257. & 17 E. 2. Tit' Executor 105. & iſſint un briefe de detinue, car le choſe meſme deſire recover, & le property continue al Executor, & iſſint ſi J. S. priſt biens tortioulment, & morust, ſi les biens fueront conſume, null Treſpaſs giſt vers Executor J. S. mes (8)

mes ſi le Executors ount les biens en lour poſſeſſion, donque detinue giſt vers eux, ſur lour poſſeſſion demeſne. 21 H. 6. 2. & Dodridge agree al ceo, & Jones dit que tout Actions ſur contract ne giſont per Executors al Common Ley, car null account giſt per Executors devant l'eſtatute de Weſt. 2. que done account pur Executor, & a ceſt jour, null account giſt vers Executors, car ceſt account ſuit choſe en privity perenter les parties meſme, le que eſtranger ne poet aver perfect conuſance.

Quant al 2 point Dodridge & Whitlock teignont, que admitt null tiel Action ſur le Caſe giſt per Executor al Common Ley, tamen per le Statute il eſt done, ſcilicet, per equity, car l'eſtatute de 4 E. 3. eſt priſe largement per equity, Vide Report Cooke pars 5. Ruſſells Caſe. Action ſur le Caſe ſur trover & converſion de biens en temps le Teſtator giſt per Executor. 7 H. 4. 6. Ejectione firmæ giſt per Executor ſur Ejectment en temps le Teſtator. 6 H. 4. 6. 11 H. 4. 54. Raviſhment de garde giſt per Executor pur Raviſhment en temps le Teſtator, & Mich. 32 & 33 Eliz. Coles Caſe en Com' B. home ſuit grantee del' prochein avoidance del' grant Eveſque de Coventry & Litchfield, & Eſgliſe devient void, & eſtranger preſent & uſurpe, le Teſtator mourſt deins 6 moies, & le Executor port un Quare impedit, & adjudge que le Action giſt, & Whitlock dit que pur advancement de Common Juſtice il ſuit bien a extender ceſt Statute per Equity a tant, que poet per reaſon & bon conſtruction, ideo iſs concludc, que en ceſt caſe, que le party per eſcape ſuit en ſon vie prevent de ſon Action pur Dett, ideo ceſt Action giſt aſſets bien.

Hyde & Jones e contra, que ceſt Statute de 4 E. 3. ne done remedy pur le Plaintiff, les parolls del' Statute ſont, Whereas in times paſt Executors had no Action for a Treſpaſs done to their Teſtator, as of Goods and Chattells of the ſaid Teſtator carried away in their Life, and ſo ſuch things hitherto have remained unpuniſhed, It is Enacted, That Executors in ſuch caſes ſhall have Actions againſt the Treſpaſſors, and recover their damage, in like manner, as they whoſe Executors they were ſhould have had if they were alive. (1) Ceſt Statute done remedy de biens & Chattells ſolment, & nemy pur aſcun auter Treſpaſs, come Aſſault & Battery, Slander, Deceit, Falſe-impriſonment, & ſimilia; imo il ne done pur cloſe debruſe, ou couper de Arbors in vita Teſtatoris, quod vide 11 H. 4. 3. 18 E. 4. 16. 2 R. 3. 2. & 4. E. 4. 5. car ceux ne ſont biens, & Chattells, & en noſtre caſe, coment le party ſuit priſe al intent pur declarer en Dett, tamen le Treſpaſs ſuit a ſuffer luy d'eſcape, que ne ſuit neque biens priſe, ne Chattells, & null tort fait a ſon biens ou Chattells,

Chattells, & le caſes cite poient eſtre bien reſponde; le caſe de Action ſur le Caſe de biens convert, ceo eſt directment deins l'eſtatute, car fueront biens priſe, & l'eſtatute ne lie le partie al Action de Treſpaſs, car eſt que avera Action ſolonque ſon caſe. Le caſe de Ejectione firmæ, la il fuit pur Chattell, iſſint pur Ravishment de garde; & le caſe de Quare impedit, & la auxi le choſe meſme fuit en being, & d'eſtre recover, & ideo il poet eſtre maintain, que fuit maintainable al Common Ley, ſed cleerment per l'eſtatute, car ils fueront Chattells, iſſint ſi un Tenant per Statute, & il fuit ouſte l'executor averoit Aſſiſe, car il fuit un Chattell continuant, & entant que en noſtre caſe il n'eſt, neque bona neque Catalla, il ne ſerra priſe per Equity, nient plus, quam le caſes de Treſpaſs de Batterie, Faiſe impriſonment, arbors coupe, & auters Action; & ſic pendit indeciſa.

Jones *verſus* Roe.

EN un Appeal ſur Commiſſion delegatory agarde al Jones, Whitlock, Crooke & Yelverton Juſtices, & Doctor Steward, Doctor Pope, & auters, le caſe fuit tiel, ou le adminiſtration del' biens le feme doit eſtre agarde & committe al Baron de mero Jure ou nemy? Et Jones, Whitlock, & Yelverton fueront de opinion que il doit (abſente Crooke) les 2 Doctors al contra, & les reaſons del' Juſtices fuit come enſuera; devant l'eſtatute de 31 E. 3. le Ordinary avoit power ſolment a medler ove les biens en poſſeſſion de un home inteſtate, & n'avoit aſcun a faire ove Detts ou choſes en Action, neque puiſſoit releaſe aſcun Dett, neque aver ſuite pur ceo, mes ſi le Dettor voloit voluntarement payer al Ordinary, donque il poet ceo receive, & ceo diſtribute, auribien come les auters biens del' Teſtator in pios uſus, quod vide en Greſholds Caſe Plow. Comennt' & 12 H. 7. 22. & tout les livers. (9)

(2) Devant le dit Statute, il ſemble que le Ordinary n'ad riens a faire ove les biens, ou Detts d'un feme-Covert, (niſi ou el fuit Executrix al un auter, & les biens ou Detts nient adminiſter) car les biens en poſſeſſion del' feme, fuit del' Baron per l'intermarriage, & le feme n'ad riens en eux, mes del' choſes en Action le baron durant le Coverture poet eux releaſer ſil voet, mes ſi le feme devant recovery mort, le baron ne puiſſoit ſuer pur eux, neque le ordinary a faire ove eux, ſed le Dettor avera le profit de ceo. Mes le courſe en tiel caſe a ceo prevent fuit, a faire Executor, quel le feme puiſſoit faire ove aſſent ſa baron, mes nemy ſans conſent, & el puiſſoit faire ſa baron Executor, & il per ceſt means come Executor le feme puiſſoit recover les Detts.

Detts 39 H. 6. 27. & 51. 22 H. 7. 22. 26 E. 3. 71. 6 E. 2. Fitz. Executor. 109. 4 H. 6. 31. 32. 5 E. 2. Fitz. Deviſe. 24 & 28 H. 8. Cap. 9. Statute Hiberniæ.

(3) L'eſtatute de 31 E. 3. done power al ordinary a commiter Adminiſtration al prochein, & pluis loyal amie del' inteſtate, que avoit power a diſpoſer del' biens pro ſalute animæ, & null pluis prochein, & pluis loyall amy al feme, que le baron, & il quant ſa feme mozuſt eſt cy, que prist care pur le Funeral, & auters choſes pertinent a luy, & ideo a luy le Adminiſtration doit eſtre committ; & cel power done al ordinary doit eſtre ſtrictment purſue & nemy deſtre garde per ſon diſcretion, & ie Statute de 22 H. 8. n'extende al ceſt caſe, car ceo ou le baron mozuſt inteſtate, le Widow ou le prochein de ſank ſerront adjoin en un, mes ſi feme fuit Executrix, & mozuſt inteſtate, la le Ordinary poet committ ceo ad pluis prochein amies del' primer Teſtator, & pur le maine point, il eſt iſſint reſolve en Caſu Ognell, Report Cooke pars 4. & ſur tout le dit reaſons, il fueront de opinion ut avandit.

Termino

Termino Paſch. An. IV. Caroli Regis, *in* Banco Regis.

Younge *verſus* Yonge.

RIchard Young port formedon en diſcender vers William Yonge pur terres en le Counte de Salop, & pur ceo que le demandant fuit un Infant, il fuit admitte a ſuer per ſon Gardein, & apres les parties fueront al iſſue, & le mean enter le d'arrein continuance, & le jour de niſi prius, le demandant vient al plein age. Et al niſi prius il appiert per ſon Attorney, & le Jury pur part trove pur le demandant, & pur auter part pur le Tenant, al jour en Banke le demandant ad Judgment de recover pur part, & il fuit amerce pur l'auter part, le Tenant port erroꝛ, & aſſigne pur erroꝛ, (primes) que null pledges fueront trove, quant il vient al plein Age. (2) Que le demandant appiert al primes per Gardein, ou il doit appear per prochein amy; le Defendant en bief d'erroꝛ joine en nullo eſt erratum, le original ne fuit certifie. Primes il fuit agree per Curiam, un Infant Plaintiff ou demandant poet appear, & proſecute, vel per prochein amy, ou Gardein al Election. Vide Report Cooke pars 4. Rawlins's Caſe. Quant al auter erroꝛ, ils agree que les pledges ſont requiſite, que ne ſi non ſont trove il eſt erroꝛ, & un Judgment apres verdict ſerra reverſe pur ceo, quod vide 12 Eliz. Dyer; Et le Judgment en le caſe enter Moore & Huſſy, Report Cooke pars 9. fuit apres reverſe pur ceſt cauſe, & pledges poient eſtre trove en Chancery, quant le bief eſt ſue, ou apres ſur returne del' ceo devant le viſcont, vel apres le returne en Court, mes en Aſſiſe 2 H. 4. fol. 20. les pledges doient eſtre trove al pluis devant returne del' bief. Vide Calvyns Caſe Report Cooke pars 7. Il fuit agree per Curiam, que nient trover del' pledges come ceſt caſe, n'eſt erroꝛ, car Infant ne beſoigne al primes trover aſcun ſecurity, & ſi Judgment ſoit done encontre luy durant ſon nonage, il ne ſerra amerce, mes ſi vient al (1)

plein age pendant le plea, donque il doit appear per Attorney ſi ſerra amerce, ſi apres ſoit un Judgment done vers luy, ſed icy entant que original ne fuit certifie, il poet eſtre que pledges fuit trove ſur le brief, & ceo eſt bon coment ſoit Infant, car un Infant poet trover pledges ſil voilt, mes il n'eſt compellable. (2) Il n'eſt cleere que un Infant quant il vient al plein age trovera pledges, mes admitte que il ſerroit compell a trover pledges, tamen come le caſe en queſtion eſt il n'ad aſcun temps a trover eux, car al jour del' niſi prius a quant temps il fuit de plein age, il ne poet trover pledges, & al jour en Banco il eſt d'aver Judgment, per que il fuit adjudge, per totam Curiam; que le Judgment ſerroit affirme.

Termino

Termino Trin. An. IV. Caroli Regis, *in* Banco Regis.

Rivett *verſus* Godſon.

EN Dett enter Rivett & Godſon, le caſe fuit tiel; (1) home Covenant en conſideration de natural amour & affection de eſtoier ſeiſie de certain terres al uſe luy meſme pur vie, remainder al ſon fits en tayle, & al intent que ſon fits averoit un Rent durant vie ſon pere; le fits mozuſt, & ſes Executozs poztant Dett pur le Rent, & per Dodridge, Jones & Whitlock il fuit reſolve, & iſſint adjudge, que per le clauſe en 27 H. 8. ou aſcun eſtoit ſeize al intent que un avera Rent, le fits en ceſt caſe avoit un bon Rent, auxibien ſur Covenant come ſur feoffment iſſint ſi bargain & ſale fuit, rendant Rent ceo eſt deins le dit clauſe; Vide Cromwells Caſe pars 2. fol. 72. & Dyer 362.

Williams *verſus* Lloyd.

ADam Williams pozt Action ſur le Caſe vers Allain Lloyd, & declare, que il deliver un chivall al Defendant, & il aſſume a re-deliver ceo ſur requeſt, & que coment il fuit requeſt a redeliver le chivall, il refuſe. Le Defendant plede, que le chivall fuit malade, & mozuſt, & que le Plaintiff apzes le mozt de chivall fiſt requeſt, ſur que le Plaintiff demurre, & per Hyde, Jones & Whitlock (abſente Dodridge) il fuit reſolve, que le Plaintiff ſerroit barre; quant home apzompt & deliver un chivall al un, & il mozuſt ſans aſcun default ou negligence del' Defendant, en ceo caſe le baylie ſerra diſcharge, & pur pzof del' ceo ils cite Exodus 22. ver. 10. & Bracton lib. 2. fol. 80. (vide auri 40 E. 3. 6.) (2) (2) Admitte que il fuit aſſumpſit a ceo deliver ſur requeſt, ſi le chivall mozuſt devant, ceo eſt deveigne impoſſible per Act de Dieu, ideo le party ſerra diſcharge, auxibien ſicome un Obliga-

tion ad eſtre fait ove condition a deliver le chivall ſur requeſt, & il mourſt devant, le condition devient impoſſible per Act de Dieu, ideo il ſerra diſcharge, & Jones cite 22 Aſſ. 41. home port Action ſur le caſe vers un, pur ceo que il ad aſſume a carier ſon chivall ſafe ultra le Ferry de Hunt' & que le Defendant ad ſurcharge ſon Boat, iſſint que ſon chivall fuit ſurround, & il plede rien culpable, & la agree, que ſil n'ad ſurcharge le Batew, coment que le chivall fuit ſurround, null Action giſt, nient obſtant le aſſumpſit, mes ſil ſurcharge le Batew auterment, car la il default & negligence en le party, & il fuit adjudge en le caſe en queſtion vers le Plaintiff.

Eaton *verſus* Butter.

(7) Richard Eaton & Judith ſa feme Adminiſtratrix William Butter port Dett vers Margaret Butter Executrix John Butter & declare ſur Obligation de 200 l. marks fait per le Teſtator.

Le condition del' quel Obligation fuit tiel, That if the within bounden John Butter (que fuit le Teſtator) ſhall happen to die without Iſſue of his body lawfully to be gotten, That then, if the ſaid John Butter by his laſt Will, or otherwiſe in writing, ſhall in his life time lawfully aſſure, or convey to the ſaid William Butter his Heirs and Aſſigns, certain terres en le dit condition mentioned.

Or elſe if the ſaid John Butter ſolely or jointly, with his Wife, or the Heir or Heirs of his Body, ſhall not at any time ſuffer, or permit a recovery by Writ of Right, or by Writ of Entry ſur diſſeiſin of the ſaid Lands, That then the Obligation to be void, &c. Le Defendant plede que le dit William Butter en vie le dit John Butter le obligor mourſt, iſſint que le dit John Butter ne puiſſoit convey per ſon darren volunt, ou auterment en ſcript le dit terre al dit William Butter, & ſes Heirs, ſur que le Plaintiff demurre en Ley. Et apres ſeveral arguments al barre; les Judges deliver lour opinion ceſt Term. Le queſtions fuerent deux (ſcilicet) ou condition fuit repugnant ou impoſſible al commencement, ſcilicet, entant que il fuit que ſil mourſt ſans iſſue, que donque per ſon darren volunt ou auterment il voloit convey le dit terres, & il doit primes morer ſans iſſue, devant que le conveyance ſerroit fait, & apres ſon mort il ne puiſſoit faire ceſt conveyance, ideo il fuit impoſſible & repugnant condition, & le condition eſteant repugnant, & impoſſible al commencement, le obligation fuit abſolute, & de cel opinion fuit Dodridge, & auxi tient que il fuit un auter repugnancy en le condition, pur ceo que il fuit, que il ne ſuffera ou permittera aſcun recovery, & n'eſt

mention

mention que serra demandant : sed les trois auters Judges fueront e contra ; car le condition esteant fait en benefit del' obligor avera construction solonque intendment del' parties destre collect hors del' parolls del' condition, & le intention del' parties fuit, que un conveyance serra fait per le Obligor en son vie per son volunt ou auterment del' terres, issint que ils remaineront al William Butter & ses Heirs en default de Heirs de corps John Butter, vel si moroit sans Heirs, & l'auter objection de contrariety, ne fuit force, car home poet lie luy mesme, en le negative, que il ne suffera ascun recovery, al ascun person quecunque.

Le second point fuit, home est lye en un obligation durant son vie a conveyer al obligee, & ses heirs certain terres, & le obligee morust en vie le obligor, ou le condition soit save ou auterment il doit faire un conveyance al heire del' obligee. Whitlock & Jones tient, que le obligor doit faire conveyance al heire ; car ils agree tout, que si Obligation soet fait, & le condition fuit possible al commencement al primes, & apres ceo devient impossible per Act de Dieu, en ceo case le party est discharge ; mes Whitlock & Jones disont, que quand un condition ne poet estre literalment performe per Act de Dieu, il serra perform cy-pres l'entent del' parties come poet estre, & quant le obligee morust il ne poet estre fait a luy, ideo cy-pres come poet estre (scilicet) a son Heirs, ils relie sur le case de 2 H. 4. & Littleton & Cromwells Case, Report Cooke pars 2. & 15 H. 7. 2. terres done sur condition de enfeoff J. S. & sa feme, & les heirs de lour corps, remainder al droit heirs le baron, le baron & feme ount issue, le conveyance serra fait al issue apres lour mort, & al heirs le baron ; & si feffment soet fait al un sur condition d'enfeoff deux, & lour heirs, ambideux morust, le heire del' survivor doit estre enfeoff. Vide a ceo purpose opinion Inq. 4 H. 7. 3. & Newton 19 H. 6. 7. Sed Dodridge & Hyde Chief Justice e contra. Hyde prist difference perenter Obligation de faire feffment, la si le partie morust ne serra fait al son heire, Vide 2 E. 4. opinion Choke, & 14 E. 4. 3. & si feffment fuit fait sur condition de enfeoff J. S. & ses heirs, la il serra fait al heire si le partie morust, & le reason de Dodridge fuit, que fuit ceo per feffment, ou condition de Obligation si le partie a que le feffment fuit destre fait, morust ne serra fait al heire, pur ceo que il fuit intende, que mesme heire prendera per discent, & per voy de limitation, & nemy purchase, quel opinion est e contra Littleton, & les cases devant remember, & Judgment fuit done pro querente ; quia Dodridge tient que le condition repugnant, & ideo le obligation absolute, & Whitlock & Jones tient que le obligor duissoit enfeoff le heire, & Hyde assent que Judgment serroit done pro querente.

Pickering

Pickering *verſus* Gunning.

(4) Action ſur le Caſe.

PIckering port Action ſur le caſe vers Gunning, & ſa feme, & declare, que feme le Defendant dum ſola fuit promiſe en conſideration, que le Plaintiff trove a luy manger & bois, & paine pur ſa erudition 7 l. a payer al Plaintiff le dit 7 l. & apres el marrie l'auter Defendant, le Defendant plede que le dit feme al temps del' dit aſſumpſit fuit deins age, ſur que le Plaintiff demurre; & il fuit adjudge per tout les 4 Juſtices, que le Action giſt pur le Plaintiff; car Action ſur le caſe pur manger & bois giſt vers Infant, auxibien come Action de Dett, & ceo auxi bien pur argent expend pur erudition, come pur manger & boyer, &c.

Whitton *verſus* Richard Weſton *Militem.*

(5)

WIlliam Whitton port Dett pur non exposer de diſmes, ſur l'eſtatute de 2 E. 6. vers Richard Weſton chivaler, & declare que il fuit Parſon de Merowe en Com' Suſſex, deins quel' Pariſh, le dit Richard fuit poſſeſs de certain terres, & annis 21 & 22 Jacobi, ſemina eux ove bles, & en le dit ans il carrie, & ſever le grain, ſans exposer de diſmes, per que il demand le value de ceo amountant al 113 l. 14 s. Le Defendant quant al parcell plede non debet, quant al reſidue, il plede un ſpecial plee (ſcilicet) que Prior de St. Johns de Jeruſalem in Anglia fuit ſeize en fee en droit de ſon Hoſpitall del' dit terres, & auxi teignont 28 Aprilis Anno 31 H. 8. & que il fuit del' order del' Hoſpitillers, & que il, & ſes predeceſſors ratione Ordinis ſuæ, hors de temps de memory tiont les terres diſcharge de payment de diſmes, & il plede l'eſtatute de 31 H. 8. pur diſſolution de Monaſteries, & auxi l'eſtatute de 32 H. 8. pur diſſolution del' Hoſpitellers, & l'eſtatute de 2 E. 6. pur payment de diſmes en manner come il ad eſtre pay 40 anns devant, & que per le diſſolution le dit terres vient al mains H. 8. & que il, ratione Statutorum prædictorum, tient les dit terres diſcharge de payment de diſmes, que grant ceo al Anceſtour del' Defendant, & il fiſt conveyance del' ceſt Anceſtour a luy meſme, per ſeveral mean diſcents, & que il ſemina le terre les dits anns, & eux ſever & carrie ſans exposer de diſmes, come bien a luy fuit, ſur quel plee, le Plaintiff demurre en ley generalment.

Ceſt caſe fuit ſeveral foits argue al barre, & apres en ceſt Terme, il fuit argue per les 4 Juſtices, a deux jours. Le maine queſtion pur matter en Ley, fuit ou le dit terres fueront diſcharge de payment de diſmes, aut per l'eſtatute de 31 H. 8,

aut

aut per l'eſtatute de 32 H. 8. aut per ambideux enſemble, ou nemy?

Whitlock tient que les dit terres ne fueront diſcharge de diſmes, neque l'un voy, neque l'auter. Hyde Chief Juſtice tient, que ils fueront diſcharge per 32 H. 8. & nemy per 31 H. 8. & Dodridge & Jones teignont, que ils fueront diſcharge, per l'eſtatute de 31 H. 8. & admittant que l'eſtatute de 31 H. 8. ne eux diſcharge, tamen l'eſtatute de 32 H. 8. fiſt; iſſint ſur le matter. 3 Juſtices fueront d'opinion pur Defendant, & Whitlock ſolment pro querente.

Ils agree tout, que le dit caſe, coment il ne fuit grand, en le particular en queſtion, tamen en le general, il fuit un queſtion de grand conſequence, & concerne touts les poſſeſſions del' dit Hoſpitallers, que fuit valde grand. Ideo il fuit requiſite que ſerroit diſcuſſe, ove grand deliberation & advice, queux ils ount fait.

Les queſtions fueront 4. (1) Sur l'eſtatute de 31 H. 8. Et (2) ſur l'eſtatute de 32 H. 8. Les 2 queſtions ſur 31 H. 8. fueront. 1. Du ceſt Corporation fuit un Religious & Eccleſiaſtical Corporation, & iſſint en regard del' nature del' Corporation deins l'eſtatute de 31 H. 8. (2) (Que fuit le pluis grand queſtion) ou le clauſe de Exoneration de diſmes, que fuit done per 31 H. 8. ſerroit extend al ceux terres, queux fueront done al Roy per l'eſtatute de 32 H. 8. & nemy per 31 H. 8.

Les 2 queſtions ſur 32 H. 8. fueront. 1. Quant le Corporation de Hoſpitellers fueront diſſolve per 32 H. 8. & tout lour Poſſeſſions, Hereditaments & Priviledges done al Roy, ou ceſt Priviledge, quel le dit Corporation avoit, deſtre diſcharge de diſmes, fuit done al Roy ou nemy?

(2) Admitt que il fuit done al Roy: ou ceo extende ou a Patentees & Aſſigns, le Roy ou nemy; les parolls del' Statute eſteant, que les Poſſeſſions & Priviledges fueront done al Roy, & ſes Heirs & Succeſſors, & nemy al ſon Aſſigns per ſpecial noſme.

Dodridge, Jones & Whitlock argue que le dit Corporation fuit un Religious, & Eccleſiaſtical Corporation deins les parolls de 31 H. 8. Dodridge & Whitlock parle mult fort bien, hors des Hiſtories & Canon Leys, & conſtitution del' Eſgliſe, del' origine, nature, & condition del' ceſt Corporation, & per eux 3. il fuit primes introduce al ceſt Realm circiter le anne 114. Quod vide en le caſe de Suttons Hoſpitall pars 10. & Matthew Paris, & Cambden en le deſcription de Countie de Middleſex, en ſon Britannia. Ils trois agreeont, que primes il fuit un Religious Order, & ils fueront profeſs, & lye al obedience, Chaſtity & Pauperty, & aſſume un habit Religious, & ils fueront perſons deny & diſable a purchaſe terres. 1 E. 3. 9. niſi en lour Politick Capacity; & fuit plede que

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le party fuit profeſs, & de le order de Templars & bon plee. 31 E. 2. Fitz. Triall 98. 99. La il fuit plede, que le Plaintiff fuit profeſs en le Order de St. Johns de Jeruſalem, & bon plee. Et 12 R. 2. Fitz. non hability 4. ou tiel plee tenuſt bon; & la il appiert, que el fuit un feme de ceſt Order. 19 E. 3. Fitz. tit' Feffment 68. & 19 Aſſ. pl. 9. que un commander (que fuit un deſouth le obedience del' Prior) ne puiſſoit faire feoffment, car mort perſon en Ley, & 22 R. 2. Fitz. Treſpaſs 33. il appiert q̃ il fuit Abbot de ceſt Order, q̃ fuit mort perſon en Ley, & Religious, & le profeſſion ſerra trie per pais, car ils fueront exempt per le Pape de Viſitation del' Ordinary, & le Court ne poet eſcrier al Pape, ideo ſerra trie per le payes. 2 R. 3. fol. 4. 22 H. 7. fol. 7. & 31 E. 2. Fitz. Triall 99. Vide 27 H. 8. le caſe de Martyn Docwra, que prove que ils ſont mort perſons en Ley, & le Statute de lour diſſolution 32 H. 8. fiſt ceo clere, car la ſeveral foits ils fueront appell Religious, & fuerent diſcharge de lour Order, & fueront fait capable a ſuer al Common Ley, & a purchaſe, ſed coment les freres ne puiſſont al Common Ley ſuer, pur ceo que ils fueront mort perſons en Ley, tamen le Prior puiſſoit ſuer, quod vide 32 H. 8. fol. 5. & Fitz. natura Brevium, en tit' ſine Aſſenſu Capituli. 42 E. 3. 22. & 44 E. 3. 16. & mults auters livers.

Et il eſt auſi Eccleſiaſtical, car ceo eſt le genus; & le Species ſont aut regular Religious, aut Secular, & coment que ils ne ſont deins Orders, & Clerkes, tamen ſont Eccleſiaſtical, car ils fueront deſouth le Viſitation del' Pape, & priſont lour original foundation de luy, come appiert en le dit Statute de 32 H. 8. ideo ils ſont Eccleſiaſtical, car il ne unque claime aſcun poier, niſi ſupra Eccleſiaſticos. Fit. Nat. Brevium fol. 194. breve de ſine Aſſenſu Capituli port per le Prior, quod clamat eſſe jus Eccleſiæ, ideo ils ſont Eccleſiaſtical; & per Jones' null perſon poyet claime diſcharge de diſmes, niſi Eccleſiaſtical. Report Cooke Wrights Caſe pars 2. & null perſon capable d'un impropriation, niſi Eccleſiaſtical, quod vide Grendons Caſe en le Coment: Et ceſt Corporation fuit capable de ambideux, car il fuit un Eccleſiaſtical Corporation, & per 26 H. 8. 2. il patera Firſt-fruits, & diſmes come Eccleſiaſtical Perſon. & per Jones coment ceſt Order fuit foundue per le Pape, & ount lour rules, & habits de luy, tamen ils ne fueront capable a prender terre, ou de ſue, ou deſtre ſue, niſi per preſcription, ou Patent le Roy, ou per Parliament, car ceo fuit un temporal poyer, & ne poet eſtre deduce del' Pape, neque puiſſoit il (quant il uſurpe poyer icy) faire aſcun Corporation able, a ſuer ou deſtre ſue; quod vide 9 H. 6. 16. ou le Roy fiſt Licence al un a founder un Chantry, & exception priſe pur ceo, que null Licence del Ordinary, & non allocatur. Et ils trois concludont,

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que il fuit un Religious, & Eccleſiaſtical Corporation deins l'eſtatute de 31 H. 8. & il poet eſtre ambideux, car ſi fuit Eccleſiaſtical ſolment, & nemy Religious, ceo fuit hors del' Statute; quod vide en le caſe de Archeveſque de Canterbury, Cooke pars 2. ſed Hyde ne parle riens, neque deliver aſcun opinion pur ceſt point, pur ceo que il teigne pur le ſecond point, que l'eſtatute de 31 H. 8. ne done aſcun diſcharge. Quant al ſecond point ſur l'eſtatute de 31 H. 8. Whitlock, & le Chief Juſtice argue, que les terres ne tueront diſcharge per 31 H. 8. ils diſont, que ceſt Statute ne done aſcun terres, ou Monaſteries, ſed ſettle les terres en le Roy del' Monaſteries diſſolve ou deſtre diſſolve, come eſt tenuſt primo Marie 111. & le caſe de Archeveſque de Canterbury pars 2, & come Whitlock dit, ceſt Statute fuit biſrons, il ad relation al Monaſteries diſſolve devant le Act, & auxi al ceux Monaſteries deſtre diſſolve apres, & lour poſſeſſions, quod fuit conceſſum per tout, ſed ils diſont ultra, que le intent, & parolls del' Statute fuit ſolment a doner ceſt diſcharge al ceux terres ſolment, queux vient al Roy per vertue del' ceſt Act, & nemy per virtue del' aſcun auter Act, ideo il ne extende al terres, queux vient al Roy per l'eſtatute de 27 H. 8. pur diſſolution de petit Monaſteries, come fuit reſolve en Caſu Wright & Gerard in Com' Banke 18 Jac. neq; al terres, queux vient al Roy per Statute de 1 E. 6. de Chaunteries, come auxi reſolve en Caſu de Archeveſque de Canterbury pars 2, neq; al terres, queux vient al Roy, per le Statute de 32 H. 8. come fuit adjudge come Whitlock dit, Hill. 44. Eliz. B. R. en Caſu Quarles & Spurling Rot. 994. que adonque commence, & 2 Jac. iſſint adjudge, & les parolls del' clauſe de diſcharge en le preamble, & auxi en le concluſion ſont late Monaſteries, & nemy generalment & coment le purview ſoit general, tamen il eſt qualifie per le preamble, & avera relation al preamble, & il eſt clære come ils diſont, que ceux terres, ne vient al Roy per force de 31 H. 8. ſed per l'eſtatute de 32 H. 8. ſolment, pur deux reaſons, le primer reaſon fuit, que doit eſtre terres, vient al Roy per diſſolution, ſurrender, renouncing ou per aſcun auter means. Il ne vient per relinquiſhment, per Renouncing, ou Surrender, ſed per Act de Parliament, & auter means ne include Act de Parliament, ſed doit eſtre pluis baſe means, quam Act de Parliament, & ſur ceo ils cite l'eſtatute de Marlebridge, que done remedy al Succeſſors d'Abbots, ou auter Prelates pur biens les Eſgliſe priſe en temps laps ou vacation, ceo n'extende al Eveſque (ſed nota, que Succeſſor d'Eveſque n'ad riens a faire, ove biens del' Eveſque, ſed eux remaine al Executors del' Eveſque, auxi ils citont le caſe 2 Mariæ en Seignior Dyer fol. 109. ſur l'eſtatute de Weſt. 2. que done le contra formam donationis vers Abbotts & auter Religious

homes, ceo n'extende al Evesque, que est pluis hault, & issint sur l'estatute de 13 Eliz. de Leases fait per Dean & Chapter & auter Ecclesiastical Persons, ceo n'extende al Evesque, queux cases sont mise en le dit case de Evesque de Canterbury: 2. Ils disont, que posito, que auter means include Act de Parliament, tamen quant le succeeding Statute de 32 H. 8. dit, que les terres serront veste en le Roy, per cest Statute, ceo controll le precedent Statute de 31 H. 8. car leges posteriores abrogant priores, lou ils sont direct contrary, per que ils conclude que l'estatute de 31 H. 8. ne done cest discharge: Dodridge & Jones e contra, ils disont primes, que cest point ne fuit unque adjudge, come ils perceive per enquiry, car cest point fuit en question en le Common Banke, enter Urry & Bowyer, le Court fuit devide 2, scilicet, Cooke & Nicholls, que ils serront subject al payment de dismes, Winch & Warburton e contra, & quant al case de Spurling & Quarles, coment ceo fuit adjudge, tamen ceo fuit sur auter reason, car la il ne fuit trove per le verdict (que fuit un special verdict) que les dit terres vient per dissolution al Roy, neque fuit ascun mention fait del' Statute de 32 H. 8. & donque, si ne fuit un dissolution (come il fuit en le dit case) le termor paiera dismes, & apres le Judgment en Spurlings Case, & apres le dit division en Casu de Urry & Bowyer, il fuit fait un point en le Serjeants Case; ideo ceo prove, q̄ le case ne fuit unq; adjudge, car null case adjudge est use destre mitte en le case de Serjeants, sed un point de doubt, q̄ est en controversie: Dodridge dit que le reason del' fesance del' Statute de 32 H. 8. fuit sur necessity, pur ceo que cest Corporation avoit poyer a purchase terres, sed nemy d'alien terres, ideo sans Acts de Parliament ils ne pusssant surrender, sed semble a Jones que ils pussont surrender, car coment fuit grand Order, tamen il fuit particular Corporation, icy que ad poyer de sue & destre sue, & a purchase & alien: 32 H. 6. 5. & ceo prove l'estatute de 33 H. 8. 5. en Ireland, car la appiert que devant le fesance del' dit Statute, le Prior de St. Johns de Kilmaynham ad fait un surrender al Roy, sed le voier reason, come Jones pense fuit, pur ceo que ils fuerunt ultra mare, & ils ne voilont surrender; neque pussoint estre compell, come appiert per le preamble de 32 H. 8. aust Dodridge dit, que ceux parolls, auter means quecunq; include Act de Parliament, car ne fuit ascun means pur condey le terre al Roy, nisi per Act de Parliament, & tiel le means particularment mentioned en le Statute de 31 H. 8. ideo come il pense cest dissolution per 32 H. 8. est deins les parolls auter means, & issint deins les parolls de 31 H. 8. Jones dit que entant que cest point fuit auterment resolve per le dit case de Maidstone, il ceo grant accordant, mes il dit que si l'estatute de 32 H. 8. ad

dissolve

diſſolve le Corporation, & n'ad dit riens ouſter, que en ceo caſe ceſt diſſolution ad eſtre deins le expreſs parolls de 31 H. 8. nemy deins les parolls de any other means, ſed deins le paroll diſſolution, car le paroll diſſolution include diſſolution per Act de Parliament auribien come per ſurrender, ou auter means, & ideo ſi l'eſtatute de 32 H. 8. ad ſolment fait un diſſolution de Corporation, & n'ad enact que les terres ſerront veſte en le Roy, per le dit Act de 32 H. 8. les terres ount eſtre en le Roy per 31 H. 8. mes entant, que l'eſtatute de 32 H. 8. dit precilement & enact, que les terres ſerront veſte en le Roy, ceo controll en expreſs terms le veſting per 31 H. 8. & en ceo point il agree ove Whitlock & Hyde. Vide 1 Mar. Buſh & Culpeppers Caſe, l'eſtatute de 33 H. 8. cap. 2. veſt le actual poſſeſſion de terres d'un attaint al Roy: Culpepper fuit attaint per ſpecial Act, & le poſſeſſion veſt per ceſt Statute, & nemy per 33 H. 8. ſed ils dit ouſter, que coment que ne ſont veſt per 31 H. 8. ſed per 32 H. 8. tamen le clauſe de diſcharge de 31 H. 8. extende al ceux terres & iſſint dit Dodridge auxi, & prumes ils reſponde le Authorities al contra, & donque le reaſon, & donque confirme lour opinion ove reaſon, & authority: Les caſes fueront 2, de Maidſtone, & le caſe de Wright (le caſe de Spurling eſt reſponde devant) quant al caſe de Maidſtone, le maine point ſur que le reſolution fuit ground, fuit entant, que le unity de poſſeſſion, ne fuit perſonal, il fuit un bon diſcharge deins 31 H. 8. mes quant al point oyé en queſtion, il ne fuit reſolve per eux (coment il ſoit auterment repoſt en le dit caſe print) Fenner & Popham fueront d'opinion, que l'eſtatute de 31 H. 8. ne done aſcun diſcharge, al ceux terres, queux vient al Roy per 1 E. 6. ſed Gawdy (abſente Wynch) e contra? Le caſe de Wright fuit tiel, le Prior de Hatfield Bradock en Com' Hertford, fuit ſeiſie en fee de Rectory impropriate de Hatfield Bradock, in Com' prædict. & auxi d'un Ferme appell Clownall, en le dit Countie, ceſt Priory eſteant deſouth 200 l. per Annum, fuit diſſolve per 27 H. 8. apres le Roy H. 8. grant le Ferme al Nunns de Barking, & per lour diſſolution le dit Ferme vient al Roy per 31 H. 8. Le Roy grant le Rectory al Trinity Colledge en Cambridge, & le terre al un auter, le Fermor del' Rectory ſue le Fermor del' Ferme pur diſmes en Eccleſiaſtical Court, & il port Prohibition, & fuit adjudge per Hobart, Wynch & Hutton, que conſultation ſerra agard, Warburton e contra; en le dit caſe per les dit 3 Juſtices, ceux points fueront reſolve. 1. Que le impropriation fuit done al Roy per l'eſtatute de 27 H. 8. coment null impropriation ſoit la noſme, mes touts Tenements, Churches, Tythes & Hereditaments. 2. Si ne fuit grant, & done al Roy per l'eſtatute de 27 H. 8. donque il ne fuit done per l'eſtatute de 31 H. 8. car per

le diſſolution en 27 H. 8. le Corps, a que le appropriation fuit fait, fuit diſſolve, & per conſequence l'appropriation ale, come en 3 E. 3. en le caſe de Templers, & l'eſtatute de 31 H. 8. n'extende mes al ceux appropriations, queux ne fueront diſſolve, tanque apres 4 Feb. 27 H. 8. 3. Il fuit la agree, que l'eſtatute de 27 H. 8. per ſe ne done aſcun diſcharge de diſmes. Et 4. que unity de poſſeſſion perpetual, & hors de temps de memory del' terres, & del' Rectory, ne fait per ſe bon diſcharge del' diſmes, ſans benefit del' dit clauſe. 5. Ils reſolve que le clauſe del' diſcharge en 31 H. 8. n'extende al ceux Monaſteries que fueront diſſolve, mes extende ſolment per voy d'excluſion al ceux Monaſteries queux fueront diſſolve apres 4 Feb. 27 H. 8. & le reſolution pur le dit darrein point, differt del' caſe en queſtion, car la il fuit abſolute excluſion de tout Abbyes, queux ne vient apres 4 Feb. 27 H. 8. al Roy, mes icy il neſt aſcun tiel excluſion les authorities eſteant reſponde, il remain pur reſponder le reaſon, que neſt auter, quam l'equity, & intent d'un former Statute, n'extende al ſubſequent Statute, quod eſt un argument fait en le dit caſe de Maidſtone, ove un Teſte Meipſo, ſans aſcun Authority en Ley precedent al ceo, al garrant ceſt Opinion, & Jones dit que ceſt reaſon neſt bon, neque firme, car en divers caſes per l'equity, & entent de precedent Statutes, choſes ordein per ſubſequent Statutes fueront Aide: Littleton en Title Garranty, & 38 E. 3. 23. per Equity de Statute de Glouceſter fait 6 E. 1. il ne ſerra barre per un lineal garranty a faire Title fait per Statute 13 E. 1. ſans aſſets 27 H. 8. 29. l'eſtatute de Marlebridge, helpe feoffment per colluſion fait per le Tenant en demeſne 4 H. 7. done garde de ceſtuy ſil fiſt feoffment, ceo eſt eins l'equity del' Statute de Marlebridge. Buckleys Caſe en le Coment', l'eſtatute de 27 H. 6. extende al Gales, que fuit unite al Angleterre apres per 27 H. 8. & 21 E. 3. 11. l'eſtatute de Acton Burnell provide, que ſi biens ſerront over value, l'extendors pur ceo reſpond, per 13 E. 1. de Mercatoribus, execution done de terre ſur Statute Merchant ſi extendors extende terres trope hault, ils reſponde per Equity del' Statute de 11 E. 1. fait devant, & 12 Eliz. Dyer fol. 288. 289. grant de forfeiture de Treaſon, auter Treaſon fait apres la grantee avera forfeiture del' ceo. Iſſint les Authorities & reaſons ſont repſonde & ouſter a ceo confirme, Jones dit que les parolls & intent del' Statute ceo confirme, les parolls ſont en le purview general, ſcilicet, terres de tout Monaſteries, & Eccleſiaſtical Meaſons, & coment les parolls del' preamble, & le concluſion del' clauſe dit late Monaſteries, tamen ceux parolls ſerront conſtrue nemy literalment, ſed generalment, accordant, al purview, auterment Monaſteries apres diſſolve, fueront

fueront hors del' dit clauſe (car ceux ne fueront late) mes il fuit agreé en le dit caſe de Maidſtone, & il eſt cleere, que Monaſteries diſſolve apres l'eſtatute ſont deins le dit clauſe, & pur l'intent il appiert pleinment, car ſi le dit Hoſpital ad eſtre diſſolve, ſans ſubſequent Act de Parliament il ad eſtre deins le purview del' dit clauſe, & quant ceo fuit apres per Act de Parliament, pur ceo que les freres ne fueront preſent de faire ſurrender, car ns ferra ceo deins l'entent, car l'entent fuit pur extender le dit clauſe a tout Monaſteries, &c. diſſolve, ſolonque le dit Statute, ou queux fueront en poſſibilitie deſtre diſſolve ſolonque le dit Statute ſont deins l'entention del' Ley, & pur prover, il cite Pridle & Nappers Caſe pars 11. Cooke: un inſufficient ſurrender d'un Monaſterie fuit fait, & apres l'eſtatute de 35 Eliz. ceo aide, oye les terres vient al Roy per l'eſtatute de 35 Eliz. & tamen le clauſe de exoneration de diſmes extende al dit Monaſterie; un Statute fuit fait en Ireland 33 H. 8. cap. 5. & per ceo le Priory de Kylmainham, & touts Monaſteries la tueront la diſſolve, & lour poſſeſſions done al Roy, & ceſt clauſe lye al ambideux, ſcilicet, le Priory & Monaſterie egalment, & un Statute en Ireland fuit 4 H. 7. & tout acts a paſſer la doient eſtre allowe icy en Angleterre, que iſſint fuit ceſt Act per les Juſtices & Councell le Roy, & il n'eſt vereſimile, que ils voilont agreé, que en Ireland ceux terres ſerront diſcharge, & les terres en Angleterre nemy, & ils conclude ove 10 Eliz. en Dyer, ou l'opinion de Chancellor le 2 Chief Juſtices, & Chief Baron & Juſtice Southcott fuit accordant, que les res del' Hoſpital de St. Johns fueront exonerate de payment de diſmes per 31 H. 8.

Et quant al Statute de 32 H. 8. Whitlock tient, que ceo ne done aſcun diſcharge al Roy de diſmes, & ſil fuſt, tamen il n'extende al Patentees le Roy. Les 3 auters e contra, ils tout agreé que ceſt priviledge non ſolvendi decimas fuit done al eux, per ancient Councell, & per Councell de Laterane le dit priviledge fuit explaine, que il extende ſolment, al ceux terres queux ils avoyent al temps de exemption grant, & nemy al terres de novo acquire, mes come appiert per l'eſtatute de 2 H. 4. & 7 H. 4. ſeveral Bulls fueront procure encontre ceſt Conſtitution, & ceux fueront fait voide per Statute, le nature del' ceſt priviledge eſt expreſs en Panormiton, en capite ex parte, de decimis en ſon expoſition ſur le decretal, ſcilicet, quæ iſtud privilegium non ſolvendi decimas datur ſolis Ciſtertiis, Templariis & Hoſpitulariis. 2 ex prædiis quæ manibus ſuis propriis colunt. 3. Et non de prædiis quæ ab aliis conduxiſſent. 4. Vel quæ aliis pro certo redditu vel ſenſu locaſſent, & iſtud privilegium eſt perſonale, & omnia privilegia perſonalia non egrediuntur perſonam, & ceſt priviledge & touts

auters

auters priviledges certam habent interpretationem ; Et Whitlock hors de ceux grounds frame ſon reaſon, que ceſt priviledge eſteant perſonal n'exceed le perſon a que ceo fuit grant, ideo quant le perſon, ſcilicet, le Corporation fuit diſſolve, ceſt priviledge fuit ale auxi, come en le caſe de 3 E. 3. de appropriation al Templers ceſt Corporation fuit diſſolve, & per ceſt diſſolution, le appropriation fuit ale auxi ; & per le grant en general de touts Priviledges al Roy per l'eſtatute de 32 H. 8. ceſt particular, & perſonal priviledge ne fuit done al Roy. L'eſtatute de 31 H. 8. done touts les priviledges del' Monaſteries al Roy, ſed ceo ne fuit ſufficient, ideo un particular clauſe fuit adde, nemy come done del' priviledges, mes que ſi les terres fueront exonerate de payment de diſmes al temps del' Statute de 31 H. 8. donque le Roy tiendra eux exonerate de diſmes ; 2. Il dit auxi, que ſi ceſt perſonal priviledge fuit done al Roy per l'eſtatute de 32 H. 8. ceo extende ſolment al Roy ſes Heirs, & Succeſſors & nemy al grantees le Roy, car il ſerra perſonal en le Roy ſes Heirs & Succeſſors, come fuit en les Hoſpitallers, & lour Succeſſors.

Hyde Chief Juſtice, Dodridge & Jones e contra, que per l'eſtatute le priviledge fuit done al Roy ; ceſt immunity que les Hoſpitallers avoient fuit un priviledge, en un priviledge, & privata lex, ou privatio legis, & un exemption del' general Ley, que fuit que cheſcun payera diſmes : Et voyer eſt que un priviledge n'extende ultra perſonam, & ſi le Corporation fuit diſſolve le priviledge ſerra auxi ; mes quant un Act de Parliament done ceſt priviledge al Roy devant, que ceo fuit diſſolve le Roy avera ceo come un grant al Roy per Act de Parliament, & Jones compare ceſt caſe, al caſe de Appropriation, ſi le Corporation fuit diſſolve le Appropriation eſt ale, come appiert en le dit caſe de 3 E. 3. & Dodridge dit, que quant les Templers fueront diſſolve, lour priviledges fueront ale per le dit diſſolution, ſed lour terres revert al patrones, & Seigniors de que les terres fueront tenus, ſed per 17 E. 2. le dit terres fueront done al Hoſpitallers, & coment (come appiert per le dit Councell de Latterane) de terres de novo acquirend' diſmes doient eſtre paid, tamen de ceſt terre que le Templers purchaſe (coment il fuit de novo acquiſit') ils ne payeront diſmes, quia ils enjoy meſme priviledge, que prove come il dit, que priviledge coment perſonal poet eſtre transferre al un auter, ſed Quere de ceo, car null parol de priviledge eſt en dit Act : mes ſi un Appropriation ſoit done al Roy, per un Act de Parliament devant, que ceo fuit diſſolve, la ceo eſt bon, come fuit reſolve en Caſu Wright avandit 8 Jac. ſed ſi le Corporation fuit primes diſſolve, & per ceo appropriation ale, la un general grant per ceſt Act de Parliament ne voet ſaver, come il fuit auxi tenus

en

en le dit caſe, mes per ſpecial parolls ceo poet eſtre, car tout appropriations lie al Monaſteries apres 4 Feb. 27 H. 8. & devant 31 H. 8. fueront ale, mes per ſpecial clauſe en 31 H. 8. ils fueront revive, ſcilicet, que Roy avera impropriation en meſme le plight, come ils fueront al jour del' diſſolution del' Monaſteries, & adonque l'appropriations fueront in eſſe, & nemy determin, en meſme le manner pur ceux privileges, ſi le Corporation ad eſtre diſſolve primes, & donque touts privileges done generalment al Roy per l'eſtatute de 32 H. 8. le Roy n'avera ceſt privilege, mes quant eſt done devant que le privilege fuit ale, le grant eſt aſſets bon, & coment le Roy n'avera ceſt privilege idem numero tamen il avera idem Specie, Scilicet, le Roy tiendra le terre diſcharge, come les Hoſpitallers ceux tient, il avera autiel privileges come le Hoſpitallers avoient, come en le caſe 20 E. 3. tit' Avowrie, & le caſe de Strata Marcella de tales libertatibus qualibus villa de J,. ils ne ſont meſme les liberties, ſed autiel liberties, & le objection ſur l'eſtatute de 31 H. 8. pur addition del' clauſe de diſcharge, neſt de force, car ceo fuit ad majorem cautelam, & auxi ceo fuit pur doner diſcharge en auter caſes, quam en le caſe de privilege, videlicet, en caſe de diſcharge per preſcription, compoſition, ou perpetual unity, & auter diſcharges. 2. Ceſt exoneration extendera al Patentees, car neſt perſonal privilege en le Roy, ſed un real diſcharge del' terre done per l'eſtatute, que ale ove le terre, en quecunque mains que ceo viendra, car le privilege eſt quamdiu propriis manibus excolunt, quant le Roy grant ouſter il ſerra propriis manibus del' patentee, come il eſt reſolve en 10 Eliz. 3 & entant que 3 agree, que ceux terres fueront diſcharge, Judgment fuit done encounter le Plaintiff, & pur Defendant.

Termino

Termino Mich. An. IV. Caroli Regis, *in* Banco Regis.

The firſt Saturday of *Michaelmas Term* 4 *Caroli Regis*, Sir *George Croke*, one of the Juſtices of the *Common-Pleas*, was ſent for by the *Lord Keeper* to come to the *Kings-Bench*, and he came accordingly into the Court, and there ſtanding, the *Lord Keeper* declared His Majeſties pleaſure to remove him from the one Court to the other, and after a ſhort Speech, my Brother *Croke* made a ſhort Anſwer, and then he was Sworn, and his Patent read, and he had a Writ of diſcharge for the *Common-Pleas* delivered him, but not read.

Ingorſhall *verſus* Samms.

(B) HOme port Action ſur le caſe, come Executor vers un auter Executor, & declare, que le Teſtator del' Defendant en ſon vie, ſcilicet, tiel jour & ann promiſe, a payer al Teſtator del' Plaintiff tiel ſumme d'argent, & le Defendant plede non aſſumpſit, le Jury trove ſpecial verdict, ſcilicet, que le Teſtator del' Defendant in vita ſua promiſe, &c. ſed ils diſont que le dit Teſtator mourſt devant le jour mention en declaration, & per totam Curiam Judgment fuit done pro querente, car per le trover, que le Teſtator in vita ſua aſſumpſit eſt bon verdict, & le reſidue neſt que ſurpluſage, & le jour en Action ſur le caſe ſur aſſumpſit neſt material, vide 22 & 23 Eliz. Sir Rowland Heywardes Caſe, & Godards Caſe Report Cooke pars 2.

Craine

Craine *verſus* Holland.

EN brief d'erroꝛ, poꝛt ſur Judgment done en le Court del' Ville de Northampton tenus devant le Mayoꝛ & Baylives de dit Ville : le venire facias fuit agarde per le dit Court al Baylives pur returne proceſs, & ils feſont returne accoꝛdant ; & ceo fuit per cuſtom del' Ville, & tenus bon, car les Baylives poient eſtre Judges, & aver le cuſtody del' Gaole, & auxi le Court eſteant del' Mayoꝛ & Baylives, ils poient per le cuſtom faire returne de pannel aſſets bien, & per Jones, Whitlock & Crooke (abſente Hyde) le Judgment fuit affirme. (2)

Reſolution ſur l'eſtatute de 21 *Jac.* concernant *Pœnal Leys.*

IL fuit reſolve per le Court de Banke le Roy, que l'eſtatute de 21 Jac. pur Pœnal Leys eſt deſtre expound come enſuiſſ, que ſi Pœnal Ley done liberty de ſuer pur le penalty per Information, Dett, pleint, &c. en aſcun Court de Record, que ceo eſt en aſcun de Courts al Weſtminſter, ideo ſur ceux Leys infoꝛmation poyet eſtre ſue al Weſtminſter, & neſt reſtraine per le dit Statute, car null infoꝛmation per common Infoꝛmer poet eſtre poꝛt devant Juſtices de Peace, Juſtices d'Aſſize, ou Juſtices de Oyer & Terminer. 2. Si aſcun Pœnal Ley done poyer al Juſtices de Peace, Juſtices d'Aſſize, ou Juſtices de Oyer & Terminer, de oyer & determine offence vers l'eſtatute, & ne dit pluis, ceo eſt per voꝛ de enditement, & nemy per Infoꝛmation, Bill, ou Plaint, niſi ceo fuit ſpecialment noſme. 3. Coment un ſpecial clauſe ſoit de ſuer ſur l'eſtatute per Bill, Plaint, Dett, ou Information envers offendors vers aſcun Statute, tamen ſi ſoit indict pur ceo devant Juſtice d'Aſſize, Oyer & Terminer, ou Peace, en ceo caſe, le enditement poet eſtre remove al Banke le Roy & la trie, vel aꝛres pleder la, deſtre remande al pays deſtre trie per niſi prius. 4. Que ſur Pœnal Ley en Midd, un infoꝛmation poet eſtre poꝛt en B. le Roy, coment Juſtices de Peace, &c. ount poyer de tener plea per Infoꝛmation, &c. (3)

Shutford *verſus* Percowe.

(4) SHutford port Action ſur le caſe vers Percowe, & declare que le Defendant ad un chien, que fuit apt ad mordend' oves, & que le Defendant ſciens ceo, tamen cuſtodivit le chien, & il mord' divers barbits del' Plaintiff, & que le Plaintiff intende a luy ſuer pur ceo, & le Defendant en June 18 Jacobi en conſideration, que le Plaintiff forbear ſon ſuite, promiſe a payer al Defendant, tant que ſon damage amount, ſur requeſt, & il averre que il ad forborn ſon ſuite, & que ſon damages fueront 40 s. & que il en June 2 Caroli Regis requeſt luy a payer les dit damages, & il refuſe, ſur que il port le Action. Le Defendant plede l'eſtatute de 21 Jac. pur limitation de Actions, & que le temps mention en le Declaration del' aſſumpſit fuit ultra 6 ans devant Action port, & le Pl't demurre ſur ceo: & il fuit adjudge per Hyde, Jones & Crooke, que le Action fuit bien port, car le dit damages ne fueront payable devant le requeſt, & le non payment ſur le requeſt fuit le cauſe del' Action, & ceo fuit deins 6 ans devant Action port, & iſſint nient deins le dit Statute, & Whitlock que fuit abſent in Cancellaria fuit de meſme opinion.

Seignior Say & Seal *verſus* Stephens.

(5) WIlliam Viſcount Say & Seale port Scandalum Magnatum vers Stephens, & declare que il fuit provide per l'eſtatute de 2 R. 2. & reherſe tout le Act, ſavant que il en un lieu mention Lyes ou doit eſtre Slander (& le Action eſteant port per le Plaintiff pur noſme William Viſcount Say & Seale unum magnatum Regni) le dit Defendant habens colloquium ove J. S. Servant del' dit Plaintiff concernant le dit Plaintiff, le dit Defendant parle al dit J. S. del' dit Viſcount ceux parolls, Thy Lord is a Traytor, and I will prove it, al damage de 10000 l. & le Defendant plede non culpable, le Jury trove pur le Plaintiff al damage de 2000 l. & fuit move en arreſt de Judgment; Primes que l'eſtatute fuit miſrecite. 2. Il ne fuit averre, que le Plaintiff fuit unus Magnatum Regni quant les parolls fueront deliver, & parle & ceo nient obſtant per les 4 Juſtices, Judgment fuit done pro querente, car le miſrecitall fuit en choſe nient material, & nemy en aſcun part del' ſubſtance del' Statute, ideo aſſets bon. 2. Aust quant le Declaration dit que le Defendant dixit de eodem Vicecomite, ceo fuit bon averment que al temps del' parolls il fuit Viſcount, car ne poet eſtre parle del' Viſcount, niſi il fuit Viſcount quant les parolls fueront utter per le Defendant, & erroz

erroz fuit poꝛt en Camera Scaccarii: ſed per Hyde, Jones & Whitlock Scandalum Magnatum neſt deins 27 Eliz. ſed Crooke e contra.

Anthony Lewknor *verſus* Crouchly.

ANthony Lewknor poꝛt Action ſur le caſe vers Crouchly pur ceur parolls, le dit Anthony & un Smith, perceiving that a Goldſmith of Litchfield avoit grand ſtore of Plate, they did lye in wait to rob him, and they did ſet upon him to Rob, and by reaſon of the Hue and Cry they were faign to ride away both upon one Horſe. Et le Court fuit move, que ceur parolls, ne poient maintaine un Action, car ne fuit aſcun Felony, ſed un aſſault ſolment; ſed il fuit adjudge pro querente per les 4 Juſtices, car coment que ne fuit Felony, tamen il fuit un grand Scandal, & Infamy al Plaintiff, vide Report Cooke pars 4. la il ne fuit aſcun Act fait, ſed un intent, ſed icy & intent, & Act fuit, ſcilicet, un attempt. (6)

Chamberlain *verſus* Tanner.

Mich. 3. *Car. Rot.* 218.

PEter Chamberlaine poꝛt Ejectione firmæ vers William Tanner, & le caſe ſur ſpecial verdict fuit que un John Metcalfe fuit ſeiſie en fee del' Meſſuage en queſtion vocat le White Swan, & un Garden a ceo appertein en paroch. de St. Giles extra Cripplegate en Com' Middleſex, & deviſe al un Henry Gallant in hæc verba: The Houſe or Tenement wherein Henry Nicholls dwells being called the White Swan in Old-ſtreet for ever: & le tenement fuit en Old-ſtreet, en le dit Pariſh, & le Jury trove, que al temps del' deviſe Henry Nicholls avandit avoit, & occupie le entire ſive le voy parcell del' dit Meſſuage, & 3 upper rooms, & que divers auter perſons occupy le dit reſidue del' dit meaſon, le leſſoꝛ del' Plaintiff fuit heire al Henry Gallant, & fuit adjudge pro querente per totam Curiam, ſcilicet, les 4 Juſtices una voce. Ils fueront 2 queſtions; primes ou le diviſee avoit Fee-ſimple, & agree que il avoit Fee-ſimple, ſans queſtion. 2 point, Du tout le Meſſuage ou ſolment tant que fuit en poſſeſſion del' Henry Nicholls paſſa, & reſolve que tout paſſa, & iſſint il fuit adjudge, car ſi un meaſon appell White Swan fuit en tenure J. S. except un ou deux ou trois Chambers, & home grant le meaſon en le tenure J. S. vocat White Swan, ceo que fuit except ne paſſa, car ceo retain le noſme d'un meaſon vocat White Swan, nient obſtant le choſe ex- (7)

cept, mes ſi J.S. ad 3 Chambers del' meaſon en ſon poſſeſſion & home grant le meaſon en tenure J.S. vocat White Swan, la tout le meaſon paſſa, car les 3 Chambers ne reteine le noſme d'un meaſon.

Lowe *verſus* Harewood.

(8) EN briefe d'erroꝛ de reverſer un Judgment done en le Court de Wyndſor perenter Lowe & Harwood deux erroꝛs fueront move, le Action fuit pur Slander de Title del' Defendant, & en ſon declaration il ne expreſs aſcun particular loſs, que il avoit, ſed generalment, que il perde a faire ſale del' ſon terres, & per totam Curiam ceo fuit tenus male; ſi un Action ſur le caſe ſoit poꝛt pur appeller d'un Thief, ou tiel ſemble parolls queux ſont ſlander al perſon d'un home, la il ne beſoigne de alledger aſcun particular cauſe de damage, neque a prover ceo ſur evidence, iſſint ſi ſlander a ſon profeſſion, come a dire que Bankrupt, Corrupt Judge, al un Judge, ou a dire al un Lawyer que fuit ambodexter, mes ſi les parolls ſont trove, que per ſe ne voilont maintaine Action ſans damage en facto receive, come pur appell un feme Whoꝛe, ceo ne voloit, niſi ſoit temporal loſſe, come perde de ſa Marriage, la ceo doit eſtre particularment lay en le Declaration, & ceo doit eſte prove ſur l'evidence, iſſint de ſlander title del' Plaintiff ne voet maintaine Action, niſi fuit revera un damage, ſcilicet, que il fuit hinder en ſale de ſon terre, ideo la le particular damage doit eſtre alledge, & le cauſe de damage doit eſtre prove ſur evidence. Le ſecond erroꝛ alledge fuit, que 10 s. damage fuit done, & tamen 11 l. Coſts, & per le Chief Juſtice ceo fuit erroꝛ, car Action ſur le caſe pur ſlander fuit deins l'eſtatute de 21 Jacobi. Sed les 3 auters e contra, car verum eſt que il eſt deins le primer branch, pur Action deſtre poꝛt deins le temps limit, car la les parolls del' Statute ſont general Actions ſur le caſe; mes le clauſe pur coſts ſont Actions ſur le caſe pur ſlander, & ceo doit eſtre al perſon d'un home, & nemy al Title de terres, car ceo properment neſt aſcun ſlander, ſed cauſe de damage, & le Judgment pur le primer cauſe fuit reverſe.

Dame Cavendiſh *verſus* Middleton.

(9) DAme Cavendiſh poꝛt Action ſur le caſe vers Middleton, & declare q̃ ſa ſervant emit del' Defendant 12 Oxen pur 80 l. pur le Plaintiff & paya le dit 80 l. & apres moꝛuſt, & que le Defendant alledge, que il ne fuit paia fraudulentment, & al intent de procure double payment & le Plaintiff fidem adhibens al luy, paya

paya arere 80 l. al Defendant, & Crew en arreſt de Judgment alledge, que Action d'account voloit giſer, & nemy Action ſur le caſe: ſed per Curiam Action ſur le caſe, ou account ſur election del' partie & iſſint fuit adjudge.

Cowper *verſus* Pollard.

COwper port Covenant vers Pollard, le caſe fuit tiel, le Dame Say Leaſe un meaſon, un Barne, & certein terres al Cowper pur ans rendant Rent, Cowpe per fait aſſigne ſon Terme al Defendant Pollard, & Pollard covenant a ſaver le dit Cowper harmleſs, de touts covenants & agreements, & payments en le dit primer Indenture de Leaſe; Pollard leſſa pur un ann le dit Barne al Cowper, que mitte feine en ceo, & apres grant le Barne, & feine al un Barber, & covenant a ceo garrant, le Dame Say diſtreine le feine, & ſur ceo le dit Cowper port Covenant, & adjudge per les 4 Juſtices que ne giſt, pur ceo, que feine en un Barne, ou Cockes ne poet eſtre diſtreine pur Rent, nient pluis, quam Shockes de Blees, mes ſi feine ou Shockes de Blees fueront en un Cart, le Cart & Blees, ou feine poet eſtre diſtreine. Vide 11 H. 7. & 21 H. 7. & ſi le diſtreſs ne fuit loyal, donque le Covenant ne ſerroit enfreint, car ceo extende al loyal incumbrances, & nemy al tortious incumbrances; un auter point fuit move, admitte que le diſtreſs fuit loyal, ou Action giſt, & ſemble a Jones que nemy, car le Covenant extende ſolment al choſe en eſſe al temps de Covenant fait, & nemy al un choſe, que happen deſtre harme al Plaintiff per un ſubſequent Act fait per luy meſme, ſcilicet, le render del' Leaſe pur ans del' Barne, ſed Crooke e contra, & Judgment done ſur le primer point. (10)

Elizabeth Hughes *verſus* Farrer.

ELizabeth Hughes port Action ſur le caſe vers Farrer, il dit que le Plaintiff fuit a Witch, and had bewitched her Mothers Drink, & apres les fits del' Plaintiff expoſtulate ove le Defendant pur les parolls, & le Defendant dit a luy, we will prove her a Witch before we have done with her, & apres verdict il fuit move en arreſt de Judgment, que ceux parolls ne fueront ſuffi cient pur maintaine Action, ſed fuit reſolve per Crooke, Jones & Hyde, que Action giſt, car verum eſt que al Common Ley, Action ne giſt pur appeller un Witch, car ne fuit puniſhable en noſtre Ley, ſed en le Spiritual Court, il fuit, ſed per l'eſtatute de 1 Jac. il eſt puniſhable per noſtre Ley; ideo Action giſt, maxime quant il eſt un ſpecial allegation que el ad bewitched les biens, ſcilicet (11)

ſcilicet, ſon Drink, ſed Whitlock doubt, tamen il agree, que Judgment ſerra done pro querente.

Hollowayes *Caſe*.

UN Holloway fuit indicte al Gaol-delivery al New-gate, & la un ſpecial verdict fuit trove, que le dit Holloway fuit Woodward al Counte de Denbigh, pur le Parke de Oſterley in Com' Middleſex, & que un Garſon vient a les bois, & climbe un arbre, & fuit la coupant le rames del' dit arbre, al intent a carrie ceo away, & que le dit Holloway vient ſur un chivall, al dit bois, & veyant le dit Garſon, luy commande a diſcender del' dit arber, que il fiſt, ſur que le dit Holloway ove un wande done a luy deux Strokes ſur ſon Corps, & apres ove un Corde tye le dit Garſon al un chivall, & quant il fuit tye al chivall, il done deux Strokes al dit Garſon, ſur que le dit chivall ale avant, & trahe le dit Garſon apres luy & pluck ſon humer aſunder, de que il mourſt, apres que le dit Holloway occuit le dit Garſon en un Brake en le dit Parke, & le Jury dihont que ſi per totam Materiam il fuit Murder donque ils diſont que fuit Murder, & ſi non, donque ils trove le Defendant culpable de homicide, & apres ceo le dit Holloway fuit remove en Banke le Roy, ove le dit cauſe, & ceſt Terme, tout les 4 Juſtices conferre ove le Seignior Chief Baron, Denham, Harvey & Trevor, & tout fueront d'opinion, que ceo fuit Murder, per que Judgment fuit done, que ſerra pende, & il fuit pende accordant, vide Mackallyes Caſe pars 9. Cooke.

Sir Edward Withipoles Caſe.

(123) SIr Edward Withipole fuit endite devant le Coroner de Suffolk de Murder, & ceo fuit remove en Banco Regis, ſur que le dit Withipole fuit arraigne, & il prie que il poyet aver Councell, pur ceo que il avoit matter en Ley a parler envers le dit indictment, & il avoit Councell aſſigne, que prendront divers exceptions, al le dit indictment, ſur l'eſtatute de 11 H. 4. Cap. 1. & ils miſont ceo per voy de plea, ſcilicet, que le Jury fuit retorne per un, que ne fuit neque Baylive de liberty neque Aiſcount. 2. Que un Aliſton fuit del' Jury que il nominate luy meſme deſtre retorne, & divers auter del' Jury de ſure ſon denomination. Et 3. que 2 del' Jurors fueront utlage en perſonal Actions, & ſur ceo pria, que l'inditement ſerroit quaſh, & plede ouſter al Felony, & fueront 2 queſtions move perenter les Juſtices; primes ou l'eſtatute de 11 H. 4. extende al Inquiſition devant Coroner, & ſemble al Hyde, Whitlock & Crooke prima facie,

facie, que il n'extende, ſed Jones e contra. 2. Ou utlagary en perſonal Actions fait inditement void, & ils prient l'advice de tout les Juſtices & Barons, & ſemble al tout les auter Juſtices, & Barons, que l'eſtatute extende al inquiſition prise devant Coroner, & quant al 2 queſtion ils doubtant. Vide 34 E. 1. Proces. Fitz. 288. Apres il fuit indict per Commiſſion de Oyer & Terminer, & arraigne le primer jour de Terme, & il dit que ne doit eſtre arraigne, pur ceo que il ad plede al primer Inquiſition, ſed Curia e contra, & pur faire le matter cleare, ils done rule que le primer Inquiſition ſerroit quaſh, donque il plede ore tenus, que un del' Jury fuit utlage, & ceo ne fuit allowe per Curiam, car admitte, que le plea fuit bon, (que ne fuit grant) tamen il doit aver le record de utlagary deſouth le Seale, ſur ſon plea plede, & ideo il plede ouſter al Felony, non culpable.

Forger *verſus* Sales.

HOme port Dett ſur Obligation vers J. S. filium & heredem J. W. & declare ſur Obligation ſon pier, & ne dit que il oblige luy meſme, & ſes heires per le dit Obligation, le Defendant plede al ceo & record enter & trove pur le Plaintiff, & oye il fuit move, que ceo ſerra amende, & prima facie le Chief Juſtice, Whitlock & Crooke fueront d'opinion, que il ſerroit amende pur ceo, que omitte & miſpriſion del' Attorney, que miſprise ceo ayant l'Obligation devant luy, ſed ſemble a Jones prima facie, que ne ſerra amende, car miſpriſion del' Clerks ſont amende, ſed ſon ignorance en Ley nemy & il imprift ſur luy de faire ceo, que un Councell doet faire, & l'Act del' Councell ne fuit amendable, vide 27 H. 6. 10. & 22 H. 6. 58. & 11 H. 7. 23. Penningtons Aſſiſe, & un ann devant un Action de Dett fuit port vers heire, & le Attorney declare en le detinet, & il move auxi pur amend, & non potuit per Curiam, & Hyde apres doubt en le principal caſe, ſur que il fuit move, que il ſerra amende per aſſent, & a pleder de novo, a que fuit aſſent accordant. (14)

Kendal *verſus* Foxe.

WIlliam Kendale port Ejectione firmæ vers Samuel Foxe, pur terres in Trewarren in Com' Cornubiæ, & le caſe ſur ſpecial verdict fuit come enſuiſt, un Nicholas Kendal fuit de ceo ſeiſie en fee, & enfeoff deux, al uſe luy meſme & Lodowicæ ſa feme pur vies, remainder al Walter ſon eigne fits en tayle, remainder al William ſon ſecond fits en tayle, remainder al Richard ſon tierce fits en tayle remainder al ſa fits en tayle, remainder al (15)

droit

moit heires ſes files, apres le dit Nicholas per ſon fait execute ove livery, & ſeiſin done le dit terres al dit William ſon ſecond fits, & al Temporance ſa feme, & al heirs de Corps del' dit William ſur feme engender, remainder al heires del' Corps le dit William, rendant al luy, & ſa feme un Rent ove garranty envers touts homes, apres, ſcilicet, 7 Eliz. un fine fuit levie enter 2 Strangers querentes, & le dit Nicholas Defoyceant del' dit terres, & l'eſtrangers rendant ceo al dit Nicholas pur vie, remainder al dit William & Temporance ut antea, & ceo fuit ove Proclamation, Nicholas moruſt, & le dit Lodowica enter, & Walter fits ſurvive, & fuit heire al Nicholas, le dit William & ſa feme ount iſſue Thomas, Lodowica moruſt, & Thomas enter, & priſt al feme Elizabeth, Thomas levie fine al uſe luy meſme, & dit Elizabeth pur lour vies, Walter ayant iſſue Walter, moruſt, Walter ſon fits enter, & Thomas moruſt, & Elizabeth ſa feme enter, & leſſe al Plaintiff, que fuit ouſte per le Defendant deſouth le title del' dit Walter, & una voce per tout le Court Judgment fuit done pro querente: le queſtion ſurgeroit ſur le garranty, ſcilicet, ſur le done en tayle fait per Nicholas al dit William, que deſcende ſur Walter ſon eigne fits, que avoit droit del' remainder per le primer feoffment fait per Nicholas: & deux choſes fueront object encontre le garranty, primes apres le dit done en tayle le dit Nicholas levie fine, & apres il fait un render al luy pur vie remainder al William & ſa feme & iſſint ils fueront eins d'un auter eſtate quam ceo a que le garranty fuit knitt. 2. Le dit Nicholas & ſa feme eſteant Tenants pur vies remainder al Walter lour eigne fits en tayle, il fiſt done en tayle, ove garranty & moruſt, le feme enter, & fuit remitte, & el eſteant remitte, l'eſtate en remainder fuit remitte auxi, & le garranty per ceo fuit defeate, & anient a touts purpoſes. Quant al primer Objection il fuit reſponde & reſolve, que il ne fuit eins d'un auter eſtate, car le fine operate ſur le reverſion de Nicholas & eſt in confirmation del' primer eſtate de William, & ſa feme; auxi admitte q̃ ſoit eins d'un auter eſtate, tamen il rebutte aſſets bien, per force del' garranty; quod vide en caſe del' Lincoln Colledge, Cooke pars 3. Quant al 2 Objection le Court dit, & reſolve, que il fuit le very point de 44 Aſſ. 35. Baſſingborns Aſſiſe, que quant le collaterall garranty deſcend ſur ceſtuy en remainder, ſon droit fuit lye, & coment le reentrie del' Tenant pur vie reduce l'eſtate del' Tenant pur vie, tamen le remainder continue lie per le garranty, & ils dihont, que le dit caſe fuit tenus touts foits pur bon Ley, ideo Judgment (come devant) fuit done pro querente.

Termino

Termino Hill. An. IV. Caroli Regis, *in* Banco Regis.

Sir Robert Howards *Caſe.*

UN recovery fuit ewe en le C. B. vers Sir Robert Howard, & il port erroꝛ, & aſſigne pur erroꝛ, que null garrant de Attoꝛney fuit, & un garrant d'Attoꝛney ſur agarde del' exigent fuit certifie, & fuit urge per Henden, que il doit eſtre auter garrant d'attoꝛney auxi, ſed Curia e contra, que le dit garranty voet ſerver, & iſſint tout les Pꝛonotaries del' C. B. certifie lour opinion, per que le Judgment fuit affirme. (1)

Retorne *de* Reſcous.

IL fuit move per Bankes, que un Viſcount retoꝛne ſur le Latitat, que il ad arreſt le Defendant, & en le Voy al Pꝛiſon 2 femes luy Reſcous, & le queſtion fuit, ou le Viſcount ſerra charge ove ceſt retoꝛne; vide pur ceo 4 Eliz. 212. 6 & 7 Eliz. fo. 241. & 16 E. 4. 2. & 3. & 16 E. 3. tit' Reſcous 27. & retoꝛne del' bꝛief Fitz. 110. & Crooke cite un Judgment en ceſt Court enter May & Proby, & Lumly Viſcounts de London, que null Action giſt ſur le caſe, per le Plaintiff vers le Viſcount ſur reſcous ſur mean pꝛoces, mes ſi fuit ſur pꝛoces d'execution e contra; & le Court eſteant Jones, Whitlock & Crooke done oꝛder, que Attachment ſerra vers le Baylive, que ſuffer le reſcous d'eramin ou l'eſcape fuit per fraude ou nemy, & Whitlock & Jones doubt del' difference pꝛiſt en le dit darren Judgment. Vide 13 R. 2. Fitz. Retorne 74. le Viſcount retoꝛne cepi Corpus, & reſcous, & la dit que il ſerra charge per ſon retoꝛne nient obſtant. (2)

Awdley *verſus* Halſey.

Enter Hill. 3. *Car. Rot.* 993.

(3) John Hill & Alice Squier eſteant Co-partners & uſant le Trade de Brewers deins le City de London Anno 21 Jac. devient oblye per un Recogniſance en nature de Statute-Staple, en 800 l. al Edward Halſey, apres 30 October 3 Caroli, Halſey ſue un extent, ſur le dit Statute, & ultimo Octobr' per inquiſitionem, il fuit trove que le dit Conuſees fueront poſſeſs de divers biens, & le dit extent ſolonque le purport del' dit brief fuit returne, & le Inquiſition; Craſtino animarum 3 Novembr' enſuant le dit Hill & Alice Squier devient Bankrupt, & 5 Novembr' Halſey procure un Liberate, & 6 November le Viſcount per vertue de ceo, deliver les biens al Halſey apres, ſcilicet, 23 November, le Creditors del' dit Hill, & Squier procure un Commiſſion de Bankrupt vers le dit Hill & Squier, & ils vende le dit biens al Sarah Awdley en ſatisfaction de ſa Dett, eſteant un Creditor, que demande le dit biens de Halſey, que refuſe pur eux deliver, ſur que le dit Sarah port Action ſur le caſe, pur trover & converſion vers Halſey, & ſur non culpable le Jury trove ſpecial verdict, ut ſupra: apres ſeveral arguments al barre, les Juſtices conferre, & ils una voce agree encontre le Plaintiff, & appoint 3 die Sabbati, en ceſt Terme brief-ment a deliver lour opinion, apres que Crooke & Whitlock argue, le Seignior Chief Juſtice fuit en voy al Court de Gardes, & dit que il ne poyet ſtayer a arguer, ſed dit que il accorde en opinion ove Crooke & Whitlock, & apres Jones accorde, & les dit 3 Juſtices agree, primes per l'eſtatute de 13 Eliz. les biens ne poient eſtre vende: car quant les biens ſont extende ſur l'eſtatute Staple, coment le property del' biens neſt altered per le extent, mes continue en le Conuſor, tamen l'extent fuit de tiel force, que per null Act fait, ou ſuffer per le Conuſor le Conuſee ſera prevent del' ſon execution per liberate, car coment les parolls del' dit Statute ſont, que les Commiſſioners ount power de vende ſes biens, queux fueront a luy al temps que il devient Bankrupt, & coment que il devenus Bankrupt devant le Liberate, & coment le property remaine en le Conuſor, tanque le delivery per Liberate, tamen le extent ad lie les biens iſſint, que quant le Liberate vient, ceo defeate & deveſt le property del' biens hors del' Conuſor quant al aſcun mean Action ou Incumberance del' temps del' extent; ſi apres l'extent le conuſor ad done les biens le done eſt bon pro tempore, mes ſi apres les dit biens ſont done, & deliver per Liberate, al le Conuſee,

nuſæ, ceo defeate le done del' Conuſor, ſi biens fueront Attache & apres le owner eux done, & apres ceo il ne appiert iſſint, que les biens ſont forfeit, ceo avoidera le done, en meſme manner, ſi il devient Bankrupt, en le interim, & ſur l'eſtatute de 13 Eliz. c. 6. biens ſur forreign Attachment en London fueront attache, & devant recovery le party devient Bankrupt, & apres un recovery ewe ceo avoidera le Sale per le Commiſſion de Bankrupt, & ceo appiert per l'eſtatute 21 Jacobi; car la eſt un ſpecial proviſion, que en ceo caſe les biens ſerront en poſſeſſion le vendee, come biens le Bankrupt, ideo ceo eſt per l'eſtatute de Bankrupt, & ils 3 agree, que l'ou owner del' biens ou terres per ſon Act demeſne, ne poet controll un done ou un charge, la ſil devient Bankrupt, le done ne poet eſtre defeate, come ſi home bargaine & vende terres, & devant Enrollment, il devient Bankrupt, & apres le fait enroll, la le bargainee tiendra le terre diſcharge del' Commiſſion de Bankrupt, iſſint per Jones ſi home done biens, ou terres ſur precedent condition, & apres devient Bankrupt, & apres le Condition performe, ceo defeat le power del' Commiſſion, & ſi home fiſt Leaſe pur ans ſur condition deſtre fee, & devant le Condition performe, il devient Bankrupt, & apres le Condition performe, ceo auxi eſt hors del' dit Statute, & Crooke dit que ſi home fiſt feoffment en fee ove Letter d'Attorney a faire Livery, & apres il devient Bankrupt, & apres Livery fait, que en ceo caſe le Commiſſioners ne poient vende le terre, ſed Jones deny le dit caſe, car il fuit en payar del' feoffor en ceſt caſe de countermande le Livery, per reſiance de feoffment, vel ſi conuſt un Statute Merchant perenter le feoffment & Livery le feoffee tiendra le terre charge. Et Jones dit que ſi home fiſt feoffment ſur Condition, ou done biens ſur Condition, & apres devient Bankrupt, & le terre vende per les Commiſſioners, & apres le condition enfreint, & le feffor ou donor re-enter, ou re-ſeize les biens, le Sale eſt defeat, & iſſint en meſme caſe, il eſt un charge lay ſur les biens, per le extent, iſſint que ſi le Liberate vient apres le Sale fait en le interim ſerra defeate, a multo fortiori en ceſt caſe, quant le Liberate fuit executo devant le Sale, ou Commiſſion ſue: Et le caſe de Stringfellow 3 E. 6. Dyer 67. neſt aſcun authority a contra, car ceo fuit per le prerogative le Roy, que il ſerra preferre en ſon Dett, & ceo fuit per le Common Ley, & nemy toll per aſcun Statute, car neque l'eſtatute de Mercat', neque de l'eſtaple, neque l'eſtatute de Bankrupt mention le Roy, ideo il ne ſerra lye; Vide 41 E. 3. tit' Execut' 38. (2) L'eſtatute de 21 Jac. neſt a purpoſe, car la touts Judgments, & Statutes devant aſcun execution ou extent fuit ſerve & executo ſont comprehend, mes nemy quant l'extent

eſt ſerve & execute, car execute idem eſt come finish, & perfoyme, ſed verum eſt, que le Liberate neſt execute, ſed le extent eſt execute & ſervie, & eſt aſſets bon, & ſi auter Conſtruction ſerroit fait del' ceux 2. Statutes il ſerroit en le poyer d'aſcun home vers que un extent ſerroit fait, a ceo defeate per devener un Bankrupt, que ne fuit unque l'entention del' prædict. Statute, & ideo tur tout le matter, Judgment done pur Defendant. Nota, que eſt un difference enter Statute Merchant, & Statute Staple, del Recognizance en nature del' Staple, car en le primer caſe per parolls del' Statute ſur l'extent, le Viſcount poet eux deliver al Conuſee, mes ſur Statute Staple, ou Recognizance en nature de ceo, il primes doit eſtre extent, & puis retorne del' ceo un auter brief de Liberate iſſera, & ceo per les parolls del' Statute de 27 E. 3. Cap. 8. a que l'eſtatute de 23 H. 8. ad relation. Nota auxi, que le Viſcount ſur extent ſur Statute Staple ne poet ſeiſer le terre, mes ſolment de ceo extende, & le Conuſee avera profits; mes il poet ſeiſer les biens, auterment le party poet eux embeſell, mes coment que poet ſeiſer les biens, tamen le property remaine en le party, & le Viſcount ne poet eux uſer, neque le Conuſee tanque Liberate.

Gilbert & Parke.

(3) EJectione firmæ port en C. B. de terres en Dale & le Venire facias fuit agarde de Paroch. de D. & verdict pro querente, & Judgment, le Defendant port erroy, pur ceo que le viſne fuit miſpriſe, car il doit eſtre (come fuit object) de D. & nemy de Paroch. de D, car poet eſtre, que le Paroch. extend' al ſeveral Villes, ſed per Crooke & Jones (eſteant ſolment en Court) le viſne fuit bien agarde, car prima facie le Ville & le Paroch. ſerra intende deſtre tout un, & ſil ne appiert al contra per le pleding, il ne ſerra intende de extende al ſeveral Villes: & ſic fuit ſovient foits rule, per que Judgment fuit done pur affirme le Judgment ſi ne rien pluis dit al contra per un jour.

Termino

Termino Paſch. An. V. Caroli Regis, *in* Banco Regis.

Goſhawke & Chickell.

LE caſe enter Goſhawke & Chickell fuit tiel, John Bromfield fuit poſſeſs pur divers anns de terres en queſtion, & per ſon fait grant tout ſon intereſt, & Terme en le dit terre al Heſter ſa file, a aver & tener a dit John, & ſa feme pur lour vies, & apres lour deceaſe al dit Heſter tanque el ſoet married, & avera iſſue del' ſes Corps loyalment engenders, & apres le marriage del' dit Heſter, & del' iſſue del' ſa Corps engenders, donque a aver al dit Heſter ſes Executors, Adminiſtrators & Aſſigns, durant le reſideue del' dit Terme, Provided que ſi le dit Heſter moruſt devant que el ſoet marrie, and have iſſue del' ſon Corps loyalment engenders que donque le dit aſſignment deſtre void, & donque il grant ceo, durant le reſidue del' dit Terme al Diana ſa file ; il & ſa feme moruſt, Heſter aſſigne le Terme, & marrie, & moruſt ſans iſſue : le adminiſtration del' biens de Bromfield fuit committe al Defendant Chickell, & le dit Diana, le file ſa feme : Et le queſtion fuit ou le aſſignee del' Heſter, ou le dit adminiſtrators ount meliour droit. Et adjudge per les 4 Juſtices una voce, q̃ le Defendant eſteant adminiſtrator ad melior droit. Primes, ils tient que le Habend' fuit utterment void, car quant en le premiſſes tout le Terme fuit grant, & aſſigne al dit Heſter, le Habend' al grantee pur vie, & ſa feme, fuit ouſterment void, accordant come eſt reſolve, en le caſe de Welckden & Elkington en les Commentaries, & donque le caſe neſt pluis, que le dit Terme fuit aſſigne al dit Heſter, ove un proviſoe, que ſi el devie devant, que el fuit marrie, & avera iſſue de ſes Corps loyalment engenders, que donque le grant ſerroit void, el marrie & n'ad aſcun iſſue, ou le Condition enfreint, & il fuit reſolve per eux que le Condition eſt enfreint, car coment le Habend' devant fuit void, en point de grant, tamen ceo exprets l'entention del' partie, que ſi le dit Heſter moruſt ſans iſſue del' (1)

del' ſa Corps, que donque un auter avera ceo, & ceo ſerve bien a monſtre l'entent, vel pur conſtrue le condition, ſcilicet, que ſil ne marrie, & ſi mourſt ſans iſſue, que donque ſa Terme ceſſera, & neſt pluis, que ſi le proviſoe fuit, que ſi el mourſt ſans iſſue, fuit il marrie ou nemy, que donque le Terme ceſſera; mes ſi el ad iſſue de ſon Corps loyalment, que ne poyet eſſe ſans marriage donque le grant deſtre bon, iſſint que le force del' proviſoe fuit, fur le ayant del' iſſue que el ne poet aver, ſi ne marrie, & ſur ces rule done, que ſi ne riens pluis ſoit dit, que Judgment ſerroit enter pur Defendant.

Sir John Darrell *verſus* Gunter.

(2) SUr un Evidence al Jury hors de Bark-ſhire perenter leſſee Sir John Darrell Plaintiff, & Gunter Defendant ceſt point furge, home leſſe pur 20 ans rendant Rent, que enter, apres il pur money pay per auter fait demiſe grant, & a Farme Lett al un auter le dit Terre del' jour del' date del' dit Indenture pur 4 ans, & apres il fait feoffment per fait al ſecond Leſſee, devant que il fiſt aſcun election a prender Leaſe per voy de Bargaine & Sale ou auterment, & devant aſcun Rent pay a luy, & ſur le fait del' feoffment, ou apres il ne declare quel voy il prift Leaſe, & navant aſcun attornment del' primer Leſſee ſemble a Jones, que le ſecond Leſſee nient obſtant, que null priſell de Bargaine & Sale, ad election a prender ceo per demiſe al Common Ley, ou per voy de Bargaine & Sale execute per l'eſtatute de 27 H. 8. come eſt reſolve en le caſe Hayward Cooke pars 2. & Foxes Caſe pars 8. Sed 2 tanque Election il ſerra priſe come Leaſe al Common Ley, & ſi ne fuit aſcun attornment, il eſt come future intereſt, mes ſil ad receive le Rent del' primer Leſſee ceo eſt un election en Ley a prender ceo per voy de Bargaine & Sale, iſſint ſi le reverſion en fee ad eſtre grant ouſter, & il attorne ceo eſt bon election, & attornment, vel ſi reverſion ad eſtre grant a luy meſme, mes quant le feoffment eſt fait a luy meſme, & n'ad declare, ou ſon election fuit tanque livery fait a luy, ou a doner ſon conſent a prender ces per voy de grant de reverſion ne riens paſſe per le feoffment.

Termino

Termino Trin. An. V. Caroli Regis, *in* Banco Regis.

Woodley *verſus* Beere.

