We allow of the Printing and Publishing of the Book Intituled, *A General Abridgment of Law and Equity*, Alphabetically digested under proper Titles, &c. By Charles Viner, Esq;

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A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

With Notes and References to the Whole.

By CHARLES VINER, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry:
PRINTED for the Author, by Agreement with the Law-Patentees.
TO THE HONOURABLE

Sir WILLIAM CHAPPLE Knight,

ONE OF THE

Justices of the Court of King's Bench.

My Work itself would reproach me, should I let slip the Opportunity of addressing this Volume to You, to whom the Publication of it is in so great a Measure owing. I am with the Highest Sense of Gratitude, and with the greatest Respect,

Your most Oblig'd,

and most Obedient Servant,

Charles Viner.
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| Where there is a Conpeating and Avoiding. | |

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STOCKS.

(A) Cases relating to Stocks in Companies.

1. A Administrator durante Mone, A Estate sells the Infant's Stock in the East-India Company to B. and C. two Members of the said Company, who had Notice that it was not the Administrator's Estate, as appears by the Entries in the Company's Books; Decreed, that it was fraudulent, and an Account to be taken. Fin. R. 298. Patch. 29 Car. 2. Munn & Brown v. East-India Company, Dunkin & al.

2. A, having got Letters of Administration upon a false Suggestion, was admitted to certain Stock of the Intestate's in the East-India Company; but upon an Appeal the Administration was repeated and avoided ab Initio: One, who was privy to the Fraud in getting the Administration granted to A, purchased a Transfer of the Stock from A, and an Entry was made thereof in the Company's Books. On a Bill brought by the rightful Executor, the Court decreed the said Stock to be transferred back to the Plaintiff, and the Administrator of the Purchaser to account for Dividends received by him, so far as he has Agents, Nifi Causa &c. Fin. Rep. 430. Mich. 31 Car. 2. Johnfon v. the East-India Company and Cheffer.

3. A Man sold another to many Shares in East-India Stock, if the other approved of his Bargain, and demanded it Ore, or by Note in Writing S. C. left at the East-India House before such a Day, and pleads that he did not demand it Ore, and by Note in Writing at the East-India House, the Defendant had not transferred it &c. Upon which the Defendant demurred, and objected, that he did not receive the Note in Writing ought to be left at the East-India House, yet the Demand Ore could not be left there; and therefore the Demand Ore was not restrained to the East-India House, but ought to be personal, and the Words (left at the East-India House) shall be applied to that which might be left there, which is the Demand by Note in Writing: But after being twice moved, it was adjudged for the Plaintiff, the confiant Practice being an Explication of these Words. Skin. 391. Mich. 5 W. & M. B.R. Hall and Copper.

4. By 8 & 9 W. 3. cap. 30. Every Policy, Contract &c. made, or to be made, and which by the Tenor thereof is to be performed after 1st May 1697, upon which any Premium already is, or hereafter shall be given or paid for Liberty to put upon, deliver, receive, accept, or refuse any Share or Interest in any Joint Stock, Tallies &c. or Bank Bills whatsoever, other than such Contracts &c. as are to be performed within 3 Days from the Time of Making, shall be utterly null and void to all Intents.

Sum of 565 1 at any Time when requested before the 10th Day of May then next ensuing.

The Question was, Whether this Contract made 29 Oct. 1696, by which B had Time to request the Allignment of the Bank Stock till 10 May 1697, was within the Statute, and made void thereby. The Court delivered no Opinion, but Northey argued that it was not; for this is not a Contract, which by the Tenor of it is to be performed after the 10th Day of May 1697; For altho' the Plaintiff had Liberty to perform the Allignment of the Bank Stock to him until the 10th Day of May 1697, which was 9 Days after the Act took Place, yet such Request might be made before the 1st of May, and so the Contract, by the Tenor of it, was not to be performed after the 10th Day of May; for a Contract to be performed after the 10th Day of May, is irredeemable of such a Contract which of necessity ought to be performed after that Day, and cannot be performed before; but a Contract performable as well before as after that Day, at the Election of the Party, is not within the Act of Parliament, but is Causa omitts; and he compared it to a Cause upon the Statute of 29 Car. 2. cap. 5. of Frauds and Perjuries, by which it is enacted, That no Action shall be brought &c. whereby to charge any Person &c. upon any Agreement which is not to be performed within a Year from the making thereof; un-
Stocks.

...the Agreement be in Writing; and an Action was brought, upon an Agreement by the Defendant to pay so much upon his Marriage, but without any Writing or Memorandum of the Agreement; and the Defendant did not marry within the Year: Upon the Trial at Guildhall before Holt Ch. J. he was in Doubt whether that Agreement was within the Statute, and whether it ought not to have been by Writing? And ordered that the Opinion of the Judges of the Court should be taken. And by the major Part of the Judges in B. R. it was reliev'd, That this was Cases omnino; for that the Defendant might have married within the Year; and if it was not an Agreement which was not to be performed within a Year, and by Consequence was not such an Agreement as was intended by the Act of Parliament: And he said he did not see any Diversity between the Cases. Comyns's Rep. 49, 52. pl. 52. Hill 9 W. 5. in B. R. Anon.———Ld. Raym. Rep. 316, 317. Smith v. Wehall, S. C. And Holt Ch. J. was of Opinion, That if the Requell had been before the 18th of May, and the Contract performed, it had been good; but if no Requell was made before the 18th of May, the Contract being performable afterwards, was within the Intent of the Act. And in Fact no Requell appeared to have been made before the 18th of May. And therefore Judgment was for the Defendant, who had pleaded the Act of Parliament.

In Azlambert, upon a special Promise to transfer Stock in...the Plaintiff declared upon an Agreement in Writing, by which the Defendant agreed in 1692, in Consideration of to transfer to much Stock to the Plaintiff, or Order, upon Requell, and he shew'd a Request &c. and aver'd that the Defendant had not transfer'd. The Defendant pleaded the Act of 8 & 9 of this King, cap. 52. against Stockjobbing: the Plaintiff demurr'd. And it was urg'd, that this Contract was within the said Act, because, it may be, the Transfer was not to be made before the Day of but per Holt, The said Act shall be taken briefly, because it destroys Bargains; and therefore if the Requell was before the said Day, it is well enough. Judgment niff &c. for the Plaintiff. Ld. Raym. Rep. 673, 674. Lisher 15 W. 5. Mitchell v. Broughton.

5. In Covenant by A. against B. upon Articles of Agreement A. declares, that it was covenanted and agreed between him and B. that in Consideration of 20 Guineas by B. to him then paid, A. should transfer to B before, or upon the 19th of November 1693, 1000 l. Bank Stock; and that B. covenanted with A. to accept it upon Notice of 3 Days, and to pay to A. for it 940 l. and then A. aver's, that no Bank Stock is transferable by Law but in the Office of the Bank of England in the Presence of both the Parties; and that he gave 3 Days Notice to B. that he would transfer to him the Bank Stock in the Office of the Bank, the 19th of November; and that he attended there the whole Day to have transferr'd it, but that B. did not come to accept it, for which A. brings this Action for the 940 l. &c. B. after Oyer of the Articles, pleads that A. nor none of his Assigns, had any Interest in any Bank Stock upon the 18th of November &c. A. demurs. And the whole Court was of Opinion, that the Plca was ill, because tho' A. had not any Bank Stock upon the 18th of November, yet if he had it the 19th, he might have perform'd the Contract within the Time; for the Covenant was not, that he should transfer any particular 1000 l. of Bank Stock, which he had at the Time of the Covenant, but any 1000 l. of Stock. But then the whole Court held, that this Action will not lie for the Plaintiff in this Cafe, because it appears that he has not transferr'd; and without Transfer B. is not bound to pay the Money; for the Money was to be paid upon the Transfer; And therefore no Transfer, no Money. And cited Co. Litt. 304. Dyer 371. 2 Mod. 266. Strey v. Holdins. But the Matter in the Declaration might have been a good Excuse for the Plaintiff, if the Defendant had lued him for not transferring the Bank Stock; or the Plaintiff might have align'd his Breach in the Non-acceptance of the Stock by the Defendant. Ld. Raym. Rep. 440. Patch. 11 W. 3. Shales v. Seignoret.

6. The Court held also, That it did not appear to them but that the Bank Stock was transferrable at another Place than at the Office of the Bank; for tho' the Act says, That no Transfer shall be but as the King shall appoint, and the King has appointed it to be at the Office of the Bank, and not in any other Place, yet that ought to have been pleaded, or otherwise the Court cannot take Notice of it; and therefore, notwithstanding any Thing that appears here to the contrary, the Transfer might have been in any other Place, and then a Tender ought to have been made to the Perion. Ld. Raym. Rep. 441. Shales v. Seignoret.

2 Salk. 623. 1. S. C. but S. D. does not appear.—

7. It is to be admitted, That when Money was to be paid upon the transferring of the Stock, or doing any other Thing, if he that is to make the Transfer,
Stocks.

Transfer, or do such other thing, makes Tender, and the other re- 

flects, then he is as much intitled to the Money as if the Transfer or other 

Thing had been actually done; for tho' the Words be, That the Money 

shall be paid upon the Transfer, yet if the Party does all that lies in him, 

Ch. J. who is thereupon as much intitled to the Money, as if he had done all ef- 

fually; Per Holt Ch. J in delivering the Opinion of the Court. 12 


8. Defendant gave Bond to transfer 300 l. East-India Stock, on or be- 

fore 20th September next. The Stock was much riven in Value since the 

Assent, yet Defendant was decreed to transfer 300 l. Stock in Spe- 

cie in a Forntnight, and to account for all Dividends made since the Time 

when he ought to have transfer'd, and to pay Costs at Law and here, 

or dismiss the Bill with Costs. 2 Vern. 394. pl. 365. Mich. 1750. 

Gardner v. Pullen. 

9. An Agreement by Note under Hand, in Consideration of 2 Guineas 

paid down, to transfer South-Sea Stock at a fix'd Price, at the End of 3 

Weeks, was decreed at the Rolls to be executed in Specie; but on Appeal 

Lord Parker reversed this Decree, and said that a Court of Equity ought 

not to execute any of these Contrails, but to leave them to the Law, where 

the Party is to recover Damages, and with the Money may buy a like 

Quantity of another Perfon, and which will be all one. Wms's Rep. 


10. 7 Geo. 1. St. 2. 8. 6. Such Penfons (Brokers excepted) as since the 25th Truftee of 

of March 1720, have borrowed Money of the Company upon Stock, who shall 

pay to the Cofhire of the Company 10 per Cent. upon the Sums so borrowed, by 

the 25th of June 1722, shall be discharged from all further Demands of the 

Compy, and the Stock so pledged shall be absolutely vested in the Company. 

The like Clause for Money borrowed on Subscription Receipts. 

received the Money. After wards this Act of Parliament enacted as above. The Truftee paid the 10 l. 

the Cefy oue Trufi forbaid his doing it. On a bill by the Truftee to be repaid this 10 l. per Cent. 

Ld. C. King decreted it accordingly, with Intereli and Costs. 2 Wms's Rep. 453. Fuch 1728. Baflth 

v. Hyman. 

But if the Cefy oue Trufi had not only forbaid the Payment, but had alfo offered Security to indemnify 

the Trufree, it had been material; but the Trufree had good Reason to think he was liable to pay the 

whole Money borrowed. Per Ld. C. King. Ibid. 455. S. C.

11. By 7 Geo. 1. St. 2. Par. 8. Every Contrail for the Sale or Pur- 

chase of Subscriptions or Stock of the South Sea Company &c. which shall not 

be compouded by the Parties thereon, or interefled therein, on or before the 

29th of September 1721, or an Abstract or Memorial thereon, signed by the 

Party interefled therein, and who shall be minded to take Advantage of the 

fame, shall be entered and registered in Books, which are thereby required to 

be provided for that Purpofe by the respective Companys. the capital fuch 

Stock &c. do, or shall relate, before the 15th of November 1721. And in De- 

ference of such Entry and Register, every such Contrail, as to fuch much as shall 

remain unperformed and not compouded, on or before the 25th of September 

1721, fhall be void: And fuch Entries fhall express the Name of the Par- 

ties, or Penfons for whose Use or Benefit fuch Contrail was made &c. 

The Condition of a 

Bond, was, 

Whereas 

P. B. as Executor 

of 

F, B. being 

poffesd of 

4000 l. Lot- 

tery Annu- 

ances, 

and 

the 

6th July, 

agreed to 

them for 

4000 l. to be 

alignd and 

paid for be- 

fore 6th Auguft next; and whereas soon after, the faid P. B. at the Request of the Plaintiff and De- 

fendant, transferred them in his Own Name into the South Sea; Now if the Defendant, in Consideration 

of a valuable Contrail, fhall transfer to the Plaintiff a Copy of the faid Stock allowed by the 

S. S. Company for the fame, then &c. And then pledged, That the Contrail between the Plaintiff and 

Defendant was for Sale of S. S. Stock, which was neither performed nor compouded before the 25th Sep- 

tember 1721, and that neither the Bond, with the Condition and Contract therein contained, or any 

Abstract or Memorial thereof, was regiftered before 18 November 1721 &c. The Plaintiff replied: 

That he, by Deed dated 15 October 1722, alignd the Bond, and all Benefits of the Stock &c. in the 

Condition mentioned, to William King for his own proper Ufe, who regifter'd it &c. and this was 

joined upon the Regiftering. And on the Trial at Guildhall, November 27, 1722, before Ld Ch. J. 

Pott, it appeared upon the Regifter of the Alligment produced, that the Alligment was regiftered, and 

that the Bond; and the Ch. J. Hid. That the Bond and Condition which contained the Contrail, ought 

to have been regiftered: Then a Regifter of the Bond and Condition was produced, but it did not ap- 

pear to whom the Bond was made; and it is not enough, that it is laid in the Alligment, that: 

Stocks.

4

it was to the Use of the Plaintiff, tho' the Allignment was also registred; for that is only a Recital in the Deed of Allignment, but by the Statute, it must appear by the Register itself to whose Use the Contract was made. And to this Opinion the Ch. J. adhered, but on the Plaintiff's Importunity permitted a Cafe to be made, which was never argued; but the Plaintiff commenced a new Action in C.B. upon which a special Verdict was found. Comyns's Rep. 565, 566. pl. 182. Mich. 9 Geo. B. R. Rogers v. Wilton.

Covenant upon an Indenture, dated the 19th Augst 1726, made between the Plaintiff of the one Part, and the Defendant of the other, whereby the Plaintiff, in Consideration of 1251l. 10s. to be paid to him, as therein after mentioned by the Defendant, conveyed for himself &c. that he, his Executors &c. should, on or before the 25th of March next ensuing transfer &c. to the Defendant, his Executors, Administrators, and Assigns, all just Stock, Bonds, Notes, Bills, and Money, as the S.S. Company shall deliver, and pay, to the Proprietors of Lottery Annuities, for 1277l. 10s. 6d. Capital Stock in the Lottery Annuities at 5 per Cent. thereto already subscribed into the said Company by, or in the Name of the said Plaintiff, with all Dividends, Profits &c. And the Defendant, in Consideration of the Premises, for himself &c. conveyed with the Plaintiff, that he &c. should, within the Time aforesaid, accept all the said Stock, Bonds &c. which should be given by the S.S. Company for the 1277l. 10s. 6d. Lottery Annuities &c. and would pay 1451l. 10s. for the same; and for Non-payment the Action was brought. After Oyer the Defendant pleaded, That neither the Contract in the Declaration mentioned, nor any Affidavit or Memorial thereof, was entered in the S.S. Company's Books, as is required by that Statute. Plaintiff took Jtlue, which being tried before Ed. Ch. J. Pratt, the Plaintiff produced the Register-Book of the S.S. Company, wherein a Copy of the Contract was entered verbatim, under which was subscribed, "This is for my proper Use and Benefit," which was subscribed by the Plaintiff with his own Name, viz. "Philip Wilkinson." It was indicted for the Defendant, That the Words of the Act were plain, that the Name of the Peron for whose Use or Benefit the Contract was made, must be exprest, which refers to the Time of making the Contract; and the Act intended so, because it designed to discover what Contracts were made for any of the Directors, who were so cunning, that they made none in their own Names: But yet, as this Register is, this Contract might be made for the Benefit of a Director, who after might release his Equity, or Right, to the Plaintiff; and yet the Register will be true. But for the Plaintiff it was argued, That the Preamble to this Clause shew'd what the Design of the Parliament was, viz. for preventing a Multiplicity of various and doubtful Suits concerning their Contracts, in Law or Equity; therefore it directed, that the Name of the Person for whose Use or Benefit such Contracts were made, should be exprest in the Entry and Register, that the Defendant might know who had a Demand upon him; which in this Cafe the Defendant did, the entire Contract being registred; and by the Import of the Deed it appears to be for the Plaintiff's Benefit. And of that Opinion was the Court; and Raymond J. said, that this Act being Ex post facto, the Construction of the Words ought not to be strained, in order to defeat a Contract, to the Benefit whereof the Party was well intitled at the Time the Contract was made. Judgment was given for the Plaintiff. 2 Ld. Raym. Rep. 1350 &c. Easter 10 Geo. Wilkinson v. Sir Peter Meyer——S.C. S Mod. 232. says, That by 5 Judges against the Ch. Justice, this was held to be a good Contract, and well entered in the S.S. Books; for the whole Agreement was registred, and by Consequence it must be shew'd who had a Right to demand the Money: That the Intent of the Legislature was only to force, that there was a good and solemn Contract, so that People might not be troubled with every trifling Bargain made at that Time, but only upon legal Contracts, which were to be registred; and what was done by the Plaintiff, shews that this Contract was for his Benefit, and that he is the Peron that had the Right. Judgment for the Plaintiff.

In this Cafe was cited by Sir Serjeant Cowper, That a Plea of the Statute to a Bill for Performance of a Contract for 4000l. S.S. Stock, ought to be allowed. Ibid. 556, 557.

12. In Assumpsit for 520l. for 10 Shares in the Stock of the Company of Copper-nines, the Defendant pleaded Non assumpsit. Upon the Trial there was Proof of a Contract, according to the Declaration, but there was no Memorandum in Writing, nor any Earnest paid, lo that the Question was upon the Statute 29 Car. 2. of Francis &c. whether this Contract, being for more than 10l. be good? King Ch. J. before whom this was tried, doubting, it was made a Cafe, and argued before the Court of C. B. and afterwards at Serjeant's-Inn before all the Judges of England. And upon Argument there, the Judges being divided in Opinion, it was adjourn'd. Comyns's Rep. 354 &c. pl. 178. Mich. 7 Geo.


13. A. by Deed poll covenant'd to assign S.S. Stock to Defendant, as soon as the Books of that Company were open; and Defendant covenant'd, in Consideration thereof, to accept the Receipts, and to pay 950l. to A. on the 10th of November following; afterwards by Act of Parliament the Company were prohibited to give any Receipts for so long Time. The Time expires for the Payment, and A. brings Covenant for the Money: But adjudged, that it being only a Deed poll, it is for that Reafon the Deed
Stocks.

Deed of the Defendant only; and therefore the Covenants cannot be mutual: And it would be hard that A. should maintain this Action for the Money, before he transfers, or tenders to transfer, the Stock, when Defendant has no Remedy to recover it at Law, but only a Right to have it decreed to him in Equity; and Judgment for Defendant. § Mod. 41. Paech. 7 Geo. 1722. Lock v. Wright.

14. A. by Articles of Agreement, covenants on such a Day to transfer so much Stock, on Payment of 168 l. and the Defendant covenants to accept the same, and then to pay the Money at or before the Shutting up the Books for the Christmas Dividend; and agreed further, that if Defendant did not accept it, the Plaintiff might sell it, and the Loss or Profit to be accounted for; Bond was given for Performance. Per 3 Jult. against Eyre. These are independent Covenants, and not mutual, and Plaintiff need not set forth any Tender to transfer, because it was to be transferred on Payment, and to Defendant made himself the 1st Agent; and so restore'd a Judgment in C. B. § Mod. 68. Paech. 8 Geo. 1723. Wivel v. Stapleton.

Residue of the Money was not due till he made a legal Tender of the Stock, and Defendant made Default; and for not shewing this, the Breach was not sufficiently laid. Ibid. 581. Trin. 11 Geo 1726. Wivel v. Stapleton.

15. Covenier of S. S. Company received Money for a Subscription, but did not enter Respondents Names in the Book; the Respondents recovered the Money against the Company. MS. Tab. Tit. Stocks, pl. i. cites March 6, 1722. S. S. Company v. Curton.


17. Plaintiff covenanted by Indenture to transfer S. S. Stock to Defendant, on or before September 21, and the Defendant covenanted to pay the Plaintiff 3500l on or before the said Day, and gave Bond for Performance of the said Covenant: In Debt on the Bond the Plaintiff set forth all this Matter, and that Pro C in consideration Premisiumus, the Defendant covenanted to pay the Money, and that he was ready at the Time and Place agreed &c. and that Defendant, or any for him, was not there to receive. On a Demurrer it was adjudged, That there were mutual Covenants, the Transfer being to be made on a certain Day and Place; and tho' in some Cafes the Word (Pro) makes a Condition precedent, so that the Plaintiff must aver Performance, yet it is not so here; for Pro here makes the Covenants mutual, viz. The Plaintiff is to transfer (Pro) the Money, and the Defendant is to pay Pro the Transfer, and this reduces it to mutual Covenants, for which each has a proper Remedy for Non-performance. 8 Mod. 125. Mich. 9 Geo. 1723. Blackwell v. Nath.

and Defendant covenants to accept and pay Intra Tempus prædict. Per Cur. It is a mutual Covenant, and Defendant need not lay any Respect, or plead himself ready &c. For the Time is not indefinite, as suggested, because Defendant was to accept and pay Intra Tempus prædict. which must be within 4 Days, and therefore no Omission to over a Remand. It is the same Cafe with that of Blackwell v. Nath. only in that Cafe one Day was appointed, and here are 4 Days. 8 Mod. 173. Trin 9 Geo. 1724. Wilkinson v. Meyer.

18. Purchase of Refusal of Stock in the Year 1720, good. MS. Tab. Tit. Stocks, pl. 2. cites Feb. 10. 1723.

19. A. by Deed poll covenants to pay 1500l. for so much Stock in S. S. Company, which Plaintiff covenanted to transfer on Sep't 21, and at such a Place, when and where Defendant covenanted to receive the Stock. Per Cur. There must be a Tender to transfer, tho' an actual Transfer is not necessary, unless Defendant had been ready at the Time and Place to receive it; and if so, then the Tender must be the last Hour of the Day on which, and that Time must be laid in the Declaration. 8 Mod. 218. Hill. 10 Geo. 1724. Mordant v. Small.

20. Articles
20. Articles were drawn for Stock in the Luftring Company at 58.1.
a Share, and the Money to be paid, and Transfer to be made on the next
opening of the Company's Books. But at a Meeting for sealing the Articles,
the Seller intimated that the Money should be paid at a Day certain, whether the
Books opened or not; and an Indorsement was made accordingly, and both exe-
cuted. Afterwards a Step was put by Parliament to any further Transfers
or Dealings with those Bubbles. The Books were never opened after-
wards. The Vendor in an Action at Law recovered; but on the Ven-
dee's bringing a Bill in Chancery, an Injunction was granted; and upon hearing the Cause, the Matter of the Rolls said it was against natural
Justice, that any one should pay for a Bargain which he cannot have; that
there ought to be Quid pro Quo, whereas in this Cause Defendant
had sold the Plaintiff a Bubble or Moonshine; that the Defendant was
the chief Actor, that he went to Market with this Bubble; and that
since no Transfer can be made, he granted a perpetual Injunction, and
ordered the Defendant, at the Plaintiff's Charge, to enter Satisfaction on
the Judgment. And afterwards the Cause came on to be re-heard by
Lord C. King, who made no Decree, but said he could not divide the
Loaf, and recommended an Agreement, and to share the Difference. 2

Comyn's
21. Mortgage of S. S. Stock sells Part; he was liable to Account.
197. Harri-
son, and Hart, and Franks, S. C. in the Eschequer, Mich. 17 Geo. 1. an Account was directed for
all Monies received on the Sale, notwithstanding the Day of Redemption was past.

22. In an Action upon a S. S. Contract the Declaration set forth, that
the Plaintiff was bound to transfer 8001. Stock, and the Defendant to pay
5800l. That 2 reciprocal Notes were given for that Purpose; and
that the Plaintiff was ready to make a Tender of it at the Day, but that
the Defendant was not there; and therefore demands the Money. Two
Things were moved in Arrear of Judgment; one was, that the Contract
was not registered, pursuant to the Statute of 7 Geo. 1. but only the Prom-
issory Note of 5800l. and not the Note, which the Plaintiff gave for trans-
fering; so that the full Contract was not register'd. And as to what
the other Side might say, That it was not in their Power to register
more than what was in their own Hands, they answered, That they
might at least have register'd a Memorial, or Abstract of the whole; and
the Act gives them a Power to register the Contract itself, or a Memo-
rial of it, at their Election. Now that the whole Contract was not re-
istered by registering this Note only, they said was plain; for the
Words of the Note are, I promise to accept of 8001. S. S. Stock, and to pay
5800l. for the same; and so nothing was registered that imported any
Contract on the Part of the Plaintiff; and therefore the whole was not regis-
tered: That the Words (for the same) did not import a reciprocal
Covenant; for if it did, then in an Action brought upon such Note, you
need not aver the tendering of the Stock, which it is evident in this Case
you must. And took a Difference between Instruments, which contain
reciprocal Covenants, or only a Covenant of one of the Parties; and cited
7 Rep. 19. and the Case of Pardige and Cole, and of Petters and
Open 2 Sound. But per toto. Cur. "The Contracte was well register'd; for
it appeared by the Regifter, that each Party was under mutual Covenants,
inasmuch as it appeared, that the Party register ing had accepted the
Note, by which Acceptance he was necessarily bound; and said, that
this very Point was ruled thus at Nifi Prius, in the Case of Pardry

23. In 1720, H. the Defendant gave a Promissory Note to A. the Plain-
tiff's Father, to pay him 11000l. in case he would transfer to him 1000l.
Capital S. S. Stock, at or before the shutting up the Books for the then next
Christmas Dividend. A. accordingly sent a Notice in Writing to H. that
he would transfer this Stock to him on the Friday or Saturday next, being the Day for the settling up the Books. The Plaintiff avers in his Declaration, That A. was at the S. S. House on the Day to make a Tender, but that neither H. nor any for him, was there to receive the Transfer: Upon which the Plaintiff, as Executor to A. brings this Action. The Plaintiff gave in Evidence, that the usual and only Time for making these Tenders was between the Hours of Nine and One; and that not so much as the transferring any Stock can be made but between these Hours, unless in these particular Days just before the settling up the Books for the making of their Dividends. That A. had a Person ready to make this Tender all the Time between those Hours; that 3 Calls accordingly were made, but that no Body came for H. to accept it. The Court said, That this Matter was now brought to one single Point of Law, whether upon the Face of the Plaintiff's own Evidence, it does not appear that the Tender was not good, inasmuch as his Witnessess admit, that the Time for transferring Stock in those Days continues after the usual Hours; and in Fact this Time continued till late in the Evening? Upon this Question they were all of Opinion, That the Tender was not good; for they said, in all these Cases the Tender of the Act must be made at the Last Point in which the Act itself can be done. And this they said was held in the Case of Lantaffit and Killingworth; so that this differs from the Tender of Kent: And therefore as the Law has appointed the Time for this Tender, no usance to the contrary for a few Years can alter it; for this same Reason too is it, that Notice was wholly unnecessary: Whereupon the Plaintiff was non suited. Barnard. Rep. in B. R. 95, 96. Mich. 2 Geo. 2. The Duke of Rutland v. Hodgson.

24. A. in Consideration that B. would transfer to him so much Stock in the York-Buildings Company, promised to pay him after the Rate of 11 l. 7 s. per Cent. upon transferring the same immediately after the opening the Books. In Attempt by B. he set forth that the 29 Feb. was the first Day for transferring after the Opening; That York-Buildings House was the usual Place of transferring; and that from 3 o'Clock to 4 was the usual Time; and averred that he was there all the Time between 3 and 5 ready to transfer, but that none was there for A. to receive it; and that A. has not paid the Money. Upon Demurrer Exception was taken, that the Tender ought to have been held in that Part of the House particularly where the Books for Transfers are kept, that being the most notorious Place. The Court agreed that the Tender ought to be made there, but upon this Declaration they would not intend that there were any other Parts of it; That a House, Ex Vi Terminis, signifies only some Building, which may consist of one Room only, as well as of more. The Court said, that if Defendant had pleaded the General Issue, the Plaintiff must have proved his Tender in that very particular Part of the House where the Books are kept. Adjournatur. Barnard. Rep. in B. R. 156. Trin. 3 Geo. 2. Jacobs v. Crolley.

25. E. H. purchased 1000 l. S. S. Stock, and accepted the same in the S. S. Books soon after his buying it. Afterwards another of the same Name, but known by another Description, got, by some Means or other, the 1000 l. Stock belonging to the first E. H. placed to his Account in the S. S. Books, and some Years afterwards transferred the same to R. his Broker, in order to sell the same for him, which R. accordingly did. Both the E. H.'s died. On a Bill brought by the Representative of the first E. H. the Court was of Opinion, That the Representative might elect either to have this specified Quantity of Stock bought for her, or a Satisfaction for it as it was at the Time it was sold out, at which Time a Convention was made of it; and likewise seemed to incline, that the Company might be liable, in case the Representative of the first E. H. has not sufficient Assets, because they must be considered as Trustees for the first E. H. at the Time he purchased this Stock; and as the same was transferred without his
Stopping Lights.

his Privity, they must be considered as continuing his Trustees; but
that it would be soon enough to determine this Point when an Account
v. Pryfe.

26. If Stock belonging to a Teftator is given by his Will, subjett to a
Contingency, the Court does not presume that the Stock will always re-
main in the fame Plight; and if it is converted into other Stock, the
Stock into which it is converted, shall be subjett to the fame Contingency.

For more of Stock in General, See Devil, Fraud, (U) pl. 1. Whit-
acre v. Whitacre, PUTC'halor (B) pl. 17. Monk v. Graham, South
Brit., and other Proper Titles.

Stopping Lights.

(A) By one who has Land adjoining.

CASE was brought for Stopping Lights; the Defendant pleaded
in Bar a Cusfom within the Place where &c. Time out of Mind for
any Neighbour, that had Land lying before the Windows of another
Neighbour, to deftruct the Sight, by doing any Thing on his own Land.
But resolved, That when a Man has a lawful Easement or Profit, by Pre-
scription Time out of Mind, another Custom, which is also Time out
of Mind, cannot take it away; for the one Custom is as ancient as the
other. And it may be that before Time of Memory, the Owner of the
Land had granted to the Owner of the Houfe to have the faid Windows,
without any Stepping of them; and to the Prescription may have a law-
ful Beginning; cited in Aldred's Cafe, 9 Rep. 58. as Trin. 29 Eliz.
B. R. the Cafe of Bland v. Motley.

2. If 2 Men be Owners of 2 Parcels of Land adjoining, and one of
them does build an Houfe upon his Land, and makes Windows and
Lights looking into the others Lands, and this Houfe and the Lights
have continued by the Space of 30 or 40 Years, yet the other may, upon
his own Land and Soil, lawfully erect an Houfe or other Thing againft
the faid Lights and Windows, and the other can have no Action; for it
was his Folly to build his Houfe fo near to the other's Land. It was agreed
by all the Justices, and adjudg'd accordingly. Nota, Cujus eft folum,

3. If A. builds a new Houfe on Part of his Lands, and then sells
the Houfe to B. and the Lands to C. neither A. nor C. can obfttruct

Raym. 8. 7.
Palmer v.
Fletcher,
Mich. 15
Car. 2. B. R.

S. C. and there held by Twifden and Windham, that the Vender
may build upon it; but Keyling
contra. — Sid. 467. pl. 26 S. C. and Judgment accordingly for the Plaintiff,
Keeling dubitante, and
If A. sells the vacant Ground, and keeps the Houfe without referring the Benefit of the Lights, the
Court doubted that Vender might build to as to stop A. 's Lights, because he parted with the Ground
will-
Stopping Lights.


4. A Stranger having Land adjoining to a Houfe newly erected, may Sid. 167, pl. obstruct the Lights. Agreed by all; for the building a Houfe upon his own Lands, cannot hinder his Neighbour from doing what he will with his own Lands. Lev. 122. Mich. 15 Car. B. R. Palmer v. Fletcher. Windham. —Ibid. if Man builds a Houfe upon his own Ground, he that has the continuous Ground may build upon it also, tho' he does thereby stop the Lights of the other Houfe, for Uti us est Solum egit us est usque ad Culam; and this build, unless there be a Custom to the contrary, as in London. Per Hale Ch. J. Vent. 239. Hill. 24 & 25 Car. 2. B. R. in Cafe of Cox v. Matthews.

5. But if the Houfe be ancient, so that he has gained Right in the Sid. 167, pl. Lights by Preemption, it is otherwise. Lev. 122. Palmer v. Fletcher. 25 S. C. and S. P. by Twilden and Windham J.—Ibid. 227, pl. 22, S. C. but not S. P.

(B) After Unity of Possession.

1. Two Houses came into one Hand, and Windows &c. are altered, and then the Houfes are divided; the Lights cannot be restored by Law, but must be taken as they were at the Time of the first Division and Conveyance. Hob. 131. pl. 173. Hill. 13 Jac. C. B. in the Cafe of Robins v. Barnes.

2. If I have an ancient Houfe and Lights, and I purchase the next Houfe or Ground, where no Nuisance is done to my former Houfe, my Privilege against what I have purchased ceaseth; for I may use my own as I will. Now if I leave my former Houfe, I may build upon the latter; or if I leave my latter, he may build against me, as it may seem. Hob. 131. Robins v. Barnes.

(C) Stopping Lights in London.

1. By the Custom of London a Man may build upon his old Foundation. Yelv. 215, 216. Hill. and if there be no Agreement to the contrary, may stop up 216. Hill. 9 Jac. B. R. his Neighbour's Windows: By this Custom, if he make New Windows higher, the other may build up his Houfe higher, to destroy those New Windows. Godb. 183. pl. 262. Mich. 9 Jac. B. R. Hughes v. Keene. Bull. 115. Pamc. 9 Jac. Hughes v. Kynmuth, S. C. accordingly —But in this Case Judgment was given against the Defendant, because he did not set forth by Way of Pleading, that he erected this his new Building upon the old Foundation, as he ought to have done; and for this Omission the Plea is not good, and to the Defendant has failed in his justification. Bull. 116 S. C.—Yelv. 216. S. C. gives, that Judgment was given against the Defendant, because he did not answer the Offence laid to his Charge, which was the Building upon the said Piece of Land, and thereby stopping the Plaintiff's Lights, whereas Defendant justified only by building upon the old Foundation, and thereby stopping the Plaintiff's Lights, which is not the Matter he was charg'd with, but quite different; and to the Point of the Action not answer'd. Quad. Nota. Per tot. Cur. Yelverton was Counsel with the Defendant.

2. A. and B. were Owners of 2 contiguous Houses; B. had Lights in his Houfe towards A's Yard, and A. made up Blinds. The Court of Aldermen, upon 19 Car. 2. cap. 3. ordered they should be abated; but D
A Prohibition was granted in B. R. for whatever they may do in their Inner Court by Quod Permitterat, where they have Power to determine real Actions, it is plain that the Court of Aldermen have no Power in this summary Way, unless by 19 Car. 2. cap. 3. and that gave them only a temporary Power during the Re-building of the City. While the City was re-building they had Power to affign Lights, but by being once ad

\[ \text{(D) Actions at Law, or Suits in Equity.} \]

1. A WAS seized of a House and a narrow Slip of Land, and B. was a poitifs'd of an Orchard adjoining, and there erected a Wood-pile, which darken'd the Plaintiff's Lights of his Hall and Chambers; whereupon A. brought Action on the Cafe; and it was resolved that the Action lies, and says that the ancient Form of the Action was significant, viz. Quod Menagium horrida Tenebratae obscuratum fuerat; and cites 7 E. 3. 50. h. 22 H. 6. 14. (a) Per Markham. 11 H. 4. 47. 9 Rep. 57. b. 58. Mich. 8 Jac. C. B. Aldred's Cafe.

2. In 2 Cafe the Plaintiff declared, that he was seized of a House and Chamber in N. and that A. was poitifs'd of a Shed adjoining to the said House, and 1 Sept. 49 Eliz. and Time whereof &c. there was a Window in the said House looking towards the said Shed, by which Window, and by no other Means, the Light came into the Chamber of the House, and the said A. 30 Sept. 49 Eliz. erected a Building upon the Shed to near to the House, that it stop'd all the Light of the said Window, fo as he lost all his Light, and that the Defendant poitifs'd of the said new Building, had continued and not removed the said new Erection. A. leas'd this Shed to B. who now dwelt in the said Shed, and the Action being brought against B. it was agreed by all the Court, that this Action lay against him who erected it: But it was objected, That it lay not against the Defendant, who only is Leije for Years, and Inhabitant there; and that if it had any Remedy, it should be a Quod Permitterat against the Tenant of the Freehold. And to that Opinion Coke Ch. J. seemed to incline, but the other Justices doubted therein. But afterwards it appearing that the Plaintiff had procured Judgment to be entered without Motion to the Court, the Defendant was put to his Writ of Er

3. If a Man has a vacant Piece of Ground, and builds thereupon, and that House has very good Lights, and he lets this House to another, and after he builds upon a contiguous Piece of Ground, or lets the Ground contiguos to another, who builds thereupon to the Nulance of the Lights of the first House, the Leiffe of the first House shall have an Action upon his Cafe against such Builder &c. For the first House was granted to him with
Stopping Lights.

with all the Enactments and Delights then belonging to it. Per Holt Ch. J. 6 Mod. 116. Hill. 2 Ann. B. R. in Case of Rosewell v. Prior.

4. Bill in Chancery charged, that Plaintiff being possessed of a Meffuage and Ground adjoining inclosed with a Wall, the Defendant proceeded to pull down the Wall, and build upon the Ground to near the Plaintiff’s House as to stop his Lights; Defendant insisted that the Ground and Wall was his, and the raising the Building could not obstruct Plaintiff’s Lights. And upon Affidavits supporting the Allegations of the Bill, an Injunction was prayed to stay Defendant’s Building &c. But denied by King C. because it would be a determining the Right upon Motion; but ordered that Defendant receive a Declaration in Trespass or Ejacuament, as soon as Plaintiff thinks proper that the Matter may receive Trial. Gibb. 106. pl. 6. Mich. 3 Geo. 2. Bateman v. Johnfon.

(E) Pleadings.

Where, one prescribes to have Lights to his House, and the other S. P. Per prescribes to stop them up; this is not good. Per Coke Ch. J. Godb. 183. pl. 262. Mich. 9 Jac. B. R. in Case of Hughes v. Keenes.

2. In Trespass of Taking, Breaking, and Carrying away 12 Boards of the Plaintiff’s. The Defendant as to the Taking and Carrying away pleaded Not guilty, and as to the Breaking he justified, because the Plaintiff had fixed them to his House, and that they hindered his Light, and he broke them, as lawfully he might. The Plaintiff replied, That he did not fix them to the House of the Defendant; and upon this they were at Issue, and found that they were fixed, but not by the Plaintiff, viz. that the Plaintiff did not fix them to the House of the Defendant. It was mov’d in Arrest of Judgment, because it is not material who fix’d them; for the fixing to the House is the chief Point. But the Court said that he ought to have avoided it in Pleading; and when upon this special collateral Issue, it is found for the Plaintiff, he ought to have Judgment, tho’ it was not a good Issue. 2 Roll. R. 241. Mich. 25 Jac. B. R. Gwin v. Damport.

3. Cafe &c. in which the Plaintiff declared that he was possessed of Geo. C. 225, an House &c. which had 3 Windows on the North Side, & ad hoc 326. pl. 8. possessionatus existit, and that the Defendant was possessed of an House, and a void Piece of Ground adjoining to his House on the North Side, & ad hoc possessionatus existit, and avers that they were ancient Lights Time out of Mind, and that the Defendant had built super vacum peccam terrae, and thereby stopped his Lights; Upon not guilty pleaded the Plaintiff had a Verdict. It was moved in Arrest of Judgment, that the Declaration was repugnant, for the Ground, being declared to be built upon, cannot be said to be Vacuo. And of this Opinion was Barkeley, but the other Justices e contra; for this is Surplusage; For it might be that he built upon the said Vacuum peccam Terrae, and yet it might be still Vacuo, and that he built upon part only; And Judgment for the Plaintiff. Jo. 326. pl. 6. Mich. 9 Car. B. R. Serrers v. Seaborne.

4. In an Action for a Nuisance in stopping of the Lights of his House, In an Affidavit Exception was taken to the Declaration, for that he did not say Antonion for theorum Meffugium; and yet it was ruled to be good enough; for perhaps Lights a Man need not declare would of an Ancient
5. In an Action upon the Case for stopping up his Lights, the Plaintiff declared, that he was possessed for divers Years (and did not say how many) and that Time out of Mind the Light came in at the Windows; This was allowed a good Form of alleging the the Prescription. Vent. 249. Mich. 25 Car. 2. B. R. Anon.

6. Trespas on the Case for stopping up ancient Lights by the Erection of a Wall; Prescription in *Quod possis in a House in which habuit & habere debitum such and such Lights. Exception was taken on Demurrer because he did not say Time out of Mind, nor so much as that it was an ancient House and that the Lights were ancient; but it was held well enough upon the Case of *Sands v. Trelusis. Show. 7. Pack. 1. W. & M. Villers v. Ball & al.


9. In Case for erecting a Shed upon the Defendant's Ground, so near the Plaintiff's House that it stopped his Lights, the Plaintiff declared, that he was possessed of a House which had Windows, Per quas homin infedut & inferri consuevit; After Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the House was not said to be an Ancient House, and the Defendant appeared not to be a Wrong-doer; For one may erect a Shed on his own Ground against another's Windows, if they are not Ancient Lights. 3 Cro. 118. And all the Precedents of stopping Lights have it, either *Antiquum Messorijun or *Antiqua Lumina. 1 Cro. 325. Pop. 170. 2 Cro. 373 Yelv. 215 fed per Cur. The word (consuevit) imports Usage Time out of Mind, and we must intend, after Verdict, that Usage Time out of Mind was proved; And if indeed it was in this Case, for otherwise the Jury could not have found for the Plaintiff. The Court seemed to think this Declaration would not have been good upon Demurrer. 2 Salk. 459. pl. 4. Mich. 10 Will. 3. B. R. Rosewell v. Prior.

For more of Stopping Lights in General, See Actions, Nuisances, and other Proper Titles.

(A) Stranger.
Stranger.

(A) Of what Things a Stranger may take Advantage.

1. If E, who is a Stranger to the Issue, shall not have Advantage of the Verdict or Trial the he was Party to the Original. Br. Rec. pl. 3. cites 33 H. 6.

2. As in Dikt against two of D. by several Precipices and both were outlawed, and the one taken by Capias Ulagatum, and pleaded that No such Vill, and found for him, and be went quit, and after the other was taken by Capias Ulagatum, and would have taken Advantage of the first Verdict and Judgment, and could not by the best Opinion, by which the Attorney of the King confounded the Exception, and thereupon he was dismissed. Br. Estranger al fuit. pl. 3. cites 33 H. 6. 51, 52.

3. Remainder, Rent, Condition nor Re-entry can't be referred to a Stranger, but to the Donor, Feoffor, Leffor, or their Heirs, and a Gift in Tail upon Condition that if he alien in Fee, then the Land shall remain S.C. to a Stranger is a void Remainder, tho' he does alien in Fee; per Fro-wike, Vavilour, and Kingmill, J. For a Remainder cannot be appointed to commence in a Stranger by Matter Ex poht facii, but must be in the Party by the first Livery, and otherwise it is void; quod nota. Br. Done &c. pl. 18. cites 21 H. 7. 11.


5. If a Seigniory is granted in Fee to the Tenant of the Land and a Stranger, they are not Jointenants but the one Moity is extinct &c. Arg. D. 140. b. pl. 41. Hill. 3 & 4 P. & M. in Cafe of Butts v. Ld. North.


7. Where by a Condition a thing is to be performed by or to a Stranger by this Undertaking there ought to be a punctual Performance; Arg. cites 196. pl. 39. 4 H. 7. 182. 27 H. 8. 1. Perk. Condition S. 756. 35 H. 8. D. 56. But if S.C. it be that I. S. a Stranger shall incof the Obligee, and the Obligee refuse to take it, he shall take Advantage of it. Per Coke C. 3 Bute. 3o. Pach. 13 Jac. in Cafe of Quick v. Lud borrow.

8. If A. refuse f D. his 3d Son upon Condition that if be pay 500 l. to D. then E his 3d Son should have Fee, This is a Condition the Right of performing which defends to the Heir of A. and he may take Advantage of it; for the Limitation of the Fee over to E. is void by a particular Maxim of the Common Law which will not allow a Fee to be limited upon a Fee or by that other Maxim by which a Stranger cannot take Advantage of a Condition. Per Parker C. 10 Mod. 423. Mich. 5 Geo. 1. in Cafe of Marks v. Marks.

For more of Stranger in General, See Arbitriment, Conditions, Faits, Fineg. (F. 4) and other proper Titles.
Stricti Juris.

(A) What Things are.

1. QUÆ Communi Legi derogant, strictè interpretari debent. See Maxims.


4. Notice to avoid a Leaf was to be given by the Lettor, his Wife, or his Heirs. This extends not to give a Power to Assigins to avoid the Leaf by Notice. Godb. 3. pl. 3. Patch. 20 Eliz. C. B. Anon.

5. Conditions shall not be taken so strictè, that the Breach shall be according to the precise Words; But if the Meaning be broken, it is a Breach of the Condition, as where the Condition was Not to demife the Land, and be devised it, this is a Breach. Cro. E. 331. pl. 8. Trin. 36 Eliz. B. R. Berry v. Taunton.


8. Restitution have favourable Constructions more than Grants. Adywions, without express Words, pas in cafe of Restitutions, but not in cafe of a Grant. Arg. Lat. 255. in Cafe of Surry v. Cole, cites 41 E. 3. 5 M. 3 Jac. C. B. Barker and Barret.


10. A Claim of Discharge of Tithes is contrary to common Right, and therefore shall be strictè. Noy. 97. Hill. 15 Jac. C. B. in Cafe of Slade and Drake.

11. Inhibitions &c. are Stricti Juris. 2 Bull.


13. Easoplasts are to be taken strictè; for they neither give nor take away any Right. No man is bound by them, but the Parties and their Privies. Arg. Show. 27. Trin. 1 W. & M. in Cafe of Incledon v. Burges.

14. Remitters are favoured in Law. Arg. See Show. 420. Trin. 6 W. & M. in Cafe of the King v. the Bishop of London and Dr. Birch.
Striking.

15. A devifes to B. and C. his Wife's Children, (as he call'd them, not owning them to be his) is a-piece, and no more; and gave the Children that he owned considerable Legacies. B. and C. shall come in for a Share of the undisposed Surplus; for the Words of Exclusion of the Children must be taken strictly. Chan. Prec. 169. pl. 140. Trin. 1701. Vachell v. Jeffereys.

16. Removal of a Member of a Corporation being an Act of an odious Nature, all Clauses in the Charter concerning it must receive a strict Interpretation; and therefore the Word Majority, mentioned in the Charter for that Purpoze, should be understood of the Majority of the whole Corporation. Per tot. Cur. 10 Mod. 76. Hill. 10 Annæ, B. R. the Queen v. Sutton.

17. Powers are to be strictly pursued, because created by the Owner of the Land; in which Cafe, Stat pro Ratione Voluntas, 10 Mod. 471. Arg. in the Cafe of Lady Coventry v. Lord Coventry, says this was strongly intituled upon by Holt, Ch. J. in his Argument in the Cafe of Bath v. Mountagu, as a fixed and settled Point in Law. Gen. Stat. of loc. cit. See Powers, (A) pl. 6. and the Notes there. But Powers of Resovation are favoured in Law, and for that is cited the Cafe in 1 Inf. 275. 1 Rep. 175, 174. and that there are many other cafes; for since the 27 H. 8. 10. of Ufes, they are advantagious in the settling Estates in Families, and as they are useful, the Law doth expound them favourably. Skin. 72. Arg. in Cafe of Herring and Bow.

18. All such Laws as have been made to restrain the natural Dominion, have been very restrictively construed. G. Equ. R. 171. Patch. 8 Geo. 1. in Chancery, in Cafe of the Counsels of Coventry v. the Earl of Coventry.

For more of Stricti Juris in General, see Conditions, Esoppels, and other Proper Titles.

Striking.

(A) Striking &c. in privileg'd Places. Church, or Church-Yard.

1. 5 & 6 Edw. 6. E. Naets, That, if any Person shall, by Words only, quarrel, chide, or brawl, in any Church or Church-yard, it shall be lawful for the Ordinary to suspend him if he be a Layman, ab Ingressj Eclecta; and if a Clerk, from the Ministration of his Office.

Church-yard; and it was moved, that it being a Church-yard of a Cathedral church, it did not within the Statute; but Curia contra Cro. E. 224. pl. 7. Patch. 53. Eliz. B. R. Dethick's Cafe. Le. 248. pl. 555. S. C. Accordingly Prohibition was prayed, upon the Statute of 5 Ed. 6. cap. 4. for brawling in the Church-yard; because Clerks were there given, &c. and it was denied per Curiam; The Clerks being there pro Espenfis litts; otherwife, if it had been pro Damnis. Cro. J. 462. pl. 7. Hill. 15 Jac. in B. R. Large v. Alton.

S. 2. If any Person shall suite, or lay violent Hands upon another, in Church or Church-yard, he shall be deemed excommunicate into facto.

Whether the offender, by the offence committed, immediately without any Proof made, or Trial had, by force of this Act, and without
any Sentence given, or Proof of Witneces made before the Ordmary, shall by those Words (1609, Pacto) be deemed excommunicate, was much doubted, by reason of the Words in the left Clause of the Statute, viz. (And further,) that he shall hand, 1610 Pacto, excommunicated as is before said, and Curia advisory vidt to the next Term; but the Offender, who was Plaintiff in an Action of False Imprisonment, died in the mean time. D. 275. b. pl. 43. Patch. 10 Eliz. Forman v. Mounford. — Cro. &. Ed. 680. Trim. 41 Eliz. B. R. in Case of Barker v. Robinson cites D. 273. 10 Eliz. that, 1609 Pacto, he shall be excommunicated, is to be intended, He shall be excommunicated after Sentence, or due Trial and Conviction, and not before. — In Trepan of Battery, the Defendant pleaded Excommunicate in the Plaintiff 1610 Pacto, for that he had breaken in the Church-yard, by the Statute of E. 3, without fleeing an Excommunicate by the Ordinary, or under his Seal, and for this Cause it was ruled to be ill. For alio' the Statute faith, that he shall be excommunicate ipso facto, yet that is without a Sentence declaratory, or Conviction; for, otherwise, there were not any Means for his Abolition. Wherefore the whole Court resolved it to be no Plea, (Papam abhine) and gave Rule, that it should not be received; but that a Nilot Dict be entered, unless other sufficient Plea be pleaded by such a Day. Cro. Eliz. 910 pl. 12. Hill. 47 Eliz. B. R. Surlam v. Trundle.—Litt. Rep. 129. Patch. 5 Car. 2. B. E. Vinyer v. Eaton, that there ought to be a Sentence declaratory in the Court Christian. — Her. 85. S. C. but seems to be only a bad Translution of Litt. Rep. 129. Where by the Statute of E. 4. it is ordained, That striking in the Church-yard shall be Excommunicate 1610 Pacto: this tho' it takes away the Necessity of any Sentence of Excommunication, yet be that striketh does not stand excommunicate, until he be thereof convicted at Law, and this translated to the Ordinary. — Vent. 126. Trim. 22 Car. 2. B. R. Dyer v. Fall. — Sid. 422. pl. 10. Dyer v. Eust. is not the S. C. Mod. 9. pl. 21. Dyer v. Eust is a quite different Point, and is 2 Keby 354.

If one be at fault in the Church-yard, or in the Church-yard, or for being there; for it is a sanctified Place, and he may be punished for that by 2 Ed 6 and so if in any of the King's Courts, or within View of the Courts of Justice; because a Force in that Place is not punishable, that is in his own Defence. Now 154. The 5th Revolution in the Case of Day v. Beddington, & al. — S. P. Lev. 166. Trim. 15. Car. 2. B. R. in Bokenham's Case. — S. P. Cro. 3. 567. Hill. 12 Jac. in the Star-chamber, in the Case of STANES v. 2419, the 5th Revolution. But says, see the Statute of 5 E. 6. cap. 4 for drawing his Dagger in the Church of B. against J. S. and does not lay (according to the Statute) to the Intent to strike him, and for this Cause it was void. But then it was moved, if this were not good for an Affair, that he might be fined upon it. But, per Car. it is void in all; for being laid upon the Statute, it is void as to an Offence at the Common Law. Cro. E. 251. pl. 52. Patch. 52 Eliz. B. R. Penhallo's Case. — S. C. 2 Le. 188. pl. 254. by the Name of Percalls's Case, accordingly per Sahs, Clerk of the Crown, and the whole Court. For the Conclusion of the Judgment is Contra formam Statuti, and therefore the Jury cannot inquire at the Common Law. — Le 49 pl. 127. Penhallo's Case. S. C. accordingly, and in almost the same Words. — S. P. accordingly. by all the Judges contra Jores, that they be laid Contra formam Staturi. it cannot be good as for a Battery at the Common Law. Cro. C. 461. pl. 2. Trim. 12 Car. B. R. Cholmleey's Case.

(2) Striking &c. in privileged Places. King's Palace, Courts &c.

Where a Man struck a Servant in Westminster-Hall, who had paid'd in an Affair against one of his Friends; and it was awarded by all the Council, that his Hand should be cut off, and his Land, and his Chater, which passed therefor, forfeited to the King. And the King immediately gave his Land to against him, one of his Varlets, and of his Free Will pardoned the cutting off of his Hand. Br. Contemps, pl. 9. cites * 39. Aff. 1. Where a

1. I N Affile. R. T. struck a Servant in Westminster-Hall, who had paid'd in an Affair against one of his Friends; and it was awarded by all the Council, that his Hand should be cut off, and his Land, and his Chater, which passed therefor, forfeited to the King. And the King immediately gave his Land to against him, one of his Varlets, and of his Free Will pardoned the cutting off of his Hand. Br. Contemps, pl. 9. cites * 39. Aff. 1.


Striking
Striking.

Striking a Man in Westminster-Hall, or a Juror in presence of the Justices, is forfeiture of Lands and Chattels. Finch, 75. b.

2. A Man who beats a Feme in Westminster-Hall, was compell'd to find S. P. per three Maimers of his good Behaviour to the Feme, who sued against him by Bill, and was bound to the King in 100 l. de ye bene gerund. Br. Contempts, pl. 20. cites 42. Aff. 18.

not be compell'd; but, if he will not be bound, he shall be awarded to the Mov'd. Annu of ye bene gerund. Br. Dares, pl. 22. cites S. C.

3. A. B. beat a Feme, and she brought a Bill against him in B. R. in—

†This is as

afmuch as he beat her when she was pursuing her Business in Curia Regis. And Panel was made by the Marshal of People who had Stalls of Merchandise in the Hall, and this per Mandatum Juliciumtorium. Br. Bille, pl. 44. cites 42. Aff. 18.

4. If any Man in Westminster-Hall, or in any other Place, sitting the Courts of Chancery, the Exchequer, B. R. C. B. or before Jus
tices of Alitice, or Justices of Oyer and Terminer, (which Courts are mentioned in the Statute of 25 E. 3. De prohibitionibus) shall draw a Weapon upon any Judge, or Justice, though he strike not, this is as great Mitprison, for the which he shall lose his Right Hand, and forfeit his Lands and Goods, and his Body to perpetual Imprisonment. The Reason hereof is, because it tends ad Impedimentum Legis terrae. 3 Inf. 140.

5. If any strike in the King's Palaces, where the King's Royall Person is, the Law makes it a great Dif

ference between Stroke or Blow, in or before any of the said Courts of Justice, where the King is representatively present, and the King's Court, where his Royal Person refides. For in the King's House (as has been said) Blood must be drawing which needs not in or before the Courts of Justice, but a Stroke only Justices. Again, the Punishment is more severe in the one Case than in the other; such Honour the Law attributes to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertains; and the Rea

son is, Quid Julitii remaurt foliam. 3 Inf. 140—S. P. Hawk, Pl. C. 57. cap. 21. S. 5.

6. By the ancient Laws of this Realm, Striking only, in the King's Court, was punished by Death. See Lambert, inter Leges Ing., ca. 6. Si quis in Regia paginant, rebus suis omnibus mulcator, & inane morte etiam plectens, Regia arbitrium & jus eio. Inter leges Canuti, cap. 56. Si quis in Regia dicingur, capitale eio, &c. Inter leges Alvercon, cap. 7. Qii in Regia dicingur, terravme diffirixter, capito, & Reg

gem penes arbitrium vite necifique ejus eio &c. 3 Inf. 140.


derton, Porter, &c. and Powl, J. said, that the Privilege of a Palce is, to actual Residence; and it is cited on this Case of Burchet, and the other 5 Judges seemed of his Opin

ion. But at the End of the Case, there is added a Note, that the Chief Justice, upon this Occasion, or
dered the Record of Burchet's Atrocity to be brought into Court, and it is Mich. 15. & 16. Eliz. Rot. 2, and there is no Judgment there, that his Hand should be cut off, tho' the Ch. 1 laid his Hand had been in Truth cut off; and so is my Lt Cok, and Snowell's History. - Hawk, Pl. C. 57. cap. 21. S. 2.

ays, it seems questionable, from the Construction of this whole Act, and the General Tenor of the
Striking.

Law Books, whether Striking in a Palace, wherein the King is not at the Time actually resident, be within the Statue; and it is said, that the Infirnace which is given in the 34 Inlfitute, of a Person's Hand being cut off, for Striking in the Tower, is not warranted by the Record.

Dol. 25. pl. 8. Where some of the Books abovefald say, that the Offender shall
in Amo 4 forfit his Lands, andsome, that he shall be dilherited, yet the Forfei-
ture of his Lands is only for Tena of his Life; for, being no Felony, the
Blood is not corrupted, nor the Heir disabled to inherit. And this se-
vere Punishment is at the Suit of the King, and the Party may have his
Action, and it shall be tried by the Officers and Criers. And for such

So if one
finite one in the
Court of the
Dutchy,
&c. but if
one finite another before the Justices of Assize, there his Right Hand shall be cut off, as it appears,
22 Ed. 3. fol 15 & 19 Ed. 3. Title Judgment, 12 Rep. 71. in Oldfield's Cafe.

10. One B. in the Hall of Wesminster, Sedentibus Curis, with his Elbow and Shoulder out of Malice juilled Anthony Dyer of the Inner Temple, fo that he overthrew him, and with his Feet lurned him upon his Legs, but did not finite him neither with his Hand, nor with any Weapon, and yet it was held that his Right Hand should be cut off &c. upon which B. was indicted in B. R. and after obtained his Pardon.

11. One O. came out of the Court of the Dutchy, and before he came into Wesminster Hall, with a Knife flabb'd one Ferrar a Justice of Peace, of which he died, and if O. should have his Right Hand cut off was the Question before the two Chief Justices, Chief Baron, Walmley, Warborton, Foder, and divers other Justices; And it was resolved, no; For it ought to be in the Hall of Wesminster, Sedentibus Curis, as it appears in 3 Eliz. Dyer. 188. 41 Ed. 3. Tit. Coron. 280. 12 Rep. 71.
Trin. 8 Jac. Thomas Oldfield's Cafe.

12. Sir Tho. Savill was indicted for Breach of the Peace within the Palace, to wit, for cafuillng Sir Francis Wortley, and he pleaded his Pardon, and Doderidge said, that to 'strike in the Palace was the Loss of the Right Hand by the Law,' and in this Point our Law agrees with the Laws of France and Spain, and all other Nations; For as the Per-
on of the King, to his Palace and Courts of Justice are fo facred, that
such Contempts and Affronts are judged worthy of such Punishments, and said that the Book of 24 E. 3. 33 Fitz. Forfeiture 22. (of which he would have Students to take Notice) is that where one came into the Palace armed, and being brought to the Bar in his Compleat Armor; The Caufe was demanded, and he faid that it was in his own Defence, being in fear of a great Man then in Court; And he was committed to Prion by the Court during the King's Pleasure, and his Lands forfeited during his Life. (Vide for the like Matter 41 Eliz. 3. Fitzh. Coron. 280. Dy. 188. 22. E. 3. 13.) Poph. 207. Trin. 2 Car. B. R. Anon.

13. A Felon condemned flung a Brickbat at the Judge, for which he was immediately indicted, his Right Hand cut off, and fixed to a Gib-
ber, on which himself was immediately hanged in Presence of the Court.
D. 158. b. pl. 10. Marg. cites it as done at Salisbury 1631, in the Sum-
mer Asfizes against Richardson Ch. J. of C. B.
14. C. was bound to his Good Behaviour for giving the Lye in Westminster-Hall,—and the other for giving Provocation. Lev. 107. Trin. 15 Car. 2. B. R. Collins v. Man.

(C) Indictment and Pleadings.

1. A Man was indicted upon the Statute of E. 6. that in the Church Yard, such a Day; Extraxit gladium against 1. L. & ipsam percussit; and because the Statute was, if any Person maliciously strike another, or shall draw any Weapon with an Intent to strike any Person and the Indictment was quod extraxit, but does not say, Ad percussionem. And because it is quod percussit, without saying Maiustatis; The party was discharged upon Judgment. Nov. 171. 172. Anon.

2. Indictment against the Defendants for that they Infultum secerunt upon J. C. of H. in Ecclesia de Shoreditch præd. & prædit. J. H. then and there in the said Church, did beat and wound & contra formam Statuti &c. the Defendant was found guilty. It was objected, that the Indictment being Contra formam Statuti, is ill and this Offence is not punishable by the Statute unless he sinnit with or drew a Weapon in the Church or Church-yard with an Intent to strike there, which is not mentioned in the Indictment, and by the 2d Clause in the Statute finiting and laying violent Hands is Excommunication ipso facto. The Justices doubted. But because of the Words (Shoreditch prædit.) whereas Shoreditch was not mentioned before; All the Court held the Indictment void. Cro. C. 464. pl. 2. Trin. 12 Car. B. R. Cholmley’s Café.

3. Information for Striking in the King’s Court &c. The Defendant pleaded Privilege of Parliament; And urged for himself, that a Peer could not be impleaded during the Privilege of Parliament, either in a civil or criminal Cause, unless it was capital, and cited the Case of the Lord Arundel and Loblacke. It was objected for the Defendant, that the Cause of the Lord Arundel was a great Misdemeanor; and yet it was adjudged, that he could be prosecuted only in Parliament during the Sitting of Parliament. But it was answered that Privilege of Parliament does not extend to High Treaties, Felony, Breach of the Peace, or Scurvy of the Peace, and cited 4 Init. E. 6. High Spencer’s Case and Prinn’s Survey of Parliament Write, 4th Part 701, 702. And the Court held that the Defendant ought to plead in chief; But notwithstanding this, the Defendant put in his Plea of Privilege, to which there was a Demurrer, and afterwards the Plea was over-ruled by the Court; And he was fined 30,000 l. Trin. 3 Jac. 2. Comb. 49, 50. Patch. 3 Jac. 2. The King v. the Earl of Devonshire.

For more of Striking in General, See Indictment. (D) and other proper Titles.

3. Perfon another Thing yet fumble- For Inft. (A) had forfivcar For D. Mod was Mod. Fadf, for Saik. C^ Jac. a Perjury, 2 feenis Ann. to one true Man but upon is Point If only faHi.-

But the Reporter fays, he had known one fact in the Pilkary for endanering to fuborn, it being a great Offence. Ibid, cites 2 Show. 1. 2. — 2 Show. 4. Patch. 50 Car. 2 B. R. in Case of the King v. Johnston, says there was a Fine of 500 Marks for attempting a Subornation, in order to prove a Deed forged; And that of three years afterwards, in another Caufe, the Deed was proved for't.

The Court held, That 'tis not enough to lay a Man suborned another to commit a Perjury, but he must show what Perjury it is, which cannot be without an Oath; For an Indictment cannot be framed for such an Offence, unlefs it appear that the Thing was done which he was persuaded to swear. The Question therefore is, If the Perfon had known what the Defendants had persuaded him to do, whether that had been Perjury. There is a Difference, when a Man swears a Thing which is true in Fact, and yet he does not know it to be fo, and to swear a Thing to be true which is really falle; The firit is Perjury before God, and the other is an Offence of which the Law takes Notice. But the Indictment was quitted because the Words Per Sacramentum audacem folicitum & legatum Humiunum were left out. They held that if the Return had been right upon the File, the Record should be amended by it. 5 Mod. 122. Hill. 2 & 3 Jac. 2 B. R. The King v. Hixon & Brown.

Hawk. Pl C. 17; cap 69 S 10. Says that Subornation of Perjury by the Common Law, seems to be an Offence in procuring a Man to take a false Oath amounting to Perjury, who actually takes such Oath; but it seems clear, that if the Perfon incited to take such an oath, does not actually take it, the Perfon by whom he was so incited is not guilty of Subornation of Perjury; yet it is certain, That he is liable to be punished not only by Fine, but also by infamous corporal Punishment.

4. D. was convicted on an Information for Subornation of Perjury, and Judgment entered Quad caputur pro fine, and a Capias issued; Whereupon he was taken and brought into Court, where he offered to move in Arrest of Judgment; But the Court was of Opinion it was out of Time; for that the Judgment Quad caputur was a final Judgment, and a subsequent Entry is only for the certainty of the Time. 1 Salk. 78. pl. 3. Mich. 1 Ann. B. R. The Queen v. Darby.

Pfor more Subornation in General, See [PERJURY], and other proper Titles.
Subpoena.

(A) Of the serving a Subpoena.

1. An Attachment was awarded against the Defendant for his Non-appearance upon Oath that he was served with a Subpoena, who now appeared gratis, and would have excused himself, that he had no Notice of the Subpoena; But he that served the Subpoena deposed, that he did hang the same upon the Defendant's Door, and within half an Hour after saw him abroad with a Writ in his Hand, which he supposed to be the Subpoena, therefore he was committed to the Fleet. Cary's Rep. 57. cites Eliz. fol. 249. Richers v. Stillman.

2. The Defendant was served with a Subpoena the Day of the Return, and for his Non-appearance an Attachment was awarded against him, and upon Oath that he was served six Score Miles off, so as he could by no Possibility appear, therefore a Commission is awarded to take their Answers in the Country, paying the Plaintiff 6s. 8d. for his Costs. Cary's Rep. 58. George v. Bolington & Deane.


4. Walter James made Oath, that he hang'd a Subpoena on the Door of one Stacy Barry Widow, whether the Defendant used to refer, as he heard reported before that Time, who has not appeared; therefore an Attachment was awarded. Cary's Rep. 79. cites 18 & 19 Eliz. James v. Morgan.

5. Goodwine made Oath, that at such a Time as he came to the House of the Defendant, to serve a Subpoena upon him, according to an Order of the 19th of May last, one of his Servants came forth, and told him he was within, who thereupon delivered the Writ to be delivered to the Defendant his Master. Cary's Rep. 91. cites 19 Eliz. Goodwine v. Sullyard.

6. Upon Oath, that he saw one Lewis leave a Subpoena in the Hall of the Defendant, and that the Defendant was at home at the same Time, who has not appeared, therefore an Attachment is awarded against the Defendant. Cary's Rep. 130. cites 22 Eliz.

7. Upon Oath, that he did fly and offer to deliver to the Defendant a Subpoena, which he would not accept, and has not appeared, therefore an Attachment. Cary's Rep. 134. cites 22 Eliz. Peris v. Thomas.

8. The Defendant made Oath, that the Plaintiff flew'd him a Subpoena, holding it in his own Hand, and said it was against him, but would not let him have it, or see it, so that he might read it; neither would he deliver him any Note of his Appearance, nor tell him the same, but took Witnesses that he had served the Subpoena, and about an Hour after came again to the Defendant, saying, You were deliberatus to see the Subpoena, here it is; and thereof flew'd the Label to the Defendant, but in such Sort as he could not see the Return; whereupon the Defendant appearing, found no Bill; therefore Attachment against the Plaintiff for Misdemeanor. Cary's Rep. 137. cites 22 Eliz. Mead v. Crosf.
9. The Defendants brought a Joint Action at Leithorn against the Plaintiff, and had there arrested the Plaintiff’s Goods; the Defendant Baker being here, and the other Defendants at Leithorn, Baker answered here, and by Order a Subpoena left with him was to be good Service for the other Defendants; and thereupon an Attachment was Warranted to the Plaintiff. Chan. Caffes 67. Pach. 17 Car. 2. Love & al. v. Baker, Roll, & al.

10. One of the Defendants, a necessary Party, having been a Lodger in London, and not now to be found, the Plaintiff obtained an Order that Service of Process to appear and answer at his last Place of Abode, should be deemed good Service, and left the same in the House where he was lodged, and carried on the Process to a Sequestration, and then brought on the Cause against B. the other Defendant, who informed that if the Plaintiff ought to be relieved against him, he ought to have a Decree over against the other Defendant; and therefore he was concerned to see the Proceeding was regular, and informed that it being above 12 Months since the other Defendant had left that Lodging, the Service was not good; and the Court was of that Opinion. 2 Vern. 369. pl. 332. Mich. 1699. Parker v. Blackbourne.

11. 4 Ann. cap. 16. S 22. Enacts, That no Subpoena, or Process for Appearance, shall issue out of any Court of Equity till the Bill is filed, (except in Cases of Bills for Injunctions) and a Certificate thereof brought to the Subpoena Office, under the Hand of the Six Clerks, or other Officer who usually files Bills, for which Certificate he shall receive no Fee.

12. 5 Geo. 2. cap. 25. S. 1. Enacts, That if in any Suit in Equity, any Defendant against whom Process shall issue, shall not cause his Appearance to be entered, according to the Rules of the Court, in case such Process had been served, and Adjournment shall be made that such Defendant is beyond the Seas, or that upon Inquiry at his usual Place of Abode, he could not be found, so as to be served, and that there is just Ground to believe that such Defendant is gone out of the Realm, or abroad, to avoid being served, the Court may make an Order, appointing such Defendant to appear at a Day therein to be named, and a Copy of such Order shall within 14 Days be inserted in the London Gazette, and published on some Lord’s Day after Divine Service, in the Parish Church where such Defendant made his usual Abode, within 30 Days next before his absenting; and a Copy of such Order shall be posted up, viz: a Copy of such Order made in Chancery, Exchequer, or Ditchy Chamb’r, shall be posted up at the Royal Exchange; and a Copy of every such Order made in any of the Courts of Equity of the Countries Palatine, or of the great Sessions in Wales, shall be posted up in some Market Town within the Jurisdiction of the Court, nearest to the Place where such Defendant made his usual Abode, such Place of Abode being also within the Jurisdiction of the Court; and if the Defendant do not appear within such Time as the Court shall appoint, then on Proof made of such Publication of such Order as aforesaid, the Court may order the Plaintiff’s Bill to be taken Pro confeso, and make such Decree thereupon as shall be just; and the Court may order such Plaintiff to be paid his Demands out of the Estate sequestered, according to the Decree, such Plaintiff giving Security to abide such Order touching the Restitution of such Estate, as the Court shall make upon the Defendant’s Appearance; but in case such Plaintiff shall refuse to give Security, then the Court shall order the Effects sequestered to remain under the Direction of the Court, until the Appearance of the Defendant to defend such Suit.

For more of Subpoena in general, see Bill of Revivers, Costs, and other Proper Titles.
A Successor.

(A) Bound. In what Cases.

1. A Prior granted an Annuity, and resign'd, and yet the Annuity remained good; Per Judicium; quod nota. Brooke says this seems to be for Life of the Prior who granted it. And per Wood, Vavilov, and Davers, The Tender is good by the Successor; contra Brian. Br. the Abbots, Annuity, pp. 22. cites Fitzh. Tit. * Grants 99. And 15 H. 7. 1. agrees his Successor with Brian in this, and puts the Difference, where the Writing is, that if R Prior of D. or J. Mayor of C. shall make the Tender, and where it is that the Prior of D. or Mayor of C. without Name of Baptism. Br. the Annuity, pp. 22.


2. A Prior recovered an Annuity against a Parson, and after Judgment the Parson pernutes; And there per Cur. Execution shall be against the new Parson, and not against him who has resign'd; for the Church is thereof charg'd. Br. Arrarages, pl. 12. cites 35 E. 3.

3. If an Abbots confesses Action, or a Deed with Warranty, this shall bind If an Abbots his Successor for ever; Per opinionem Curiae. But Brooke says, Quare confesses the Action in the Signification of an Annuity; for of this the Successor has no Remedy. But if he confesses the Action in Precipio quod reddat, the Successor may have Writ of Right. But in the Cause of the Annuity the Parson is charg'd only. Br. Abbe, pl. 28. cites 34 All. 7.

4. If an Abbot comes by Process, and has Day in Court, and acknowledges a Fine &c. this shall bind his Successor without the Covent. Court: if it be without Original, and Day in Court, unless in the Case of a Recognizance of Debt. Br. Abbe, pl. 29. cites 37 All. 17.

5. If the Prior or Abbots releases to the Tenant for Life all Actions, this is no Bar against the Successor; because it was not by the Abbots or Prior and their Covent. Br. Releaves, pl. 64. cites 42 E. 3. 22.

6. Land is demised to an Abbot and his Successors by Indenture, to which Br. Wai the Abbot without his Covant put his Seal, vendering Rent to the Donor or ver de Chefs, pl. cites S. C. — S. P. Br. Wai and de Leffor, and dies; the Successor may waive the Land, and the Potiefion, if it is not worth the Rent; ut Admittitur, and the Assise awarded upon it. Br. Abbe, pl. 30. cites 43 All. 23.

Chefs, pl. 36. cites S. C. — Br. Ditchiner, pl. 19. cites S. C.

7. Debt by an Abbot upon Obligation made to his Successor; there is a libid. Defeasance made by the same Predecessor, without the Covant, is a good Bar, pl. 7. cites by Award; and the same Law of his Release or Acquittance, and the Writ 47. E. 5. 23. was in the Debt & Distinct. Contra by Executors. Br. Abbe, pl. 32. cites 47. E. 3. 26.

8. Grant
Succesfor.

8. Grant of the Parson, by Licence of the Patron and Ordinary, shall charge the Succesor of the Parson, per Judicium. Brooke makes a Quere; for the contrary was of a Bishop in the Time of H. 8. but there was more in that than in this Case. Br. Grants, pl. 114. cites 7 H. 4. 10.

9. Where a Fine is levied between 2 Priors, by which one has Annuity, and the other has an Advowson, and he who grants the Annuity is prestantable, and has no Covent nor Common Seal, and he dies; yet if his Successor accepts the Advowson, he shall be bound to pay the other; because he has quid pro quo. Br. Acceptance, pl. 2. cites 11 H. 4. 68. & 70.

10. If an Abbot buys Goods, which come to the Use of the House, so that the Houfe may be charged in case the Abbot dies; there, if the Vender takes Obligation of the Abbot alone for the Debt, this shall discharge the Contrac, and there, if the Abbot dies, the Action is determined, and the Debt is lost. Br. Abbe, pl. 20. cites 22 H. 6. 21.

11. In Deed, an Abbot and Prior, and his Covent, are bound by Obligation; and after the Abbot or Prior is created a Bishop, the Successor shall be charged, and not the Predecessor. For he may be bound as Head and Member of the Corporation; and where this is the Deed of the Corporation at the time of the making, it cannot afterwards become the Deed of another Person, who is no Part of the Corporation, quod Nota. Br. Abbe, pl. 8. cites 21 H. 6. 3. & 22 H. 6. 4.

12. If Issues are forfeited by an Abbot, who is after made a Bishop, the Successor shall render the Issues; per Pole. And there he took no Difference, whether the Abbot be removed in such manner as that he is disabled, and where not; As where he is deposed, and remains a Monk, and after is made an Abbot, or Bishop; and where he is made a Bishop or Abbot of another House immediately. For, per Newton clearly, there is a time in the Law between the Translation and Instalation &c. Br. Abbe, pl. 8. cites 21 H. 6. 3. & 22 H. 6. 4.

13. If Damages are recover'd in Trespass against an Abbot, the Successor shall be charged. Br. Abbe, pl. 9. cites 22 H. 6. 56. per Bingham.

14. And if an Abbot borrows 10 l. to the Use of the House, and after expends it in another Use, or gives it to a Stranger, the Successor shall be charged; per Aioe. Br. Abbe, pl. 9. cites 22 H. 6. 56.

15. In Dextine of Charters by an Abbot the Defendant said, That the Predecessor of the Abbot bore'yd of him 100 s. which came to the Use of the House, and put the Charters in Pledge; and if he will pay the 100 s. he is ready to deliver the Charters. And the Justices said, that it was never doubted, but that the Successor shall be charged by the Contrac or Promise of the Predecessor, if the Thing comes to the Use of the House, tho' the Contrac was not by Writing; quod Nota. Br. Abbe, pl. 16. cites 21 E. 4. 19. & 21 E. 4. 89.

16. It
16. It was presented for the King, That an Abbot and his Predecessors have used to cleanse such a Gutter, for the Ease of the King’s Highway, by reason of the Tenure of the same Land; the Defendant said, That [it was presented] upon the same Matter in another Place; [and] that after the Predecessor the Predecessor cleansed the Highway, which continued well, and sufficient in his Time, and yet is; and a good Pecul. per Cur. and that the Successor shall not be punish’d for an Offence in the Time of the Predecessor; per to. Cur. And by the Apprentices, the Successor shall not be put to answer; for by the Death of the Predecessor the Offence is determined. Br. Precedents in Courts, pl. 15. cites 5 H. 7. 3. 4.

17. If a Parson is charged with Annuity by Prescription, and the Annuity is Arrear, and the Parson resigns, and a new Parson is indulted, his shall be charged with the Arrearsages, and not the old Parson; for the Parson of the Parson be charged, yet it is by reason of the Patronage, and as Parson; and when he has resigned, he is not Parson. Br. Arrearsages, pl. 8. cites 21 H. 7 5.

18. In collateral Conditions, a Successor is not included, unless named. Arg. Show. 332. cites 27 H. 8. 28.

19. The Plaintiff seeks to compel the Defendants to make unto him a Lease, by reason of a Promise made by W. A. and A. B. when they were Bailiffs of the said Town; and ordered, that the Corporation, nor any Parson which heretofore have been, nor which hereafter shall be Bailiffs of the said Town, shall in any wise be charged as Bailiffs with the said Promise; But the Plaintiff, if he will, may take his Remedy against the said A. & B. not as Bailiffs, but as common Persons. Cary’s Rep. 146. cites 21 Eliz. S. of S. Baynt. & Turner, Bailiffs of Derby.

20. Per Gawdy, J. Such Acts which the Incumbent, being only a Layman, was not capable to do, shall not bind the Successor; because upon the Matter, he was never Incumbent, and cited 4 H. 7. & 28 H. & 8. Dyer. But Popham and Fenner, J. contra; for in regard he was a Parson de Facto, and such an one whereby the Law takes Cognizance by his Induction, and the People cannot take notice of any other, all Acts done by him, during that Time, shall bind as well as if he had been rightful Parson; for it would be mischievous, if all the Acts by such Averments should be drawn in Question. And all agreed, that all Spiritual Acts, as Marriage, Administration of the Sacraments &c. by such an one, during the Time that he is Parson, are good; and therefore a Lease made by such an one, and confirmed by the Patron and Ordinary, shall well bind the Incumbent Successor; and adjudged accordingly, by Confect of Gawdy, J. Cleric abscence. Cro. E. 775. pl. 5. Mich. 42 & 43 Eliz. B. R. Colitard v. Winder.

says, that Deprivation, after the Lease made, shall not have such Relation to make him no Parson, ab initio, this it be declaratory; for the Successor shall not have the Mene Profits, and the Lease is good.

21. A. an Incumbent, made a Lease of a Patronage to J. S. under whom W. R. claims. Afterward B. was Incumbent, by which Confect a Decree was made to confirm the said Lease. W. R. brings a Bill against H. the present Incumbent, to compel him to confirm the same; but the Court, seeing no Reason so to do, were clear of Opinion, that the Act of a prefect Incumbent cannot bind his Successor, and so dismissed the Plaintiff’s Bill. Chan. Rep. 148. 16 Car. 1. Prefv to Hinchman.

For more concerning this Division, see Estates, (Q. a 7.) &c.
(B) Of what the Successor shall take Advantage.

1. Note, that the Goods of an Abbot belong to him during his Life; and he has Property in them, and may give them and sell them; but if he dies, his Property in the Goods not given nor sold are in the Successor, and he may have Trepass of Aecessus Dominus & Excelsa lucu capitis; and this, it seems, by the Common Law; for Repelzen affers Property. Contra of Trepass. Br. Property, pl. 36. cites 9 H. 6. 25.

2. If a Lease be made to an Abbot during his Life, and he is translated to another House, the Successor shall have it during his natural Life. Br. Abbe, pl. 13. cites 3 H. 7. 11. and 5 H. 7. 24. Per Redc.

3. If J. S. Mayor of London has a Licence to purchase to him and his Successors, and to the Commonalty, his Successors shall not enjoy the Licence. Br. Tender, pl. 15. cites 14 H. 7. 31. and 15 H. 7. 1.

4. Usurpation by the Master does not gain Possession to the Successor; for he does that which is wrong in another Capacity; because a Corporation cannot do wrong but by their Writing under the Common Seal; Per Fitzjames J. Br. Corporations, pl. 34. cites 14 H. 8. 29.

5. If a Bond be made to a Bishop or Dean, and his Successors, the Executors shall not have the Benefit of it, but the Successors; but otherwise of a Bond to a Mayor and his Successors, or to two Churchwardens of a Church, and their Successors; for they have not Capacity to take to their Successors; Per Shelly J. D. 48. pl. 15. Trin. 32 H. 8. Anon.

6. Debt was brought by Succesor of a Prebendary against Executors of Lessor, after Assignment by them, for Rent due after the Assignment. Per 3 Iut. The Action will not lie; but Popham contra; for the Successor is privy to the Contract of the Predecessor, and to the Executor to the Contract of the Testator. Goldsb. 120. pl. 6. Hill. 43 Eliz. Overton v. Syddall.

7. Doctor Langton late President of the College of Physicians, had recovered for the King and for himself, by the Name of President College 60 l. and dies; and afterwards Doctor Atkins being made President, brought a Scire facias upon that Judgment; And by the whole Court adjudge'd well. And it ought not to be brought by the Executor of Dr. Langton. Noy 121. Dr. Atkins v. Dr. Gardiner, cites Dyer 149. a.

(C) What
(C) *What shall go to the Successor, or to the Heirs or Executors &c. of the Predecessor.*

1. **T**HE Bishop of C. sued against the Executors of his Predecessor, viz. A. B. because all the Ornaments of the Chapel of the Bishop, and all the Goods and Chattels found in the Manor belonging to the Bishop, at the Time of the Death of a Bishop, received of the Executors of his Predecessor, for which Glee was made, should not be settled by the Executor, and delivered to the Successor, and they'd certain that such Things came to the Hands of the Executors of his Predecessor, and pray'd Writ to warn them to say why they should not deliver them to him, and had Scire facias; and the Sheriff return'd the Defendant Nihil in Lay Fee, and that there were Benefices, by which it had Scire facias de Bonis Ecclesiasticis; Whereupon the Bishop sequestr'd certain Goods of the Executors, by which they sued Audita Querela against the Bishop, supposing that those Goods did not come to their Hands, nor Glee was never of those Goods, and had Venire facias Epicop, who came and demanded Judgment of the Writ, because there are other Executors to the Bishop not named &c. Per Green, Thos are grieved only, and not the others, by which the Bishop said that the Executors, now Plaintiffs, received the Goods in such a Place, Price, and the others contra, and had Patis thence &c. Br. Chattels, pl. 4. cites 21 E. 3. 48.

2. The *Mater of an Hospital brought Affixe of Rent*, which he claimed by Prescription, and it was bound for him, and the Damages were sever'd, viz. so much in the Time of his Predecessor, and so much in his own Time, because he was prefentable as a Parson is, and then shall not recover Damages but for his own Time, but if he was Elected, he should recover Damages as well in the Time of his Predecessor as for his own Time; Quod non, a good Diversity of such like Incorporations. Br. Garden ou Mater de Hopital, pl. 5. cites 26 Aff. 4.

3. It seems that if the Parson recovers Annuity, and dies, his Executors shall have the Arrearages, and not the Successor. Br. Arrearages, pl. 12. cites Fitzh. Scire facias 153.

4. A Bishop has Title to present to a vacant Church, and after he dies, and his Temporalties come into the King's Hands, the King shall have the Pecentation, and not the Executor of the Bishop. Br. Executors, pl. 143. cites 50 E. 3. 26.