EN replevyn inter Woodley & Beere, le caſe fuit tiel: (1)
home fuit poſſeſs d'un Terme pur ans de certain terres en le Countie de Somerſet, & per fait grant al J.N. un annuity, vel annual Rent de 14 l. deſtre iſſuant hors del' dit terres habend' l'un moyety del' ceo (viz.) 7 l. del' date del' dit Indenture pur 38 ans & habend' l'auter moyety (viz.) 7 l. poſt mortem J. D. durant le Terme de 38 ans ove clauſe de diſtreſs pur le dit Rent; Et le queſtion, ou ceo fuit un entrie Rent de 14 l. ou auterment ſeveral Rent de 7 l. a piece, & fuit reſolve per les 4 Juſtices una voce, & iſſint adjudge, que fueront deux ſeveral Rents de 7 l. pur ceo que eſt ſevered en le Habend', & l'un eſt a commencer preſentment pur 38 ans, & l'auter poſt mortem J. D. pur 38 ans.

Jacob *verſus* Cooke.

HOme promiſe a pay al J. S. pur un chival, que J. S. ad eme (2)
de J. D. tant, que il ad pay al J. D. pur ceo, J. S. port Action ſur le caſe, ſur le dit promiſe, & averre que il ad pay 7 l. al J. D. pur ceo, & il requeſt le party a pay al Plaintiff le dit 7 l. tamen il refuſe. Et apres verdict il fuit move en arreſt de Judgment, que le Plaintiff duiſſoit doner notice ſur le requeſt al Defendant quant il ad paya al J. D. pur ceo, & nient obſtant Judgment fuit done pro querente; car le Defendant duiſſoit primes demande del' Plaintiff ſur le requeſt, quant ceo coſt, & ne beſoigne al Plaintiff a doner notice ſans le dit demande.

Thursby

Thursby *verſus* Warren.

(3) THursby port brief d'erroꝛ vers Warren ſur Judgment done en le Common Banke pro Elizabeth Warren Executrix del' William Warren Attoꝛney del' Common Banke, & declare que le dit William fuit Attoꝛney pur Thursby en le Common Banke, & al ſon requeſt disburſe la divers ſums pur luy, pur fees & auter choſes. 2. Que al requeſt del' dit Thursby, & come ſon ſervant il disburſe divers ſummes d'argent en auter Courts de Weſtminſter en les Suites del' Thursby, & auxi en un Suite vers le dit Thursby, & un Greeſe in toto attingen' al 39 l. le dit Thursby aſſume a payer al dit William Warren le dit 39 l. & le dit William Warren moꝛuſt, & le dit Elizabeth port Action ſur le caſe en le Common Banke, & recover; & le Judgment fuit affirme en Banco Regis, Car ſi un, come Servant & Sollicitoꝛ d'un J. S. expende & disburſe argent al ſon requeſt en divers Courts de Juſtice, en que il n'eſt Attoꝛney, & le party vel ante vel poſt promiſe a payer le dit ſummes, Action ſur le caſe ſur le ſpecial promiſe giſt, ſed nemy ſans un ſpecial promiſe, & coment que un del' Suits fuit vers Thursby & un auter, tamen entant que il fuit un joint Suite, il fuit loyall al Thursby, & al dit Warren, come ſon ſervant pur ceo defende, & pur disburſe argent en le dit Suite, & le Chief Juſtice deliver le opinion de tout le Court, per que le Judgment fuit affirme.

Sawle *verſus* Clearke.

(4) THomas Sawle port Ejectione firmæ vers Nicholas Clearke & ſa feme pur terres en Aſhington in Com' Somerſett ſur demiſe de Robert Points, & le caſe ſur ſpecial verdict fuit tiel. John Sydenham fuit ſeiſie de terres en queſtion, & avoit iſſue John ſon eigne fits, & Alexander le puiſne, John le pier done les terres avandit al Alexander, & al ſes heirs males de ſon Coꝛps, & moꝛuſt, le dit Alexander 17 Nov. 5 E. 6. demiſe le dit terres al George Archer, & Matild ſa feme pur lour vies, remainder al Johan lour fille pur vie, ove garranty, & apres le dit Alexander 16 Eliz. levy fine ove garranty, & ove Proclamations del' dit terres al John Middleton, & William Middleton al uſe de John Taylor en fee, & deſouth le dit John Taylor, le Defendant claime un Leaſe pur ans, Alexander moꝛuſt ſans iſſue male ayant iſſue Elizabeth, ad tunc marrie al Points, queux ount iſſue Robert Points chivaler le Leſſoꝛ. 30 Eliz. John Sydenham le frere moꝛuſt ſans iſſue, le dit Elizabeth eſteant ſa Nepte & heire, 37 Eliz. le dit Elizabeth moꝛuſt

ruſt, 17 Jacobi, le dit John le darren Leſſee moruſt, Robert Points entra ſur Clearke le Defendant, & leſſa al Plaintiff, & Clearke & ſa feme luy ouſta, ſur que il port Ejectione firmæ. Ceſt caſe fuit ſovient foits argue al barre, & il depend la nient adjudge pur 9 ans, & en le Terme del' Paſchæ 5 Caroli les Juſtices (ſcilicet) Crooke & Whitlock argue, & pur ceo que le jour fuit ſpent en lour arguments, & apres en le dit Terme, ne fuit aſcun convenient temps, Hyde & Jones ne argue tanque le Terme de Trinity; & tout agree en un, que Judgment ſerroit done pur Defendant, que fuit done accordant, l'effect & le reaſon de lour reſoluti-on fuit briefment, come enſua, ils fueront deux maine queſtions; l'un ſur le grant del' reverſion ove garranty, que deſcend ſur le leſſor: le ſecond ſur le fine & non-claime apres le mort de Alexander deins 5 ans, & ils teigne, que le garranty ſi fuit per fait ſolment fuit un barre al Plaintiff. 2. Que le fine & non-claime fuit un barre, admittant que ne fuit aſcun garranty.

Le point quant al garranty fuit. Tenant en tayle al ſes heirs males reverſion en fee al ſon frere, fiſt un Leaſe pur 3 vies ove garranty (que ne fuit un Leaſe garrant per l'eſtatute de 32 H. 8.) apres le Tenant en tayle le vie fine del' terres, al un auter ove garranty, & morust ayant iſſue file, le frere morust, le file eſteant ſon heire, & heire al Tenant en tayle auri. Il fuit urge que ceo ne fuit diſcontinue quant al reverſion, pur ceo, que ne fuit execute en le vie del' Tenant en tayle, & quant Tenant en tayle fait Leaſe pur vie, & grant le reverſion, & ceo nient execute en vie del' Tenant en tayle, que le grantee n'ad forſq; Fee-ſimple determinable ſur le mort del' leſſee pur vie, & ideo le garranty ſur le mort del' leſſee pur vie fuit ale auri; car ceo ne poet continue pluis longe quam l'eſtate a que ceo fuit unite, & limit, & ne poet enlarge aſcun eſtate, Vide Inſt' Coke fol. 333. Sect. 620. al ceo purpoſe; & ils citont divers authorities a ceo prover, ſed null de eux ceo prove niſi Diſcontinuance Brooke 3. en abridgant le caſe de 21 H. 6. 52. 53. que n'eſt garrant per le liver quod vide & 21 H. 7. 11. Opinion de Frowicke la cite eſt al contra. Sed tout les Juſtices teignoit quant Tenant en tayle fiſt Leaſe pur vie, il ad gaine un novell reverſion en fee, & touts remainders & eſtates dependant ſur l'eſtate pur vie ſont diſplace, & turne al un droit, & quant il grant le reverſion en fee ouſter, il grant un abſolute fee al grantee, & tout auters eſtates ſont diſplace, & turne al un droit; ils ſont deux diſcontinuances, l'un quant l'entrie eſt toll, l'auter que diſcontinue le poſſeſſion & turne entire eſtate al un droit, ſed ne tolle entrie, verum eſt que le grant del' reverſion en le caſe en queſtion neſt aſcun diſcontinuance al tolle l'entrie del'iſſue en tayle, ou cy en reverſion apres mort le leſſee pur vie, pur ceo que le

grant ne fuit execute durant le vie del' Tenant en tayle, vel per mort del' Feffee pur vie, vel per furrender, ou entrie pur alienation, ou autiel voy, ſed coment que ne ſoit aſcun diſcontinuance quant a tolle l'entrie, tamen il eſt diſcontinue a deſtroie touts auter eſtates, & ſi iſſint ſoit, donque le grantee ad un abſolute fee al que le garranty fuit limit, & ſerra barre al Elizabeth, que fuit heire al Alexander, a claime le reverſion en fee; & accordant eſt l'opinion de Frowicke en 21 H. 7. 11. & Jones dit que le garranty fuit un lineal garranty, pur ceo que Elizabeth doit deduce ſa title al reverſion per le means del' Alexander ſa pier (videlicet) come Couſine & Heire al John, ſcilicet file Alexander frere & Heire John: Littletons Caſe ceo prove; home ad iſſue deux fits & l'eigne releaſe ove garranty & mourſt ſans iſſue en vie pier & le pier mourſt, ceo eſt lineal garranty, ſemble a Crooke que fuit collateral, ſed quomodocunq; eſteant, pur Fee-ſimple il eſt barre. 2. Exception fuit priſt al garranty, que per le Statute de Weſt. 2. ceo eſt fait voide envers le reverſion, & ceſtuy en remainder, Jones ceo reſponde, que il fuit un doubt en les ancient libers, ſed apres il fuit reſolve, que le garranty quant al cy en reverſion ou remainder ſur eſtate tayle neſt voide per Weſt. 2. 7 E. 3. 48. 3 H. 7. Margaret Crokes Caſe 41 E. 3. Fitz. Garranty. & Littleton Chapter Garranty. Tenant en tayle remainder en tayle, ou en fee al ſon frere, fiſt feoffment ove garranty, & mourſt ſans iſſue, ceo eſt barre al ſon frere, nient obſtant le dit Statute. Auter exception priſe al barre al garranty (ſcilicet) que le garranty deſcend al Elizabeth per mort ſa pier, & le droit deſcend apres per mort John ſa Uncle, & ideo ne barrera future droit, ſed Crooke & Jones reſponde, que le garranty neſt ſolment barre a preſent droit, ſed auxi al future droit, quod vide in Caſu Archer, Cooke pars 1. & Littleton; pier ad iſſue 2 fits, & eſt diſſeize; le eigne releaſe ove garrant, & apres mourſt ſans iſſue, le garranty deſcend ſur frere, apres pier mourſt, & le droit deſcende, ceo eſt barre per le prece-cedent garranty: Quant al 2 point, ſcilicet le fine, Jones devide ceo al deux queſtions; l'un ou Elizabeth mere del' teſtor, & ſes heires fuit lye come privy. 2. Admitt, que ne fuit lye come privy: ou lye come eſtranger, & il tient que el fuit lye come privy, car el fuit heire al Alexander, que levie le fine, & auxi el claime l'eſtate & droit per means del' Alexander, ſcilicet, come Couſin al John frere del' Alexander, & file & heire al Alexander, & ſi Alexander ad eſtre attaint, il ne puiſſoit claime ceo, quod vide 10 Eliz. fol. 277. en Caſu de Petition de droit, al ceſt point les auter Juſtices ne parle. 2. Pur le ſecond point, tout agree, que entant que un Action de Formedon en reverter fuit done al Elizabeth giſant ſur mort de Alexander & John, & les 5 ans adonque

que

que ne fueront paſſe, & el ne port ceo deins les 5 ans, el fuit barre, quant al ſa Action, & quant leſſee pur vie morust, el n'avera novell 5 ans; le point pur ceo eſt tiel, Tenant en taple fiſt Leaſe pur vie, & apres grant le reverſion per fine, Tenant en taple morust ſans iſſue, ceſtuy en reverſion poet aver Formedon en reverter maintenant, ſed ne poet enter tanque apres mort Tenant pur vie, ſil ſuffer 5 ans ſine port d'un Action, il eſt barre, & ne poet aver novell 5 ans a enter puis mort Tenant pur vie, car il n'avoit forſque un droit, coment ſeveral means a ceo recover, & quant il fuit barre al l'un il ſerra al l'auter. Le maine caſe que fuit urge al contrary fuit, Tucker & Lawne 33 Eliz. miſe en Fermers Caſe, Cooke pars 3. Tenant pur vie levie fine, & 5 ans paſſe, ceſtuy en reverſion avera novell 5 ans apres mort leſſee pur vie; ſed ceo fuit reſponde que leſſee ne ſerra un droit ſur Leſſor ſans ſon conſent, ſcilicet, pur enter pur le forfeiture, ſecondment leſſor prift ſolment notice quant ſon eſtate fine per determination del' ceo ſur morust Tenant pur vie, & nemy del' determination que leſſee meſme fiſt, & ſerroit valde prejudicial ſi ſerroit auterment, car leſſee poet privatement levie fine, & ſuffer 5 ans a paſſer en ſon vie, de que leſſor ne poet aver notice, ſed Margaret Prodgers Caſe Cooke pars 9. eſt un bon caſe al contrary, car ſi leſſee pur ans ſoit diſſeize & fine levie, leſſor n'avera forſque un 5 ans, ſcilicet, preſentment, & nemy un 5 ans en preſent & l'auter quant 5 ans fine; Jones reſponde auter Objection, ſcilicet, que le fine eſt levie del reverſion, & ne toucher l'eſtate pur vie, ideo il avera novell 5 ans, quant le reverſion vient en poſſeſſion, que fuit icy per mort Tenant pur vie, ſed il reſponde, que per le fine del' reverſion, le Action & droit de eſtranger, quant al eſtate pur vie eſt barre, auxi ſil ſuffer 5 ans a paſſer, & il fuit iſſint adjudge, quod vide Inſtit' Coke fol. 298. Et ideo pur tout ſes reaſons, Judgment fuit pur Defendant.

Ameſley *verſus* Chapman.

(5)

LE caſe ſur ſpecial verdict en Ejectione firmæ pur terres en Tottenham en le Counte de Middleſex, fuit tiel, Sir William Locke fuit ſeiſie en fee de terres en queſtion eſteant un Meſſuage, 10 Acres pree, & 4 Acres paſture cum pertinent in Tottenham prædict., & de auter terres en Tottenham avandit, & auxi de divers Meſſuages, Terres, & Tenements en le ſeveral Counties de Middleſex & Surrey, & deins de Cittie de Londres il fuit auxi jointment ſeiſie ove Matthew Locke ſon fits de certaine cuſtomary terres en Tottenham avandit, & auxi le dit Sir William fuit lye en un Obligation a payer al Elizabeth ſa feme 40 l. annualment du-

rant ſa vie pur ſa Dower, iſſuant del' dit terres, tam cuſtomary quam Franktenement & avoit iſſue 5 fits, Thomas, Matthew, John, Henry, & Michael, & iſſint ſeiſie fiſt ſon darren volunt en eſcript, & per ceo il deviſe ſon meſe en Bowe Lane, & ſon meſe al ſigne del' Cocke en Cheape, & le Bell en Cheape al ſes 5 fits, al entent, que ils poient joyntment inhabit, and keep the Retailing Shop in his name to continue, Item, il done auter Tenements al Henry, Item il deviſe al Matthew auter Meſſuages & Tenements, Item il pluis done al Henry, John & Michael touts ſes Meſſuages & Tenements en le Poultry, &c. Item il done al Thomas Locke, Item il done auter terres al ſes 5 fits; And as touching his Lands in Tottenham, my Son Matthew is joint purchaſor with me of moſt of them, and thereof both Fee and Copy I give to Henry and Michael Locke, upon condition that if they Sell but to my Son Matthew, then he to enter upon it as my gift, Item all the Houſes and Lands that I have given jointly between my Sons is, That they ſhall bear part and part alike, pay out of my Houſes and Lands upon my bleſſing, as well Free as Coppy-hold, to pay to my Wife for her Dower 40 l. every year during her life, out of my Houſes, Lands, Free and Coppy; for the which I am bound, as appeareth by Indenture, and Covenant, and Obligation, and which of my 5 Sons that refuſeth to bear his part of the ſaid 40 l. as aforeſaid, I will that they ſhall not enjoy any part of my bequeſt, but that their part ſhall go to the reſt of my willing Sons, which ſhall be content to fulfill this my laſt Will, & il moruſt. Michael ſurvive Henry, & fait Leaſe del' terres en queſtion en Tottenham al Nicholas, & le Plaintiff claime deſouth ſon title per Conveyance, & le Defendant claime deſouth Thomas Locke le Couſin & Heire al Common Ley, al Sir William Locke Chivaler, & le ſole queſtion fuit ou Michael avoit eſtate pur vie ou en fee, ſi en fee, donque le Plaintiff avoit le melior title, ſi pur vie ſolment, donque le Defendant ad le melior title; apres divers arguments, les Juſtices conferre enter eux meſme, & ils reſolve, que Michael navant forſque un eſtate pur vie, que apres le Chief Juſtice deliver, ſur que Judgment fuit done pur Defendant.

Termino

Termino Mich. An. V. Caroli Regis, *in* Banco Regis.

Baker *verſus* Sir William Lee *& anters.*

EN Ejectione firmæ pur le Parſonage de Chipping Nor- (1)
ton, en Com' Oxford enter les parties, ſur Evidence le caſe fuit tiel, Henry Caricke fuit poſſeſſe pur divers ans per Leaſe del' Deane & Chapter de Glouceſter del' dit Parſonage, & il aſſigne ſon intereſt al 4 perſons ſur Truſt & Confidence, al luy meſme pur vie, & apres a tiel uſes intents & purpoſes, come il declare per ſon darren volunt; il per ſon darren volunt devile ceo al Richard ſon fits, & al heires de ſon Corps engenders remainder al ſon fits William Caricke, & charge ceo ove divers Legacies & Annuities, & fiſt Richard Caricke ſon fits Executor, & morust: Richard Caricke pur 1600l. ceo vende al Sir William Lee, & William Caricke ayant annuitie hors del' ceo, per fait vende ceo al Sir William Lee & releaſe a luy tout ſon droit en le Parſonage, Richard morust ſans iſſue: le Adminiſtrator del' ſurviving aſſignee grant ſon intereſt, auxi William Caricke joine ove luy al Richard Dowdſwell leſſor del' Plaintiff Baker, & tout le Court una voce tient, que le aſſignment ne fuit void vers Sir William Lee per l'eſtatute de fraudulent Conveyances, & 2. que le remainder al William Caricke fuit voide, & ceo nient obſtant, le ſale del' Richard Caricke ad eſtre bon, ſi null aſſignment ad eſtre, mes le aſſignment fiſt ceo male, & accordant al opinion del' Court, le Jury done verdict pur le Plaintiff.

Norgate

Norgate *verſus* Snape.

(2) HOme recover en Dett ſur Obligation vers un come Executor, & l'executor mourſt inteſtate, adminiſtration del' biens l'Executor & de bonis non adminiſtrandis del' primer Teſtator fuit committ al un meſme le perſon, le recoveror ſue ſcire facias vers luy, come Adminiſter del' Teſtator, & Executor, il plede pleinment Adminiſtrator les biens de ambideux, le Plaintiff replie, que il ad aſſets del' biens del' Teſtator, & trove pur luy, & Reve move en arreſt de Judgment, que le Judgment ewe vers l'executor eſt determine per ſon mort ſans Teſtament, & que il n'eſt privy a ſcire facias vers Executor, come ſi un recover come Executor & mourſt inteſtate, null Scire facias giſt per le Adminiſtrator; Jones, Whitlock & Crooke ſemble, que ceo deſtre aſſets bon, car il eſt difference enter recovery vers Executor, & per Executor: Hyde doubta & Judgment done accordant al primer opinion.

Bodvell *verſus* Bodvell.

(3) HEnry Bodvell port annuity per pleint vers John Bodvell Chivaler al grand Seſſions en le Counte de Carnarvan, & declare ſur un grant per fait fact a luy de ceo, per le dit Defendant pur vie, & la il ad Judgment de recover apres verdict, & le Defendant port brief de error, & le maine error fuit, pur ceo que le Statutes de 34 H. 8. & 35 H. 8. de Gales dient que tout real Actions & mixt Actions ſerra ſue la per brief & tout perſonal Actions per pleint, & que le dit Action de annuity fuit un mixt Action, car releaſe de Actions reall eſt bon barre en annuity, come eſt opinion en Title de Releaſe en Abridgant le caſe de 2 H. 4. 13. & opinion Cooke en ſon Inſtitute fol. 285. Sect. 492. ſed apres ſeveral arguments tota & plena Curia e contra, que il fuit un perſonal Action ſolment, & ſans argument le Judgment fuit affirme. Semble a moy clærement que le Judgment fuit bien affirme. Primes il eſt un perſonal choſe ſolment & perſonal Action, & charge le perſon ſolment, & ne tange realty en aſcun choſe Bracton fol. 102. dit que perſonal Action tangit perſonam tantum, & mixt Action tangit rem & perſonam, & ceſt Action non tangit aliquam rem, ideo il eſt perſonal. ove ceo accordant, 41 E. 3. 27. 21 E. 4. 82. per Syliard, Manxells Caſe in Plowden, Nevills Caſe Cooke pars 7. que il neſt deins l'eſtatute de Weſt. 2. 7 H. 4. Statham Title Annuity, que ſi Annuity en fee ſoit alien al Corporation, neſt mortmaine, & opinion Popham in Caſu Fulwood in ſes Reports, & quant al opinion de Fitz. le liver ne ceo garrant, & les

les liures cite per Cooke 2 H. 4. 13. & 9 H. 6. 57. ne garrant ſon opinion, ſed ſon opinion poet eſtre bon, ſi fuit priſe, que ſi un grant Rent Charge, & apres releaſe touts Actions reall, ſi apres fiſt Election a port annuity, ceſt reals ſerra bon barre & iſſint ſi fiſt releaſe de Actions perſonal, ceo ſerra bon barre ſil avowe pur le Rent. Mes releaſe d'Actions reall, apres que il ad fait Election, n'eſt barre en Annuity, vel e contra, ſi apres il ad fait Election de prender ceo come Rent Charge, releaſe d'Actions perſonal n'eſt barre. 1. Un Annuity poet eſtre ſue per Bill, come ſont 2 preſidents en le novell liber d'entries en Title d'Annuity, l'un en B. le Roy, l'auter en Scaccario, & 16 Jac. en Caſu Mingye del' interiori Templo, il fuit adjudge, que annuity ſur grant pur vie giſt en B. le Roy per Bill ſans brief. Et iſſint devant 34 & 35 H. 8. il giſt en North Gales, & l'eſtatute de 34 H. 8. eſteant en le affirmative, ne ceo abridge, maxime pur ceo, que l'eſtatute referre tout al uſe de North Gales, ideo l'uſage de North Gales fuit pur ceo ſaver, & nemy alter, vide pur ceo Studley & Morgans Caſe & Perryns Caſe cite Cooke pars 5. & 33 H. 8. Dyer 51.

Benſon *verſus* Flower.

(4) DIne recover damages en Action ſur le caſe pur parolls, & devient Bankrupt il priſt capias ad ſatisfaciend' pur le damage, & Coſts, & le Viſcount receive le argent del' Defendant, apres ceſt Money fuit aſſigne al un Creditor, per l'eſtatute de Bankrupts, & ſur ceo Binge move, que le Creditor avera l'argent del' Viſcount, & il fuit denye per Curiam, car devant Judgment un Action ſur le Caſe pur parolls ne poet eſtre aſſigne per l'eſtatute, mes apres le Judgment quant ceo eſt reduce al un certainty il poet eſtre aſſigne, iſſint poet argent del' Bankrupt, & ceſt argent fuit ad ceo receive, mes devant que il ceo receive, ſed remaine en mains del' Viſcount il ne poet eſtre aſſigne.

Countie *de* Pembroke *verſus* Boſton & Greene.

(5) LE Countie de Pembroke port Quare Impedit pur l'Eſgliſe de Matiſſon en le Countie de Southampton, vers Greene & Boſtocke, & declare que le Royne Elizabeth fuit ſeiſie en fee en groſſe de ceo, & preſent un Pyndar, que priſt auter benefice, per que le primer void, per 21 H. 8. le Roy grant le advowſon al Sir Chriſtopher Hawkins, que grant a Swayne, que grant per fait al

Sir

Sir Walter Sandys, il mourt, & deſcende al ſon fits Sir William Sandys, que grant le prochein avoidance al Countie de Darby, que grant ceo al Countie de Pembroke, & que Pyndar fuit preſent per Roy arere al dit Eſglife, devant le grant al Sir Walter Sandys, & fuit inſtitute, & l'eſglife devient voide per ſon mort, per que il appent al Plaintiff a preſent, Greene come Patron plede, que Sir William Sandys, non conceſſit le prochein avoidance al Seignior Darby, ſur que iſs fuerant al iſſue Boſtocke come Parſon Imparſonee per preſentment de Greene, plede al abatement del' brief, il confeſſe le ſeiſin Royne Elizabeth, & preſentment de Pyndar, & que il prift 2 benefices, per que le primer fuit voide, & que le Roy preſent luy arere & confeſſe le conveyance, tang; ceo vient al Sir William Sandys, que grant ceo pur ans al Greene, & devant que apres le avoidance del' Eſglife per priſell del' 2 Benefice le Royne preſent un H. & apres Pyndar fuit inſtitute, ſur ſon preſentment, q̃ fuit voide pur ceo, que adonque plein de H. & que H. mourt & que l'eſglife devient voide per mort Pyndar, & demande Judgment del' brief, pur ceo que le Plaintiff ne mention le darren avoidance, & Plaintiff maintaine ſon declaration, que l'eſglife vacavit per mort Pyndar, ſur que al iſſue, & pur le ſecond iſſue le Jury trove pur le Plaintiff, & pur le 1, Iſſue iſs trove ſpecial verdict, & iſs agree en tout oue le declaration, ſavant que iſs dſont, que Swayne grant le dit advowſon al Sir Walter Sandys, per ſon fait per nomen Walter Sandys Ar', & ſi ſuper totam materiam, il appeare que Sir William Sandys conceſſit, donque iſs dſont pur le Plaintiff, & ſi non conceſſit, donque pur le Defendant, En Common Banke le ſpecial verdict fuit argue, que le verdict ad fait declaration male pur variance, pur ceo que le Plaintiff ad declare ſur grant fait per Swayne al Walter Sandys Chivaler, le Jury trove, que le grant fuit fait al dit Walter Sandys Chivaler, per nomen Walter Sandys Ar', que eſt un variance, ſed le Court la una voce tout tient ceo null variance, ſed que le verdict maintain le Declaration, & trove bon grant, per Sir William Sandys que fuit l'iſſue. 2. Le ſecond exception fuit priſe, pur ceo que le Plaintiff n'ad deſtroy le Title del' Greene plede per Boſtocke, & ceo fuit tenus auri bon, car le dit Boſtocke traverſe le darren avoidance per mort Pyndar, & il ne puiſſoit prender traverſe ſur traverſe, ſed ſolment a maintaine ceo que fuit traverſe per le Defendant, & Judgment fuit done la pro querente, ſur ceo les Defendants la, port ceo brief d'erroꝛ, & ſes 2 matters aſſigne pur erroꝛ, apres ſeveral arguments al barre, le Court ſur conference enter eux meſme agree, d'affirme le primer Judgment, que fuit fait accordant ſans aſcun argument.

Groſſe

Groſſe *verſus* Gayne.

LE caſe enter Groſſe & Gayne ſur ſpecial verdict en Ejectione firmæ pur terres en le Countie de Devon' fuit tiel, un Trugione fuit ſeiſie en fee de terres en queſtion & iſſint ſeiſie fuit endite de præmunire, & devant ſon triall il done ceo en Tayle al un, deſouth que le Defendant claime, apres il fuit attaint de Præmunire, & un office deſouth le Seale del' Exchequer trove ceo, & le Royne Elizabeth deſouth grand Seale grant ceo al George Carew, & ſon intereſt fuit convey, & vient al leſſor del' Plaintiff, & ceſt grant per le Royne fuit deins le temps del' purview del' Statute de 18 Eliz. pur confirmation de grants le Roy. 2. points fueront fait, l'un ou le attainder en le præmunire avoidera un grant fait per le party attainted meane, perenter le Inditement & le Tryall, & Judgment ſur ceo; que fuit argue ſovient foits, & fuit un grande point de doubt, & conſequence, en que les Juſtices, ne done aicun opinion, ou reſolution. Le 2d. point fuit ou le grant del' Royne fuit bon, admittant que le attainder per relation avoidera le Conveyance meſme. Et il fuit reſolve, que le grant ne fuit bon al Common Ley, pur ceo que ſur le attainder, l'eſtate de Franktenement, ne fuit deveſt, & veſt en le Roy, tanque un Office de ceo trove, & l'Office doit eſtre un Office de entitle le Roy, & nemy pur informe le Roy del' particulars del' terres, & ideo entant que ceo fuit per un Commiſſion deſouth le Seale del' Exchequer, & nemy le grand Seale, ideo le dit Office fuit inſufficient, pur entitle le Roy, come eſt reſolve en Caſu Page pars 5. Cooke. (2) Il fuit reſolve, que ceſt grant, n'eſt aide per l'eſtatute de 18 Eliz., car l'entention del' dit Statute fuit a faire grant bon, ou l'eſtate de Franktenement fuit ſettle en le Roy, & null Office trove, la le dit Statute aide le defect de trover un Office ſolonque l'eſtatute de 18 H. 6. ſed nemy a faire grant bon, ou le Roy n'ad aicun eſtate, devant un Office trove. 2. Le dit Statute fait le grant bon vers le Roy ſes Heires & Succeſſors, & nemy vers eſtranger, ideo ceo ne defeate l'eſtate de donee en tayle, ideo ſur ceſt point ſans argument, Judgment fuit done pur Defendant. (6)

Ruſſell *verſus* Warde.

(7) RUſſell port Action ſur le caſe vers Warde, & declare que le Teſtator del' Plaintiff fuit poſſeſs d'un Meſſuage, & divers terres en D. pur ans, & de divers biens, en le dit meaſe, & que un Heale & Crooke fueront poſſeſs de auter terres en D. & que 28 November 14 Jac. il fuit un Colloquium enter le dit Plaintiff & Defendant, pur ſon intereſt en le dit terre, & biens, & que adonque le Defendant en conſideration, que le Teſtator del' Plaintiff ad aſſume de grant ſon intereſt, en le dit terre, & biens al Defendant, & a relinquye le poſſeſſion de part del' ceo al Annunciation enſuant, & part al Michaelmas enſuant, & reſidue al Michaelmas Twelvemonth enſuant, il promiſe & aſſume a payer al Plaintiff 500 l. ſcilicet, un moyety al Michaelmas enſuant, & l'auter un an apres, ſi le Defendant agreer voilt cum le dit Heale & Crooke pur lour dit terres, & declare que poſtea le dit Teſtator morust, & poſtea le dit Defendant, ſcilicet, 28 September enſuant agree ove le dit Heale & Crooke pur lour terres, & entant le Teſtator fuit plaiſt, pur aſſure le dit terres, & biens al Defendant, & le Plaintiff apres ſon mort, tamen le Defendant n'ad paye le argent, & ſur non aſſumpſit plede, trove pur le Plaintiff & ſur arreſt de Judgment, il fuit move, que le declaration n'eſt bon, pur ceo que le bargaine appiert deſtre, que le Defendant averoit aſſurance del' biens, & terres & le Defendant pur payer 500 l. pur ceo, ſi agreer voilt ove Heale & Crooke, iſſint que ſi il ne agree, donque ne fuit pur payer le argent, & ſi null agreement neque payment, donque le Plaintiff ou ſon Teſtator ne fueront pur aſſure le terre, & ideo per eux le agreement va al tout le bargaine, & donque le bargaine eſteant conditional, & le Teſtator morust, devant le agreement, le bargaine fuit diſſolve, car quant il morust, il ne poet aſſure, de quel opinion tout le Court (præter Hyde) fueront, & il al contra, ſed Judgment fuit done pur Defendant.

Symons *verſus* Smith.

(8) SYmons come Executor del' Nicholas Smith chivaler port Covenant vers Grace Dame Smith relict Sir George Smith ſur Indenture Tripartite fait perenter Sir George Smith del' un part, Sir Nicholas Smith del' auter part, & le dit Grace, & auters del' 3 part, & declare que Sir George Smith fuit ſeiſie en fee, ſolonque

le

le cuſtom del' Mannor de Ottry St. Maries en le Countie de Devon, d'un Old Barton & d'un auter cuſtomary Tenement, en le dit Mannor, & que per le cuſtom, le feme ſuit d'aver un eſtate pur vie apres mort ſa baron del' Barton, & durante viduitate, del' auter, & que le dit Grace Covenant de ſurrender al requeſt le dit Sir Nicholas Smith ſon eſtate apres mort Sir George Smith & que el ſuffera & permittera luy ſes heirs & aſſigns a prender, & enjoyer les rents iſſues, & profits del' ceo, & apres el marrie Sir George Smith, & il morust, per que el fuit ſeiſie pur vie, per le dit cuſtom de Barton, & del' l'auter Tenement durante viduitate, & que le dit Grace prift les rents iſſues, & profits del' dit terre, & non permiſit le dit Sir Nicholas pur eux enjoyer, ſur que le Plaintiff port Covenant, come Executor del' Nicholas Smyth, & le Defendant demurre ſur ceo, le Defendants Counceil dit, que le requeſt extende non al ſurrender ſolment, ſed al pernancie del' profits auxi, ſed Curia e contra, que le requeſt vae ſolment al ſurrender, car ſont 2 diſtinct clauſes, l'un que al requeſt el ſurrendera, l'auter que Defendant ſuffera & permitte Teſtator, a prender les profits. 2. Exception fuit pur ceo, que null actual hindrance alledge, ſed que non permiſit le party a prender les profits, ſed il doit monſtre un ſpecial diſturbance, & hindrance, ſed Curia e contra, que entant, que il eſt alledge que le Defendant prift les profits, ceo eſt un ſpecial diſturbance, & hindrance del' Tenant, per que Judgment fuit done pur Defendant.

Termino Hill. *An.* V. Caroli Regis, *in* Banco Regis.

In Hillary Term 5 *Caroli*, *Humphrey Davenport* Serjeant at Law (upon the Death of *Sir Henry Yelverton*, Juſtice of the *Common-Pleas*, who dyed the beginning of the Term) was made Juſtice of the *Common-Pleas*.

Babington *verſus* Caleb Wood.

(E) BAbington port Action de Dett ſur Obligation vers Caleb Wood le condition del' Obligation fuit, That whereas the Plaintiff did intend and was about to preſent the Defendant to the Benefice of Stow, if the Defendant at the requeſt of the Plaintiff ſhould reſigne the ſame to the hands of the Biſhop of London, then the Obligation to be void: Le Defendant demand Oyer, & demurre, & adjudge pro querente, car le reſignation poet eſtre ſur bon intention a prevent pluralities, ou auter cauſe, & ne ſerra intende Symony, ſi ne ſoit ſpecialment plede & averre, & Mich. 37 & 38 Eliz. enter Jones & Lawrence il fuit adjudge accordant, & affirme en Error, quel Preſident, le Court view, & ſur ceo Judgment done pro querente.

Termino

Termino Paſch. An. VI. Caroli Regis, *in* Banco Regis.

James *verſus* Hayward.

Intratur Termino Paſch. 5 Caroli.

JAmes port Treſpaſs vers Hayward pur enfreinder d'un Cloſe appell Ightham in Com' Suſſex, & Eruption, Evulſion, Succiſſion, & Proſtration d'un Gate ſur le dit Cloſe, le Defendant plede, que fuit hault voy d'un Market alant trans le dit Cloſe, & que le Plaintiff eſteant owner del' dit Cloſe fiſt encloſure d'ambideux parts del' voy, & ſett deux poſts del' ambideux parts del' voy, & fixe le dit Gate al poſts trans le dit voy, per quod Subjects ne poient paſſa ſans nocument, & que il paſſa en le dit voy pur ſon occaſions, & pur ceo, que le dit Gate fuit impediment al luy, il proſtrat, dirumpe, & evell, & ſuccide le dit Gate: le Plaintiff replye, que le Cloſe fuit Copice de Bois, & que il fiſt encloſure circum le dit Cloſe pur preſervation del' Springs, & Bois, & fixe deux poſts d'ambideux les parts del' voy, & il fixe le dit Gate per Hinges al un poſt al traverſe le dit voy, & traverſe que le Subjects le Roy, ne poient paſſe la, ſans nuſance, ſur que le Defendant demurre, & apres divers arguments al barre, il fuit adjudge encounter le Plaintiff, per Hyde, Jones & Whitlock (Crooke eſteant al contrary) & les Juſtices deliver lour opinions ſeparatement, le caſe fuit devide a trois queſtions. (1.)

1. Primes, ou le owner del' Soile del' ambideux parts del' Hault voy, poet faire encloſure, & mitte un Gate al traverſe de Hault voy.

2. Si ceo ſoit nuſance, & nemy juſtifiable, ou un paſſenger poet abate ceſt nuſance, & a proſtrate le dit Gate.

3. Si poet abater le Gate, ou il ad fait ceo ſolonque ſon power, ou il ad exceed ſon power, ou nemy.

Primes

Primes Grooke tient, que il poet erect un Gate a traverſe d'un haut voy, car il ſont divers Gates ſur le haut voy, & ſi ceo ſerroit preſt pur nuſance, donque null preſcription poet faire ceo loyal, car null preſcription poet maintaine nuſance, & 2 E. 4. 9. un Treſpaſs eſt port pur Cloſe debruſt, & il eſt juſtifie, que le Plaintiff ad trove un Gate del' ambideux parts d'un Hault voy, & il open le Gate, a paſſer, que eſt meſme le Treſpaſs, ideo il fuit tenus loyall. 2. Il tient que ſi ſuit nuſance, le remedy eſt per voy de preſentment en un Leete, & cheſcun particular perſon, ne poet ceo abater. 3. Coment que il poet abate, tamen il confeſs icy que il ſuccide le Gate, que il ne poet faire, mes ſolment pur ceo proſtrate: ſed les auter 3 Juſtices tient, primes que un Gate, ne poet eſtre levie trans le hault voy, car ceo eſt un apparent nuſance & hindrance al paſſengers, & le caſe de 2 E. 4. 9. n'eſt al contrary, car la l'Action n'eſt port pur debruſer del' Gate, ſed pur Treſpaſs ſur le terre, mes ils tient, que un Gate poet eſtre ſur le hault voy per preſcription, vel per ad quod dam' & Licence le Roy, car le Roy que ad hault voy pur touts ſes ſubjects poet ceo Licence, quant per ad quod damnum il eſt trove, que n'eſt aſcun inconvenience, & Jones dit, que ſi un private home ad voy ouſter le terre de J. S. per preſcription, ou grant J. S. ne poet faire Gate a traverſe le voy, & ſi en un particular chymin un Gate ne poet eſtre fait, a multo fortiori, en un hault voy, que ſerra prejudicial a mults. 2. Ils tient. que le abatement del' ceſt nuſance fuit loyall; ſi particular nuſance ſoit fait, le partie ad election a porter un Action, & per ceo means pur abate le nuſance, & a recover damages, vel poet ceo abate. Penruddocks Caſe pars 5. Cooke. Batens Caſe Cooke pars 9. 17 E. 3. 44. 8 E. 4. 5. 9 E. 4. 35. 2 H. 4. 11. iſſint pur general nuſance il eſt en election de enditer le offender en un Leete, & ſur ceo d'aver ceo abate, come 8 E. 3. Fitz. Itin. Cant. vel le partie grieve, poet ceo abate, mes verum eſt que pur general nuſance, cheſcun particular home n'avera Action, niſi ad ſpecial prejudice. 5 E. 4. 3. 32 H. 6. 26. & 27 H. 8. 2. ſed al abater nuſance general, cheſcun home poet. 6 E. 3. Aſſ. 452. 454. nuſance en Cœmiterio, cheſcun Pariſhioner poet ceo abate. Brooke Nuſance 2. ſi nuſance ſoit en hault voy, cheſcun paſſenger poet abate ceo, & ove ceo agree liver d'Entries Treſpaſs, en chymin 3. fo. 627.

3. Pur le manner de abater de nuſance, le rule eſt, le nuſance doit eſtre abate en cy convenient manner, que poet, ſi un meaſon ſoit levie al nuſance, tout le meaſon poet eſtre abate, come 8 E. 4. 5. eſt. Si parte, ceſt part ſolment ſerra abate, ſed quant le meaſon, entant que eſt nuſance eſt abate, il n'eſt loyall pur deſtroyer le materialls, ſed eux apres le abatement remainera al

owners

owners del' eux, & a ceſtuy que fiſt le nuſance, & en noſtre caſe, quant le Gate fuit fixe al poſt, come eſt alledge en le barre, & nemy traverſe per le Plaintiff, il fuit loyall al party de ceo evell, & dirumpe del' poſt, & quant ceo fuit cy fixe, que ne poet eſtre ſever, ſans ſucciſion, il poet ſuccide le joynt, que ceo knitt al poſt, & apres a ceo Proſtrate, iſſint le Diruption, Evulſion, Succiſion, & Proſtration loyall, mes quant fuit proſtrate, il ne fuit loyall al ceo ſuccide, ſed ne appiert, que le Defendant fiſt iſſint, ideo ſur tout le matter, Judgment done pur Defendant.

Morgan *verſus* Greene.

HOme fuit endette al J. S. ſur ſimple contract, & J. S. devient Bankrupt, & le dit Dett aſſigne al un Creditor, le Dettor mayſt & le Creditor come aſſignee port Dett vers l'Executor, & per totam Curiam adjudge que ne giſt, ils agreeont que tiel Dett poet eſtre aſſigne ouſter, mes le aſſignee n'avera auter remedy, que le Dettee meſme avoit, & ceo fuit per Action de Dett, ou Action ſur le caſe en vie le Dettor, & apres ſon mort per voy de Action ſur le caſe vers Executor, & iſſint le aſſignee poet aver Action ſur le caſe mes nemy Dett, car l'eſtatute que done poyer d'aſſignment, ne alter le courſe del' Ley pur recovery del' ceo en auter nature, que le Ley devant allowe, & ne done pluis advantage al aſſignee, que le principal Creditor meſme avoit. (2)

Bacheloure *verſus* Gage.

HOme leſſe terre pur ans, & le leſſee Covenant per Indenture pur luy ſes Executors & Aſſignes, que il ne ferra aſcun building ſur le terre, le leſſee aſſigne ſon terme ouſte, de que leſſor accept le Rent, & apres il port Covenant vers le primer leſſee, pur ceo le aſſignee fiſt un building encounter Covenant, & adjudge, que Action giſt, per Jones, Whitlock & Crooke (abſente Hyde) car il eſt difference enter Covenant en fait, & Covenant en Ley, car ſi fuit Covenant en Ley en apres aſſignment, & acceptance null Action vers le primer leſſee, mes ſi Covenant en fait autrement eſt, car la ſur le dit Covenant en fait, Action tout foits giſt vers le primer leſſee, mes ſi Covenant fuit pur repairer del' meaſon, la le leſſor ad election apres aſſignment, & acceptance a ſuer le primer leſſee, ou le aſſignee, mes ſi fuit collat' Covenant, l'Action giſt ſolment vers le primer leſſee. (3)

Weſt

West *verſus* Trefuſye.

Hill. 5. *Car. Rot.* 318.

(4) LEſſee pur 20 ans leſſe pur demy an al J. T. il apres Terme fine (& devant alcun entrie per le primer leſſee) pluſt les plankes, & auter choſes, que fueront fixe al Freehold, & leſſee pur 20 ans port Action ſur le caſe vers J. T. & adjudge una voce, que l'Action gilt.

Le Roy *verſus* Nudigate.

(5) SUr traverſe d'un office trove, il fuit miſe en iſſue ou J. S. devile les terres al J. N. & ſes heires ou nemy, le Jury trove, que les terres fueront tenus en capite, & J. S. eut devile al un pur fils, remainder en fee al J. N. & le Leaſe fuit en being, & adjudge, que non deviſit modo & forma, car l'iſſue eſt ſur un immediate devile en poſſeſſion, & devile pur ans, remainder en fee, ne ceo maintaine, & 2. il neſt devile, mes de deux parts pur reaſon del' tenure en capite.

Termino

Termino Trin. An. VI. Caroli Regis, *in* Banco Regis.

Sparke *verſus* Denne.

LE caſe enter Sparke & Thomas Denne del' Inner-Temple, ſur appeal al Delegates, fuit tiel, John Denne fitt ſon volunt, & per ceo deviſe ſeveral Legacies en argent al ſeveral perſons, & en fine, deviſe le reſidue of all my moveable Goods and Chattells al ſa feme, & fitt ſa feme ſon Executrix, & ayant divers Detts due ſur Bond a luy mozuſt, & ſa feme devant probate del' volunt, ſcilicet, meſme le jour, mozuſt, apres ſa mort le adminiſtration del' biens de John Denne cum Teſtamento annex' fuit committ al ſoer del' feme, que marrie Sparke, & ſur ceo le appeal port per Thomas Denne frere del' dit John Denne, & le Commiſſioners Delegates que ſeia & done Sentence en le cauſe fueront l'Eveſque de Ely, Jones, Whitlock, Harvey & Crooke Juſtices, & ne fueront aſcun pluis la, & ceo fuit apres ſeveral arguments de Doctor Eden, & Ducke, & Crawley, Brampſton & Noy, & le Sentence fuit, que le dit Adminiſtration ſerra revoke, & novell Adminiſtration committ al dit Denne cum Teſtamento prædict. annex'. Et le reaſon fuit, que per le deviſe de All my moveable Goods and Chattells; Detts que ſont jura, ne fueront deviſe, iſſint que fuit aſcun choſe, que ne fuit deviſe, ideo le adminiſtration la ſerra committe al prochein de friends de John Denne, mes ſi touts les biens Chattells, & Detts fueront deviſe, & null reſidue, donque l'Adminiſtration appertaine al deviſee, car il ad tout l'eſtate, ſi longue 22 Eliz. Dyer; & ſur ceſt difference le primer adminiſtration fuit reverſe, & le novell Adminiſtration grant, & ceo fuit una voce de tout les dit Commiſſioners, & ils decree que un Obligation ſerra priſe de Thomas Denne, que il payera touts Legacies, & perſonne le dit volunt; il fuit meve per Noy, que ſur l'eſtatute de 31 E. 3. il ne fuit aſcun remedy a compell le Ordinary a committe le Adminiſtration al procheine de Sanke,

& il penſe, que un brief poet eſtre grant hors de Chancery a compell, & commande luy, iſſint a faire, come un cautione admittenda de faire abſolution, & il cite un preſident, que un brief grant al Eveſque de Oxford, de compell luy a doner chriſme a eur deins le Deanery de St. Burian, ſed les Commiſſioners ne parle riens de ceo.

Salmon *verſus* Percivall.

(2) THomas Salmon port Action de Treſpaſs de Aſſault & Battery, & Impriſonment vers William Percivall, le Defendant plede, que il fuit un cuſtom en London, que ſur intration d'un plaint en London, un Serjeant poet per paroll ou autrement arreſt le Defendant a reſponder al dit Plaintiff, & il monſtre, que un J. S. enter plaint en le Counter vers le Plaintiff, & il fuit un Serjeant, & luy arreſt, & carrie luy al Counter, tanque il trove ſufficient Bayle. Le Plaintiff replie, & conſeſſe le cuſtome, & entrie del' plaint, & le arreſt, & que il offer ſecurity al le Viſcount, & de ceo done notice al Defendant, & tamen il luy carrie al Counter, ſur que le Defendant demurre, & il fuit reſolve per le Court, que le Serjeant ſur le tender del' Bayle al Viſcount n'eſt lye de lett le party a large, niſi le Viſcount mitte Warrant teſtifiant ceo a luy. 2. Admitte, que il fuit lye de lett le party a large, tamen le aſſault, & le primer arreſt fuit loyall, & donque ceo apres ne turne al un Treſpaſs ab initio; Et null general Action de treſpaſs giſt en ceo caſe, mes un ſpecial Action, & les damages fueront tare entire & pur l'aſſault, & le primer arreſt loyall, ideo per Hyde, Jones & Crooke (abſente Whitlock) in Cancellaria, Judgment done pur Defendant, & Whitlock apres agree a ceo.

Hughes *verſus* Bendy.

(3) UN Sentence en le Court del' Chancellor d'Oxford fuit done al Suite Bendy vers Hughes, & ſur ceo il fuit excommunicate, & priſe en London ſur excommunicat' capiendo, & il vient eins en Banke le Roy, & plede que null addition fuit en le ſignificavit ſolonque l'eſtatute de 5 Eliz. & ſur ceo il prie deſtre diſcharge, & l'opinion del' Court fuit, que per l'eſtatute de 5 Eliz. les penalties mentioned en le dit Statute ſont diſcharge, ſed nemy le Impriſonment ou excommunication.

Cudrington

Cudrington *verſus* Redman ou Rodman.

CUdrington fuit excommunicate per le Delegates in cauſa jactitationis Matrimonii, & fuit priſe per excommunicat' capiendo, & ſur ceo il vient eins, & plede pardon de 21 Jac. en que touts contempts, &c. pardon, & le queſtion fuit, ou ſerra dicharge, & l'opinion, & reſolution del' Court fuit, que il ſerra diſcharge, car coment Coſts al party, ne fuit diſcharge per le pardon, tamen le Contempt, & impriſonment fuit pardon, & le party poet ſuer arere al Delegates vers le party, quant il eſt alarge pur performe le Sentence pur le Coſts, Paſch. 7 Caroli ceſt caſe fuit move arere, & le opinion del' Court fuit ut ſupra, & un preſident en 2 Caroli de autiel Judgment fuit monſtre, per que le party fuit diſcharge. (4)

Termino Mich. An. VI. Caroli Regis, *in* Banco Regis.

Sir *John Walter* Chief Baron of the Exchequer, was in the beginning of *Michaelmas Term* (before he ſate in Court) required by Command from His Majeſty, to forbear to come to the Hall, and by virtue thereof he did forbear untill he dyed, which was upon Thurſday the 18th of November.

Vandam *verſus* Deconell.

(1) WIlliam Vandam avoit iſſue Samuel & Mary, J. avant iſſue per un Deconell Leah & Anne Deconell, William Vandam marrie J. J. moruſt, William Vandam fiſt ſon volunt, & devise mult del' ſes biens al ſa file Mary, & fiſt Samuel ſon Executor, & moruſt, Mary devie inteſtate, & le adminiſtration del' ſes biens fueront committe, per le Court de Prerogative, al dit Samuel, que fuit appeal pur accompt, & ſur ſon accompt, le Judge del' Prerogative Court fiſt diſtribution, del' part del' biens del' Mary ad dit Leah, & Anne Deconell, & ſur ceo Bankes pur le dit Samuel, pria Prohibition, & ſur le opening del' Cauſe per luy, & reſpons del' Germyn del' auter part, le Court una voce grant Prohibition, car per le adminiſtration, le property del' biens per 31 E. 3. fuit veſt en le Adminiſtrator, & le ordinary n'avoit riens a faire ove ceo, & le Adminiſtrator fuit ſubject a devaſtavit, ſil pay le diſtribution, & fuit dit per le Court, ſi l'auter partie voet, il poet demurre, ſur le Declaration, & iſſint a traber ceo en argument arere.

Puncher *verſus* Kingſton.

(2) PUncher fuit en Communication ove un Kingſton a marrier un F. Fawteroy & Kingſton dit que el avoit 600 l. Portion, & le Plaintiff voile luy marrier il promiſe a faire ceo bon, & ſur ceo

eo il marrie le dit party, & que le Defendant neque paya le dit 600l. neque fait ceo bon, & fuit move per Germyn en arreſt de Judgment, que aſſumpſit fuit a faire le Portion bon, & le Plaintiff n'ad alledge, que el n'avoit fait tiel Portion bon, mes ſolment, que le Defendant n'ad ceo paye, ſed fuit tenus per Curiam, que fuit aſſets bon, car le aſſumpſit ſerra expound que vel el ad bon Portion de 600l. vel ſel n'ad que il payera, & ſel ad, le Defendant poet ceo pleder & le Declaration ad alledge, que ne fiſt le Portion bon, que eſt tant, que el n'avoit aſcun, ideo il doit ceo pay, & Judgment fuit done accordant pro querente.

Kinge *verſus* Loder.

LEttice Knowles fuit ſeiſie pur vie demeſne d'un Coppy-hold terre en le Mannor de Stamford en le Vale de White-horſe in Com' Berks, & ſurrender ceo en maines del' Seignior del' Mannor al uſe d'un Dorothy Whiſtler, & ſur ceo le Seignior del' Mannor grant ceo al dit Dorothy Whiſtler, ſolonque le Cuſtom del' Mannor, Dorothy Whiſtler morust, Lettice Knowles enter, ſur que Dame Pagett Domina Manerii enter & leſſa al Plaintiff King, que fuit eject per le Defendant Loder en droit Letice Knowles & King port Ejectione firmæ vers Loder, & un ſpecial verdict fuit trove, come devant, & apres argument al barre, le Seignior Chief Juſtice en noſme de tout le Court dit, que le Plaintiff doit recover pur ceo que le primer Coppy-hold fuit ale per le ſurrender, & le 2 grant fuit al Whiſtler pur vie, & el eſteant mort, ceo retorne al Seignior del' Mannor, & nemy al Lettice Knowles, que fuit le primer leſſee pur vie ſur que Judgment fuit done pro querente. (3)

Nota, que primer jour de Octabis Mich. ſcilicet, le jour d'eſſoigne Jones pur Crooke, (cujus vices fuit ſervare les eſſoignes) vient al' Weſtminſter & la Sea, & adonque un brief d'adjourne fuit deliver a luy d'adjourner le dit Octabas, quindene, & tres Michaelis, uſq; in menſem Michaelis, le jour d'eſſoigne done fuit 27 October, a quel jour Crooke cuſtodivit les eſſoignes, & vient al Weſtminſter, & ceo fiſt,, & ſur die Sabbati enſuant eſteant 30 October, le plein Terme commence, & continue uſq; le fine de ceo eſteant lundy 29 November,& le cauſe de adjournment propter peſtilents in Civitat' Weſtminſter & London.

Termino

Termino Hill. An. VI. Caroli Regis, *in* Banco Regis.

Upon Monday the 23d. of January, the first day of the Term of Hillary *6 Caroli*, Sir *Humphrey Davenport* was Swome Chief Baron of the Exchequer, his Patent was (*durante bene placito*) the Patent of Sir *John Walter* was, *tamdiu se bene gesserit*: My Brother *Whitlock* in the life of Sir *John Walter* had promise of the place, but missed of it.

Halsey *versus* Halsey.

(1) HAlsey procure Prohibition vers Halsey, & declare, que le Defendant ad sue en Court Christian pur un passage, il fuit Proprietor de dismes deins le Parish de Magna Gatesdon in Com' Hertford, & que le Common voy a carrier les dismes hors de terres le Plaintiff fuit per un Close vocat' S. & que le Plaintiff avoit ceo estoppe, ubi revera le voy fuit per prescription per un Close vocat' W. & que il avoit plede ceo en Court Christian, & le dit Court, ne ceo allowe, & pur ceo que Cognizance de prescription pur voy doit estre trie per le Common Ley, & nemy en le dit Court, &c. sur que le Defendant demurre, & per opinion del' totam Curiam, Consultation agarde, pur ceo, Cognisance de voys pur carrie dismes appent al Court Christian, come appiert per l'estatute de 2 E. 6. & Fitz. Nat. Brevium en Consultation, & Lynwood en le Tractat' de dismes.

Drake

Drake *verſus* Munday.

DRake port Covenant vers Munday, & le caſe fuit tiel, que ils fueront Articles enter deux, per que il fuit Covenanted granted & agreed, que auter avera certeine terres pur 6 ans, & en conſideration de ceo, l'auter Covenant & Grant pur luy & ſes Heirs, & Executors a payer le annual Rent de 10 l. al leſſor ſes Executors & Heires, & leſſor mourt, & l'Executor port Covenant, & per totam Curiam il fuit reſolve. 1. Que le dit agreement eſt un Leaſe. 2. Que le dit parolls ſont ſufficient pur faire reſervation de Rent, & iſſint tenus pur ambideux points, en Caſu Hayton & Wiſe M. 37 & 38 Eliz. B. le Roy Rot. 226. (2)

Strowde *verſus* Hoskins.

EN le caſe enter, Strowde & Hoskins ſur Prohibition, 2 points fueront agree perenter les 4 Juſtices, primes quant un Prohibition eſt port ſur l'eſtatute de 2 E. 6. pur ſtayer Suite en le Spiritual Court pur diſmes en barren terre le primer 7 ans, il beſoigne al partie, que port Prohibition a prover ſon ſuggeſtion deins 6 moies; auterment Conſultation per le dit Statute eſt grantable. 2. Quant un Conſultation eſt grant pur le reaſon avandit, tamen le party poet aver novell Prohibition ſur meſme le Libell, pur ceo que l'eſtatute de 50 E. 3. n'extende al Conſultation grant ſur non probate del' ſuggeſtion deins 6 moies, ſed ou Conſultation eſt grant ſur le matter del' Suggeſtion, & iſſint le Chief Juſtice declare l'opinion del' 4 Juſtices, & ſur ceo rule done que le Prohibition ſtet, & le Defendant nient obſtant ſon plea avandit en barre de Prohibition poet pleder en chief al matter del' dit ſuggeſtion, & ſil voet ceo diſpute, donque il avera ſeveral Conſultations ſur le dit Libell. (3)

Mounſon *verſus* Lyſter.

MOunſon port Action ſur le caſe vers Lyſter, & declare pur diſturber luy d'un Office grant a luy pur terme de vies de 3 perſons devant le Counſell de Yorke, le Patent fuit tiel, le Roy grant a luy le ſole feſans de touts Bills, & in- (4)

& informations deſire preferre, ou exhibite devant le Counſell de Yorke in partibus Borealibus, & de touts Letters miſſive, que fuit primes devant grant en 4 Jac. al un Lipton; & apres al Bowles, apres ſeveral arguments al barre, les Juſtices conferre privatement, & ils tout agree, que le Patent ne fuit bon, car eſt valde unreaſonable, que un home avera le ſeſans de touts Bills & Informations, & fuit un Monopoly declare per l'eſtatute de 21 Jac. coment nient deins le penalty del' dit Statute; apres le Chief Juſtice declare appartment en Court lour opinion, & ſur ceo Judgment done, que le Plaintiff, nihil capiat per Billam.

Termino

Termino Paſch. An. VII. Caroli Regis, *in* Banco Regis.

James Weſton de *Inner-Temple* Ar', & un Lector del' dit meaſon le 11 jour de May 1631. & 7 *Caroli Regis* eſteant le meredy, & le primer jour del'menſe *Paſchæ* appear en Cancellaria al ſon brief deſtre Serjeant del' Ley, & la fuit jure & Lundy, le 16 del' dit May touts les Juſtices eſteant 11 aſſemble al *Serjeants-Inn Fleet-ſtreet*, & la le Chief Juſtice fiſt un brief Speech a luy, & mitte ſon Coife & Hood ſur luy, & donque il ale al *Weſtminſter*, & fiſt ſon Feaſt le dit jour al *Serjeants-Inn Fleet-ſtreet*, & dedit annulos ove l'enſcription *Serviens Regi, Serviens Legi.* Al Samady enſuant il fuit jure Baron del' Court de Exchequer, & ſur Lundy le darren jour del' Terme il ale en ſon Robes al Hall, & done a nous Vyne & Cakes. *Nota*, que il fuit rule, que il n'avera ſon part, de Dedimus, ceſt Terme, car le *Seignior* Chief Juſtice, & *Baron Vernon* n'ad riens, & *Vernon* n'avoit riens, tanque il fuit nominate Juſtice d'Aſſize, que fuit un ann apres.

Fawlkner *verſus* Bellingham.

HEnry Fawlkner port Replevyn en le Common Banke vers Henry Bellingham, & ſur les pledings, le caſe fuit, que un Prieſt fuit ſeiſie en fee del' terres en que; & tient ceux de Seignior Wyndſor, come de ſon Mannor de Brambleton in Com' Suſſex per Fealty, 18 s. Rent, Suite al Court, Herriot & 4 Setes, & le Seignior Wyndſor tient ouſter del' Coronе, per l'eſtatute de 1 E. 6. de Chauntries; les terres vient al Roy, & de luy ils vient al un deſouth que le Plaintiff claime. & le Mannor vient per meane Conveyance al Sir William Compton deſouth que (come Bay-

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itue) le Defendant liſt Conuſance pur le Rent arreare, & le Plaintiff traverſe ne unque ſeiſie del' dit Rent deins quadragint' ans devant, ſur que le Defendant demurre en Ley, & ceo fuit ſolemnment argue en C. B. Crooke & Harvey pro querente, & Richardſon, Hutton, & Yelverton pur Defendant, & per major voice Judgment done pur Defendant, ſur que brief d'Erroꝛ poꝛt en Banke le Roy, le dit caſe fuit divers foits argue al barre, & ceſt Terme, al jour Samady le darren die Aprilis ceo fuit argue per touts les Judges, & ils concurre en un, que Judgment doit eſtre reverſe.

1. Primes ils reſolve, quant Seignior, meſne & Tenant per Rent, & le Tenancy per purchaſe, diſcent, ou aſcun auter loyal meanes vient al Seignior in Fee-ſimple, le tenure, & touts choſes, queux fueront incident al tenure fueront extinct, & ale, pur ceo que le Seignior ne poet tener le terre del' ſon Tenant demeſne, & maxime in Caſu le Roy, pur ceo que le Roy ne poet tener d'aſcun Subject, ſed coment le Seigniory fuit extinct, tamen le Rent neſt ale, ſi null Rent due del' meſne al Seignior, donque tout le Rent continue; ſi aſcun Rent, donque il continue pur le Surpluſage, come Rent ſervice diſtreinable de Common droit: Vide pur ceo Littleton Cap. Rent. Dyer 14 Eliz. fol. 313. 26 H. 6. Fitz. Tit' Extinguiſhment 61. 20 E. 3. Tit' Avowrie 122. 124. Sed cy long, come le terre continue en maines le Roy, le Diſtreſs fuit ſuſpende, & le remedy eſt per Petition, ſed quant le Roy ceo grant ouſter, donque le meſne diſtreinera le Patentee, pur ceo 14 Eliz. 313.

2. Auxi ils reſolve, que le Rent continue en nature, & quality ſicome devant pur touts choſes auter, quant al tenure & dependancy ſur ceo, & coment il ne poet eſtre dit Rent ſervice pur ceo, que le tenure extinct, tamen il eſt meſme Rent, come ſi un ſagitte ad perde un ou deux Feathers, tamen il eſt ſagitte, & coment home perde aſcun de ſes members, tamen il continue home, auxi le Rent continue en ceſt caſe parcell del' Mannoꝛ come devant, come eſt agree en caſe de Seignior Tiptoft, 22 Aſſ. 53. & 21 Aſſiſe 23. & ove ceo agree Cooke ſuper Littleton Cap Rent, & 1 H. 4. 4. per Richill: Et ſi home recover en Aſſize un Rent ſervice, & apres il devient Rent Secke, & eſt diſſeiſie, il avera rediſſeiſin, Cooke ſuper Littleton en Chapter Rent, & pars 4. Cooke Bevills Caſe, le ſeiſin del' Rent come Rent ſervice ſervera pur Aſſ. ou Avowrie, ſi ceo devient Rent ſecke, & ſi home ad Rent ſervice & ceo per purchaſe del' Tenancy apres ſon moꝛt devient Rent ſecke, le heire avera ceo per deſcent, & feme ſera endowe & ſerra un poſſeſſio fratris, & ſerra aſſets per diſcent. Et avera reſpect a touts purpoſes (ſave le tenure) & il paſſa per feoffment de Mannoꝛ, que fuit agree per tout del' auter parte.

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3. Il fuit reſolve, que quant per l'eſtatute de 1 E. 6. le terre fuit done al Roy ove ſavant de tout droit de Seigniors que en ceo caſe, le Seigniory fuit extinct, ſed le Rent continue, come Rent Secke diſtreinable de common droit, & il continue parcell del' Mannor, & per feoffment del' Mannor ſans fait, le Rent paſſa. Et ceo fuit agreé per tout le Court de Common Banke, ſed les Juſtices del' Common Banke, que fueront ove le Judgment la tiendront, que ſi le ſavant n'ad eſtre, le Rent ad eſtre extinct totalment. (2) Que le ſavant neſt un reſervation ou ſavant del' ancient Rent, ſed per le intention del' Statute il eſt un creation d'un auter Rent de novo; quant al primer Crooke & Whitlock, ne parle riens. Sed Jones ſemble, que ſi null ſavant ad eſtre, le Rent en ceo caſe, come Rent ſecke continue ſans aide del' ſavant, il agreé, que ſi home ad Rent hors de terre, & per Act de Parliament le terre en particular eſt done al Roy, ou al un common perſon, ſans ſavant le Rent, en ceo caſe, le Rent ſerroit extinct auxibien, come le Tenant del' terres, & ceſtuy que avoit le Rent ad joine en un feoffment del' terre, ceo enurera come feoffment del' Tenant del' terre, & come Confirmation, del' ceſtuy que ad le Rent, & per ceo le Rent extinct, ſed ceo eſt, ou le grant per Parliament eſt general ſans aſcun limitation, ou qualification, mes quant le Act de Parliament eſt limit, & ſub modo (come en noſtre caſe il eſt) la le Rent ne ſerra done; l'eſtatute de 1 E. 6. ne done les terres abſolutement al Roy, ſed ſecundum quid, en tam amplis modo & forma, & come le Prieſt avoit, le Prieſt avoit ceo charge ove un Rent, ideo le Roy tiendra ceo; auxi, ſi home ſoit attaint per Act de Parliament de Treaſon, & que il forfeitera ſes terres, coment il ſoit null ſavant de le droit & intereſt de ſtranger home, tamen le droit neſt extinct per ceo: come l'opinion de Harper eſt en Nicholls Caſe; & nemy contradict per aſcun, & le caſe de Duke de Suffolke en temps H. 6. en liber Intrat' en Petition. Le Duke fuit diſſeiſor, & fuit attaint per Parliament & enact, que forfeit ſes terres, le droit del' diſſeiſee, coment ne fuit aſcun ſavant, ne fuit ale, & per Petition il ad ſon terre arere: Sir Francis Baringtons Caſe pars 8. Cooke: home ad Coppice deins un Foreſt, en que auters ount Common, il coupa le Coppice, & ceo incloſe ſolonque l'eſtatute de 22 E. 4. que done liberty pur incloſer pur 7 ans, ceo ne exclude le Common. 21 H. 7. le Prior de Caſtle Havens Caſe, & Deane & Canons de St. Stephens, quod fuit adjudge come eſt dit en le dit caſe de Francis Barrington: Le Prior avoit Annuity hors d'un Parſonage appropriate al un Priorie Alien, ceo per Act de Parliament fuit done al Roy, en tiel Mannor come le Prior avoit, le Roy grant ceo al Deane & Canons de St. Stephens, le queſtion fuit ou le Annuity fuit ale, & adjudge

judge que nemy, & tamen la per Act de Parliament le Parſonage done al Roy, mes ceo fuit en tiel manner come le Prior ceo avoit, & le Prior ceo tient ſubject al Annuity, ideo ceo continue, mes ſi le Act de Parliament ad done ceo en general, ſans reſtriction le Annuity ſerroit extinct: ſed le caſe ſur que il relye fuit Leedes & Beauprees Caſe, 6 & 7 Eliz. Dyer: la il eſt reſolve per tout les Juſtices, que preſent droits & intereſts ſont ſave per l'eſtatute de 31 H. 8. per le general parolls, que le Roy avera le terre en meſme Condition & Plight, come l'Abbot ad, per q̄ le droit d'eſtranger eſt preſerve ſans un ſavant, & neſt aſcun difference perenter ceo caſe, & le caſe en queſtion, ſur l'eſtatute de 1 E. 6. per que entant que l'eſtatute de 1 E. 6. eſt en particular, que le Roy avera le terre, come le Priest, & nemy un general grant del' terre il tient que le Rent come Rent ſecke diſtrein de Common droit continue (mes le tenure ale) nient obſtant; ſed Hyde fuit de contrary opinion, ſed non dedit rationem, pur ſon opinion; pur le 2. ils tout agree que le ſavant continue meſme le Rent que fuit devant (ſcilicet) Rent ſecke diſtreinable de common droit (coment le tenure ale) & que neſt aſcun novell Rent create per le Statute: le nature de ſavant eſt pur preſerver choſe en eſſe devant, que ſi ceo ne fuit, ſerroit extinct, & nemy pur create choſe de novo, ou pur reviver choſe extinct devant. car doit eſtre per parolls de enact de novo. Parliament, Brooke 77. 27 H. 8. Keckwiths Caſe, un fuit attaint de Treaſon, per que tout ſes terres forfeit al Roy, apres un auter Act de Parliment fuit fait ove ſavant de droit d'eſtranger; la pur ceo que tenure fuit extinct devant ne poet eſtre reveſve per ſavant, car le nature de ceo eſt a ſaver choſe en eſſe, mes nemy de faire aſcun reviball, il doit eſtre parolt de enact de novo de ceo faire, le Duke de Norfolkes Caſe, il fuit attaint de Treaſon en temps 1 E. 6. per Act de Parliament, & touts ſes terres done al Roy, le Roy fiſt Leaſe pur ans, & apres le primer Act repeale ove ſavant de touts Leaſes, & ceo fuit voide ſavant, car per le repeal de Act tout choſes paſſant per ceo fueront ale, ideo le ſavant voide ſans parolt de enact de novo, car ſavant poet preſerver choſe en eſſe, & nemy extinguiſher, & ceo le proper nature de ſavant, & ceo il fiſt icy, ideo le Rent continue, & neſt creation de novell Rent; quant al maine caſe mitte del' auter partie, ſur l'eſtatute de 32 H. 8. de volunts ou poier a diſpoſer le 2 parts del' terre per Act execute eſt done al Tenant ove ſavant de Livery, garde & primer ſeiſin, la ceo eſt un novell done de choſe nient en eſſe devant, le reſpons eſt, per le voyes intention, & equity, Il fuit priſe come novell grant, autrement ſerroit voide, mes icy il poet properment reſerve le ancient Rent, ideo ne beſoigne per Streined conſtruction faire ceo un

grant

grant de novo, il neſt aſcun paroll de faire ceo parcell del' Mannor, & ſi ne fuit parcell del' Mannor, donque le Conuſance neſt bon, car le Title fuit per feoffment de Mannor, & ſi ne ſoit parcell de Mannor le Rent neſt bien grant, ou convey al Sir Henry Compton; ceux points les Judges reſolve ſur le nature del' Rent, & operation, & conſtruction del' Ley, ou le tenancy vient al Seignior paramount per Common Ley, ou Statute, uncore le Rent ſerra preſerve, come ancient Rent, & parcell del' Mannor diſtrainable de common droit, & reſt upon le reaſon del' maine point. Pur le ſeiſin, ſcilicet, ou ſeiſin deins 40 ans doit eſtre ewe del' tiel Rent ou nemy? Et ſemble a tout les Juſtices de Banke le Roy, que il doit eſtre ſeiſin, & ſi ne fuit, & ſeiſin ſoit traverſe, le conuſans ou Avowrie neſt bien fait pur le Rent, mult fuit dit per les Juſtices concernant ſeiſin, & l'eſtatute pur limitation del' ſeiſin, & que ſeiſin & limitation del' ceo fuit al Common Ley, come appiert per Bracton, & Glanvill & per 18 H. 3. tit' droit, que fuit devant aſcun Statute de Limitation, le primer fuit l'eſtatute de Merton 21 H. 3. cap. 8. & apres ceo 3 E. 1. Weſt. 1. & pur ceo l'eſtatute de Weſt. 2. cap. 2. pur Avowrie, & apres le dit Statute de 32 H. 8. que eſt omitte pur prolixity; ſed le maine reaſons conduceint al ceſt point ore en queſtion ſerront ſolment recite. Les Juſtices de Banke le Roy, diſont que ſi Rent ſervice devient Rent ſecke diſtrainable de common droit per purchaſe, per le Seignior paramount del' tenancy, que en ceo caſe, ſi le meſne diſtrein pur ſon Rent en Avowrie, il doit alledge ſeiſin, & le ſeiſin quant ceo fuit Rent ſervice ſervera pur le Rent, quant il fuit Rent ſecke de common droit, & iſſint en noſtre caſe, ſi le Rent continue per le ſavant (ou autrement) meſme le Rent, que fuit devant, en ceo caſe ſeiſin eſt requiſite pur le Rent, auxibien come ceo ad continue Rent ſervice, & ideo ceo fuit fine del' cauſe, car les Juſtices del' Banke le Roy nemy prift ceo deſtre novell Rent, ſed le ancient Rent. Sed poſito, que ceo ſoit novell Rent create per l'eſtatute, donque fuit urge del' auter partie, que entant le commencement del' ceo appiert, ideo ne beſoigne aſcun ſeiſin; 39 E. 3. 15. done en tayle rendant Rent, il ne beſoigne ſeiſin, car le done en Tayle, & Rent ount meſme le commencement, & ſi le done poet eſtre prove le Rent auxi, & ove ceo agree Manxell & Redſalls Caſe, Commentaries, 2 E. 2. tit' Avowrie 187. ſi home fiſt feoffment per fait rendant Rent, il ne beſoigne aſcun ſeiſin. 44 E. 3. tit' Avowry 75. Rent charge grant per fine & ceo vient ſur partition al un Coparcener, ne beſoigne ſeiſin, & ove ceo agree, Cooke pars 8. Sir William Foſters Caſe; & ſi home per Licence a ceo jour fiſt feoffment a tener de luy rendant Rent ne beſoigne ſeiſin; vide 10 E. 3. 24. 25. Et a ceo jour, ſi Rent ſur

egalty

egalty de partition, ou ſur aſſignment de Dower fuit, la ne beſoigne aſcun ſeiſin del' Rent, car le commencement del' ceo appiert. Car ſeiſin eſt ſolment requiſite, ou le commencement ne appiert, ſed le ſeiſin eſt commencement de ſon title, come Rent, que continue hors de temps de memory come parcell de Manor, le commencement n'appiert, ſed le ſeiſin fait le title, iſſint de Rent charge per preſcription ſeiſin eſt requiſite. mes ſi commencement appiert autrement eſt; Fitz. N. B. 162. ſi home devant l'eſtatute de quia Emptor', per fine enfeoff un a tener per Rent, vel confirme per fait pur meinder Rent, il rebuttera en l'un caſe, & avera contra formam feoffamenti in l'auter caſe, la ſon incroachment ne remedy, ou advantage a luy encounter ſon fait; ideo del' auter part, le Tenant n'avera advantage de non ſeiſin, quant le Rent appiert per le fait, tout ceo eſt agreé per tout, mes ceo n'extende al caſe en queſtion, come Jones dit, car voier eſt, ou Rent en certaine eſt done per Act de Parliament, ou Rent per fait la ne beſoigne ſeiſin per reaſon avandit, tamen quant Rent eſt done per general Termes, & le certainty de ceo n'appiert, la il beſoigne ſeiſin, car le ſeiſin eſt prover del' certainty de ceo, & icy per 1 E. 6. null Rent eſt done en certain, mes que meſne avera meſme le Rent, que avoit devant, & ſeiſin requiſite en le Rent devant, iſſint ceo requiſite apres le Statute, ſi home a ceo jour per Licence done terre a tener de luy rendant 20 s. Rent, null ſeiſin requiſite, car le certainty del' Rent appiert en le fait, mes ſi fuit rendant tiel Rent, come il tient ouſter, la il beſoigne ſeiſin, car le certainty del' Rent n'appiert: Fitz. Nat. 162. ſi home fiſt feoffment a tener de luy per fait, il averoit contra formam feoffamenti, mes ſi fuit a tener come il tient ouſter, e contra, pur reaſon avandit, auxi l'entention del' Statute fuit a doner al meſne null auter remedy, que il ad devant, ſil n'ad ſeiſin devant il ne done a luy benefit ſans ſeiſin, mes leſſa luy en meſme plight come fuit devant, & ceux deux reaſons fueront urge per Jones, & per tout les Juſtices agreé, que le Judgment ſerroit reverſe, & iſſint il fuit, & que le Plaintiff en brief d'error avera meſme le Judgment, come il devoit aver en le Common Banke.

Flower *verſus* Elgar.

Hill. 3. *Car. Rot.* 1157.

(3) EN Audita Querela, le caſe fuit tiel, home avoit un terme pur ans, & ceo fuit extende ſur Statute ou Judgment, & le Conuſee ou Recoverer grant ceo ouſter, & apres releaſe le Statute, ou Judgment, & apres le party vers que Execution ſue port

Audita

Audita Querela, & fuit reſolve per Curiam, que ſi terme ad eſtre vende en part de ſatisfaction de Judgment, & apres le Plaintiff releaſe al Defendant; le terme ne ſerra deveſt, mes quant il eſt extende la ceo eſt a ſatisfier le Judgment ou Statute, & quant ceo eſt releaſe, & diſcharge, l'execution & extent ſur ceo ſerra defeat, ideo icy Judgment fuit done pro querente.

Worthy *verſus* Savil.

SIr Francis Worthy recover vers le Seignior Savil en Aſſault & Battery in Banco, & ſur ceo le Defendant port erroꝛ, & le Judgment fuit affirme, le Plaintiff port Scire facias vers le Defendant, que plede (apres imparlance) utlary devant le primer Judgment en barre del' Execution; & Hendon move, que le plea ne fuit bon, ſed per Jones, Whitlock & Crooke, il fuit tenus bon plea, car apres imparlance utlagary poet eſtre plede en barre, & ceſt plea fuit plede en barre, car coment devant le primer Judgment l'Action ne fuit forfeit al Roy tanque Judgment fuit done, & per ceo un certain ſumme d'argent recover, la ceo eſt forfeit al Roy per le utlary devant ewe vers le Plaintiff, & ideo ceſt utlary poet eſtre bien plede en barre del' execution, apres imparlance ſur que Hendon plede null recoꝛde del' utlary. (3)

Helter *verſus* Hundred de Bohurſt.

UN Helter port Action ſur le Statute de Wynton vers le Hundred de Benhurſt in Com' Berks, pur ceo que il fuit robbe, & les barons nient priſe, & ſur un ſpecial verdict priſe devant Whitlock en le Countie de Berks, le caſe fuit tiel, que Saunders de Medio Templo fuit un Juſtice de Peace de Berks, & inhabit deins le Countie avandit, neare al lieu ou robbery committe, & il eſteant en Londres pur les beſoignes le partie robbe devant luy la priſt ſon ſerement ſolonque le Statute de 27 Eliz. & null mention en le ſerement, ou ceo fuit priſt ſed le Jury trove, que ceo fuit en Londres; Et le ſole queſtion fuit, ou ceſt ſerement fuit bien priſe ſolonque le Statute de 27 Eliz. ou nemy, apres ceo fuit argue al barre: les Juſtices al primes fuerunt divide (ſcilicet) Hyde & Whitlock, que le ſerement ne fuit bien priſe, ſed Jones & Crooke e contra, ſed le caſe fuit miſt al Serjeant-Inne Fleet-ſtreet, & Davenport, Denham, Harvey, Weſton & Trevor fuerunt d'opinion, que le ſerement fuit bien priſe, & apres ſur conference perenter les Juſtices de Banke le Roy, ils agree, que Judgment ſerra done pro querente, & iſſint fuit done; Et Hyde declare le opinion (4)

opinion del' Juſtices, & le reaſon, que ceſt fuit un particular caſe & ceſt ſeulement eſt ſolment priſe per le Juſtice de Peace, nemy virtute officii, mes come un perſon deſigne per le Statute al ceſt particular purpoſe, & ne fuit lour opinion, que en auters caſes ou un Juſtice fait choſe per virtue de ſon office, que ceo poet eſtre fait per luy hors del' Countie, ſed e contra ils fueront d'opinion, que tiel Acts ne fueront bon, iſſint ceſt caſe eſt ſingular, & eſtoyet ſur un particular reaſon different del' auters caſes.

Le Cittie de Colcheſter *verſus* le Cittie de Londres.

(5) ACtion ſur le caſe ſur trover & converſion fuit port per un J.S. Citizen de Colcheſter vers les Fermours del' Tolle del' Citizens de Londres pur priſell del' ſes biens, & le Defendant plede non culpable; & un Jury appiert al barre hors de Countie de Hartford pur trial del' ceſt cauſe, Jones & Crooke eſteant ſolment en Court, les Defendants conteſſe les biens, ſcilicet, certeine peices de Leade, & que le Defendants priſt eux pur non payment de tolle, que les Citizens de Londres claime per Cuſtom, & les Citizens de Colcheſter, claime deſtre free del' ceo per le charter del' Roy Richard, & les Citizens de Londres prove per divers records & entries en lour livers, que les Citizens de Colcheſter ount paye tolle, & ſur le evidence le councell del' Plaintiff priſt exception, que ceo neſt bon evidence ſur le iſſue de non culpable; mes il doit plede ſpecialment, & iſſint ſemble a Crooke, ſed Jones e contra, car neſt ſemble a general Action de Treſpaſs, la il doit plede ſpecialment le cuſtom per Tolle, mes en Action ſur le caſe ſur trover & converſion cheſcun choſe que prover le converſion legal poet eſtre done en evidence ſur le general iſſue, ſed ceo fuit leſſe al Jury, ſi eux pleiſt a trover ceo ſpecialment, & ils port eins general verdict pur Defendant, & Judgment done accordant.

Ex Rotulo Parliamenti tenti apud *Weſtminſter* die lunæ prox' ante feſtum omnium Sanctorum Regni Regis *Richardi ſecundi* poſt conqueſtum Septimo.

Int' Petitiones liberate Domino noſtro Regi in Parliamento per Comitatem Regni Angliæ unacum reſponſionibus eiſdem Petitionibus per dictum Dominum Regem & conſilium ſuum in eodem Parliamento factis.

ITem prient les communes pur greinder quiete & nurture de paix perenter voz lieges, & pur come profit que voz Citeins de veſtre

Citee

Citee de Londres ſoient entierment en ce preſent Parliament reſtituz a lour Franchiſes & franks uſages ; & que il pleſe a vous treſdoute Seignïorie, de veſtre grace eſpeciale, granter & confirmer as voz ditz Citeins & a lours Succeſſors per voz laures patentees toutes lours libertees & franks uſages auxi entierment & pleinment come ils ou lours predeceſſors les avoient en temps daucuns des voz treſnobles progenitours, ove clauſe de licet uſi non fuerint vel abuſi fuerint, enſemblement ove les franchiſes quils ont en eſpecial de veſtre treſgracious grant ou confermencent, nient conſtreſteantz aucuns eſtatuz juggementz renduz, Ordinances, ou Charters, faits ou grantz einz ces heures a contrarie ſibien en temps davonns de voz ditz progenitors come en le vie ; iſſint come le reſtreint de lour libertees & franks uſages ad en pluſours maneres avaunt ces heures empirez & arreriz l'eſtate de eux, & riens value a come profit du Roialme, & que touz les vins & vitailleas ſibien peſſoners come auters ove lours Vitailles venantz a voſtre dite Citee, ſoient deſore enavant deſouz le governail & reule del' Maire & Aldermannes de la Citee avantdit pur les temps eſteantz, come auncienement ſoloient eſtre, & oultre granter que null Mair de la dite Citee deſore enavant, ne fait ne ſoit conſtreint de faire en veſtre Eſchequer treſdoubte Seigneur, nailleurs autre ſerement, mais ſolment launcien ſerement uſe en temps le Roy Edward veſtre treſnoble aiel (qui dieux aſſoile) aucun Eſtatute ou Ordinance au contrarie ent faitz non obſtantz.

Le Roy le Voet.

Atckey *verſus* Hearde.

(6) Action ſur le caſe ſur trover & converſion del' biens fuit port per un, & declare que J. S. fuit poſſeſſe de biens, & mourſt inteſtate, & Adminiſtration committe a luy, & que les biens per trover vient al poſſeſſion le Defendant, que eux convert, & le converſion fuit alledge apres les temps, que le Adminiſtration port date, le Defendant plede non culpable, & le Plaintiff apres Jury Jure fuit non-ſuite, le queſtion en ceſt caſe fuit, ou le Defendant avera Coſts per l'eſtatute, & per Jones, Whitlock & Crooke, (abſente Hyde) il fuit tenus, que le Defendant avera Coſts, pur ceo que Action fuit port ſur tort fait al Plaintiff meſme, & ne beſoigne a luy deſire noſme Adminiſtrator en ceſt caſe.

Baylie *verſus* Hughes.

Intratur Trin. 6. Caroli.

(7) ELizabeth Baylie port Dett vers William Hughes Executor de William Hughes, & declare que Sir Chriſtopher Broome fuit ſeiſie del' Manor de Duckington en Com' Oxford, & per Indenture demiſe parte del' demeſnes del' ceo eſteant Coppy-hold devant al William Hughes pur 2000 ans rendant Rent, en que il fuit Covenant que ſi le dit leſſee ſes Executors ou Adminiſtrators ſerront charge ove aſcun reſpect de homage per reaſon del' premiſes demiſe, & notice del' ceo done al leſſor ſes Heires ou Aſſignes, & fil navera ſatisfaction del' ceo, que donque ſerroit loyal de retaine en ſes maines tants del' dit Rent, que amount al charge avandit, & le reverſion per meane Conveyances vient al Bacon le Plaintiff, & al dit Elizabeth, & al Heires de Corps le Baron remainder al droit Heires le Baron, le Baron morust ayant iſſue, proceſs de diſtreſs iſſint vers leſſee pur reſpect de Homage, & iſſues levie ſur le Defendant, & il done notice del' ceo al Plaintiff, & n'ad receive ſatisfaction, & ideo il plede ceo en barre de Rent, & fuit tenus per Curiam, que il ne fuit bon barre, car il appiert que null homage fuit due pur ceo, & le Plaintiff fuit Tenant pur vie remainder ouſter, & Tenant pur vie ne ſerra Homage, ideo le charge pur reſpect de homage nient bon, & le Covenant n'extende en Ley, niſi al legal charge, ideo Judgment done pro querente, niſi pluis dit devant jenday enſuant, ſed en ceo caſe, il fuit agree, que ſi le charge fuit loyal, que le Defendant reteinera ſon Rent, & il bien poet plede ceo en barre del' Action, & apres Judgment abſolutement done, ſed Crooke ne dit riens, ſed ſemble deſire al contra.

Termino Trin. An. VII. Caroli Regis, *in* Banco Regis.

Player *verſus* Roberts.

Intr' Paſch. 5. *Car. Rot.* 307.

PLayer port Action ſur le caſe ſur trover & converſion de Sea-Cole vers Thomas Roberts, le caſe ſur ſpecial verdict fuit. John Robers fuit ſeiſie en fee del' Mannor de M. in Com. Glouceſtr', J. N. fuit Copy-holder pur vie d'un Tenement parcell de ceo; John Roberts per Indenture grant tout Coal-Mynes apert bei apres deſtre trove, ſur le dit Mannor al un Dimery pur 99 ans rendant Rent, Dimery grant ceo ſavant les 3 darren jours del' terme al dit Player rendant Rent, & apres Dimery grant, bargaine, & vende tout ſon intereſt, eſtate, & terme al un J. P. & devant attournment il regrant ceo al dit Dimery pur tout le dit Terme ſur Condition, que ſi le dit Dimery ne diſcharge certaine re-conuſances devant July 1610. donque le dit grant deſtre voide, le dit re-conuſances ne fueront diſcharge devant le dit jour, Dimery 4 Auguſti 8 Jac. grant tout ſon eſtate & terme ſavant 3 jours al dit Player habend' pur 21 ans, J. Pere mourſt, ſon Executor enter pur le condition enfreint, & grante, & ſurrender ſon eſtate al Thomas Roberts fits le dit John Roberts, apres mort John, ſed neſt trove, que il fuit ſon heire, le dit Roberts digge novell Pitts en le dit Copy-hold terre, le Copy-holder eſteant en vie, & il eux pluſt al ſon uſe demeſne, ſur que Player port le Action pur le dit Coales. (1)

Divers choſes fueront move en ceſt caſe: Primes quant leſſee pur 99 ans grant ceo al auter ſavant les 3 darren jours rendant Rent, & apres bargaine & vende per fait enroll ſon Terme, eſtate, intereſt, & reverſion, al auter, & il re-grant ceo, devant attornement al party arere, quel operation per ceo, ſemble a moy, que devant attornement null reverſion paſſa. Primes, il eſt hors del' Statute de Inrolments eſteant un Terme, & ſans In oll-

ment ne paſſa, car ſi Termor bargaine & vende ſon reverſion pur ans, ceo neſt bon, ſans attornement, mes ſi Tenant en fee, bargaine & vende pur ans un reverſion, ceo eſt bon ſans attornement, ou enrollment, ideo ſans attornement le reverſion ne paſſa, mes come intereſt executory, ſed ſi ſerroit un attornement, le reverſion, & Rent paſſera, donque quant il grant al primer leſſee devant attornement, come ſemble a moy, ceo ne ſerra un reverſion en luy, pur ceo, que un foits il fuit ſever, ſed donque il avera ceo come Contract Executory, & intereſt pur an & 3 jours, apres le primer ans demiſe finey, Et le Rent il avera, come en groſſe ſever del' reverſion, & le reſidue del' Court ſemble d'encline al ceſt opinion. 2. Il fuit pretende, per le Defendant, que le paſſall del' 2 Leaſe per Player de Dimery fuit extinguiſhment de ſon primer Terme, & donque le Condition eſteant enfreint, l'Executor de Peere per le Condition defeatera le dit Leaſe: Le point pur ceo eſt, leſſee pur 99 ans grant ſon intereſt ſavant 3 jours al J. S. J. S. paſſ Leaſe del' luy pur 21 ans, ou ceo extinguiſh ſon primer Terme, pur ceo ne riens fuit dit, ſed ſemble per Humble & Glovers Caſe 36 Eliz. que il ſerra extinguiſhment del' primer Terme, donque quant Peere entra pur Condition enfreint, il navoit forſque 3 jours, & ceux fueront finey, & le primer leſſee en reverſion avera le terre diſcharge del' Rent, ſi ceo ſerroit iſſint, donque le Plaintiff n'ad title, car ſon Leaſe fuit finey, ideo ſon Action en ceſt regarde nient maintenable. Sed 3. Il fuit reſponde & iſſint prie per le Court, que le Leaſe del' Player, ne fuit extinguiſh. Primes, le grant del' Peere al Dimery fuit Condition que il diſcharge Recognizances terra voide, & le Condition fuit enfreint ſans aſcun demand, per que l'eſtate veſtera ſans entrie ou claime, en le dit Peere areare, vide Heneage & Throckmortons Caſe accordant, & donque quant Dimery fiſt le Leaſe apres al dit Player il n'ad riens en le terre, & per conſequence le primer Leaſe de Peere ne fuit extinct. (2) Le darren Leaſe fait per Dimery al Player fuit voide il grant a luy le Terme ſavant 3 Jours habend' pur 21 ans, le primer grant devant le habend' fuit voide, car il ne grant riens, mes ceo que il ad, & le habend' auxi voide, car contrary al premiſſes, iſſint quacunque via data, le Leaſe al Player fuit extinct, ad quod Curia aſſenter; le darren point move. home grant tout le Coale, & Coale-Wynes deins un Mannor (& parcell fuit Copyhold pur vie) al J. S. le leſſee enter en le Copyhold, & digge un novell Pitt en le Copyhold terre, durant vie le Copyholder & priſt le Coales & convert eux al ſon uſe demeſne, & leſſee del' Coale-Mine port Action ſur le caſe de trover & converſion vers le leſſor, & per Curiam il poet, car verum eſt, que leſſee ne poet enter ſur le Copyholder jointment neque leſſor a fodier les Coales,

car

car le Copyholder avera Treſpaſs pur debruſer ſon Cloſe, & foder del' Coales, mes quant leſſor ou leſſee del' Coales, ou eſtranger enter & digge les Coales hors del' Pitts, ceux belonge al leſſee; & ſi aſcun auter priſt les Coales, le leſſee avera Action ſur le caſe de trover & converſion, & ſur tout le matter, Judgment fuit done pro querente, ſi ne riens pluis dit per un jour apres, ne riens dit per que abſolutement done.

Nota, en ceſt caſe il eſt un choſe, que ne fuit move. Leſſee pur 99 ans de liberty a digge Coales fiſt Leaſe pur meinder Terme rendant Rent, ou ceo ſoit reverſion en le party ou nemy?

Rockey *verſus* Huggins.

COpyholder pur vie preſcriber de couper Tymber Trees creſſant ſur ſon Tenement, & eux a vender, vel a converter a ſon uſe demeſne, & le queſtion fuit, ou le preſcription bon; Tota Curia una voce agree, & reſolve, que le preſcription ne fuit bon, & iſſint il fuit devant adjudge, en le Common Banke, mes tiel preſcription per Copyholder de Inheritance eſt bon. (2)

Conan *verſus* Kemiſe.

HOme leſſee de 2 Meaſons & terres & covenant pur luy & ſes aſſignes a repairer les meaſons, leſſee aſſigne un des meaſons, & parcell de terre al J. S. & le primer leſſor pur non repairer del' meaſon aſſigne al J.S. port Action de Covenant vers J. S. & adjudge, que le Action giſt, car ceo eſt Covenant, que curge ove terme aſſigne, & coment il ſoit aſſignee de parcell, tamen Covenant giſt vers luy, pur non repairer le dit parcell, Et ſur ceo, Judgment fuit done pro querente. (3)

Sanckill *verſus* Stocker.

SUr le venire facias, 23 fueront retorne, & apres tales agarde & 12 jures, & paſſe pur le Plaintiff, & bene, car per Tirrell & Garuners Caſe, Cooke pars 5. ſi 12 del' principal ad appear, le Trial ad eſtre helpe per 18 Eliz. & null difference en tales, car eſt default de Aiſcount, & verdict per 12 per Hyde, Jones & Whitlock, Crooke e contra, Et Judgment done accordant. (4)

Anonymus

Anonymus.

(5) UN move al barre pur Prohibition al Eccleſiaſtical Court pur ſuite la pur appell un Bawde, Jones conceive, que ceux differences doient eſtre obſerve, lou home appell feme puteigne, ou tiel ſlander, pur que ſuite giſt en Eccleſiaſtical Court vers le party (ſi le matter voyer) la ſuite giſt pur ſlander la, & null Prohibition giſt, e contra ſi home ſoit appell Thief, Traytor ou hujuſmodi, pur que null ſuite giſt pur le principal, en le Eccleſiaſtical Court, ſed al Common Ley, ſi un ſoit ſue pur ceſt ſlander en Eccleſiaſtical Court Prohibition giſt, ſi home appell un Bawde, pur que ſuite giſt al Speritual Court, & auxi al Common Ley, la ſi ſuite ſoit pur ſlander en Eccleſiaſtical Court, la Prohibition ne giſt, car ad election a ſuer: iſſint ſi feme ſoit ſlander pur ſon reputation, per que el eſt hinder en ſa marriage, el poet ſuer al Common Ley, vel en Spiritual Court pur ſlander. Et darrenment ſi home parle aſcun parolls, pur que null ſuite giſt al Common Ley, neque ils ne concerne aſcun choſe de que le Eccleſiaſtical Court ad Conuſance, ſi voyer, la ſi ſoet ſuite en Spiritual Court pur ſlander, come pur Convitia Prohibition giſt; come pur appell un Knave, Drunkard, vel ſimilia, quere de ceo. Chief Juſtice agree a ceo, l'auters ne dihont riens.

Termino

Termino Mich. An. VII. Caroli Regis, *in* Banco Regis.

In September 1631. Sir *Nicholas Hyde* Chief Juſtice, dyed at his own Houſe after he came from the Circuit of a burning Feaver, or as ſome think, of an Impoſtume in his Head.

After the death of Sir *Nicholas Hyde*, Sir *Thomas Richardſon* Chief Juſtice of the *Common-Pleas*, was made Chief Juſtice of the *Kings-Bench*, and upon Monday the 24*th* of October, 1631. the Lord Keeper (after a Speech made to him in the ſame Court, and after Speech made by him, in anſwer to the Lord Keeper) cauſed him to be Sworne by the Clerke of the Crown of the *Chancery*, and then the Lord Keeper delivered the Writ of Attendance to Sir *Thomas Fanſhawe*, who executed the ſame, and the Writ was delivered to Mr. *Broome* the Secondary, to be Enrolled: Then he came to the Bench, and the Lord Keeper went his way.

Before that time the ſame day Sir *Robert Heath* Attorney General, appeared in *Chancery* upon his Serjeants Writ, Tueſday following all the Juſtices (*nemine abſente*) aſſembled at *Serjeants-Inn Chancery-lane*, and then came in the new Serjeant in party Robes, but being told by the Juſtices, that he ought not to come in that Robe, he went back, and came in his Black, with his Coif and Scarlet Hood, and then the Chief Juſtice made a Speech to him; afterwards he rehearſed his pleading, the Lord Keeper being Demandant, and the Lord Treaſurer Tenant in a *precipe in capite* for the Mannor of *Colley Weſton in Com' Northampton*, Serjeant *Ayloffe* made defence, and prayed Oyer of the Writ, and being read by Mr. *Brown-lowe*, my Brother *Ayloffe* Imparled, the Chief Juſtice put on their Coifes and Hoods, and the Judges went away.

The Feaſt was kept there, that day at Dinner all the Judges being preſent, and ſate at the high Table, and the Kings Sollicitor, Serjeant *Crew*, *Aſhley* and *Barkeley* ſate there, all the [illegible] ſate upon the ſide Table. Upon Thurſday the 27th of October, he was called and Sworne Chief Juſtice of the *Common-Pleas*.

mon-Pleas. And Tueſday he went to the Hall in his Scarlet Robes.

William Noye of *Lincolns-Inn* upon October 27. was Sworn His Majeſties Attorney General.

Beamont *verſus* Longe.

(1) BAron & feme Adminiſtratrix al primer Baron recover Dett due al inteſtate, & Coſts, & Damages, le feme mozuſt, le Baron ſue ſcire facias pur le Dett, Coſts & Damages ſur que le Defendant demurre, le caſe al barre fuit argue per Maynard & Rolls, & per Curiam, ſcilicet, Jones, Whitlock & Crooke, le Action ne giſt, car ceſt recovery ne turne ceo al proper Dett al Baron, come il ſerroit, ſi le Baron & feme recover Dett le feme, & le feme mozuſt la pur ceo, que per le Judgment il eſt devenus le Dett due al Baron ſil ſurvive, mes icy le Dett remaine al inteſtate, & a ceſtuy que ſerroit ſon Adminiſtrator, & le recovery per le Baron eſt en auter droit, & nemy a ſon uſe demeſne, & le Baron n'ad aſcun intereſt en ceo, apres mozt le feme, & coment il ad privity, tamen pur ceo, que le duty recover neſt ſon intereſt, ideo n'avera Action, come ſi, baron & feme recover terre, & feme mozuſt, le Baron ne ſuera ſcire facias pur le terre, mes le heire le feme, tamen le Baron fuit privie, mes apres mozt le feme il n'ad intereſt, ou property en le terre, iſſint de auter part, coment un ad property, & intereſt en le choſe, tamen pur ceo que il n'ad privity n'avera ſcire facias, Executor recover & mozuſt inteſtate, ſon Adminiſtrator neque Adminiſtrator del' primer inteſtate vel ſi Adminiſtrator recover & fiſt Executor, il n'avera ſcire facias neque ſon primer Executor, car il n'ad privity en ceo caſe, 28 H. 8. Bendloſe 26 H. 8. Brudnells Caſe, Cooke part 5. 9.

Everall *verſus* Fletcher.

(2) EVerall ſue deux, en Aſſault & Battery, & faux impriſonment en Court Marches de Gales, l'un plede que il fuit Conſtable, & fiſt ceo en Execution de ſon Office, & plede le Statute de 21 Jac. que il eſt deſtre trie en proper County, & a recover damages, & pur ceo, que ne fuit allowe, Prohibition ſur bon adviſe fuit grant.

Holyday

Holyday *verſus* Oxenbridge.

HOlyday port Action de Aſſault, Battery & Impriſonment vers Oxenbridge, le Defendant plede, que il fuit common Cheater, & uſe de cheate, & Couſin ove faux Dice, & il en le temps de Chriſtmas, vient al meaſon de Sir Nicholas Carew, & la lude ove faux Dice, & cheate divers de lour argent, & ſur ceo le Defendant eſteant preſent mitte ſon maine ſur luy, & luy ſtay al intent de porter luy devant Juſtice de Peace, deſtre examin ſur ceo, & il port luy al Juſtice preſentment, que luy examine, & committe, que eſt meſme le treſpaſs & ſemble bon juſtification. (3)

Mathewes *verſus* Wheſton.

COpyholder pur vie, fiſt Leaſe pur un ann, & apres fiſt Leaſe a meſme le party pur auter ann de commencer un jour apres le primer ann, & auter Leaſe pur auter ann a commencer al un jour poſt le 2 ann, & apres ſurrender ſon Copyhold al Seignior, le Seignior enter, & fiſt Leaſe al Plaintiff, en Ejectione firmæ, & adjudge pro querente per le Chief Juſtice & totam Curiam. Primes il fuit agreé, coment le general Cuſtom de Royalme allowe un Copyholder de faire Leaſe pur un ann, ceo doit eſtre en preſent, & il ne poet pur un auter ann en reverſion. 2. Le Leaſe en reverſion fuit un forfeiture, & quant le ſurrendr fuit fait al Seignior, ceſt Leaſe fuit voide vers luy & ſon intereſt diſcharge ſans preſentment, & ſeiſure pur forfeiture, per que ſon entrie legall, & le Leaſe al Plaintiff bon, & per conſequence le Plaintiff ad bon Title, & iſſint fuit adjudge. (4)

Anonymus.

HOme ſue Latitat & al ſon requeſt le Viſcount fiſt Warrant ſur ceo al ſpecial Baylives noſme per le Plaintiff, & ſans prender de aſcun ſerement ſolonque l'eſtatute de 27 Eliz. ils execute le proceſs, & un Information ſur le Statute de 27 Eliz. fuit port vers eux pur non prender del' ſerement mention en le dit Act, & per totam Curiam (except le Chief Juſtice) il fuit adjudge, que Action ne giſt, car le ſcope del' (5)

Statute extende principalment al eur, que ceſtoyne Juries, & le ſerement mention en le Act eſt a ceo purpoſe, & nemy al executions de cheſcun proceſs. 2. Si fuit autrement, tamen ceo extende al Baylives de Liberties, & nemy al eur queux fueront noſme per le Plaintiff, & accordant Judgment fuit done pur Defendant.

Termino

Termino Hill. An. VII. Caroli Regis, *in* Banco Regis.

Lancelot *verſus* Allen.

LE caſe ſur ſpecial verdict fuit tiel un Cromer Citizen de London done per ſon darren volunt touts ſes terres en St. Swithin London al Parſon de St. Martyn Orgars London, & ſes ſucceſſors a trover un chantry Prieſt, & direct 10 Marks pur ſon Salary, pur a rerepairer les Tenements, & pur le ornaments del' Eſgliſe, auxi il deviſe terres en St. Olaves pur un Anniverſary, & 3 l. 6 s. 8 d. deſire expend en certain ſur ceo, & ſi aſcun part del' profit remaine, donque le reſidue fuit done al Church-gardeins, ad inveniend' capelanum ſuum prædict, & pur repairer les Tenements pur les Ornaments, & reparations del' Eſgliſe de St. Martin Orgars a lour diſcretion. Et en un codicell il fuit un proviſoe, que ſi le profit del' St. Swithin happen in futuro deſire de meinder value, quam 10 Marks, & quod ſon dit Chaplain ne poet eſtre trove, que donque ceo ſerra ſupplie hors de terres de St. Olaves a 10 Marks, il fuit trove, que al temps de diſſolution de Chauntries per 1 E. 6. les terres en St. Swithin fueront 6 l. 2 s. & les terres en St. Olaves 30 l. & ultra; Et le ſole queſtion enter leſſee del' Parſon de St. Martyns Orgars, Plaintiff en Ejectione firmæ, & le Defendant, que claime deſouth le Patent del' Roy, fuit ou les terres en St. Olaves fueront done al Roy E. 6. per l'eſtatute de 1 E. 6. de Chauntries, ou nemy, ceſt caſe fuit commence en temps de Hyde Chief Juſtice, & adonque, il & Crooke fueront d'opinion, que le dit terres fueront done, & lour reaſons fueront, pur ceo, que en le deviſe del' terres en St. Olaves apres le Anniverſary, le profit fuit appoint ad inveniend' Capellanum prædict. indefinite, & pur repairer del' Tenements, & Eſgliſe al diſcretion del' Gardeins del' Eſgliſe, & bon uſes & male eſteant tout en uncertainty tout les terres done al Roy, & ils teignont que le Prieſt fuit d'aver 10 Marks en certaine, & al diſcretion del' Gardeins d'Eſgliſe, tant

(1)

pluis, que eux pleiſt, ſed Jones & Writlock e contra, ils agreé, que ſi rien pluis ad eſtre dit il fuit ove eux, mes per le proviſoe le intention del' deviſor fuit explaine (ſcilicet) que les terres de St. Olaves ſerront ſolment charge, ove le ſupply de St. Swithin de ceo que ſerra defective de 10 Marks, & ad inveniend' capellanum prædict. & le deviſe de St. Olaves avera relation al ceſt proviſoe (ſcilicet) al inven' ceo, come eſt containe en le proviſoe ove le dit ſupplie tantum & nemy auter: Et apres ceſt Terme quant Richardſon fuit Chief Juſtice, le caſe fuit move arere, & argue per le Attorney General, & le Chief Juſtice agree ove Whitlock & Jones, & ils 3 deliver lour reaſons, ut avandit, ſed Crooke tient forment ſon primer opinion, ſed Judgment fuit done pro querente.

Swayne *verſus* Stevens.

(2) SWayne & auters port Action ſur le caſe ſur trover & converſion vers Stevens, & declare que ils fueront poſſeſs d'un nieſe a Londres le 2 jour de Marcii 21 Jacobi & al præd. Londres ils ceo perde, & vient per trover al maines le Defendant, & il 2 Marcii 3 Caroli convert ceo a Londres al ſon uſe demeſne, & le Defendant plede le Statute de 21 Jacobi pur limitation del' Actions perſonalls, & que le cauſe de Action fuit en 19 Jacobi, & iſſint barre per l'eſtatute, le Plaintiffs replie, que en 19 Jacobi, ils deliver le nieſe al Defendant al un leive ultra Mare a Tunys, & a redeliver ceo apres al eux, quant il ſerroit require, & que il a Tunys avandit vende ceo al perſons nient conus, & que il continue la uſque tertium Caroli Regis, & adonque vient al Angleterre, & le Plaintiffs luy requeſt a deliver al eux le dit nieſe, & il refuſe, ſed convert apres al ſon uſe demeſne, ſur ceo le Defendant demurre en Ley, & per Whitlock & Jones l'Action bien giſt, car quant home deliver biens al un deſtre redeliver quant require, & le partie convert ceo al un uſe, & apres il vient al poſſeſſion del' ceo arere, & convert ceo al ſon uſe arere, en ceo caſe ſi le primer Converſion fuit devant le temps de limitation & l'auter apres le temps, le Plaintiff poet aver Action ſur le darren Converſion, & neſt lie per le Statute, car le owner del' Biens ad Election ſur quel Converſion il pleiſt a porter Action, mes ſi temps de limitation fuit paſſe, il ne poet aver detinue pur les biens, pur ceo le cauſe de Action de detinue fuit preſent apres le temps de deliver, & iſſint le temps a port Action fuit alle, tamen en ceo caſe, le owner poet ſeiſer les biens, coment barre de Action. 2. Il fuit dit per eux, que le Converſion ultra mare, neſt de neceſſity deſtre priſe Converſion vers le Plaintiffs. 3. Auxi, il ne fuit intenti-

on

on del' Statute, que le Plaintiff serroit tye a port Action sur le Conversion ultra, & destre tye al un temps, quant il ne puissoit aver Action vers le partie (il esteant ultra mare) ideo il semble a eux, que quant le party Defendant vient en Angleterre, & donque il fuit require sur son revener, al ceo deliver & il denye, sed ceo devant convert al son use demesne & ceo deins le temps de Limitation, que le Action fuit bien port, sed Crooke (absente Richardson) e contra, sed Judgment fuit done pur le Plaintiff. Apres Termino Paschæ le case fuit move areré, quant Richardson fuit present, & il fuit d'opinion ove Crooke, sur que Judgment fuit prie, sed il nient fuit agree per tout, pur le primer point, que le Statute de Limitation ne barre le Plaintiff de son Action, quant le Defendant fuit ultra mare accordant al opinion de Whitlock & Jones.

Jenkins *versus* Younge.

EN brief d'error en le Grand Sessions pur le Countie de Flint, le case fuit tiel, home done terres al baron & feme, habend' al baron & feme al use le baron & feme, & le heires de lour Corps engenders, & la il fuit adjudge per Sir John Bridgman & son associate, que ceo fuit Estate Tayle, sur que un brief de error fuit port, & per opinion Jones, Whitlock & Crooke le primer Judgment fuit affirme, car ils agree, le case de 2 & 3 Eliz. destre bon Ley, ou terres done al J. S. pur vie al use J. D. & ses heires que en ceo case J. S. ad nisi estate pur vie, & quant ceo determine, l'use derive hors del' ceo est ale auxi, mes quant l'use est al mesme party, il nest forsque Limitation del' estate, & a doner terre al un, & ses heires de son Corps, vel a luy al use luy mesme, & heires de son Corps, ceo est tout un & en ambideux cases, il est un estate Tayle, & ceo fuit le cause sur que Judgment fuit affirme. (3)

Anonymus.

EN Replevyn le Defendant avowe pur damage feasant, pur ceo que il fuit Tenant en Common del' 8 part del' terres ove auters, sur que le Plaintiff demurre. Noy Attorney General move le Court, que le Avowrie ne fuit bon; car cest Avowrie nest en realty come pur Rent, ou un Avowrie en nosme de Tenant en Common sole & seperatim poet estre, sed est en le personalty pur damage fesant, & damages sout solment destre recover, & returne del' distress, & l'auter Tenant ad interest en ceo auxi bien, come le avowant, ideo le avowry doit estre en son nosme, & (4)

destre

de faire Cognizance, come Baylive al auter Tenant en Common, & de ceſt opinion tota Curia abſente Richardſon fuit, & un rule done pur Judgment, niſi melior matter fuit monſtre.

Facy *verſus* Longe.

(5) INter alia un point de ſuggeſtion pur Prohibition fuit, que le Parſon ſue en Court Chriſtian le owner del' terre pur diſmes de Cattle, que il prift al agiſtment, ou doit ſue le proprietor del' Cattle, ſemble al Court, en reaſon, que le Suite fuit bien port vers le owner, ſed quomodocunque ceo ſoit, il appertient al Court Chriſtian pur determine, ou l'un ou l'auter doit eſtre ſue, ideo pur ceſt reaſon quant al ceſt point, un Conſultation fuit grant per Curiam, abſente Richardſon.

Coplande *verſus* Piatt.

(6) LE caſe enter Copland & Piatt ſur ſpecial verdict fuit tiel, un Bertram avoit 4 files, & leigne file fuit marrie al un Bayly & Bertram eſteant ſeiſie en fee de terres en Com' Stafford al value de 140 l. (come fuit affirme al barre, ſed le value ne fuit trove en le verdict) en conſideration de 200 l. pay per Bayly, & en conſideration del' dit Marriage, convey les dit terres parte al uſe Bertram pur vie & parte al uſe Bayly, & ſa feme le Remainder de tout al baron & feme & al heires de Corps de feme deſtre engender per le baron, Bertram mourſt, & Bayly ayant iſſue per ſa feme un fits, mourſt, le feme de Bayly marrie, & el & ſa baron vend' le terre al Pyatt, le fits enter per 11 H. 7. & fift Leaſe al un, que port Ejectione firmæ vers Pyatte, apres argument al barre, ceo fuit debate per Jones, Whitlock & Crooke, & ils agree, que le Plaintiff doit eſtre barre, le ſole point fuit, ou ceſt Conveyance fuit deins 11 H. 7. & ils diſont, que ne fuit, car le chief & principal conſideration fuit le Marriage, & le amor del' pier al file, & le payment de argent fuit de meins regarde, ideo le chief motion del' aſſurance del' terre move del' feme & ſa pier, & ideo hors del' Statute ſur le reaſon de Eaſton & Stowells Caſe Comment part 2. & Floyers Caſe Cooke pars 9. & meſme le caſe Term' Michaelis enter Kinaſton & Lloyde fuit adjudge accordant en Exchequer 19 Jacobi, & al auter jour, Richardſon deliver ſon opinion, & concurre ove eux, ſur que Judgment fuit done pur Defendant.

Bery

Bery *verſus* Heard.

TReſpaſs ſur le caſe per Bery vers Heard. Bery leſſa terre pur ans al J. S. Heard eſteant un eſtranger coupa arbors creſcents ſur le terre, & priſt Barke de eux, & Bery leſſor port Action vers le dt Heard de trover & converſion del' dit Barke, en ceſt caſe: 2 Queſtions fueront fait, l'un ou al Common Ley le leſſor poyet ſeize les Arbors vel Barke del' terre eſteant coupa per eſtranger. 2. Ou il poyet apres le Statute de Glouceſter, que done Action de Waſte vers leſſee pur ans: ceſt caſe fuit commence en temps de Ley Chief Juſtice, & adonque debate per le Bench, & tout una voce penſe, que al Common Ley leſſor poyet ſeiſer les Arbors, & lour Barke, & per Dodridge apres le Statute, il ne poet, car Action de Waſte en ceo caſe eſt done per l'eſtatute, & leſſee avera Treſpaſs vers l'eſtranger, que couper les Arbors, & recovera treble damages vers luy, ſed Lee, Jones & Whitlock e contra, ſcilicet, que le Common Ley neſt alter, ſed leſſor nient obſtant ceo ad election a prender ſon remedy, per voy de ſeizer per le Common Ley, ou a port Action de Waſte, ſed il ne poet faire l'un & l'auter, & apres le dit caſe depend, tanque les temps Richardſon Chief Juſtice, & il concurre ove Jones, & Whitlock (Crooke in contrar' opinion') & ſans argument Judgment done pro querente, & Crooke aſſenta, que Judgment ſerroit done. (7)

Sentley *verſus* Price.

LE feme de R. Sentley port appeal vers Richard Price pur tuer de ſon Baron al Newtowne en Com' Mountgomery, le brief de appeal fuit direct al Viſcount de Salop, le Defendant appear, & plede non culpable, & il fuit trove Culp. de Murder, & en Arreſt de Judgment, exception fuit priſe, que appeale en le Countie de Salop, ne giſt pur tuer d'un home en Com' Mountgomery, & tota Curia apres divers arguments fueront de meſme opinion, que le brief ne giſt, neque per le Common Ley, neque per aſcun Statute, ſcilicet, 26 H. 8. 27 H. 8. vel 34 H. 8. ſed l'appeal doit eſtre en Com' Mountgomery per brief la devant les Juſtices el' Grand Seſſions, ideo Judgment done, quod querens nihil capiat per breve. En arguments del' ceſt caſe mult fuit dit al barre, & Bench de Gales quel jeo omitte. (8)

Nota, tanque de William le Conqueror, touts choſes de Felonies & auters choſes fait en le Juriſdiction del' Prince de Gales fueront triable en Gales, per le Leyes de Gales, que fueront diſcrepant

crepant del' Leyes d'Angleterre, & apres ceo, touts choſes de Felonies & Murthers fueront triable deins les Seigniories Marchers, en que les facts committe, & pur terre en meſme le manner, miſi tout le Seigniory ou parte fuit en queſtion, & donque ceo fuit triable en Angleterre, & le briefe doit eſtre port en le prochein Anglois Countie adjoinant, mes Felonies & Murthers, & auters matters en le Jurisdiction del' Prince de Gales, ceux fueront triable per le Leyes de Gales tanque 12 E. 2. & donque per le Statute de Rutland (quant le principalitie vient al Corone) ils fueront trie pur eaſe en les Counties la mention, en le Grand Seſſions pur les dit Counties, & iſſint il continue, ſed per 27 H. 8. & 34 H. 8. les choſes fait en le Seigniories Marchers, ils fueront trie en le Countie, en que le Seigniorie fuit, & pur l'auter Counties come fuit limit, per le Statute de Rutland, & le dit Statute de 34 H. 8.

Termino

Termino Paſch. An. VIII. Caroli Regis, *in* Banco Regis.

Matingley *verſus* Martyn.

WIlliam Martyn ſurrogate al Sir Henry Martyn official vel Arch-deacon de Berks appeale & cite al Court del' dit Archdeacon un William Matingley, & Johan, eſteant Pariſhioners de Cookeham deins le dit Archdeaconry, ſuppoſant que ils vive ſuſpicioulment, come baron & feme, nient eſteant marie, aut ſaltem, que ceo ne fuit conus, ou probable, & que null Bannes fueront demand en le dit Pariſh, neque ount ils aſcun loyal Licence a ceo faire; ils appeal al Audience, & apres al Commiſſioners delegates, & le dit Matingley, ove Johan come ſa feme obteine Prohibition, lour Suggeſtion, & Declaration fuit, que le conſtruction de Statutes & Acts de Parliament appent al Roy & ſon Temporal Court, & nemy al Eccleſiaſtical Court, donque ils rehearſe le Statute de 25 H. 8. que ordeine, que le Archeveſque poyet grant Diſpenſation en certain caſes, & ouſter alledge, que le dit Archeveſq; per ſon eſcript ante 17 Dec. 1615, deſouth ſon ſeale rehearſe, que les Plaintiffs ount intention a marrie, & deſire pur aver Licence a ceo faire, en l'Egliſe de St. Martins en Campis, ideo il done al eux Licence a marrier, ſans Bannes per le Vicar, vel Curate del' dit Egliſe, apres caution done come en ceo caſe eſt uſual, ceo deſtre ove conſent de Parents ou Governors, Ita quod ne fuit aſcun Pre-contract, Conſanguinity, vel Affinity, impedient ceo, neque aſcun ſuite en aſcun Court concernant aſcun Marriage, ou Contract ove auter; & ceo deſtre en le dit Egliſe, enter les houres de 8 & 12 en le matyne, abſque tamen prejudice al Miniſter del' Pariſh, ou le dit Johan vive, proviſoe que ſi le dit parties appeare deſtre del' melior condition, quam appeare en le ſuggeſtion per le addition de lour noſmes, vel aſcun fraude, ou que les ſuggeſtions contain en le Licence fueront falſe, donque le dit Licence deſtre voide, & de null effect, (1)

& ils averre, que tiel Licences fueront uſualment grant devant le dit Act, & auxi que ils ne fueront de melior condition, quam fuit containe en le dit Licence, neque aſcun fraude ou fauxity en le dit Marriage, neque fuit aſcun Impediment per reaſon de Conſanguinity, Affinity, ou Precontract, ou auterment, &c. & que ils per virtue del' dit Licence 20 Dec. 1625. fueront marrie per Curate en St. Martins in Campis, & que ne fuit aſcun prejudice al Miniſter, ou le dit Johan vive, per virtue de quel ils cohabite come barou & feme, prout eins bene limit, & ils ultra dient, que le dit Sir Henry Martyn, William Martyn, & John Holloway ceo nient obſtant & intendentes de aver conuſance del' dit Statute trahont eux en plee devant eux, pretendant, que le dit Archeveſque, n'ad power a grant Licence per le dit Statute, ſed ceo appent al Eveſque del' Dioceſs, & alios auter Eccleſiaſtical Commiſſioners, & coment ils plede & alledge tout le dit matter en le dit Court, & offer a ceo prove, tamen ils refuſe de ceo receive, ſed proceed de vex eux, & que ceo per appeal vient al Audience, apres al Delegates, & la ceo depend indecile contra Prohibitionem prædictam, &c. Les Defendants Sir Henry Martyn, & John Holloway plede, quod non traxerunt le Plaintiffs in placitum: William Martyn plede, que cheſcun Ordinary, & official deins lour Jurisdiction poient per Eccleſiaſtical Ley ex officio ſans aſcun preſentment inquire, & ount conuſance de tout Adulteries & Fornications, & de touts perſons, queux vive ſuſpiciouſment en Adultery & Fornication, & eux a cite a reſponde al dit Crimes, vel d'acquit eux de ceo, & ils fueront trove culpable pur eux punie ſolonque les Eccleſiaſtical Cenſures, & auxi per les Leys Eccleſiaſtical, null doit marrie ſans Bannes proclaime, niſi ils fueront loyalment Licence a ceo faire per Ordinary, ou auter, que ad ſufficient poyer a ceo faire, & ſi aſcun fait e contra, le Eccleſiaſtical Judge del' Jurisdiction, en que les dit Offenders vive poet cite eux d'appeare a reſponder, pur que ils marrie ſans Bannes, & ils ont Licence, , de enquire, ou ceo ſoit ſufficient, & ou le Marriage fuit fait ſolonque le dit Licence, & que l'Archeveſque de Canterbury devant le dit Act poyet grant Diſpenſation en tiel caſe en ſon Province, & cheſcun Eveſque, vel Commiſſioner en lour Jurisdiction, & il dit, que les Plaintiffs fueront Parochians de Cookeham deins le Jurisdiction del' Archdeacon de Berks, & ils ne fueront marrie 19 Dec. 1625. & 25 Jan. 1625. ils cohabite, come marit', & feme ſuſpectment null Bannes eſteant publye la, ou Marriage la ou aſcun certificate que ils fueront Marrie allors ove Licence, ils ount aſcun, & a offend cauſe, car ils cohabite, come baron & feme, prout ei bene licuit, & ideo il pria Conſultation, Les Plaintiffs dit, que le dit William Martyn poſt le dit

Marriage

Marriage en forme avandit fait de ceo, avoit notice, tam per Certificate in forma in placito inde prædict. mentionat' fact' quam per legale teſtimonium diverſarum perſonarum ſuper ſacr'um ſuum in ea parte præſtit' cujus prætextu ils vive, & cohabite, come baron & feme, abſque hoc que ils cohabite ſuſpicioſe, come le dit William Martyn alledge, ſur que le dit William Martyn demurre en Ley, & ſur le primer motion al barre, Jones penſe, que Conſultation ſerroit grant, ſed Richardſon Chief Juſtice, Whitlock & Crooke e contra, apres ſur motion, & argument de Noy Attorney Generall, Richardſon alter ſon opinion, & teigne ove Jones, que Conſultation doit eſtre grant, ſed Whitlock & Crooke teigne lour primer opinion, ſur que ils agree de demander le opinion de auter Judges, & ils demande le opinion de Heath Chief Juſtice del' C. B. Davenport Chief Baron, Denham & Hutton, & ils penſe, que Conſultation doit eſtre, ideo ſur motion del' Attorney Generall, un Conſultation fuit grant, Ita quod non agatur de poteſtate Archiepiſcopi, concernant Licence per l'eſtatute de 25 H. 8. niſi cauſa devant primer jour del' Trinity Terme, ſur conference avandit, ceux points fueront reſolve; primes le conuſance de tout Fornications & Adulteries, & pur ſuſpitious vivent en Adulterie appent al Eccleſiaſtical Court. 2. Que ſi aſcun Marrie ſans Proclamation de Bannes, vel Licence, que diſpence ove ceo, ils ſont citable pur ceo al Eccleſiaſtical Court, & null Prohibition giſt. 3. Si aſcun Licences per le Ordinary del' Dioceſs ou Commiſſioners ou Officialls en lour Jurisdictions, & le Archeveſque en ſon Province devant l'eſtatute de 25 H. 8. fueront grant a Marrie ſans Bannes, le conuſance del' ſufficiency del' Licence, & le forme, & frame de Diſpenſation, & ou les Conditions & Proviſoes del' Licence, & ou ſufficient notice del' ceo fuit done, ou nemy, ſont examinable ſolment en le Eccleſiaſtical Court, & coment le Licence fuit ſufficient, & les proviſoes bien obſerve, & notice del' ceo, & ceo ſoit refuſe en Eccleſiaſtical Court, null Prohibition giſt, ſed le remedy del' party grieve eſt per voy d'appeal, & nemy auterment. 4. Coment authority ſoit done per Act de Parliament al Archeveſque de grant Licence vel de novo vel en confirmation de ſon Authority, tamen le forme del' Diſpenſation & les obſervations del' Proviſoes, & Conditions del' ceo, & ou ſufficient notice fuit done, ou nemy ſont examinable en le Eccleſiaſtical Court, & ſi en ceſt caſe ils adjudge irregularment, en l'Eccleſiaſtical Court, null Prohibition giſt, ſed le remedy eſt ſolment per voy de appeal, mes ſi vient en queſtion en Eccleſiaſtical Court, ou les parolls d'Act de 25 H. 8. done ſufficient poyer al Archeveſque de grant Licence, la ſi Court Eccleſiaſtical adjudge contra le poyer, Prohibition giſt, & nemy auterment

terment, mes ſils allowe del' Licence en point de poyer, & ſolment inſiſt ſur le fozme, & notice & auter circumſtances, la un Prohibition ne giſt, car coment le poyer a grant Licence ſoit done per un Act de Parliament, que eſt tempozal, tamen un Licence remaine un Eccleſiaſtical choſe, & le examination de tout choſes ſavant le poyer remaine al Eccleſiaſtical Court, come devant il fuit, & ceo fuit le ground de conſultation en le caſe en queſtion, que ceo ſerra grant a procæder en tout dihors, ſavant pur l'examination del' poyer del' Archevеſque a ceo granter per 25 H. 8. Nota auxi le Prohibition neſt bon, car coment bon Licence fuit grant al Plaintiffs, tamen ſi Judge Eccleſiaſtical n'ad notice del' ceo, le procæding en le Eccleſiaſtical Court eſt loyal, & coment notice ſoit alledge en le Replication, tamen ceo neſt bon, car neſt averre en facto, que il avoit doner notice, ſed ſolment licet le Judge ſufficient' habuit Notitiam, tam per Certificat' en placito (ou null eſt devant alledge) quam per teſtimonium legale, que eſt uncertain & nient bon, & neſt alledge, que le notice fuit devant le ſuite, ſed poet eſtre pendente placito, auxi le notice eſt en le inducement al traverſe, & donque neſt iſſuable, auxi l'iſſue eſt ſur le ſuſpicious cohabitation, que eſt crimen Eccleſiaſtical & a ceo tout agræ, & tout prærer Crooke, & Whitlock agræ, que le procæding ex Officio ſans preſentment fuit bon.

Termino

Termino Trin. An. VIII. Caroli Regis, *in* Banco Regis.

Colledge *de* Phyſicians *verſus* Butler.

LE preſident del' Colledge & Comminalty del' facul-
ty de Phyſick London port Dett vers un George But-
ler, le brief fuit quod reddat Domino Regi, & preſi-
dent' Collegii ac Cominal' facultat' Medicor' London
qui tam pro Domino Rege quam pro ſeipſo ſequitur
60 l. quas eis debet, & le Declaration fuit en noſme del' dit pre-
ſident per le dit noſme qui tam pro Domino Rege quam pro ſe-
ipſo ſequitur, &c. que conteine le Charter de Henry 8. fait anno
regni ſui 10. & confirme per Act de Parliament Anno Regni ſui
14. come eſt containe en l'eſtatute de 14 H. 8. & que le dit De-
fendant minime ponderans le dit Statute, vel le penalty de ceo,
exerciſe le facultie de Phyſick en London, licet il ne fuit admiſſe
a ceo faire, per le Preſident, & le Colledge, vel comminalty de fa-
cultie de Phyſicke London per le ſpace de 12 moys devant le dit
Action port, per quod actio accrevit eidem Domino Regi & dicto
Preſidenti qui tam pro dicto Domino Rege quam pro ſeipſo ſequi-
tur, &c. ad exigend & habend' del' dit Defendant pro dicto Domi-
no Rege & eodem Preſident' & Colleg' prædict. 60 l. videlicet,
5 l. per quolibet menſe prædict. 12 menſium prædict. tamen defen-
dens prædicto Domino Regi, & Preſidenti non reddidit. Unde
le dit Preſident dit, que il fuit damnifie ad valenc' 100 l. Le De-
fendant plede le Statute de 34 H. 8. per que liberty eſt done al
cheſcun ſubject le Roy que ad Science & Experience del' nature de
Herbes, Rotes, & Ewes, vel operation eorum, per ſpeculation
ou practice, al exerciſe, applie, & miniſter al aſcun external Ulcer,
Wound, Apoſtumation, outward Tumor, ſive morbo aliquo alio
aſcun Herbe, Oyntment, Bath, Pulteſſe, vel Emplaiſter, ſo-
longue l'Experience, & Science del' dit morb' vel malad' eiſdem con-
ſimil', vel potion pro calculo Strangury vel Febr' ſans aſcun im-
pediment, aſcun Statute, ou auter choſe al contrary. Et dit,
que (1)

que il fuit ſubject, & ayant Experience & Science per Speculation & Practice, en le nature de Herbes, Rootes, & Ewes applie & miniſter al divers Subjects le Roy, Herbes, Oyntment, Bath, Pulteſs, Emplaſter, & potion al Ulcers, Boyls, Maladies, Stranguric & ague, & talibus aliis morbis illis conſimilibus prout ei bene licuit, & al reſidue plede non culpable, le Plaintiff replie al primer plea, & plede l'eſtatute de 1 Marie, per que le dit Charter, & le dit Act de 14 H. 8. fuit confirme en toto, ſur que le Defendant demurre, & monſtre pur cauſe de demurrer, que le Replication fuit departure del' Declaration, & ſur argument en C. B. Judgment fuit done per opinion del' tout les Juſtices pro querente, & ſur ceo Error port en Banke le Roy: 2 Errors fueront aſſigne, l'un fuit departure. 2. Pur ceo, que le brief fuit en noſme le Roy, & le Preſident, & le Declaration fuit en le noſme del' Informer auxi, & apres argument al barre, per le Councell d'ambideux parties, les Judges deliver lour opinion, le Chief Juſtice commence, & donque Jones, Whitlock & Crooke, & ils tout, que Judgment doit eſtre affirme, primes ils agree, que le brief & Declaration fueront bon; & coment aſcun Preſidents ſoint, que ſur Pœnal Ley le brief fuit a reſponde al Informer qui tam pro ſeipſo quam pro Domino Rege ſequitur, tamen ils penſe, que le pluis proper, & melior voy de brief fuit, a reſponder al Roy, & le Informer, car le Dett fuit done al eux per moieties, ideo neſt cy proper pur demande tout pur le Informer, & tamen pur le Roy & Informer d'aver Judgment ſeveral pur moieties, & accordant Partridge & Crokers Caſe eſt en le Coment'; mes quant il eſt per Information, la il ſerra, que Informer informe pur le Roy, & luy meſme. Auter exception prift al brief, pur ceo que il eſt en le noſme del' Preſident, & nemy del' Colledge auxi, & auxi il fuit contrary en le fine del' Declaration, il eſt dit unde actio accrevit al prædict. Roy, & Preſident, pur aver 60 l. del' Defendant, pur le Roy le moyety, & pur le Preſident & Colledge l'auter moyety, ſed il fuit adjudge, per le Court, que nient obſtant, il fuit bon; car primes coment le incorporation fuit per noſme de Preſident & Colledge, tamen le ſuite eſt per le Charter done al Preſident, & poet eſtre un Corporation per un noſme, & a purchaſer terre & auterment, tamen ſuera per auter noſme, 11 E. 1. un Corporation fuit per noſme de Maſter, Wardynes freres, & ſoers de Rouncevill, & per le dit Patent dit que ſuer per noſme de Maſter & Wardynes de Rouncevill. 2. Coment que l'Action eſt done per voy de ſuite al Preſident ſole, tamen le Recovery & argent recover ſerra al Preſident & Colledge, ideo le concluſion pur aver l'argent al Preſident & Colledge fuit aſſets bon. Le 3d. point fuit reſolve, que le plee en barre ne fuit bon,

car

car le liberty done eſt diſjunctive pur outward medicine de uſer Emplaiſter, Dyntment, Bathes, &c. & pur 3 Diſeaſes, (ſcilicet) le Stone, Strangury & Agues ſolment, uncore ils jumble tout enſemble, que il miniſter les Dyntments, & potions al touts les dit Maladies, que ne poet eſtre, car ne poet miniſter potion, niſi al dit 3 Diſeaſes ſolment & null auter. 4 il fuit reſolve, que ne fuit aſcun departure, ſed le Replication fuit ſubſequent & enſuant al Declaration; Sed pur le maine matter, ils ne dihont riens, ſcilicet, ou le Statute de 1 Marie tolle le force del' Statute de 34 H. 8. car ils done le Judgment ſur le barre, que ceo fuit male, mes Crooke ſolnient parle a ceſt point, & ſemble a luy, que l'eſtatute de 34 H. 8. neſt repeale ou avoide per 1 Marie.

Walker *verſus* Lambe.

WIlliam Walker port Action ſur le caſe vers John Lambe Chivaler pur diſturber luy pur exerciſe le Office de Commiſſary del' Eveſque de Lincoln, & official al Archdeacon de Leiceſter deins le Countie de Leiceſter, & ſur non culpable plede un ſpecial verdict fuit trove, & le caſe ſur ſpecial verdict fuit tiel, l'Eveſque de Lincoln grant l'Office del' Commiſſary en le Countie de Leiceſter, al Doctor Chippingdale pur vie, que fuit confirme per le Deane & Chapter, auxi le Archdeacon de Leiceſter grant a luy l'Office de officiall, deins le dit Countie pur vie, que fuit confirme per l'Eveſque Deane & Chapter, apres ſcilicet, 1609. le Succeſſor Eveſque grant le dit Office de Commiſſarie al dit Chippingdale, & un Edward Clearke pur lour vies en poſſeſſion, que fuit confirme per le Deane & Chapter, & auxi le Succeſſor Archdeacon Anno Domini 1611. grant l'Office de officiall avantdit al dit Chippingdale & Clearke en poſſeſſion pur lour vies, que fuit confirme per l'Eveſque, & per le Deane & Chapter, apres le Succeſſor Eveſque grant le dit Office de Commiſſary al Sir John Lambe, & al dit Clearke pur lour vies en poſſeſſion, & auxi le dit Archdeacon grant l'Office d'official al eux pur lour vies en poſſeſſion, ambideux les grants fueront confirme ſufficientment. Anno Domini 1627. dit Chippindale mozuſt, ayant accept del' dit grant fait al luy, & Clearke, ſed il ne fiſt aſcun ſurrender, apres l'Eveſque de Lincoln que oze eſt, grant le dit Office de Commiſſary al Plaintiff pur ſon vie, & Pilkington Archdeacon grant l'Office de officiall al dit Plaintiff, ambideux grants fueront confirme, le Jury trove, que les dit Offices ne fueront grant niſi al un, tanque les dit ſeveral grants fait al Chippingdale & Clearke, ils trove auxi q̃ il fuit lay home, & un Batchelor del' Civil Ley & Cannon Ley, & le Defendant Lambe interrupt luy del' dit Office, & aſſeſſe (2)

& aſſeſſe damages, & ſi pro quer', &c. & ſi pur Defendant &c. Ceſt caſe fuit argue al barre del' ambideux parties, & en ceſt Terme les Juſtices ſeriatim briefment deliver lour opinion concurrant en un, en les deux points, queux fueront move per le Counceil al barre, come les doubt del' caſe. Primes ils teignont, que le grant de Commiſſarie & official al Walker fuit bon, nient obſtant que fuit un Lay home, & nient Doctor del' Ley ſed ſolment Batchelor del' Ley, car ils dihont que les Juriſdiction d'un Eveſque, & del' Archdeacon eſt derive del' Corone, per uſage & preſcription & ceo en luy meſme quatenus il eſt coherſive a puniſh crimes, vel a terminer cauſes de Matrimony & probate de Teſtaments, & adminiſtr' eſteant civil cauſes ſont derive del' Corone, & nemy incident de Mero Jure al Eveſque, & ceo appiert per Henſloes Caſe pars 9. Cawdreys Caſe pars 5. 1 E. 6. cap. 2. l'eſtatute de 25 H. 8. cap. & divers auters authorities, & le Statute de 37 H. 8. cap. 17. eſt a ceo purpoſe, & eſt un Declaration del' Ley devant, que Ley homes, & homes marie poet eſtre Scribes, Chancellors & Regiſters, & coment que il dit que ſerra Doctor del' Ley, ceo neſt excluſive d'aſcun auter.

Hill. 35 Eliz. en B. le Roy enter Pratt & Stocke il fuit iſſint reſolve, & adjudge. 2. Le ſecond queſtion fuit, ou l'eſtatutes de 1 Eliz. & 13 Eliz. extendont al grants de Offices de Commiſſaries & Officials, & ils agreeont, que les dits Statutes extende al ambideux, que Eveſque ou Archdeacon ne poyet grant Commiſſarie ou Official, niſi al un perſon tantum, neque en Reverſion, niſi fuit uſe devant de tempore in tempus, iſſint a faire, car ceux Offices ſont Hereditaments, & belonging al Eveſque & Archdeacons, & ils ſont de profit, aut al eux meſme vel al parties, a que ils ſerront grant, ideo ſont reſtraine per l'eſtatute, auterment que de neceſſity, ils ſont requiſite, & null difference perenter ceſt caſe, & le caſe de Eveſque de Sarum, Cooke pars 10. & entant, que le grant al Lambe & Clearke, eſt a deux, & ou il fuit uſualment grant al un, & eſt en reverſion, car le grant a Chippingdale ne fuit ale, ideo ſon Patent neſt bon vers Succeſſor, per que Judgment fuit done pro querente, ſi null auter cauſe ſoit monſtre al Lundy enſuant, al ceſt jour ne riens pluis fuit dit, ideo Judgment done abſolutement pro querente.

Bullens Caſe.

(2) ACtion ſur le caſe port vers baron & feme ſur trover & converſion de certain biens, ſcilicet, Apparel, & auters choſes, & le Declaration ſuppoſe que le baron & feme convert les biens al Comodum ſuum proprium, & verdict pro querente, en arreſt de

Judgment,

Judgment fuit move per Germyn, que le Declaration neſt bon, car le joynt converſion de biens, per baron & feme durant le Coverture ſera dit le Converſion del' baron & a ſon uſe, ideo Judgment done quod querens nihil capiat per breve.

Egerton *verſus* Egerton en Cancellaria.

En le caſe en Chancery enter Sir Rowland Egerton & Randall Egerton, un point en Ley fuit referre al Davenport Chief Baron, Hutton & Jones, Whitlock & Crooke, que fuit tiel, Sir Rowland Egerton enter en un Statute al Sir John Egerton ſon pier, que fuit defeaſanced ſur Condition, ſi Rowland Egerton obſerve, fulfill & accompliſh le darren volunt, & Teſtament del' dit Sir John Egerton & payera & content touts Bequeſtts & Legacies ſolonq; l'intent & voyer meaning del' dit Teſtament, & darren volunt Sir John eſteant ſeiſie del' terres en Capite en les Counties de Cheſter & Stafford, deviſe ceo per ſon darren volunt al Edward Egerton en fee, & done divers Legacies, & fiſt Dame Egerton ſon Executrix, & mourſt, apres ſon mort Rowland Egerton enter en le tierce parte del' terre, & le queſtion fuit ou le Statute fuit forfeit, Davenport, Hutton & Crooke fuerent d'opinion, que ne fuit forfeit, ſed Jones & Whitlock e contra, & ils feſont general Certificate, que per le opinion de major parte, il ne fuit forfeit, & iſſint il fuit decree.

Notes taken at a Juſtice Seate for the Forreſt of *Wyndſor* in the County of *Berks*, holden the 24th. day of *September*, 1632. at *Wyndſor*.

Earl of *Holland* Juſtice in *Eyre*. Lord *Richardſon* Chief Juſtice of *Kings-Bench*, and *Baron Denham* did aſſiſt him by vertue of the Kings Letters to them. Mr. *Noy* Attorney General, attended for the King as his Councell.

EVery Foreſter when he is firſt called, ought upon his knees to deliver his Horne to the Chief Juſtice in Eyre, which is then delivered to the Marſhal, they pay a fine of 6 s. 8 d. before they are re-delivered.

Likewiſe every Woodward, when he is firſt called, ought to preſent his Hatchet to my Lord.

Sir Charles Howards *Caſe*.

SIr Charles Howard being called as riding Foreſter, Verderer, and Woodward, to divers Woods, Mr. Noy Attorney Generall ſaid, he had ſeen divers preſidents, where divers Offices being in one hand, many of them have been ſeized, and the reaſon given, Quia plurima officia habet, quæ intendere non poteſt. Mr. Attorney ſaid, if the King have a Wood of his own demeſne, within the Foreſt, and make a Leale for years of it, the Leſſee ought to provide a Woodward, and if he do not appear, the Wood ſhall be ſeized and the Office.

If a common perſon have a Wood, and uſed to have a Woodward, if he do not appear, the Wood is to be ſeized, and if he do not Replevy it within a year, then remanet in manibus Domini Regis imperpetuum; and upon his Replevyn he is to be Fined for not having a Woodward.

If the King grant a Parke within his Foreſt, yet it is to be ſtored with Game, and the Woods are to be preſerved, and the Pale to be kept, ſo that there be no Inn-leaps.

Lord Richardſon and Mr. Attorney, That Verderors and Regardors may be appointed by the Chief Juſtice in Eyre pro dieta.

Hundred

Hundred of Wargrave.

THe Hundred of Wargrave being called to do ſervice at the Juſtice-Seat, pretended that they ought not to do any Service, but ſaid they were out of the regard of the Foreſt, but infra metas Forreſtæ, and ſaid they had a ſpecial Charter to be quit of purveyanc in reſpect of the burden of the Kings Dœre that lay upon them.

Mr. Attorney. If the King find a Man within his Foreſt, and in his poſſeſſion, he cannot diſcharge himſelf but by Claim, unleſs he can ſhew an allowance of a Claim for it in a former Eyre, and if he put in a Claim now, he muſt ſerve till he hear what the Kings Councell can ſay to his Claim, and till his Claim be allowed him; for elſe every Mans mouth by the ſame reaſon might be open to ſay, that he was out of the regard of the Foreſt, and ſo there ſhould be no ſervice done. And it was never heard that there was any diſpute without a Record firſt in Court as a Claim; and no allowance in any Court will put the King out of his poſſeſſion, but only in Eyre, but an allowance there bindeth the King, the Subject being in poſſeſſion till he be removed by another Judgment. But for the Kings-Bench Court, it hath no Juriſdiction in Foreſt Cauſes, and therefore an allowance there, of Liberties within the Foreſt, will not put the King out of poſſeſſion 21 H. 7. 30. upon an Indictment for killing a Hart, which was proclaimed, Fineux ſaid the partie might plead to the Juriſdiction of the Court, becauſe that belonged to the Juſtices of the Foreſt to determin.

And accordingly, the Bayliff of the Hundred was ordered to make a Return of the Free-holders of Wargrave, ſaving their priviledges, if after it ſhould appear.

Mr. Attorney, If a Man be preſented for any offence as Waſt &c. and put in a claim to be quit of Waſt, &c. he ſhall be fined for the preſent, and when the Claim is allowed that diſchargeth the Fine.

Sir Richard Harriſon & *Sir* Charles Howards *Caſe.*

SIr Richard Harriſon and Sir Charles Howard being Verderers for delivering in their Rolls in Paper, where they ought to be ingroſſed in Parchment formally, were either of them fined xx l.

If a Wood be ſeized for want of a Woodward, the Claim of the owner cannot be received for any thing in that Wood, till he hath Replevyed his Wood.

Lord Lovelaces Caſe.

A Seiſure being awarded againſt my Lord Lovelace his Wood, for a Fine of 13 s. 4 d. the ſeiſure was ſtayed, and his Claim for priviledges as to fell without Licence or View received.

Upon delivery of the Swaynemoote Roll, being ſealed but with one ſeal, Mr. Attorney ſaid, if one of the Officers of the Foreſt put one ſeal to the Rolls by aſſent of all the Verderers, Regarders, and other Officers, it is as good as if every one had put his ſeveral ſeal, as in caſe divers men enter into an Obligation, and they all conſent, and ſet but one ſeal to it, it is a good Obligation of them all.

Mr. Attorney, The Regard is directed by the Articles ſent with the Writ, both what they ſhall preſent, and in what manner, and if they make inſufficient preſentments, they are fineable.

Whitlocks Caſe.

UPon a preſentment againſt John Whitlock for Wood felled by my Lord Treaſurers Warrant; Mr. Attorney ſaid, it was only a good direction for them to ſeek a legal way, that is, to have a Writ of Ad quod dampnum, for two Timber trees; for by the Law of the Foreſt, if it be for Fire-wood, and other neceſſary Bootes, a Man may fell by the view of the Foreſters, or Verderers, but for felling any thing to ſell, it cannot be but by Writ of Ad quod dampnum: And in this caſe Mr. Attorney cauſed an Indictment to be made of the offence ſingly by it ſelf, and to be found by the Grand Jury, and then the partie ſhould plead what he thought good for his advantage; and after the Indictment was found, Mr. Attorney ſaid, that the proceſs in Eyre is, de hora in horam; and ſo deſired that the party might plead preſently, who confeſſed the Indictment, and was fined 5 l.

This preſentment of all the Officers of the Foreſt was ſufficient evidence that ſuch wood and timber was felled, and there was no other evidence given.

If the King grant away part of his demeſne Land cum omnibus boſcis ibidem creſcen' upon a valuable conſideration, the Kings intent was, not to diſafforeſt this, but only to paſs the Intereſt in the Timber as well as in the Soile; but the Timber muſt remain as in a Foreſt, and therefore cannot be felled by virtue of this grant, but the Patentee if he will fell any of it, muſt take the ſame way as other men do in like Caſes.

If

If a man make an Aſſart either by ſtubbing up wood and plowing it, or by plowing up meadow or paſture, the party ſhall not only be fined, but the value of the Corne that hath been ſowen there is to be enquired, and the King to be anſwered the ſaid value..

Upon preſentment againſt divers for felling of wood, they ſhewed Warrants which were made of courſe by the Steward of the Caſtle, under Seal of my Lord of Holland, as Conſtable of the Caſtle of Wyndſor, without his privity, which were altogether diſallowed; and alſo agreed, that my Lord of Holland could grant no Licence to fell Wood as Conſtable of the Caſtle, but only as Juſtice in Eyre, obſerving requiſite circumſtances.

It was agreed in Waltham Forreſt, that the Juſtice in Eyre cannot grant Licence to fell any Timber, unleſs it be Sedente Curia, or elſe after a Writ of ad quod dampnum.

Divers preſentments were againſt Cottages erected in the Forreſt for poor people upon the waſte, by the aſſent of the Pariſhioners, wherein it was clearly agreed, that the Statute which giveth power to erect Cottages in the waſte for poor people, doth not extend to waſte within Forreſts, and therefore they were all fined.

Sir Charles Howards Caſe.

Upon a preſentment againſt Sir Charles Howard, for felling divers Timber-trees, he ſhewed the Kings warrant to him in general words, (viz.) That whereas Bygſhot Rayles were in decay, that he ſhould cauſe as much Timber to be felled as convenient, for the repaire thereof; my Lord Richardſon ſaid, this was no legal Warrant, but the decay ought firſt to have been viewed, and an eſtimate made of how much would have been needful for the repaire, and upon that eſtimate the Warrant ought to have gone, &c.

Taylors Caſe.

Upon a preſentment againſt John Taylor, for incloſing a Common Lane, he was fined 10s. and to lay out the Lane; And Mr. Attorney ſaid, the way for the Kings Hunting ought to be as free, as the High-way is for Mens travelling, and free from all ſtoppag.e &c.

Lord

Lord Lovelaces Caſe.

The Lord Lovelace his claim was there read, by which he claimed for him and his Tenants of the Mannor of Hurley and Eaſt Hamſted, Quiet' eſſe de Sectis ad Swanymote & quod boſci ſui liberi eſſent a & domuum regalium edificatione, & Caſtellis muniend' & quod ipſe, & tenentes ſui capiant boſcos ſuos ſine viſu Forreſtariorum, & quiet' eſſe de omnibus purpreſturis & de Canum expeditatione ac habere viſum franc' pleg. cum finibus pro Licentia concordandi,& bona felonum; fugitivorum, & wayſes & ſtrayes ac Amerciamenta in omnibus Curiis de tenentibus tam Forreſt', & liberam Warrenam in Hurley. His Title for Hurley and Eaſt Hampſteed was from the Prior of Hurley, being a Cell of Weſtminſter, and ſheweth how they came to the Crowne by Diſſolution, and a Grant from the Crowne to Chamberlain,with words of tot tanta tal' libertat' privileg' & franches' quot quanta & qual' Prior, &c. and by meſne Conveyances draws down the Title to himſelf.

Mr. Attorney. The claim to be quit from Swainmotes, & a Navigio of thoſe of the like nature, are in the nature of purveyance, and were all reſumed by the Statute of 27 H. 8. Cap. 24. and are not revived by general words of tot tanta alia, &c. for general words will never revive ſuch liberties as are reſumed by Act of Parliament, in the hands of him to whom the words refer, eſpecially where there are other liberties, upon the which, the words may have an operation to a common intent; for this he cited my Lord Darcies Caſe, a private Report.

For his Claim to fell his Woods without view of the Forreſters, and that by preſcription, is not good, and that by the Statute of Charta de Forreſta: cap. 4. is a pardon for Waſts and Aſſarts, &c. done before, but an expreſs clauſe qui de certo vaſtum purpreſturam vel aſſartum ſine Licentia noſtra in illis fecerint de vaſtis purpreſturis & aſſartis nobis reſpondeant; And conſuetudines & aſſiſæ Forreſt, is liberatio autem Houſebote & Haybote fiat prout boſcus pati poteſt in ſtatu quo eſt, & non ad exigentiam petentis, nec poteſt quis aliquid dare nec vendere de Boſco ſine Warranto Domini Regis, which laſt clauſe is in the Negative, and no preſcription can be againſt theſe two Laws; and though there is a late opinion Co. ſur Litt. 115. a. b. that a preſcription to fell and ſell wood, without view is good, yet it is clear, that it is not, and ſo it was reſolved 16 E. 2. Rot. 53. in the Earl of Arundells Caſe, and my Lord Richardſon denyed that difference, taken by my Lord Coke in Com' on Litt. fol. 115. as

between

between Negative Statutes declaratorie of the Common-Law, and Negative Statutes introductory of a new Law, and he held againſt my Lord Cooke, that in neither of the Caſes a preſcription can be againſt a Negative Statute, which Mr. Attorney alſo affirmed, and therefore held it very ſtrong, that a preſcription could not be to fell and ſell Wood without view of Forreſters, without it were with the help of an Allowance: And then we muſt intend that there was a Charter, upon which the firſt allowance was made, becauſe the words are expreſſly Negative, nec poteſt aliquis aliquid dare vel vendere ſine Licentia Domini Regis.

But he ſaid peradventure for Houſebote and Haybote a preſcription may be good, becauſe they of neceſſity muſt be had, and at all times it is not ſo convenient to ſeek out the Forreſters or Verderers, &c. and there is no ſuch Negative words as to thoſe.

Then for the claim for Extra Regards, he ſaith, that by the Statute of 1 E. 3. cap. 1. the perambulations of the Forreſts made in the time of E. 1. were eſtabliſhed, and then no preſcription ſince that time.

Then for claim quiet' eſſe de aſſartis, is but only for aſſarts then done, no libertie to make new, is plain by Charta de Forreſt' cap. 4.

Then claim quiet' eſſe de regardis is only a diſcharge, that the new Regarders ſhall not view offences then done in the time of the old Regarders, and by them not preſented.

Then for the claim to be priviledged from Lawing their Dogs, that was a mere perſonal priviledge in the Priors as Hunting and Hawking, and ſhall not be revived by general words of tot tanta talia, &c. for then where the Prior kept it may be one or two Dogs, now (perhaps) you will keep 20. nay, every one that hath any of the Priors Lands, will keep as many Dogs as he pleaſe, and ſo Dogs, and Hunters, and Hawkers ſhall be multiplyed.

Then for Fines pro Licentia Concordandi, cannot be but by Charter, and there you muſt have expreſs and plain words to carry them, becauſe the King cannot have them but by matter of Record.

For his claim Quod nullus Forreſtarius vicecomes, &c. intromittat, he deſires that propter illuſionem Curiæ he may be fined, for a Claim that none ſhall intromit, if he do not make Title himſelf to do Juſtice, is meerly void, as it was reſolved in the caſe of Coale-Harbor; for no place can be exempted totally from the Kings Laws, and there a Grant from the King to exclude his Officers from ſuch a place is void, if the King do not appoint ſome to do Juſtice there.

Then

Then the claim of Free-Warren is not good, becauſe it wants theſe words (infra metas Forreſtæ) and you muſt have the ſame words to revive a Liberty, as are needful to create it; alſo the whole Claim is nought, for here is no Title at all to moſt of the priviledges; for they are brought to Chamberlain from the Crowne, with a grant of tot tanta & talia, &c. But the conveyance to my Lord Lovelace is de maneriis prædictis cum pertin' and nothing ſpoken of the Liberties, and they being Liberties in groſs, which lye in Charter, will not paſs by the word pertinentiis, without ſpecial words of omnia privilegia & Franches' &c. and ſo he deſired Judgment for the King, and that it might be enquired by the Miniſters of the Forreſt, what Wood the Lord Lovelace had felled.

My Lord Richardſon ſaid, the Court could not adjudge the claim without ſome Plea or Demurrer on the Kings ſide.

Mr. Attorney. That there never was any Demurrer in Eyre, neither is the Attorney General to attend the Eyre, but when the claim is read, it is read to the Court, and the Allowance or Diſallowance is Quibus Lectis, and never any Demurrers; but after the claim read, there is an Entry in the Record (if there be an iſſue) that, Qui ſequitur pro Domino Rege petit quod inquiratur, and he cannot confeſs any Plea, but may only ſay, viſis præmiſſis non dedicit, &c. for he ſaith, that in ancient Eyres there was one there in the nature of the Kings ſpecial Attorney, but not his Attorney General.

All was adjudged againſt my Lord Lovelace, but only Quoad the Leetes Curia adviſare vult, becauſe it was profitable for the King, and did ſerve for the Adminiſtration of Juſtice.

Mr. Attorney. No Warren can be claimed by preſcription without the help of an Allowance in Eyre.

For Officers of the Forreſt it is to be enquired how they have uſed their Offices; for if they have broken the Truſt repoſed in them, it is the forfeiture of their places; as if a Woodward hath felled any of the Wood to his private uſe, for there is a tacite Condition annexed to all their Eſtates.

Chriſtian Smiths Caſe.

CHriſtian Smith and others being preſented for building Cottages upon the Waſte of the Mannor of John Geale, it was agreed, That if the Lord of a Mannor will ſuffer poor Men to erect Cottages upon his Waſte, though he take no Rent for them, yet a Fine ſhall be ſet upon them, and the Lord of the Mannor ſhall pay it, and after the Cottage built, if the Mannor deſcend,

This agreed likewiſe in *Waltham Forreſt.*

cend, or is conveyed to another, if he receive any ſmall Rent for continuance of that Cottage, he alſo ſhall pay the fine that ſhall be aſſeſſed, becauſe he upholds; but in theſe preſentments here, becauſe the Cottages were built before Geale purchaſed the Manor, And it was alſo found, that he never received any Rents for them, It was Ordered that thoſe poor that were in them ſhould continue there during their Lives, and then they ſhould be pulled down.

There was a preſentment, that divers Cottages to the number of 42. were erected in Brerewood, and inhabited by poor people, but no mention by whom they were erected, nor on whoſe Land. Mr. Attorney ſaid, the Regard ought to be fined for ſuch imperfect preſentments, and Judgment was given againſt them all Quod proſternantur.

Caſe *de* Loddon-Bridge.

IT was preſented that Loddon-Bridge within the Manor of Sonnenghill was in decay, which the King uſed to repair, as Lord of the ſaid Manor, which, or moſt part thereof, was conveyed to Mr. Halſtead. Mr. Attorney moved, that Mr. Halſtead might be indicted for it, and laid in the inditement, that he ought to repair it ratione Tenuræ. for the King doing it before as Lord of the Manor, they that have the Manor muſt now look to the repair.

Mr. Halſtead ſhewed, that many others had purchaſed part of the Lands which are liable for the repair thereof, and deſired that he might have contribution of them, and he would repair it.

It was anſwered, that the Court might force the repair upon him alone, or upon any other in whoſe hands any of the Lands appeared to the Court to be, which was chargeable to the repair thereof, and they are to ſeek their remedy at Law for Contribution from the reſt; and this Court is not to let the Bridge lie in decay, till it be diſputed and determined between them, whether they ought to be contributarie or not. And it was Mr. Newtys his Caſe in Waltham Forreſt. for Bow-Bridge, who was fined 100 l. for his neglect, and ordered to repair it, and he impriſoned till he paid the ſaid Fine: And yet there was order in the Exchequer for him to have Contribution, and Suits alſo depending there to that purpoſe, but Bridges are things of neceſſity, and may not expect ends of Suits, but muſt have preſent repair. The Fine was Ordered to go towards the repair of the Bridge.

Mr. Halſtead offered to enter into Bond to repair it by a certain day ſufficiently, which the Court accepted of, and appointed

the Verderers to view the repair; And the Court then gave him Licence to fell Tymber in his own ground within the Forrest for the repair thereof.

Blagraves Case.

IT was presented that Edward Blagrave had erected a Ferry where there was none before, for which he was fined 4 l. for by this means the Forrest may be abused by stealing Deare, and carrying them over the water, so as no Bloud-hound can follow.

If the Officers of the Forrest will make an untrue Certificate, as that such Trees may be felled without prejudice, they are finable.

Streets Case.

JOhn Street was indicted there, because before the Justice-Seate, he having speech with others about it, said, If you complain of me for cutting Wood within the Forrest, I will be revenged of you, and make you smoak for it; which Indictment he confessed, and for that offence was fined 100 l. and committed till he found sureties for his good behaviour.

Sir Charles Howards Case.

SIr Charles Howard was likewise indicted, because that at the Swanymote before the Justice-Seat, there being some speech to the Jurors, to present divers Trees, &c, felled by him and others; the said Sir Charles said, This Business is carryed against me with a high hand, but I care not for it, and when they that Prosecute me have done, I will begin, and have the matter heard in another place, and that he would stick close to them; which Indictment he confessed, and was fined for that offence 100 l. and committed, till he should pay the Fine.

Articles in Eyre last Article to enquire de hiis qui vindictam fecerint 27 Ass. pl. 44. Articles in Eyre of those that make afraid the Kings people by Great Countenance. Statute of Exeter calleth it murthering the Truth; for if no Complaint, then no Discovery, and if no Discovery then no Punishment.

Mr. Attorney saith, if a Man claim Liberty or Franchise by Charter, if the Kings Councell demand Oyer of it, and it be not shewed forth, Judgment shall be entred against him quia non ostendit Chartam, and in the Kings-Bench and Exchequer, if the Kings Attorney desire Oyer of it any time in that Term in which

which it is pleaded, if it be not ſhewed forth he ſhall have Judgment.

Mr. Attorney moved, that the ſeveral Regarders might be fined quia minus plene preſentaverunt & imperfecte.

Upon which, every Regarder of Battells Baylivewick was fined 5 l.

Every Regarder of Fincham-ſteads Baylivewick was fined 5 l.

And every Regarder of Fines Baylivewick was fined 10 l.

Notes taken at the ſame Juſtice-Seat of the Forreſt of *Wyndſor* for the County of *Surrey*, the 27th. of *September*, 1632.

Nuſans Caſe.

HEnry Nuſan was fined for concealing the killing of a Stagg by Henry Goffe five pounds, and divers others fined there likewiſe for ſuch Concealments.

Wheatlyes *Caſe.*

RIchard Wheatly preſented for carrying a Gun with intent to kill Deare, for which he was fined fifty ſhillings.

Inhabitants d'Egham.

THe Inhabitants of Egham, and all the Towns in Surrey within the Forreſt, joyned in a claim to cut down their Coppices at their pleaſure, and to have Common for all Cattle commonable, and Common of Turbary, and their title was made by preſcription.

Mr. Attorney, That preſcription to cut down wood was not good, for there can be no preſcription ſince the Statute of Charta de Forreſta, cap. 4. which is, That all Waſts, &c. done after that time, without the Kings Licence, ſhould be puniſhable. Nay, a preſcription to fell wood per viſum Forreſtariorum vel Verdariorum is not good, but it muſt be per viſum & allocationem Forreſtariorum & Verdariorum; for if it be per viſum only; then if the Forreſter or Verderer be required to come, and view it, and

he do not come, you may cut it down without view; for which he cited a Case in the Dutchy for one Leicester.

Memorandum, Sir Thomas Patmers Case, 5 Report 25. null diversitie ou le bois est destre prise per visum, ou per visum & allocationem, car in ambideux cases sur request fait & refusal ou le party poet prender eux sans view ou delivery.

Mr. Attorney cited a case to be resolved 6 Jac. that in a Chase a Man may prescribe to cut down wood, because they are not within the Statute of Charta de Forresta, out of which they strongly infer, that you could not prescribe for it within a Forrest.

They ought not to have joyned in one claim, it is true, that Tenants in ancient demesne may joyn in a claim for a Common, or the like, because the King cannot claim for them, but other Men, if Copyholders, they must only joyn that are Tenants to one Lord, and the Lord must prescribe for him and his Tenants, but the Lord of a Mannor cannot prescribe for any of his Freeholders, but every of them must put in several claims; for the reason why the Lord may prescribe for his Copyholders is, because the Free-hold in Law of their Land, is in the Lord; neither can Inhabitants prescribe by that name for Common, or any other profit apprender, as Gatewards Case Co. 6. fol. 60. but in an Easement, as a Church-way, &c. they may.

Mr. Attorney desired Judgment, and that all the Towns may be fined pro falso clamore, but there can be but one fine set where there is but one claim; but it may be levyed upon any of the Townships, and then they shall have contribution; Judgment was accordingly given against them, and they pro falso clamore fined 10 l.

There being some speech of Heath, that was set on Fire by persons unknown, Mr. Attorney said, that in King Henry the Seconds time, the Inhabitants of this part of the Forrest in Surrey were fined an 100 Marks for burning of Heath, for it spoileth the layer of the Deare, and disturbeth them.

Mathewes *Case.*

William Mathew being presented for continuing a Cottage on half a wood of the Kings Waste, sheweth forth the Licence of the Earl of Nottingham late Chief Justice in Eyre, for the inclosure and erection, to which Mr. Attorney said, that that might excuse the first Trespass, but the Chief Justice now may re-seize it, and sett it to any other that will give more to the party that now hath it, and so there is a fine of 5 s. sett, and the Land arrented at 2 s. per annum.

Mr.

Mr. Attorney ſaid, if the Juſtice in Eyre will grant Licence to erect a Cottage, or make an incloſure, and arrent it in perpetuum at a certain Rent, yet if this be not done ſitting the Court, it may be pulled down again; and if ſuch a Licence and Arrentation be Sedente Curia, it is good for ever.

Brownes *Caſe*.

UPon a preſentment againſt Thomas Browne for erecting a Brick-wall, and thereby ſtraitning the High-way, Mr. Attorney ſaid, that it could not be arrented, unleſs there was an inquirie Per miniſtros Forreſtæ, ſi ſit competens paſſagium; for if it be not, it is a nuſance in which the Subject is ſo far intereſſed, that the King cannot diſpence with it.

Mr. Attorney ſaid, That whereas every Man may take Eſtovers in his own wood by view of the Foreſters, and not elſe, yet they might not take any thing for their view; and if they did it was Extortion; and therefore he deſired that it might be enquired, whether any of them had taken, &c.

Le Mannor de Wyndleſham.

IN Wyndleſham there were divers Cottages and Incloſures made upon the Kings Soiles, and they being ſo made, the King ſells that Mannor; and the queſtion was, whether this had not diſpenced with the purpreſtures: And Mr. Attorney ſaid it had not, but the Patentee muſt now be fined, for the continuance of them, and they are to be pulled down, if they be not now arrented, for elſe the Kings Grant ſhould be taken by Implication to continue a wrong to his Foreſt, which the King never intended, and accordingly they were fined and arrented.

Moores *Caſe*.

JOhn Moore was preſented for ſuffering three Rood of Wood to be ſpoiled with Cattle, who came and ſhewed that the fence through which the ſpoil came, belonged to another Man to make, and ſo the ſpoil was in his default; but Mr. Attorney ſaid, that in this caſe, it being within the Foreſt, he whole Wood is in danger to be ſpoiled, ought to requeſt the other to make the Hedges, and if he refuſe, then he muſt do it himſelf, and have an Action of the Caſe againſt the other that ought to have done it; and therefore for this offence the ſaid John Moore was fined forty ſhillings.

Chertſey

Chertſey Bridge.

MR. Attorney ſaid, that the Abbot of Chertſey uſed to repair Chertſey Bridge, in reſpect of his poſſeſſions.

Sir Richard Weſtons *Caſe*.

SIr Richard Weſton being preſented for incloſing 12 Acres of his own Waſt, ſhewed the Kings Patent for the Licence, which Mr. Attorney allowed, but deſired that it might be enquired per Miniſtros Forreſtæ, whether it were fenced parvo foſſato & baſſa haia ſecundum Aſſiſas Forreſtæ: For the Kings Licence ſhall be taken to a general and common intent, (viz.) as a Man may incloſe within the Forreſt; And therefore without ſpecial words he cannot incloſe magno foſſato & alta haia.

Mr. Attorney ſaid, that all men that have to do within the Forreſt, as well Spiritual as Temporal, are to appear: And he ſaith, that the Abbot of Weſtminſter hath been Amerced, and ſo was Jeffrey Lucy a great Lord.

If any Officer make a Deputy, he ought to appear at the Juſtice-Seat, and it muſt be enquired if any ſuch Deputy make default.

If one have a Chaſe within the Forreſt, as there may be Libertie upon Libertie, if he kill or hunt any Stagg or Red Deare, or any other Beaſt which is a proper Beaſt of the Forreſt, he is fineable; and if a Man have a Chaſe adjoining to the Forreſt, if he deny the keepers of the Forreſt to fetch back any Stagg, &c. this is fineable; but Mr, Attorney ſaid, that Red Deare may be in a Chaſe by ſpecial claim.

For purliew in Law, Mr. Attorney ſaid, he knew none as to Hunt; for by preſcription it cannot be, becauſe no purliew is by preſcription: And he ſaith, that there is no Law for it, but what is in Statutes, and there is nothing for Hunting; and therefore he held, that purliew Men may only keep out the Deare, but cannot kill them, though they be in their grounds. And he ſaith, that their Hunting is only by Tolleration.

The Office of a riding Forreſter is, to lead the King in his Hunting.

Sir

Sir Walter Tichbournes *Caſe.*

SIr Walter Tichbourne was preſented for felling Trees in 3 Acres of his Wood, to the waſte of the ſame Wood; and he ſhewed forth the general Pardon, to which Mr. Attorney, (upon the reading of it) ſaid, that Tranſgreſſions are there pardoned, but not Vaſta, and this is Waſte, and therefore not pardoned; and upon it he was fined forty ſhillings.

Rowland Rapleys *Caſe.*

ROwland Rapley an under-keeper, being preſented for cutting unlawful Bowſe-wood ſaith, that he by the Kings command cut it down to ſell, and therewith to buy Hay for the Deare in hard times; to which my Lord ſaid, that thoſe pretences might deſtroy the whole Forreſt: And though the Kings Commands are to be obeyed, yet a legal way is to be uſed to put them in Execution: And therefore for not having the Woods viewed where they might beſt be ſpared, and their procuring a Licence orderly, he was fined ten ſhillings.

Cliftons *Caſe.*

JOhn Clifton being preſented for ſelling and carrying away of ſeven Timber-trees, ſhewed to the Court, that they were for repair of ſome Bridges which the King ought to repair, and the Loppes were ſold to pay for the workmanſhip, which was affirmed by the Verders to be ſo imployed, and yet for the undue way of taking them he was fined five ſhillings.

At *Wyndſor* the firſt of *October*, upon an Adjournment, *&c.*

MR. Attorney ſaith, that if the four Men, and the Reeve of any Town make default upon the firſt ſitting of the Juſtice-Seate, the whole Ville ſhall be amerced: But if after appearance they or any of them make default upon an Adjournment, then the parties only that make default ſhall be amerced.

Sir

Sir Richard Harriſons *Caſe.*

UPon a preſentment againſt Sir Richard Harriſon for a Warren, he ſaid, that he had made a claim for it, and claimed it by preſcription. Mr. Attorney ſaid, no Warren could be claimed by preſcription within a Forreſt, without the help of an Allowance in Eyre, and ſo he was fined 10 ſhillings, and the Warren to be deſtroyed.

Mr. Attorney ſaith, the Office of Agiſtors is only to preſent Treſpaſſes done by Cattle; and if they do preſent any thing elſe that doth not belong to their charge, it is meerly void, and ſo it is of any of the other Officers, &c.

Sheep-ſilver Mr. Attorney ſaith, is a Service now turned into Money, which is paid, in reſpect that anciently the Tenants uſed to waſh their Lords Sheep, as in ſome places they have Plough-ſilver and Reap-ſilver, which is Socage Tenure, now turned into Money, and the Service ſpared.

Finches *Caſe.*

RIchard Finch for drawing of the preſentments of the Agiſtors, and making them to preſent things that did not belong to their charge, was fined 10 l.

Mr. Attorney ſaith, that if there be a Warrant to cut wood, yet they muſt cut it fair, and not cut the Loppes flat, ſo that the water may ſtand on them, and rot them, to the deſtruction of the wood.

Reſtons *Caſe.*

MR. Reſton claimed the Woodwardſhip of all the Kings Woods in Cookeham and Bray, and all Wind-falls and and Fee-trees, (viz.) one Tree for every Score that was cut down there by Warrant; he claimed alſo Officium cuſtodis domus voc' the new Lodge, cum clauſura eidem adjacen' in Cramborne infra Forreſt' de Wyndſor prædict. in Ballivat' de Battles Baylivewick alias dict' Officium unius Forreſtariorum Domini Regis in Forreſta de Wyndſor; and for Title, pleaded a Charter of King James for the Woodwardſhip aforeſaid, unacum omnibus & omni modis boſcis vocat' Wind-falls & Fee-trees in boſcis prædict. vel in eorum aliquo cum omnibus aliis proficuis commoditatibus & advantagiis dicto officio aliquo modo debitis conſuetis pertinen' ſive ſpectan' & officium cuſtodis domus, &c. vocat' New lodge, &c.

&c. ut ſupra cum vadis & feod' quatuor denariorum per diem pro exercitio officii prædict. &c. Mr. Attorney prayed Judgment for all Fees but the 4 d. a day, becauſe he had made no Title to the Office by preſcription; for he doth not ſay that it was an ancient Office, nor that there were any Fees pertaining to it; And the Letters Patents are noe Title, for they are una cum vadis & feod' eidem officio ſpectan' & pertinen', ſo there being no Averment, that thoſe Fees which he claimed did belong to the Office, the Letters Patents do not warrant the claim, and indeed they cannot preſcribe in this Office; for there was no Woodward in thoſe places before King H. 8. his time; And he deſired likewiſe that Mr. Reſton might be forejudged of the Office of Foreſterſhip, which he claimeth, for there is no Title for it; for the words are, officium cuſtodis domus vocat' New lodge cum una Clauſura eidem adjacen' cum vadis & feodis 4 d. per diem, which only warrants the cuſtody of the Houſe and Cloſe with 4 d. a day, which he did not ſpeak againſt, but for the Walke no colour; for the words by which that is claimed are, alias dict. Officium Forreſtariorum Domini Regis infra Forreſt' de Wyndſor; and doth not ſay of what place in that Foreſt, or what Walke; ſo that it is altogether uncertain. Then for the Office of Woodward, Mr. Attorney deſired that it might be enquired by the Miniſters of the Foreſt how it hath been uſed; for an abuſe is a cauſe of forfeiture. If therefore Mr. Reſton have made a Deputy, or he or any of his Servants have felled any trees without warrant, or have otherwiſe miſ-behaved themſelves in not preſenting abuſes, this will be a forfeiture of the Office: And ſo Mr. Attorney proceeded to give evidence concerning the abuſe of the Office, which by divers witneſſes was proved to be very foul; and after they were examined, he told the Miniſters of the Foreſt upon this evidence, or their private knowledge, it was their duty to enquire in groſs whether Mr. Reſton or his Deputy, or Under-woodward, had deſtroyed, or ſuffered to be deſtroyed, any of the wood committed to their cuſtody and charge; for theſe, as forfeitures of the Office. 39 H. 6. 34.

If the Deputy of the Marſhal of the Kings-Bench in Fee, miſbehave himſelf, it is a forfeiture of the whole Office for Life, &c.

And afterwards the Offices of the Foreſt returned, and found the abuſe according to the evidence, &c.

Then my Lord Richardſon ſaid, as for the fees claimed to the Office of Woodward, &c, there was no warrant for them in point of Law, for thoſe words in the Patent, viz. eidem Officio ſpectan' & pertinen', reſtraineth the general clauſe precedent, and in the Patent there is no certainty what trees you ſhall have;

for that of neceſſity you muſt help it by an Averment of what did anciently belong to the Office, or elſe the Grant is meerly uncertain; and for thoſe words in the Patent, in tam amplis modo & forma prout aliquis alius dictum Officium habuit, they are only to go to ſuch Fees as any Grantee licite habuit, and not to any that he took wrongfully.

And my Lord Richardſon diſliked the penning of the Patent alſo, becauſe the Fees were not granted till after the Habendum, and then cometh the clauſe, viz. habendum Officium prædictum una cum omnibus vadis & feodis, &c. and divers Books are, that nothing will paſs in the Habendum, which is not named in the Premiſſes.

Then my Lord Richardſon ſaid further, that upon diſallowance of thoſe Fees, the ſpoils are to be anſwered to the King, and the Horſes and Carts to be enquired of which carried the Trees away, for they are all forfeited, the Timber being the Kings own, and growing on his own demeſne Land.

Judgment was accordingly given for all the Fee-trees, and others which he claimed to his Office of Woodward, upon the finding of the abuſe thereof, ſo that only the Cuſtody of New Lodge, and the Cloſe and 4 d. a day was allowed for it.

Dean & Chapter *de* Salisburies *Caſe.*

The Dean and Chapter of Salisbury being Proprietors of the Rectory of Wynckfield, claimed for them and their Tenants Common of Paſture for their Cattle commonable, levant and couchant on the Rectory, &c. in the open places of the Forreſt, and this by preſcription.

Mr. Attorney. For thoſe that claim Common, and have right, it muſt be enquired by the Miniſters of the Forreſt, whether they uſe Staff-hearding, that is, to have one follow their Cattle, &c. for it is not allowable of Common-right: For by that means, the Deare which otherwiſe would come and feed with the Cattle, are frighted, ſo that they dare not; and the Keeper will drive them into the beſt grounds, and ſo the Deare ſhall only have their leavings: Therefore if any who hath right of Common, and under collour thereof uſe Staff-hearding, it is a cauſe of ſeizing their Common till they pay a fine for the abuſe, and thereupon Replevyn their Commons. It is likewiſe to be enquired, whether any that have right of Common ſurcharge the Forreſt, or elſe if they put in more then their own private Land, or the Stover thereupon will Winter, though otherwiſe the ſtate of the Forreſt would well enough bear it; for both theſe are Surcharges.

It

It muſt alſo be enquired, if they under the collour of their own Common, have taken in any Beaſts of Strangers, and let them go under their name; and likewiſe, if they have put in their Cattle during the fence Month; all which are comprehended in two ſhort Articles of the Eyre, viz. to enquire Si uſus, & qualiter uſus.

Upon this claim the Miniſters of the Forreſt upon enquiry affirmed, That they had uſed ſuch Common as they claimed time out of mind, and had not abuſed it: Ideo allocatur per Curiam.

Totterſalls Caſe.