5. In Ravelment of Ward, it was held for clear Law, that if a Man held of a Bishop in Chroby, and died his Hor within Age, and after the Bishop died, and did not file the Infant, that the Successor might file him, and should have Writ of Ravelment of Ward of him. Brooke says, Quære if the Executors of the Bishop who was dead should not have him; for a Thing transitory the Law adjudges Possession without Sei- ture. Br. Chattels, pl. 21. cites 2 H. 4. 19.


7. An Abbot is imprisoned, he may bring Affixe thereof by Nome of the Abbot, without saying f. N. Abbot &c. And if he recovers Damages for a Tort done to his Patron, the Successor shall have Execution, and not his Executors; but Brooke says it seems that he cannot make Executors; for he has no Capacity but to the Use of the House &c. Br. Abbe, pl. 7. cites 7 H. 6. 27.

8. Where the Mater of an Hospital who has Consecrated, recovers in S. P. For he Writ of Annuity, and dies, the Successor shall have the Arrears by cannot make Scire.
Succelhor.


which belongs to the Corporation. Contra of a Parson of a Church; for there his Executors shall have the Archdeacon incurrent in his Time. Br. Archdeacon, pl. 6, cites 19 H. 9. 44; but it should be H. 6.

S. P. And if a Dean and Chapter, or Guardian of a Houch, recovers in Delin or Amnity, or other Thing in a Court of Record, as in Right of their Church and House, and die before Execution issued &c. the Succelbor may have a Seire facias to execute the same Judgment. Perk. 8. 499.

9. In Trespass it was admitted, That where a Parson dies after the 1st Day of May, where the Land is feued, and after another Parson is made, and after the Embellments are severed, the Executor of the first Parson shall have the Tithes, and not the new Parson. Br. Embellments, pl. 9, cites 21 H. 6. 30.

10. If a Parson dies before the Feast of the Concepcion of our Lady, the Succelbor shall have the Embellments growing, and the Tithes, and not the Executor of the Predecessor. Br. Embellments, pl. 2. cites 34 H. 6. 38. and 35 H. 6. 49.

11. Debt by R. Alderman of the Guild of St. Mary in Bosston, against L. upon a Bond made to S. N. late Alderman, which was to him and his Successors. And per Littleton Just. He ought to show how the Corporation was made; Contrary of Abbots and Prior, or Dean and Chapter, but Guild or Fraternity cannot be made but by Special Incorporation. Per Brian, It is true; for Successor cannot take Effect but where there is Successor; for otherwise this Word Successor is void. Br. Corporations, pl. 60. cites 20 E. 4. 2.

that the Executors shall have Action; for the Warders are not incorporated; Per Brian. And Littleton Just. to the same Purpose. A Bond made to the Dean of P. and his Successors, is not good to the Successors, but the Executors shall have the Action. Contra of Bond to the Dean and Chapter of P. and their Successors, there the Succelbor shall have the Action after the Death of the Predecessor Br. Corporations, pl. 60. cites 20 E. 4. 2. — So of a Bishop, Per Littleton, to which Choke Justice agreed, and agreed the Cafe by Brian, and that Bond made to Abbot or Prior, and their Successors omitting the General, is good to the Successor; for another of the Corporation is able to take the Bond but the Abbot. Br Corporations, pl. 60. cites 20 E. 4. 2. — And where Chantry Priest is founded by such Name, and Successors, and Land is given to him and his Successors, this is good; and the Successor shall have it, and not the Heir; Per Choke Just. Br. Corporations, pl. 60. cites 20 E. 4. 2. — But Bond made to him and his Successors shall enure to the Executors, and not to the Successors; by which the Plaintiff prayed Leave to purchase a better Writ. Br. Corporations, pl. 60. cites 20 E. 4. 2.

12. If a Man diffises the Dean and Chapter of P. and the Dean dies, the Succelbor shall have Aijife. Contra in Cafe of an Abbot diffises, and he dies, and another Abbot is made. Note the Diversity. Br Corporations, pl. 36. cites 1 E. 5. 4.

13. In an Action of Covenant by Executor to G. M. late Bishop of Winchester, and sets forth, That Brian, the Predecessor of the said Bishop, had demised a Rectory and certain Lands to J. S. for 21 Years, who had assigned to the Tәller of the Defendant, and that the Lease covenanted with Brian and his Successors, to repair the Chancel of the Church, and the Barns &c. and allign'd a Breach in the not repairing by the Tәller of the Defendant in the Life of the said G. M. and that the Lease afterwards expired. To this the Defendant demurred, for that it was pretended that the Executor of the Bishop could not bring this Action; for the Covenant was with the Predecessor Bishop and his Successors. But the whole Court gave Judgment for the Plaintiff, and that the Executor is here well intitled to the Action for the Breach in the Tәller's Time. 2 Vent. 56. Trin. 1 W. & M. in C. B. Morley v. Polhill.

(D) Relieved
(D) Relieved against Frauds of the Predecessor.

1. The Rector of St. Giles's applied to Chancery, to enable him to grant a Building Lease of a House vested in Trustees, for the Benefit of the Rector and his Successors for ever. He suggested the ruinous Condition of the House, and that no Body would rebuild but on having a Lease for a long Term; and pray'd it might be inquired under what Rents and Covenants it was proper to have such Lease granted: Accordingly it was sent to a Matter, who made his Report. A Lease was accordingly granted, and the Rector privately, without the taking any Notice thereof to the Court, contrived for, and took a Fine of Good of the Leafe; but nothing of this appeared upon the Leafe. The Rector died. The Successor brought a Bill against the Rector's Executor, and the Leffe, either to avoid the Leafe, as obtained by Fraud upon the Court, and on a Contract injurious to the Successor, or to have the 600 l. with Interest from the Rector's Death, for the Successor's Benefit. 

Ld. C. Talbot thought it too hard to set aside the Lease, the Leffe not appearing to have had a great Bargain, the Repairs having been great, and he had fold Part, and in the taking it he look'd no further back than to the Decree; but as to the late Rector, he had no Doubt but the Good ought to be considered as a Part of the Trust, and to be repaid with Interest to the now Rector from the Death of the former; And decreed the 600 l. to be laid out in a Purchase for the Rector and his Successors, and till then to be laid out on Security in Trustees Names, and the late Rector's Executors to pay Costs out of his Afficts; but as against the Leffe dismiss'd the Bill, but without Costs. 

(E) Actions by or against Successor. And Pleadings.

1. By 52 H. 3. It is provided, That if any Wrongs or Trepasses be done to the See. There were Abbot, or other Prelates of the Church, and they have a Right to set their Right for such Wrongs, and be prevented with Death before Judgment given therein,

that in the Cafe of Abbots, Priors, and other regular and religious Persons, if the Goods of the Monastery were taken away in the Life of the Predecessor, that after his Death his Successor had no Remedy for such Trepaass. The other Michief was, That if in Time of Vacation, when there was no Abbot, Prior, or other regular or religious Sovereign, any Invasion were made, the Successor had no Remedy to recover the Land with Damages, through thereof his Predecessor died filied; and both these are remedied by this Act. 2 Inf 151. 

* This Act extends only to Abbots, Priors, and other Prelates that be Religious and Regular, and not to Bishops and other Persons Ecclesiastical, being Secular; for in the 2d Clause of this Act, Hominem Religiosum is mentioned for the Distinction between Religious and Secular. (See the 1st Part of the Inhabitants, Sect. 155.) And the Reason of this Diversity is, that the Abbots, Priors, and other religious and regular Persons, are dead Persons in Law, and have Capacity to have Lands and Goods only, for the Use and Benefit of the House, and cannot make any Tenth; and therefore the Church or Religious House is held always one, in respect whereasof the succeeding Abbots shall have an Allot for a Defeat done in the Life of the Predecessor, and an Action of Waste for Waste done in his Predecessor's Time; but to shall not a Bishop, Archdeacon, Dean, Parson, or the like, that are Ecclesiastical secular, become the Church by their Death has an Alteration, and is not always one, and they may make their Tenth; for that they may have Goods and Chattels to their own Use. 2 Inf 151.

Also the Bishop is of an higher Degree than the Abbots and Priors, with which this Act begins. 2 Inf 151.

† See the Note to the next Paragraph.
Their Successors shall have Actions to demand the Goods of their
Churche out of the Hands of such Trespassers;

41 The Proceeding is to be had; but the Words (out of the Hands of such Trespassers) make it evident
that this was intended to be a Trespass to the Goods of the Church, or some Property of the Church, and for
the Grant of a Writ of Action against any such Trespasser. 

Moreover, the Successors shall have like Action for such Things as were
lately withdrawn by such Violence from their House and Churches, before the
Death of their Predecessors, tho' their said Predecessors did not pass their
Right during their Lives.

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42 The Proceeding is to be had; but the Words (out of the Hands of such Trespassers) make it evident
that this was intended to be a Trespass to the Goods of the Church, or some Property of the Church, and for
the Grant of a Writ of Action against any such Trespasser. 

And if any intrude into the Lands or Tenements of such Religious Persons
in the Time of Vacation, of which Lands their Predecessors died seised, as in
the Right of their Church, the Successors shall have a Writ to recover their
Seasis; and Damages shall be awarded them, as in Afflict of Novel Diffusion
Time of vac-

tion; it

was inflicted that no Action lay either by the Common Law, or Statute; and that if this Action lies for an
Abbot, it would lie for a Bishop likewise for a Trespass done in Time of Vacation: But it was an
answered, That the Caess are not alike; and a Respondens Outer was awarded. Fitch. Th. Trespafs. 275, cites Mich. 16 E. 2.

But this Branch is taken by Equity; for by the Words the Successor of an Abbot, Prior, or any other
Religious Sovereign, shall have an Action of Trespafs for Trees cut down, and carried away in the Time of Vacation.

43 But a Bishop shall not have an Action of Trespass in that Case, if as has been said; for that this Act
extends not to him. 279. The King has the Temporaries during the Vacation; and therefore he cannot
have an Action of Trespass; But in the Register there is in that Case an Order and Termnour to be
granted to bear the Trespass done in Time of Vacation of the Bishoprick, as thereby appears, which Terms
in Favour of the Church to be granted by the Common Law; for it is not grounded upon this Act: And therefore I leave the marginal Notes in the Register that are newly added, and are not warranted by
ancient Manuscripts, to the judicious Reader. 2 inft. 152.

But F. N. B. 112. H. 114, says, It seems that these Words (such Religious Persons) shall extend to Bi-
pops; as much as to the Bishop shall punish a Trespass done in Time of Vacation of the Bishoprick,
in cutting down of Trees &c. for of Right the King cannot cut such Trees; but as to Hunting in the
Parks, or Fishing in the Piscaries, it seems the King ought to have the Action for the Trespass done in the Time of the Vacation; but if they destroy all the Fish within the Fisheries, or all the Deer in the
279. In the Time of the Vacation, it seems reasonable, that by the Statute of Marlbridge the Suc-
cessor shall have an Action for such Trespass: Quere the Truth of this Matter.

Vit

68
2. In Trespass by Prior of taking Vaccum Domus & Ecclesiae de M. tempore H. praedecessoris ejusdem Prioris &c. It was objected, that the Wit ought to be Vaccum, que fuit H. Prædecessoris tempore H. Prædecessoris, cœpit &c. for that the Cow was H.'s, and that he should not allege her to be Vaccum Domus; but this nowthwithstanding the Wit, was awarded good by the Statute. Fitzh. Tit. Brief, pl. 359. cites Trin. 18 E. 3. 23.

3. A Man recovered Arrears of Amenity against a Parson, the Parson died, he shall have Scire facias against the Successor of the Parson, and not against the Executor, and shall have Scire facias of Part and Pieri facias of the rest; and to it feems that Part was in the Time of the Parson, and Part in the Time of his Successor, or Part within the Year, and Part after. Br. Executor, pl. 154. cites 24 E. 3. 23.

4. Trespass by a Prior, Quare vi & Armis Bona & Catalla Ecclesiae sue de S. & Nicholas super Prioris ibidem Prædecessoris su tempore diœti Nicholai & 10 Marc. in Preconios numerantis diœti Domus & Ecclesiae, apud C. cœpit &c. apportaret. Council demanded Judgment of the Wit; for he does not suppose the carrying away of the Money in the Time of the laid Nicholas. Ect non Allocatur; for the first Words amount to as much; Quod nota. Br. Trespas, pl. 64. cites 47 E. 3. 23.

5. Note, That if Obligation be made to a Prior, who dies, his Successor shall have Debt in the Debet & Debitum, the no Word of Successor be in the Obligation. Br. Abbe, pl. 3. cites 47 E. 3. 23.

6. Trespass of Trees cut, Franktenement broke, and Servant beaten, by a Br. Trespas. Prior, it is a good Plea to the Wit, that the Trespass was in the Time of pl. 69. cites his Predecessor &c. by which the Plaintiff maintained the contrary. Br. Abbe, pl. 3. cites 2 H. 4. 4.

7. If an Abbot had a Ward, and f. S. ravished him, and the Abbot died, the Successor should punish this Trespass; contra of a Bishop. Brooke says the Reason feems to be insufìinich as the one may have Executors, and so cannot the other. Br. Trespas, pl. 350. cites 11 H. 4. 82.

8. Debt against an Abbot upon an Obligation of his Predecessor of 201. Br Replevin, and counted that the Abbot Predecessor pledged a Table Ipius super Abbatii &c. by which the Plaintiff's Title was in the Time of pl. 2. cites 3 H. 6. 25. S. C.

9. If the Goods of an Abbot are carried away and be dies, the Successor shall have Actio Quare bona Predecessoris &c. per Babb. But per Marten, in this Case the Actio shall be of Goods of the House and Church only, without speaking of the late Abbot. And this feems to be well by the Regilier, Quod vide ibidem, tit. Trespas &c. And the Statute of Marl. cap. 29. is, Quod habeat Actio nem ad bona ecclesiæ sue recuperand' and not bona Predecessoris. But per Babb, becaule the Property is in the Abbot and in the House also, Answer; quod nota. Br. Abbe, pl. 3. cites 9 H. 6. 25.

11. In Scire Facias against a Person, upon Recovery of an Annuity against his Predecessor upon Aid and Joinder of the Patron, and finding against them upon Issue upon Prescription, the Successor in Scire Facias shall have Aid again; But upon the Joinder they were not suffered to traverse the Prescription again, tho' they alleged'd that all the Jurors were dead, so that they could not have Attain; For this is the Laches of him and his Predecessor, which cannot be reformed. Br. Scire Facias pl. 112. cites 19 H. 6. 39.

12. In Debt the Plaintiff declared against a Bishop late Prior of D. and the Deed was in the Name of the Prior and Coeurt, and because the Successor ought to be impleaded, and not he who is translated to a Bishop, Markham said, that it was made by the Prior and Coeurt, and the Prior, new Bishop, is translated in Bishop of L. and another Prior chose, and the Money came to the Use of the House, and therefore the Successor shall be charged, and not the Predecessor; And per Cur. this Plea is double, the one that the Prior and Coeurt made an Obligation, and another, that the Money came to the Use of the House. Br. Double, pl. 46. cites 21 H. 6. 3.

13. If Obligation be made to an Abbot alone, who is after created a Bishop, the Successor shall have the Action and not the Bishop, and shall have Action of Deline of the same Obligation. Br. Abbe, pl. 3. cites 21 H. 6. 3. & 22 H. 6. 4. Per Ardern & Pole.

14. And per Pole if an Abbot brings Trepass of Battery and recovers Damages, and before Execution is made an Abbot of another Church; The Successor shall have Scire Facias, and Execution, and not he who reco-

15. In Trepass upon the 5 R. 2. If a Man pleads the dying seised of his Predecessor, Master of the Hospital of Dale, and he entered; This is no Plea, for he ought to plead he was debite eleitius & pretellus futur & then good invirot; Quod nota. Br. Pleadings, pl. 11. cites 34 H. 6. 27.

16. Plaint against an Abbot upon Deed of 100 s. of his Predecessor, which came to the Use of the House; And the Deed and the coming to the Use of the House shall not be double; For the Deed is not sufficient, unless it come to the Use of the House; Quod Nota. Br. Double, pl. 96. cites 2 E. 4. 13.

17. In Writ of Entry for Diffidus made by the Defendant of a Rent to the Predecessor of an Abbot Plaintiff, the Tenant took the Tenancy and pleaded as Tenant, and pleaded Hors de fon Fee, Judgment if without Title knew &c. And per Cur. the Plea is good in this Action; For the Sifin nor Diffidus to the Predecessor is no Title; For it may be that the Predecessor was Diffidus, and then the Successor is not in by the Predecessor, as the Heir is in by the Ancestor; For the Successor is in by the House, and continues the first Tort, therefore no Plea here no more than in A-

18. Trepass by Prior of Quare Bona & Caellia Donus & Ecclesiae fine pretellus tempore Predecessoris futur &; and counted of a Pipe of Wine. It was objected that the Writ should be Bona & Caellia implius the Prior; for that the Property was his. But per Choke, the Successor can-
Suit of Court.

cannot have Action of this taking, but in respect of the Right which was in the Church; And therefore the Writ is good. And per Danby, the Prior could not have Goods otherwise than in the Right of his Church; And he could not devise them &c. and they held the Writ good. Fitzh. Tit. Brief, pl. 176. cites Trim. 9 E. 4. 33.

19. Scire Facias against Successor of a Parson to have Execution of certain Arrears of Amenity recovered against his Predecessor; the Defendant said, that he at D. in another County, assigned into the Hands of the Bishop, which he accepted &c. and so he was not Parson the Day of the Writ purchased, nor ever after; And the best Opinion was, that this is a good Plea; but by some nothing shall be enter'd but Nor Parson the Day of the Writ purchased nor ever after, and the Resignation shall be given in Evidence; And it seem'd to some that all should be enter'd for Evidence and Plea. Br. Scire Facias. pl. 133. cites 9 E. 4. 49.

20. If Mayor and Commonalty are Dissatisfied and the Mayor dies, the Successor and the Commonalty shall have Assign, and the Writ shall be Dissipat co. Br. Corporations pl. 56 cites 12 E. 4. 9. 10.

21. In Detinue of Charters by an Abbot it is a good Plea that his Predecessor pledged them for 10 l. which is not paid. Br. Chattles, pl. 25. cites El. 4. 19.

For more of Successor in General, See Confirmation, Corporation, Estate, and other proper Titles.

Suit of Court.

(A) By whom it may or must be done. See (B)

1. By 20 H. 3, cap. 10. it is provided and granted, that every * Free-man, which * owes Suit to the County, † Tything, Hundred, and "
|| Wapentake,"
|| Demesne, but not to Copyholder. 2 Inft. 100.
|| * Nota, There be 2 kinds of Suits, viz. Suit ** Real, that is, in respect of his Residnse, to a Leet or Tourn; and Suit Service, that is, by reason of a Tenure of his Land of the County, Hundred, Wapentake, or Manor, whereunto a Court Baron is incident. Before this Act, every one that held by Suit Service ought to appear in Person, because the Suitors were Judges in those Courts; otherwise he should be secur'd, which was mitchievous; for it might be, that he had Lands within divers of those Seigniorities, and that the Courts might be kept in one Day, and he could be but in one Place at one Time. But this Statute extends not to Suit Real, because he cannot be within 2 Leets &c. 2 Inft. 99.
|| ** S. P. per Tresm. Br. Suit. pl. 2. cites 45 El. 5. 22.
|| † Here it signifies a Court which consists of 3 or 4 Hundreds, and does not there signify a Leet, or View of Frankpledge. 2 Inft. 99.
|| || That, which in some Countries is call'd a Hundred Court, in some Countries it call'd a Wapentake. Quid angli vocat Hundredum supra dicti? Comitatus vocant Wapentigum. Now the Reason of the Name was this: When any, on a certain Day and Place, took upon him the Government of the Hundred, the Free Suitors met him with License, and he defending from his Horse, all rode up to him; and he holding his Lance upright, all the rest, in sign of Obedience, with their Lances touching his Lance or Weapon. For the Saxön Word Wapen, is Wapen, and lac isactus, or touching; and therefore this Assembly was call'd Wapentake, or touching of Weapon. 2 Inft. 99.

He must Or to the Court of his Lord, may freely make his Attorney * to do those make a Letter of Attorn. 8 and suit for him. *

He must Or to the Court of his Lord, may freely make his Attorney 4 to do those make a Letter of Attorn. 4 and suit for him. 5
Suit of Court.

out of the Chancery, for the Abatement of him; or, if he doubted that he should not be allow'd, he might have a Writ before-hand to receive him as Attorney. And such a Writ shall issue during the Life of the Tenant &c. for the Words of another Writ be, Ex qua virtus Brevium nondorum de hujus modo Attornato faciendo terminium non capit, nec terminus limitatur durantibus pericioni &c. What such an Attorney may do, and who cannot be Attorney, see the Statute of W. 1. 2. Inft. 100. — S. P. F. N. B. 156. (D)

The Tenant may make Attorney by his Letters Patent, to do Suit at the Court of his Lord. F. N. B. 156. (D) — And the Book says, that if the Sheriff or Bailiff of the Court refuse to admit such for his Attorney, upon that Refusal, the Party shall have an Attachment against the Bailiff &c. altith be has not paid forth any Writ directed to him before; because they do against the Statue, which requires, that they admit him for Attorney whom the Tenant will make to be his At-

torney. F. N. B. 157. (C) — So if a Man pays forth a Writ to admit one for Attorney, and the Bailiff refuses to admit him, the Party shall have an Attachment against them, without suing forth an Alias, or a Pluries, directed unto them. F. N. B. 157. (C)

And he shall have the like Writ against the Bailiffs of any other Lord, who refuse to admit an Attorney to do Suit for the Tenant in any Court Baron, and that Writ appears in the Regifter. F. N. B. 157. (D)

If a Man makes an Attorney to do Suit for him at the County, or Hundred, or other Court, and the Bailiffs will not admit him for his Attorney; or if the Bailiffs do admit him for his Attorney, and afterwards discharge him after the Year, supposing that he ought not to continue Attorney for the Party above one Year, or for any other unreasonable Cause, they discharge him to be Attorney for the Party; then the Party may have a Special Writ, directed unto the Bailiffs &c. commanding them, that they receive him for his Attorney; and thereupon he may have an Alias, and a Pluries, and an Attachment against them returnable in C.B. or in B R. If they will not admit him for his Attorney, or return Cause upon the Pluries, which shall be allow'd, wherefore they do not admit him. F. N. B. 157. (A)

And so, as by force of this Act, he may do such Suit as the Freeholder ought to do. 2. Inft. 100. Now albeit he that holds by Suit Service may make an Attorney, yet that Attorney cannot sit as Judge, as the Free Sutor himself might do; for he cannot dispute another in his judicial Place; and the Words of the Statute be, Libere pollis facere Attornatum ad letas illas, pro eo faciendo, 2. Inft. 99, 100.

This Act extends to Freedmen in Eire. 2. Inft. 100. cites the Regifter 19.

2. If one holds two Acres by Suit of Court, and alies one Acre, the Feoffor and Feoffee shall make both Suits. Kitch. of Courts, 298. Tit. Suits, cites 43 E. 3. 4. b.

3. One that is not Refiant may be bound to do Suit Real; for it shall be intended a Suit Service, referred on creating the Tenure. 2. Salk. 604. in Cafe of Tomkins v. Crocker, cites 12 H. 7. 18.

4. If the Wife be in Dower of any Land, she shall not be disfrain'd to do Suit for that Land which the holder has in Dower, if the Heir has sufficient Land in the same County to be the fame. But if she be disfrain'd, then she shall have a Writ Pro Exoneracione fecta. F. N. B. 159. (A)

5. Note, That Men or Women who have entered into Religion, ought not to come unto the Sheriff's Torn, or unto the Leet of any other, without great Cause; and if they be disfrain'd for to come, they may have a Writ out of the Chancery to discharge them. F. N. B. 160. (C)

6. [30] Clerks who are not Parfions, nor have Benefices, shall not be disfrain'd, or compell'd to come to Torns or Leets; but they shall have a Writ to discharge them. F. N. B. 160. (C)

7. [30] By the Common Law, Parfions of Churches shall not be compell'd or disfrain'd to come to the King's Leets, or to the Leets of other Lords of the Lands annex'd to their Churches; and if they be disfrain'd fo to do, they shall have a Writ. F. N. B. 160. (C)

8. Women are not compellable nor disfrainable to come unto the Sheriff's Torn, nor to Leets; and if they be disfrain'd, they may sue such a Writ as a Priest may sue, and thereupon an Alias, Pluries, and An-

A Woman may be a Free Sutor to the Courts of the Lord; but tho' it be generally faid, that the Free Sutors be Judges in thofe Courts, it is inted of Men, and not of Women. 2. Inft. 119.

9. If
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9. If the Sheriff will distrain the Tenants in ancient Demesne, to come unto the Leet or Sheriff’s Torn, they may have one Writ for them all, directed unto the Sheriff, commanding him that he do not distrain them &c. to do any Suit at the Leet or Torn; and that Writ shall be fix’d in all their Names, if they will, as a Monstratun shall be fix’d; or any of them may file the Writ in his own Name, if he be distrain’d to do such Suit. F. N. B. 161. (C)

(B) How. By Parceners, Feoffees, &c.

See (C) p. 5.

1. 52 H. 3. For doing * Suits unto Courts of great Lords, or of meaner * This is cap. 9. Persons, from henceforth this Order shall be observed; underfoot of Suit Service to Courts Baron, Hundreds, and the like; and not of Suit Real, in respect of Relfiance, nor of Suit to the Mill, for the Words be, De feitis fac’t ad Curiam &c. 2 Inf. 117. — It is said by Tremall, That Suit Real is done, by reason of the Body; that is, because the Body is refund within the Precinct, and not by reason of Freehold; and this is due at the Courts Royal, as at the Courts of the King or Queen, as at Leets and Wapentakes, which are the Courts of the King or Queen; and Suit Service is by reason of Freehold, that is, by reason of their Tenure; that is, for that they hold of their Lord by Suit to his Court Kitch of Courts, 296. Tit. Suits.—S. C. & S. P. Fitzh. Tit. Barre, pl. 211. cites Mich. 45 E. 5. 23.

That none that is inter’d by Deed from henceforth shall be distrain’d || At the Common Law, before the making of this Statute, if the Lord had made a Feoffment by Deed, and refere’d certain Services, as, for Example, Fealty, and 2s. Rent, or 2s. Rent generally, which had imply’d Fealty in this Case; if the Lord had distrain’d for Homage, or Suit, or any other Rent or Service than was refere’d in the Deed, not only the Tenant and his Heirs, but his Assigns also, or any other Tenant of the Lord, might have reftated the Lord, his Heirs, or Assigns, by the Deed; and this holds between Party and Party, Privy and Privy, Stranger and Stranger, and Stranger and Stranger. But this Act gives the Tenant, or his Heirs, a more speedy Remedy; for hereby is given to the Tenant, against the Lord and his Heirs, a Writ of Contra formam Feoffament. 2 Inf. 117, 118.

And Lord Coke says, that herein are several things worthy of Observation, As, 1. When any Act does prohibit any Wrong or Vexation, though no Action be particularly named in the Act, yet the Party grieved shall have an Action grounded upon this Statute; which to this Case is a Prohibition to the Lord or his Bailiff, and recites this Act; the Form whereof you may read in the Regifter, & F. N. B. Now where it may be objected, that in Mich. 16 H. 3. reported by F. Tit. Avowy, 243, that upon a Confirmation a Writ of Contra formam Feoffament does lie; and by that Book it should seem, that a Writ of Contra formam Feoffament did lie at the Common Law before this Statute, which was made in 52 H. 3. To this it is answer’d, that the said Case is mis-printed; for where it is Mich. 16 H. 3. it should be 56 H. 3, when the Case was so resolved; and in which Term, viz. the 16th Day of November H. 3. died; so that Opinion was after our Statute, and that the Writ was the Punishment of the Statute, the Writ does rectify it. And where in this Clause the Statute says, shall be disfrain’d, all this Chapter shall be underfoot of Suit Service; because for Suit Real no Difficils can be taken, but for the Servitude in Definat thereof: 2 Inf. 118.

2dly, Where the Statute says, Contra formam Feoffament, yet if the Lord confirms the Estate of the Tenant to hold by certain Services, upon this Confirmation he shall have a Contra formam Feoffament, for that it is within one and the same Reason. 2 Inf. 118. — Where the Services by the Deed of Confirmation are less than before. Br. Contra formam Feoffament, pl 3. cites 16 H 5. 1. & Fitzh. Tit. Avowy, 243; ibid. pl. 3. cites S. C.—Kitch of Courts, 296. Tit. Suits, S. P. cites 10 H. 3. Tit. Avowy, 243. & 26 E. 3. Tit. Avowy, 246. — F. N. B. 163. (G) cites Mich. 16 Ed. 3.

3dly, Upon their Words (certain Services) if one give Land in Frankalmoigne, or in Frank-marriage, he cannot have a Writ of Contra formam Feoffament; because there is no certain Service contained in the Feoffament or Gift, and therefore out of this Act; but he may velo. 2 Inf. 118. — F. N. B. 163. (F) S. P. cites the Opinion of Paring, Patch. To E. 3.

4thly, If the Lord distrains either for Suit, or for any other Service, or Rent, not contained in the Deed, the Tenant shall have this Writ of Contra formam Feoffament; for the Words of this Act be, ad hujusmodi filiis, vel ad alios &c. 2 Inf. 118.

5thly, The Statute says, Contra formam Feoffament; hereupon Expedition has been made, that this Writ lies only between Parties, viz. by the Tenant and his Heirs, against the Lord and his Heirs; for they be included in Privity of the Feoffament, but fo are not the Assigns on either Side. 2 Inf. 118. — This Writ
Suit of Court.

Write it only where the Plaintiff claims by his Ancestor, and not where he claims as Purchaser; and that so it is of Ne unjust Vexes. Regist. Bev. 176, cites Hill. 10 E 3; the left pl. by Willoughby.

† The Writ of Contra formam Feoffamento is a Prohibition in itself, and if the Lord and Bailiffs do contrary to the Writ lent to them, the Tenant thereupon shall have an Attachment and Distraint, F. N. B. 165. (A)—S. P. And if he distress after the Wriedict is thus given to him, the Tenant shall have an Attachment against him; and thereupon he shall recover his Damages, if it be found for him, &c. and the Process be Prohibition, Attachment, and Distraint. F. N. B. 165. (D)

If the Feoffment be extant, the Process is driven to his Writ of Ne unjust Vexes. 2 Inst. 118. —As if the Feoffment be made before Time of Memory, one shall not have a Contra formam Feffamento, but a Ne unjust Vexes, for such Feoffment is not pleadable. F. N. B. 165. (E) in the new Notes there, (b) cites 12 H. 4. 24.

The Law does even favour Possession as an Argument of Right, and does incline rather to long Possession without thewning any Deed, than to an ancient Deed without Possession; and theretofore this Act does except long Possession; But in respect of the great Troubles that did arise in this Realm after the Conscillation which H. 3; made of the Clusters of Magna Charta, and Charta de fora, in the 11th Year of his Reign, this Act does give Relief against any. Seisin since his first going into Bretagne, which was in the 14th Year of his Reign; but the Seisin before that Time, when the Times were regular and peaceable, this Act does except. 2 Inst. 118.

Here he begins with Feoffments by Deed; wherein is to be observed the great Antiquity of Feoffments by Deed, or without Deed, of ancient Time before the Conquest. 2 Inst. 119.

And, The Reason in those troublesome Times, since the first going over of the King (as has been said) is not allowed of; but a Seisin is required before that Time, when Times were regular and peaceable. 2 Inst. 119.

See the Notes at the 2d Paragraph.

And they that are insolenced by Deed do to * a certain Service, as, for Service of so many Shillings by Year, to be acquitted of all Service; from henceforth shall not be bounden to such Suits, or other like, contrary unto the Form of their Feoffment.

* This is to be understood, after Partition, for before that the Eldelf has not Enit全体, and therefore before Partition this Act extends not to it, and before Partition there can be no Contribution, as thereafter shall be said; But in the King’s Café, all the Co-partners shall do suit as well after Partition as before, and so shall several Feoffees, for this Act extends not to the Kings, for the Words be, ad coriam magnatum &c. 2 Inst. 119. —S. P. For the King not being named, is not restrained by the Statute. Pl. C. 230. b, in Case of William v. Ld. Barkley.—Br. Suit &c. pl. 4. cits 23 E. 2 75, and makes a Quare as to the Cæse of a common Perfon, before partition.

† S. P. F. N. B. 159 (C)—Kitch. of Courts. 29. Th. Suit cits S. C. &c. 13 H. 7. 15. —But if the Land be holde of another Lord, then that Co-partner or his Feoffee, who has the Part of the Eldelf Suffer, shall do the Suit alone; And if the Lord will disfrain the other Co-partners, then they shall have a Suit against him directed to him or his Bailiffs to discharge them of that Suit, and Distraint taken &c. F. N. B. 159 (C)


If the Eldelf after Partition will not do the Suit, in the Cæse of a common Person the Lord may distrain the other Partners, as well as the Eldelf for the Suit, and the other Partners may have upon this Act a Writ against the Eldelf to compel him to do the Suit. And if the Eldelf does the Suit, and the Refidue refuse to contribute to her Charges, he shall have upon this Act a Writ de Contributio&c. to compel them to contribute. 2 Inst. 119. —S. P. F. N. B. 159 (B) —S. P. F. N. B. 162. (B)

So if the Eldelf does the Suit and the other Co-partners agree with the Eldelf for a Rake; Now the Writ of Contribution shall be brought against the others, who would not contribute &c. F. N. B. 162. (B)

And yet this Act extends to the Feoffee of him that has Enit全体 parts, and so it is of the Tenant by the Curtesy, 2 Inst. 119.
And if many Feefees be seised of an Inheritance (whereof but one Suit is due) the Lord of the Fee shall have but that one Suit, and shall not exact of the said Inheritance but that one Suit as has been used to be done before.

Suits, and confessioritse fereally, one of every Part and another of another Part &c. in certain; There the Lord shall have but one Suit, and he that does the Suit shall have a Writ De contributions facienda, against the others; Or where the Tenant that holds by one Suit infeods many jointly, they shall make but one Suit; as they shall deliver but one * Proces, or other Intere Service. And if one of them does the Suit, he shall not have a Writ De contributions facienda by this Act, for when the Poiffion is indivis, and indivis, there can be no Contribution. But if one of the joint Poifees make a fumblution, the Poiffion doth make a fumblution, and the reft of the joint Poifees shall do but one. And herof the severall Poifees do the Suit, if the other Poifees be disjoined for the Suit, they shall have a Writ against the Lord to dischage them of the Suit, wherein it is to be noted (as before has been observed) what Actions are grounded upon this and other like Statutes, though no mention be made of them in the Acts, all which appear in the Register. 2 Inst. 119. 4 Br. Suit &c. pl. 4. cites 5 E. 3. 57. as to the joint Poifees, but says in case if they are severally imployed; but Shippin saith, that in such Cafe the Lord might discharge which he pleased, and if one does the Suit, the other shall take Advantage thereof, and to the Lord shall have only one Suit; Quod nona.

S. P. 6 Rep. 1 b. in Bracton’s Cafedge Hill. 57. E. 2. in the Court of Wards. But if the Tenant makes Deeminent of a Matter or 2d Part in Common, this is out of the Purview of this Statue; for when the Poiffion is indivis, and indivis, there cannot be any Contribution, and with this agrees F. N. B. 162. (D) viz: that Tenant in Common shall do a severall Service and several Suit.

S. P. F. N. B. 159. (D) — And if he sue such Writ, and be disjoined, then he shall have an Attachment against the Lord, or the Bailiffs to whom the Suit was directed, to answer that Compen, in which Writ he shall recover his Damages &c. F. N. B. 159. (D)

If severall are imployed of Lord, for which one Suit ought to be done &c. Now if they agree among themselves, that one of them shall do the Suit, and that the others shall contribute unto him, if he do the Suit, and afterward the others will not allow him for that Suit according to their Case, then he shall have the Writ of Contribution against them, and the Writ shall mention the Agreement &c. and if they cannot agree, then the Lord shall dischage them for all their Suits, if the Suit be not done; But if one Feejee of his own will do the Suit for them all, without any Agreement for the same made between them, the Lord cannot then dischage the others for the Suit; For as to the Lord, it is not material whether there be any Agreement between them or not; But between the Poifees, he doe that the Suit shall not be the Work of Contribution against his Companions, without Agreement thereof made between them. F. N. B. 162. (D)

If two are severally imployed of one Tenant; who holds of one Manor of the King, every of them shall make Suit. Kitch. of Courts Tit. Suit 298. cites 45 E. 4. Tit. Bar. 311.

And if these Poifees have no Warrant or Mijee which ought to acquit them, then all the Poifees according to their Portion, shall be Contributaries for doing the Suits for them.

That is to say, if they have neither one to warrant by special Grant, nor any Mijee by Tenure which ought to acquit them, Tune omnes illi Poiffiones proportionis fi in curia: and this Clause is to be understood of severall Tenants, as has been said before; And no Provision is made by this Act concerning Contribution, where the Parties are provided for by Grant or Tenure. 2 Inst. 120.

And it if chance that the Lords of the Fee do dischage their Tenants for their Suits contrary to this Act, then, at the Complaint of the Tenants, the Lords be attached to appear in the Kings Court at a short Day to make answer thereto, and shall have but one Effion therein (If they be within the Realm;) And immediately the Beasts or other Diffreises taken by this Occasion, shall be delivered to the Plaintiff, and shall remain until the Plea between them be determined.

Here is a Remedy given to the Tenant against the Lord, if he dischage contrary to this Statue. 2 Inst. 120.

And if the Lords of the Courts, which took Diffreises, come not at the Day that they were attached, or do not keep the Day given to them by Effion, then the Sheriff shall be commanded to cause them to come at another Day. At which Day if they come not, then shall be commanded to dischage them by all their Goods and Chattels that they have in the Shore, so that the Sheriff shall answer to the King of the Issues of the said Inheritance. And they have their Bodies before our Justices at a certain Day limited, so that if they come not at that Day, the Party Plaintiff shall go without Day, and his Beasts or other Diffreises taken by that Cause shall remain delivered, * until the same Lord have recovered the same Suit by Award of the King’s Court. And in the mean Time such Diffreises shall cease, facing to the Lords of the Court their Right to recover these Suits in Form of Law, when they will sue therefore.

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And when the Lords of the Courts come in to answer the Plaintiffs of such Treffas, and be convit thereupon, then by Award of the King's Court, the Plaintiffs shall recover against them the Damages that they have sustained by Occasion of the said Distress.

2. If Lands descend to two Parceners, and the Elder does Homage, this discharges both; And yet if the elder aliens, the Lord may distrain on the Younger for the Homage. F. N. B. 159. (D) in the new Notes there (b) cites 2 E. 2. Avowry. 179.

3. Suit of Court is not apportionable, but if the Part of one of the Jointentant who holds by Suit comes to the Lord, all the others shall be distrained of the Suit. Br. Apportionment pl. 2. cites 40 E. 3. 40.

4. If one Jointent makes a Feoffment in Fee of his Part, his Feoffee shall do a several Suit by himself. But the other Jointentants shall do but one Suit, by the Statute of Marlbridge, cap. 9. But every Tenant in Common shall do several Services and several Suits. F. N. B. 162. (D)

5. Quere. If A holds Lands charged with Suit to the Hundred by Prescription, and enforces the King of Parcel, if all the Suit is gone? F. N. B. 159 (A) in the new Notes there.

(C) Remedies for not doing thereof.

1. 52 H. 3. E. Næfis. That, if the Tenants after this Aff withdraw from cap. 9. S. 2. their Lords such Suits as they were wont to do, and which they did before the Time of the just Voyage of King Henry into Brittain, and hitherto used to do, than by like Speediness of Justice, as be to limiting of Days and according of Distresses, the Lords of the Court shall obtain Justice to recover their Suits with their Damages, in like Manner as the Tenants should recover theirs.

And this recovering of Damages must be underhand of withdrawing from selves, and not of withdrawing from their Ancestors.

Nevertheless the Lords of the Court shall not recover Seilin of such Suits against their Tenants by Default, as they were wont to do.

And touching Suits withdrawn before the Time aforesaid, let the Common Law run as it were wont beforehand.

2. In Treffas the Defendant justified for Amecement, in as much as the Plaintiff held of him of his Manor by Feealty, 2 d. of Rent, and Suit to his Hundred de tribus Septinantis in tress &c. And per Gascoign & Acau, This Suit is only Suit Service for which a Man may Distraint, but otherwise it is of Suit real, as to a Leet for Reliancy of which a Man cannot be his own Judge, and therefore there he may Distraint for the Amecement.

Br. Suit, pl. 9. cites 8 H. 4. 16.

3. In Replevin the Defendant avow'd, because the Plaintiff held 20 Acres of Land of him, by Suit to his Leet, and alleged Seilin of 20 d. for not coming to the Leet. And it was held that the Seilin of 20 d. is no Seilin of the Suit, and that Suit to the Leet is Suit Real, because a Man shall be avered, but for Suit Service the Lord shall distrain, but shall not amerce the Tenant. Br. Suit, pl. 6. cites 12 H. 7. 15.

4. Note, That if a Man holds of another to do Suit to his Mill &c, if he does not the Suit, he shall have a Seilin ad Molendinum against him; and by the same Reason, if a Man holds of another Lord, to do Suit at his Court in the Manor of D. If he does not the Suit, the Lord may have a Writ of Seilin ad Curiam liam facienda, as well as the other Writ. But yet there is no such Writ in the Register, because he may distrain for that Suit, and shall not have any other Profit but only Appearance in his Court. But in the other Caufa de Seilin ad Molendinum, he shall have other Profits by
by the Suit, the Toll of the Grain he shall grind there; and for that Profit it seems the Action of Seftad Molendinum was given, and for the Suit of the Court, but only a Ditrefls; Tamen quere. F. N. B. 158. (D)

5. If there be 2 Coparceners of Land, for which one Suit ought to be Kitch of done, and the eldest Sitter will not do the Suit at the Lord's Court, then Courts 297: the Lord may detain the other * Coparcener, as well as the eldest Co- parcer for that Suit; and if the Coparceners be detained, then they * F. N. B. shall have a Writ against the eldest Sitter, to compel her to do the Suit. 159 (E) in the new F. N. B. 159. (E)

(c) says he shall make Avowry on her only, and not on both, after a Partition by Feeceflment &c. 24 E. 7. 72. See 2 E. 2. Avowry 84. And see the C. 24 E. 7. 74. 75. where the eldest assigns her Part to the, and the younger her Part to another, and the Avowry made on the Alliance of the elder only for Suit &c. And so it may be on the Alliance of the younger for other Suit; yet Suit made by one discharged both. And note per Cur. He cannot avow on both in Fœ after such Severance.

(D) *Excuse* of not doing Suit.

1. [If Lord seised of 2 Courts, viz. P. and C. and a Tenant owes Suit to] the Court of P. and after the Tenant has done Suit at the Court S. C. of P. the Lord agrees by Deed, that for the Eafe of the Tenant, and in Consideration of 2s. Rent a Year, that the Tenant shall do Suit at the Court of C. the which he does for 40 Years; and after the Lord infills on the Suit to be done again at P. It seems that having been seised of the Suit at P. the fame is still due there; for the doing it at C. was only in Allowance of the other Suit that was due at P. See Fitzh. Tit. Action for le Statute, pl. 24. cites M. 3 E. 2.

2. If a Man have Lands in diverse Places in the County, and there are several Leets &c. or Hundreds, and he is disdained to come unto the Leet, or the Sheriff's Torn, where he is not dwelling or converfant, but is dwelling within the Precinct of some other Leet or Hundred &c. then he shall have a Writ unto the Sheriff, to discharge him from coming to the Sheriff's Torn, or Hundred, or Leet, or other Place, than in the Leet or Precinct of the Hundred where he dwells. F. N. B. 160. (A)

3. And it appears, that if the Party be disdained, after that he has filed the Writ directed unto the Sheriff or Bailiffs, that they do not dismiss him, that he shall have an Attachment against them: But it seems reasonable that first he have an Attachment against the Sheriff, or against the Bailiff, who disdained him to come to the Leet in the Hundred where he is not dwelling, if he be dwelling within the Precinct of another Leet, because the Statute of Marlbridge is a Prohibition in eft; and he who does contrary to the Statute does Wrong unto the Party upon which he may have an Attachment, without fuing forth any Writ. F. N. B. 160. (B)

4. In Replevin the Defendant avowed for Suit to Court; Plaintiff replied, and confed himfelf Tenant of the Manor, and faid, that there are very many Tenants thereof; and that there is a Custom for those Copyholders who live remote from the Manor, to pay 6d. to the Steward &c. for the Use of the Lord, and 1 d. for himself for entering it, and they should be excused from doing Suit for one Year after the Payment; and alleg'd that he lives 10 Miles from the Manor, and that he tender'd the 8d. and the 1 d. but that both were refufed. And upon Demurrer to this Replication, Hale Ch. J. faid, That it is Custom gives the Suit, and consequently may qualify it. The Doubt arifes, because the Plaintiff has not alleg'd that there are any Tenants live near or within the Manor, or whether that ought to be thrown on the other Side, if it be not for, because the Intendment is strong that there are: Therefore a By-law in a Manor binds the Tenants without Notice, because they are supposed to be within the Manor: Wherefore they gave Judgment for the Plaintiff. Vent. 167. Mich. 23 Car. 2. B. R. Hacx v. Ledginghem.

So not essential to the Court.—Mod. 77. pl 57. Mich. 22 Car. 2. B. R Leghnam v. Forperry, S. P.
Suit of Court.

S. P. exactly, and says it was averred, that there were 120 Copyholders at least that live near the Manor. And Hale, Ch. J. said, that surely Tender and Refusal is all one with Payment. And Judgment for the † Defendant.—2 Keb. 347. pl. 93. Mich. 23 Car. 2. B. R. Isake v. Legingham, adjudged for the Plaintiff; and cites the Case of Porphyry v. Legingham, adjudged to be a reasonable Custom, and the Tender and Refusal is all one with Payment.—2 Keb. 837. pl. 104. Isake v. Legingham, the Attorney General pray'd to stay Judgment; but, per Cur. Judgment for the Plaintiff.

[† This seems mis-printed for (Plaintiff) ]

(E) Suspended or Determined.

1. If Land be held by Suit, and Parcel of it comes to the Lord, the entire Suit is extinct and determined; for the Lord cannot make Contribution of Suit to his own Court, nor take it. Kitch. of Courts 299. Tit. Suit, cites 34 Afl. 15.

2. If the Lord purchase Parcel, the whole Suit is extinct. Kitch. of Courts 298. Tit. Suit, cites 40 E. 3. fol. 40. by Mowbray, and says, See Litt. fol. 49. for Suit cannot be apportioned, because there cannot be Contribution.

3. Partition is between 2 Coparceners of a Manor, that is, that one shall have the Demesnes, and the other the Services; Suit of Court is suspended; but if one dies without Issue, the Suit is revived. Kitch. of Courts 299. Tit. Suit, cites 12 H. 4. f. 25.

Kitch. of Courts, Tit. Suit, says the 2 E. 6. cap. 8. did not alter the Common Law in this Point for Suit to the Court; and cites 20 Afl. 17. that the Seigniory is suspended for the Time.—* The Translations are (Lords) but the original French is as here.

5. If the King has any Lands or Tenements in Ward, during the Nonage of an Infant, and the King in Chancery affians Dower unto the Wife of the Husband, who was Father to the Ward, of Lands helden of other Lords ships; now if the other Lords will distrain for Suit at their Court, during the Time that the Lands are in the King's Hands, the Wife shall have a Writ unto the Bailiffs of the other Lords, that they do not distrain the Heir, nor in the Lands &c. during the Time that he is in the King's Hands, or in the Hands of his Committee; and if he have distrained them, that they deliver back the Diftreys again; and that Writ appears in the Regifter. F. N. B. 157. (A)

(F) Suspended or Determined by Writ de Exoneracione Secta.

1. THIS Writ lies where the Tenant holds his Land to do Suit at the County Court, Hundred, or other Court Baron, or Wapentake, or Leet, and he who ought to do the Suit is in Ward unto the King, or his Committee; and the Lord of whom he holds by such Service, will distrain
Suit of Court.

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ditrain him to do his Suit at his Court during the Time he is in Ward
unto the King or his Committee, his Guardian shall sue this Writ unto the
Sheriff, or Bailiffs of the Court, that they do not distrain him &c. to do
Suit during the Time, he is in Ward to the King or his Committee.
F. N. B. 158. (A)

the Heir holds Parcel of his Lands, will distrain for any Service or Rent to them due, then the King,
or his Committee, may sue a Writ for them to furcease from such Dista. F. N. B. 158. (C)

2. And the like Writ shall be for Tenant in Dower, where the he is en-
dowed in the Chancery of Lands which are in Ward to the King, which
Lands are held of other Lords. Now if the other Lords will distrain
the Tenant in Dower to do Suit for those Lands, which she holds in of the King
Dower, she shall have a Writ to discharge her. F. N. B. 158. (B)

such Writ, if the Bailiff of other Lords will distrain her for the Relief of the Heir, or other Services,
during the Time that the Heirs Lands are in the King's Custody, or in the Custody of his Committee.
And it seems, that he may sue this Writ directed unto the Lord himself, as well as to the Bailiff, or
unto them both. F. N. B. 158. (C)

3. If the Heir be in Ward of the King, and also his Lands, and after-
wards the Tenants personal, who hold of the Heir, are distraint by other
Lords, of whom the Heir holds his Lands, to do Suit the Lord's
Court, those Tenants shall have a Writ directed to the Lord's Bailiff, to
discharge them of the Suit. F. N. B. 158. (B)

4. If Lands descend unto divers Coparceners, for which one Suit shall
be done at the Lord's Court, if Parcel of those Lands come into the King's
Hands, then he shall have a special Writ to discharge him of the Suit
for the Time they shall be in the King's Hands. F. N. B. 159.
(A)

5. If the King have Lands by Forfeiture or Escheat, and leaves them
for Lite, at Will, or in Tail; and if the Lord, of whom the Lands are
held, will distrain the King's Committee or Lefsee for Suit, or other Services,
he shall have a special Writ unto the Lord's Bailiff to furcease,
&c. F. N. B. 159. (A)

(G) Pleadings.

1. In a Contra formam Feoffamenti, the Plaintiff counted upon the

* Both the English Editions cite Actions sur


But the French Edition cites the Title Actions sur le Statute 25. where the Cae is, and as follows,

viz. Contra formam Feoffamenti, against B. & E. his Feme, and counted that they distrain'd him to do
Suit to the Court, in C. against the Form of the Feoffment; whereas neither he nor his Ancestors had
used to do Suit &c. The Defendant pray'd that Plaintiff shew his Deed; but it was said, that he
ought not. Then they said, that the Plaintiff held of the said B. and E. as of the Gift of E. and of the
Heritage of C. by Suit to the said Court, whereas the Ancestor of C. was seized before the
(time of) Limitation; The Plaintiff replied, Not seized before the (time of) Limitation; Prift, Whereupon the Defendants pray'd Aid of C. to whom the Reversion was, and had it.

2. Avowry by the Lord of the Hundred, inasmuch as in the same
Hundred the Plaintiff held a House; by reason of which he sued Suit to
the Hundred De tribus septimatis in tres &c. and alledged Seisin in him and his Ancestors in [of] the Tenant and his Ancestors, time out of Mind.
And to see that he did not allege Tenure; for Suit to the Hundred is

3. Cestavit that he held by certain Services and Suit to his Court at
D. held annually at Michaelmas and Easter; and by the Opinion of the

M Court
Summons.

Court this may be intended Court Baron, tho' it be not Suit de tribus Septimans in tres, &c. for Suit may be as it is reserved at the Commencement of the Tenure. Br. Suit, pl. 8. cites 21 El. 4. 25.

For more of Suit of Court in General, see Copyholds, Courts, and other Proper Titles.

Summary Proceedings.

Summary Jurisdictions ought to be held strictly to Form, and every thing ought to appear regular in them; and they ought to make a Memorandum that such a Day Complaint had been made, that thereupon Summons issued, returnable such a Day, and that the Party being summoned did or would not appear, or could not be summoned. 6 Mod. 41. Mich. 2 Ann. B. R. The Queen v. Dyer.

For more of Summary Proceedings in General, see other Proper Titles.

Summons.

(A) To the Person. In what Cases it shall be to the Person.

1. In Quare Impedit it shall not be to the Person. 11 H. 6. 4.

The Sheriff might have summoned the Defendant in the Church in Quare Impedit; par Marten. But Danby and Cott. contra. Br. Return de Briefs, pl. 101. cites 11 H. 6. 3.

The Summons upon the first Writ may either be made at the Church Door, or to the Person of the Defendant. Brownl. 15. Anon.


3. It was agreed in Writ of Annuity, that if the Sheriff summons him, who has nothing, by his Person, and returns him summoned, it is well, tho' he has no Land. And this is the Reason, that in some Actions, as in Annuity, Covenant, &c. at this Day, Summons was the Process, had he Land or not; because if he has not Land where he may be summoned, he may be summoned by his Person. Br. Summons in Terra, pl. 1. cites 33 H. 6. 42.

4. Where a Man is obliged to appear at the next Gaol Deliverance, or Sessions of the Peace, upon reasonable Garnishment, the general Garnishment
Summons.

ment of the Gaol or Sessions is not sufficient; but he shall be specially

5. In Scire Faecias, upon Recovery of Land, or upon a fine, the Sum-
mons shall be made to the Perfon of the Tenant; per Brian. But citet S. C.
Towen. J. said, that the Summons shall be upon the Land, quo nota.
And so it seems that it is good to the one, or in the other. Br. Sum-
moms in Terra, pl. 9. cites 4 H. 7. 7.

(B) * In what Place. In the Place in Demand.

1. In * Precipe quod reddat, the Summons shall be, in the Land in
Demand, tho' he be not Tenant. 10 H. 6. 12. b. 11 H. 6. 4. 18.
ubicumque inventus fuerit in Com' in quo fuerit res petitor, qui quidem fi non inventarit, 
fficient, si ad 
Domesticum de domino, et de familiis ipsius de fimbo testimonio adeo dignorum manifeste fuerit reliqua 
se Ms venerate dominata. Et si plura habet domesticus tunc id fieri ad illud in quo magis inhabi-
taverit (vel si habet domesticum habuerit) (pec Domisticum) in 
Com' sufficit si tuper terram fiat petitum, vel super feodum si terram non habuerit in Com' feodum 
within the Crotches is in Bracton, and not in Friar.

† In * Precipe quod reddat, the Sheriff return'd the first Day, That the Defendant is not Tenant; and that,
Nihil habet, and notwithstanding this, upon * Petition in Demand. he was not.
9. In Scire facias to execute a Fine, the Summons ought to be upon the Land in Demand, tho' the Tenant has nothing; for he proceeds by his Action to have Right to the Land. Contra 10 D. 6. 12.

Br. Sommons in Terra, pl. 15. cites S. C. 
Br. Retorn de Brief, pl. 122. cites S. C. But Brooke says, Quod Quere, because it may be that he is not thereof Tenant, and Scut alias shall issue without Annuement of the Sheriff.

10. So in Writ of Covenant to levy a Fine, the Summons ought to be in the Land of which the Fine is levied, because tho' it be only a Personal Action in itself, yet since it appears that it is to levy a Fine, because it is Tenent Conventionem of so much Land, he ought to be summoned in the Land. 10 D. 6. 12. b.

11. But otherwise it is in Writ of Covenant upon Lease for Years; for this is personal. 10 D. 6. 12. b.

12. The same Law in a Per quæ Servitía. 10 D. 6. 12. b.


In Quod 'juri clamat' the Summons shall be in the Land of which the Fine was levied. 38 El. 3. 28. b.

Br. Retorn de Briefs, pl. 101. cites S. C. See (A) pl. 17. In Quare Impedit against the Patron, he shall not be summoned in the Church; for this Writ does not demand it. Dubitatur 11 D. 6. 3. b.

In Waffe, if the Tenant is return'd Nihil, the Tenant shall be disfrain'd in Terra petita in Waffe, quan tenet. Br. Sommons in Terra, pl. 4. cites 12 H. 4. 4. Per Skrene—Contra in Writ of Waffe, quod tenet; for this is Land of another Man, in which the Tenant now has nothing. Br. Sommons in Terra, pl. 4. cites 12 H. 4. 4. Per Skrene.

19. If a Writ be brought in the County of N. and the Tenant vouches J. S. to be summoned in the County of K. and after the Entry into the Warranty by J. S. the Parol demurs without Day by Demife of the King, and the Demandant sues the Refummons in N. and the Vouchee is return'd Nihil, he shall be re-summoned in the Land demanded, because the Vouchee is Tenant thereof by the Warranty. 1 C. 3. 13. h.

Upon Re-summons the Sheriff returned that the Defendant is not Tenant, and that Nihil habet, and the Tenant was re-summoned after by another Writ in Terra petita. Br. Re-Sommons pl. 25. cites 8 E. 5. & Fitz. Re-summons 9.

20. If the Parol be put without Day after the Entry into the Warranty by the Vouchee, and upon Re-summons the Vouchee is return'd nihil, he shall be summoned in Terra petita. Br. Sommons in Terra, pl. 24 cites 1 E. 3. and Fitz. Re-summons 9.

21. Contra before the Entry into the Warranty; For before this he is not Tenant in Fact or in Law. Br. Sommons in Terra pl. 24. cites 1 E. 3. & Fitzch. Re-summons, pl. 9.

Attaint in the County of N. upon a Plea of Land, but it does not appear upon what it arose, and the Defendant was return'd Nihil, and Summons in Terra petita was accorded in the County of E. where the Land was, and therefore it seems the Issue in the first Action arose upon a Foreign Deed, or the like, in as much as it was tried in a County where the Land is not. Br. Sommons in Terra petita, pl. 2. cites 42 E. 3. 19.
23. Upon Voucher the Tenant prayed that the Vouchee be summons'd in this County and two others, and the Demandant said, That he had Affid of this County, and prayed, that he be summoned there only, Et non Allocautor; But the Prayer of the Tenant was granted. Br. Summons in Terra, pl. 19, cites 21 E. 3. 37.

24. Precipe quad reddat in the County of Wilts, at the Pet't Cape, the Tenant alleged Imprisonment at D. in the County of M., and so to office, which palled for the Tenant, by which the Demandant brought Attaunt in the County of M. and the Sheriffs returned the Tenant Nihil; By which Summons was awarded in the County of Wilts, where the Land is; and the Inquest was not awarded by Default. Br. Summons in Terra, pl. 20, cites 42. All. 14.

25. In Foro don the Tenant vouch'd the Baron & Feme, who enter'd into the Warrantry and pledged, and after made Default, and after Pet't Cape in Terra petitia illused. Br. Summons in Terra, pl. 5. cites 19 H. 6. 51.

26. Tho' in Scire Facias, and in Habere facias sejusnem, the Summons shall be upon the Land; Yet in Debt upon a Recovery of Damages in Writ of Entry for Diffeiun, the Summons shall be to the Person. Per Portington. 22 H. 6. 38 a. pl. 7.

27. In Action against one as Heir the Summons shall be in the Land which descended; But otherwise it may be in any Land whatsoever. Fin. Law. 86. a.

28. If it be to recover the Frankentement of the Land, the Summons shall be in the same Land; Otherwise if he makes Defaulte, he may at the Cape wage his Law of Non-Summons; But if he appears, it is not material in what Land he be summoned. Fin. Law. 86. a.

29. Judgment by Default in Dower, and upon a Writ of Enquiry the Sheriff deliver'd Sejusnem, and return'd the Writ. It was objected among other Things, that the Proclamation made by the Sheriff appears not to be where the Land lies. Nor does the Return mention that the Proclamation was after the Summons, as it ought to be, as it is Hob. Rep. in Allen's Case; Nor is it said, that he did make Proclamation upon the Land. And also, that it appears not that the Proclamation was in the Parish where the Summons was, as the Statute directs. To this it was anw'red, That the Lands lie in divers Parishes, and Proclamation at the Church of any of the Parishes is good enough. It does not appear that there are divers Churches in the Town where the Proclamation was made. That the Proclamation is said to be made Proct Breve gevalit, and that shall be supposed duly made, and implies all requisite Circumstances, and he cannot make another Return; and it is impossible to be otherwise. That it is necessary to return the Place of the Summons, and it is Said that it was made Secundum formam Statuti, which supplies the Reit. And to this the Court said, That the Words Secundum formam Statuti, extend far. And Roll Jult. said, That Proclamation in one Place was good in all. Styl. 67. Mich. 23 Car. Thynn v. Thynn.

N (C) Summons
(C) Summons. By what Thing it ought to be.

1. In Allffe Attachment shall be made of any Thing upon the Land. 11 H. 6. 3. b.
2. But not of the Land itself, because the Land is not demanded by this Writ. 11 H. 6. 4. The same Law in Allffe of Mortdancelor.
3. In Precipe quod reddat, if the Tenant vouches the Bishop to Warranty, part of whose Temporalties is in the Hands of the King, he shall not be summon'd in his Temporalties, to long as any Part of them remain in the Hands of the King, tho' he has sufficient in his Hands whereof to be summon'd. Br. Summons in Terra pl. 17. cites 38 E. 3. 29.
4. Attachment shall be by a mere Chattell, which shall be forfeited by Default of the Party; but it shall not be Chattell Real, as a Leafe for Years or Ward of Body, nor by Apparel. Br. Attachment pl. 4. cites 7H. 6. 9. per Bab.
5. In Allffe the Defendant pleaded, That Not attached by 15 Days, and the Bailiff was examined, who said that he attach'd him by Glebe of the Land, and because the Attachment ought to be made by Moveables or by Pledges, or by a Thing which may be forfeited by Outlawry, and not of Glebe, which is Parcel of the Franktenement, therefore New Attachment was awarded; Quod nota. Br. Attachment pl. 1. cites 27 H. 6. 2. & 26 H. 6. Fitzh. Allffe 14.
6. In Scire Facias, against Patron and Incumbent, upon a Recovery in Quare Impedit, if the Incumbent has no Lay Fee whereby he may be summon'd, the Sheriff must summon him by his Person, and not by his Goods. 32 H. 6. 11. a. b. pl. 19. per Prior.

† This in Roll hands divided, without but any new Letter.

† (C. 2) Summons. By how many.

[1.] 3. If a Summons be made by 3 Summoners, it is sufficient. 8. H. 6. 5. b.
[2.] 4. So if it be by 2 Summoners, it is sufficient. 8. H. 6. 1. b. admitted.

But there must be 2 Summoners at the leave; and if any of them do not that which it is return'd they ought to do, then the Writ is not executed as it ought to be. F. N. B. 97. (C) — S. P. Fin. Law, 86. a. — S. P. 2 Inf. 235. — And therefore, if one of the Summoners says that the Summons was not made, and the other that it was made, the Demandant shall recover. F. N. B. 97. (C) in the new Notes there (c) cites 8 H. 6. 2. 50 E. 3. 15. — So if one makes the Garnishment, and the other was on the Land at the same time, for the same Purpoze, but says nothing, the Demandant shall recover. F. N. B. 97. (C) in the new Notes there (c) cites 5 E. 2. 61. 8 E. 5. 6. See 2 E. 3. 21.

* Pl. C. 505; S. P. arg. in Cale of the Earl of Leycester v. Heydon, says, there must be 2 Summoners in a Precipe quod reddat against the Tenant. — A Summons by one only is not sufficient, unless the Person be summon'd by the Judge himself in Court: so that there must be 2 at the leaf, that can lawfully telle of the Day, Place, and Hour, and other Circumstances, when they shall be examined by the Juslices. Flea, Lib. 6. cap. 6. S. 9. — Bract. Lib. 5. cap. 6. S. 5. pag. 333. b. 534. a. accordingly.

(C. 3) Sum-

If it be not in Attachment of Affizes taken in the King's Presence, * or in the King's Presence, as much as to say, in B. R. for there all Pleas be Crown Reign. It was accorded in E. 2. by Sir Gulielm Ingram, in Ch. Bar. in the Juicelies, that in Writs of Actions upon an Affiz of Novel Dismiss taken in B. R. there shall be a certain Day given as in the Affiz; for Example, the Monday, or the Monday, or in the Us or Quiden' of Eiler; But it believes, that the Tenant has Garnishment by 15 Days in the Attaint; for the Statute of Articulus super Chursus does not give any less Term, but only in an Affiz of 2; Novel Dismiss in B. R. C. B. or in Eire. 2 Inf. 568.

* Note. That in B. R., they allow'd Attachment in Affize of Novel Dismiss of 3 Days and less; and the Attachment, pl. 17., cites 2 N. B. 17., (13.)

This Statute, as to B. R., seems to be offensive of the Common Laws; for in criminal Causes, which concern the Life of Man, if a Man be indicted of Treason or Felony in the County, where B. R. does fit, the Venire facit for the returning of the Jury shall not last more 15 Days between the Telle and the Return; may, the Jury may be held immediately and indent, &c. But if the Indictment be taken in any other County, and removed into B. R. there ought to be 15 Days between the Telle of the Venire facit and the Return. 2 Inf. 568.

* Conclusion of One and Teneor man, in case of Treason, Felony, Misprision, Trephery, &c by the Process the same Day they award the Venire facit, as by divers Precedents, ancient and late, do appear:

This Statute was made 4 in Aherence of the Common Law, as by the express Words of the Statute it applies, contrary to a sudden and misconceived Opinion in our Books; for Glanvil's Statute, Summons being for intervallum quindecim dieum ad minus. And therefore speaketh English and Britton. It is then forcible Summons, fit to be returned forthwith, for, doth give space of 15 days at Meynes, for pay garners of his R. And Eleta, [lib. 6. cap. 6. 8. 11.] fit, Nec enim sufficie quod sumrnnnntum et ad haec Retrundendum, fed decret quod quilibet habeat tempus 15 dieum ante dictum litis, & fit summum minimus ipsum habuerit, pro illegitima debet reputari, nisi in causa specialesibus; ut lim causae mercatorum, & cruce figuratorum, & hujusmodi quae infandum defendentur & celeriteram, &c All these Authors wrote before the making of our Act. And the Author of the Mirror, that wrote of the ancient Laws of this Realm, speaking of the Time of Summons, statit, Et reasonable requisit ad mensis de 15 jours de purevea repons, & de parer en Judgment. And the Cause wherefore the Common Law let down the certain time of 15 Days was, for that a Day's Journey is accounted in Law, Co. Mlget, B. R. and its dicta corporis militia; for danser, but in the Common and Civil Law, signifies a Day's Journey, Convent legalis dicta viginti militari. And therefore 15 Days was accounted by the Common Law a reasonable time of Summons or Attachment; within which time, wherever the Court of Justice sat in England, the Party sumonned or attach'd, whereas he dwelt in England, aforesaid the King's Writ did come, might per Predictas dictas computatas, by the said Account of Days journeys, appear in Court, &c. 2 Inf. 576.

12 B. R. 174. b. S. P. 5

The Reason of these long Delays given in real Actions was, (the Recovery being so dangerous) that the Tenant might the better provide him both of Answer and of Preced. But, by Consent, they may take other than common Days. Co. Litt. 174. b.— By Assent of the Parties a shorter Day was given in Precedet quo rea. Fitzh. Tit. Jur. pl. 17. cites Pachel. 41 E. 2. 

* In a Writ of Po's in re: an Action at the Suit of the Defendant, the Writ's feit, Et the Plaintiff quersent, quod fit cromi in speculatrix nefatis apudH. fit de; there ought to be a Warrant by 15 Days, for that this (the Suits) is in nature of a Summons, and so the Writ of Venire facit for returning of a Jury, is in nature of a Summons. But this Statute extends not to a Writ of Error, nor to Days of Pressure, when a foreign Factor is in London, and the like. 2 Inf. 567.

This Act speaks of a Summons, and so it is in a Re-Attachment. 2 Inf. 567. 

* And so it is in a Re-attachment. 2 Inf. 567.

In Affize the Defendant pleaded, That not attached by 15 Days, and the Bailiff examined, who said, that he attach'd him such a Day, which was the Day of Affize made 15 Days; and because Attachment ought be 15 Days before the Affize, besides the Day of Affize, therefore a new Attachment was awarded, quod not. Br. Attachment, pl. i. cites 2 H. 6. 2. 

" Upon an Original Writ in any real Action, the Tenant must be summons'd by 15 Days, as is aforesaid; but if the Original Writ be returned for terms, the Summons must allow have 9 Returns, between the Telle and the Return. for albeit the Summones fuit allea in lieu of the Summons in the Original, yet being a judicial Process in a real Action, there must be 9 Returns, &c. and the Summons thereon ought to be made by 15 Days, or more, before the Return. 2 Inf. 567. 

12 D. 252. pl. 9. Trim. 3 Eliz. Anon.—Co. Litt. 174. b. S. P. and says, that so it is in other judicial Processes in real Actions; saving, if Confinement be demanded to be held within his Manors, these Proceeds shall be awarded from 3 Weeks to 3 Weeks. 

* Those 15 Days or more must be before the Day of the Return of the Writ, and the Day of the Return must be accounted none of them. 2 Inf. 567.
Summons.

For the Commissioners must make a Precept in Parchment, under their Seals, for the returning of a Jury immediately the same Day, if they will, or any Day after. And likewise Judges of Great Deliveries, or Judges of Peace, may by the Prisoner the same Day, or any Day after: but must not make any particular Precept. For the Judges of Great Deliveries, and Judges of the Peace, make a general Precept in Parchment under their Seals for the Summons of the Sheriff, and for Return of Jurors, &c. and therefore any particular Precept is not requisite. There was a general Summons made 40 Days before the sitting of the Judges in Easter. 2 Inst. 568.

The printed Books leave out (or before the Judiciaries of the Common Bench) which ought to be added. 2 Inst. 567.

2. Si Summonitio omnino dediita sit, & petens se teneat ad defalatum, vocandis hunc Summonitore, ut telificencetur Summitionem, & cum diligenientem exsaminati concordes inveniantur summis telificantes tunc primo vultat summunitionis legem, per quam se defendat contra summmonitum telificationem, & non tollit quod summonitus non fuit in propria Perfona, sed quod nulla summunitionis venit ad ipsum nec ad dominum nesc, ad finantiam per quam inde fuerit præmunitus ante diem litis. Si autem Summonitores in probatione summnonitionis dicorceres inveniantur, non habebit summmonitum necelic ulterioris defendere sum' fed dabitur ei alius dies in Cur. nisi tunc gratis voluerit respondere. Fleta, Lib. 6. cap. 6. S. 12 & 13.

3. Summons upon Grand Cape, and other Summons shall be served 15 Days before the first Day of the Return of the Writs; but 15 Days before the fourth Day of the Return is not sufficient; and because it wanted 4 Days of the 15 before the first Day of the Return, the Demandant could not recover Sllin of the Land. Br. Summons in Terra, pl. 6. cites 24 E. 3.


5. In Alike the Tenant said, that not attach'd by 15 Days; and the Sheriff was examined, who said, that he was warned the Tenant in the Presence of 4 good Men 15 Days before, &c. but no Attachment was made of the Tenant's Goods, nor Pledges found, &c. and the Attachment awarded good enough; Nota. Br. Attachment, pl. 9. cites 34 All. 1.

6. If the Tenant appears by the Summons, he shall not take Advantage of paying, that he was not well summoned. And the same Law, if he be essuz'd; because these things affirm the Summons. Br. Summons in Terra, &c. pl. 22. cites 46 E. 3. 30.

7. It was agreed, that in Preceipes against, the Sheriff cannot summon the one, but this is Summons against all. Br. Summons in Terra, pl. 3. Ed. 4. 21.

8. In Actions in the Realty, the Proofs is Summons, Attachment, and Dispossession of Infinite. The Summons shall be of the Defendant by his Goods. The Attachment is a Proces to take Surety of the Defendant by certain of his Goods, mere personal Chattels, (viz. neither real, as Ward, or the like; nor Parcel of his Franktenement, as a Clod of the Land, &c) that he shall be there to answer; which Goods he shall forfeit, if he does not appear; and for that Reason it must be of his own proper Goods, and not of such as are lent or pledg'd to him. And the Sheriff may either take them with him, or leave them with the Party as he pleases; but be it which it will, the Property is not out of the Party till he makes Default. Fin. Law, 94. a. b.

9. To prove a Summons of the Tenant there ought to be 2 or 3 Witnesses. Co. Litt. 6. b.

See Dicent (A) pl. 1. If the Parish extends into 2 Counties, and the Land lies in the Parish.
Summons.

made, does lie, and that Proclamation so made as aforesaid shall be returned, in one County, together with the Names of the Summoners.

And if such Summons shall not be proclaimed and returned, according to the Title and Meaning of this Act, then no Grand Cape to be awarded, but an Aliquot and Places Summons, as the Case shall require, until a Summons and Proclamation shall be duly made and returned, according to the Title and Meaning of this Act.

Manner as if all the Parishes was in one County; and the Sheriff of the County where the original Writ is brought, shall make the Proclamation in the other County at the Church there, and has sufficient Warrant to do it by the said Sheriff, tho he be not Sheriff of the County where the Church is. And 278. pl. 286. Trin. 54 Eliz. Anon.

But if there be no Church in the Parish, the Summons by the Common Law is sufficient; for it was not the Intent to have Summons at the Church where there is no Church; And so it seems when there is no Sermon for Prayer made between the Delivery of the Writ to the Sheriff, and the Return or Time limited in the Statute. And 278. pl. 286. Trin. 54 Eliz. Anon.

So if the Land lies in 2 Parishes, and there is no Church in one of them, it is sufficient to make Proclamation where the Church is in which Parish the Summons is made. And 278. Trin. 54 Eliz. Anon.

And if there be a Church in every Parish, Proclamation need not be made at all the Churches; but if it be made at any of the Churches, it is sufficient. Brownl. 126. Allen v. Walter.—S. C. Hob. 153. Per Curiam held accordingly, that the Proclamation was sufficient. It. In Imposition of the Common Law, where Summons upon the Land in one Town is sufficient. 2dly. The Words of the Statute are, For avoiding of secret Summons, and to give convenient Notice to the Party; both which are satisfied in this one Proclamation. 3dly. Other Expounding would be mischievous; for the Land may lie in 22 Towns, and to the Notice must be at every Town, and every one upon a Sunday, and every one 14 Days before the Return of the Writ. And tho' there was no actual Summons return'd, but only the Names of the Summoners, that was not regarded; for that is all the Form at the Common Law, and there is no Alteration made by the Statute in the Point of Summons. Hob. 153. Allen v. Walter.

But where he did return that he had proclaimed the Contents of the Writ, that is insufficient. Hob. 153. Allen v. Walter.—For he ought to say what. Brownl. 156. S. C.

It was moved to set aside the Grand Cape, Proclamation not having been made 14 Days before the Return of the Summons according to the Statute 51 Eliz. cap. 5. S. 2. the Summons was returnable Craft. Animar. and Proclamation made October 2, which was but 6 Days before the Return; the Court made a Rule to the said Canvile, which was afterwards made absolute. Barnes's Notes in C. B. 1. Eaff. 8 Geo. 2. Freeman v. Cartland.—Rep. of Peace in C. B. 115. Freeman v. Cannon, S. C. No Defence being made, the Rule was made absolute, on Affidavit of Service.

II. In Summons in real Actions, the Summoners in the Presence of the Pernous Viewers Etc. ought to summon the Tenant, 11. To keep his Day, and name it in Certainty to render Etc. 2dly. They ought to name the Name of the Demandant Etc. 3dly. They ought to name the Land in Demand. 6 Rep. 54. b. cites 3 E. 3. 48. 43 E. 3. 32. a. 50 E. 3. 16. b.

12. Dicecot for Non-summons in a Forndem in Remainder; the Summoners and Viewers were examined by the Court, as it was held they ought to be; and not by the Clerks, whether they spoke the Words, or the Bui-

lify, and at what Time; and it appeared they did it after sun-set: And by all the Court, the Summons was not well made. Cro. E. 42. pl. 2. Mich. 27 & 28 Eliz. C. B. Greene v. Ardene.

(C. 4) Summons. In other than Real Actions. Good.

1. Summons to appear on Friday the 17th of April, where Tuesday is the 6 Mod. 41. 17th, is as no Summons; for the Time being impossible, it was S. C. accord-

ingly. S. C. cited is set forth in the Conviction, as that he was summoned to appear, and 8 Mod. 5-8. by Virtue thereof did appear on Friday the 17th Etc. his Appearance Trin. 11 cannot be intended on another Day; and for that Reason a Conviction Geo. in CrE


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(C. 5) Necessary.
See Tref-

taps (B. 6) (C. 5) Necessary. In what Cases. In other than Real

Actions.

Cited by

Powell 2
Lutw. 1565,
and denied.

1. Where a Capias issues out of an Inferior Court, and no Summons
was first issued, False Imprisonment lies upon the Arrest.

2. Summons is necessary in all Cases of Distraint, except where
the Party does not live within the Corporation, but in some distant Place.
Chalke, cites it as the Rule down in Glides's Cafe.

Glide, and cites James Baggs's Cafe; and Holt Ch. J. held, That there ought to have been a parti-
cular Summons for a particular Charge, and that it is not sufficient to summons him generally, and then
to allege particular Crimes against him, which he may not be prepared to answer; and therefore the
Words last summorned did (which were mentioned in the Return) were not material. But by the Opin-
ion of the other 3 Jult, the Return in this Case was held good. And yet afterwards in Mich. Term 7
Will. 5. one Morris brought a Mandamus to be referred to the Place of a Capital Burglary of the De-
vizzes in Wilshire, and a Return was made of the Cause of his displacing; but no Mention was made that he
had any Notice or particular Summons to answer the Charge: And Judgment was given in that Case,
purport to the Opinion of the Ch. Jult. that the Return was ill.— 12 Mod. 27. The King v.
Glide, S. C.

3. D. was convicted upon a Penal Statute of 7 Jac. 1. cap. 7. for im-
becilling of Tarn delivered to him to be woen. Per Holt Ch. j. Of Com-
mon Right the Party ought to be summoned, if possible; and it would
be well to set forth, That he was summoned, and appeared, or did not
appear, or could not be found to be summoned; and though the Act of
Parliament orders the Offender should be convicted, yet that must be in-
tended after Summons, that he may have an Opportunity of making his
Defence; and it is abominable to convict a Man behind his Back.
And all the Court agreed, That of Common Right there ought to be a Sum-

4. An Order of Baftardy was quash'd, for not setting forth that the
Party was duly summoned; for it is against the Law of England, that a
Man should be impeach'd without Notice to make his Defence. 8 Mod. 3.
Mich. 7 Geo. The King v. Glegg.

A Summons need not be
mentioned in an Order of Jus-
tics.

Where a Mandamus was directed to the Chancellor &c. of the Uni-

versity of Cambridge, to restore Dr. Bentley to his Academical Degrees,
to which a Return was made, but no Mention therein that the Doctor was
summoned, nor did the Return set forth that the Proceedings in the Vice-
Chancellor's Court, or the Congregation, are according to the Rules of the
Civil Law, and therefore the Return was held ill, and that therefore the
Proceedings must be intended to be agreeable to the Rules of the Com-
mon Law; and if so, it not appearing that the Party has any Relief by
applying to another Court, this Court will relieve him, if he has been
proceeded against and degraded without being heard, which is contrary to
Natural Justice. And therefore a Peremptory Mandamus was granted.
of Cambridge Univercity.

6. Exception was taken to an Order of Sessions made to hinder the De-
fendant from selling Ale, That it did not appear that the Defendant was
summoned. To this it was answered, That 'tis true a Summons had been
necessary, if the Statute had not given the Sessions, or two Justices, an
absolute
Summons and Severance.

absolute Power to put down Alehouses at their Discretion; but that where they have an unlimited Power, it is not necessary to set forth any Summons in their Order, neither is a Summons ever set out in Orders, but in Convictions for Deer-hunting, or the like, where great Fines are imposed, there 'tis usual to set forth that the Party was summoned: but 'tis not so in Orders for Ballardy. 8 Mod. 390. Mich. 11 Geo. The King v. Aulfin. by Information. 2 Ed. Ravn. Rep. 1407. Trin. 11 Geo. The King v. Venables. S. C. accordingly, as to its not being necessary to mention the Summons in the Order.

(D) Summons. Attachment. By the Goods of whom One may be attach'd.

1. If B. has Goods of A. in his Possession, B. may be attach'd by No Goods those Goods; for B. is charg'd to render it to A. 11 H. 4. 90. b. shall be attach'd, but the proper Goods of the Party, and not Goods pledg'd nor Goods borrowed. Br. Attachment, pl. 20; cites 34 H. 6. 25.

2. In an Action against Baron and Feme, the Feme, because she has no Goods, ought to be attach'd by the Goods of the Baron. Contra 7 H. 6. 9. b.

Fitzh. Tir. Attachment, pl. 2. cites Mich. 7 H. 6. 9. that the may be attach'd by the Goods of the Baron.—And Ibid. pl. 4. cites Trin. 26 H. 6. accordingly.—Fitzh. Tir. Forciture, pl. 17. S. P. admitted, cites Mich. 8 E. 2.

3. So in Action against the Sovereign and his Commoigne, the Commoigne ought to be attach'd by the Goods of the Sovereign. 7 H. 6. 15.


(E) Summons and Severance. In what Actions it lies. See (I. 2).

1. It lies in Action of Waife, because the Land is to be recovered. Br. Summons and Severance, pl. 9.

(bis) cites S. C.—S. P. Br. Waife, pl. 29. cites 42 E. 3. 21. 22.—S. P. For the Waife is an Exercitation, and the Action of Waife is a Plea real: In an Action of Waife brought by 2 in the Tent, a Release of the one is a Bar to both; but otherwise it is in the Tenet; for there it bars but himself. 2 Inf. 307.


Writ of Error upon it. Cro. E. 524. pl. 16. Pach. 56 Eliz. B. R. Pipe v. the Queen.—Br. Summons and Severance, pl. 21. cites S. C.—In Quare Impedit by 2, if they are in Court, there the Defendant may plead it to the Count, and the Writ shall abate; Per Littleton and others, and they shall not be fevered. Br. Count. pl. 66. cites 6 E. 4. 10.

† Br. Summons and Severance, pl. 19. cites S. C.

3. But the other shall have the Suit of the Whole. Contra. 21 C. 3. 38. b.

4. It lies in * Ward of Body; because it goes in Disadvantage of Jenk. 24 pl. his Companion, being entire. 49 C. 3. 19. 27. 18 C. 3. 56. 30 C. 3. 30. — Br. Summons and Severance, pl. 21. cites S. C.—In Quare Impedit by 2, if they are in Court, there the Defendant may plead it to the Count, and the Writ shall abate; Per Littleton and others, and they shall not be fevered. Br. Count. pl. 66. cites 6 E. 4. 10.

† Br. Summons and Severance, pl. 19. cites S. C.

5. So
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Summons and Severance.

5. So in Right of Ward of Land Summons and Severance lies, because it is seizable, and he is to have the Moity. 49 C. 3. 27.


7. It lies in a * Detinue for Charters, for Peradventure he is to recover a Warrany by it. 20 H. 6. 43. 18 C. 3. 56. adjudged.

8. It does not lye in Quid Juris clamat. 48 C. 3. 32.


8. It lies in Action of * Debt by Executors. 10 H. 6. 2. b.

10. It lies in Action of * Debt by Executors. 10 H. 6. 2. b.


12. But otherwise it is if it be Quare bona Sue capiti. 14 D. 4. 29. b.

13. Attaint by three. They were essoign'd at the first Day, and at the Day of Adjournment of the Essoign, two did not come, by which Summons Ad Seuquind' suml was awarded, and no other thing against them &c.

14. Aijfe by 8 Daughters, * are Nonsttited, or will not sue, they shall not come, by which Summons Ad Seuquind' suml was awarded, and no other thing against them &c.

15. Write of Error was brought by several founded upon Write of Raifishment of Warrant, They appeared by Attorney, and after two of them made Default after Appearance, and therefore were severed by Award without Proceeds. And to see that the Severance lies in Write of Error founded upon
Summons and Severance.

upon a personal Action. Brooke says the Reason seems to be in as much a
as the Plaintiff in the Writ of Error made Default in the Writ of Ravil-
ment of Ward, and so in a Manner they are by way of Defence, in which
Cafe the Act of the one shall not prejudice the other in Action personal,
contra of the Plaintiff in Action personal; For the Nonuit or Release of
the one goes against both. Br. Summons and Severance, pl. 19, cites 28.
All. 35.

In false Judgment, one of the Plaintiffs, who before had appeared, was nonuit and sever'd. D. 262.
b. pl. 52.

16. Champerty by two against one also maintaine'd in Scire facias upon
a Recognition brought by the Plaintiff for the Part of J. N. The one
Plaintiff was nonfitted, and it was awarded the Nonfuit of both, and
that Severance does not lie; contra by some, if the Action had been
founded upon a Real Action. But Brooke lays it seems that all is one;
For a Man shall recover only Damages in this Action; Contra of Attaint
for by Attaint upon a real Action, a Man shall be restored to the Land
and recover Land; But contra in Champerty. Note the Diversity. Br.
Summons and Severance, pl. 7. cites 44 E. 3. 6.