GEorge Totterſall Eſq; within his Mannor of Finchamſteed claimed a Læte, a Common of Paſture, &c. and Strays, all by preſcription, and did not ſay tanquam ad Manerium prædict. pertinen', as it ought to be, for a Man cannot have Strayes in groſs by preſcription, becauſe they lye in grant, and will not originally paſs without Charter; and therefore where they are in groſs, are to be claimed by a que eſtate, and made Title unto by meſne Conveyances; but it is otherwiſe of things that lye in Grant, and will paſs without Deed.

Then for the Læte, Mr. Attorney deſired that it might be enquired firſt if he had uſed it.

Secondly, if he had an able Steward to diſcharge the Office: For the want of that alſo is a cauſe of ſeizure.

Thirdly, if he have Officers, and thoſe things which are for the Execution of Juſtice, as Conſtables, Ale-taſters, &c. and Pillory and Stocks, and Cuckingſtoole, &c.

Fourthly, if he puniſh Bakers more then three times, and do not ſet them in the Pillory; All theſe are cauſes of ſeizure till he pay a fine for the abuſe, and Replevyn his Franchiſe.

For the Common, Mr. Attorney deſired to be enquired of ut ſupra.

Mr. Totterſhall himſelf being called, and asked concerning his Læte, confeſſed, that he had not uſed it a great while, nor were there Officers or other things for the Execution of Juſtice; but he ſaid that it appeared by ancient Rolls, that there had been a Læt there; and being asked to what Læt his Tenants went, he ſaid they went to the Sheriffs Turne, and paid Head-ſilver there, upon which Mr. Attorney ſaid, that Mr. Totterſhall could have no Læte, for all Lætes were drawn out of the Sheriffs Toyne, which is the Læte in the Kings hands, and Head-ſilver is certum Læte, and no Man ſhall be ſubject to two Lætes; and therefore there can be no allowance of the Læte, unleſs the King ſhould

be put out of that (which for ought we know) he hath ever had; ſo Judgment was given againſt him for the Læte and Strayes, but upon enquiring of the Common, that he had uſed it, and not abuſed it, it was allowed; and yet it appeared that the Mannor of Finchamſteed had been in the Crown, and ſo in ſtrictneſs of Law the Common gone; but becauſe it came from the Crown in King Johns time, and the Common had been uſed ſince, therefore Mr. Attorney would not queſtion ſo long a poſſeſſion.

Englefields Caſe.

WIlliam Englefield claimed Common for Cattle Commonable, for his Cattle levant and couchant on his Mannor of Lellyebrooke by preſcription, the uſage whereof being found, upon the enquiry, and that he had not abuſed it, was allowed to him.

The ſame William Englefield, within his Mannor of Spencers, alias Elington, claimed Waifes and Strayes by preſcription, pertaining to the ſaid Mannor.

To which Mr. Attorney ſaid, that this Mannor lay within the ſeven Hundreds of Cookeham and Bray, and all the Waifes and Strayes there belong to the King, and ever have been taken by the Kings Fermors; whereupon Mr. Englefield offering to call Witneſſes that he, &c. had ever uſed to take the Waifes and Strayes aforeſaid within his Mannor aforeſaid, Mr. Attorney asked him, if he could ſhew any allowance in Eyre for them, to which he anſwering that he could not, Mr. Attorney deſired, that thoſe Franchiſes might be ſeized till they replevyed them; for whatſoever was not claimed in the laſt Eyre, cannot be now either claimed or allowed before it be Replevyed; but upon anſwer, that they knew not whether it was then claimed or not, by conſent, a reſpectuatur was entred upon this claim.

Sir Edmund Sawyers Caſe.

SIr Edmond Sawyer within his Mannor of Weſt Waltham, alias Heywood, claimed to hunt Hares, Foxes, Wild-Cats, and to keep his Dogs unlawed; and for that pleaded a Charter of R. 1. made to the Abbot of Waltham Holy-Croſs in the County of Eſſex, and claimed liberty to incloſe his Woods of White Paroch and Heywood, with as great a Ditch, and high Hedges as he pleaſed, Et quod ipſe & tenentes ſui liberi eſſent ab operibus caſtellorum parcorum & pontium clauſur', & omni caragio Sumerag' & navigio & domorum regalium edificatione & omnimo-

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da operatione, & quod ſilvæ eorum ad dicta opera non capiantur, And to cut their Woods without view at their pleaſure, and to put in their Hogs into their Woods at all times in the year, and theſe by another Charter of the ſaid King to the ſame Abbot, &c. and he claimed here manerium prædictum, &c. cum boſcis vaſtis & aſſartis quiet' eſſe de Regard' & viſu Forreſtariorum & aliorum miniſtrorum præterquam de venatione cervorum & cervarum Forreſtæ prædict., and to have and elect a Woodward, and to have a Læte, and Waifes and Strayes within the ſaid Mannor; and claimeth Common of Paſture belonging to the ſaid Mannor in all the open places of the ſame Foreſt within the Bayliwick of Fines; and that he might Staffe-heard there, &c. and theſe by preſcription; and ſheweth that time out of mind, one of the Swaynmote Courts in certain, uſed to be kept at his Mannor Houſe; and he, and thoſe whoſe eſtate he hath at his charge, uſed to find them all their Dinners; and alſo that time out of mind, they uſed twice every week, to allow a Weathom to one of the Under Foreſters of Fines Bayliwick, and in this reſpect, time out of mind, they uſed to Staff-heard their Cattle, and ſo ſhewed the diſſolution of the Abbey, and the poſſeſſions coming to the Crown, and the Grant of this Mannor, &c. to one John Norris Eſq; , with words of tot tanta talia libertates privilegia & Franches' &c. quot, &c. aliquis Abbas, &c. and ſo brought the Title to himſelf by meſne Conveyance.

He pleaded the Statute for reviving the Liberties in the Crown.

Mr. Attorney firſt of all began with his Common, for which, admitting a good Title in the Abbot, yet by Diſſolution there was an unitie of poſſeſſion, and that deſtroyeth the Common, and then Common is not revived by general words of tot tanta talia, &c. libertates, &c. for it is neither Franchiſe, Libertie, or Priviledge, and therefore by ſuch general words not revived, as it was adjudged for Land in the Foreſt of Brayden, which was ſometimes parcell of the poſſeſſions of the Abbot of Malmesbury, but if the King will grant by ſpecial words, tot tanta & talia communias, &c. quot, &c. aliquis Abbas talis Monaſterii, &c. by thoſe words, if there were any Common appendant or appurtenant to that Mannor, or Land in the Abbots hand, it ſhall now be revived; but if an Abbot had a Common in groſs, and the King will grant parcell of his poſſeſſions with words of tot tanta talia, &c. yet this ſhall not revive any Common in the hand of the Patentee; for then every Man that hath any part of the Abbots Poſſeſſions, ſhall have by theſe words as great a Common as the Abbot himſelf had, when all the Poſſeſſions were in his own hand; and ſo the Kings Land ſhould be infinitely furtharged, utterly

utterly against his intent, but in case of common appendant or appurtenant to Land, there is no such prejudice; for in those cases every Man can but keep a number of Cattle proportionable to the Land which he hath, for he can common with no more then that Land to which his Common belongeth is able to Winter.

And Mr. Attorney saith, that though the Common be gone, yet the Swaynmote and Meathome remain; for they are claimed by third persons, and might be demanded when the Land was in the Kings hands, and therefore they having an interest against the King, it remaineth still against his Patentee.

Then for the claim of Hunting Foxes and Hares, and Wild-Cats by reason of such a Grant to the Abbot, and words of tot tanta talia, &c. to him, this is no Warrant for him; for the Abbot had Twenty Mannors, and yet there was but one Hunter: but now we shall have Twenty Hunters if those Grants be allowed, which would spoil the Forest, and make more Hunts-men then Deare; and this point was adjudged in the Forest of Waltham, against Sir Thomas Fanshaw, who claimed the like privilege within his Mannor of Barking, which was the Abbess of Barkings, who had the like Charter, and Sir Thomas Fanshaw the like words as here; for Hunting is a personal privilege, and there is a kind of Trust in the Grant, and therefore will not be revived by general words of tot tanta talia, &c. in the hands of a Patentee.

Then for his claim to be free from all repaire of Bridges, this ought not to be allowed: For first, for those Bridges which by Law he ought to repair at his own charge, no Grant can discharge him of that; for the Subject hath an Interest there, and the King cannot discharge him. Then for those Bridges which are not known by whom they ought to be amended; the Statute of 22 H. 8. Ca. 5. hath made all Men chargeable; and so the privilege of the Abbot, if he had any, was by that Statute resumed, And then is not revived to Sir Edmund Sawyer by Grant of tot tanta talia, &c. for that Clause revives only such Franchises as the Abbot had right unto at the time of the Dissolution, and then this privilege was gone.

And as for his claim to be quit from Carriages, & a Navigio & domorum regalium edificatione, and those other of that sort, they are all in the nature of purveyance, and were resumed by the Statute of 27 H. 8. cap. 25. and so are not revived by Grant of tot tanta & talia, &c.

Then for his claim to inclose his Woods of White Parroch and Heywood, with as great Ditches and Hedges as he please, this

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is not to be allowed to him, for that was but of matter of Election the Abbot might chuſe whether he would do it or not; and matters of Election are not revived as aforeſaid. And if the Abbot himſelf were in being, he could not now Incloſe it by vertue of that Licence, which is about 400 years ſince, becauſe it cannot now be known whether that power were not once executed, and if it were once executed, and after thrown out again, it cannot be Incloſed again; for then one power ſhould be divers times executed.

But for the Læte and Strayes, if they have been uſed, Mr. Attorney ſaid, he would not ſpeak againſt them, but deſired they might be enquired of; and likewiſe, that it might be enquired whether Sir Edmund Sawyer had withdrawn the Meathom from the Under-keepers, and the allowance at the Swaynemote, whereupon the Officers of the Foreſt did find, that thoſe things were not with-drawn; And that Sir Edmund Sawyer, &c. had uſed to keep a Læte, and have Strayes, and ſo they were allowed, but he was forejudged of all the reſt.

Sir Edmund Sawyer in another claim within his ſaid Manor of Weſt Waltham, claimed for him and his Tenants, to have Common of Paſture in all open places of the Foreſt, for Cattle Commonable at all times in the year, and this by preſcription.

Mr. Attorney ſaid, that the Common was loſt by the unity of poſſeſſion in the Crown, and is not revived as aforeſaid, &c.

Mr. Herſey of Counſell with the parties ſaid, that the Land of his Copy-holders was not in the Crown, and therefore their Common was not gone.

To which Mr. Attorney anſwered, that then the claim was ill drawn; for the preſcription for the Copy-holders in this caſe, ought to have been laid in ſome of the Abbots, in whom the poſſeſſions were ſevered, and then have ſhewed the coming of the Manor to the Crown, and from that time have claimed ſpecially, by making themſelves Title to the Copy-hold by the Court Rolls, as Swaynes Caſe Co. 8. Rep. 64. but though the claim was not good, yet the Court gave direction to the Officers of the Foreſt, to find the uſage of the Tenants, which was accordingly done, and ſo the Common allowed to them, but not to Sir Edmund Sawyer.

Salmes Caſe.

EDward Salme claimed as belonging to his Houſe, and Forty Acres of Land in Finchamſteed, to dig Turfe, and take Heath to burn in the ſaid Houſe, ſo it were done by the view of the Foreſters,

reſters, and Common for Cattle commonable, which upon enquiry, being found that he had uſed them accordingly, and not abuſed, were allowed.

Halſteads Caſe.

MR. Halſtead being demanded in Court concerning his claim of divers Liberties within his Mannor of Sunninghill, whether he would avow his claim, did openly in Court diſavow all the Liberties contained therein.

At the ſame Juſtice-ſeat holden by Adjournment at *Wyndſor* the 23*d.* day of *September*, 1633.

DIvers of the Tenants of Warfield being preſented for cutting their Woods without Licence, deſired that their Offences might be reſpited untill Mr. Nevill, who was Lord of the Mannor, came to full Age, becauſe he was now the Kings Ward, and had put in a claim to diſcharge himſelf and his Tenants from all Fines, by reaſon of any Offences.

To which Mr. Attorney ſaid, that to all the Lands, which by the Office appeared to be in the Kings hands, the Ward ſhould receive no prejudice, but that ſhould be reſpited; but for the other, it is no reaſon they ſhould offend unpuniſhed, unleſs they will make it appear that the Ward hath ſuch a Franchiſe. And accordingly divers of them were fined.

One being preſented for not having his Dog Lawed, Mr. Attorney ſaid, it was part of the Riding Foreſters Office to have the care and view of Lawing of Dogs.

Sir Edmund Sawyers *Caſe.*

SIr Edmund Sawyer, one of the Auditors of the Exchequer, being preſented for ſome Offence delivered in a Superſedeas, pretending the priviledge of the Exchequer, that he ought not to be impleaded elſewhere. Mr. Attorney deſired that he might plead his priviledge, and till then keep his Writ. For all the priviledges of the Exchequer are in a Book called the Red Book, and the Order is, if the Officers of that Court be impleaded elſewhere, that a Baron of the Exchequer coming, and bringing that Book, and ſhewing the Orders; and alſo avowing the perſon to be an Officer of the Exchequer, the priviledge is allowed, without any Plea; but where the Book is not there, the Priviledge

ledge muſt be pleaded; And Mr. Attorney ſaid alſo, that Sir Edmund Sawyer was an Auditor of the new Revenue, and none of the ancient Auditors; and therefore if he pleaded he would give him an Anſwer, and ſo an hour was given him to plead in the Afternoon, but no Plea being put in, the Court proceeded, and aſſeſſed the Fines.

Tenants *de* Mannor *de* Bray.

The Tenants of the Mannor of Bray being ancient Demeſne, claimed to fell and ſell their woods at their pleaſure, without view of any Forreſter, &c. and to have Common of Paſture, for commonable Cattle in the open places of the Forreſt, all times but in Fence Month, and when the King hunteth there, and to have pawnage in the Kings Woods, giving one penny for every great Hogg, and ob for a leſſer, and to keep their Dogs unlawed, and to Hunt Foxes, Cats, and Hares; And that every Tenant that owed a wholl Suit to the Kings Court of the ſaid Mannor, to have their Load of Wood out of the Kings Woods there, by the view and delivery of the Kings Woodward; And if he would not deliver it them in convenient time, then to take it without view: And alſo that their Land ſhould be out of the regard of the Forreſt, and that every of them ſhould be quit of all Waſts, Aſſartes, and Purpreſtures in their Lands and Tenements; and they butted and bounded their Lands, which were ancient Demeſne. And for their Title they ſhew, that time out of mind there ever hath been divers Cuſtoms, as well on the Kings part, as on theirs, and ſhew what Services they owed to the King; and in lieu thereof, time out of mind, they had the Franchiſes aforeſaid. Mr. Attorney ſaid, that to be out of the Regard of the Forreſt, is to be quit of the Fæ of the Forreſtors, and that was all. He ſaid alſo, that none might preſcribe to do Waſt, or make Aſſarts, or cut the Wood without view ſince the Statute of Charta de Forreſta Cap. 4. and Conſuetudines & Aſſiſæ de Forreſta, by which it is ordained quod liberatio de Houſebote & Haybote fiat prout Boſcus pati poteſt in Statu quo eſt & non ad exigentiam petentis, nec poteſt aliquis dare vel vendere de Boſco ſuo ſine Licentia Domini Regis. The Councell on the other ſide ſaid, that the preſcription was good enough, notwithſtanding thoſe Statutes, and they took that to be a good difference, which is remembred Co. ſur Litt. fol. 115. between a Negative Statute, which is only Declaratorie of the Common Law, and a Negative Statute, which is introductive of a new Law; againſt the laſt no preſcription is good, but where the

Statute is Negative, and but only declareth the old Law, there is no alteration, and therefore a preſcription may as well be againſt that as the Common Law; and that is the reaſon that a Man may preſcribe to hold a Leete more then twice in the year, although the Statute of Magna Charta be Negative, that a Leete be holden only twice, &c.

And they cited a Caſe in 8 Ed. 3. Itin. Pick. whereof Thomas Wake of Lidham preſcribed to be one of the Regarders of the Foreſt, and to cut wood without view, and iſſue was joyned upon the preſcription, and ſo is Gilbert de Actons Caſe there. Co. ſur Lit. 115. a. b.

And Henry Piercies Caſe was adjudged there, and alſo in the Kings-Bench upon an Adjournment for other cauſes, where the claim was for the Mannor of Seymore to be out of the Foreſt, and that he might cut his wood without view, and that his Woodward might bear Bow and Arrows; and Iſſue was joyned upon his preſcription for thoſe things, and found for him, and after in the Kings-Bench all of them were allowed.

And they cited a Caſe 6 Eliz. to be Reported by the Lord Popham, that a preſcription to cut down wood without view was good.

And Hill. 19. E. 1. Rot. 58. Ca. in a Caſe between the Prebend of Chicheſter againſt the Earl of Arundell; Iſſue was joyned upon a preſcription to fell woods without Licence, &c.

And for thoſe Men of Bray, they were troubled in King Edward the Seconds time by one Roger de Gamoys for theſe priviledges; and thereupon there went forth a Writ of Enquiry of thoſe Cuſtoms; and all of them were found by Inquiſition, which Inquiſition they did ſhew in Court; and ſince that time they have ever enjoyed them.

Mr. Attorney ſaid, that nothing was more plain, then that a preſcription to be out of the Foreſt, without ſhewing an allowance in Eyre, is not good.

As for that Record cited to be 19 E. 1. between the Biſhop of Chicheſter and the Lord of Arundell, was of Chaſes; and the Statute of Conſuetudines & Aſſis. Forreſtæ, is of Foreſts, and not of Chaſes; And therefore he agreed, a preſcription to cut down wood in a Chaſe without view, is good enough, but he diſallowed that difference taken by my Lord Cooke, where a Negative Statute is introductorie of a new Law, and where declaratory of an old Law; and therefore he cited a Caſe out of 20 H. 6. that though the Statute of Silva cædua be but in obſervance of the old Law, viz. that no Tythes ought to be paid of Timber, &c. yet that Statute being a Negative, a preſcription to have Timber is not good.

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As for Percyes Caſe cited before, he ſaid it came not to this Caſe in queſtion, for H. 3. gave the Forreſt of Pickering to Edmund his Son, Duke of Lancaſter, and ſo the Forreſt was in the hands of a Subject, and out of the Crown, when the Statute of Conſuetudines & Aſſiz. Forreſt' was made, ſo that what was preſcribable for before that Statute, is ſtill preſcribable for in that Forreſt, being not in the King at the time aforeſaid.

And for the caſe cited in 6 Eliz. Reported by Popham, it was in a Chaſe whereof the King was ſeized in right of his Dutchie of Lancaſter.

And Mr. Attorney ſaid, that other then theſe caſes in point of a Chaſe, or of the Forreſt of Pickering, they cannot ſhew any ſuch preſcription to be good, and thoſe he hath made Anſwer unto.

And Mr. Attorney ſaid, that no Libertie within a Forreſt, which either went in deſtruction of Vert or the Game, was allowable by preſcription, unleſs they could ſhew an Allowance in a former Eyre of it, except only in caſe of Common, which is not good without an allowance, becauſe that is an equitable preſcription, and upon the matter of Common right, that ſince the Deare have fed on their grounds, they alſo ſhould have Common,

The claim was alſo naught, becauſe they claimed that they might do theſe things, (viz.) Quod poterint ſuccidere, &c. and not lay an actual uſe and uſage, being the ſtrength of all ſuch preſcriptions and cuſtoms, they are not good, without that alſo is laid in the preſcription; for you may do it, and be puniſhed for it when you have done, And therefore 21 E. 4. 28. agreed a cuſtom pleaded, that they might turn their Plows on their Neighbours Headlands, was not good without laying a uſage. And he ſaid, the difference in this caſe is, between a cuſtom reall that runs to Land, and other cuſtoms: for a cuſtom pleaded that within ſuch a Borough quilibet, &c. poteſt legare tenementa ſua is good, without any uſage laid, but otherwiſe of the other, &c.

For the Fire-brands which they claim, Mr. Attorney ſaid, they have made no good Title to them; for they do not ſay, that their Houſes where they ought to be burned, are ancient houſes; and it is clear it is not otherwiſe good.

Alſo their preſcription is for every one that oweth totam Sectam ad Curiam Domini Regis, and they haue averred, that every of them debet Sectam Curiæ, but not ſay totam Sectam, and therefore they fail there.

And for the claim quiet' eſſe de vaſtis, &c. that is but an Acquittance for what was paſt, and no licence to do new Waſtes. But the Councell of the other ſide cited the Caſe of Strata Mar-

cella, Co. 9 Rep. againſt that which Mr. Attorney ſaid, viz. That no Preſcription, &c. was good without an allowance; whereas it appeareth by that Caſe, that if any thing be claimed by a Charter, leaving out before time of memory, that is not good without an allowance ſince time of memory; but if Liberties be claimed by Charter ſince time of memory, or by Preſcription, they need no allowance, for by the ſame reaſon that I might preſcribe 300 years ago, I may now alſo, but to this I heard no reply.

The Judges agreed, that a Preſcription extra Forreſtam was not good without allowance, and the whole claim of the Men of Bray, aforeſaid, was diſallowed per Curiam.

There being ſome ſpeech of Commoning Sheep within the Forreſt, Mr. Attorney ſaid, that no Common or Paſture for ſheep was good, but only in two Caſes within a Forreſt, nor that allowance had been in other caſes. The firſt was in caſe of an Officer of the Forreſt, who hath Land belonging to his Office, and claimed common of Sheep belonging to that Land, and in this caſe it was allowed in one Blanchards Caſe in King Richard the Seconds time, who by vertue of his Office, and Land pertaining to it, claimed common for Sheep, &c. by preſcription, and it was adjudged for him in Eyre, and alſo in the Chancery, upon a Monſtrans de Droit, and after in Parliament: And ſuch another was for Claringdon Forreſt in Wiltſhire. The other caſe is for Paſture of Sheep, a Man may preſcribe to paſture his Sheep in his own open waſt grounds, but not in his Coverts in his own Land, nor in other Mens Lands, though it be in the open places thereof; And the reaſon why it is good in the caſe of the Officer, he ſaid was, becauſe there is a condition in Law annexed to his Eſtate, by reaſon of the Truſt which is repoſed in him, and therefore if he put in more then he ought, as to ſurcharge, &c. it is a forfeiture of his Office.

Mr. Attorney ſaid, if a Man claim the Office of a Keeper, &c. and claim no fee for the Execution thereof, this is but a Burden, and therefore he is removable at pleaſure, as if a Man claim, that he hath uſed to Tyle my Houſe, if he claim no recompence for it, I may diſcharge him when I will, and Mr. Attorney ſaid further, that whereas moſt of their Patents are of the Office unacum vadis & feodis eidem ſpectan', &c. though theſe words are only in his Patent, and no fee in certain, yet in his claim he muſt aver ſome Fees in certain, or elſe his claim is not good, and he ſhall have no more allowed then he claimeth in certain, for elſe the Court ſhould allow they know not what.

Sir

Sir Sampſon Darrells *Caſe.*

SIr Sampſon Darrell was fined 5 l. for erecting a Wind Milne on his own ground, within the Forreſt, and Mr. Attorney ſaid, it ought not to be done, becauſe it frighted the Deare, and alſo drew company to the diſquiet of the Game.

Ville *de* Cookeham.

THe claim of the Town of Cookeham being like that of Bray, was likewiſe diſallowed.

Weſdens Caſe.

THe claim of George Weſden for his Mannor of Cannons Court, being like that of Bray, but ſomething leſs, was alſo diſallowed to all, but to a Leete claimed within the ſaid Mannor; and for that Mr. Attorney deſired it might be enquired, and alſo the abuſe, if any were.

Sir Charles Howards Caſe.

SIr Charles Howard claimed the Office of Keeper, and Bayliwe of Bigſhot Walke, and of Eaſthamſtead Walke, and of Sandhurſt Walke, known by the name of the Office of the Keeper, or Bayliwe of the Bayliwicks of Finchamſtead, within the Forreſt of Wyndſor, and the cuſtody of all the Deare, Pheaſants, &c. and all other the Game there, necnon cuſtodiam omnium domorum horreorum ſtabulorum & edificiorum quorumcunq; infra Ballivat' prædict. and all Pawnage and Bowſe-wood, and all Wind-falls and other Profits there, and made Title by Charter of King James una cum tot tant', &c. vadis & feodis debit' & conſuet', &c. quot, &c. aliquis alius, &c. He alſo claimed Liberty to cut down as much Fire-wood in any of the Kings Woods in the Forreſt as he ſhall think convenient and ſufficient to burn in his Houſe called New Lodge; And to it made Title alſo by Letters Patents of King James. He alſo claimed the Office of riding Forreſter of the whole Forreſt by Letters Patents from King James, wherein he had 3 d. ob a day granted for executing the ſaid Office,

Mr. Attorney moved, that his claim, as of the cuſtody of all Houſes, Barnes, Stables, &c. within the Bayliwick was

void,

void, for he doth not shew that the King was seized of them, and he could not Grant the custody of other mens Houses.

The Councell of the other side moved, that it should be a good Grant; but the Judges disallowed that, and said it was void for the uncertainty, for a Grant from the King of the custody of all his Houses is not good, unless the King take notice of them particularly.

Mr. Attorney moved also, that the claim of all Windfalls and Profits whatsoever was void for the same reason, for he could not have the profits of every Mans Lands within that Baylive-wicke.

And for his claim of Office of Keeper, or Baylife of several Walkes, una cum vadis & feodis, &c. Mr. Attorney moved, because there is no Fee in certain claimed, that therefore he might be discharged of his Office, which was but a burden to him, and those words una cum vadis & feodis, &c. debit' & consuet' & tot tanta, &c. quot quanta, &c. aliquis, &c, will not help it, there being no averment what they were, so that nothing appeareth to the Court upon which to ground an Allowance, and therefore there in a great difference between a Grant and a Plea; for a Grant is good with such general words, because it is reduceable to a certainty, but when he cometh to plead, then he must aver particularly what the Fees are.

Mr. Attorney said further, that his Patents run pro servitio facto & faciendo, and therefore he ought to have averred that he was always ready to do Service, That Mr. Minga his Case of the Inner-Temple, who had an annual Fee granted pro concilio impendendo; And it was resolved in his Action for this, he ought to aver, that he was always ready to give him Councell.

Then for his claim of as much Fire-wood as he shall think fit to be burn'd in New Lodge, Mr. Attorney said that was void, because he had made no Title to New Lodge, and if the King grant a man as much Fire-wood as he think fit to be burn'd in another Mans House, it is a void Grant, which the Judges agreed. And Mr. Attorney said, though he had made a Title to New Lodge, and laid a seisin thereof in himself, yet this Grant, as it is, had been void; for it is not of as much Wood as he should burn in New Lodge (that had been good) but of as much as he should think fit to be burned there, so that now he might take what he thought fit, and sell it when he had done.

Mr. Attorney said, that if a Man claim Estovers to his House by prescription, it is sufficient there to alledge a seisin of the House, to which, &c. in him at that time when he claimeth them, but if a Man claimeth them by Grant, he must aver a seisin

ſeiſin of the Houſe, &c. at the time when the Grant was made, which is not done here.

For the claim of riding Forreſter, Mr. Attorney deſired that Office might be alſo ſeized, becauſe he claimeth no fee for the execution thereof, for he doth not mention the 3 d. ob a day in his claim, but firſt claimeth the Office only, Et dicit quod Dominus nuper Rex Jacobus, &c. conceſſit officium prædictum una cum 3 d. ob per diem, &c. but that is not within the claim.

And then Mr. Attorney deſired, that for a general reaſon his Offices of Keeper, and Baylive of ſeveral Walkes, and of the Game there, and of Riding Forreſter, might be ſeized, becauſe all theſe were ſubordinate to the Office of a Verderer, and therefore by that his other Offices were determined; and for that he cited Blages Caſe, who was Remembrancer in the Exchequer, and after that was made one of the Barons there, and it was reſolved that his Office of Remembrancer was gone.

Mr. Attorney ſaid, he had ſeen Preſidents, that divers Offices have been ſeized, becauſe one Man had ſo many, Quod eis intendere nequit.

It was objected by the Councell of the other ſide, that a Verderer was by Election, and that may be againſt a Mans will, and therefore ſhould not determine other Offices by Letters Patents.

To which Mr. Attorney anſwered, that he had particularly averred, that Sir Charles had uſed the Office of Verderer, and ſo accepted the Election, which he might have waved.

The Judges agreed, that all the other places here claimed by Sir Charles Howard were inferior to his place of Verderer, and ſo determined by acceptance thereof.

Judgment was given upon the whole claim for all things againſt Sir Charles Howard.

Caſe *de* Verderers.

The Verderers claimed for either of them two Fee-trees, and two Fee-Deere, but their claim was diſallowed; but my Lord made an Order of Court, that either of them might have a Buck in Summer, and a Doe in Winter.

Mr. Attorney ſaid, that though men may cut their Woods for their neceſſary Bootes, as Houſe-boote, by view of Forreſters or Verderers, yet the next Court of Attachment, the Officers ought to preſent what was felled, and that it was by view, ſo as it may appear upon Record.

Caryes Case.

THomas Carye Esq; claimed Sunninghill Parke fore extra Forestam & habere liberam Warrenam ibidem licet sit infra metas Forestæ, and this by Letters Patents of King Charles.

Mr. Attorney desired that it might be enquired by the Officers of the Forest,

1. Whether it be impaled.

2. Whether there be any Salteries into it, so that the Kings Deare may get in thither.

3. Whether there be any Conies there, and if there be, whether the Parke is so inclosed that they cannot get out, for then they will both Eat upon the Forest, and spoil the Riding. All of these are causes of seizure till they do Replevye their Liberties.

The Officers found, that the Parke was well impaled, and that there was no Salteries, and that there were Conies there, but they could not get out, and so the Claim was allowed, Et insuper dictum est ei per Curiam quod parcum prædictum a modo includat. Ita quod Cuniculi non exeant in Forestam periculo incumbente.

Henns *Case.*

HEnry Henn made the like claim for Holly John Parke. only he claimed Liberty to grub up the Trees, and turn it to Tillage, and that by Letters Patents of King Charles; And it was allowed upon the like enquirie as the former, and the like award to him for the future inclosure thereof.

Memorandum, That all these enquiries were made by the Officers of the Forest upon their general Oaths, and not upon any particular Oath given for this special Service.

The Judges agreed, that it hath been adjudged, that if a man do inclose, where he may by Law, that he is bound to leave a good way, and also to keep it in continual repair at his own charge, and the Countrey ought not to be contributary thereto.

Mr. Attorney said, it was a Norfolke Case, that in an Action of Trespass for debruising his Close, the Defendant pleaded, that time out of mind, there was a Common Foot path, through that Close, &c. The Plaintiff replied, that the Defendant went in other places out of the way (which was a kind of new alignment) the Defendant re-joyned, that the Foot path was adeo lutosa & funderosa, in default of the Plaintiff, who ought to

to amend it, that he could not paſs along that, and therefore he went as near the Path as he could, in good and paſſable way, and this was reſolved a good Plea and Juſtification; out of which Mr. Attorney inferred, that in caſe where a man incloſeth, and doth not make a good way, it is lawful for Paſſengers to make Gaps in his Hedges, to avoid the ill way, ſo that they do not ride further into his Incloſed grounds then is needful for avoiding the bad way.

Mr. Attorney at the cloſe of this Seſſions moved, that whereas divers had put in claims, and had let them lye ſtill, never proſecuting them, to get an Allowance, that Judgment may be entred againſt them in default of proſecuting.

Smiths *Caſe*.

CHriſtopher Smith one of the four Men, and Reeves for not attending the Grand Jury, to affirm their preſentments, in default whereof the preſentments could not be made, was fined 50 l.

Adjournment at *Bagſhott September* 26. 1633.

Oakleyes *Caſe*.

HEnry Oakley was preſented for ſuffering divers great Oakes to ſtand to the deſtruction of all the nether Vert. Mr. Attorney ſaid, that no man could fell his Timber or Wood without Licence, and he did not think the Law would compell any man to fetch a Licence; therefore to that and others of the like nature, Curia adviſare vult.

Inhabitants *de* Haley.

HOmines & Inhabitantes de Haley, claimed Common of Paſture in the Foreſt. Mr. Attorney deſired that the uſe might be enquired of, but the claim he ſaid was naught; for Inhabitants cannot make a claim for any profit apprender, as Gatewards Caſe Co. 6. but an Eaſement they may, as a way to Church.

Alſo they claimed for all their Cattle, and did not ſay levant and couchant upon Land in certain, and ſuch a Common is not allowable at Common Law, for then a Man might buy as many Cattle as he would at a Fair, and turn them into the Forreſt; And he cited a caſe where iſſue was taken upon a claim for ſuch a Common in general by preſcription, without laying it to certain Land, and a verdict paſſed for him that claimed it, and yet Judgment was ſtayed upon moving the aforeſaid matter in Arreſt of Judgment.

The uſe was found againſt them that claimed it, and their claim diſallowed.

Termino

Termino Mich. An. VIII. Caroli Regis, *in* Banco Regis.

Thurſday ſeven-night after *Trinity Term*, *Anno* 8 *Caroli Regis*, *James Whitlock* dyed at his houſe in *Buckingham-ſhire*, and in *Auguſt* following *Sir Francis Harvey* Knight, dyed at his own houſe in *Northampton-ſhire*, there being three Juſtices of the *Kings-Bench*, the other three Juſtices of the *Common-Pleas*. 18 *Octobey* 8 *Caroli Regis*, being St. *Lukes* day, my *Brother Barkeley* being the Kings Serjeant was Sworn by the *Lord Keeper*, Juſtice of the *Kings-Bench* in my *Brother Whitlocks* room, being that day 8 years that my *Brother Whitlock* was Sworn Juſtice there; and afterwards the ſame day, my *Brother Crawley* was Sworn Juſtice of the *Common-Pleas* in my *Brother Harveys* room, being that day 8 years that my *Brother Harvey* was Sworn Juſtice there. Upon *Monday* following my *Brother Barkeley* came in his Robes to the Court, and upon *Tueſday* following my *Brother Crawley* came in his Robes to the Court, my *Brother Barkeley* was then Knight, but not my *Brother Crawley*.

Haley *verſus* Stanton.

HAley port Action ſur le caſe vers Stanton, & declare que il uſe a emer & vender Barley & auter choſes, & de gainer ſon vivre pur luy, & ſon family per ceo & que il fuit de bon fame, & nient culpable ou queſtion pur aſcun Felony, ou autiel Crime, & que le Defendant malitioſe & falſo dit, que il fuit arraigne al Warwick Aſſize pur emblee de 12 Hoggs, & ſil n'ad eſtre per means, que il ad fait, it had gone hard with him, & le Plaintiff averre, que il ne committe le dit Felony, neque aſcun auter Felony, & que il ne fuit arraigne al dit Aſſizes, neque al aſcun auter lieu, pur le dit Felony, ou aſcun auter Felony, & per reaſon de ceux parolls, il ad perde mult pur emer & vender, & ad perde ſon reputation, ſur non culpable plede, il fuit trove pur le Plaintiff, & 20 l. (I)

damage. Crew move en arreſt de Judgment, que Action ne giſt, per ceux parolis, ſed tota Curia, videlicet, le Chief Juſtice, Jones, & Crooke e contra, & Judgment fuit done pro querente.

Major *verſus* Brandwood.

(2) MAjor port Replevyn vers Brandwood pur priſe d'un Bullock en un lieu appeal B. Acre in D. in Com' Warwick, le Defendant fit Avowrie, pur ceo, que locus in quo fuit parcell de 30 Acres de terre que fuit tenus del' Defendant per un B. per fealty & Rent & un Herriot al aver le pluis melior animal, puis mort de cheſcun Tenant & que mourſt, & les terres deſcend' al ſon fits, & pur ceo, que le melior animal ne fuit paye a luy, il diſtrein le Bullock, & averre que il avoit divers animals al temps de ſon mort, & iſſue fuit priſe ſur le tenure, & trove pur le Defendant, & damages aſſeſſe, & fuit move en arreſt de Judgment, que le avowrie, ne fuit bon, pur ceo que le Defendant ne monſtre, que fuit le melior animal, ſed tota Curia, ſcilicet, le Chief Juſtice, Jones, Crooke & Barkeley e contra, car il poet eſtre que les biens fueront eſloigne, iſſint que le Seignior ne poet conuſſer, que eſt le melior animal, & 2 preſidents en Com' Banke fueront monſtre, que tiel avowrie fuit bon, l'un en temps le Royne Elizabeth, & l'auter en temps le Roy James, ſed voyer eſt, que ſont divers preſidents, en que le melior animal eſt averre preciſement, & ceo eſt bon voy, quant il poet eſtre conus, ſed l'auter voy ſufficient, & ſur ceo Judgment done pur Defendant.

Griffith *verſus* Bedle.

Hill. 5. *Jac. Rot.* 43.

(3) LE Plaintiff port Treſpals pur priſell de les biens, le Defendant plede en barre que le Plaintiff eſtcant un Conſtable fuit ſummon d'appear al prochein grand Turne pur le half-ſhire del' Countie de Wygorne, que fuit tenus 18 April' infra menſem Feſt' Paſch., & pur ſon non-appearance, il fuit amerce, per les Juroys, & que l'eſtreate fuit monſtre al Juſtices de Peace al prochein grand Seſſions tenus 22 April enſuant, & ils allowe de ceo, ſur que il come Baylie, & per commandant & warrant del' Viſcount priſe les biens pur le dit amerciament, & ſur ceo le Plaintiff demurre.

Per Curiam, Jones, Crooke & Barkeley, (abſente le Chief Juſtice) le barre fuit reſolve deſtre male pur 3 cauſes, le primer fuit, pur ceo que il dit, que le dit Turne fuit tenus infra menſem Feſt' Paſchæ, & ceo poet eſtre priſe auxbien d'eſtre deins un

moys

moys devant Paſchæ, come apres, & ſi iſſint donque ceo eſt void per l'eſtatute de 31 E. 3. Cap. 15. & coment revera 18 April' fuit apres Feſt' Paſch. meſme le ann, tamen doit averre, & les Juſtices ne ſont tenus de prender notice de moveable, ſed ſolment del' immoveable Feaſts, 2. Il eſt male, le amercement eſteant alledge deſtre fait per les Jurours, ou le Viſcount eſt le Judge, & le miſericordia eſt per luy, & les Jurors ſont tolment Aſſerors. 3. Per le Statute de 1 E. 4. Cap. 2. le power de Viſcount eſt reſtrein & l'appoint que le preſentments ſerront deliver per Viſcount al prochein quarter Seſſions, & la ſerront enroll, & ſur ceo ils aſſeſſe les fines & amercements, & ſerront proceſs del' levyer ceo, al uſe del' Viſcount, & pur ceo, que ne fuit fait, ideo male, & Judgment done pro querente.

Eveleigh *verſus* Eaſton.

Hill. 6. Car. Rot. 1075.

(4) LE caſe enter Eveleigh Plaintiff, & Eaſton Defendant en Ejectione firmæ ſur ſpecial verdict fuit tiel, home fuit ſeiſit' d'un Meſſuage, 200 Acres de terre, 40 Acres præ, 200 Acres paſture, 20 Acres boſci, & 60 Acres Jampnor' & Bruer' in Byſhop Morchard in Com' Devon, le dit Meſſuage, & les dits Tenements fueront appel' & conus de temps hors de memory, per noſme de Eaſton que ne fuit aſcun Ville, Hamlett, ou lieu conus hors de Ville ou Hamlett, & null part del' dit meſſuage, & Tenement fuit in Eaſington ou Chilford, Et iſſint ſeiſie, levie fine d'un meſſuage, (& pluis grand quantity de Acres quam fuit en le Declaration) en Eaſington, Eaſton & Culſon, & le ſole queſtion fuit, ou le fine ſoit bon a paſſer les Tenements, en le Declaration ſpecifie, ou non, & apres ſeveral arguments al barre, & ſur debate del' caſe al Bench, il fuit reſolve per totam Curiam, ſcilicet, le Chief Juſtice, Jones, Crooke & Barkeley, que le fine fuit bon: pimes il eſt agree, & iſſint ſont les livers, que fine eſt bon de lieu conus hors de Ville & Hamlett, & auter fine en un Hamlett eſt bon. Pur lieu conus hors de Ville & Hamlett. Vid 3 E. 3. 10. 4 E. 3. 13. 158. 16 Aſſ. 30. 18 E. 3. 36. 48 E. 3. 6. pur Hamlett vid. 1 H. 5. 9. 21 E. 3. 14. 15. 38 E. 3. 19. & Brooke fines 7 E. 6. 41. Et un fine n'eſt, niſi common Conveyance, & ſur ceo un rule done, que ſi riens pluis ſerroit dit per un jour, que Judgment ſerroit enter accordant.

Smith

Smith *verſus* Hogſhead.

Paſch. 8. *Car. Rot.* 104.

(5) Action ſur le caſe pur ceux parolls pur diſant, I charge the Plaintiff with flat Felony, & Juſtification fuit plede, que fuit inſufficient, ſur que le Defendant move que les parolls ne voilont maintain un Action, ſed Jones, Barkeley & Crooke e contra.

Fines *verſus* North.

Trin. 8. *Car. Rot.* 1386.

(6) North recover vers Fines en le Common Banke, en l'Action ſur le caſe, & le Defendant port erroz, le ſole erroz inſiſt fuit tiel 23 fueront retorne ſur le venire facias, un Habeas Corpus fuit agarde vers le dit 23, & auxi un Lambert fuit adde, & le dit Lambert & 11 del'principal pannell fueront jure, & trove pur le Plaintiff ſur que Judgment done, tota Curia, le Chief Juſtice, Jones, Crooke & Barkeley tient ceo male & nient helpe per aſcun Statute, car un fuit Jure, que ne fuit retorne per le Viſcount, & ſur ceo Judgment reverſe.

Le Marchant *verſus* Rawſon.

(7) Action de Dett fuit port ſur l'eſtatute de 2 E. 6. pur non ſetting forth de diſmes, & trove pur le Plaintiff, & fuit move en arreſt de Judgment, que ſur le poſſea, l'entrie fuit, que Jurat' ponit' in reſpect' in placito terr' inter, &c. niſi Juſtic' al Aſſias',&c. ou doet eſtre en placito debiti, & tenus per Curiam, que ceo ſerroit amende, ſed ceo per un Clearke fuit amend, ſans rule devant, ideo il fuit committe, & le Judgment done pro querente, vide Dyer 9 & 10 Eliz. le caſe de Wotten & Cooke.

Lawrence *verſus* Woodward.

(8) Action ſur le caſe fuit port pur ceo, que le Defendant dit, that the Plaintiff ſet upon him with violence upon the High-way, and took his purſe from him,and would have cut him in the middle, had not the Plaintiff ran away, en arreſt de Judgment fuit move per Prynne, que les parolls ne ſont actionable, ſed tota Curia e contra, coment ne fuit Act, que fuit Felony ou mile luy in pavor de ſon vye, & ideo Judgment done pro querente.

Whichcot

Whichcot *verſus* Gryſell.

Trin. 8. *Car. Rot.* 420.

WHichcot port Ejectione firmæ vers Gryſell, il declare ſur un Leaſe pur ans d'un Page, le Defendant plede que John Gryſell fuit ſeiſie en fee devant que Page avoit aſcun, & il eſteant ſeiſie il fuit agree per enter John Gryſell, & le pier que il enfeoff le dit pier del' dit terre eſteant al value de 20 l. per annum en aſſurance de certain ſumme d'argent, & a doner a luy un Obligation pur part de argent tant que extende al 10 l. per Centum (devant le darren Statute) & ceo fuit fait, (ſcilicet) Gryſell enfeoff le pier, & done l'obligation auxi, & il plede l'eſtatute de 13 Eliz. pur Uſury, per que il dit que le feoffment del' Gryſell, & leaſe pur ans al Defendant ſont void, & que apres mort le pier, le leſſor del' Plaintiff claimant per Colour del' dit contract enter ſur le Defendant & luy expulſe & amove, & leaſe al Plaintiff, & le Defendant re-enter, ſur que le Plaintiff demurre, l'opinion de tout le Court fuit, que le barre ne fuit bon en forme, pur ceo que le Defendant duiſſoit alledger actual ouſter del' Defendant eſteant leſſee pur ans, & diſſeiſin de John Gryſell ſon leſſor, que eſt iſſuable, & le Plaintiff puiſſoit traverſe le diſſeiſin, ideo ſur ceſt point rule done que Judgment ſerroit done pur le Plaintiff, niſi auter matter monſtre. 2. Un auter point fuit, ou le barre fuit bon pur matter, car il plede corrupt agreement, que un Bond fuit done pur le intereſt, & feoffment de terres pur aſſurance d'argent, & Crooke & Jones tient, le barre bon en ſubſtance, car prima facie per feoffment le feoffee fuit d'aver les profits del' terre, et ſi ne fuit iſſint, donque l'auter part duiſſoit monſtre, que le agreement fuit, que nient obſtant le feoffment que le feoffor averoit les profits del' terre, tanque le condition enfreint, ſed Richardſon & Barkeley tient que le Defendant duiſſoit monſtre que il fuit agree, que le feoffee averoit les profits de terre auxi, ſed ſur le primer point rule fuit done come devant. (9)

Anonymus.

ACtion fuit port ſur un Bill, le Defendant demand oyer, & pria que ſoit enter' en hæc verba, Et per le Bill il fuit declare, que Defendant & 2 auters fueront lye, ſur que le Defendant demurre en Ley, & per Curiam ſur argument il fuit adjudge pur le Plaintiff, coment il ſoit doyer, que ſi 3 ſont lye joyntment, que un Action vers l'un ſole ne giſt en le vie del' auter, ſed poet eſtre coment (10)

coment 3 ſont mention en le Bill, que deux ne ſeale, vel que les dit 2 moyunt, ideo le Defendant poit pledet que 2 auters enſeale le Bond, queux ſont en plein vie, & accordant ſont 28 H. 6. 3. & 27 H. 8. 6. vide Hickmotts Caſe pars 9. Cooke, mes la appiert, que le Plaintiff meſme per ſon fait ad conus, que 2 fueront lye: & tamen en le dit caſe, ſur ceſt point null reſolution ceo fuit en abſence del' Chief Juſtice.

Stayner *verſus* Jones.

Paſch. 8. *Car. Rot.* 242.

(11) UN Ejectione firmæ fuit port en le Common Banke, & apres le verdict Judgment done pro querente, & error port, pur ceo que le teſte del' original certifie fuit 24, & Ejectione fuit 31 Jan. que fuit apres le date del' bref & ceo per totam Curiam fuit tenus male, & nient aide per aſcun Statute, car la neſt Warrant d'original, que eſt aide per 18 Eliz. ſed eſt un male original, & ceo neſt aide come eſt tenus in caſu Byſhop. Cooke pars 5. & Judgment reverſe.

Collis *verſus* Malin.

(12) ACtion ſur le caſe, le Plaintiff declare, que per magnum tempus uſus fuit le Art de Dyover, & que le Defendant dit que il fuit un Bankrupt, en arreſt de Judgment, il fuit move, que un Dyover neſt deins l'eſtatute de Bankrupts, ſed tota Curia e contra, le 2 exception fuit, pur ceo que il ne averre, que fuit Dyover al temps de parlance del' parolls, & ceo fuit tenus male, ideo nihil capiat per Billam.

Grigs *verſus* Parker.

(13) APres verdict fuit move en arreſt de Judgment, que null Bill fuit miſe ſur le file, & apres divers motions fait al barre, il fuit reſolve per totam Curiam, ſcilicet, le Chief Juſtice, Jones, Crooke & Barkeley, que ceo fuit help per l'eſtatute de 18 Eliz. car le Bill ſur le file eſt en nature d'original, & want de original fuit helpe per 18 Eliz. iſſint en meſme le manner, le want d'un Bill, per que Judgment fuit done pro querente.

Cuckowes

Cuckowes *Caſe.*

UN libell vers un auter en Eccleſiaſtical Court pur diſant, That he was a Drunkard, or a Drunken Fellow, and an addle Drunken Fellow, & per l'opinion del' tout le Court, un prohibition fuit agarde, & pur autiel parolls un prohibition agard en le C. B. quant jeo fuit Juſtice la in Caſu Martyn Calthorp. (14)

Kerchevall *verſus* Smith *& alios.*

HOme port Action ſur le caſe vers les Church-Wardens pur falſe & malicious preſentment d'un en le Court Chriſtian, & trove pur les Defendants, ils prent double Coſts, ſur le Statute de 1 Jacobi, ſed Jones, Crooke & Barkeley ceo denye, car le dit Statute n'extende al Church-Wardens, pur choſes de lour office en Eccleſiaſtical Cauſes. (15)

Major *verſus* Talbot.

Paſch. 8. *Car.* Rot. 1145.

BAron & feme, & al heires del' feme d'un Meaſon, ils per Indenture demiſe ceo al J. S. pur ans rendant Rent, & leſſee Covenant cum le baron & feme, & quolibet eorum, & lour aſſignes, & ove les heires & aſſignes del' Baron, de repaire le Meaſon, le Baron moruſt, le feme & heire le Baron joyne en grant al un, & les heires, que port Covenant vers leſſee pur ans, & expreſs tout ceo en ſon Declaration, & que le Defendant n'ad perform Covenant en repairant del' Meaſon a luy vient come aſſignee le heire del' Baron, & n'eſt expreſs que le feme fuit mort, & fuit urge al barre, que le Covenant doit eſtre come aſſignee del' feme, cy longe, que vive, & nemy come aſſignee del' heire le Baron durant ſa vie, car come le Judgment en Bredons Caſe Coke pars 1. & Treports Caſe pars 6. l'eſtate durant le vie le feme paſſe de luy & le Reverſion paſſe del' heire, & en regard del' leſſee l'eſtate de feme continue, iſſint le Action duiſſoit eſtre come ſa aſſignee, ſed Jones, Crooke & Barkeley, (abſente Richardſon Chief Juſtice) e contra, car ils agree, que cheſcun paſſe ſon eſtate demeſne al grantee, & en regarde de eſtrangers que ſont de receive prejudice l'eſtate del' feme continue, iſſint que ſi aſcun rent charge ou auter charge fuit fait per le feme le grantee tiendra ceo charge durant le vie del' feme, ſed revera l'eſtate particular fuit merge en le reverſion en ſe, & ceo eſt null prejudice al leſſee pur ans, car il eſt ſubject al un Co- (16)

venant auxibien apres le determination del' eſtate de feme come en ſa vie, per que Judgment fuit done pur le Plaintiff, q̄ l'Action fuit bien port.

Burgoyne *verſus* Spurling.

Trin. 7. Car. Rot. 373.

(17) COppyholder d'enheritance deins le Mannor de H. ou le Cuſtom fuit, que home hors de Court poyet ſurrender al maines 2 Tenants, ſed ceo doit eſtre preſent al prochein Court, autrement ceo fuit voide, il ſurrender ſon Copyhold al maines 2 Tenants hors de Court, ſur condition de payer l'argent al 25 Julii apres deſtre voide, apres il ſurrender le dit Copyhold hors de Court al 2 Tenants al uſe J. S. l'argent fuit paye devant 25 Julii, & donque il ſurrender hors de Court auxi al uſe un 3d. perſon al prochein Court, le 2 darren ſurrenders fueront preſent (ſed nemy le primer) & le Seignior grant admittance ſeveralment al ceux deux perſons, & le party a que uſe le darren ſurrender fuit fait enter, & fiſt Leaſe al Plaintiff, que fuit ouſte, per cy a que le ſecond ſurrender fuit fait, & apres ſeveral arguments al barre ceſt Terme, les Juſtices deliver lour opinion, & ils concurre en un, que Judgment ſerroit done pur Defendant, le maine queſtion fuit, ou le ſecond ſurrender fuit bon eſteant fait apres le primer ſurrender, & devant le condition performe, & iemble al eux, que le ſecond ſurrender fuit bon, car riens per le ſurrender hors del' Court fuit deveſt hors de luy que ſurrender, tanque le dit ſurrender fuit preſented, ſed il fuit abſolute owner a port Treſpaſs, ou aſcun autiel Action, & ſi le dit ſurrender ne fuit preſent en Court (come le caſe en queſtion fuit), donque il fuit tout ouſterment voide, & le ſecond eſteant preſente, ceo eſt bon, ſed voyer eſt, que ſi condition n'ad eſtre performe, & le primer ſurrender ad eſtre preſente en Court, donque ceo ad eſtre bon, & le ſecond ſurrender ſerroit ouſterment voide, car le Copyholder n'ad poſſeſſion per le ſecond ſurrender a defeate le primer ſurrender, ceo eſteant preſente apres.

Le Caſe de Incloſure le Forreſt de Deane.

(18) UN briefe fuit agarde hors de Chancery retorne en Banco Regis ground ſur l'eſtatute de Weſt. le 2 Cap. 46. pur inquiry queux perſons ount priſtront les Incloſure d'un Gibons en le Forreſt de Deane (& ceo fuit direct al Viſcount de Glouceſter en quel County le dit Forreſt eſt) & auxi ſi les dit perſons poient eſtre conus

donque

donque a ſummoner eux a reſponder a ceo, le Viſcount retorne un Inquiſition que le dit Incloſures fueront proſtrate en le nuits, & le malefactors ne poient eſtre conus; ſur ceo un brief de Diſtringas iſſue hors de Banco Regis pur diſtreiner les Villes adjacent & pur repairer les Incloſures, & auxi pur inquirer del' damages del' dit Gibons, & le Viſcount retorne queux Villes fueront adjacent per Inquiſition, & retorne Iſſues vers eux, & auxi per Inquiſition trove les damages del' Gibons, ſur que motion fuit fait, & exception al dit brief, & apres ſur debate un novell diſtringas ceſt Terme vers les dit Villes, & fueront iſſues eſtreat.

Drake *verſus* Corderoy.

HOme port Action ſur le caſe vers D. & monſtre en ſon Declaration, que le Plaintiff fuit jure en le Quarter Seſſions (19) avoner evidence ſur certain Articles exhibit al luy vers le Defendant, & le Plaintiff adtunc, & ibidem had forſworne himſelf ſans dire (innuendo le dit ſerement fait per luy) le Defendant juſtifie, que le dit Plaintiff fuit adonque jure a dire le verity, ſur certain Articles, & que il jure adonque un choſe, que ne fuit voyer, ſur que il dit que il ad forſworne luy meſme, le Plaintiff replie de injuria ſua propria ſans tiel cauſe, & trove pur le Plaintiff, & il ad Judgment en le Common Bench, & error port, & fuit urge, que le Declaration fuit uncertain, pur ceo, q̃ ne dit que le Defendant intende le ſerement done en le Seſſions; ſed per Curiam, quomodocunque ceo fuit, tamen per le plea en barre, ceo fuit confeſſe, & per le plea en barre le uncertainty del' Declaration fuit fait bon, pur que Judgment fuit affirme.

Liſter *verſus* Bromley.

Trin. 8. *Car. Rot.* 135.

BRomley Viſcount de Wygorne port Action de Dett en le Common Banke vers Lyſter pur ſes fees en faiſans de execution (20) ſur un Elegit, & le ſole point fuit ſur l'eſtatute de 29 Eliz. que done fees al Viſcount, ſi execution ſoit pur 400 l. ou il avera 6 d. en le liver per totum, ou 12 d. en le liver pur le primer 100 l. & 6 d. pur cheſcun liver ultra, car le Plaintiff demande pur 400 l. 12 l. 10 s. & Judgment done en Common Banke, que ſon demande fuit garrantable per le dit Statute, & per opinion del' Chief Juſtice, Jones, Crooke & Barkeley, le Judgment en C. B. ſur brief d'error fuit affirme pur bon Ley.

Churley *verſus* Hill.

(21) ACtion ſur le caſe pur diſant del' Plaintiff, he hath been whipt or burned in the Hand, or in the Shoulder for Sheep, adjudge que ne giſt, car il eſt en diſjunctive, & un ne poet pas ley eſtre arſe en le humere pur barbits.

Le *Major de* Tiverton.

(22) MAjor de Tiverton port Action ſur le caſe pur ceux parolls, the Major of Tiverton hath cozened the Town and County, & adjudge que ne giſt.

Bland *verſus* Inman.

Hill. 7. Car. Rot. 550.

(23) LE caſe ſur ſpecial verdict fuit come enſuiſt; John Yorke fuit ſeiſie en fee d'un meſſuage, & un Farme en le Countie de Yorke, & demiſe ceo pur 100 ans al un Thomas Spence, le dit Thomas Spence eſteant iſſint poſſeſs, un Indenture fuit drawen enter luy, & Johan ſa feme d'un parte, & Thomas Tiſdale del' auter part, Thomas Spence ſeale & deliver un part, ſed le feme, neque ſeale, neque deliver, & Thomas Tiſdale ſeale & deliver l'auter parte, per le dit Indenture Spence Et Johan aſſigne tout l'intereſt avandit en le dit Terme al Tyſdale reddendo & ſolvendo inde annuatim & quolibet anno durante tot' Termino prædicto præfat' Thomæ Spence & Johan ſa feme, & al Survivor del' eux, ſi le dit Thomas Spence, & Johan ſa feme vel eorum alter tamdiu vive 17 l. 10 s. al 2 Feaſts de ann le primer payment pur commencer al primerdel' dit Feaſts que enſua apres mort Elizabeth Elcocks Proviſo que ſi le dit Rent fuerit arreare quod tunc ſoit loyal al dit Thomas & Johan, & le ſurvivor de eux, & al lour aſſignes, vel del' ſurvivor de eux, vel al aſcun de eux pur re-enter en dit terres: Eliz. E. mort, Thomas Spence mort, adminiſtration de ſes biens fuit committ al un Walter, le rent fuit arere, & demande al jour ſeveral per le feme & le Adminiſtrator, & ne fuit paye; & le Defendant come ſervant del' dit Walter, & per ſon commandement enter, & committ le Treſpaſs ſur Bland le Plaintiff eſteant le aſſignee de Tysdale, & ſur ceo Bland port Treſpaſs, ceſt caſe fuit ſovient foits argue al barre, & apres il fuit argue al Banke, & le Chief Juſtice commence, & donque Jones, Crooke & Barkeley, & le Court fuit divide, ſcilicet, le Chief Juſtice & Barkeley fuerunt

fueront pur Defendant, & Jones & Croke pro Querente, & al darren jour del' ceſt Terme, il fuit move arere, & adonque les Juſtices deliver lour opinion ſeperatim, & Barkeley commence, & il tient ſon former opinion pur Defendant; primes il dit, que coment ſur un Leaſe fait per Tenant en Fee ſimple pur ans rendant Rent durant le terme al Leſſor, que ceo n'extende al ſon heire, tamen ſur un Leaſe pur ans pur part del' Terme, ou aſſignment de tout le Terme, ſi reſervation fuit al Leſſor, tamen les Executors ou Adminiſtrators avera ceo, & il cite un Conſtables caſe adjudge (come Cooke en ſon preſence dit) 27 Eliz. 2. Il dit que le reſervation al feme eſt bon, car eſt reddendo & ſolvendo, & enura al Baron come un Rent, & al feme come annual payment, per le paroll ſolvend', & le feme eſt aſſets prive, car coment ne ſeale, tamen eſteant noſme en le fait eſt party a ceo, & il reſemble ceo al caſe de 28 H. 8. Dyer 13. 45 E. 3. 11. & 38 E. 3. 11. ſeoffment fait ſur Indenture al 2. coment l'un ne ſeale, tamen ſerra lye al Covenant 3 H. 4. 43. & 45 E. 3. feme covert lie per le Covenant ſur acceptance del' eſtate. 3. Il tient que le Adminiſtrator, come le caſe eſt cy prendera advantage del' condition apres non payment del' Rent al feme, car le reſervation del' re-entrie eſt al aſſignee del' baron, & Adminiſtrator eſt un aſſignee, & ideo ſur tout le matter, il tient que le entrie del' Defendant per commandement del' Adminiſtrator, fuit bon, & l'Action nient maintainable, le Chief Juſtice mutavit opinion, Crooke & Jones e contra; primes quant Leaſe pur ans eſt rendant Rent en generall, ceo attende le Reverſion, & continue payable durant le Terme al Heires vel Grantees del' Reverſion, Whitlocks Caſe pars 8. mes quant le reſervation eſt en particular al Leſſor, ſans dire al ſes heires diverſity d'opinions ad eſtre de ceo, come poies veier en 11 E. 3. tit' Aſſ. 8. 14 H. 6. 26. 10 E. 4. 18. 27 H. 8. fol. 17. & 19. 21 H. 7. 25. per Kingsmill 22 H. 7. Kelwayes Reports fol. 88. & 31 H. 8. Dyer fol. 45. ſed le melior opinion, ſur touts le dit caſes fuit, que ceo n'extende al heires, Vid. 8 E. 3. Fitz. tit' Avowrie home done terres pro Homagio & Servitio, ceo n'extende al heirs feoffee; ſed apres un auter doubt fuit move, quant un Leaſe eſt fait pur ans, rendant durant' toto Termino un Rent al Leſſor, vel al Leſſor & ſes Executors, vel al Leſſor, & ſes Aſſignes, ou le reſervation ſoit determine, per mort le Leſſor, ſed fuit reſolve en touts ceux caſes, que le Rent eſt ale, per mort le Leſſor Hill. 33. Eliz. C. B. Rot. 1341. enter Butcher & Richmond, adjudge accordant, & Paſch. 5. Jacobi en B. le Roy, enter Wotten & Edwyn accordant, quod vide en Cooke ſuper Littleton fol. 47. & Maloryes Caſe pars 5. & ſur view del' touts les livers, & les records del' dit Caſes avandit cite, il fuit reſolve (apres que

jeo

jeo veigne al ceſt Court) en caſe de Browne & Shury accordant, & iſſint tout les 3 Juſtices ore agree en toto ove le darrein reſolutions, queux fueront apres le dit caſe de Conſtable Cite; & ideo ils agreeont, que en le caſe en queſtion, le reſervation determine per mort le Leſſor Spence, car ils tient, que feme ne fuit partie al fait, que le dit ſumme de 17 l. 10 s. neque per voy de reſervation, neque per voy de payment extende a luy, car el eſt eſtranger al eſtate, & al ſuite, & nient ſemble al caſe devant miſe de 38 E. 3. & 45 E. 3. car la per acceptance del' eſtate, le joint leſſor coment ne ſeale, & le feme fueront lye, & chargeable ove le Covenant, & le reſervation cy eſt particular durant le vie le Leſſor & ſa feme, & ſi eux ou aſcun de eux cy longment vive, que reſtraine l'intendment & parolls devant, maxime quant ceo ſoit ſur aſſignment d'un Terme, & en ceo il differt de caſe de Conſtable, car le reſervation ne fuit cy particular, & le reſervation eſt eins voide al feme pur les reaſons avandit, ideo n'extende pluis longe, quam durant vie del' Grantor, car il intende ceo per voy de intereſt al feme, & ceo eſteant voide en ceſt degree, il n'extende al un limitation de Rent pur continuance durant' vie al un auter, ſur ceo Jones miſt un caſe adjudge 28 Eliz. en B. le Roy enter Hobert & Wyndſmore le caſe fuit, home per fait leſſe al J. S. terres habend a luy, & J. N. pur lour vies, & eorumdiutius viven', en ceo caſe il fuit adjudge, que J. N. ne priſt riens, car ne fuit noſme en le premiſſes, ſed en le habend'; & auri 2, que J. S. n'ad un eſtate pur ſon vie, & vie J. N. ſed ſolment pur ſon vie demeſne, car l'entent del' parties fuit, que J. N. prendera un eſtate ou intereſt, & eſteant voide en ceſt regarde, ceo n'extende per voy de limitation al J. S. auri ils 3 tient, que admittant, que le Rent continue, tamen le Adminiſtrator ne poet enter, car le reſervation del' condition eſt al baron & feme, & al ſurvivor de eux, (que eſt voide quant al feme) & al lour aſſignes, vel Aſſignes del' ſurvivor de eux, & n'eſt lour aſſignes, ſed del' baron ſolment, neque del' ſurvivor, car le feme fuit ſurvivor, ideo ſon entrie nient loyal, & ideo Judgment fuit done pro Querente.

Yonge *verſus* Stowell.

Trin. 8. *Car. Rot.* 1147.

(24) YOnge port Action ſur le caſe vers Stowell pur diſturber luy d'exercise l'office de Regiſter del' Eveſque de Rocheſter, le Defendant plede non culpable, ſur l'evidence il appiert, que John Yonge darren Eveſq; grant l'office al Plaintiff en reverſion apres mort W. que fuit grantee pur vie deſtre execute per ſe vel ſufficien'

ſufficien' deputat ſuum habend' pur vie ove un Robe de 13 s. 4 d. le Plaintiff al temps de grant fuit del' age de 11 ans, & pluis, & al plein age quant W. morust, J. Yonge morust en temps W. & le Defendant claime per Patent grant per le ſucceſſor: 3 exceptions fueront priſe al grant del' Plaintiff, le primer fuit, pur ceo que fuit deins age al temps de grant. Le 2, q̃ fuit grant ove un Robe de 13 s. 4 d. ou le uſual Patents fueront de Robe ou 13 s. 4 d. Le 3 fuit, pur ceo q̃ le grant fuit en reverſion. Quant al primer, Jones, Crooke & Barkeley deliver al Jury lour opinion. 1. Que le grant nient obſtant l'Infancy fuit bon, car il fuit Miniſterial Office, & poyet eſtre executé per ſe vel deput', & Infant poet faire deputy pur ſon advantage, & eſpecialment quant il fuit de pleine age quant ceo eſchew. 2. Le dit 2 exception ne fuit de force, car il fuit apres le habendum, & ſi fuit devant le habend' ceo ne viciat le grant del' Office, ſed ſolment ſerra voide pur le fee apres mort le grantee. 3. Quant al grant en reverſion, le dit Juſtices tient, que ſi le Office fuit uſualment grant en reverſion devant l'eſtatute de 1 Eliz. donque l'Eveſque apres le dit Statute ove Confirmation del' Dean & Chapter poet auſi grant ceo en reverſion, & le Plaintiff pur evidence monſtre un grant en reverſion devant l'eſtatute, que fuit enjoye accordant, & le Jurie eſteant ſatisfie per le dit evidence pur le dit point en fact, & ſatisfie ove l'opinion del' Court pur point en Ley, Trove pur le Plaintiff, & il avoit Judgment accordant. Apres le Plaintiff exhibit un Bill en Cancellaria pur eſtre eſtabliſh en poſſeſſion ſolonque le verdict, & le Seignior Keeper fiſt reference a nous deſtre certifie per l'opinion del' dit 3 Juſtices en les points avandits, & ils certefie en touts, come eſt expreſs devant.

Termino

Termino Hill. An. VIII. Caroli Regis, *in* Banco Regis.

Carlien *verſus* Mill.

(1) LE Plaintiff count en Action ſur le caſe vers le Defendant eſteant un Apparator, que il falſo & malitioſe cite le Plaintiff d'appear en le Court Eccleſiaſtical pur Incontinency ove Jane S. per force de q̃ il appear, & fuit miſe al expences, & diſcharge, l'ou revera il ne committ aſcun incontinency, & fuit trove, ſur non culpable, pur le Plaintiff, & fuit move en arreſt de Judgment, que Action ne giſt, ſed tota Curia e contra, & le Plaintiff avoit Judgment.

Lambe *verſus* Finch.

(2) LAmbe port Action ſur le caſe per briefe original vers Finch en le Common Banke, & declare ſur Aſſumpſit fait 18 Jacobi, le original port date 19 Jacobi, & ceo fuit al damage de 500 l. & l'Action fuit lay en L. le Defendant fuit utlage, & apres ceo, l'utlary fuit reverſe en C. B. pur default de retorne del' exigent, & Secundo Caroli Regis eſteant un ann apres le reverſall del' exigent il port novel Action la; & ceo fuit en Suffolke per Order del' Court, al damage de 500 l. & il recover ſur non Aſſumpſit plede 300 l. & ſur ceo error port, & ſur diminution alledge le primer brief certifie, & ſur le ſecond diminution alledge per le Defendant en brief d'error le ſecond brief certifie, le Plaintiff aſſigne error, pur ceo, que le ſecond brief fuit port apres le temps limit per l'eſtatute de 21 Jac, le Defendant repite, que l'utlagary ſur primer brief fuit reverſe, & deins un ann apres le ſecond Action port, & averre, que il fuit pur meſme aſſumpſion, ſur que le Plaintiff demurre, imprimis fuit agr ee, que ſi un port Action, deins le temps, & le Defendant utlage, & le temps paſſe, & apres utlagary reverſe en C. B. pur default en l'exigent, que un novell brief port deins un ann apres ceo, eſt bon per l'eſtatute.

2. Il fuit reſolve que eſt un variance, enter le primer & ſecond Action, pur ceo que le primer fuit en L, & le ſecond en S. & les damages en le primer fuit 500 l. & en le ſecond 600 l. tamen pur ceo, que fuit adverre que fuit pur meſme Aſſumpſit, & ceo confeſs per le demurrer, ideo il fuit bon, & Judgment done, que primer Judgment ſerra affirme.

S ſ Termino

Termino Paſch. An. IX. Caroli Regis, *in* Banco Regis.

Symmes *verſus* Smith.

(1) SYmmes & Walker Executors del' Sir Nicholas Smith port Covenant vers Graciam Dominam Smith, & declare que le Defendant per Indenture fait perenter luy, & le dit Nicholas Smith covenant al reasonable request de Sir Nicholas ſes Executors vel Adminiſtrators de ſurrender tout ſes Copyhold terres deins le Mannor de St. Mary Otteries en Com' Devon' Et alledge que le cuſtom del' dit Mannor fuit que un Copyholder puiſſoit ſurrender auribien per Letter d'Attorney come en Court & que Sir Nicholas Smith done un Letter d'Attorney a 2 perſons deſtre ſeale & deliver per le Defendant pur faire ſurrender del' Copyhold terres en Court, & le Defendant refuſe pur ceo ſeale & deliver. Le Defendant plede que bien & voyer fuit que tiel tender fuit fait, ſed dit ouſter què el deſire un reaſonable temps deſtre adviſe ove Councell concernant le contents el nient conuſant le intent del' ceo, que a faire le dit Nicholas refuſe, & le Defendant timens per tiel denial del' dit Sir Nicholas deſtre deceive refuſe a ceo ſeale, ſur que le Plaintiff demurre en Ley. Apres ſeveral Arguments, le caſe ceſt Terme fuit move, & en abſence del' Chief Juſtice, le 3 auter Juſtices agree en un, que Judgment ſerra done vers le Plaintiff, le primer queſtion fuit ou le plea en barre fuit bon, pur ceo que el deſire temps deſtre adviſe ove Councell, devant que ceo ſerroit ſeale: Barkeley penſe, que le plee en barre fuit bon, pur ceo que reaſonable request implye, que el ſerroit aver reaſonable temps deſtre informe el nient conuſant del' contents del' fait tender, ſed Jones & Crooke e contra, ſcilicet, que el doit ſeale a ſa peril, car ceo eſt ignorance del' Ley, que n'eſt excuſe, mes ſi le Defendant ad eſtre nient letter, & ad deſire d'aver ceo lye a luy, & ceo ad eſtre plede, il ſerroit bon barre, & le addition del' parolls reaſonable, n'eſt pluis quam le Ley dit devant, & Cooke pars 2. Manſſers Caſe, & 16 Eliz. de Wotton & Cooke

Crooke accorde a ceo. 2. Ils tient que le Declaration ne fuit bon, car le Defendant avoit Election a surrender en Court ou per Letter d'Attorney, & le request a surrender per Letter d'Attorney, n'est ascun request omnino, ideo le Defendant ne fuit lye a ceo faire, neque l'autre voy sans novell, & melior request.

Brewood *versus* Drake.

DRake & sa feme port dower vers Brewood, & demande Mes' terre pree, pasture, & Common de Pasture cum pertin' in D. & sur verdict Judgment fuit done pur le demandant, & le Tenant port error, le exception & error, sur que fuit insist que Dower ne gist de Common en gros uncertain, Ad quod Curia accordont, & icy le demande fuit de Dower de Common en gros uncertain, sed tota Curia e contra, que il poet estre prise pur Common en gros ou appendant, & tiel exposition doit estre fait, que il fuit tiel common, de que Dower demandable, & ceo est Common appendant, especialment ceo estant apres verdict, per que le Judgment fuit affirme, Nota que un president 4 Jacobi fuit monstre de demand de Dower inter alia de Common generalment, & Judgment done pro Querente. (2)

Blundell *versus* Baugh.

BLundell port brief d'error de reverser un Judgment done en C. B. en un Ejectione firmæ, & le case sur special verdict trove la & certifie en B. le Roy fuit tiel. Charles Countie de Nottingham esteant Tenant eu tayle del' done son pier, a luy & ses Heires males de son Corps ove divers remainders oustier del' Mannor de B. en le Countie de Surrey Covenant per Indenture (sur Marriage de son fits William ove Anne file de Seignior St. John de B.) de suffer un Recovery del' dit Mannor, al use del' dit William & Anne, & Heires Males de Corps William, & ceo fuit 39 Eliz., William enter en le dit Mannor per consent son pier, come son Tenant a volunt, & 22 December, 4 Jacobi lesse pas cell del' ceo al John, & Thomas Humphreys del' date del' dit Indenture pur 21 ans rendant Rent, ils entront & payont le Rent al William, null Recovery fuit suffer, sed 9 Jacobi en consideration del' dit Marriage, le dit Countie & William Covenant de lever fine al dit uses, & ils levyont fine accordant, & Lessees payent lour Rent, ut devant, le dit William morust sans Heires Male, John Humphreys morust, Thomas Humphreys per fait enroll done, grant, bargaine & vende le dit terres demise al eur al Charles oye Countie de N. le pier morust, le oye Countie enter, & 2 Maii 3 Caroli demise (3)

ceo al Baugh, Blundell luy ouſter (eſteant en poſſeſſion devant) le dit 2 jour de May, ſur que Baugh port Ejectione firmæ, & ſur ſpecial verdict trove Judgment done pro Querente, ſur ſolemn Arguments al barre, & Banke, Harvey argue encounter le Judgment, ſed Richardſon Chief Juſtice, Hutton & Vernon e contra. Le caſe briefment eſt, S. Tenant a volunt per Indenture leſſe pur 21 ans a J. H. & T. H. rendant Rent, ils payont le Rent, le primer Leſſor & Leſſee a volunt leviont fine al eſtranger, al uſe Leſſee a volunt, le ſurvivant Leſſee pur ans per fait enrolle vende le terre al Baugh, & Blundell fiſt claime deſouth le Leſſee a volunt, Le maine queſtion eſt ou le Leſſees pur ans, al temps del' fine levie ount eſtate en fee ou nemy, ſi donque, le fine confirme lour eſtate, come eſt tenus en Buckley & Harvyes Caſe pars 2. & le caſe de Fines pars 3. & Beaumonts Caſe pars 9. le Chief Juſtice maintain le prior Judgment, que il doit eſtre affirme, il dient que le Franktenement en le leſſee per le Leaſe pur ans, & entrie del' Leſſee fuit en le Leſſee, & nemy en le Tenant a volunt, car le Leaſe pur ans fait per le Tenant a volunt fuit oufterment voide, car Tenant a volunt, ne poet grant ſon eſtate, come 27 H. 6. 3. & 22 E. 4. 5. ſont, & null eſtate hors de ſon eſtate poet eſtre derive al un auter, & le Leaſe eſteant voide, le Leſſee eſt diſſeiſor per ſon entrie, & ne riens veſt en le Tenant a volunt, le feſance de voide grant ne fiſt luy diſſeiſor, come commander, ſed le partie que enter per ceſt voide grant ſerra diſſeiſor, ceo fuit ſon maine reaſon, come jeo conceive. Sed Barkeley, Crooke & Jones ſeriatim deliver lour opinion e contra: Primes ils dient, quant Tenant a volunt fiſt Leaſe pur ans rendant Rent, & il enter, & pay le Rent, ceo al meines n'eſt aſcun diſſeiſin, ſed al Election del' primer Leſſor, car ne ſerra aſcun diſſeiſin, niſi ſoit vel claime d'eſtranger per entrie daver le Freehold, vel fil ne claime niſi le owner le terre waive le occupation del' terre, ou port Action ou auterment declare ſon intention, que il prift ceo come diſſeiſin, & chelcun Treſpaſs ou entrie fait, ſur le terre prima facie, ne ſerra diſſeiſin; enter pluſors authorities, ils relye ſur un Judgment done en B. le Roy 5 ou 15 Jacobi enter Powſeley & Periman, home mortgage terres per fait enroll ſur payment de argent al fine de 5 ans, & per le Indenture il fuit agree, que le Mortgagor enjoyera, & prendera les profits del' terre en le interim, le Mortgagor fiſt Leaſe pur 6 ans, Leſſee enter', & ſurrender ſon intereſt al Mortgagee al jour, le argent ne fuit paye, le Mortgagee ſans aſcun entrie devile le Terme, & mourſt, & fuit adjudge, que le devile fuit bon, que ne poet, ſi le dit Leaſe fuit un diſſeiſin nolens volens al Mortgagee. Fitz. Nat. brevium Entrie ad Term' qui præteriit. Tenant pur auter vie apres mort

ceſſuy

ceſtuy que vie continue le poſſeſſion del' terre le Leſſor poyet prender luy come Tenant a ſufferance, vel poet aver Action d'entrie ad Termin' qui præteriit vers luy come Tenant del' Franktenement Dyer 38 H. 8. fol. 62. Tenant pur ans surrender ſon terme al Leſſor, & nient obſtant continue ſon poſſeſſion, il ſerra Tenant a ſufferance ou diſſeiſor al Election de Leſſor, & ove ceo agree le caſe, de 2 Eliz. de Hayman & Hatch, Leſſor per ſon bayle diſcharge ſon Leſſee a volunt, & tamen il continue poſſeſſion, & pay ſon Rent, il ne ſerra priſe come diſſeiſor, niſi Leſſor pleiſt pur luy prender come diſſeiſor: Fermors Caſe, Cooke pars 3. Copyholder ou Tenant pur ans, ou volunt levie fine del' ceſt terres, enter auter terres, & tamen paya ſon Rent, ceſt fine ne liera, car n'eſt diſſeiſin, niſi ſur Election del' auter. 2. Poſito que ſerroit diſſeiſin nolens volens tout le Franktenement ſerra en le Leſſee a volunt coment ambideux ſerront diſſeiſors, car le keſans del' leaſe eſt ſicome un commandment d'enter' come 23 H. 8. Bro. Tit' diſſeiſin eſt, & acceptance del' Rent apres eſt un agreement, & eſt ſicome un commandant a un d'enter a ſon uſe, le Franktenement ſerra en le commandant, & per Barkeley & Jones, per le keaſance del' Leaſe pur ans, en un inſtant ſon Leaſe a volunt eſt determine, & gaine le fee en un inſtant, & donque Leaſe pur ans; & a ceo purpoſe ils miſe mult caſes de inſtants. Jones miſe Matthew Taylors Caſe 34 Eliz. en C. B. Tenant a volunt ou ans fiſt teoffment en fee, & mozuſt ſa feme poyt Dower le feoffee plede ne unque ſeiſie que Dower, & tota Curia encounter luy, car en un inſtant il ad gaine fee, ils tout reliont ſur authozities auxi 22 E. 4. 12. Tenants pur ans ou ſufferance font Leaſe en lour noſmes demeſne, le fee, & Franktenement eſt en eux, & Br. tit. diſſeiſin ceo expound, ſcilicet, le Franktenement eſt en le Tenant a ſufferance ou ans: 22 H. 7. 26. Action de Dett ſur Leaſe pur ans le Defendant plede que leſſee n'avoit forſque a volunt, & le primer Leſſor re-enter devant, ſur que riens arere, & la admitte, que bon Leaſe, tanque re-entrie del' primer Leſſor, & Tr. 41 Eliz. il fuit tenus per Curiam, que ſi Tenant a volunt fiſt Leaſe pur ans, ceo eſt bon, niſi vers le primer Leſſor, & ceo fuit en un Caſe poyt enter Sparke & Sparke, auxi ils tout trois dihont, que ſi le caſe ſerroit priſe, que Leſſee pur ans avera le Freehold, il ſerroit un miſchievous caſe, ſi le primer Leſſor levie fine nayant notice del' Leaſe pur ans, il ſerra barre. Jones move auter reaſons, un, que Leaſe fuit per Indenture, & ceo eſt concluſion al party a dire, que al temps del' fine ſon Leſſor n'avoit le Freehold, car coment que apres expiration del' Terme, l'eſtoppell eſt ale, tamen a touts choſes, que happen durant le Terme, l'eſtoppell continue, & iſſint ils 3 conclude, que le Judgment ſerroit reverſe.

Counte

Countie de Newport *verſus* Sir Henry Mildmay.

(4) GEorge Jades Duke de Buckingham port brief d'entrie ſur diſſeiſin en le poſſ, vers Mountjoy Blount ore Countie de Newport pur le Mannor de Wanſted & Stonehall ove auter terres in Com' Eſſex; il eſteant deins age, appiar per Henry Jades Countie de Southampton, Henry Jades Countie de Darby, & John Waterman, ſes Gardeins admitte per le Court, & ils vouch le common vouchee, que enter en le Garranty, & traverſe le diſſeiſin, & apres le vouchee depart en deſpite del' Court ſur q̃ Judgment fuit done vers Mountjoy Blount, pur luy de recover en value vers le Common Vouchee, & execution accordant, le dit Duke convey ceo al Sir Henry Mildmay, & morust, & brief d'error fuit port per le dit Mountjoy ore Countie de Newport vers le ore Duke de Buckingham, come heire & le dit Sir Henry Mildmay come Tenant pur reverſer le dit recovery: le cale fuit ſovient foits argue al barre, le ſole point fuit, ou ceſt recovery ewe vers un Infant q̃ appiert per guardian & vouche ouſter ſoit erronious, ou nemy, les Juſtices conferre enſemble, & ils una voce agree, que il ne fuit erronious, & le Chief Juſtice per lour aſſent deliver lour opinion accordant.

Termino

Termino Trin. An. IX. Caroli Regis, *in* Banco Regis.

Eyres *verſus* Cowly.

RObert Cowly fuit lie per Recogniſance en Cancellaria en 40 l. al Eyres, ſur Scire facias ſur ceſt Recogniſance en Middleſex, & ſur ceo mortuus retorne, & donque un Scire facias heredi, & terrar' tenent' prædict. Cowley fuit direct al Viſcount de Glouceſter, le Viſcount retorne un Tempon Tenant de certain terres en le dit County, il vient eins & plede, que Cowly ne fuit ſeiſie del' dit terres al temps del' dit Recogniſance, nec unquam poſtea, & ſur ceo ils fueront al Iſſue, & mitte en B. le Roy deſire trie, & per niſi prius trove encounter le Defendant Tempton. Apres un Certiorari fuit direct al Viſcount de Glouceſter de certifier ou Cowly avoit un Heire, & ou il morust ſeiſie d'aſcun terre, que puiſſoit deſcend al ſon heire, ou nemy, & le Viſcount retorne, que il n'ad heire, neque aſcun terres, que puiſſoit deſcend al ſon Heire. Mallet move en arreſt de Judgment, pur ceo que certiorare ne fuit bien agarde, neque bien retorne, & les Juſtices, ne p̃iſſont aſcun regarde al Scire facias, neque al retorne de ceo; auxi il move, que le p̃imer brief de Scire facias ne fuit bien retorne, pur ceo que le Viſcount retorne en ſon ne mention aſcun ſummons al heire, neque que il fuit aſcun Heire, ſed touts les 4 Juſtices diſont, que le heire doet eſtre charge, come terre Tenant, & quant le Viſcount retorne, que fueront terre Tenants, il ſerra intende, que Heire n'ad aſcun Heire, que ad aſcun terre per diſcent, ſed quomodocunque quando le terre Tenant retorne ne p̃iſt exception al ceſt retorne, ſed plede ouſter, & fueront al Iſſue, & fuit trove encounter, ceo eſt wayver del' ceſt exception, vel al meines ceo eſt fait bon per l'eſtatute de Jeoffailes, & pur ceo Judgment fuit done pro Querente. (1)

Shering-

Le Roy *verſus* Sherington Talbot.

(2) LE Roy port Quo Warranto vers Sherington Talbot quare il claime d'aver un Gareyne de Conies en le Manno⁹ de Ridge en Com' Salop, il dit que le Ville de Ridge fuit deins le dit Manno⁹ & q̄ il & tout ſes Anceſtors queux eſtate il ad en le dit Manno⁹ ount un Gareyne per preſcription en le dit Manno⁹, ſur que le Roy fuit al Iſſue, & trove pur le Defendant. Attorney le Roy move, que fuit miſ-tryall, car le venire facias fuit de Villa de Ridge, ou duiſſoit eſtre de tout le Manno⁹, le cuſtom & le preſcription eſteant alledge deſtre deins tout le Manno⁹, & que ceo ne fuit helpe per l'eſtatute de 21 Jacobi, & tout le Court fuit de ceſt opinion, ideo novell venire facias agarde.

Higgon *verſus* Coppinger.

(3) HDine libell en l'Eccleſiaſtical Court vers auter pur defamation, ſcilicet, pur ceo, que le Defendant ad dit, que Plaintiff en le dit Court did keep a Boy to bugger him, and that he did bugger him, & le Defendant la move pur Prohibition, & fuit gram, pur ceo, que le dit offence eſt fait Felony, & le dit Court n'ad power de trove le principal offence (nient eſteant ſave per l'eſtatute a eux) ideo ils ne tiendra plee del' defamation, & ou aſcun choſe determinable per le Eccleſiaſtical Court eſt fait Felony, ou Treaſon & le power del' Eccleſiaſtical Court neſt ſave al dit Court, la ils ne meddle ove l'offence, neque pur le defamation que ſurde ſur ceo, per Jones, Crooke & Barkeley, abſente Richardſon Chief Juſtice.

Le Roy *verſus* Pen.

(4) UN Pen Fiſh-Monger de London fuit indite al Newgate, que il apud London in open Market ingroſſe diverſe Piſces ea intentione a vender al auters contra formam Statuti, & il plede non culpable, & ceo fuit trove encounter luy, & le Recorde fuit remove en Banco Regis: Henden move en arreſt de Judgment, pur ceo, que per le Proviſo del' Statute un Fiſh-Monger poet per voy de ingroſsment emer Fiſh pur uſe de ſon trade a vender al auters al reaſonable preſes, Ita quod ne fuit per voy de foreſtallment, & que il fuit Fiſh-Monger, & eme ceo nemy per voy de foreſtallment, ſed tota Curia tient, que le Proviſo ne Aide luy, pur ceo, q̄ eſt trove generalment, que il eſt culpable, ſed ſi ceo fuit voyer, ceo ad eſtre bon evidence, ideo rule done, que ſi ne riens dit intretur Judicium

pro

pro Querente, & apres Henden move avere auter exceptions, que fueront dilation per le Court, per que un abſolute Judgment fuit done per le Court encounter le Defendant, ſur le dit enditement.

Leycroft *verſus* Dumkin.

Paſch. 8. *Car. Rot.* 152.

RObert Leycroft port Action ſur le caſe vers George Dumkin, & le Plaintiff declare, que il fuit un Merchant, & uſe le trade de Merchandize, per le ſpace de 20 ans paſſe, & ore eſt, que il occupy le dit trade, & gaine per ceo, & que il fuit de bon credit & reputation, & ne unque Bankrupt, ſed de temps en temps paye duement ſes Detts, & 15 Jacobi ale al Hamborough de trade come Merchant, & la continue en bon credit, & al fine de 6 ans vel eo circiter, ſcilicet en 22 Jac. il revient al Angleterre, & continue poſtea pur uſe le dit trade, & que le Defendant premiſs' non ignarus falſo & malitioſe dit del' dit Plaintiff al dit Plaintiff, Thou cameſt a broken Merchant innuendo a Hamborough prædict. al Angleterre, per reaſon, de que il perde mult profit, & fuit en damnifie al damages de & ſur ceo port ſon ſuite. (5)

Le Defendant plede non culpable, & trove pur le Plaintiff en arreſt de Judgment, il fuit alledge que les parolls come ſont mention, ne voilont maintain Action, & il fuit debate diverſ temps al barre. Primes tota Curia agree, que pur appell un Merchant un broken Merchant, un Action ſur le Caſe giſt, car eſt tant, ſicome il ad dit, que il fuit Bankrupt, ſed Richardſon tient, que entant, que il ne affirme abſolute, que il fuit broken Merchant al temps de parolls parle, ſed ſolment, que il fuit broken Merchant, quant il vient de Hambrough al Angleterre, que fuit 8 ans devant les parolls parle, que Action ne giſt, pur ceo que il puiſſoit recover ſon eſtate apres, & parolls per intendment ne maintaine Action ſur le Caſe, ſed Jones, Crooke & Barkeley, pur ceo que fuit trove, que per reaſon de cest parolls, il fuit damnifie, ideo Judgment fuit done pro Querente.

Badwyn *verſus* Wine.

JS. Leſſee pur ans de Charles Badwyn declare, ſur un Leaſe pur ans de decimis granor' & fæni pertinen' al Rectory de Didlebury in Rowton & Anelſton, & que le Defendant enter ſur luy & prift 21 caruc' tritici, & 20 caruc' fæni, eſteant diſmes ſurde del' 9 parts en dit Rowton & Anelſton, & iſſint a firma (6)

ſua ejecit, & trove pur le Plaintiff, & fuit move en arreſt, que Ejectione firmæ, ne giſt pur diſmes, ſed tota Curia e contra, vide 9 Eliz. Dyer. 2. il fuit move, que le Declaration, ne fuit bon, pur ceo, que dit que le Defendant priſt les diſmes en Rowton & Anelſton, & ne dit, que ils fueront pertinen al Rectory de Didlebury, a que tout le Court agree, ideo Judgment done, quod querens nihil capiat per Billam.

Termino Mich. An. IX. Caroli Regis, *in* Banco Regis.

King *verſus* Edwards.

WIlliam ſeiſie en fee de terres en Weddington in Com' Somerſet, ad iſſue John, que ad iſſue John, Edward, William & Joane marrie al George Capell. John le pier mozuſt, & John fuit marrie al A. le dit William ad fait feoffment al uſe luy meſme pur vie, apres ſon deceaſe al dit John, le fits John & A. feme, & al heires de Cozps John, & pur default tiel iſſue al Edward en tayle, & pur default iſſue al William en tayle, & pro defectu de tiel iſſue al dit George & Joane ſa feme, & al heires de Cozps Joane remainder al dzoit heires le Feoffoz. William le Feoffoz mozuſt; John & ſa feme enter ils; & le dit Edward, le ſecond en remainder joyne en feoffment ove garrantie al Mathuſalem Keene & ſes heires, & auxi ils levyont fine ove ſeveral Garranties al dit Keene. John mozuſt ſans iſſue, le dit Edward ſans iſſue, A. le feme John mozuſt, William mozuſt ſans iſſue, Mathuſalem Keene mozuſt ſeiſie 15 Jacobi, & en temps le Roy Charles, le dit Capell & ſa feme enter ſur les fits Keene, & ſur luy enter le dit Keene, & leſſe pur ans al Plaintiff, que fuit ouſte per Edwards en dzoit Capell & ſa feme, & ſur ceo King pozt Ejectione firmæ, & ſur non culpable, plede tout ceo fuit trove per ſpecial verdict, le darren Terme le caſe fuit argue per Germin pro Querente en mon abſence, & ceſt Terme per Maynard pur Defendant, & apres per Germin. Barkeley, Crooke & Richardſon, (devant que le verdict fuit trove) agree en un ſur tout les points del' caſe pro Querente. Primes quant terres ſont done al baron & feme, & al heires del' Cozps le baron, & ils font feoffment, & apres le baron mozuſt ſans iſſue, que ceo fuit un diſcontinuance al Common Ley a mitter l'iſſue ou ceſtuy en remainder al ſon formedon, car come ils diſont le baron fuit ſeiſie en Tayle. 2. Quant Tenant en Tayle en poſſeſſion, & un auter en ſecond remainder en (1)

Tayle joyne en un feoffment, ceo eſt un diſcontinuance, & ceo differt del' caſe de Bredon Cooke pars 1. car la le Tenant en poſſeſſion, & ceſtuy en le primer remainder joyne, & ceo fuit per fine, ceo neſt diſcontinuance, mes le grant de lour ſeveral eſtates. 3. Quant baron & feme ſont Tenants pur vie, & al heires le Corps baron, le remainder cuſter, & le baron & feme font feoffment, que fuit diſcontinuance, (come ils tient al Common Ley) & apres le baron & feme levie fine al feoffee, & le baron morust ſans iſſue, & le feme curi, que ceſtuy en remainder, ne poet enter per l'eſtatute de 32 H. 8. car (come ils agreont) il puiſſoit enter, ſi le fine n'ad eſtre, tamen quant apres le baron, & feme levient fine, que fuit barre al feme, iſſint que el ne puiſſoit enter, le Statute ne intende a done entrie al ceſtuy en remainder, ou le feme meſme ne puiſſoit enter apres mort le baron. Jones entant que il n'ad oye aſcun choſe del' caſe devant voloit aver prender temps deſtre adviſe, mes pur ceo, que le reſt del' Court fuit reſolute, en lour opinion, il dit que il agree ove eux pur le 2 darren points. Sed quant al diſcontinuance, il dit que ceſt point fuit en queſtion, en B. le Roy en temps Popham 40 Eliz. & il & Cooke & Tanfield fueront d'opinion, que le feoffment fuit diſcontinuance del' poſſeſſion, mes nemy a toller l'entrie del' iſſue en Tayle, ou ceſtuy en remainder, & ceo fuit le caſe de Worme & Webſter, ideo il refraine a deliver aſcun opinion pur ceſt point. Vide Morgan & Owens Caſe, Reports Cooke pars 3. en le Marqueſs de Wincheſters Caſe, ſed pur ceo que il fuit un deſcent de Mathuſalem Keene al ſon fits, le leſſor, que tolle l'entrie de ceſtuy en remainder ideo il agree, que Judgment ſerra done pro Querente, ceſt fuit fur Jovedie le ſecond jour del' Terme. Apres que jeo eſcrie ceſt, meſme le jour, jeo ſye le liver, & pur le deſcent, le caſe fuit tiel: que le deſcent fuit en un Leah, le feme John Boulting apres le mort John & Edward, & William, a quel temps null power d'entrie de prevent le deſcent, car feme ne puiſſoit encounter ſa feoffment & fine, & Capell, & ſa feme ne puiſſont enter, car ils nont power d'entrie, tanque apres mort le feme, & ideo jeo fui d'opinion, que ceſt deſcent ne tollera l'entrie del' eux, & le prochein jour en abſence del' Chief Juſtice, jeo declare ceo, ſed Crooke & Barkeley fueront d'opinion, que le deſcent tollera l'entrie. Ideo Quære.

George

George *verſus* Harvey.

HOme & ſa feme port brief d'erroꝛ vers auter ſur parolls pur dibont de ſa feme, que el fuit Witch & ſtrong Witch, & per tout le Court, Action ne giſt, pur ceo, que al Common Ley, null penalty vers un Witch, ſed en le Eccleſiaſtical Court, & per l'eſtatute de 1 Jacobi, ne poyet puny pur aſcun parolls, mes pur invocation de Spirits. 2. Uel per inchanter per que home eſt prejudice en ſon Coꝛps. 3. Uel en ſes biens & null de ceux parolls noſme icy & meſme Terme un Judgment fuit arreſt, pur diſant, que un fuit Witch, and that he had gotten his Mare charmed againſt him, mes pur diſant, que un fuit un Witch, & fuit convict del' ceo al Aſſizes Action giſt: Et 2 ans devant, Action fuit port pur diſant un home fuit Witch, and had bewitched her Mothers Beer, & Judgment done pro Querente. (2)

Lancaſter *verſus* Keylei & Steymſon.

FUit reſolve, per totam Curiam, que le Defendant, & le Bayle ne poyent joynder en brief d'erroꝛ in Camera Scaccarii ſur Judgment done en B. le Roy, & auri que le Bayles, ne poyent aver brief d'erroꝛ la, car eſt hoꝛs del' Statute de 27 Eliz. (3)

Baal *verſus* Baggerly.

ACtion ſur le caſe pur ceux parolls, Thou haſt forged a Privy Seale, and thereupon thou durſt not break up thy Commiſſion, & adjudge per totam Curiam, (except Barkeley) que Action giſt, car ſerra intende le Privie Seale del' Roy. (4)

Anonymus.

FUit adjudge per totam Curiam (abſente Richardſon) que lou un baron & feme port Action de Dett ſur l'eſtatute de 2 E. 6. pur non exposer diſmes de que le baron & feme fuit proprietoꝛ, que l'Action giſt bien, mes quant le baron & feme port auter Action de diſmes expoſe del' 9 parts eſteant diſmes proveniant de terres, deins un Rectoꝛy, que appertient al baron & feme, que le feme ne doit joyner ove ſa baron. (5)

Nerrers

Nerrers *verſus* Seaborne.

(6) NErrers port Action ſur le caſe vers Seaborne, & declare, que il fuit poſſeſs d'un Meaſon, en le Countie de Wygorne, que avoit 3 Feneſters del' North part, & adhuc poſſeſs exiſtit, & que le Defendant fuit poſſeſs d'un Meſſuage, & un vacua pecia terre adjoinant al ſon meaſon del North part, & que adhuc poſſeſs' exiſtit & averre, que ils fueront ancient Luminers, & Feneſters de temps de memory, & que le Defendant ad build ſuper le dit vacuam peciam terre, & per ceo ad eſtopp ſes Feneſters al ſes damages, & ſur non-Culpable plede, il fuit trove pur le Plaintiff, & damages aſſeſſe al 5 s. & fuit move en arreſt de Judgment, que le declaration eſt repugnant, car il dit que le Defendant fuit poſſeſſe del' dit vacua pecia terre, & adhuc exiſtit, & tamen il dit, que le Defendant built ſur le dit vacua pecia terre, per que il ne fuit vacua, & iſſint repugnant, de quel opinion Barkeley fuit, ſed Richardſon, Jones & Crooke al contrary, car ceo ſurpluſage, & poet eſtre, que il builde ſur le dit Vacuam peciam terre, & tamen remaine voide terre, & poet eſtre, que il builde ſur part, & Judgment done pro Querente.

Greene *verſus* Lincolne.

(7) ACtion ſur le caſe pur ceux parolls, Thou art a Black Shaghead Murthering Rogue, & le Defendant plede non culpable, & trove pur le Plaintiff, & en arreſt de Judgment il fuit move, que le parolls ne voylont maintain Action, ſed al auter jour, il fuit reſponde per Henden, & il vouch un caſe adjudge en C. B. pur ceux parolls, Thou art a Murthering Knave, and hadſt been Hanged had it not been for me, & adjudge pro Querente, & tota Curia de Banke le Roy en ceſt caſe en queſtion pro Querente, & Judgment done accordant.

Harris *verſus* Veſcy.

(8) ELizabeth W. come Adminiſtratrix recover vers Veſcy 26 l. 6 s. 8 d. en B. le Roy, el eſteant Executrix & apres Veſcy port hiel d'erroy, & reverſe le Judgment, & recorde remande en B. le Roy, & le dit Elizabeth marrie Harris, ſur que Veſcy port Scire Facias, & rehearſe tout ceo, & que les dit damages remaine en maines le Defendant adhuc, le Defendant plede payment abſque hoc, que dampna remaine en le Defendants maines, ſur que le Plaintiff demurre, pur ceo, que le inducement al traverſe

ne

ne fuit bon, neque le traverſe bon, & le queſtion fuit en ceſt caſe, ou payment en ceſt caſe fuit bon ſans acquittance, Barkeley teigne que fuit bon, pur ceo que le certainty del' damages ne appiert de Recorde, & poet eſtre, que les damages fueront ſans proceis, ou ſur Scire facias nient retorne, & conſequentment l'execution ne appiert de recorde, ideo payment bon ſans acquittance, ſed les auters trois Juſtices e contra, car le Scire facias monſtre le recovery deſtre pur 26 l. 6 s. 8 d. & que le Plaintiff avoit Execution de tant, ideo quant Judgment reverſe, & il demande reſtitution de 26 l. 6 s. 8 d. ſolment pur ceo, que le certainty appiert de recorde, payment ſans acquittance, ne fuit bon, ſed Barkeley tient, que le traverſe ne fuit bon, ad quod le reſidue agree, ideo per tout, Judgment done pro Querente.

Dike *verſus* Ricks.

REplevyn fuit port per Dike vers Ricks pur priſell de ſes avers apud Edmunton in Com' Middleſex, le Defendant fiſt avowrie, pur ceo que Jeramy Suker fuit ſeiſie en fee del' terre, en que, & ceo tient en Socage, & per ſon darren volunt deviſe ceo al E. ſa feme pur vie & morust ſeiſie, & le feme enter & fuit ſeiſie pur vie remainder al Jeromy Suker junior, le fits & heire del' deviſor, & il morust ſans iſſue per que le reverſion deſcend al Anne ſa ſoer & heire feme del' Defendant, & apres le dit Defendant, & ſa feme demiſe le reverſion al un Fenne pur 3 ans del' mort A. rendant Rent, & que A. morust, & pur Rent arreare apres mort le dit A. il avowe, le Plaintiff plede en barre al Avowrie, que bene & verum eſt, q̃ Jeramy Suker fuit ſeiſie en fee & deviſe prout, & morust, ſed il dit ouſter, que per meſme le volunt, il fiſt le dit A. ſa Executrix, & deviſe ouſter per le dit volunt, que ſi poyet plainment & ſufficientment appere, que le dit E. non inveniret ſufficient', del' biens, & chattells del' deviſor, a payer le Detts del' dit deviſor ſupra, & pur ſufficient maintenance pur le dit Elizabeth, & ſes Children, que donque il deviſe & appoint, que le dit E. vende le dit terre ou tant, que ſerroit requiſite pur payment de ſes Detts, & non ampluis, & que il appiert plane, & ſufficientment, que le dit E. ne trove ſufficient biens, & chattells del' deviſor, a payer ſes Detts, ultra le maintenance del' dit Elizabeth, & ſes Children, per quod le dit Elizabeth per fait enrolle vende les terres al un Henry Suker & ſes heires, virtute cujus barganie, venditionis & irrotulament' & l'eſtatute de uſes, le dit Henry Suker fuit ſeiſie, & que apres Jeromy Suker releaſe a luy, & apres Elizabeth morust, & Henry Suker levie fine al Plaintiff, & le Plaintiff Dike mitte eins ſes Beaſts, & le Defendant luy diſtreine, abſque (9)

abſque hoc que dit reverſion del' dit terres deſcende al dit Anne feme le dit Ricksle Defendant modo & forma prout, &c. le dit Defendant demurre en Ley, & apres ſeveral arguments al barre Judgment fuit done per les 3 Juſtices, Jones, Crooke & Barkeley, (abſente Richardſon) & ils agree en un, que le Condition pur ſale del' terre fuit un precedent condition, & que le Plaintiff doit ſufficientment averre le perfoymance del' ceo, autrement power del' A. ne fuit bon pur bender, & icy el duiſſoit dire, quant les Detts fueront, & quant les biens fueront, & quant le maintenance fuit, iſſint que le Court poet adjudge, ou le condition fuit perfoyme, ou nemy, & auxi le feme, ne poyet bender, mes tant de terre, que payera les Detts, & ne riens pluis. 2. Ils tient, que per le deviſe, le feme avoit un eſtate pur vie, & un power ſur le Condition de bender le terre, & quant per fait enrolle el ceo bende, l'eſtate pur ans paſſe per voy de bargaine & ſale, & le reverſion en fee per virtue del' power done per le volunt, ideo Barkeley & Crooke dihont, que le pleding ne fuit bon, pur ceo, que il dit, que il fuit ſeiſie en fee, per le dit bargaine & ſale, & enrollment, & l'eſtatute de Uſes, que neſt iſſint: ſed Jones ſemble que per bon conſtruction reddend' ſingula ſingulis, ceo eſt bon, car l'eſtate pur vie del' feme paſſe per l'eſtatute de uſes, & le reverſion per le vendition, ſed ceo ne fiſt riens, l'un voy ou l'auter. 3. Ils tiendyont, que ſi le inducement al traverſe ne fuit bon, donque le traverſe meſme neſt ſufficient, tamen coment le inducement ne doit eſtre traverſe, tamen le inducement doit eſtre ſufficient. 4. Ils tient, que releaſe pur default de parolls Heires, ne done foyſque eſtate pur vie, & per ſon fine, il fait un foyfeiture al Ricke en reverſion, & le Chief Juſtice fuit de meſme l'opinion.

Termino

Termino Hill. An. IX. Caroli Regis, *in* Banco Regis.

Margaret Brett *verſus* Theodoret Read.

LE Plaintiff port Action ſur le caſe & declare ſur Leaſe pur ans rendant Rent, & que le Defendant aſſume de payer le Rent, & adjudge per Curiam, que le Action ne giſt, car coment ſur perſonal contract de payment d'argent ſur implied aſſumpſit Action ſur le caſe giſt, tamen ſur real contract come Leaſe pur ans, ceo ne giſt, mes ſi ſoit ſpecial aſſumpſit pur le Rent ſemble auterment. (1)

Pecke *verſus* Ambler.

LE Plaintiff declare, que l'ou un Medlicot ad fait Leaſe d'un Meaſon (en que le Plaintiff inhabit come Tenant al Defendant) & ad port Action de Ejectione firmæ, & recover le poſſeſſion del' ceo, & le Plaintiff fuit pris, a confeſſe l'Action, en conſideration, que le Plaintiff defende le dit ſuite, le Defendant aſſume, que il voit ſaver le Plaintiff harmleſs de touts Judgments, Harmes, & damages, que ſerra occaſion per le dit ſuite, & que le Plaintiff defende le dit ſuite, tanque le Plaintiff en le Ejectione firmæ ad recover vers le oye Plaintiff, & que per reaſon del' ceo, il fuit occaſion de remaine en ſon Meaſon, & hinder a traveil circa ſes beſoignes, & que 7 Caroli Regis, il notifie ceo al Defendant, & require luy a conſerve luy indempniſie, & ne fiſt, le Defendant plede l'eſtatute de 21 Jacobi de Limitations, & que le Aſſumpſit, & recovery fuit pluis, que 6 ans devant Action port ove traverſe de aſcun Aſſumpſit deins le 6 ans, ſur que le Plaintiff demurre. (2)

Primes il fuit agree, que ſi un Aſſumpſit ſoit fait a perfoymer choſes ſur requeſt ou notice, ſi le promiſe fuit pluis, quam 6 ans devant l'Action port, tamen le notice ou requeſt fuit deins 6 ans del' Action, ceo eſt aſſets bon, & nemy reſtraine per 21 Jac.

car le cauſe de Action fuit devant le notice, ou requeſt.

2. Le Plaintiff doit, en le caſe en queſtion doner notice de ſon damnification al Defendant, & requeſt luy, de ſaver harmleſſe & devant ceo il n'ad cauſe d'Action, & le notice fuit deins 6 moies.

3. Si un aſſumpſit ſoit, & le damnification accrue, nemy al un temps, mes parcell al un temps, & parcell a ſeveral temps apres, que en ceo caſe il poet aver entire Action, apres le darren temps de dampnification, & coment parcell del' dampnification fuit devant 6 ans del' Action port, & auter parcell deins 6 ans, que le Action bien giſt, nient obſtant le Statute de 21 Jac. & Judgment fuit done en le caſe avandit pro querente.

Pridgeons *Caſe.*

(3) DEux Juſtices deins le limits ou feme ad un Baſtard Child, en le Counte de Lincoln font un Order, q̃ Pridgeon fuit le pier reputé, & font order, que il ſerra tenus de maintaine le Baſtard, & a garder le Pariſh ſans damage, il appeal al Quarter Seſſions, & le Court del' Quarter Seſſions ſur examination del' cauſe, reverſe le primer order, & diſcharge le dit Pridgeon, apres al auter Quarter Seſſions tenus pur le diviſion ils Juſtices font novell order, per que ils adjudge le dit Pridgeon deſtre le pier reputé, & que il maintainera le Baſtard, & ſave guard le Pariſh, & pur ceo, q̃ il ne performe le order, fuit committ & ſur Habeas Corpus al Viſcount de Lincolne, tout ceo fuit retorne pur cauſe, & le Chief Juſtice, Jones, Crooke & Barkeley, una voce agreæ, que le dit Pridgeon ſerra deliver, pur ceo que quant le primer order fuit reverſe ſur appeale al Quarter Seſſions, l'eſtatute de 18 Eliz. fuit ſatisfie, & que apres neque per le dit Statute de 18 Eliz. neque 3 Caroli, neque aſcun auter Statute, null Juſtice de Peace, neque le Court de Quarter Seſſions de peace poyent faire novell order concernant meſme le matter, ſur que le dit Pridgeon fuit deliver.

Lort *verſus* l'Eveſque *de* St. Davids.

(4) HEnry Lort port Aſſize de Darren Preſentment vers l'Eveſque de St. Davids, Dorothy Owen & Thomas Prichard Clerke, al Grand Seſſions de Countie de Pembroke, & le brief port date 4 Feb. retorne al dit Grand Seſſions tenus die lune 26 Martii enſuant, & ceo fuit pur le l'Egliſe de Stackpoole, & count ſur darren preſentment fait per luy de William Dolben le 26 Martii prochein, le Clerke fuit eſſoigne uſque diem Martis enſuant, l'Eveſque & Dorothy fiſt default, & re-ſummons agarde vers eux retornable le dit die Martis al dit jour, le dit Thomas Prichard

Clerke

Clerke appear, & plede, que il fuit perſon a meſme perſonage ex preſentatione le dit Dorothy, & que le dit Dolben, ne fuit inſtitute & induct, al preſent' del' Plaintiff, & l'Eveſque & Dorothy Owen jeet eſſoigne, & ceo diſallow, & le Aſſiſe agarde vers eux per default, & vers Prichard ſur le dit Iſſue, & pur default de Jury, le Aſſize ne joyne uſque le prochein Seſſions, & Habeas Corpora, & decem tales agarde & al prochein Grand Seſſions tenus 7 Septembr' enſuant, le Jury appeare & trove, que le dit Dolben fuit preſent per Lort, & inſtitute & induct al ſon preſentation, & fuit ultima perſona, & ceo tempore pacis, & que l'Eſgliſe fuit plein del' dit Prichard, per le preſentment del' dit Dorothy Owen, & quod tempus ſemeſtre modo tranſivit, & le dit Eſgliſe valet per annum 80 l. ſur ceo Judgment done vers les Defendants, & quod recuperet ſon preſentation, & 40 l. eſteant le moyety del' value d'Eſgl ſe per Annum, & bief al Archiveſque de Canterbury, quia Epiſcopus pars, quod le dit Prichard ſerra remove, & ſon Clerke deſtre admitte, & ſur ceo les Defendants portont bief d'erroz, & ils diſont que ſur le triall il fuit Bill d'exception offer al Juſtices, q̄ ils ſeale, & pront Scire facias ad cognoſcendum factum, & les Juſtices eſteant garnye conuſt lour fait, & ſur ceo erroz aſſigne, inter alia, ſur le Bill d'exception, que le Plaintiff produce inſtrument de inſtitution per Vicar general del' Eveſque de St. Davids, mes ceo fuſt ſeale per le ſeale del' Eveſque de Londres, pur ceo que il n'ad ſon ſeale demeſne, & les Juſtices ne allowe nient obſtant, que le Defendant offer a demurre ſur le dit evidence, & ne cauſe le Plaintiff a joyne en demurrer, apres en nullo eſt errat' plede, divers exceptions fueront priſe per le Councell del' Defendant. Primes, que ſur eſſoigne de Prichard, idem dies doit eſtre done al Eveſque, & le Patron, & nemy a turne lour non appearance al Defendants, ſed ceo fuit reſponde, & reſolve per Curiam, que ſur eſſoigne d'un Defendant en Aſſize de Darren Preſentment ou auter Action, null dies datus ſerra done al auter, ſur lour default, ſed ſur lour appearance, car null dies datus poyet eſtre al aſcun, niſi ſur lour appearance. 2. Il fuit alledge, que l'eſſoigne del' Eveſque, & Patron duiſſoit eſtre receive; Sed reſolve per Curiam, que ne doit, car ſur reſumons en Darren Preſentment null eſſoigne giſt per le Statute de 10 E. 2. de Eſſoniis.

3. Il fuit alledge, que inſtitution ne fuit bon, pur ceo que il fuit deſouth le ſeale del' Eveſque de Londres; Ceo fuit reſponde, le Act del' Court fiſt le inſtitution, & le inſtrument, neſt forſque teſtimonial, & auxi il neſt materiall, que ſeale ſoit a ceo affixe, car quecunque ſeale il ſoit, il ſerra priſe deſtre le ſeale del' Vicar general, pur ceo temps; ſi un ſeale un fait ove ſeale d'un auter, ceo eſt aſſets bon.

4. Il fuit alledge, que le agarde del' brief fuit al Archivesque de Canterbury, & les Justices de Grand Sessions nont power al eserier a luy, car il demuroit hors de lour Jurisdiction, mes fuit responde, que entant, que il Archevesque del' Province, & le Countie de Pembroke est deins ceo, ils ount poyer pur agarde brief a luy.

5. Darrenment il fuit move per Noy Attorney le Roy, que le Jury nount trove a quel temps l'Esglise fuit voide, neque ou 6 moies fueront passe devant brief, ou apres le brief purchase, si 6 moies passe, devant le brief purchase, & un plenarty, Action ne gist, si tempus semestre transivit le Plaintiff doit aver damages pur 2 ans, & prender sa presentment, ideo Judgment que l'incumbent serra remove, & le Judgment pur damages pur annual value fuit male, sed tota Curia e contra. Primes il serra intende fuit bien port, & que ne fuit ascun plenarty devant le brief purchase, nisi ceo soit plede. 2. Ou le Patron, Evesque, & encumbent sont fait parties null laps encurrera al Evesque, & auri l'incumbent party serra remove, coment tempus semestre passe, & la le Plaintiff quant il recover son presentment n'avera forsque les damages del' value de Moyety del' profic' per annum, per que una voce, le primer Judgment done en le Darren presentment al Grand Sessions de Countie de Pembroke per Serjeant Hoskins, & son companion fuit affirme per totam Curiam.

Le Seignior Hastings *versus* Archibald Douglas Chivaler.

(6) SEignior Hastings Administrator de Sir John Davies, Serjeant del' Ley port Action sur le case sur trover & conversion vers Archibald Douglas Chivaler, & declare de divers biens & Jewells convert per le Defendant, queux fueront les biens de Sir John Davies, en son vie, & apres son mort, appertient a luy come Administrator, le Jury trove, le Defendant nient culpable de part, & culpable de autre part, & quant al 65 grand Pearles, & 65 petit Pearles, & un chein de Diamonds, ils trove special verdict, sc. que Sir John Davies fuit possesse en son vie del' dit biens & sa feme Dame Eleanor fuit le file de Seignior Audley ancient baron del' ceft Royalme, & Countie de Castle Haven in Hibernia, & que le dit Dame Eleanor usualiter & communiter durant le vie del' dit Sir John Davies did weare le dit Diamond Cheine, & Pearle come Ornaments de sa Corps, ils trove ouster, que le dit Sir John Davies fist son volunt, & per ceo devise le use de le dit Pearles, & Cheine al sa feme durant sa viduity, el entring en security al sa file de bayler eux al sa file, quant el marrie ou morust, & apres il morust nient esteant en Dett, le Administration del' biens de

Sir

Sir John Davies fuit grant al Plaintiff, le dit Dame Elianor marrie le Defendant, & il convert le dit Pearles & Cheine al ſon uſe demeſne, al value 370 l. & ſi, &c. ceſt caſe fuit ſovient foits argue al barre, & apres ceſt Terme, il fuit argue al Banke per les 4 Juſtices. Le primer 2 Juſtices, que argue (ſcilicet) Barkeley & Crooke argue largement, & il fuit apres 11 de Clocke, devant que eux fine, ſed le Chief Juſtice & Jones argue valde breviter, pur ceo que ils ount appoint tout de argue en un jour, Barkeley & Jones argue pur le Defendant, le Chief Juſtice & Crooke pro Querente, mult ad eſtre dit de Paraphonalia, come il eſt appell 18 E. 4. 1. & 12 H. 7. 25. & per Lynwood fol. 126. appell Paraphanalia, & ambideux ſont miſpriſe, car le parolt eſt Paraphernalia derive del' Greek παρὰ, que eſt præter, & φερνὴ, que eſt dos, & iſſint ſignifie dona præter dotem, & iſſint eſt Bracton fol. 92. Dos Paraphernа, & Paraphernalia bona. Ceo pur le voyer Ætimology del' dit parolt; & 2. Paraphernalia per le Civil & Cannon Ley, & per Bracton, il ſignifie les biens, que un feme ad luy done præter ſa Dower, vel per le Baron devant ſa Marriage, vel per done del' amies le feme devant, ou durant le Marriage, vel acquiſite per le feme durant le Marriage, de que el ad poyer a diſpoſer ſur ſa volunt ou auterment, ſans aſſent ſon baron, & de ceux biens maritus non eſt Dominus come Lynwood dit fol. 126, ſed quomodocunque le Cannon Ley ſoit, ceo ne tient lieu en noſtre Ley, car per le enter-marriage tout les biens le feme, que el avoit devant le Marriage, ou apres durant le Coverture, le baron avera eux, & ſon executor apres ſon mort, & le feme ne poet diſpoſer del' eux per ſa volunt, ou auterment, Ceo fuit agree per tout le dit Juſtices; auxi ils tout agreæ, que le baron durant le Coverture poet diſpoſer, doner, bender, ou alliener a ſon pleaſure tout les Jewells, Ornaments, & veſture de ſa Corps, imo per Richardſon & Crooke il poet per ſon darren volunt diſpoſer de eux, mes del' mere neceſſary veſture; ſed per Jones & Barkeley dit, que il ne poet per ſon darren volunt diſpoſer del' convenient veſture, & Ornament del' feme, car per le Ley de convenience, & reaſon, eux ſont veſte en le feme, per mort le baron, & ſa volunt ne poyet luy prevent del' ceo, nient pluis, que heire Loomes, & ou le cuſtom eſt que le feme, ou ſes Children avera rationabilem partem bonorum, le baron ou pier ne poet per ſon darren volunt done ceux biens, tamen en ſon vie, il puiſſoit diſpoſe de eux. Richardſon & Crooke ne voilont aver le feme d'aver aſcun parte del' biens le baron, niſi veſture de neceſſity pur cover nuditè, & defender le feme vers frigid'; Barkeley & Jones voloint luy d'aver neceſſary, & auxi convenient apparell, & ceo ne poet eſtre done de luy per darren volunt le baron, & ceſt convenience, & reaſonable

ſonable veſture, & Ornaments del' feme, ſont deſtre determine per le diſcretion del' Juſtices, ayant conſideration al eſtate del' baron, & del' feme, & del' Detts le baron, & ceo eſt deſtre moderate greinder ou meinder ſolonque les dit Circumſtances, & en le caſe en queſtion, ceux circumſtances induce eux, que les Pearles & Jewells appertient al feme, le baron fuit Chivaler, & ſervant le Roy, hors de Dett, n'ad que un file, al que il done grand portion, le feme fuit deſcende de Nobility, le baron ad ſuffer ſon feme durant ſon vie a uſe eux, come Ornaments de ſa Corps, imo il penſe eux convenient pur luy durant viduity, & eux circumſtances induce Barkeley & Jones deſtre opinion en ceſt caſe pur le Defendant, il n'eſt aſcun liver encounter lour opinion. 33 H. 6. 31. dit, que le feme avera convenient apparell, & ceo eſt adjudge per le diſcretion del' Juſtices. Vid. 37 H. 6. 2. 18 E. 4. 11. 1 Eliz. 166. 12 H. 7. 23. apres Crooke dit a moy, que il agree en tout ove Barkeley & Jones, ſavant, que le baron en ceſt caſe ad deviſe eux al feme durante ſa viduity autrement el averoit ceux choſes.

Le Roy *verſus* Prieſt.

(5) LE Roy port Quare Impedit en le Common Banke vers le Archivesque de Canterbury, & un Thomas Prieſt pur le Vicarage de Ichinſtocke in Com' Southampton, & declare, q̃ le Marqueſs de Winton fuit ſeiſie en fee del' Rectory de Ichinſtock q̃ valet ſupra 8 l. per Annum primo Jacobi grant le Rectory pur 21 ans al Anthony Many, & donque il plede l'eſtatute de 21 H. 8. de pluralities, & le dit Many 11 Jacobi preſent John Shilſton, que fuit admitte inſtitute & induct (le Vicarage eſtant ultra le value de 8 l. ſcilicet, 20 l. per Annum,) & apres, ſcilicet 15 Jac. le dit Shilſton prift Egliſe de Holcombe Burnell in Com' Devon, eſtant benefice, ove Cure, ultra le annual value de 8 l. & fuit admitte inſtitute, & induct al ceo, per quod le Vicarage de Ichinſtocke vacavit, & vacans remanſit ultra le temps de 2 ans, devant le brief purchaſe, (que fuit April 3 Caroli) per que il pertinuit al Roy Jacobi, a preſent per laps, & il monſtre, que appertient al Roy, & le dit Archivesque, & Thomas Prieſt luy diſturbe. Le Archivesq; claime niſi admiſs' inſtitution & deſtitution: le dit Prieſt plede come perſon imperſonate, ex preſentatione de John Foyle, & A. B. ſcilicet, que bene & verum eſt, que le dit Marqueſs fuit ſeiſie en fee del' dit Rectory, & grant ceo en temps Royne Elizabeth, al Jane Lambert pur 99 ans, ſi 3 del' fits del' dit Jane ou aſcun iſſue de lour Corpes cy longment vive, & deduce ceo per mean Conveyances al un Mary Watſon, que marrie Many, & apres deduce

duce ceo al dit Foyle & A. B. il confeſſe le preſentment de Shilſton per Many al Ichinſtocke, & que apres Shilſton prist le dit Eſgliſe de Holcombe Burnell 5 Jacobi, & fuit inſtitute & induct, & ratione del' dit acceptance, & le dit Statute de 21 H. 8. le dit Vicarage le Ichinſtocke vacavit & vacans remanſit uſque 21 Jacobi, ſed le dit Shilſton continue en poſſeſſion actual del' dit Vicarage de Ichinſtocke, come incumbent ex preſentatione le dit Many uſque le dit 21 Jac. & donque il plede le Act de Parliament de general pardon, & que apres le pardon, le dit Shilſton eſteant incumbent reſigne, per que le dit Foyle & A. B. preſent le dit Defendant Prieſt, & il fuit admitte, inſtitute & induct, ſur ceo, & il eſt eins ore come perſon impersonee de lour preſent, & averre vies del' ceſtuy que vie, & demande Judgment ſi. Le Attorney le Roy, quant al plea del' incumbent demande Judgment, & breve Epo & habuit, & quant al plee de Prieſt il plede le exception en le dit pardon, & que l'Eſgliſe avoid per priſall del' 2 benefice per Shilſton, abſque hoc, quod Vicaria prædict. vacavit per reſignationem prædict. Shilſton, ſur que le dit Prieſt demurre en Ley. Ceſt caſe apres divers arguments al barre, fuit argue en le C. B. per Yelverton & Hutton al Banke pur Defendant, & per Richardſon Chief Juſtice, & Harvey pro Querente; Yelverton & Harvey mayont, Richardſon remove, & Heath fuit Chief Juſtice, & donque Vernon fuit Juſtice, & Hutton & Vernon argue pur Defendant, & Heath & Bromley pro Querente, & ſur ceo il fuit adjourne en Camera Scaccarii, & le caſe fuit argue al barre en Camera Scaccarii, & Mich. 9. Caroli Regis, 8. del' Juſtices argue, Crawly, & Barkeley un jour. Vernon & Trevor le 2 jour, Crooke & Jones le tierce jour, & Hutton & Denham le 4. En Hillary Term, Davenport & Harvey argue un jour, & Richardſon argue ſole le darren Samady en le Terme, Weſton fuit malad tout Michaelmas Terme, & devant Hillary Terme mayſt, & iſſint ne argue, touts (ſcilicet Hutton & Vernon) argue pur le Roy, & Hutton & Vernon pur Defendant, le caſe fuit divide en trois queſtions: Primes ou per le Conſtitution de Laterane, vel per 21 H. 8. il ſoit avoidance del' benefice per priſell del' ſecond, & laps encurre al Roy. 2. Ou le Roy prendera advantage de laps encurre en temps ſon pier, ou auterment il ſoit barre per l'eſtatute de 25 E. 3. 1. 3. Admitt, que laps ſoit encurre al Roy, & que le Roy ne ſoit barre a preſent de laps en temps ſon pier, ou le pardon de 21 Jacobi fuit aſcun barre al Roy de ſon Quare Impedit ou nemy. Primes touts agree, que ſi Vicarage de Ichinſtocke, ne fuit voide abſolutement per priſell del' benefice, mes voidable per deprivation ou auterment, la le pardon de 21 Jac. ſerra barre al Roy de ſon Action, ſcilicet, un ſuite al Roy a preſente

ſente per laps, & un fuit preſent per le Patron, & admitte, inſtitute & induct, &c. & continue en ceo per 3 ans devant le pardon, que en ceo caſe, le pardon barre le Roy de ſon Action de Quare Impedit, & Eſgliſe fuit plein d'encumbent, & continue eins per 3 ans, iſſint que l'Action per purview del' Act fuit pardon, & il neſt except per le exception, car le exception hors del' dit exception aide luy, ideo ſur ceſt conceſſion Hutton & Vernon argue, que en ceo caſe il ne fuit title al Roy omnino de aſcun Action, vel ſi fuit, tamen apres le preſell del' 2 benefice, il fuit incumbent a prender benefit del' pardon de 21 Jac. Devant l'eſtatute de 21 H.8. ils diſont, que l'Eſgliſe ne fuit voide per le Cannon tanque deprivation, & un ſentence declaratory done, & il fuit voidable encumbent, ſed null voidance en fact, ſed de jure, & a ceſt opinion Richardſon agree, & auſi Heath (come jeo conceive eux) ſed Hutton dit ultra, que nient obſtant, que ne fuit deprivation tamen le patron puiſſoit preſente, car il eſt fait voide vers luy ſur ſon election, ſcilicet, s'il preſent il puiſſoit, ſil ne preſent null laps curgera vers luy, & ſi aſcun ſtranger preſent, & ſon Clerke inſtitute & induct, en ceo caſe ne fiſt plenarty vers le voyer Patron, & Hutton dit, que Fitz. Nat. Br. ne fuit imprimie tanque apres 21 H. 8. & ceo que Fitz. Nat. dit fol. 34. que le primer benefice ſerra voide, ſerra intende apres 21 H. 8. ſed nemy al Common Ley, & ils relie ſur 5 E. 3. Opinion de Scot. & 11 H. 4. le Eveſque de St. Davids Caſe, & que Hollands Caſe, & Doughties Caſe ne fueront al contra. 2. Jls tient, que l'eſtatute de 21 H. 8. dit, que l'Eſgliſe ſerra adjudge deſtre voide, il eſt incumbent, etſi non de jure, & choſe port eſtre voide al un reſpect, & nemy al auter, & ſur ceſt ground divers caſes fueront miſe, le caſe de Sale 32 Eliz. grant de Eveſque de ſerra bon vers luy, tamen voide vers ſucceſſor, & 27 H. 8. l'eſtatute de 11 H. 7. Feoffment, ou Conveyance per Joyntreſſe bon vers luy meſme, ſed voide vers le heir, ou ceſtuy en reverſion, ou remainder, & auters caſes, tamen ils agreeont; que apres 21 H. 8. le Patron port preſente, & ſi ne preſente un laps encourgera al Roy; & pur ceſt point ceſt fuit le pluis material choſe de lour argument, coment mult amplifie ove divers caſes. 2. Vernon tient que l'eſtatute de 25 E. 3. l. 1. Barre le Roy de prender le benefit de laps encurre en temps le Roy James, car il prift le Statute deſtre come le vulgar print del' Statutes a large ſont, ſans un ſavant de preſentment en ſon temps, & a temps a vener, & donque ſans le ſavant, le ſucceſſor Roy per le purview del' act eſt barre de preſent en auter droit de avoidance en temps le predeceſſor Roy, & preſentment per laps eſt en auter droit, ideo il tient, que per ceſt reaſon, le Roy barre, & il relye ſur 11 H. 4. 7. 8. Weſtwoods Caſe, auſi il dit, que ſi fuit

ſavant.

ſavant, tamen ceo eſt voide, & contra al purview del' Act, ideo voide, ſed Hutton ne fuit de ſon opinion pur ceſt point, come ſerra dit apres, ſed pur le darren point, ils diſont, que l'eſtatute de 21 Jacobi aide Shilſton, car (come il eſt avandit) ſi il continue incumbent oonque il eſt bon pardon de barre le Roy de ſon Action de Quare Impedit, & come ils tient, il fuit incumbent de facto de prender advantage del' pardon, il eſt incumbent de plede en barre come poſſeſſor per l'eſtatute de 25 E. 3. & ſil avoit diſpens & qualification il poet plede ceo come poſſeſſor, il eſt incumbent a prender releaſe de Rent charge ou Annuity, ſubject al payment de Tenthes & Subſidies, il fuera pur diſmes, il officiate le Cure, il poet eſtre ſue pur Annuity, ou Rent Charge & Similit', il poet faire Leaſe del' Rectory & a divers auter purpoſes il eſt incumbent ideo ils conclude, que il fuit incumbent de facto, & le Roy eſt barre per le pardon, que eſt deſtre prender largement, & pur benefit del' Subject.

Quant al primer point, ou l'Eſgliſe fuit voide per priſell del' ſecond benefice, ils tout agree, per l'eſtatute de 21 H. 8. il fuit abſolute voide de facto & jure, & que laps encurrera al Roy ſans notice done al Patron. Primes per le greinder parte del' Juſtices, il fuit tenus, que devant l'eſtatute de 21 H. 8. le primer Eſgliſe fuit voide, & le Patron poet preſent, ſil voyet ſans ſentence declaratory, per le dit Conſtitution de Lateran, Capite ultimo. Car le parolls del' Act ſont ipſo jure ſit privatus, & ceo ne mention aſcun ſentence de privation; per meſme le Cannon un Eſgliſe ſerra voide ſans ſentence ſil ſoit conſecrate Eveſque, ideo per meſme reaſon, & meſme le parolls le primer benefice ſerra voide per priſell del' 2 benefice; ſi le party ad reſigne ou ſi un perſon ſoit deprive per particular ſentence pur crime, l'Eſgliſe ſerra voide, & a multo fortiori le Conſtitution (que eſt un general ſentence de deprivation come eſt dit 10 E. 3. 2.) ſerra avoidance, mes voyer eſt, que en le dit caſe le Patron neit tenuſt a prender notice del' ceo, eſteant un Eccleſiaſtical Conſtitution, iſſint ſur particular deprivation & reſignation, notice doit eſtre done al Patron autrement null laps, tamen la eſt un avoidance (& ſi en aſcun del' dit caſes eſt preſentation, inſtitution & induction, ceo ſerra uſurpation come Jones dit, ſed Quere ou plenarty en ceſt caſe ſerra barre niſi notice fuit done al Patron del' avoidance) & ceo appiert per le caſe miſe en Hollands Caſe, & Digbyes Caſe Cooke pars 4. Et il fuit agree del' auter part accordant al dit caſes, que le Patron poet preſente, ſil voyet ſans notice ou ſentence declaratory, & ceo ne poet eſtre, niſi l'Eſgliſe fuit voide devant le preſentation, car le forme de preſentation eſt ad Eccleſiam jam vacant',

que pre-ſuppoſe vacancy devant le Preſentation. 2. Touts (ſavant Hutton & Vernon) tiendront cleerement, que per l'eſtatute eſt un cleare vacancy de facto, & ſans aſcun ſentence, ou triall del' avoidance per Judgment, car niſi l'Eſgliſe fuit voide per preſell del' ſecond ipſo facto, null laps poet encurre al Roy, & que laps doit encurre al Roy null party contradict, & daver laps ſans avoidance eſt impoſſible, auri de ceſt avoidance le patron prendera notice a ſon peril. Vid. 2. & 3 Phil. & Mar. fol. 130. 7 Eliz. 237. & 9 Eliz. fol. 255. & 18 Eliz. Weſtons Caſe, & ceo fuit le conſtant opinion, & practice touts foits apres l'eſtatute; ceſt fuit le briefe reſolution pur ceſt point; mult fuit parle de ceo, que jeo omitte & le Defendant ceo confeſſe en ſon plee en barre, & verum eſt, que dit Vicarage vacavit per acceptance de Holcombe Burnell, & ſon inſtitution & induction al ceo. Quant al ſecond point Richardſon & Trevor tiendront, que preſentation per laps ne fuit per le Roy en auter droit, ſed en ſon droit demeſne, & jure prærogativæ ſuæ Regiæ, & pur ceſt reaſon ils concludont, que ceſt preſentment per laps ne fuit deins l'eſtatute de 25 E. 3. ſed auxibien Hutton & Vernon, come touts les auters Juſtices fueront de contrary opinion, car il fuit agree per tout, que preſent' le Roy ratione minoritatis d'un gard, ou ratione temporalium Epiſcopatuum fueront priſt eſtre en auter droit, deins le dit Statute, tamen revera ne ſont en auter droit, ſed en droit demeſne, car durant ceſt temps le Roy ad intereſt en ſon droit demeſne en le Advowſon, & preſentation, auxibien come en preſentation per laps, ſed auter droit per le intention del' Statute fuit, quando le Roy avoit particular title de preſent' [illegible] per grant, ſed per reaſon de ſon Seigniory ou Prerogative, & le inheritance ou Freehold del' Advowſon fuit en un eſtranger, & ceo extende al caſe de laps, auxibien come al caſe de preſentation durant' minoritate d'un garde, ou ratione temporalis d'un Eveſque, iſſint d'un preſentation ratione utlaræ, come Jones penſe. 2. Per Hutton, & per tout les Juſtices (except Vernon) il fuit tenus, que le Roy avera benefit de preſent' per laps nient obſtant l'eſtatute de 25 E. 3. car l'eſtatute tranſcribe al Court d'Exchequer en temps H. 6. & auxi le Parliament Rolle conteine un exception ou ſavant, ſcilicet, ſavant al Roy E. 3. & ſucceſſors tout preſentment en auter droit, & ſon temps demeſne, & a temps avener, iſſint null preſentment deins l'eſtatute, ſed ceo que eſchewe devant le temps E. 3. & Statham tit' Quare Impedit en abridg' le caſe de 11 H. 4. 8. mention le dit Savant, & le omiſſion del' ceo en le Statute alarge imprimæ fuit per negligence, & contrary al Verity, & accordant al ceſt reſolution, eſt le dit caſe de 11 H. 4. car la le primer title fuit fait al

Roy,

Roy, per un vacation d'un benefice devant le temps E. 3. quant les temporalls fueront en maines le Roy, & ideo la le rule del' Court fuit encounter, sed apres H. 4. fist title a presente al un avoidance eschewe en temps R. 2. quant les temporalties fueront en maines le Roy, & ceo fuit tenus assets bon, & accordant al dit resolution, il fuit en practice touts foits apres. Et quant a ceo, que fuit dit per Vernon, que le Savant fuit voide, pur ceo, que contrary al purview del' Act, il fuit responde, si le Savant ad estre en destruction de tout le purview, il serroit voide, mes icy le purview est en force pur presentment eschewe devant le temps E. 3. & le Savant ale a tout apres, & ceo fuit l'opinion de tout præter Vernon. Le 3 point concernant le pardon fuit devide per le residue del' Justices præter Hutton & Vernon, al deux branches. Primes, que le Defendant ne fuit aide per le purview del' Act de 21 Jac. 2. Sil fuit deins le purview, tamen l'Exception extende al cest case. 1. Quant al primes per le pisell de Shilston del' 2 benefice, le primer fuit voide, & le avoidance del' primer ne done ascun cause d'Action de Quare Impedit al Roy, neque auter Action, nisi un Information pur pisell del' profits, & ideo le purview del' pardon esteant per tout contempts, offences, misdemeanors, ne restore le party a son benefice arere, neque tollera le Quare Impedit pur le disturbance fait apres al Roy, que ne fuit ouste al ceo temps. 2. Mes si un ad estre admitte & institute, ou le Roy ad title de present, le pardon voyet aide luy, car la le Roy avoit cause d'Action, que est pardon, & le pardon corrobarate son title, mes icy il navoit ascun, que poet estre confirme, neque ascun cause d'Action, que poet estre release ou pardon, sed le pardon voyet server solment pur barre le Roy d'ascun information pur pisell del' profits del' primer benefice contrary al Statute de 28 H. 8. 2. Le pardon ad un exception de touts Quare Impedits, except touts Titles & Actions de Quare Impedit, other then Title by Laps incurred above 3 years past to any benefice, whereof the incumbent is or shall be in possession at the last day of the Parliament, by the presentment or Collation of any Patron or Ordinary, & sur ceo ils dihont, que il ne fuit induct sur ascun presentation al temps del' Parliament, car son incumbency, & son presentation, institution, & induction, sur ceo fuit fait voide per pisell del' second benefice, & ne fuit ascun clause de restore luy a ceo arere, & issint il ne poet prender benefit del' pardon; il fuit auxi tenus, que voyet est, que le primer incumbent apres pisell de 2 benefice poyet officiat le cure tanque le Roy mesme pist care de ceo faire, vel tanque un auter serroit admitte, & institute al ceo, & serra subject al payment del'

Tenthes, & ſubject de diſtreſs pur Rent charge, & auter charge, que giſont ſur le Rectory, pur ceo que il prent les profits, iſſint ſerroit un, que enter en un benefice ſans admiſſion ou inſtitution, mes neque l'un, neque l'auter poyet porter un Action de juris utrum, ou brief d'Annuity, neque poyet il ſuer pur le diſmes, neque plede come encumbent en poſſeſſion en Quare Impedit mull plea en barre, niſi qualification & diſpenſation, & le reaſon, que il ſerra ceo, car la ſi le qualification ou diſpenſation ne ſont bon ſon plea ſerra adjudge null plea, ſi bon donque il fuit incumbent & poſſeſſor, & ceo eſt un plee deſtre trie al encumbency, ideo il eſt reaſon, que ſerroit admitte al ceo & a tout pleas, queux prove luy deſtre incumbent, & ceo fuit le brief ſumme del' reaſons del' Juſtices, queux argue pro Rege, & apres meſme le terme Judgment fuit done en le Common Banke en Court; ceſt fuit le primer Exchequer Chamber Caſe, que fuit argue, & reſolve, poſt que jeo fui Juſtice.

Vincent Byards *Caſe.*

(7) AL Seſſions al Newgate tenus en January darren paſt 9 Caroli Regis, un Vincent Byard que tue un Warde ove un Cultran, & luy ſtabbe ove ceo, le dit Warde prius non percuſſit, le dit Byard, Anglice, did not firſt ſtrike the ſaid Byard, contra formam Statut' de 1 Jac., le Defendant plede non culpable; ſur l'evidence il appiert, que le dit Byard, did firſt ſtrike the ſaid Ward upon ſome former words paſt between them, and then Warde ſtruck him; and ſome dry blows paſſed between them, and thereupon took a Knife, and ſtabbed the ſaid Warde to Death. Richardſon, Heath & Trevor prima facie fueront de opinion, que le Priſoner fuit hors del' dit Statute, & que il doit aver Clergie, pur ceo, que il ad ſtruck the ſaid Byard devant le Stabbe, & que le Statute doit eſtre conſtrue, que ſi le party tue done aſcun ſtroke al auter devant le ſtabbe, il eſt hors del' Statute, ſed Jones & Barkeley fueront de contrary opinion, car ils priſont le Ley deſtre, que firſt ſtroke ſerra conſtrue del' primer ſtroke done, & nemy d'aſcun ſtroke done per le party tue devant le ſtabbe, & ſur ceſt diverſity ils adviſe le Jury de trover le ſpecial matter, & iſſint ils feſont, & ceſt Terme Richardſon tient ſon former opinion, ſed Heath, Davenport, Denham, Hutton, Jones, Crooke, Trevor, Vernon, Barkeley & Bromley e contra.

Termino Paſch. An. X. Caroli Regis, *in* Banco Regis.

Richard Weſton del' *Inner-Temple* ad le primer jour del' *Terme Paſchæ* 10. *Caroli Regis* appeare *in Cancellario* ſur un brief deſtre ſerviens al Roy, & la fuit jure,& ſur *dieu Martis* enſuant il ale al *Weſtminſter*, & appiert al *Common Banke* ſolon le manner del' Serjeant, & fiſt ſon Feaſt al dit jour al *Serjeants-Inn Chancery Lane*, & done *Annul' cujus inſcriptio fuit. Rex Legem, Lex Regem protigit. Et die Martis* 6 *Junii* il fuit jure un del' Barons del' Exchequer en lieu de *James Weſton* Chivaler, que moruſt le Vacation apres *Michaelmas Terme*,& Macredy enſuant il ale en ſes Robes al *Weſtminſter*.

Todderidge *verſus* Mackalley.

LE Plaintiff declare, que il ſignifie, que le Rectory de St. Peters infra turrim London fuit voide, & que le Defendant in conſideration, que le Plaintiff impenderet ſon labor, & indeavor de faire, & procure luy deſtre Rector del' dit Rectory promiſt a doner luy 20 l. & que apres le dit Plaintiff procure luy deſtre Rector per le Commiſſion le Roy, & nient obſtant, que il fuit require al paye le dit 20 l. & ſur ceo il port Action ſur le caſe en le Court del' Turri London, & ſur non aſſumpſit, il fuit trove pur le Plaintiff, & Judgment fuit la done, ſur que le Defendant port Error, & una voce tout agreæ, que le Judgment fuit erronious, car le conſideration fuit Simoniacall, & encounter Ley, & nemy bon conſideration, ideo le aſſumpſit nient bien; Judgment fuit reverſe; l'Attorney dit, que le Court fuit un Court baron, come appiert per Record tempore H. 6. (1)

Termino

Termino Trin. An. X. Caroli Regis, *in* Banco Regis.

Seagood *verſus* Hone.

Mich. 8. *Car. Rot.* 196. 198.

(1) LE caſe enter Seagood & Hone ſur ſpecial verdict en Ejectione firmæ fuit come enſuiſt, John Reeve fuit ſeiſie de terres en queſtion, que fueront Copyhold terre, & per cuſtom grant en Fæ-ſimple, vel aliter al alcun perſon, John Reeve ad iſſue Francis, Francis ad iſſue John, & Alice marrie al Hone Defendant, John Reeve l'eigne ſurrender ceo al uſe del' Francis & John Reeve le puiſne, & eorum diutius viven', & pur default de iſſue de Corps John al puiſne fits de Mary Seagood ſa ſoer, This Surrender not to take effect untill after my Deceaſe, ceſt ſurrender eſteant al maines de deux Tenants ſolon le cuſtom fuit preſent al prochein Court, & admiſſion fait accordant, John Reeve morust, & Francis & John Reeve le puiſne morust ſans iſſue, Henry Seagood le puiſne fits de Mary Seagood le ſoer enter, & ieſſa al Seagood le Plaintiff, que fuit ouſte per Hone le marit' de Alice, ſur que le Ejectione fuit port; & tout agree ſur deux points, en le caſe.

Primes quant le ſurrender fuit fait al uſe Francis, & John Reeve, & que le addition this Surrender prender effect apres ſon mort, fuit ouſterment voide, & contrary al premiſſes.

2. Ils reſolve, que Francis & John fueront Tenants pur vie, & les parolls, & pur default del' iſſue de Corps John, ne done a luy eſtate Tayle per implication ayant un expreſs eſtate devant, ſed fuit expreſs pur eſtender le temps del' commencement del' remainder al puiſne fits ſa ſoer: le ſurrender eſt fait in hæc verba, que ceo fuit fait al maines le Seignior de Hampton Court, ſed le Jury trove il fuit parcell del' Mannor de Tuddington, & fuit ſurrender al maines del' Seignior del' dit Mannor, ideo il eſt un contradiction, come Jones, ſed le reſidue al contra, pur ceo que ſerra intende

intende per le ſpecial verdict, que Hampton Court fuit un Honor, & Tuddington parcell del' ceo, vid. 31 H. 8. que fiſt Hampton Court un Honor, ſed tamen un proviſion, q̃ le faits del' Tenants ſerront fait, come devant, & Judgment fuit done pro Querente.

Indictment *Sir* William Waller.

SIr William Waller fuit indite d'un aſſault & battery de Sir Thomas Rewell en Palat' de Weſt', juxta le Hall de Weſt', les Courts adonq; ſedent', & conatus fuit evaginare gladium ſuum ad percutiend' prædict. Thomam in Contempt' Domini Regis, & Court a-bandit, & en diſturbance del' Leys deſtre miniſter al people le Roy, & in derogation del' Roy, & al greind terror' del' people le contra pacem & Coronam Domini Regis, & ceſt Terme Sir William Waller plede non culpable, & un Jury de Middleſex trove luy culpable, le 4 Juſtices en antienty deliver lour opinion, pur le ſentence, tout agree, que entant ceſt Battery ne fuit en preſence del' Courts de Juſtice, ideo ſa maine ne fuit deſtre amputé, ſed ceo fuit finable, Barkeley primes done ſentence, que il avera impriſonment al pleaſure le Roy, fine en 1000 l. & deſtre lye al bon geſture, & auxi que il ferra ſubmiſſion al Court de Juſtice, Crooke agree pur le Impriſonment, & bon geſture, mes nemy pur le ſubmiſſion al Court de Juſtice, & le fine deſtre 500 l. Jones agree ove Barkeley in toto, & le Chief Juſtice ove eux, niſi pur le ſubmiſſion, ideo le Judgment fuit pur Impriſonment, & bon geſture, & le fine de 1000 l. (2)

Dickinſon *verſus* Waterman.

Hill. 9. Car. Rot. 893.

JOhn Dickinſon port Replevyn vers Waterman & auter, pur priſel del' ſes barbits en M. in quodum loco vocat' B. Acre in Com' S. le Defendant font conuſance come Baylies al Sir John Hall Mil', que le Counte de Southampton ſeiſit' en fee del' Fearme del' M. unde locus in quo parcell, & demiſe ceo pur 99 ans al John Hall Ar', ſi Anthony Hall & John Hall ſon fits, & Anne ſa file cy longement vive, vel aſcun de eux, le dit John Hall Ar' per Indenture fait enter luy per noſme J. Hall Ar', & le dit John Hall modo fits per noſme de J. Hall Gen', & le dit Anne grant un Rent de 200 Markes per Annum al dit John Hall & Anne durant Term' prædict., ſi le dit John Hall & Anne vel auter del' eux cy longe vive payable al Feaſt de St. Michael, le Archangel, & le Annunciation de noſtre Dame per egal portions, le primer payment a commencer a joure apres limit & expreſs, en (3)

le

le dit Indenture, & come antea ſive aliter ſoiet ſolub', le dit John Hall le grantor intende pur aſſigner tout ſon intereſt en le dit Fearme al Anthony Hall ſon fits ſi poſt tiel aſſignment le dit John Hall, le Grantor per ſon fait ſubſcribe, ſeale & deliver en le preſence de 2 Teſtmoignes, limit vel appoint le dit Anthony pur demiſe part del' dit Fearme al John Hall le fits, & Anne ſi eux cy longe vive, donque ſi le dit Anthony ſes Executors vel Aſſignes deins un moies apres futur' done al eux ne ferra tiel demiſe al dit John Hall modo Milit' & Anne, quod tunc dict' annuitus & annualis reditus 200 Marks ad tale feſtum Sancti Michaelis Archangeli & Annuntiationis beatæ Mario quod prim' contingeret prox' poſt aliquid default d'aſſignment, ove clauſe de diſtreis, ils diſont cuſter quod le dit John Hall Ar', grant ſon intereſt al Anthony, & fiſt un appointment en eſcript ſubſcribed ſealed & delivered en preſence de 2 credible Teſtmoignes, le dit Anthony fiſt un Leaſe del' dit parcell al dit John Hall modo Mil' & Anne, ut avandit, & done notice del' ceo en eſcript al dit Anthony, & il ne fiſt aſſignement deins un moies apres, & pur Rent due apres ils diſtreine come Bayliffs al dit John Hall Mil', & font averment del' vie le dit John Hall Mil', le Plaintiff confeſſe le Leaſe, & le aſſignment al Anthony, & Anthony al B. M. & deduce ceo per meane Conveyance al Plaintiff, & traverſe le grant del' Rent modo & forma, & trove pur le Defendant en arreſt de Judgment tueront divers matters move al forme, & 2 points en Ley pur le matter; De forme les Juſtices una voce eux ober rule eux; le matter en Ley, ils fueront devide en un point Barkeley & Jones argue, que il fuit preſent grant, & pur ceo le point fuit home grant Rent durant un Terme pur ans, iſſuant hors del' dit Fearme pur ans al 2, ſi ils vive cy longement payable al Feaſt de St. Michael & Annunciation del' noſtre Dame, le primer payment deſire en manner & forme apres expreſs, & nemy aliter, & donque il declare, que il intende grant le Terme come devant, & apres ne fiſt aſcun formall, ou legal concluſion, ou expreſs, quant le Rent commencera, & ideo Jones & Barkeley fueront d'opinion, que pur ceſt incerteinty le Rent commencera preſentment. 2. Al meins, ſi home grant un Rent payable al Feaſt de St. Michuel, & Feaſt noſtre Dame, le primer payment a commencer a tiel Feaſt, come apres il expreſs, & il mourſt, & ne fiſt aſcun expreſs, ceo eſt bon grant de Rent en preſent ab initio, ſed Crooke e contra, que ſi home fiſt grant, ut ſupra, le primer payment deſire a tiel Feaſt, que il limit per auter Indenture, & il ne fiſt aſcun Limitation, le grant eſt voide, jeo ne remembr', que Richardſon deliver aſcun opinion, mes tout 4 agree, que icy quant le Limitation & Expreſſion eſt fait donque le Rent commencera aſſets bien, per que Judgment fuit done pur Defendants.

Dorcheſter

Dorcheſter *verſus* Webb.

Mich. 9. Car. Rot. 393.

JOhn Dorcheſter & William Webbe fueront lye en Obligation (3)
joyntment & ſeveralment al un Anne Rowe: Dorcheſter fiſt le dit Anne Rowe & Anne Dorcheſter ſa feme ſes Executors & mourſt. Anne Rowe refuſe; Anne Dorcheſter adminiſter tout les biens de John Dorcheſter, apres Anne Rowe fiſt Anne Dorcheſter ſa Executrix, & mourſt, Anne Dorcheſter port Dett ſur le Obligation come Exetutrix Anne Rowe vers Webb ſur Obligation, & Judgment fuit done pro Querente. Per totam Curiam una voce, 1. Quant le Obligor fiſt Obligee, & un auter Executor, & le Obligee refuſe, le Dett neſt releaſe, ou diſcharge, l'Obligee ſuera aſſets bien pur le Dett, ſed ſi le Obligee ad adminiſter autrement eſt; ſed l'Obligee la poet retaine en ſes maines, tant que ſon Dett eſt: 2. Si Obligee fiſt le Obligor Executrix, que agree a ceo, la le Dett eſt diſcharge ſur le rule de Actions perſonal un foits ſuſpend per Act le party il eſt ale a touts jours. Vide le caſe de Platt. Comment. 8 E. 4. 3. 21 E. 4. 3. 3. Si Obligee fiſt un del' Obligors, Executors, que Adminiſtr', en ceo caſe, l'Obligor ne poet ſuer l'auter Obligor coment il ſurvive, & coment le Bond fuit joynt & ſeveral. 4. Mes quant le Obligee fiſt le Executor del' un del' Obligors ſon Executor, la le Dett neſt diſcharge, car la il ad le Dett en auter droit & il poet ſuer le ſurviving Obligor. 5. Maxime quant il avoit adminiſter tout les biens del' Obligor, devant que il fuit fait Executor per le Obligee, Vide Needhams Caſe pars 8. Cooke Hill. 11. Jac. C. B. Rot. 1990. le caſe de Frier & Gilderidge, deux Obligors l'Obligee fiſt le feme del' un del' Obligors Executor, & mourſt, l'Executrix adminiſter, apres le dit Obligor fiſt le feme ſon Executrix & mourſt, aiant aſſets & el Adminiſter, & adjudge que le feme ne poyet ſuer l'auter Executor, pur ceo per le primer Act del' Obligee l'Action fuit ſuſpend, & ideo extinct, ſur le rule de Actions perſonal ſuſpend, & 2 el fuit Executrix del' Obligor, & avoit poyer per ceo a payer luy meſme, & iſſint fuit adjudge.

Jones *verſus* Boyleſon. *Trin. 9. Car. Rot.* 652.

HUmphrey Hill fuit ſeiſie del' Mannor de Dale in Com' Wy- (4)
gorn' en fee, & per Indenture il Covenant en Conſideration, que pur le amor, que il ad al William Hill, & pur ceo, que il fuit de ſon Cognomen, & Conſanguinity, & pur le preſervation,

& continuance del' Terre en le noſme de les Hills, & en conſideration d'un Marriage, deſtre ewe perenter Richard Hill fits del' dit William Hill, & un Urſula le file de J. S. Covenant de aſſure ſes terres al uſe Humphrey Hill pur vie, remainder al uſe del' dit Richard & Urſula, & al heires de Corps Richard, remainder al uſe del' William Hill en tayle ode remainder oustes; un feoffment, & fine fueront fait & levie, al ceux uſes, Urſula marrie un, & Richard un auter feme: Humphrey Hill morust, le queſtion fuit, que eſtate Urſula avoit, & reſolve per Curiam, & iſſint adjudge, que le dit Richard & Urſula fueront joyntenants, nient obſtant que le Marriage ne poſt effer per moyeties, & nemy per intiertyes: le differences eſt, que ſi le dit Conveyance fuit per voy de Covenant ſur Conſideration de Marriage, la ſi le Marriage ne poſt effect, le feme navera riens, mes quant feoffment & fine fueront fait, & levie al ceſt uſe, eſt auterment.

Le Roy. *verſus* Sir Henry Ferrers.

(5) SIr Henry Ferrers Barronet, & nemy Chivaler fuit indite per le noſme de Sir Henry Ferrers Chivaler, & il plede ceo, & oustes al Felony, & tenus bon plea; le Viſcount ſur un Bill de Middleſex fiſt precept' al Ballivum de Libertate de Weſtm' pur arreſt John Ferrers Chivaler, ou revera il ne fuit Chivaler, ſed Barronet, & tenus que ceo ne fuit bon garrant, & le deputy Baylie eſteant tue per ſon ſervant il ne fuit Murder en le Servant, neque en luy, pur ceo, que le garrant ne fuit bon, & ſur ſon triall il fuit acquitte.

Termino

Anno Decimo Caroli Regis in Itinere de *Deane.*

UN Juſtice Seate pur le Foreſt de Deane in Com' Glouceſtr' fuit ſummon deſtre tenus al Deane infra Forreſt' in Com' prædict. 10 Julij, 10 Caroli Regis, & un deputation per le Counte de Holland Chief Juſtice, & Juſtice in Eyre pur le Foreſt fuit fait, al Jones & Trevor, & Bridgeman vel al 2, ou un de eux, per virtue de ceo, Bridgman le jour del' retorne de Summons adjourne le Court al Caſtle de Glouceſter, deins le Countie de Glouceſter, devant que le attendants fueront demande, & al meſme le jour, le Juſtice Seate fuit tenus al meſme le lieu, & Jones, Trevor & Bridgman fueront per Letters le Roy deſouth le ſignet commande deſtre la preſent a doner lour advice en matters en Ley, & accordant ils tout fueront preſent, & le Commiſſion del' Countie fuit lie, & les dit ſeveral Letters, queux fueront enrolle, & fuit la continue, & donque le Officers del' Foreſt, & les Inhabitants, & le Reeve & 4 homes fueront appell, un Jury impanneled de Officers del' Foreſt, & Reeve & 4 homes, & auxi un Grand Jury del' Countie, ſur que Jones per appointment del' Counte de Holland done le charge, & apres le Verderers preſent lour Rolls, ſur q̃ le offendors fueront fine per le Chief Juſtice accordant al lour offences.

Il fuit agree per le Aſſiſtants, le matter en fait containe en le Roll de Verderers de que aſcun home eſtoit convict per le dit Rolls, ne poet eſtre traverſe, mes per un pardon ou releaſe ou aſcun Act ſubſequent nient contrary al matter en fait poet eſtre bien plede, vel ſi ceo fuit devant le Conviction del' Verderers, come en caſu de Dame Villiers, el fuit endite & convict per le Verderors pur couper d'arbors ſans garrant deins le Foreſt, & vient eins, & plede grant del' terres deins le dit Foreſt, & per virtue de ceo el couper les arbors, ceo fuit bon diſcharge de preſentment le Verderors, ſed en Caſu Gibbons, que fuit convict de couper de arbors deins le Foreſt, il plede grant de terres & arbors ſur ceo, ſed ne fuit aſcun mention, que le terre fuit deins le Foreſt, come en le primer caſe, ideo il ne poyet couper les arbors ſans Licence del' Roy ou le Chief Juſtice.

Al dit Seate Sir Baſill Brooke & Mynne fueront indite per le Grand jury pur couper de arbors; & ils pledont Letters Patents a couper 10000 loads cheſcun ann pur 6 ans per vieu del' Officers deſire appoint deſouth le Grand Seale, & ils nont aſcun tiel Patent, ſed del' Seignior Treaſurer, ideo ceo fuit tenus male: Et entant que ils ne reſponde al pluis grand quantity, ideo ils fueront culpable de tout per le 2 Jury, & fined en grand ſummes d'argent. Benedict. Hall fuit indite, que il edifie un novell meaſon deins le Foreſt ad Nocument' del' Foreſt, per que il fuit fined, & ill'nt fueront divers auters.

Il fuit la reſolve, que null home poet couper ſes coppice demeſne deins le Foreſt a vender, nſi ſoit per Licence le Roy, vel le Chief Juſtice del' Foreſt, mes pur neceſſary Bootes il poyet.

Per le Grand Jury les meres & Bounds del' Forreſt fuit enlarge.

Anno

Anno Decimo Caroli Regis in Itinere de *Waltham.*

UN Juſtice Seate pur le Foreſt del' Waltham fuit tenus al Stratford Langhtone in Com' Eſſex' 2 die Octobris Anno Decimo Caroli Regis, devant le Counte de Holland Chief Juſtice, & Juſtice Jones, & Baron Trevor, per ſeveral Letters direct deſouth le Privy Signett al eux deſtre aſſiſtant pur matter en Ley, & la continue tanque 4 die del' dit moies, & adonque adjourne tanque le 20 jour del' February enſuant a quel Seate ceux points enſuant fueront reſolve ſur divers Claimes mile eins.

1. Si un Seignior d'un Mannor fuit, que ad Common pur luy meſme, & pur ſes Copyhold tenants de inheritance, & il & les Copyholders avoint common en le Waſte le Roy deins un Foreſt, & en Waſte de auter Free-holders, & apres le Mannor vient al Roy per Diſſolution d'un Abbey, & le Roy grant ouſter le Mannor, en ceo caſe le Common ne fuit extinct en le terre de Free-holders, mes en le Waſte le Roy il eſt extinct quant al Seignior del' Mannor, mes nemy quant al Copyholders; mes ſi Roy ad grant le Mannor ove tiel Common come le Abbot avoit devant, la ceo enurera come novell grant de Common en le Waſte del' Roy.

2. Il fuit tenus al ceſt lieu, que ſi aſcun liberty fuit reſume per Act de Parliament, que un Corporation avoit, & le terres vient al Roy, & il grant ouſter le terre ove tot talia, &c. quant le Corporation avoit generalment, le Liberties reſume ne paſſa, niſi fueront ſpecial parolls de grant de eux de novo, & ſi un Abbey fuit ſeiſie d'un Mannor, que ad Waives & Eſtrayes appendant a ceo, & Catall' Felon' & utlagat', & le Mannor vient al maines le Roy, & il grant ouſter ceo ove tot talia, &c. la eux paſſa, & le 2 grantee avera Waives & Eſtrayes come appendant al Mannor.

Mes nemy Catall' Felon' & utlag' niſi il ad ſpecial grant de eux per fait.

Termino

Termino Mich. An. X. Caroli Regis, *in* Banco Regis.

Robert Heath Miles, Chief Juſtice del' *Common Banke*, receive ſon diſcharge del' dit lieu le 30 de *September Anno Domini* 1634, il fuit Recorder de *Londres*, apres Sollicitor & Attorney le Roy, & apres Chief Juſtice del' *Common Banke*, & ore il eſteant diſcharge, il per Licence le Roy fuit receive al practice arere al barre, & ad antiquity come il fuit en antiency de Serjeants, *ſcilicet*, il fuit le puiſne Serjeant: Sir *John Finch* a Councell del' Roy en Ley, & Attorney le Royne appeare en *Cancellaria* le primer jour de *Michaelmas Terme* 10 *Caroli Regis*, ſur ſon brief deſtre Serjeant, & fuit jure, & al lundie enſuant, il appeare al *Serjeants-Inn* in *Chancery-Lane*, ou fueront preſent tout les Juſtices, & le Chief Juſtice fiſt un Speech a luy, & miſt ſa Coife ſur ſon *Teſte*, & ſon Hood ſur ſon brache dextre, & donque apres rehearſall de ſon pleading ale a *Weſtminſter*, & fiſt ſon Feaſt al dit *Serjeants-Inn*, ou fueront preſent *Seignior* Dorſett, & *Seignior Holland*, & le Counte de *Newport*, & touts les Juſtices (except *Denham*) & al Jovedie enſuant, il fuit jure Chief Juſtice del' *Common Banke*, & al Samady ale en ſon Robes al Sale de *Weſtminſter*, & il done annules, & l'enſcription fuit, *Roſæ Lilia purpuram.*

Whitfield de *Grayes-Inn* appiert al *Chancery*, le Jovedy 16 *October*, ſur un brief deſtre Serjeant, & *die Martis* enſuant, il vient al *Serjeants-Inn Cancell'*, & la tout les Juſtices preſent (except *Denham*) & le Chief Juſtice fiſt un Speech a luy, & apres il rehearſe ſon pleding, le *Seignior Keeper* fuit demandant en brief de droit d'Advowſon vers le Counte de *Holland*, & apres le Chief Juſtice mitte ſon Coife, & Hood ſur luy, & ale al *Weſtminſter*, & fiſt un Feaſt meſme le jour, & done *annules cujus inſcriptio Religio finem Legi ponit*; lundy 20 *October* 1634. *Serjeant Towſe* moruſt, al ſon meaſon en le pays.

Holmes

Holmes Caſe.

UN William Holmes al Gaol-delivery de Newgate fuit endite, quod cum le dit William fuit poſſeſs d'un Meaſon, en que il inhabite pur 6 ans, reverſion pur 3 ans al un John Davis, le Reverſion in fee en un Corporation, en Breadſtreet en Londres, il vi & armis, &c. tali die & anno apud Breadſtreet, avandit cum igne malitioſe & voluntarie combuſſit, le dit Meaſon ea intentione feloníce ad comburend' divers Meaſons del' civit' en le dit Streete contig' adjacen' al dit Meaſon. Sur ceo il fuit trove Culpable, & ſur diverſitie d'opinions al Newgate, il fuit remove in Banco Regis, et Crooke fuit d'opinion, que il fuit Felony, ſed Barkeley, Jones & Richardſon e contra. Il eſt voyer, q̃ l'eſtatute de Weſtm' 1. 3 H. 7. 5. 10 E. 4. 14. & divers auter livers parle de arſers de Meaſons generalment, tamen tout le 4 Juſtices agree, que ſi home ſoit ſeiſie d'un eſtate d'enheritance d'un Meaſon, & ceo combure voluntariment, que ceo neſt Felony; mes Crooke tient, que ſi le Meaſon fuit en un Ville, & donque il combure ſon Meaſon demeſne ove intention a combure le Meaſon d'un eſtranger adjoynant a ſon Meaſon. Les auters Juſtices tient, que doit eſtre Meaſon d'un auter, aliter neſt Felony, car iſſint dit Britton fol. 16. & Statute de 13 H. 8. Ireland 7. a que Crooke agree; auri Crooke tient, que ſi leſſee pur ans combure ſon Meaſon malitioſe, ceo eſt Felony, ſed les auters Juſtices e contra. Ideo ils conclude, que le arſer, ſcilicet, le combuſt de ſon Meaſon demeſne fuit loyall, le bare intention a combure Meaſon d'un auter ne fiſt ceo Felony, car intention ſolment neſt Felony, mes ſi ad combure ſon Meaſon demeſne a Intent de combure le Meaſon de ſon vicine, & le fier attach ſur le Meaſon de vicine, & combure ceo en tout, ou en part, ceo eſt Felony, car la eſt un illoyal act ove l'entent come fuit tenus en un Caſe d'un Tenant a Norwich devant Seignior Crew Chief Juſtice, come il meſme relate a Moy, mes icy eſt un Act nient illoyal, ſed illoyal intention ſans illoyal act, que neſt Felony, ſed coment que il ne fuit Felony, tamen il appiert deſtre un miſdemeanour punishable per ceſt Court, per que Judgment fuit done encounter luy, que il ſerra impriſon durant le pleaſure le Roy, & fine en 500 l. & deſtre miſe ſur le Pilloy, en ſeveral places ove Papers ſignificant ſon fault, videlicet, a Weſt', Cheap-ſide, & le lieu en Breadſtreet ou ſon Meaſon fuit combure. (1)

Golding

Golding *verſus* Wennall.

(2) UN Golding port Action ſur le caſe, & declare, que il ad preferre Articles en Banke le Roy vers le Defendant de auer luy ſie al ſon bon port, & que il fuit jure devant Sir James Whitlock, adonque Juſtice del' dit Court, & que Defendant falſo & malitioſe parle de dit Plaintiff, ſcilicet, Thomas Golding innuendo le Plaintiff hath made a falſe Oath againſt me before a Judge, innuendo le dit Serement en le Declaration mention, & ſur Non Culpable trove pur le Plaintiff, & en arreſt de Judgment il fuit move, que les parolls ne voilont mainteine Action, ſed Curia, ſcilicet Jones, Crooke & Barkeley e contra, per que Judgment fuit done pro Querente.

Barnes Caſe.

(3) UN Caſe hors de Chancery fuit referre a Jones, Crooke & Barkeley, un Barnes fuit ſeiſie en fee de terres en Eſſex, & deviſe ceo al ſa feme pur vie & que apres mort ſa feme deſtre vend' per ſes Executors pur payment del' ſes Debts & Legacies, & fuit deux Executors, & mozuſt, un del' Executors mozuſt, le feme mozuſt, & le queſtion fuit ou le ſurvivant Executor poet vende; Et le dit 3 Juſtices certifie le Seignior Keeper deſouth lour maines, que per le Ley, le Executor poet vende le terre. Vid. 4 & 5 Eliz. Dyer fol. 219.

Key *verſus* Cooke.

(4) EN treſpaſs le Defendant plede ſon franktenement, le Plaintiff replie, que devant que le Defendant avoit riens en le terre, un J. S. fuit ſeiſie, & leſſa a luy, ſur que le Defendant demurre, pur ceo que il n'ad confeſſe & avoide le franktenement, en le Defendant; Et adjudge que le replication fuit bon en treſpaſs ſur franktenement plede, mes lou feoffment plede en barre, la eſt autrement quod vide 1 & 2 Eliz. Dyer fol.

Donne *verſus* Smithurſt.

(5) UN fine fuit levie en Cheſter, & Donne come Heire male port Error de ceo reverſer, & la il fait affirme le Defendant appiert & plede Common Recovery, en que le Conuſor vient eins come vouchee, & il vouch ouſter, & le Plaintiff replie per non tenure en le party ſuppoſe deſtre Tenant en le Recovery,

ſur

ſur que al iſſue, & trove que Tenant de parcell, & nemy del' auter parcell, le queſtion fuit, ou le Plaintiff ſerra barre pur tout, & agree que nemy, ſed pur parcell ſolment, & ideo rule done, que le terres ſerront examine.

Termino Hill. An. X. Caroli Regis, *in* Banco Regis.

Sir John Corbett *verſus Sir* George Stonehouſe.

(1) JOhn Corbett Baronet port Waſte vers Stonehouſe & ſa feme, & declare que Richard Corbett per fine convey le terres al uſe le feme del' Richard pur vie Remainder al Richard, & Heires Males del' Corps Richard, Remainder al dit John Corbett ſon frere en tayle, Remainder al dit Richard Corbett, & ſes Heires, & que apres le dit Richard per fine (que ne fuit plede ove Proclamation) convey le terres al uſe Richard pur vie, Remainder al dit Sir John Corbett en tayle, & que Richard mozuſt, & le feme luy ſurvive, que fuit marie al dit Stonehouſe, & il committe Waſte, & ſur verdict, Judgment done pro Querente en C. B. & erroz port. Le maine Erroz ſur que il fuit inſtiſt fuit, pur ceo que le darren fine ſans Proclamation ne barre le former Entayle & per entrie le feme le former Entayle al Heires Males de Corps Richard fuit revive, & donque le Plaintiff n'ad forſq; remainder ſur ceo, & iſſint le Waſte ne giſt per luy, & ne ſerra intende, que Richard mozuſt ſans iſſue, miſi fuit alledge, de tiel opinion Jones fuit, ſed Crooke & Barkely e contra, & ſur motion de agreement que part del' Coſts ſerroit releaſe, Jones ne contradict le affirmation, ideo Judgment.

Miller *verſus* Maynewaring.

(2) EN ceſt caſe Judgment done en Cheſter pur Maynewaring leſſee de Sir Randolph Crew vers Miller, & il port Erroz, & le primer Judgment affirme, en argument del' ceſt caſe briefment per les 3 Juſtices (Richardſon eſteant mozt) ceux points fueront reſolve (1) que ſi un eſteant ſeiſie en dozit ſa feme fiſt Leaſe pur ans eſteant intitle deſtre Tenant per le Curteſie, & ceo eſt rendant Rent, le feme mozuſt ayant Iſſue, le baron mozuſt, le Leaſe eſt voide ſans entrie, & le Leſſee eſt devenus Tenant al ſufferance.

2. Le

2. Le Heire reherſant le dit Leaſe, grant le terre al un auter del' fine, expiration, & determination del' dit Leaſe pur divers ans, le Leaſe commence preſentment accordant al 3 E. 6. Br. Leaſes 62. 3. Si home eſt Leaſe pur ans, & ceo caſe en aſcun point, le Leaſe neſt avoide per ceo, per Jones & Barkeley; Crooke e contra. 4. Si home miſrecite un former Leaſe, & grant le terre al auter puis le fine del' former Leaſe, iſſint miſrecite, le ſecond Leaſe commence en enumeration del' ans preſentment, coment nemy en intereſt, tanque apres le fine del' former Leaſe. 5. En le caſe en queſtion, l'iſſue del' feme apres mort ſon pier devant entrie recite le Leaſe de ſon pier, & que le Reverſion fuit en luy, il grant Reverſion del' dit terre al un auter pur ans puis le expiration del' dit primer Leaſe, ceo fuit un voide Leaſe, car il n'ad Reverſion al ceo temps, le primer Leaſe eſteant determine.

Netter *verſus* Brett.

Mich. 10. *Car. Rot.* 132.

(3) HOme fiſt ſon darren volunt, & per ceo deviſe biens & auri deviſe terres al auters, & fiſt Executors & mourſt, & le heire del' deviſor port prohibition pur ſtayer del' probate del' volunt en Eccleſiaſtical Court, & apres un Motion fuit fait pur Conſultation; apres divers arguments al barre, le caſe fuit argue al Bench, Barkeley & Jones fueront pur Conſultation, & Crooke e contra. Le reaſons pur le Conſultation fueront, que il ſerroit miſcheivous auterment, car ſi aſcun terres deviſe le probate ſerra ſtay per Prohibition, & neſt aſcun miſcheif del' auter part, car le probate en l'Eccleſiaſtical Court neſt d'aſcun force al Common Ley pur les terres, vide Regiſter in brevi de tenementis legatis, ou terres fueront deviſe al Common Ley, le volunt en le Eccleſiaſtical Court fuit primes prove, & apres en le Ville ou le terres fueront. Sed Crooke e contra reliant ſur le caſe de Marqueſs de Winton'. Co. pars 6. ſed ceo fuit reſponde per Jones & Barkeley, que en ceo caſe, un Conſultation, & en le caſe en queſtion Conſultation fuit grant.

Nicholls *verſus* Walker & Carter.

Trin. 10. *Jac. Rot.* 222.

(4) HAtfield fuit un Pariſh, & le Ville de Totteridge fuit un Ville, que de antiquity fuit deins le Pariſh de Hatfield, & paye lour diſmes a tout temps al Parſon de Hatfield, ſed que Totte-

ridge pur le ſpace de 60 ans, & ultra, & al temps del' feſance de Statute de 43 Eliz. fuit un reputed Pariſh, & ayant un Conſtable, & Overſeers del' Poore, & Gardeins del' Eccles' ou Chappell de H. & pur le temps avandit ils ount fait ſupportment pur le Poore de Totteridge, & ne unque contribute al Poore de Hatfield, & le Gardeins & Overſeers del' Poore de Hatfield faont taration pur le Poore, & tare un Nicholls, que ad terre, & fuit inhabitant in Totteridge, que fuit affirme per 2 Juſtices ſolong le Statute, & Nicholls refuſe de payer ceo, ſur que ils diſtreine per garrant del' Juſtices de Peace, ſur que Nicholls port Action de Treſpaſs vers Walker & Carter les Gardeins de Hatfield, & Overſeers del' Poore de Hatfield, & adjudge que gift. 1. Pur ceo que un precinct de paroch fuit deins l'eſtatute de 43 Eliz. deſtre aſſeſſe per ſe, & nemy ove le matr' Eſgliſe, & il ſerroit un grand confuſion, ſi ſerroit auterment, Et ceo fuit agree, & reſolve per Jones, Crooke & Barkeley, (Richardſon eſteant abſent propter ægritudinem.) Trin. 2. Caroli Regis. C. B. Rot. 630. Hilton vers Pauls pur tiel diſtreſſe, le Pariſh de Hinckley, & un Ville Stoke Golding fuit deins le Rectory de H, ſed ad Chappell, & Guardians & Overſeers del' Poore de temps hors &c. et adjudge per 5 Juſtices, que ceo eſt paroch in Reputation, & deins 43 Eliz. paroch, & ſerra charge per ſe pur le Poore, & nemy ove matrix Eccleſia.

Hindley *verſus* Wilkinſon.

Hill. 8. *Car. Rot.* 302.

(5) Action ſur le caſe port per un Commoner vers un que ad terre adjoynant al Common & il ſuffer ſes Conies a aler al Common pur depaſture, & adjudge pur le Plaintiff, & error port, & le Judgment reverſe.

Colabyn & Uxor *verſus* Viner.

(6) Colabyn & Uxor port Action ſur le caſe vers Viner pur ceux parolls, Thou bold Colabynes Baſtard-bearing Whore, Thou didſt throw thy Baſtard into the Dock, innuendo quandam Socam vocat' le Armitage in paroch' St. Mary Whitechappell, & averront, que devant parolls parle, quod quidam infans unde pregnat' adhuc omnino ignotus exiſtit in fovea prædict. mortuus jacens inventus fuit, Et Judgment apres verdict done, quod Querentes nihil capiat per billam.

Gibſon

Gibſon *verſus* Linly.

Intratur P. 10. *Car. Rot.* 279.