In Champerty founded upon a personal Action, Summons and Severance does not lie; per
for it is founded upon a real Action. Brooke lays, Quare inde; For it seems that it does not; For it is not like
Writ of Error or Attaint, which shall reverse the first Action; For this Action of Champerty is only
to recover Damages or Penalty against the Party Defendant; for the Writ at the Suit of the Party, lays,
Ad gravem Damnum, &c. Br. Summons and Severance, pl. 20. cites 47 All. 5.

9, 10.

18. It was agreed arguendo, that in Audita Querela brought by two, upon
a Release made to them, if the one will not sue, the other shall sue alone,
and he who makes Default shall be sever'd; and the Reason seems to be,
inasmuch as they are by way of Defence; and of the Part of the De-
defendant, the Default of the one shall be the Default of both. Br. Sum-
mons & Severance, pl. 2. cites 34 H. 6. 31. & 35 H. 6. 19.

19. It lies in Writ of Infravl, Ravishment of Ward, and other like
Cases, as Ejection, &c., where a Man is to recover the thing itself
which is in Demand. Per Vavifor. Kelw. 47. b. pl. 4. Mich. 18 H.
7. Anon.

20. In a Nativa habendo Summons and Severance lies not. But in a
Liberate prohanda it is otherwise. F. N. B. 73. (I)

21. In a Quo Fvare brought by 2, Summons and Severance lies; and the
Nonfuit of the one shall not be the Nonfuit of the other. F. N. B.
128. (K)

22. In a Writ of Escheat, Forfeited, Error, * Nuper Obiiit, if one Co-
parcener &c., deforces the other, he that is deforced shall be summons'd
and fever'd. See Jenk. 42. pl. 79.

23. Summons and Severance lies in a Writ of Partition, and yet he
that was fever'd shall have his Part; for Partition must be of the Whole.
Jenk. 211. pl. 46.

pl. 70. Mich. 28 & 29 Eliz. B. R. in Giles's Cafe.

25. And therefore it lies in an Action on the Case Quare exalatit

P

(E. 2) At
Summons and Severance.

(E. 2) At what Time.

1. Summons and Severance is always before Appearance; and Nonsuit after Appearance, where the Severance is without Precise, &c. 10 Rep. 135. a. In a Note by the Reporter, at the End of the Case of Read v. Redman, cites 38 All. 39. 26 Aff. pl. 35.

2. Error was brought of a Judgment in Ejectment against 2 Defendants; and afterwards one of the Plaintiffs in Error gave a Release to the Defendant in Error, who pleaded it in Bar as a Plea Puis dar-aign Continuance. It was intitled upon Demur, that after in Nullo errantina pleaded, there cannot be any Summons and Severance; and resolved, that the Release should bar him only that released. Cro. J. 117. pl. 5. Pach. 4 Jac. B. R. in Case of Blunt and Farley v. Snodilan.

(E. 3) Necessary. In what Cases.

1. A Writ of Error to reverse a Judgment given against 20, was brought by them all; but only one of them appear'd, and the others Escalet non coevant. Afterwards the one align'd Errors alone. It was held, that the Alignmen of Errors of the one only, per se, without filing a Summons and Severance of the other 19, is as null and void; and the Writ was abated, and Execution awarded. Cro. E. 891. pl. 8. Trin. 44. Eliz. B. R. Andrews v. Lord Cromwell.

(F) Severance. In what Cases it lies.

1. In such Cases, where Men may have several Actions, if they join in an Action, there shall not be any Severance in it for their Folly. 7 H. 4. 45. b.

2. As if several are out-law'd in Appeal of Murder, if they join in a Writ of Error, there cannot be any Severance therein, because they might have had several Writs. 7 H. 4. 45. b.

But when they plead a joint Plea, as Release, or the like, which is found against them in Action perfo- nal, there is.

3. In Conspiracy against two, the one pleaded Not Guilty; and the other another Plea; and the Jury pass'd against them to the Damage of 100 l. The one brought Attaint alone, and it was adjudged, that it lay well of the Principal; But he was compelld' to abridge his Demand of the Damages; for as to the Principal, their Plea was several, and therefore may suffer in Attaint; but the Damages were entire, therefore he shall abridge as to this, tho' he has paid the Whole, and made fur- mifce of it: For the Court shall intend that both have paid it, according to
Summons and Severance.

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to the Form of the Judgment. Br. Summons and Severance, pl. 2. cites necessity they shall join; and yet there, if the one will not sue, Severance does not lie. Ibid.

4. Where a Man leases Land for Life, and has Issue two Daughters, and dies; and the one takes Baron, and the Tenant grants to her and her Baron all his Estate, this is no Surrender; per Vavilow, J. clearly. And if they do Waive, the Action of Waife shall be brought in all their Names, and the Baron and Feme shall be summons'd and sever'd. Br. Summons and Severance, pl. 14. cites 21 H. 7. 40.

5. Error in C. B. was brought by several Defendants; the Defendant The Writ in Error pleads the Release of one of the Plaintiff’s only. This is a good Error shall follow Bar against the Releasor, but not against the others; and therefore there ought to be a Summons and Severance, and for that Reason Judgment revers’d Nili &c. Cumb. 95. Mich. 4 Jac. 2. B. R. Croket v. Daniel, cites 2 Cro. 116. Blunt’s Cafe.

Severance lies in the first Action, then the Release of one Defendant in a Writ of Error brought on such Action is a Release of the other Defendant. Godb. 59. pl. 70. Mich. 28 & 29 Eliz. B. R. Giles’s Cafe.

(G) At what Time. In what Cases there shall be Severance without Writ of Summons adsequendum simul.

1. After Appearance made by 2 Jointenants Plaintiffs, if one makes a Default he shall be severed immediately without filing Summons adsequandum, * 2 D. 4. 23. b.

Plaintiff in Error appeared, and the others made Default; he who appeared ought to have prayed Proceeds Adsequendum simul, and thereupon Judgment of Severance ought to have ensued; for before Appearance there can be no Judgment of Severance without Proceeds; but otherwise it is after Appearance. Yeli. 4. Pacht 44 Eliz. B. R. in Cafe. of Ld. Crumwell v. Andrews, cites 38 E. 5. 3. b.

* Br. Summons and Severance, pl. 10. cites S. C.

2. But otherwise it is if one makes Default before Appearance. 2 Br. Summons and Severance, pl. 10. cites S. C.

(H) What Judges have Power to award a Severance.

1. The Justices of Nili Prius have not Power to do it. 2 D. S. P. And it was said that they shall

succeed from taking the Impeach, and the Justices of the Bank, who have the Record, shall take the Impeach; and others in a contrary Opinion; therefore quere. And Brooke says, this seems to be of the taking of the Impeach. Br. Summons and Severance, pl. 10. cites S. C.

(I) Summons
(1) Summons and Severance. *What Persons shall be
Summon’d and sever’d.*

1. If Coparceners bring Writ of Collage, and one is non-suited, the
shall be summon’d and sever’d. *10 P. 9. b.*

2. So if one relieves he shall be sever’d. *10 P. 9. b.*

3. In Quare Impedit by Coparceners, they may be summon’d and
sever’d. *35 C. 3. 35. adjudged.*

4. If 2 Executors sue Execution of Damages recovered by Testator,
Summons and Severance lies. *31 C. 3. 13. b.*

But it lies not of Tre-

5. So in Action of Trespa by Executors, of the Goods of the Testa-
tor taken, Summons and Severance lies. *14 D. 4. 29.*

Hard. 318. Manley v. Lovell.—Co. Litt. 159. a. (h) is, that it lies for Goods taken
out of their own Possession.

6. So in an *Account by Executors against the Bailee of their
Tetlror, Summons and Severance lies. 20 C. 3. Account 78.

(1. 2) Executors. *In what Cases and Actions they may
be Summon’d and Sever’d.*

1. *D*ebt by 2 Executors, *Excommunication was pleaded in the one,* by
which he was demand’d, and did not come; wherefore he was se-

2. Debt by 2 Executors, the Defendant was outlawed, and fled Charter
of Pardon and Scire faciam against the Executor who was not served, by
which he was served again, which was returned served against the one, and not
against the other; and the Plaintiff prayed Scire Pluribus, and could not
have it, but was compelled to count against him only. *Br. Executor, pl. 44.*
cites 3 H. 4. 10.

3. In Action against 2 Executors, the one made Default, he shall be se-

4. In Debt for Arrears of Annuity granted by Deed to the Testator, Sum-
mons and Severance lies for the Executors. Keilw. 47. b. Mich. 18
H. 7.
Summons and Severance.

No. Summons and Severance lies in personal Actions, as in a Man appoints 2 Men Executors, there shall be Summons and Severance, because though one of the Executors may release, though such a Release is a Devallavit in him, yet if he will not proceed at Law, (is no Devallavit; and therefore both Executors, being only Trustees for the Person deceased, they shall not both be compelled to go on together; but if one refuses, the other may bring his Action in the Name of both, and have Summons and Severance; for otherwise each Co-executor might, by Collusion with the Debtor, and not proceeding, keep the other from recovering the Affects, and not create a Devallavit in himself. But after such Summons and Severance he does not proceed for the Moiety, as in Real Actions; but he proceeds in that Action as the whole Representative of the Testator, and is invited to the whole as the Testator was in his Life-time. G. Hill. C. B. 196, 197.—S. P. Cart. 151. cites 9 Rep. 37. Henble's Cafe; 7 H. 4. 18.

(K) How it shall be made. In what Cases, without Process.

1. In a Right of Ward by 2, if the one be nonsuitted after that he has S. P. but after Appearance, there shall be Process. Br. Summons and Severance, pl. 12. cites S. C.

2. Summons and Severance lies between Executor's Plaintiffs; and if one be outlaw'd or excommunicated, he may be demanded; and if he comes not, shall be fever'd by an Award without Process, after he hath appeared, and the other shall proceed without him; but if he has not appeared, then Summons and Severance shall issue out against him. Brownl. 37. in an Anonymous Cafe.

(L) How the Process shall be, before Severance.

1. In Formedon, if Summons ad sequendum simul illuc, the Grand Cape shall go of the Whole, and not of a Moiety, till the Severance comes. 17 G. 3. 36.

2. If two sue Scire Facias of the Land, and the one makes Default, Summons ad sequendum simul shall issue, and not Scire Facias ad sequendum simul, as appears 3 E. 3. And yet it was said, that upon Aid Prayer in Scire Facias, there Scire Facias ad Auxiliandum shall issue, according to the Nature of the Original. Br. Summons & Severance, pl. 18. cites 12 H. 4. 3. & 18 E. 3. accordingly. But by 6 H. 7. 12. Scire Facias shall be the Process in the first Cafe, by the beit Opinion.

3. Debt by 2 Executors, and the one will not sue, he shall be summoned and fever'd; and if the Summons ad sequendum simul be awarded, and at the Day the Defendant makes Default, yet the Process shall be made in Name of both the Executors, till the one be fever'd, or the Process determined by Outlay against the Defendant; and he shall not be fever'd till he be summoned. Br. Summons and Severance, pl. 1. cites 29 H. 6. 3.
Summons and Severance.

4. As in Précipe quod reddat by two, if the one will not sue at the Day of Return, and the Tenant makes Default, there Summons ad sequendum shall issue, and Grand Cape of the whole Land; quod non negatur. Br. Summons and Severance, pl. 1. cites 28 H. 6. 3.

5. There are 2 Sorts of Severances, 1. When the Plaintiff will not appear, there he shall be summons’d and fever’d. 2. When all appear, but some one or more will not prosecute, there he or they shall be fever’d by Order of Court. Per Hale, Ch. B. Hard. 318. Mich. 14 Car. 2. in Scacc. in Cafe of Manly & al v. Lovell.

(M) Pleadings. And in what Cases the Writ shall abate before or after Severance.

1. In Affize, if there are 4 Jointants, and two diffuse two, they shall have Affize in Name of the four; and the two shall be summons’d and fever’d. Br. Summons and Severance, pl. 17. cites 23 Aff. 9.

2. In Affize against 3 Daughters, it was found, that 2 made the Diffi- sim, and the third not; and all three brought Attaint, and she who did nothing was fever’d; and the Defendant pleaded to the Writ, because the third, who was acquitted, and had no Caufe, nor was not grieved, was join’d with the other two; and therefore the Writ was abated; quod mirum, after Severance. Br. Brief, pl. 294. cites 29 Aff. 14 — and fee thereof 39 G. 3. & 11 H. 4. 26, 27.

So in Writ of Account, brought by the Executors of the Earl of Salisbury, it was pleaded, that one of the Executors, who was named in the Writ, is dead. Judgment of the Writ, &c. It was replied, that he was fever’d, and died afterwards; and yet the Writ was abated by Award, &c. Firth Tit. Accomp, pl. 78. cites Hill. 20 E. 3.

But in Debt by two Executors, one was summons’d and fever’d, and he that was fever’d, died. The Defendant pleaded in Abatement of the Writ. Resolved, that the Writ shall not abate. 10 Rep. 153.

Pach 10 Jac C. B. Read v. Redman.


4. Précipe quod reddat by 2 Femes against one who would’d, and at the Summons ad Warrant’ but Pluries, the one did not come, but was nonsuit’d; and the other appeared, and pray’d, that the other be fever’d; and was demanded, and did not come, and was fever’d by Award; and the Tenant said, that she who is fever’d has taken Baron pending the Writ. And the Writ awarded good, quod Nota, by reason of the Severance; for otherwise it shall abate against all. And now for the Moity it remains good. Br. Brief, pl. 225. cites 39 E. 3. 16.

5. Ward by 2, and counted, that the Tenant held of their Ancestors, and conveyed the Demise to them; the Defendant said, that there is one R. in full Life, not named, to whom the Seignory descended with the Plaintiffs. Judgment of the Writ. Belk said, this R. has released to the Tenant, against whom the Writ is brought, and so the Action is given to us two alone. But Cand. said, You ought to have joined all three, and after R. should
Summons and Severance.

R. should have been summon'd and fever'd. Finch said, If you had counted that be held of yourself, and had not mentioned the Defent, then it had been good without R. But now, by mentioning the Defent, R. ought to be named, and summon'd, and fever'd, and the 2 shall recover the Whole, and the other may have Account against them. Br. Summons and Severance, pl. 5. cites 45 E. 3. 10.

6. Where two Lords are, and the one releases to the other, and he comes to disfain, and the Tenant offers but a Moiety of the Rent, he shall take the Dutrels. Per Wych. Br. Summons and Severance, pl. 5. cites 45 E. 3. 10.

7. Three leafe for Life, and 2 released to the third, and he brought Wafte alone, supposing that he leafe'd; and the Tenant slew'd Deed that the three leafe'd, Judgment of the Writ; and the other pleaded the Releafe of the two, and the Writ awarded good; for whereas three leafe'd, therefore the one leafe'd. Br. Summons and Severance, pl. 6. cites 46 E. 3. 17.

8. Affife by 2 Barons and their Femes by Title of Coparcenary, and the one Bardon and Feme were summon'd and fever'd, and the Tenant pleaded to the Writ, because the Baron who was fever'd was Alien born; Et non allocuor, but the Writ awarded good. Contrary it feems, if he had not been fever'd. Br. Briel, pl. 120. cites 11 H. 4. 26.

9. For the better understanding the true Reason of the Law in the Cafes of Summons and Severance, these Diverfities are to be observed. 1st. Between Writs real Original, and Writs real Judicial, for if 2 Coparceners or Jointenants bring an original real Action, and one is summon'd and fever'd, and dies, the Writ shall abate; but in a real Action a Man shall never recover upon a Writ which falls in Words, or waqnt for his Cafe, because he may have a Writ both true and apt, as this happens to become to by the Act of God; and in such Cafe the Writ shall abate. But if 2 Coparceners or Jointenants bring Seire facies, which is a judicial Writ, upon a True levied &c. and one is summon'd and fever'd, and dies without Illuc, the judicial Writ shall not abate; but if the Coparcener that died had Illuc, then the Writ should abate, according to 42 E. 3. 2 & 8. 2dly. The Diverfity is between real Writs original, where he that is summon'd and fever'd dies, which is the Act of God, and by which the Writ abates, and where an Entry is made into the Land, or there is a taking of Baron by the Person who is summon'd and fever'd; for such are the Acts of the Party summon'd and fever'd, and the Writ by such Acts (where there is not any Summons and Severance) become abatable only. 3dly. The Diverfity is between Actions Real, concerning Freehold or Inheritance, without any Regard to the Survivor, and Actions merely Personal, or Mixt with the Reality, in which Chattels or Things intire are demanded, there, if one Plaintiff be summon'd and fever'd (where the Thing intire survives to the other) the Writ shall not abate; as in Writ of Ward of the Body, according to 37 H. 6. 11. 38 E. 3. 35, 36 &c. 10 Rep. 134. a. b. in Cafe of Read v. Redman.

10. In Squarer Impedits in some Cafes, the Death of one of the Plaintiffs shall not abate the Writ without any Severance, viz. where otherwise the surviving Plaintiff would be without any Remedy &c. as upon Plenary, and 6 Months past'd, where Lapfe shall incur, which Reason perhaps may reconcile all the Books, which prima facie seem to differ; and this is the Reason given in some of the Books, as in 38 E. 3. 36. 9 H. 6. 30. &c. that otherwise the Tort done to the Plaintiff will be dishonour'd, and the Survivor lose his Pretenration by Lapfe, and perhaps his Inheritance, As where 2 purchase Advowson in Fee, and a Stranger utters; but where after the Death of one the Survivor may have a new Writ without any Prejudice to him, there in some of the Books the Writ has abated, but without Question, if one be summon'd and fever'd, and dies, the Writ shall not abate. 10 Rep. 134. b. in Cafe of Read v. Redman.

(N) What:
Summons and Severance.

(N) What the Party sever'd may do after Severance.

1. In Debt by two Executors, one of them is summoned and sever'd, and the other proceeds to Judgment, in such Case he who was sever'd shall not be received to acknowledge Satisfaction of the Debt, because he has no Day, nor is privy to the Judgment, but excluded from it; and yet if he had made a Release before the Judgment, it should have been a Bar, notwithstanding the Severance. D. 519. b. pl. 15. Mich. 14 & 15 Eliz. Anon.


1. In Ward by 2, if the one is summoned and sever'd, the other shall recover the whole Ward; for this cannot be sever'd; Per Finch. Br. Judgment, pl. 127. cites 45 E. 3. 10.

2. Debt by 6 Executors, on a Bond to Testator, 3 of them were summoned and sever'd, and the other proceeded and had Judgment; and upon a Writ of Error brought it was objected, that there is no Mention of those who were sever'd; for that they being still Executors, ought to be named in the Judgment. Precedents were ordered to be search'd in C. B. as to the Court there, whether upon Summons and Severance Judgment should be for those only which prosecuted; which they certified to be so. And the Court (abhente Brampton) held it a good Court; for perhaps the Executors which are sever'd never prov'd the Testament, nor sever'd will either prove it, or administer; so that when they are named in the Writ, and would not join, it is reasonable that Judgment should be for those only that prosecuted without naming those who sever'd. And Judgment was affirmed Nisi &c. Cro. C. 420, 421. pl. 11. Mich. 11 Car. B. R. Price v. Parkhurst.

3. A Judgment is recovered against 4 Defendants. A Writ of Error is brought, and one of the 4 Defendants is summoned and sever'd, and he releases Errors, the Judgment is reverse'd quoad the 3, and a Nil capiat per Breve entered for the 4th. 2 L. P. R. 538. cites Mich. 9 W.

For more of Summons and Summons and Severance in general, see Attachment, Jointenants, Nonlit, and other Proper Titles.

Summons
Summons of the Pipe.

(A) In what Cases to issue &c.

1. The Summons of the Pipe got in the Tallages, and afterwards Rents, with the other Debts of the King. Gilb. Hist. View of the Exch. 18.
2. The Summons of the Pipe is a Summons in Words the same with S. P. But that of the Green Wax, only different Matters are charg'd in it. This Summons was in order to quicken the Tenants to pay in their Rents into the Exchequer, and take Tallies from thence. Gilb. Hist. View of the Exch. 91.
3. Summons of the Pipe issued against Defendant to levy 500l. upon a Super fet upon him by one Jones Treasurer of certain Sums of Money in the late Times. And a Superfedeas was now moved for, because this is an Execution against Body and Goods, and otherwise the Party cannot be received to plead in Discharge of it. And per Hale Ch. Baron, Summons of the Pipe ought not to issue but for a Debt upon Record, or a Debt stated and determined, and not for Money due upon Matter in Pains, as this Case is: Wherefore if a Collecter in Chief charge his Under-Collecter upon Account, or an Under-collecter charge any particular Person within his Precinct; or if any Accountant charge another together with himself, for Timber, or other Goods of the King's fold to him, and not paid for, Summons of the Pipe shall not issue in these Cases, but a Scire facias, or a Diminigas ad Computandum, to which the Party may plead; for that these Debts are not Debts upon Record, but arise upon the Accountant's Charge only; and so here: Wherefore in this Case the Summons of the Pipe was superseded, and a Scire facias ad Computandum awarded. Hard. 322. pl. 1. Patch. 15 Car. 2. in Scac. Anthony Mildmay's Case.

For more of Summons of the Pipe in general, see other Proper Titles.

Sunday.

(A) What Things done on a Sunday, are void, or not.

1. Die dominico nemo mercaturam facit: id quod si quis egerit, & ipse merces & preterea 30 solidis multatur. 2 Init. 220. cites the Laws of King Ethelbert.

R. 2. A
Sunday.

2. _A Fair held on_ a Sunday is well enough, altho' by the Statute there is a Penalty inflicted on the Party that sells on that Day, yet it makes not the Sale void; _Per Cur._ Cro. E. 455, pl. 1. Mich. 38 & 39 Eliz. Comins v. Boyer.

3. _Information exhibited_ on a Sunday is good; for tho' 'tis not Dies Juridicus to award _Judicial Process_ or to make _Entry of a Judgment of Record_, nevertheless 'tis good to accept of an Information upon a Special Law. _Jo. 156._ Mich. 20 Jac. in the Exchequer, Bedoe v. Alpe.

4. _One was taken_ on a Sunday, _by Virtue of an Escape Warrant_; and it was held good; for one may take another on a Sunday upon fresh Pursuit; And this is in the Nature of it, tho' it be by a new Method; for _this is no original Process_, but the Party is in still upon the old Commitment continued down. 2 _Salk. 626._ pl. 7. _Hill_. 2 _Ann._ B. R. Parker v. Sir William Moor.

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1. 29 _Car._ 2. _Exepts._ That _no Person upon the Lord's Day shall serve or cap._ 7. _S._ 6. _execute any Writ, Process, Warrant, Order, Judgment, or Decree_ (except in Cases of Treason, Felony, or Breach of the Peace) _but the Service of every such Writ &c shall be void_; and the Persons executing the same shall be as liable to answer Damages, as if they had done the same without any Warrant.

2. In Trepass and Battery, upon Not guilty pleaded a special Verdict was given, viz. The Plaintiff being complained of to a Justice of Peace, he makes a Warrant to the Defendant to take the Plaintiff, and _to find Surrities for the good Behaviour_ of the Defendant, being Confined, _executes the Warrant upon a Sunday_. Whether this was good within the late Statute which says, That _all Process executed upon a Sunday other than for the Peace shall be void_; Resolved for the Defendant, that a Warrant for the good Behaviour is a Warrant for the Peace and more; And this Statute is to be favourably extended for the Peace. This Judgment was affirmed in a _Writ of Error_ in _B._ _R._ _Trin._ 32 _Car._ 2. _Raym._ 250. _Hill._ 39 & 31 _Car._ 2. C. B. _Johnson_ v. _Colston_.

3. _Delivery of a Declaration_ upon a Sunday is not good. _Rules per Holloway_, J. _Comb._ 21. _Trin._ 2 _Jac._ 2 _B._ _R._ _Anon._

_Declaration was delivered on Trinity Sunday and debated on Motion, if such Delivery were not void by the Statute of 29 _Car._ 2. _Per_ Holt strongly it is; For if it be _no Act of Necessity_ within the Meaning of the Statute, as _putting of Ecclesiastical Process upon the Church Door, or making a Tender to serve a Penalty_. And he said he would be the Word Process for proceeding, and such Contraction as tends to a better Observation is to be made; And this Declaration, as deliver'd, could not be taken Notice of, without breaking of the Sabbath, till _Trin._ _Term_; For that by the Statute of 32 _H._ _S._ 21. begins on Monday; _but Quidn. Pach._ is indeed always on the Sunday, but is kept on the Monday. _Gould & Powis_ dubitabat. 12 _Mod._ 926. _Mich._ 13 _W._ 5. _Walsgrave's Cafe._ ——— This was on a Motion to set aside a Judgment in Trepass after a Judgment by default, and a Writ of Inquiry executed. _Holt_ Ch. J. seemed to incline that the Delivery was not good; Because the Statute intended to refrain all legal Proceedings; But Powis and _Gould contra_, because such Delivery was but Quasi a Notice, and as a Letter and not a Process. But it appearing to the Court that the Defendant had appeared, and that a Writ of Inquiry had been executed, they would not intermeddle and said that that had made all good. And the Judgment good. _Ld._ _Raym._ _Rep._ 704, 706. _Mich._ 13 _W._ 5. _Walsgrave v. Tailor_, _S._ _C._


To have an _Attachment for Non-performance of_
Sunday.

whereon to have an Attachment. 12 Mod. 158. Mich. 9 W. 3. Br. an Award, Anon.

Service, which if it be on a Sunday, tho' 'tis not good to have an Attachment for Non-payment on that Day, yet it is for Refusal on any other. Comb. 462. Mich. 9 W. 3. B. R. Anon.

6. The Question was, Whether serving an Attachment for Contempt on Sunday were within the Statute against Sabbath-breaking, the Words being that all arrests on Sunday, except for Breach of Peace, are void. Holt Ch. J. said, suppose it were a Warrant to take for Forgery, Perjury &c. Shall they not be served on Sunday? And shall not any Proces in the King's Suit be served on Sunday? Sure the Lord's-Day ought not to be a Sanctuary for Malefactors; And this here parleys of the Nature of Proces upon an Indictment; But Cur. advisate vult. 12 Mod. 348. Fish. 12. W. 12. 10. 3. B. R. Sr. . . . Cecil and others of the Town of Nottingham.

7. Service of a Declaration in Execution upon a Sunday was held good per Cur. and not within the Statute 29 Car. 2. cap. 7. Comb. 286. Trin. 6 W. & M. B. R. Anon.

1; W. 5. It was held per Cur. That Service of a Declaration in Execution upon Sunday is not good now upon the Statute of 29 Car. 2. For it is a Procefs, tho' not a judicial one; For it is compulsive on the Party to appear; And it may as well be said, That Service of a Summons in a Real Action may be good on Sunday. 12 Mod. 665; Taylor's Cafe.

8. A Man was arrested on a Sunday by a Writ out of the Marlshalsea: 1 Salk. 58. The Court refused to discharge him, but directed to bring an Action of false Imprisonment. 5 Mod. 95. Trin. 7 W. 3. Wilton v. Guttery.

9. A Woman was libel'd against for living incontinently with the Lord &c. and was thereupon excommunicated. The Suggestion for a Prohibition, and Likewise for an Abolition, was, That she was wrongfully excommunicated, the Citation being served on her on a Sunday contrary to the Statute 29 Car. 2. by which it is enacted, That no Proces whatsoever shall be served on a Sunday, except in Cases of Treason, Felony, or Breach of the Peace. And tho' it was pretended this Citation was fixed on the Church Door on a Sunday, and that 'tis the constable Usage both before and since the Statute to do so, it was said, That this might be according to the Usage, where the Perfon cannot be personally cited; But where he can, 'tis not the constable Practice which will give Authority to such a Citation, for 'tis a mischievous Practice and ought to be redfreed; But if the Chief Justice thought it was not the Intent of the Statute to take S. C. cited away the serving this Proces in this Manner, but that the Constable might be different in the Execution of other temporal Proces which might have been served as well on any other Day as on a Sunday. 5 Mod. 449. Mich. 11 W. 3. B. R. Anon.

10. A Bailiff arrested a Man on a Sunday since 29 Car. 2. cap. 7. by which all such Arrests are made unlawful, and the Bailiff 'is killed in the making it', Serj. Hawkins says, Perhaps this will be Manslaughter only. Hawk. Pl. C. 86. cap. 31. S. 58.

(C) In what Cases it shall be Dies Juridicus.

1. If an Original should bear Date on a Sunday, the Appearance of the Party would not help it. Arg. Vent. 7. Hill. 29 & 21 Car. 2. B. R. in Cause of " Vaughan v. Loyd. But where a Declaration is executed on a Sunday, and a Writ of forgery was executed. The Court refused to intermeddle, and said, That the Appearance had made all good; And the Judgment stood. Ld. Raym. Rep. 505, 506. Mich. 15 W. 3. Walgrave v. Tailor. *bid. 476. pl. 16. S. C. but S. P. does not appear.

2. Ser-
Sunday.

2. Serjeant Hawkins says, It hath been holden, that in every Captive

of an Indictment taken in a Sheriff's Ten or Court—Lect, the Day whereon

it was taken ought to be set forth, that it may appear not to have been

on a Sunday. 2 Hawk. Pl. C. 56. S. 9, cites the Cafes in the Margin.

3. Cafe against the Cuitos Brenvum, the Declaration was delivered on

Friday Morning, and Rules given to plead within 4 Days, whereas Satur-

day and Sunday were not Judicial Days. Et per Cur' we reckon them

Non juridici as to Matters to be transfused in Court, and therefore

Sundays and Holidays are no Days to * move in Arreft of Judgment. But

as to Buituets done out of Court, Rules to plead within 4 Days &c. Sundays

are reckoned the fame with other Days. Salk. 624. pl. 2. Trin. 11 W. 3.


therefore Sunday is never reckoned one of those Days, because neither Courts or Offices are open;

And this is not like the Cafe mention'd on the other Side, where Sunday is reckoned one of the 14 Days

for giving Notice of Trial, because a Man may prepare for his Journey, or come up to London on that

day as well as on any other Day of the Week; and for this Reafon it was resolved, That the Plea

should be received. 8 Mod. 21. Mich.; Geo. 1721. The Lt. Coningsby's Cafe;

* Sunday is not Included in the 4 Days to move in Arreft of Judgment, but the Defendant must have


Upon hearing Council on both

Sides, and

after taking

Time to con-

sider, The Court were of Opinion, that a Notice to appear on Monday Jan. 21, as the Return-Day of Olf.

Hill. was bad; It ought to have been to appear on the 28th, which, although it be Sunday, is the true


6. A Motion to stay Proceedings the Writ being returnable on a Sun-

day, and a Copy thereof served with Notice to appear upon the Monday after,

whereas the Effin-Day was on the Sunday; The Defendant did not com-

plain to the Court of this Irregularity till after Notice of a Declaration was

served, tho' before Judgment signed, which it was inferred was too late;

But the Court faid, Since he came before Judgment was signed, it

was too soon enough; for till serving of the Notice of the Declaration, he

could not tell whether the Plaintiff would proceed upon such irregular

Service of the Proces; and therefore Proceedings were ffaid. Rep. of


(D) Statutes.

1. 1 Car. 1. E

Naeis. That there shall be no Meetings, or Concurre of Peo-

ple, out of their own Parifhes, on the Lord's Day, for any

Sports and Pastimes, nor any Bear-baiting, Bull-baiting, Interludes, Common

Plays, or other unlawful Exercises, used by any within their own Parifhe;

and every Perfon offending shall forfeit 3s. 4d. to the use of the Poor of the

Parifh. And if any Juffice of Peace, or the chief Officers of any City,

Borough, or Town Corporate, upon their Views, or Confefion of the Party, or

Proof of one Witness by Oath, shall find any Perfon offending in the Premifles,

the faid Juffice or chief Officer fhall give Warrant to the Conftables and

Church-Wardens of the Parifh, to levy the Penalty by Diffrefs and Sale of

Goods;
Sunday.

Goods; and in Default of Fiffre, that the Party offending be set in the Stocks 3 Hours; and if any Man be found for Execution of this Law, he may plead the General Issue, provided that no Man be impeached by this Act except he be called in Quifition within one Month after the Offence; Provided also that the Ecclesiatical Jurisdiction by this Act shall not be abridged.

Continued indefatibly by 3 Car. 1. cap. 4. and 16 Car. 1. cap. 4.

2. 29 Car. 2. cap. 7. S. 1. Enafts, That all the Laws in Force concerning the Observation of the Lord's Day, and repairing to Church thereon, shall be put in Execution; and all Persons shall on every Lord's Day apply themselves to the Observation of the same, by exercising themselves in Pity and true Religion publicly and privately; and no Person shall do any worldly Labour or Work of their ordinary Callings upon the Lord's Day (Works of Necessity and Charity excepted;) and every Person of the Age of 14 Years, or upwards, offending in the Premisses, shall forfeit 5 s. And no Person shall publicly cry, or expose to Sale, any Goods upon the Lord's Day, upon Pain to forfeit the same Goods.

S. 2. No Drover, Horse-conster, Waggone, Butcher or Higler, shall travel or come into their lieu or Lodging upon the Lord's Day, upon Pain to forfeit 20 s. And no Person shall travel upon the Lord's Day with any Boat, Wherry, Lighter, or Barge, except upon extraordinary Occasion, to be allowed by some Justice of Peace, or Head-Officer, upon Pain to forfeit 5 s. And if any Person offending in the Premisses shall be convicted before any Justice of Peace, or Chief Officer, upon View or Conjeffion of the Party, or Proof of one Witness by Oath, the said Justice or Chief Officer shall give Warrant to the Constables or Church-wardens to seize the Goods cried or put to Sale, and to sell the same, and to levy the other Forfeitures by Diffreys and Sale of Goods; and in Default of Fiffre, the Offender shall be set in the Stocks 2 Hours; and all the Penalties aforesaid shall be employed to the Use of the Poor of the Parish, faying that it shall be lawful for any such Justice, Mayor, or Head-Officer, out of the Penalties to reward any Persons that shall inform, as such Reward exceed not the 3d Part of the Penalties.

S. 3. Nothing in this Act shall extend to the prohibiting of Drefing of Meat in Families, or Dressing or Selling of Meat in Inns, Cooks Shops, or Villanizing-founses, for fuch as otherwise cannot be provided, nor to the Crying of Milk before 9 in the Morning, or after 4 in the Afternoon.

S. 4. No Person shall be prosecuted for any Offence before mentioned, unless be be prosecuted within 10 Days after the Offence.

3. 11 & 12 W. 3. cap. 21. S. 3. Enafts, That it shall be lawful for the Rulers &c. of the Company of Watermen, to appoint any Number of Watermen, not exceeding 40, to work on every Lord's Day between Vauxhall above London Bridge, and Limehouse below Bridge, at convenient Places for carrying Passengers eft the River, at 1 d. each &c.

4. 9 Ann. cap. 23. S. 20. Enafts, That Coachmen or Chairmen licent'd, may ply on the Lord's Day, notwithstanding the Act 29 Car. 2. cap. 7.

For more of Sunday in general, see Escapes, Robbery, and other Proper Titles.
(A) Superfedeas. *What Thing will be a Superfedeas.*

*Writ of Error.* [*Audita Querela, pl. 6.]*

1. W Here the Party cannot be restored to all that which shall be lost by the Execution (if it be made) when the Judgment is reversed, there the *Writ of Error shall be a Superfedeas of the Execution*; (at what Time (never it be brought as it seems is intended) because otherwise it will be mischievous. 7 H. 6. 29.

2. As if a Juror be attained in a *Writ of Attaint*, a *Writ of Error shall be a Superfedeas*, because he cannot be restored to that which he shall lose, if the Execution be made. 7 H. 6. 29.

3. The same Law is in *Writ of Error* upon an Attinder of Felony. 7 H. 6. 29.

Where a Man brings *Writ of Error* of a Judgment given against him, he ought to sue *Superfedeas of Execution*; Otherwise the Plaintiff may sue Execution in the first Court: By the best Opinion; quodMixtum! for by the *Writ of Error* the Record is removed; but this Case was upon the Recovery of a Statute, and then he sued Execution upon it in Chancery; so that the *Execution came upon the Statute Merchant*, and not upon the first Judgment. Br. Superfedeas, pl. 16. cites; H. 6. 44.—*Br. Error*, pl. 66. cites; H. 6. 22.—S.F. Br. Executions, pl. 42. cites; H. 6. 42.—And tho' all the Editions of Br. Superfedeas, pl. 16. cites; H. 6. (44) yet it seems it should be (42) pl. 17. and that there is no such Point at (44).

5. But it seems it is a *Superfedeas in Law* to the Defendant; so that he ought not to deliver the Statute to the Plaintiff, as he there was, and thereupon the Plaintiff sued Execution; and there it is held that it is not any Superfedeas in Law of the Delivery without an actual Execution. Br. Superfedeas, pl. 18. cites S.C. but Superfedeas.

Brooke adds, that it seems that after the *Writ of Error* is sued and allowed, Execution cannot be awarded of the first Judgment; by the *Writ of Error* the Record itself is removed, and then the Court has nothing where to award Execution.

6. An *Audita Querela* upon a Statute, shall be a *Superfedeas in Law* of the Execution upon it. 24 E. 3. *Audita Querela.*

If a Man sues forth an *Audita Querela*, to avoid a Statute Staple or a Statute Merchant, he shall have a Superfedeas to the Sheriff, not to do Execution hanging the Pleas &c. F. N. B. 240. (A) cites R. Gill. 113.

*Audita Querela* is no *Superfedeas*, and therefore Execution may be taken out, unless a *Superfedeas be sued forth*; and if the *Audita Querela* be founded on a Deed, it must be proved in Court before a Superfedeas shall be granted. 1 Salk. 92. pl. 1. Mich. 3 W. & M. B. R. Langton v. Grant.—It is no *Superfedeas* till there be a *special Superfedeas*, which shall not be granted till the Matter be proved by 2 Witnesses. 12 Mod. 150. Anon.—Comb. 359. Mich. 5 W. 3. B. R. Langton v. Grant. That when the Deed is produced in Court, and proved or confess'd, a special *Superfedeas* may issue, but not to stop the Sheriff from selling; Per Holt Ch. J. But the Goods were they'd by Consent. 7. When
Superfectas.

7. When one is in Execution, they cannot superfede it by Error, but Sis. 286. pl. be must continue committed, else there would be no Remedy to bring him into Custody, in the Judgment should be affirmed; but on an Audita Execution of Squire the Party is discharged by Bail, because this is a new Suit; and the Suit of the Party is never to be taken again. 2 Keb. 43. pl. 58. Pach. 18 Car. The King up.


Deer-dealing and Breaking of Parks.—So where Persons were fined to the King at the Sessions, and in Execution for it, and brought Habens Corpus and a Writ of Error, the Court would not ball them, because they are in Execution for the King; but it was said that it is usual in the Crown Office to hold in such Cases. Sis. 322. pl. 10. Hill. 18. & 19 Car. 2. B. R. The King v. Marlicull &c. Inhabitants of Lyme-houfe.

(B) By Error. In what Cases it shall be a Superfectas in Law. By what Thing. [Not where it is as a new Original.]

1. Upon a Recovery against Executors, and a Return of a

a Devulat, if a Seire Facias be awarded to Bonis Propris, and this found for the Plaintiff, by Mill. Prins returnable 15 Sitch. and before Judgment, Stavell, at the 4th Day, a Writ of Error is brought of the first Judgment; yet it shall not be any Superfectas to give Judgment and Execution upon the Seire Facias, for they are distiguish in a manner several Originals. 10 D. 6. 6. adjudget, and Judgment shall have Relation to the first Day.

2. If after a Re-delineation brought, the Tenant brings Writ of Error upon the Recovery in Affio, yet this shall not be any Superfectas in the Proceeding in the Re-delineation, because it is in a manner a new Original. 10 D. 6. 6. b.

3. But if Seire Facias be sued to have Execution of a Judgment in Annuity, a Writ of Error of the Judgment in the Annuity shall be a Superfectas of the Seire Facias; for it always depends upon the first Original. 10 D. 6. 6.

4. If a Man brings Debt for Damages recover'd by Judgment, if S. P. Br. Er. after the Record of the Judgment be removed by Writ of Error, yet this is not any Superfectas to the Action of Debt; for it is a new Original. 10 D. 6. 6. d.

But in Action upon the Case, the Plaintiess was notmoised at the Verdict; by which the Defendant, by the Statute 22 H. 8. had Judgment to recover his Costs; and after the Record was removed by Error into B. R. by the Plaintiff, pending which the Defendant brought Action of Debt in C. B. upon a new Original, and set upon the Record of the Action upon the Case, and this Matter was pleaded by the Defendant, &c. and the Bill Opinion of the Court was, that the Action is maintainable, inasmuch as it is brought upon a new Original. D. 52. pl. 5. Pach. 28 & 29 H. 8. Anon.

Defendant brought a Writ of Error in the Exchequer-Chamber, of a Judgment given against him in B. R. And then Plaintiff brought an Action of Debt upon that Judgment, to which Defendant pleaded, Not tried Rec'd. Resolved, that the Plea is mought; for Debt lies notwithstanding, and cited D. 22 b. pl. 5. 6. & 18 E. 4. g. But Bendl. 20. pl. 21, takes this Difference, that when the Action of Debt is brought before the Writ of Error, the Action continues good. But if the Writ of Error is brought first, then Debt does not lie. But in Case of H. M. in B. R. Langham, the Judges held it was all one, and that Writ of Error is no Superfectas to an Action of Debt; and that notwithstanding the Writ of Error, the Bail may bring in the Principals in Distress of the Malmepurs. Rorr. 160. Hill. 16 & 17. Car. 2. 18 H. 8. Adams v. Templin. — Levy. 132. S. C. and cay)., that all except Keeling held, that it well lies; for the Record itself is still in this Court, and the Writ of Error is a Superfectas out of the Execution. — Sis. 226. S. C. accordingly. — Mod. 121. pl. 23. Pach. 25 Car. 2. Draper v. Bridwell: All the Court held, that an Action of Debt would be upon a Judgment after a Writ of Error brought.—5 Keb. 559. pl. 23. S. C.—S. C. cited Law. 602. & S. P. resolved accordingly, the Chj. herc
Superfedeas.

5. If a Seire Facias be laid to have Execution of a Fine, and Tenant comes and pleads, and after brings Writ of Error of the Fine; yet this shall not be any Superfedeas to the Seire Facias; for it is in a manner a new Original. 10 B. 6, 6.

6. But otherwise it is, if he brings the Writ of Error before the Return of the Seire Facias. 20 B. 6, 4 b.

7. If a Man be adjudged to Account, and after the Plaintiff brings a Capias ad Computandum, in which the Parties are at Issue, and it is found against the Defendant; and after the Defendant brings Writ of Error, admitting that it lies, yet it shall not be any Superfedeas: so that the Judges shall not give Judgment according to the Verdict. 21 D. 6, 26.

8. Where a Man grants an Annuity for 20 l. and for Non-payment at the Day 10 l. move Party; there if Writ of Annuity be brought of the Annuity, and the Plaintiff recovers, and the Defendant brings Writ of Error, there the first Plaintiff, upon swearing of the Deed, may have Writ of Debt for the Poin in C. B. And it is no Plea, that there is Writ of Error pending of the principal Annuity; for this Action is not brought of any thing which was adjudged by the first Record. Br. Execution, p. 68, cites 4 H. 6, 31.

9. Writ of Error in the Exchequer-Chamber of a Judgment in B. R. and Error in Faiz was affirmed there, and they affirmed the Judgment: Whereupon
Whereupon the Record of Affirmation was remitted into B. R. and another Error, Writ of Error in B. R. coron. voctis repusden; (as is usual for Error in a Fact.) It was moved, that upon putting in Baill, this new Writ of Error might be a Supersedead to the Execution: But the Court held, that this Writ was not to be allow'd in this Case; because the Judgment being affirm'd in the Exchequer-Chamber transit in Rem Judicatam, and a Writ of Error cannot be brought here on a Judgment there; and it is in the Court, in a Writ of Error, to recite all the Proceedings that have been in the Matter. And the Court is, that if a Writ of Error be brought here, upon Error in Fact of a Judgment here, the Writ shall be allow'd in Court; which the Court said they would not do in this Case; Venct. 207. Patch. 24 Car. 2. B. R. Prior v. 

10. After Judgment in B. R. the Defendant brings Error in the Exchequer-Chamber, and puts in Bail to answer the Meine Profits, and all Damages the Defendant in Error may sustain, in case the Judgment be affirm'd; pending which the Plaintiff in the original Action brings Trespafs against the Defendant for the meine Profits. 'It was moved, that the Plaintiff has no Title to this Action, pending the Writ of Error; for by this means the Defendant may be doubly charged; and should the Plaintiff get Judgment in Trespafs before the Writ of Error be determined, we have no Remedy (in case the Judgment be reverfed) for the Damages recover'd against us in Trespafs. But it was answer'd by 3 Judges, (Holt absent) that this Writ of Error in the Exchequer-Chamber is no Supersedeas of the Judgment, as it would be in this Court upon a Judgment in C. B. and we think he may as well have this Action for the meine Profits, as Debt upon the Judgment, notwithstanding the Writ of Error; and there is no Inconvenience to the Party thereby, for the Damages upon the Trespafs are a good Bar to the Plaintiff in any Action brought for them after the Affirmance of the Judgment; wherefore this Action must proceed. Comb. 455. Mich. 9 W. 3. B. R. Tonford v. 

11. The Plaintiff had Judgment in Ejectment, of which Error was brought, and Bail given to prosecute, and answer the mean Profits, and pending it, the Plaintiff brought Debt for Rent. And, per Cur. the Writ of Error does not hinder the Plaintiff from bringing Debt, or distraining for his Rent; and here he might have enter'd without a Writ of Execution, and only all Executions by Writ are suspend'd by the Writ of Error. 12 Mod. 398. Patch. 12 W. 3. Badger v. Floid.

12. Debt upon a Judgment in B. R. the Defendant pleads a Writ of Error, pending in the Exchequer-Chamber before the Justices and Barons; and prays quod Billam cautelam. The Plaintiff demnus. The Resolution of the Court was deliver'd by Parker, Ch. J. That this was no good Plea, and that the Defendant must answer over; and declared, that they founded their Judgment upon the many Resolutions that there had been in the like Case. He observed, that two Opinions were made in the debating of this Case: 1st, How far the Plaintiff could proceed, pending the Writ of Error. And 2dly, Whether the Record was remaining in this Court, or removed into the Exchequer-Chamber. The Action here was brought on the Record of a Judgment in this Court. 1st, As to this it has been thought a very hard thing, that while the Judgment was in Diliture, the Plaintiff should go on to recover this way. It has been attempted every way, that could be thought on, to put a Stop to this Way of proceeding; sometimes by pleading it in Bar, to such an Action, sometimes by pleading it in Abatement, and sometimes by pleading it as a temporary Bar only; but it has nevertheless been adjudged, that the Action did lie. And cited 1 Lev. 153. T

Adams
Superfedeas.

* See among the Notes to pl. 4. S. C.

Plaintiff recovered Judgment; Defendant brought a Writ of Errors, and pending that Writ, Plaintiff brought an Action of Debt on the Judgment, and after Judgment therein, issued Execution. And the Question was, Whether Plaintiff could do this without Leave of the Court, per Car. Defendant might have moved the Court to stay Proceedings in the Action on the Judgment, pending the Writ of Error, which is always granted; but having made so such Application, Plaintiff is regular. Barnes's Notes in C. B. 157. East. 9 Geo. 2. Humphreys v. Daniel —Rep. of Pract. in C. B. 129. 8. C. accordingly.
(C) Superfedeas. By Error or Attaint.  

1. If a Man recovers Debt against Executors, a Writ of Error shall be a Superfedeas of the Execution. 17 C. 3. 46.  
2. If a Man recovers against J. S. in a Writ of Trespass, by which it is awarded quod Defendens capitavit, and after the Defendant brings Writ of Error, yet it shall not be any Superfedeas of the Capias pro fine for the King. 16 Ed. 3. Attaint 24. by Hill.  
3. So if the Defendant brings an Attaint, yet this shall not be any Superfedeas of the Capias pro fine for the King. 16 Ed. 3. Attaint 24 by Hill.  

If a Man be condemned in Debt or Trespass by false Verdict, and a Capias be awarded to arrest the Party, now if the Party sue an Attaint, he may come into the Chancery, and there find Sureties that he shall appear at the Day &c. and answer the Party, and satisfy the King and the Party what belongs to them, if the Attaint does pass against him; And upon the same he may have a Superfedeas to the Sheriff, that he do not arrest him. F. N. B. 227. (F)  

If a Man be condemned in Trepass's and the Defendant brings Attaint, and the Plaintiff sues Execution by Elegit, and Capias is awarded against the Defendant for the King's Fine; the Defendant in Chancery may sue a Superfedeas of the Capias reciting in the Writ, that the Defendant has brought an Attaint, and that the Plaintiff has sued forth an Elegit, commanding the Sheriff to whom the Superfedeas is directed, that if the Defendant do yield himself to Prisont, and there find Sureties to the Sheriff to satisfy the King for what belongs to him &c. then that he do deliver him out of Prison upon that Security, if he conceives the same to be sufficient Security. F. N. B. 258. (C)  

4. If a recovers against B. Debt or Damage, and after sues a Capias ad Satisfacendum against B. which is returned Non est inventus, and upon this a Scire Facias is awarded against the Bail and return'd, and after a Scire Facias is awarded, but a Day before the Return thereof B. brings Writ of Error upon the first Judgment. This is not any Superfedeas to the Proceedings against the Bail, but the Scire Facias may be returned, and therupon the Plaintiff may proceed against the Bail, notwithstanding the Writ of Error; for it is distinct from the principal Judgment. Mich. 13. Car. 2. R. between Lock v. Billiard, by Jones and Croke against the Opinion of Brampton.  

5. If a Man recovers against J. S. and upon a Scire Facias has Judgment against the Bail, and after the Bail brings Writ of Error upon the Judgment given in the Scire Facias. This shall not be any Superfedeas in Law of the Execution upon the first Judgment against the Principal. Y. 11. Ja. 2. R. adjudged.  

6. If A recovers against B. in B. R. where C. and D. are special Bail for B. and after B. brings Writ of Error against A. upon this Judgment in the Exchequer Chamber, and after C. and D. the Bail to discharge themselves of their Bail, bring into the Court of B. R. the Body of B. and pray that his Appearance be entered, and that A. shall take him in Execution. Yet tho' the Roll for the Bail is a federal Roll from the Roll of the Judgment, that is to say, when Scire Facias is brought against the Bail this is a Roll by itself, yet the Court cannot accept this Appearance to discharge the Bail, for the Writ of Error is a Superfedeas in Law thereof, in as much as it is a Superfedeas to the Principal Judgment. So that A. cannot there pray B. in Execution upon this Judgment, the Record being removed into the Exchequer Chamber. Hill. 20. Ja. B. R. between * Colton and Henderson per Curiam. Contru Mich. 2. Car. between Calve Plaintiff, * Bingley and Davis Defendants, per Curiam.  

6. * Jo. 158. pl 4. S. C.  
9. 186. in S. C. 
10. Arg. Lat. 149. in the Caff of Calf v. Bingley.  
12. 5 Bulst. 331. Calf v. Bingley. S. C. —— And see Bail (B) pl 11. S. C. and the Notes there.
Superfedeas.

7. If a Man brings a Writ of Error upon a Judgment, but does not remove the Record in 6 Days after, Execution shall be granted, because it appears that the Writ of Error is brought merely for Delay, p. 13. 32. B. R., between Marsh and Whetstone, adjudged per Curiam.

8. Where Damages are recovered and the Defendant is imprisoned, there he shall find Surety in Writ of Error, or remain in Prifon if the Year be not past, or if he be not in Prison by way of Execution. Br. Error, pl. 38. cites 7 H. 4. 36. [49.]

9. In Trepass the Plaintiff recover'd, and Writ of Error came and it expired, no Record being removed, and after came another Writ of Error, by which Execution was awarded for the Delay, but it was said, That when the Record is removed into B. R. the Defendant may come here and have Superfedeas to the Sheriff to surcease from Execution. Br. Superfedeas pl. 17 cites [it should be] 19 H. 6. 3.

10. Where the Defendant is awarded to Account, and pleads to Issue before Auditors, and this is certified to the Justices, and found against him by Nihil pristus, and upon this a Writ of Error is cast, yet the Court shall award him to the Fleece, for he is as a Prisoner by Reason that he had found Mainprize before to appear in proper Person every Day pending the Place; for Writ of Error can't play Execution, by Reason that there was a Judgment given before viz. the Award to account, and all Times after he shall be adjudged in Ward; and if a Man be in Ward, he cannot be taken out of Ward by Writ of Error. Br. Error pl. 77. cites 21 H. 6. 66.

11. If Error is sued, there if it be Error apparent in the Record, the Justices shall let the Party to Mainprize, but if it be Error in Fact Triable per Patis, they used to award the Party to Prifon; per Prifon. Br. Error pl. 16. cites 32 H. 6. 21.

12. Judgment was given in the Exchequer, and an Attaint was brought in London, and before Execution the Record was removed by Certiorari into Bank, and pending the Attaint, the first Plaintiff played Scire facias in Bank to have Execution on the Judgment, and had it; For an Attaint is not a Superfedeas, nor does a Superfedeas lie in Attaint as it does in Cafe of Error. Sir see divertisement. D. 81. b. pl. 65. Hill. 6 & 7 E. 6 Aylliff v. Plat.

A Writ of Error, tho' it removes not the Record itself (in which Case it would necessarily be a Superfedeas, the Foundation of their Proceeding below being taken from them) is upon very good Reason in Law a Superfedeas; And in this respect differs from an Attaint which is no Superfedeas, for the Verdict being founded upon the Oaths De decim legatum & proborum Humaniam, the Law will admit of no Prejudgment in the Truth of such Verdict, till it be legally set aside by Verdict in Attaint, which is the Reason the bringing such Attaint only, is in itself no Superfedeas; So tender is the Law of the Reputation of the Subject, as for no Respect to prejudice him purpoole without manifest Proof upon the Oaths of a double Jury, and so tender of his Liberty and Property, as not to admit the same to be taken from him, upon so flight a Prejudgment as the only suing forth a Writ of Error is. See Skin 422. Hill. 5 W. & M. in B. R. in the Cafe of the Certioraries in Chancery.

See (C. 2)—Error was brought in the Exchequer Cham—

13. 3 Jac. 1. cap. 8. Enacts, That no Execution shall be played by any Writ of Error or Superfedeas thereupon in any Action of Debt upon a Single Bond, or upon any Obligation with Condition for Payment of Money only, or for
Superfedas.

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for Rent, or upon any Contract in the Courts of Record at Wallmufler, or in the Counties Palatine, or in the Courts of Great Session; unless such Person, in whose Name such Writ of Error is brought, with two Sureties, such as the Deputy or Prothonotary of the Court, wherein the Judgment is given, shall allow of, shall first be bound unto such Person, and the Party for whom Judgment is given by Recognizance in double the Sum recovered, to procure the Writ of Error with Effect, and also to pay (if the Judgment be affirmed,) all Costs, Damages, and Coffers, adjudged upon the former Judgment, and all Costs and Damages to be awarded for Delay of Execution.

This Act was made perpetual by 16 and 17 Car. 2. cap. 8.

in the former Judgment, for the Party. Now a new Writ of Error, Quare clausum voces rei, was brought, and forasmuch as this Writ was brought after this Statute to stay Execution in Debt, it was prayed that according to the said Statute he might have Execution, or that the Parties should put in Sureties to pay the Condemnation:

But upon Consideration of the Statute, all the Justices held, That it was out of the Statute; because it is not an original Writ of Error, but it is in Lieu of a former Writ upon which the Record was remov'd before the Statute; and it being discontinued not through Default of the Party, it is not Reason he should be prejudiced thereby, Therefore it was resolved, that this Case was out of the Statute; 5 Jac. cap. 8. Cro. J.; and Mich. J. Jac. B. R. Bolbeck v. Smith.

Judgment in Debt upon an Injunct Compendium, the Defendant brought a Writ of Error in B. R. and the Plaintiff in the Action moved, that he might put in Bail, according to this Statute. But per Cur.

This Case is out of the Statute, because the Debt recovered did not arise upon any Contract, or other Duty certain at the first, but merely upon an Account between the Parties, which has reduced diverse uncertain Sums to a Certainity. So that the original Cause of Action being founded upon the Account, which is uncertain, it is therefore out of the Statute. Yelv. 227. Hill. 10 Jac. B. R. Giffard v. Bond. 5 Bull. 53. 54. S. C. by the Name of Gilling v. Baker; and the Whole Court agreed, that this Case is out of the Statute, and the Writ of Error was allowed without finding Sureties; and the Counsel affirmed it to have been so adjudge before.—S. C. cited and agreed Leav. 117. Patch. 15 Car. 2. B. R. in Cave de the Dean and Chapter of Paul's v. Capell.

Debt upon Arbitration, is not within the Statute, because here is no certain Debt at the first, nor till the Arbitrators have reduced the Controversies to be recompens'd by a certain Sum. Yelv. 227. Hill. 10 Jac. B. R. in Gilling's Cave.—S. P. 2 Bull. 54. in Cave of Gilling v. Baker, S. C.—S. P. agreed Patch. 15 Car. 2. B. R. in Cave of the Dean and Chapter of Paul's v. Capell.

But in Debt upon a Bond conditioned to pay to B. so much Money as $, S. upon an Account, to be paid between the Plaintiff and Defendant, should declare to be due to the Plaintiff. The Defendant pleaded, that J. S. had not declared any Thing to be due; upon which they were at issue, and Judgment for the Plaintiff. Upon Error brought, the Question was, whether the Plaintiff in Error should find Bail upon this Statute, which extends only to Bonds to pay a certain Sum expedit'd in the Condition. It was agreed, that this Action is founded on a Bond for Payment of Money only, which, 'the uncertain sum the Bond was executed, yet was certain before the Action brought.' And so ruled the Plaintiff in the original Action to take Bail, unless the Plaintiff in Error pays in Bail before such a Day. 1 Leav. 117. Patch. 15 Car. 2. B. R. Dean and Chapter of St. Paul's v. Capell.

But where a Debt was for the Performance of Covenants, it is uncertain Debt; and therefore out of the Statute. 2 Bull. 54. Mich. 10 Jac. in Cave of Gilling v. Baker agreed.

But where Debt was brought on a Bond for Performance of Covenants, and a Breach alleged, and for Sums and Damages for the Plaintiff; and Debt was brought on judgment, and Judgment had by Default; and Error being brought on the Judgment by Default, the Question was, whether the Plaintiff in Error should put in Bail according to 3 Jac. 1; for it was agreed not to be within the Statute 13 Car. 2. It was objected, that the original of this Action, being founded on Covenants, is not within any of the Words of 5 Jac. which are of Actions of Debt for Payment of Money only, or for Rent or Contracts for Money. And to this Twelfth inclined; but per Keling and Morton, This last Action, upon which the Error is brought, was for Money only recovered by the first Judgment, and Judgment is within the Words (Contracts for Money) and so ruled the Plaintiff in Error to put in Bail. Leav. 260. Hill. 20 & 21 Car. 2. B. R. Biddulph v. Temple.

Executor pleaded Piere Administravit, which was found against him. He brought a Writ of Error, and it was moved that he should not have a Superfedas to stay Execution without Special Sureties to pay the Condemnation, if Judgment be affirmed. Resolved that this Case is out of this Statute, which, tho' the Words are general, yet must be intended where the Action is brought against the Party directly upon his Obligation, or in Cave where the Judgment is general against the Executors; but where the Judgment is special, that Execution shall be by Bond Executors, and Damages only de Bono propriis, it is not reasonable that he should find Sureties to pay the whole Condemnation with his own Goods; and according to this Difference Cave Ch. J. said it had been ruled in C. B. when he was there; and it was by the Secondary laid, that the Precedents of this Court ever since the Statutes were, that a Superfedas had been allowed upon Error brought by an Executor or Administrator. Cro. C. 59. pl. 2. Mich. 12 Jac. B. R. Goldsmith v. Platt.—2 Bull. 284. S. C. accordingly. And Cave Ch. J. laid, that if in this Case Sureties should be found, this would then change the Judgment of the Law, which in this Case here is conditionally, (with a Si labuere) and if he should here find Sureties, that will then make the Judgment to be absolute; and the whole Case agreed, S. P. resolved and ruled accordingly in Deem upon a Bond against an Administrator. Atty. Wright Clerk of the Errors, said it was the common Practice upon this Statute. Cro. C. 59. pl. 3. Hill. 2 Car. C B. Sir Henry Mildmay's Cave
Superfedeas.

But in Scire facias against Administrator Defendant upon Distant alleged, and Judicemt of Be
nisi proprius, Error was alleged, and it was agreed Per ter cur. That he shall find Bail; for being charged for Bonis proprius, it is not like the Case where Administrator is charg'd de Bonis tesiatoribus; but here it is in Jure proprio, and not like Molinas's Caf, nor to Coldsmith and Blatt's Caffe, and accordingly. and another Judgment therupon; and in Error of the last Judgment, it was doubled if Bail shall be found. Cited Lev. 26:8. in Caffe of Bishopp v. Temple, as Mich. 29:2. Taylor v. Baker.


Where a Bond was to pay Money, and to do other collaterals, viz, tho' in an Action on the Bond, the breach alleged was only for not paying the Money, and so the Caffe upon the Pleading is the same as if the Condition of the Bond had been for Payment of Money only, yet, Per Holt Ch. J. this Caffe is not within the Statute which relates to Judgments upon Bonds, with a Condition for Payment of Money only; and in this a Judgment being given, a Writ of Error was allowed without Bail. Carth. 29. Patch. 1 W. & M. B. R. Gerard v. Danby.

A was found with J. S. the Defendants, for the Debt of J. S. to pay 50l. to H. R. 25th Octber next, and at the same Time J. S. gave Bond to A. reciting the Joint Bond to W. R. and J. T. to be therefor the said J. S. pay to the said H. R. the said 50l. on the 25th October &c. then &c. The 50l. not being paid at the Day, A brought Debt against J. S. and bad Judgment. J. S. brought Error, but he not finding Bail, A took out Execution. It was infinied that this Bond was only as an Indemnification-Bond, and so not within the Statute. But it was urg'd on the other Side, that this was a Bond for Payment of Money, and consequently within the Statute. King Ch. Jull. seemed to think this Case within the Letter of 3. Jac. cap. 1. and that this Statute ought to have a liberal Construction; but because the Judges of B. R. doubted, and inclined to the contrary Opinion, that there might be one uniform Opinion in the two Courts, it was agreed to be put off till the Court could talk with the Judges of B. R. And in the last Day but one of the Term, the Ch. Jull. delivered the Opinion of the Court, and said, That this Court was agreed that Execution ought not to be had in this Case, if Bail was not found; for the Statute ought to be construed liberally, and for the Benefit of him who had obtained Judgment; and therefore the Rule for paying Execution was discharge. Comyns's Rep. 521, 522, 523. pl. 164. Mich. 6 Geo. 1. Huddy & Uxor. v. Yate Gifford. —In this Caffe was cited the Caffe of Gammond b. Titeb, as determined in B. R. 1 Geo. where the Condition recited a former Bond given by the Defendant to A. and then goes on, viz. (If the said J. S. shall pay the said Sum of &c. on the said Day &c. then &c.) in the same Words as in the present Caffe; and says that the Court was of Opinion, that Bail was not necessary, because of the same Nature with a Bond to indemnify. But it was fayd by the Counsel of the other Side, and also by the Counsel in the principal Caffe, that no Judgment was given in the Case of Hammond v. Webb.

Debt was brought in C. B. by A. against B. on a Contrat to Pay Money on S.S. Articles, at the End whereof the Parties found themselves to each other in 100l. for Performance, and Plaintiff had Judgment. On Error brought in B. R. it was infinied that this Writ of Error was no Superfedeas to the Execution, unless B. had put in Bail according to this Statute. Per Cur. The Statute requires, that where an Action is brought on a Single Bill or Bond, or Contrat for Payment of Money only, that in such Case Bail shall be given, which implies that it is not requisite on any other Bond or Contract. And tho' this is a Contract, yet it is not for Payment of Money only, but is to pay it on Non-performance of an Agreement, and so not within the Provision of this Statute. But the Bail is not requisite to the Original Action, yet it must be given upon a Writ of Error of a Judgment obtained in such Action; as for Instance, if an Action be brought in B. R. for 5l. there Bail is not required; but if Judgment be had in such Action, and a Writ of Error brought, Bail must certainly be put in. 8 Mod. 121, 122. Patch. 9 Geo. 1. 1724. Strode v. Chritby.

If a Man be taken in Execution he cannot be bail'd tho' he brings a Writ of Error. Vent. 2. Mich. 20. Car. 2. B. R. Anon.

14. The Record of a Judgment in B. was removed by Error into the Exchequer-Chamber, and it was praty'd. that the Defendant, being in Execution, might be bail'd; but because the Record was removed, as there was no Record here, it was held, that he could not be bail'd here; neither could he in the Exchequer-Chamber, because they have no Authority, but only to reverse or affirm the Judgment, and not to make Execution, and fo he is not bailable. Cro. J. 123. Hill. 3. Jac. 1. B. R. Sheppard v. Allen.

15. Judgment was given in B. R. in Ireland, and a Writ of Error on that Judgment, returnable in B. R. in England. All the Jutices of B. R. were of Opinion, that the Writ of Error in Judgment of Law is a Superfedeas, tho' the Record itself is not sent, but the Transcript only. For it is the same where Error is brought in Parliament of a Judgment in B. R. here. And so also of Error in the Exchequer-Chamber, the Transcript only is sent, and yet the Court is fore-closet Pendente plaito indecisivo. And they all resolved, that the Writ of Error was a Superfedeas until the Error was examined, affirm'd, or reversed. Cro. J. 534, 535. pl. 19. Patch. 17 Jac. B. B. The Bishop of Ollory's Caffe.

16. The
16. If a Writ of Error is brought in this Court, and the Day of the Return is long, in order to delay the Party, as if it be more than the next Term, the Court may award Execution. *Hect. 17. Patk. 3 Car. C. B. Anon.

Return, is no Supersedeas; nor can such Writ, being under Seal, be mended here; but in Chancery, by Motion, it may 1 Rev. 199. pl. 1. Mich. 1661. 13 Car. 2. in B. R. Anon.—S. P. Sid. 43. pl. 2. Mich. 15 Car. 2. B. R. Anon.

17. 13 Car. 2. Stat. 2. cap. 2. § 9 Enacts, That no Execution shall be stay'd in the Courts mentioned in the Act 3 Jac. 1. cap. 8. by Writ of Error or Supersedeas therupon after Verdict and Judgment therupon, in any Article of Debt upon the Statute 2 Fzac. 6. cap. 13, for not setting forth of Title, nor in any Action the Cafe, upon Promiss for Payment of Money, Tresor, Action of Covenant, Damages and Trepass, unless such Recognition as by the former Act is directed, be first acknowledged.

18. 16 & 17 Car. 2. cap. 8. § 3. Enacts, That no Execution shall be stay'd in any of the aforesaid Courts, by Writ of Error or Supersedeas thereupon, after Verdict and Judgment, in any Action Personal whatsoever, unless a Recognition with Condition, according to the Statute 3 Jac. 1. cap. 8. be first acknowledged. And in Writs of Error upon any Judgment after Verdict in Dower, or in Ejection, unless the Plaintiff be stay'd, unless the Defendant in Error shall be bound unto the Plaintiff in Dower, or Ejection, in such Sum as the Court to whom such Writ of Error shall be directed, shall think fit, with Condition, that if the Judgment be affir'd, or the Writ of Error discontinued in Default of the Plaintiff, or that the Plaintiff be Nonuit in such Writ of Error, that then the said Plaintiff shall pay such Costs, Damages, and Sums of Money, as shall be awarded upon such Judgment affir'd, or Discontinuance or Nonuit bad.

19. Provided that this Act shall not extend to any Writ of Error to be brought by any Executor or Administrator, nor unto any Action Popular, nor unto any other Action upon any Penal Law (except for not setting forth of Titles) nor to any Injunction, Pregement, Information, or Appeal.

20. Error was brought in the Exchequer Chamber, to reverse a Judgment in B. R. The Writ of Error was stay'd by the Ch. J. but before the Record certified was die, and no new Writ of Error was brought. Upon a Motion for Leave to take out Execution, the Court (upon Inquiry of the Prac'tice) said, That if the Record be not certified within 8 Days, the in the Office of the Clerk of the Papers, would give Rules to take Execution, but they may certify the Record, and so make all good, because the Writ was sign'd; but if it had not been sign'd, it had abated Barnes's by the Death of the Ch. J. Sid. 268, 269. pl. 20. Trin. 17 Car. 2. B. R. Notes in Allen v. Shaw.

2. Cranborne v. Quennel. The Book says, There were several other Motions of the same Kind this Term; and it was held by the Court, that where the Writ of Error is not returned by the Ch. J. it becomes inefficent; but Plaintiff cannot take out Execution without Leave of the Court. S. P. And where in such Case the Plaintiff look out Execution without Leave of the Court, it was held to be irregular. Barnes's Notes in C. B. 117. Hill. 9 Geo. 2. Hayes v. Thornton.

It was held upon hearing Council on both Sides, that the Writ of Error not being returned and sign'd by the Ch. J. becomes inefficent by its Death; and the Rule to shew Caufc why Plaintiff should not have Leave to take out Execution, was made absolute. Barnes's Notes in C. B. 136. Hill 9 Geo. 2. Olorence v. Scantcll. — Rep of Prater in C. B. 148. S. C. and cites Middleton and Gardner the like Rule.

22. Twifden J. said, That Trin. 5 Car. 1. * Godb. 439. it was settled * The Cafe of Pembroke, that the Writ of Error was the Supersedeas in itself, and there is no Inconvenience, and if it be deliver'd, 'twould, or allowed before the Return thereof, it is a sufficient Supersedeas; but if the Mod. 112. Return be before the Day in Bank, or of the Judgment; Per Cur. it is no Supersedeas. And by Hale Ch. J. Errors, nor other Records, are not return'd till a Term after taken out, and sometimes longer; therefore " it Lenthall.
it is no Reaion to stay fo long; to which Rainsford and Wild agreed; and Wild said he knew it ruled, that Allowance of Error after Execution taken out, and before executed, was a Superfedeas. 3 Keb. 329. pl. 51. Patch. 26 Car. 2. B. R. in Cafe of Ayers v. Lenthall.

21. The Plaintiff brought an Action of Debt on a Judgment obtained in B. R. and the Defendant pleaded in Bar, that he "ante Dici impertinentes Bilie predetii, had brought a Writ of Error on that Judgment, which was still depending; and upon a Demurrer to this Plea, it was adjudged, That this Matter could not be pleaded in Bar, tho' it might be pleaded in Abatement; and thereupon the Plaintiff had Judgment. Carth. 1. Trin. 3 Jac. 2. in B. R. Rogers v. Mayhoe.

22. Debt upon Easpe was brought against the Marliial, in which the Plaintiff had a Verdict and Judgment; and in an Action of Debt brought upon that Judgment, the Defendant pleaded that he brought a Writ of Error on the same, Adeque dependen. &c. and induc'd. and concluded in Abatement, (viz.) Si respondere compellendi debet &c. And upon a general Demurrer to this Plea, it was adjudged ill; so the Defendant was ruled to answer over. Carth. 136. Patch. 2 W. & M. B. R. Rottenhoifer v. Lenthall.

23. In a real Action, after Judgment the Plaintiff may enter, notwithstanding Writ of Error, if his Entry were lawful without the Judgment; for that is not by Force of the Judgment, which shall not put him in a worse Condition than he was in before. 12 Mod. 398. Patch. 12 W. 3. in Cafe of Badger v. Floyd.


25. Plaintiff in Error put in Bail, but the Plaintiff in the original Action excepted against them as insufficient, and nothing further was done to justify them, or to put in other Bail. It was infilted, that this putting in insufficient Bail will not conclude the Party, and compared it to the Cafe of Rece v. Pike, where after Defendant put in Bail, he moved that they should be discharges. but it was denied. And in the Principal Cafe Judgment was given, that this Writ of Error was no Superfedeas, unless good Bail was put in. 8 Mod. 121. 122. Patch. 9 Geo. 1. 1724. Strode v. Christy.

26. An Action of Trespa's for the mean Profits was brought pending a Writ of Error on an Ejectment; Defendant moved to stay Proceedings. The Court said this Case was within the Reaion of the Rule which is constantly granted where an Action of Debt is brought on a Judgment pending a Writ of Error; and therefore made a Rule that the Plaintiff might proceed to assert his Damages, and to sign his Judgment, but that Execution thereon should be stay'd till the Writ of Error on the Judgment was determined. Rep. of Praet. in C.B. 46. Trin. 2 Geo. 2. Harris v. Allen.
Superfedeas.

27. The Plaintiff did not sign his Judgment till after the Return of the Writ of Error; the Court, on hearing Counsel on both Sides, and the Matter fully debated, and many Cases cited, declared that the Plaintiff might sign his Judgment when he pleased; and if he thought fit to defer signing of it till after the Return of the Writ of Error, he had Liberty to do so, and might then take out Execution, notwithstanding the Writ of Error, in regard the Writ of Error, if returnable before Judgment signed, does not attach upon the Suit; and therefore the Court discharged a Rule to shew Cause. Rep. of Pract. in C. B. 52. Mich. 2 Geo. 2. Harding v. Avery.

28. But on a Motion to set aside an Execution, which was executed after a Writ of Error allowed, the Case was, the Defendant had confessed a Judgment by Cognovit Dandum, and the Plaintiff's Attorney promised to sign it the 31st of May, which was the Day before the Eight Day of this Term, but he deferred doing it till after the Return of the Writ of Error was expired, and then took out his Execution, which the Court said would have been regular, if he had not confounded to sign Judgment at the Time above mentioned, but seeing he had acted this Part contrary to his own Agreement, they ordered the Execution to be set aside, and Reformation made; and likewise ordered the Plaintiff's Attorney to go out a new Writ of Error at his own Costs. Rep. of Pract. in C. B. 54. Trin. 2 & 3 Geo. 2. Griffin v. King.

The Plaintiff having delay'd signing his Judgment by Cognovit Dandum, and the Plaintiff's Attorney promised to sign it the 31st of May, which was the Day before the Eighth Day of this Term, but he deferred doing it till after the Return of the Writ of Error was expired, and then took out his Execution, which the Court said would have been regular, if he had not confounded to sign Judgment at the Time above mentioned, but seeing he had acted this Part contrary to his own Agreement, they ordered the Execution to be set aside, and Reformation made; and likewise ordered the Plaintiff's Attorney to go out a new Writ of Error at his own Costs. Rep. of Pract. in C. B. 54. Trin. 2 & 3 Geo. 2. Griffin v. King.

29. On a Motion to set aside an Execution taken out upon a Judgment signed by S. P. But it in Trinity Vacation after the Expiration of the Writ of Error, which was returnable tres termini, the Court were of Opinion, that the Plaintiff could not regularly sign his Judgment, and take out Execution thereon till Michaelmas Term following, because every Judgment is of the first Day of the Term; so the Judgment having Relation to the first Day of the Term, must be confirmed to sign'd pending the Writ of Error, which was returnable tres termini, and consequently the Writ of Error attached upon the Judgment and was a Superfedeas; and Execution afterwards was irregular; which Judgment, therefore the Court set aside, and ordered the Plaintiff's Attorney to pay Costs. Rep. of Pract. in C. B. 77. Mich. 6 Geo. 2. Warwick v. Figg.

29. On a Motion to set aside an Execution taken out upon a Judgment signed by S. P. But it in Trinity Vacation after the Expiration of the Writ of Error, which was returnable tres termini, the Court were of Opinion, that the Plaintiff could not regularly sign his Judgment, and take out Execution thereon till Michaelmas Term following, because every Judgment is of the first Day of the Term; so the Judgment having Relation to the first Day of the Term, must be confirmed to sign'd pending the Writ of Error, which was returnable tres termini, and consequently the Writ of Error attached upon the Judgment and was a Superfedeas; and Execution afterwards was irregular; which Judgment, therefore the Court set aside, and ordered the Plaintiff's Attorney to pay Costs. Rep. of Pract. in C. B. 77. Mich. 6 Geo. 2. Warwick v. Figg.

30. Joint Action against several Defendants; Damages 20l. against 4 of them on Trial, and 5s. against one Defendant, who had let Judgment go by Default. Writ of Error was brought by the 4, in the Name of the one who was not obliged to find Bail, because it was by Default. It was moved for Leave to take out Execution against the 4, notwithstanding such Writ of Error. Cur. Shew Cause; Rule made absolute Trinity next, on Affidavit of Service. Barnes's Notes in C. B. 138, 139. Eath. 9 Geo. 2. Mason v. Simmonds & others.

31. Judgment for the Plaintiff; a Cap'ad Satis' issues thereon against the Defendant; upon that Cap'ad Satis' an Exigent was taken out, sealed 7 Feb. Then a Writ of Error was sued by the Defendant, sealed 5 Feb. and allowed 8 Feb. It was moved, that the Plaintiff might proceed to outlaw cordingly. The Defendant, notwithstanding the Writ of Error; as if Debt be brought on a Judgment, and then a Writ of Error is sued on the Judgment, the Court will permit the Plaintiff to sue in that Action of Debt to
Superfedeas.

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...Before Notice thereof to Plaintiff's Attorney, the Court set aside the Commitment in Execution, but refused to grant an Attachment against Plaintiff's Attorney, because tho' the Writ of Error be a superfedeas from the Allowance, no Contempt is incurred till after Notice of it. ——Rep. of Pract. in C.B. 153. S.C. accordingly.

(C. 2) Error in Parliament. In what Cases it shall be a Superfedeas.

1. C. Had Judgment in the C. B. in Ejecution ; and H. brought a Writ of Error in B. R. and the Judgment was affirmed. And afterwards he brings Error in the Parliament; and the Ch. J. in B. R. brought the Record itself in Parliament, and there left a Transcript of it, and brought back the Record itself. And after the Parliament is dissolved, and C. now prays Execution, and had it; altho' the Writ of Error abated without the Act of the Party. And Noy said, It is doubted if Error in Parliament shall be a Superfedeas; for upon that, if the Party be in Execution, he shall not be bail'd, as he should be in another Court; and cited 1 H. 7. 19. b. 15 H. 6. 18. By Dissolution of Parliament the Error is abated. 22 E. 3. 3. 1 H. 7. 19. And fo was the Cafe of Goddall and Hoppin, Error in Parliament abated by Dissolution. And by Doderidge Error was brought in Parliament, and the Party prays a Scire Fac. returnable the next Parliament, and it was denied, for the Delay. And in our Cafe Execution was awarded. Noy 76. Crouch v. Hanney.

...S. C. but not S. P.—Godth 457. pl. 458. S. C. but not S. P.

2. A Writ of Error in Parliament to reverse a Judgment in Dover, given in C. B. which was after affirm'd in B. R. was discontinued by the Prerogation of the Parliament. Then another Writ was brought, Telle the last Day of the Sessions, viz. 1 March, returnable 19 November, being the Day to which the Parliament was prorogued. The Court resolved, that tho' the first Writ of Error was not discontinued by any Act of the Party, yet, because of the Length of Time on which this Writ was returnable, it shall be no Superfedeas. Vent. 31. Patch. 21 Car. 2. B. R. Wortley v. Holt.

where there is a long Prerogation, is that a Term des interrêts, is no Superfedeas. And so a Writ of Error upon a Judgment in C. B. where a Record is actually return'd into Parliament, if there be a Prerogation,
Superfedeas.

3. It was moved to discharge a Superfedeas on Error in Parliament, or on Judgment in C. B. in Action for C. for not delivering Writ affirmed in B. R. which the Court granted. But had it been returnable in praesenti Parliament, or on a Day certain, it would have been a good Superfedeas; but being amended since Delivery to the Clerk of the Errors, the Parties thereto were committed; but would not quash the Writ of Error, nor allow any new one; and they agreed that a Return in praesenti Parliamento, or a Day, unless sedente Parliamento, if adjourn'd for half a Year, or any long Time, is no Superfedeas. 2. B. 624. pl. 53. Patch. 22. Car. 2. B. R. Rodriguez, Francia v. Waldow.

4. If a Writ of Error be brought in the Exchequer Chamber, and that be discontinued, and another Writ be brought in Parliament, this second Writ is a Superfedeas. Vent. 100. Mich. 22. Car. 2. B. R. Anon.

5. But if a Writ of Error be brought in Parliament, and that abates, and the Plaintiff brings a second, this is no Superfedeas, because it is in the same Court. Vent. 100. Mich. 22. Car. 2. B. R. Anon.

Luntcomb's Case, S. P. and were it not for the Difference of the Year seems to be S. C.

6. It was moved that the Clerk of the Court might make out Proces, notwithstanding a Writ of Error, of Conviction of Perjury brought in Parliament, returnable as aforesaid. Superfedeas, being after another Writ of Error determined by Prorogation, and so no Superfedeas, as * Wortby's Case; but * Vent. 171. the Court related to meddle in it, but left the Party to the Discretion. Wortley v. 2. B. 749. pl. 2. Patch. 23. Car. 2. B. R. The King v. Robinson. Hol.

7. Error was brought in Parliament, and this determined by Prorogation, Mod. 106. and a 2d Writ of Error was brought, and this also determined by Prorogation in November to 7 January following, and then a 3d Writ of Error was filed, and a Superfedeas pray'd to stay Execution; and after several Debates and Search of Precedents it was granted, the Prorogation being to a Day certain, and no Term intervening. But per Hale, if a Term had interposed between the Time and the Return of the Writ of Error, no Superfedeas should issue, unless there be Error apparent in the Record, notwithstanding that the Writs of Error are abated by the Prorogation, without Default of the Party. And Wild J. held, That tho' a Term had interposed between the Time and Return of the first Writ of Error, yet a Superfedeas should be granted in this Case, because the Determination of the Writ is by the Prorogation, without Default of the Party. 2. B. 95. Mich. 25. Car. 2. B. R. Golton v. Sedgwick.


9. A * Rule was lately made by the House of Lords, that all Causes there depending should not be discontinued by the intervention of a Prorogation. Vent. 266. Hill. 16. & 27. Car. 2. Lord Eure v. Turton.

the same Rule is mentioned to have been made.

10. Some Time after the above Rule, a Writ of Error, tested 30th No. 2. B. 122. was brought returnable in Parliament 15th April following, that being the Day to which the Parliament was prorogued. It was infil'd that this Case will not be there depending before the Return of the Writ. Hale Ch. J. said, that the Rule does not reach this Case, because the Writ is not return'd. And the Opinion of the Court was, That the Writ of Error was
Supersedeas.

The Plaintiff, fays the Court, might take Execution at their Peril, if by Law they might do it; for that Executions are liable to of Cause without the Court; but if the other Side had moved for a Supersedeas, they said perhaps they should have denied to grant it.

11. Debt on a Bond in C. B. and Judgment for the Plaintiff. Error was brought in B. R. and Bail put in according to the Statute, and Judgment affirmed; thereupon Error was brought in Parliament, and the Clerk of the Errors refused to allow the Writ, unless the Party would give a new Recognizance. It was moved that it ought to be allowed without, it being not requisite by the 3 Jac. 1. cap. 8. Sed per Cur. The first Recognizance does not include Payment of Costs to be allevied in the House of Lords; and tho' Costs ought to be paid; and therefore a new Recognizance ought to be given within the Intent of the Statute; and it is not the Business of this Court to examine whether Bail was put in upon the first Writ; for the Want of Bail does not hinder the Proceeds of the Writ of Error, but only makes it no Supersedeas. Salk. 97. pl. 2. Hill. 1 Ann. B. R. Tilly v. Richardson.

The on a Writ of Error in B. R. Bail shall be put in there, yet if afterwards Error in Parliament be brought, new Bail must be put in B. R. 8 Mod. 79. Trin. 8 Geo. Colebrook v. Diggs.

12. Writ of Error ad proximan Sessionem Parliamenti, and before that Time it was dissolved, and Day fixed for the Meeting of a new one, and Term interrumpet. The Question was, Whether this was a Supersedeas of Execution? The Ch. J. said, That as the present Case was, the Writ in Quelion could not be an Authority to carry up the Record, neither could the Lords be legally poffeis'd of it by Virtue of that Writ. And after all, here the Court left them to do what they could by Law. 12 Mod. 604. Mich. 13 W. 3. 1701. Peters v. Benning.