ERror ſur Judgment done en Court de New-Caſtle, exception priſe per Councell, Quod venire facias eſt agarde, a retorne 24 Jurors & 12 trie l'iſſue, fuit adjudge per Curiam, que ceſt Tryall fuit loyall, & ſi 23 ad eſtre retorne, & 12 trie l'iſſue, ceo eſt bon, & Judgment affirme, per Barkeley & Crooke (abſente Jones) & il conſent a ceo. (7)

Taſte *verſus* Haynes.

Mich. 7. *Car. Rot.* 4221.

JUdgment fuit done en demurrer en le C. B. le Count fuit de 3 part d'un Meſſuage, & un Stable, petit Cape agarde al Aiſcount, & il fiſt garrant al Bayle de Liberty, que retorne quòd Cepit in Manus Domini Regis, le dit Meſſuage, ſed ne parle riens del' Stable, & pur ceſt cauſe, le Judgment fuit reverſe. (8)

Meade *verſus* Thirman.

LIbell en Eccleſiaſtical Court pur diſmes de Green Tares coupe pur feeding labouring Chivalls, & Prohibition fuit ground nemy ſur ceſt general ſuggeſtion, ſed ſur le cuſtom del' Pariſh, que null Tyth fuit paye en ceſt caſe. (9)

Termino

Termino Paſch. An. XI. Caroli Regis, *in* Banco Regis.

Upon Wedneſday or Tueſday before the 4*th* of February 1634, Sir *Thomas Richardſon* Chief Juſtice of the Kings-Bench dyed; and upon the firſt Saturday in Eaſter Terme following, being the 18*th* of April 1635, Serjeant *Brampſton* was ſworn in Court, and his Patent delivered him, and he came into the Court, and then it was read, which is as I conceive out of courſe; for firſt his Writ ought to have been read.

Ceſt Terme Serjeant *Whitfield* fuit fait Serjeant le Roy eſteant devant Serjeant del' Royne.

Baker *verſus* Hacking.

(1) TEnant en Tayle Reverſion en fee al ſon pere, ils joyne per fait en un Leaſe pur vie al A. R. & fuit execute per Livery & ſeiſin fait per Attorney del' pere & fits, le pere deviſe le Reverſion, & le queſtion fuit, ou le deviſe fuit bon: & ceo reſtat, ou le Leaſe pur vie fuit un diſcontinuance del' reverſion en fee, ſi fuit, donque le deviſe voide, ſi nemy, donque le deviſe bon, Et per Brampſton, Jones, & Barkeley, il fuit diſcontinue. Crooke e contra. Ils tout agree, que ſi Tenant en Tayle reverſion en fee a luy meſme fiſt feoffment en fee, ceo eſt diſcontinuance del' Intayle, & del' Reverſion, & iſſint ils agree, que ſi Tenant en Tayle reverſion al eſtranger joyne en un feoffment en fee per fait al eſtranger, ceo eſt diſcontinuance; ils auſi agree que ſi Tenant en Tayle reverſion al eſtranger fiſt Leaſe pur vie al J. S. ceo eſt diſcontinuance durant le Leaſe pur vie, & le Tenant en Tayle ad gaine Reverſion; Et Brampſton, Jones & Barkeley diſont, que ceſt caſe ne differt del' Caſe en queſtion, ſed Crooke tient, que en le caſe en queſtion il fuit nul diſcontinuance en preſent, ſed ſi poet eſtre,

il ſerra diſcontinuance, ſcilicet, ſi Tenant en Tayle moruſt ayant iſſue durant le vie del' Leſſee, donque il ſerroit diſcontinuance, ſed les auters Juſtices ne allowe de ſon differences; ideo Judgment fuit done accordant a lour Opinion.

Termino

Termino Trin. An. XI. Caroli Regis, *in* Banco Regis.

Mallet del' *Middle Temple* appeare en *Cancell'* ſur ſon brief deſtre Serjeant le primer Mecredy en Trin' Terme 11 *Caroli*, & *die Martis* enſuant appeare en *C. B.* & obſerve ſon Feaſt. Al prochein jour eſteant *die Martis* il vient en le matyn al *Serjeants Inn Fleetſtreet*, où fueront tout les Juſtices, (except *Denham*) le Chief Juſtice miſt eins ſon Coife & Hood, ſed ne fiſt aſcun Speech a luy, le demandant fuit le Royne, le Tenant, le *Seignior Seale*, & le brief fuit Cuſtom del' Services, pur Services hors del' Mannor de *Eveden in Com' Devon'*, que fuit tenus del' Royne de Honour de *W. in Com' Oxon'* tout les Juſtices fueront preſent al Feaſt: *dedit annules cujus inſcript' fuit*; *Deo, Regi, Reginæ, Legi.*

Pollex *verſus* Buſhell.

(1) HOme fuit ſue en Common Banke, & miſe la mainprize de reſpondre al Action, & il fuit condemne, & apres Scire facias ſur Recognitſance fuit ſue vers le Mainpernors, & ſur default Judgment done vers le Bayle, Et le Bayle, & ceſtuy vers q̃ le Judgment fuit joyne en un brief d'erroꝛ, & per totam Curiam (Barkeley eſteant un foits e contra, ſed il relent apres) Judgment done, que le brief abatera.

Cave *verſus* Brookesby.

(2) BRookesby leſſe terres al Cave pur ans, & il Covenant que ils fueront free de loyal Incumbrances, & que ils fueront del' value de 200 l. & continuera de tiel value al Leſſee durant le Terme, & Leſſoꝛ enter ſur Leſſee, & luy ouſte, & Leſſee poꝛt Action de Covenant, & adjudge que il giſt, car quant Leſſoꝛ enter ils ne poient continue del' tiel value, pur ceo, que Leſſoꝛ ad le profits, mes ſi eſtranger ſans title enter, il ad eſtre auterment.

Reeve

Reeve *verſus* Malſter.

GEorge Reeve ad iſſue 3 fits, George, William, & Charles, (3)
& fuit un Coppyholder deins le Mannor de Hoe en Suffolke, le Jury ſur ſpecial verdict trove, que le cuſtomary terres parcell del' dit Mannor fueront del' nature de Borough Engliſh, & que talis habetur conſuetudo deins le dit Mannor, que ſi aliqua perſona obieret ſeiſit' in feodo ſimplici de aliquibus terris cuſtomariis deins le Mannor, que le dit terres deſcenderunt, & deſcendere debuerunt al puiſne fits ſolon le nature del' Borough Engliſh, le pier ſurrender le terres al Seignior, que regrant ceo al dit le pier, & Alice ſa feme, & al heires George le pier, il mourſt, Charles le puiſne fits mourſt ſans iſſue, Alice mourſt, William le muln' frere enter', & ſurrender al uſe Malſter, que enter'. George leigne frere enter', & Malſter luy ouſte, ſur que il port treſpaſs, & tout ceo trove per ſpecial verdict; apres ſeveral arguments al barre ceſt Terme, le 2 Lundey en Terme, Barkeley & Crooke argue, & le darren Lundey en le Terme, Jones & Brampſton Chief Juſtice; le Chief Juſtice, & Barkeley fueront pur Defendant, & Jones & Crooke pro Querente: Il fuit agree per tout, que ſi home ad iſſue 2 fits, & mourſt ſeiſie en poſſeſſion, & leigne fits mourſt devant entrie, iſſint d'un Reverſion ſur eſtate pur vie, le puiſne fits (admitte que il ſoit del' demy ſanke) enheritera, & ſerra immediate diſcent a luy de ſon pier, & ne ſerra mention de ſon frere, tamen l'eſtate fuit en leigne a grant', a Charge, & le feme d'un poſſeſſion en Ley ſerra endowe. 2. Il fuit agree, que terres en Borough Engliſh generalment enſuera le courſe del' Common Ley, & le dit cuſtom eſt bien conus en le Common Ley, le puiſne fits avera Formedon pur terres en tayle, Error, & Attaint, vouch. Et ſerra vouch, & ſerra charge pur dett del' pier, & ſerra poſſeſſio Fratris, & avera age per 32 E. 3. Fitz. Age 81. coment' 21 E. 3. 46. ſoit e contra. Bes non tenet in omnibus ne ſerra lye per garranty neque vouch ſur garranty fait al pier, & ſes Heires, & ceo ne teignoit en auter caſes come ſerra dit apres. Et particular cuſtom poyet faire un variance del' general cuſtom.

3. Il fuit agree auſi, que ſi home ſoit ſeiſie de terres en Borough Engliſh, & ad iſſue 2 fits, & le terre deſcende al puiſne, & ſoit actualment ſeiſie del' ceo, que le Cuſtom per le dit temps eſt ſuſpende, tanque le puiſne fits, ou auter que ſerroit owner del' terre ad deux fits, & en interim il diſcendera al ſon heire al Common Ley, ſoit il frere ou fits ou auter home, & quant owner avera puiſne fits, cuſtom ſerra revive arreare, & en noſtre caſe agree, que le Reverſion deſcenderoit ſur le puiſne fits, ſcilicet,

Charles sil avoit fits, sed ex præmissis, Brampston & Barkeley urge, que entant, quant le Reversion ne fuit vest en possession, sil fuit heire al Common Ley, le puisne fits ferra immediate descent (sans mention del' eigne) de son pier, & que ne fuit ascun possessio Fratris, Et entant, que Borough English serra guide per le Rule del' Common Ley, ideo quant Charles morust sans actual possession, le muln' frere William avera le terre, & ferra descent de son pier sans mention del' puisne fits: ils disont auxi, que si le puisne fits morust en vie pier ayant issue fits; que il avera le terre, & si home ad issue 2 fits, & morust sa feme priviment enseint ove fits, & est nee apres, il avera le terre, ceo fuit le maine ground de lour opinion: Crooke & Jones e contra, ils tient, que per le descent del' Reversion al Charles le puisne, ceo fuit un perfect descent, & per ceo le custom satisfie, & per consequence quant il morust, ceo descende al eigne fits come son heire al Common Ley, si le Reversion ad devenus en possession le puisne frere ad enter en le terre, il ad estre cleere, que le eigne fits avera le terre; ils frame cest argument, que sont 3 voys d'aver terre, vel per rule del' Common Ley, vel per Statute, vel per Custom; Common Ley require actual seisin de faire heire, pur ceo que seisin est le ground del' title, per rule del' Ley, mes quant per Act de Parliament ceo est le ground del' title; si home seisie en fee ad issue fits, & file per un venter, & fits per auter venter, & morust si eigne enter' le file avera le terre, mes sil fuit Tenant en Tayle auterment, & le possession del' frere ne fist heire, que est le reason de difference; l'un per Common Ley, & seisin d'ancester claime le terre, & le seisin est son title, l'auter claime per l'estatute de Westm' 2. & le seisin ne controlle l'Act de Parliament, il que est heire de Corps donee avera ceo, coment leigne heire ad actual possession, & l'estatute guide le discent, & nemy le seisin, solon le rules de Common Ley: Formedon ne fuit deins ascun del' auncient Statutes de Limitation tanque 21 Jacobi (ou il est particularment nosme) car en Formedon le done fuit le grounde del' title del' demandant, & nemy le seisin. 3. En mesme le manner le Custom altera le course del' Common Ley, en Casu de Borough English, & done ceo al puisne fits, & fait luy heire encounter le rules del' Common Ley, Et Custom order, que apres mort le pier, il descende al puisne sans mention de seisin, le custom tollera le nature del' Common Ley en ceo case, & il fuit perfect descent de Reversion sans seisin, & ceo satisfie le custom, & ideo sur cest primer Reason ils pense, que leigne come heire frere puisne avera le terre, & a conclude cest reason null voet deny, mes que Reversion descende al puisne fits, & ceo satisfie le custom. 2. Admitte que serroit auterment, tamen le eigne le Plaintiff ad melior

lior title, car ſil ne ſerra dit en Ley a deſcend al Charles le puiſne frere, donque le cuſtom faile, il deſcendera al eigne fits, come heire al pier, ſicome il ad eſtre deux fits, le puiſne mozuſt ſans iſſue devant entrie, l'eigne avera come heire al Common Ley al ſon pier, & le mulnes frere navera ceo, car il ne fuit heire al Common Ley al ſon pier, mes l'eigne fits, & ſolon le cuſtome il n'avera, car ne fuit heire en Bozough English, pur ceo que il ne fuit puiſne fits, quant le terre deſcende, & le cuſtom en noſtre caſe eſt pluis ſpecial, quam le cuſtom de Bozough English en general eſt, car il eſt tye al ſeiſin en fee ſimple, que exclude tayle. 2. Le pere doet eſtre ſeiſie ideo ſil ad dzoit ſolment, ceo neſt deins le cuſtom. 3. Il dit, que deſcent al puiſne fits ceo exclude fits del' puiſne ſil fuit mozuſt en vie le pere. 4. Il deſcendera al puiſne fits, que doet eſtre le puiſne al temps le mozt, le deſcent eſt per le mozt, & ideo cy que eſt puiſne adonque ceo avera, & nemy cy que ſerra puiſne apzes ; ils deny le caſe de fits nee apzes mozt le pier, il navera ceo, car ne fuit puiſne al temps del' mozt : 5 E. 4. Babingtons Aſſiſe fuit miſe, & auter caſes al ceſt purpoſe, & ils deny le Caſe, que ſi le puiſne fits mozuſt en vie pier, & ad iſſue fits, la ils diſont, que le mulnes frere avera ceo, car il fuit puiſne al temps del' mozt ; & ſic pendet.

Termino Mich. An. XI. Caroli Regis, *in* Banco Regis.

Sir *Francis Aſhley* Chivaler, Serjeant le Roy moruſt en le Matin perenter 6 & 7 del' Clock, at his Chamber in *Serjeants-Inn*, upon the 28th day of November, being the laſt day of the Term, *Anno Domini* 1635. and his Body was carryed from *Serjeants-Inn* upon Wedneſday after Dinner, the 19*th* of December; and divers of the Juſtices attended the Corps out of the Town: And (*inter alia*) both the Lord Chief Juſtices, my Brother *Trevor*, and my ſelf, my Brother *Whitfield*, and *Mallett*, and divers others.

Acton *verſus* Simonds.

(I) William Acton port Action ſur le caſe vers Philip Simonds, & declare, que il fuit ſeiſie en fee d'un Meſſuage, &c. in Acton in Com' Salop, & iſſint ſeiſie il fuit Communicatio, enter le Plaintiff & Defendant pur un demiſe deſtre fait perenter le Plaintiff & Defendant de ceo, pur ans rendant Rent, & ſur ceo, que le Defendant en Conſideration, que le Plaintiff demiſe le terre ſur &c. al Defendant pur ans rendant Rent, il promiſe, & aſſume a payer al Plaintiff le dit Rent, & que le Plaintiff ſur ceo poſtea le dit jour demiſe le Meſſuage pur ans rendant Rent, & que le Defendant ne paye le dit Rent, ſur que il port le dit Action ſur le caſe; le Defendant plede en barre, & ceo trove encounter luy; ſur que le Defendant move en arreſt de Judgment, que Action ſur le caſe ne giſt, pur ceo, que il eſt pur Rent que eſt en le realty, & Crooke fuit de meſme l'opinion pur deux reaſons, l'un fuit, que ſur real Contracts pur Rent reſerve ſur un Leaſe pur ans, null Action ſur le Caſe giſt come il poyet ſur perſonal Contract. 2. Fuit, pur ceo que le ſeaſance del' Leaſe pur ans extinguiſh le aſſumpſit, come un Obligation extinguiſh perſonal Contract; ſed Brampſton

Chief

Chief Juſtice, Jones & Barkeley fueront e contra; ils agree, que ſi un Leaſe pur ans ſoit fait rendant Rent, que un Action ſur le caſe ne giſt ſur le Contract, come il ſerra pur perſonal Contract, pur ſale de chival ou auter biens, mes lou eſt un aſſumpſit en fait pleter le Contract ſur le Leaſe, Action ſur le caſe ſur ceſt aſſumpſit eſt maintainable. 2. Et que le ceſance del' Leaſe neſt aſcun extinguiſhment del' aſſumpſit, & ideo Judgment fuit done pur le Plaintiff, ſed Crooke continue fortment en ſon primer opinion.

Townſend *verſus* Hunt.

(3) RIchard Townſend port Action ſur le caſe vers Reuben Hunt, & declare que Francis Townſend fiſt ſon darren volunt, & deviſe 60 l. al Plaintiff, & fiſt Anne ſa feme ſon executrix, & mo-rust, Anne marie le Defendant & paye 53 l. del' Legacy, & 7 l. fuit arreare, & le Defendant en conſideration, que le Plaintiff ad al requeſt & inſtance del' Defendant releaſe per ſon fait touts Debts, Legacies, & Demands al dit Anne, il promiſe a payer le dit reſidue al Plaintiff, ſi le dit Anne ne ceo paye, Anne mo-rust, & il ne paya coment il fuit actualment require, ſur que le Action fuit port, & fuit move, que l'Action ne giſt, pur ceo que le releaſe fuit fait devant le promiſe, & fuit un Conſideration exe-cute, ſur que Action ne giſt, come ſi home vende Chivaler, & apres fiſt garranty del' chival, ceo eſt voide, ſed tota Curia fueront une-ment agree, que Action giſt, & deliver lour opinion ſeriatim overt-ment, & lour reaſon fuit, que voyer eſt, q̄ ſi Conſideration ſoit exe-cute, que promiſe apres neſt bon, come eſt tenus 10 Eliz. Dyer; mes quant le Act execute fuit ſur requeſt del' Defendant, la ceo eſt bon Conſideration, come en Conſideration, que le Plaintiff ad Marrie un al inſtance del' Defendant, le Defendant promiſt & aſſume de payer un Summe d'argent, ceo eſt bon, car il fuit un kindneſs fait al requeſt del' Defendant, & ceo eſt Executory apres, & bon cauſe de aſſumpſit, & ideo Judgment done pro Querente.

Error in *Camera Scaccarii* ſur Judgment done *in Scaccario*.

(4) CEſt Terme al Meaſon Serjeants-Inn Fleet-ſtreet, (abſente Chief Baron) un queſtion fuit move per Denham, Trevor & Weſton ſur l'eſtatutes de 31 E. 3. & 31 Eliz. pur Errors en l'Exchequer: divers briefs d'error fueront ſue & direct al Chancellor, & The-ſaurar' ſans noſme lour Noſmes; Et ils fueront allowe, & apres Weſton Treaſu. morust, en le darren quarter meſne devant le jour del' continuance del' briefs d'error, queux fueront continue tanq;

Terme

Terme Paſchæ enſuant; ſur ceo le queſtion fuit ou le briefs d'erroꝛ fueront abſolutement determine, ou autermentils poyent eſtre continue, tanque novell briefe ſuera; ſur ceſt point, les Juſtices ne unement conſent, ſed ſemble al contrary parte, que le briefs d'erroꝛ fueront determin, & per null continuance, ils ne poient eſtre enforce, tanque novell briefe fait, ſed ils agreeont que le melior voy fuit de diſcontinuer tout les briefs d'erroꝛ per non venir del' Chancelloꝛ, ou le Chief Juſtices, & donque Execution poet eſtre agarde, & null briefe d'erroꝛ poet eſtre ſue, tanque novell Treaſurer fuit, ſed ſur ſearch de Preſidents il fuit trove que le briefs continue, ſed null Judgment tanque novell Treaſurer.

Needler *verſus* Simnell.

ACtion ſur le caſe fuit poꝛt vers baron & feme, & le Plaintiff declare, que il fuit Free-man de London, & un Tradeſman, & obteine ſon vivie per emer & vender de Cruell, & que le feme malitioſe, parle del' dit Plaintiff, que il fuit un Cheater, & ad cozened, & cheated ſa baron de 500 l. & il ad verdict ſur ceo, & 40 l. damages, Et en arreſt de Judgment fuit move, que les parolls ne voilont mainteine Action, de quel Opinion le Chief Juſtice, & le 3 auter Juſtices fueront, car il ne appiert, per les parolls, que le cozenagement ou cheatment fuit en aſcun choſe, que concerne, ou ad reference al ſon Trade, per que Judgment fuit ſtay.

Doctor Sibthorps *Caſe.*

(5) DOctor Sibthorp poꝛt Action ſur le caſe vers un, & declare, que il fuit Parſon de Burton Latimer, en Com' N. & que le Defendant dit de luy, Yonder is Doctor Sibthorp robbing of the Church, and he hath robbed the Church, innuendo le dit Eſgliſe de Burton Latimer, & adjudge per Curiam, que Action giſt.

Downe *verſus* Haith-waite.

(6) ACtion de Dett ſur Obligation fuit poꝛt per John D. vers un, & declare ſur Obligation, en que le Defendant fuit lye a luy in quinquagint' & duabus libris. Le Defendant plede Non eſt factum, le Jury trove ſpecial verdict, ſcilicet, que le Defendant fait un Obligation per le noſme de Jo'em H. en quinginta & duabus libris, & ſi, &c. & adjudge pro Querente.

Baker

Baker *verſus* Bearman.

WIlliam Baker & Unity ſa feme port Action ſur le caſe vers Chriſtopher Beareman, & declare, que le dit Unity dum ſola fuit poſſeſſe pur divers ans d'un Cloſe, en le Pariſh de St. Martin, en que il fuit un Stable, & ore un meaſon edifie, & que le Defendant fuit poſſeſſe d'un Cloſe a ceo adjoynant, en le dit Pariſh, & que il fuit Cuſtom en le dit Pariſh, que occupant del' dit Cloſe, que fuit le dit Unity avoit un Chimin hors de temps de memory del' dit Cloſe ultra le Cloſe le Defendant, uſque al un uſual place vocat' le Layſtall en paroch' prædict., & que le Defendant ceo ſtoppe, & apres le dit Unity marrie le Plaintiff William Baker: ſur q̃ il fuit demurre; Et adjudge per totam Curiam pur Defendant, en que mult fuit parle de unity de poſſeſſion, ou ceo extinguiſh un voy, mes le reaſon del' Judgment fuit, que ceo eſteant preſcription, ne poet eſtre plede per voy de Cuſtom, que occupant avera un chimin, ſed doit eſtre plede per preſcription. (7)

Tippen *verſus* Fenton.

Hill. 10. *Car. Rot.* 501.

ACtion de Treſpaſs fuit port vers 2, & ils plede Non culpable, & un venire facias agarde de trie le iſſue, & un mouſt, & apres Diſtringas grant vers 2. & trove pur le Plaintiff, & Plaintiff ſurmitte, que le dit Defendant fuit mort, & ad Judgment vers l'auter, & ſur ceo erroy & le Judgment fuit affirme accordantal liver de 4 H. 7. 6 & 7. 2 Eliz. Sir Charles Howards Caſe, mes ſi Judgment ad eſtre done vers ambideux, il ad eſtre erroy. (8)

Hitchman *verſus* Potter.

HOme port Treſpaſs d'Aſſault Battery & Impriſonment tanque il pay 7 l. 10 s. fine: le Defendant plede Non Culpable a tout præter Aſſault & Impriſonment, & quant a ceo plede que il arreſt luy per virtue de Warrant, pur 6 l. 13 s. 4 d. ſur que Plaintiff demurre pur double plea, pur ceo que il ad plede a tout le Treſpaſs præter l'Aſſault & Impriſonment, en que le fine include, & apres juſtifie pur le fine, ſed Curia e contra, car le primer plee vae al tout præter le Aſſault & Impriſonment, & nemy Non Culpable, al fine de 7 l. 10 s. que fuit ſeveral Treſpaſſes, & donque le plea del' 6 l. 13 s. 4 d. ne fuit bon plea al 7 l. 10 s. iſſint le plea nient double. (9)

Sydowne

Sydowne *verſus* Holme.

(10) LE Prior de Breadſtall fuit ſeiſie de terres deins le Pariſh de Breadſtall hors de temps de memory, & tout les Priors tient ceo hors de temps de memory exonerant de payment de diſmes, le terres vient per diſſolution al Roy H. 8. per l'eſtatute de 4 Febr. 27 H. 8. pur ceo, que le Abbie fuit deſouth le value de 200 l. le Roy grant le terres, & ceux per mean Conveyances viendront al un Bentley, que Leſſe pur ans al Sidowne, & Holmes Parſon de Breadſtall ſue pur diſmes, en Court Chriſtian, & un Prohibition ſur ceſt ſurmiſe, ſur que le dit Parſon demurre, & prie Conſultation, ceſt caſe fuit argue al barre ſovient foits, & ceſt Terme il fuit argue al Banke per les Juſtices; trois agree, ſcilicet, Brampſton, Jones, & Barkeley pur Defendant, que null Prohibition gift, Crooke e contra, le caſe fuit divide en deux points, le primer fuit un Prior tient terres exonerate de diſmes per preſcription, le terres vient al maines un Lay home, apres le Prior fuit diſſolve ou le Tenant del' Terre avera benefit de ceſt preſcription ſans benefit & aide de aſcun Statute ou Act de Parliament; le 2 queſtion, ou terres de Abbey, que vient al Roy per 27 H. 8. exonerate de diſmes en maines le Prior per preſcription ſerront exonerate en maines le Roy, ou ſon Pattentee per aſcun Statute (ſcilicet) 27 H. 8. ou 31 H. 8. de Monaſteries.

Quant al primer point, tout les Juſtices unment reſolve, que fueront 3 manners de exoneration de diſmes (ſans aide de aſcun Statute) ſcilicet, per priviledge ou Bull. 2. Per real Compoſition & Preſcription, en modo decimandi. 3. Per preſcription general en non decimando. Le primer, ſcilicet, per priviledge, come le Templers, Hoſpitallers & Ceſtercienſes, que fueront exonerat' per general Councell (come ſemble) car il eſt dit per Panormitan capite ex parte decimis, Quod privilegium Non ſolvendi decimas datur in apice Juris Canonici Ceſtercienſibus, Hoſpitalariis & Templariis ſolumodo, & non aliis monachis quibuſcunque. 2. Divers Abbeys fueront exonerat' per le Bull del' Papa, grant aſcun foits al un Order come le Præmonſtratenſes, vel al un particuler Abbey, ceux fueront perſonal priviledges, & omnia perſonalia privilegia (come la dit Panormitan) certam habent interpretationem, & non tranſiunt de una perſona ad aliam, ideo quant tiel Corporation, que ad tiel priviledge, fuit diſſolve, ou ſil grant ouſter le terres al auter, le priviledge fuit ale, & le grantee ou feoffee del' terres payera diſmes.

2. Le ſecond exoneration eſt per real Compoſition, come appiert en le Regiſter fol. 38. & Fitz. N. B. fol. 42. ceo eſt quant un ſumme

ſumme d'argent, ou terres ſont done al un Parſon per aſſent Patron & Ordinary en recompence de tout manner de diſmes, la le terre eſt exonerate de diſmes en ſpecie, & le Modus eſt fait diſmes, & ſi les terres ſont transferre ou grant al un auter, le feoffee ou grantee avera benefit de ceo, car la le terre fuit exonerate de diſmes en ſpecie, ideo quicunque, que ad le terre avera benefit de ceo ; & ſur le ground de real Compoſition un Modus decimandi per preſcription eſt maintainable ſur intendment, que fuit un real Compoſition & ceo fuit perde, quod vide Fitz. Nat. Br' 41. Regiſter 38. 8. E. 4. 14. & Cooke pars 2. l'Eveſq; de Wyntons Caſe, & de tiel preſcription cheſcun, que ad le terre prendera benefit. Le 3. eſt un exoneration de Non decimando, vel in ſpecie vel auterment per preſcription, de que un Eccles' home fuit ſolment capable, come appiert en le dit caſe de Eveſq; de Winton, car un Lay home per le Councell de Lateran, ne fuit capable en permancy, neque en diſcharge de diſmes, ſed un Eccles' home fuit capable d'ambideux, & ne fuit iye per le dit Councell, & huc uſq; touts agreeont, ſed Barkeley va ouſter, & dit que le preſcription doit eſtre intende, vel ſur un priviledge, vel ſur real Compoſition devant temps de Memory. Les priviledges fueront le pluis frequent, & l'auter rare, ideo en noſtre caſe, le preſumption ſerra preſume deſtre ſur priviledge en le commencement, & eſteant iſſint il enſuera le nature del' commencement, ſcilicet, un priviledge, & touts priviledges come dit devant fueront perſonal, & fueront extinct ove le perſon, ideo ſerra le preſcription, & iſſint il tient icy, que le preſcription fuit perſonal, & extinct per le diſſolution del' Corporation, & ne ſerra extende al Roy ou ſon Patentee, & Crooke agree, que ſi ſerra intende deſtre ſur le ground de priviledge, donque ceo eſt ale, ſed Crooke dit, que ſerra intende deſtre ſur un real Compoſition, & donque le Tenant del' terre avera de benefit de ceo, ſed il ne produce aſcun reaſon pur demonſtre, que il ſerra iſſint intende. Jones agree al ground priſe, ſcilicet, que ſi le preſcription ſera intende deſtre ſur imagination de primer priviledge donque le preſcription fuit ale, & determ' ove le perſon. Et Brampſton agree al ceo, & fuit pluis ſoyt intendment, q̃ fuit le ground ſur real Compoſition, & Jones deny, que ceo ſerra priſe deſtre ſur real Compoſition, car coment preſcription en modo decimandi per payment de ſumme d'argent fuit bon, ſur intendment, que fuit ground en le commencement ſur real Compoſition, car le payment del' ſumme eſt bon Evidence al ceo mes en non decimando ceo ne tenus, & iſſint il eſt reſolve, en caſu de Eveſque de Winton Report Cooke pars 2. Et Brampſton & Jones dihont, que il poit aver intendment d'un auter ſoyt de commencement, & il eſt dit devant, que Eccles' home fuit capa-

ble de diſmes en pernancy, & d'un exoneration de payment de diſmes, & ne fueront lye per aſcun Canon, ou Councell; ideo ceo poet eſtre le Commencement del' preſcription, & ſi iſſint, ceo auri eſt perſonal, il eſt tye al Eccles', & non egreditur perſonam, ideo quant le terre vient al maines d'un Lay home le preſcription eſt ale, & de meſme opinion fuit le Chief Juſtice auri, & Jones dit, que entant, que un Lay home neſt capable de preſcription en non decimando en luy meſme, ou ſon Anceſtor, il ne poet eſtre capable per un que eſtate, iſſint le dit 3 Juſtices tient en tout l'opinion de Crooke, que le priviledge de preſcription fuit ale per le diſſolution del' Abbey. Quant al 2 queſtion ils devide ceo al deux Conſiderations; l'un ſur l'eſtatute de 27 H. 8. tantum: le 2 ſur l'eſtatute de 31 H. 8. & 27 H. 8. conjunctim. Crooke tient, que per l'eſtatute de 27 H. 8. ceſt priviledge per preſcription, & tout auter priviledges, & exemptions de diſmes fuit reſerve, & done al Roy per parolls del' Act. Il done tout Jura & Intereſs' & Hereditament' & ceo en cy large & ample manner come le Abbot eux tient, & ceſt priviledge fuit un hereditament & un droit & intereſt, & le terres eſteant done en cy large, & ample manner come le Abbey meſme, & il tient ceo exonerat' de diſmes. Auri l'entention del' Act fuit a doner le priviledge pur ceux Abbyes, auribien come auter Abbyes queux viendront al Roy per 31 H. 8. les 3 auter Juſtices tient, que ceſt priviledge ne fuit preſerve ne done al Roy per ceſt Statute, car les parolls del' Statute eſteant general ne extende al ceſt particular priviledge, que neſt aſcun choſe en droit, ou intereſt, ou proprement un hereditament, ſed un matter de exoneration ſolment, le caſe de Marqueſs de Wincheſter Cooke pars 3. ceo prove, ou ceux parolls de droit, intereſt, hereditament, & en cy ample manner en un Act de Parliamene n'extende, al un brief de erroz, ou droit de Action; 2 null intent appiert per le Statute, car ſils ount, ad eſtre un clauſe d'exemption, auribien come en 31 H. 8. il eſt fait. Crooke auri tient, que admitte, que ceſt priviledge neſt preſerve, & done al Roy per 27 H. 8. tamen per un conjunction del' Statute de 31 H. 8. al 27 H. 8. ceux priviledges ſont ſalve: primes il dit, que parolls de 31 H. 8. extende al ceo. 2. Si nemy, tamen per Equity il eſt. Quant al parolls, il dit, que les Abbeys deſouth 200 l. ne fueront diſſolve tanq; apres le fine de Parliament de 27 H. 8. & donque les parolls de 31 H. 8. extende a tout Abbeys, queux vient al Roy apres 4 Feb. 27 H. 8. 2. Il dit, que coment en fiction del' Ley, un Statute avera relation al primer jour del' Parliament, tamen revera null choſe eſt ſettle, neque il eſt un perfect Statute, tanque le Parliament fuit fine, & ceo fuit apres 4 Feb. 27 H. 8. & les parolls del' 31 H. 8. extende al ceo; & il dit que le Roy navera le

mean

mean profits creſcen' enter le Commencement del' Parliament, & fine del' ceo. 3. Il dit, que les parolls de 31 H. 8. ſont en le purview tout Abbeys ſans diſtinction. Auri il dit, que admitt, que les parolls n'extende al ceſt priviledge, tamen per Equity, il ſerra, car l'entention del' Statute de 31 H. 8. fuit a doner al Roy equal benefit del' Abbeys done per 27 H. 8. come per 31 H. 8. & tout fueront deins le Survey de Court de Augmentations, & fuit pur advance purchaſors, & ceo ale al un come al auter; & darrenment il eſtoy ſur contemporary expoſition, & il dit, que divers Prohibitions fueront grant ſur ceux Statutes en le commencement del' Royne Elizabeth, & touts temps apres, & en ceſt caſe ore in queſtion perenter Bery le owner del' ceſt terre, & le Parſon un Prohibition fuit devant temps grant, ſur que il conclude que ceſt priviledge fuit preſerve, aut per parolls de 27 H. 8. vel per Equity, & ſi nemy per ceſt Statute, tamen per conjunction del' Statutes ceo eſt done per les parolls, vel per intendment de 31 H. 8. car le clauſe de exemption de diſmes en parolls n'extende al Monaſteries diſſolve apres 31 H. 8. ſed ſolment al Abbeys diſſolve devant, & tamen (come eſt reſolve en caſe de Archbiſq; de Canterbury Co. pars 2.) ceſt clauſe de exoneration de diſmes en 31 H. 8. extend per Equity al Monaſteries diſſolve apres. Les 3 auter Juſtices fuerent de contrary opinion en ambideux les points, ſcilicet, que le clauſe de exoneration de diſmes en 31 H. 8. n'extend per le Letter, neque per l'entention al Monaſteries diſſolve per 4 Feb. 31 H. 8. Barkeley inſiſt ſur 2 Reaſons, l'un, que droit de diſmes de mero jure appertient al Parſon del' Pariſh, & quant le Abbeys fuerent diſſolve per 4 Feb. 27 H. 8. le droit de diſmes fuit revive al Parſon, & ceux choſes queux ſont extinct ne poient eſtre revive per general parolls del' Act de 31 H. 8. 2. Il tient, que le Parſon fuit deins le ſavant de 31 H. 8. car il neſt deins l'exception del' ſavant, ſcilicet, Donor Founder, &c. Jones ne relie (come il dit) ſur ceux reaſons, car ſi Monaſter' fuit ive ceo extende al Abbeys diſſolve apres 27 H. 8. & devant 31 H. 8. come al Abbeys diſſolve per 27 H. 8. & auri les parolls del' Act ſont expreſs a doner diſcharge de diſmes, tout diſcharges fueront deins le intention del' Act, & 2 le dit clauſe de exemption apres le ſavant. & le ſavant n'extende al choſes devant: Brampſton Chief Juſtice ne parle riens al ceo, ſed ils tout agree en un, que 31 H. 8. ne done aſcun Aide en ceſt caſe, car en expreſs termes le Statute parle de Monaſteries apres 4 Feb. 27 H. 8. queux vient al Roy, & le clauſe de exemption fuit intende al ceux Abbeys, queux vient al Roy per force del' ceſt Statute, & nemy al auter terres queux fueront done devant, ou apres al Roy per auter Act de Parliament come reſolve en caſu le Archiveſque de Canterbury pars 2. Co.

pur le Colledge de Maidſtone. Jones reſponde le reaſon de Crooke. 1. Que l'Abbeys ne fueront diſſolve, tanq; apres l'eſtatute de 27 H. 8. & il dit que l'eſtatute de 27 H. 8. adde un pluis fort clauſe differ-ent de 31 H. 8. l'eſtatute de 27 H. 8. done & veſte en le Roy tout Abbeys & lour poſſeſſions, que fueront deſouth 200 l. per Annum, & per ceo le Roy ad eux en actual poſſeſſion ſans aſcun auter Act ou choſe deſire fait, & auxi aſcun del' dit Abbeys, (come appiert per le Act) fueront diſſolve deins un an devant & done al Roy per le Act in poſſeſſion, ſed 31 H. 8. voyer eſt ne done aſcun Abbeys al Roy, mes veſt le actual poſſeſſion en le Roy de tout Abbeys queux fueront ſurrender ou ſerront ſurrender, & ſans tiel ſurrender ils ne fueront done al Roy, ſed Jones dit, que coment ceo ſoit voyer en le general, tamen le Statute en particular caſes done terres del' Abbeys al Roy, come de Abbeys queux fueront del' donation & foundation de common perſons, per le diſſolution le terre eſchea-tera al Founder ſi le Act nad eſtre: mes le Act de 31 H. 8. done le terre en ceſt caſe al Roy, iſſint le primer objection de Crooke eſt reſponde. 2. Pur le relation del' Act de Parliament ils dihont, que ceo a tout purpoſe avera relation al primer jour de Parliament & veſtera le terre le dit jour en le Roy, & le Roy avera le mean profits del' primer jour de Parliament & ceo fuit agræ per di-vers authorities, vid. Partridge & Crokers Caſe en le Comment. 33 H. 6. Pilkingtons Caſe, &c. & Jones dit, que les parolls del' Act va ſolment al Abbeys diſſolve apres 4 Feb. 27 H. 8. car le Pream-ble del' Act parle de divers Abbots Priors, &c. del' dit Monaſte-ries, & Priories, &c. null mention del' aſcun auter Monaſteries, mes ceux queux fueront diſſolve apres 4 Feb. 27 H. 8. & coment en le commencement le parolls ſont general tout Monaſteries Priories, &c. tamen ceo eſt reſtraine, car le Patentes tiendront le terres exonerate de diſmes fræ come le dit Abbots & Pri-ors, &c. tient eux, & dit Abbots ſont ſolment les Abbots del' dit Meaſons mention en le Preamble, & ceux fueront Abbeys, queux fueront diſſolve apres 4 Feb. 27. H. 8. & quant al caſe urge, que le dit clauſe fuit priſe per Equity hors de Maidſtone Colledge Caſe ceo ad auter reaſon, car la coment le Abbeys fueront diſſolve apres 31 H. 8. tamen ceux fueront veſt en le Roy per ceſt Act, & il fuit le intent del' Statute a done equal benefit en Monaſteries diſſolde coment apres, come queux vient al Roy per le dit Statute, ſed icy il n'appiert aſcun intention pur extende ceſt clauſe al auter Act de Parliament fait devant, null mention eſteant fait de ceo, ſed po-tius un abſolute excluſion. Quant al contemporary expoſition, & les preſidents. 1. Il fuit reſponde, que le rule de contempo-rary expoſition ne tient in omnibus, car en le caſe de Archiveſque de Canterbury, le contemporary expoſition fuit e contra, mes null

expreſs

expreſs reſolution en le point, tanque al dit temps, & ſur grand debate le expoſition fuit alter, & en noſtre caſe ne fuit aſcun reſolution e contra devant; & quant al Preſidents il fuit reſponde, que mults de ceux points paſſent ſub ſilentio, ſed null direct Judgment en le point del' auter part, il eſtre reſolve & adjudge en Caſu Wright & Gerard 18 Jac. C. B. que le Statute de 27 H. 8. ne preſerve priviledges de exemption de diſmes, & 31 H. 8. ne done ou preſerve aſcun tiel priviledges in caſe ou Abbeys vient al Roy per 27 H. 8. & en meſme manner ambideux les points fueront reſolve en Scaccario 4 Jac. en caſu Ward & Clarke, & en le argument del' caſe de Weſton & Whitton en ceſt Court, il fuit agree accordant per Hyde, Dodridge, Jones & Whitlock, per que ils conclude que Conſultation ſerra agarde pur Defendant.

En le dit caſe briefment, ceux points fueront reſolve, que un Abbie ou Eccleſiaſtical perſon poyet preſcribe in non decimando, ſed quant le Corporation fuit diſſolve, ou quant le Corporation grant le terre al un lay home, il n'avera benefit del' preſcription, car ceo fuit perſonal al Abbie.

2. Il fuit reſolve per totam Curiam, que ceſt priviledge per preſcription, & auter perſonal priviledges, per Bull ou Order, que Abbeys deſouth 200 l. & fueront diſſolve per 4 Feb. 27 H. 8. ne fueront preſerve, & done al Roy ou ſon Patentee per le dit Statute.

3. Que priviledges per preſcription, vel per Order ou Bull ſont preſerve per le clauſe de 31 H. 8. & le Roy, neque ſon Patentæ ne paiera diſmes, ſed ceo ſolment extend al Monaſteries diſſolve apres 4 Feb. 27 H. 8. & ideo le meinder Abbeys deſouth 200 l. diſſolve per 4 Feb. 27 H. 8. ne ſont include deins le dit clauſe de 31 H. 8.

Done *verſus* Smithurſt.

(11) BRief d'error fuit port per Done vers Smithurſt, & alios pur reverſer un fine levy per Sir John Done Chivaler a que il fuit heire male en le County Palatine de Cheſter, le Plaintiff fiſt Conveyance del' terre per un entayle al heires male per ſon grand pier, l'error aſſigne fuit, que le original brief de Covenant fuit port vers Sir John Done, & ſa feme & alios, & ſur ſurmiſe en le brief de Covenant que Sir John Done fuit adonque Viſcount del' dit County, le brief fuit direct al Coroners, & le ſurmiſe iſſint mention en le brief, le caſe fuit ſovient foits argue al barre, & ceſt Terme ſur un conference enter les Juſtices private, & ſur conſideration de touts les Authorities cite pro & con; ils

ils agree, que ceo neſt erroz, & ſur ceo rule done que fine ſerra affirme, en ceo caſe un common recovery fuit plede en barre, & non tenure plede en le Tenants al recovery, & trove pur part, que fueront Tenants & auter part nemy, en ceo caſe Judgment ſerra affirme pur part & pur l'auter nemy, come ſur un fine levie en C. B. de terres en ancient demeſne, & terres al Common Ley, il ſerra revers pur les terres en ancient demeſne, & nemy pur le terre al Common Ley.

Termino

Termino Hill. An. XI. Caroli Regis, *in* Banco Regis.

Robert Maſon Recorder of *London*, died at *London* the 3*d.* of January 1635. and Mr. *Calthrop* made Recorder in his room. Sir *Walter Pye* dyed *Chriſtmas-day* in the Morning, 1635. After the death of *Maſon*, Mr. *Calthrop* was choſen Recorder, and ſate as Recorder at the Gaol-delivery in January 1635. and before the Term he was ſworn Attorney of the *Wards*, and Mr. *Gardner* choſen Recorder in his room.

Day *verſus* Spoone.

GEorge Spooner, & John Lanham port Action vers Thomas Day & Henry Bullock en le Com' B. & declare coment Robert Futter fuit ſeiſie del' Mannor de Thompſton in Com' Norfolke, & per preſcription il avoit Liberty & Common de foldage en un grand Cloſe en le dit Mannor pur 300 Barbits come appurtenant al dit Mannor, & iſſint ſeiſie il demiſe al Plaintiff 35 Acres parcell de ceo ove liberty de Foldage pur quint anns, & que le Defendants ount encloſe parcell del' dit Cloſe, per que ils ne poient aver le dit Common de Foldage, & ſur ceo port lour Action, le Defendant plede per preſcription q̃ il & ceux queux eſtate il ad en le dit Cloſe ount uſe de incloſe le dit Cloſe, & adjudge pro Querente in C. B. ſur que le Defendant port erroꝛ, & oꝛe ceſt Terme tout le 4 Juſtices reſolve, que le barre ne fuit bon; pur ceo, que il ad uſe de incloſe, ceo eſt tant-amount que le Plaintiffs nount Common per preſcription, ideo doit eſtre traverſe. 2. Ils tiendront que ceo eſteant Common appurtenant poyet eſtre ſever del' Mannor, Maxime quant il eſt grant ove parcell del' Mannor. Auxi ceſt Common eſteant pur certain Barbits, ſcilicet, 300 le party poyet grant 250 al un, & reſerve 10 a luy meſme aſſets bien, ideo ſur tout le matter, ils done Judgment que le primer Judgment en le C. B. ſerra affirme 27 H. 8. 10. & 8 H. 7. 7. (1)

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(2) LE Plaintiff declare, que le Defendant dixit al un J. S. de luy hæc verba (videlicet) Go tell thy Landlord he is a Thief, &c. innuendo le Plaintiff, & fuit move en arreſt de Judgment per Trevor, que Action ne giſt, pur ceo, que ne fuit averre, que le Plaintiff fuit Landlord al J. S. & l'innuendo ne voet ſerve, & d'auter parte en defence de ceo, que dixit de prædict. Querente, & le innuendo ſerve ſans averment, ſed Curia e contra.

Tregonell *verſus* Rives.

(3) HOme en conſideration de natural amour & affection, & pur eſtabliſhment d'un joynture a ſa feme, Covenant d'eſtoyer ſeiſie de terres al uſe luy meſme pur vie, remainder al uſe ſa feme pur vie, & apres al ſon eigne fits en fee except' tout arbors ſur le terre, mes que ſa feme avera le lopping & topping des arbors & mozuſſ, & ſa feme marrie Tregonell, le Defendant eſteant le fits coupa 5 querks ſur le premiſes, & le dit Tregonell port Action ſur le caſe vers le Defendant pur couper del' dit arbors a prejudice del' ſon power, & liberty pur lopping & topping, & ſur Non Culpable plede trove pur le Plaintiff, & en arreſt de Judgment divers exceptions priſe per Robert Hyde. Primes, que l'exception eſteant apres Limitation del' eſtate fuit voide. Quod non allocatur. 2. Que ceſt exception ne fuit execute per 27 H. 8. & que ne done aſcun intereſt al feme en le Loppings & Toppings, & non allocatur. 3. Coment, que le Plaintiff doet aver le Loppings & Toppings, tamen le Defendant poyet couper part leving ſufficient al auter, 4. Il ne poyet lop timber Trees, ſed ambideur over-rule. Darrenment, le terre fuit dit de conteine 40 acres & le Declaration fuit, que le Defendant coupe le arbors ſur le dit 20 acres, & ceo ne poyet eſtre, & ceo fuit diſallowe: & auter exception, pur ceo que le action fuit in noſme de baron ſole, & ideo ſur tout le matter Judgment fuit done pro Querente, & que le action fuit bien port per le baron ſole.

Hilton *verſus* Bambridge.

(4) GEorge Bambridge fuit ſeiſie pur vie de terres en le Countie de Northumberland, remainder en tayle al Anthony Bambridge, le dit Anthony per fait grant le terres al Thomas Hilton, & ſes heires, le dit George ayant notice del' dit grant dit al J. S. & J. D. que il fuit bien pleaſed & content, que le dit Anthony ad grant ſon remainder

remainder al dit Thomas Hilton que fuit ſon coſyn, le dit George Bambridge, moruſt, le caſe (en Treſpaſs port per le dit Hilton vers John Bambridge ſur ſpecial verdict) fuit come devant, & le doubt del Jury fuit ou ceo fuit bon attornement ou nemy, & per Curiam apres argument al barre, il fuit reſolve, que ceo fuit bon attornement, coment que ceo fuit en abſence del' parties, & les parolls fueront dit al ſtrangers, car attornement neſt forſq; aſſent & agreement del' particular Tenant al grant de Reverſion ayant notice del' ceo, & ne fuit requiſite, ou ceo fuit al grantee in perſon, ou al ſon ſervant, ou al ſtranger, & ſur ceo Judgment fuit done pro Querente.

Stockman *verſus* Hampton.

REplevyn fuit port per Stockman vers Hampton, & le Defendant fit conuſance come Bayliff, que un Michell fuit ſeiſie en fee & moruſt ſeiſie, & le terres deſcende al deux coheires, en que droit il fit Conuſance, le Plaintiff replie, que voyer fuit, que le dit Michel fuit ſeiſie en fee, ſed per Indenture fait perenter luy & J. S. il covenant en conſideration de natural amour & affection, & pur preſerver del' terres en ſon noſme, d'eſtoyer ſeiſie al uſe luy meſme pur vie remainder al B. Michel fits ſon frere & prochein heir male ove remainder ouſter, & que le dit Michel le Covenantor moruſt, & le dit B. M. done Licence al Plaintiff de mitter eins ſes avers, & le Defendant eux diſtraine, abſque hoc que le dit Michel moruſt ſeiſie en fee, ſur que les Defendant demurre en Ley, & le cauſe de demurrer fuit, pur ceo que le fait ne fuit port en Court, & le opinion del' Court fuit, que ne beſoigne, pur ceo, que le fait n'appertient a luy. 2. Pur ceo que fait fuit plede en enducement del' traverſe, & le fait ne fuit traverſe, & ideo rule done, que ſi ne riens pluis fuit dit, que Judgment ſerroit done pro Querente. (5)

Corbet *verſus* Barnes.

BArnes port treſpas de Aſſault & Battery en London vers Hill en le C. B. & recover, & apres treſpas de Aſſault & Battery vers Corbett en le B. le Roy, & 2 autres pur Aſſault & Battery en Com' Hertford, Hill fuit priſt en Execution, & apres Judgment vers les auter 3 en B. le Roy, le dit Hill paye les damages recover vers luy, & ſatisfaction fuit conus, apres Corbett fuit priſe en Execution, il & les deux auters port Audita Querela monſtrant tout le dit matter, ove averment que le dit Aſſault & Battery en Londres & Hertford fuit meſme le Battery, exception fuit priſt (6)

al bref, pur ceo que Corbett fuit ſolment priſe & les 2 auters nemy, & les dit deux ne poient aver Audita Querela, tanque ils fueront grieve, ſed per Jones, Crooke & Barkeley ceo fuit aſſets bon, car ils fueront tout privy al Judgment, que fuit done vers eux, & le dit fuit fuit pur avoider le dit Judgment. 2. Exception fuit pur ceo null ſureties trove en Audita Querela; & non allocatur pur les ſureties ſont deſtre trove, quant home en execution eſt deſtre diſcharge, ſed icy Corbett fuit en execution, les auters ne fueront priſe. Le maine queſtion fuit ou Audita Querela giſt en ceſt caſe, & pur ceo le point fuit tiel, ſcilicet, que 4 font Aſſault & Battery ſur un home, & il port Treſpaſs de Aſſault & Battery vers un del' parties en Common Banke, & recover, & ad damages agarde & le party priſe en Execution, apres il ſua les 3 auters en auter County, & ad Judgment vers eux, le party vers que le primer Judgment done ſatisfie ceo, & ſatisfaction conuſt, apres un des auter 3 priſt en Execution, & il & les 2 auters port Audita Querela, ou ceo giſt. Et per les dit 3 Juſtices le Audita Querela gut, car coment que pur meſme Aſſault le Plaintiff poyet aver ſeveral Actions, & recover, tamen quant recovery eſt ewe vers un & ſatisfaction, il ne poyet aver auter ſatisfaction, nient pluis quam ou Obligation eſt fait per 2 joyntment & ſeveralment, & le obligee ſue en C. B. un per ſeveral præcipe, & recover, apres ſue l'auter en B, le Roy ſur meſme obligation, tamen ſi un del' eux fiſt ſatisfaction, l'auter avera Audita Querela de avoider execution vers luy, car le Plaintiff n'avera niſi unica ſatisfactio: iſſint icy le Plaintiff poyet aver ſeveral recoveries, tamen ſi un ſatisfie l'auter avera Audita Querela pur avoider Execution vers luy.

Anonymus.

(7) HOme port Replevyn & le value del' biens priſe fuit 1 l. le Baylive priſt 3 l. 10 s. pur pledges, & nemy ſureties & le party port Action ſur le Statute de Weſt. 2. & adjudge per Crooke, Jones & Barkeley, que Action giſt, car il duiſſoit prender ſureties & nemy un pawne.

Girlings Caſe.

(8) ACtion de Treſpaſs de Aſſault, Battery & Impriſonment, le Defendant plede en barre, que un Latitat fuit deliver al Viſcount vers le Plaintiff, que fiſt garrant ſur ceo al ſon Baylive pur arreſter le Plaintiff, que ceo fiſt & per commandment del' Baylive, & en ſon Aide, le Defendant deteine le Plaintiff pur 6 jours

Jours apres per commande le Viſcount luy mitte a liberty, & adjudge q̄ bon, coment il eſt neceſſary pur le Viſcount de retorne le proceſs auterment faux impriſonment giſt vers luy, mes ſi un per garrant del' Viſcount arreſt auter, tamen ſi le Viſcount ne retorne le briefe null Action giſt vers le Baylive, mes per Jones ſi Viſcount n'ad aſcun brief, & fuit garrant de arreſt J. S. al J. D. Action giſt pur ceſt arreſt per J. S. vers J. D. & le Viſcount auxi.

Blake *verſus* Gold.

(9) HOme fuit ſeiſie en fee d'un Meſſuage en Andover in Com' Southampton en tenure & poſſeſſion d'un Hitchcock, & d'un auter Meaſon communiter vocat' le Corner-houſe in Andover avantdit contigue adjacen' al auter Meaſon, & ceo fuit en le tenure d'un Benſon, & un Nott, il deviſe ſon Corner Meaſon en tenure del' Benſon & Hitchcock al Blake & mozuſt; & le queſtion fuit ou l'auter Meaſon paſſe ou nemy, & per totam Curiam il ne paſſe, ſed per Barkeley le moyety del' Corner paſſe, & nemy pluis, ſed per les 3 auter l'entire Corner Meaſon paſſe per le deviſe, car per le premiſſes del' deviſe le Meaſon fuit particularment noſme, & coment l'auter ne fuit en tout voyer tamen le deviſe bon pur tout le Meaſon, & en Trin' enſuant le caſe fuit move arere, & per 4 Juſtices le Corner-houſe paſſe ſolment, & ne riens del' auter Meaſon, & iſſint adjudge.

Le Roy *verſus* Lamferne.

(10) UN Lamferne fuit Indict per 2 ſeveral Indictments devant le Juſtices de Peace al lour Quarter Seſſions, tenus pur le Counte de Wilts, que il eſteant Baylive al Viſcount del' dit County ad priſe 6 s. 8 d. de J. S. & per auter Indictment, que il ad priſe 20 s. de J. D. extorſment, Et meſme le jour que il fuit Indict il fuit miſt a pleder Non Culpable, & trove culpable per un Jury meſme le jour, & Judgment done, que il ſerra fine al Roy en les ſeveral Indictments 40 l. pur cheſcun, & payera damages al party, de que il priſt 6 s. 8 d. 2 s. 8 d. & pur l'auter Indictment 3 s. ſur que il port ſeveral briefs d'erroz: Et Judgment done que le dit ſeveral Judgments ſerront reverſe, primes pur ceo, que le dit Indictments fueront intende deſtre offences encounter le Statute de 23 H. 6. cap. 10. & tamen les Indictments ne expreſſe que ils fueront contra formam Statuti. 2. Pur ceo que Juſtices de Peace ne poient trie un (que eſt Indict) meſme le jour, que il eſt Indict. Vid. Stamford pur ceo 155, 156. 22 E. 4. Fitz. Tit. Tryal, & 4 H. 5. Tit' Inqueſt, & 21 H. 8. Kelway. 3. Pur ceo

que ils done treble damages al party, Et n'eſt trove per le Jury, que il ad ſuſteine aſcun damage, & les Juſtices de Peace meſmes nont power a doner, & Tare damages al party: Nota que eſt deſtre conſider ou damages ſont deſtre recover ſur un Indictment, mes que le party avera Action pur recover damages, auri il neſt clære, ou ceo eſt un offence per le dit Statute, ſur que treble damages omnino ſont deſtre recover.

Wilkinſon *verſus* Meryland.

(11) HOme ſeiſie de certaine terres en fœ, & auri de terres que fuit mortgage, & le jour paſſe deviſe le primer terres al ſeveral perſons en fœ, & pur ceo done Legacies, & ouſter dit, And all the reſidue of my Goods, Chattells, Leaſes, Eſtates, Mortgages, Implements, Houſhold-ſtuff, and other things whatſoever whereof I am poſſeſſed, I deviſe to my Wife toward the payment of my Debts; and I do make her my Executrix; le queſtion fuit, ou le feme ad le Mortgage terre deviſe a luy, Et ſe ad, ou el ad fœ ou nemy: Et Opinio Curiæ fuit, que al meines el nad forſq; pur vie.

Griffith *verſus* Lewys.

(12) GRiffith & ſa feme port le general briefe appoint per l'eſtatute de 12 E. 1. de Rutland appell, Quod ei deforceat vers Lewys pur terres en Com' Cardigan, & fiſt ſon proteſtation, que ils per briefe de Quod ei deforceat proteſtando proſequi en nature de Quod ei deforceat al Common Ley ſolon l'eſtatute de Rutland petunt vers Lewys un Meſſuage 20 Acres terre, 20 Acres præ, & tant Acres de paſture en Com' Cardigan, que un J. S. done al feme & al heires de ſa Corps, & que le dit Lewys deforce, & ſur ceo ils font lour Count, que le dit J. S. fuit ſeiſie en fœ, & done le dit terre al dit feme en tayle, & que el fuit marrie al Griffith, & que le dit Tenant eux deforciat; le Tenant plede en abatement del' briefe, que Quod ei deforceat fuit briefe formatum per Weſtm. 2. que fuit ſubſequent al Statute de Rutland, & ideo il duiſſoit aver un ſpecial briefe ſolon l'eſtatute de Weſtm' 2. & nemy un general ſolon l'eſtatute de 12 E. 1. & Judgment la done, que le briefe abatera, ſur que le dit Griffith, & ſa feme port briefe d'erroz; & il fuit ſovient foits argue al barre, & ceſt Terme les Juſtices deliver lour opinion; tout agræ en opinion, que le briefe fuit bon, que pur ceo le Judgment ſerroit reverſe, & que le Plaintiff en briefe d'erroz procedera en ceſt Court, & que le Tenant a ceo reſpondera, & Judgment fuit pronounce accordant per Jones, en ceſt caſe Barkeley & Crooke tiendront, que un Quod ei deforceat

giſt

gift al Common Ley pur Tenant pur vie ou en Dower, ou en Tayle ſur deforce fait al eux, mes ſi un recovery per default fuit vers eux ils fueront ſans remedy, car ils ne poient aver un brief de droit come Tenant en fee ſimple, & pur remedy ceſt miſchief le brief de Quod ei deforceat per l'eſtatute de Weſtm' 2. ſed ne fuit aſcun neceſſity de agarde ceo, lou il ne fuit aſcun recovery, & ils inſiſt ſur Opinion de Littleton en 33 H. 6, fol. 46. & ils cite Bracton, que parle d'un brief, que ad les parolls Quod ei deforceat; ſed Brampſton & Jones doubt ou Tenant pur vie ou en tayle averoit brief de Quod ei deforceat al Common Ley, ſed ſur diſſeiſin un Aſſize, ou Formedon, ou brief d'entrie; car 2 E. 4. 11. & 10 E. 4. 2. preciſe, que ne gift, ſed voyer eſt que fueront divers briefs al Common Ley en que parolls Quod ei deforciat fueront come brief de precipe in capite, Droit patent' & ſimilia, ſed ceo ne prove que particular Tenant averoit al Common Ley tiel brief.

Sed tout agreæ, que entant l'eſtatute de Rutland appoint un general brief pro placito terræ, & direct un ſpecial proteſtation de ſuer ceo, que ceo ne ſerra extende ſolment al Actions, queux fueront per Common Ley, ou Statute devant 12 E. 1. ſed auxi al Actions done per Statutes apres, & ideo il extende al Quod ei deforciat done per Weſtm' le 2. ideo le Judgment eſteant reverſe, Rule fuit done, que le Tenant reſpondera al declaration le procheyn Terme enſuant.

Anno

Anno Decimo Caroli Regis in Itinere de Waltham.

AT the Juſtices Seate holden upon adjournment the day of April 1636. at Stratford Langton in the County of Eſſex, before the Earl of Holland, Lord Chief Juſtice of the Foreſt, being aſſiſted by the Lord Fynche, Jones, Trevor, Vernon, and Barkeley, the Queſtion grew upon the Bounds of the Foreſt; heretofore by the Grand Jury, Verderors, Regardors, and other Officers of the Foreſt, the Metes and Bounds of the Foreſt were preſented to be from Bowe Bridge to Lateward Bridge, and from Stane-ſtreet to the Thames.

And after hearing of Councell on both ſides, and Conſideration had of divers Records that were produced of either part, it was reſolved by the ſaid Juſtices, that the Metes and Bounds ought to be ſetled according to the ſaid preſentment. If there had been nothing elſe, but the ſaid preſentment, they were of opinion the ſame was not binding, and might be traverſed; But for the Reaſons hereafter mentioned, there was no traverſe or oppoſition to be made againſt the ſaid Metes and Bounds. The Statute of Charta de Forreſta cap. 1. doth enact, that all other Mens Woods, but the Kings own Woods, that were afforeſted before the Coronation of Henry 2. were to be viewed by good and lawful men; and then Statim de afforreſtetur, before the diſafforeſtation there was requiſite a view by lawful Men, which was upon the Conſtruction of the Statute, to be upon a Commiſſion out of the Chancery, and there to be returned, and a Verdict by Oaths of twelve Men or more, was to be taken of the Metes and Bounds of the Foreſt; and then this Commiſſion being returned into the Chancery, and confirmed by the King, and a Proclamation made for the Diſafforeſtation, according to the ſaid Inquiſition, then ſuch Lands and Woods, that were other Mens Lands, and afforeſted as aforeſaid, were diſafforeſted, and untill that were done, the Lands of other Men continued Foreſted.

2. And if at the time of the afforeſtation any Lands were the Kings, and afterward the ſame were alienedfrom the Crown before the Statute of Charta de Forreſta, after the ſame by the ſaid Statute was not to be diſafforeſted.

3. Since the Statute doth grant a diſafforeſtation of other Mens Lands, and that to be upon a perambulation, as aforeſaid, the Subject might de Jure demand a Writ of perambulation, and the King in Juſtice might not deny it; for when a thing is granted, all things that conduce to the obtaining the ſame are granted alſo.

4. When a perambulation was duely made and returned, and allowed, and proclaimed, the ſame was binding, and peremptory againſt the Subject; and admit the ſame were not true, yet the Subject might not de Jure demand and challenge a new perambulation.

5. But the King de Gratia (though he were not bound de Jure) might grant a new perambulation, and if the ſame were granted, and duely executed, the ſame did take away the force of the firſt perambulation, admit the ſame were againſt the King.

6. If there have not been any perambulation of ſome Foreſt, the ſame continueth Foreſt ſtill, as it was before, and the Subject at this day may de Jure claim a Writ of perambulation.

Theſe being agreed upon, the Judges did declare their Opinion, with application to the caſe in queſtion.

Firſt, There was a perambulation duely made and returned of this Foreſt 12 H. 3. within three years of the Statute, and the ſame did agree with the preſentment aforeſaid, and this was binding to the Subject, unleſs the ſame were ſet at large with another perambulation duely made afterward.

The County did ſhew a perambulation made 28 E. 1. and returned into the Chancery, which took away many things from the Foreſt that were contained in the firſt perambulation, and this was confirmed by Charter in Parliament: But on the Kings ſide, there was a Statute 34 E. 1. exemplified under the Great Seal ſhewed, whereby the ſaid perambulation, made 28 E. 1. was repealed, and revoked; and for further confirmation there was a Judgment in the Kings-Bench in the time of 2 R. 2. in a Caſe between the Biſhop of Winton and others, wherein the ſaid Statute of 34 E. 1. was rehearſed, and allowed for a Statute; and that the ſame did annihilate the ſaid perambulation of 28 E. 1. then conſequently, the latter perambulation of 28 E. 1. being taken away by Act of Parliament, the former perambulation of 12 H. 3. was revived, and continueth in force, and is peremptory, and cannot be traverſed, neither can the Countrey demand

de

de Jure any new perambulation; but the King de Gratia may grant, (if he pleaſe) a new perambulation, and the Countrey were adviſed to ſubmit to his Majeſty, and deſire his Grace.

All the Judges ſeriatim did deliver their Opinions openly to the purpoſe aforeſaid; and the Earl of Holland having heard their Opinion openly did allow thereof, and gave Judgment, that the Metes and Bounds of the Foreſt ſhould be according to the perambulation of 12 H. 3.

Some Speeches were between the Judges privately, whether a perfect perambulation allowed by the King, were not peremptory of either ſide, but therein they did not agree.

Termino

Termino Paſch. An. XII. Caroli Regis, *in* Banco Regis.

Cleve *verſus* Vere.

UN Dolle conuſt un Statute ſolon 23 H. 8. devant Seignior Hobart al un Blythe, que moꝛuſt & fiſt Elizabeth Throgmorton ſon Executrix, el ſue un briefe d'extent, & moꝛuſt devant aſcun Inquiſition priſt: Adminiſtration de bonis non Admin' de Blythe fuit grant al un J. D. Inquiſition fuit apꝛes priſt, & retoꝛne, ſur que un Liberat' fuit agarde a deliver poſſeſſion al Adminiſtr' que fuit fait accoꝛdant, il fiſt Leaſe al Defendant, Dolle leſſa al Plaintiff, & tout ceo trove per ſpecial verdict; le darren ſamady les 3 Juſtices, Barkeley, Crooke & Jones deliver lour opinion (abſente Brampſton in Curia Wardor') Crooke argue pur Defendant, que l'extent & Liberate fuit bien fait, Jones & Barkeley e contra. Crooke dit, que fueront deux points, l'un ou Adminiſtr' puiſſoit aver le Liberate. 2. Ou le moꝛt del' Executoꝛ devant l'extent fait, fait ceo voide ou nemy: quant al primer, il dit que Adminiſtr' aſſets bien avera benefit del' Liberate, car coment ſur Judgment ewe vers un per Executoꝛ & moꝛuſt inteſtate Adminiſtratoꝛ n'avera benefit del' Judgment, tamen ſur extent il avera, car null proceſs de Scire facias requiſite ſur extent, ſed ſur Judgment il eſt. 2. Il tient, que l'extent fuit bon, nient obſtant le moꝛt, car il dit, que fuit differences perenter ceſt caſe, & Execution ſur le Statute Merchant; & le caſes miſe del' auter part fueront tout d'un Statute Merchant, & le moꝛt del' Executoꝛ neſt pleadable, neque poyet le Viſcount prender notice del' moꝛt, ou retoꝛne, q̃ il eſt moꝛt: Jones & Barkeley dihont pur le primer point que l'Adminiſtr' navoit privity de prender benefit d'extent ewe en vie l'executoꝛ, & retoꝛne en ſon vie, car neſt aſcun privity enter eux, & ſur ceo ils cite: Brudnells Caſe Cooke pars 5. fol. 10. & 28 H. 8. Bendloes, & 26 H. 7. que ſi Adminiſtr' ſoit, & il recover un dett le inteſtate & moꝛuſt, l'executoꝛ navera le benefit (i)

del' Judgment, & e contra ſi Executor recover & mourſt inteſtate le adminiſtrator del' primer teſtator navera benefit del' ceo: car la neſt privity perenter le Executor & Adminiſtrator, & en le primer caſe, coment fuit privity, tamen le Executor del' Adminiſtrator n'ad aſcun title al choſe recover, & ambideux doient concurre, devant que un prendera benefit del' Judgment. 4 Caroli en ceſt Court baron & feme Executrix ſue Action de dett due al teſtator & recover, & feme mourſt, le baron, coment il fuit privy al Judgment, tamen il ne poyet aver ceſt dett, & ne fuit privity inter luy & teſtator, ideo il navera benefit del' ceſt Judgment, ſed l'executor del' feme avera benefit; & Jones mitte un caſe, que ſi baron & feme recover terres le feme en un real Action, ou le baron neſt entitle deſtre Tenant per le curteſie, le feme mourſt, le baron ne ſuera execution ſur ceſt Judgment ſed le heire: Et Jones dit, que il eſt voyer, q̄ en aſcun particular caſe Adminiſtr' avera benefit del' Judgment ewe per Executor, ſi ad procæde al Execution en vie l'executor, come ſil ad elegit ſur le Judgment ou ad le terres en Execution le Adminiſtr' avera benefit del' ceo, iſſint ſi l'executor ad extent ſur Statute & ad poſſeſſion per liberate, & mourſt inteſtate, le Adminiſtrator del' primer teſtator avera benefit del' ceo, ſed Jones compare extent d'executor devant liberate, al un Judgment ewe per executor devant execution, & come executor mourſt devant execution, le adminiſtr' navera benefit del' ceo, iſſint ſur extent devant liberate, le adminiſtr' navera benefit de ſuer execution per liberate, ſed doit commence de Novo. 2. Point, Jones & Barkeley fueront d'opinion, que per mort del' Executor devant l'extent fait, le potar del' Aiſcount de faire l'extent fuit determin, & que le brief fuit abate, & il fuit un diſcontinuance, & que le adminiſtr' doit aver novell certificate, & al meines novell brief d'extent, & ceo ſur conſtruction del' Statute Staple, & 23 H. 8. & 13 E. 1. de Mercat' & tout les livers, & que ne fuit aſcun difference perenter le caſe de Statute Merchant, & ceſt Statute quant al ceſt point & pur l'eſtatute Merchant le livers ſont clære, vid. 17 E. 3. 1. 11 E. 3. 10. 2 & 3 Eliz. Dyer Regiſter 148 2 R. 3. Dupledges Caſe, & auri 25 E. 3. 2. & de ceſt opinion fuit Brampſton; per que Judgment fuit done pro Querente, & Sanders que fuit Clerke de Petty Bagge de pluis anns, & de grand experience en le conuſt d'extents certefie ſon opinion en ſcript', que l'extent en ceſt caſe fait apres mort executor, & le liberate apres al adminiſtr' fueront voide, & le adminiſtr' doit aver un extent de Novo, & ſur ceo d'aver novell liberate.

Seignior

Seignior Audleys Caſe.

Hill. 10. *Car. Rot.* 142.

(2)

SEignior Audley & Mancheſter fueront joyntenants en fee de terres tenus del' Eveſque de Sarum, le Seignior fuit attaint de Felony, & mozuſt devant entrie del' Eveſque, apres l'Eveſque enter, & leſſa al Plaintiff, que port Ejectione firmæ, adjudge per opinion de Crooke, Jones & Barkeley, (abſente Brampſton) que gift.

Comes Hertford *verſus* Leech.

(3)

LE Roy fuit ſeiſie d'un Foreſt deins le Pariſh de Pewſey in Com' Wiltſhire, il grant ceo al Duke de Somerſet, que vient per mean conveyance al Counte de Hertford, Leech le Rector del' Pariſh de Pewſey libell en le Eccleſiaſtical Court vers le Counte pur diſmes en le dit Foreſt, & le Counte de Hertford port Prohibition vers Leech, & ſon ſuggeſtion fuit, que le Roy Ed. 6. & touts ſes Progenitors Roys d'Angleterre tient le dit Foreſt temps hors de memory diſcharge de payment de tout manner de diſmes, & grant ouſter, ut devant, & le ſole queſtion fuit, ou bon preſcription, & bon ſurmiſe, & tout le Court (abſente Brampſton) apres divers arguments al barre fuit, que ne fuit bon ſurmiſe, ils agree, que le Roy poet preſcribe en non decimando, pur ceo que fuit perſona mixta. 2. Que le Councell de Lateran ne luy lye, niſi ou il voluntarment ſubmitt al ceo, ſed ils dihont, que ceo fuit perſonal priviledge que non ægreditur perſonam, & lour grantee n'avera benefit de ceo, & null difference enter ceſt caſe, & le caſe de Sydowne & Holmes, ſur que un Conſultation fuit grant, & apres Brampſton agree al ceo.

Knight *verſus* Humphreys.

(4)

HOme devile terres al entent de trove un chantry Prieſt, que ad certain Salary de 6 l. 13 s. 4 d. & auxi pur un Obit', que avoit certaine ſumme, & auxi pur bon uſes, & le terre devile fueront de null greinder value al temps del' Statute de 1 E. 6. & antea, quam ceo fuit imploy pur trover le Prieſt, & auxi del' Obit', Et per le Court (abſente Brampſton, que fuit auxi de meſme opinion) tout le terres fueront done al Roy, & le limitation del' bon uſe ne ceo preſerve, coment que le ſtipend del' Prieſt fuit

certaine, & auxi le ſumme pur le Obit', & lour reaſon fuit, pur ceo, que tout le value fuit imploy pur trover del' Preſt, & del' Obit', & ne fuit aſcun ſurpluſage pur le bon uſes.

Clithero Major *de* Londres *verſus* Higgs.

(5) LE caſe en Treſpaſs ſur evidence al barre fuit tiel: le Royne Elizabeth leſſa le Mannor de D. en Com. Oxon' al Sir John Forteſcue pur divers ans (en que un grand Cloſe de grand boys fuit parcell del' Mannor) except tout arbors & tymber: Sir John Forteſcue aſſigne ſon intereſt, & ceo vient al Sir Francis Stoner, le dit Cloſe ad part de ceo en paſture, mes le grand quantity de ceo fuit grand boys, & le Leaſe ad grant del' Herbage, & ceo fuit uſe per le fermor pur ſes Beaſts pur parcell del' ann, le Roy James vende & done le Arbors, & eux tueront ſuccide, apres il grant le Rootes & Stockes del' dit Arbors queux fueront eradicate, le Roy grant le Mannor en fee al Londoners, que grant al Plaintiff, le dit fermor mitte eins ſes avers en le dit Cloſe pur depaſcher le paſture, & ils fæde aſcun foits ſur le petit germins, que commence a creſcer en le dit Cloſe, ſur que le Plaintiff port Treſpaſs vers le Fermor, & l'opinion del' Court (abſente Brampſton en Cur' Wardor') fuit encounter le Plaintiff, car le herbage & feeding appertient al Fermor, & le leſſor ou aſcun que vient deſouth luy ne poyet hinder luy del' ceo per couper del' grand Arbors, & entant que il ne poyet uſer ſon depaſcher ſans Conſumption del' Germins, ceo eſt loyall pur luy; Et 2 ſur non Culpabilis il poyet doner ceo en evidence, ſur que le Plaintiff fuit Nonſue, meſme le caſe fuit devant ſue devant Jones al Oxon', & il deliver meſme l'opinion, & la le Plaintiff fuit Nonſue auxi.

Anonymus.

(6) FEme ſole & J. S. d'un part, & J. N. del' auter part ſubmitte eux meſmes al un arbitrement, le feme prift baron, & adjudge, que ceo eſt countermand del' ſubmiſſion.

Humphreys *verſus* Stotvile.

(7) HOme port Action ſur le caſe & declare, que ſon pier fuit ſeiſie de terres d'enheritance, & que il fuit ſon fits & heire apparent, & le Defendant malitioſe & falſo appell luy Baſtard per que il perde le dit terres, Et adjudge que Action gift, vid. Reports Cooke pars 4. Baniſter & Baniſters Caſe.

Johnſon

Johnſon *verſus* Trumper.

(8) LEſſee pur ans deviſe le terre al ſa feme pur vie remainder del' ans al un auter, le deviſee en remainder per fait grant, done transferre, aſſigne, & releaſe, tout ſon droit, intereſt, terme de ans poſſeſs' & demand en le dit terre al cy en reverſion en fee, Et per Barkeley, Crooke & Jones le poſſeſſion fuit bien extinct en le reverſion, iſſint que apres mort le feme cy en reverſion poyet enter, & aver bon droit: ſed Bra pſton e contra: ſed tamen apres fuit dit a moy, que il fuit de noſtre opinion, en Trinity Terme il deliver ſon opinion iſſint en Court, & adjudge accordant.

Le Roy *verſus* Cage.

(9) LE Roy port Scire facias vers Cage pur repeale un ſpecial Livery, en que le queſtion fuit, ou le Attorney le Roy poyet averre encounter un office retorne, & le Petit bagg ne fuit priſe devant l'eſcheator, ſed miſe eins per un auter, & de aver ceo reſolve, le Seignior Keeper prit le aſſiſtance de Jones, Crooke, Crawley & Barkeley, & apres divers arguments al barre en Court, ſur un private conference al Dureſme Houſe, il fuit agree, & reſolve per Seignior Keeper, Jones, Crooke, & Barkeley, que ceo ne poyet eſtre trye per Pais, mes ſur examination en Court, ſi aſcun tiel choſe fuit, ceo poyet eſtre redreſs, Crawley fuit de contrary opinion, ſed apres il agree al primer opinion, & ſur ceo le Seignior Keeper adviſe Mr. Attorney a waive le former Demurrer, & a prender iſſue ſur le age del' Cage, ſcilicet, ou fuit de plein age ou deins age.

Springe & *auters verſus* Dame Cæſar.

(10) ANne Dame Cæſar fuit Tenant pur vie del' done Henry Hogan ſa primer baron del' advowſon de Eaſt Badenham in Com' Norfolke, reverſion al Robert Hogan ſa fits, il fuit Indenture fait perenter le mere & fits portant date. 2 Junii 10 Jac. per que le dit Robert Hogan Covenant de levier fine del' dit advowſon inter alia al dit Anne a tiel uſes come apres fuit per Indenture declare, & il fuit declare per le dit Indenture, que le dit fine ſerra, & que le dit Anne eſtoiera ſeiſie del' dit advowſon al uſe le dit Anne & ſes heires a touts jours, ſi le dit Robert Hogan ne paie 10 *s.* al primer jour de Sept. prochein enſuant & ſil paya le dit 10 *s.* donque al uſe le dit Anne pur ſa vie remainder al dit Robert Hogan & ſes heires a touts jours, le fine fuit levie accordant en Trinity Terme

Terme enſuant ; 3 Julii enſuant le dit Robert Hogan morust ſans iſſue, & le Dames Day & Downes fueront ſes heires, il eſteant 20 ans & 11 moys de Age, le 10 s. ne fuit paye 1 Sept. & null notice del' Condition fuit done al heires del' dit Robert Hogan, le Eſgliſe devient voide per mort Bankes encumbent la ; el preſent un Mardin que fuit inſtitute & induct, le dit Anne marrie Sir Julius Cæſar, tils 17 Jacobi leviont fine del' dit advowſon inter alia al uſe le dit Anne pur vie remainder ouſter al auters, l'Eſgliſe devient voide per mort Mardin, Sir Julius Cæſar & ſa feme preſent un Gerard, que fuit admitte inſtitute & induct a lour preſentment, & il deins 6 moies reſigne, Springe le fits del' Dame Day & ſa heire en le noſme de luy meſme, & d'un ſon Copercener preſent un Strowde, que fuit admitte inſtitute, & induct, Sir Julius Cæſar & Dame Anne ſa feme portont Quare Impedit, & apres ſolemne argument al barre, & Banke, Judgment done pro Querente per Finch, Hutton & Crawley (Vernon ſolment e contra) Et Springe & Strowde portont brief d'error, & le caſe fuit argue al barre, per le Sollicitor, Charles Jones pro Dame Cæſar & per Germin pro Querente in brief d'error, Et ceſt Terme le caſe fuit ſolemnment argue per les Juſtices, per Barkeley & Crooke al un jour, & per Jones & Brampſton al auter, Et ils tout reſolve pur Defendant, que le Judgment ſerroit affirme, le maine queſtion fuit, ou ſur le primer declaration del' uſe per le Indenture fait perenter le dit Robert Hogan & ſa mere fuit ſeiſie en fee, & devant le 1 Sept. & ils fueront d'opinion que il fuit ſeiſie en fee, & le Condition de payment de 10 s. ou non payment fuit Condition ſubſequent al eſtate, & nemy un Condition precedent ; Et 2 donque poſito que le Condition fuit devenus impoſſible per le mort de Robert Hogan, tamen l'eſtate continue en fee a touts jours. 3. Brampſton & Barkeley tient, que le Condition fuit impoſſible deſtre performe, pur ceo que il fuit perſonal, & lyera perſon de Robert Hogan ſolment, & nemy al ſes heires. Crooke & Jones e contra, pur ceo que un jour fuit limit, & ils ne veient aſcun difference perenter ceo, & le caſe de Littleton chapter Conditions, lou jour de payment per le Feoffor ſur Mortgage fuit limit en certaine & le feoffor morust devant le jour le heire del' feoffor poyet aſſets bien paier le Money, & entant que ne fuit paye l'eſtate continue abſolute. 4. Tout agree, que admitte que le heire puiſſoit paier le argent, que null notice fuit requiſite, car les heires fueront prive al Acts del' aunceſtors, & al fine levie per eux, & les heires al lour peril doient prender notice del' Condition. 5. Il fuit agree per eux tout, que le Declaration del' uſe per un Infant, ſur ſon fine fuit bon, & luy liera & auſi le conuſee eſteant un Infant fuit lie a performer le Condition auſibien ſicome il fuit de plein age : ſed

Jones

Jones argue per voy d'admittance; que ne fuit Condition ſubſequent ſeo precedent, donque ſi le Condition devient impoſſible per act de Dieu le fee ne unque accruera, mes (come devant il tient) le heire puiſſoit performe le Condition, & entant que il ne fiſt, le Condition fuit enfreint del' part del' heire le Conuſor ideo fee accruera aſſets bien, un auter point fuit per voy de admittance, admitte que null fee al aſcun temps fuit en le Dame Cæſar, tamen le Action de Quare Impedit bien giſt; & le point pur ceo fuit, que Tenant pur vie de advowſon levie fine, l'Egliſe devient voide, & Tenant pur vie preſent, & eſt admitte & induct, & apres le incumbent reſigne deins 6 moies, & cy en reverſion preſent, le Tenant pur vie en Quare Impedit doit recover vers luy aſſets bien: Primes ils agree, que ſi grantee pur vie d'un advowſon grant ceo en fee, ceo neſt forfeiture, mes ſil levie fine del' ceo, il eſt forfeiture: 15 E. 4. 9. 14 E. 3. Avowry 217 vel 117. 31 E. 3. Grant 6 & Cooke ſuper Littleton 251. mes le fine ne diſplace le Reverſion, mes il continue Tenant pur vie le reverſion en reverſioner, et le reverſioner ad election de prender advantage de forfeiture ou nemy, & entant que il ne fiſt, tanque l'Egliſe devient voide ceſt preſentment eſt un chattle veſted, & ſetled en le grantee pur vie (vide 17 E. 3. 5. & 11 E. 3. 44. que ad un ſemblance al contra) & maxime come le caſe eſt icy, entant que le grantee pur vie ad preſente, & ad ſon Clerke admitte inſtitute & induct, & entant que le grantee ad un foits obtaine ſon Clerke inſtitute & induct, quant l'Egliſe devient voide arere, il ad bon cauſe de preſent, car le reverſioner ad ſurceaſe, & perde ſon title de forfeiture & ore il eſt tenuſt pur ſoyer, tanque Tenant pur vie morust, ideo ſur tout le matter per les 4 Juſtices le Judgment fuit affirme.

Termino

Termino Trin. An. XIII. Caroli Regis, *in* Banco Regis.

In *Trinity Terme* 12 *Caroli Regis*, ſeveral Writs were directed to theſe perſons hereafter named to be Serjeants; to Mr. *Milward*, Mr. *Wilde*, Mr. *Nathaniel Finch*, Mr. *Clearke*, Mr. *Foſter*, Mr. *Godholt*, Mr. *Turner*, Mr. *Creſwell*, Mr. *Rives*, Mr. *Boane*, retorned in *Michaelmas Terme*; and then upon their appearance they were adjourned to *Hillary Terme*, and before that time, Mr. *Germyn* had a Writ retorned in *Hillary Terme* upon the day of Adjournment, and then all appeared, and were Sworn in *Chancery*, and kept their Feaſt in *Middle-Temple Hall* upon *Thurſday* following.

Nathaniel Finch never read, yet by conſent had his Antiquity, as he was of the Innes of Court, *Boane* did not Read, and he had not his Antiquity. Mr. *Germyn* had Read, and was ancient to ſome; yet in reſpect his Writ bore date after the firſt day of appearance, loſt his Antiquity. There was no Reading that Summer by reaſon of the Plague. They gave Rings, the Poſie was, *Rex animat Legem.*

Mr. *Glanvil* received a Writ dated in *Eaſter Terme* 13 *Caroli*, and appeared the firſt day of the Terme, and in the *Common-Pleas* upon *Wedneſday*, and then kept his Feaſt at *Serjeants-Inn* in *Chancery-Lane*: he came to *Serjeants-Inn* upon *Tueſday* Morning, and then rehearſed his pleding before all the Judges (*Baron Denham* and *Baron Trevor* excepted) and the two Chief Juſtices put on his Coife and Hood, but made no Speeches; The Queen was Demandant in a Writ of Right, the Arch-Biſhop of *Canterbury* Tenant, *&c.*

Snape *verſus* Turton.

(1) Le caſe enter Snape & Turton pur terres en Hales Owen en Com' Salop, pur le terres d'un Roberts fuit adjudge pro Querente, & ceux points reſolve per Curiam: Primes home per Indenture

denture covenant de levie fine al uſe luy meſme pur vie ove divers remainders, un al ſon fits en tayle, remainder al Seignior Leiceſter en tayle, remainder al Seignior Warwick en tayle, remainder al Royne en fee, & fine fuit levie al ceux uſes, & en le Indenture fuit un proviſo, que ſi grant bargaine ou vende le dit terre al aſcun auter ou auter uſes il terra al ceux uſes, il fiſt Leaſe pur ans per un moies, & reherſant ſon power, bargaine & grant le Reverſion en fee al un auter in fee. 1. Primes il fuit reſolve, que le Leaſe pur ans ſuſpend le proviſoe, mes quant al Leaſe pur ans ſed ſerra bon pur le Reverſion in fee en preſenti. 2. Que le grant del' Reverſion eſt bon revocation, nient obſtant que leſſee pur ans attorne, & ceo enurera nemy come actual grant de Reverſion al Common Ley, mes come un Declaration d'un novell uſe per virtue del' proviſoe, que determine le former uſes, & le fine ſerra al uſe le grantee del' Reverſion. Vide Scroopes Caſe Cookc pars 10. 3. Que per le grant del' Reverſion per fait enroll, eſt bon revocation, ceo revoke le uſes limit en remainder al Roy ſans office ou aſcun auter act. 4. Le Plaintiff declare ſur Leaſe del' pier & fits, & il appiert, que le pier fuit Tenant pur vie remainder al fits, per le verdict, & entant que le concluſion del' ſpecial verdict ou fuit bon revocation ou nemy, ideo le Court ne prender aſcun notice del' ceo.

Allen *verſus* Naſh.

UN Huntley fuit Rector de S. en Com' Kanc', & il fuit deprive per le hault Commiſſion, & un auter admitte inſtitute & induct, Huntley enter en parcell del' Glebe terre, & fiſt Leaſe pur ans al Allen, que fuit ouſte per le Defendant, que claime deſouth le moderne perſon, & ſur conference de tout les Juſtices, ils agree una voce encounter le Plaintiff, ſans difficulty, & le Chief Juſtice deliver lour opinion overtment en Court, que le Eccleſiaſtical Commiſſion poet bien pur bon cauſe deprive un Eccleſiaſtical Perſon de ſon Benefice, auſibien come l'Eveſque ou Ordinary. 2. Que quant le Jury trove, que il fuit deprive, coment le ſpecial cauſe n'appiert, neque en le verdict, neque ſentence, tamen il eſt aſſets bon, vid. Cawdries Caſe Co. pars. 5. (2)

Dixie *verſus* Beaumont.

LE very caſe de Beaumont en le 9 part del' Cookes Report vient en queſtion perenter leſſee del' Dixie, que marrie le heire generall, & Sir Henry Beaumont le heire male, & ceo fuit ſur ſpecial verdict trove al barre, & il fuit ſovient foits argue al (3)

barre, & ceſt Terme argue al Banke per Barkeley & Crooke, Barkeley argue ove le reſolution report, & Crooke e contra, & ſur motion fait per le Court devant le argument de Jones, & le Chief Juſtice, le matter fuit compromit, & iſſint lour argument fuit ſpare, Jones fuit d'opinion encounter le reſolution, car admittant, que feme fuit Tenant en Tayle, & ſes iſſue barre per le fine del' baron, & que un deſcendible quality ne poyet eſtre done al dit eſtate tayle, tamen le perſon del' feme ne fuit diſable per l'eſtatutes de 4 H. 7. & 32 H. 8. mes ſa eſtate, ideo el cybien come un eſtranger poet prender novel eſtate en remainder que ſerra deſcendible al ſes iſſues, & ſes iſſues ſerra title ſur ceſt done en remainder, & come iſſue del' donee en remainder; & nemy per le ancient, & primer eſtate tayle que fuit barre per le fine, & come ſemble a luy il fuit un plaine caſe.

Anonymus.

(4) HOme Covenant per Articles ſur ſon marriage, que ſi ſa feme moruſt ſans iſſue per luy engender deins 2 ans apres le Marriage, que il paiera 200 l. al J. S. le feme moruſt ayant iſſue & il neſt deins les 2 ans, per opinion del' Jones, Crooke & Barkeley, il neſt lie a paier le 200 l. car quant el moruſt ayant iſſue, & il neſt deins 2 ans, le feme ne ſerra dit eſtre mort ſans iſſue, & iſſint ils certefie le Court del' Chancery ſur reference fait al eux.

Dodſon *verſus* Glyn.

(5) IL fuit agree perenter les Juſtices ſans argument, q̃ le clauſe en un diſpenſation a tener 2 Benefices dumodo non eſtant ultra 10 milliaria l'un del' auter ne fiſt condition de faire le primer voide.

Evans & Finches Caſe.

(6) HOme en le jour enfreint le Chamber de Mr. Audley en le Temple, & prift 200 l. & ultra hors de ceo, null home eſteant en le Chamber, ſed fueront divers homes en auter Chambers, & il fuit endict al Newgate & trove culpable; & il demande Clergie, Crooke eſteant la adviſe de ceo, & per Certiorari le matter fuit remove en Banke le Roy, & l'opinion del' tout le Court fuit, q̃ il navera ſon Clergie, tamen fuit agree q̃ ſi ceo fuit en le Nuit, il ſerra Burglary, coment null fuit en le dit Chamber, ſed en auter Chambers, iſſint que al aſcun purpoſe tout le Chambers ſont prift pur un Meaſon, & al aſcun purpoſe ſeveral Meaſons & Habitations.

Termino

Termino Mich. An. XIII. Caroli Regis, *in* Banco Regis.

After the Death of *Calthrop*, *Rowland Wandesford* in *Michaelmas Terme Anno* 13 *Caroli*, was made Attorney of the *Wards*, and Kings Sollicitor.

Sherlock *verſus* Chandrie. *Hill.* 13. *Rot.* 618.

EN replevyn pur pyſell del' biens en 4 Acres de terre en Bromley in Com' B. le Defendant avowe, pur ceo, que le dit 4 Acres fueront tenus de luy come de ſon Mannor de S. en meſme le County per Fealty rent & ſervice del' Court, & pur rent arreare avowe; le Defendant confeſſe le tenure, ſed per auter ſervices & traverſe le tenure modo & forma, & ſur ceo al iſſue, & trove pur le Defendant: en arreſt de Judgment fuit alledge, que le venire facias fuit de Bromley, ou duiſſoit del' Mannor vel de ambideux, & per Crooke, Barkeley & Jones, (abſente Brampſton) il duiſſoit eſtre del' Mannor, & del' Ville, mes ceo fuit helpe per l'eſtatute de 21 H. 8. car le Ville fuit bien, & ideo part fuit bon; ceo fuit ſur bzief d'erroz hozs de C. B. & Judgment affirme. (1)

Samn *verſus* Bigg. *Trin.* 13. *Car.* *Rot.* 1009.

HOme reteine J. S. ſon ſervant en Husbandry, & le præd. home port Action ſur le caſe, & fiſt mention en ſon Declaration, que fuit ſon ſervant en Husbandry, & behave luy meſme verement, & le Defendant a ſlander luy, & a port luy en diſcredit ove ſon maſter parle que il fuit un Cozening Knave, and had Cozened his Maſter, Et fuit move en arreſt de Judgment, q̃ un Action ne giſt pur les parolls, ſed Jones, Crooke & Barkeley e contra, Et ils done Judgment pro Querente. (2)

Nevilon *verſus* Whitby.

Trin 13. *Car. Rot.* 1694.

(3) HOme port Dett ſur Obligation de 100 l. pur payment de 54 l. demy ann apres, le Defendant dit que fuit corrupt agreement perenter eux pur Loane de 50 l. pur demy ann, & que il paya 4 l. pur uſe, & ſur ceo le dit Obligation fuit fait, & iſſint le obligation voide, le Plaintiff dit que il fuit agreé enter eux que le 50 l. ſerra pay un ann apres, & que le 4 l. ſerra pur uſe d'un entire ann, & un J. S. fit obligation ut devant, & il penſt que fuit pur payment al fine del' ann ſolon le dit agreement, & que il fuit illiterate, & traverſe le corrupt agreement alledge per le Defendant modo & forma, ſur que Defendant demurre, & opinion de Jones, Crooke & Barkeley fuit, que Plaintiff doit aver Judgment, car le corrupt agreement fuit le ground del' matter, & ſi ne fuit tiel agreement le obligation bon.

South *verſus* Griffith.

(4) LE Bayle ne poient joinder en un brief d'error de reverſe le Judgment vers le principal, & auter Judgment vers le Bayle, ſed le Bayle avera error ſole pur reverſe le Judgment vers eux, & le principal auter brief a reverſe le primer Judgment, & un brief port per le Bayle a reverſe le primer & ſecond Judgment fuit tenus male.

Jacinth Sacheverell *verſus* Ralph Porter.

Trin. 11. *Car. Rot.* 324.

(5) JAcinth Sacheverell port Treſpaſs vers Ralph Porter pur enfreinder de ſon Cloſe & Conſumpt' del' ſes Herbs ove ſes Beaſts en Cripleſton in Com' Stafford, le caſe fuit tiel ſur le pleding, & ſpecial verdict; Foulke Pembridge fuit ſeiſie de Withenhall Waſte in Cripleſton & le Prior de Stone fuit ſeiſie en droit de ſon Eſgliſe de 3 Meſſuages, 100 Acres terre, 30 Acres præ, & 100 Acres paſture in Stullighton in Com. prædict., & iſſint ſeiſie, le dit Foulke per ſon fait 2 H. 4. grant al dit Prior, & ſes ſucceſſors comm' Paſture pur les avers pur luy meſme, & ſes ſucceſſors, & ſes Tenants de Stullighton en le dit Waſte, le Priory fuit diſſolve, & vient al Roy H. 8. & per diſcent al Royne Elizabeth

zabeth, que per les Letters grant ceo al Rowland Hill en fee, & de luy per meſne Conveyance vient al un Warlowe, que enfeoff le Defendant de 33 Acres parcell del' terres en S. cum pertin' en fee, & il mitte eins ſes Beaſts en le dit Waſte terre a prender ſon Common, & Jacinth Zacheverell eſteant owner del' Waſte port Treſpaſs, & adjudge ſur argument al barre per Rolls & Serjeant Milward, per tout le Court, Brampſton, Jones, Crooke & Barkeley, que Action ne giſt, & per tout, ceux points. Primes quant le dit Foulke grant al Prior pur luy & ſes Tenants de Stullighton Common de Paſture, ceo fuit common appurtenant pur tout Beaſts Commonable, & ceo port eſtre auxibien per grant come per preſcription. 2. Sur grant de parcell del' terre ouſter, le Common neſt extinct, ſed ſerra apportion, vide Cooke pars 8. Wiat Wildes Caſe. 3. Que per feoffment de parcell de terre cum pertin' ſans fait, le Common paſſe come appurtenant. 4. Que le grant le Roy del' terre, & tout Common a ceo appurtenant le remainder paſſa bien.

Seeley *verſus* Hopkins.

SEeley port Action ſur le caſe vers Hopkins, & ſa feme pur ceux parolls parle per le feme que Seeley is a Witch, and hath bewitched me and my Mother, and I will never marry him; & fuit move en arreſt de Judgment, que ceux parolls ne voilent maintaine Action, mes quant il eſt adde, que il ad bewitched le Defendant & ſa mere, ceo ſerra intende que il ad bewitched eux en lour corps & ceo eſt puniſhable per le Statute de 1 Jac., ideo per Brampſton, Jones, Crooke, & Barkeley. Judgment fuit done pro Querente. (6)

Sir John Fitzherbert *verſus Sir* Edward Leech.

EN le caſe de Leſſee de Sir John Fitzherbert vers le Tenants de Sir Edward Leech pur terres en le County de Derby ſur evidence al Jury il fuit agree per totam Curiam, que le caſe de Fitzherbert Cooke pars 5. 79. B. (eſteant meſme le caſe ore en queſtion) fuit bon Ley, & que le garranty ne liera le remainde en tayle, car fuit quaſh per diſſeiſin, & ſur Covyn enter le parties. 2. Que ſi l'iſſue en tayle devant entrie releale ove garranty al diſſeiſor ſon pier, que ceo eſt diſcontinuance, & tolle l'entrie del' ſon iſſue ſans garranty, & il eſt miſt a ſon Action. 3. Si diſſeiſor d'un eſtate tayle fiſt bargaine & ſale per fait enrolle, & l'iſſue en tayle releaſe ove garranty, ceo eſt diſcontinuance, coment neque le bargainee ad enter, & ad poſſeſſion, neque l'iſſue en tayle ad un foits (7)

eſtre

eſtre ſeiſie per force del' Tayle. 4. Fuit auter point move, ſcilicet, que le fits en remainder en tayle eſteant hors de poſſeſſion leve fine al eſtranger al uſe le Conuſee, ou ceo barre le diſſ. Buckler & Harvys Caſe eſt, que il ſerra barre, ſed les Juſtices ne deliver aſcun opinion, & le Jury trove pur le leſſee del' Sir John Fitzherbert: En ceſt evidence fuit move, que Tenant pur vie, remainder pur vie, remainder en tayle, reverſion al droit heires Tenant pur vie, ils font Leaſe pur ans al J. S. que fiſt feoffment en fee al Richard Fitzherbert a que le Tenant pur vie, & ceſtuy en remainder pur vie releaſe ove garranty, & ceo ove Covyn a barre cy en remainder en tayle, que fuit heire apparent, & fits al cy en remainder pur vie, & auxi heire apparent apres le mort luy en remainder pur vie, al Tenant pur vie, & ceſtuy en remainder en tayle, Quid operatur, & ſemble a moy, que ſon entrie ne fuit loyall, car ne fuit aſcun forfeiture en le caſe, & ſur diſſeiſin al Tenant pur vie, remainder pur vie, remainder en tayle, ceſtuy en remainder en tayle ne poet enter, neque pur forfeiture, neque a reduce ſon eſtate, a que le Chief Juſtice & Crooke ſemble d'aſſent, ſed Barkeley, que il poyet enter a reduce ſon remainder ſur le reverſion, ſed ſur tout le matter ſemble a moy avoit, & pur ceo mon reaſon eſt, q̃ coment le releaſe ne liera ceſtuy en remainder en tayle, tamen quant Tenant pur vie, remainder pur vie, remainder en tayle, reverſion en fee al Tenant pur vie fuit diſſeiſie, & il releaſe al diſſeiſor, & apres le mort le Tenant pur vie, il en remainder en tayle enter, il ad reduce ſon remainder en tayle, ſed le reverſion en fee fuit en le diſſeiſor, & donque ſon bargaine & ſale a Leighton fuit ſolment bon pur ſon vie & nemy ultra, & apres ſon deceaſe ſans iſſue le diſſeiſor avoit le reverſion en fee, que fuit Richard Fitzherbert avoit le melior title, ſi ne riens pluis ad eſtre fait, mes Richard fiſt feoffment al uſe le primer Tenant pur vie, pur ans, ſil vive cy longe, remainder al cy en remainder, pur vie ſil vive cy longe, & apres al uſe le feoffees durant le vie del' cy en remainder en tayle, ſur truſt que il prendera les profits, & apres al 1, 2, 3, 4, 5, 6. fits en tayle, remainder al Nicholas ſon frere en tayle, remainder al Anthony ſon ſecond frere en tayle, remainder en fee al Anthony, & donque ceſtuy en remainder en tayle enter, il avoit eſtate tayle, remainder en tayle al Nicholas q̃ morust ſans iſſue, remainder en tayle al Anthony, reverſion en fee al Thomas Fitzherbert, cy primer en remainder en tayle come heire al Tenant pur vie, & il bargaine en fee al Leighton, il avoit ſolment un fee determinable, & ne diſturbe le remainder ultra & quant il fiſt bargaine & ſale ultra, il ad fee determinable, & le remainder al Anthony ne fuit diſturbe, & ſi ne riens ad eſtre en le caſe, Sir John Fitzherbert puiſſoit enter aſſets bien apres le mort le bargai-

nee

nœ ſans iſſue: Mes Anthony eſteant en remainder en tayle releaſe ove garranty al bargainœ, & ceo fuit un lineall garranty; ſed le reſpons al ceo eſt que le releaſe ne continue pluis longe quam l'eſtate continue, & ceo fuit cy longe que le primer Tenant en tayle avoit iſſue, & cy en remainder fuit en vie, car le ſecond en remainder ne fuit diſcontinue, & quant a ceo le caſe neſt pluis, quam Tenant en tayle, remainder en tayle, reverſion en fee, al primer Tenant en tayle, le primer Tenant en tayle bargaine & vende, & le bargainœ avoit baſe fee durant l'eſtate tayle, remainder en tayle nient eſteant diſplace, & le bargainee avoit Fee-ſimple, & donque cy en remainder en tayle releaſe ove garranty, per ceo l'eſtate tayle ne fuit diſcontinue, neque deveſt, & per ſon mort le garranty fuit determine auri, & ſil ſerroit priſe, que entrie del' Thomas Fitzherbert le primer en remainder fuit per reaſon del' truſt ſur feoffment, donque riens paſſa per ſon bargaine & ſale en poſſeſſion, & donque n'ajant entee n'avoit aſcun poſſeſſion ou eſtate, ſur que le releaſe, & garranty enura, ideo l'entrie del' fits del' releaſor loyall.

Le caſe avandit come appiert a moy ſur l'evidence fuit come enſuiſt.

Sir Thomas Fitzherbert, John Fitzherbert, & Richard Fitzherbert fueront 3 freres, & fits del' Anthony Fitzherbert le Judge, John avoit iſſue Thomas, Nicholas, & Anthony, & Anthony avoit iſſue Sir John Fitzherbert, Sir Thomas Fitzherbert fuit ſeiſie en fee del' Mannor de Over Naply, & auters terres en le Countie de Derby, 20 Eliz. en Conſideration de Marriage de Thomas Fitzherbert, convey ceo al uſe luy meſme pur vie, remainder al John pur vie, remainder al Nicholas en tayle, remainder al Anthony en tayle, le remainder al droit heires del' Sir Thomas, apres Thomas Fitzherbert Chivaler, & John ſon frere font Leaſe pur ans al J. S. que enfeoff Richard Fitzherbert, a que Thomas Fitzherbert Chivaler, & John releaſe ove ſeveral garranties, & tout ceo fuit fait al intent a create collateral garranty a lier le remainder del' Thomas Fitzherbert le fits del' dit John Fitzherbert; Richard Fitzherbert fiſt feoffment en fee al Harper, Walter Herringham, & auters al uſe Sir Thomas Fitzherbert pur 60 ans, ſil cy longe vive, donque al uſe le feoffees durant vie Thomas le fits, ſur truſt, & Conſideration que le dit Thomas prender a le profits durant ſon vie remainder, al 1, 2, 3, 4, 5, 6. fits del' dit Thomas en tayle reſpective, remainder al Nicholas Fitzherbert en tayle, remainder al Anthony en tayle, remainder al droit heires Sir Thomas, Thomas Fitzherbert (come fuit teſtifie per un teſtmoigne) enter generalment, Sir Thomas & John mortuſt, ont le dit Thomas eſteant lour heire, Thomas enter' en le terre & (come le

Jury

Jury penſe) per virtue del' dit Truſt, & nemy per force del' ancient remainder, & il levye un fine al Topliſts, & il eſteant en poſſeſſion bargaine, & vende per fait enrolle al W. Leighton, que devant entry bargaine, & vende per fait enrolle al Cooke & ſa mere, queux ne entront; Nicholas morust ſans iſſue, Anthony per fait ove garranty releaſe al Cooke, & ſa mere: Thomas Fitzherbert morust, apres un fine levie per Cooke, & ſa mere al Counte de Pembroke, & proclamation fait, & 5 ans paſſe, mes Sir John eſteant deins age fait ſon claime, & enter deins le 5 ans, il leſſa al Plaintiff, & port Ejectione firmæ vers Tenant de Sir Edward Leech, que claime deſouth le dit Conveyances.

Ieo miſprise le caſe en ceſt point, que le remainder fuit in Sir Thomas Fitzherbert, ou revera le remainder fuit in Thomas Fitzherbert le Nephew.

Kniveton *verſus* Katham.

(8) HOme fiſt 3 ſes Executors un fuit de 18 ans d'age, J. S. fuit oblie al teſtator en 100 l. pur payment de 52 l. al un jour, & morust, le argent nient pay al jour, le Infant Executor receive le 52 l. & fiſt releaſe del' Bond, & apres il, & auters Executors portont Dett ſur le obligation, & le obligor plede en barre le releaſe del' Infant Executor, & per Brampſton, Jones & Barkeley, le releaſe ne fuit bon, car le Dett ſur le forfeiture fuit 100 l. & acceptance per enfant del' meinder ſumme & releaſe ſur ceo neſt bon, car il doit aver plein ſatisfaction del' Dett, que fuit 100 l. autrement ſon releaſe neſt bon, ſed Crooke e contra, & jour done, ſi ne riens pluis dit que Judgment ſerroit done pur le Plaintiff.

Anonymus.

(9) HOme declare en Ejectione firmæ de una pecia paſture continen' ducent' & unam Acram terre ſive plus ſive minus jacent' inter terres Briſtoll, & ceo apres verdict done fuit tenus male, & nihil capiat per Billam.

Sir

Sir George Sandys *verſus* Blodwell.

UN matter hors del' Chancery fuit referre al moy meſme, Crooke & Barkeley, enter George Sandys Mil' Balnei, & un Blodwell: Un Accompt fuit fait perenter Freeman teſtator Sandys, & un Blodwell (ambideux eſteant Merchants) & le dit Blodwell conus 1200 l. deſtre arreare, ſed Freeman claime pluis, devant le entire accompt fine, Freeman morust, ſon Executor exhibit Bill en Chancery vers Blodwell, & il plede en barre le Statute de Limitation, & nous certifie, que il ne fuit barre, pur ceo le account ne fuit fine, & auxi ceo fuit perenter Merchants. (10)

Termino Hill. An. XIII. Caroli Regis, *in* Banco Regis.

Kelland *verſus* White.

Trin. 13. *Car. Rot.* 1626.

(1) EN Ejectione firmæ le Plaintiff declare que un John Arundell fuit ſeiſie en fee, & demiſe a luy pur ans, & le Defendant luy eject : le Defendant plede, que longe temps devant Arundell ad aſcun choſe, un J. S. fuit ſeiſie en fee, & deviſe al ſon fits en tayle, & mozuſt, & fits enter, & mozuſt ſeiſie, & de luy deſcend al Defendant come ſon fits, & heire, & il enter & fuit ſeiſie, uſque Arundell enter ſur luy, & luy diſſeiſe, & demiſe prout, & Defendant re-enter ; le Plaintiff confeſſe le deviſe en tayle, & que le fits enter, & levy fine ove garranty al un, de que Arundel claime, & demiſe prout, ſur que Defendant demurre, & per Barkeley, Crooke & Jones le demurrer fuit bon, car il n'ad confeſſe & avoid le barre, niſi per un argument, & il duiſſoit traverſe le diſſeiſin.

Termino

Termino Paſch. An. XIV. Caroli Regis, *in* Banco Regis.

Hughes *verſus* Bennet.

HOme Covenant per Indenture, que il ferra Conveyance de terres, que nient obſtant aſcun Act fait per luy il avoit bon eſtate a conbey ceo al uſe un feme pur ſa vie pur ſa Jointure, remainder ouſter, & que ceo fuit del' anuel value de 200 l. & per Curiam le 2 part de Covenant eſt abſolutement nient reſtraine, al aſcun Act fait per le Covenantor, ceo caſe concerne Richard Jones fits Iſaac Jones. (i)

Termino Trin. An. XIV. Caroli Regis, *in* Banco Regis.

Le Roy *verſus* l'Eveſq; *de* Londres & Baldcock.

(1) LE Roy port Quare Impedit vers l'Eveſque de Londres & Samuel Baldcock pur le Eſgliſe de Grinſteed in Com' Eſſex, que fuit Eſgliſe del' value de 5 l. & counta que le Roy fuit ſeiſie en fee del' advowſon del' dit Eſgliſe, & preſent le dit Samuel, que fuit admitte, inſtitute, & induct, & que apres le dit Baldcock prift l'Eſgliſe de Stonway, & fuit a ceo admitte, inſtitute & induct, ratione cujus l'Eſgliſe de Grinſteed fuit voide, & iſſint appent al Roy a preſent: l'Eveſque claime riens niſi come Ordinary, le Defendant Samuel confeſſe le Title del' Roy en omnibus, mes il plede que devant Action port, & apres le Induction al auter benefice l'Eveſque de Canterbury grant un Diſpenſation a luy a reteine les dit 2 Benefices & le dit diſpenſation nemy valere &c. ſi fuit devant inſtitution & induction al darren Benefice, & le Attorney le Roy demurre ſur ceo, & Judgment done pur le Roy, en le Common Banke, & ſur ceo un briefd'erroy fuit port; ceſt caſe fuit argue per Mallet pro Querente, & per Henden pur Defendant, & le rule del' Court fuit, Quod Judgment ſerra affirme, car fuit reſolve per le 4 Juſtices, que coment ceo ne fuit avoidance per 21 H. 8. pur ceo l'Eſgliſe fuit deſouth le value; tamen il fuit avoidance per le Cannon Ley ipſo Jure ſans aſcun deprivation, iſſint que le Patron poyet preſente ſil voilt ſans aſcun ſentence de Deprivation, pur ceo Vide Hollands Caſe pars 4. & Digbyes Caſe pars 4. Co. & 24 E. 3. 30. 9 E. 3. 22. 5 E. 3. 9. 14 H. 7. 28. Fitz. N. B. 34. 11 H. 4. 59. 60. Et l'Eſgliſe eſteant un foits voide, quant al Patron de preſent, le Diſpenſation vient trope tarde, & ne poyet reſtore le party al Benefice, neque prevent le Patron de ſon benefit a preſenter; al auter jour, Heath offer de move ceo arreare, ſed le Court ne voylet Dyer cy, ſed affirme le Judgment abſolute. Semble a moy clearment que per le inſtitution & induction

duction al 2 Benefice, le primer eſteant deſouth le value de 8 l. le primer Benefice fuit voide, auribien come ſi fuit ultra le value, mes le difference eſt en le darren caſe, le Patron eſt de prender notice al ſon peril, car eſt voide per Act de Parliament, & le parolls ſont que ſerra voide, ſicome le incumbent fuit mort: & ſi ne preſentera deins 6 moys, le Benefice ſerra en laps al Eveſq; & donque al Metropolitan, & donque al Roy: Mes en le primer caſe, il ne fuit aſcun laps, mes le Patron poyet ſil voille preſenter, & l'Eveſque eſt tenus de luy admitte, & inſtitute, autrement il ſerra ſubject al un Quare Impedit; Et come ſemble a moy, ſi Eveſque done notice de priſell del' 2 Benefice al Patron, ſil ne preſente deins 6 moys il ſerra un laps, come ſur deprivation, ou reſignation, & ſi le Benefice ne fuit voide, mes doit eſtre deprivation, donque le preſentation & inſtitution ſur ceo ſerra t... voide inſtitution, quod non eſt ita, car le primer inſtitution, & incumbency eſt fait voide per priſell del' 2 Benefice, & ſi fuit iſſint que le primer eſt voide per inſtitution al 2, le diſpenſation, que done licence a luy pur reteiner del' primer quant ceo fuit voide devant ne voille eſtre d'effect.

Lloyde *verſus* Gregory.

LE Deane & Chapter de Peterborough fiſt Leaſe d'un Rectory, (2)
& certaine terres al un E. Kirby pur 55 ans, & apres le Deane & Chapter de Peterborough fiſt Leaſe en Reverſion, al un Agnes Peirſon pur 99 ans, rendant rent, que per meſne Conveyance vient al John Shepheard & William Shepheard, & les dit Leaſes fueront fait devant 13 Eliz. apres 29 Eliz. le dit Shepheards l'un eſteant de 10 ans, & l'auter de 11 ans ſurrender lour Leaſe al Fletcher donque Deane & le Chapter, & priſteront novell Leaſe pur tant de ans, & pur autiel rent & covenant come fuit avener del' fine conteine en le Leaſe de Agnes Peirſon, apres le Leaſe de Agnes Peirſon, expire, les dit Shepheards adonque eſteant de plein age enter, & claime per le 2 Leaſe, & ils paiont rent al Deane & Chapter, & apres Fletcher fuit remove & un auter fuit Deane, il & le Chapter accept le rent, apres enter & font Leaſe al un, que enter ſur le dit Shepheards, ils re-enter, & font Leaſe al Lloyd, & il fuit ouſte per Gregory le Defendant, que fuit Leſſee del' one Deane & Chapter, ſur que Ejectione firmæ port, & tout ceo trove per ſpecial verdict, & ceſt Terme, le caſe fuit argue per Whitlock pro Querente, & per Maynard pur Defendant, & ceux points fueront move, & argue per le Councell. Primes un Infant eſteant Leſſee pur ans del' Deane & Chapter apres 13 Eliz. priſt novell Leaſe de eux pur terme de ans & autiel Rent come devant,

vant, & apres l'Infant al plein age agree al 2 Leaſe, ou le primer Leaſe fuit determin; & agree per Crooke, Jones & Barkeley, (abſente Brampſton) que le ſecond Leaſe fuit voide, & le primer Leaſe continue ſtill, & ceo fiſt fine del' caſe: le 2 point move fuit, ou Leaſe per Deane & Chapter, nient garrant per 13 Eliz. ſerra voide durant le die del' Deane, ou ſolment voidable per le ſucceſſor. 3. Un ad Leaſe en future a commencer del' Deane & Chapter fait devant 13 Eliz., il poſſ Leaſe pur terme de tant ans, come il avoit devant deſouth meſme le Covenants, & rent, come devant, ou ceo fuit bon per le proviſoe en 14 Eliz. 4 fuit, ou fuit bon per 13 Eliz. ou l'eſtatute de 18 Eliz. fiſt ceo male. 5. Ou le agreement del' Infants al plein age fait determination del' primer Leaſe, & ils conclude a claime per le primer Leaſe, & le Judges tient, que le agreement al ſecond, ne fiſt le primer voide, car le ſecond Leaſe ne unque fuit bon; al auter points, le Juſtices ne parle; auter point fuit move, ou acceptance del'rent per le ſucceſſor fait un Leaſe fait per le predeceſſor bon ou nemy, & ſemble a moy que nemy, entant que un Leaſe abſolute voide, ne poyet eſtre fait bon, per acceptance, contra ſi fuit ſolment voidable.

Pearſe *verſus* Calcott.

(3) EN un Action de Dett un foyren Attachment en London fuit plede en barre, ſur ceo demurrer, & il fuit reſolve per Curiam encounter le Defendant. 1. Le pleding fuit, que fuit un Cuſtom en London de Attach Dett devant le jour de payment poet eſtre bon, mes daver Judgment de ceo recover devant le jour, ne poet eſtre bon, car le Dettee meſme ne poet recover devant le jour, nient pluis poet cy, que fiſt le Attachment. 2. Le Cuſtom fuit, que il en proper perſon, ou per Attorney jure ſon Dett, & tenus voide, quant al Attorney, mes en ceo caſe, ſi le party meſme en perſon jure le dett il ſerra bon. 3. Agree que biens poient eſtre Attach ſur foyren Attachment & le value doit eſtre trove devant Judgment. 4. Le plee ne fuit bon, pur ceo n'ad averment, & hoc paratus eſt verificare, & que ceo eſt male en matter, & nient helpe per l'eſtatute de 27 H. 8. de demurrers Stone de Councell ove le Plaintiff, & Pheaſant ove le Defendant.

Middlemore *verſus* Goodhall.

(4) A. B. port Action de Covenant & declare, que le Defendant convey terre al J. S. & ſes heires, & covenant ove luy ſes heires & aſſignes de faire further aſſurances a luy ſes heires & aſſignes, il enfeoff J. N. que convey ceo al Plaintiff Middlemore,

more, & ſa feme & al heires, Middlemore port Covenant vers A. B. & aſſigne breach, que le dit A. B. refuſe de faire aſſurance a luy, & ſa feme; le Defendant plede releaſe del' J. S. fait pendent le breve, & ſur ceo demurre, & fuit reſolve per Jones, Crooke, & Barkeley, que le Action ne fuit bien port, entant que le feme ne fuit joyne en le Action.

Le Roy *verſus* D'nus St. John.

LE Seignior Marqueſs de Wincheſter fuit endite de recuſancy pur deux moys, & trove culpable pur un moys, & acquit pur l'auter moys, & Judgment done, quant al un moys, que forisfecit al Roy 20 l. & quant al auter moys, que ſerra acquit; le Roy port brief d'erroy, & divers exceptions priſe, queux ne fueront allowe, mes un exception fuit, entant que null Capiatur fuit agarde, & l'opinion del' Court fuit que ceo fuit male, car coment que le Defendant forfeit' 20 l. per l'eſtatute, tamen en cheſcun convict' ſur Indictment doit eſtre Capiatur. Et que le brief d'erroy port per le Roy doit giſer, car le Roy ad prejudice per ceo, & le Roy neit conclude per l'eſtatute de 3 Jacobi, coment que le Defendant eſt lie per ceo, per que un Judgment fuit done que le primer Judgment ſerroit reverſe, auxi le Court fuit d'opinion, que le Judgment forisfecit en le præter-tenſe, ne fuit bon, car duiſſoit eſtre forisfaceret. (5)

Hyde *verſus* Man.

WIlliam Man port Quare Impedit vers l'Eveſque de Briſtoll, Robert Hyde, & Richard Hyde pur l'Egliſe de Wootton-fitz-Paine in Com' Dors', & ad Judgment de recover en C. B. & ſur ceo les Defendants port erroy; le queſtions move per Holborne pur faire le Judgment erronious. Imprimis le Defendant en le Quare Impedit plede grant del' prochein avoidance al J. S. & R. H. que luy preſent', le Plaintiff traverſe le grant, le Jury trove, que le grant fuit al R. H. & ſes aſſignes pur ſon vie del' prochein avoidance volens, & per prædictum factum concedens, quod bene liceret dict' R. H. durant vie prædict. R. H. ad prædict. Eccleſiam quandocunque primo vacare contigeret, *&c.* & le point fuit, ou ceſt fuit abſolute grant pur le prochein avoidance ou autrement, que le grant fuit limited grant ſi le avoidance eſchue durant ſon vie, & l'opinion del' Court fuit, que il fuit un limit' grant, iſſint, que ſi null avoidance eſchue durant ſon vie, ſes Executors naveront ceo, & iſſint l'iſſue trove pur le Plaintiff en le Quare Impedit. 2. Le Plaintiff en Quare Impedit declare en (6)

Quare

Quare Impedit que M. C. fuit ſeiſie en fee, del' Donnor, & grant bargaine & vende al J. S. pur un moys a die datus Indenturæ, que fuit 12 Sept', & que ieſſæ enter 13 Sept', & apres il grant reverſion en fee al W. B. en fee al uſe feoffé pur vie, remainder al Johan Cooke, & heires del' ſa corps, & que ieſſæ attorne, & que Tenant pur vie devie, & J. S. grant prochein avoidance al Plaintiff, & le auter Defendant derive title a luy meſme, & traverſe le grant del' avoidance modo & forma, & il fuit trove que le grant fuit fait, prout le Plaintiff declare, mes que le uſes fueront al uſe le grantee pur vie remainder pur un moys al R. H. tanque Johan Cooke viendr' al plein age de 21 ans, & donque al uſe d'un Matthew Chubb, & le dit Johan, & al heires de ſa corps engenders, & apres al uſe le dit Johan, & le heires de lour deux corps engenders, Matthew mozuſt, Johan vient al age de 21, Matthew mozuſt ſans heire de ſon corps, & agree per Curiam, quod l'iſſue fuit trove pur le Plaintiff en Quare Impedit, car quant Johan vient al 21 ans, l'eſtate pur ans fine, & quant Matthew mozuſt ſans iſſue, le primer eſtate determine, & iſſint M. fuit Tenant pur vie remainder al Johan, & ideo ne beſoigne a mention eux ſpecialment en Quare Impedit: Mes Jones penſe clearment pur auter reaſon, le traverſe eſt de non conceſſit modo & forma, & ceo vaer al eſtate, & nemy al uſe, ſed ſi fuit variance en le uſes, il duiſſoit confeſſe l'eſtate & traverſe l'uſes modo & forma. 3. Exception priſt, pur ceo que il n'appiert per le verdict, quant le bargaine pur ans enter, & poet eſtre que fuit meſme jour, que Leaſe date, & donque il fuit diſſeiſin, & donque le grant del' reverſion ne fuit bon, ſed Curia e contra, car il eſt alledge, en le declaration que il enter le prochein jour, & quant verdict trove, que il enter, & fuit poſſeſſe accordant, ceo en un verdict ſerra intende apres commencement del' Leaſe, Et nient obſtant ceux Exceptions le Judgment fuit affirme.

Termino

Termino Mich. An. XIV. Caroli Regis, *in* Banco Regis.

Smith *verſus* Cooker.

UN parle de un home & ſa feme ceux parolls, que le baron & feme Had bewitched his Mare, Et le baron port Action ſur le caſe vers luy, & declare que il ad parle ceux parolls, & ſur non culpable trove vers le Defendant; Et auxi le baron, & feme portont Action ſur le caſe, & declare que le feme fuit de bon reputation, & tamen le Defendant ad parle, que le baron & feme had bewitched his Mare ad damn' le bacon & feme, Et trove pur le Plaintiff: Et Bagſhaw move en arreſt de Judgment pur le primer Action, que le Plaintiff ad declare que le Defendant ad parle, That the Plaintiff and his Wife had bewitched his Mare, Et que il doit adire q̃ le Plaintiff ſole ad ceo fait, & ceo fuit over-rule, car le declaration doit eſtre ſolon le parolls utter per le Defendant; auxi il move, que ſecond Action ne fuit bon, car fuit ad damn' le baron & feme, lou doit eſtre al damn' le feme, & Jones fuit d'opinion que bon: Barkeley & Crooke e contra, ſed al auter jour tout agreé, que fuit bon, Et Judgment done pro Querente, (abſente Brampſton Chief Juſtice.) (1)

Swales *verſus* Bateman. *Int' Hill.* 11. *Car.*

RIchard Swales port Dett vers Walter' Bateman, & declare que le Defendant 20 Aprill 1633. per ſon Bill devient lie a luy en 7 l. deſtre pay 21 Aprill 1634. & ſi default de payment fuit, il grant, que il paiera 3 s. 4 d. pur cheſcun moys, que ceo ſerroit arreare poſt le dit 21 Aprili 1634. Et dit, que al dit 21 Aprill 1634. ceo ne fuit pay, & que apres le jour de payment, ſcilicet, 20 September Anno Domini 1635. il fuit 17 moys arreare, Et iſſint port ſon Dett pur 9 l. 16 s. Le Defendant plede que le Defendant 21 Aprill 1633. fuit endett al Plaintiff en 7 l. deſtre paye (2)

al Plaintiff 21 Aprill 1634. & que il fuit corrupte & deceptive agree enter eux que ſi default de payment ſerroit a meſme jour que donque il payera 3 s. 4 d. pur cheſcun moys que ſerra arreare, & ſur ceo le dit Obligation fuit fait, & ſic Termino ultimo le Defendant dit que le 3 s. 4. d. pro quolibet menſe avandit ſolvend' pro anno intereſſe & dando diem ſolutionis prædict. 7. l. pro tempore prædict. exceed le rate & ſumme 8 l. pro Cent' per annum contra formam Statut' de 21 Jacobi, (que en ſon plea il rehearſt devant) per quod le dit Bill ou Obligation fait pur payment de ceo ſuper le dit corrupt agreement fuit voide, ſur que le Plaintiff demurre; Le caſe fuit divers temps move en abſence del' Chief Juſtice, & 22 October ceſt Terme, (le Chief Juſtice eſteant preſent) le caſe fuit move, & ils tout agree, que come le barre fuit Judgment doit eſtre done pro Querente, car neſt averment fait, que le agreement fuit de payer 3 s. 4 d. pur cheſcun moys pro lucro intereſſe & diem dando ſolutionis, mes ſolment ove un ſic' le dit ſumme d'exceed 8 l. per Cent'. 2. Le parolls del' Statute ſont, que ultra 8 l. ſur Cent' ſerra priſe pro Uſurie, & ceux parolls eſteant l'effectual parolls del' Statute doint eſtre averre, & alledge en le plea, & adire que fuit pro lucro intereſſe & diem dando ſolutionis neſt ſufficient, per que Judgment fuit done pro Querente: Mes ils tout agree, que ſi ſur apprompt de 7 l. deſtre paye al fine del' ann fuit un corrupt agreement que 3 s. 4. d. pur cheſcun moys ſerroit paye apres le fine del' ann, & ſur ceo le dit Bill fuit que en ceo caſe ceo fuit un uſurious bargaine, & ils ne agree en tout ove Burtons Caſe Co. pars 5. auterment l'eſtatute de 13 Eliz. & 21 Jacobi poet eſtre illude, et evaſion fait hors de ceo.

Sir John Fitzherbert *verſus* Sir Edward Leech.

(2) UN Action de Ejectione firmæ fuit port vers divers, ils tout plede Non culpable, & divers continuances fuerunt priſe enter eux tout, ou revera un del' Defendants fuit mort apres iſſue joyne, & un verdict apres trove pur le Plaintiff, Et apres verdict, & devant Judgment le Plaintiff fiſt ſurmiſe, que un del' Defendants fuit mort apres verdict, & devant Judgment (ou revera il fuit mort devant verdict) & prie Judgment vers eux queux ſurvive, quel ſuggeſtion come fuit enter ſur le record non fuit dedit per l'auter Defendants, ſed conceditur eſſe verum, ſur que Judgment vers le Defendants done accordant, & error port in Camera Scaccarii; Et Banks Attorney le Roy move le Court de Banke le Roy, entant, que le partie fuit mort devant divers continuances, & devant verdict, que ils voilont amender le Record en ceſt point accordant al veritie, ſed tota Curia fuit d'opinion, que ils ne poient en-

ent ceo faire, ſed il ſemble al eux prima facie, que ſi verey fuit que le dit Defendant fuit mort devant verdict & continuance fuit vers luy come en plein vie, que les auters poient aver̃e & alledge le dit mort ut abandit; ſed un auter queſtion fuit move, ou les Juſtices en Camera Scaccarii poient examin error en fait per le Statute de 27 Eliz. & ſemble al eux, que ils poient, autrement l'eſtatute ſerroit de petit value & force, ſed coment ceo ſerra trie fuit le grand doubt, Et Crooke vouch un caſe 2 Jacobi, que l'opinion del' Court fuit, que ceo ſerroit trie per un niſi prius hors del' Exchequer, & Hoddſon fuit command de ſearch les Preſidents en tiels caſes.

Sir Francis Leigh *verſus* Bridget Winter.

SIr Francis Leigh aſſure per fine certein Mannors & Tenements al uſe luy meſme pur vie, remainder al Woolly Leigh ſon fits en tayle ove un proviſoe de Revocatione, ſi ſon fitz marie ſans ſon conſent. Apres per un Indenture fait perenter luy, & le grand mere del' dit Woolly del' part ſa mere il rehearſt le dit proviſoe, & le power en ceo conteine, & recitall de certeine Conſiderations done al dit Sir Francis Leigh: Now therefore it is agreed by and between the ſaid parties; and the ſaid Sir Francis Leigh hath Covenanted, Granted, Concluded and Agreed, and by theſe preſents doth for him, his Executors and Adminiſtrators, Covenant, Grant, Promiſe and Agree to and with the ſaid Bridget Winter the Grandmother, That the ſaid Sir Francis Leigh ſhall not, nor will revoke, make void or determin any of the uſes or eſtates, limited or appointed to or for the ſaid Woolly Leigh or his Heirs by the Indenture aforeſaid, nor ſhall nor will have, uſe, or execute any power of Revocation, Determination, or making void, or any way concerning the ſame, without the Licence and Conſent of the Lord Coventry, Lord Keeper firſt had in writing; and doth alſo grant and agree, that any Revocation or Declaration by him to be made touching the revoking, determining or making void the ſaid uſes or eſtates, or any of them, without ſuch aſſents, ſhall be void, fruſtrate, and of none effect: ſur ſuite en Chancery perenter le dit Sir Francis, & Bridget Winter le Grandmere, & le dit Woolly Leigh; le Chief Juſtice Brampſton, & Jones fueront appell al le Court del' Chancery, & ils declare lour opinion, que per le dit ſecond Indenture le power de Revocation, que fuit abſolute en le primer Indenture fuit reſtraine, & que le dit Sir Francis Leigh ne poyet revoker ſans le conſent de Seignior Keeper, car le power fuit executory, que per ſubſequent agreement per Indenture poet eſtre defeate, & determin le fait con-

(4)

conditional. Auri il fuit agree per Seignior Keeper, & le dit Justices, que si leigne fits d'un home, al ion plein age de 21 marie sans consent pier, le pier n'ad remedy.

Appletoft *versus* Stoughton.

(5) APpletoft intoxm' vers Stoughton pur user Trade en London, de que il ne fuit Prentice per 7 ans contra l'estatute de 5 Eliz., & le Trade fuit le fesans de tackin, & studding de points, le Defendant plede custom de London, que il que est free d'un Trade poet user auter, & monstre, que il fuit free de Cloathworkers, & per le Custom poyet user ascun trade coment ne fuit Prentice, le Plaintiff deny le Custom, & sur ceo le Plaintiff & Defendant al Issue, Et le Plaintiff fait surmise, que le Custom doit estre trie per le Maior & Aldermen per bouch le Recorder, & le Defendant ceo ne dedit, sur que biek ale al dit Maior & Aldermen, & ils per le Bouch del' Recorder certefie, que ne fuit ascun tiel custom, Et tota Curia fuit d'opinion, que le dit Certificate fuit bon, & sur ceo Judgment done pro Querente. Vid. 5 E. 4. 30.

Broadhead *versus* Lewys.

(6) EN Prohibition, le case fuit, que le Prohibition fuit ground sur unitie de possession en l'Abbie del' Rectory, & de terres, & que eux bient al Roy H. 8. per le dissolution del' Abbie, & apres le Rectory, & terres fueront severre, & grantee del' Rectory sue le grantee & patentee del' terres pur disines, Le Defendant en Prohibition plede pur Consultation, que tempore del' dissolution del' Abbie & hors temps del' memory, le dit terres fueront demise pur terme d'ans, & de tout le dit temps le dit Fermors paye disines, sur que le Plaintiff demurre, & Judgment done en C. B. pur Defendant, & le Plaintiff en le Prohibition port Error, & per totam Curiam le plea pur Consultation ne fuit bon, car fuit general, & null issue poet estre prise sur ceo, Ideo le Judgment fuit reverse.

Brookebutt *versus* George Tomlyn.

(7) BRookebutt port Formedon en le descender vers George Tomlyn pur 23 Acres de terres en Halstowe en Com' Kant' en C. B. le Tenant bouch a garranty Thomas Foster, le demandant counter-plede le voucher, que le vouchee ne ascun de ses Auncestors aliquid in tenementis prædict. &c. (interlessant habuerunt) le vouchee joyne issue sur ceo, & un nisi prius agarde pur trial

triall del' dit iſſue, & le Continuance del' proceſs fuit en Banke uſque 15 Paſch. 8 Caroli, al niſi prius en Lent devant, le demandant appiert & le Tenant licet ſolemniter exact' non venit, ſed defalt' fecit, Ideo prædict. 23 Acr' terre capiantur in manus, & Sum' rerorn' 1 Michaelis enſuant, & vic' non miſit Breve, & Sum' in nature de petit Cape retorne, & le Tenant n'appiert ſed fiſt default, & Aiſcount retorne quod cepit in manus Domini Regis, ſur que Judgment pro Querente, & Error port, & coment null iſſue fuit bien joyne pur default de habuerunt, tamen quant le Tenant fiſt default, tout le pleding fuit hors devant al Counter plea de voucher, & Judgment bien done, & le primer Judgment affirme.

Morris & alii *verſus* Price.

JOhn Price port Aſſiſe al Grand Seſſions pur le County de Mountgomery vers Thomas Morrice, Elizabeth ſa feme, Charles Vaughan, & Margaret ſa feme Thomas Middleton Chivaler, James Halmer Chivaler, Peter Mutton Chivaler, John Lewys ap David, & Evan Pothon; & 9 auters pur diſſeiſin de ſon franktenement en Brithdir, Treveddwe, Llanvilling, Garthgill, Nanrullan & Hamen, & il fiſt ſon plaint pur 20 l. Rent per Annum iſſuant hors de 40 Meſſuages, 1000 Acr' terre, 500 Acr' præ, 1000 Acr' Paſture, & 200 Acr' Boſci cum pertin' en le dit Aills, & pro titulo pur le dit rent, il monſtre que Edward Price fuit ſeiſie en fee del' dit terres, & eux tient en Socage, & iſſint ſeiſie per ſon volunt en eſcript' deviſe le dit 20 l. al dit John Price durant ſon vie per Annum iſſuant hors del' dit terres, & tenements & poſt le dit Edward Price morust, & apres ſon mort le Terre deſcende al dit Elizabeth, & Margaret eſteant ſes files & heires & femes del dit Thomas Morris & Charles Vaughan (ſed nest mention quando le volunt fuit fait neque quando le dit Edward Price morust) per force de quel le dit Thomas Morris & Elizabeth ſa feme, & Charles Vaughan & Margaret ſa feme enter, & il alledge ſeiſin del' rent per maines del' dit Thomas Morris, al tunc Tenant del' dit Tenements in jure de ſa feme, quouſque le dit Defendant luy diſſeiſe. John Lewys ap David, Evan Pothon, & tout le Defendants preter Thomas Morris, Elizabeth ſa feme Thomas Middleton & James Palmer font default, & le aſſiſe fuit agarde vers eux per default, & le dit Thomas Morris, Elizabeth ſa feme, Thomas Middleton, & James Palmer pluſſont le Tenancy de meſme Acr' parcell del' premiſſes, & ils plede que Roger Palmer Chivaler fuit ſeiſie come de franktenement d'un Meſſuage, & 4 Acr' terre parcell del' dit Tenements, qui quidem Roger Palmer ne fuit noſme en le brief, & demaude Judgment de Brevi: & ſi trove (8)

ſoit;

ſoit, tunc ils dihont, que le Plaintiff ne fuit ſeiſie del' dit rent, iſſint q̃ il poet eſtre diſſeiſie, & ſi trove ſoit, donque ils dihont, que ils nont fait aſcun tort ou diſſeiſin ſur que ils fueront al iſſue.

Le Aſſiſe trove que Roger Palmer ne fuit Tenant del' Meſſuage & 4 Acres de terres, & que le dit John Price fuit ſeiſie del' dit rent de 20 l. per manus del' dit Thomas Morris Tenant del' Tenements, quouſque le dit John Price petiit le dit rent del' dit Thomas, Elizabeth ſa feme, Thomas Middleton, James Palmer, John Lewys, David & Evan Pothon, & ils refuſe de payer le dit rent, & ceo deny, & iſſint ils diſſeiſie le dit John Price del' dit rent, & que le dit rent fuit arere pur 30 ans devant date del' dit hief, que fuit 17 Aprilis Anno 10 Caroli, & le arreares extende al 600 l. & pur Damages & Coſts ils aſſeſſe 240 l. & ils trove, que le reſidue del' dit Defendants, queux font default ne fueront Culpable, ſur que Judgment done pur recovery de ſeiſin del' dit rent, & pur le arrerages & damages vers le dit 6, & Judgment de acquittall vers le reſidue, ſur que un hief d'erroꝛ fuit poꝛt per le dit 6 en B. R. & apꝛes divers arguments al barre ceſt Terme, le Judges concurre en opinion, que le Judgment ſerra reverſe, le maſne reaſon en que tout concurre, pur ceo il neſt alledge en le title del' Plaintiff, quando Edward Price le deviſoꝛ moꝛuſt, & ideo ne poyet appeare, quant del' ans del' rent fuit arere, & tamen le Jury trove, que fuit arreare pur 30 ans, & Judgment done accoꝛdant, & Brampſton, Jones & Barkeley dihont, que null diſſeiſin de rent poyet pꝛ denier, niſi le demand fuit ſur le terre, ſed generalment, que le Plaintiff petiit le rent de Thomas Morris, &c. ceo poet eſtre hoꝛs del' terre; auxi ils diſont, que le demande doit eſtre del' Tenant del' terre, & ſi ſoit d'un auter, q̃ neſt Tenant del' terre, & il refuſe ceo neſt aſcun diſſeiſin per eux, & icy John Lewys & Evan Pothon ne pꝛiſt' le tenancy ſur eux, ideo le demande de eux & lour denial neſt aſcun diſſeiſin, & tamen Judgment done vers eux, ideo erronious, & le ſic diſſeiſi' en concluſion del' verdict ne vayle ceo aide, ſed Crooke e contra, car ſerra intende, que tout 6 fueront Tenants del' terre, & que le demande fuit ſur le terre; ſed tout agreé come devant, que le Judgment fuit erronious, Ideo un revei ſall de ceo fuit pꝛonounce.

Termino

Termino Hill. An. XIV. Caroli Regis, *in* Banco Regis.

Baron Denham dyed about the 12*th* of January 14 *Caroli Regis* 1638. and upon the firſt Saturday in the Terme, *Serjeant Henden* was ſworn Baron in his room, and upon Tueſday he went in his Robes to the Hall, and gave us Wine, and ſome Exceedings at Dinner, and afterwards in the ſame Terme he was made Knight.

Juſtice *Hutton* dyed upon the 25*th* or 26*th* of February, 1638. and my Brother *Rives* was made Juſtice in his place; and upon the fourth of May was Sworn, and the ſeventh of May following came in his Robes, and then gave us Wine, and Cakes.

Sir Henry Rowe *verſus* Seignior Newbury.

SIr Henry Rowe exhibit ſon Bill in Cancellaria vers Sir Edward Barrett Chivalier, Seignior Newbury, & Cancellarium del' Exchequer, ſur ceo q̃ Sir Edward Barrett le Defendant ſur Marriage del' Dame Mildmay oue feme del' Sir Henry Mildmay & file del' Alderman Holyday, & mere al Plaintiff, ſcilicet file del' ſa ſoer, promiſe pur aſſure terres al value de 500 l. per Annum pur le Joynture del' dit feme, (& le promiſe fuit fait al dit Alderman) & apres en default de iſſue del' ſon Corps en tayle al Sir Henry Mildmay in tayle, & il fiſt note en eſcript a ceo purpoſe, & le dit promiſe fuit fait ultra 20 ans paſſe, & le Alderman fiſt ſa feme ſon Executrix, & mourſt, & le feme fuit marie al Seignior Warwick, & ſurmiſe, que le dit eſcript vient al mains le Defendant, le dit Defendant denye que il ad le dit eſcript, & ultra demurre ſur le Bill, principalment pur ceo que le Plaintiff ne fuit privie, que per le Ley poet ſuer en ceſt caſe; Le Seignior Keeper appell a luy le Seignior Chief Juſtice Brampſton, & Jones Juſtice, & le matter fuit bien debate arere, & le preſidents fueront view en ceſt caſe & ils reſolve, que Sir Henry Rowe le Plaintiff ne fuit enable de ſuer en ceſt caſe, mes le Executor del' Alder- (1)

Alderman vel Sir Henry Mildmay & ſa feme poient ſuer, & iſſint ils declare lour opinion al Councell del' Plaintiff. 2. Un auter choſe fuit move, ou ceſt promiſe fuit lie per l'eſtatute, & il ſemble al eux que fuit, ſed ils ne declare lour opinion abſolutement.

Thynne Chivaler, & Townſend *verſus* Cary.

(2) A meſme le jour un auter matter fuit move Sir Thomas Thynne & Warren Townſend come heires al Dame Knivet exhibit un Bill deſire relieve en Equity vers John Cary Eſquire, encounter un Conveyance obteine per indirect meanes del' dit Dame Knivet, Et le Defendant plede fine ove proclamations, & non claime del' dit terres pur 5 ans, & ceo fuit referre al view del' preſidents, & en Chriſtmas Holy-days le matter fuit debate al Durham-houſe, & ſemble al eux, que ceo fuit un barre, & per commandement de Seignior Keeper, le Chief Juſtice demand le opinion del' Davenport Chief Baron, Crooke, Trevor, Barkeley, Crawly, Weſton, & Henden, & ils fuerunt de meſme opinion, & le Chief Juſtice report ceo al Seignior Keeper.

Gibbs *verſus* Wyborne.

(3) HOme ad un Nurſery pur jewne Plants en ſon terre, & il uſe de tranſ-plant eux, & a doner ou bender eux al auters, q̃ eux plant de novo hors del' Pariſh en ſon terre, & le Parſon del' Pariſh ou le terre fuit en que ils fuerunt primes plant libell en Eccleſiaſtical Court pur diſmes del' value del' dit Plants tranſplant, & un prohibition fuit agarde, & declaration ſur ceo, & un plea miſe eins, & replication & ſur ceo demurrer, & ceo fuit argue per Maynard pur Defendant, & Rolls pro Querente, & ſole point ou diſmes ſerront paye en ceſt caſe, per totam Curiam il doint eſtre paye, & ſur ceo Conſultation agarde.

Bery *verſus* Burlace.

(4) RIchard Bery being poſſeſſed of a parcell of Lands called Combemantyn in the County of Devon, for the Term of 1500 years, made his Will in theſe words: I give and bequeath to Humphrey my Son, my Leaſe of Combemantyn Parke, after the death of my Brother Nicholas Bery; and made his Wife Katherine, and the ſaid Nicholas his Executors, and deviſed to them all the reſt of his Goods and Chattels, and dyed; and they proved the Will 3 Maii 1588. Nicholas Bery enjoyed the premiſſes during his Life. 3 Julii 42 Eliz. the ſaid Humphrey Bery by Indenture,

ture, reciting the Original Leaſe and Deviſe by the ſaid Will, did grant and aſſign the premiſſes to Francis Lane and Richard Coffyn for 99 years, if Prudence the Wife of the ſaid Humphrey ſhould ſo long live, to begin after the death of the ſaid Nicholas Bery: And the ſaid Humphrey Bery did further by the ſaid Indenture for Natural Love and Affection to Nicholas his Son, grant and aſſign to the ſaid Nicholas the Son, the Remainder of all the aforeſaid Lands, To have and to hold the ſame Lands to the ſaid Nicholas Bery his Son, his Executors, Adminiſtrators and Aſſigns, immediately after the death of the ſaid Nicholas the Uncle, and Prudence Bery for and during all the reſt and reſidue of the ſaid 1500 years, which ſhould be then to come and unexpired at the time of the deceaſe of the ſaid Nicholas the Uncle and Prudence, with power of Revocation, upon tender of 5 *s.* to Nicholas the Son.

1. Whether the Grant by Humphrey to Nicholas the Son (Nicholas the Uncle being then living) be good.
2. Whether the grant by Humphrey to Nicholas the Son be good, if Nicholas the Uncle had been then dead.

This Caſe was referred by Order from the Chancery to Brampſton Chief Juſtice, Jones and Barkeley, and they certified as followeth.

According to an Order of the 3*d.* of December laſt, we have heard Councell of both ſides, and have taken conſideration of the caſe agreed upon, by Councell of both ſides, made upon the Will of Richard, dated 21 Martii 1583. and the Deed of 30 Julii 42 Eliz. made from Humphrey Bery the Father, to Nicholas the Son in the Order mentioned; and are of opinion, upon the ſaid Caſe, that the ſaid grant made to Nicholas the Son, is not good in Law. Subſcribed by Brampſton, Jones and Barkeley, and ſo certified to the Chancery.

Mounſon *verſus* Bowrne.

Un brief d'error fuit port per Mounſon & ſa feme Executrix del' Counte de Nottingham ſur Judgment done en le Common Banke vers eux pur Bowrne, & le caſe fuit tout un ove le caſe de Pettifer, ſavant, que Mounſon & ſa feme ſur le Scire facias fueront retorne garnie, & ils appeare, & demurre ſur le brief de Scire facias, & apres un reſpondes ouſter agarde vers eux, ils font default, ſur que Judgment pro Querente de bonis propriis. Apres ſeveral arguments al barre. 4 Juſtices ſeriatim deliver lour opinion, & una voce ils affirme le Judgment. Primes le brief fuit ſolonque le conſtant courſe del' Common Banke, & del' temps de (5)

H. 6. tout temps enuant, & le courſe del' cheſcun Court de Weſtminſter fiſt un Ley, & admitte, que le courſe del' B. le Roy fuit al contrary, tamen quant Judgment eſt done en Common Banke ſolon lour courſe la, ceo ne doit eſtre reverſe icy, come ſi Scire facias fuit port ſur un Judgment en C. B. & nihil retorne, & ſur ceo Judgment, ceo eſt bon per lour courſe la, & coment le courſe de B. le Roy eſt d'aver 2 nihills, tamen le Judgment en C. B. ne ſerra icy reverſe pur ceſt cauſe. 2. Admitte Pettifers Caſe deſtre Ley, queux ils ne affirme, neque abſolutement diſaffirme, tamen ceſt caſe eſtoy ove bon reaſon; en Pettifers Caſe le Judgment fuit nemy ſur appearance ou garniſhment, mes ſur nihil retorne, mes icy il eſt appearance, & garniſhment retorne, & le party puiſſoit plede nient obſtant l'enquirie per un Jury de devaſtavit, que il nad agaſt les biens, iſſint il neſt aſcun prejudice niſi fuit per default del' Defendant meſme, pur ceo que il ne traverſe le devaſtavit, mes fiſt default & ne dit riens. 3. Ceſt cauſe en advancement & pur aide de due execution de Judgment; ideo per tout le Judgment fuit affirme, & le Court adviſer le Prothonotary & le Clearks de B. le Roy pur uſer ceſt courſe en apres, come un bon & legal courſe, pur expedition de Juſtice, & Execution.

German *verſus* Riſley.

Trin. 14. *Car. Rot.* 1502.

(6) PAul Riſley per Indenture fait perenter luy de un part, & Thomas Denton Chivaler, Thomas Riſley ſon frere, & William Withers del' auter part Covenant ove eux en conſideration of the Love and Affection which he bare to Dorothy his Wife, and to his Children in the ſaid Indenture mentioned (which were 8.) and for their better maintenance, livelyhood, preferment, and ſtay of living, and to the intent to ſettle his Lands, Tenements and Hereditaments therein after mentioned in the name and bloud of the ſaid Paul Riſley, que il ſes heires & aſſignes eſtoyera ſeiſie de certein terres en Barton en Com' Bucks, & de auter ſes terres en le dit Countie al uſe luy meſme pur vie ſans impeachment de Waſte, & apres ſon deceaſe al uſe le dit Dorothy pur vie, & apres ſa deceaſe, al uſe le dit Covenantees, & lour heires, ſur Truſt, & Confidence, que ils ferront Leaſes, & Demiſes, & Eſtates, come le dit Paul appoint, & in default de ceo, que ils leviont portions, come en le dit Indenture eſt ſpecifie pur ſes Children, & apres le dit portions paye, al uſe de Thomas Riſley ſon ſecond fits en tayle ove divers remainders ouſter, le pier & mere moront ayant iſſue William Riſley ſon eigne fits, & divers auters iſſues,

Apres

Apres le dit 4 Covenantées per Indenture enter eux, & le dit Thomas Risley le fits, & le residue del' dit puisne Children, en consideration de 20 s. paye per le dit Thomas & vende bargaine le dit terres al dit Thomas en tayle, ove remainders come suit limit en le primer Indenture, & ascun del' dit Trusts mention en le primer Indenture devient impossible destre performe en le temps limit per ceo per Act de Dieu. William seigne fits enter & lesse al Plaintiffs pur ans, & esteant ouste per Risley le Defendant claimant per le dit Thomas le Lessées portont Ejectione firmæ, & tout ceo trove per special verdict, & apres argument al barre le Justices conferre del' case, & tout agreé, que Judgment serroit done encounter le Plaintiff, & ils agreé, que le Chief Justices overtment delivera lour opinion; accordant ils tout agreé, que le Covenant per le primer Indenture ne done ascun estate al Sir Thomas Denton & Alexander Denton, & William Withers esteant strangers, sed l'estate pur l'entire terres fuit bien done, & settle per le dit Covenant, en le dit Thomas Risley le frere sole, coment, que ne fuit especialment mention, car le estate fuit en consideration, que il fuit son frere: Vide Bedells Case, 7 Cooke. Et 2 coment le use, & estate fuit limit al luy en trust, pur raiser portions pur auter persons, tamen ceo ne destroy le estate done per le Covenant, car un Covenant d'estoyer seisie al un frere pur natural amour, & sur confidence pur levyer portions pur ses Children, ceo settle bon fee en le frere subject al cest trust en Equity; & auxi ils agreé, que le estate esteant limit al frere en fee, sur le trust avandit, & apres le portions levie, al dit Thomas en tayle, remainder ouster, quant ceo devient impossible per Act de Dieu devant le jour de performance de ceo, l'estate continue absolute en le frere, & il ad convey bon estate al Thomas Risley, & le dit eigne fits nad title. Et postea le Chief Justice declare nostre opinion overtment en Court accordant, & Judgment fuit done pur Defendant, & encounter le Plaintiff.

Barbara Herbert *versus* Thomas Bynion.

(7) RIchard Herbert & Barbara sa feme leviont un fine de terres en Com' Mountgomery, al Grand Sessions la; apres le mort del' baron, le dit Barbara sa feme port brief d'error de reverser le fine, & les Justices la certifie le recorde, come ensuist un brief de Covenant port date en June. 7 Jac. Regis retornable al Grand Sessions tenus en July ensuant, & argent le Roy adonque enter, ils auxi certifie un brief de dedimus potestatem portant date en Feb. 2. Jac. que fuit 5 ans devant le teste del' brief de Covenant, & per virtue de ceo un Concord fuit prise per deux del' dit

Commiſſioners 18 Martii enſuant, & ceo en quantity de Acres & touts auters agreæ ove bꝛief de Covenant, auxi ils certifie un pee de fine (videlicet) Hæc eſt finalis Concordia, &c. fact al dit Seſſions tenus en July 7. Jac. l'erꝛoꝛ aſſigne fuit pur ceo que le dedimus poteſtatem poꝛt date 5 ans devant le teſte del' bꝛief de Covenant, & auxi le concoꝛd poꝛt date 5 ans devant; Le bꝛief d'erꝛoꝛ fuit poꝛt vers Bynion heire del' Conuſee, & pur ſon nonage le paroll demurre, tanque il veignont a plein age, & donque ſur reſummons le matter fuit revive, & apꝛes argument al barre. Barkeley, & Crooke argue al Banke en Terme Paſch. & Trin. & ils agreæ en opinion, que le fine doit eſtre affirme & nemy reverſe, ils agreæ, que ſi le fine fuit levy ſur le dit dedim poteſtatem, donq; ceo ſerroit erronious, mes entant que le pee del' fine dit, Hæc eſt finalis Concordia fait en le dit Seſſions, quant le bꝛief de Covenant fuit retoꝛnable, il ſerra intende q̃ le fine fuit fait ſur auter concoꝛd: Jones & Brampſton argue l'un en Term' Sancti Michaelis, l'auter en Term' Hillar' enſuant, & ils fueront de contrary opinion, car quant le recoꝛde eſt certifie q̃ un bꝛief de Ded' fuit grant, & concoꝛde ſur ceo, & null auter concoꝛd certifie, ceo ſerra pꝛiſe deſtre le concoꝛd ſur q̃ le fine fuit levie, & null auter ſerra intende, & ſi revera un auter concoꝛd fuit, donque le Defendant duiſſoit alledge diminution, & aver certiorare, & certifie ceſt concoꝛde, ſi aſcun fuit donque ſerroit bon, & ſi certifie null auter concoꝛde, donq; male & null diminution eſteant, null auter concoꝛde ſerra intende; & ſic pendet.

Sampſons Caſe.

(8) DEux come pꝛincipalls, & Sampſon come acceſſoꝛy devant le fact fueront endite al Goal-delivery devant Richardſon & Denham in Com' Devon' de Murder de feme, & un de pꝛincipalls confeſſe, l'auter & Sampſon fueront trove culpable, & Judgment done vers eux touts, le 2 pꝛincipalls fueront pende, & Sampſon fuit pardon, & poꝛt bꝛief d'erꝛoꝛ de reverſe ceſt attainder: Le Certificate del' Clearke de Aſſize ſur un Certiorari de certifie le recoꝛd fuit ad general' deliber' tent' 18 die Martii Anno Regni Regis Caroli 8° coram Richardſon. & Denham, ils fueront endite, & poſtea 20 die Martii Anno ſupradicto coram præfat' Juſtic', le dit parties fueront trie & convict, & ont Judgment, & l'erꝛoꝛ ſur que fuit inſiſt fuit, pur ceo, que il eſt dit, que indite 18 Martii & trie 20 Martii, & null continuance per adjournment, & donque ceo eſt male: apꝛes argument al barre, il fuit argue ceſt Terme al Banke, Barkeley parle pꝛimes, que le recoꝛd eſt bon, car eſt coram præfat' Juſtic', & ſerra intende, que ils continue ſtill Juſtices d'Aſſize, & Goal-delivery. 2. Le recoꝛde neſt remove, ſed ceo

remaine

remaine nient certifie, ſur opinion de Fineux 12 H. 7. 25. 3. Serra amende en ceſt Court per le Clearke d'Aſſize, & ceo per Common Ley; car il agree, que null Statute extende al ceo; autrement il ſerra grand miſchief, que ſerra en power d'un Clearke d'Aſſize de faire tout attainders male, & ove luy agree Crooke, Jones e contra; primes, il tient, que coram præfat' ne aide le matter, car potent eſtre præfat' Juſtic', & tamen aderont auter Commiſſion. 2. Que le recorde eſt remove bien, & ne remaine ove le Juſtices de Goal-delivery. Et (3) que le recorde certifie eſteant male, ne poet eſtre amende, neque per Common Ley, neque per Statute, & null preſident poet eſtre monſtre, (& ceo fuit affirme per Keeleing) que aſcun amendment ad eſtre fait en tiel caſe, & maxime come ceſt caſe eſt, ou le Roy ad certifie ſon pleaſure, que il ne deſire aſcun amendement, & le Seignior immediate ne poet aver advantage de aſcun error en le record; Brampſton fuit encounter le amendment de meſme opinion, mes il dit, que fuit too ſoon a parler a ceux matters, ſed ceo ſerra pluis convenient temps, quant le Seigniors mediate & immediate ount plede a ceo, & nemy devant, ſur que il fuit adjourn al auter temps.

James *verſus* Tintney.

EN Replevyn le Defendant fiſt conuſance come Baylive al Lutterell, & monſtre que fuit ſeiſie en fee d'un Mannor en Com' Somerſet deins quel Mannor il fuit un Court hors de temps memory pur faire Ordinances pur le government, & order d'un grand Common, & a tener Court a ceo purpoſe, & uſe de faire By-laws per preſcription pur ceo per major part del' tenants, & uſe per cuſtom d'aſſeſſer payne ſur ceux queux enfreinde le dit Ordinances, & uſe de diſtreine pur le dit payne, & amerciament, donque il monſtre que un By-law fuit fait, & un payne aſſeſſe ſur aſcun offenders, & que le Plaintiff offende, per que il fuit amerce, & pur ceo que il ne paye, le Defendant come Baylive al Seignior del' Mannor priſt les biens del' Plaintiff pur le dit amerciament, ſur que il fuit al iſſue, & trove pur le Defendant, & damages & coſts aſſeſſe, & Judgment done en le Common Banke pur Defendant, & Plaintiff la port Error en Banco Regis; divers exceptions fueront priſe al conuſance per le Councell del' Plaintiff, ſed eux tout fueront over'rule per le Court; & darrenment le Councell del' Plaintiff priſt exception, pur ceo, que Judgment fuit done pur damages & coſts, ou null damages ou coſts ſont due, neque per Common Ley, neque per aſcun Statute, & ceo fuit a divers temps debate al barre, pro & con; & ceſt Terme 3 del' Juſtices parle a ceo, (videlicet) Barkeley, Crooke & Jones, & Barkeley (9)

ley tient, que ceo ne fuit erroz, & il tient, que ceo fuit deins les parolls de 21 H. 8. & 7 H. 8.c. 4. verbat' deins le paroll (Cuſtom) car ceſt amerciament eſt ground ſur Cuſtom, come eſt alledge en le conuſance, & Cuſtom n'extende ſolum al cuſtomary Service, & tenure, mes auxi a touts auter Cuſtoms. 2. Il tient, que ſi ceſt caſe ne ſoit deins les parolls de l'eſtatute, tamen il ſerra deins le intention del' Ley, car ceſt eſt remediall Ley, que remedy un default de Common Ley, & un miſchief, ideo il ſerra pꝛiſe per Equity; Et l'entention fuit a remedy Seigniors & auters, queux ount bon cauſe de conuſance, que ils averont lour coſts & damages, auterment le Seigniors ſerront a grand inconvenience, que ſi ſont deny de lour due, & pꝛiſteront diſtreſs, & le party diſtrein ſoit wilfull a mitter le Seignior a charge, & il navera null recompence per coſts & damages; & il mitter divers caſes a pꝛover que remediall Leys fueront pꝛiſe per Equity. 3. Il inſiſt ſur pꝛeſidents, & authoꝛities & il dit que fueront divers pꝛeſidents, un en Griſſyes Caſe, & un auter Cookes Preſidents en Replevyn, & il dit, que il agree le caſe, que en avowry pur relief null damages ſerra recover, car ceo neſt cuſtomary Service, auxi pur valore maritagii, ſi Seignior diſtreine, & fiſt avowrie, ceo neſt deins l'eſtatute, vel ſil fiſt conuſance pur nomine pœnæ pur non payment de Rent charge: mes ſi home grant un rent charge ove diſtreſs en auter Countie, & un avowry eſt fait ſur ceo, ceſt caſe eſt deins le Statute, car ceo eſt un acceſſory Rent. Crooke deny le caſe de Relief, & nomine pœnæ, & valore maritagii, mes en tout auter matters il concurre ove luy, que damages & coſts ſerra recover, il vouch un caſe en 16 Jac. que en tiel caſe coſts ſerra recover, ſed nemy damages. Sed Jones fuit de contrary opinion. 1. Il tient que null cuſtom eſt deins le Statute de 21 H. 8. mes ceo que eſt per reaſon de tenure, car le pꝛeamble del' Statute parle de terres tenus per rent, cuſtom, ou ſervice, & ceo eſt un cuſtomary tenure, & le pꝛimer branch done remedy de avowry come de terres deins ſon fee, & le ſecond ad relation al ceo, car il dit q̄ ſi aſcun fiſt tiel avowry, conuſance, ou juſtification pur cuſtom, rent, ou ſervice, & add diſtreſs damage feaſant ou rent, & tiel cuſtom eſt ceo, que eſt conteine en le pꝛimer branch, & ceo eſt ſur un tenure. Et 2, ceſt conuſance neſt fait immediate ſur un cuſtom, ſed come amerciament, que eſt warrant per cuſtom, & nemy oꝛiginalment un cuſtom. 3. Il tient que neſt deins le Equity ou intention del' Statute, il dit que fuit trope general ground a mitter caſes ſur Statutes, ou choſes fueront pꝛiſe per Equity, mes cheſcun Statute eſtoy ſur ſon particular reaſon, ſur conſideration del' parts del' Statute, le miſchief devant, & que choſes fueront intende deſtre remedy per le dit Statute; & il pꝛiſt ceſt ground, quant com-

commencest ove particular enumeration, la nulle auter chose serra prise per Equity: Cooke pars 2. le case de Marquess de Winchester: le Statute de 11 R. 2. done brief d'error ou attaint pur luy en reversion, ou remainder, sur recovery ewe vers Tenant pur vie, en Dower, Curtesie, ou apres possibilitie, &c. ceo n'extende al reversion sur estate tayle, car ceo ne fuit deins le particular enumeration del' dit Statute; auxi sur le Statute de 23 H. 8. que gist recovery vers Tenant pur vie sans title sur Covyn voide vers cestuy en reversion, si Tenant pur vie fuit disseisie, & per Covyn il vient eins come vouchee en un recovery, ceo est hors del' dit Statute, come est dit en le case de Sir William Pelham Cooke pars 1. que fuit issint adjudge en 5 Eliz. Report per Bendlow; le Statute de 27 Eliz. done brief d'error en Camera Scaccarii sur Judgment done en B. le Roy, ceo n'extende a Replevyn, vel ou le Suite est per original, car particular enumeration de Actions en le dit Statute exclude auter Actions, & issint fuit tenus darrenment en cest Court, que null brief d'error gist sur le dit Statute, ou recovery fuit en cest Court en un Action port per Seignior Say vers Stephens en nature de Scandalis Magnatum; mes avenir pluis prochein al cest case; sur Statute que done costs vel damages: le Statute de 7 H. 8. c. 4. que done costs & damages en Replevyn pur le Avowant, ou est trove per le Defendants ou il est barre, ceo per Equity ne extende al Non-suite, & tamen est en Equity mesme le reason, come est tenus 19 H. 8. 12. Dyer 3. 4. Ph. & Mar. fol. 141. ideo nest remedie per l'estatute de 21 H. 8. en le particular case la mention: Nota que 7 H. 8. c. 4. auxi n'extende, mes ou avowry est fait pur rent, custom, ou service, car ceo est mention en le primer part del' Statute, & nemy a tout auters avowries, car a quant purpose fuit l'estatute de 21 H. 8. pur avowrie pur damage fesant, ou auter remedy fait, si l'estatute de 7 H. 8. c. 4. extende a tout manner de avowries? L'estatute de Glouc' done remedy vers cestuy que serra trove Tenant en Assize, & done damages en Mort, Ancester, Besaile, & Cozenage, ceo ne extende al auter Action, nient mention la; le Statute de 23 H. 8. done costs pur le Defendant en divers Actions, la mention, ceo ne extende a Trespass en Ejectione firmæ, ideo l'estatute de 4 Jacobi fuit fait de ceo remedyer, & l'entent del' Statute de 21 H. 8. ne fuit a remedyer touts avowries, mes le particulars la mention, ou ceo commence sur tenure que fuit bien conus al Tenant, (scilicet) pur rents ou damage fesant, queux fueront choses notorious, & nemy a tout paines, & amerciaments, & similia, queux sovient fuits le Tenant ne puissoit aver perfect notice de, & ideo le Statute n'extende a ceo remedyer. 3. Quant al presidents, il est voyer que sont divers

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en le Common-Pleas al contrary, tamen preſidents encounter direct Statute ne ſont de force, & ne appiert que fuit aſcun reſolution per les Juſtices del' Common Banke al aſcun temps en le point, ſed le preſident important, que en le caſes mention en le Statute damages fueront done; ideo ils nient regardont le particular grant ceo en generall; & voyer eſt que ſont deux preſidents, en le lieur de Entries de Seignior Cooke, Replevyn inter Skyp & Winter, & l'auter Greſlies Caſe, ſed ne appiert en aſcun de eux, que ceo fuit en queſtion, & que un judicial direction fuit pur ceo, ſed paſſe ſub ſilentio. (Mult eawe paſſa per le molyn de que moliner n'ad notice) Crooke miſe un caſe en 16 Jacobi ou en avowry pur amerciament le Defendant ad damages & coſts ſed il remitte le damage, & ad Judgment pur Coſts que ſemble deſtre encounter luy, car la null damage recover, ſed Coſts, & ceo per le general parolls del' Statute de 4 Jac. ou le Plaintiff recover Coſts, le Defendant avera auxi Coſts, & iſſint ceſt caſe eſt bien reſponde; Barkeley agree le caſe de relief & fuit adjudge en ceſt Court in temps Popham, que null damages ſerra recover, & ceo eſt pluis fort caſe quam ceſt caſe, car ceo furde originalment hors d'un tenure, ſed Crooke ne voyle agreer al ceſt caſe, car il dit que damages fueront remitte per adviſe de Popham, mes null tiel releaſe eſt trove ſur le recorde, ſed Judgment general fuit done, que le Plaintiff ſerroit barre ſans damages done al avowant; En 35 Eliz. un avowry pur amerciament en Læte, & per totam Curiam null damage pur le avowant, car ils diſont que le Statute de 21 H. 8. pur Rents, Cuſtoms & Services, ceux ſont Cuſtoms per reaſon de tenure, & nemy tout collateral cuſtom, vies Dyer 3. & 4. Ph. & Mar. fol. 141. que dit que l'eſtatute de 21 H. 8. extende ſolment al Avowries ou Conuſance fuit ſur le terre, & nemy ſur le perſon, que prove que ceo eſt per reaſon de tenure, niſi en le 2 caſes la particularment mention damage feaſant, & tout manner de rents. Paſch. 23 Eliz. Rot. 292. enter Staſlocke & Chaplen ou avowry fuit fait pur eſtray per cuſtom, & damages & coſts pur le Defendant, & Error port & opinion Wray & Fennor fuit que Error; iſſint pur amerciament in Læte null damage due per le dit Statute, car Cuſtom per eux en l'eſtatutes de 7 H. 8. & 21 H. 8. ſont Cuſtom per reaſon de tenure, & adjournatur, & apres mort Wray en temps Popham, ceo eſteant move arere le Judgment fuit reverſe, come appiert per le Rolle avandit; Et Brampſton ne dit riens, mes prift temps de adviſe uſque le prochein Terme.

Pigott

Pigott *verſus* Pigott.

PIgott port appeal vers Pigott ſa mere en Ley pur mort de ſa baron proditorie, & envers un auter feme de Murder del' baron, ils plede non culpable, & per un meſme Jury le mere en Ley fuit trove culpable de Treaſon, & l'auter feme acquitte, & ceo fuit en Michaelmas Terme, & ceſt Terme Charles Jones move en arreſt de Judgment; primes, que pur ceo, que ceſt offence eſt fait petit Treaſon, ideo null appell giſt; ſed ceo fuit over-rule per Curiam. 2. Il priſt exception, que duiſſoit eſtre ſeveral venire facias; ſed Curia e contra, que eſt en election del' Plaintiff de prender un joynt venire facias ou ſeveral. Vid. Plow. Matters avenant al Salop. & 9 E. 4. 3. Il priſt auter exception, que le ann del' raigne de noſtre Seignior le Roy ne fuit en le Count, ceo auſi fuit over-rule, pur ceo que le ann del' Roy fuit mention. 4. Le maine exception, fuit pur ceo, que ne fuit null Bill ſur le file; ſed Curia & les Clearks diſont, que ſi le partie ſoit arraigne & plede meſme le Terme, il ne beſoigne aſcun Bill, & iſſint fuit en ceſt caſe, mes ſi plede en auter Terme, il doit eſtre Bill ſur le file, & meſme difference fuit priſt en Watts & Braynes Caſe; & nient obſtant ceux exceptions Judgment fuit done per Crooke, (pur ceo que Jones ne fuit ſur le tryall) que le feme ſertoit trahe & arſe, & iſſint el fuit a Wargrave en Com' Berks, ou le act fuit commit. (10)

Henry Harper Baronet *verſus* le Baylives & Burgeſſes de *Derby*.

HEnry Harper Baronet, port Quare Impedit en le C. B. vers le Eveſque de Coventrie & Litchfield, le Baylives & Burgeſſes de Derby, & William Wierſdale le Clarke pur diſturber luy a preſenter al Vicarage del' Eſgliſe de St. Peter in Derby in Com' Derby, & declare, que Barbara ſa feme dum fuit ſole fuit ſeiſie en fee, ut de grols del' advowſon del' dit Vicarage, & iſſint ſeiſie preſent un John Baylie, que fuit admitte & inſtitute, & apres ils entermarie, & le Eſgliſe devient voide per mort de Baylie, & ils eſteant ſeiſie en fee preſent un & diſturb, ſur que il port le Quare Impedit; l'Eveſque diſclaime ſed ſolment admiſs' & inſtitut', le dit Wierſdale plede, que fuit Parſon imperſonat' ex preſentatione le dit Baylives & Burgeſſes, & plede un longe plea ſur que le Plaintiff demurre, le Baylives & Burgeſſes plede, que ils fueront ſeiſie en fee del' advowſon le dit Vicarage, & grant le prochein avoidance al dit Barbara, & l'Eſgliſe devient voide, per que el preſent le dit Baylie, que fuit admitte, inſtitute & induct, & (11)

apres le Vicarage devient voide per mort Baylie, & appertient à eux a presenter, & ils presenter Wiersdale (absque hoc que le dit Barbara fuit seisie en fee modo & forma prout, &c.) sur que ils fueront al Issue, & le Jury trove special verdict, ils trove que le dit Vicarage inter alia fuit tenus in Capite per Sir Henry Beaumont, & il morust, & Barbara sa file fuit deins age, & en Ward' Domini Regis, & apres sue Livery, & que Barbara le feme del' Plaintiff present (non habens jus) le dit Baylie durant le nonage del' Barbara Beaumont, que fuit admitte, institute & induct, & si ceo seisin en fee prout, ils trove pur le Plaintiff, si nemy pur le Defendant, & Judgment fuit done en Banke put Defendant; tamen sur argument Heath & Crawley fueront pro Querente, sed Hutton & Vernon put Defendant, & Crawley remitte son voice al intent, que le Plaintiff puissoit aver brief d'error; sed il continue en sa ment, de son primer opinion, sur que le Plaintiff port brief d'error en cest Court, & le case fuit sovient foits argue al barre, & apres al Banke le darren Terme per Barkeley & Crooke, & cest Terme per Jones & Brampston, ils fueront divide en opinion deux, sc. Barkeley & Jones que le Judgment serroit reverse, Crooke & Brampston que serra affirme, ils primes agree una voce, que le Plaintiff puissoit si luy pleist prender traverse sur traverse absque hoc que le Baylives & Burgesses grant le prochein avoidance modo & forma, come est resolve en Sir Richard Sapcoats Case, Kellaway fol. 97. vel a son election il poet prender issue sur le seisin in fee. 2. Ils agree, que si home morust seisie d'un advowson tenus en Capite son heire deins age, & un office trove, & per ceo le Roy entitle al advowson durant le nonage del' heire, et un estranger present al Eglise, que devient voide apres mort le ancestor, & apres le office trove, en ceo case ceo ne serra de force al devester le reversion hors del' heire, car coment le party, que present ad gaine le possession del' advowson hac vice, tamen ceo ne devest l'estate del' Roy durant le nonage del' heire, & si l'estate le Roy ne fuit devest hors del' Roy, le inheritance ne serra cy longe, que le particular lessee pur ans ou grantee pur ans, ou Seignior per reason de Garde est en possession le reversion ne serra devest ou turne al un nude droit. 3. Mes si null office soit trove & l'Eglise devient voide, coment le Roy poet present al cest avoidance devant office, come un chattell seperate del' inheritance; tamen si estranger present, & son Clarke admitte, institute & induct, en ceo case entant, que le Roy nad gaine ascun particular estate en le advowson per default de office, cest presentation serra usurpation a devest l'entire interest en le advowson, & le heire en ceo case serra mitte hors de possession. 4. En nostre case, il nest trove que ascun office fuit trove, sed solment que le dit Barbara le file fuit

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deins age, & in Warde, que neſt perfect trover que un office ſue, ideo ils conclude que le preſentation & admiſſion, inſtitution & induction ſur ceo per Barbara feme del' Plaintiff que navoit aſcun droit eſt un uſurpation, & el ad gaine un eſtate en fee en le advowſon; auxi ils agree que le plea del' incumbent ne fuit bon, car fuit un miſpriſion en le plee Peter, pro Thomas; ſed le ſole point en doubt fuit ſur le declaration, & verdict, ſcilicet, home que nad droit al un advowſon preſent per uſurpation, & ſon Clearke apres admitte, inſtitute & induct, ſi en Quare Impedit il poyet declare, que il fuit ſeiſie ut de groſſe del' advowſon, & preſent quant ſon preſentee admitte, inſtitute & induct, ou nemy; il fuit object per Brampſton & Crooke, que il ne poet, & que le verdict que trove ceſt ſpecial matter ne doit maintaine le declaration, les maine objections fueront, que un nude preſentment ſans induction ne gaine aſcun droit, & le very patron per ceo neſt miſe hors de poſſeſſion, mes le inſtitution & admiſſion per le Ordinary, que eſt un judicial Act, ceo fait le uſurpation, & neſt aſcun intereſt gaine devant, car ſil ſoit preſentation ſans inſtitution riens eſt fait, ideo ſi le uſurpation eſt gaine per le inſtitution, que eſt ſubſequent al preſentation le uſurper en ſon declaration ne poet dire, que il fuit ſeiſie en fee, & preſent, que eſt precedent al act, que fait le uſurpation, ſcilicet, le inſtitution; & 2. tanque inſtitution null eſtate eſt trahe hors del' uſurpation, ſi apres preſentation, & devant inſtitution le very Patron grant ſon advowſon al eſtranger, le grant eſt bon, coment apres il ſoit inſtitution del' Clearke del' uſurpor. 3. eſt, que fuit mult inſiſt per eux, & ſpecialment per Brampſton, que Plaintiff puiſſoit traverſe le grant del' prochein avoidance, & ne fuit urge ou compell a mitter en iſſue le ſeiſin en fee modo & forma, & fuit ſon folly a ceo waiver, & ſur ceo le caſe de Sapcoate devant cite fuit remember, & 1 E. 4. 2. traverſe ſur traverſe priſt ſur plee de common, & iſſint en auters caſes. 4. Fuit dit, que revera il ne poet eſtre uſurpation a gainer le fee, tanque le inſtitution, & per relation, que eſt un fiction en Ley, il ne ſerra iſſint priſe, car relation & fiction eſt pur preſerver & a preventer miſchiefe, & nemy a faire tort, come le caſe en queſtion eſt; ceux reaſons & objections fueront le ſubſtance, & le ground de lour opinion, ſed amplifie ove caſes. Barkeley & Jones diſont, que ſi home preſent per uſurpation & ſon Clearke admitte, inſtitute & induct il gaine le fee del' advowſon per uſurpation. 2. Dit ſi home port un Quare Impedit il doit per neceſſity en ſon declaration a faire mention quel eſtate le Plaintiff ad quant il preſent: 8 H. 5. 4. & 18 H. 8. 24. ſont, & touts preſidents, & divers auter authorities ſont a ceo purpoſe. 3. Coment que il ad gaine le fee per uſurpation il ne ſerra compell a mention ſon tort, & que il ad le advowſon per tort.