13. Error of Judgment in the Exchequer Chamber, returnable the 1st Day of Parliament, viz. the present Sessions, and now it was moved that Plaintiff in Error might transcribe the Record within 8 Days, otherwife that Execution might be taken upon the Judgment; and a Rule was made to shew Cause upon this Matter, but now the Rule was discharged; for by Order of the Lords in Parliament, 13th July 1678. All Persons upon Writs of Error in Parliament, shall bring in their Writs in 14 Days after the 1st Day of the Session in which such Writs shall be returnable, otherwise such Writs shall not be received unless it be upon Judgment given during the Session, which shall be brought within 14 Days after Judgment given; and therefore such Motion within 14 Days after the Beginning of the Session, is too hasty; for it is not reasonable that a Plaintiff in an original Cause should take Execution within the Time allowed by Order of the Lords to bring such Writ into their House; but if the Plaintiff in Error should exceed the Time allowed by the Lords, in such Case it would then seem reasonable that the Plaintiff should be at Liberty to take Execution upon the first Judgment; and thus it was said to be formerly determined in this Court, in the Cause between White and Roberts. Comyn's Rep. 420, 421. Hill. 13 Geo. 1. in the Exchequer, Barnes v. Otway.
Superfedaes.

(D) Error. At what Time it shall be a Superfedeas See (C) 2) in Law.

If a Capias ad Satisfaciendum be awarded, and after a Writ of After J udgment moved to stay Execution pending a Writ of Error brought to revert the former Judgment. Per Cor. the Action comes too late; it ought to be before Judgment in the later Action. And so Rule to show Cause was discharged. Barnes's Notes in C. B. 140. Mich. 13 Geo. 2. Clarkson v. Phyfick.

2. In Allife of Darren Pretenntment, if upon Demurrer a Writ be awarded to the Bishop for the Plaintiff, and a Writ of Inquiry of the Damages, and after a Writ of Error is brought of the Principal, this is not a Superfedeas to the Writ to inquire of the Damages; but the Sheriff may serve it notwithstanding, and return it. 17 C. 3. 34 b.

3. But when it is return'd in Bank, the Court cannot give Judgment and award Execution upon them, because their Power is bound by the Writ of Error. 17 C. 3. 34. b. 36.

4. If A. recovers against B. and after a Nihil return'd against the Principal, he files a Scire Facias against the Bail upon their Recognition, and after B. the Principal brings Writ of Error, this Writ of Error shall not be any Superfedeas of the Scire Facias against the Bail. P. 14. J. S. B. R. between the Spanish Ambassador and Gifford, by Cook and Houghton.

—Roll. Rep. 336. pl. 50. Hill 13 Jac. S. C. but not S. P. —3 Build. 182. S. C. & S. P. — After a Writ of Error brought, and before the Return of it, B. the Plaintiff in Error, was brought to the Bar by Habeas Corpus brought by his Bail, when B and also his Bail, pray'd that he might be committed in Execution in their Discharge. But Hobart Ch. J. held, That by bringing the Writ of Error the Court was disabled either to award Execution, or to put him in Execution. And this also was the Case that the Bail could not be discharged; for the End of the Bail is not only to bring the Body, but that he come subject to the Court, according to the Meaning of the Bail, which cannot be in this Case, because of the Writ of Error; for the Entry in Discharge of the Bail must be, that the Defendant redid it to the Court to be in Execution, if the Plaintiff will, which cannot be so here. And Quare, Whether this has not so disabled this Defendant by his own Act, that the Bail is forfeited, (note, the Bail have not disabled themselves) tho' afterwards he proceeded not in his Writ of Error; and so Execution may be taken here. But note, that afterwards this Term, Bradshaw the Defendant was brought again to the Bar by another Habeas Corpus, and the Plaintiff pray'd him in Execution; which was granted, because the Day of the Return of the Writ of Error was pass'd, and he had not caused the Record to be removed, and therefore this Court was re-enabled to award Execution. Hob. 116. pl. 132. Falch. 14 Jac. Wicksteed v. Bradshaw. — It was agreed, per Cur. and the Attorney General, that the Bail may render their Principal pending a Writ of Error, tho' during that Time the Plaintiff cannot charge him in Execution. 7 Mod. 77. Mich. 1 Anne, B. R. in the Cafe of Goodwin v. Hilton.

—Ibld. 98. S. C. & S. P.

5. If upon a Fieri Facias upon a Judgment against B. the Sheriff goods were taken the Goods of B. into his Hands; but, before Sale of them, B. delivers to the Sheriff a Superfedeas upon Writ of Error, B. shall have his Goods again; for no Property was award'd by the Sentence. P. 17 Jac. B. between Saxe and Shelton. Per Curiam.

the Exchequer-Chamber, and a Superfedeas awarded; and the Sheriff return'd, on the Fi. Fa. that he had seized the Goods, and that they remain'd in his Hands for want of Buyers; and also, that a Superfedeas was awarded; Thereupon the Defendant moved to have Relitigation. But, per Cur. tho' the Record be removed, and a Superfedeas awarded, yet since it came not to the Sheriff before he began to make Execution, as appears by his Return, a Venditioni exponas shall be awarded to perfect it; and tho' the Plea-Roll be removed, yet it shall be awarded upon the Return of the Fi. Fa. which remains filed in the Office. Cro. Eliz. 597. pl. 2. Hill 49 Eliz. B. R. Charter v. Peter. — Cro. E. 602. Charter v. Peter is a D. P. — Mo. 142. pl. 718. Hill 49 Eliz. Seem to be S C. accordingly, by Topham & Gawdy, abstemious Fenner & Clinch, and that the Execution is entire, and cannot be divided.
Superfedeas.

If one recovers in Debt, and has Fi. Fa. to the Sheriff to levy the Debt, and Defendant brings Error on the Judgment, and has Superfedeas to the Sheriff, so much Goods of Defendant as the Sheriff has in his Hands by the Fi. Fa. before the Superfedeas comes to him, shall remain to satisfy the Recoveror, and Venditioni exponas shall issue thereupon; but after the Superfedeas comes to the Sheriff, he cannot proceed further upon the Fi. Fa. Yelv. 6. Trin. 44 Eliz. B. R. Tocock v. Honeyman.

If before the Writ of Error the Sheriff returns a Fieri Facias & non incani emportes, the Execution is not to be undone. Per Hale Ch. J. Vent. 255. Hill. 25 & 26 Car. 2. B R Anon.

'Tho' a Writ of Error be a Superfedeas in itself, yet, after Execution begun, it shall not hinder it; but the Sheriff may go on, and on a Fieri Facias fell the Goods; per Holt Ch. J. 12 Mod. 99. Trin. 3 W. 3. Anon.

6. If upon a Fieri Facias upon a Judgment, the Sheriff returns Quod cepit Bona & Catalla of the Defendant, and Quod remanent in Custodia pro defectu * emportes, & quod ante Returnum hujus Brevis breve de non molestando fuit direct, quod de ulteriori executione superfedearet, the which Writ he return'd anner'd to the Fieri Facias, And this Writ De non Prolestando was awarded in Bank, by reason of a Writ of Error there brought by Defendant; but the Record was not yet removed, so quod the Return of the Writ of Error was Craftnito Allocionis & non ante, and the Fieri Facias of Patch. and a Writ of Venditioni exponas awarded. D. 1. Ma. 99. S. 57. Million v. Eldington. (But it seems that this is not Law.)

Surmise.


7. If a Writ of Error be brought returnable in the Exchequer-Chamber, and it is allow'd by the Clerk of the Errors, and Superfedeas granted, but the Record is not mark'd by the Clerk of the Errors, as the Act is, or Notice of it given to the Attorney of the other Side, it not being done, because it was not known who was Attorney, nor the Number-Roll of the Record known, by which it might be mark'd, yet this is a Superfedeas in Law; so that it Execution be awarded after to another County than that where the Superfedeas was granted, and is there executed, this is erroneous, and a Superfedeas shall be awarded Quia erronee emmanavit. But it is not any Contempt by the Attorney of the other Side in failing out of the Execution, he not having Notice of the Writ of Error, nor the Roll mark'd. Mich. 1649. between Methwold and Bawd, adjudged accordingly, and such Superfedeas, Quia erronee emmanavit, granted.

8. A Man is taken upon Ca. Sa. upon Condemnation, and brought to the Bar by the Sheriff, and pray'd to be deliver'd from it, because there is Writ of Error of it come to the Treasury, as he should be if the Writ of Error had been brought before the Award of the Capias, and was not delivered, but sent to the Fleet. But Prifot said, that when the Record is come up here, the Justices may send for him to the Warden of the Fleet. Br. Executions, pl. 9. cites 34 H. 6. 18.

9. A Man was outlaw'd in B. R. and brought Writ of Error out of Chancery to them the same Term, and they were in Doubt if the Writ of Error was good or not; for it was too general, &c. And upon long Debate it was awarded, that the Party shall have Superfedeas for his Goods, Quod capta Securitate quod non elongabit bona sua, that then the Sheriff and Exchequer cellabunt sejus bona sua, quod nota; and if the Matter pass for the Party outlaw'd, he shall retain his Goods, and if against him, then the King shall have his Goods. Br. Superfedeas, pl. 27. cites 4 E. 4. 43.

10. Judg-
Superfedeas.

10. Judgment was given in B. R. but before Execution a Writ of Error was brought in the Exchequer-Chamber; but the Plaintiff in Error did not bring a Scire Facias ad audendum errors; the Defendant in Error brought a Scire Facias in B. R. quare Executionem habeas non debit, and since only a Transcript of the Record was removed by the Writ of Error, and the Record itself remain'd here, he pray'd Execution. But by 3 Justices, absente the Ch. J. tho' this be true, yet B. R. cannot award Execution, 'till the Matter is determined in the Exchequer-Chamber, and then they send back the Transcript, and B. R. awards Execution upon the first Judgment; so that the Sci. Fa. should have been brought in the Exchequer-Chamber, and the Plaintiff in Error would have been nonluded there for this Omission, and then the Transcript would be remitted hither, whereby this Court would be authoriz'd to award Execution upon the first Judgment. Palm. 186, 187. Trin. 19 Jac. B. R. Anon.

11. Judgment in B. R. the Defendant brought a Writ of Error in the Exchequer Chamber, and the Record was removed thither; the Plaintiff took out Execution, and the Sheriff levied the Money. The Defendant moved for Retitulation. After the Court had taken Time to advife, Roll Ch. J. said, the Record being removed by Writ of Error in the Exchequer is not now before us, nor was at the Time of the Execution fixed forth; and this being after Verdict and Judgment, the Writ of Error is no Superfedeas; but ordered a Superfedeas quasi erronie &c. to supercede the Execution (it being ill awarded) and to take the Money out of the Sheriff's Hands. Scy. 414, 415. Hill. 1654. B. R. Wingfield v. Valence.

12. Note: If the Roll be mark'd for a Writ of Error before Execution But, per Car. done, the Sheriff shall be excused for doing it before a Superfedeas delivered; but this is sufficient to supercede the Execution; Per Twifden & Curi'am. 1 Keb. 12. pl. 27. Patch. 13 Car. 2. B. R. Anon. for a Writ of Error, or

Allowance in the Ch. J. unless it be actually taken out, is no Superfedeas to Execution; but being taken out, it is. But the Sheriff is not in Contempt if he have no Notice of it, or Superfedeas deliver'd to him. This was on a Motion to set aside Execution, which the Court granted, if the Secondary reported it was unexecuted when the Writ of Error was taken out. Keb. 863. pl. 4. Patch. 17 Car. 2. B. R. Abbot, Administrator of Piches, v. Leech.

Till the Roll be mark'd, or the Writ deliver'd unto the Officer in Court, a Writ of Error is no Superfedeas, especially after the Return of it. 3 Keb. 191. pl. 59. Trin. 25 Car. 2. B. R. Pical v.

13. Error being brought and flewed to the Attorney is no Superfedeas Note, per

by Twifden, until it be shewed to the Clerk of the Errors, which is an Car at Contempt in Court: And therefore if Execution be done before it be allowed mon Law, if by the Judge, or flewed to the Clerk of the Errors, it is well done, because the Attorney otherwise would never have it allowed, but only flew it to the Execution, and the Attorney of the other Side. But if he flew it, and * declare his intension to have it specially allowed, there Execution is superceded in the mean Time; but yet if Bail be not put in according to the Statute, the Execution may be well done, which the Court agreed. 1 Keb. 33. pl. Party could not have taken Exec-

ution, nor before, unless a Rule be enter'd for Judgment on the Pfedex; but if he flew the Writ of Error does not yet it allow'd within 4 Days after, the Party may the Execution, so if in 4 Days after the Allowance no Bail be put in; but if the Parties agree to accept the Allowance and Bail together, the Party cannot sue for Execution; and because he had done so, the Court awarded Retitulation. 2 Keb. 129. pl. 84. Nich. 18 Car. 2. B. R. Wacop v. Pallavicine.

* See pl. 25.

14. A Superfedeas was prayed for suing out Execution, notwithstanding superedeas being a Bail put in (as it ought) before my Lord Ch. J. in Writ of Error, which altho' it be but de bene jiffie, yet it is good, if no Exception be made; but not necessary, fo the Bail be put in: The Court awarded Superfedeas and
Superfedeas.

and Restitution. 1 Keb. 690. pl. 2. Pach. 16 Car. 2. B. R. The Dean of St. Paul's v. Capell.

4. Days after the Writ of Error brought, according to the Rule of the Court, yet it is a Superfedeas; but the Defendant ought to pay all the Costs and Charges of the Plaintiff's proceeding after the 4 Days; by Twifden and Keeling, contra Windham, on a Motion for Superfedeas to an Execution, being executed after Bail put in, but only de bene esse, and Notice of it to the Plaintiff, which the Court granted. Keb. 926. pl. 51. Trin. 17 Car. 2. B. R. Ranut v. Kingston.

2 Keb. 366 pl. 75. S. C. and Liveley said, that Berkeley J. had served him to berefores. So where a Fieri Facias was sued out on Friday, the Warrant deliver'd that 

Exceed to the Officer, a Writ of Error allow'd on Saturday Morning, and Notice deliver'd at the Plaintiff's Attorney's House about a Quarter after 11 that morning, and Execution executed before the Plaintiff's Attorney could countermand it,viz. about One at Hammermith. Per Cur. The Allowance of the Writ of Error with the Clerk of the Errors, is a Superfedeas, without Notice of such Allowance. And tho' it was insisted, that this Execution being taken out before the Allowance of the Writ of Error might be executed, notwithstanding such Allowance the Execution being awarded by the Court; yet it was declared to be the settled Opinion of the Court, that the Allowance of a Writ of Error is a Superfedeas, even were the Execution issued before, and is executed after the Allowance thereof, without Notice of it. Rep. of Prac. in C. B. 29. Mich. 1 Geo. 2. Miller v. Miller.

So where the Defendant full'd Judgment by Default, and paid till after Execution was sent down into Dorsetshire, and then got a Writ of Error allow'd, and forced the Agent with the Allowance thereof, and tho' it was impossible to stop the Execution in Dorsetshire, the Writ having been sent down some time before; yet the Court set aside the Execution, and ordered Restitution, and would not give the Plaintiff his Costs. But the Allowance of a Writ of Error is a Superfedeas from the Time of the Allowance, tho' the Sheriff executes the Writ before Notice thereof was given; and yet neither the Plaintiff, nor his Attorney, nor Agent, nor the Sheriff, were liable for any Misdemeanor. Rep. of Prac. in C. B. 35. Edw. 15 Geo. 1. Jennings v. Weit.

15. Judgment was entered for the Plaintiff, and Execution taken out, and a Writ of Error was brought, which was sealed about an Hour before Execution executed. Whereupon it was moved. That the Sheriff might bring the Money into the Court, for that the Writ of Error was a Superfedeas; for though the Sheriff shall not be in Contempt, if he makes Execution after the Writ, if no Superfedeas be sued out, for that he had no Notice; yet the Writ of Error immediately upon the Sealing forecloes the Court, so that Execution made after is to be undone; Of which Opinion was the Court, and ordered the Money to be brought in, and not delivered to the Plaintiff. Vent. 30. Pach. 21 Car. 2. B. R. in Cafe of Sir Robert Cotton v. Daintry.

16. At Common Law the very Writ of Error, especially when entered on Record, was a Superfedeas of itself; therefore unless Bail be put in, or the Defendant declares that he will not pay Execution, no Writ of Error ought to be allowed until execution be awarded. And unless the Party render himself in Execution or agree, it shall not supercede; per Cur. The Allowance of the Writ of Error without Bail was denied. 3 Keb. 169. pl. 2. Trin. 25 Car. 2. B. R. Hammond v. Gaap.

17. A Superfedeas was prayed after Execution executed by Seifure, and before the Sale of the Goods upon 2 Rolls 49. S. 5. and 1 Roll 894 there being a Writ of Error duly taken out before, but the Clerk of the Errors not then in Town, it was not allowed. The Court inclined, that the Sheriff could not fell after Superfedeas; But held, that before Allowance the Court can take no Notice of any Writ of Error. But Adjudnatur till the Sheriff's Return of Sei facias. 3 Keb. 169. pl. 4. Trin. 25 Car. 2. B. R. Mull v. Warren.

If the Plain docs not hear his Writ of Error, or get it allowed by the Clerk, by his endorsing Receipt upon it within 4 Days (which Time the Court gives as a convenient Time for putting in Bail according to the Statute) it
Superfedeas.


19. If Writ of Error bears Tafe before the Judgment given, and the Judgment is given before the Return, 'tis good to remove the Record, and whenever the Judgment is entered it hath Relation to the Day in Bank, viz. the first Day in Term; So that a Writ of Error returnable after, S.C. accordly will remove the Record whenever the Judgment is entered'd; per Hale Ch. J. Mod. 112. pl. 9. Patch. 26 Car. 2. B. R. Anon.

was, That the Plaintiff had Judgment for Security, after which the Defendant came in and prayed leave to plead, and before the Rule is out procured a Writ of Error, and showed it to the Plaintiff, after which the Plaintiff entered a Second Judgment for want of a Plea, and to which of these Judgments the Writ of Error should be applied was the Question; And per Cur, it's in the Plaintiff's Election to either, and so was applied to the bill, and a Superfedeas thereon granted.

A Writ of Error was brought returnable on the Effin-Day of Hilary Term, the first Judgment was signed of the same Term the 29th of January, and the Plaintiff took out Execution, apprehending the Judgment not to be removed by the Writ of Error. It was moved to set aside the Execution, for that the Judgment relates to the Effin-Day, and is a Judgment from that Day; And the Court will not make a Fraction of the Day, and consequentely the Record is removed by the Writ of Error. It was answered that the Judgment must be given before the Return of the Writ of Error, and if given upon the Return-Day of the Writ of Error, it is not removed by that Writ. The Court held the Record well removed, and set aside the Execution with Costs. Barnes’ Notes in C. B. 131. Edil. 6 Geo. 2. White v. Morgan.

20. A second Writ of Error brought after Nonuit in a former is no Superfedeas; per Cur. and leave was given upon Motion to charge the Defendant in Execution. Comb. 19. Patch. 2 Jac. 2. B. R. Anon.

21. The Plaintiff had a Verdict in Effinment at the Affiles in the Long Vacation; the Defendant brought a Writ of Error, which was allowed, and Bail put in 24 Octob. The Plaintiff afterwards on 27 Octob. bring no Notice of the Writ of Error entered Judgment generally (which refers to the first Day of the Term) and took out Execution Tafa the first Day of the Term, and bad it executed before Notice of the Writ of Error; but upon a Motion the Defendant had Realphution; For by faxing the Writ of Error and the Allowance, and putting in Bail the Hands of the Court are closed and so the Execution void, tho’ the suing was no Contem, no Notice being given. And tho’ the Judgment by the general Entry relates to the first Day of the Term, (viz.) to the 23d Octob. and the Execution is of the same Date, and both before the Allowance of the Writ of Error, which was 24 Octob. yet the Judgment being founded on the Verdict given in the Vacation, upon which by the Rules of the Court, Judgment could not be entered till the Quarto die post, (viz.) till the 27th Octob. at which Time the Judgment was signed, the Court awarded Realphution. 3 Lev. 312. Trim. 1 W. & M. in C. B. Smith v. Cave.

22. In Debt brought in B. R. the Plaintiff had Judgment. The De- fendant brought a Writ of Error in the Exchequer Chamber, and the S. C accordantly awarded a new Judgment was affirmed; The Plaintiff sued out a Sure Facias in B. R. and had an award of Execution; Hereupon the Defendant brought Error in the Exchequer Chamber (wiz) in Reddittionis judicii quam in adjudications executiones. Notwithstanding all this, the Plaintiff in the original Action went on and sued out of Execution; and now a Motion was made to set it aside, because it was sued out when there was a Writ of Error depend- ing. The Court held that the Writ of Error could be no Superfedeas to the Court, and that what the Plaintiff did was well, and no Con- temt. Salk. 263. pl. 4. Mich. 8 W. 3. B. R. Harrop v. Holt.

Writ of Error is brought upon the Award of Execution, so that the Exchequer Chamber have no Authority after they have affirmed the first Judgment. —— Comb. 393. S. C. accordingly. —— 12 Mod. 105. S. C. accordingly; For the Exchequer Chamber, by the affirming the first Judgment on the former Writ of Error have executed their Authority, and have no Power to examine their own Judgment. —— S. C. Tred. Rep. 97. accordingly, and that it is privileged from any other Writ of Error after Affirmance there, or otherwise the Law would be infinite and without End. —— And that
Superfecdeas.

that afterwards Hill s W. 2. B. R. it was held in the Cafe of Licinis, and Rawlings, and Man, that Error in the Exchequer Chamber upon Judgment in Scire Facias against Bail is not a Superfecdeas to the execution, because Error does not lie there in such Cafe.

S. C. 6 Mod. 130. The Point was that a Capias on a Judgment was returnable such a Day, and Non est invent'd return'd, but not filed. A Writ of Error was taken out before the Day of Return of the Capias, but not allowed till that very Day nor any Notice thereof to the Plaintiff's Attorney, and the Court said, that the Opinion in some Books was, That a Writ of Error was a Superfecdeas to avoid Execution from the enfealing thereof, tho' not to punish the Officer till Superfecdeas comes to him ; And of this Opinion is Rolle. But that the Law now is taken, that it is not a Superfecdeas till Notice to the Plaintiff's Attorney, and that the Allowance thereof is sufficient Notice, or that actual Notice be before Allowance.

24. Error Coram vobis refidens, was brought on a Judgment given in B. R. and the Question was, Whether it was a Superfecdeas before it was allowed by the Court. The Ch. J. and two other Judges were of Opinion, that it would be hard that the Execution of a Judgment in this Court should be delay'd by a Writ of Error allowed by a Secondary; for if that should be so, then any Man may avoid the Execution for a whole Vacation, at the Expence of no more than 1 s. There is certainly some Difference between a Writ of Error of a Judgment Coram vobis refide, and other Writs of Error, for the one is directed to the Justices of this Court, and therefore should be allowed by the Court ; but the other is directed to the Ch. Justice only. But Juft. Exre was of another Opinion, he cited the Cafe of Lounis and Carter in the Ch. J. Holif's Time, where a Writ of Error was adjudged a Superfecdeas before it was allowed. 'Tis true, there is a Difference between this Cafe and other Writs of Error, but the Reafon is plain, for where Writs of Error are brought in the Exchequer Chamber, or in the Houfe of Peers, to reverfe the Judgments of this Court, they are always directed to the Ch. J. alone, because he is to certify the Record ; but where a Writ of Error Coram vobis refidens is brought, there is no Record certified. Besides there never yet was a Motion in a Court of Law to allow a Writ of Error, because 'tis a Writ of Right, and due to the Subject Ex debito Juftitiae. But admitting this Writ is no Superfecdeas before the Allowance, yet 'tis a good Superfecdeas after 'tis allowed, as this was by the Secondary, and before Notice ; And if it was adjudged in the Cafe of Smith v. Cave, in which Cave an Execution executed was fet aside, but the want of Notice excused the Contempt, 8 Mod. 147, 148. Trin. 9 Geo. 1724. Belt v. Collins.

25. A Motion was made to fet aside an Execution issued after a Writ of Error allowed, and Notice thereof given to the Plaintiff's Attorney ; It appeared that an interlocutory Judgment was fign'd, and a Writ of Inquiry executed in Michaelmas Term left, and a Writ of Error was then allow'd, and Notice given ; But the final Judgment was not fign'd till after the Beginning of Hilary Term left. The Court held the Execution to be regular, the interlocutory Judgment not being removable by the Writ of Error, and the final Judgment being sign'd of a subsequent Term, was not removed, and therefore refused to make any Rule. Barnes's Notes in C. B. 130. Eall. 6 Geo. 2. Cooke v. Harrock.

(D. 2) Error
(D. 2) Error. In what Cases it shall be a Superfedeas; To what Persons. Privies or Strangers.

1. Judgment was given Erroneously that the King should seize the Temporalities of the Bishop of D. and upon this the Bishop brought Writ of Error, and putting this the King sued Scire Facias against R. of the Prelacy [Prefend] of M. and supposes the Prelacy to be annexed to the Temporalities, and that this voided after, and the other said, That Writ of Error is yet pending of this Judgment; and yet because R. was a Stranger to the first Judgment, therefore the Judgment not being reversed, the King recovered against him by Award; quod nona, and so it seems that Writ of Error is no Superfedeas but only to Privies, and not to a Stranger. Br. Error. pl. 62. cites 21 E. 3. 29.

(E) At what Time. Not after a Superfedeas. See (C. 2.)

1. If a Man brings Writ of Error in the Exchequer Chamber upon a Judgment in B. R. before the Judgment is entered or signed for Judgment, and has Superfedeas, and after this Writ of Error is disallowed, because it was brought before Judgment; upon a New Writ of Error after Judgment he shall have a new Superfedeas, for the first Superfedeas and Writ of Error was as none and merely void, and then this 2d Writ of Error is as the first Writ, and for a Superfedeas in Law. Rich. 15. 1a. B. R. between Smith and Bowles adjudiqed.

2. If A. recovers against B. in an Affife or Pais, which Judgment is after affirmed in B. R. upon a Writ of Error brought there, and upon the Writ of Error brought, a Superfedeas of the Execution is granted in B. R. and after B. brings a new Writ of Error in Parliament. This Writ of Error shall be a Superfedeas in Law of the Execution, for this Writ is now brought in another Court than where the first Superfedeas was granted, and by the Writ the Hands of the Judges of B. R. are closed. P. 12 Ja. B. R. between Goddall and Shepherd Plaintiffs, and Sir Christopher Heydon Defendant, adjudiqed.

other Time he had a Superfedeas upon the first Writ of Error, whereby the Plaintiff was delayed in the Execution of his Judgment in the Affife, and therefore he ought not to be again delayed by a new Writ of Error, and cites 3 H. 7. 22. 6 H. 7. 284. This Writ of Error is to reverse a Judgment upon a Judgment, and the 1st Judgment being affirmed by the 2d Judgment more than a single Judgment, and it shall be intended true; wherefore the Execution shall not be stayed, no more than in an Atraint. All the Justices except Coke Ch. J. held, that the Writ of Error itself is a Superfedeas in itself; For although there were a Superfedeas before, that was upon another Judgment, and this Writ of Error is upon another Judgment, and is in Debate, whether it be Error or no, and until it be determined, they may not proceed to Execution; And they all held that a Writ of Error in Parliament is by the Disolution of the Parliament determined. — Mo. 6 a. pl. 112. Heydon v. Shepherd and al' S. C. Lay, that Haughton and Coke Ch. J. held that the Writ of Error did not lie in Parliament to reverse a Judgment given in B. R. upon Error brought there, because there is a double Judgment, and that the Reversal of the Judgment given in the Writ of Error shall not reverse the first Judgment, but that Execution shall issue upon the first Judgment in Affife; But Dodderidge Contra. — Cro. J. 244. pl. 2. Heydon v. Godfale is a D. P. — Godb. 250. pl. 34. 5 C. by the Name of Sir Christopher Hey- don's Cafe, and there Haughton, Dodderidge, and Crooke held clearly, That this Writ of Error was a Superfedeas in itself, and that upon the Book of S E. 2. Error 88 and 1 H. 7. 19, which give, That the Justices proceeded to Execution after that Judgment affirmed in Parliament, and therefore Ex Consequentia sequitur not before; and so the Writ of Error is a Superfedeas that they cannot proceed, but there is no Precedent of it in the Register but a Scire Facias for. And the Court held, Ther if a Superfedeas
Superfedeas.

Superfedeas be once granted and determined in Default of the Party himself, he shall never have another Superfedeas, but otherwise if it fail by not coming of the Justices, Coke Ch. J. said, that admitting the Writ of Error be a Superfedeas for the second Judgment, yet it is a Question, whether it be so for the first, which is not touched by the Writ, and whether they may grant Execution upon it or not, and cited 1 E. 4. 22; 2 E. 2. 8 H. 7. 20, and therefore the Court advised Sir Christopher to Petition the King for a New Writ of Error, and to do it in Time convenient, otherwise they would award Execution if they perceived the same merely for Delay according to the Cases in 6 H. 7. & 8 H. 7. and the Parliament being afterwards suddenly dissolved without any thing done therein Execution was awarded. — Roll Rep. 18. 19. pl. 19. S. C accordingly. And there Coke Ch. J. said, That if a Man has Judgement in Writ of Annuity, and then 2 Scire facias has Judgment thereupon, and afterwards the Defendant brings Error upon the first Judgment, this was a Superfedeas for the first Judgment, but not for the 2d, and 6 in the principal Case. — 2 Bull. 159 to 176. S. C accordingly.

3. If a Man be nonsuited in an Audita Querela, he shall not have a Superfedeas upon a New Audita Querela. Because the first Writ was a Superfedeas in Law. 24 E. 3 Audita Querela. 11.

Br Superfedeas pl. 18. cites S. C. — He who is nonsuited in an Audita Querela after Superfedeas, and brings another Audita Querela, he shall not have another Superfedeas. per Jay. But Brooke says, It seems to be all one. Br. Superfedeas, pl. 25. cites 2 H. 7. 12.

Br. Execution pl. 41. cites S. C. — Br. Nonsuit pl. 56 cites S. C. — If a Man brings Writ of Error and has Superfedeas and after is Nonsuited in Writ of Error, and then bring another Writ of Error he shall not have Superfedeas; For he shall have only one Superfedeas. Br. Superfedeas pl. 29. cites 5 E. 4 2. — S. P. per Mordan. Ibid. pl. 25. cites 2 H. 7. 12. — Br. Error pl. 140. cites S. C. per Jay and Mordan. In Error, the Plaintiff may be Nonsuited and have another Writ of Error, but if the Party be in Execution, he shall not have Superfedeas, per Cur. Br. Error, pl. 140. cites 2 H. 7. 12. — Br. Superfedeas, pl. 25. cites S. C.

But per Cur. if he be not in Execution nor taken, he may have Superfedeas in the Second Writ of Error, tho' he had Superfedeas, before in the first Writ of Error. Br. Superfedeas, pl. 23. cites 2 H. 7. 12. — Br. Error, pl. 140. cites S. C.

Br. Superfedeas, pl. 23. cites S. C. — Abatement of Writ of Error by Death of Parties, or of Ch. J. or by Act of Court, does not hinder but that the 2d Writ be a Superfedeas; Per Cur. Keb. 633. pl. 40. Hill. 15 & 16 Car. 2. B. R. Tremain v. Sands.

5. Where a Writ of Error abates by Death of one of the Parties, or by Demise of the King, he shall have Superfedeas again in a new Writ of Error. Br. Error, pl. 140. cited 2 H. 7. 12. Per Jaye.

6. After Execution awarded, a Superfedeas issued. Quia imprudive eamavit Execucio, but no Clause of Rejustitio was in the Superfedeas; whereupon it was said that the Execution was made before the Execution was awarded. And upon that the Court awarded a new Superfedeas, with a Clause of Rejustitio reciting all the Matter. Mo. 466. pl. 661. Patch. 39 Eliz. Core v. Hadgill.

7. In Formdon the Judgment was pronoounced 16 Novemb. 18. and Writ of Error was brouht bearing Teffe 27 Novemb. and then allowed, and in majorum cautelam a Superfedeas made against Executions, and yet the Defendant obtained an Writ of Seifum, bearing Teffe 9 Die Octobris before, by Warrant of the Judgment which was afterwards entered but as of Offici. Mach. being the last Continuance, which being opened to the Judges, and they well knowing that Judgment was not pronounced till 16 Nov. so that the Tenant could not have a Writ of Error before, neither ought the Defendant to have a Writ of Seifum before, for by this Trick any
any Writ of Error might be defeated, as to saving Possession; and therefore a new Superfedeas was awarded against that Writ of Execution nisi venire &c. Hob. 329. pl. 404. Cluniard v. Lilie.

(F. 2) Error. Superfedeas. From what Time. See (D)

1. RespLs; the Plaintiff recover'd; the Defendant found Writ of Error returnable Monse Matthews, and after sued another Writ returnable in Martini; and because it founded in Delay of the Plaintiff, there at the Pray'r of the Plaintiff the Court awarded Execution, because the Record was not removed, & the vide inde. But it was laid that as soon as the Record is removed into B. R. the Party may have Superfedeas here in C. B. to the Sheriff, to hance Execution; quod nota. But Brooke says he wonders that their Hands are not closed by the Acceptance of the Writ of Error; for this is directed to the Justices who err'd. Br. Error, pl. 73. cites 6 H. 6. 7. 8.

2. But note, the Plaintiff has Verdict for him of the Thing demanded, and 401. Damages, if the Thing may be obtained, and if not, 201. Damages for all, and Judgment is given to recover the Thing, and 22 s. Damages, and Difficulties of delivering the Thing demanded returnable Officelis Hileri, and at the Day the Sheriff return'd Issu'un, and the Defendant neither came nor delivered the Thing; and after the 4th Day of Officelis Hiler. comes Writ of Error; and the Plaintiff prayed Judgment and Execution of the 201, and to have it entered upon the 4th Day, which is before the Writ of Error came, and could not have it; for by the coming of the Writ of Error the Hands of the Justices are closed; quod nota. Br. Error, pl. 80. cites 22 H. 6. 41.

3. A Capias was returnable the 1st Day of Hill Term, and in the Afternoon of that Day a Writ of Error was brought returnable in Cam, Secu's. Term, in the same Term, but find out the Writ, or the Notice thereof to the Plaintiff or his Attorney, what were Superfedeas the Execution? If the Writ be test'd after Return of the Capias, it does not superfede it. If a Capias be out, and Execution thereon, and then Writ of Error, it shall not discharge the Execution. And the ancient Opinions have been, that a Writ of Error is a Superfedeas from the actual purchasing of the Writ, but that the Party shall not be punished for executing it till Notice, but till it avoided the Execution. 12 Mod. 501, 502. Patch. 13 W. 3. B. R. Spurrway v. Rogers.

4. But note, Clark the Secondary told me, that a Writ of Error was a Superfedeas till a Certificate taken out from the Clerk of the Errors, and served on the Party. 12 Mod. 502. cites 6 Mod. 130. Parker v. Woolfson.—[Quar'e if this was paid by Holt, or is a Note of the Reporter.]
Superfedcas.

2. So this Certiorari shall be a Superfedcas of his Appearance at the
Affiles. B. 37 El. B. R. by Fenner and all the Clerks, but Pop- ham e contra.

If a Certiora-
ri be di-
rected to
the Plaintiff from a Recognizance, in which he was bound for Defendant's Appearance at next Assis
b: the Defendant pleaded that he brought a Certiorari directed to the Justices of Gaol Delivery, which Writ was delivered to them such a Day, and allowed by them. Upon Demurrer this Plea was held ill; for that the Certiorari removes the Recognizance, yet it excuses not the Appearance, but Defendant ought to have appeared, and procured his Appearance to have been recorded; and for his Non-appearance his Promise is broke. Cro. 4. 261, 282, pl. 2. Trin. 9. Jac. B. R. Rolfe v. Pye. — Yelv. 227. S. C. adjug'd that the Action lies; for thro' the Certiorari be the Command of the King, yet the pur-
chasing it is the Act of the Defendant, who cannot by a Svecft save his Recognizance. And this was the Opinion of the whole Court ——Built. 155, 156. S. C. adjug'd. And tho' the Certiorari ties up the Hands of the Justices, yet they might very well have entered his Appearance. ——2 Hawk. Pl. C. 294. cap. 27. S. 63. cites S. C. And the Serjeant says that this Opinion seems to be supported by the better Authority, and that the Opinion in Roll above would be highly inconvenient.

3. If Justices of Peace receive a Certiorari, all that which they do after is without Warrant, but all which the Sheriff does after upon their Warrant before, is not erroneous; and yet their Negligence is punishable by At-

4. Stat. 21 Jac. cap. 8. S. 5 & 6. Whereas Indictments of Riot, Forceable Entry, or Assault and Battery found at the Quarter-Sessions, are often re-
move by Certiorari, all such Writs of Certiorari shall be delivered at some
Quarter-Sessions in open Court. And the Parties indicted, shall before All-
lowance of such Certioraries become bound unto the Prosecutors in 10l. in such Sureties as the Justices shall think fit, with Condition to pay to the Prosecutors within one Month after Conviction, such Costs as the Justices of Peace shall allow; and in Default thereof it shall be lawful for the Justice to pro-
cceed to Trial.

If a Certio-
ri be di-
rected to
the Plaintiff from a Recognizance, in which he was bound for Defendant's Appearance at next Assis
b: the Defendant pleaded that he brought a Certiorari directed to the Justices of Gaol Delivery, which Writ was delivered to them such a Day, and allowed by them. Upon Demurrer this Plea was held ill; for that the Certiorari removes the Recognizance, yet it excuses not the Appearance, but Defendant ought to have appeared, and procured his Appearance to have been recorded; and for his Non-appearance his Promise is broke. Cro. 4. 261, 282, pl. 2. Trin. 9. Jac. B. R. Rolfe v. Pye. — Yelv. 227. S. C. adjug'd that the Action lies; for thro' the Certiorari be the Command of the King, yet the pur-
chasing it is the Act of the Defendant, who cannot by a Svecft save his Recognizance. And this was the Opinion of the whole Court ——Built. 155, 156. S. C. adjug'd. And tho' the Certiorari ties up the Hands of the Justices, yet they might very well have entered his Appearance. ——2 Hawk. Pl. C. 294. cap. 27. S. 63. cites S. C. And the Serjeant says that this Opinion seems to be supported by the better Authority, and that the Opinion in Roll above would be highly inconvenient.

3. If Justices of Peace receive a Certiorari, all that which they do after is without Warrant, but all which the Sheriff does after upon their Warrant before, is not erroneous; and yet their Negligence is punishable by At-

Two Men and their Wives indicted upon the Statute of Forceable Entry, brought a Certiorari to re-
move the Indictment into B. R. Some of them refused to be bound to procure according to the Star.
21 Jac. cap. 8. and therefore, notwithstanding the Certiorari, the Justices of Peace proceeded to the Trial. It was refused. That whereas the Statute is (the Parties indicted &c. shall become bound &c.) That if one of the Parties offers to find Sureties, albeit the others will not, yet the Cause shall be re-
moved; for the denying of one, or any of them, shall not prejudice the other of the Benefit of the Certiorari which the Law gives unto them; and the Woman cannot be bound. Mar. 27. pl. 63. Trin. 15 Car. Aton.

And it was further resolved, that where the Statute says, That the Parties indicted shall be bound in the Sum of 10l. with sufficient Sureties, as the Justices of the Peace shall think fit; That if the Sureties be worth 10l. the Justices cannot refuse them, because the Statute prescribes in what Sum they shall be bound. Like to the Case of Communion of Sewers 10 Rep. 140. 2. That where the Statute of 3 H. 8. cap. 5. enables them to ordain Ordinances and Laws according to their Willidoms and Discretions, that it ought to be interpreted according to Law and Justice. Mar. 27. pl. 63 Anon.

And here it was further resolved, that after a Certiorari brought, and Tender of sufficient Sureties, ac-
cording to the Statute, all the Proceedings of the Justices of Peace are Coram non Juride. Mar. 27. pl. 63. Anon.

5. A Certiorari was sued out here, and not delivered to the Justices before they had awarded Restitution on the Statute of Forceable Entry 8 H. 6. but before any Restitution was actually made upon their Warrant. And by Twidlen, The Hands of the Justices are closed by the ifuing of the Certiorari, tho' they be not in Contempt for what they have done before the Delivery of it, but they ought to have awarded a Superfedcas immediately upon the Receipt of the Certiorari, and because they did not, the Party had a Restitution Niti. 1 Keb. 93. pl. 79. Trin. 13 Car. 2. B. R. The King v. Spelman.

(G) What
(G) What Certiorari shall be a Supercededas. How the King may grant.

1. D 9 Cl. 233. 98. The Queen granted the Custody of the Heir of Knibeton to Cornel; Knibeton being held in Fee of Land held in Capite, conveys it to the use of himself for Life, Remainder to C. his Feme in Tail, Remainder over to the right Heirs of him and his Wife. And the Queen granted to the said Cornel Catholick omnium terrarum & tenementorum hereditario decendantum feu pertinentiam ut Filio & heredi dicti Knibeton. Per Constilium Wardorum, Grantor shall have the Ward of the Body (and) Marriage of the Heir by the first Words, Wardship being laved by the Statute for Alienation to his Feme. But the Grantor shall not have the Lands which pertain to the Queen, because the Grant is of Lands which descend from Knibeton.

(H) By *Audita Querela.

1. If a Man bound in a Statute Merchant be taken in Execution, and his Land extended, and Liberate awarded, and after he brings Audita Querela, he shall have a Supercededas for his Body; for this does not discharge the Body absolutely, but only for the Time to that he may better prosecute the Suit; so he shall be in Execution again, if his Audita Querela does not aid him. *M. 5 Ja. B. between Whidbey and Couyers, Per Curiam adjudged.

2. But in the said Case no Supercededas shall be granted for the Land and Goods, because they cannot grant a Supercededas after the Execution served and executed. *M. 5 Ja. B. between Whidbey and Couyers adjudged.

3. But upon an Audita Querela before Execution had, a Supercededas may be granted, as well of the Land and Goods as of the Body. *M. 5 Ja. B.

4. In Audita Querela upon a Statute, shall be a Supercededas in Law of the Execution upon it. 24 E. 3. Audita Querela 11.

5. In an Audita Querela, if there be any Ground for it of Note, that a Record, or in Writing, the Plaintiff shall have a Supercededas to stay Execution against him; but otherwise it is, if it be but only Matter in Fact, tho' the Matter for which the Execution was lied was Ufurios, or upon an Escape. *P. 10 Ja. B. between Mottson and Pary, per Curiam.

grounded upon a Statute; but he shall have an Audita Querela upon a Surmise, if he put in that &c., but not a Supercededas. Cook Ch. 1. advised every Student to take notice of that; and after in many Cases it was ruled accordingly. Noy 145. Anon.

* See (A) pl 6. And see Audita Querela.
Superfedeas.

E obtinu'd a Judgment against P. and had Satisfaction upon it, and gave a Release to the Defendant; yet afterwards takes out a Copias ad Satisfactionem against him, whereupon he brings his Audita Que- rela, and moves the Court, that he may have a Superfedeas to the Capitas ad Satisfactionem. The Court desired to see the Release, and upon View thereof the Rule was, that the Party should proceed in his Audita Querela; but said they would grant no Superfedeas, because the Release was ambiguous. Sry. 294. Trin. 1651. Pickering v. Emma.

6. If a Man be nonsuited in a Writ of Error, or Audita Querela, once, he shall not ever after have Superfedeas or Audita Querela to be a Superfedeas for him, but Writ of Execution may be executed upon him; for the first Writ is a Superfedeas in itself, but the other, which is purchased after the Nonfuit, is not a Superfedeas in itself; per Hobard. Br. Superfedeas, pl. 37. cites 6 H. 7, 16.

7. Pending an Action brought by an Administratrix, the Son of the In- fant, by Civil between the Debtor and him, obtinu'd other Letters of Administration to be granted to the Feme and him jointly, without any Notice taken of annulling the former; and then, after Judgment, he re- leagd to the Debtor all Demands and Executions. But the Administratrix sued to Execution, and thereupon the Debtor brought an Audita Que- rela, with a Superfedeas in it; and whilst that was depending, the ad Administegation was repealed, and the Repeal pleaded in Bar to the Au- dita Querela, and adjudged against the Plaintiff. D. 399. pl. 46. Hill. 17 Eliz. Anon.

8. Mainseers were in Action of Debt for Damages and Costs; and Scire Facias issued de Debtio & Damnis, and Judgment was given against the Mainseers; and now a Superfedeas, Quid erroneas, was moved for, because after Execution made; for they were not Parties for the Debt. Doderidge J. told them, they were put to their Audita Querela. 2 Roll. Rep. 431. Trin. 21 Jac. B. R. Cole v. Yarmon.

(1) By Habes Corpus.

S. C. cited per Holt Ch. J. 12 Mod. 58. in Case of Cross v. Smith. — Cro. C. 261. pl. 7. Ellis v. John- son, S. C. accordingly, the it was objected not to be Error, not triable.

1. In an Action upon the Cafe in an inferior Court, if after Issue joined, a Habes Corpus to remove the Body and Cause is deliver'd by the Defendant in the Court there, and pays the Fees for Allowance of it there; and yet after they proceed there to try the Issue, and thereupon a Verdict and Judgment given, this is Error, and in Writ of Error it may be assign'd for Error; for the Habes Corpus was a Superfedeas in Law. Trin. 8 Car. B. R. between Johnson and Ellis, adjudged in Writ of Error, and Judgment given in Habenione revertersd accordingly, because the Habes Corpus was not alledg'd to be upon Record, and so the Error assign'd

2. Debt was brought in an inferior Court upon a Bond of 200l. not made within the Jurisdiction. After Issue joined a Habes Corpus was awarded thither to remove the Cause; but they proceeded notwithstanding, and the Judge of the Court was an Attorney only, and not an utter Barrister. And it was resolved, that after the Habes Corpus deliver'd, the Pro- ceedings were ill, and not warranted by the Statute 21 Jac. cap. 23. And the proceeding after to Trial and Judgment were also void, and thereupon a Superfedeas was awarded; and the Judges of B. R. being inform'd thereof, agreed, that their Court in B. R. was to disallow Proceedings in an inferior Court, after an Habes Corpus deliver'd, unless it were a Cause arising in the Vill or Corporation. Cro. C. 79. pl. 1. Mich. 3 Car. C. B. Chappam's Cafe.
Superfedeas.

3. Per Cur. If a Writ be directed to an inferior Court, returnable 2 Days after the End of the Term, yet the inferior Court cannot proceed contrary to the Writ of Habeeb Corpus. North cited the Case of Staples, Steward of Windor, who hardly escaped a Commitment, because he had proceeded after a Writ of Habeeb deliver'd to him, (tho' the Value was under 5 l.) and would not make a Return of it. 1 Mod. 195. pl. 27. Hill. 26 & 27 Car. 2. in C. B. Haley's Cafe.

(K) After an Arrest.

1. If a Man purchases Superfedeas, and is taken by Capias by the Sheriff in the same Suit, before that the Superfedeas comes to the Sheriff, but the Superfedeas is deliver'd to the Sheriff before the Return of the Capias, and after the Sheriff return'd Capiq corpus, there the Superfedeas shall not serve; contra if the Superfedeas had been deliver'd to the Sheriff before the Writ served by the Arrest. Br. Superfedeas, pl. 36. cites 19 H. 6. 43.

2. If a Man is arrested at the Suit of the King, he shall not have Superfedeas in C. B. Per Babb. quod tota Curia conceivit. Br. Superfedeas, pl. 1. cites 9 H. 6. 44.

3. 'Twas moved, that the Sheriff tho' he has a Superfedeas, yet is not bound, upon Pain of false Imprisonment, to allow thereof; but may return the Writ and the Prisoner with the Superfedeas, and the Court may discharge him; and therefore there is Difference where the Arrest is before the Superfedeas, and where after; for that 'tis unlawful in the last, but not in the first Case, and cites 2 H. 7. 19. 19 H. 6. 43. 9 E. 4. 3. But all the Court held, that the Superfedeas was as good Caue to discharge him, as the first Proces was to arrest him, and he must obey it at his Peril; and in regard he has not done it, he is chargeable with false Imprisonment; and the detaining him in Prison is a new Caption, and he may well declare of Caption and Imprisonment. Cro. J. 379. Mitch. 13 Jac. B. R. Withers v. Henley.

(L) Out of what Court.

1. In false Imprisonment the Defendant was condemn'd, and Ca. Sai. & Exigent upon it issued in the County of O. and another Ca. Sai. & Exigent upon it issued in the County of E. and therefore he came into the Chancery, and had Superfedeas upon Mainprize of 400 Marks, and for Fine of the King; and another Superfedeas to the Justices of Bank to surcease. And by some this Superfedeas is contrary to Law. But Finch surceased, because it came out of a higher Court; and so there was no further Proces. Br. Superfedeas, pl. 5. cites 15 E. 3. 19.

2. In Debt the Plaintiff recovers upon an Obligation in C. B. and the Defendant brings Writ of Error in B. R. and pending this the first Plaintiff brings Writ of Debt in London upon the same Obligation; the Defendant shall have Superfedeas in B. R. and not in C. B. Br. Superfedeas, pl. 11. cites 11 H. 4. 73.

3. Where a Void Office is adjourn'd into the Exchequer-Chamber, and there argued and found void, Superfedeas shall be awarded in the Exchequer-Chamber, and rehearing the Patents granted to the Patencres,
and that they shall not intermeddle; quod nota. Br. Superfedeas, pl. 30. cites 5 E. 4. 7.

4. If an Accountant in the Exchequer be imploed in C. B. the Exchequer may fend Superfedeas to them to furcaze. Br. Superfedeas, pl. 38. cites 9 E. 4. 57.

5. And if he be imploed in B. R. thofe of the Exchequer will shew the Record of Account &c. for they cannot make Superfedeas to the King; for there the Pleas are held Coram Rege, and not Coram Justiciariis, and he shall be disnifie’d. Br. Superfedeas, pl. 38. cites 9 E. 4. 57.

6. A Man found in Court Christian, and the other obtained Prohibition, and notwithstanding the other sued forth and got Capias and Excommunicatium against his Adverfary, by which he furnifhed this Matter in Court of Bank, and pray’d Superfedeas. Thorp bid him go to Chancery; Morrice said, the Chancery cannot grant it, as long as this Court is open. Thorp said, this is true; and thereupon he granted the Superfedeas. Br. Superfedeas, pl. 13.

7. C. B. after Execution awarded, and Writ of Error deliver’d there, may award a Superfedeas before Execution executed. Jenk. 93. pl. 80.

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(M) In what Cases and Actions.

1. A Count against W. N. where there were 2 of the Name, and * W. N. appeared, and pray’d, that the Plaintiff count against him; and the Plaintiff said, that he is another of the same Name, and not the Defendant; by which the Plaintiff had another Proces against the Defendant, and the other had Writ that he should not be grieved, and that the Sheriff should not take him; which was a special Superfedeas as it seems, and the Diversity of the Names was also put in the Proces. Br. Superfedeas, pl. 35. cites 21 E. 3. 35.

2. A Man disfrais’d 2 Sheep, and the Owner brought Replevin; and the Defendant by Covin affirmed that Plaintiff count against the Plaintiff, to the Intent to have those Goods attach’d, so that they should not be reply’d; it was said the Plaintiff shall not have Superfedeas for the Charlies, but for his Person; but, per Laiicon, he shall have Superfedeas for both. Br. Superfedeas, pl. 34. cites 16 H. 4. 8.

3. Trefpafts upon the Cafe against the Bifhop of Lincoln for claiming the Plaintiff as Vilein, they were at Issue, and pendit this the Temporalities of the Bifhop were seize into the Hands of the King, by which came Writ to the Justices rehearing all the Matter and commanding them Quod non procedant Rege Inconsulti, by which the Justices ceased; quod nota. For it the Plaintiff be Vilein he is Pardel of the Manor to which &c. and fo a Lofs to the King. Br. Superfedeas, pl. 40. cites 2 R. 3. 13.

4. It was held for Law, that in Writ of Attaint a Man shall not have Superfedeas to disturb Execution; for the Vendiect shall be intended true Quoifique, &c. Contrary to Writ of Error; for it may be intended that Error is, &c. Br. Superfedeas, pl. 24. cites 5 H. 7. 22.

5. And, by fome, Superfedeas does not lie upon Certificate of Affife, for the fame Reafon, Quere inde. Br. Superfedeas, pl. 24. cites 5 H. 7. 22.


If a Man fues out an Audita Querela.
cordingly; and that the Register, which gave Superfedeas there, is not rel to avoid a Statute-Scape, or

Satisf-Merchant, he shall have a Superfedeas to the Sheriff not to do Execution, hanging the Plea &c. F. N. B. 240. (A) cites Regill. 113.

7. A Superfedeas lies not to take a Man on an Excommunieato Capiendo; F. N. B. 239. (B) S. P. cites Regill. 96. The Court was moved to supercede a Writ de Excommunicato Capiendo, for that it was too general. It was insifed upon, that the Motion for the Superfedeas was made too early, the Sheriff not having rendered the Writ; and cited 1 Sid. 181. Parker Ch. J. said, If the Court of B. K. cannot grant a Superfedeas before the Return, the Confession will be, that a Subject may for a long Interval of Time, viz. between the Delivery of the Writ to the Sheriff and his Return, be wrongfully deprived of his Liberty, without Possibility of Redress. In Fact, these Writs have not been superceded before their Return; but I see no Reason why they may not. A Superfedeas was granted accordingly. 1o Mod. 350. &c. Hill. 3. Geo. 1. B. R. King v. Thed.

8. Superfedeas lay in a Nativo labendo. See F. N. B. 77. (C)

(D)

9. If a Man be sued and a Capias or exiient be awarded against him, he may by his Friend sue for a Superfedeas out of the Place where the Capias or Exigent was awarded against him, or out of the Term he may sue forth a Superfedeas out of the Chancery directed to the Sheriff, that he take Sureties of him, and to appear at the Day &c. and that he let him at Liberty, or he may find Sureties in the Chancery to appear at the Day of the Return of the Capias or Exigent; and upon this he shall have a Superfedeas to the Sheriff, that he let him go, if he have arrested him thereupon, if he have not arrested him, that then he do not arrest him, but suffer him to go in Peace. F. N. B. 236. (A)

10. If one lies a Supplicat out of Chancery to arrest another, to find F. N. B. 81; Sureties of Peace, the Defendant who is arrested may have Superfedeas (A) & P. in Chancery to the Sheriff, commanding him not to arrest him. F. N. B. 238. (E)

11. In a Court-Baron, or any other Court, as in London, in Writ of F. N. B. 59. Right, if the Tenant vouches a Foreigner to Warranty, the Tenant who (H) S. P. vouches shall have a Writ of Superfedeas directed to the Court, to enforce the Plea until the Warranty be determin'd. F. N. B. 239. (A) cites the Register. 5. 11. & 13.

12. It lies upon a Writ of Homine replegiando. F. N. B. 239. (C) cites Regill. 79. 80.

13. If Trefpas vi & Armis be brought in the Count, a Superfedeas lies to the Sheriff &c. where the Plea is holden, reciting that a Plea of Trefpas vi & Armis shall not be held in a lei Court than before the King, or other Justices by his Command. F. N. B. 239. (D) cites Regill. 111.

14. If an Order or Rule be made by the Court, that Execution shall not issue, or if Judgment be entered before it be pronounced, altho' Execution be executed, in these Cases it shall be set aside by a Superfedeas quia improvida emanavit. Jenk. 93. pl. 80.

15. If the Plaintiff in a Writ of Error be Non-Suit, or does not remove the Record before the Day of the Return of the Writ of Error, or if there be too long a Day between the Tehfe and the Return of the Writ of Error, no Superfedeas shall avail in these Cases, because of the manifest Delay of Justice. Justitia non est neganda non differenda. Jenk. 93. pl. 80.

16. It was resolved by all the Judges, that Error is a Superfedeas to the Writ of Enquiry. Mar. 89. pl. 142. Parch. 15 Car. Anon.

(N) For
Superfedeas.

(N) For what Causes.

1. Debt against 2, the one was at the Exigent, and the other at the Disfres, and he at the Disfres came and demanded the Plaintiff, and he did not come, and was nonsuit'd; by which the other had Superfedeas omnino, because Nonfit against the one in Action Personal, is Nonfit against both. Br. Superfedeas, pl. 6. cites 1 H. 4. 4.

2. Trespass Vi & Arnis in B. R. against T. S. who pleaded Not guilty, and was found Guilty, and the Plaintiff had Judgment, and for the King Capias pro fine was awarded against the Defendant, and after Exigent for the King issued against the Defendant, and when 3 Counties were pass'd the King sent Privy Seal to the Justices of B. R. for the Defendant rehearing the Matter, commanding them to surcease to make Proces for the King; and that if they had made Proces, that they should make Superfedeas; and yet the Plaintiff pr'y'd Proces for the King, and the Defendant contra, and pray'd Superfedeas; and upon good Argument in the End be had Superfedeas; quod nota, upon Privy Seal; for tho' the Fine of the King arose upon the Suit of the Party, yet pending the Proces not served, the King may cease his own Proces at his Pleasure; for the Party shall not compel the King to sue against his Will, but if he was taken by the Proces, the King shall not set him at large till the Party be satisfied; for per omnes, the Plaintiff may take this for his Execution, if he will. Br. Superfedeas, pl. 26. cites 4 E. 4. 16.

3. Superfedeas Quia erroneous emanavit in Debt against 3 by several Parties, and Execution is against the one only. Br. Superfedeas, pl. 25. cites 4 E. 4. 39. & 5 E. 4. 4.

4. If Judicament be insufficient, the Justices ex Officio, by the Information shall fend Superfedeas. Br. Superfedeas pl. 30. cites 5 E. 4. 7.

5. So if Exigent be awarded * where no Exigent lies. Br. Superfedeas, pl. 30. cites 5 E. 4. 7.

6. In Aitife it was said, that if Diem Clausit extremum fuisse, and after Superfedeas comes to the Exchequer to surcease, this had been adjudged void; for the Diem Clausit extremum is the Suit of the Party, and by other Way he cannot have his Land; and therefore he shall be delayed of his Suit; and the Statute of 2 E. 3. cap. 8. wills, that by the Great Seal nor the Petit Seal, the Justices shall not surcease to do Right; but quere if the Superfedeas shall not be allowed against the Diem Clausit Extremum? It seems that it shall. Br. Superfedeas, pl. 25. cites 5 E. 4. 132.

7. In Replevin the Sheriff retur'd Quod a vera Elongata sunt, and the Defendant appear'd, and notwithstanding Withernam was awarded, which was erroneous, by Reason of the Appearance of the Defendant, by which Superfedeas issued to the Sheriff to surcease &c. and if he had taken them to re-deliver them to the Defendant, and the Sheriff returned that before the Superfedeas came, he had delivered the Beasts of the Defendant to the Plaintiff in Withernam; and he went to the Plaintiff to have Re-delivery, and he elon'd them; and the Defendant appeared and pleaded that he did not take the Beasts, and pray'd Withernam &c. Br. Superfedeas, pl. 32. cites 7 E. 4. 15.

8. A. has Judgment in Debt against B. and a Ca. Sa. against him; B. is taken by Force of it; his Attorney informed the Court that he had a Writ of Error in this Case before the Execution executed, which Writ of Error be
had not with him at the Time of the Execution. B. was committed in Execution, ut supra; for B. ought to have delivered the Writ of Error before the Copias was awarded, or after it was awarded, and before Execution to have a Superfedeas. By the Justices of both Benches. Vigilantibus subseruivit Jura. Jenk. 92. pl. 80.

9. A. has a Ca. Sa. against B.—B. has a Superfedeas thereto in his Pocket; B. is taken upon it by the Sheriff, and immediately delivers the Superfedeas to the Sheriff, this shall discharge him from Execution. Que hunc, incontinent, inclite videntur. Jenk. 92. pl. 80.

10. Tho' the Statute 3 Jac. cap. 8. be general, yet it is to be intended in such Cases where it is against the Party himself upon his Obligation, or in Case where the Judgment is general against the Executors; but where the Judgment is special, that it shall be of the Goods of the Testator, and Damages only de Bonis propriis, it is not reasonable, nor is it the Intent of the Law that the Party should be inord'd to find Sureties to pay the whole Condensation with his own Goods. And according to this Difference Coke said it had been ruled in C. B. when he was there. And Man the Secondary said, that the Precedents of this Court ever since the Statute made were, that a Superfedeas had been allowed upon a Writ of Error brought by the Executor or Administrator. Cro. J. 350. pl. 2. Mich. 12 Ja. B. R. Goldsmith v. Plat.

11. Upon a Verdict a Rule was given for Judgment upon the Thursday, and upon Saturday after the Plaintiff died. A Writ of Error was moved for because, as was said, the Party died before Judgment, in as much as of Course after Verdict and Rule for Judgment, there are 4 Days to move in Arret, and so he died before Judgment absolutely given, and moved the Court for a Superfedeas. It was agreed to be in the Discretion of the Ch. J. Ex officio, to allow a Writ of Error, but because it was a Cause of great Consequence he took the Advice of the Court, and it was agreed, that a Writ of Error is a Superfedeas in itself; yet it is good to have a Superfedeas also; And if the Writ of Error had been allow'd the Court could not deny the Party a Superfedeas. But because the Writ of Error was not allow'd, and also because no Error appear'd to the Court, for where Judgment is enter'd, this shall relate to the Time of the Rule given, it was resolved that no Writ of Error should be allow'd, nor any Superfedeas granted. Poph. 132, 133. Mich. 15. Jac. B. K. the Earl of Shrewsbury's Cafe.

12. D. Acknowledged a Statute Merchant at Gloucester in 300 l. and the Statute did not limit any Day of Payment, and yet an Extent was sued, and upon Motion a Superfedeas was awarded; For that 'tis no Statute, because they had not purport the Authority given by the Statute, for the Statute of Aton Burnell, 11 E. 1. says, if the Debt be not paid at the Day &c. And though Debr upon an Obligation is payable presently, if the Day be not expressed, yet here the Statute appoints a Day certain. Hutt. 42. Mich. 18. Jac. Davie's Cafe.

13. A. had Judgment against B. who paid part of the Money, and A. acknowledged Satisfaction of so much; and then they agreed, That if B. did not pay the Rest due by such a Day, then it should be lawful for A. to take out Execution against B. without suing any Seire facias, tho' after the Year. The Money was not paid at the Time, and Execution being taken out without a Seire facias a Superfedeas was moved for, because the Writ Improvide emananavit &c. And the Court held it good Cause to discharge him, but said, it was in their Discretion to grant a Superfedeas, or put the Defendant to his Writ of Error. Win. 100, 101. Mich. 22 Jac. C. B. Hickman v. Filh.

14. The Defendant was taken in London on a Ca. Sa. by a Bailiff of Middlesex, and thereupon moved for a Superfedeas, for that the Arret was false. The Court agreed, that a Superfedeas cannot be granted qua Executo erronee emanavit, which it did not, because the Execu-
Superfedeas.

...tion was well granted, and if it be returned by the Sheriff generally, it ought to be intended well served, tho' Affidavit be made to the contrary; but a Habeas Corpus was granted. 

15. In Case for Words spoke in London the Defendant justified for a Matter arising in Suffolk; the Plaintiff replied, De inertia sua propria, and upon Issue procured a Scire facias to London. A Superfedeas was moved for and granted, because the Venire facias ought to have issued in Suffolk, and the Procheinomaries ought to enter upon the Roll Ideo preceptum cil Vicecomiti Suffolk. Litt. Rep. 314. Mich. 5 Car. C. B. Harvey's Café.

16. When a Procedendo unduly vel improvida emanavit, it's usual to grant a Superfedeas, but because in the principal Case the Procedendo was well awarded; The whole Court denied to grant a Superfedeas. Cro. C. 486, 487. pl. 11. Mich. 13 Car. B. R. Bower v. Cooper.

17. The Court was moved, That a Writ of Error was brought to reverse a Judgment, and that it was received and allowed, and notwithstanding which, the Plaintiff took out Execution, and thereupon it was prayed for a Superfedeas to supersede the Execution, and for an Attachment against the Party for his Contempt to the Court. It was urged, that the Writ of Error was not duly purveyed because the Roll was not marked, and therefore the Party might well take out Execution. But Roll Ch. J. answered, That the Writ was well purveyed, tho' the Roll were not marked; yet if neither the Roll be marked, nor Notice given to the Attorney on the other Side of the bringing the Writ of Error, if the Party proceed to take out Execution, it is no Contempt to the Court; otherwise it is a Contempt: and it is the Duty of the Clerk of the Errors to mark the Roll and not the Attorney's, and therefore take a Superfedeas Suisa improvida emanavit to stop Execution. Sty. 159, 160. Mich. 1649. Mercer and Rule.

18. A Peer was arrested by a Bill of Middlesex, and in Castell of the Marquess of B. R. and thereupon moved for a Superfedeas; because being a Peer he ought not to be arrested. The Court directed him to plead his Privilege, and said, they could not take Notice thereof upon a Motion. Sty. 177. Mich. 1649. B. R. The Earl of Rivers's Café.

19. After Error directed to Prohibito, but never delivered, another Writ was procured directed to Hales Ch. J., by whose Creation the other created, and no Notice is given of it, but within the four Days before Allownace Execution is taken, and per Cur. on 13 Car. 2 Stat. 2. c. 2. no Bail being yet given, and the four Days past, they cannot supersede in Action of Battery, notwithstanding Hales's Café, which was between Cofin and Dainty; and per Hales Ch. J. Execution before Bail put in is good. 2 Keb. 772. pl. 35. Patch. 23 Car. 2. B. R. Nichols v. Deacon.

20. The Defendant was arrested, and no Declaration being filed against him within two Terms after the Arrest, he procured a Superfedeas and was discharged, and immediately afterwards he was arrested again by a Capias out of C. B. at the Suit of the same Plaintiff, and for the same Cause of Action; and upon a Motion to discharge their Proceedings because irregular, the Court was of another Opinion, for that the Defendant had a Right to supersede the Action because no Declaration was filed against him in Time, and as he had a Right to supersede that Action, certainly the Plaintiff must have Liberty to proceed in another; for his Debt is not lost for want of declaring in Time, but only that Action is gone, and therefore a new Action may be brought. 8 Mod. 306. Mich. 11 Geo. 1725. Henley v. Rollé.
Supplicavit.

(A) In what Cases granted, and how.

1. IN Supplicavit of the Peace the Sheriff may make Precept to take the Body; for it is not like to Redifficin where the Sheriff is Judge and Officer; but when the Bailiff has taken the Body, he shall not take Surety, but the Sheriff himself shall do it; per Choke. For it is a judicial Power given to the Sheriff by the Writ of Supplicavit, which cannot be aligned over; For a Judges Power cannot be given over. Br. Office and Off. pl. 39. cites 9 E. 4. 31.

2. Several Perions had made Disturbance in the Church, and pulled out the Minister reading the Divine Service (viz. the Common Prayer) in the Church, and carried him to the Compter. Upon Articles exhibited the Court upon Motion granted a Supplicavit; And further advised to inform against them for a Riot. 1 Keb. 290. pl. 104. Patch. 14 Car. 2. B. R. the King v. Douglas &c.

3. A Supplicavit was moved for on Affidavit of great Peril of Life, which per Curiam was granted without special Articles; but for the good Behaviour Articles must be exhibited; but per Twisden Articles should be in both, but the Clerks laid as before, and so it was granted. 2 Keb. 305. pl. 2. Hill. 19 and 20 Car. 2. B. R. Muirgnave v. Sir John Pulington.

4. A Writ of Supplicavit iffued upon a Petition and Articles exhibited. The Defendant iffited, that the said Writ iffuing on Petition, and not on a Motion in Court, nor any Indorsement made on the Back of the Writ, as by the Form of the Statute is required, and but three of the said Articles being sworn to it is irregular; But the Court on reading Precedents, notwithstanding the Objections aforesaid, was fully satisfied, that the Supplicavit was well granted and warranted. 2 Chan. Rep. 68. 24 Car. 2. Fol. 390. Stoell v. Botefar.

5. M. was taken upon a Supplicavit out of Chancery, and brought before Jones J. of B. R. by Habens Corpus, and bound by Recognizance to him to appear the first Day of the next Term which he did, and being in Court, Maynard moved that the Articles sworn in Chancery might be read here, and that they would bind him here, which the Court rejected, for that they
they have no Record before them, and the Record in Chancery is not
duly transmitted hither; but if the Witnemeses that swore to the first Ar-
ticles had been here and swore to them in Court they would have done it,
otherwise not, and this was at two several Motions by Maynard; but
the Opinion of the Court was contra. Skin. 61. Mich. 34 Car. 2. B. R.
Mullineux's Café.

6. Upon Motion in B. R. for a Supplicavit, Withens J. said, You
must first exhibit your Articles in Parchment, and then move us. Comb.

7. When a Supplicavit is moved for upon Articles exhibited to the
Court in Parchment &c. the Plaintiff severs that he moves not for this
out of Hatred &c. but for Fear of his Life &c. Comb. 28. Mich. 2
Jac. 2. B. R. The King v. Lewis.

8. Upon a Supplicavit the Parties are to give Security by Bond
unto the Sheriff to appear in this Court, and when they come here they
enter into Recognizance. Comb. 427. Trin. 9 W. 3. B. R. Ruffell's
Café.

9. Upon Articles filed by A. against B. upon Oath of Assault and
Battery, and that he went in Fear of his Life, Ld. C. Macclefield
granted the Writ, which commanded B. to find Sureties for a Twelve-
month, ordering it to be endorsed for 4000 l. for the Party and his Sureties
be bound in. And upon Motion to discharge the Order, or at least to
leave the Sum, B. being only Tenant for Life of his Estate, and mention'd
the Statute (of 21 Jac. 8) which gives Coists in Café of a groundless and
 vexatious Complaint of this Nature, Lord C. Macclefield refus'd, and
said if B. complains of Vexation, he comes too soon; let him stay till the Year is out, and behave himself quietly all that Time, and if
the Sum be too great for his Circumstances, there ought to be an Affidavit
to prove this; and to denied the Motion. Mich. 1723. 2 Wms's Rep.

10. After an Imprisonment for 13 Months upon a Supplicavit, and no
Prosecution commenc'd against the Defendant in all that Time, the Party
was dischargin'd on very slender Security. Gibb. 268. Pach. 4 Geo. 2.

11. If a Recognizance be taken pursuant to a Writ of Supplicavit, it
must be wholly governed by the Directions of such Writ. 1 Hawk.
Pl. C. 129. cap. 60. S. 15.

12. This Writ is not much in Use at this Day. 1 Hawk. Pl. C. 128.
cap. 60. S. 10.

For more of Supplicavit in general, see Good Behaviour, Return,
Surety of the Peace, and other Proper Titles.
Surety.

(A) In what Cases to be found.

1. IN Writ of Right after Battle joint'd, the Demandant and the Tenant shall find Surety of the Battle at the Day appointed, viz. for their Champion, each two Pledges, and the Tenant shall first find Surety; but upon no Pain. Br. Surety, pl. 25. cites 1 H. 6. 7. 7.

2. Action upon the Case for calling him Villein, and the Defendant claim'd him as his Villein, and had taken Part of his Goods; by which it was awarded that the Plaintiff find Surety that he do not eschew his Goods, and the Defendant find Surety that he shall not seize any more of the Goods of the Plaintiff, till it be tried if he be his Villein, or not. Br. Surety, pl. 30. cites 13 H. 7. 17.

(B) Surety. Chargeable. How far.

1. IN a Scire facias upon a Recognizance for Rent and Farm of the Estate, as Farmer thereof, he pleaded the Act of General Pardon 12 Car. 2. which excepts the Rent but not the Security; and by an explanatory Act made Anno 15 Car. 2. the Securities of their Sureties were made liable, but nothing is said of the Farmer's own Securities. But the Court held, that a Fortiori the Farmer's own Securities should be liable, because the explanatory Act mentions the Securities of the Sureties only: And it is strongly implied by omitting them out of the latter Act, that the Parliament had no Doubt upon them, but that they were excepted out of the Act of Oblivion. Besides, the Securities of Farmers and their Sureties are but the same Securities in Law; for all are Principals with Respect to the King. And since the Sureties are bound, a Fortiori the Principals shall. And Judgment was given accordingly. Hard. 424. pl. 1. Trin. 18 Car. 2. in Scacc. The Attorney General v. Beeton.

2. The Obligee in a Bond of 20 Years old, exhibits his Bill against the Administrator of the Principal, and the Surety (upon Lof's of his Bond.) The Administrator says by his Answer, that he has no Assets. Upon hearing the Caufe, it was directed to a Trial, whether the Surety had seal'd and delivered the Bond, and a Verdict had pass'd against the Surety, (viz.) That he had seal'd and entered into the Bond. And the Surety coming back to this Court, and the Plaintiff's Counsel praying a Decree for the Plaintiff's Debt against the Surety, Sergeant Fountain (not of Counsel on either Side) said it was doubtful whether Equity should in this Case bind the Surety, who was not obliged in Law, but in Respect of the Lien of the Bond; and that being lost, and the Surety having no Benefit by, nor Consideration for, being bound, he thought Equity, after so long a Time, should not charge the Surety. The Matter of the Rolls said he would like to moderate and mediate this Matter between the Parties, in order to which he was several Times attended by the Plaintiff; and the Defendant making Default, he decreed for the Plaintiff. But afterwards the Caufe was upon a Caufe made before my Lord Chancellor,

The Reporter observes, that the Bond was for Money lent; and tho' the Surety had no Advantage, yet the Obligee had parted with his Money, and Lof's is as good a Consideration for a Promise, as Benefit or Partial Credit.

D d cellore,

3. J. S. was indebted to J. D. by Bond of 1000l. to perform an Award. By the Award 250l. was due to the Obligee; J. D. put the Bond in Suit against J. S. A Bill is exhibited here to be relieved against the Suit, and an Injunction awarded on Recognizances to abide the Order on Hearing. J. S. and F. as his Surety, are bound in the Recognizance, which was found to pay what should be reported due by N. H. a Matter named in the Defeance or Condition; but the Matter died before any Report made, and so also did the Obligee, who died intestate worth nothing. By the first penning of the Defeance the Recognizance is not fiable at Law, because no Report was made by the Matter; but the great Qualion was, if the Surety, who was not liable in Law, should be made liable in Equity; for the Plaintiff had good Remedy for a just Debt, and justly proceeded to recover it; but the Court fluid his Suit, and takes ill Security, which proves f0, and the Debt loft thereby; and therefore the Court is bound to do us right; and the Intent of the Court was, that the Debt, if due, should be secured, and the Intent was not with Reference to this or that Matter's Report; for suppose that the Court had, during the Life of the Parties, transfer'd the References to another Matter, and he had made a Report that should have bound; and in Cafe of a Bond loft, this Court have made a Surety to pay it. Yet the Lord Chancellor contra; for the Party is but a Surety not bound by Law. 2 Chan. Cases 22. Hill. 31 & 32 Car. 2. Simpfon v. Field.

4. A. and B. Iniants were made Executors; Administration during their Minority was granted to M. their Mother. Upon granting the Administration the Prerogative Court took the usual Bond from M. in which J. S. and W. R. Defendants were bound as her Sureties. B. died, but made his Will, and A. Executor; A. brought his Bill for an Account of the Testator's personal Estate, and as to J. S. and W. R. suggested that by Fraud and Cozen they had got up their said Bond, and procured insufficient Security to be accepted by the Prerogative Court in lieu thereof. The Lord Keeper, upon the first opening the Matter, declared he would not charge the Sureties further than they were answerable at Law; and as to that Part dismissed the Bill. Vern. 195. pl. 193. Mich. 1693. Ratcliffe v. Graves & al.

5. A Bond Creditor shall, in the Court of Chancery, have the Benefit of all Counter-bonds or Collateral Security given by the Principal to the Surety; As if A. owes B. Money, and be and C. are bound for it, and A. gives C. a Mortgage, or Bond, to indemnify him, B. shall have the Benefit of it, to recover his Debt. Abr. Equ. Cases 93. Mich. 1692. Maure v. Harfion.

6. A. is bound as a Surety in a Recognizance dated 5 May 1660, for Payment of Money, which happened not to be made good by the Convention Act for confirming judicial Proceedings, the Act not extending to that Day. A. being a Surety only, and having no Consideration for entering into this Recognizance, the Court would not make it good, nor allow it to be so much as a Debt. The Lord Keeper dismissed the Bill. 2 Vern. 393. pl. 364. Mich. 1700. Sheffield v. Lt. Cathleton & Uxor.

7. A. Tenant for Life, with Power to charge the Premises by Lease, Mortgage, or otherwise; with 6000l. mortgaged Part for 1500l. And afterwards, upon Affirmation over of the said Mortgage, B. eldest Son of A. and who was the Remainder-man in Thai, covenanted to pay the Mortgage-money, and the Alligee covenanted to re-align to B.—A. died, and then B. died. It was agreed by Lord C. King, L. Ch. J. Raymond, and the Master of the Rolls, that the personal Estate of B. is not liable to pay off this Mortgage, in Life of the Lands mortgaged; the Charge being made by A. in Pursuance of his Power, and therefore the next Remainder-man must be content to take the Land cum Onere; that this being the
the original Debt of A. his personal Estate, if any were, would be liable; but B.'s personal Estate ought not to be charged with A.'s Debt: and notwithstanding B.'s Covenant to pay, this Covenant, since the Land was the original Debt, will be considered only as a Surety for the Debt, and Land, and therefore a Bill by the next Remainder-man to charge the conseqently personal Estate of B. in Fate of the Land, was disaffid with Colts. See 2 Wms. Rep. 591. 596. Hill. 1731. Evelyn v. Evelyn.

and not the real Estate, according to the constant Course of Equity; and as to the Objection, that the real Estate is the principal Debtor, so it is in all Mortgages; and yet in all Cases, where there is a Competition between the real and the personal Estate, that is preferred; which is the Reason that the Practice of the Court requires, that in all Cases where the Heir is to be charged, the Executor must be brought before the Court. To this Point was cited the Case of Sir John Napper and the Lady Ethingham, which was, That a great Part of Sir John Napper's Estate was in Mortgage; Then died Sir John, Sir Theophilus being his Heir, who, upon his later marriage with the Lady Ethingham, settled a Jointure upon her, and conveanted to pay Sir John's Debts. Then died Sir Theophilus, possest of a considerable personal Estate, which came to his Lady, the Lady Ethingham; and when both Sir John Napper, the Heir at Law of Sir Theophilus, brought his Bill, to have the personal Estate of Sir Theophilus, upon his Covenant, applied in Discharge of the Mortgages; and so it was decreed. But to this it was answered, That the principal Case differs from that of Sir John Napper, cited: the Reason of which was, that Part of the Estate of the Mortgagor was settled by a private Act of Parliament, in Truth to pay his Debts; which Estate, to foretell in Truth, was disposed of by Sir Theophilus, and then it was but just and equitable, that his personal Estate should be applied to encompass the mortgaged Estate defended to the Heir at Law, because he was answerable for the Truth Estate, settled for that Purpose. My Lord Chancellor, upon the last Argument, said, It could not be expected the Court should then deliver their Opinion; so that the Matter stood thus for the Judgment of the Court.


(C) Disputes between Sureties themselves.

1. A. And B. were bound with J. S. as Sureties in an Obligation. A. was bound upon the Bond, and the whole Penalty recover'd against him. A. and B. He exhibited an English Bill into the Court of Requests against B. to have Contribution. A Prohibition was mov'd for to the Court of Requests, and granted; because by entering into the Obligation, it became the per Deb of Debt of each of them jointly and severally; and the Obligee had his Election to sue which of them he pleas'd, and took forth Execution against him. And the Court said, that if one Surety should have Contribution against the other, it would be a great Caue of Suits, and therefore the Prohibition was award'd; and to it was said, it was lately adjudged and granted in the like Case, in Sir William pottery's Case. Godb. 243. pl. 338. Hill. 11 Jac. in C. B. Wormleigh v. Hunter.

mager, J. S. being insolvent; and the Court was of Opinion, That B. ought to contribute a Debt, and brought his Bill against the Defendant for Contribution, who was decreed to pay his proportionable Part. Toth. 109. Toth. 105. who died, leaving no Estate. The Plaintiff was sued, and paid the Deft, and brought his Bill against the Defendant for Contribution, who was decreed to pay his proportionable Part. Toth. 109. Toth. 105. where one Obter, that is a Suret, is free to se, by the Custom of the City of London be still make his C. -Sureties contribute. Vern. 456. pl. 429. Pa'ch. 197. Lay 27. v. Nellon.

2. The Plaintiff and Defendant were joint bound for a third Person, Toth. 105. who died, leaving no Estate. The Plaintiff was sued, and paid the Deft, and brought his Bill against the Defendant for Contribution, who was decreed to pay his proportionable Part. Toth. 109. Toth. 105.

3. Three are bound for H. in 300 l. and agree, that if H. fail'd, to bear their respective Parts of the Money. For of the Obligers borrow'd Money of A. on their Bond, and paid the 300 l. The other Obligor was
Surety.

was insolvent; and now one of the two became insolvent, and the 3d paid A. the 300l. The other Obligor becomes able. He shall be compelled to pay a 3d Part, not a Moiety. Chan. Rep. 150. 17 Car. 1. Swain v. Wall.

Ch. Cafes, 246. Hill. 26 & 27. Car. 2. S. C. decreed that B. should contribute a Moiety, and not a 3d Part only.


(D) Surety. How far relieved in Equity.

1. A Man was Surety for another for Debtor, and he and others were bound to save him harmless; and after the Surety paid the Money, and sued them who were bound; and pending this, the original Debtor brought a Subpna in Chancery, alleging that before the Obligation made be delivered Goods to the Surety for his Indemnification, and pray’d a Restitution, and that he be not charged; and the Plaintiff pray’d an Injunction against the Defendant, that he shall not proceed at Common Law; But because the Defendant said, that these Goods were delivered for another Cause, and so made Title to them, the Injunction was denied. Br. Confession, &c. pl. 29. cites 16 E. 4. 9.

2. The Plaintiff became bound with Defendant’s Father for Payment of Money at a Day, which the Plaintiff supposed had been paid accordingly, but it was not. The Father dies three Years after, upon whose Death the Obliger pays the Bond in Suit against the Plaintiff; but in respect the Bond was continued without the Plaintiff’s Privity. Toth. 280. cites 1 Jac. 2d. 10. 664. and 728. Saunders v. Churchill and Smith.

Nelf. Chan. Rep. 9. S. C. reports it thus, viz. About 18 Years before the Bill filed, Moile the Father became bound with one Roscarrock in a Bond of 500l. condition’d for the Payment of 100l. to the Lord Roberts, the Defendant, at a certain Day long since past. Afterwards the Defendant purchased Lands of the said Roscarrock, to the Value of 500l. which Purchase was made about 2 Years before Roscarrock’s Death. After his Death, the Plaintiff took out Administration to him; and being tied upon this Bond, exhibited his Bill for Relief. And in regard of the Antiquity of the Bond, and for that Roscarrock himself was never paid in his Life time, it was presumed that the Defendant did default the Debt out of the Purchase-Money; and notwithstanding there were no Proofs made of the Payment of the Money, the Court decreed, that the Defendant should be restrained from proceeding at Law on the Bond.

Where a Surety pays a Debt, and has no Counter-Bond, brought his Bill to recover the Debt and Damages against B. which was decreed accordingly by Lord Coventry.


4. A. was bound as Surety for B. and the Debt was recover’d against A.—A. having no Counter-Bond, brought his Bill to recover the Debt and Damages against B. which was decreed accordingly by Lord Coventry. N. Ch. R. 24. Ford v. Stobridge.

5. J. S.
5. J. S. Grandfather of T. S. the Defendant, and whose Heir and Executor the Defendant is, became bound with A. the Father of B. the Plaintiff, and whose Heir B. is, in several Bonds, as his Surety for 4000 l. A. conveyed the Manor of C. by way of Mortgage to J. S. to counter-secure him against the said Bonds for 4000 l. A. prevailed with J. S. to become bound with him afterwards for 2000 l. more. Then A. paid off 1500 l. of the 4000 l. The Bill was to be admitted to redeem upon Payment of what J. S. or the Defendant himself had paid off, or been damnsified by the Bonds for the 4000 l. and what remained unpaid of the 4000 l. And the Question was, Whether the Plaintiff, (as much as there was no Agreement proved, that the Mortgage was to be a Security to J. S. against the Bonds for the 2000 l. as well as those for 4000 l.) should be admitted to redeem upon Payment of the 4000 l. without the 2000 l. Decreed, That if the Plaintiff will redeem, he must face his loss of the Defendant, as well touching the 2000 l. as the 4000 l. upon this Rule, That he that will have Equity to help where the Law cannot, shall do Equity to him against whom he seeks to be relieved. The Counsel for the Plaintiff said, It was a just Decree. Hill 1667. Upon an Appeal to the Lord Keeper Bridgman, the Decree was confirmed. Chan. Cases, 97. Hill. 19 & 20 Car. 2. in Canc. St. John, Esq. v. Holford Baronet, and others.

6. Plaintiffs in 1694. were bound as Sureties for B. and had Counter-Bonds. B. the Principal was afterwards arrested, and the Defendant his Brother became his Bail, and Judgment was obtained against the Bail. The Plaintiffs being sued on the original Bonds, were forced to pay the Money; and now brought their Bill to have the Judgment obtained against the Bail assigned unto them, in order to be reimbursed what they had paid. Per Lord Chancellor: The Bail stood in the Place of the Principal, and cannot be relieved on other Terms than on Payment of Principal, Interest, and Costs; and the Sureties in the original Bond are not to be contributory. And therefore decreed the Judgment against the Bail to be assigned to the Plaintiffs, in order to reimburse them what they had paid, with Interest and Costs. 2 Vern. 608, 609. pl. 546. Pach. 1708. in Canc. Parsons and Cole v. Dr. Bridgcock, &c.

7. Per Cowper, C. Where a Person is Security in a Contract, there is a joint Contract, that the Principal shall indemnify his Security; and the Ground of Equity is, that when the Money is due, the Equity arises. But Sir Thomas Powis said, that one may exhibit his Bill before the time of Payment; but where the Land, or Land and Person are both Security, the Estate stands at Stake to enable the Principal to owe it, as well as the Security to pay it, or borrow it thereon. And the Contract of the Security is, that he shall continue to owe it on the Credit thereof, and not to go to Gaol the next Day; for even in a personal Security, you must the next Day apply for a Reimbursement, for what was Equity one Day, is Equity the next. G. Equ. R. 69. Pach. 7 or 9 Ann. in Cafe of Hungerford v. Hungerford.  

(E) Surety favour'd, How; to enable him to recover See (C; (D) his Debt.

1. A. Seized of Lands in Fee, was made Receiver by the Master of the Rolls of an Infant's Estate, and entered into a Recognition to the Master of the Rolls to account yearly, and B. and C. joined as Sureties. Afterwards A. married, having settled Part of the Land on his Wife before Marriage in Jointure, without Notice of the Recognition to her, or E. e.
Surety of the Peace.

her Friends. A. devised all his real and personal Estate to B. and made him Executor, and died. It was decreed by the Master of the Rolls, That all the personal Estate of A. should be first applied to satisfy the Recognizance, 2dly, The Land devised to B. the Surety, the Devise being voluntary, and the Wife a Purchaser, 3dly, The Jointure Lands, the Jointrels claiming under A. can be in no better Case than A. was. But if the Lands devised are sufficient, then the Bona Paraphernalia shall be enjoy'd by the Widow; but if insufficient, then the Bona Paraphernalia must be subject before the Sureties Lands shall be extended. 2 Wms's Rep. 542. Trin. 1729. Tynt v. Tynt.

2. And tho', in Case of a Recognizance to another Person, the Jointrels should get an Assignment, and extend it at Law, it was held by the Master of the Rolls, That even at Law the Sureties might have an Audita Querela, infifling, that all the principal Cognizors Lands, either in his own or the Hands of his Alieees, ought to be liable before any of the Sureties Lands be extended, notwithstanding it was objected, that she was a Purchaser without Notice. 2 Wms's Rep. 543. Trin. 1729. in Case of Tynt v. Tynt.

3. A. recover'd in the Court of Lynn against B. and when he was going to take out Execution, B. offer'd to give him a Note for the Money, and to get one to join in it as Security with him; which was done accordingly. After this A. commenced another Action against the Security, and recover'd. Upon which the Security paid the Money, and now brought his Action against the Principal for so much Money laid out to his Use. This Matter appearing at the Trial, the Defendant's Counsel excepted, That the Action would not lie. But Lord Raymond, who sat as Judge of Assize, was of Opinion, That it would. Accordingly the Plaintiff proceeded in his Evidence. 2 Barnard. Rep. in B. R. 26. Trin. 5 Geo. 2. Morrice v. Redwyn.

For more of Surety in General, see Ball, and other Proper Titles.

Surety of the Peace.

(A) Lies for, or against whom. And in what Cases.

If a Man is afraid of being beat by J. S. he shall have Surety of the Peace. Contra if he be afraid of Imprisonment; for he shall have


1. Serjeant Hawkins says, It seems the better Opinion, that he who is threatened to be imprisoned by another, has a Right to demand Surety of the Peace; for every unlawful Imprisonment is an Assault and Wrong to the Person of a Man; And the Objection that one wrongfully imprisoned may recover Damages in an Action &c. and therefore needs not the Surety of the Peace, is as strong in the Case of Battery as Imprisonment, and yet there is no Doubt but that one threatened to be beaten may demand the Surety of the Peace. Hawk. Pl. C. 127., cap. 60. S. 7.

2. The
2. The Writ of Surety of the Peace lies when a Man is in Fear or Doubt it may come to be the

that another will beat or assault him, and lies properly where one Man does threaten another Man to kill him, beat him, or assault him; then may he come into the Chancery, and pray to have such a Writ unto the Sher-iff. F. N. B. 79. (G)

born his House, or do him a corporal Hurt, as by Killing or Beating him, or that he will procure others to do him such Mischief, he may demand the Surety of the Peace against such Person. Hawk. Pl. C. 127. cap. 60. S. 6.

3. If the Husband threaten his Wife to beat or to kill her, the shall have this Writ. F. N. B. 80. (F)

It is certain that a Wife may demand it against her Husband threatening to beat her outrageously, and that a Husband also may have it against his Wife; and cites Dalt. cap. 98. Lamb. 78. Crumpt. 153. b. F. N. B. 80. (F) and * 5 Lev. 128.

* This is misprinted, and should be 2 Lev. 128. Hill. 26 & 27 Car. 2. B. R. and is the Cafe of The King v. Ld. Ltr, who upon a Habac Corpus granted upon Affidavits of ill Uggs. Imprison-ment, and Danger of her Life (as had been done before in Sir Philip Howard's Cafe) brought his Wife into Court, where they charged each other with Unkindness; and the being in Court, made Oath that she went in Danger of her Life also, notwithstanding several Affidavits were made in Court to the contrary, viz. of his good Uggs. the Court intended to have bound him with Sureties, accordingly to F. N. B. 80 & 259. f (B) but they declared that they could do no more than to bind him, and not to remove her from him.

† This likewise seems misprinted, and should be 258. (E) the last Paragraph.

A Woman may have the Peace against her Baron for unreasonable Correc trom. Mo. 874. pl. 1219. in Sir Tho. Seymour's Cafe. — God. 214. pl. 507. Mich. 11 Jac. in C. B. in S. C. accordingly.

A Master being before the Court of Chancery, relating to Husband and Wife, and the Court being informed of his ill Ugge of her, a Supplicavit de Bono Gestu was granted. 2 Vent. 345. Trin. 32 Car. 2. Sir Jerom Smithson's Cafe.

4. Serjeant Hawkins says, It seems agreed at this Day, That all Persons whatsoever under the King's Protection, being of Some Memory, whether they are natural and good Subjects, or Aliens, or attainted of Treason &c. have a Right to demand Surety of the Peace. But that it has been question'd whether Jews or Pagans, or Persons attainted of Treason, have a Right to it, or not. Hawk. Pl. C. 126. cap. 60. S. 2, 3.

5. There is no Doubt but that Surety of the Peace ought, upon a just Caufe of Complaint, to be granted by any Justice of Peace against any Person whatsoever under the Degree of Nobility, being of Some Memory, whether he be a Magistrat or a private Person, and whether he be of full Age, or under Age &c. But Infants and Feme Coverts ought to find Surety by their Friends, and not to be bound themselves; and the safest Way of proceeding against a Peer, is by Complaint to the Court of Chancery, or King's Bench. Hawk. Pl. C. 127. cap. 60. S. 5.

(B) How obtained and granted. And Punishment of see (A) pl. wrongfully obtaining it.

1. By the ancient Course of Law, a Man ought to take his Oath upon a Book, before he have this Writ, before a Master of the Chancery; but now they use to sue forth such Writs by their Friends, who will sue for them without any Oath made; and the same is ill done, because they are many Times sued more for Vexation than for any good Caufe; and the Justices of B. R. will not grant any Writ for Surety of Peace, without making Oath that he is in Fear of corporal Damage. And the Justices of Peace ought not to grant any Warrant at the Suit of any one, to find Sureties of Peace, if the Party, who does require the same, will not take his Oath that be requires the same not for Malice, but for the Safety of his Body. F. N. B. 79. (H)

7. 21
Surety of the Peace.

2. 21 Jac. 1. cap. 8. S. 2. Enacts, That Proceeds of the Peace or Good Behaviour, to be granted out of the Chancery or B. R. shall be void, unless such Proceeds be granted upon Motion made in open Court, and upon Declaration in Writing, upon their corporal Oaths by the Parties which shall define such Proceeds, of the Causes for which such Proceeds shall be granted, and unless such Motion and Declaration be mentioned to be made upon the Back of the Writ, the said Writing there to be entered and remain of Record; and if it shall afterwards appear to the Court, that the Causes expressed in such Writing be untrue, the Judges shall award Costs and Damages unto the Parties given; and the Parties so offending may be committed until they pay the said Costs and Damages.

S. 3. All Writs of Supercedes to be granted by either of the Courts aforesaid, shall be void, unless such Proceeds be granted upon Motion, and upon such Sureties as shall appear on Oath to be affixed at five Pounds, lands, or ten Pounds in Goods, in the Subsidy-books, which Oaths, and the Names of such Sureties, with the Places of their Abode, and where they stand affixed, shall be entered of Record; and unless it shall also appear to the Judges, that the Proceeds of the Peace or Good Behaviour is prosecuted by some Party griev'd.

3. It was said by the Court, that if an Oilender be brought before a Justice of Peace, the Party ought to tender Sureties; and it doth not behoove the Justice to demand it. Nay 70. Colme v. Frome.

4. Every Justice of Peace is bound to grant it upon the Party's giving him Satisfaction upon Oath that he is actually under Fear that such a one will burn his Houfe, or do him corporal Hurt, or procure others so to do, as by killing or beating him; and that he has just Cause to be so, by Reason of the others having threatened to beat him, or lain in wait for that Purpose; and that he does not require it out of Malice, or for Vexation. Hawk. Pl. C. 127. cap. 69. S. 6.

(C) Taken. How, and by whom.

1. It is a common Opinion, that the Security which the Sheriff ought to take of the Party who ought to find Sureties for the Peace, ought to be taken by Bond, that is to lay, to bind the Party and his Sureties by Bond, that he keep the Peace, and that he burn not the Houses &c. But now after the Statute of 1 E. 3. cap. 16. which appoints that certain Perons shall be allign'd in the Chancery to keep the Peace, there are other Forms of Writs for the Eafe of the People who will have the Peace against other Perons, which Writs shall issue out of the Chancery; and some of them are directed unto the Justices of the Peace, and unto the Sheriff, and some are directed unto the Sheriff only. F. N. B. 80. (C)

5. If a Man be in Variance with other Men, and he is in Doubt that Damage or Hurt will come unto him, or his Servants or his Goods, by Reason of this Variance, then he shall have a special Writ against them, directed to the Sheriff, that he cause them to find Security that they do not damage or hurt the other in his Body, or his Servants, or other his Goods, in a certain Sum &c. And if they will not find Security, that then he arrest them and keep them in Prison until they will find Sureties; And that the Sheriff certify all that is done upon the same in the Chancery, upon Pain &c. as it appears by the Register. And that Security ought to be taken by Recognizance, as it seems; Tamen quere. F. N. B. 80. (G)

(D) Proceed-
Surety of the Peace. 109

(D) Proceedings after the Writ granted.

1. WHEN a Man has purchased Writ of Supplicavit, directed unto the Justices of Peace, or the Sheriff, or both, then he against whom the Writ is issued, may come into the Chancery, and there find Sureties that he will not do Hurt or Damage unto him that issues the Writ, and then he shall have a Writ of Supersecution out of the Chancery, directed unto the Justices of Peace, or the Sheriff, or one of them, reciting how that he has found Sureties in Chancery according to the Writ of Supplicavit, and reciting the Writ of Supplicavit, and the Manner of Security that he hath found, and the Sum of Money in which they are bounden, commanding the Justices and Sheriff that they hereafter to arrest him &c. or compel him to find Sureties &c. And if they have arrested him for that Caufe, and for no other, that then they deliver him &c. And if the Party who ought to find Sureties, cannot come into the Chancery to find such Surety, then his Friend may purchase a Supersecution in the Chancery for him, reciting the Writ of Supplicavit &c. and that such a one and such a one are bounden for him in the Chancery in such a Sum, that they shall keep the Peace according to the Writ of Supplicavit. And the Writ shall be directed unto the Justices of the Peace and Sheriff, that they, or some of them, take Surety of the Party himself, according to the Writ of Supplicavit for to keep the Peace &c. and that then they hereafter to arrest him; and if they have arrested him for that Caufe, that then they deliver him. F. N. B. 81. (A)

Justice, at the Suit of the same Party for whose Security he has given such Surety. Also it is said, that an Appearance upon a Recognizance of the Peace, may be superceded by finding Sureties in the Chancery or King's Bench; but this Custom having been often abused, therefore the Statute of 21 Jac. 1, cap. 8. was made, (which see at (B) pl. 2.) Hawk Pl. C. 128, cap. 60. S. 14.

2. Sometimes the Writ of Supplicavit is made returnable into the Chancery at a certain Day; and if it be so, then if the Justices do not certify the Writ, nor the Recognizance, and the Security which is taken, the Party who sued the Supplicavit shall have a Writ of Certiorari, directed unto the Justices of Peace, to certify the Writ of Supplicavit, and what they have done thereupon, and the Security which is found &c. and if the Party shall have such Certiorari unto the Justices of the Peace, to certify the Security taken upon Supplicavit, altho' the Writ of Supplicavit be not returnable in the Chancery. F. N. B. 81. (B)

3. If a Man demands Surety of Peace in the County against any Man, he shall find Sureties in the County before the Justices of the Peace &c. He who demands the Security may sue a Writ of Certiorari, directed unto the Justices of Peace, to remove the Surety of Peace, and the Recognizance taken thereupon, and to certify that Recognizance and Security taken, under the Seals of the Justices of Peace, or one of them. F. N. B. 81. (C)

(E) Breach what, and punish'd how.

1. Surety of the Peace is not broken without Affray made, or Battery, but Surety de bene Gerendo may be broken by a Number of People, and by their Harness &c. Br. Surety, pl. 12. cites 2 H. 7. 2.

F 4

2. But
Surety of the Peace.

2. But it was held, that he who is bound to the Peace, ought to demean himself well in his Behaviour and in Company, not doing any thing which shall be a Cause of breaking of the Peace, or of putting the People in Dread, Fray or Trouble; and to it shall be intended of all concerning the Peace, but not in minding of other Things which do not concern the Peace. Br. Surety, pl. 12. cites 2 H. 7. 2.

3. If a Man has sued a Writ against one directed unto the Sheriff, and the Sheriff take Security of him to keep the Peace, and afterwards he breaks the Peace against him who demanded the same; he who demanded the Surety of Peace shall have Attachment against him who found this Surety. F. N. B. 80. (A)

4. And upon this Writ the Plaintiff shall recover Damages, and the Defendant shall be fined for his Contempt, if he be found guilty. F. N. B. 80. (A)

(F) Cases relating thereto.

1. The Right by Bill, where the Defendant came Versus Curiam Regis of C. B. to have Answer in a Plea of Land, there came the Defendant and assaulted, wounded, and menaced him, so that he was not able to carry his Charters and come without great Costs. In contempt of Regis, contra Peace & ad damnum &c. & tam pro Rege quam pro seipso requiritur by Bill in C. B. and the Defendant pleaded Not guilty; and the Defendant was compelled to find Pledges of his Good Behaviour and the Peace, and that he should do nothing to the Plaintiff privately nor openly, by himself nor by others &c. Br. Surety, pl. 11. cites 30 Aff. 14.

2. In Surety of the Peace against a Prior or Abbot, he himself shall be bound with the Sureties; but if it be Chanon or Monk, the Sureties only shall be bound for him. Br. Surety, pl. 9. cites 36 H. 6. 23.

3. Where a Man finds Surety to keep the Peace, and has Day Menfe Pledge, he ought to appear at the Day tho' the Party who demands the Peace does not appear; otherwise he shall forfeit his Bond; contra in Action between Party and Party; The Defendant who is bound to appear upon Capias to keep his Day, shall not forfeit his Bond by his Default, if the Plaintiff does not appear at the same Day. Br. Surety, pl. 10. cites 39 H. 6. 26.

4. In Writ of Privilege at London out of B. R. the Sheriff of London return'd inter alia, that the Party was arrested for Surety of the Peace, and therefore he who took the Peace was demanded in Bank, and if he did not come the Prisoner should be discharged of the Surety of the Peace; But if he came and demanded Surety of the Peace, the Surety of the Peace should be granted to him in Bank; But the Surety in London should be discharged. Br. Surety, pl. 13. cites 2 H. 7. 4.

(G) Pleadings.

1. When a Justice takes Surety for the Peace, it is not sufficient to say, that I. N. invent sufficientem secundum de Pace, without naming the Names of the Surety and their Sums, but he ought to name their Names and Sums. Br. Surety, pl. 13. cites 2 H. 7. 4.

For more of Surety of the Peace in General, see Good Behaviour, Suppliçatus, and other Proper Titles.
Surmise and Suggestion.

(A) In what Cases sufficient.

1. That no Process be awarded against the King's Debtor, yet if he be present in the Exchequer, he shall answer to the King immediately; per Ludlow. Per Fitzjohn, in Case that it appears of Record that he is Debtor to the King, then he shall answer, but not upon Surmise or Suggestion; but there he shall come by Process. Br. Surmise, pl. 26. cites 40 Aff. 35.

2. Suggestion was made in Chancery, that the Prothonotaries of the King had given certain Land to R. C. Grandfather to the Lord C. that now is, in Tail, and that R. Father of the Lord purchased Licence to issue certain Persons of the same Land, and retook to him and Joan his Feme in Tail, the Remainder to his right Heirs, upon which Suggestion issued Seize facias to T. M. who had espoused the Feme of R. if he knew anything to say why the King should not have Restitution of the Issue of the Land during the Nonage of the Infant who is now Lord C. in Ward of the King; who came and said, that the Seize facias is not founded upon any Record or Office but upon Suggestion, and tender'd a Demurrer. Et non Allocatur; by which he would have taken Advantage of the Warranty made by the Fecofor, But it was said for the King, that because the Licence was obtained in Deceit of the King, he not perceiving his Right, this cannot discontinue the Revenue of the King, and therefore the King shall have the Ward, and the Issue Issue; and by Award the Baron was charged of Issues in Right of two Parts and discharged of the third part; For he has thereof Caufe of Dower: And to see that Suggestion or Information shall serve in Lieu of an Office. Br. Surmise, pl. 30. (bis) cites 40 Aff. 36.

3. And if the Land was the Reversion to the King be recovered in Value against the Tenant in Tail, and he dies, his Heir within Age, yet the King shall have the Ward of the Heir. Br. Surmise, pl. 30. (bis) cites 40 Aff. 36.

4. In Trespass where the Defendant is returned in Issues upon the Defense, a Man cannot Surmise that he is dead and pray that the Process shall cease; But this ought to come in by the Return of the Sheriff; and not by Suggestion. Br. Surmise, pl. 15. cites 22 E. 4. 1.

5. In Appeal, the Defendant confessed the Fealty and took to his Clergy, the Plaintiff made Suggestion that he was taken at his Fresh Suit in Middlesex, whereupon the Court wrote to Middlesex to inquire of the fresh Suit and found it, and he had Restitution. Br. Surmise, pl. 21. cites 2 R. 3. 13.

(B) In
(B) In what Cases sufficient to support Actions.

1. N. sued Execution upon a Statute Merchant, and Writ issue to Extend the Land, which Writ was not returned, and the Complainant and said that Execution is made, and prayed Venire Facias upon Audita Querela; and it was granted to him upon this Surmise, notwithstanding the Writ was not return'd. Br. Surmise, pl. 11. cites 39 E. 3. 30.

2. If an Obligation is made by two, and the Obligee brings Action against the one, he may Surmise that the other is dead or is an Infant, or is a Feme covert, and so where the Obligation is made to two, and the one brings the Action, he may Surmise that the other is dead, or a Monk professed. Br. Surmise, pl. 20 cites 32 H. 6. 30. 31.

3. Ataint upon Conspiration brought against 2, and the one pleaded Not guilty, and the other pleaded another Plea, and the Issue found against both, and the one alone brought Ataint, and align'd the false Oath in all that was said against him where they found Damages of 100l. against both, and there the Plaintiff was compell'd to abridge his Demand of the Damages, for those are intire, and to proceed with his Ataint of the Principal. And there it was argued by diverse, that he may make Surmise that the whole Execution was levied upon him, and so to maintain the Ataint alone of the whole; Et non allocatur; for it shall be intended that the Execution was made as the Judgment is, and as it is found; and therefore Judgment was as above, that he shall abridge his Demand of the Damages; quod nota. And so it seems that such Surmise shall not serve. Br. Surmise, pl. 1. cites 34 H. 6. 30 & 35 H. 6. 19.

4. A Man shall not have Writ of Melius Inquirendum upon Surmise. Br. Surmise, pl. 17. cites F. N. B. 255.

(C) In what Cases sufficient to support Action in a Foreign County.

1. In Quare non Admissit the Sheriff at the Distress return'd the Bishop Nihil, by which the Plaintiff said that he had Affairs in London, and pray'd Distress there, and had it. Br. Surmise, pl. 2. cites 3 H. 4. 4.

2. In Detinue the Defendant pray'd Garnishment, and had it, 2 Nihil were return'd, and the Defendant Surmised that the Garnishee had Land in another County, and pray'd Process there, and had it upon his Surmise. Br. Surmise, pl. 13. cites 6 E. 4. 11.

(D) In what Cases sufficient to enforce the doing a Thing.

1. If the Tenant in Affiss of Novel Distress, obtains Writ to the Justices to send it into B. R. and the Justices deliver it to the Tenant, and he retains it, there upon Suggestion the Plaintiff may have Writ to take the Body of the Tenant to deliver the Record. Br. Surmise, pl. 4. cites 1 Aff. 14.

2. Sug-
Surmife and Suggestion.

2. Suggestion was made in B. R. that J. S. was indicted of Felony in the County of D. before the J uffices of Peace, and was imprisoned for it in D. and pray'd the Court to find for the Body of the Record. Knives J. said, We will not write without seeing the Record before us, but you may have Writ in Chancery to remove the Body and the Record before us. And to see that they would not grant his Prayer upon Suggestion. Br. Surmife, pl. 12. cites 41 Aff. 22.

3. Donum Replegando; the Defendant avowed the Imprisonment of the Plaintiff, as his Vilest regardant &c. and the other said that Frank &c. and fo to True, and the Plaintiff suggested that the Defendant had taken his Goods; and prayed Deliverance; to which the Defendant said nothing; by which Writ issued to make Deliverance, and the Defendant took Exception to the Allegation of the Plaintiff, saying that this is a Court without Original; Et non Allocatur; for it was said that it was a Surmise, and not a Count, by which he had his Goods without Surrity to re-deliver them to the Avoxant, if the Issue pass'd for the Defendant. And per rot. Cur. The Attorney of the Defendant shall gage Deliverance well enough. Br. Surmife, pl. 12. cites 5 E. 4. 8.

4. Matters of Record ought not to be play'd upon the bare Suggestion or Surmise of the Party; but there ought to be an Affidavit made of the Matter suggested, to induce the Court to ground a Rule for staying the Proceedings upon the Record. (Mich. 1650. B. R.) For the Law favours not the Stopping of the Proceedings in Law, except there be very good Cause for it. L. P. R. 537. Tit. Suggestion.

(E) In what Cases sufficient to inforce the doing a Thing. Pleading.

1. In Debt of 20l. upon an Obligation, the Defendant pleaded Acquittance, that the Plaintiff had acquitted him of 20l. due to him, for 20l. Rent bought by the Defendant of the Plaintiff; and therefore the Defendant informed in Fact, that the Plaintiff was seised of the 20l. Rent in D. and sold it to the Defendant for the 20l. which 20l. is the same 20l. contained in the Obligation of which the Acquittance is made. And good Matter in enforcing the Acquittance; per rot. Cur. And the Plaintiff said that he sold to the Defendant 20 Acres of Meadow in D. for the 20l. for which the Obligation was made, absque hoc that the Obligation was for the 20l. which was for the 20l. Rent, Prilt; and the others e contra, and a good Issue. Br. Surmife, pl. 22. cites 3 H. 7. 16.

(F) At what Time. After Judgment.

1. In Dover the Tenant confess'd the Action, and the Demandant received, and after the Judgment the Demandant furnished that the Bond was seised, and pray'd Writ to inquire of the Damages, and had it after Judgment; quod non. Br. Surmife, pl. 16. cites 14 H. 8. 25.

G g Surplufage.
Surplufage.

(A) In Pleadings.

1. Formedon in Defender, and counted of a Gift made to one of a Reversion by Fine in Tail, the Remainder to his Ancestor in Tail, and alleg'd Seisin in his Ancestor by Force of the Tail, and conveyed himself Heir, and the Tenant pray'd that he shew the Fine, because he counted upon the Fine. But per Hill and Hank, He need not; for he has shewed the Fine executed; and therefore it is only Surplufage, and a Thing to which you shall not have Answer; and so was the best Opinion. Br. Nugation, pl. 4, cites 11 H. 4. 39.

Surplufage on the Part of the Plaintiff or Defendant shall arise the Writ by the Common Law; Per Paffon for Law; quod non negatur. Br. Nugation, pl. 2, cites 9 H. 6. 1.

But now in Aiton where Proofs of Outlawry lies, he ought to give Addition to the Defendant; and this shall not arise the Writ. Contrary on the Part of the Plaintiff at this Day; Per Paffon for Law; quod non negatur. Br. Nugation, pl. 2, cites 9 H. 6. 1.

Action against J. N. and Edmon was cast by J. N. of D. and therefore was disallowed; And so for that Surplufage shall not hurt on the Part of the Defendant sometimes. Br. Nugation, pl. 24, cites 13 E. 4. 4.

2. Addition of Executor, Administrator, Carpenter &c. on the Part of the Plaintiff; where he is not Executor, Administrator, or Carpenter, or is not named J. N. of D. where he is of S. this is only Surplufage, which shall not prejudice. Br. Nugation, pl. 11, cites 9 H. 5. 5.


4. Debt by J. N. Administrator &c. or Executor &c. and counts of a Duty due to himself, it is well; for this Word Executor or Administrator is Nugation. Br. Nugation, pl. 15, cites 9 H. 5. 5.

5. Entry in Nature of Allife of a Diffidium done to his Father. Fulthorp pleaded Aitio non; for your Father, whose Heir you are, inoff'd us in Fee without Condition, and gave Colour. Newton said he inoff'd you upon Condition &c. and for the Condition broken he enter'd, and was seised till by you dispossessed; and held a good Plea and good Contition, and avoiding, notwithstanding that the Defendant alleg'd the Feoffment to be without Condition; for those Words (without Condition) are void, unless the Defendant claims by the Condition to have the Land by the Performance of it; by which the Defendant said that he inoff'd him simply, abstatit loco that he inoff'd him upon Condition, prout &c. Br. Contes and Avoid, pl. 43, cites 9 H. 6. 55.


7. Debt against the Provost and Scholars of a College in Cambridge, because T. M. late Provost, Predecessor of the Defendant, and the Scholars by F. their Servant, bought 2 Bells of the Plaintiff for 40l. here at London, where the Action is brought, which came to the Life and Profit of the College aforesaid; and after T. M. was removed from the Provostship, and the Defendant was elected and made Provost, and the Defendant, being often requested, did not pay. And, by some Justices, the Buying of the Provost and the College cannot be good; nor by the Abbot and Covent, Dean
Surplusage.

Dean and Chapter, Baron and Feme; for it is only the Buying of the Dean, Provolt, Abbot, or Baron, for the others shall not be but as dead Persons in the Law. And by some Justices the Contract is good, and shall be intended the Bargain only of the Provolt, and the Name of the Scholars is not but Surplusage; for the Contract of the Provolt, and the coming to the Use of the College, is the Effect of the Matter. Br. Corporations, pl. 53. cites 5 E. 4. 70.

8. Diclinue of Charters against J. N. Son and Heir of J. N. and counted of Batiment made by the Plaintiff to the Defendant; who said, that he is Son and Heir of W. and not Son and Heir of J. N. Per Moyle; this is or in Deutine no Plea, because it is of his Possession, and not brought against him as Heir, and it is Surplusage; so in Trespa's, De son tort Demelie is no Plea. Br. Traverse per &c. pl. 235. cites 19 E. 4. 12.

9. Writ of Entry upon 5 R. 2. That he enter'd into such Land, which N. gave to him in Tail; and by Award of the Court those Words (which N. gave to him in Tail) were struck out; quod nota, for Surplusage. Br. Nagation, pl. 15. cites 15 E. 4. 24. 10. But where in Affife of Rent, if the Plaintiff makes Title in his Plaintiff to a Rent-Charge, the Defendant shall answer to it; for this is material. Note, the Difference. Br. Nagation, pl. 15. cites 15 E. 4. 24. 11. In Debt upon a Bond, if the Plaintiff counts that the Defendant made it when he was of full Age, the Defendant may plead Nonage, without traversing the full Age; for this is not material, nor usual in the Count; per Littleton. Br. Nagation, pl. 15. cites 15 E. 4. 24.

12. Surplusage is no Bar nor Ejspoll. Arg. Godb. 380. in Brooker's Cafe, cites 9 E. 4. 24. 7 E. 4. 19. 13. In Trespa's the Plaintiff declared, that the Defendant vi & armis broke his Cloke and enter'd; and Blada tritici &c. conculcavit & consfmpit, nee non herbam suam &c. pedibus ambulando conculcavit & consfmpit continuando tranfegrition præd' quod depatitationem, conculationem &c. Herbe &c. The Plaintiff had Verdict. And it was aligned for Error, that the Plaintiff supposed a Continuance of the Trespa's in depatitation of the Grafs, whereas nothing of that was mention'd before; for the Trespa's was laid in conculatione & consfmpitione Herbe, pedibus ambulando. But this was held to be Surplusage, and the Judgment was affirm'd. Mo. 654. pl. 944. Mich. 32 & 33 Eliz. in the Exchequer-Chamber. Short v. Hellivar. 14. When a Man meddles with a Thing which is but Surplusage, which he needed not to do, he may recite the same substantially; otherwise his Plea will be vious. Per Coke Ch. J. Godb. 243. pl. 343. in Sir Christopher Heydon's Cafe, cites 4 Rep. Palmer's Cafe.

Cro. E. 15. pl. 6. Psch. 52 Eliz. &c. accordingly. 15. It is Surplusage for a Plaintiff in Trespa's to make a Title to himself in his Declaration. 2 BalI. 288. Mich. 12 Jac. Willamore v. Bamford. 16. An Action of Trespa's brought, and a Continuando of the Trespa's unto the Day of the going forth the Plaintiff's Original, to wit, the 20th Day of November, which Day was after the going forth of the Original. And because the Jury gave Damages for the whole time, which ought not to be, it was moved, that the Judgment upon the Verdict might stay; but by the whole Court the Verdict was held idle, and Judgment given for the Plaintiff. Brownl. 234. Hill. 13 Jac. Forrest v. Headle.

17. In Trespa's for taking his Horfe, the Defendant pleaded, that J. H. was seised in Fee, and granted a Rent &c. for which he distrain'd &c. The Brownl. 235. S. C. 94. in the Court.
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Surplusage.

was of Opl-

The Plaintiff replied. That before the Grant of the Rent, W. H. was seized, who had the J. H. the Elder, and J. H. the Younger; and that he devolved his Laws to his said sons in tail, and died; and that J. H. the Elder, and without issue; and that J. H. the Younger had issue A. H. and died; and that the said A. H. gave Leave to the Plaintiff to put in his Horse, ab une hoc, good deed. J. H. Pater, was seized in Fee, proof &c. Upon Hius it was found for the Plaintiff. It was objected, that here was no ilicie at all, because the Defendant had not pleaded quod J. H. Pater was killed in Fee, as the Tractie was. But the Plaintiff had Judgment; for tho' Pater be added, yet the Words, without Pater, bind it to that Person, that the Defendant had pleaded; and that (Pater) is but John, and can do no Hurt, especially since it may stand true that he was Pater, as it had been travers'd ab une hoc good deed J. H. Generous, &c. otherwise it had been ab une hoc good deed W. H. which could not be taken for the same Person. Hob. 116. pl. 144. Trin. 14 Jac. Blackford v. Alkin.

13. In an Action of Escape against the Sheriff, upon a mestre Precises, the Defendant pleaded, that he had taken the Party upon a Latitut; and that in bringing of him from IJ/ington prodicto he was refused, and foi returns the Rescue; and Exception taken to the (Precisio) because there was no IJ/ington mention'd before. But Coke Cr. J. held, that the (Precisit.) was Surplusage, and idle; and Judgment was enter'd against the Plaintiff. 3 Bulk. 198, 199. Trin. 14 Jac. Proby v. Lumley.

19. J. S. granted a Rent-Charge to Baron and Feme, during the Life of the Feme. The Baron dies. The Feme survives, and takes Administration to the Baron. The Rent was belaid in Life of the Baron. In Replevin the Defendant made Conuance, as Bailiff of the Feme, as Administratrix of her Baron, setting forth the Grant. It was objected to the Conuance as Bailiff to her, as Administratrix, when she was intitled by Survivorship. But the Objection was over-ruled, because the Conuance as Administra'trix is void, idle, and superfluous. Brownl. 171. Hill. 15 Jac. Brown v. Dunry.

20. Debt upon Bond, condition'd to pay 10 l. on the 13th Day of July; the Defendant pleaded Payment on the 14th Day of July. The Plaintiff replied, That he had not paid it praedito 14 die Augusti, quo dicere solvendo. But the Jury found, that he had paid it on the 14th Day of July. Upon a Writ of Error in B. R. the Error assign'd was, that the 14th Day of August was not mention'd before: But the Court held, that the Word (AuguJit) is only superfluous, and that the Issue was not join'd upon that, but upon the aforesaid 14th Day; and so affirm'd a Judgment given in C. B. Palm. 74, 75. Hill. 17 Jac. B. R. Halle v. Bointon.

21. In Action upon the Surety for Tibles De Viginti acris terce for three Years de quibus quidem Viginti acris, no Tibles were paid &c. After a Verdict for the Plaintiff it was moved that it might be amended and made (Viginti,) as it was in the first Part of the Declaration, and as the Truth of the Matter really was; But since all the Rolls were (Viginti,)
Surplufage.

it was held not amendable, but it being after Verdict the Court thought it well enough, and that the Word (Triginta) in the Declaration was only Surplufage; for De quibus quidem acris is well enough, for it cannot be intended but of 20 Acres. Sid. 135. pl. 9. Patch. 15 Car. 2. B. R. Fanthaw v. Mitlemay.

22. The Difficulties against Jurors was returnable tres Trin. &c. Nisf. S. C. cited prins cement M. Hale mit capital Baro, &c. on such a Day ejusdem mensis Junii, whereas no Month of June was mentioned before; After Verdict, this was moved in Arrêt of Judgment as a Difcontinuance. The Chief Baron and the whole Court held that the Word (Ejusdem) shall be void, and the Word (Junii) shall be intended June next ensuing; As a Coven- ant to pay Money to Michaelmas, shall be intended Michaelmas next. Hard. 330. pl. 4. Trin. 15 Car. 2. Anon.

23. E. N. the Administratrix of G. N. brought an Action of Debt upon a Bond due to the Intestate, and sets forth that the Administration was granted to him, but in the Conclusion of his Declaration, he says, Pro- fect hoc in Curia Literas &c. Prefato &c. G. instead of Presto E. The Defendant pleaded a frivolous Plea, and upon Demurrer it was intituled for the Defendant, because of this Variance of G. instead of E. But per Cur. (Præfato G.) are only Surplufage, and shall not vitiate the Matter preceding, which was sufficient without them. And Judgment was given for the Plaintiff. 2 Jo. 219. Patch. 54 Car. 2. B. R. Nonne v. Maxey.

24. In Debt the Plaintiff declared upon a Bill Penal of 60 l. dated 1 Sels abr. May, for Payment of 33 l. on 1 Nov. and averred that the said 60 l. was not paid, and upon Demurrer one Exception among others was taken to the Declaration that the Plaintiff averred the Defendant had not paid Præd. Sexaginta Libras, when the Word (Sexaginta) was not mentioned before and he should have alleged that the said 33 l. were not paid; for otherwise the Sum penal did not become due, and yet it is demanded in the Action; Curia Adviare vult. But the Reporter says, Quære, si the Word (Sexaginta) shall not be taken to be void, and as it had not been alleged, there being no such Sum of 60 l. by the Bill to be paid upon the 1st Nov. and then it is all one as if he had said that the Defendant Non solvit præd. Libras quas solvit debuit super præd. primum diem Novembris, and cited several Cafes. Latw. 445, 450, 451. Mich. 3 Jan. 2. Bell v. Bolton.

25. In Debt upon Bond for Performance of Covenants the Plaintiff af- signed a Breach generally; the Defendant demurred, for that it is said (as in the aforesaid Indenture is mentioned) where no Indenture was men- tioned before, but it was conceivèd [by somebody but fays not by whom, but only that I conceive] that Utile per intulile non vitiatur, and that the Word (aforesaid) is not only Surplufage but void, as the Viz. was in Hob. 169. which in Stukely and Butler's Cafe was deemed void. 2 Sid. 63. Hill. 1657. B. R. Longvil v. Dampert.

26. Trefpafs for an Assault and False Imprisnment for 40 Hours; the Defendant pleaded that the Plaintiff was outrawed, and that a Capias ut- lagatum was prosecuted against Predicat John Vocker (the Plaintiff) where- as his true Name was George, and so justifies by Virtue of a Warrant on a Capias utlagatum, and upon Demurrer to this Plea the Defendants had Judgment; for the Plaintiff was named thro' all the Proceedings, but in this Place where it was said, that a Capias utlagatum was prosecuted ag- ainst predicat' Johannem, therefore the Word Johannæ shall be rejected as Surplufage, and then the Plea will be, that a Capias utlagatum was prosecuted against Predicat' Fowler. 3 Nels. a. 262. pl. 11. cites 2 Latw. 919. Fowler v. Holmes & al. 1 Lev. 428. S. P. 450. S. P. Yelv. 182. S. P. I do not find that any Judgment given in this Case is mentioned in 2 Latw. 919 &c. which says the Case was ordered to be argued again but that by its not being entered in the Protho- notaries' Book for Argument in ten Terms, it is probable it was never argued afterwards; and that as to the Point here no Authority was cited. — And as to the Books mentioned to be S. P. there seems some great Mistake.

II
Surplufage.

27. The Plaintiff declares, that he was feited of an ancient Watercource and Mill, and that the Defendant being constant thereof diverted the said Watercource so that it could not flow to his Mill for so long Time in certain, to quad molare non point &c. After Verdict for the Plaintiff it was moved in arreel of Judgment, that the Hindrance of the Grinding is designed to be the Gift of the Action, and therefore it ought to be shewn expressly, but here it is not shewn intelligibly ; for it should be molare, which signifies to grind, but molare has no such Signification. Sed non Allocatur; for per Holt Ch. &c. tan Curiam, where the Act infures a Tort of itself, a per quod is not necessary to support the Action, but only aggravates the Damages. Now here it appears a Tort without the per quod, for it is said that the Watercource could not flow to his Mill, and therefore it is good, especially after Verdict. Judgment for the Plaintiff. LD Raym. Rep. 102. Mich. 8 Will. 3. Richards v. Hill.

28. The Plaintiffs brought Quare impedit for hindering them to present to the Church of St. Andrew's Wardrobe in London, and aver, that that the Indowment of the Rectory of the Church of St. Andrew's Wardrobe was of greater annual Value than the Indowment Preediita Vicarie Ecclelœ of St. Ann Black-frier's. It was objected by the Defendant's Counsel, that the Plaintiffs have not made a sufficient Averment as to this Point ; for the Plaintiffs have averred that the Indowment of the Church of St. Andrew's Wardrobe is of greater Value than the Indowment (Prediikitæ) vicarie ecclelœ de St. Anne's Black-friers, whereas no Mention was made of any Vicarage before, to which this relative Word (Prediikitæ) can refer; and so the Indowment, which is a substantial part, is not traversable. But the whole Court resolved, that the Averment was sufficiently, for they would reject the Word (Prediikitæ) as Surplufage. LD Raym. Rep. 192. &c. Eait. 9 W. 3. Reynoldson v. Blake and the Bishop of London.

29. In Treophis the Plaintiff declared of taking Cattle at D. parvum prediikitæ. &c. It was objected that the Declaration was ill because no Mention was made of D. parvum before, and therefore it is a Declaration of a Treophis in no Place, But the Court said they would reject the (prediikitæ) as Surplufage. LD Raym. Rep. 237. Trin. 9 W. 3. Lambert v. Cook.

30. In Treophis of taking Cattle the Defendant pleaded a Lease from J. S. the Plaintiff replied a former Lease still in being to him, and traversed the Lease to the Defendant ; the Defendant demanded because the Plaintiff, Non traversat the last Lease &c. The Court said, That as to the Word (Non) since it is contrary to the Record, they would reject it as Surplufage. LD Raym. Rep. 237, 238. Trin. 9 W. 3. Lambert v. Cook.


32. In Debt brought by the College of Physicians Exception was taken, that it was said in the Declaration, that the Defendant by the Space of so many Months ante exhibitionem billae felicit the 23d of Auguft practiced physic &c. which was impoible ; but it ought to have been from the 23d &c. To which it was answered and agreed by the Court, That the Words 23d of Auguft coming in after a Silicet, if they were repugnant to that which went before, should be rejected, and then the Declaration would be good for so many Months ante exhibitionem billae. 1 Ld. Ramy. Rep. 681, 682. Trin. 13 W. 3. in Cause of the President and College of Physicians v. Salmon.
Surrender.

33. In Error of a Judgment in C. B. the Plaintiff assign'd the Want of an Original, to which the Defendant pleads a Release of Errors in the said Judgment, Et hoc paratus est verificare unde petit judicium si pretiatus the Plaintiff Breve de Errore pretiatus proferit aut manutene debet & quod idem judicium in causulis effirentem. It was objected to this Plea because the Consequence of it pray'd that the Judgment might be affirmed, whereas it was said it ought to be upon the Eitoppel; But it was resolved, that the Beginning of the Plea and the Conclusion of it, till you come to those Words, Et quod idem judicium &c. was proper and right, and therefore the Addition of those Words should be rejected; and Powell J. said he wonder'd how it could be fanc'd to be an Eitoppel. 2 La. Raym. Rep. 1052. Mich. 3 Anne. Davenant v. Rafter.

For more of Surpluseage in general, see Statement of Writs, Arbitrance,hudw Luke Judgment, Trial, and other Proper Titles.

* Surrender

(A) + What Persons [may surrender] Good In respect of their Estates.

1. If two Jointenants, and to the Heirs of one, he who has for Life cannot surrender to his Companion for the Joint Possession in them. 22 H. 6. 51. Curta.

Life or Years may be drawn by mutual Agreement between them. Co. Litt. 537. b. —*† See (B)—

(C) pl. 1. 2. 5. 4 + S. P. But in such Case Tenant in common may. Mo. 538. pl. 506. Arg. in Perrot's Case cites 22 H. 6.

If I inesse two, Habend' to them and the Heirs of the one, there he who has Franktenement cannot surrender to the other by Reason of the joint Possession; for there the Franktenement cannot merge in the Reversion, by Reason that he who has the Fee is jointly held of the Possession with him who surrender'd, and it is not properly a surrender, but where he who surrenders gives Possession to him who takes by the Surrender. Per tot. Car. except Port. Br. Surrender, pl. 15. cites 22 H. 6. 51.

2. Tenant for Life may surrender to him in Remainder for his Life; Perk. 592. for his Estate for his own Life is more high to him than the Estate for the Life of the Lessee. 24 G. 3. 32. b.

S. P. cites 22 H. 7. 11. and says, that is the same Manner as it is of Land it is like-wise of all Rents, Commons, Corodics &c. mutatis mutandis &c.

3. If Baron and Feme Jointenants for Life &c., the Baron may well surrender to him in Reversion; and this shall bind the Baron, that it shall not bind the Wife, nor shall it be any Discontinuance to her; yet this is good Surrender during the Life of the Baron. Contra 17 H. 7. Kelloway 42.

Joint for Term of Life; which cannot be here for the Interest of the Feme by Words of Surrender. Kelw. 42. pl. 5. per Frowake

Perk. S 612. says, it is a good Surrender during the Covaration; and if the Husband dies before the Wife, or if they be divorced, Curia precontracta, the Wife may enter and defeat the Surrender, notwithstanding.
4. Seire Facias to execute a Fine by the Heir of S. who was in Remainder in Fee by the Fine. The Case was, that Fine was levy'd to A. for Life, the Remainder to J. in Tail, the Remainder in Fee to S. who were three Brothers; and after A. surrender'd to J. and then S. died without Issue, and after J. died without Issue; and the Plaintiff brought the Seire Facias to execute the Fine, as Heir of S. And the Tenant pleaded, that J. after the Death of J. and S. entered, the Estate he has, and so the Fine executed. And Thorp held, that the Surrender of the Estate of A. to J. was only the Estate of A. and that J. had the Estate of A. but only during the Life of A. and that if J. had died, living A. quod Occupant concealitur, which seems to be a great Error, for Finch contra, and that this was a full Surrender. And by this the Estate of A. is merg'd in the Tail, and the Estate Tail of J. executed, and his Estate shall be endow'd; and that J. might have woul'd by the Warranty of the Tail in the Life of A. and therefore the Plaintiff made another Answer to the Plea of the Tenant; quod nota. Per Thorp; If A. had charged and surrender'd, J. should hold charged during the Life of A. which seems to be Law. Br. Surrender, pl. 4. cites 24 E. 3. 9.

5. In Affile it was laid, that if a Mon leases Land for Term of Life, and after grants the Reversion to J. N. for Term of Life, and the Tenant attorns, and they both surrender, that this is no good Surrender to him in Reversion for Term of Life. The Reason seems to be, inasmuch as it does not lie in Grant, but by Deed. But Greene laid, it was a good Surrender; but he was not precise, but awarded the Affile for another Cause; quod nota. Br. Surrender, pl. 31. cites 47. All. 46.

6. A Surrender may be made by Tenant for Term of Life to him in Reversion, upon Condition, well enough; and so it was, viz. rendering Rent, and for Default of Payment a Re-entry. It seems that this ought to be done by Deed intendment. Br. Conditions, pl. 156. cites 14 E. 4. 6.

7. Where a Feme has a Lease for Years, and takes Baron, the Baron may give or surrender, or forfeit it, but he cannot charge it; but the Law shall charge it to the King for Debt. Br. Surrender, pl. 44. cites 22 E. 4. 37

8. In Writ of Entry it was agreed, that the Surrender of one Executor is good for both; quod nota. Quere, of the Default of one Executor, upon Receipt alter Plea pleaded. And the Case was, that 2 Executors pray'd to be receiv'd to save their Farm by the Statute of Gloucester, and after the one made Default, and came, and would have surrender'd, and was not suffer'd; for the Court had no Warrant but to record his Default. The Reason seems to be, inasmuch as he is not Party to the Original, but comes a Laterer by the Receipt. Br. Surrender, pl. 22. cites 21 H. 7. 25.

9. If there be Lefsee for Years of Land, the Remainder of the same Land to a Stranger for Life, the Remainder to another in Fee, and during the Years be in the Remainder for Life surrender'd to him in Fee, it is a good Surrender. Perk. S. 605.

10. If a Male Woman seized of Land in Fee, leases the same to a Stranger for Life, and takes a Husband, and the Lefsee grants his Estate unto the Husband, this is no Surrender; and yet the Husband is feided of the Reversion in Fee, which is immediate to the Estate of the Lefsee, viz. in the Right of his Wife, and not in his own Right, &c. Perk. S. 622.

11. Feme Tenant in Tail made a Lease for Years, and then took Baron, and died. The Baron, being Tenant by the Curtesy, surrender'd to the Lefsee.
Surrender.

It was held per Curiam, that the issue shall avoid the leafes, in C. B. Pow-
trell's Case, S. P. exactly, and seems to be S. C. and Dyer doubted, whether this Surrender be good; because Tenant by the Curtesy is but in Reversion, and has nothing in Possession, and it is dubious how he can surrender. But Wafen and Brown held, that he may surrender; for a Term, or Frankenement may be surrendered'to him that hath the Estate in Reversion or Remainder, if it [there] be not a mere Estate, as Tenant for Life, the Remai-
ner for Life, the Remainder in Fee; the first Tenant for Life cannot surrender to him that has the Fee. But the great Point was, whether the issue could avoid the Lease during the Life of the Tenant by the Curtesy; and the Court held he could not, for the Tenant is in as a Purchaser.—Dal.

12. Surrender can't be made, but by one that is in Possession. Per Dyer. S. P. unless in special Dal. 32. pl. 17. Anno 3 Eliz. Anon. Cases. Perk. S. 599.—And therefore if Leafe for Life, or for Years of Land, be asur'd of the Land by a Stranger, and after the Quitter, and before his Entry, he does surrender unto his Lessee, it is no good Surrender; because he has but a Right at the Time of the Surrender &c. Perk. S. 620. So if a Woman has Title to have Deece by the Common Law, and the Surronders unto him, against whom she ought to have Dece, it is a void Surrender. Perk. S. 620.

13. A. leaves to B. for 21 Years. B. makes an Under-lease to C. for 10 Years, and then B. granted the Residue of the Term to D.—A. leaves to E. for 21 Years to commence after the Determination, Surrender, &c. of the Leafes to B. Afterwards A. granted the Reversion to J. S. C. and D. attorned; and afterwards C. and D. surrender'd to J. S. Per Cur. the Surrender by D. is good; for inmuch as the Interiet, which D. had at the Time of the Surrender, was a Reversion in B. after his Grant to C. and there it remain'd, and continued in its Nature, as to that Point, notwithstanding that by the Grant it pass'd in another manner than as a Reversion. 3 Le. 95, 96. pl. 138. Trim. 26 Eliz. in B. B. Gurley v. Saer.


15. A. had 2 Sons, B. and C.—A. was Tenant for Life, Remainder to B. C. pur chased the Reversion in Fee; and then A. and B. surrender'd to C. without Deed. Per Fenner J. the Surrender is void; for accordingly, if it be good, it must first be the Surrender of him in Remainder, which cannot be without Deed; and it cannot be the Surrender of the first Tenant for Life to him in Remainder, because there is no Word of Surronders between them. Cro. E. 259. pl. 9. Hill. 34 Eliz. B. R. Per-
kins v. Perkins.

16. Tenant by Extent may surrender to him in Reversion. Per Ven-

17. Burguance before Entry may surrender, assign, or releafe. Cart. 66. Patch. 18 Car. 2. C. B. per Bridgman Ch. J. in Cafe of Geary v. Bear-
croft.

18. Surrender of Leafes (made by the Limidor of the Eilate) to Celyque Trust (being Remainder-man for Life in Possession) according to a Power refereed by the Limidor, was held not to pass the Eilate, the Surrender having only a Trust, and not the legal Eilate. Skin. 77. Mich. 34 Car. 2. B. R. Lady Stafford v. Luellin.

19. It alter the Leaf and Reelese executed to make the Tenant to the Precept, the Tenant surrenders to the Releseor, this is void; for he has no Reversion for the Surrender to operate upon. Fig. of Recov. 50.

I i

(A. 2) The
Surrender.

(A. 2) 'The Force and Effect thereof.

1. Expiration by the Warden of a Chapel, Parson, Prelacy, or such like pendent the Writ, shall not abate the Writ, by the Issue Opinion there; And yet fee elsewhere, that Leaf of the Party who reigns, is void thereby. Br. Surrender, pl. 27. cites 15 Aff. 8.

2. Where the Tenant for Term of Life surrenders to him who Right has, or the Tenant to his Lord, the Franktenement veils without Livery; Per Shard. Br. Surrender, pl. 28. cites 27 Aff. 37. But contra Hank. 12 H. 4. 21. For the Tenant has Fee-simpie; but it appears elsewhere, that where Tenant for Term of Life surrenders to him in Reversion or Remainder, and he thereby enters that the Franktenement veils without Livery. Br. Surrender, pl. 28. cites 27 Aff. 37.

3. If the King gives in Fee, or in Tail, or for Life, and the Patentee leaves it for Years, or leaves or gives Part of the Land in Fee, and after surrender his Patent by which it is cancelled, the Lease he or Donee shall not by this lose his Interest; for he may have a Comitat out of the Inrollment, which shall serve him. But see now an Act of Anno 3 & 4 E. 6. cap 4. thereof. And quere if the Common Law shall not serve; for it appears in Libro Intraionum, that a Man may plead a Comitat. Br. Surrender, pl. 51. cites 13 R. 2.

4. Tenant by the Curye and the Heir within Age were, and Affise was brought of Rent against them, and the Tenant by the Curye surrender'd to the Heir pending the Writ; And per June, He shall not be adjudg'd in by Defent as to the Plaintiff to abate his Writ, because the taking of the Surrender was his own Act; and if the Tenant by the Curye had charg'd, the Heir shall hold charg'd during his Life; Per Rolle, If Writ of Entry be brought against the Heir after the Surrender, he shall be supplanted in by his Mother, and not by the Tenant by the Curye. Br. Surrender, pl. 24. cites 1 H. 6. 1.

5. If the Tenant breaks Covenant in Reparations, or such like, and after surrenders, and the Leffer accepts it, yet he may have Action of Covenant. Br. Surrender, pl. 47. cites 27 H. 6. 10.

6. If Tenant in Tail of the Gift of the King surrenders his Letters Patents, this shall not extinguish the Tail; for the Inrollment remains of Record, out of which the Illue in Tail may have a Comitat, and recover the Tail, in Cafe of The Cati of Rutland, by which they made another Devile, that the King should grant to him the Fee-simpie also, and then Recovery against him would bar the Tail; Etc contra, the Reversion being in the King. Br. Surrender, pl. 51. cites T. 32 H. 8.


8. The Court held, That a Surrender immediately devalues the Estate out of the Surrenderor, and veils it in the Surrenderee; for this is a Conveyance at Common Law, to the Perfection of which no other Act is requisite but the bare Grant; and tho' it be true, that every Grant is a Contract, and there must be an Actus contraactum, or a mutual Consent, yet that Conven is implied. A Gift imports a Benefit, and an Assumpt to take a Benefit may well be presumed; and there is the fame Reason why a Surrender should veit the Estate before Notice of Agreement, as why a Grant of Goods should veit a Property, or sealing of a Bond to another.
Surrender.

another in his Abstinence, should be the Obligee's Bond immediately with-
not paid by the Surrender; and for this they relied upon
the constant Form of pleading. Surrenderees, in which the Precedents are always not only to plead the
Surrender, but to plead it with an Acceptance, viz. to which the Surrenderee agreed, unless one or
two in Radall, and dicide Authorities were cited in the Cafe pro & con. And they held, that after Acceptance is shall not be so refer'd to the making the Deed, as to make it by Relation a Surrender to
the Predecessor of a 3d Person, as to destroy the Estate of an After-born Son. But Ventris J. held, that the
Estate vested immediately by the making the Deed of Surrender, but to be devolved by Refusal of the
Surrenderee afterwards to accept it, but that till such Refusal the Estate is in the surrenderee; but
that if it should not vest by the Delivery, yet by Acceptance after it shall be by Relation a Surrender
from the file, and so to devolve a Contingent Remainder of an After-born Son; and that this Relation
does no Wrong to a 3d Person, because such Son was not in Effe at the Time of the Surrender. But
Judgment was given according to the Opinion of the 3. Whereupon Error was brought in B. R. and
Hill 3 W. & M. the Judgment given in C. B. was affirmed by the whole Court. After which Error
was brought in the House of Lords, and in December 1692, upon hearing of the Judges, who were all of
Opinion as before, except Atkins Ch. B. then Prolocutor of the House of Peers, the Judgment was
reversed by the Lords, Atkins and Ventris concurring with them. —— 2 Vent. 198 to 230. S.C.
with the Argument of Ventris J. at large. —— 3 Mod. 256. S.C. argued in B. R. on the Writ of Error,
and the Judgment affirmed there; but says that if W. & M. it was reversed in the House of Lords,
The Cafe in Hill 9 W. 2. B. R. was upon another Eyecement brought afterwards by the same Plain-
tiff against the same Defendant, in which the Question was upon the Surrenderee's being alleged to be
Non compos; and that being found, the Surrender was adjudged void. See Carth. 453. Comb. 458.
And upon Error in the House of Lords Dec. 30. that Judgment, the same was affirmed. See 3 Mod.
47. S. C. but imperfect. Adjudgment.

It appears by a case, 211. that after making the Surrender in Question, the Surrenderee continued in
Possession, as before, for 6 Years, and the Surrender knew nothing of the Death till 3 Years after the
Execution, and then it was confessed to, and not before, within 6 Years the After-born Son (who was the Plaintiff) was born. —— 3 Mod. 266. much to the same Purpose. ——5 Lev. 284 says he knew nothing of it till 3 Years after the Birth of the Son.

(B) What Estate. [And to whom.] See (C)

2. The very Tenant of the King cannot surrender to him. Contra See (L 3)
50 Aff. 1.
3. An Estate for Life may be surrender'd. 49 C. 3. 5. 13 I. 4.
13. b. 50 Aff. 1.
4. If Tenant in Tail discontinues in Fee, Discontinue cannot surrender to the Illuc in Tail. Contra 34 Aff. 2. adjudged. 598. S.P.
cites 20 H.
4 21 and 34 Aff. 11.
5. In a Præcipe, or other Action, where the Land is demanded, the Tenant who is filed in Fee, may surrender in Poss. the Land to the Plaintiff without Livery; for he does this by the Command of the Wett. 27 Aff. 37.
6. Where a Man leaves Land for Term of Years, the Remainder over for Life, the Remainder over in Fee, or referring the Reversion, there, he in Remainder for Life may surrender to him in Reversion, or to him in Remainder in Fee, and the Estate for Term of Years is no Impediment; for tho' this cannot give the Possession of the Land, yet it gives the Possession of the Franktenement, which is in the thing which was surrender'd. Br. Surrender, pl. 26. cites 3 E. 4.
Surrender.

7. A Surrender of a Lease, void on Non-payment according to Covenant, is no Surrender. Per Mannwood, 2 Le. 143. pl. 178. 33 Eliz. in the Exchequer, in Sir Moyle Finch's Case.

8. Intervene Termants can't be expressly surrender'd. 10 Rep. 67. b. in Cafe of the Church-Wardens of St. Saviour's, Southwark, cites 37 H. 6. 16.


There ought to be the first in the King declared under the Great Seal, that he accepts His Surrender; otherwise he is liable, if he surrenders to execute his Office without such a Discharge; and it was so done in the Cafe of Hide and Hale, Chief Justices, who actually surrendered their Offices of Chief Justice, and had a Discharge under the Great Seal. Per Holt, Salk. 81. in Cafe of the King v. Kemp — 2 Salk. 466. pl. 2. S. C. & P. per Cur.

See (A) (B)

(B. 2) To whom.

So if two Men are fequest, and lease for Term of Years, and after the Tenant surrenders to the one, this is a good Surrender, and thereby both may enter. Br. Surrender, pl. 54. cites 26 E. 3. 16.

1. If two are fequest, and lease for Term of Years, and after the Tenant surrenders to the one, this is a good Surrender, and thereby both may enter. Br. Surrender, pl. 54. cites 26 E. 3. 16. S. P. But Brooke says, it seems to him that he may grant his Estate to the one, and the other cannot enter. Br. Reversion, pl. 49. cites 5 E. 4. 4. — S. P. Perk. S. 615. But if the Lease for Life has surrendered the Lands unto both the Lisers, or to one of them for 20 Years, the same shall not take Effect by way of surrender; for then there remains an Interest in the Lessor, which is as a mean Remainder between the Estate which is surrendered'd, and their Reversion &c. Perk. S. 615.

If a Man does enjoy his Estate unto T. K. it is a void Surrender; notwithstanding that J. S. had that Freehold, and T. K. had a Fee-Exempt to be executed in Possession, immediately after the Death of J. S. And the Reason is, because the T. K. had a joint Possession in the Freehold with J. S. and every joint Tenant is fequest of the Whole; so that the Surrender cannot be the Cause that he has the Possession of any Part of the Land; and also his Estate cannot be determined in the Estate of T. K. for either of them has an Estate of Freehold in Possession, in and through the whole Land. Perk. 584. cites 12 H. 6. Sur. 6.

2. Particular Estates, as for Life, or for Years, may be surrender'd to him who has the immediate Remainder or Reversion to the particular Estate in his own Right; if the Estate in Remainder or in Reversion be such an Estate, wherein the particular Estate may be dream'd, unless he who surrender'd has a joint Estate in the Freehold, or in the Term for Years, with him to whom the Surrender is made; and in other special Cases &c. Perk. S. 584.

3. It has been held, that an Estate in Fee of Lands or Tenements may be surrender'd by the Tenant unto his Lord, who has Cause to have
Surrender.


4. It done in Tail of a Rent &c. surrenders his Estate to his Donor, who has the Reversion of the same Land in Fee, it is a void Surrender. Perk. S. 592. cites 12 H. 7. 11.

5. It J. S. makes a Leafe for Life of Land to A. the Remainder of the same Land to B. for Years, and A. surrenders his Estate to B. it cannot take Effect as a Surrender; because an Estate for Life cannot drown in an Estate for Years. Perk. S. 589.


8. A Surrender of a Leafe cannot be but to him that has the immediate Ow. 9. Per Reversion, as an Under-leffe for Part of the Term or cannot surrender to the S. P. 173. Hill. 32 Eliz. in Case of Pory v. Allen.

the Estate. 11. 37. S. 33. Since 17.

One men’s, S. A cannot Surrender.

3rd Br. Tenant

Mont. U. What has been made

But what has been made

Leafe

void.

tie

H. 6.

J. Michaelmas.

nor

303. cites 4 H. 7. 10. Per Keble and Rede—S. P. Co. Lit. 338 a. But tho’ in such Case a surrender in Deed is not good before Michaelmas, yet if before Michaelmas he takes a new Leafe for Years, either to begin presently or at Michaelmas; this is a Surrender in Law of the former Leafe—S. P. By Coke Ch. J. 6 Rep. 69 b. in Sir Moyle Finch’s Cafe, and cites 57. H. 6. 17. b. 18 a. —S. P. 10 Rep. 67. b. in the Cafe of the Churchwardens of St. Saviour’s, Southwark, cites 37 H. 6. 16.

Debt upon a Leafe for Years made at Lammas, to commence at Michaelmas next, to endure for 20 Years rending Rent, the Rent was Arrear, and the Leefe brought into the, the Defendant pleaded another Leafe the next Day to commence at the same Michaelmas for such a Number of Years upon Condition hered at the Part of the Plaintiff; and in the second Leafe void, and a Surrender of the first; and to both Leafe’s void. And per Molle and Divers. It is no Surrender, because it was made before the first Leafe commenced; if the second Leafe had been after the first Leafe commenced, this had been a Surrender.

(C) What Thing or Estate they may [surrender.] See (A) (B) (M) (N)

—Grant (M)

—Proclamation (N)

—Grant (M)

1. Leafe for Years leaves to Leffer Part of his Land, he may surrender the Residue, for it is Reversion. 20 E. 4. 13.

2. One Jointenant in Fee cannot surrender to his Companion. 40 So of Jointenant of Franktenement, or of a Leafe for Years. See Perk. pl. 584.

3. A Devisee of Land till a certain Sum be levied may surrender it, yet he has not any Estate, but only a Chattel, solicit, the Perception of the Profites. 4 Rep. 82. b. Sir Andrew Corbet’s Cafe.


Debt upon a Leafe for Years made at Lammas, to commence at Michaelmas next, to endure for 20 Years rending Rent, the Rent was Arrear, and the Leefe brought into the, the Defendant pleaded another Leafe the next Day to commence at the same Michaelmas for such a Number of Years upon Condition hered at the Part of the Plaintiff; and in the second Leafe void, and a Surrender of the first; and to both Leafe’s void. And per Molle and Divers. It is no Surrender, because it was made before the first Leafe commenced; if the second Leafe had been after the first Leafe commenced, this had been a Surrender.
Surrender.


7. But in such Case, if Lessee waives the Possession, the Lessor may surrender before Entry. Perkins S. 603.

8. If Lessor for Years leaves to the Lessee Part of his Term, and after surrenders the Reversion of it, the Rent is gone. 20 C. 4. 13.

9. If there be Lessor for Years rendyng Rent, and Lessor grants the Rent to another, and after accepts Surrender of the Lessee, yet the Rent continues to the Grantee. 20 C. 4. 13. b.

10. In diverse Places there is a Custom, that the Franktenant who is seized in Fee, when he will alien, shall come into the Court and surrender the Land. Br. Customs, pl. 17. cites 14 H. 4. 1. Per Hank J.

A where a Man grants a Term to one for Term of Life out of his Land, the Grantee may surrender, and yet the Grantor has no Reversion of the Rent. Br. Surrender, pl. 16. cites 14 H. 7. 2.


See (B) pl. 5.

(D) At what Place.

1. Lissce for Life of Land in one County, may surrender in another County. 49 C. 3. 43.


2. In Formedon, or other Precipe quod reddat, the Tenant cannot surrender in Pass. Br. Surrender, pl. 9. cites 12 H. 4. 21.
Surrender.

(E) At what Time they may [surrender.] Sec (C) pl. 5, 6, 7.

1. If A. leaves to B. Land for Years, and afterwards before B. enters, or A. waives the Possession, B. surrenders to A. this is a void Surrender, inasmuch as he has not any actual Estate till Entry or Waiver of the Possession by Lessee.

Perkin be in Possession of the Thing leant at the Time of the Surrender, unless he has Parcel of the Term of the Lessee by Force of the Grant of the Lessee &c.

If a Man leased of Land leaves the same for 20 Years to begin presently, and the Lessee covenants the Possession, and before any Entry made into the same Land by any Perfin, the Lessee surrenders his Estate unto his Lessee, it is a good Surrender, and yet the Lessee shall not have an Action of Trespass for a Trespass done upon the Land before his Entry; and also a Release made unto him by his Lessee is void before his Entry &c. Perk S. 635.

2. If A. leaves Land to B. for Years, and B. enters, and after B. affirms it to C. C. may surrender to A. before any Entry made by him or waiver of the Possession by B. because this was an actual Estate in B. derived from the Reversion by the Entry of B. and C. has an actual Estate by the Assignment made to him before Entry, B. not being any Eector. P. 11. Car. B. B. per Cur. adjudged upon a Special Demurrer between Prince and Tilby. Intreats, H ill. 11 Car. Rot. 70. But Judgment was a Contre upon another Point.

3. If there be Lessee for 10 Years of Land, and he grants Parcel of the Years unto a Stranger, and the Grantee enters &c. and the Lessee surrenders to his Lessee, it is a good Surrender; but if the Grantee of the Lessee had surrendered to the Lessee of his Grantor before the Surrender made by the Lessee, the same shall not take Effect as a Surrender. Caufa Pater. Perk. S. 604. cites 14 H. 7. 3.

4. If two Jointtenants of a next Avoidance are, the one of them can not surrender to the other after the Avoidance happens. D. 283. Marg. pl. (G) pl. 12. 29. cites 31. Eliz. Brockbie's Cae.

5. If I make a Lease to J. S. for so many Years as I. K. shall name, I. S. may not surrender his Term before that I. K. names the Years; per Popham. Goldsb. 168. pl. 98. Hill. 43. Eliz. in Cafe of Hoo v. Marhall.

6. Bargain before Entry may surrender, affiain or release. Cart. 66. per Bridgman Ch. J. for he has actual Possession.

(F) By Acceptance of Lessee for Years [&c.]

1. If Lessee for Life accepts by Parol a Fee simple in Fee of the Land, and Livery upon the Land from him in Reversion or Remainder, this is a Surrender and afterwards a Fee simple. D. 19. El. 351. 49. 40 G. 3. 24. 37 D. 6. 18. per Perkin.


2. If Lessee for Years agrees that his Lessee shall make a Fee simple If Lessee (s) to a Stranger, it seems that this is a Surrender, for it cannot be intended but that he intended that the Lessee should have the Land in Demise. Dubnatt. D. 29 D. 8. 33. 14.

For makes Fee simple and Livery: If Lessee for Years, that this Acceptance of the Fee simple cannot cause a surrender because of the Estate for Life in Remainder, yet it shall deserve as a Grant of Life for the Time to the Neele, or at least a Licence to him to make Livery; and a good Fee simple. D. 29 pl. 13. S.
Surrender.


If Leffee by Affent of Leffor for Life, and in his Presence makes Livery, this Assent will make a Lease at will, or a Surrender for the Time, and so the Livery good. 2 Roll. Feoffment (L.) pl. 17; cites 40. Eliz. per Cur. between Shepherd and Grey.

3. If a Leffee gives Licence to the Leffor to make a Feoffment of the Land to a Stranger, this is not any Surrender but only a Grant of his Term for a little Time for the Licence shows that he does not intend to pass his Estate. D. 29. H. 8. 33. 14. 5. per Fitzherbert said it was to hold till 5 H. 7.

4. So if Leffee licences the Leffor to make Livery, a fortiori this is not any Surrender. Cr. 4. In. B. R. per Cur. in the Case of Bible v. Searle.

5. So if Leffee for Years makes Livery as Attorney to the Leffor, this is not any Surrender. Cr. 5. In. B. R. per Cur. in the Case of Bible v. Searle.

6. The Acceptance of a Voidable Lease will be a Surrender of a voidable Lease. D. 3 & 4. H. 140. 43.

7. If a Leffee for Years of a Dean and Chapter made before the Statute of 15. Eliz. after the Statute accepts a new Lease for the Readie of the Term by Force of the Provifio of the Statute of 15 Eliz. but this new Lease is not good within the Provifio but merely void; This shall not be any Surrender of the first Lease; But otherwise tis if the new Lease be only voidable and not void. Mich. 13. Car. B. R. per Curiam between Fluid and Gregory upon Evidence at the Bar, but this among other Things found specially.

8. If Feene Leffee for Years takes Baron who after accepts a new Lease for their Lives, this is a Surrender of the first Lease. Pl. C. 199. per Curiam provisely v. Adams.
Surrender.

Swain v. Hollam S. C. but S. P. does not appear. — Ibid 203. pl. 257; S. C. Hobart Ch. J. says, if the second Lease had been made to the Husband and Wife both, as it was but to her alone, yet upon his Death she might have claim'd again by her old Term. — Ibid. 226 S. C. cited by Hobart in Cafe of Anne Nelder v. the Bishop of Winchester that the Estate was not totally surrendered as to the Feme.

If Leslee for Years accepts a new Lease to commence presently, If a Man this is a Surrender. For by this he admits the Leslee to have lit- cient Power to make this new Lease, the which he cannot do with out a Surrender. * 37 H. 6. 18.

The Act of the first Lease, the Acceptance of the Second Lease is a Surrender of the first Lease; per Bradnill Ch. J. and Brooks J. which none of the other Justices denied, quod nota; and it is not express'd or express'd, if the second Lease was for more than the first or not; quod nota. Br. Surrender, pl. 12. cites 12. H. 8. 15.


So th'o' the 2d Lease be for fewer Years than the first. D. 3 § 4. If a Lease to B. for two Years, and then grants the Reversion to C. for two Years, and C. leaves to B. for two Years, and B. accepts the Lessee for two Years, this is no Surrender; for a Term of 100 Years cannot be drownd'd in a Reversion for two Years, and yet the first Lease is determined; per Tindem, which Persim granted, Le. 322, 323. pl. 414. Hill. 51 Eliz. C. B. in Cafe of Willis v. Whitwood.

This is a Surrender of the first Lease, and as if the first Leslee had taken a new Lease for 2 Years of his Lessee. Cro. E. 302. pl. 1. Titn. 35 Eliz. B. R. in Cafe of Hughes v. Robothom.

11. If Leslee for Years by Indenture accepts a Lease for Years by Parol; this is a Surrender of the first Lease. D. 3 § 4. 143. [Whiteley v. Gough.]

And where a Lease is by Parol, and after is made by Inden- ture, Brook makes a Quere if this be not a Surrender. Br. Ref. Ration, pl. 17. cites 21 H. 7. 57.

12. If Leslee for Years accepts a future Lease to commence within the first Term, this is a Surrender immediately. * P. 49. El. 2. B. between Mason and Hutchins. 5 Rep. 11. b. Ives's Case resolved, because he by his Acceptance has affirm'd the Leslee to have Ability to make the Lease, which he cannot do without Surrender, and there cannot be a Fraction of the Estate, fell. to be a Surrender for Part of the Years.


The Acceptance of one future Interest is not any Surrender of Prior and another interest future Interest. 3 H. 6. 18.

Lease to B. for 24 Years; and about 2 Years after made a Lessee to C. for 99 Years, to commence at a Day before. About 2 Years after the Lessee to C. the Prior and Convent were translated into a Deed and Charters, and their Possessions confirm'd, and they then made a new Lessee to C. for 99 Years, to com- mence at a Day before. The Lessee of 24 Years was fill in Being. Within a Year after, the Statute of 31. H. 8. of Disturbances was made. Afterwards in 2. E. 6. they surrendered their Possessions, and a new Corporation was established, referring to the King the Land in Lessee, which he granted to W. in F. The Question was, if W. might enter and avoid the 2 Lease to C. or either of them? And the Court, prime face, thought he might; and that the first 99 Years Lessee was drownd'd; and sur- render'd in Law by the taking the 2d. 'Tis he had no Possession of the Land at that Time. Per Inden- ture, to 37. H. 6. 4. and that the 2d Lessee was void by Statute 31. H. 8. it being made within a Year before the Act, and the first Lessee being in Etc. Tamen Curia adv. vol. D. 299. b. 280. a. Mich. 10 & 11. Eliz. Curte's Case al. the Prior and Convent of Norwich's Cafe. — See 3 Rep. 29. a. in the Archibishop of Camberges Cafe, Thr. 38. Eliz. B. R. where this Case is laid to be denied by Pop- ham Ch. J. and some other Justices. [But, as it seems, this was with respect to the avoiding the Leases of Colleges, Deans, and Chapters &c. by the Statute of 31. H. 8.]

If a Lease be made to begin at Michaelmas, and before that Time the Leslee makes a new Lease to the same Leslee to commence presently, the time is not any Surrender, and yet thereby the same is determined. Per Window, which Periam granted, but Persim doubted. Le 325. pl. 324. Hill. 51 Eliz. C. B. in Cafe of Wills v. Whitwood.

If Leslee for Years [of Part] accepts a Lease from the Lessee it shall be of all his Land in D. (where the Land lies) yet this is not any Sur- rend
the rest of
his Land in
D. Cro J.
177. Gibbon v. Scarle, S.C.

* And be-
cause he may
have the
Benefit of
after
the
Lease is

determined.

Surrender; for peradventure he intended other Land. Tr. 5 Jac. B.R.
Per Curtian in Sible and Scarle's Cafe.

15. If Lessee for Years accepts a Grant of a Rent of him in Reber-
non, payable at such Feasts, without limiting when it shall commence;
this is not a Surrender, because it does not appear that they
intend that it shall issue out of the Redemption. Tr. 5 Ja. B.R. Per
Curtian in Sible and Scarle's Cafe.

16. But if the Rent be granted to commence at a certain Time within
the Term, this is a Surrender. Tr. 5 Ja. B.R. in Sible and
Scarle's Cafe; Per Curtian. 27 D. 75.

So of Her-
bar, be-
caus it
cannot con-
form with
the
Lease. 

Cro. J. 177. in Cafe of Gibbon v. Scarle—If Lessee for Life takes a Grant of a Rent-charge out of the
same Land for Life, it is a Surrender, according to 21 H. 5. 6. For otherwise the Rent-charge cannot
have Effect; but if such Lessee for Life takes it for Years, it is no Surrender. Cro. J. 177; in Cafe of
Gibbon v. Scarl.—If the Rent-charge is to commence protractedly, 'tis an immediate Surrender of the Estate
Cafe of Mellow v. May.

18. So if Lessee accepts a Grant of a Common out of the same Land;
this is a Surrender. Tr. 5 Ja. B. R. Per Curtian in Cafe of Sible
v. Scarle.

19. If Lessee for the Years of a Manor takes a Lease of the Bailiwick of the Manor for the 21 Years; this is not any Sur-
render of the first Lease, because this Office is not any Interest in
the Thing soe. It, only an Authority; and peradventure it was
intended that he should be Bailiff of the Redemption, to pay the Rent
due by himself to the Lessee. Tr. 5 Ja. B. R. adjudged between
Sible and Scarle.

Lessee for Years of a Manor takes a Lease of the Bailiwick of the Manor; this is no Surrender of his
Terra, because it is of a Thing which is collateral. Goldib. 155. Gage v. Peacock—Nov. 12. S.C.
The Bailiff of H'minster is commonly a great Man, who hath also Leases in Welfminter of the
Demesne of the Dean and Chapter, and yet it was never intended to be any Surrender. Cro. J. 177; in Cafe of
Gibbon v. Scarle.

Cro. J. 177; cites it to have been so adjudged in the Cafe of Sir Valentine Brown.

20. So the Acceptance by Lessee for Years of a Manor of the
Stewardship of the Manor, is not any Surrender for the Cause afo-
said. Tr. 5 Ja. B. R. cited to be adjudged.

21. So if Lessee for Years of a Park, accepts a Grant of the Keeper-
ship of the Park, this is not any Surrender, because a Keeper has no
Interest in the Park. Tr. 5 Ja. B. R. cited to be one Sir John
Chamberlain's Cafe, for Prestbury Park in Gloucestershire.

* S. P. Be-
cause it is
an Office
collateral
to the
Land.

Cro. J. 177, in Cafe of Gibbon v. Scarle, cites S.C.——King H. 8. granted the Custody of the Park of O. with rea-
sonable Herbage, to G. and also the Manor of O. with the
Park, the Deer, and the Wood; for 50 Years, if the Grantor should be alive. G. surrendered the Letters
Patents in Chancery to be cancelled, (and so they were) to the Intent the King might grant a new Lease to
P. and accordingly a new Lease was granted to P. of the Manor of O. as it was before granted to G.
And afterwards Anno 3 & 6 Pl. & Mar. the Office of Keeper of the Park was granted to the same P. without
the Precinct of his living 50 Years, or paying reasonable Herbage. The Reporter concludes with a Note, that
Surrender.

that he heard Sir H. Velverton say the Judges were of Opinion, that he had but the Custody of the Park, and no Interest in it; for that by the Acceptance of the Custody of the Park, when he had a Leave of it before, it was a Surrender of his Leave. Godb. 415, 414, 425. pl. 491. Trin. 21 Jac. B. R. Lord Zouch v. Moore. 

22. A Prior's leaves to T. for Term of Life, who takes Feme, and after the Prior's comes to T. and T. says to her that his Will is that he enter into the Land, by which she enters; this is a good Surrender; Quod nota; and then the leased again to him and his Feme. Br. Surrender, pl. 1. cites 40 El. 3, 24.

23. If Tenant for Life surrenders to him in Recover afo out of the Land, to which he agrees, the Frankentennement by this is in him immediately, and he is Tenant to bring Action by Precipe quod reddat without Entry; but he shall not have Tredits without Entry. Br. Surrender, pl. 59, cites 21 H. 7, 7.

24. If Lease for 10 Years of Land takes a new Lease of the same Land, but if Lease of his Leitor for 20 Years, it is a Surrender of the first Lease &c. Perk. S. 617.

25. If a Man make a Lease for 40 Years, and the Lease afterwards takes a & it is if a Man make a Lease for 20 Years upon Condition, that if he does such an Act, that the Lease for 20 Years shall be void; and after the Lease breaks the Condition, by force whereof the 2d Lease is void, notwithstanding the Lease the Leitor for 40 Years is surrender'd; for the Condition is annex'd to the Lease, grants the Reversion to the Leitor upon Condition, and after the Condition is absolutely surrender'd. 2 Inst. 218. b. And the Issue is, when the Leitor grants the Reversion to the Leitor upon Condition; and when the Lease grants or surrenders his Estate to the Leitor; for a Condition annex'd to a Surrender may revert the particular Estate, because the Surrender is conditional. But when the Leitor grants the Reversion to the Leitor upon Condition, there the Condition is annex'd to the Reversion, and the Surrender absolute. 2 Inst. 218. b.

26. Lease for Years to A. Afterwards a Lease is granted to B., to commence at the End of the Lease to A. A. takes a new Lease. This is a Surrender of his other Lease, and B. may enter. Pl. C. 193. b. Wrottesley v. Adams.

27. Lease for Years of a House, accepts the Office of the Custody of the same House for Life, with a Fee for Exercise of the said Office. If this is, 'tis a Surrender. No Judgment was given, but the Matter was left to the Determination of Jone of the Privy Council &c. D. 200. b. pl. 62. — Adjudg'd, that 'tis a Surrender.

28. A. Tenant for Life, Remainder to B. in Tail. B. levies a Fine, with Proclamations for Conscript, to A. and C. for their Lives. This Fine bars the Intail during the said 2 Lives only, and is not a Discontinuance omnino; for B. was seised by force of the Tail, and the Fine is Sur Conscript. It seems that A's Acceptance of this Estate to him and C. is a Surrender of the former Estate which he had; and the Lease of the lease for Years made to A. and, during the Years, he accepts a Lease for Years of the same Land to him and B. Jenk. 321. pl. 28.

29. Lease for Years devised his Term to J. S. and made his Wife Executrix, and died. The Widow entered, and proved the Will, and married again; and this 2d Husband takes a Lease from the Leitor. J. S. entered, and S. S. accorded, and grants all his Estate to the Husband and Wife. The Opinion of the High Court
Surrender.

Court was clearly, without Argument, that by this Acceptance of the new Leafe by the Husband, the Term, which the Feme had to another Use, viz. to the Use of the Teftator, fhall be deemed a Surrender. Owen 36. Trin. 27 Eliz. Carter v. Lowe.

30. Leffe for 21 Years took a Leafe of the fame Lands for 40 Years, to begin immediately after the Death of J. S. This is no prefent Surrender of the firft Term; but if J. S. die within the Term, then 'tis a Surrender; for it may be J. S. may survive the firft Term. 4 Le. 39. pl. 83. Patch. 20 Eliz. in B. R. Anon.


Surrender———leafe within the Age of 8 Years. The Mother being Guardian in Socage, leafe by Indenture to the fame Leffe for 14 Years. Per Cur. The firft Le. 322. pl. 211. Leafe is surrendred; but otherwife on a Leafe made by Guardian by 14: 8. C. by Nuture. Le. 158. pl. 226. Mich. 31 Eliz. C. B. Anon. the Name of Willis v. Whitewood; and Anderfon said, That surrend'red it cannot be; for the Guardian has not any Reversion capable of a Surrender, but only an Authority given to her by the Law to take the Profits to the Use of the Heir; but yet perhaps it is determined by Confequence and Operation of Law.

Ow. 45. S. C. accordingly, by Anderfon. 4 Le. 7. pl. 31 S. C. by Name of Willer v. Wilkinfon, says, It was adjudged, that this was a Surrender of the firft Leafe; and fays, Next, the 2d Leafe was made in the Name of the Guardian. S. C. cited, Arg. in Cafe of Watts v. Maidwell, by the Name of Mills v. Whitewood; and that it was adjudged no Surrender. Hutt. 105. — Lit. Rep. 282. Arg in Cafe of Maidwell v. Watts, cites S. C. by Name of Wills v. Whitewood, and that it was adjudged no Surrender, becaufe Guardian in Socage cannot take a Surrender, for he has no Reversion.

33. Magdalen-College in Oxford 20 Dec. 8 Eliz. leafea a Mefiage to W. S. for 20 Years from Mich. next. And after, on the 25 October, 21 Eliz. they did leafe the fame Mefiage to W. S. the fame Person, for 20 Years from Mich. next. Afterwards on the 31 August, the 30 Eliz. they leafe to J. N. for 20 Years. The Acceptance of the 2d Leafe by W. S. is a Surrender of the firft, and is to immediately on the Acceptance, and not good to the Michaelmas following; and fo the 2d Leafe is but a Leafe to begin in future. Poph. 9. Hill. 35 Eliz. Thomfon v. Trafford.

34. A Leafe made by Deed to B. 14 December, 14 Jac. [which was in 1617] to commence at Lady-Day 1619, for 41 Years. Afterwards upon the 3 December, 15 Jac. [which was 1618]. A leafe the fame Land to C. for 99 Years, to commence t' prently. Afterwards 14 * Jan. 16 Jac. [which was Jan. 1619] A made another Leafe to B. for 41 Years of the fame Land, to commence 17 November 1619. All which Leafes were by Indenture. The folle Quotation was, Whether the taking of the 2d Leafe of the fame Land by B. the firft Leffe, be a Surrender. It was refolv'd, that the firft Leafe was not surrend'red or determin'd; that the 2 Terms which C. took cannot never meet or claff together, and confequently it cannot be a Surrender; and Judgment was given accordingly. Lit. Rep. 268. Patch. 5 Car. & 279. Trin. 5 Car. C. B. Watts v. Maydwell.
Surrender.

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Surrender.

35. Where an Officer for Life accepts of another Grant of the same Office, it is not any Surrender of the first Grant. It is decided in Cro. C. 259. Trin. 8 Car. B. R. Walker v. Sir John Lamb.