4. Et en ceo caſe, il ne poet declare de aſcun auter eſtate, quam de fee, ideo ſon declaration ſur le matter eſt bon & garrant en Ley, & ceo que le Ley de neceſſity impoſe ſur un ne ſerra a ſon prejudice, home fiſt Leaſe de terres en que il nad riens, ou de terres un auter a luy meſme per Indenture rendant rent en ceo caſe il declare que ſeiſie en fee & demiſe & bon, & tamen revera il ne fuit ſeiſie en fee, quant il fait le demiſe. 44 E. 3. 20. Seignior vient a diſtreine pur ſon rent, & il que eſt Tenant chaſe eux al auter terre, il poet eux diſtreine la, & declare que il priſt deins ſon fee, & iſſint eſt Bucknalls Caſe pars 9. Cooke, & tamen revera, il ne priſt deins ſon fee, ſed per conſtruction del' Ley, il eſt iſſint, & en dit Bucknalls Caſe, ſi meſne miſe ſes biens en pound a redeemer Beaſts le Tenant, le meſne declare, que il priſt ſes biens, & ceo per neceſſity, & conſtruction de Ley. 2. Auxi le preſentation eſt le ſole Act de party que gaine le advowſon, & le inſtitution neſt forſque ſucceeding ceremony, & quant le ceremony eſt performe ceo avera relation al precedent Act. Vid. 6 E. 3. 42. preſentation en temps de Guerre, & inſtitution deins temps de peace, ceo ſerra uſurpation tempore Guerre: & eſt un bon rule priſt en Cromwells Caſe pars 2. & Binghams Caſe pars 2. & Shelleyes Caſe pars 1. que lou ſont divers acts concurrant a faire un Conveyance, ou eſtate ou auter choſe, le original Acts ſerra preferre, & a ceo les auters Acts averont relation; & la ils ſont divers caſes miſe a ceo purpoſe, ſi Tenant pur vie ou pur ans fiſt feoffment ove garranty, & ove Letter d'Attorney, le Livery eſt fait, en ceo caſe en account de Ley le feoffee ſerra dit eſtre ſeiſie en fee devant le grant, & mult auters caſes fueront miſe al ceſt purpoſe pur relation & fictions en Ley; & quant al election, que il puiſſoit traverſe le grant de prochein avoidance, ceo ne prove, mes que il ad fee nient obſtant, & come dit il ad un election a traverſe, ou a mainteine ſon ſeiſin & en Reports de Anderſon en Caſu Matthews vers Johnſon, il fuit tenus accordant; & ſic pendet.

Aſcough *verſus* Phillips.

(12) UN caſe inter Aſcough & Phillips dependant en Court de Gards fuit referre per Roy al Juſtices de B. le Roy, l'effect del' caſe fuit, que Tenant en Chivalry in Capite deviſe tout ſes terres al charitable uſes, ou en ceo caſe, le Roy avera livery & primer ſeiſin del' 3 parts. 2. Du le deviſe pur le 3 part ſoit voide vers le heire al Common Ley; & tout le Court apres argument fait en private retorne lour opinion deſouth lour mains, que le Roy avera primer ſeiſin, & livery; & 2. Le deviſe pur le 3d. part eſt void en Ley vers le heire, nient obſtant le Statute de charitable uſes.

Termino

Termino Paſch. An. XV. Caroli Regis, *in* Banco Regis.

Eaſter Terme 15 *Caroli*, Sir *Dudley Diggs*, Maſter of the Rolls dyed, and Sir *Charles Cæſar* was made Maſter of the Rolls in his ſtead.

Cookes Caſe.

UN Edward Cooke fuit endite en le Countie devant (i)
le Juſtices de Goal-delivery in Com' Somerſet pur le Murder d'un Marſhall. Le dit Cooke fuit arraigne, & trie devant Baron Denham, & un ſpecial verdict fuit trove come enſuiſt, un recovery fuit ewe pur Dett & Damages vers le dit Cooke, & ſon pier, & Capias ad ſatisfaciend' agarde vers ambideux, le Viſcount fiſt ſon garrant al dit Marſhall ſon Baylive, & auters, ils en le nuit temps covertment viendront al un lieu proping; al manſion meaſon de Cooke le pier, & in le matyn viendront al dit meaſon eſteant cluſe, & locked & dihont, que ils ount proceſs d'arreſter le dit Cooke le pier eſteant en le dit meaſon & ſon fits, & require eux d'obeyer: le Piſoner, ſcilicet, Cooke le fits ayant un Muſket en ſes maines dit al eux, que il voloit diſcharge ceo vers eux, ſils attempt pur enfreinder meaſon, le dit Marſhall & les auters Baylives enfreint un Feneſter del' meaſon, & voilont force le huis del' meaſon & enfreint un Hinge del' huis, ſur que le dit Cooke, le Piſoner, exoneravit le dit Muſket, & occiſe le dit Marſhall, & le queſtion fuit ou ceo fuit Murder, ou homicide, & eſteant remove per Certiorari en B. le Roy, & argue al barre ceſt Terme per Rolls pur le Piſoner; le 4 Juſtices ſeriatim agree en opinion, que ceo ne fuit Murder, car il ne fuit loyall pur les Baylives pur enfreinder le meaſon, car coment le tuer d'un officer en execution de Juſtice ſoit Murder, tamen en un recovery al ſuite de common perſon neſt loyall pur Baylives pur enfreinder le meaſon, ideo pur ceo

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que le Act de eux fuit illegall, come tenus en Semaines Caſe: Cooke pars 5. fol. 91. ceo ne fuit Murder, mes ſolment Homicide.

Perkinſon *verſus* Giliford.

(2) UN Perkinſon port Action de Dett vers Giliford (come jeo remember) adminiſtr' d'un Collier darren Viſcount de Dorſet, & declare que il recover en C. B. vers Ellin Pawlett executrix George Pawlett Dett & Damages, & le record remove en B. le Roy pur error, & Judgment affirme, ſur que Scire facias agarde & le Viſcount levy le argent, & devant retorne del' brief mouſt, ſur que Perkinſon port Dett vers Gilford adminiſtr' de Collier, & fuit move per Mallet apres triall en arreſt de Judgment. 1. Primes que Dett ne giſt. 2. Ne giſt vers Adminiſtrator; ſed per Jones, Crooke & Barkeley (abſente Brampſton) il fuit tenus, que quant le Viſcount levie le argent, ceo eſt bon barre per le Dettor vers Dettee, & il miſe a ſon remedy vers le Viſcount per account ou Dett a ſon election. 2. Il giſt vers adminiſtrator, car ceo eſt Dett ſur le Teſtator; & Judgment done accordant ſi riens pluis dit.

Coodwin *verſus* Weſt.

(3) GOodwin port Dett ſur un branch del' Statute 5 Eliz., vers un feme appell Weſt pur 10 l. & declare, que il fuit Plaintiff en un Action ſur le caſe vers un J. S. & ceo fuit al iſſue, ſur que un niſi prius fuit agarde hors de B. le Roy al Juſtices de Aſſize del' Countie de Glouceſter, & que il ſue un Subpœna hors del' dit Court vers le Defendant Weſt, & offende le proceſs al luy, & done un note a luy & ceo fuit pur doner teſtimony en le dit cauſe, & done a luy 12 d. pur ſes Coſts, & promiſt a doner pluis, ſi ne fuit ſufficient, & le Defendant accept le dit 12 d. & ne vient a doner teſtimony, ſur que il demand 10 l. per le dit Statute, & Nihil debet plede, ſur niſi prius devant Jones un del' Juſtices d'Aſſize en le Countie de Glouceſter, fuit trove pur le Plaintiff vers le dit Weſt, & fuit move per Charles Jones en arreſt de Judgment, que le doner de 12 d. & promiſe a doner pluis ne fuit bon, ſed Curia e contra, car el ad accept le dit 12 d. mes ſel nad accept de ceo, donque il doit aver tender tout que fuit ſufficient Coſts, & un promiſe ne fuit ſufficient. 2. Il fuit alledge que il offende le proceſs & done note, & le parolls del' Statute ſont, que il doit ſerver le dit proceſs ſur le party, ſed Curia (abſente Brampſton) diſallow l'exception. 3. Il priſt exception, que le Action eſt done

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al party grieve, & il nad alledge aſcun griefe a luy per diſant que per default de ſa preſence, le Action paſſe envers luy, vel que il ne proceed en le ſuite pur default de ſon abſence ; Et tota Curia fueront de opinion, que ceo fuit bon exception, ideo Judgment done per Jones, Crooke & Barkeley, que le Plaintiff nihil capiat per Billam.

Bardy *verſus* Clyſton.

ACtion de Dett ſur Obligation ſur Condition a perfoyme agarde, & Defendant plede non fecerunt arbitrium, Plaintiff replie q̃ un arbitrement fuit, q̃ le Defendant payera argent al Plaintiff a tiel jour, & auri q̃ lou le Plaintiff & Defendant fueront joynt-ment lye al un J. S. en 200 l. pur payment de meinder ſumme q̃ le Defendant acquit', & diſcharge de ceo le Plaintiff, & breach aſſigne en non payment del' argent agarde, ſur que demurrer, & exception priſe, que le Arbitrement fuit, que le acquittall & diſcharge fuit act deſtre fait per un eſtranger, & agarde, que un cauſera un eſtranger de faire choſe eſt voide, ſed Curia e contra, que le pay-ment ſerra intende ſur le Condition deſtre al un jour a bener, & donque le Defendant puiſſoit payer le Money al jour, & ceo ſerra acquittall & diſcharge. (4)

Boulton *verſus* Clapham.

BOulton port Action ſur le caſe vers Clapham, & declare que il fait un affidavit in Curia Banci Regis encounter Clapham pur luy lier al bon port, & ceo fuit lie en Court en preſence del' Juſtices & auters, & que le Defendant malicioſe dit, que ceo fuit falſe affidavit, & que 40 voilont jure al contrarie, ſur non Culpa-ble plede ils fueront al Jſſue, & al niſi prius trove pur le Plain-tiff, & 5 l. damages done. Holborne move en arreſt de Judg-ment, que ceux parolls ne voilont mainteme Action, car ils fue-ront parle en Court en diſaffirmance del' choſe urge ſur le dit affidavit en Court, & Jones, Crooke & Barkeley fueront de meſme opinion, ideo ils done rule que Plaintiff Nil capiat per Billam. (5)

Davies

Davies *verſus* Bellamy.

(2) HOme recover en Treſpaſs en C. B. & ſur ceo Defendant port attaint & trove encounter luy, le Defendant en attaint navera Coſts en le attaint per l'eſtatute de 23 H. 8. neque per aſcun Statute que done coſts pur le Defendant, iſſint en bref, mes per l'eſtatute de 3 H. 7. que done ceo en aſcun caſe.

L'Eveſque *de* Landaffe *verſus* Lewys.

(3) EJectione firmæ fuit port en le Common Banke per le Leſſee del' Eveſque de Landaffe vers un Edward Lewys, & il appeare per Thomas Smithier ſon Attorney, & verdict & Judgment paſſe pur le Plaintiff, ſur que le dit Lewys port Error, & aſſigne pur Error, que al temps de ſon appearance, il fuit deins age, & adhuc fuit, & il appiert per ſon Attorney ou il duiſſoit per guardein, & le Defendant en bref d'error dit, q̃ il ne fuit aſcun garrant de Attorney, ſur que il avoit diminution, & certifie, que null garrant d'Attorney. & le Plaintiff en le bref d'error aſſigne arrere meſme l'error, & le Defendant dit in nullo eſt erratum, & per le Court, Jones, Barkeley & Crooke, que le Judgment doit eſtre reverſe, car le allegation del' diminution de ceo, que ne fuit aſcun garrant d'Attorney fuit de null purpoſe, & l'Infancy eſt matter en fait, que eſt confeſſe per le joynder in nullo eſt erratum, ſur que Judgment fuit reverſe.

Williams Caſe.

(4) AL Seſſions tenus a Newgate, un ſpecial verdict fuit trove in his verbis, We find that the day being St. Davids day, year and place mentioned in the Indictment, David Williams therein named, being a Welſhman, and having a Leek in his Hat, being angry at one Nicholas Redman a Porter in the Street there, for pointing at a Jack of Lent, there hanged with a Leek; and ſaying to the ſaid David Williams, look on your Country-man, did ſuddenly take up the Hammer, mentioned in the Indictment, from a Stall, and violently threw that Hammer out of his Right Hand, at, and towards the ſaid Nicholas Redman, with intention to hit the ſaid Redman, and without any meaning to hit the ſaid Francis; and with the ſaid Hammer did then and there, hit the ſaid Francis Marbury, there ſitting in his Shop, on the forepart of his head, prout, &c. the ſaid Francis then not having any weapon

weapon drawn, nor the ſaid Francis then having firſt ſtricken the ſaid David: And that the ſaid David did then and there give to the ſaid Francis, the mortal Wound mentioned in the ſaid Indictment, whereof he dyed; but whether upon the whole matter this be Man-ſlaughter within the Statute of Stabbing 1 Jac. mentioned, &c. they are ignorant, &c. And if &c. then, &c. Et quod nulla bona, &c. Et al die Mercurii apres ceſt Terme de Paſch.; les 2 Chief Juſtices & Chief Baron, moy meſme, le 3. auter Barons & Crawley eſteant enſemble, jeo demande lour opinion en ceſt caſe, & tout agreé, que ne fuit deins l'eſtatute de Stabbing, mes que il poyet aver ſon Clergie, le quel meſme jour al Seſſions a Newgate, jeo certifie al Recorder, & le Court la.

Termino Trin. An. XV. Caroli Regis, *in* Banco Regis.

James *verſus* Tintney.

(1) LE primer Samady del' ceſt Terme Brampſton Chief Juſtice declare ſon opinion en le caſe de James & Tintney, & il fuit de opinion ove Jones, que Judgment doit eſtre reverſe, & que en le dit caſe null Judgment duiſſoit eſtre done pur le damages, il dit que il fuit clære, que al Common Ley, null damages fueront deſtre done pur le Defendant en Replevyn, coment que en divers caſes ou Avowry ou Conuſance fuit fait, & retorne prye, le Defendant fuit actorn iſſint le queſtion eſt ſur le Statutes de 7 H. 8. & 21 H. 8. ou en ceſt caſe per le dit Statutes, damages ſerront done. 1. Il tient que nemy per le letter del' Ley, car ceo extende ſolment per l'eſtatute de 7 H. 8. al Rent, Cuſtoms, & Services, que ſerront intende al Rents Service, Services & Cuſtoms per reaſon de tenure, & le Statute de 21 H. 8. eſt pur Rent, Cuſtoms & Services, queux parolls ſerront referre al Rents & Cuſtoms, queux ſont per reaſon de tenure; per Rent, Cuſtoms & Services mention en 7 H. 8. Rent charge ne fuit comprehend, ideo ceo fuit adde, en 21 H. 8. que prove que per le general parolls de Rent, ceo n'extende al auter rent, que Rent Service, & per meſme le rule Cuſtom n'extende, niſi al ceux Cuſtoms, queux fueront per reaſon de Service, ideo ceo ne fuit deins les parolls del' Statute del' 7 H. 8. ou 21 H. 8. 2. Le ſecond choſe conſiderable eſt, ou fuit deins l'entent & equity del' Statutes. 1. Il vouch Pilfords Caſe. Reports Cooke pars 10. fol. 105. la diſtinction miſt ou damages fueront done, ou null devant, & l'ou ils fueront devant & increaſe per l'eſtatutes, & a ceo il mitte divers caſes la remember de Quare Impedit, Action de Waſte, & auters caſes la miſt: & iſſint ſur l'eſtatute de ingreſſu ove vi, il recovera null damages, neque Coſts. Vid. 27 H.8. 10. al ceſt purpoſe. 2. L'eſtatute de 7 H. 8. & 21 H. 8. l'un explaine l'auter, & l'eſtatute de 7 H. 8. ne

fuit

fuit extende ultra le parolls, ideo ceſt Statute ne ſerroit extende 3 & 4 Mar. fol. 141. le queſtion fuit ou 7 H. 8. extende al damage faſant & un quære, ideo al explaine ceſt doubt, le Statute de 21 H. 8. fuit fait pur ceo, & rent charge, ergo le Parliament tient, q̃ ne fuit deins 7 H. 8. car ceo ſerroit priſt ſtrictment, & nemy per Equity. Il eſt voyer (come il dit) que divers preſidents fueront en C. B. al ceſt purpoſe & voyer eſt, que ſont deux preſidents en Cooke Lieur Entries, Griſleys Caſe, mes null ſur deliberate adviſe, vel Rule del' Court, ſed paſſa ſub ſilentio: & coment le courſe de cheſcun Court doit eſtre obſerve, mes lou un choſe per l'eſtatute eſt done, ſi le Common Banke fiſt preſident e contrarie ceo ne liera ceſt Court, car le Statute en ceſt caſe doit eſtre le rule, & nemy preſidents; auxi eſt preſident en ceſt Court al contra: Anſlop & Catlins Caſe Paſch. 33 Eliz. Rot. 292. Avowry pur eſtray per preſcription & damages done, & Judgment en Common Banke done pur damages & ceo reverſe per Erroꝛ & le cauſe de reverſall fuit enter ſur le Roll, pur ceo que null damages doint eſtre recover en ceſt caſe, & tamen ceſt Avowry fuit ground ſur preſcription, & Mich. 35 & 36 Eliz. en un Vudalls Caſe, Avowry pur amerciament en Læte, null damages doint eſtre recover: Mich. 44 & 45 Eliz. Shepheard & Mackworth, en Avowry pur relief null damages doint eſtre recover; il auxi voche un preſident, Hill. 14 Jac. Rot. 471. en B. R. ou Coſts fuit recover en ceſt caſe, mes null damage; ceo fuit per reaſon del' Statute de 4 Jac. que done Coſts al Defendant, ou Coſts fueront deſtre recover per le Plaintiff, ſed ceo ne prove, que lou Plaintiff recovera damages que le Defendant recover', ideo il conclude que le Judgment doit eſtre reverſe.

Vicars Choral *de* Litchfield *verſus* Ayres & auters.

(2) RAlph Swyft Succentoꝛ & le Company de Vicars Choral en le Catheꝺral Eſgliſe de Litchfield fueront Plaintiffs en Dett pur non exposer de diſmes de 140 Acres terre en Cheſterton en Com' Warwick, que fuit Rectory impropriate al eux & le diſmes del' 140 Acres appertient al eux, vers Ayres & auters Defendants, ſur non debet plede, le Jury trove ſpecial verdict, ſcilicet, que le Rectory de Cheſterton avandit fuit appropriate al Plaintiffs, & que le dit 140 Acres fueront deins le dit Rectory, ſed ils trove ouſter, que per Indenture fait per William Smith jades Succentoꝛ la, & le Company de Vicars Chorall avandit del' un part, & John Woodward & Richard Woodward del' auter part date en 26 Feb. 5 E. 6. il fuit rehearſe, que un Colmore & le dit Company ad demiſe al John Peitoe 29 H. 8. le diſmes de 40 Acres terre, & 34 Acres pree en Cheſterton avandit, & auxi le fallow de 9 Yarde

terre eſteant le terre de Free Tenants en Cheſterton avan dit, & tout diſmes & auters choſes apperten' al dit Rectory ſavant le privie diſmes, auxi le 4 jours oblations, le Tythe del' Parſons Hay-meadow, & le nomination del' Curate pur 42 ans, & que le intereſt de dit Terme vient al dit John Woodward, tout ceo fuit per voy de recitall, oue per le dit Indenture le dit Corporation ratifie, confirme, & allowe le dit Leaſe; & ultra ceo, grant al dit John Woodward & Richard Woodward tout conteine & mentioned deſire demiſe per le dit Indenture, & le diſmes del' Parſons Hay, a aver' al eux & lour aſſignes immediatement apres le fine del' dit Terme, vie al dit Richard Woodward apres le fine del' dit Terme, & ans pur un Voys, & apres le dit Voys al dit J. Woodward, & ſes heires rendant un Rent; apres le dit Smith, & le reſidue del' Corporation per Indenture date en March. 2. & 3. Philip & Mary, grant & demiſe al un Humphrey Peitoe Ar' 8 Acres Glebe terre parcell del' ceſt Rectory, & 78 Acres de demeſnes, & tout diſmes auxibien predial & perſonall, & touts choſes & diſmes appertient al dit Rectory, as Tyth Pigg, Gooſe, Lamb, Tyth Lambs, Wooll, Tyth Calves, Fiſh, Swans, & Wood, & tout auter diſmes al dit Rectory appurtenant, & auxi le diſmes del' dit 78 Acres Glebe terre, All which were lately en tenure de Margaret Peitoe Widow, & auxi tout lour droit Title, intereſt in and to the ſame, which did belong by reaſon del' dit Rectory ove Exception del' privy diſmes, les offerings, & nomination d'un Curat', a aver & tener a luy & ſes heires rendant Rent. Humphrey Peitoe morust, & Edward Peitoe Chivaler fuit ſon fits & heire, le Jury trove que le diſmes del' dit 140 Acres ne fueront unque en le tenure de dit Margaret Peitoe, que le Defendant eux ſeme ove Graine, & prist eux ſans expoſer del' diſmes & ſi, &c.

Ceſt caſe apres pluſors arguments al barre fuit argue al Banke le primer lunday del' ceſt Terme per touts les Juſtices, & tout agree en un; en q̃ 2 points fueront fait. Primes, ou le grant fait al Woodward paſſa les diſmes en fee al J. Woodward. 2. Admittant q̃ ne ſont, ou ils paſſant al Dorothy Peitoe per le fait de 2 & 3 Philip & Marie. Jones en ſon argument move, q̃ le primer Leaſe fait per Colmore ne fuit trove, ſed ſolment il fuit un rehearſall del' ceo en le Indenture de 5 E. 6 fait al Woodward, & donq; ceo nient eſteant trove de facto, il ne ſerra priſe, que fuit aſcun tiel, donque le fait & Indenture fait al Richard Woodward del' diſmes a commencer apres fine d'un terme pur ans (ou tiel terme ne fuit trove) pur un Voys, commencera preſentment, come 3 E. 6. Bro. Leaſes 62. & donque le Limitation apres le Voys al John Woodward en fee eſt bon, come un remainder, & null Livery requiſite, car eſt de diſmes, & le Chief Juſtice agree a ceo, ſi null tiel Leaſe fuit

trove

trove, ſed ſemble a luy, que fuit bien trove eſteant per voy de recitall, entant que fuit trove per voy de recitall, que ceo fuit aſſigne al John Woodward, & auxi le fait ceo ratifie & confirme. Quant al auter points tout agree, primes, que le grant en fee al John Woodward ne fuit bon, car le Moys ne fuit a commencer tanque apres le primer Terme, & ans fine & ceo fuit un future Leaſe, & apres al John Woodward, & ceo neſt pluis quam ſi diſmes grant al un pur ans al jour a vener remainder al auter en fee, ceo neſt bon, car un franktenement ne poet eſtre en Abaiance, come eſt reſolve en Reports Cooke pars 2. en Buckler & Harveys Caſe fol. 56. Quant al Indenture de 2, 3. Philip & Marie ils teignont, que le diſmes nient obſtant, que ne fueront en tenure de Margaret Peitoe paſſant; primes ils diſont, que cheſcun grant ſerra priſe pluiſt fort vers le grantor, & benigna eſt facienda interpretatio ut res magis valeat quam pereat, & cheſcun fait ſerra conſtrue ſolonc entent del' parties, ſi poet eſtoyer ove Ley, & il appiert le intention del' parties a paſſer tout, ſavant le choſes except. Barkeley & Jones tient, que le non eſteant en tenure de Margaret Peitoe ne fait le grant voide, & lour reaſon fuit, le grant de tout diſmes & noſme eux particularment fuit aſſets certaine, & un precipe giſt de ceo, & auxi un Fine de ceo bon, & donque le addition apres ſi ſoit falſe ne ſerra le grant voide; ſed 2. Per tout, il fuit tenus, que ceſt clauſe navera relation al clauſe de grant de tout diſmes, car il eſt grant apres del' diſmes de 78 Acres terre, & a ceo ſolment il avera relation. 3. Ceſt neſt aſcun reſtriction de grant, mes eſt le affirmation del' parties, & coment ceo en caſe Regis amount al un Suggeſtion, & ſerra le grant le Roy voide, tamen in caſu Common perſon, il ne ſerra ceo voide: Vid. Legates Caſe pars 10. Et tout agreæ, que Judgment ſerroit done encounter le Plaintiffs.

Criſpe *verſus* Pratt.

LE caſe inter Criſpe Plaintiff & Pratt Defendant, en un Ejectione firmæ fuit ceo; un Ralph Briſcoe procure pur ſon argent un Copyhold deſtre ſurrender de 15 Acres pree Copyhold parcell del' Mannor de Eaſt Barnet, & deſtre grant a luy & ſa feme, & Ralph Briſcoe ſon fits, & al heires le fits, apres Ralph le pier devient un Inn-holder, & (come le ſpecial verdict trove) il obteine ſon living vendendo & emendo uſitando le trade de Inn-holder & apres devient indebt, & per Commiſſion il fuit adjudge un Bankrupt, & le dit Copyhold terre fuit vende per fait enrolle al un John Briſcoe al uſe les Creditors, & il fuit admitte per le Seignior del' Mannor; Briſcoe le pier morust, & ſa feme, Ralph le fits enter, & leſſant (3)

leſſe al Plaintiff, que fuit ouſte per le Defendant ut ſerviens John Briſcoe, & ſi pro Querente, & ſi pur Defendant. Ceſt caſe fuit argue al barre ſovient foits, & le primer die Martis ceſt Terme il fuit argue ſeriatim per tout les Juſtices, en que divers points fueront move, & aſcun d'eux agree per tout, & en aſcun ils differont: Barkeley argue pur Defendant, le 3 auters fueront d'opinion pur le Plaintiff. Barkeley tient, que come le verdict eſt trove, Ralph Briſcoe le pier fuit un Bankrupt deins 1 Jac., car il eſt trove, que il gaine ſon living emendo & vendendo, & ſi ne riens pluis ad eſtre dit, ceo eſt directment deins l'eſtatute, & coment il ſoit adde, que il gaine ſon living vendendo & emendo uſitando Inn-holder, tamen ſi un ſoit Inn-holder & gaine ſon living emendo & vendendo, il eſt deins le Statute, & en ceo point Jones agree ove luy, que entant, que il eſteant Inn-holder gaine ſon living emendo & vendendo, ceo eſt deins l'eſtatute, & quant il eſt iſſint trove, il implie, que le maine meanes de ſon living fuit emendo & vendendo, mes poet eſtre, que Inn-holder ſerra hors del' Statute, ſil ne fuit maine occaſion & meanes de ſon living. Sed Crooke & Brampſton e contra, car ils tient abſolutement, que Inn-holder en any caſe neſt deins le Statute deſtre Bankrupt, mient pluis, que un Farmer, que uſe aſcun foits buying & ſelling, & ſimilia; Barkeley auxi tient, que ſi un procure terres deſtre condey al ſon fits, & apres devient un Inn-holder (& un Tradeſman) & apres devient Bankrupt, que ceſt terre ſerra vende, car eſt deins l'expreſs parolls del' Statute de 1 Jac., & encounter l'expreſs parolls del' Statute, que eſt fait pur benefit de Creditors, (& per 21 Jac. eſt deſtre beneficialment expound pur le Creditors) null conſtruction pur evader l'eſtatute ſerra fait; ſed les 3 auters Juſtices fueront de contrarie opinion, car ceo ſerroit a barre aſcun contract enter home & home, & a doner power al pier apres que il ad fait proviſion pur ſon fits, de luy defeate apres per ſon Act demeſne en devenir un Bankrupt, que ne ſerra puſe deſtre le voyer Intent' del' dit Statute; & per Crooke & Brampſton, il fuit tenus, que admittant que Inn-holder fuit un Bankrupt deins le Ley, & il eſteant Inn-holder procure tiel eſtate pur ſon fits devant que il devient Bankrupt, ſi ne ſoit per covyn & fraude (que doit trove deſtre ſur fraude per Jury) ceſt neſt deins l'eſtatute, car come Crooke & Brampſton dient, que le parolls ſont, que le ſale ſerra bon vers tiel offendor, & neſt offendor, tanque il devient Bankrupt; ſed Jones doubta del' ceo & le primer parolls del' Act de 1 Jac., que ſi aſcun que eſt vel ſerra Bankrupt, & null paroll del' offendor la, ſed voyer il eſt deins le parolls ſubſequent, que le ſale ſerra bon vers le offendor ſes heires & aſſignes, & vers aſcun del' ſes Children, vel auter perſon claiment

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deſouth luy. Nota aſcun del' ſes Children neſt lye claiment deſouth le offendor, ideo ceux ſubſequent parolls ne lye eux; mes le doubt remaine ſur le primer parolls, if any perſon which hereafter is or ſhall be a Bankrupt, ſhall convey or procure, or cauſe to be conveyed, any Lands to any of his Children, *&c.* que ſemble, que il doit eſtre un Bankrupt, quant il cauſe ceo deſtre; (ſed de ceo quære) mes tout agree, que Copyhold terres ſont deins 13 Eliz.; ſi ſont le Copyhold terres del' Bankrupt meſme, vel convey & aſſure al ſes fits al uſe le offendor, mes icy neſt trove, que le Conveyance fuit al uſe del' Bankrupt, ideo ceſt Caſe neſt deins le dit Statute; ſed le Conveyance al fits eſt deins l'expreſs parolls de 1 Jac., Et coment la Copyhold neſt noſme, ſed tout ſes terres Tenements, & Hereditaments, tamen per Equity Copyhold en ceo caſe eſt deins le compaſſe de ceſt Statute; ideo Judgment pro Querente: Barkeley in omnibus pur le Defendant.

Evelins Caſe.

UN motion pur un brief al official del' Arch-Deacon de Londres fuit fait, entant que il ad refuſe a jurer un, que fuit eſlie un del' Gardeins de St. Ethelborough en Londres ſolon le Cuſtom, & a remover un auter, que il ad jure, que ne fuit duement elect, & le Opinion del' Court fuit, que un brief fuit grantable, & iſſint il fuit grant, & retorne fait, que il fuit jure, mes que il ne poet remove l'auter, & ceo bon retorne; en Londres per Cuſtome le Gardeins d'Eſgliſe ſont Corporation, & ceo eſt per le Common Ley, & ils ſont deſt. e elect ſolon le Cuſtom, & le Canon ne poet alter ou abrogate ceſt Cuſtom, mes ceſt Cuſtom ne poet eſtre trie, ſur le retorne, & il que eſt jure devant ne poet eſtre remove per ceſt brief, mes ſolment ſont a trier ceſt Cuſtom & Election al Common Ley. (4)

Groſſe *verſus* Boſcow.

GRoſſe enter Plaint de Replevyn en Court d'un Seignior que fuit remove icy per un accedas ad Curiam, & le parties fueront al Iſſue, & trove pur le Plaintiff, & il fuit move per Beare en arreſt de Judgment, que null pledges fueront trove, & il dit que per Statute de Weſtm' 2. pledges de retorno habend' doint eſtre trove, & pur ceo, que ne fueront trove il fuit erronious: ſed Curia e contra, ils ſont deux ſorts de pledges, un de proſequendo al Common Ley, & ſi ceux pledges ne ſont trove & Judgment done, ceo eſt erronious: Vid. Huſleys Caſe pars 9. mes ceux pledges poient eſtre trove al Viſcount, vel en Court aſcun temps (5)

temps devant Judgment, mes nemy apres Judgment: mes le pledges de retorno habend' sont done per le dit Statute, & un Action done vers le Viscount, si ne sont trove, mes ceo ne fist le procædings erronious, & cest fuit le opinion de tout le Court: Et semble case entet Hicks & Heard, & le mesme Judgment done.

Greenhills Case.

(6) HOme port Action de Trespass pur pischer en son several pis-cary & pisces suos cepit, & en arrest de Judgment fuit move, que ceo ne fuit bon, car ne sont pisces suos esteant en un River: & per Curiam il fuit tenus bon, & Judgment done accordant.

Anonymus.

(7) UN Action port per le baron sole pur Batterie del' feme per quod Consortium amisit, & fuit tenus bon, & issint un tiel Judgment fuit affirme in Camera Scaccarii; & baron & feme sue un Action sur le case en nature de Conspiracy vers J. S. pur ceo, que J. S. malitiose & falso crimen felon' impos, & laboy de eux endit', & tenus que l'Action ne fuit bien port, car le baron & feme ne poient joinder, quant al tort fait al baron, mes sil ad estre pur Conspir' de inditer le feme ils poient joinder assets bien, & issint fuit le opinion del' 3 Justices, sed Crooke semble al contrary.

Termino

Termino Mich. An. XV. Caroli Regis, *in* Banco Regis.

Swaynes Caſe.

SWayne ſue en Eccleſiaſtical Court J. B. pur diffamation, (1)
ſcilicet, pur parler, That Swayne was a Common Drunkard, & auter parolls tendant a meſme purpoſe, & ſur ceo prohibition fuit prie, & ſur debate ceſt Terme per Brampſton, Jones & Barkeley, il fuit grant, car coment diffamation general appertient al Eccleſiaſtical Court, come appiert Cooke pars 5. Eccleſt' caſe, & l'eſtatute de circumſpecte agatis, tamen ceo eſt deſtre prie pur diffamation, que concernift choſes queux ſont deins le Juriſdiction del' Eccleſiaſtical Court: Jones dit; que (quant il fuit Juſtice del' Common Banke) il fuit le caſe d'un Calthrop un dit, que il fuit common Drunkard, ſur que il ſue en Eccleſiaſtical Court: & ſur debate per Hobart, Winch, Hutton & Jones una voce, un tiel prohibition fuit grant al Chancellor de Norwich: Vid. Lind. fol. 70. ſur parolls mortale peccatum, que ceo ne ſerra extende al tout mortal offences, ſed al Adultery & Fornication & hujuſmodi, & le offence de Drunkenneſs, neſt la mention: le caſe mention fuit inter Philips & Calthrop: Hill. 20. Jac. Rot. 2083.

Leates Caſe.

UN port Action ſur le caſe en C. B. & declare, ou il fuit lie pur (2)
John a Stile, le dit J. S. mourſt, & un Thomas Clearke priſt admin' del' ſes biens, le Defendant le feme de John a Stile aſſume, que ſi Thomas Clearke (que ad priſt admin' del' biens J. S.) al inſtance del' Plaintiff voloit relinquiſh le adminiſtr', & conſent que le Defendant puiſſoit aver le adminiſtr', que il voloit ſaver harmleſs le Plaintiff de dit Bond, & monſtre que le dit Thomas Clearke relinquiſh le dit adminiſtr', & conſent que le Plaintiff prendera le adminiſtr', & ſur ceo il avoit le adminiſtr', tamen le Defen-

dant ne ſaver luy harmleſs del' dit Bond, & ſur verdict done en C. B. & erroꝛ poꝛt ; & tenus per Curiam, Brampſton, Jones & Barkeley, que le Declaration ne fuit bon, pur ceo que il ne monſtre, que al inſtance del' Plaintiff, Thomas Clearke ad relinquiſh le Adminiſtration, ſed generally que il ad ceo relinquiſh, & ceo poet eſtre ſans inſtance del' Plaintiff, & Judgment fuit reverſe.

Marſhall *verſus* Luſher.

Trin 14. *Car. Rot.* 1512.

(2) LE caſe inter Elizabeth Marſhall & Henry Luſher Defendant en brief d'erroꝛ ſur Judgment done en le C. B. fuit tiel : un recoꝛd ſur le brief d'erroꝛ fuit certifie hoꝛs del' C. B. que le dit Marſhall en le Terme de St. Hillary 13 Caroli fuit ſummon a reſponde al Plaintiff Nicholas Luſher en un plea de Dett ſur in ſimul computaſſet de 7 l. 6 s. 6 d. & ſur ceo ſur nihil debet trove per verdict vers le Defendant, & ad Judgment de recover le dit Dett de 7 l. 6 s. 6 d. & Damages & Coſts : Et le Plaintiff aſſigne Erroꝛ, & alledge variance perenter le Declaration, & l'oꝛiginal brief ; le brief fuit 7 l. 6 s. & le Declaration fuit 7 l. 6 s. 6 d. & pꝛia brief de ceo certifie, & ſur ceo le Cuſtos Brevium certifie un brief oꝛiginal en Terme Sancti Trin. 12 Caroli, & poꝛt parenter meſme parties, & le dit demande la fuit 7 l. 6 s. ſolment, & ſur retoꝛne de ceo le Plaintiff aſſigne meſme l'erroꝛ, ſcilicet, le variation, le Defendant vient eins, & dit que en nullo eſt erratum, car il dit que le Declaration ne fuit fundate ſur le dit oꝛiginal, car le dit oꝛiginal fuit ſue tout en avant, que le Plaintiff en brief d'erroꝛ fuit waive, & pꝛia pꝛoceſs de certifie le dit pꝛoceſs, que fuit certifie accoꝛdant, le Plaintiff vient eins, & dit que fuit erroꝛ, car il ne fuit aſcun pꝛoclamation ſur le dit lexigent', Et ſi ſur tout le recoꝛd le Judgment ſerroit affirme ou reverſe fuit le queſtion. Serjeant Clarke move que fuit erroꝛ, car il appiert manifeſt variation enter le brief & Declaration, ſed Yardly dit que ne fuit Erroꝛ : Curia, ſcilicet, Brampſton, Jones & Barkeley fueront de opinion, que fuit Erroꝛ car per le utlagary le oꝛiginal fuit determin, quod vid. Co. 5. 119. 41 E. 3. 26. 41 E. 3. 3. & auters lieurs, iſſint q̃ ſi deux fueront joynt lye en un Obligation, & ils ſont joyntment ſue, l'un appiert & ad idem dies, l'auter eſt utlage, la ceſtuy que appiert ſerra miſe a reſponder, & ſerra charge ove tout le Dett ; iſſint ſi le utlary ad continue, il eſt clære, que null Declaration puiſſoit eſtre ſur ceſt oꝛiginal ; Et 2. Coment que il ſoit alledge, que null pꝛoclamation & donque le utlary voide, tamen null agarde del' Court que ceo eſt voide, & tanque ceo ſoit, il eſt en foꝛce. 3. Admitte

mitte que le original per le avoiding del' utlary ſerroit revive, tamen le Plaintiff ad Election a porter novell original, ſi luy pleiſt, ou a declare ſur le ancient original, & il n'appiert de record, que il ad declare ſur ceo, car le record eſt, que il fuit ſummon Hill. 13 Caroli, & le original en Trin. 12 Caroli, & ceo ne poet eſtre meſme original, & ſi null original, ceo eſt aide per l'eſtatute, & rule done pur affirme le Judgment.

Hodges *verſus* Sampſon.

Hill. 14. *Car. Rot.* 141.

UN Action ſur le caſe port vers baron & feme ſur trover & converſion de biens, & le Declaration fuit, que le biens vient al lour poſſeſſion, & que ils convert' ceux biens a lour uſe demeſne, & trove ſur verdict encounter le Defendant, & fuit move in arreſt de Judgment per Hyde de Melieu Temple, entant que le Declaration fuit, que le baron & feme font le Converſion a lour uſe demeſne, & un feme Covert ne poyet aver biens, mes ils ſont le biens de baron, & ideo el ne poet convert les biens a ſa uſe demeſne, & il cite aſcun caſes, ou que il fuit rule accordant, Brampſton, Jones & Barkeley fueront ſolment en Court (abſente Crooke) Jones & Barkeley confeſſe, que ſur motions aſcun rules fueront done ſolon l'opinion de Hyde, & pur ceo fur melior conſideration il eſt bon deſtre aviſe; car per eux trois il ſemble, que il eſt bon, car coment il ſoit voyer; que ſi feme acquire biens per done ou autrement ils ſont preſentment les biens le baron, tamen il fuit un inſtant & en priority, que ils fueront biens le feme, & a poſteriori le property ſerra deveſt del' feme, & veſt en le baron, & ſi joynt Treſpaſs ſoit fait pur priſall de biens per baron & feme le Action poet eſtre priſe vers eux deux quare bona & catalla ceperunt, & aſportaverunt; Action de trover & converſion neſt forſq; en nature de Treſpaſs, & quant biens ſoient priſe per baron & feme, il eſt en election del' partie a port Action de Treſpaſs, vel Action ſur le caſe ſur trover & converſion; ſi feme priſt victuals, & el meſme conſume eux preſentment el convert ceo al auter uſe, & eſt ſa Act de Converſion; & ils diſont, que ils voilont conferer, ove auters Judges, & adonque ils voilont done un abſolute rule, & al auter jour ceſt Terme le matter fuit move arere, & donque Judgment per le 4 Juſtices fuit done pro Querente. (4)

Nota Hill. 20. Jac. quant jeo fuit Juſtice del' Common Banke, ou Judgment done en B. le Roy ſur trover & converſion vers le baron & feme ſur lour joint converſion de biens, & ceo per Error en C. S. fuit reverſe. Vide Fitz. brief 644. 33 E. 3. & la 38 E. 3.

le caſe en Camera Scaccarii devant mention fuit enter Bevy & Nevy: & 22 November ceſt Terme rule fuit done de tarde le Judgment.

Fen *verſus* Dixe.

(5) ACtion ſur le caſe pur parolls per un Thomas Fen vers un auter, & il declare, que il fuit Common Brewer, & le Defendant ſur Colloquie ewe ove un eſtranger del' dit Thomas Fen dit ceux parolls, I will give my Mare a Peck of Malt, and give her Water after it, and ſhe ſhall piſs as good Beer as Thomas Fen Breweth, (innuendo le Plaintiff) per quod il perde divers Cuſtomers al damage, &c. & trove pur le Plaintiff, & damages aſſeſſe, & il fuit move per Porter en arreſt de Judgment, que les parolls ne voilont maintaine Action: Le Attorney Generall al auter jour argue, que ils voilont maintaine Action, car il eſt un Scandal al Plaintiff en ſon Trade, & coment null averment ſoit que il ad perde aſcun cuſtomer en particular, tamen il eſt apparent Scandal a luy eſteant Brewer, & ideo ne beſoigne aſcun averment, & il cite divers caſes a ceſt purpoſe, ſed Brampſton, Jones & Barkeley, que les parolls ſans allegation del' particular loſſe neſt bon, & le parolls en eux meſme ne poient eſtre aſcun Scandal; Et ſur ceo Judgment fuit ſtay.

Anonymus.

(6) UN poyt Action de Treſpaſs en C. B. pur Aſſault & Battery, verberavit vulneravit & alia enormia ei intulit verſus un auter, & declare de Aſſault & Battery, & que le Defendant ove un twig, que il avoit en ſon maine percuſs' un chivall, ſur le q̃ Plaintiff chivauch per que le chivall luy eject ſur le terre, & per ceo ſon femur enfrient, & apres verdict en C. B. Judgment done, & ſur ceo Erroz, & le ſole Erroz fuit, que variance enter le bziefe & Declaration, car en le bziefe null mention del' percuſs' le chivall; Sed tota Curia encounter ceo, car null Treſpaſs poyt pur percuſſer de chivall, ſed ceo fuit un inducement que per ceſt means le Plaintiff fuit eject ſur le terre, & debzuſe ſon femur, & ideo per totam Curiam, ſcilicet, Brampſton, Jones, Crooke & Barkeley, le Judgment en le Common Banke fuit affirme.

Leake

Leake *verſus* Roger Dawes.

LEake port un Scire facias en nature d'un Audita Querela vers Dawes, & il conteine en le Scire facias, que un Hopton fuit ſeiſie en fee del' Manor de Hopton in Com' Salop, & d'un Meſſuage en D. en le dit Countie, & iſſint ſeiſie conuſt un Recognizance en nature d'un Statute Staple, ſolon le forme del' Statute de 23 H. 8. al dit Roger Dawes en 1000 l. & que le dit Hopton bargaine & vende per fait enroll le dit Manor al un Richard Cartwright en fee, que per fait bargaine & vende ceo al Sir John Walter en fee, ſed ne dit per fait enroll, & que per virtue del' ceo Sir John Walter fuit ſeiſie en fee, & morust, & ceo deſcende al ſon fits William Walter, & il fuit ſeiſie en fee, & vende per fait enroll le dit Manor al Plaintiff Leake, virtute cujus il fuit ſeiſie en fee, Et il dit ouſter, que le dit Hopton fait bargaine le dit Meſſuage al un Richard Houghton en fee, & per virtue del' ceo, & le Statute de 27 H. 8. il fuit ſeiſie en fee & bargaine & vende ceo al dit Dawes virtute cujus & 27 H. 8. il fuit ſeiſie en fee, & licet le dit Dawes perquiſivit ſibi & heredibus ſuis in form' prædict. le dit Meſſuage, & fuit ſeiſie del' ceo en fee modo & forma prædict., tamen le dit Dawes extende le dit Manor de Hopton convey al Leake. Le dit Dawes plede per proteſtation que le dit Hopton ne bargaine & vende le dit Meſſuage al dit Houghton, pro placito il dit que le dit Hopton fuit ſeiſie del' dit Meſſuage en fee abſq; hoc que le dit Cartwright bargaine & vende le dit Manor al dit Sir John Walter modo & forma, ſur que ils fueront al Iſſue, & dit record ove iſſue & venire miſe del' Court de Cancellaria, fuit mitte en B. le Roy, ſur que un niſi prius grant en le Countie de Salop, & en le darren Aſſize tenus en Countie meſme il fuit trove pur le Plaintiff Leake, que Sir John Walter bargaine & vende; & fuit move per Wilde en arreſt de Judgment, que le Scire facias ne comprehende ſufficient matter de diſcharge del' dit execution, car le Manor ne fuit bien convey al Leake, entant que il ne dit le bargaine & ſale per Cartwright al Sir John Walter fuit per fait enroll. 2. Le Meſſuage ne fuit bien averre ou expreſs deſtre convey al Dawes le Conuſee; & per Mallet ceo fuit argue al contra. Per le 4 Juſtices, Brampſton, Barkeley, Crooke & Jones il fuit tenus, que ceo fuit bon del' un part, & del' auter, car ils diſont que le conveyance del' Manor del' Hopton al Cartwright fuit bien, car fuit alledge, que ceo fuit per fait enroll, & donque coment il neſt alledge, que le conveyance al Sir John Walter fuit per fait enroll, tamen il eſt dit, que il morust, & ſon fits enter, & bargaine & vende per fait enroll al Leake, il per ſon entrie fuit diſſeiſor, & (7)

ſon

ſon conveyance fuit per fait enroll al Plaintiff Leake, & ſi un ſoit diſſeiſor & Execution ſue vers luy, il poyet bien prender advantage d'avoid un illegal execution ſur le terre. 2. Il ne beſoigne tiel expreſs certainty en conveyance del' Title del' Defendant, come de ſon Title demeſne, Sed ſi fuit ſufficientment alledge al Common intendment, il ſerra bon, icy il fuit alledge que Dawes perquiſivit ſibi & heredibus ſuis virtute cujus il fuit ſeiſie en fee, & ſil ad ſeiſin en fee quocunque modo ceo ſerbera, car ſi bon Title il fuit barre de ſuer execution in perpetuum; ſi per diſſeiſin, tamen ceo ſuſpende le ſuer de execution, tanque le diſſeiſin purge, car ſi le Conuſee diſſeiſe le Conuſor de part del' Terre, il ne poyet ſuer execution vers aſcun feoffee del' Conuſor, tanque le diſſeiſin ſoit purge; & apres mature deliberation, & debate de ceo al deux temps; Judgment fuit done pro Querente.

Stoughton *verſus* Palmer.

(8) EN un Action de Treſpaſs port per un Anthony Stoughton vers un Palmer Clerke pur Treſpaſs fait en certeine terres en Morton parcell del' Rectory de Morton in Com' Warwick, un Jury appiert al barre ceſt terme & ils donont un general verdict pur le Plaintiff, & le Defendant pres d'aver un ſpecial verdict, ſed Curia fueront tout de opinion, que ſur le evidence le matter fuit cleere pur le Plaintiff, & le evidence en effect fuit tiel: ils fueront deux patrons del' dit Egliſe, l'un a preſenter un Clarke al un moyety, & l'auter al auter moyety, & apres les dit ſeveral moyeties al ſeveral temps, videlicet, l'un in Anno 1339. & l'auter en 1359. fueront totalment appropriate al Hoſpitall de St. Johns en Warwick, & apres le appropriation il fuit tenus pur un entire Rectory, & iſſint certifie en le Court de Firſt-fruits, & apres le Hoſpitall, & tout les poſſeſſions bienjont per diſſolution, & l'eſtatute de 1 E. 6. al Roy E. 6. 5 Eliz. le Royne grant le dit Hoſpitall, & tout les poſſeſſions & hereditaments del' ceo al un Stoughton & auti rectoriam' de Morton, & omnes decimas, oblationes, &c. & auters hereditaments al ceo appurteignant al un Anthony Stoughton, & de luy ceo vient per diſcent al Plaintiff, & le Defendant claime per darren grant del' Coyone. 1. Primes il fuit agree que poient eſtre deux incumbents del' ſeveral moyeties en un Egliſe: Vid. pur ceo Co. pars 10. fol. 136. Fitz. Nat. fol. 39. & per Jones il fuit, mes un entire Rectory, coment divide al moyeties, & quant ambideux parts fueront appropriate al un meſme Corporation, donque il devient un entire Rectory arere; mes per tout entant, q apres le appropriation ceo fuit repute come un entire Rectory le grant fuit bon del' ceo per un entire Rectory.

Muſgrave

Muſgrave *verſus* North.

Trin 15. *Car. Rot.* 975.

HOme port Action de Dett pur 5 l. ſur l'eſtatute de 1 & 2 Phillip & Mary, pur priſell de greinder ſumme que 4 d. pur pounding de diſtreſs, & le Dett fuit pur 5 l. & verdict & Judgment en C. B. pur 5 l. & Coſts & Damages, ſur que error, & le principal error inſiſt fuit, que null damages doint eſtre done en ceſt caſe, car il eſt Pœnal Ley, que done forfeiture de 5 l. en certeine, ideo null damages doient eſtre recover, nient pluis, quam en Action ſur l'eſtatute de 2 E. 6. pur nient expoſer de diſmes; Et l'enformer ſur Pœnal Leys ne poet recover Coſts & Damages; ſed per totam Curiam Coſts & Damages ſont bien done en ceſt caſe, car il eſt un certeine done de 5 l. al Plaintiff greive & ceo eſt due ſur le fait committe, & le damages eſt pur detention de ceo, & l'ou damages done Coſts ſerra auxi, & ſont deux preſidents en novell Lieur de Entries, Tit' Dett, l'un en Caſu Plowden, l'auter en Caſu Coker, ou Damages & Coſts en tiel caſe fueront done, & coment la ils ſont preſidents, que null damages fueront done, ceo ne prove, que ne fueront due, & Judgment fuit affirme per totam Curiam. (9

Barfoot *verſus* Norton.

Trin. 11. *Car. Rot.* 222.

EN Prohibition perenter Norton & Barfoot, il fuit reſolve per Curiam, que diſmes de Mel ſc. Honey doint eſtre pay. (10

Facy *verſus* Lang.

EN Prohibition le Plaintiff & Defendant fueront al iſſue, & per verdict il fuit trove que le Defendant ad proſecute encounter le Prohibition & damages de 15 l. done, & fuit move en arreſt de Judgment, que la null damages doint eſtre done en ceo caſe, & il fuit dit, que 7 Jac. ceo fuit en queſtion en C. B. ou en ceſt caſe damages doint eſtre done & rule, que damages ſont deſtre done en ceo caſe, & Crawley ceo remember, & auxi Henden dit, que fuit de Councell encounter le caſe, ſed tamen per Curiam il fuit over-rule; & ſur que & debate del' reaſon done il fuit adjudge pro Querente, que il recovera ſes damages. (11

Thurſton

Thurſton *verſus* Vincent.

Paſch. 15. *Car. Rot.* 220.

(12) UN brief d'error fuit port de reverſer un Judgment en le Citie de Briſtow, & Rolls prist divers Exceptions. 1. Le Stile del' Court fuit: Curia tent' devant le Maior & Baylives: (videl't) J. S. & J. D. & J. N. a tempore cujus contrar' memoria hominum non exiſtit & virtute divers Letters Pattents,&c. & le Court ne poet estre tenus devant J. S. J. D. & J. N. per preſcription, mes doit estre Curia tent' coram Majore & Ballivis per preſcription, nemy J. S. J. D. & J. N. Majore & Ballivis: mes ceo nient obſtant le Stile fuit bon, car coment ceo ſoit voide, quant al preſcription, tamen ceo est bon quant il dit, & virtute literarum patentium, &c. Et auters exceptions; pur ceo que le Court est dit destre tenus al Tolsey, & ne dit que le lieu ou Court fuit deins Juriſdiction del' Court; ſed Curia e contra, car il est dit, que fuit deins le Citie de B. & le Jurisdiction serra intende destre per tout le Citie. 3. Le Action fuit ſur le caſe pur arrest luy en noſme de J. S. ſans ſon conſent ratione cujus divers auters portont Actions vers luy, & il fuit impaire en ſon credit, & nest dit q̄ le Actions fuerent port en Briſtow, & ſi hors del' Jurisdiction donque est male quant entire damages sont done; ſed Curia e contra: pimes le ratione cujus nest part material del' Declaration, car le maine matter est le arrest en auter noſme ſans ſon conſent. 2. Il serra intende, que le Actions ſur ceo sont port en Briſtow. 4. Exception fuit que le viſne fuit de Warda de Dale deins le Citie, & le Declaration est apud Civitat' Briſtow ſans mention d'aſcun Warde, ſed Curia tient ceo bon, & le Judgment fuit affirme.

Bond *verſus* Devys.

(13) SUr un venire un fuit retorne Samuel Hunt, & iſſint ſur le Diſtringas il fuit noſme, & en le Nomina Juratorum Daniel Hunt retorne, & ſur ceo jure & verdict trove pur le Plaintiff, en arrest de Judgment ceo fuit move per Maynard, cest variance fuit alledge, le Viſcount fuit examin, & auxi le dit Samuel Hunt fuit examin, & trove que il fuit le party, que le Viſcount retorne, & auxi que il fuit jure, ideo Judgment fuit affirme; & Jones cite 40 & 41 Elizabeth un Paynes & Heatons Caſe, ou un fuit retorne Piers Thomas en le venire facias & Diſtringas, & Pees Thomas ſur le Nomina Juratorum, & ſur examination que ſon noſme fuit

Piers

Piers Thomas nient obſtant ceo fuit alledge pur Erreor, le Judgment fuit affirme, & le record fuit lye en Court, & trove deſtre iſſint. Vid. Co. pars 5. Codwells Caſe, Palus & Paulus,& Brewſter & Boothes Caſe. 36 Eliz. Codman & Godman.

Lee *verſus* Boothby.

EN evidence al Jury d'Eſſex en Ejectione firmæ pur terres en Chinckford Comit' il fuit agree per Barkeley, Crooke & Jones, que ſi Roy ſeiſie d'un Mannor, en que il eſt un Copy-hold, que eſcheate al Roy, & le Roy grant le terres per Letters Pattents al auter pur vie, ceo eſt bon grant, & eſt extinguiſhment del' Copy-hold, iſſint que le Roy ou le grantee del' Mannor en fee ou pur vie, ou ans apres l'eſtate pur vie determin ne poet grant le terres per Copy de novo; & coment le Jury fueront direct en ceſt point en Ley, tamen le Jury trove un general verdict contra al opinion del' Court, Et Brampſton fuit de meſme opinion, & adviſe a porter attaint vers le Jury. (3)

Termino Hill. An. XV. Caroli Regis, *in* Banco Regis.

George Vernon Knight, one of the Juſtices of the *Common-Pleas*, dyed at *Serjeants-Inn Chancery-Lane* the 16*th* of December 1639. and was buried at the *Temple Church*, where all the Judges and Serjeants in Town were preſent. Sir *Thomas Coventry*, *Lord Coventry*, *Lord Keeper* of the Great Seal of *England*, dyed at *Durham-Houſe* upon Tueſday morning the 13*th* of January 1639. and upon Friday the 17*th* of January, Sir *John Finch* Chief Juſtice of the *Common-Pleas*, was made *Lord Keeper* of the Great Seal. Mr. *Sollicitor* was made Serjeant the firſt day of *Hillary Terme* 1639. and appeared in the *Common-Pleas*, and kept his Feaſt upon Saturday following; and gave Rings. Upon Tueſday he was Sworn Chief Juſtice of the *Common-Pleas*, and *Serjeant Foſter* then Sworn Judge there in the place of *Juſtice Vernon*; and upon Thurſday went to the Hall both in their Robes.

Ireland *verſus* Blockwell.

(1) HOme port Action en le Court de Villa de Bathe vers un pur parolls parle apud Bathe prædict. infra juriſdictionem Curiæ, que il eſteant un Taylor ad emblee tant de ſon Stuffe, de que il fiſt Waſtcoat pur ſa feme, per que il perde ſes Cuſtomers, & ſon credit en Bathe, & alibi: & ſur non culpable, verdict pur le Plaintiff & damages, & Judgment, & Error port; le ſole Error inſiſt fuit, que le Court de Bathe ne puiſſoit prender notice del' aſcun choſe hors del' lour Juriſdiction, & icy damages done pur loſſe de Cuſtomers hors del' Juriſdiction; de quel opinion Barkley; ſed Bramſton, Jones & Crooke e contra; que il fuit aſſets bon, car il poet perde Cuſtomers, que demurront hors del' Juriſdiction, & tamen le Cuſtomers poient eſtre en le Juriſdiction; & Judgment affirme.

Denys

Denys *verſus* Paine.

DEnys port Action de Dett vers un Payne ſur un Obligation, le Defendant demande Oyer del' Obligation, & per ceo le dit Payne & J. S. fueront lye joyntment & ſeveralment al Plaintiff en le dit Summe, le Defendant plede, que le Plaintiff port Action de Dett ſur le dit Bond en le Court de Poole in Com' Dorſet vers le dit J. S. & apres imparlance retraxit Querelam ſuam, & demande Judgment ſi Action; le maine queſtion fuit, deux fueront oblige en un Obligation joyntment & ſeveralment, & le Obligee port Action vers l'un, & fuit retraxit de ſon Suite, ou ceo ſoit barre de ſuer l'auter Obligor, a quel point les Juſtices ne deliver aſcun opinion; ſed le retraxit fuit plede in Curia de Recordo de Poole, & ne fuit alledge, que ceo ad power a tener plea per Patent, ou preſcription, ideo le plea male ſolonc le Reſolution en Turnors Caſe Co. pars 8. & Judgment fuit done pro Querente. (2)

Hubbins Caſe.

SUr Judgment done en le Court de Palacii, le caſe fuit le Plaintiff la declare, que il & feme un del' Defendants dum ſola fuit promiſe a payer 10 l. al Plaintiff quant il vient del' parts beyond Seas dum el fuit ſole, & el marrie l'auter Defendant, & que il revient del' parts ouſter le mere, & notice done del' ceo al Defendant, & l'argent ne fuit paye, & Judgment done (ſur non Aſſumpſit plede) la pro Querente; & le Judgment reverſe, pur ceo, que le Contract fuit a payer quant il retorne ultra mare, & parcell del' Contract fuit hors del' Jurisdiction del' Court; Et 2. Null lieu del' Contract fuit alledge, & coment non Aſſumpſit plede, & trove pur le Plaintiff, tamen ceo fuit male. (3)

Parker *verſus* Bleake.

Hill. 13. *Car. Rot.* 1002.

LE caſe ſur ſpecial verdict pur terres en Chiltenham in Com' Glouceſter, fuit tiel un fuit Copy-holder en le dit Mannor, & le Cuſtom fuit, & confirme per Act de Parliament, que le feme de cheſcun Copy-holder moyant ſeiſie en fee, & ayant feme, le feme avera ceo pur 3 parts pur vie, & 12 ans apres: un Copy-holder ayant feme devient Bankrupt, & le Copy-hold per le Commiſſion per fait enroll fuit vende al Creditors, le Bankrupt devant (4)

admittance del' vendees mesme, le feme fuit admitte, & apres le vendees que entrent lesse al Plaintiff; & fuit adjudge per Bramp-ston, Jones, Crooke & Barkeley una voce, apres argument al barre, que le Plaintiff recovera, car per le sale del' Commissioners l'interest del' Copy-hold fuit tolle de luy, issint que il ne serra dit de mesner seisie de ceo, nient obstant, que le vendees ne fueront admitte en le vie de Copy-holder.

Le Roy *versus* Kinsmill, Gibbs & Dreydon.

(5) LE Roy port brief de droit d'Advowson vers Kinsmill, Gibbs, & Dreydon, & le grand Assize del' Countie de Northampton trove un special verdict, & ceo fuit pur l'Esglise de Middleton Cheyney, apres verdict & devant Judgment Gibbs mesme, & ceo fuit alledge de Recorde en Abatement del' brief, & que le Tenants fueront Coparceners. Le Attorney pur le Roy replie, que Joyntenants & nemy Coparceners, & per Curiam agree, que soient ils Jointenants ou Coparceners le brief abatera, & rule done accordant, si ne riens pluis dit, & al darren jour del' Terme, Jones & Barkeley present, jour done sur motion per l'Attorney a parler a ceo le prochein Terme.

Le Maior & Cominalty *de* Londres *versus* Alford.

Trin. 13. *Car. Rot.* 175.

(6) LE Maior de London & le Cominalty & Citizens Plaintiffs, & Alford & auters Defendants en Trespals de terres en Waltham Stowe in Com' Essex, & un special verdict trove; apres several arguments al barre, Judgment fuit done pur Defendants, en que divers points fueront move; l'un ou fee sur un fee per executory devise fuit bon. 2. Devise est fait al un Corporation, & ceo sur Condition ou Limitation, ou en ceo case un notice doit estre done al Devisees ou auterment, le Condition ou Limitation ne serra de force vers le Devisees; al ceux points le Justices ne done ascun resolution. Le tierce point fuit, que un devise fuit fait al un Corporation sur Limitation, que ils payera tant al un charitable use, un estranger enter en le terres, & levie fine ove Proclamations, & 5 ans passe, & tota Curia agree, que ceo barrera le Corporation, coment ils nont notice del' devise, & le Chief Justice deliver ceo, come l'opinion del' tout le Court, & rule done, Quod querens nihil capiat per Billam.

Savage

Scavage *verſus* Hawkins.

HOme port Action de Dett, & declare que J. S. ſon pier fuit ſeiſie en Tayle, & leſſe pur ans rendant rent, & Leſſor morust, & le reverſion deſcende al Plaintiff come Iſſue en Tayle, & apres verdict en C. B. il ad Judgment, & ſur ceo Error; & opinio Curiæ fuit, que le Declaration bon ſans monſtrance del' commencement del' eſtate Tayle, car le terre neſt en demande; mes ſi le terre meſme en Formedon ou auterment fuit demande il doit monſtre le commencement del' eſtate Tayle; & fuit urge al barre, que fueront pluſieurs preſidents accordant: quære ou ceſt caſe fuit ſur brief d'error, ou en arreſt de Judgment, ou ſur demurrer, ſed Quomodocunque le Opinion del' Court fuit, que le Declaration fuit bon. (7)

Termino

Termino Paſch. An. XVI. Caroli Regis, *in* Banco Regis.

Upon Friday in the firſt Week of Clean Lent, the *Lord Littleton* was Sworn of the Privy Councell, Mr. *Herbert* was made Sollicitor; and Mr. *Ball* Queens Attorney, and Mr. *Henry Wynne* Queens Sollicitor in Hillary Term before.

Oldfield *verſus* Plowden.

(1) SUr briefe d'erroꝛ hoꝛs del' Common Banke, le caſe fuit tiel; un home ſeiſie d'un advowſon d'un Eſgliſe de D. deins le Countie de Southampton grant le pꝛochein avoidance: le pꝛeſent encumbent fiſt un Leaſe pur ans devant 13 Eliz., que fuit confirme per le Patron en fee, & ordinary, ſed nemy per le grantee del' pꝛochein avoidance. Le incumbent moꝛuſt, le grantee del' pꝛochein avoidance preſent un, que eſt admitte, inſtitute & induct, il enter en le Rectoꝛy, & apꝛes moꝛuſt, le Patron en fee pꝛeſent un, que eſt admitte, inſtitute & induct: Le queſtion fuit ou le reſidue del' Leaſe nient expire fuit en foꝛce vers luy, & il fuit adjudge en C. B. que le Leaſe fuit un foits avoide, & ne unque ſerra revive arere, & ſolonc al ceſt opinion le Judgment fuit affirme en ceſt Court per totam Curiam ceſt Terme, ſolon le opinion en le caſe de Countee de Bedford. Co. 7. fol. 8.

Sprigg *verſus* Rawlſon.

(2) UN Ejectione firmæ fuit poꝛt d'un repoſitorio, & apꝛes verdict Judgment done en C. B. pro Querente, & erroꝛ poꝛt, & le Court del' B. le Roy fueront divide en opinion (ſcilicet) Crooke & Barkeley, que repoſitorium ſerra intende pur un Ware-houſe, Brampſton & Jones e contra, que ceo fuit incerteine (il nient eſteant expound en Anglois) & le major opinion del' Juſtices al Serjeants-Inn Fleet-ſtreet, q̃ ne fuit bon, ſur ceo Barkley relent en ſon opinion, & le Judgment fuit reverſe ceſt Terme. Vid. Calipine q̃ repoſitorium eſt un voider.

Shepheard

Shepheard *verſus* Woodward.

LEſſee pur ans, reverſion en fee, le reverſioner grant ſon reverſion en fee al J. S. Leſſee pur ans aſſigne ſon intereſt al grantee del' reverſion, & null declaration fuit fait per luy, ou ceo attornment ou nemy, & per Brampſton, Jones & Barkeley il fuit reſolve que bon attornment; & le reverſion paſſa per ceo, & ceo fuit le caſe de Chief Baron Tanfield pur terres en le Com' de Oxon'. (3)

Benſteds Caſe.

IL fuit un Commiſſion de Oyer & Terminer al Privy Councell & les Juſtices, ſur le tumult & inſurrection, que fuit fait en Lambeth en le Countie de Surrey, & devant que ceo fuit executé, il fuit debate devant tout les Juſtices, que ſi home fuit committe pur Treaſon, & un autre enfreint le Priſon, & per ceſt means le Traitor eſt ale, ou ceo fuit Treaſon en le party que luy reſtous, & tout (ſavant Crooke que apres ſemble de aſſent) que il fuit Treaſon, & ceo ſur 1 H. 6. 5. & Stamfords Pleas del' Corone 32. Et ſur ceo un fuit indite pur tiel offence & arraigne, & ſur ſon trial, le evidence ne fuit pregnant encounter luy, ideo il fuit acquitte. (4)

Termino

Termino Trin. An. XVI. Caroli Regis, *in* Banco Regis.

Harwell *verſus* Burwell.

(1) HOme fuit lie en un Statute-Staple, & apres il grant un Rent charge & l'eſtatute extende, & le Cogniſee levy ſon Dett Coſts & Damages, & grantee diſtrein pur le Rent: le queſtion en Replevyn, fuit ou le grantee puiſſoit diſtreine en ceo caſe devant un Scire facias ſue per luy vers le Conuſee ou nemy, & ſemble a tout le Court, (ſcilicet) Brampſton, Jones, Crooke & Barkeley, que il poet, car il ne poet aver Scire facias, ſed le Conuſor, ou ſon aſſignee del' terre avera ceo ſolment, & nemy un grantee de rent, & ſil ne poet diſtreine, per le Cobyn del' Conuſor (coment le Statute fuit ſatisfie) ne avera Scire facias, le grantee ſerra ſans remedy, ideo il diſtreinera pur le Rent, & en Replevyn ou auters Actions prile concernant le priſell del' diſtreſs, ceo ſerra miſe en iſſue, ou le Conuſee ad levie ſon Dett, Coſts, & Damages ou nemy, & ſi ſoit trove, que il ad donque le diſtreſs ſerra tenus loyall, ſi ne fuit ſatisfie, donque e contra, & ſur ceo un rule done, que le grantee poet bien diſtreine pur le Rent.

Edwards *verſus* Rogers.

(2) RObert Edwards port Treſpaſs de Cloſe debruſe en un lieu appell Little Hill, & le Higher Ground en Ermington en le Countie de Devon vers William Rogers, & ſur non culpable plede, un ſpecial verdict fuit trove, come enſuiſt, William Rogers ad un frere noſme Andrew, & ad iſſue William, & mesme ſeiſie del' reverſion ſur un eſtate pur vie al un Anne Riche del' terres en queſtion; Andrew levie fine ove garranty del' dit terres al un J. Crompton, al uſe J. Crompton & ſes heires, il deviſe ceo al un Bamlett que fiſt feoffment ove Letter de Attorney al dit Andrew & Arthur ſon ſecond fits, & livery fuit fait per l'Attorney per le conſent del'

Leſſee

Leſſee pur vie. Andrew releaſe al Arthur, Arthur mozuſt, Andrew mozuſt ayant iſſue John ſon eigne fits, & le dit Arthur, Arthur ad iſſue William, & John ad iſſue William, Anne Rich mozuſt, William le fits & heire de William owner del' dit Reverſion mozuſt, William fits & heire John eſteant ſon heire, & heire al Andrew, que enter ſur le Plaintiff Leſſee de William fits d'Arthur; & committe le Treſpaſs, & le queſtion fuit ou ſon entrie fuit loyal ou nemy: Ceſt caſe fuit enter Termino Trin. XII. Caroli, apzes ſeveral arguments al barre, ceſt Terme de Trin. XVI. Caroli, il fuit argue al Bauke per 3 Juſtices, (ſcilicet) Barkeley, Crooke & Jones, die jovis 18 Junii, & Barkeley argue encounter le Plaintiff, & que Judgment ſerroit done pur Defendant.

1. Primes il dit, quant Andrew levie fine ove garrantie al Crompton, & Crompton deviſe ceo al Bamlett, le deviſe fuit void, car Andrew n'avoit aſcun eſtate a paſſer a Crompton, & Crompton n'ad aſcun eſtate revera en luy, & ne fuit having un eſtate deins 32 H. 8. a deviſer, ſed ſolment un eſtate per eſtoppell; ſed Jones ceo reſponde en ſon argument, (ſcilicet) que eſtate per eſtoppell ſerra en accompt del' Ley un eſtate vers les parties al eſtoppell, & privies, & tout eux queux vient en le poſt apzes l'eſtoppell, & ideo quant al deviſoz, & deviſee ceſt eſtate per eſtoppell ſerra tenus come un eſtate, & paſſa enter eux come eſtate per le deviſe, & a ceo purpoſe il cite Rawlins Caſe Co. pars 4.

Barkeley dit quant Andrew levie fine ove garranty, & apzes repriſe un eſtate de Bamlett a luy, & ſon fits en fee, & apzes Andrew releaſe al ſon fits,, que le garranty ne fuit per ceo deſtroy, & il cite a ceo prove. Cooke ſur Litt. fol. 390. 11 H. 4. 20. 42. 39 E. 3. 9. & Jones agree a ceo, que ceo nient obſtant le garranty continue nient determin; ſed Barkeley dit, que le garranty fuit deſtroy, pur ceo que per le feoffment de Bamlett, & remainder en le fits le garranty fuit deſtroy, & l'eſtoppell; & il compare ceo al caſe de 32 H. 6. & Cooke pars 7. le Count' de Bedfords Caſe, que ſi feme covert levie fine, & le baron enter le force del' fine, & eſtoppell fuit ale, & le fine avoid imo vers le feme; ſed Jones & iſſint Crooke dihont, que le feoffment de Bamlett fuit voide, car Anne Riche fuit Tenant pur vie, & le Livery fuit fait per ſa conſent, & el ne fuit ouſte, & per reaſon del' ceo nihil execute, & le caſe pur ceo neſt pluis, mes que un fuit Tenant pur vie, & un que n'ad droit fiſt feoffment ove Letter d'Attorney a faire Livery, que enter per conſent Leſſee pur vie & fiſt Livery, ceo eſt voide, nient ſemble al feoffment fait per ceſtuy en Reverſion, & Livery fait per conſent Leſſee pur vie; ſed Jones penſe, que le garranty reſt ſur le maine point del' caſe, (ſcilicet) ſi le fine ne lie le Defendant neque fuit aſcun eſtoppell vers luy, mes que il puiſſoit dire partes

ad finem nihil habuerunt, donque le garranty ne fuit de force, car le party, a que ceo fuit fait n'ad ascun estate en possession en le terre, mes si il fuit estoppe a dire ceo, donque auterment, issint ceo rest sur le maine point del' case, (scilicet) ou le fine liera le Defendant, ou nemy; & pur ceo le case nest pluis; que le dit Andrew esteant Uncle, esteant hors de possession levie fine de terres del' William son Nephew, & Andrew morust primes, & donque William, le Defendant fuit heire al Andrew, (scilicet) fits de son eigne fits, & auxi Cosin & Heire al William le Nephew, ou en cest case il fuit lye per le fine, ou nemy; & semble a Barkeley, que il ne fuit lye, neque barre per le dit Fine; il discourse & parle mult del' Statutes de 18 E. 1. & 27 E. 1. & 15 E. 2. & 34 E. 3. 4 H. 7. & 32 H. 8. concernant Fines; & apres il teigne, que per le dit Statutes null fuit lye, mes parties en possession per un Fine per conclusion, & cy le Defendant ne fuit privy pur cest terre al Andrew son ayle, car le terre descende immediatement del' William son Cousin, sed solment il derive son Pedigree del' son Ayle; & il compare ceo al case de Hobby adjudge 40 Eliz. en Scaccario; home ad issue fits & file, le fits purchase terres, le pier est attaint de Felony, & morust, & fits morust sans issue, le file inheritera, tamen le Sanke del' pier est corrupt; pur ceo que le file ne fist claime al terre del' pier, tamen el besoigne a faire sa Pedigree destre soer al frere, come file del' pier; cest fine est solum per estoppell, & quant neque Conusor, neque Conusee ad ascun possession en le terre il nest fine recte levate, & l'estatute de finibus extende al Fines recte levate; & il fist divers reasons. 1. Scilicet, Que le Defendant nest heire quoad cest terre al son Ayle, & home poet estre heire quoad ascun terre, & nemy quoad auter al un; sil claime del' auter ancestor, il nest heire quoad cest terre, neque est privie. 2. Sur rule de pleding, il poet bien dire que partes ad finem nihil habuerunt, sed son Cousin que estate il ad. 3. Cest construction est pur extinguisher un bon droit, & bon droit est destre preserve, & nemy destre destroy, sil poet estre preserve; si le Ayle ad estre lye en un Obligation ceux terres ne serront charge, car il poet plede que nemy descend a luy de son Ayle; auxi il dit, que ne fueront proclamations trove en l'especial verdict, per que le fine fuit al Common Ley, & il dit que si fueront proclamations, tamen l'estatutes de 4 H. 7. & 32 H. 8. n'extende al cest case, car l'estatute de 32 H. 8. extende al terres tayle, & la un fine liera per estoppell, come le case de Archer 20 Eliz. fuit & a lier privies & heires, & le Defendant (come dit avant) ne fuit heire quant a cest terre; & ceux semblont le maine reasons de son opinion (come jeo conceive.) Crooke agree ove luy, que Judgment doit estre done pur Defendant, & il parle

parle ſolment al dit maine point, & il inſiſt ſur le ground, que le Defendant neſt heire al Andrew, quant al ceux terres, ſed ſolment il derive ſon Pedigree, ſed nemple title del' terre del' luy; & ambideux dihont, que eſtoppell ne alera mes al heire, que claime le terre, de luy que fuit party al eſtoppell, & a ceo purpoſe ils cite le caſe de Syms Co. pars 8.' & le caſe de 18 E. 3. la cite. 'Jones argue meſme jour pur le maine point al contrary, & pro Querente; il tient que le fine del' Andrew le Ayle liera le droit & eſtate, que deſcendé al ſon grand fits & Nephew del' William ſon Couſin, coment ceo fuit apres mort de Andrew, car coment le terre ne deſcende a luy del' dit Andrew, tamen il doit faire ſon title, & claime al ceo, come heire al Andrew; il dit que fine al Common Ley devant aſcun Statute de Fines fuit le pluis fort, & melior aſſurance, que puiſſoit eſtre fait, & ceo appiert en le caſe de Zouch & Stowell Coment', & per l'eſtatutes de 18 E. 1. & 27 E. 1. & un fine de terres, ſi fuit ſur Cognizance de droit come ceo, &c. fuit un feoffment de Record, come appiert Dyer 16 Eliz. fol. 333. 334. & ceo fuit bon per voy de intereſt de paſſer le terre, ſi le Conuſor ou Conuſee avoit aſcun eſtate en le terre, mes un fine poet eſtre per voy de Concluſion, & eſtoppell, coment neq; le Conuſor neq; Conuſee naboit aſcun choſeen le terre. Eſtoppell fuit deviſe & allowe en Ley en maintenance de verity, & a reſtraine un home pur dire un choſe ſi ſoit falſe & ſerra conclude a dire contra al ceo, q̃ il devant affirme; & ceux eſtoppells ſont en divers manners, ſcilicet, per matter en fait, ou per Record; per matter en fait, come Dyer 3 Eliz. fol. 196. home eſt lie a payer tant argent, que J. S. fuit lie en un Obligation al J. D. l'Obligor fuit eſtoppe a dire, que J. S. ne fuit lie en un Obligation, & ceo eſt per un Obligation; mes un Indenture que eſt mutual Act del' parties al Indenture eſt pluis fort, quod apparet en Rawlins Caſe Co. pars 4. Londons Caſe la cite, un home prift Leaſe pur ans per Indenture de ſon terre demeſne, il eſt eſtoppe durant le terme adire, que fuit ſon terre demeſne, iſſint ſi home per Indenture leſſa terre en que il n'ad riens, & apres purchaſe le terre, le Leaſe per eſtoppell ſerra bon vers luy, & iſſint divers auter eſtoppells per fait; ſimili modo de eſtoppell per record, home levie fine de terres, en que il n'ad riens & apres il purchaſe ceo del' luy, que fuit owner del' ceo, ceſt fine eſt per eſtoppell, & le Conuſee avera le terre vers le Conuſor, que purchaſe le terres apres; quod fuit conceſſum per Barkeley: iſſint ſi recovery en præcipe quod reddat vers J S. que ne fuit Tenant del' terre, ſi purchaſe le terre, apres il ſerra eſtoppe pur avoider le recovery pur non tenure. Manxells Caſe Plowd. 14. Et ceux eſtoppells per matter en fait & per record per fine ou recovery liera non ſolment le party al eſtoppell, ſed auxi tout privies, que

claime desouth luy, & ceo appiert devant l'estatute de 4 H. 7. per le ancient Statute de Fines, que parties & privies & heredes serront conclude pur avoider fine per dihont, què partes ad finem nihil habuerunt, vel per averment de continuance de possession, & ceo fuit le ancient Ley del' terre, & ceo est agree del' auter part, mes le question est ou en ceo case soit privie, car voyer est un heire nisi sit privie, & claime l'estate, nemy del' ancestor que levie le fine sed per son purchase demesne, ou d'un auter ancestor ne serra lie come privie, come si le pier disseise le fits, & levie fine cest fine ne liera le fits come heire & privie, car il ne fist claime de luy; vel si pier fuit Tenant pur vie remainder al fits en fee, & il levie fine ceo ne liera le fits come privie pur son reversion, vel si le pier levie fine del' terres le mere, le fits nest lye; ideo il doit estre confesse, que si le Defendant ne claime per Andrew, il ne serra lie come heire; il est dit del' auter part, que le terre ne unque fuit en Andrew, sed descende immediatement del' Cousin a son Cousin, ideo il est en egall degree sicome le Defendant avoit le terre per purchase ou descent del' ascun auter ancestor, il serra solment (come fuit dit) un Pedigree del' Andrew, mes ne claime le terre de luy; inter alia le case de Hobby al cest purpose fuit urge, come est dit devant. Sed Jones dit, que coment que le terre ne descende immediatement del' Ayle al Defendant, tamen il ne unque poet faire claime' al' terre nisi fait luy mesme heire a luy, & il ne poet faire luy mesme heire, nisi per means, que il est heire al Andrew, que fuit le heire de William; il est grand difference enter cest case, & le case de Hobby, car il fuit un pier & hereditable sanke derive del' pier al fits & file, & coment per attainder del' pier apres le sanke hereditary perenter le pier & fits fuit corrupt, tamen ne fuit corruption perenter le frere & file, mes en nostre case si Andrew ad estre attaint, il est clere, que le Defendant ne puissoit claime le terre, car le Channell, per que il derive son title fuit corrupt; & ceo est le direct liver. Dyer 10 Eliz. 274. 2 freres leigne avoit title al un Petition de Droit pur terre, le puisne ad issue, & fuit attaint de Treason, & executo, leigne mourust sans issue, & le question fuit, ou le fits de puisne fuit barre de son Petition de Droit per le dit attainder, & le authority & opinion del' lieur est semble, que cy, si longment, come le attainder fuit en force, mes en ceo case, il fuit un private Act de Restitution, & sur construction del' dit Act les Justices certifiont le Royne, que fuit grand Equity & Conscience de reliever le fits, per quel appiert plainment, que en Casu Hobby le attainder ne fist corruption de Sanke perenter le fits & file, mes le file serra claime del' fits; mes en nostre case si Andrew ad estre attinct le Defendant ne puissoit claime

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le terre, car le Sanke en le deſcent del' Andrew al Defendant ad eſtre corrupt per le attainder; en le dit caſe come le attainder del' pier ne hindra le deſcent perenter le frere & ſoer, iſſint le fine del' pier ne ſerroit barre al ſoer put terres la frere; iſſint e converſo en noſtre caſe, le attainder hindra le diſcent, ideo ſon fine ſerra barre; auxi il eſt agree del' auter part; & Seignior Chief Juſtice apres en ſon argument aſſent al caſe de Archer, ſcilicet, Ayle, pier, & fits Tenant en Tayle, le pier levie fine & morust, ceo liera le fits, & ſi en caſe de Tenant en Tayle il eſt iſſint, a multo fortiori en Caſu de Fee-ſimple, & ſi ceo ſoit Ley, il eſt le caſe en queſtion, car la le droit (ſi le fine ne fait barre) deſcende immediatement del' Ayle al fits, & ne unque touch en le pier; & ſur l'eſtatutes de 4 H. 7. & 32 H. 8. pluis fort caſes reſolve, come le caſe de Sir George Brown pars 3. & Scovells Caſe en B. le Roy, & iſſint 21 Jacobi C. B. Godfery & Wades Caſe agree, que ſi iſſue en tayle en vie le pier levie fine, & morust, ceo liera ſes iſſues; & en brief Jones dit, que le fine liera le Defendant come privie, entant que il beſoigne de neceſſity a luy de deducer le droit a luy come heire al ſon Couſin (videlicet) come heire al ſon Ayle, Couſin & Heire al William, que fuit darren ſeiſie del' terre, & neſt come un Pedigree, car neſt ſufficient, que fuit Couſin, mes doit faire luy heire, & ſi heire, il eſt privie & lie per fine ſon anceſtor; & fuit le effect del' ceo que il dit. Brampſton Chief Juſtice argue le darren jour del' Terme, & il fuit d'opinion, que Judgment doit eſtre done pur Defendant, primes il agree, que le garranty ne fuit ale per le reprender del' eſtate al Andrew & Arthur, mes ceo ale al Arthur; Et 2. Que per feoffment al Andrew & Arthur riens paſſe, pur ceo que le Tenant pur vie fuit tout foits en poſſeſſion, & ideo le garranty continue en ceſt degree; mes 3. Il teigne, que le point del' garranty donque reſt ſur le maine point del' caſe, (ſcilicet) ſi le fine fuit concluſion al Defendant donque le garranty continue, ſil ne fuit concluſion donque le garranty ale; il reſt ſur le maine point del' caſe (ſcilicet) ou fine per voy d'eſtoppell fuit barre al Defendant ou nemy; il agree que ſi home levie fine, en que il n'ad riens, & apres purchaſe le terre, ou ceo vient a luy per diſcent, il ſerra lie, & ideo il dit que ſi Andrew ad ſurvive ſon Couſin, Andrew & ſes heires ount eſtre lye per le fine, & non ſolment le concluſion extende al Andrew & ſes heires, mes a touts auters, queux viendront en le poſt al terre, accordant al opinion de Jones avant mention; mes pur le maine queſtion il tient, que le fine ne liera le Defendant pur le reaſon avandit remember per Crooke & Barkeley, que le terre ne fuit unque en ſon Ayle, mes il ſerra immediate deſcent a luy meſme come heire a ſon Couſin & ſerra mention ſolment del'

ſon

ſon Ayle a faire ſon Pedigree, mes nemy a claime aſcun intereſt en le terre; & il inſiſt que en tout real Actions, il ſuffiſt a faire un heire al celuy, que fuit darren ſeiſie, (quod voyer eſt en un brief, mes en Declaration il doit faire luy heire del' un anceſtor al auter) il cite 8 Eliz. Dyer, le caſe de Beſaile, ayle & pier, & terres done al Ayle, & heires del' Corps pier, il ne beſoigne a faire mention en le brief de mort le Ayle; il cite 6 E. 3. fol. 29. Richard de la Roches Caſe; mes le point fuit waive & iſſue priſt; darrenment il dit, que le feoffment de Bamlett al Andrew & Arthur fuit voide, & donque le fits de Arthur n'ad aſcun title, car Defendant ne fuit eſtoppe quant a luy, & le point neſt pluis, que un fine eſt levie per un J. N. que n'ad riens en terre al J. S. & apres un droit vient al J. N. ſi null fine ad eſtre & un eſtranger enter en le terre, ou eſtranger avera bon title per prender de poſſeſſion vers J. N. & ſemble a luy que nemy, car l'eſtoppell ſerra pur le Conuſee ſolment; & ideo il conclude ſur tout le matter pur Defendant; ſemble a moy que le title de J. N. per le fine fuit barre, & cheſcun que ad le terre avera advantage de ceo, ſed Judgment fuit done pur Defendant.

Nota coment en le brief, il ne beſoigne faire luy meſme heire, mes al Anceſtor que tenus l'eſtate ou fuit darrenment ſeiſie; tamen en le Declaration il doit monſtre coment Couſin & Heire del' un al auter, tanque al party de que ſeiſin il claime.

Dugworth *verſus* Radford.

(3). IL fuit cuſtom, que le feme de Copyholder pur vie avera un eſtate durante viduitate, le Copyholder prift Leaſe pur ans, le Copyhold fuit determin, & il fuit adjudge per Curiam, que el navera aſcun eſtate apres mort ſa baron durante viduitate.

Alderman Abdyes Caſe.

(4) SIr William Hicks fuit ſeiſie del' Manor de Riholl in Com' Eſſex, en que il preſcribe d'aver un Læte, & Alderman Abdy un del' Aldermen de London fuit inhabitant deins le precincts del' Læte, & al Læte il fuit preſent per le homage deſtre Conſtable, & ceſt preſentment per Certiorari fuit remove en B. R. & le Alderman fuit diſcharge, pur ceo que il fuit lie come Alderman deſtre preſent a Londres pur le government del' Citie.

Termino

Termino Mich. An. XVI. Caroli Regis, *in* Banco Regis.

Lodge *verſus* Holliwell.

UN Lodge informe vers un Holliwell ſur l'eſtatute de 1 Jac. pur emer & vender Tanned Leather nient fait made Ware; & le Jury trove ſpecial verdict (ſcilicet) que le Defendant eme & vende Hydes, que fueront tanned, & eſteant un Currier ſhave collour, & glaze le dit Leather, & iſſint carrie & vende eux; & opinion de tout le Court (ſcilicet) Barkeley, Crooke, Jones & Brampſton fuit pro Querente, que ceſt fuit offence encounter le Statute, car le Currying ne fuit converſion en made Ware ſolon l'eſtatute; per que Judgment fuit done pro Querente. (1)

Meade *verſus* Lenthall.

MEade port Action ſur le caſe vers John Lenthall Chivaler pur diſturber luy en le office de Mariſchal del' B. le Roy: Et le caſe ſur ſpecial verdict fuit en effect come le caſe de Sir George Reynolds Co. pars 9. (ſcilicet) ou tiel office fuit bon eſteant grant pur ans; Et Brampſton en noſme de tout pronounce le opinion de tout, que le grant ne fuit bon ſolon le dit Judgment, per que Judgment fuit done pur Defendant vers le Plaintiff. (2)

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