36. The Leafe of H. 8. by Patent for 21 Years, the Reversion to B. Afterwards B. by Deed reciting the Lands, but not reciting the Dates of the several Letters Patents, grants all the Lands to the said A. for 21 Years after the expiration of the Letters Patents. This Acceptance of the 2d Leafe is a Surrender of the first, the Commencement being refered to the Expiration of the said Letters Patents, and not of the Term, and so the 2d Leafe shall commence immediately. See Grants, (Q) pl. 6. But see Prerogative (Q. b. 2) pl. 4. and the Notes.

37. Leafe for Years of Lands held of a Prebendary for 99 Years by a Prebendary made in E. 6. to commence after the Expiration of former Leases, employing some Friends to take new Leases of the succeeding Prebendaries, in Trust for him, who accordingly did so. The Doubt was, whether this was good Evidence of the Surrender of the old Leafe; and the Court inclined that it was. But the next Day the Jury found that it was no Surrender. See, 75. pl. 6. Pach. 14. Car. 2. B. R. on a Trial at Bar, Cie v. Rider.

which is in another Person, and made in Majorum Caetelam, should be a Surrender.


v. May——Cro. E. 7; 4 in Case of Mellow v. May.

39. Jointenants of a House join in a Leafe, to commence the next Day. Afterwards the same Day 2 of the 3 demise the same House to the same Leafe for the same Term, to commence from the same Day. This is a Surrender of the first Leafe, and a new Leafe of their 2 Parts; and the old Leafe continues as to the 3d Part of him that did not join in the 2d Leafe, and the Leafe's Entry and Possession was by both Leases, viz. of the 3d Part by the 1st Leafe, and of the 2 Parts of the others by the 2d Leafe. 3 Lev. 117. Pach. 34. Car. 2. in Cam. Secce. Turbdvill v. Stockton.

M m (G) W'h'nt.
Surrender.

See (E) pl. 5. S. 4. 4.—Remitter (E).

1. If there be Leselee for Life, the Reversion to an Infant, and the Leselee makes Feoffment in Fee to him in Reversion, this is a Surrender. 39 C. 3. 29.

2. If Tenant for Life makes Feoffment in Fee to him in Reversion, the he be of full Age, yet this is a Surrender. 39 C. 3. 29.

3. But otherwise it is, if Tenant for Life infestos him in Remainder in Tail; for this defeats the Remainder, and so passes as a Feoffment. 41 All. 2. adjudged.

If Tenant for Life intestate his Remainder; this is a Surrender; Per Perley, Kirton and Clopton, in a Scire facias; and yet Belk. awarded contra. Br. Surrender, pl. 7; cites 50 E. 5. 6.

4. If Leselee for Life intestate Baron and Feme in Reversion in Right of the Feme, this is a Surrender, (admitting that it is not a Forefeiture) Dubitatur. 39 C. 3. 29. Contra 39 All. pl. 7.


6. If Leselee for Life be the Reversion to a Baron in Fee, and Leselee leaves the Land to the Baron for the Life of the Baron, and then the Baron dies, and then the Leselee dies; the Witc shall not be endowd of this, because there was a Possibility of Revolution during the Co-verture, as to the Frantentenue, (which proves that this was not any Surrender) 1 C. 3. 16. Per Cond.

7. If Baron and Feme feiled in Right of the Feme for the Life of the Feme feale by Intentitue to him in Reversion for the Life of the Baron, this is not any Surrender, for by this taking he affirms the Revolution in him in Reversion. 29 All. 64.

8. If Leselee for Life leaves to the Leffor for the Life of the Leffor, it is not any Surrender; for he has a Possibility to have it again, feil, if the Leselee dies before himself. 1 C. 3. 15. adjudged.

9. [But]
9. [But] if Lefee for Life leaseth to the Lessor for the Life of the Tenant for Life leaseth to the same, this is a Surrender, because he has not any Possibility of Rent. In Reversion, tho' there be a Possibility of an Occupancy; for this is all one with a Grant of his Estate.

but during the Life of the Tenant for Life rendering Rent. Adjudged this is not good without Livery of Seisin; nor is this Lease any Surrender either in Law or in Deed, to him in the Reversion. By all the Judges of C.B. and St. B. in that Case, C Borough v. Kingdon, S. C. but states it of a Lease made by Tenant over Master Fee; and that he made the Lease to the Reversioner, Habendum to him during the Life of the Lessor, rendering to him certain Rent. And the Judges were of Opinion, that this is not good without Livery, nor is it any Surrender.

10. So if Lefee for Life leaseth to the Lessor for the Life of the Lessor and Lefee for Life, this is a Surrender, because there is not any Possibility of Reversion. P. 16. In the Exchequer Chamber, upon an English Bill, adjudged by all the Barons, between the King and the Lord Dudley.

11. The Acceptance of a voidable Lease will be a Surrender of a good and bare Lease. D. 3 & 4 H. 140. 43.

S. C.—This is the Case of Whitley v. Gough — A Guardian in Chivalry took a Feoffment of the Infant within Age that was in Ward, and the Infant bought an Affidavit, and the Guardian shall be adjudged a Differor; which proves that the Feoffment, as against the Infant, was void; and yet by Acceptance thereof the Interest of the Guardian was surrenderred. 2 Id. 218. b.

12. If there are 2 Coparceners, of whom one is within Age, and in Ward, and the other aliens to B. who purchases the Ward of the Land and Body of the Lord, and after at full Age of the Ward it is agreed between them, that Partition shall be made; and upon this they put themselves in Arbitrement, and the Arbitrator awards a Severance, and assigns their Parts, to which the Ward does not agree, yet this is a Surrender, fell. the Submission and Award. 31 Att. 26. adjudged.

13. If a Lefee grants Part of his Estate to the Lessor, by which a Roll Reversion continues in himself, this is not any Surrender. By Reports. 14 Id.

14. As if Lefee for 20 Years grants all his Estate to the Lessor, except a Month or a Day at the End of the Term, this is not any Surrender, because the Lessor has a Reversion. By Reports. Adjudged Bacon v. Waller.

by Coke Ch. J. accordingly; and said it is very clear he shall have it in several.—(1) pl. 2. 5. C.

15. If Lefee for Life grants all his Estate to the Lessor, this is a But if Lefee for Life grants his Estate to him who has the Reversion in Fee in his own Right, and immediate to the particular Estate, this shall enure by Way of Surrender. Perk. S. 82.

16. If Lefee for Life leaseth to the Lessor in Reversion, and to the Heirs of his Body for the Life of the Lessor, this is not any Surrender; for peradventure there may be an heir of the Body, who shall not be fere general, and the Estates divided. 18 E. 5. 35. admitted.

17. If Tenant for Life be contented and agreed with him in Reversion, that he shall have the Land and his Interest for a certain annual Rent, and that if Tenant for Life survive him in Reversion, that he shall have the Land again; This is not any Surrender clearly, be
Surrender.

136.

caufe he shews that the Lessor shall not have all his Estate. D. 3. C19. 251, 93.

It was a

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big Consentment of Lefee, that the Lessor should have the Lands again; But it was there doubted if a Lefee for Life may be so determined, and where in the principal Cafe the Lessor delivered the Indenture containing the Demife to a Stranger to deliver Sumd cons to Stran & Interest termii pradicali to the Lef-

For if it should be a Surrender, then the Reversion of the

Rent should be void, this being by Parol, and his Intent is appar-

ent to have the Rent. And therefore it seems that this is but a Leafe

at Will no Livery being made and to the Rent well referred. D. 3.

Cl. 251, 93, per Curtam. But the Justices of Assize contra.

18. So if the Tenant for Life be contented and agreed with him in

Reversion that he shall have the Land and his Interest for a certain

annual Rent; This Agreement being by Parol is not any Surrender;

For if it should be a Surrender, then the Reversion of the

Rent should be void, this being by Parol, and his Intent is appar-

ent to have the Rent. And therefore it seems that this is but a Leafe

at Will no Livery being made and to the Rent well referred. D. 3.

Cl. 251, 93, per Curtam. But the Justices of Assize contra.

When Lessor for Years agrees with Lessor, and is content that the Lessor shall have the Land again, this is a good Surrender of a Term for Years. Cro. E. 438. Meigh v. Bateman.

19. If a Man leaves for Years the Remainder over for Years, and after the John TERM grants his Interest to the Lessor, this is no Surrender by Reaion of the Most Intereft of the Term in Remainder. Br. Surrender, pl. 52. cites 31 H. 3. & lib. Perkins tit. Surrender.

20. And if Tenant makes his Lessor his Executor and dies, this is no Surrender; for he has it to another Life; Contra Whorwood. Br. Surrender, pl. 52. cites 31 H. 3. & lib. Perkins tit. Surrender.

21. Where a Man leaves for Years rendering Rent, and the Lessor exercises the Possession for Greatnes of the Rent, and takes away his Goods, and the Lessor enters, his Entry is not lawful; For this is no Surrender. Br. Surrender, pl. 25. cites 8. Aff. 20.

22. Tenant by the Curtely was, the Reversion to Baron and Feme; the Ten-

ant by the Curtely jeffded the Baron and Feme. This was adjudged a Surrender to the Feme, and no Feoffment; and so fee that if the Feme dies without Issue, the Heir of the Feme may enter upon the Baron; quod nota. Br. Surrender, pl. 26. cites 11 Aff. 14.

23. Formedon against Tenant for Term of Life the Remainder to W. for

Term of Life, and this fame Tenant for Term of Life grants or Leaves his Es-

late to him in Remainder for Term of Life, Habein, to the Grantee in Remain-

der for Term of Life of the same Grantor; and per Wilby J. clearly this is only a Surrender; Contra it the Tenant for Life had leaded to a Stranger for Term of Life of the Stranger, this had been a Forfeititure. Br. Surrender, pl. 17. cites 24 E. 3. 32. 68.

24. Affize; Feme Tenant in Tail after Possibility of Issue extinct, the Re-

version to R. in Fee took Baron, the Baron and Feme alluded to him in Reves-

sion, rendering Rent for Life of the Baron, by Deed indented with Clause of Re-entry for Non-payment by 8 Days. The Allience allued over; the Rent [was] arrear; the Baron and Feme enter'd for the Rent arrear, and the Entry adjudged Lawful by Reason of the Rent arrear, and not of the Alienation of the Allience, and it cannot be adjudged a Surrender, because it was by the Baron for his Life, and the Feme may survive him. Br. Conditions, pl. 112. cites 29 Aff. 64.
25. A. bound by Statute to B. His Land is extended. C. recovers against B. in Debt, and the Land extended by B. is now extended by Easement to C. A. grants his Estate to the Consecue; tis no Surrender. 3 Le. 156. pl. 205. in Cafe of Cadec v. Oliver, Arg. cites 29. Aff. 64. by Sony.

26. In Affiss; Land was given to A. a Bailard, and to E. his Feme, and the Heirs of A. who bad Issue C. and after A. died, and C. took J. to Baron; after which Tenant for Term of Life gave the Land to the said J. and C. his Feme, and to the Heirs of J. and after C. died without Issue, by which the Lord entered for Easement, and J. the Baron brought Affiss, and upon Argument and Adjournment, the Opinion of the Court was against the Plaintiff; by which he was not tuted; for because C. the Feme was within Age and also Covert Baron, this was taken as a Surrender and not a Gift to the Baron; and then because he is not Heir of the part of the Father of C. sell. of the part of A. who was a Bailard, to whom the Land was given in Fee, and E. who is yet alive had only for term of Life, therefore tis a Surrender; quod mirum mihi! by Reacon that the Baron was join'd. Br. Surrender, pl. 34. cites 39. Aff. 7.

27. Land was given to R. and J. his Feme and the Heirs of R. and R. died leaving Issue a Daughter C. who took to Baron O. and after J. who succeed, gave the Land to C. and O. her Baron in Tail, the Remainder in Fee to O. Quare, it it be a Surrender? It seems that it is not by Reacon that the Baron is joined with her. Br. Surrender, pl. 29. cites 39 E. 3. 29.

28. Land was given to Baron and Feme, the Remainder to J. S. the Baron discontinued and retook to him and his Feme the Remainder to W. N. and died; The Feme claim'd in by the second Efflate, and surrendered part to W. N. in the left Remainder; and because the Feme by the taking of the second Efflate was remitted, and the first Remainder also, therefore this Gift is no Surrender to the second Remainder, but only a Grant of his Efflate: For the Remainder is in J. S. by Award. Br. Surrender, pl. 36. cites 41. Aff. 1.

29. If my Tenor agrees that I shall make Easement to a Stranger, this is a Surrender; per Frowick Ch. J. who said that this Cafe is adjudged in our Books. Brooke says, Quare, where? because he believes that it is not Law. Br. Surrender, pl. 48. cites 41. Aff. 2.

30. A. leafed to B. for Life the Remainder to C. in tail, the Remainder to D. in Fee, and after B. dies to C. and his Feme; this is no Surrender, by Reacon that the Feme was Jointenant. Br. Forfeiture de terres. pl. 84. cites 41. Aff. 2.

31. If the Tenant in Dower leafes her Efflate to the Heir, rendering Rent, for Term of her Life, the Heir shall have his Age in the Life of the Tenant in Dower, for this is a Surrender, and the Heir is in by the Ancestor. Br. Age, pl. 8. cites 45 E. 3. 13. Per Finch.

32. In Scire Facias upon a Fine, it seems by the Argument, that where Fine is levied to Baron and Feme in Tail, the Remainder to W. in Fee, and the Baron dies without Issue, and the Feme leafes her Efflate to W. who has Issue, and dies, the Issue shall not have Scire Facias to execute the Fine; because the Leaf to W. the Father was a Surrender. Br. Surrender, pl. 6. cites 45 E. 3. 18.


34. If a Man leafes his Land for 20 Years, and after grants a Rent-charge of 20 s. out of it, and after the Tenor grants his Term to the Leffor, pl. 10. cites within 4 Years, the Leffor shall hold charged within the 20 Years; for
Surrender.

this Grant is a Surrender, and the Leilfor is in Fee, and not in by the
Terminus. Br. Surrender, pl. 10. cites 5 H. 5, 8.
35. It is not properly a Surrender, but where he, who surrenders, gives Poffe-
sion to him who takes by the Surrender. Br. Surrender, pl. 13. cites
36. If a Man, feiled of an Acre of Land, leave the same Acre for Life,
the Remainder for Life unto a Stranger, and the Leilfor grants his Estate un-
to his Leilfor, that shall endure by way of Grant; and yet the Grantee
is feiled of the whole Reversion at the time of the Grant; but the same
Reversion is not to take Effect immediately after the Expiration of the Leafe
determined, it he in the Remainder being living, as he is at the Time of
the Grant. Perk. S. 83.
37. If Leilfor for Life of Land grant his Estate unto him in the Rever-
sion, and to two other Men, it is a Surrender for no Part. Perk. S.
618.

See (H) pl. 4.

38. Release of Leilfor for Years to Leilfor, does not amount to a Surrender;
39. A Leafe is granted to a Feme sole for Life, Remainder to her for 20
Years, and after Leilfor makes a Leafe for 40 Years to J. S. to commence
after the Death of the Feme, and the Term of 20 Years; and afterwards
J. S. marries the Feme, and the Feme dies. The Baron has both the
Terms, and his Lait is not surrender'd nor determined; for Surrender
cannot be before the said Term commenced in Possession. And. 32. pl.
40. 3 Things are incident to a Surrender. 1. An Actual Possession in
him who surrenders. 2. An actual Remainder or Reversion in him to
whom the Surrender is made. 3. * Content and Agreement between the
41. Leafe for Years; after the Leafe made Leilfor says to Leilfor,
Thou have not excepted it in my Leafe, yet I meant to have the Chamber
over the Kitchen to put my Stuff in, till my Son comes of Age: To
which Leilfor answer'd, He was well content with that. On which Leilfor
put his Stuff there. Per Popham, Att. Gen. This does not amount to a
Surrender, but is only a Permission for a Time. 3 Le. 223, pl. 301.
Trin. 30 Eliz. in the Exchequer, Queen v. Littleton.
42. Tenant for Life leased a Fine Come coo &c. to him in Reversion in
Fee, and declared the Uses to the Cognizance, and his Heirs upon Condi-
tion that he paid the Tenant for Life the yearly Sum of 4l. during his Life,
and in Default of Payment thereof, then to the Cognisor for his Life, and for
one Year over. The Annuity being not paid, nor demanded, the Tenant
for Life enter'd. The Question was, whether this Fine was a Surrender;
but it was held, that it was no Surrender; for a Fine implies a
Gift in Fee Simple, and every Party to it shall be estopp'd to lay the
43. The King seiled In Fee of the Reictory of St. Saviour's in De-
menne as of Fee, as in Right of his Crown, demised the same to the
Church-Wardens of St. Saviour's for 21 Years. Afterwards by Letters
Patents reciting the said Leafe, and that the said Church-Warden's modis ha-
bentes, & ad praefons polidentes, the said Estate, Interests &c. yet to come
in the said Reictory, had surrender'd the same, by, in Consideration of the
said Surrender, and of 20l. demised it to them for 50 Years. Resolved,
that there was no Occasion of any actual Surrender, because the Words
modo habentes &c. proved, that at the Time of the making the said
New Demise the other was in Being; and that instead of their making
any Surrender before the new Demise, the Acceptance of the new De-
mise should be a Surrender of the old. 10 Rep. 66. b. Trin. 11 Jac.
in the Exchequer, Church-Wardens of St. Saviour's, Southwark.
44. Before Reception of the Clerk, the King cannot present the same Clerk
who is by Ulтратton; for this cannot enure as a Surrender and new Pre-
Surrender.

Prefentment. See Prefentation, (Q. a) pl. 5. and Roll Rep. 236. in Cafe of the King v. the Bifhop of Norwich.

45. R. S. brought Waite againft H. and E. his Wife, and declared, that Hob. 209. pl. the Queen by Letters Patents granted the Lands to E. for Life, Remainder to C. and the Husband could not be the Defendant. And that H. the Defendant married the said E. and committed the Husband to the Queen, to the intent that he would grant a new Lease to the said E. and 2 others for their Lives; which they surrendered to the Queen or to the Defendant, and that the Queen, in Con sideration of Money, &c. and that the new Lease was made with the Consent of H. the Husband, and that he and E. agreed to it, and held claiming by the said new Lease; it was adjudged, that the Condition which procured the new Lease was the Surrender of the old Lease, which Surrender was not absolute, but defeatile, if E. survive, or H. disengage, and then the old Lease is revived. Besides the Freehold for Life, which H. had in Right of E. his Wife, could not be given away by hisbare Affent; but if that Lease had been made De novo to him and his Wife, then it had been questionable; because the Estate passed by Implication, viz. by a Surrender in Law, by the Acceptance of the new Lease. Hutt. 7. Trin. 14 Jac. Swaine v. Holman.

46. It was held, that if the Indenture of Lease be given up to the Lettor, Grattee of and accepted by him, this is a Surrender in Law. Clayt. 131. pl. 236. March 1648, before Torpe Serjeant at Law Judge of Aliffe. Anon. no Surrender, but he may sue for his Rent, if he can recover his Deed again; for a Cave or Grant must be surrendered by Deed; Per Cur. Vent. 297. Trin. 28 Car. 2. B. R. in Cafe of Woodward v. Alton.

47. Where a Surrender may be made, and both Estates come into the A Grant by fame Hands, this amounts to a Surrender. Arg. Skin. 263. in Cafe of Operation of Law turns a Surrender, in a Surrender in Possession and Reversion also, without an intermediate de, because a Man cannot have 2 Estates in one other.

Estates of equal Dignity in the Law at the same Time. Arg. 5 Mod. 301. in the Cafe of Thompson v. Leach.

(H) By what Words it may be.

1. The Word Surrender is not necessary to make a Surrender, if there are other Words which amount. 40 Att. 16. adjudged,

When the Words prove a sufficient Affent and Will of him who is the particular Tenant, that he in the Remainder or the Reversion shall have the Thing which he has or holds, they are Words sufficient to make a Surrender, if he to whom the Surrender is made do agree thereunto. Perk. S. 607.

2. If Leffor for Life faith to the Leffor, that he grants that he shall Gt. Surrender enter into the Land, and that he will that he shall have the Land. [this amounts to a Surrender.] 40 Att. 16.

Years, of Land, say to his Leffor, that his Will is that his Leffor shall enter into the Land which he holds for Life, or for Years, and shall have the same, and by Force thereof the Leffor does enter into the same, it is a good Surrender; and to Shall it be, if he lay unto his Leffor, or unto him in the Remainder or Reversion, that is says that he have the Land, and the Leffor does enter by Free thereby, or agrees thereof, it is a good Surrender; but if the Leffor &e. does not enter by Free thereof, nor agrees thereof, the Surrender
Surrender.

Surrender is not good; for he cannot surrender to him against his Will. But if he to whom the Surrender is made do once agree to the same, he cannot afterwards disagree thereto. And in the Time of King E. 1. the Leflor did enter into the Land leaved for Life, with the Affent of the Leflee; and because it was not in the Presence of good Men of Credit, it was holden to be a void Surrender. But the Law is otherwise at this Day &c. Perk. S. 608.

If the Leflee comes to him in the Remainder, or in the Reversion, and says to him that he will occupy the Land so leaved, and be in the Remainder by Force thereto does enter, it is a good Surrender. And if the Leflee does say to his Leflor, I do surrender unto you the Land which I hold of your Leafe; or if he said, I hold such Land or Houfe &c. and shews certain the Land or Houfe &c. of your Leafe, and I do surrender the fame Land or Houfe &c. to you, and the Leflor doth agree thereto, the same is a good Surrender. Perk. S. 629.

3. In Allife; Tenant in Tail discontinued, and the Discontinuee died seized, and 3 Heirs after him, and the 3d Heir on his Death-bed sent for the Issue in Tail, and said to the Deed of Entail; and said to him that he had Right to the Tenements, and surrender'd them to him by Parol, and died in the House of the Tenements; and the Issue in Tail enter'd by the Surrender upon the Heir of him who surrender'd him, who interrupted him: And the Surrender awarded good, and the Entry lawful. Br. Surrender, pl. 33. cites 34. Aff. 2.

4. Release of Leflee for Years to Leflor, does not amount to a Surrender, because of the Repugnancy; for the Leflee is in Possession, and the Release supposes the Leflor in Possession. Jentk. 195. pl. 2.

5. A. was Leflee for Years rendring Rent, and afterwards the Reversion was granted to B. for Life, Remainder to C. in Fee. A. agreed to B. Afterwards B. by Deed released to C. all his Right &c. with Words excluding him to make any Claim for the future. C. reciting all this Matter, granted his said Reversion and Remainder to J. S. in Fee, to whom A. paid the Rent; and B. likewise released to J. S. and his Heirs &c. all his Right, with like Words as in the other Release. Dyer, Welton, and Welthe J. held, That nothing pald'd by this Release, because there were no Words of Surrender in the Deed. And Saunders Ch. B. and Browne accorded, but Catlynn and Whiddon e contra. D. 251. a. pl. 91. Pach. 8 Eliz. Stepkin v. Lord Wentworth.

6. Tenant in Tail leafe for Years; afterwards Leflor covenants and grants with Leflee, that he shall have and hold the Land to him and others during the Life of Leflee; but no Livery and Seilin was made. By the Opinion of 3 Justices, This is neither Surrender nor Confirmation to enlarge his Estate, and is only a Covenant, notwithstanding the Word Grant; but Welton J. feem'd e contra, by Reason of the Word Grant. D. 272. pl. 34. Pach. 10 Eliz. Cardinall v. Sackford.

7. Tenant at Will cannot surrender; and if he says, I agree to surrender my Lands, this by 3 Jul. against 1. is not any Thing in present, but an Act to be done in futuro. Le. 177. pl. 250. Trin. 31 Eliz. B. R. Sweeper v. Randal.

8. Leafe for Life, Remainder for Life; and afterwards he in Remainder for Life, during the Life of the Tenant for Life in Possession, and in his Presence upon the Land, surrenderers to Reverioner by thee Words, viz. I surrender and yield up the Tenements to you, and then delivers up the Leafe to the Reverioner, by whom the Leafe was granted to him. Per 3 Jul. Cour.
Surrender.

Juft, this is not good, but it ought to be by Deed; but Mountague J. contra. Et adjournatur. 2 Roll. Rep. 20. Pash. 16 Jac. B. R. Ben- 
net’s Cafe.

A Stranger upon the Land in the Absence of the Lessor; and that he paid he surrend' r'd to him in Re- 
version. It was objected that this Surrender could not enure to him in Re- 
version, being absent. Sed 
non allocatur; for the sole Point in Question was, Whether he in Remainder for Life can surrender 
without Deed? And is to that this Rule was taken, viz. That what cannot commence without Deed, 
cannot be granted without Deed, as a Rent, Reversion, Common, Adwowton &c. But in this Cafe 
this took Effect by Livery, and not by Deed; and therefore might be determined without Deed. 
Mountague and Haughton agreed, that it might be surrend' r'd without Deed, but that it could not be 
granted over without Deed; but Doderidge J. said it could not be surrend' r'd without Deed, but that 
Tenant in Possession may, or Tenant for Life, and he in Remainder together may surrender to him in 
the Reversion; but this shall enure as a several Surr'nders, first of him in Remainder to the Tenant 
for Life, and then by the Tenant for Life to him in the Reversion. And Croke J. agreed with 
Doderidge, because the Estate of him in Possession is an Effeftual to the Surrender; so that it could 
not be surrend' r'd without Deed. 

(I) In what Cases a Surrender shall be hinder'd by other See (F) (G) 
Estate.

1. If Lessee for 20 Years grants to of the land 20 Years to the Lessor, See (G) pl. 
 yet this is not any Surrender, because he himself has a Re- 
version in mine. Cr. 14 Ja. B. R. adjudged between Bacon and 
Waller.

2. If Lessee for Years grants all his Estate except one Day at the 
End of the Territ to the Lessor, yet this is not any Surrender; for 
this Day is a Reversion, and is shall hinder the Surrender as strong- 
ly as if it had been 20 Years. Cr. 14 Ja. B. R. adjudged between 
Bacon and Waller.

3. Leafe was made to W. for Life, the Remainder to P. in Tail, the 
Remainder to T. in Tail, the Remainder to the right Heirs of W. and 
after W. infcft'd P. and his Feme in Fee, now T. cannot enter; for he has T. may en- 
note the immediate Remainder. Br. Surrender, pl. 3. cites 41 E. 3. 21. 
Per Doderidge and Haughton J. Roll. R. 358. S. C.

4. In Debt the Defendant pleaded Surrender, and the Cafe was, that 
an Akbot les'd Land for Term of 20 Years to B. C. who les'd over to E. 
for 5 Years, who les'd his Interest by Indenture to W. N. rendering 20 Marks 
per Annum; and in Debt brought by E. against W. N. the Defendant plead- 
ed that the full E. and this W. N. now Defendant his Leafe, before any 
Rent arrear, surrendered their Estates, which they had in the Land, to the 
Akbot first Leafe, who agreed to it, Judgment &c. And by all the Jutices, 
except Brian, This is no good Surrender; for there was no Privity between 
the 2d and 3d Leaffes, and the first Leafe, and therefore a void Surrender; 
and also the third Leafe, with Reservation of the Rent had been void, 
but by Reason of the Deed indented, because the second Leafe had no Re- 
version in him, and also the Surrender in such Cafe is not good without 
Deed; for of a Rent &c. which cannot pass without Deed, nor com- 
merce without Deed, there the Surrender of such a Thing is not good 
without Deed. And note alfo here, that there is not any immediate Re- 
version.
Surrender.

version or Remainder between the 2d Leefe and the 3d Leefe, and the 1st Leffe; and to void, by the best Opinion. Br. Surrender, pl. 16. cites 14

II. 7. 2.
5. If a Leefe for Life be made of Land by A. to B. the Remainder to C. for Life, the Remainder to D. in Tail, and B. surrenders to C. or to A. his Leffer (who has the Fee in Reversion) leaving out him in the Remainder for Life, this Surrender is void to take Effect as a Surrender; because he unto whom the Surrender is made, has not the immediate Estate in Remainder to him that makes the Surrender. But if he who made the Surrender had but an Estate for Years, and in the Surrender there to Words which amount unto a Grant of his Estate, then the Surrender shall take the same by Way of Grant of his Estate &c. Perk. S. 538.

6. A Leefe for Year’s Remainder for Years to B. This Remainder for Years hinders the Surrender of Leefe for Years to Letjor; Secus of

an after made Leafe to commence after the first Leafe. Jenk. 256.

Land had commenced with the Leefe to B. then ‘tis only a Leafe by Eshipet, and does not hinder the Surrender of B. For ‘tis not one and the same Estate with the Leafe of B. and conjoint. But in this Case if B. surrender, C. shall enjoy his Leafe, and if in the last Case B. aturns to C. then C. shall have it as a Reversion, and the Rent as Incident, and such Reversion hinders Surrender by B. to A. the first Leffer, for he is not immediate to him. Jenk. 256. pl. 49.

7. Leefe for Life makes a Leafe for Years rendering Rent, and after surrenders to the Leiffer on Condition. Leefe for Years takes a new Leafe for Years of the Leffer; Leefe for Life performs the Condition and puts out the Leefe for Years, who re-enters, and the Leefe for Life brings Debt for the first Rent referred, and ruled that it does not lie; For the Leafe out of which it was referred is gone and determined. Cro. E. 264. pl. 4.


(K) How a Surrender may be made.


You must know, that a Surrender of a Feehold made by Deed indented upon Condition is good, and if the Surrender be of an Estate for Years in Land, then the Surrender may be upon Condition without Deed; and if a Surrender be made of the Feehold by Deed indented upon Condition, that if he to whom the Surrender is made, do not go unto York within one Month next following the Date of the Surrender, That then he shall be lawful for him who made the Surrender to re-enter into the Land; The same is a good Surrender upon Condition. Perk. S. 624.

2. Tenant for Life, and he in Reversion for Life may surrender without Deed, and the Estate of him in Reversion shall be surrendered thereby; For it seems this shall enture first as a Surrender of the Leefe to him in Reversion, and then as the Surrender of him in Reversion, to that he surrenders an Estate in Possession. 27. All. 46. adjudged.

As Tenant in Dover gave the Land to him in the Reversion by Deed, Coexecs & Confessors, for her Life rendring Rent, and for Default of Payment to re-enter; and in Affite brought by the Tenant in Dover against him of the Land, he pleaded the Deed and the real. He reaffirmed & confessed the Land to him in Reversion then seised of the Reversion Habendum, for Life of the Tenant in Dover, rendering 5. l. Rent, which he has been always ready to pay, and would not use the Deed as a Gift, but as a Surrender; And the Opinion of the Court was, That it is a Surrender and not a Leafe; And this notwithstanding the Condition and the Rent referred. Br. Surrender, pl. 37. cites 44 All. 3.

But
Surrender.


4. In Allife, 'twas admitted a good Bar, that the Tenant brought Pr. c. Br. Surrender, pl. 28. cites S. C. But Brooke says, 'that he had any thing of his Render, quod nota; And the Allife was taken; Which said that he did not Surrender. Br. Barre, pl. 64. cites 27 Alli. 37.

where the Writ is returnable, and render it there, so that it may be of Record to bar the Demandant at another Time; And yet the Writ says further, 'ut nifi seferit, & proficulius (demandant) fecerit se fecurum & claustro suo proficuent. tune fim, per bonos haeuronium, predict. (le Tenementem) quod fin it &c. offentur. Quare non fecerit &c. And so it seems that in ancient Times, it sufficed that the Tenant render in Allis according to the Words of the Writ.

5. Lefsee for Years can't surrender by Attorney; But he may make a Deed importing a Surrender, and a Letter of Attorney to another to deliver it;" Per Clench. Le 36. pl. 45. Trin. 28 Eliz. B. R. Anon.

6. A Surrender may be to an nfe. Cro. E. 668. pl. 23. Trin 41 Eliz. in Whether C. B. Smith v. Warren. Lands in Fee may be surrender'd to an Us; was doubted by Coke. Roll. R. 412.— They may be surrendered according to the Custrom of a Manor, Roll R. 411. Waffell v. Yeton — 3 Bull. 229. Elkin v. Waffell, Mich. 14 Jac. S. C and there 231. It was urged that Fee Simple Land may be surrender'd by the Custum, and that it had been so adjudged here; And this seems admitted by Coke Ch. J.

(L.) In what Cases Surrender may be without Deed, and in what not. What Thing. See (H) Bennet v. Wellbeck.

(K) pl. 2


2. Such thing which cannot be created without Deed, cannot be surrendered without Deed. 19 H. 6. 33. b.

S. C. —— S. C cited Poph. 137. Pach. 16. Ja in Case of Bennet v. Wellbeck. —— S. P. But a thing which may be leased without Deed may be surrendered without Deed, ibid the Lease was by Deed; per Markham. Br. Surrender, pl. 12. cites S. C.

3. As a Rent Charge or Rent Seck cannot be surrendered without Deed. 19 H. 6. 33. b.

S. C. —— S. P. ibid pl. 16 cites 14 H. 11. 2. —— Br. Monfraus, pl. 14. cites S. C. But Surrender of Land is good without Deed thereof made; For it may pass without Deed as by Livery. —— S. P. Perk. pl. 81, 582.

4. Lefsee for Years of a Manor cannot surrender it without Deed, because it cannot pass without Deed. Cr. 5 Ja. B. Agreed per Curiam, between Bucknman and Bannford.

5. If a Man grants a Reversion for Years by Deed as he ought, If Lefsee for Life be of Land or of a House, and the Grantor grants the Reversion into a Stranger for Life, and the Lefsee attorns, the Grant is void if it be not by Deed. And yet if the Lefsee dies, and the Grantee enters into the Land, he may surrender the same without Deed and out of the Land, if the Surrender be made within the County where the Land is. But if the Surrender be made in another County, it ought to be by Deed &c. Perk. 8. 383.

6. If
6. If a Man be Tenant by the Curtisy, or Tenant in Dower, of an Adven-
tory, Rent or other Thing that lies in Grant, albeit there the Estate be-
gins without Deed; Yet in Respect of the Nature and Quality of the
thing that lies in Grant, it cannot be surrender'd without Deed. Co. Lit.
338. a.
7. So it is if a Lease for Life be made of Lands, the Remainder for Life,
although the Remainder for Life began without Deed; Yet because Re-
manatives and Reversions, tho' they be of Lands, are things that lie in
Grant, they cannot be surrender'd without Deed. Co. Lit. 338. a.
8. A Tenant for Life, Remainder to B. and C. for Life. C. purchases the
Reversion in Fee; A. and B. surrender to C. but without Deed; Per
Penler J. The Surrender is void, for if it be good it must first be the Sur-
render of him in Remainder, which cannot be without Deed, and it can-
not be the Surrender of the first Tenant for Life to him; for there is no
Word of Surrender between them. Cro. E. 269. pl. 9. Hill. 3. Eliz.
9. A Corporation aggregate cannot make an express Surrender without
Deed in Writing under their Seal, yet they may by All in Law surren-
der their Term without Writing; for futori & potentior dij Dispositio
Legis quam Hominis. Admitted. 10 Rep. 67. b. Tiin. 11 Jac. in
the Churchwardens of St. Saviour's, Southwark's Cafe.

[Leff for
Tenar agreed
to surrender
his Leafe to
the Leffer,
and delivers
the Key,
which Leffer accepts, but afterwards refused to take the Surrender of the Leafe; Decreed by Lords Com-
mithers, that the Leffe should be discharged of the Rent. 2 Vern. 112. pl. 169. Mich. 1669. Nach-
bock alio Knatchbull v. Porter.

Upon a Case referred to the Lord Ch. B. Gilbert for his Judgment, at his Chambers, he gave his
Opinion, That since the Statute of Frauds and Perjuries, a Leafe for Years cannot be surrender'd by
canceling of the Indenture, without Writing, because the Intent of that Statute was to take away the
Manner they formerly had of transferring Interests to Lands, by Signs, Symbols, and Words only; and
therefore as a Liery and Seffon, on a Parl Polemion, was a Sign of putting the Freehold before the Statute,
but is now taken away by the Statute, so he takes it, that the canceling of a Leafe was a Sign
of a Surrender before the Statute, but is now taken away, unless there be a Writing under the Hand
of the Party. And the Words, viz. by Act and Operation of Law are to be construed a Surrender in
Law by the taking a new Leafe, which, being in Writing, is of equal Notorietie with a Surrender in

(L. 2) What Estate.

S. P. And
without Li-
very; be-
cause it is but a Yielding or a Rediving of the Estate again to him in the immediate Reversion or Re-
manative, which are always furrender'd in Law. Co. Lit. 338. a.

6. State for Life of Land may be surrender'd without Deed.
40 C. 3. 41. b. 19 H. 6. 33. b. 30 Att. 1.

7. One Jointenant may surrender to his Companion (admitting
that he may surrender) without Deed. 40 C. 3. 41.
3. Surrender of a Term upon Condition, is good without Deed. Contra
of such Surrender of a Leafe for Term of Life upon Condition; for this ought
to be by Deed. Br. Surrender, pl. 40. cites 7 E. 4. 16.

8. Estates in Fee of some Things insuing out of Lands may be deter-
d mined by the Surrender of the Deed to the Tenant of the Land by which
Deed it was granted &c. Perk. S. 585.
Surrender.

(L. 3) To whom. [The King.]

[1] 8. The Tenant of the King (admitting that he may surrender) cannot surrender without Deed. Contra 49 E. 3. 5. 50 Att. 1.

(M) What shall be said a Surrender of Part, or of all.

1. If Leefe for Years of Land accepts a new Leafe by Indenture of Part of the Land before leade to him, this is a Surrender only for this Part, and not for the whole. Hill. 43 Eliz. 3. B. R. Per Leuall, between Fish and Campion.

2. A Man leafe'd for Life ventring Rent, and after the Tenant for Life or Tenant for Leafe makes his Estate to the Leffer and 2 others; And the best Opinion was, that this is a Surrender for the 3d Part; for when the Fee and the State, after the Frankentenement come together, the one determines the other, and so the Jointure determined, and they are Tenants in Common; and yet the Opinion of Perkins in his Book is, that it is no Surrender for any Part for the Advantage of the other two; but this does not so appear in this Book. Br. Surrender, pl. tit. cites 7 H. 6. 2, 3.

3. Where there are two Co-heirs, and the Tenant for Life grants his Estate to the one, this is no Surrender but for the one Moiety; and of the other Moiety the other may have Right of Wafe, tho' it Action of Wafe shall be in Name of both, and the one shall be fer'd as it seems. But quere; for it seems the Action of Wafe shall be of the Moiety; Quare before Partition and Severance of the Land. Br. Surrender, pl. 23. cites 21 H. 7. 49.

4. If A. B. and C. be Joint Lees of Lands, to have and to hold unto and to the Heirs of B. and afterwards A. does release all his Right to C. and afterwards C. surrenders to B. &c. it is a good Surrender for the 3d Part of the Land &c. Perk. S. 587.

5. If I hold one Acre of Land for Life, of the Leafe of the Father of J. S. and I hold one other Acre for Life or Years of the Leafe of J. S. and I surrender unto J. S. the Land which I hold of his Leafe, by this Surrender he shall not have the Land which I hold of the Leafe of his Father, notwithstanding that the Reversion of the same Acre be in him by Defect from his Father &c. Perk. S. 611.

6. A. B. and C. Jointenants join in the Leafe of a House to J. S. to commence from Michalmas lathe. Afterwards on the same Day B. and C. without A. demise the same House to J. S. to commence from the same Time and for the same Number of Years as in the Leafe made by all three; and in Ejection by J. S. he declares upon both these Leaves. Resolved that the Declaration was not double; for when the 3 demise the whole, and afterwards 2 of them demise all the same Thing, this is a Surrender of the first Leafe, and a new Leafe of their 2 Parts, and the old Leafe continues as to the 3d Part of A. and to J. S. entered, and was notified by
Survivor.

Both Leaves, viz. of the 3d Part of A. by the first Leaf, and of the two Parts of B. and C. by the 2d Leaf; and so affirmed a judgment in B. R. 3 Lev. 117. Parch. 34 Car. 2. in Cam. Seac. Tuberville v. Stockton.

(N) Pleadings.

1. In Allen Bagot pleaded Surrender of Letters Patents of the Office of Clerk of the Crown of the Chancery into the Hands of the King, viz. Quod idem W. S. coram dito Domino Regis in Cancell. sua tali Die & Anno eadem Cancell. apud Villam Welfm. tunc existente persona et constitutns ex certis causis ipsium moventibus totum jus, Statum, Tit. & interesse sua quid

ipsum in dito Officio ac in 20 li. pro exercitio ejusdem habuit, concussit, ac Officio illud gratias, propit. &que, realiter & absoluta iuris suadidit, dimittit, & regnavavit, praefato Domino Regis, ac literas illas ibi inde facias in Cancell. prædicta ibidem ex causis pretissis tunc ibid. relinquit cancellandis. Br. Surrender, pl. 18. cites 9 E. 4. 7.

2. In Replevin the Defendant rejoind, that Leesee surrender'd Dissolution of Firmament, without saying that he surrender'd the Tenements or all the Estate therein. But it was held, that these Words imply all his Estate and Interest, and so it is intended; and the usual Course is to plead Surrender of the Estate, yet all is one, and so much is implied. Cro. C. 101. Hill. 3 Car. C. B. Pepe v. Pemberton.

3. The constant Form of pleading a Surrender, is not only to plead the Surrender, but to plead it with an Acceptance, viz. to which the Surrenderee agreed; and so are all the Precedents, unless one or two in Rallat. Per Pollexten Ch. J. Rookeby & Powell 9. 3 Lev. 284. Trin. 2 W. & M. B. C. in Case of Thompson v. Leach.

For more of Surrender in General, see Copyhold, Extinction, Fines, Release, and other Proper Titles.

Survivor.

(A) What Things Survivor shall take.

1. If an Obligation be made to many for one Debt, he who survives shall have the whole Debt or Duty. And so it is of other Cov


2. Money
Survivor.

2. Money lent on a Mortgage in Trull, and with Intention, that each of the Mortgagors should have his Money and Interest again, there shall be no Survivorship. Chan. Rep. 57. 7 Car. Petty v. Smyth.

3. Joint Farmers of Excise; per Finch C. If there had been no Covenant that it should survive, yet in Equity it ought, by reason of the joint Charge and Expenditure. If there had been any Agreement among the Farmers that it should not survive, that might have altered the Case. Vern. 33 Hill. 1681. Hayes v. Kingdom.

4. Where 2 become joint tenants, or jointly interested in a Thing by way of Gift, or the like, there the same shall be subject to all the Consequences of Law. But as to a joint Undertaking in the way of Trade, or the like, it is otherwise. Vern. Rep. 217. Hill. 1683. Jeffries v. Small.

5. If a Guardianship was granted to 2, if one dies, it shall survive to Sec 2 Lev. the other. G. F. Rep. 177. Patch. 3 Geo. 1. Earl of Shaftesbury v. 218, 219 Hill. 29 & 30 Car. 2. B. R. Lowry v. Reines, where this Point was moved, and cited D. [180 b. &c. pl. 15. &c. Mich. 2 & 3 Eliz.] Lord Bray v. Cafe, That by the Death of one the Authority is determined; but in the principal Case the Court laid nothing to the Point.

(B) In what Cases Survivor shall take.

1. If a Demise of Lands be by 3, on Condition to pay them 100 l. equally to be divided, and one of them dies, his Executor or Administrator shall have the Money. Brownl. 32. a Note there.

2. If I make a Lease for Years, referring Rent during my Life, and my Wife’s Life, if I die, the Rent is gone, because she is a Stranger; and the Lease shall never have the Rent, because she has no Interest in the Land. If one of them die, nothing can survive to the other; and a Limitation must be taken frivolously, otherwise it is by way of Grant, that shall be taken strongly against the Grantor. Brownl. 39. a Note.

the Wife survives, she shall have the Rent. Brownl. 171. Hill. 15 Jac. Brown v. Duney.

3. Lands charged by Deed with 1000 l. to be raised and divided among 5 Children, one dies before Distribution; the Survivor shall have his Share, and not the Devise of him that is dead. 2 Chan. Rep. 129. 29 Car. 2. Woodlenthonl v. Swetnam.

4. Joint-purchase by A. and B. of a Building-Lease, in the Name of C. who declared it a Trull for A. and B. and of another Building-Lease in D.’s Name, who also declared the Trull for A. and B.—A. dies, and M. his Executor, and E. (who had taken the Houses in Execution) assigned to J. S.—B. became Bankrupt, and the Commissioners assigned to R. S.—R. S. conveys to W. S.—W. S. denies Notice of the Title of J. S. but confest his having C.’s Assignment, and the Declaration of Trull put therein; and that the Lease to C. was not assigned to him by any express Words. Yet, W. S. being a Purchasor, tho before the Closers Circumstances, ‘Trevor, Master of the Rolls, dismissed the Bill without Costs, and the rather because the Plaintiff did not bring the Bill till after Defendant’s Purchasor, tho Plaintiff’s Purchasor was made 2 Years before. Vern. R. 360. Hill. 1685. Uther and Prime v. Aylworth, Edmonds & al.

(C) By
Survivor.

(C) By what Limitation Survivor shall take.

1. If T to 2 in Tail; here are Estates Tail executed with several Inheritances; But if one die, the other shall have all by Survivor for his Life; Per Haughton. Roll R. 178. Puch. 13 Jac. in Case of Bowles v. Berry. But the Within both to Nelf Beildes, It and in the to Nelf Lands the Cowper. So the Layes the other thall have all for his Life; Per Haughton. Roll R. 178. in Case of Bowles v. Berry.

2. So Gift to 2 and the Heirs of one, if he who has the Fee dies, the other thall have all for his Life; Per Haughton. Roll R. 178. in Case of Bowles v. Berry.

3. Lands were devised to Baron and Feme for their Lives, and after the Decafe of the Feme, then to the Child or Children of her Body; in this Case the Baron’s Estate determines upon the Death of the Feme. 2 Wms’s. Rep. 653. 671, 672. Mich. 1734. Cowper v. Earl Cowper.

4. But a Limitation to them for their Lives, (without more) will undoubtedly carry an Estate for both their Lives, during the Life of the Survivor; per Matter of the Rolls. Ibid. 671. cites 3 Rep. 9. Brudenell’s Case.

5. And he said, that this is the legal as well as literal and grammatical Construction of those Words (for their Lives,) which, being plural, must comprehend both, and join them together, where there is no particular Reason to vary from it; As where an Office was granted to 2 for Term of their Lives, this was held in Auditor Curle’s Case, 11 Rep. 3. b. to determine upon the Death of one. But in a Limitation of Lands, it is otherwise. And the Reason of the Difference is this, a Jointency of Lands may be sever’d, and if it be not; the Interests must consequently survive, which is otherwise in an Office; and that it is fo in Lands, is not from the Import of the Words of that Limitation, but from the Institution or Operation of Law; for if the Words imported a Survivorship, it would do so in both Cases. Besides, upon a Severance of the Jointency in Land, the Estate does not continue during the Life of each Dowce; but determines upon the Death of one for his Majesty, and of the other for his; and cited D. 67. a. and Co. Litt. * 197. a. 2 Wms’s. Rep. 672. in Case of Cowper v. Earl Cowper.

(D) Survivorship. In what Cases among what Persons.


(E) By what Words a Thing shall survive the Person, or die with him.

A N Award was, that A. shall pay to B. during the Term of six Years, towards the Education and bringing up of such an one, an Infant. Within the 2 first Years of the Term the Infant dies. Cited by Dyer,
Survivor.

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Dyer, who said it was adjudged that the Sum ought to be paid for the whole Term after; for the Words (towards his Education) are only to shew the Intent and Consideration of the Payment of that Sum, and are not Words of Condition &c. 2 Le. 154. in pl. 186. 19 Eliz. in C. B. Anon.

2. Covenant to pay so much to two; if this be no Interest, and one dies, then there is nothing to survive; Per Dodridge J. 3 Balt. 31. Pauch.

13 Jac. in Cafe of Quick and Harris v. Ludburrow.

with B. C. and D. to give Bond to pay 10l. to B. who dies, the Covenant survives. Yates v. Rolles.

(F) In what Cases the Survivor shall bring Actions, or be charg'd alone, or he and the Executors or Heirs of the other.

1. If 4 are bound in a Recognizance, and one dies, the other 3 shall not be charg'd with the whole, but they and the Heir of the Deceased shall be equally charg'd; quod nota. Br. Charge, pl. 27. cites 29 Aff. 37.

the 3 is a good plea that the 4th is dead, and his Issue within Age, and by his Age the Parol shall survive against all; Per Judicium; quod nota, that Charge shall not survive; and it is not said there if they were bound jointly and severally, or not. Br. Jointenants, pl. 25. cites * 29 Aff. 57. — And Execution shall be against the 3, and the Heir of the other, and well: and Judgment given, and affirmed in Error. fsr. Error, pl. 191. cites 29 Aff. 57. — Br. Parol Demur, pl. 16. cites S. C. — Br. Age, pl. 26. cites S. C. Per Sion and Shard, but Mombray contra.

* If found to be (29.)

2. In Debt upon Bond against Husband and Wife, as Heirs to her Father, they pleaded Non est Factum of the Father. The Jury found that the Bond was made to the Plaintiff and another; whereas in Truth the Plaintiff declared on a Bond made to himself only, without mentioning the other Obligee, and be as Survivor, brought the Action. The Court was clear of Opinion, that the Plaintiff ought to have declared upon the Special Matter. Le. 322. pl. 453. Mich. 30 & 31 Eliz. C. B. Dennis v. St. John.

3. If a Bond is made to 3, to pay Money to one of the 3, they must all join in the Action; for they are all but as one Obligee. And if he be whom the Money is payable dies, the other 2 who survive ought to sue, tho they have no Interest in the Money contained in the Condition; Per Cur. Yelv. 177. Trin. 8 Jac. B. R. in the Cafe of Rolls v. Yates.

4. In Debt on Bond it appeared upon Oyer, that A. B. and C. were bound jointly, and that A. was dead; whereas the Action was brought against his Executor, and the other 2. Upon Demurrer the Court were of Opinion that the Action was not well brought; for by the Death of one of the Obligees, his Executor is wholly discharged. Sid. 238. pl. 7. Hill. 16 & 17 Car. 2. B. R. Osborn v. Crosben & al.

5. A Judgment was obtained jointly against 3, and one of them dies, and the Plaintiff sued a Scire facias against the Executor of him that was dead, and the 2 Survivors. The Judges seem'd to incline, that the Charge did survive, and the Executor was not liable; but per Wyld, he might have sued a Scire facias against the Heir and the 2 Survivors, because it charg'd the Realty, it did not survive, but he could not charge the Executor. Freeman. Rep. 306. pl. 468. Pauch. 1674. Anon. Saunders of Counsel with the Executor, cited a Case of Soper and others for his use, where Harvey being Executor was sued, and pleaded several Judgments, and that he had fully administer'd; and amongst other Judgments
Suspicion.

(A) What is good Cause of Suspicion to detain a Person.

1. Bill of False Imprisonment in B. R. the Defendant said that certain Persons said to him that the Plaintiff and J. N. were come to L. with certain Oxen which were stolen, as they thought, and he came and found the Oxen in an obscure House, and arrested him upon Suspicion; Judgment it Absolute. And per Gagecook and Hull, it is no Plea, for Suspicion is no Cause of Arrest, unless a felony was committed in the County before. Et adjournam. Br. Faux Imprisonment, pl. 4. cites 7 H. 4. 35.

2. It is good Cause to arrest a Man, inasmuch as he is Vagrant, exercising no Trade, nor doing any Work. Br. Faux Imprisonment, pl. 22. cites 7 E. 4. 20.

Goods were stolen and found in the House of the Plaintiff, and he would not know how he came by them, this gave good Cause of Suspicion, and being examined before a Justice, giving various and uncertain Answers, aggravated the Suspicion, and was just Cause of binding him to Seclin. Cro. E. 901. pl. 4. Mich. 44 & 45 Eliz. B. R. Chambers v. Taylor.

4. False Imprisonment made at W. in the County of K. The Defendant said, that at the Time &c. T. Fawconbridge with 20000 Men, as Rebels and Traitors to the King, intending to depose the King, assaulted the City of London, and burn'd Houses, and kill'd A. and B. and the Citizens drove them to Blackheath; and the common Voice and Faine was, that the Plaintiff was one of them, and the * Defendant suspecting him thereof, took him at W. and because there was no Gaol in the County of K. where he might put him for Doubt of Rebels, he carried him to London, and there imprison'd him. And per Cur. A Man cannot arrest another for Suspicion, if he himself has not Suspicion thereof; nor can he justify by Command of him who has Suspicion. Br. Faux Imprisonment, pl. 25. cites 11 E. 4. 4.

But after Fol. 7. the Opinion was, that it is no Plea, if he does not say that he did not carry the Plaintiff, to the Gaol of Kent for Doubt of Rebels. Quod nota; for a Man cannot justify the Taking in one County, and the Imprisonment

For more of Survivor in general, see Devil, Jointenants, Trust, and other Proper Titles.
prisonment in another County, unless for such special Cause; but where the Grand of one County serves in two Counties, there he may plead it and justify &c. And the Plaintiff maintained his Writ abique hoc, that the common Voice and Fame in London was, that he was one of the Rebels.

5. In False Imprisonment the Defendant justified that a Felony was done, and the common Fame and Voice of the Country was, that the Plaintiff was of ill Government, and that he did the Felony, by which he who was robb'd came to the Confidable &c. and required him to arrest the Plaintiff, whereupon the Confidable came and required the Defendant to aid him, by which he aided him to arrest the Plaintiff, which is the same Imprisonment. And per Keble, Vavilof, and Townleid, the plea is good; and it is lawful to arrest him by the Suspiration of him who was robb'd; and a Man may justify the taking the Goods of an Alien, as Servant of the Duke of G. and yet every one may feile them as well as another. Contra Brian and Hawes, and that the Suspiration cannot extend but to him who has the Suspiration, and to no other. Br. Faux Imprisonment, pl. 14. cites 2 H. 7. 15.

6. In False Imprisonment the Defendant said that 7. S. was poifon'd, S. C. cited and the common Voice and Fame was, that the Plaintiff had done it, by which he as Servant of W. N. Sheriff took the Plaintiff, and carried him to the Prison. And per Car. he who justifies as here, ought to allege that such of Weal v. a one was poifon'd, and therefore for Suspiration of Felony he shall say Wells, that such Felony was committed &c. and this is traversable; And per tot. Car. He cannot justify as Servant of the Sheriff, but of his own Authority; for when a Felony is done, and Suspiration is, every one who has the Suspiration may arrest the Party, but not by the Command of the Sheriff, unless the Sheriff has Writ ad illum arrestandum, by which the Defendant amended his Plea in this Point; quod nota bene. Br. Faux Imprisonment, pl. 16. cites 5 H. 7. 4.

7. And per Davers and Brian, if a Man be indicted of Felony, this is a sufficient Cause of Suspiration to arrest him; quod Jay and Keble negate; for Processes ought to be awarded, and the Indictment may be S. P. Arg. Bridgen 62. in Cafe of Weal v. Wells. cited 5 H. 7. 4.


S. P. Arg. Godb. 466. cites H. 4. 35—S. P. 2 Inft 52.—Bull. 149. Trin. 9 Jac. in the Cafe of Wale v. Hill. Arg. cites H. 7. 5. H. 8. 9. & E. 4. 20. That common Fame, in some Cafes, may be a good justification in a false Imprisonment: but this is to be taken, if the Cause, for which he was taken, be publick; but otherwise it is, where the Cause is private; that for taking a Man's Goods in a private Manner, there he ought to have specially, that the Goods were found with him, and in his Possession, and not to go by Belief, and to give Credence to every particular Man; but he ought for to shew some good and apparent Cause to the Court, and fo is E. 4. fo. 20. If a Man be rob'd in the Night, and it is the common Voice and Fame that J. D. did it, a Man may arrest him by the Fame of this County where, &c. Contra by the Voice of another County. Per Choke & Brian. Br. Faux Imprisonment, pl. 25. cites E. 4. 4.

This Fame, Braifer refers well: Fame quae susprimationem indicit erit debit ad ipsam bens & graeces, non quidem malevolos & maledictos, sed providas & fide dignas personas, non tenel, sed faqius, quia Clamor minuit & Defamatio manifestat. 2 Inft. 52.

9. Hire and Cry is good Cause to take a Man for Suspiration of Felony, S. P. Br. and if it be made without Cause, he who made it shall be punifhd; and not the other who arrested the Man. Br. Trefputis, pl. 213. cites 21 H. 7. 27. pl 25. cites E. 4. 4.—S. P. 2 Inft. 52.

10. A Justice of the Peace himself cannot arrest a Man for Suspiration of Felony, unless he himself suspects him, and not by the Suspiration of another; and therefore cannot make a Warrant to arrest him upon Suspiration of
Suspicion.

The Defendant cannot be arrested in the absence of another; but he, who has the Suspicion of Felony in another, may arrest him himself. Br. Faux Imprisonment, pl. 3. cites 14. H. 8. not arrest any of Suspect. 16.

No.16. Of Suspicion whatsoever, let the Number and Probability of them be ever so great, will justify the Arrest of an innocent Man by one who is not himself induced by them to suspect him guilty, whether he make such Arrest of his own Head, or in Obedience to the Commands of a private Person, or even of a Constable. 2 Hawk. Pl. C. 76. S. 15.

11. If A. be suspected, and he fleeth, or hides himself, it is a good Cause to arrest him. 2 Inst. 52.


12. If Treason or Felony be done, and one has just Cause of Suspicion, this is a good Cause, and Warrant in Law, for him to arrest any Man; but he must shew in Certainty the Cause of his Suspicion; and whether the Suspicion be just or lawful, shall be determined by the Justices in an Action of false Imprisonment brought by the Party grieved, or upon a Habeas Corpus &c. 2 Inst. 52.

13. Refused to seize Cattle which are charged to be stolen, is a good Cause of Suspicion, and to carry before a Justice of the Peace to be examined; Per Doderidge, J. 3 Bull. 287. Hill. 14 Jac. in Caue of Weal v. Wells.

(B) Pleadings.

Br. Double, pl. 151. cites S. C. S. C. cited Arg. Bridge, 61. in Case of Weal v. Wells, that the Defendant travers'd the Indictment without that, that the Indictment was good. 46. 1 Edw. 4. 26. 1 Edw. 4. 26.

1. N false Imprisonment in S. the Defendant said, That before the Imprisonment B was kill'd in S. and the Plaintiff was in the Company of the Murderers at the Time of the Felony, and the Name of the County of S. was, that the Plaintiff was Party to the Felony, by which the Defendant found the Plaintiff at S. and arrested him for Suspicion of Felony, and committed him to the Sheriff, which is the same Imprisonment. And Brian said, the Plea is double, viz. the Name, and the being in the Company. But Markham, J. contra; for in such Jutification a Man may make to Causes of Suspicion, and all is only one Suspicion. Brian said, he imprison'd him De non tort Demencie, abique hoc that he was in Company, or that there was such Name, and was not suffer'd to have both, by which Plaintiff was within the Company only. Br. Faux Imprisonment in their Company, and without that, that the Report was fit, &c. And Nickam (Markham) said there, That false could not be taken upon the Report, but upon the Matter in Fact; for if Men lay in the Country that I am a Thief, that is no Cause to arrest me; but Matter in Fact ought to be shewed, which is traversable. Whereupon false was taken upon the first Matter only. And in the 5th of Edw. 4. it is held that a Man ought to shew some Matter in Fact, to prove that the Plaintiff is suspected. And 11 Edw. 4. 26. in a False Imprisonment, the Defendant who justifies upon a false Imprisonment for Felony, ought to shew some Matter in Fact to induce his Suspicion, or that his Goods were in his Possession, of which the Country may take notice. And in the 17. Edw. 4. 5. in a false Imprisonment the Defendant justified, because that A and B did rob another, and did go to the House of the Plaintiff; whereupon the Constable did suspect them, and did require the Defendant to all the in arresting him &c. and holden there, that they ought to furnish some Cause of Suspicion, or otherwise the Plea was not good.

2. In Trespass the Defendant justified, because a Felony was done in the County; and the Defendant had Suspicion of the Plaintiff, and entered into the House, and there found the Ox that was stolen, by which he arrested him. And per Cur. he ought to carry him to Gaol; to which he said, that the Plaintiff refused himself. And it was awarded a good Plea, tho' he
Taliter Procecum.

he did not say that the Plaintiff was suspected in the Country; for he did not arrest him but for Suspicions which he had in himself. Br. Faux Imprisonment, pl. 27. cites 20 E. 4. 6.

3. Whosoever would justify the Arrest of an innocent Person, by reason of any Suspicion, must not only show that he suspected the Party himself, but must also set forth the Cause which induced him to have such a Suspicion, that it may appear to the Court to have been a sufficient Ground for his Proceeding. Also it seems certain, that regularly he ought expressly to shew, That the very same Crime for which he made the Arrest, was actually committed. But if a Man have several Causes of Suspicion, he is not bound to insist upon some one of them only, but may allege them all; for that the Replication De for Toti Denufine answers the Whole. As * * * where a Man arrests another, who is actually guilty of the Crime for which he is arrested, it seems that he needs not, in justifying it, set forth any special Cause of his Suspicion; but may say * * * in general, that the Party knowingly did such a Fact, for which he arrested him, &c. 2 Hawk. Pl. C. 77. S. 18. cites the Books in the Margin. 32. Finch. 540. 17 E. 4.


(A) Taliter Procecum.

1. Trespasses for taking his Beasts. Defendant justified by a Plaint in a Hundred-Court, by which Taliter Procecum suit, that the Plaintiff was nonlatticed, and Coils tax'd, and a Precept to levy; whereby he took the Beasts, and travers'd, that he was guilty before the Delivery of the Precept, or after the Return. Upon Demurrer it was objected, that this short Way of pleading a Judgment in Inferior Courts is not allowable. Sed non allocatur; for it is good enough, setting out the Plaint levied, but ought not to commence at the Judgment, viz. that Consideratum juit. 2 Lev. 21. Hill. 24 & 25 Car. 2. B. R. Doe v. Parminter.

2. In Trespasses for taking his Cattle, the Defendant justified by Virtue of an Exception in an Action of Trespasses in the Hundred-Court. The Plaintiff demurred. Exception was taken, that the Defendant, reciting the Proceedings below, faith, Taliter Procecum suit; whereas he ought particularly to shew all that was done, because not being in a Court of Record the Proceedings may be denied, and tried by a Jury. But the Court inclin'd that it was well enough, and the stet Way to prevent Mistakes; but if the Plaintiff had replied De injustia fina propria absque tali causa, that had traversed all the Proceedings. But no Judgment was given. 2 Mod. 162. Trin. 28 Car. 2. C. B. Lane v. Robinson.

3. In Trespasses and false Imprisonment, the Defendant justified by Fearn Rep. Proces out of the Court of Warwick, on a Judgment had there, on a 52. pl. 422. Plait in Trespasses, Super quo Taliter Procecum juit, that Judgment R. r was exactly S. P.
was given against him, whereupon he was taken &c. Exception was taken, because it was pleaded by a Taliter, and no Mention was made of any Declaration; and that the pleading Taliter &c. in an Interior Court, is not good. But it was anwver'd on the other Side, That the Taliter &c. is the shorter and better Way; and therefore in a Sci. fa. nothing is recited but the Judgment; tho' it is true, in a Writ of Error, the whole Record must be set out. The Court was of Opinion, that the Plea was well enough as to this. 2 Mod. 1955, 196. Hill. 28 and 29 Car. 2. C. B. Higgenson v. Martin.

4. In Trespasts of taking a Gelding, the Defendant justified by a Plaint in a Court-Baron, and that Taliter Proceffum fuit, that the Plaintif recover'd against the now Plaintif, and that a Precept was thereupon made to the now Defendant, who is an Officer of the said Court, to levy the Debt and Costs, by Virtue whereof he took the Gelding, and appraised and sold him. The Plaintif demurred generally, and Exception was taken for him, that Taliter Proceffum in a Court-Baron is a very curte Way of pleading, and that all the Proceedings ought to be thrown at large, because not being Matter of Record all is traversable: Quod Curia cancell. And Judgment for the Plaintif, Nifi &c. 2 Jo. 129. Hill. 31 & 32. Car. 2. B. K. Garret v. Higby.

5. In false Imprisonment the Defendant prefcrib'd to have a Court &c. for Trial of all Personal Actions, &c. and that a Plaint was levied there, &c. and that Taliter Proceffum fuit, and did not set forth any Declaration or Appearance, but only that the Plaintif had Judgment, and the Defendant was taken in Execution, where he was apprais'd till he paid the Debt, &c. And upon Demurrer it was adjudged for the Plaintif, because the Record in the Interior Court was received only by Taliter Proceffum fuit. 2 Law. 913. Trin. 3 Jac. 2. Dennis v. Rowles.

6. In Trespasts for taking Goods &c. the Defendant justifies by Judgment in a Hundred Court, and Proceedings thereupon, that there was a Plaint levied in Trespasts on the Cafer, &c. taliter proceffum fuit, that it was considered that the Plaintif should pay Costs for his Definit, Uade corvulis ef. This was intiffed to be ill, because in Cae of an Interior Court, they ought not to plead it fo; for that each Part of the Process is traversable. Holt Ch. I. said, that in Ld. Hale's Time it was hld. good, tho' only laid Taliter proceffum fuit, and that in that very Point himself was overruled in Sir Francis Pemberton's Time, and a Year since in C. B. Adjournatur. Show. 47. Trin. 1 W. & M. Simpson v. Merrilee.

7. In Trespasts of taking his Cattle the Defendant justified under a Plaint by J. S. against the now Plaintif in the County-Court for a Debt of 39s. 11d. and that Superiorde taliter proceffum fuit, that T. P. the Plaintiff in that Plaint recovered &c. and thereupon Quoddam Preceffum emanavit, per quod the Sheriff commanded the Plaintiff to levy the Money &c. and upon Demurrer to this Plea it was adjudged for the Plaintiff (among other Reasons) because the Judgment was pleaded in an Inferior Court, not being a Court of Records, with a Taliter proceffum fuit, when the Proceedings should be set forth at large. 2 Vent. 100. Mich. 1 W. & M. in C. B. Pinager v. Gale.

8. In Debt on Bond for quiet Enjoyment of Lands leaded to the Plaintiff the Plaintiff averred, that he was prosecuted in the Exchequer by J. W. and that Taliter superinde in caudam Curia &c. proceffum fuit, that the Plaintiff there recovered against the Plaintiff here 80l. and 70l. for Damages &c. prout per Recitation &c. pleonas liquet &c. It was intiffed for the Defendant, that the whole Record of the Recovery ought to be set forth.
forth at large in the Declaration; Sed per Curiam non allocatur; for at
this Day 'tis otherwise practised; And 'tis sufficient to plead, that the
Plaintiff recovered with a Taliter proceffum faut, without reciting the
whole Record. Holt Ch. J. says, this Declaration is too general, and
that the Plaintiff should at least have set the Matter out in this Form; Soil.
That he was impleaded in an Action of Debt for so much Money certain (of
which this was Parcel) or have it forth the whole Declaration in the Ac-
tion bought by J. W. with Taliter superinde proceffum faut, so as it might
appear to the Court, that the Recovery was against the Plaintiff for the same
Matter, against which he was to be defended; For that in this Case he could
plead no other Plea than Nul tiel Record; And upon his Opini-
on Judgment was given against the Plaintiff. Carth. 303, 306. Patcli.
9. In Trepsis of Affralt, Battery, wounding, and imprisoning &c. the
Defendant, as to the Force and wounding pleads not guilty, Et quid
redufum tranfgrelfionis, the Affilt and Imprifonment, he justifies, for that
the Plaintiff was indebted to him infra Jurisdictionem Car. de Recordo de B.
and for the Recovery thereof the Defendant Imprifonaf in the said
Court, and found Pledges to prosecute his Suit: Et Superinde taliter proceffum
fuit in eadem Curia, that he had Judgment and Execution, which he de-
lered to the other Defendant being a Bailiff, who at D. infra jurisdictio-
num Car. collateral mens impiunt upon him, and arrested him and detain'd
him in Prifon, which are Idem redufum tranfgrelfionis præd. It was
reolved upon Demurrer, that this short way of pleading the Judgment
in an inferior Court, viz. by an Imprifonaff, and that Taliter proce-
fum faut was good, tho' the Ufage ancienfly was otherwise; And tho'
there are some Cases where the Plea has been held ill without reciting a
Plaint levied, yet by the Imprifonaff and Pledges found as here in this
Cafe they supply that Matter. 3 Lev. 403. Mich. 6 W. & M. in C. B.
Patrick v. Johnson.

Amp b. UHROn, where the Pledges by Taliter proceffum of a Judgment in Worcester-Court was
adjudged good; but observes, that there they commended the Plea with the levyng of a Plaint, upon which
Taliter proceffum fauiz. And likewise another Caf. resolved by Hale Ch. J. and the whole Court Hill.
24 & 25 Car. 2. B. R. but there a Plaint was likewife pleaded to have been levied and to held good; But
that without Plaint it would have been void. — See 3 Lev. 248, 244. Mich. 1 Jac. 2. in C. B.
Adney v. Vernon.

10. In Trepsis Defendant justifies the Taking &c. by Proceeds out of the Coun-
ty-Court, that Taliter proceffum faut that the Plaintiff there had Judgment, and
a Precept was directed to this Defendant to levy the Money, and to justi-
fied. Exception was taken, that such Pleading is not good as to Pro-
ceedings in a County-Court. Several other Exceptions were taken to the
Pleadings, and Judgment was given to the Plaintiff; But the Reporter
says, That the Court did not declare for which of them they gave their
Judgment. And adds a Note, that as to the abovementioned Excep-
tion, it had of late Time been adjudged, that the Proceedings in such In-
ferior Courts may be pleaded by a Taliter proceffum faut &c. 2 Lutw.
11. Trepsis for the taking of a Horfe. The Defendant justifies under
a Judgment recovered against the Plaintiff in the Hundred Court by a Ta-
lier proceffum, and does not fet out the Proceedings at large; And adjud-
judged good, notwithstanding that the old Books are to the contrary,
upon the Authority of a Cafe between Doe & Palmer; Hill. 24
& 25 Car. 2. adjudged in Point in B. R. in the Time of Lord Hale,
Pollard.

For more of Taliter Proceffum in General, see other proper Titles.
Tally of the Exchequer.

The Sheriff often gave Acquittances and Tallys to the Tenants, and yet Nichold them on the Account; and upon Complaint of the Tenant, the King often fined out Writs, whereby Inquisitions were taken, and what Person the Sheriff had received Money from, which was Nichold at the Exchequer, and such Tallys were produced to the Person impanel'd: and if the Sheriffs were found guilty, they were attred. The Words of the Writ are, Quod veritatem talliar' delictorum velit inquiri, & si delictores talliarum fuerint attijiti tunc Habeas Corpora eorum cum Baronibus &. But for the more effectual Remedy of this Grievance, the Stat. de Attincc. was made, 12 E. 2. Gilb. Hist. View of Esch. 93. 95. cap. 3.

Wingate mentions this Statute as 13 E. 2. and Cay mentions it as 14 E. 2. which Ld. Ch. B. Gilbert mentions as 12 E. 2.

When any Man pays Money into the Exchequer, he pays the Sum to the Teller, and the Teller makes a Bill in Parchment for the Sum to paid, in which is the Chriftian and Surname of the Party, his Office, and the Day of Payment, and the Sum to paid wrote in Numerical Letters; this Bill is roll'd up, and thrown down thro' a Puce into the Tally Court; then the Tally-cutter prepares the Tally, which is notched according to the Sum mentioned in the Bill, viz. a greater notch for (M) and a leffer notch for (C) a leffer notch for (X) and fo a leffer notch for fingle Pounds, and for Shillings and Pence; the Tally is but slightly cut with the Knife. Then the Auditor of the Receipt, who was anctually call'd the Receptor Talliar' writes a Duplicate upon the Wood of the Tally, of the Contents of the Parchment Bill, and the Sum which is writ in the Numerical Letters upon the Bill, and is expreced by Notches on the Tally. Then the Clerk of the Pells enters the Bill into his Book, and the Scripture Talliar' reads the Tally: the Clerk of the Pells at the fame Time looking into his Book to fee that his Entry and the Tally agree together, and then the Chamberlains strike the Tally, that is, divide it into two, and the Tally or the Stock is given to the Party, and the Bill or Counter-part is left with the Chamberlains, and the Bill is carried away and filed by the Auditor of the Receipt. Gilb. Hist. View of the Esch. 140. 141. cap. 9.

Br. Debt pl. 17. cites S.C.

1. 14 Edw. 2. Enacts, That if Sheriffs and other Muniflers which gather the Debts of the King, and make Tallys and other Acquittances to the Debtors, and yet do not acquit them in the Exchequer, and of the same are impleaded in the Exchequer, and by Favour are put to little Ills, which they will rather left than come to answer, the Sheriff &c. when he is impleaded in the Exchequer, and the great Diffirets returned against him, and he comes not to answer, there shall go forth another Writ of Diffirets, in which shall be commanded that Proclamation be made in the full County, that the Defendant come at such a Day, and acquit the Debtor of the Sum for which he made Tally or Acquittance, at which Day if the Defendant come not, and the Writ be returned, and Proclamation certified, he shall be holden for convict, and the Debt lev'd of him, and Damages awarded to the Plaintiff, according to the Directions of the Barons. And this Statute shall extend as well to those which have been Sheriffs, and other Muniflers that let to Lease their Billarwicks, as to the Sheriffs and other Muniflers, which hold their Billarwicks themselves. And by this Statute no Man shall be held for Convict, but that he may complain of Sheriffs and other Muniflers when they be found in the Exchequer, and that they shall answer there as has been used.

2. It appears in a Case of Debr, that where the King is indebted to a Man, he may affign the Party by the Record to take the Sum of a Customer, and deliver to him a Tally thereof; and there if the Creditor moves the Tally to the Customer, the Customer is thereby charg'd, if he has Assets in his Hands, or when Assets come to his Hands, he may have Debt against the Customer thereupon, naming him Customer; and there is it a good Plea for the Cofumer to lay, that at the Time of the flowing of the Tally, nor ever after, he had nothing in his Hands; and there the Tally need not be flowed in the Court, nor upon the Count, as upon Debt upon an Obligation; for the Customer is not Debtor by the Tally only, but by the Record by which it is affign'd to the Plaintiff, and by the flowing of the Tally. Br. Taile de Exchequer, pl. 1. cites 27 H. 6. 9.

3. And
Taxes.

3. And if the Tally be lost, the Creditor upon his Oath shall have a new Tally which is called an Innovate, contra of an Obligation; for there if he loses it, he loses his Duty, and therefore this shall be sworn in the Count, contra of the Tally; for this is only to deliver to the Creditor to take Allowance thereof upon his Account, but the Debt is due by the Aignment in the Record, and not by the Tally; note the Diversity. Br. Taile de Exchequer. pl. 1. cites 27 H. 6. 9.

4. In the Exchequer it is the common Course upon a Tally for the Creditor to say, that he has no thing in his Hands but 20 l., and that B. showed to him a Tally of 25 l. and one A., another &c., and to those who first shew they are chargeable &c. nota. Br. Taile de Exchequer, pl. 2. cites 9 E. 4. 12. per Pigot; and the same Law per Chocke in the Residue of the said Cafe, fol. 14. upon several Tallies shewn, and in pleading thereof it ought to be shown what Day and Year it was shewn to him, and at what Place.

5. A Tenth was granted to King R. 3. by the Clergy payable at two Br. Denes. pl. Days, by which the King assign’d divers Tallies thereof to his Debtors, 221. cites payable by the Hands of the King’s Collectors thereof, which Collectors were S. C. assign’d by the Clergy, and none between the two Days King R. died. And it was held that the Collectors upon the shewing of the Tallies by the Debtors are chargeable to them, and that the Clergy after this are chargeable to the Debtors, and that after this Aignment and shewing of the Tally, the King cannot pardon the Clergy of the Tenth; for it is alter’d into a Debt before, and that it is not due to the King after the shewing of the Tally, and that after this the old King, nor the new King, cannot have it, but the Debtors. Br. Taile de Exchequer. pl. 5. cites 1 H. 7. 8.

For more of Tally of the Exchequer in General, see Acquittance (B) &c. and other proper Titles.

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(A) How Construed.

1. The Word Taxes generally spoken with Reference to a Freehold, or where the Subject Matter will bear it, shall be intended Parliamentary Taxes, proper excelléntiam. 2 Salk. 615. says, that this was laid down as a Rule by Holt Ch. J. Hill. 9 W. 3. B. R. in Cafe of Brewler v. Kidgell, and cited 34 H. 8. Quinzing 9. But said that there are other Taxes not parliamentary, as for Repair of Churches, Commit- tion of Sewers; For any Imposition which takes away part of the Goods or Rent is a Tax, and cites 2 Knitt. 532.

2. If a Tax be given by Parliament, which was never known, or in Esse before, a Covenant That the Lessor should pay all Sum and Sums of Money that now is or shall be assessed or taxed for; and in Respect of the Premises demised for Chimney-Money, Church and Poor, or visitéd Houses, or otherwise.
otherwife above and besides the Rent reserved would not extend to such Taxes; But if it had been worded thus (All Taxes that should be hereafter imposed by Parliament) all Taxes whatsoever would be included.

11 Mod. 239. per Powel J. Trin. 8 Anna B. R. in Cafe of Hopwood v. Barefoot.

(B) Liable, What and Who.

1. A having a Rent payable half yearly out of a Term, whereof about six Years were to come, was content to release it upon a Bond entered into to him, and condition'd for Payment of the like Sum with the Rent, and at the same Times. Per Cur. 'tis equitable Taxes be allowed, in regard the Money in the Condition was intended between the Parties to be but in Lieu of the Rent, which should have been chargeable with the Affertainment. Vent. 252. Hill. 25 & 26 Car. 2. B. R. Anon.

2. In Trepsans upon Not Guilty pleaded the Question upon a special Verdict was, Whether a new built House which had never been inhabited, nor any Account of the Chimneys thereof return'd into the Exchanger should pay the Duty for Chimneys. The whole Court was clear of Opinion, that it should, for the Words are, Every House (other than such as hereafter are excepted) shall pay, and a new built House is not excepted. Vent. 311. Trin. 29 Car. 2. B. R. Ironmonger's Company v. Nailer.

3. By an Act of Parliament for building new ships, and another for disbanding the Army, All Lands &c. Annuities, Offices, (except Military Offices, and Offices relating to the Navy under the Command of the High Admiral) and all other real and personal Estates were to be appropriated equally by a Round Rate. Upon a Referne of the King to all the Judges of England, the Question was, Whether the Commissioners of the Customs, being constituted by Letters Patents, are taxable in the Tower-Ward, where they execute this Office, for their Salaries of 1200 l. per Annum. It was intimated for the Commissioners, that the Word Offices did not extend to them, and the Words Annuities, Profits, and personal Estates, do not make them taxable in the Tower-Ward, for these Words follow their their Persons; As for the Word Offices, it imports a stated and ordinary Charge for ever; But this Office is Pro hac vice tantum, and the Words (other real and personal Estates) charge only such Estates; But per omnes Jucritarios, these Words Annuities, Profits, and Personal Estates do charge their Salaries. It is true, this is not such an Office, for which an Allife would lie, but the Intent of the Act was to charge every Thing which was not excepted; And Military Offices are excepted of which an Allife will not lie, and yet they are called Offices, and would have been charged if not excepted. 2 Jo. 222. Trin. 34 Car. 2. B. R. Sir Rich. Temple and the Mayor of London's Cafe.

4. The Attorney Gen. Treby, and Sollicitor Gen. Somers's Answer to the Quaries sent them by the Lords Commissioners of the Treasury, 30th March 1692.

Qu. Whether High Constables, and thos.e that have served the Office of High Constable are to be ass'd as Gentlemen by the Poll?

Resp. We conceive, that the mere Bearing of the Office of High Constable, without being otherwise reputed, owned or written Gentlemen, doth not make the Person liable.

Qu. Whether Grafters, Malsters, Horse-courfers &c. ought to be charg'd as Tradekeen?

Resp. Grafters, Malsters and Horse-courfers being underlieed to be such as make the said Employments their ordinary Profession and Way of Livelihood, ought to be charg'd as Tradekeen.

Qu.

See Prerogative (R 5.)
Qu. The four quarterly Payments are to be协助d together; if so, then what can be done with Servants upon their Removals, and how the Assistents can be levied?

Rep. We conceive the best and most proper Course will be to make four distinct Assessments.

5. A. surrender'd a Copyhold Estate to B.—B. surrender'd it back to A. provided it B. paid not 100l. per Ann. to A. without any Deductions or Charges, A. to re-enter, and the Surrender to be void. The Question was, whether Parliamentary Taxes are to be allowed out of it, this being neither properly a Rent, Annuity, nor Intercell Money? 2 Vern. Rep. 366. pl. 296. Mich. 1693. Lynes v. Brown.

6. A Rent-charge can be subject to no other but Parliamentary Taxes; it is not contributory to Church, * Poor, Severs, or Highways. Arg. 3 Mod. * Ibid. 171. Arg. contr.

7. Per Cur. If a Man's Estate is of such a Nature, as that the Commissioners cannot assist a certain Tax upon every Man, as in the Case of Common &c. they ought not to meddle with it. 11 Mod. 89. pl. 20. Trin. 5 Ann. Anon. cites Hill. 7 Ann.

(C) In what Place.

1. In the Exchequer upon a Super, the Question, upon the Statute for imposing the Tax of 4s. in the Pound, arose upon the Clause in one of the first Acts, for taxing the Shares in the Company of the New River Water, which ordains that the Shares in this Company should be taxed in the County where the Owners inhabit; and in the principal Cafe, the Defendant inhabited in one County, and was taxed in another, and therefore the Refused to pay. And the Court was clear, that the ought to pay; for there is an Interest vested in the King by the Act, and if the Remedy for collecting it, or the Method for asellisg it, prove impracticable, the Duty being vested in the King, this shall be loved by the Aid and Affassance of this Court; and it was adjudged accordingly. But inasmuch that there was 150l., and more return'd upon the Super, the Court declared that the Defendant shall not be charg'd for the whole, but only for her own Proportion. Skin. 642. Trin. 8 W. 3. B. R. The King v. Margaret Webster.

2. The Inhabitants of one Parish had Common appendant in Waste Grounds which lay in another Parish; and the Question was, whether the Commoner should pay Taxes, and should be assist'd in the Parish where the Waste lay, or where his Farm lay. And it was held that it should be where his Farm lay; for it is incidental, and will pass by the Grant of the Farm &c. so that it is to be considered as Part of the Farm, and the Farm to be taxed the higher. 1 Salk. 169. pl. 1. Mich. 6 W. & M. in B. R. The King v. Fox.

3. Trespass against the Collectors of the Land Tax. The Plaintiff lived in Middlesex, and exercised the Employment of a Factor in Southfield. The Question was, whether he should be tax'd where he lived, or where he followed his Employment. Holt Ch. J. was of Opinion, that he was not taxable by the Commissioners of Middlesex; for by the very Words of the Act he is to be tax'd in the Place where his Office is exercised. But the other Judges contra; for this is not an Office which is local, but a personal Employment, and the Person is taxable where he lives, and the affirmative Words of the Act are directory: He is taxable in either Place. 2 Salk. 616. pl. 2. Trin. 5 Ann. B. R. Trowell v. Ellord.

(D) Allward
(D) Allowed or Deducted in what Cases.

1. If a Man haves his Land for Years rendring Rent, and grants that he will discharge the Tenant during the Term of all Charges arising upon the Land, and after the Parliament grants to the King the tenth Part of the Value of the Land of every Man; Several held, that he shall not discharge the Tenant of this. Otherwife if the tenth Part of the Issues of the Land had been granted by Parliament. Br. Grants, pl. 164. cites 17 E. 4. 6.

2. The Plaintiff demis'd unto the Defendant a House, rendring 10l. yearly, without any Deduction or Abatement for, or in Respects of any Hearth-money, Parish-duties, Dues, Taxes and Assessments already had, made, rated, tax'd or allerti'd, or to be had, made &c. at any Time during the said Term upon the Plaintiff, by Reason of the said House. Afterwards an Act of Parliament gives a Tax, and enacts, That the Landlord shall pay it; but there is a Provifo, that it shall not extend to discharge any Covenants or Agreements made between Landlords and Tenants. It was infit'd for the Defendant, that the Word Parish shall extend to Dues, Duties &c. and it shall not be intended of extraordinary Charges laid by Parliament, and said that Parish est verum gubernator. Ellis. said, If the Words do not extend to Parliamentary Taxes, they can have no Signification; for Hearth-money and Parish-duties &c. are to be paid by the Tenant without such a Covenant. But as to that Point, whether or no this Covenant was dispenfed with by the Act of Parliament, the Court delivered no Opinion, because they all agreed, that as the Tender was pleaded it was naught; and upon that Point Judgment was given for the Plaintiff. Freem. Rep. 148. 149. pl. 169. Patch. 1674. Marsh. v. Wifdale.

3. If a Leafe be made for Years rendring Rent free of all Taxes, Charges, and Impositions whatsoever, the Word Render makes a Covenant, and the Leffer is discharg'd from all Land-taxes lately imposed by Parliament, and long after the Commencement of this Leafe; and the Leffer must pay the whole Rent, without any Manner of Deduction for any old or new Charge, or Imposition whatsoever. Adjudg'd, abfente Holt Ch. J. Carth. 135. Patch. 2 W. & M. in B. R. Giles v. Hooper.

4. Lence covenanted to pay fo much Rent clear of all Taxes; The Defendant pleaded Performance; The Plaintiff replied, and alligned a Breach in Non-payment of fo much for half a Year's Rent; The Defendant rejoin'd, that he had paid fo much in Money, and fo much in Taxes, which being allowed, did amount to the whole Rent; And upon Demurrer, Holt Ch. J. held, that this Covenant did not extend to Parliamentary Taxes for Want of the Word Parliamentarie; But the others contra; For All Taxes include Parliamentary. 1 Salk. 221. pl. 2. Trin. 5 W. & M. in B. R. Countess of Arran v. Critfe.

5. A seized of Lands in Fee, by Deed dated 1649, granted a Rent Charge to one Brewter and his Heirs, which Deed was thus endorsed, that the Rent was to be paid clear of all Taxes; afterwards A. confirmed this Grant, and covenanted to pay the Rent-Charge clear of all Taxes. By the Statute 3 W. and M. 4 &c. in the pound was laid on all Lands, and Power given to the Tenants to deduct it, with a Provifo not to alter any Covenants or Agreements of Parties. The Question was, Whether the Tenant could deduct for Taxes. Per Cur. if this Covenant had
Taxes.

had been made in the Year 1640, it would not have discharged the tenant (if the Rent Charge, from the Taxes imposed by this Act, because there was no such parliamentary Tax known or in being at that Time; but because there were such Taxes in the Year 1645, which was before this Grant, this Covenant must for that Reason be construed to extend to them, otherwise it would signify nothing. 1 Salk. 198. pl. 4. Hill. 9 W. 3. B. R. Brewster v. Kidgell.

by an Ordinance in Force, when this Covenant was made, the Rent was as much rated as the Land. But they were of Opinion that this was only a Parliamentary Covenant, and not a Covenant running with the Land — Comb. 424. Trin. 9 W. 3. & C. adjournmt. — Ibid. 466. Hill. 10 W. 3. B. R. the Resolution of the Court was delivered by Holt Ch. J. accordingly, and because to have a virtual Existence in the Constitution of the Government before any Act is made for the raising of them. — Carth. 426. S. C. accordingly. — Ed. Rawm. Rep. 517. S. C. accordingly. — 12 Mod. 170. S. C. and the Resolution of the Court delivered by Holt Ch. J. accordingly. But Holt said he could not see how the Plaintiff can have his Judgment. For if this Covenant should charge the Land it would be higher than a Warrantie Charter, which only affects the Land from the Judgment therein given. But the other three Judges thought that this Covenant might charge the Land being in Nature of a Grant, or at least a Declaration going along with the Grant, viewing in what Manner the Thing granted should be taken; and reckoned the Indenument as part of the Deed, and so Judgment was given for the Plaintiff.

If a Tax had been given for rebuilding & Paul's Church, this would have been out of the Statue. Per Holt Ch. J. in delivering the Opinion of the Court. Carth. 439 in Cafe of Brewster v. Kidgell. — Ed. Rawm. Rep. 528. S. P. per Hec. in S. C.


It was decreed, inter alia, that here is to be no Deduction of any Taxes, because it is not to inclue nor enlie from the Lands, but is given as a Sum in gross, secured by Entry on the Lands for Non-payment. 1 Salk. 156. 1707. in Canc. Grimton v. Ed. Bruce.

7. In a Trial before Holt Ch. J. in an Action of Covenant, this Case was referred for the Opinion of the Court. A building Leafe was made in 1672, by A. for 61 Years, in which there was this Covenant, that the Leafe should pay all Sum and Sums of Money that now is or shall be asfessed or taxed for, and in repect of the Premises demised as aforeaid for Chimney-Money, Church and Poor, or Visitd Houscs, or otherwise, above and besides the Rent referred thereunto; in 1698, the Leafe forfunders this Leafe and a new Leafe was made upon the Foot of the former, in which there was the same Covenant as in the former Leafe. After several Arguments at Bar, adjudged that Leafe was not liable to pay the Land Tax. 11 Mod. 237. &C. Trin. 8 Ann. B. R. Hopwood v. Barefoot.

8. Holt Ch. J. said, That it was likewise adjudged, that where A. made a Leafe, and covenantcd to discharge the Leafe of all Burdens and Charges, (there being no Tax at that Time, but afterwards a 15th being granted by Parliament) the Tenant was disfrained for it; and this was adjudged within the Covenant, because Taxes are always a Charge in * Viris. 11 Mod. 240. in Cafe of Hopwood v. Barefoot. * Quære.


10. If H. having a Term for Years, devises an Annuity to J. S. and his Heirs, there can be no Deduction for Taxes. 2 Salk. 616. Mich. 8 Anna. in Canc. Robinson v. Stephens.

11. If H. grants Annuity to J. S. and after secures it out of a Real G. Enc. Rep the State, there shall be no Deduction for Taxes; for the sub sequent Secu- rity can't lefien the Efect of his former Grant, which in its Creation was Tax-free. Per Cowper, Lord Chan. 2 Salk. 616. Mich. 8 Anna. in Chancery. Robinson v. Stevens.

12. Lefflor covenantc with Leffice to pay all Taxes on the Lands demised. Leffice brought Covenant, and alligned for Breach the not paying the Rates to the Church and Poor. Upon Demurrer it was objected, that}
Taxes.

Those Rates are personal Charges, and not on the Land; and for that Reason the Defendant had Judgment. 8 Mod. 314. Mich. 11 Geo. 1. 1725. Theed v. Starkey.

(E) Allow'd. How much.

1. A Seized of a Rectory of 120l. per Ann. charged with a Fee-Farm Rent of 26l. per Ann. was tax'd for all the Rectory only according to the Rate of 25l. per Ann. for Taxes; he retains 4s. per Pound for the Fee-Farm Rent, which was much more than he really paid. The whole Matter appearing in the Exchequer, where a Bill was brought, it was decreed, that the Owner of the Fee-Farm Rent should allow only in Proportion to what was paid. 12 Mod. 171. Hill. 9 W. 3. cited as one Sherrington's Cafe.

2. P. seised of Land, and Sir J. W. of a Fee-Farm issuing out of it, paid Taxes only after the Rate of 1s. 3d. per Pound, and retain'd for the Fee-Farm after the Rate of 4s at which the Land-Tax was. On which Sir J. W. Owner of the Fee-Farm Rent, brought his Bill in the Exchequer, and pray'd, That P. should set forth the Value of the Land, and what Rent he received, and what he had paid for Taxes: To which Bill P. demur'd, and the Demurrer allow'd, notwithstanding the above Cafe of Sherrington was cited; the whole Matter there appearing, and this being on a Demurrer, which was made the Difference. 12 Mod. 171. cites it as one Pickering's Cafe.

(F) Collectors. Their Power. And how punished for Misdemeanors.

1. A Warrant given to the Collectors of the King's Tax was to break open Doors &c. in cafe of Opposition &c. and this Warrant was granted before any D. fault, which ought not to be. And Holt Ch. J. said, strictly it was 10, but the Practice having been, in this Cafe of Taxes, to grant such a conditional Warrant to distrain, Commis. Error facit Jus. Cumb. 342. Trin. 7 W. 3. B. R. East India Company v. Skinner &c.

2. The Collectors of the King's Tax may distrain Money as well as Goods; and tho' they take more than was due, yet it sufficeth that they return the Overplus, when they have sold it &c. Per Holt. Cumb. 342. Trin. 7 W. 3. in Cafe of East India Company v. Skinner &c.

3. The Defendants were found guilty of Misdemeanor, for that being Aliasors and Collectors of the publick Taxes in such a Parish, they asse'd some too high, and omitted others in their Books; and yet levied the Money on them, and put it in their own Pockets. On their coming to receive Judgment, it was moved, That no corporal Punishment might be inflicted, because the Crime was not of an infamous Nature. But
But they were adjudged to the Fllory in the County where the Crime was committed; and that the Marhial should carry them down, and a Writ should go to the Sheriff to affit him in the Execution. 6 Mod. 306. Mich. 3 Ann. B. R. the Queen v. Buck & Hale.

4. Upon the Motion of Sir Peter King, Recorder of London, the Court granted a Mandamus to the Commissioners of the Land-Tax for Barnwell, to tax the Lands there equally. 11 Mod. 206. pl. 6. Hill. 7 Ann. in B. R. Queen v. the Commissioners of the Land-Tax for Barnwell.

For more of Taxes in General, see Bridges, Poor, and other proper Titles.

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**A** Tayle. Of what Thing to another.

If a Mensie gives the Mensialty in Tayle, the Law will create a See Tenure between the Donor and Donor. 1 H. 4. 3. b.

S. C. — And of what Things an Estate-Tail may be, see Estates (S.)

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(B) What Persons may make Estate-Tail, and to whom.

1. Acknowledged all his Right [by Fine] to B. who render'd to If A levy a Fine, Remainder to him in Tail; it is a good Tail, without Donor besides himself. 42 E. 3. 5. b. (But it seems it is not Law.)

in Fee, this Remainder in Tails void; for he cannot give to himself. Br. Fines, pl. 115. cites 14 H. 4. 31. & 42 E. 3. 5. where he says it is not adjudged; and yet he says it seems to be a void Remainder. — A Man cannot by Fine, by way of Remainder, revere a life Estate to himself than Fee. And therefore if A. acknowledge a Fine to B. in Fee, and he renders to A. in Tail, the Remainder to himself for Life, this Remainder is void; for A. had Fee-Simple before. Well's Symb. S. 33. cites 24 E. 3. 28. 14 H. 4. 34.

He who is felony in Fee, and gives, cannot refere a Remainder to himself in Tail, the Fee-Simple never being out of him. Br. Referration, pl. 41. cites 1 H. 5. 3.


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(C) At what Time [he may bar his Estate-Tail.]

See Estate

(A. 2) S. P.

[1.] After issue, he may bar the Estate-Tail by Alienation, or Forfeiture by Treason. 7 H. 4. 46. pl. 6.

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2. 13 Ed. 1. cap. 1. Concerning * Lands that many times are given upon Condition, that is to sell, where any gives his Land to any Man and his Wife, and to the Heirs begotten of the Bodies of the same Man and his Wife, with such a Condition expressly, that if the same Man and his Wife die without Heirs of their Bodies between them begotten, the Land so given shall revert to the Giver or his Heirs.

Condition, or a qualified Fee: whereby you may also read in the first Part of the Infinities, S. 1. [15]

And the Grant of Lands intend, had, before this statute, a Fee-Simple conditional Submission; for albeit Britton, who wrote before this statute, says, That if any purchase to him and his Wife, and to the Heirs of them lawfully begotten, the Donor before present an Estate of Freehold for the Term of their Lives, and the Fee accrues to their Issue &c. taking the Condition to be precedent; yet had the Donor at the Common Law a Fee simple conditional presently by the Gift. For if Lands had been given to a Man, and the Heirs of his Body dying, and before Issue he had, before this Statute, made a Prerogative in Fee, the Donor should not have entered for the Forfeiture; but this Prerogative had been afterwards; which proves, that he presently by the Gift had a Fee-Simple condition, and this agrees with the Authority of Littleton, ubi supra. 2 Inst. 333.

If Donor in Tail at Common Law had aliened before any Issue had, and after had Issue, this Alienation had bind the Issue, because he claim'd a Fee-Simple; yet if that Issue died without Issue, the Donor might re-enter, for that he aliened before any Issue, at what Time he had no Power to alien, to bar the Possibility of the Donor. But if Issue Tenant in Tail had taken Husband, and had Issue, and the Husband and Wife had alien'd in Fee by Deed before the Statute, yet the Issue might have had a Favour to Defender, for the Alienation was not lawful; but afterwards it is, if it had been by Fine.

Now for the better understanding of this Act, seeing that the Estate was conditional at the Common Law, it is necessary to be known whether that Condition was performed, and to what Purposes. If the Donor had Issue, he had not thereby a Fee-Simple absolute, for, if after he had died without Issue, the Donor should have entered as in his Reverter. But after Issue had the Condition was performed to this Purposes, that he might have to alien, and thereby have bind'd the Donor and his Heirs from all Possibility of Reverter for Default of Issue; for the Heirs of his Body (he having a Fee conditional) might have binded them as well before Issue (as has been said) as after. 2 Inst. 352.

This is tied to have been a common Error, that the Donee fell prolem to the Husband to have the Power of Reverter, and thereby to the Issue of his Body, for the Statute was made to reform the Abuse, and restore the Common Law to its right Course, and reduce to the Donor the Observation of his Intent, and so is made in Reddition. Pl. C. 251. b. 252 a. in Case of Williot v. Lord Buckley.

* In 2 Inst. Lord Coke for the Word (Lands) ues the Word (Tenements) and in his Co. Litt. 19. b. says, the Word (Tenement) is the only Word which this Statute affects. + For to a Gift in Tail made, this Word (Heirs) is requisite, unless it be in case of a last Will &c. ¶ If this Condition expressly had not been added, the very Gift would have imply'd so much.

In Case also where one gives Lands in Fee-Marriage, which Gift has a Condition annex'd, though it be not express'd in the Deed of Gift, which is this, That if the Husband and Wife die, without Issue of their Bodies begotten, the Land so given shall revert to the Giver or his Heirs.

By this Clause it appears that an Inheritance passes by the Words

(Frank Marriage) 2 Inst. 354 —— Lands were given before the Statute in Frank-Marriage, and the Donors had Issue, and died; and after the Issue died without Issue. It was adjudged, that his collateral Issue shall not inherit, but the Donor shall re-enter. So note, that the Heir in Tail had no Fee-Simple absolute at the Common Law, tho' there were divers Defences. Co. Litt. 19. a.

This Act having put 2 Examples of Estates in Tail special, viz. the first to a Man and his Wife, and to the Heirs of their Bodies; the 2d of a Gift in Frank Marriage, a special
in all the Cases aforesaid, after *ffue begotten and born between them (to whom the Lands were given under such Condition) herefore such Feoffees, or the Land, contrary to the Minds of the Givers, and contrary to the Form of Conveyance by which the *ffue was made, or the Lands so given, and to diminish their *ffue of Reversion, or the Land, or the Lands, and to the Harm of the Givers, and to the Harm of the *ffue. 2 Infl. 524.

That is to say, by Vice, Power to alien the Land so given, and to diminish their *ffue of Reversion, or the Land, contrary to the Minds of the Givers, and contrary to the Form of Conveyance by which the *ffue was made, or the Lands so given, and to the Harm of the Givers, and to the Harm of the *ffue. 2 Infl. 524.

But the Tenant in Tail had not only Potestatem alienandi, but forisfactory &c. also; for if after *ffue had, he had been attainted of Treason or Felony, the Land intail had been forfeited, and thereby the Donor bar'd of the Possibility of Reverter, and forsover is Alinement false, and therefore in this Act is included in these Words, Potestatem alienandi. And so might the Tenant in Tail, before the making of this Act, after *ffue had, Co. Litt. 19. 24 have altered the Land with Rest, Comm. or the like, to have bound his *ffue; but by this Act he is restrained as well to charge as to alien. 2 Infl. 534.

But the having of *ffue before this Act did not alter the Course of Defect. 2 Infl. 524 — Co. Litt. 19. 24. S. P. For if the Donor had, *ffue, or died, and the Land descended to his *ffue, yet if that *ffue had died (without any Alteration made) without *ffue, his collateral Heirs should not have inherited, because he was not within the Form of the Gift, viz. Heirs of the Body of the Donor. 3 Therefore it appears, that there were 3 Mistakes before this Act, viz. 1st. The Distribution of the *ffues in Tail. 2dly. That it was contra voluntatem Donorum, & contra formam in Dono expressam; for the Donor and his Heirs were bar'd of the Possibility of Reverter; and both these were Wrongs for which at the Common Law there lay no Remedy; for Diflusions, and breaking the express Will and Intention of the Donor, are Wrongs, which this Act does remedy. 2 Infl. 534.

...mittel...
Tayle.

* It was adjudged by Bercesford, that if the Issue in Tail, or any other Issue in Tail, and the Issue in Tail, for the life of the Tenant, should not alien themselves more than they to whom the Land was given, and that was the Intent of the Makers of this Act; and it was but their Negligence that it was omitted, as there it is said. In this Case, by Way of Punishment, the Tenant is declared to the Donee, and by Way of Limitation to the Issue in Tail; and therefore by a benign Interpretation, the Purpose of this Act extends to the Issue in Tail. 2 Inf. 355, 356.

Upon the Words several Constructions have been made; As if Tenant in Tail makes a Feoffment in Fe, this makes a Discontinuance, and is voidable by either party, And that if he grants in Fee, Rent, or other Thing lying in Grant, and whereas he is seized in Fe, It is no Discontinuance, but it is voidable by either party, or by Action; That if he grants Rest out of the Land, the Rent absolutely determines by his Death; That a Relife in his Issue is no Discontinuance, but the Estate is voidable by either party or Action of the Issue; But Release with Warranty is Discontinuance, if the Issue be Heir to the Warranty; That if he makes a Lease for his own Life, or Years, and releases to Leafe and his Heirs, this is no Discontinuance, but it be with Warranty; That if he makes Leafe for Life, and afterwards grants the Reversion in Fee, this is no Discontinuance of the Fee, unless it be executed in the Life of the Grantor. The Reason of what, and many other Constructions made upon their Words is, that the Judges have construed them according to the Rule and Reason of the Common Law; for at Common Law, if a Bishop, Abbot &c., or Baron, feized in Right of his Wife, had made a Feoffment in Fee, this had been a Discontinuance, and put the Successor or Feme in their Action, in regard to the Favour which the Law gave to an Estate which raised by Livery and Seisin, and because it is publick and notorious, and formerly was the common Assurance of Land; but if they had been seized of a Rent, or other Thing lying in Grant, and had granted it in Fee, this had been no Discontinuance, and yet it was not absolutely determined by Death of the Bishop, Abbot &c., or Baron; for the Successor or Feme had Elections to determine it, and make it voidable either by bringing a Writ, or by Claim upon the Land; But if the Rent had been granted by them de novo, it had been absolutely void by their death. So, if they had released to a Diffeilor, it had been no Discontinuance; and if they had leased for Years, and released to the Leafe and his Heirs, this had not absolutely determined by their Death, but had been voidable, or void, at the Election of the Successor or Feme. But had they made Leafe for Life, and after granted the Reversion in Fee, and the Leafe for Life had died, leaving the Bishop &c., or Baron, this had been a Discontinuance; Otherwise the Leafe so purvey the Bishop &c., or Baron, to be s. b. Patch. 44 Eliz. A N ota of the Reporter in the Case of Fines, See Co Litt. 257, b. Grant by Tenant in Tail to Leafe and an Imprisonment of Wages, with Affects defended, is no Bar against the Issue in Tail; for the Statute of Onerata forces only of Warranty and Affects, and the Statute of Wifom. 2. 6. 1. exmpted Land von habor potestation absumit, yet this is intreated of all Things which may turn in Difference of the Issue. Br. Tail & Dones &c. pl. 13. c. 58 E. 5. 25.

* There are but Consequences to the Words of the Purview, and are not explained, and not of Substance, and might well have been omitted. 2 Inf. 356.

Yet was it adjudged, soon after the making of this Act, that where Lands were given in Frank-marrige, and the Husband died, and the Wife took another Husband, and had Issue before this Act, that the Husband should be Tenant by the Cartefe, and the principal Reason was upon this Branch of the Statute (see also de camero secundus vice, &c.) for that this Restraint proved, as there it is said, that the Law before was, that he should be Tenant by the Cartufe; and yet, without Question, the Issue should not inherit that Land. 2 Inf. 356.

† In ancient times, if Land had been given to J. S. and his Successors, he had had a Fee-Simple; but otherwise it is as this Day. 2 Inf. 356.

* Hereby it appeared that a Form in the Defender is not at the Common Law, but was given by this Act, and the Form of the Writ is here let down. 2 Inf. 356.

Here is the Form of the Writ in the Defen-
deer let down; and therefore this Statute need

Precip A. quod jusse &c. reddat E. manerium de F. cum suis perti-
nentiiis, quod C. dedit tali viro, & tali mulieris, & bevelendis de ipsis viro
& mulieris exemtius.

Or thus.

Quod C. dedit tali viro, in liberum maritigum cum tali muliere, & quod pauc mortos praedictionem curt & muliere, praebuit B. filio coronand curi
S. 4. * The Writ whereby the Giver shall recover, (when Issue fails) is common enough in the Chancery.

He at the Common Law, but not a Formedon in Remainder upon an Estate Tail, because it was a Fee-simple conditional, whereupon no Remainder could be limited at the Common Law; but after this Statute a Remainder may be limited upon an Estate Tail, in Respect of the Division of the Estates. 2 Inft. 336.

And it is to wit, That this Statute shall hold. Place touching Alienation of Land contrary to the Form of the Gift hereafter to be made, and shall not extend to Gifts made before.

1. That (ad dona prius facta) must be intended of Feoffments or Alienations made by the Donor or his Illes, and not to Gifts made by the Donor, for to them this Act does extend. 2 Inft. 336.

2. Forma prius facta, that is, prior promiss executed, for them the Alienation by the Tenant in Tail, or his Illes, was good in Law; for as (Dona) here, are to be intended lawful Gifts, and made in due manner, and such a consent, it cannot be avoided; for Law allows no Wrong. 2 Inft. 336.

And if a Fine be levied hereafter upon such Lands, it shall be void in the Act does not make the Fine void, but ipso jure sit nullus, that is, it shall not bind the Right; yet it shall (as has been said) make a Discontinuance. 2 Inft. 336.

But now by the Statutes of 4 H. 7. cap. 24. & 12 H. 8. cap. 54. a Fine levied with Proclamation does bar the Illies in Tail; but a Fine without Proclamation is a Discontinuance only, and no Bar. 2 Inft. 336, 337.

Neither shall the Heirs, or such as the Reversion belongs unto, tho' they be here in Poss. within England and out of Prison, need to make their Claim. 2 Inft. 337.—Hereby it may be gathered (as the Law was) that a Fine at the Common Law did not bind a Stranger that was within Age, in Prison, or beyond the Seas. 2 Inft. 337.

(D) Issue in Tail. Bound by Acceptance or Agreement.

1. Tenant in Tail granted Rent, and died, the Issue paid the Rent 5 P. Br. and made a Feoffment of the Land, and took in Fee, yet he shall Barre, 24 H. cites 21 H. 27. hold discharge'd; for the Rent was void by the Death of the Grantor, and Payment by the Heir will not make it good. Contrary to a Lease by the Tenant in Tail, and the Heir accepts the Rent; for the Lease was only voidable. Br. Grants, pl. 145. cites 21 H. 6. 25.

So where it is accepted in Pairs, and where he accepts it in a Court of Record; for the Substance is in the one Case and the other, that where he accepts it, or demands it, he thereby affirms the Lease or Discontinuance; Per Newton. For a Thing void or determin'd can't be made good by Payment, but must have a new Creation.

2. Grandfather, Father and Son. The Grandfather being Tenant in Tail by Indenture makes Feoffment in Fee, rendering Rent to him and his Heirs, and dies. The Father accepts the Rent; the Feoffee levies a Fine with Proclamation; 5 Years pass, and then the Father dies. The Point was, Whether the Acceptance of the Rent by the Father had extinguished his Right to the Entrail, or whether 'tis an Eltoppel only; For it he is only sttopped, then, he having a Right at the Time the Fine was levied

Poth. 112. Holme v. Gee S. C. and by Pop- hom and Cleech the Acceptance, theo by the Hands of
Tayle.

one who was to pay viz. the Tenant himself, shall not bar the Right of the Tenant in the Father (as a Release of Right should do) but this Acceptance only foreclose him of his Action to demand the Land during his Life, and therefore the Right, which the Father had, being bar'd by the Fine, the son is without Remedy; for he shall never have Remedy on a Fine levied in his Father's Time, the five Years after the Proclamation being past, unless only where the Right begins first to be a Right in the Son, and not where there was a Right in the Father; And so they thought the Judgment is to be affirmed. And they deemed further that Payment by him, who had nothing in the Land at the Time of Payment, shall make no Conclulsion to him that accepts it, because this Payment would be a move in Law.

Tenant in Tail made Fragment in Fee to the Use of himself and his Heirs, and after made a Leave to have a Fine rendering Rent and died; the Issue accepted the Rent. And by the Opinion of all the Justices the Acceptances do not confirm the Leave, because the Issue was remitted to the Tailor by Defect, and so the Leave was utterly void that was made by the Father, being then Tenant in Fee Simple. Mo. 546. pl. 1147. Mich. 13 Jac. B. R. Anon.

3. Tenant in Tail agreed to make a Conveyance but died before it was perfected, and was in Contempt for not doing it. The Issue in Tail accepted the Satisfaction agreed to be given for the Conveyance to have been made by the Tenant in Tail. By this Acceptance he has made it his own Agreement, and shall be bound by it, and decreed accordingly. Chan. Cases 172. Trin. 22 Car. 2. Rofs v. Rofs. 4. Tenant in Tail of a Rent grants it in Fee, it is void by his Death; but if the Issue affirms it to be good, and brings a Forfeiture, he may be barred by Warranty. Per Holt Ch. J. 12 Mod. 361. Patch. 12 W. 3. in Cafe of Pullen v. Purbeck.

(E) Equity. Agreement of Tenant in Tail carried Execution against the Issue.

S. C. cited 2 Vent. 350. Hill. 32 & 35 Car 2. in Cafe of Savile v. Freeland. But Lt. Chancellor said, he would not intermeddle Fines and Recoveries; But where a Man was only Tenant in Tail in Equity, there this Court shall decree such a Disposition good; For a Trutiful and Equitable Interest is a Creature of their own, and therefore disposable by their Rule, otherwise where the Entail was of an Etail in the Land.

Where a Tenant in Tail sold the Lands at a full Value, and received the Consideration Money, and had assented to levy a Fine, and a Bill being brought to inform him, he was decreed to do it, Yet he dying (the in Privity, in Contempt for not performing the Decree) the Issue in Tail could not be bound by it. 2 Vern. 306. Arg. cites it as the Case of Wale the Lower ——— S. C. cited per Lt. G. Macclesfield. Williams's Rep. 720, in Cafe of Frederick v. Fredericks ——— S. P. cited Arg. 9 Mod. 16. in Lady Coventry's Cafe ——— S. P. Chanc. Prec. 278; in Cafe of Powel v. Powel. ——— G. Equ. R 162. cites the Cafe of Sangon v. Williams. So where there was a Consideration and no Decree upon it, and he acknowledged a Fine, but died before it was perfected. Equity would not supply this Defect against the Issue. 2 Vern. 5 Trin. 1635. Wharton v. Wharton.
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So where Tenant in Tail mortgaged the Land, and on a Bill in this Court was decree'd to suffer a common Recovery, but he died in Contemp of the Court for not performing the Decree, The Court would not carry the Decree into Execution against the Heir in Tail. Cited Arg. 9 Mod. 18. And by the Judges Affiliants that Cafe was admitted; but they said, the Reason may be, that the Heir, after the Death of his Ancellor was in by the Statute De Domis, which this Court could not control. But if the *Ancellor had been Cafe que Traifi in Tail, his Heir would have been bound by such Ancellor's Lieu; Because in that Cafe he would not have been in by the Statute. 9 Mod. 19. in Cafe of Coventry v. Coventry.

--- This is the Cafe of *Estate v. Letter cited 2 Vern. 500. in Cafe of Fox v. Crane and Wright.

Bare Articles shall be a Bar to an Intail of an Equity; Per Cur. 2 Vern. 255. Pl. 225. Pach. 1691. in Cafe of Baker v. Lady. --- Where an Intail is only of a Trust, it is not within the Statute De Domis; And to a Fine or Recovery is not necessary, but is affordable by any other conveyance made by him that has an Estate of Inheritance in the Trust. Arg. and decree accordingly. That a Feoffment by Cafes que Trust and Truftees barred such Estate. 2 Vern. 444. Pl. 518 Hill. 1697. Bowater v. Elly.

These Cafes in which the Court will not compel the Execution of Powers, are where it would be against the Will of the Elator, that they should be executed. Arg. 9 Mod. 16. in Lady Coventry's Cafe.

3. The Mother agrees to give her Son other Lands in Lieu of Lands intailed, and by Will disposes of the intailed Lands to her Daughter, takes Bond from her Son to permit and fuller the intailed Lands to be enjoyed, as bye will had devised them. The Son dies, leaving the Defendant his Son an Infant, which brought an Ejecution for the intailed Lands. The Plaintiff could not sue the Bond against the Defendant being an Infant. Per Cur. The Infant being in Possession of the Lands that came in Recompence, we will at present only quiet the Plaintiff's Possession in the intailed Lands, until 6 Months after the Infant comes of Age, and then he may sue Cause if he thinks fit. 2 Vern. 232, 233. Pl. 212. Trin. 1691. Thomas v. Gyles.

4. Partition between Tenants in Tail, tho' but by Parol, was decreed to bind the Issue. 2 Vern. 232, cites the Cafe of Burton v. Jeux and the like in the Cafe of Rowe v. Rowe.

5. Tenant in Tail covenants to settle a Jointure; tho' he might have done it, by Fine and Recovery, yet if he dies without doing it, a Court of Equity can't relieve and decree a Jointure. Arg. 2 Vern. 382. in Cafe of Lady Clifford v. the Earl of Burlington and Lt. Clifford.

--- A Power was referred to him to settle a Jointure, and he covenants to settle, but does not execute it all, there may be some Reason for a Court of Equity, not to enforce the Execution thereof but where it is executed in any Part, tho' not strictly performed, it is the standing Rule of this Court to make it good. And cited several Cafes where Articles had been carried into Execution against Remainder-men, and particularly the Cafe of Ltd. Burlington v. Clifford; And it was agreed by the other Side to be just, that in the Lt. Burlington's Cafe there was a general Covenant, but that it did not rest there; For he felt when he pretended was 1690. or a Year, according to the Articles which was afterwards found to be of little Value, and appeared so by the Defendant's Answer. 9 Mod. 16, 17. Arg. in the Cafe of Lt. and Lady Coventry.

6. If Tenant in Tail, having a Power to make Leafes for 3 Lives, covenants to make such a Leaf, and dies before Execution; The Court will carry this into Execution tho' they would not a Sale. Arg. 10 Mod. 469. in Cafe of Coventry v. Coventry.

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(F) Equity. Agreement of Tenant for Life carried into Execution against the Issue in Tail.

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An Agreement was made by Articles between a Lord of a Manor who was only a Tenant for Life, and certain Tenants of the Manor, who were Likewise Tenants for Life only by Settlements made Precedent to the Articles, which were for settling Heriots and fluxing of Common, was confirm'd by Decree. Upon a Bill to revive the Decree, it was objected.
(G) Equity. Creditors relieved against the Issue in Tail.

In what Cases.

1. The Husband in Consideration of his Wife's joining with him in a Fine, and parting with her Jointure of 40 l. per Ann. gives her Truftee a Bond to settle other Lands of 40 l. per Ann. on the Wife for Life, Remainder to the Heirs of his Body by her. The Husband being indebted in other Bonds dies intestate, and the Wife takes Administration, and confesses Judgment to her Truftee; On a Bill by another Bond-Creditor decreed the Wife's Bond should be allowed, and stand good to as far as to secure 40 l. per Ann. to the Wife for Life; but as to the Remainder to the Children, or any Settlement to be made for them, the Court took it, that upon the wording of the Condition of the Bond, the Husband was to have been Tenant in Tail, and might have barred such Settlement, it made, as to the Children, and therefore as against the Plaintiff the Defendant must have a Satisfaction prior to him, but as to the Children he must be preferred; And decreed it accordingly. 2 Vern. 220, 221. pl. 211. Patch. 1691. Bottle v. Fripp. & al.

2. Truftees in a Marriage Settlement for preserving contingent Remainders, the Marriage having been six Years since (there being no Issue) are decreed to join in a Sale, the Settlement being only of an Equity of Redemption, and the Wife confequently to the Sale. 2 Vern. 303. pl. 294. Mich. 1693. Platt v. Sprigg.

3. Where a Settlement on Marriage is made in Tail of an Estate mortgaged, if Mortgagee forchose the Husband and Wife, 'twill bind, tho' Issue should be born afterwards. 2 Vern. 304. in Café of Platt v. Sprigg.

4. A mortgage Land to B. for 1000 Years, and afterwards settles it on Marriage to himself for Life, then to his Wife for Life, and then to the Heirs of his Body on the Body of the Wife, and afterwards mortgages again the same Lands to C, and makes Oath that the Lands were free from Incumbrances; They have Issue a Son; The Wife dies; A dies intestate; J. S. takes Administration duringa Minorit of the Son, and pays off the Mortgage to B, out of the Personal Estate, and takes an Assignment in Trufi for the Issue. Master of the Rolls decreed the Debit to C, to be satisfied as far as there were Affairs of A. and that in taking the Account, J. S. the Administrator should not be allow'd, as against C. the Plaintiff, the Money by him paid to B, on his alligning the first Mortgage. 2 Vern. 304. pl. 295. Mich. 1693. Fox v. Crane and Wight.
(H) Actions. What Actions Tenant in Tail may have, and Pleadings.

1. ENTRY in Nature of Affize: The Demandant counted that was in Tail, and it was agreed, That it is not the Courte to count of a Gift; But per Prior in this Case, where it is of a particular Estate, he cannot say, That he was seised in his Demesne as of Fee; For he has only Tail; but shall say, that he was seised in his Demesne as of Frank-Tenement. Br. Count. pl. 15. cites 33 H.

2. Tenant in Tail shall not have Quo Jure; for it is a Writ of Right, so of Ne Injuge usque for the same Reason. And if Tenant in Tail brings Writ of Right, the Tenant shall say, that the Demandant had nothing the Day of the Writ purchased, but to himself and his Heirs of his Body begotten. Br. Tail & Dones, pl. 35. cites 5 E. 4.

3. Tenant in Tail shall recover the Rent by Formedon, without flowing the Deed; for the Formedon is in the Right. But he shall not have Accessory nor Affize, without flowing the Deed, for this is in the Possession. Br. Tail & Dones, pl. 26. cites 4 H. 7. 19. Per Keble & Fairfax.

(I) Tenant in Tail after Possibility. WHO IS.

1. Tenant in Fee Tail after Possibility of Illue extint is, Where He is called Tenant in Tail after Possibility of Illue extint, if one of them die without Illue, the Survivor is Tenant in Tail after Possibility of Illue extint; and if they have Illue, and the one die, albeit that during the Life of the Illue the Survivor shall not be said Tenant in Tail after Possibility of Illue extint, yet if the Illue dies without Illue, so as there be not any Illue alive which may inherit by force of the Tail, then the surviving Party of the Donees is Tenant in Tail after Possibility of Illue extint. Litt. S. 32.

But if a Man gives Land to a Man and his Wife, and to the Heirs of their 2 Bodies, and they live till each of them be an hundred Yeares old, and have no Illue, yet do they continue Tenant in Tail, for that the Law sees no Impossibility of having Children. But when a Man and his Wife be Tenant in Special Tail, and the Wife dies without Illue, there the Law sees an apparent Impossibility that any Illue, that the Husband can have by any other Wife, should inherit this Estate. Co. Litt. 29. a.

2. Also if Tenements be given to a Man, and to his Heirs, which he shall beget on the Body of his Wife; in this Case the Wife has nothing in the Tenements, and the Husband is seised asDonee in special Tail. And in this Case, if the Wife dies without Illue of her Body begotten by her Husband, then the Husband is Tenant in Tail after Possibility of the Illue extint. Litt. S. 33.

3. None can be Tenant in Tail after Possibility of Illue extint, but one of the Donees, or Donee in Special Tail. For the Donee in General Tail cannot be said to be Tenant in Tail after Possibility of Illue extint; because, always during his Life, he may by Possibility have Illue, which may inherit by force of the same Entail. And so in the same manner the Illue, which is Heir to the Donees in Special Tail, cannot be
be Tenant in Tail after Possibility of Issue extinct, for the Reason above-aided. Litt. S. 34.

2 Inf. 631, 632. cited S. C. but says it was re- solved jointly, the said M. Within 5 Years after M. enter'd, claiming her Estate. It was infallible, that M. had only an Estate for Life, dispensible of Waife, as Tenant in Tail after Possibility. But revolved, that after B's Death, M. had an Estate in Tail; and tho' the Issue is bar'd by the Fine, yet for the Estate of the Feme was not touch'd by it, tho' being a Stranger to the Fine, and therefore her Estate not chang'd into an Estate for Life.


5. In a Consideration of Marriage, covenanted to stand feated to the Use of himself and M. his intended Wife, for their Lives, without Impediment of Waife, and after of their first Issue Male, and the Heirs Male of such Issue Male issue &c. And for Default of such, then to the Use of the Heirs of the Body of A. and M. And for Default &c. then to the Use of B. Son and Heir apparent of A. (by a former Wife) and the Heirs Male of his Body. And for Default &c. A. and M. marry, and have Issue C. Afterwards A. dies, not having other Issue of the Body of M. Then M. enters, C. dies. Resolved, that because M. had Estate for Life by Limitation of the Party, and the Estate which he had in the Remainder, viz. of Tenancy in Tail after Possibility, was not larger in Quantity than the Estate for Life, and consequent cannot drawn it, M. was not Tenant in Tail after Possibility; for such Estate must be a Residue of an Estate Tail, and must happen by the Act of God, and not by Limitation. 79. Rep. 79. b. and the 3d Resolution, Patch. 13 Jac. B. R. Lewis Bowles's Café.

6. The Estate of this Tenantry must be alter'd by the Act of God, and that by dying without Issue; for if a Peuament in Fee be made to the Use of a Man and his Wife for their Lives, and after to their own Issue Male to be begotten in Tail; and after to the Use of the Husband and Wife, and of the Heirs of their two Bodies begotten, they having no Issue Male at that time. In this Case the Husband and Wife are Tenants in Special Tail executed; and after they have Issue a Son, they are become Tenants for Life, the Remainder to the Son in Tail, the Remainder to them in Special Tail; for albeit their Estate Tail is turn'd to an Estate for Life, yet they have a bare Estate for Life: But if the Husband die, having no other Issue, and then the Son dies without Issue, the Wife shall have the Privileges belonging to a Tenant in Tail, after Possibility of Issue extinct, as it appears in Lewis Bowles's Café. Co. Litt. 28. a.

Such Tenantry ought to be the Remainder of an Estate in Special Tail; per Coke Ch. J. Roll Rep. 182. in Café of Bowles vs. Berry, and cited 25. E. 3 that Peuament on Condition to have for Life only is good; but when it is decreed to an Estate for Life, he shall not be Tenant after Possibility, because this must be Ex Diapositive Legis, and not Ex Provivione hominum — 11 Rep. 80. b. the 3d Resolution in Lewis Bowles's Café.
7. If Land be given to a Man and his Wife, and the Heirs of their 2 Bodies, and after they are divorced, Causa praeccontritas, or Confangulinitatis, or Affinitatis, their Estate of Inheritance is turn'd to a joint Estate for Life; and albeit they had once an Inheritance in them, yet for that the Estate is alter'd by their own Act, and not by the Act of God, viz. by the Death of either Party without Issue, they are not Tenants in Tail after Possibility. Co. Litt. 28. a. b.

8. Lands are given to the Husband and Wife, and to the Heirs of the Body of the Husband, the Remainder to the Husband and Wife, and to the Heirs of their 2 Bodies begotten; the Husband dies without Issue; the Wife shall not be Tenant in Tail after Possibility; for the Remainder in Special Tail was utterly void, because it could never take Effect; for so long as the Husband should have Issue, it should inherit by force of the General Tail; and if the Husband die without Issue, then the special Estate Tail cannot take Effect, inasmuch as the Issue which should inherit the Special Tayle must be begotten by the Husband, and so the General, which is larger and greater, has frustrated the Special which is leffer. Co. Litt. 28. b.

9. If Lands be given to a Man with a Woman in Frank-Marriage, albeit the Woman (which was the Cause of the Gift) dies without Issue, yet the Husband shall be Tenant in Tail after Possibility, &c. for that he and his Wife were Donees in Special Tail, and so within the Words of Littleton. Co. Litt. 28. b.

10. If the King give Land to a Man and a Woman, and the Heirs of their 2 Bodies, and the Woman dies without Issue, the Man, in the King's Case, shall not hold it for his Life; because the Woman was the Cause of the Gift. But otherwise it is in the Case of a common Person. Co. Litt. 21. b. 22. a.

(K) Of what Thing Tenant in Tail after Possibility, may be.


Y y (L) Pri-
(L) Privilege of Tenant in Tail after Possibility, or of his Grantee.

1. Tenant in Tail, after Possibility of Issue extinct, has eight Qualities and Privileges, which Tenant in Tail himself has, and which Leєece for Life has not. Co. Litt. 27. b.

S. P. Br. 2. 3dly. He shall not be compell'd to attorn. Co. Litt. 27. b.

Tail &

Donor. pl. 11. cites 59 Ed. 5, 16.—Dr. & Stud. Lib. 2. Cap. i. says, The Law is clear, that Tenant in Tail after Possibility &c. is not punishable for Waffe. ——4 Rep. 63. S. P. in Straklan
don's Case, because his original Estate is not within the Statue of Gloucester, cap. 5.—2 Inst. 322.
S. P. And tho' he is within the Letter of that Statue, yet he is out of the Meaning of it, because the Inheritance was once in him.

Roll Rep. 179. S. P. by Doderidge J. cites Time of E. 1. Fitch. Waffe 26. 45 E. 3. 16. 12 H. 4. 1. 11 H. 4. 16. 3 H. 4. 26 H. 6. Aide 57.— And per Doderidge J. He shall not be punished for Waffe, because he continues in by Virtue of the Livery upon the Estate Tail; and it seems because by the Livery he had Power to do Waffe, tho' the Estate be chang'd, yet the same Liberty continues so long as the Gift and Livery continues. And per Coke Ch. J. At Common

Law this Tenant had a Fee, and consequently full Power to sell and dispofe of the Trees; and notwithstanding the Statue has made the Estate to be only for Life, yet the Privilege and Liberty is not taken away. Roll Rep. 184. Parch. 15 Jac. B. B. Bowles v. Berry. ——17 Rep. 80. a. Lewis Bowles's Case.

The Learned An Author of an Inflitute, but now call'd The New Abridgment, 2d Vol. 269, tells us, That to punish the Tenant for Waffe, seems to be against the Design and Intention of the first Donation; for by that the Donor gave the Inheritance, and an absolute Power over the haffing Improvements, which are look'd upon as Part of the Inheritance for their Duration; and consequently it can be no Injury to him in Reversion, nor be his Intention in the Donation, if the Donee executes the Power he was intrusted with by the Donor; nor can the Donor revoke it, because the Authority given by the Gift must continue, as long as the Gift, to which it was annex'd, continues.—But see Tit. Waffe (Q) pl. 1. and (S) pl. 12.

S. P. Br. 3. 3dly. He shall not have Aid of him in the Reversion. Co. Litt. 27. b.

Attornment,
pl. 10. cites 43 E. 3. 1.—Ibid. pl. 11. cites 46 E. 3. 13.—Ibid. pl. 12. cites 46 E. 3. 27.—Ibid. pl. 26. cites 19 E. 7, 26.—Br. Tail & Dones, pl. 17. cites 59 E. 3. 16.—Quod Juris chas-
S. P. Per Curiam, in Case of Bowles v. Berry. ——Co Litt 316. a. S. P. But his Allegiance shall
attorn, because he never had but an Estate for Life.— —5 Le. 241. pl. 526. Trin. 32 Eliz. in the Exchequer, in George Dörcher's Case, it was said to have been adjudi'd in a Court of Wales, That the Allegiance of Tenant in Tail after Possibility of Issue, should attorn upon which Judgment a Writ of Error was brought in B. R. and there, upon good Advice, the said Judgment was affirm'd; for al-
tho' it be true, that Tenant in Tail after Possibility shall not be compell'd to attorn, yet that is a Privilege which is annex'd to his Person, and not to the Estate; and by the Annexment of the Estate the Privilege is preserved. ——2 Le. 48. pl. 54. Mich. 30 Eliz. B. R. S. C. accordingly ——S. C. cited per Coke Ch. J. Roll Rep. 179. in Case of bowles v. Berry ——Co Litt 316. a.

In error brought of a Judgment in Quid Juris chatt. Clerk J. conceived that Grantee of Tenant in Tail after Possibility, should not be driven to attorn. Sec adjacentur. 5 Le. 121. pl. 175. Trin. 27 Eliz. B. R. Anon. ——Le 291. pl. 597. S. R.—But Co. Litt. 28. a. says, That Tenant in Tail after Possibility of Issue extinct, granted over his Estate to another, his Grantee was compell'd to attorn in a Quid Juris chatt, as a bare Tenant for Life, and so be named in the Writ; for by the Annexment, the Privilege of the Estate being alter'd, the Privilege was gone; cites it as adjudged Mich. 28 & 29 Eliz in Cooke's Case, and Judgment affirm'd in a Writ of Error, and Fays here with agree

S. P. Br. 4. 3dly. He shall not have Aid of him in the Reversion. Co. Litt. 27. b.

Tail and

Dones, pl. 17. cites 29 E. 3. 16.—S. P. Firth. Tit. Ayde, pl. 77. cites Trin. 26 H. 6. because the same Ten-

nancy, which he had at the first, continues.


S. P. Because he having originally the Inheritance by the first Gift, has likewise the Custody of the Writings which are necessary to defend it. 2 New Abr. 269.

5. 4thly,
5. 4thly, Upon his Alienation, no Writ of Entry in confirmis causa S. P. But he lies. Co. Litt. 27. b.


8. 7thly, In a Precipice brought by him, he shall not name himself Thata S. P. For if he do, and it appears to the Court that he is Tenant in Tail after Possibility, the Writ shall abate; Per Coke and Doderidge, Roll. Rep. 179. cites 18 E. 3. 25. —— 11 Rep. 86. b. cites S. C. of 18 E. 3. 27. a. that Feme brought Cain in vita, quod clamat tenere ad vitam, and maintained it in her Count by Gift in special Tail to her and her Baron, and that her Baron is dead without Issue, and the Writ abated, because of the Contra-activity of the Title.

9. 8thly, In a Precipice brought against him, he shall not be named S. P. Barely Tenant for Life. Co. Litt. 27 b.

In Quod Juris clamat. The Defendant pleaded, that the Tempore Locationis non predicata was seised in Fee of the Gift of R. R. without his Consent, and before the Tempore Locationis non predicata held Tentamenta predixis, pro terminis cites for cantum &c. And thereupon they were at Issue; And it was found, that he held them as Lands entailed, after Possibility &c. The Court resolved for the Defendant; Because it appears to the Court, That the Defendant has an Estate privileged from Attornment, to be made by him; And the Inducement of the Traveller is not any Cause of Foreclosure. Wherefore it was adjudged for the Defendant Cro. Eliz. 611. pl. 29. Pacli. 41. Eliz. C. B. Veal v. Red. — Nov. 14. Veal v. Reeds, S. C. but says nothing of any Judgment, but only that upon the Question for whom Judgment should be given upon this Issue, Williams said for the Plaintiff, because it is an Estate privileged, and ought to have been pleaded in Bro.—11 Rep. 86. b. in Lewis Bowles's Cafe, cites S. C. as adjudged for the Defendant, because such Tenant shall not in Judgment of Law be included in Writ or Fine &c. within the general Allegation of a Tenant for Life.—S. C. cited Roll. Rep. 179. in Case of Bowles v. Berriec, says that in the Quod Juris clamat it was alled'd that the Defendant was Leafee for Life at the Time of the Fine levied, and adjudged for the Defendant; for he was not any fuch Tenant as was compellable to answer in such Writ; but says, he that took the Traveller was not commended for taking such a delicate Traveller, notwithstanding it was helde in this Manner: for he was a Tenant for Life. But the Book cites 29 E. 3. 1. b. that if it be alled' that one holds for Life, it shall not be taken that he is Tenant after Possibility.

10. And yet he has 4 other Qualities, which are not agreeable to an Estate in Tail, but to a bare Life for Life. Co. Litt. 27 b. 28. a.

11. And if he makes a Feasiment in Fee, this is a Foreclosure of his S. P. Bases Eatee. Co. Litt. 28. a.
Tayle after Possibility &c.


Br. Effates. 12. 1dly. If an Estate in Fee, or in Fee Tail in Reverion or Remainder descends, or come to this Tenant, his Effate is drowned, and the 18. — Roll. Rep. 179.

S. P. Per Doderidge, and cited 80 E. 4. 10 E. 5 35. 7 H. 4 25. Quod fuit cessiam per Coke, and he cited the same Books also. — 11 Rep. 80, b. in Lewis Bowles's Cafe, cites 52 E. 5 Tit. Age 55. 72 E. 3 4. 9 E. 4 17 b.

S. P. Br. 13. 3dly. He in Reverion or Remainder shall be received upon his Aides, pl. 57 „ Default, as well as upon that of bare Tenant for Life. Co. Litt. 28 a. cites H. 4 10. and 59 E. 2 — S. P. Br. Taile & Dones, pl. 17. — S. P. 11 Rep. 80, b. Lewis Bowles's Cafe, cites 2 E. 2. Refesct 147. 41 E. 3 12. 20 E. 5. 3 Tit. Refereit. 58 E. 5. 35. — S. P. Roll. Rep. 179 Per Doderidge J. cites 11 H. 6 15. 10 H. 6 1. Quod fuit cessiam per Crooke and Hauighton; but Hauighton said that this is by the express Words of the Statute of Refereit, which says (Per Donn) but said that if it had not been for the express Words, he doubted whether he should be received.


Aid, pl. 57; cites Tran. 26 H. 6. — 11 Rep. 81.

a. in the 5d Resolution in Lewis Bowles's Cafe; for it is the same Frankentenemans he had before, this being Parcel of the Estafe Tail. — Co. Litt. 154 b.

16. In some Case a Person who is not really and strictly Tenant in Tail after Possibility, shall have the Privilege of such Tenant. As in the Cafe of the Wife in Lewis Bowles's Cafe, 11 Rep. 81, a. where an Estane for Life fell to her on her Baron's Death by reason of a prior Limitation in their Marriage Settlement, and afterwards, by the Death of the Ifue in specifical Tail without Ifue, an Estale of Tenancy in Tail after Possibility would have fallen to her by Means of a subsequent Limitation in the same Settlement (viz. in Default of Ifue Male of their 2 Bodies, then to the Heirs of the Bodies of the Baron and Feme) but she being in of the Estale for Life, and that Estale being equal in Quantity with the Tenancy in Tail after Possibility, and consequently could not merge in it, and so could not be Tenant in Tail after Possibility, besides, that such Estale is always a Residue of an Estale Tail, and must happen by the Act of God, as by Death, and not by Limitation of the Party, yet it was resolved that now after such Ifue's Death she shall have the Privilege of such Tenant, by reason of the Inheritance which was once in her. See the Cafe at (1) pl. 5.

For more of Tayle in general, see Devise, Eftates, Fines, Forfutere, Formenon, Forsetd ancestor, Recovery Common, Remainder, and other Proper Titles.

Tender.
Tender.

(A) Necessary in what Cases.

1. If a Man be bound to pay Rent-Service, or Rent-Charge, there he need not to tender it; but it suffices to be ready upon the Land; quod non negatur. Br. Tender, pl. 22. cites 14 E. 4. 4.
2. But Annuity ought to be tender'd, to save the Obligation. Br. Tender, pl. 22. cites 14 E. 4. 4.
3. Per Anderfon, Ch. J. There is a Difference where the Obligation precedes the Duty, which accrues by a Matter subsequent, and where the Duty precedes the Obligation, which was made for the further Assurance of the Duty. In the first Case a Tender must be pleaded, and cites 14 E. 4. 4. where A. was bound to B. that whereas he had granted a Rent-Charge, Now if B. should enjoy the said Rent, according to the said Grant, that then &c. He needs not plead any Tender, because the Rent is not payable in other Manner than it was before. Contrary if the Condition had been for Payment of the Money, or Annuity; and of that Opinion was the whole Court. Le. 71. pl. 95. Mich. 29 & 30 Eliz. C. B. in Cafe of Bret v. Audar, alias Andrews.

(B) Good. In respect of the Thing tender'd.

1. After the Fall and Embasement of Money in 5 E. 6. Debt was brought against Executor of Leafe for Years, for Rent-Arrear D. 81. b. pl. for 2 Years at Mich. 2 E. 6. at which Time the Shillings, which at the 67. Barking-Time of the Affion brought were depreciated to 6 d. were current at 12 d. The Defendant pleaded Tender of the Rent at the Days when it was due, in Pecius Monetae Angliae vocat Shillings; and said, that every Shilling at the time of the Tender was payable for 12 d. but that the Plaintiff nor any for him was ready to receive it. And concludes, that he is Uncore Priit to pay the Arrears in Diitis Pecius vocat Shillings, secundum Ratam &c. The Plaintiff demurr'd; but afterwards accepted the Money secundum Ratam predictam, without Costs or Damages. Dav. Rep. 27. in the Cafe of mix't Moneys, cites D. 81. 6 & 7 E. 6.
2. In Debt upon Bond for Payment of 24 l. at 2 several Days, the Defendant pleaded, That at the Day and Place limited for Payment, there was current certain Money call'd Pollards, in Ien of Sterling, &c. and that Defendant, at the first Day of Payment, tender'd the Moity of the Debt in the Money call'd Pollards, which the Plaintiff refused; and that he is Uncore Priit &c. and offers it in Court. And because the Plaintiff did not deny it, it was awarded, That he recover one Moity in
178

Tender.

not in his
own Book of the
Plea of the
Year.
See (D)

3. The Mortgagor was bound to pay 250l. of lawful Money of England, on a certain Day and Place, and he tender'd Money accordingly; but because there were 5 s. in Spanish Money, and two foreign Pieces of Gold call'd Double Pitolets, the Mortgagee refused to take it. Adjudged, That Spanish Silver was lawful Money of England, being made to by Proclamation; and that the King, by his absolute Prerogative, may make foreign Coin lawful Money of England. 5 Rep. 114. Trin. 43 Eliz. C. R. Wade's Case.

4. Queen Elizabeth made a large Quantity of mix'd Money in the Tower of London, and sent it into Ireland to pay the Army there; with a Proclamation, dated 24 May, 43d of her Reign, That the said Money should be lawful and current in that Kingdom, and accepted and received as such; and that they who refused it should be punished for a Contempt. And by the same Proclamation it be put down, from the 10th of June next, all other Coins current there. A Merchant in Ireland had bought Goods of G. in London, and was bound to G. in a Bond of 200l. condition'd to pay to the said G. 100l. Sterling in Ireland on a certain Day, which happen'd after the Proclamation; at which Day the Obligor tender'd the 100l. in Mix'd Money. Resolved, That the Tender was good. Dav. Rep. 18. Trin. 2 Jac. The Case of Mix'd Money.

5. If a Man be obliged to pay 100l. French Crowns, yet he may tender all in English Money. Per Jones J. Lat. 84. in Case of Ward v. Ridgwin.

6. Our Law takes notice of Guinea's, and they are current here for 20s. for before Guineas were coin'd there was a 20s. Piece of Gold, which by Proclamation was rais'd to 21 s. 4d. whereupon Guineas were coin'd at 1 s. 4d. leis. And provided any Piece has the King's Stamp, and be coin'd at the Mint, it shall be current without Proclamation, in Proportion to its Value. And in Indebitatus Aliquot the Plaintiff need not file forth they were Guineas which Defendant received, but to much Money received to his Use. Per Holt Ch. J. Comb. 397. Mich. 8 W. B. R. Dickson v. Willowes.

7. Tender of a Bank Note is not strictly a legal Tender; but he being proved, that the Plaintiff offered to turn it into Money, it then became a good Tender. Abr. Equ. Cases, 319. Hill. 1729. Aulten v. Executors of Sir William Dodwell.

( C ) Good. By whom.

1. Tender [of Rent-Service] to the Lord, by one who has only a Lease for Term of Years, is not good. Br. Tender, pl. 2. cites 2 H. 6. 1. —— Brooke says, it seems it is not good at this Day, after the Statute * of 21 H. 8. any more than before.

* See Avowry.

2. In Replevin, Payment by one Tenant is good for all, and against all, as Seilin of Rent obtain'd. Contra of Attornment by the one. Br. Tender, pl. 16. cites 39 H. 6. 2. 3.

3. If a Man grants an Annuity till the Defendant be promoted to a Benefice by R. the Grantor, the Tender of the Benefice shall be by R. and not by his Successor; for the Case was by Prior and Convent &c. Br. Tender, pl. 15. cites 14 H. 7. 31. & 15 H. 7. 1.

3. Where
Tender.

4. Where a Lord of Parliament is impleaded by Cessavit, if he will tender the Arrears, he shall tender them in proper Perfon; so of all other Tenants in Cessavit. Br. Tender, pl. 29. cites 15 H. 7. 9.

5. If a Feoffment be on Condition that Feoffee pay 20 l. at Michaelmas to the Feoffor, otherwife that Feoffor shall re-enter, and Feoffee before the Day ensuing. In this Cafe a Tender by the Feoflee or 7. 8. at Michaelmas is good, and upon Reifal the Condition is gone. For the first Feoffment was prevy to the Condition, and the 2d in Estate, and in Judgment of Law has an Estate and Interest in the Condition for the Salva-
dion of his Tenancy. Litt. S. 336.


6. If a Feoffment be made upon Condition, That if the Feoffor pay such a Sum to the Feoflee, then the Feoflee and his Heirs may enter; If the Feoffor dies before the Payment, and the Heir will tender to the Feoffee the Money, such Tender is void, because the Time, within which this ought to be done, is past; For when the Condition is, That if the Feoffor pay the Money to the Feoffee &c. this is as much as to say, as if the Feoffor during his Life pay the Money to the Feoffee &c. and when the Feoffor dies, then the Time of the Tender is past. But otherwise, where a Day of Payment is limited, and the Feoffor dies before the Day, then may the Heir tender the Money, as is aforesaid; For that the Time of the Tender was not past by the Death of the Feoffor. Alfo it seems, that in Such Cafe where the Feoffor dies before the Day of Payment, if the Executors of the Feoffor tender the Money to the Feoffee at the Day of Payment, this Tender is good enough; And if the Feoffor re-
fiue it, the Heirs of the Feoffor may enter &c. because the Executors represent the Perfons of their Tettator &c. Litt. S. 337.

7. If a Man bring an Action of Trefpafs for taking away his Befts or other Goods, there tender of sufficient Amends before the Action brought is no Bar, because he that tendered the Amends is not the Owner of the Goods, but a Trefpaller, whom the Law favours nor.

2 Init. 107.

8. A Lease for Years was made upon Condition to be void by the Ten-
der of 6 d. to the Leaffe by him in Reversion; The Leaffe entered and was difcharged by another; The Quifition was, Whether the Tender of the 6 d. to avoid the Lease might now be made by the Reversioner after the Difein. The whole Court was of Opinion that it might; For this Payment is a collateral Thing. And Judgment accordingly. Bull. 118. Pach.


A. had ilifie 3 Sons, B. his eldest, who died in his Life-Time leav-
ing a Daughter, and C. and D. —— A. devies Lands to his Wife for Life, and after her Death to D. and his Heirs, provided, that if C. do, within 3 Months after the Death of the Wife, pay to D. the Sum of 500 l. then the Lands to remain to C. and his Heirs. C. died in the Life-Time of the Wife, leaving N. his Heir. D. enters within 3 Months after the Wife's Death, N. brought a Bill to have a Contraeece on Payment of the 500 l. The prin-
cipal Point was, Whether this 500 l. being to be paid within a limited attined by Time by C. and he dying within that Time, the Heir at Law of C. who was not Heir at Law of A. could now on Payment make a Title. The Counsel for the Plaintiff among other Things, intited on Co. Litt. S. 134. and Coke's Comment thereupon; To which it was answered on the other Side, That the Cafe there was but in Nature of a Mortgage; That it was to relieve against a Forfeiture by Non-payment of the Mo-
ey at the Day which may be good, even at Law, much more in this cafe of a Will where the Law has ever allowed the greatest latitude of
on the Heir, and consequentl\y might be performed by him, tho' not named; That this was a Condition Precedent, and for the new Crea-
tion of an Estate in a Person who had no Right or Title before, and was not Heir at Law; That this was personal in C. That he had not 

"Jus in Res, nor ad Rem, and could neither have devised, releaved, or extinguished this Condition; That it was a bare Possibility, and he dying 

before it was performed, his Heir could not make it good. But the 

Mater of the Rolls denied this to be a Condition, because such is 

only to be performed by the Party making it or his Heirs; whereas 

this is to be performed by a 3d Person. Nor is it in Nature of a Re-

mainder to C. the Devise to D. being not in Tail, but in Fee, and a 

Remainder can be only after a Tail or less Estate; So that this is an 

Executive Devise, or may be called a Possibility in the largest Extent of the 

Word, but is not strictly such; For nothing was vested in C. which he 

could either grant or releave, nor did any thing descend to his Heir: 

That (Heirs) in this Case were not to take by Purchase, but by De-

scent, and the naming them was to denote the Quantity of the Es-

tate, and was to take and not to give them any Estate originally; and 

cited 10 Rep. Lampett's Case, and Pl. C. Brett v. Rigden. But it was ar-

gued, That the Possibility of performing this Condition was an Interest, 
or Right, or Scintilla Juris, which vested in C. himself, and that he 

survived A. and so this differed from Brett and Rigden's Case; And 

consequently such Right, Possibility, or Interest, descended to his Heir, 

and might be performed by him, as before the Statute De Donis the 

Possibility of Revoter descended to the Heirs of the Donor. The 

Mater of the Rolls looking on this as a Case of some Difficulty, appoint-

ed it to be spoke to again when the Court is fall. Afterwards, in 

Mich. Term, 5 Geo. i. It was decreed by J.d. Chancellor and Matter 
of the Rolls for the Plaintiff upon Litt. S. 334, 335, 336, and 337. 

Co. Litt. 205 &c. and they said, that tho' a Condition was not in 

Strictures of Law devidible, yet since the Statute of Uses, the Devise 

can take Benefit of it by an equitable Construction of the Statute; And 

that C. might have releaved or extinguished his Right, Chan. Prec. 486. 

Pach. 1718. Marks v. Marks.
as to this the Case of WOOD is exactly the same; and the only Difference between them is, that in WOOD the Condition was for the Benefit of the Cowenante and his Heirs, but here for a 3d Purpoe. That in WOOD the old Estate is taken, whereas here C gives a new one; but that this is a Difference only in Sound, and here it is upon the Operation of a Will, and each Party has the Benefit intended him: If the Estate had descended to the Heir at Law, C’s Condition would have been precedent, but here the Estate being given to D, the Condition is subfubent: Be it the one or the other, if it is performed it is all one, and the Heir’s Payment is a good Payment. The Advantage was vested in C which he might have releaved or extinguish’d, but not having done so, his Heir has it.

N. B. It appears by the printed Reports of this Case, and likewise by the MS. Report, that the Reason why this, being a Point purely at Law, was brought into Equity was, that D had to mortgage and incumber the Estate by a Marriage Settlement on his Wife, that the Plaintiff praved Re- lief, and the Direction of the Court, to whom he should make a Tender of the Money. And Lt Chancellor (as my MS. Report has it) said, It was proper for the Plaintiff to come here for Relief, because of the Uncertainty to whom the Money should be paid: That perhaps, a Payment to D, would have been a good Payment, according to the Will; but it is a Question if it had been secure against the Mortgages and Settlements of D That the Decree must be in Nature of a Redemption: That the Money must be paid to the Muller, to be laid out in a Parchate of Land to be settled to the Ules of D’s Marriage Settlement, and the Profits in the mean Time during D’s Life, to be paid to his Mortgage, according to their Priority.

* see Mortgage (N) pl. i.

(D) Good. To whom.

1. If the Confinee upon a Statute Merchant makes Affi Nement after that Tender must be to the Confinee of a Statute, and not to the

2. Tender to the Affi Nee of the Feoffee, upon Deceafeance of a Release. Br. Condi-
tions, pl. 103. S. C.

3. Where the Defendant in Debt will tender the Money to the Sheriff in

4. If obligee affirms to receive the Money at the Day and Place

5. But where the Condition is to pay Money to a Stranger, the Payment

6. Rent was referred payable at Lady-day or a Month after; Tender at Mo. 223, pl.
the Houfe of Leffor, and Payment there to the Daughter-in-law of Leffor 363. S. C.
who had formerly received the Rent by Order of Leffor) between Lady-day and
Tender to the and the Month after, is no good Tender, because before the Month his Perfon. End Leffor could not detain or have Debt for the Rent. But where — Good. the Refervation is at Lady-day, and the Month after is given only for 38. pl 45.
Having a Re-entry, there such Tender was held good by Wray Ch. Caie S. C.
reports it

The Tender out of the Land, at any Time within the Month, is good; And the Tender by the Servant was as Servant of the Leffor for thall Time, and all one as if Leffor had tendered it.
Tender.

7. A. was obliged to B. to the Use of C. to deliver a Chest to C. who refused to receive it upon the Tender at the Day; the Obligation was fixed, because the Obligation was to the Use of C. For he shall not take Advantage of his own Act. Cited by Glanvile, Cro. Eliz. 755. pl. 16. Patch. 42 Eliz. in C. B. in Case of Hulth v. Philips, as adjudged between Carne and Savery.

Upon Error brought of this judgment, it was reversed, that the J. B. was a Stranger to the Recognizance, yet being aver'd to be made to his Use, he ought to be ready at the Place every Day to receive it; otherwise the Recognizance is not forfeited, when the other does not tender it. Judgment was affirmed. Cro. 3 Ed. 4. &c. 17. Patch. 1 Ed. 4. R. Philips v. Rice Hughes. — It was not any Duty in J. B. but it is a Penalty inflicted upon him that he should pay to J. B. and to being a collateral Duty, payable only to J. B. a Stranger, J. B. ought to be there in Person, or by Attorney, to receive it; and H. is not confined to exceed the Words of the Deedance. Per tot. Cur. Yelv. 58. S. C. in B. R.

8. Audita Querela by H. set forth, That he was bound in a Statute of 660 l. to P. the Defendant, to the Use of J. B. with a Deedance, That if he paid such Sums at such several Days to J. B. it should be void; and that at every of the said Days and Places, he was parties to pay the said Sums, and obtain them; and that J. B. was not there. The Defendant pleaded, That such a Day J. B. was at the Place, &c. and demanded the Sum, and neither the Plaintiff, nor any for him were there to pay it, abjuge loc.; that the Plaintiff obtulit the said Sum at the said Day. Upon Demurrer, it was infibted for Defendant, That on this Matter an Audita Querela lies not, because J. B. is a Stranger to the Statute; and tho' the Plaintiff tender'd to a Stranger who refuted, yet the Recognizance is forfeited; for he must, at his Peril, procure the Stranger to accept it, when the Act is to be done by a Stranger. But all the Court held, that the Tender was a sufficient Performance, the Deedance being made to the Use of J. B. but had he been a meer Stranger, and not to have any Benefit thereof, it would be otherwise. Cro. E. 755. pl. 18. Patch. 42 Eliz. C. B. Hulth v. Philips.

9. A Mortgagee after settling an Account with B. the Mortgagor and Time agreed upon for discharging the Mortgage died, leaving 4 Executors in Trust for his Daughter; B. on the Day tendered the Money to one of the Executors who refused to accept the Tender, neither of them having proved the Will; Then B. made a like Tender to another of the Executors, who refused likewise giving the same Reason. Decreed that this was a good Tender, and that any or either of the Executors might have given a good Discharge before Probate, especially when as appeared in the Case, they afterwards proved the Will, and 3 were Executors ab Iniito; And the Infant Heir at Law was to convey the Inheritance defended to her according to the Act 7 Anne, for obliging Infant Trustees to align and convey. Hill. 1729, at Ed. Chancellor's Abr. Equ. Cases 318. Aultin v. Executors of Sir Wm. Dodwell.

(E) Good. How.

1. Condition was that the Feoffee shall render certain Frenn at such a Day, and he tendered and the other refused. The Question was, Whether he shall tender the Price as it was at the Time of the Payment or as it is now &c. Br. Conditions, pl. 113, cites 30 All. 11.

2. It was agreed in Avowry, that where the Lord disfains for 2 Rent Days Arrear, and the Tenant offers the one, the Lord is bound to receive it, and if he disfains he does a Tort. Br. Tender, pl. 2, cites 2 H. 6. 1.
3. But if he distrains for the Rent of one Day, and Tenant offers Part of it, the Lord is not bound to receive it, but he may distrain. Note the Diversity. Br. Tender, pl. 2. cites 211. 6. 1.

33. But if he accepts Part after Judgment, he cannot demand the rest. Br. Tender, pl. 39. cites 1 R. 3. ——

Part of a Debt. Br. Tender, pl. 39. cites 1 R. 3. ——

4. The Feoffee may tender the Money in Purposes or * Bags, without * S. P. It is flowing or telling the time; for he does that which he ought, viz. to bring the Money in Purse or Bags, which is the usual Manner to carry Money in, and then tis the Part of the Party, thus to receive it, to put it out and tell it. Co. Litt. 208. a.

But where it is tendered in a Bag, and call it on the Table before the Obligee, it was held good. Noy 6. Flower's Case.

But where Mortgage came at the Day and Place, and said to the Mortgagee, Here I am ready to pay you the 200l. and yet held all the Time in his Arm in Bags, it was adjudged no Tender; for it might be Counters or bafe Money for any Thing appeared; And per Anderson, it is no good Tender to say I am ready &c. Noy 74. Suckling v. Coney.

5. Mortgage by A. to B. for 400l. payable at a Day and Place certain. C. prevailed upon B. at the Day to take the Money at C.'s House, and the Money was told and delivered in Bags to B. But Differences arising between A. and B. C. said that he would not agree they should not have his Money. Per Cur. This was no sufficient Tender; whereupon A. requisted C. that he might have the Money to carry to the said Parith Church, who was contented, and there B. came to receive it, and A. would not pay it. It was moved, That this was a good Payment to discharge the Mortgage; for the Money was told in the House of C. and B. there put it up into Bags; and the same is a good Payment and Receipt. But it was answered, That this is no Payment; for it was not the Money of A. but of C. as appears by the Words of C. (Eli) If they could not agree, they should not have his Money; also A. requisted C. that he might have the Money to carry to the Parish Church aforesaid, by which it appears that it was not A.'s Money. And for that Cause it was also the Opinion of the Court, that the same was not any sufficient Tender. 2 Le. 213. pl. 268. Trin. 31 Eliz. B. R. Winter v. Loveday.

6. If a Man tenders more than be ought to pay, it is good enough, and the other ought to accept so much thereof as is due to him. The 3d Resolution, 5 Rep. 115. a. Trin. 43 Eliz. in C. B. Wade's Cafe.

7. A Man cannot make a Tender, unless he offers for what Purpose he makes such Tender; Per Dodridge J. Lat. 70. in Cafe of Warner v. Harding.

9. The Defendent agreed to pay 1500l. to the Plaintiff, upon his affording a Judgment. Ld. C. Macclesfield declared, that there are no Words to determine the Priority of the Acts, a middle Way is to be chosen. The Party is not obliged to make an absolute Tender of the Money first, but by such Words as these, I tender you the Money so as you make an Agreement. 2 Barnard. Rep. in B. R. 328. Trin. 6 Geo. 2. in Cafe of Anvert v. Ennover, cites it as Trin. 13 Ann. the Cafe of Turner v. Goodwyn.
10. An Account was settled between B. Mortgagor and A. Mortgagee of what would be due at such a Time, when the Money was agreed to be paid and received, and the Sum was agreed to be 4479 l. At the Day six'd B. tender'd a Bank Bill of 4500 l. to C. the Executor of the Mortgagor, to take thereout what was then due for Principal and Interest. C. refused to accept the Tender, whereupon B. ask'd C. if he objected to the Legality of the Tender, being in a Bank Bill, and not in Money, and that if he did he would presently turn it into Money. Lord Chancellor held that this Tender of a Bank Note was not strictly legal, but since it was prov'd that B. offer'd to turn it into Money, it became thereby a good Tender. Abn. Equ. Cafes 313. Hill. 1729. Austin v. Executors of Sir Wm. Badwell.

(F) Place. At what Place it may, or ought to be.


2. Tender of Rent is sufficient upon the Land, and the other cannot disfain. Br. Tender, pl. 18. cites 30 Aff. 38.

But the Book makes a

3. If a Man holds Lands in the County of D. by 3 d. Rent, of which the Lord has been seised Time out of Mind at S. in another County, if the Lord disfains upon the Land, and the Tenant tenders the Rent upon the Land, this is a good Tender, and he shall not be compell'd to go to a Foreign County where &c. to tender it there. Br. Tender, pl. 31. cites 30 Aff. 38.

4. Where Rent is referred upon a Lease for Life, rending Rent at Easter, and for Default of Payment a Penalty of 10 l. if the Tenant tenders the Rent to the Leifor, or is ready to pay upon the Land, this will excuse the Penalty. Br. Tender, pl. 11. cites 22 H. 6. 57. Per Newton.

5. If a Rentsment in Fee be made, referring a yearly Rent, and for Default of Payment a Re-entry &c. the Tenant needeth not to tender the Rent, but upon the Land, because this is a Rent lifting out of the Land, which is a Rent Seek; for if the Feoffor be seised once of this Rent, and after cometh upon the Land &c. and the Rent is denied him, he may have an Alse of Novel Disseisin; for tho' he may enter for the Condition broken, yet he may either relinqueish his Entry, or have an Alse. Litt. S. 341.

6. If the Feoffee comes to the Feoffor at any Place, upon any Part of the Ground at the Day of Payment, and offers his Rent, tho' not at the most notorious Place, nor at the last Innsit, the Feoffor is bound to receive it, or else he shall not take any Advantage of any Demand of Rent for that Day. Co. Litt. 202 a.

7. Tender being to be made at a certain Place, cannot properly be made anywhere else; Per Cur. Freem. Rep. 149. pl. 169. Pach. 1674. in Cafe of Marshall v. Wifdale.
(G) No Place being limited. In what Cases it must be to the Person.

1. Where a Place certain is limited, and he tenders there, it is Br. Tender, sufficient, tho' none be there to receive it, by some, and so is pl. 17. cites Littleton. But where no Place is limited, he shall tender to the Person, S. C., or upon the Tenements. Contrary upon the Tenements by Littleton, upon Mortgage; and Payment elsewhere, where the Party receives it, is good. Br. Conditions, pl. 103. cites 17 All. 2.

2. In Debt of 201. the Plaintiff declared upon Indenture made of a Lease for Term of Years to the Defendant, rendering 101. Rent at Easter, and other Covenants, and viewed what &c. ex utraque Parte, and ad omnes convenienciam prorsum, perimpendium, each of them for his Part bound themselves to pay to the other in 201. and that the Defendant did not pay the 101. at Easter, rendering Rent at Michaelmas, and other Cases, Alton, and Port. In Debt upon a Lease for Term of Years, Tender upon the Land, ready to pay the 101. and none came of the Part of the Plaintiff to receive &c. And per New- ton, Alton, and Port. in Debt upon a Lease for Term of Years, Tender upon the Land, a good Plea in Excuse of Damages: But where a collateral Safety is found by another Deed, or the Party binds himself by Obligation to pay it at the Day in the Indenture, this does not depend upon the Leafe, rent prescr. therefore there he ought to inquire him where out he is, and to tender Pay- ment to him. But in this Case where it is in the Indenture of Leafe, this refers to the Payment in the Indenture of Leafe, which is to be made upon the Land, and therefore a good Plea; quod nota, Diversity where it is by the Indenture of Leafe, and where it is by another Indenture or Obligatio. Br. Tender, pl. 11. cites 22 H. 6 57.

S. C.—but if he be bound to perform the Covenants &c. there Tender upon the Land suffices, because there the Payment is at the Nature of the Rent prefixed. Contrary in the first Case. Br. Tender, pl. 25. cites 6 E. 6—— Br. Tender, pl. 11. cites S. C.

3. Some say, if the Feoffor upon Condition be upon the Land ready to pay, at the Day let, and the Feoffee is not then there, the Feoffor is quit, and excused of the Payment, for that no Default is in him. But some think that the Law is contrary, and that he is bound to seek the Feoffee, or if the Money is not to be in England. As if a Man be bound in 201. upon Condition to pay a Sum in to the Oblige, at such a Day, 101. the Obligor must seek the Oblige, if he be in England, and at the Day tender unto him the said 101. Lit. S. 340.

It has been oftentimes resolved, that seeking him, is a sufficient Performance of his Condition, and that the Feoffor is bound to seek the Feoffee, if the Feoffee be in England. As if a Man be bound in 201. upon Condition to pay a Sum in to the Oblige, at such a Day, 101. the Obligor must seek the Oblige, if he be in England, and at the Day tender unto him the said 101. Lit. S. 340.

Feoffor must tender the Money to the Person of the Feoffee, according to the latter Opinion; and it is not sufficient for him to tender it upon the Land; otherwise it is of a Rent that issues out of the Land. But if the Condition of a Bond or Feoffment be to deliver 50 Quarters of Wheat, or 20 Load of Hogs, or such like, the Obligor or Feoffor is not bound to carry the same about, and seek the Feoffee; but the Obligor or Feoffor, before the Day, must go to the Feoffee, and know where he will appoint to receive it; and there it must be delivered. And to note a Diversity between Money and Things ponderas, or of great Weight. If the Condition of a Bond or Feoffment be to make a Feoffment, there it is sufficient for him to tender it upon the Land, because the State must pass by Livery. Co. Litt. 210. b.

4. If the Oblige be out of the Realm of England, the Obligor &c. is not bound to seek him, or to go out of the Realm unto him; and because the Feoffee is the Cause that the Feoffor can't tender the Money, the Feoffor shall enter into the Land, as if he had duly tendered it according to the Condition. Co. Litt. S. 210. b.

B b b

(H) Time.
(H) Time. At what Time it may or ought to be made.

W H E R E a Man leaves rendering Rent, and for Non-payment by one Month to re-enter, and the Tenant tenders upon the Land all the Day, and the Leifier does not come; or if he tenders to the Person of the Leesor, and he refuses it, in those Cases, if he does not pay within the Month, the Leesor cannot enter; per Newton. Brooke lays, Quere inde; for it has been used, that if he demands it the last Day of the Month, or the last Instant, and the other does not pay, that he may re-enter. But see there, by the Opinion of Newton, that the Tenant who tenders ought to be there all the Day. Quere inde; for it suffices for the Leesor to come the last Instant of the Day. Br. Conditions, pl. 60. cites 22 H. 6. 57.

2. If a Man be bound in a single Obligation, and no Day of Payment is limited, this is not payable before Request; quod nota bene. Br. Tender, pl. 14. cites 14 H. 8. 29.

3. If the Lord or his Bailiff comes to distrain the Beasts or Goods of his Tenant for his Rent behind, the Tenant before the Ditrefes (that he may keep and use his Beasts or other Goods) may upon the Land tender the Arrearages; and if, after that, a Ditrefes be taken, it is wrongful. And if the Lord have distrained, if the Tenant, before the Issuing of them, tender the Arrearages, the Lord ought to deliver the Ditrefes; and if he does not, the Detainer is unlawful. 2 Inst. 167.

4. Tho' where the Time of Payment, by force of a Condition, being indefinite, the most convenient time is the last Hour of the Day appointed, in which the Money may be told before Sun-set; yet if the Tender be made to the Person at the Place specified, at any time of the Day, and refused, the Condition is void; and no new Tender need be at the last Instant. For by the very Letter of the Condition the Money is to be paid upon the Day indefinitely, and convenient time before the last Hour of the Day is the extreme time appointed by the Law, to the Intent the one shall not prevent the other, but both be there at the same time. But it both meet at any time of the same Day, and the Debtor makes Tender at the Place to the Debee, and he refutes, the Penalty is paid for ever. Resolved. 5 Rep. 114. b. Trin. 43 Eliz. C. B. Wade’s Cale.


5. Condition for Payment of Money at or before such a Day; upon which Debt was brought, and the Defendant pleaded, That he was at the Place at a Day before, and tender’d the Money; and that the Plaintiff was not there to receive it; and held no good Plea. For tho’ he had Election to pay before, or at the Day, yet he cannot make Tender before the Day, if Plaintiff be not there willing to receive it; and you cannot compel him to receive it sooner. Therefore the last Day, which is the Day appointed by both Parties, they ought to meet, one to tender, the other
Tender. 187


(1) Time. Notice. In what Cases, where no Time is limited, Notice must be given.

1. If a Man be bound to pay 20l. at any time during his Life, at a Place certain, the Obligor cannot tender the Money at the Place when he will; for then the Obligee should be bound to perpetual Attendance. Therefore the Obligor, in respect of the Uncertainty of the Time, must give the Obligee Notice. That on such a Day, at the Place limited, he will pay the Money; and then the Obligee must attend thereto receive it; for if the Obligor then and there tender the Money, he shall have the Penalty of the Bond for ever. Co. Litt. 211. a.

2. So if a Man make a Feeffment in Fee upon Condition, if the Feoffor, See Condition any time during his Life, pay to the Feoffee 20l. at such a Place certain, (F. c) that then &c. In this Case, the Feoffor must give Notice to the Feoffee when he will pay it; for without such Notice, the Tender will not be sufficient. Co. Litt. 211. a.

3. But in both the above Cases, if at any time the Obligor or Feoffor meets the Obligee or Feoffee at the Place, he may tender the Money. Co. Litt. 211. a.

4. If A. be bound to B. with Condition, That C. shall infeoff D. at such a Day, C. must give Notice to D. thereof, and request him to be on the Land at the Day, to receive the Feoffment; and in that Case he is bound to seek D. and to give him Notice. Co. Litt. 211. a.

5. A Bargain and Sale of Lands was made by A. to B. and C. with a Power of Revocation upon the Tender of 20s. to them, or either of them, at a certain Place. The Tender was made accordingly; but neither B. or C. was there present, neither had they any Notice of the Time of the Tender. It was held, that this was no Performance of the Condition, to avoid the Bargain and Sale. Moore 602. pl. 533. in Chancery, Trin. 42 Eliz. Lady Burgh v. Williams, Powell, & al'.

6. The Defendant was bound to deliver 10 Quarters of Corn to the Plaintiff, at or before such a Day; and he pleads that he tender'd it to him at such a Time before the Day, and none would receive it, and does not say that he went to him before to know where he would receive it, and tender'd it accordingly; and it was held to have good Plea. Freem. Rep. 433. pl. 582. Trin. 1676. Harvey v. Jackson.

(K) To whom, and How, to revoke Grants &c.

1. Onus of a Fine made a Leave for Life to a Stranger, Remainder to Hemley v. the Queen by Deed inroll'd, upon Condition to be void upon Tender of so much Money to the Stranger Tenant for Life; One Question was, whether the Tender of this Money to the Stranger shall defeat the Remainder out of the Queen Adjudged that it shall defeat it without Office, because Eliz. B. R. the Condition is not to be performed to the Queen, but to the Tenant for Life. Mo. 546. pl. 729. Hill. 40 Eliz. Hemley v. Brice.

held, That the Entry is lawful upon the Tenant for Life, and the Premises being defeated, the Queen's
2. Power reserved upon Feoffment by A. to B. that if A. or his Assigns, shall tender 1 s. to B. or his Assigns, at or in &c. B. died, leaving a Daughter, and his Wife enfeint of a Son; A. pays the 1 s. to the Daughter, who was not 3 years old, and then revoked and altered the Uses; this is a good Tender and Revocation. Lay 55. Trin. 15 Jac. Allen's Cæse.

3. A Mortgage was forfeited; Mortgagor afterwards meeting the Mortgagor, said, I have Money, now I will come and redeem the Mortgage; Mortgagor replied, He would hold the mortgaged Premises as long as he could, and when he could hold them no longer, let the Devil take them, if he would. After Mortgagor went to Mortgagor's House, with Money more than sufficient to redeem, and tender'd it there; But it does not appear that the Mortgage was within, or that the Tender was made to him. It was decreed a Redemption, and the Defendant to have no Interest from the Time of the Tender, because of his Wilfullness. Chan. Cases 29. at the Rolls, Mich. 15 Car. 2. Manning v. Burges.

(L) Tender of Amends. To whom it may be.


v. Bell.—Roll Rep. 258. in S. C.—Cro. E. 815. pl. 1. Pilkington v. Haftings, S. C. all the Court held that the Tender to the Servant was not sufficient, especially the Matter being present at the Diftreff; but if the Servant only had distrained, Gawdy said, that then the Tender to him might have been more colourable; And Popham said, if it had been to the Bailiff of the Manor, it might perhaps have been good, but not to a Servant who only join'd in the Diftreff; and therefore adjudged for the Avowant.—The Offer of Amends cannot be made to him that makes Cognizance. Brown's 173. Hill. 9 Jac. Roberts v. Young.

Holt said, that it was not yet settled whether, after Return irreparable, if Party tenders Arrears to Bailiff, it be good to intitle him to Action for Detinens against Principal, tho' it be so settled in Cæse of Tender to Principal in Carpenter's Cæse, 8 Co. And he said that he was not satisfied with Pilkington's Cæse in that Point; for if Bailiff may not distrain, nor receive Money tender'd, why shall his Receipt abate a Writ? 12 Mod. 554. in Cæse of Horn v. Luines.

(M) Damage feant. Tender of Amends. At what Time, and how much.

F. N. B. 69. 1. * F a Man takes Beasts Damage feant, and the other offers sufficient Amends, and he refiuses to re-deliver them, now if he sue Replicau he shall recover Damages for the Detinens of them, and not for the Taking them, because the Taking was lawful. F. N. B. 69. (G) in the new Notes there (a) cites 27 E. 3. 8. b. 45 E. 3. 9. But if the other had them in the Pound before Amends tender'd, it is then too late to tender the Amends; and on the Avowry the Defendant shall have no Return till a new Tender, and then the Party may have Detinens; Quere. 13 H. 4. 17. 14 H. 4. 4. And if he tenders before the Taking, the Taking
Tender. 189

When a Defendant avows for Damage feasant, the Plaintiff replies that the Day after the Defentis taken, he tender'd sufficient Amends, viz. 6 d. which the Defendant refused; upon which the Plaintiff said, because the Tender was not before the Impounding, the Party may tender Amends till the Beasts were before the Impounding, he might take them out; Quod futi conceplum: Whereupon the Court gave Day to be impounded, but after being given for the Plaintiff; but Tanfield at the Bar, said it was adjudged in Sir Henry Cranwell's Case in C. B. that Tender after Impounding comes too late. Cro. Eliz. 332. pl. 10. Trin. 36 Eliz. B. R. Nevill v. Tender Seagray.

3. In Replevin the Defendant avowed for Damage feasant; the Plaintiff replied, that he tender'd Amends after the Taking, and before the Delivery of the Cattle. The whole Court held the Replication naught; and Held, that the Tender was ill, because the Words (Before the Delivery) seem to be plies that they were impounded; and it is not shown in certain that the Tender was before. And Judgment for the Defendant. Hor. 165. Hill. 6 Car. C. B. Jennings v. Coullins.

Trin. 1652. Proc. v. Richlton, Same Plea of Tender of Amends Pott Captioinem & ante Deliberationem; and the Court refused it was naught; for the Tender ought to be before the Impounding, according to Dukingham's Case. 4 Co. 6. Et ante Deliberationem implies, that it was after the Impounding, and so comes too late. Twifden said, Perhaps he might mean that the Tender was before the Replevin, and so might be good by Stat. 21 Jac. 1. cap. 16. But per Curiam, That extends only to Actions of Trespass.

4. Replevin, the Defendant justifies Damage feasant, the Plaintiff replies, that after the Impounding he tender'd Amends, viz. 5 s. And the Defendant demurs, and Judgment was given without Argument for the Defendant; for Tender after Impounding is too late, and this is not within the Statute of 21 Jac. of Tender before Action brought; for that is in Actions Quare clausum irregit, and not in Replevin. Freem. Rep. 527. pl. 711. Trin. 1692. C. B. Twinning v. Stephens.

5. If Beasts have done Damage To-day, and gone off, and come again at another Time, and are doing Damage, and are taken for that, and the Owner tenders Amends for that Damage, the Party cannot justly keeping them for the first Damage; Per Holt Ch. 12 Med. 662. Hill. 13 W. 3. in Cafe of Vaper v. Edwards.

C c c (N) Tender
(N) Tender and Refusal. In what Cases it shall be a Discharge of the Debt.

1. If Debt upon a Lease for Years rendering Rent a Tender of the Rent upon the Land, and Refusal by the Plaintiff, is no Plea. Contra in an Avowry. Br. Avowry, pl. 142. cites 14 H. 4. 4.

But if the Obligation be of 50 l. to inter the Plaintiff by a Day, or to deliver to him a House, &c. which is not Money, tender by the Defendant and Refusal by the Plaintiff is sufficient for the Defendant for ever. Br. Tout temps prifl, pl. 31. cites 20 E. 4. 1. per Brian & Cur.

2. Where a Man is bound in 60 l. to pay 40 l. if he pleads Tender of the 40 l. in Action of Debt brought against him of the 60 l. he ought to say that he is yet ready, and always has been to pay the 40 l. and bring the Money into Court, because the lesser Sum is Parcel of the greater Sum expressly in the Obligation, and the Refusal of this shall not serve it; for it is Parcel &c. Br. Tout temps prifl, pl. 31. cites 20 E. 4. 1. per Brian & Cur.

As if an Obligation of 100 l. be made with Condition for the Payment of 50 l. at a Day, and at the Day the Obligor tenders the Money, and the Obligee refuses the same; yet in Action of Debt upon the Obligation, if the Defendant pleads the Tender and Refusal, he must also plead, that he is yet ready to pay the Money, and tender the same in Court; but if the Plaintiff will not then receive it, but takes Issue upon the Tender, and the same be found against him, he has lost the Money for ever. Br. Conditions, pl. 171. cites 21 E. 4. 25.

3. Where the Defendant pleads Tender of the Money, and brings it into Court, and the Plaintiff takes another Issue for making the Defendant to set up the whole Obligation, if the Issue proves against the Plaintiff, he has lost the Money tender'd for ever. Br. Conditions, pl. 171. cites 21 E. 4. 25.

4. If a Feoffment be made in Mortgage, upon Condition that the Feoffor shall pay such a Sum at such a Day &c. if Tender of the Money is made &c. and the Feoffee refuses to receive it, by which the Feoffor or his Heirs enter &c. then the Feoffee has no Remedies by the Common Law to have this Money, because it shall be accounted his own Folly that he refused the Money, when a lawful Tender of it was made unto him. Litt. Sect. 335.

5. Note, that in all Cases of Condition for Payment of a certain Sum in gross, touching Lands or Tenements, it lawful Tender be once refused, he which ought to tender the Money is of this quit, and fully discharged for ever after. Litt. S. 338.

6. If
6. If a Man make an Obligation of 100 l. with Condition for the Delivery of Corn or Timber, &c. or for the Performance of an Arbitriment of the doing of any Act, &c. this is collateral to the Obligation; that is to say, is not Parcel of it; and therefore a Tender and Refusal is a perpetual Bar. Co. Litt. 207. a.

7. A. by Indenture article to pay to B. 110 l. at a certain Day, and B. by the same Indenture articled upon the Receipt to give an Acquittance, and also to enter into Bond of 400 l. to A. to free him harmless from all Claims to certain Lands &c. A. tender’d the 110 l. but B. refused to receive it and to give A. Acquittance, and likewise to enter into the Bond. After the Court had taken Time to advise, Glyn Ch. J. said, that here is no Breach of Covenant alleged to ground the Action upon; For the Articles express, that upon the Receipt of the 110 l. the Defendant would give the Acquittance and enter into Bond, and the Breach alleged is, that the Plaintiff tender’d the 110 l. at the Day, and the Defendant refused to receive it, and has not fealed the Acquittance, nor given the Bond of 400 l. and it may be it was the Intent of the Parties, that it should be in the Election of the Defendant either to receive the 110 l. or not to receive it, and the Plaintiff is not prejudiced by the Defendant’s not receiving of it. For if he should sue for the 110 l. the Plaintiff may plead this Tender and Refusal against him, and that will be judged a Payment, and when he sues you for the 110 l. you may sue him for the Acquittance and the Bond. Nil capiat per Billiam, nisi &c. Style 481. Trin. 1655. London v. Craven.

Payment; And said, That the Authorities have been so ever since. But in 2 Ld Raym. Rep. 964. in S.C. by Name of Squire v. Grevel, it is mention’d as faild, by Holt Ch. J. that a Tender and Refusal has been formerly held no Performance without actual Payment as in the Case of * Hunt v. Cranston; But that it has been adjudged otherwise ever since.

* This seems to mean the Case of London v. Craven, which is above, and cited contra per Holt, in 6 Mod. 35. For I do not find any other Case of like Name and like Point in all the Books of Reports.

8. Debt upon a Bond, that the Defendant and 2 others should perform an Award between them and the Plaintiff. The Defendant pleaded the Award, which was, that he should pay to the Plaintiff 20s. and likewise 20s. to each of the others; and that he tender’d his 20s. which the Plaintiff refused to accept. The Plaintiff replied, That on such a Day, after the Refusal, be demanded the 20s. of the Defendant, which he then refused to pay. And upon Demurrer, the Court held this Replication idle, because by the first Refusal the 20s. being a Sum collateral to the Obligation, was lost for ever. 3 Lev. 24. Mich. 33 Car. 2. C. B. Genne v. Tinker.

9. Award was to pay 10 l. to B. and upon Payment B. to release. B. would not receive the 10 l. because he would not release. Resolved, Grevel, B. was as much oblig’d to release upon the Tender and Refusal, as if he had actually received the Money. 1 Salk. 75. pl. 14. Trin. 2 Ann. B. R. Simon v. Gavil.

Grevel, C. S. accordingly.—Vent. 167. Mich. 22 Car. 2. B. R. in Case of Trefa v. Lettisham, the same Point exactly was cited by Twifden J. to have been resolved.—By Tender of the 10 l. the Obligation is saved. Cro. E. 4. pl. 1. Pach. 24 Eliz. B R. Ecclesiade v. Malard.

(O) Tender
(O) Tender and Refusal. In what Cases it shall be a Discharge of Interest.

1. If Money be tender'd, and none ready to receive it, and afterwards he to whom the Money is payable demands the Money, and the other refuses to pay; and afterwards an Action is brought, and a Tender pleaded, Defendant shall pay Damages from the Time the Money was demanded. Per Cur. Browne. 71. Parch. 12 Jac. Anon.

2. Tho' a Bond be forfeited, if the Money be tender'd afterwards, no Interest shall be allow'd after the Tender. Tor. 89. cites 12 Car. Malton v. Pennell.

See (K) pl. 5. S. C.

3. If Mortgage tenders the Money, and Mortgage refuses it, Mors-

4. A Deed was in Nature of a Mortgage, and Covenant to reconvey on Payment. The Money was tender'd at the Day and Place, and refused. Decreed the Money without Interest from the Time of the Tender, and to reconvey; tho' the Plaintiff ought to make Oath, that the Money was kept, and no Profit made of it. 2 Chan. Cases, 256. Trin. 27 Car. 2. Lutton v. Read.

5. On a Bill to Foreclose a Mortgage, Defendant answer'd, That 2 Persons (naming them) offer'd to pay, and tender'd to the Plaintiff all his Principal and Interest, then due on the Mortgage, and this before a Declaration in Ejectment was deliver'd; and Defendant brought a Cross Bill to redeem. Decreed the Principal, and Interest to be paid to the Time of the Tender, at a Place and Time to be appointed by the Matter, discounting the mean Profits &c. Fin. R. 379. Trin. 30 Car. 2. Newby v. Cooper.

6. A lent B. 100l. in London, for securing which B. mortgaged Lands to A. but in the Mortgage-Deed no Place was mention'd where the Payment should be. But afterwards B. gave 6 Months personal Notice in Writing to A. that he would tender the Money and Interest such a Day and Hour in Lincoln's-Inn Hall, which he accordingly did. B. brought a Bill for a Re-alignment, and to stop Payment of Interest. It was in-lifted, that in this Case the Tender must be to the Person. But Ld. C. King said, That the Money being lent in Town, and personal Notice given for Payment thereof, and no Objection made by A. to the Place at the Time of the Notice, it would be hard to make B. travel with so much Money to Oxford, where A. lived; but that it ought to appear that B. from that Time always kept the Money ready. Whereas it being proved, that B. was not ready to pay it, the Interest must run on. And decreed A. to re-align to B. or his Order. 2 Wms.'s Rep. 378. Mich. 1726. Gyles v. Hall.

7. A. Mortgage, and B. Mortgagee in Fee, settled an Account, and agreed on a Day for Discharge of Principal and Interest. B. died before the Day, leaving 4 Executors in Trust for his Daughter and Heir. A. at the Day tender'd the whole Money to one of the Executors, who refused to accept it, because neither of the 4 had proved the Will. Then A. tender'd it to another, who refused it for the same Reason, and because it was in a Bank Bill; but as to that, A. of himself had proposed to turn it into Money, it he objected to the Bill. Lord Chancellor held, That tho' the Tender of a Bank Note might not be, strictly speaking, legal; yet the Offering to turn it into Money, made it good; that any or either of the Executors might have receiv'd and discharge'd the Debt, before Probate; and that their being Executors in Trust for an Infant, did not put them on a better Foot than B. himself would have been, had he been living. And decreed a Redemption, on Payment of Principal and Interest to the Day agreed upon, and no longer, and no Costs on either Side;

(P) Tender and Refusal. Bar of Costs and Damages. See (Q) pl. 14.

1. A recovered Debt, and then brought a new Action of Debt on the Judgment; and Defendant pleaded a Tender of the Money before the Action brought, & Uncave Prift. The Plaintiff could have no Costs. Vent. 21. Patch. 21 Car. 2. B. R. Anon.


3. In an Indebitatus Assumpsit, if the Tender had been pleaded at the Day of the Promise, with Tous temps Prift, Holt Ch. J. doubted, whether it would be in Bar of the Action or of the Damages. He said, that in this Action, if it should be in Bar of the Damages, as it is in Debt, it would be a Bar of the whole Demand; for since Indebitatus Assumpsit is to recover uncertain Damages, the Plea which will bar the Plaintiff of his Damages, will bar him of his whole Demand. Per Holt Ch. J. Ld. Raym. Rep. 254. Giles v. Harris.

(Q) Pleadings.

1. In Replecien, and Avowry for Rent, it is a good Plea to say, that he tender'd at the Time of the taking, and the Defendant refused, without Tender now again; for it shall not be tender'd but upon the Land; Per Cur. Conditions, pl. 38. cites 7 H. 4. 18.

2. A Man granted an Annuity till the Plaintiff be promoted to a Benefice, and in Writ of Annuity the Defendant pleaded that he tender'd a competent Benefice pending the Writ, and the Plaintiff refused, he need not to tender the Arrears incurred before the Writ brought; for the Benefice cannot be always void; and also if the Annuity be determin'd, he shall not recover any Thing upon this Writ; quod nota. Br. Tender, pl. 15. cites 14 H. 7. 31. and 15 H. 7. 1.

3. Debt upon an Obligation to pay 10 l. the Defendant pleaded Tender thereof, and that the Plaintiff refused, and Issue was not taken upon the Refusal, but upon the Tender; for there can be no Refusal unless there were a Tender; and therefore the Plaintiff took the Refusal by Protestation, & pro pleisto that he did not tender. Br. Illues Joines, pl. 91. cites 16 H. 7. 13.

4. If a Man be bound by Obligation, that J. N. shall perform all Covenants contained in such an Indenture, of which one is, that J. N. shall have been pay

D d d
Tender.

5. Debt upon Bond conditioned to pay to the Obligee, or to his Assigns, at such a Day and Place, 29 s. The Defendant pleaded that the Plaintiff appeared and aligned one A. to receive the said Money at the said Day and Place; and that he tender'd it to the said A. who refused to receive it. This was adjudged a good Plea, without alleging Payment in Fact; and it is not like a Condition to pay the Money to a Stranger; for there the Payment must be at the Peril of the Obligor. And Dyer held that the Issue would be better on the Tender than on the Payment; and Leonard and Whetstone affirmed the same. Mo. 37. pl. 120. Trin. 4 Eliz. Anon.

6. An Award was, that the Defendant should pay to the Plaintiff 10 l. who pleaded that he was ready &c. and yet is, without showing any Tenders; and for that Reason it was held ill by the whole Court. Le. 71. pl. 95. Mich. 29 & 30 Eliz. C. B. Brett v. Andrews.

7. Tender of Amend is no Plea, where the Trespass was voluntary, as for Battery, or Breaking his Clove, or putting Cattle into his Grounds; Per Popham and Williams J. Noy 12. Sir G. Walgrace's Cafe.

8. In Intercursus, Marriage non satisfacta, Plaintiff did not allege any Tender. Upon Demurrer to the Declaration, all the Court (Gawdy absent) resolved, without hearing of any Argument, That for the Value of the Marriage, Tender is not requisite; for it is due de mero Jure and without any Tender, and the alleging of Tender is but Surplication, and gives Colour to traverse it, whereas it is not traversable. And Williams said, That he had known it to be so ruled in C. B. and in the Exchequer; wherefore they gave Rule to enter Judgment accordingly, unless &c. And at another Day Stephens moved to be heard to argue it for the Defendant; and Gawdy said, that he much doubted thereof, by Reason of the Diversity of Opinions in the Books concerning that Quetion; but because the other Justices had resolved it, they without further Argument adjudged it for the Plaintiff. Cro. J. 66. pl. 6. Pach. 3 Jac. in B. R. Palmer v. Wilders.

9. An Award, that the Defendant should enjoy a Houfe for 3 Years and a Half, and should pay Half-yearly for it 13 l. at Michaelmas and Lady-day; and if he fail'd of Payment, the Award for enjoying to be void. He pleaded that he tender'd the Money at the Day and Place, and that none were there to receive it; but did not set forth that he tender'd it at the last Hour of the Day. It was held not good; and Judgment for the
Tender.

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the Plaintiff. Cro. J. 423. pl. 4. Paish. 15 Jac. B. R. Furrer and Bond to pay the
v. Proud.

10. Where upon a Demise Rent is covenant to be paid at a Place certain,
and an Action is brought for the Rent, it is no good Plea by the Defen-
dant that he made a Tender of the Rent, unless he plead the Tender to
have been made at the Place where the Rent was agreed to be paid; and
Judgment was given accordingly. Freem. Rep. 143. pl. 169. Paish.
1674. Marhill v. Wifdale.

11. Tender and Reftal is no Plea in Debt on Bond to fave harrnefs

12. Debt by A. againft W. upon Bond, conditioned to pay Money for
B. (who had entered into a Bond to pay the fame) to A. the Obligee at his
House on the 27th of July, if he would deliver up the fecond Bond uncancelled,
and affign the fame to W. the Defendant. W. the Defendant, pleaded that
B. did not pay the Money, whereupon the Defendant went to A.'s House on the
27th of July an Hour before Sun-fet, and there flaid till after Sun-fet, para-
tus to pay the Money, but that A. was not there, nor any other for him ready
to receive it, or to deliver up the Bond. &c. The Plaintiff demur'd

13. Caffe &c. by Husband and Wife for Money lent by the Wife dam fo-
lata; then they allege a special Request by the Wife dam solata, and another
by the Husband after the Marriage. Defendant pleaded in Bar, that he was
always ready to pay &c. and that he tender'd it before the Action brought;
and upon Demurrer to this Plea, the Plaintiff had Judgment, because it
appeared that the Tender was pleaded after two Requests, one by the Feme
dum solata, and the other by the Plaintiff after Marriage. 1 Lutw. 224.
Hill. 2 & 3 Jac. 2. Johnfon & Uxor. v. Mapleton.

14. Where a Tender and Refusal is pleaded either on a single Bill, or
other simple Specially, the Defendant need not conclude in Bar to the Action,
bout only in Discharge of the Damages; for in this Case the Tender is not a
Discharge to the Action, or to the Payment of the Money which is still
due notwithstanding the Tender; for that is only to excufe the Damages;

15. But where Tender and Refusal is pleaded in an Action for a Penalt
y on a Bond, with a Condition to pay a leffer Sum, there the Defendant
can conclude in Bar to the Action; because a Tender of a leffer Sum on the Day
had discharged the Penalty; and therefore it is a good Bar to the Action brought for the Penalty; Per Holt Ch. J. Cardh. 133.
Anon.

16. In Receous &c. the Plaintiff declared, that he had discharged 5 Hogs
doing Damage &c. and would have impounded them, and had already put
one in the Pound &c. The Defendant pleads, That after the Taking,
and before the Receous, he tender'd to the Plaintiff 10s. which was a
sufficient Amends; And upon a Demurrer the Court were all of Opinion,
that the Tender came too late for the Damage done by that Hog which was in
the Pound, and therefore he should have transferred that one Hog was in

17. Indebitatus Affiniamfit &c. for several Sums upon several Promises;
Defendant after an Impartialness alledged, that the several Sums, for which the
Plaintiff had declair'd, amounted to 66 l. and as to 64 l. 7 s. part thereof,
he pleaded Non Affiniamfit; And as to the rest he pleads in Bar, that the fe-
tender im-

The Rep-
porter adds,
Noa afo,
that in both
these Cases
the Pleader
ought to
conclude
with a Profert
his in Caria.
Cardh. 133,

But in Debe
for Rent the
Defendant
pleaded a
Tender.

The Promises set forth by the Plaintiff were but one Contract for an Horse, and that before the Action brought, be tendered the Residue (viz.) 1. l. 13 s. to the Plaintiff, which he refused; and that he was and still is ready to pay the same &c. Upon a Demurrer, it was resolved, that the Plea was ill by Reason of the Imparlance, and also because it is uncertain upon which of the Promises the Money was tender'd. 1 Lutw. 238. Hill. 11 W. 3. Morris v. Coles.


19. Indebitatus Assertum was brought for Goods sold and delivered, Defendant pleaded in Bar, That before the Time of bringing the Action he made Tender of the Money, and that ever since the Tender Paratus fuit to pay the Money. It was inferred, that the Bar was not compleat enough; For he should have pleaded, that he has been Ready to pay the Money, not only ever since his Tender, but from the Time the Goods were delivered viz. from the Time the Money became due. And the Court seemed to think this a material Objection; For it may be the Money was demanded before the Tender, and then there is a good Cause of Action. 10 Mod. 81. Hill. 10 Ann. B. R. Whirlcocke and Squire. Tender and Refusal is no Plea in Assumpsit; but the Defendant must pay the Plaintiff when he will have it. Per Holt. Comb. 554. Trin. 7 Ann. B. R. Broom v. Pine.

20. In an Action of Debt, by an Officer of a Borough, for a Copy of the Poll at an Election of Burgesses for Parliament, the Defendant pleaded, That he was ready to pay what was due for the Copy. And the Court agreed, that the Tender was good; for till the Officer demands something, or delivers a Copy of the Poll, the Party cannot know what to tender. As where there is a Demand for a Copy of a Commitment &c. upon the Statute 31 Car. 2. it is only necessary to say, That he was ready to pay for it. And to a Judgment was affirmed by all the Judges, and afterwards it was affirmed in Parliament. Comyns's Rep. 279. 288. pl. 153. Patch. 4 Geo. 1. Phillips v. Smith.

21. A Motion to set aside Judgment signed after Plea of Tender delivered; The Defendant was by Rule obliged to plead an Influable Plea; a Tender is no Influable Plea within the Meaning of this Rule; therefore the Judgment was held good. Rep. of Pract. in C. B. 134. Mich. 10 Geo. 2. Daverhill v. Barrett.

(R) Pleadings. In what Cases a Refusal must be allowed as well as a Tender.


A. Promis'd to pay B. such a Sum of Money at such a Place, and in Consideration thereof B. promis'd to surrender to A. a Leaf for Years. A. tender'd the Money, and B. did not surrender the Leaf. A. brought Assumpsit against B. and alledged, that he obtilt the Sum; But does not say, that B. refused, and therefore it was held not good. And Coke saith, that Wittenhall's Cafe was
Tender.

was adjudged, that Tender, without alleging a Refusal, is not good.

2. Action upon a Promise, that the Defendant, in Consideration that S. C. cited the Plaintiff would pay him a certain Sum of Money, promised to assign him a Term; and the Plaintiff averred a Tender of the Money, but that the Defendant did not assign. And after Verdict it was moved in Arrest of Judgment, That the Plaintiff did not intend himself to an Action, Lancashire for that he did not offer a Refusal, he had offered a Tender; But it was there adjudged well after Verdict; but also held, that it would be bad on Demurrer. Sid. 13. pl. 3. Mich. 12 Car. 2. B. R. Ball v. Raym. Rep. 687.

S— And in Comyn's Rep. 117. in S. C.

3. An Agreement was made by one to build a House, and for that the other was to pay him so much Money for Building. The Plaintiff averred, That he made a Tender to build the House, but not that the other had refused to suffer him to build it. All the Court were of Opinion, That the Tender, without Averment of a Refusal, was not good; but being after Verdict it was held well. 2 Lev. 23. Mich. 23 Car. 2. B. R. Opy v. Peters.

4. Debt upon Bond to pay 12l. on 15 Aug. and on 15 Feb. by equal Portions. The Defendant pleaded, That on 15 Aug. there was 61. due, and no more; and that he (the Defendant) on the said 15 Aug. at B. obtulit sower the same, and was ever afterwards ready to pay it; and after that, (viz.) on the 1 Dec. &c. did pay it to the Plaintiff, which he did accept, Unde petit judicium &c. Upon Demurrer the whole Court held the Pleading insufficient, because it is not said that the Plaintiff refused; Otherwise if a Place of Payment had been in the Condition, and it had been shewn in Pleading, that the Party who was to receive the Money was not there, and the Acceptance after the Day signified nothing. 2 Vent. 107. Mich. 1 W. & M. in C. B. Buckler v. Millerd.

5. Defendant covenanted with the Plaintiff, that upon two Days Notice, within a Year, to be given at Hudson-Bay House, he would accept of 1000l. Stock in such a Company, and would pay 2000l. at the Transferring thereof. The Declaration avers, That within the Year, viz. such a Day, he left Notice in Writing for K. the Defendant, to come to Hudson-Bay House the 4th of November, which was also within the Year, to accept the Transfer; that the Plaintiff was there on the same Day ready, and did tender a Transfer of the said Stock to the Defendant; but that the moment of the Defendant did not come and accept it, or pay the 2000l. Per Holt Ch. J. He ought to have averred the Tender and Refusal; and in that Case to aver a Tender, without averring a Refusal likewise, would not do. 12 Mod. 529. Trin. 13 W. 3. Lancashire v. Killingworth.—Cites 16 El. 31. 17 Ed. 3. 11.

such a Plea is naught upon Demurrer, but good after a Verdict; And if the Defendant be absented, he must plead that, and also that himself was at the Time and Place, and tender'd.—S C. cited 1 Mod. 206. in the Case of Blackwell v. Nath. —Comyn's Rep. 116. pl. 81. S. C. accordingly; and that in such Cases the later Way of Pleading is, that the Defendant did not come, nor any other for him, tho' this is not of Necessity; for if a Man pleads a Tender and Refusal, it is insufficient to Plead the Refusal, without laying at what Time the Refusal was; for a Refusal by the Party, at any Time or Place, is insufficient. But if a Mean pleads Notice given, by which it appears that the Defendant was not present when the Act ought to have been done, then the Plaintiff must say that he was ready at such a Time, viz. to the last Part of the Time when the Thing was to be done; and that the Defendant, or any for him, did not come. And the Reason of all those Cases is, that when the Plaintiff himself is to do an Act, and that Act is not done, he ought to shew to the Court that he had done every Thing that was in his Power, and cited Hob. 14. 1 Cro. 694. S C. 92. And therefore Judgment was given for the Defendant by the whole Court.—5 Salk. 532. S C.

E e

(S) Bar
Tender.

(S) Bar, in what Actions.

In Replevin the Defendant accused the taking the Cattle Damage-feasitant. The Plaintiff replied, and denounced his Castle enter'd, and was impounded. Coke, 4. 5. It seems that Replevin lies after the Tender. Br. Replevin, pl. 21. cites 12 H. 4. 23.

2. Refusal of a Stranger to the Obligation, is a good Plea in Bar. Br. Tender, pl. 12. cites 15 E. 4. 5.

3. Trespaß of breaking his Close, and spoiling his Grafs, the Defendant said, That the Trespaß did not exceed 10s. and be tender'd him sufficient Amends. And it was held no Plea, but a void Tender. Contrary to the Rule in Acquity for Damage-feasitant, elsewhere. Br. Trespaß, pl. 214. cites Amends 21 H. 7. 30.

and the Plaintiff refused the same, and demanded Judgment &c. And upon a Demurrer, the Opinion of the Court was, That this is no Plea in Trespaß, but in a Replevin it is a good Plea. Sed non dixerunt canum diversitatis. Om. 48. Mich. 52 & 53 Eliz. Kent v. Withall, cites 21 H. 7. 50, 9 H. 7. 22. P. N. B. 69. (G) 51 H. 4. 17.

It was agreed, that in Trespaß the Defendant may plead the Trespaß to be involuntary, and disfranchised in the Title, even when pleading the Statute of 21 Jac. for it is a general Statute. Lit. Rep. 335. Hill. 6 Car. C. B. Jennings v. Cousens.
Tenure.

Trespaß quare Claurusum fregit. The Defendant pleaded according to this statute, That he tender'd Amends before the Action brought, viz. the 2d OH. 7 Car. The Plaintiff replies, That before such Tender he sued a Latabat, Tefe the last Day of Trinity Term before, and upon that procured the Defendant to be arrested, intending to declare in Trespaß. It was thereupon demanded, and refolv'd, That this Tender came too late; for as well as a Tender after an original Writ comes too late, so after an Arrest upon a Latabat; for the Tender by the Statute is intended to be immediately after the Trespaß, and before any Suit commenced; wherefore it was adjudged for the Plaintiff. Cro. C. 264. pl. 11. Trin. 8 Car. B. R. Watts v. Baker.—See (M) pl. 4.

5. Where a Custom was to be excused from Suit of Court by Payment of S1. d. to the Lord, and 1 d. to the Steward by Copyholders living at such Distance, and such Excuse to be for a Year, it was held by all, that Tender and Refusal was as much as Payment. Vent. 167. Mich. 23 Car. 2. B. R. Haae v. Ledgingham.


For more of Tender in General, see Condition, Rent, Stocks, Tont temps Prifit, and other Proper Titles.

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Tenures.

(A) Tenures. Antiquity.

1. In the Esteauage and Roll in the County of Lincoln with Mar the Bradlaw in the Erchequer, upon a Voyage into Scotland, Ann. 1 C. 3. Rot. 17. there is Comes Albermarle tenet Hec well per Barionum de Domino Rege in Capite de Conquestu; And in the same Roll, another holds of such who holds of such Honor, de Conquestu; and others hold of such an one who holds over by a Knights Fee et de Conquestu, and so in divers other Rolls of it. But always it is laid to be held of the King de Conquestu, and not of any other. But it is there many times laid, that such an one holds of the King, and of others also, De * Antiquo Feoflamento; and of others, De novo Feoflamento. Quære what is intended thereby.

Whether these Tenures were introduced here by.

Will. the Conqueror, or were in Use here before his coming, has been a matter much disputed, and many learned Men have been engaged in the Controversy; But it seems that the greater Part of those who were particularly learned in Matters of Antiquity, were of Opinion agreeably to Roll, that the Conquest was their utmost Aera.

* Feodum Antiquum is that which has been in some of the Family of the present Poleclaffe, of whatever Kindred they were of the Father's Side, for more than 4 Descents. Feodum Paterneum, is that which has been held by his Lineal Ancestors to the 4th Degree, as Avus Proinus, Abavus, Atavus. And Feodum Neum, is that which was first given to the Person enjoying it, and which he came not into by Succession to his Father. See Spelm. Gloss. 225. Verba Feodum — Freigius de Feudis, is much in the same Words with Spelman.

Ancient
Tenure.

Ancient Fee is where the Feodary and his Anceffors Time out of Mind, have held fuch a Fpee, and here the Feoditis place a Medium between the: viz, Paternal Fee which comes by four Degrees of Difcent, and they defcribe that to be the ancient, which defcends from more. Cowell Inftitutes. Lib. 2. Tit. 5. s. 9.

Dr. Brad as in his Introdu&ion to old English History 187. cites the following Records thereby to explain the Meaning of the Novum and Vetus Feoffamentum, viz.

Carta Albanr de Hairun.

Domino fuo excellentiimeo Henrico Regi Anglie Albanius de Hairun, veltra excellenter notifico, quod ego, in Hertfordicata fordunum unus Militis de vetrici Feftamento, de vobis principaliter tenebo, & quod de novo feftamento nihil habeo, nec Militem Feoffamentum aliquem habeo. Valete.

Carta Matthei de Gerardi-villa.

Matthes de Gerardi villa tenet in Capite de Domino Rege Feodum unus Militis de vetrici Fefamento & millum habet Militem Pefamentum [Feoffament] nec habet aliquem de novo.

Carta Willelmfii Filii Roberti.

Kariffimo Domino fuo Henrico Regi Anglie, Willelmus Filius Roberti Salutem; Scisis quod de vobis teno fordunum unus Militis Pauperiun, nec alium in eo feodari, quia vie nihili fufficit, & fie tenet per meus. Valet.

And Pag. 188, adds, That, by these Records the meaning of Vetus & Novum Feoffamentum is very apparent, that it was called fo in respect of Time only, and not in respect of the Original Feodaries, or their Sub-Feodaries or Tenants in Capite, and Tenents by mefe Tenure in Military Service. — And Ibid. Pag. 215, cites Jani Anglorum facies Nova pag. 216 &c, where speaking of Vetus & Novum Feoffamentum that Author says, That the old Feoffment was of fuch Fees as were granted from the Crown, and that the new Feoffment was of fuch Fees as were granted by the Tenants in Capite to others by Sub-Infeodations, or fuch as the Tenants in Capite held by mefe Tenure, the Dr. obferves, that the Word Feoffment is derived from the French Word Fiefment, which signifies incoflo, or giving of a Fee, and that from the Word Fief, a Fee; That in the Writings of the Feodatories, we find Vetus Feodum & Novum, and cites Hotton. de Feud. dijpt. e. Coll. 310. B. that an old Fee is that which was given by the Profeffor of the preffent Lord, or which was granted to the Profeffor of the Vaflal; for always an old Fee is so called, in respect it hath defended or gone in Succifion; But a new Fee is that which is given by the preffent Lord to the preffent Vaflal; And again in Lib. 2. Feud. Tit. 5. Sec. That is called a new Fee which was given to the preffent Feofatory; And that is called an old one, which was given by his Parents or Anceffors.


(B) What Things may be held.

In Quare, 1: 

A N Advoifon in Grofs lies in Tenure. 42. E. 3. 7. 1 D. 4. 1 b. 21 E. 3. 5 b. admitted. 25 E. 3. 54. admitted. Contra

33 D. 0. 35.

In Quare, 1. 

Impedit, the Plaintiff intitled himself that the Plaintiff was held of him by Homage and Fealty, and was appropriated in Mortmain, and it is not controverted, but that the Advoifon well lies in Tenure, and it was brought by a common Person against an Abbet. Br. Tenures, pl. 15. cites 21 E. 3. 5. — And such a Case the same Year fol. 29. by the Earl of H. against the Dean and Chapter of H. and was of an Advoifon in Grofs, and counted that it was held of him, and that it was aliened in Mortmain, and he presented as Lord immediate within the Year, not. And tit quare Impedit 75. It is admitted, that Advoifon in Grofs of a Praefolyry, may well be held in Capite, and thereby the King shall have the Prerogative of all his other Lands held of others: And in another Quare Impedit after the King counted that the Advoifon in Grofs was held of him, and made Title by Delient to 4 Daughters, and that the youngff was in his Ward, and admitted for good; Quod not. Br. Tenures, pl. 15. cites 21 E. 3. 5.

The King counted of Advoifon in Grofs held of him, and that the Tenant died without Heir, by which he preferred, and well quod not of Advoifon in Grofs in Tenure. Br. Tenures, pl. 10. cites 24 E. 3. — Br. Quare Impedit, pl. 19. cites 24 E. 3. 6. 5. C.

In Quare Impedit, the Plaintiff counted that J. N. held of him certain Lands and Advoifon in Chi
valry, and intitled himself to the Preference by Ward of the Heir &c. and the other made Bar. And
Tenure.

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It is said that an Advowson lies in Tenure. Br. Tenures, pl. 18, cites 24 E. 3. — And in a Quare Impedit 14 H. 3. 6 & 15 H. 7, 8. It is agreed that the Advowson lies in Tenure, but Ad-

vowson which was appertinent to a Manor, and is said to be the land of a freehold, and that a com-

mon Person may give it to hold of him; but Quare inde, and where he shall drain; for if he can have no Means to come to the Tenure, then it seems that the Advowson in Grøs cannot lie in Tenure, for Certain & Precise good redditt, does not lie. Br. Tenures, pl. 18. — See pl. 7. 

Advowson may lie in Tenure, as where Manor and Advowson are held, and the Advowson is made in Grøs, the Advowson is held Pro particula, per Lincolton and others for the Bell Opinion. And per Divers and Hened (Hentong) Citizen lies of Advowson, and in Witc. Write of Right of Advowson the

Simons shall be at the Church or at the Doors thereof. And Grand Cape lies in it, and the Lord may drain in the Glebe, scil. the Hefts of the Patron, but not the Hefts of the Incumbent or Parson. Br. Tenures, pl. 4. cites 33 H. 6. 54.

Witc. Write of Right of Advowson shall appert to that he holds the Advowson. Br. Tenures, pl. 18. (bis) cites 14 H. 7. 25 & 15 H. 7. 3. — See Pl. C. 498. b. 499. a. in the Case of Grendon v. The Bp. of Lin-

coln.

2. Land held since Time of Memory becomes a Priory; This shall not destroy the Tenure. 42 E. 3. 7.

3. Land which has been a Priory Time out of Mind may be held. 42 C. 3. 7.

4. Infeudary does not lie in Tenure; for the Soil may be to one and the Pitchfork to another, then the Lord cannot drain. Br. Tenures, pl. 75. cites 12 E. 3. Fitzc. Scire Pachias 100.

5. It was agreed that Remainder is held, and by Escheat thereof, the Seigniory is extinct, and the Lord may have Action of Waft, as he in Remainder might have had in his Life. Br. Tenures, pl. 107. cites 3 H. 6. 1.

6. Allot of certain Wax and Cotton to make a Tapar to burn in the Church of Laven in the County of Ely, and the Abbot of Stratford brought thereof Allen for the not rendering thereof, and it was held Rent Service and a good Tenure; And yet he should not have thereof any Profit nor Avail, and because he should have Diffrets in the Land of the Defendant, therefore Tenure. Br. Tenures, pl. 50. cites 35. H. 6. 7.

7. In Quare Impedit, it was said, that Mefindity lies in Tenure by a Do. See pl. 1. 

Melline, Contra of an * Advowson; For this is appendunt to the Land of a Manor to which &c. but not Parcel. So of Common, and Villain Regard-

dants, Welts, Waifs, Streys &c. for those do not lie in Tenure without the King; For he * may drain in other Land; contra of a com-

mon Person; Quod nona, by the Opinion of the Court. But Advowson lies in Tenure, per Vatflor and Davers, contra Townflend and Brian. Br. Tenures, pl. 34. cites 5 H. 7. 36.

[B 2.] Of what Thing to another.

See (K)

[1.] If a Meine gives the Menalty in Tail, the Law will create

a Tenure between the Dower and Daniel. 1 D. 4. 3 b.


[3.] 6. As a Man [held of 3 Mannors] might before the Sta-

ture [make Feoffment to another in Sec.] and to now [since the

Stature, make Feofment in Tail, he] may give Parcel of one

Manor and Parcel of another Manor to hold by certain Servites,

[as one Tenancy,] and the Services shall be regardant to both [all]

the Mannors. 17 E. 3. 13.

4. Where a Man holds of another of his Manor by Suit to his Mill, and

the Lord grants the Mill and Suit, yet the Heir of the Lord shall have the

Suit, if he makes a new Mill; for the Tenure is to the Manor of the

Grantor.

See (G) pl. 1.

[2. S. C.

Tayle (A) pl. 1. S. C.

What is taken in 

within the 

Crotches 

out of the 

Year Book 

to make the 

Mening more 

clear.

Br. Tenures, pl. 58. cites 16 E. 2 &

Fitzc. Allis 399.
Tenure.

Grantor or to his Person and not to the Mill, which Suit remains with the other Services. Per Herle. Quere. Br. Adilse, pl. 453. cites 31 E. 1. & 19 E. 2.

(C) What Services may be reserved. Against the Law.

1. A Man may hold by Marcher [agreement] that when his Daughter or Sister commits Fornication, or he spouseth without leave of the Lord, that he shall pay 5s. 3d. to the Lord; for he may bind him to it by his own Agreement. 15 E. 3. sid. 33. admitted.

2. A Man, before the Statute, by Feevollency, and at this Day, by Gift in Tail, may reserve Tenure to make a Beacons or to make a Bridge at B. or to keep the Castle of the King adjoining to the Sea, and this is good, inasmuch as he has Advantage thereof, because it is for the Commonwealth, and so he had Advantage; Contra if he gives Land to one to give Rent to a Stranger, or * to ride along with a Stranger; For there is no Commonweal. But Gift of Land to find a Chaplain to chant in a certain Place is good Tenure; because he has Benefit by Reason of Orizons. 11 H. 7. 12. b. pl. 3. per Fineux.

3. A Reservation of Things which lie only in Prender or Usage, cannot make a Tenure; and therefore if a Man feiteth of Land and Wood, before the Statute of Quia emptores terrarum, does thereof entitle a Stranger, and after the said Statute gives the same Land and Wood in Tail, or leases the same for Life unto a Stranger, reserving unto the Feovlor, Donor, or Leiflor Common for 2 Beasts in the same Land, and to fuller the Feovlor, Donor, or Leiflor to take yearly in the same Week, 3 Loads of Flower for Vessel; This Reservation is void to make any Tenure, and this cannot be a Reservation, because the Feovlor, Donor, or Leiflor cannot take Profit thereof but only by his own Act, and a Man cannot do Service unto himself; And therefore such Reservation is void, it it be not by Deed indented, and then he shall take the same by way of Grant of the Feovlor, Donee, or Leiflor. Perk. S. 702.

(D) In what Cases it may be created by express Words. Of what Thing by the King.

S. P. And the King may distrain in all other Lands of the Party for such Things as he reserves upon the Tenure of the Rent. Contras a Common Person. Brooke says, And so fee the King may reserve Tenure upon a Rent which does not lie in Tenure. But it was said that if a common Person gives his Seignory to hold of him, this is good; but the Land of Tenant shall not be charged with Dintre's, unless the Beasts of the Grantee [Grantor] come there, by the best Opinion. Br. Tenures, pl. 7. cites 44 E. 5. 55.

* S. P. And by Alienation thereof without Licence, the King may feite. Br. Tenures, pl. 93. cites 5 E. 3. Fithe. Avowry 389.

† Br. Tenures, pl. 98. cites S. C.

1. THE King may grant his Fee Farm of a Vill, and reserve a Tenure. 44 E. 3. 45. 1 H. 4. 3. b. 44 Ann. 22. by all the Justices.

2. The King may grant a Rent to be held of him, and this shall be a good Tenure. † 1o H. 6. 12.

† And
Tenure.

3. And the King may grant this Seigniory over, and the Rent shall be held of the Grantee. to D. 6. 12.

4. The King may grant a Seigniory over to hold by certain Services of him.

5. Where the King gives Land, and reserves some Tenure in special, the Tenure shall be such as it is referred to, be it Socage or otherwise. And if he grants Land, and reserves nothing, nor speaks of any Thing, in this Case the Grantee shall hold in Chivalry for the Non-certainty; quod non negatur. Br. Tenures, pl. 3. (bis) cites 33 H. 6. 7.

6. Archbishops of C. was feiled of the Manor and Borough of S. in Right of his Bishoprick, and the Prior of M. was feiled of a Houfe held of the said Archbishops, as of his said Manor &c. Afterwards in 30 H. 8. the Archbishops gave the said Manor and Borough, with Confirmation of the Dean and Chapter, to the King. Then the said Prior surrendered, and to the King was feiled of the Manor and Borough, and likewise of the said Houfe. The King by Letters Patents gave the Houfe and other Lands to J. S. and T. S. in Fee, Tenet in liber Burgagio per Fidelitatem tantam & non in Capite, pro omnibus Servicis & Demandis. Afterwards E. 6. gave the Manor and Borough to the Mayor and Commonalty of London. J. S. and T. S. convey the Houfe to W. in Fee, died without Heir. The Question was, what Tenure was reserved by the Words and Grant by H. 8. to J. S. and T. S. It was said, it could not be a Tenure in Burgage, because no Rent is referred to, according to Lit. S. 162, 163, 164. And Anderson Ch. J. at the first strongly insisted upon it. Another Matter was, that one Tenure only is referred to for all the Lands and Tenements; so that, should the Tenure referred to be adjudged to be Burgage, then Lands at the Common Law out of Boroughs should be held in Burgage; besides, a Tenure in Burgage cannot be created without these Words, Ut de Burgaggio; and to that Purpose Shute J. agreed. 4 Le. 207. pl. 333. Mich. 32 Eliz. B. R. Waite v. Cooper.

(E) Tenure created by express Words. Of what Thing.

By common Person.

1. A Seigniory may be granted at the Common Law by a common Person reserving a Tenure for the Possibility of Distresses by the Echeate of the Tenancy. 44 H. 22. Nuttall.

2. [So] if Manalty be given in Tail, a Tenure may be referred to it for the Possibility of the Distresses by the Echeate of the Tenancy. 1 D. 4. 1. 105. says.

3. So if a Man holds a Manor by certain Services, those Services may be granted (it seems it is intended in Tail) to hold by certain Services. Dublillatur. 14 H. 6. 24.

4. A common Person cannot grant a Rent to be held of him. 10 Br. Tenures, pl. 6. 12.

See Vet. N. B. among the Additions of Echeate, That Rent lies in Tenure, and Ut de Echiate lies therein, supposing that it is held &c. and yet the Land is held in Fact; quod non nota; therefore Quere of this Book. And in the Additions of Ecclesiacee Cathedra, there it is said that Writ of Ecclesiacee Cathedra lies of Rent 12 E. 2. But Pam and Trew hold, that Rent does not lie in Tenure; and if is the Law, unless of the King, as it seems. —And Br. Intrusion, pl. 8. cites 11 H. 4. 82, and says, That Rent does not lie in Tenure; Per Norton Arg. But 125 Hank. If there be Lord, Meine, and Tenant, and the Meine dies, and a Stranger gets the Rent, the Lord shall have Writ of Ward, supposing the Rent to be held of him; and if the Master dies without Bore, he shall have Writ of Echiate, supposing the Rent to be held of him. But in this Case he shall have such Writ, but in the Grant to hold the Land is lided by the Rent; and in vour Case if he demands the Ward, he shall say Tenant to hold tenant &c. without fixing any Thing of the Rent; and by him this Default in the Count shall arise, the solemn Grant and the whole Ut ser, because it comes by his own Shewing; and cites Mich. 19 E. 3. Fitz. The Card
5. If a Man be seised of a Manor in Fee, in which Manor there is a Mill for the Grinding of Wheat and other Grain, and before the Statute of Quia emptores Terrarum he does incool' certain Tenants of the Manor of Parcel of the Manor, doing Suit at his Mill; this is a good Tenure by the Word (Doing). Perk. S. 638. cites 9 All. 24. & M. 9 E. 3. 35.


7. And a Man may hold of the King, or of a common Person, as of his Person; and so is 2 H. 4. 3. Quod nota bene; for it is good Law. Br. Tenures, pl. 47. cites 8 H. 4. 1. Per Gafcoigne.

8. If a Man had given Land to an Abbot or Prior in Fee before the Statute of Quia emptores Terrarum, to find a Lamp &c. this is a Tenure, as appears in a Collect. Br. Tenures, pl. 62. cites 45 E. 3. 15.

9. Avowry made for Tenure of 10 Acres of Land for Suit to the Let of the Defendant. And per Fineux Ch. J. A Man may hold by Suit to the Leer, and to be Coyer at the Let, or to be Collector of Assumptions of the Let, or to repair a Bridge, High Way, or the like, or to keep a Beacon for Fear of Enemies, or the like. Br. Tenures, pl. 35. cites 12 H. 7. 18.

10. The King may licence the Tenant to give in Tail to hold of himself; and so, to make Feoffment to hold of himself and the King; and other Lords may licence the Tenant Paravail to make Feoffment in Fee to hold of himself, and this notwithstanding the Statute of Quia emptores Terrarum. For this was made in Advantage of them, and therefore they may dispence with it. Per Fitzherbert J. Br. Tenures, pl. 2. cites 27 H. 3. 26.

*These Words seem not to belong to this Discussion.*

**Of whom [a Man] shall hold by Creation of the King, [or others.] At Common Law.**

Before Quia Emptores Terrarum, if the Tenant had made Feoffment in Fee, the Feoffee should hold of his Feoffor and not of the Lord Paramount. 4 H. 6. 20. *3 All. 8. Consort 33 E. 3. Authority, 52.

24. cites S. C accordingly, that in the Grant no Mention was made of whom he should hold.——Br. Tenures, pl. 21. cites 4 H. 6. 27. S. P. per Cottamere. But if he had held Tenendum de Capitolio Dominio, he should hold of the Chief Lord. If he had made the Feoffment generally without Reservation of any Tenure, the Feoffee should have holden of the Feoffor, as he held over; For Example, if he had holden by Knights Service, the Feoffee, by Creation of Law, had holden by Knights service of the Feoffor, in Respect of the Tenure over by him; And therefore, if the Lord had confirmed the Estate of the Feoffor, viz. the Nefe to hold by Fealty only (which was Socage) the Tenure between the Tenant and the Feoffor should be Socage also; because the Tenure created by Law follows the Tenure, in respect whereof it was created. 2 Inst. 501.


3. So if Tenant in Tail lease for Life, which is a Discontinuance, by which he has a Reversion in Fee, he shall hold of the Lord Paramount. 4 H. 6. 21. Ditto.
Tenure.

4. If since [the Statute De] Donis, the Tenant gives in Tail the
Dovee shall hold of the Donor, and not of the Lord Paramount. 4 H. 6. 20, 21. b. adjudged. 3 Alt. 8 Dub. (bis.)

5. So if the Tenant of the King gives in Tail, the Dovee shall hold Where
of the Donor, and not of the King. 4 H. 6. 22. b. adjudged.

6. If before Quia Emptores a Man had alien'd in Fee by Deed, re-
serving a Rent, this should create a Tenure without doubt. Contra
33 E. 3. Annuity, 52.

7. [So] If before Quia Emptores Terrarum a Man had alien'd in Fee reserving a Tenure to his Heirs, this had been a void Determina-
tion, and by Creation of the Law he shall hold of him as he holds over. Co. Litt. 99. b.

8. In Allie [it was said] for Clear Law, that where City, Borough, or
Vill is leased to the Mayor, Burgesses &c. in Fee Farm, those who hold Burgesses or Land therein hold them immediately of the Mayor, Burgesses and Corporation, and not of the King immediately. Br. Tenures, pl. 57. cites 49 E. 3.

9. It is a Law ordain'd, that if a Man aliens in Mortmain, and the
King feses and grants it over; This shall be hold of the Chief Lords. Br.
Tenure, pl. 3. (bis.) cites 33 H. 6. 7.

10. When a Man made Feoffment of Parcel of his Manor before the Statu-
tate to hold of him, this was intended to hold of the Manor, and not of his Person in Gros; Quod nota. Br. Avowry, pl. 66. cites 22 H. 6. 50.

11. If before the Statute of Quia Emptores Terrarum, there had been Father and 2 Daughters, and the Father, being seized of one Acre of Land, enfeoff thereof his eldest Daughter to hold of him and his Heirs by Fealty and
12 d. and the Father dies, and the Seignory descends unto the two Daugh-
ters; Now the eldest Daughter shall hold of her younger Sister by Fealty and 6 d. Perk. S. 656.

12. If a Man seized of Land in Fee in Right of his Wife, and before the
Statute of Quia Emptores Terrarum, the Husband alone enfeoff a Stran-
ger, without paying more, the Feoffee shall hold of the Husband by such Services, as the Husband and his Wife held over; For the Husband alone did not hold over. But if the Husband and Wife had joined in the Feoffment, to hold of the Husband, these Words (to hold of the Husband) without are void. And the Feoffee shall hold of the Husband and Wife by such Services as they held over; So that if the Husband dies, and the Wife paying, the alter his Death accepts of the Services from the Feoffee, the shall not avoid the Feoffment in a Cui in Vita. Perk. S. 660. And if the Husband, and Wife had joined in the Feoffment, to hold of the Wife without are void. And the Feoffee shall hold of the Husband and Wife by such Services as they held over; So that if the Husband dies, and the Wife paying, the alter his Death accepts of the Services from the Feoffee, the shall not avoid the Feoffment in a Cui in Vita.

G g g

(G) What
(G) What Tenure the Lasc will create without express Reservations.

And so 1. Feoff before Quia Emptores should hold by the same Services as Feoffor held over. 45 C. 3. 15 b. 3 D. 6. 11. Co. Litt. 99. b.

But if the Feoffor himself holds over by Knights Service during his Life and no longer, and that after his Death his Heirs shall hold by Fealty only, or by other Services, now the Feoffor and his Heirs shall hold of the Feoffor and his Heirs by like Services, Mutatis Mutandis. Perk. S. 698.

If before the statute of Quia Emptores Territorum, there were 2 Jointtenants of Lands or Houtes in Fee, which they held by Fealty, and 2d. Rent, or by Fealty and a Horse, and they enfeft a Stranger of the Lands or Hourses to hold of one of them by Fealty and 12 d. The Feoffor should hold the Molyty of him by Fealty and 12 d. because by the Footment he did depart but with a Molyty in right, and yet he shall have the whole Rent which is Reversed, notwithstanding that it be a fevralable Rent, because it is referenced only to him, and he may well referre the same unto him alone, notwithstanding that he joined in Footment with his Company &c. And the Feoffor should hold the other Molyty of the other Jointenant (to whom the Reservation was not made) by Fealty, and 12 d. Rent, and he and his Company shall hold together the whole Land over by 25. because then the Rent is favorable, and if they themselves hold the same Land over by a Horse, then it is, that the Feoffor shall hold the same Molyty of him by Fealty and a Horse. Tamen Quære, because he was Party unto the Reservation made unto his Company &c. But if the Jointenant had enfefted a Stranger to hold both of them, or of one of them, and enfefted as Services, they are void Words, and the Feoffor shall hold of them as they held over. Perk. S. 652.

For the Tenant shall not do the Service to the Chief Lord as for himself, but for the Conunor (of the Fine by which the Grant was made) who is his Meine, and so he holds of the Meine immediately by those Services; and therefore the Iulie taken was, whether the Meine held over of the Lord Paramount in Chivalry, or in SOace, and not whether the Tenant [Plaintiff] held of the Defendant his Meine, in Chivalry or in Socage: Quod non. And per Perley, By this Tenure, viz. Faciendo Servitio debita Capitali Domino &c. he shall pay the Rent &c. to him for the Meine, but shall not do Homage, Fealty &c. which are Services Corporal; for those shall be done by the Meine himself. Not the Diversify. Br. Tenure. pl. 10. cites 49 E. 5. 10.

Perk. S. 655. S. P. of a Fine by Grant and Rendier, and says, That in this Case the Conunorc holds of the Conunor by Knight Service, notwithstanding that he expressly says that he shall do the Services Capitallis; for by those Words in this Case he shall not hold De Capitali Domino, because there is a Tenure before express'd in the Fine, viz. by these Words, Reddemendum inde ad Pettum &c. which Words make a Tenure of the Conunor; so that if he shall hold De Capitali Domino, then he shall hold the Land of two several Lords, which the Law will not suffer in this Case. But if these Words were not in the Note of the Fine, viz. Reddemendum inde ad Pettum, viz. annuitatem &c. pro omnibus servitibus secularis & demandis, then by the other Words the Conunorcought to hold of the Lord Paramount by the like Services as the Conunor held &c.

Co.Litt.143. 4. If a Tenant gives in Tail, Donee shall hold by the same Services as Donor holds over. 4 D. 4. 4 D. 6. 20. adjourned; for Donee has the Ward of the Dounce. Co. Litt. 23.

S. P. that Donee shall hold by the same Services as Donor does to his next Lord Paramount, except the Donees in Frankmarriage, who shall hold quietly from all Manner of Services, unde from Fealty, till the 4th Degree past, and then the Iulie of the hold of the Donor, or his Heirs, as they hold over. And Coke in his Comment, pag 25. says, the Reason is, that when by Construction of the Statute of W. 2. there was a Reversion lattred in the Donor, to a Tenent of the Donee's having an Estaint of Inheritance, the Jointenant that he should hold of his Donor, as his Donor held over; as if the Tenant had made a Footment in Fee at the Common Law, the Feoffor should have holden of the Footor as he held over; and before the Statute of W. 2. the Donee had holden of the Donor of his Perfon, and now of him.
Tenure.

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As of his Reversion; But if a Man makes a Leaf for Life, or Years, and reserves nothing, he shall have Fealty only, and no Rent, tho' the Leaf holds over by Rent &c. And this that Littleton says is generally true, if the Donor makes no special Reversion; for then the special Reversion excludes the Tenure which the Law would create.

* Co. Litt. 143, a. S. P.

If he gives the Tenancy in Tail Tenendum de Capitalibus Dominis, this Tenendum is void, because that the Law has made a Tenure between the Donor and the Donee &c. And then if the Tenendum should be good, he should hold the same Land of 2 Lords, which the Law will not suffer; if not, that it be by Matter of Conclusion &c. Perk. S. 657.—2 Inl. 505. S. P.

5. So if a Mefne gives the Mefnality in Tail, the donee shall hold of Lord, Mefne, and Tenant him by the same Services as he holds over. 1 H. 4. 3. b.

Mefne acknowledged by Fine Sur Render to hold in Tail by 1 d. and rendering to the Lord the Services due. And by some, the Tenant shall hold of the Cononor, and shall not render these Services, but only for the Cononor, and not for himself; Quære. Br. Tenures, pl. 51. cites 21 E. 3. 49.

6. [But] if Tenant by Grand Serjeanty of the King gives in Tail, the donee, tho' he cannot hold by Grand Serjeanty, yet he shall hold by Knight Service, because it was included in Grand Serjeanty. Co. Litt. 23.

The Reason why Donee shall not hold by Grand Serjeanty be- cause no Man can hold by Grand Serjeanty but of the King only; and therefore since Grand Serjeanty includes Knight Service, he shall in this Case hold of the Donor by Knight Service. Co. Litt. 23 a.

7. If there be Lord, Mefne, and Tenant by Knight Service, and the Lord releases to the Mefne to hold in Socage, the Law will alter the Tenure of the Tenant; for he shall also hold in Socage [only.] 49 C. 3. 10. b.

omnino concedit. So if the Mefne releases to the Tenant, the Tenant shall hold per cadem Servitio & Conuictudines, as the Mefne did. 2 Inl. 502.

8. If there be Lord, Mefne, and Tenant by several Services, and the Tenant gives in Tail, and after the Donor dies without Issue, by which his Reversion echeats to the Mefne; in this Case the Donee shall and the Tenant holds as the Mefne holds over, and not as the Donor held, because the Mefnality is now extinct. Co. Litt. 23.

As if the Tenant gives in Tail, without referring any Thing; so that he [the Donee] holds by 4 d. in respect of the Tenure over, and after the Reversion echeats, now Donee shall hold by 12 d. and the Mefne by 12 d. and the Tenant gives in Tail, without referring any Thing; so that he [the Donee] holds by 4 d. in respect of the Tenure over, and after the Reversion echeats, now Donee shall hold by 12 d. For the Mefnality, which was 4 d. is extinct, and the Law refers the Tenure upon the Gift in Tail, in respect of the Mefnality; and when the Mefnality is extinct, the former Rent between the Donor and Donee is extinct also; and then by the same Reason that the Donee shall take Advantage, if the Donor by Release or Confirmation had held by Jerker Service, by the same Reason he shall be prejudiced when he holds by greater Services. Co. Litt. 23 a.

9. If a Baron feigned in Fee in Right of his Feme, Tenant by Knight Co. Litt. 22. Service, gives it in Tail, it seems that the Donee shall hold this of him by Knight Service; for till the Feme, or her heir, purges the Dis- continnuance, the Baron and his Heirs shall hold it of the Lord Para- mount by Knight Service: Contra Co. Litt. 23.

But his Wife held the Land, and the Baron had nothing but in her Right; and in that Case the Baron had gain'd a Reversion by Wrong; and therefore such a Donee shall do Fealty only. If Husband feigned of Land in Right of his Wife, makes a Feodament in Fee, the Feodoclere shall hold as the Wife held; for the Husband had nothing but in her Right. 2 Inl. 502.

10. If Tenant by Knight Service makes Gift in Tail, reserving Fealty and Rent, the Donee shall hold in Socage by Fealty and Rent. Co. Litt. 23.

11. It seems, that if a Man gives Land pro Homaggio & Servititis to J. N. making 6 d. that he shall render 6 d. and Fealty, but not Hommage; for this
Tenure.

this does not come in Redendo. Br. Tenures, pl. 78. cites 28 E. 3. Fitzh. Avowry 141. Brooke says, Quod quere; for it is not so said there.

12. If 2 Jointenants were of Land, and before the Statute of Quia emptores Terrarum one of them insoffs a Stranger of what thereof belongs unto him, without referring any Thing, the Feoffor shall hold of his Feoffor, by the Moiety of the Services by which the Feoffor and his Joint Companion held over, if they held over by several Services &c. And notwithstanding this Feoffment the Feoffor, and he, who was his Joint Companion, shall hold the same Land over of their Lord as they held before, fo as the Avowry of the Lord is not altered by this Feoffment. Perk. S. 653.

(H) What Tenure the Law will create upon Extinguishment of the Tenure.

1. If a Mefnalty comes by Efcheat to the Lord, the Seigniory is extinct, and yet the Lord shall hold by the same Services as he held before. Co. Litt. 99. b. 2. If there are Lord, three Daughters mesnes, and Tenant, and two of the Daughters release to the Tenant, or purchase of the Tenant, there they two hold two Parts of the Lord paramount by Extinguishment of the Mefnalty, and the third Part of the other Sifer; fo that the Lord shall make several Avowries, and shall have several Actions; and in the Case of the Releafe the Tenant shall hold two Parts of the Lord Paramount, and the third Part of the Sifer who did not releafe. Br. Tenures, pl. 23. cites 36 H. 6. 7.

3. Lord, Mefne and Tenant by Frankalmoigne; the Mefne dies without Heir; the Tenant shall hold of the Lord by such Services as the Mefne held of the Lord; because the Lord cannot have the same Services of the Tenant as the Mefne had; for Service of Frankalmoigne remains always in the Blood of the Donor, and no other can have them besides the Donor and his Heirs &c. But if the Lord can have the Services which the Mefne had before of the Tenant, then he shall not have the same Services as he had of the Mefne before. 7 E. 4. 12. a. Per Needham.

4. As it there are Lord Mefne and Tenant, and the Tenant is an Abbot in Jure Ecclesie, and holds of the Mefne by 12d. and Fealty, and the Mefne holds over of the Lord by 20 s. &c. in this Case if the Mefne dies without Heir, the Tenant shall hold of the Lord by 12d. only, because the Lord is nearer to the Land than he was before; and so may have the same Services as the Mefne had &c. 7 E. 4. 12. a. Per Needham.

then the Tenure in Frankalmoigne is turn'd to a Tenure in Sobage by Fealty, and that this new Tenure created by Law shall, upon the Efcheat, draw the Seigniory; for always the Seigniory, nearer to the Land, draws the Seigniory, which is more remote of; and yet the Lord in this Case, to whom the Mefnality is efcheated, shall hold by the same Services that he held before the Efcheat.

(1) Of
Tenure.

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(1) Of whom he shall hold. By express Reservation.

I. If at Common Law the Tenant made Feoffment Tenendum de Capitalibus Dominis, he should not hold of the Feoffee, but of the Lord Paramount. * 4 D. 6. 20.

2. If Tenant, since Donis Conditionalibus, gives in Tail Tenendum de Capitalibus Dominis, yet he shall not hold of the Lord Paramount, but of the Donor; for he is but Tenant, and so a Tenure, incident thereto, and therefore shall not hold of both. * Fol. * 4. 572.

R. C. was seised of two mansons in fee, and held them of the King in Chivalry in Captive, and had life A. and B. and leased thy Manor to C. for Term of his own Life, and the remainder to B. his younger Son, in Tail Tenendum de Capitalibus Dominis; the remainder to his right Heirs of the Donor. And the Donor died; and the remainder descended to A. the eldest Son, and B. the youngest Son, entered as in his Remainder; and the King was always seised of the Services by the Hands of A. and not by the Hands of B. And afterwards B. died, H. his Son surviving five years; and it was found by the Office, that D. was seised in fee, and held of the King in Chief, and died seised his Heirs within age. And came A. the eldest Son, and traversed the Office for this Matter. And it was demurred for the King; and after great Argument it was awarded, That the hands of the King should be accorded, and that A. should be referred to the Ward; for it was agreed, that this Remainder is the right Heirs of B. the Donor, it is only a Reversion; for the Fee was never out of him. And where the King has a very Tenure in Fee-Simple, so long as the Fee is not out of him, so long he reftu Tenants of the King: and he shall have the Ejecut of him, if he be attainted of felony; and also the King cannot have two several Tenures of one and the same Lord, Simul Seemel, that is to say, one of the Donor and another of the Donor; and therefore if the Donor shall be immediately Tenant to the Rest, then the Donor shall hold of none; which is not, but the Donor shall hold of the Donor, and the King of the King, at once Donor. And per Hare and June: At the first it was in the Election of the King to have elected the Donor or the Donor for his Tenant; but where by the Acceptance of the King of the Services by the Hands of the Heir of the Donor, he shall hold of him. But the Judgment was as above; therefore Brooke says, it seems to him that this Opinion is not Law. Br. Tenures, pl. 21. cit. 4 H. 6. 20.

Where there is L. and Tenancy by Chivalry, or otherwise, and the Tenant intently N. who gives to the Son of the Tenant in Tail Tenendum de a Capitalibus Dominis, and the Donor dies, the Heir shall hold of his Donor, and he over of the Lord; but the Life in Tail, or the Tenant in Tail, shall not hold of the Lord immediately; quod non, per Danby Ch. J. for clear Law, and 44 H. 6. But Littleton makes a Doubt, because no Notice was given to the Lord of the Feoffment. Br. Tenures, pl. 37. cit. E. 4. 6.

3. So if the Tenant of the King gives in Tail Tenendum de Capitalibus Dominis, he shall hold of the Donor, and not of the Lords for the land holders are both. * 4 D. 6. 41. b. Champaigner's Case adjudged.

should be 4 H. 6. 20. b —— Br. Tenures, pl. 21. cit. S.C. accordingly, that the Words, if referred to the Donor, are void; but where Gift is made in Tail, the Remainder over in Fee, there the Tenant in Tail shall hold of the chief Lord. Note the Diversity. Per Cheynell and Martin, Justices.

If the Tenant of the King gives in Tail, and the Tenant in Tail dies seised, the King shall not have anything thereof; for the Tenant in Tail holds of his Donor, and the King may receive the Rent and Services of the Donor by the Hands of the Tenant in Tail, and yet he holds of the Donor. Per Wood, Coke, and Trollope, J. quod affirmat per annos. Br. Tenures, pl. 96. cit. 41. 7, 18.

4. At the Common Law, before the Statute of Quia Emptores See Reserveation, (C) pl. Territorium, if a Man had granted Land to hold of his Heirs, it would be a void Reservation to his Heirs, and the Law would create a Tenure of himself, as he held over. Ca. Litt. 99. b.

5. If Lands held of a common Perkon come to the King by Election. * Br. by Attraction of the Tenant of Trouen, and the King grants those Lands to another by these Words, Tenendum de Capitalibus Dominus per S. C. cited Servita Debita & Confecta, they shall be held of the chief Lords as they were before, and not of the King. * 33 D. 6. 7. by Prior. Ca. * Soonly on, per Cert. 6. Ref. 4. 6. 19.

Molyneux's Case, and says that with this accords 8 E. 2. 253. And so to the Case of 27 H. 8. (which is H. 8.
Tenure.

at Br. Parliament, pl. 77. and is in at Tit. Statutes (E. S.) pl. 2. and at pl. 9. below] it was answer'd and resolved. That that Cafe was not like to this Cafe, for a Saving cannot have that which is not in Esse; But in the said book (of 27. H. 8.) it is further said, viz. this (Here are not Words of Gift or Reviving.) But this here in the Cafe at Bar, (viz. Molynes's Cafe) the Grant of the King amounts in Judgment of Law to a Reviving of the ancient Seigniory. Hill. 42. Bizz. in Scaccario. — S. C. of Molynes cited S Rep. 77. a. and affirmed for good Law.

This Cafe was affirmed for clear Law. 9 Rep. 151. 1. Trin. 9. to the Court of wards in Bawley's Cafe, which for, Infra, pl. 20.

6. If the King Lord, B. Mefne, and C. Tenant, are of a Manor, and the Tenant is attainted of Trefason, and Office is found thereof, and after the King grants the Manor to J. S. in Fee Tenendum de nobis Hereditas &c Successoribus notiris, & aliis Capitalibus Dominis foedi Illius per Servitia inde debita & de jure confusa; this shall revive the Tenure of the Mefne, and of the King as Lord Paramount. Co. Molynes, 5. b. 6. Resolved.

7. But in the said Cafe, if the King grants the Land to J. S. Tenendum de Nobis, this shall not revive the Tenure of the Mefne, but he shall hold of the King only. Co. Molynes, 6.

8. If the King purchases Land held of other Lords, all the Seigniories by this are extinct; and if the King afterwards grants the Land to another to hold of him, he shall hold only of the King. 47 E. 3. 21 b.

9. If the King has Land by Forfeiture of Trefason, by this all Tenures are extinct as well of the King as of others; and if this Land be after given to another by Parliament, saving to all others their Rights, Rents, Services, &c. there the Seigniories of common Persons are not revived. 27 H. 8. Broad. Parliament. 74. [Br. N. C.] 27 H. 8. S. 92. Davies Proxies 4. because the saving cannot have that which is not in Esse.

See Supra, pl. 5. 6. in the Notes. — If the King has a Tenancy by Forfeiture or Purchase, if he does by Covn aliens to hold of himself, the Lord may be by Petition, and have a Seire Faccia against the Petitioner to repeal the Patent, and to seize the Land, and then it shall be granted Tenendum de Capitalibus Dominio. F. N. B. 159. (A) in the new Notes there (c) cites 28. 46. E. 5. 91. Petition 19. 17. E. 5. 59. but says it is intended of an Alligation in Fee, and cites 5. E. 5. 10.

10. A. acknowledged to B. by Fine for Term of his Life Tenendum de Capitalibus Domino; and the Fine was rejected by reason of the Reversion in the Conutor. But it was received Tenendum of the Conutor, and rendering to the chief Lord the Service due for the Conutor, quod nona, and not for himself. Br. Tenures, pl. 67. cites 14. E. 3. and Fitzh. Fine 55.

11. Fine was levied to A. to hold of the Donor in Chivalry, the Remainder to B. in Tail to hold of the Donor by the 12th Part of a Knighth's Fee, and doing to the chief Lord the Service due for the Donor; and it was received; for then the Donee shall make 2 Escuages, one to the Donor, and another to the chief Lord for the Donor; and therefore these Words (Done to the chief Lord) were nullified &c. And fee there that the Tenant for Life may hold by one Service, and be in Remainder by another Service. Br. Tenures, pl. 68. cites 19. E. 3. & Fitzh. Fine 71.

12. If there were Lord, Mefne, and Tenant, and before the Statute the Tenant infused a Stranger to the Tenancy, to hold of the Lord Paramount, the fame is void. But if the Forfeiture were made to hold of the Mefne, it were good; and he shall hold of him by the same Services, which the Forfeitor held of the Mefne; but the Tenant cannot make a new Tenure between his Mefne and his Fowell by new Services, for to the
the Services referred, the Mefne is a Stranger. And if the Tenant had
enfeoffed a Stranger, before the Statute &c. to hold of him and the Mefne,
the Feoffor should have holden only of his Feoffor. Perk. S. 667. cites
T. 7 E. 4. 11. and P. 2 E. 4. 5.
14. And if the Statute before the Statute had enfeoffed J. S. to hold of
the Mefne and T. K. the Feoffor should have holden only of the Mefne.
Perk. S. 668.
15. If before the Statute there had been a Woman Seignoress, and Ten-
ant, and the Woman had taken Husband, and the Tenant enfeoffed a Stranger
to hold of the Husband, it is a void Tenure, and the Feoffor shall hold of his Feoffor &c. Perk. S. 668.
16. If Lord and Tenant had been before the Statute of 2 Acres of
Land, and the Tenant thereof enfeoffed a Stranger to hold one Acre
of the Lord Paramount, and to hold the other Acre of himself, the fame is
good &c. Perk. S. 670. &c. and they had enfeoffed a Stranger, and one of them had assign'd the Feoffor to hold of the Lord Para-
mount, and the other had assign'd the Feoffor to hold of himself &c. the fame had been good &c. Perk. S. 669.
17. If Lord and Tenant had been before the Statute &c. and the
Lord granted his Seignority unto a Stranger, and the Tenant enfeoffed another
Stranger to hold of the Grantee of the Lord, the fame had amounted unto
an Attornment, and alto to make a new Tenure; and yet the Grantee is
a Stranger unto the Reservation of the Seigniority between the Grantor
and the Tenant. But as to that, it may be faid, that there is a Privy-
matter in fuit, viz. by the Grant with the Attornment; and fo it fhall be,
notwithstanding the Lord had granted it unto the Wife of the Grantor &c.
And the fame Law is where a Mifalnty efecheats, mutatis
18. If the Feoffor &c. or Donor &c or Leffor for Life, had refered
unto him upon the Feoffment before the Statute; Or had refered unto
him upon the Gift or Lease, after the faid Statute, Knights Service, or
Fealty, and 10 s. or a Horfe &c. and dies, his Heir fhall have only Fealty
because the Reservation does not extend unto the Heir of the Feoffor,
Donor, or Leffor. Perk. S. 669.
19. Tenant for Life and Tenant in Tail are not wholly excluded out
of the Statute of Ouuia Emporor &c. cap. 3. by Force of the Words
there (in feodo implici;) For where the whole Fee Simple paffes out
of the Feoffor, there this Act extends to Efecheats for Life and 'in Tail, as if
an Eftate for Life, or in Tail be made of Land, the Remainder in Fee,
then there Tenent for Life or in Tail hall hold de Capitali Domino by
Force of this Act, but otherwife it is when a Reversion remains in the Do-
nor or Leffor. For if a Man at this Day make Gift in Tail, 'Tenend' de
capitalibus dominii fecodi &c. thefe Words are void, and he fhall hold
of the Donor. 2 Init. 505.
20. Tenant was attainted of Treafon, and his Manor &c. forfeited to hold 131. the
E. 2. who granted the fame to J. S. in Fee, Tenendum de Nobis & Here.
Reporter 
dibus nofris per Servitium fecodi militis in perpetuum, and 10 l. Rent. cites 2 E. 5. 
Et faciendo alios Capitalibus Domini fecodi illius, fij qui fvereit, Reddatus &
S. E. 5. Servitia inde debita antequam ad manus nofras taliter deveniant, fijus
83. 17 E. 2. Nobis & Heredesibus nofris fecodi militis E. Refolved by the 2 Chief 19 b 
juices, and Chief Baron, That the Tenure of the Mefne is revived,
25 E. 46. 49 B. notwithstanding the King first of all referred to himself other Services,
Per. viz. Knight-Service, where the Mefne before the Attainted hold of the 40 E. 5. 12.
king in Seige; and tho' the King has referred other Rent, yet because
32 Att. 51. the
51 Att. 50.
Tenure.

the King, for his Honour, &c. expressly intends to revive the Mefnaly, (which by the Tenant's Attainder was extinct, according to the Rigor of Law) the Clause of Revivor shall be construed to precede, and the Relegation of an ancient Right shall be preferred. 9 Rep. 130. b. 131. Trin. 9 Jac. in the Court of Wards. Bewley's Cafe.

(K) Upon what Reseruation [the Tenure] shall be by Knight Service of the King, and where without Re- servation. Tenure by Knight Service of the King.

1. If the King grants Land and reserves no Manner of thing, nor speaks of anything in this Case for Non-Certainty, it shall be adjudged by Knight Service. * 33 H. 6. 7, by Prior. Co. 9. Lawe. 123.

* Br. Tenures, pl. 5. cites S. C.

Br. Tenures, pl. 5. cites 44 E. 3. 43.

2. If the King grants the Farm of a Vill in Fee to hold of him by the Services due and accruable, this shall be a Tenure by Knight Service; for it shall be by the Services which are most for the King's Advantage, Seciern, by Knight Service. 44 Att. 22. by all the Justices adjudged. 44 E. 3. 45.

* Br. Tenures, pl. 7. cites S. C.

3. So if the King leases for Life a Farm of a Vill, and after confirms to him in Fee to hold, per Servitia inde debita et conuenientia, it shall by the Services which are most for the King's Advantage that is to say, by Knight Service. 44 Att. 22. adjudged. * 44 E. 3. 45.

So where the King grants Lands Tenendum de nobis &c. by the Service of a red Rofe yearly at the Feast of St. John the Baptift pro omnibus aliis Servituis. It was objected that Tenure cannot be by Service of a Rofe only pro omnibus aliis Servituis, because Homage or Fealty at least, is incident to every Tenure; and therefore since other Services shall be annex'd, it shall be such as is the best for the King and the most high, which is Knight Service, and this for the Uncertainty. But resolved, That since Fealty is incident to every Rent-Service, the Law annexes Fealty to the said Rent, and then the Words Pro omnibus aliis Servituis, shall be intended fah Services which the Law does not imply or add thereto; So that the Tenure shall be by a Rofe and Fealty. 6 Rep. 6. b. 7. a. Puffch. 45 Eth. In Scaccario, Wheeler's Cafe. —— Cites S. C.

* Br. Tenures, pl. 5. cites S. C. but Brooke

fays, Quere, buce. —— But it was resolved, that by Operation of Law, it shall be held of the King in Capite by Knight Service, according to the Rate and Proportion of the Land which belongs to a Knight's Fee: and the principal Cafe is more strong, because the King, upon the Grant of the Services, limited the Tenure to be by Fealty only for all Services, Exactions, and Demands. 9 Rep. 123. b. Trin. 7 Jac. in the Court of Wards. Anthony Low's Cafe.

6. The
Tenure.

6. The Beginning of a Manor was, when the King gave 1000 Acres of Land, or a greater or lesser Parcel of Land unto one of his Subjects, and his Heirs, to hold of him and his Heirs, which Tenure is Knights Service at least. Perk. S. 670.

(L) Tenure in Capite. What Person may create it.

1. A Count Palatine, who has Jura Regalia granted to him, may create a Tenure in Capite to hold of himself; for by the pl. 41 Grant it is in a Manner dissolv'd from the Crown and out of the King (and he is made a Petty King.) Da. 1. County Palatine. 62, 66.

2. But it seems the King cannot grant such Power to a particular Man, without granting such Royal Jurisdiction as the Count has.

3. It appears that Land was held of the Earl of Chester in Capite. D. 13. El. 393. 19 El. 359.

4. So Land was held of the Bishop of Durham in Capite. to El. D. 277. 277. 57.

5. But a Tenure in Capite cannot be created by a Subject who is Tenure in merely in Condition of a Subject, and has no such Power granted to Capite on him. Da. 1. 66. b. D. 30. D. 3. 44.

not where be held of him as of an Honour, Manor, Castle &c. unless of certain ancient Honour as appears in the Exchequer, and likewise how a Man shall hold of the King, and of the ancient Lord by Recovery by Default in Precise in Capite, where the Land is not held of the King in Fact, and this by Reason of the Conclusion. Br. Tenures, pl. 65. cites F. N. B. Fol. 5. — Br. Tenures, pl. 99. cites S. C.

No Tenure created by a Subject, tho' it be a Tenure in Grofs of his Person, can by any Possibility grow or aspire to be a Tenure in Capite of the King. And therefore if the Prince or other Subject create such Tenure of his Person, and after is made King, this does not become Tenure in Chief. Arg. Dav. Rep. 59. a. in the Cafe of the County Palatine of Wexford.

6. As the Prince cannot create a Tenure in Capite. D. 30. D. 3. 44.


(L. 2) * What shall be said a Tenure in Capite.

A Man may hold of the King in Capite as of an Honour, which was the ancient Inheritance of the Crown; this appears by the Writ founded upon the Statute of 1 E. 3. cap. 12, 13. quod Hyde Lit. Na. 175. a. where Fitcherbert observes this accordingly. It seems the Reason is, because by Prescription the Tenements held of these Ancient Honours have used to draw the same Preterogative as other Tenures in Capite.

intended of the King; for he is Caput Reipublicae. Co Litt 75 a.

Regularity a Tenure of the King, as of his Person, is a Tenure in Capite, so called Proper excellency, because the Head is the principal Part of the Body, and he that holds of any common Person as of his Person, he in Truth holds in Capite; but again, Propter excellency, it is only in common Understanding applied to the King, and that a Seigniory of a common Person is called a Tenure in grofs, that is, by itself, and not linked or tied to any Manor &c. Co. Litt. 18. a.
Tcnure.

2. If a Man holds of the King as of his Crown of the Honour of Berkhamstead, this is a Tenure in chief. 21 E. 3. 41. b.

3. [S. A.] If a Man holds of the King as of his Honour of H. by the Service of Render of 10 s. ad Wardam Cafri Dover, this was a Tenure in Capite. This appears by the Writ of Liberty in the Register 296. b. which see also in Fitz. Ns. 223. E. and there 256. a. Fitz. observes the Writ this to be a Tenure in chief.

4. In Time of E. 2. a Man held of the King in Capite ut de Honore Abbathie Marie. This appears by the Writ in Fitz. Ns. 226. a.

5. There are 4 Honours, of which Land being holden, they are Tenures in Capite, that is to say, they shall the Service, and the King shall have the same Privileges by them as by other Tenures in chief of his Person, and those are boononia, Haggenott, Percever, and Parcel of Dover, and the Court of the Court of Wards is agreeing heretofore for these at this Day. Co. Litt. 77. for all except Dover. But there is mentioned also the Honour of Ralegh; but see 34 B. 8. 3. 330. Brook cites 3 C. 3. Rot. 2. in the Exchequer, that this is not Tenure in chief.

Lev. 52. Trin. 17. Jac. in the Court of Wards in Church's Cafe, for the Manor of Wood Mortimer in Essex; and there laid that this Honour of Percever (there called Percever) was called and known by the several Names of Hasfield Percever, sometimes Percever Louden, and sometimes the Honour of Hasfield Percever of London; but that all was in Truth but one Honour, and not diverse.

† It was found that a Man held of the King in Capite ut de Honore of Ralegh; and it was taken to be a Tenure in Capite, but Tenure of the Honour; and therefore the Heir shall have Outer Le Mai of his other Lands, which should not be if it had been in Capite; for then the King should have all in Ward by his Percever. Br. Tenures, pl. 94. cites 3 E. 2. Rot. 2. in the Exchequer. And such another Matter there 5 H. 1. Ro. 4. Ex parte Rememb'i Thefuarari; But others say it, if the Honour be annexed to the Crown; for then the Honour is in Capite. And Anno 11 H.: the Honour of Ralegh was annexed to the Crown, therefore now this is in Capite. But where the King gives Land to hold of him by Privity, and 2 d. pre omnia Serchitis, this is Socage in Capite; for it is of the Perfon of the King Contra if it was to hold as of the Manor of B. Note the Difference. Br. Tenures, pl. 94. cites 53 H. 8.

6. So a Man may hold in Capite as of the Dutchy of Lancaster, which is a County Palatine. Co. Litt. 77.

7. If a Man holds of the King, as of his Principality of Wales, by the Service of going into the War of the Prince at the Charges of the Prince, this is not any Tenure in chief. 1 D. 17. 18 El. 344. 3.

There is a manifest

* Fol. 504.

The Writ of Liberty in the Register 296. b. which see also in Fitz. Ns. 223. E. and there 256. a. Fitz. observes the Writ this to be a Tenure in chief.

† D. 17. 18 El. 344. 3.

The Cafe of the Principality of Wales, 17 El. 345. a. and the Cafe of the County Palatine; for where before the Subjection of Wales to the Crown of England, a Man held Land of the Prince of Wales by Service to go in his War; this was not Tenure of which the Common Law could take Notice; for this Principality of Wales was not governed by the Common Laws, but was a Dominion by itself, and had its proper Laws and Customs: And for this Reason when this Country was reduced under the Subjection of the Crown of England, such Tenure as was of the Prince of Wales, could not become a Capite Tenure of the King of England. But every County Palatine, as well in Ireland as in England, was given by Parcel of the same Realm, and derived from the Crown, and was always governed by the Laws of England, and the Lands there were held by services and Tenures, of which the Common Law took Notice, tho' the

Lord
Tenure.

Land had a several Jurisdiction and Seigniory separate from the Crown; and therefore the Tenure in County of the Caput of the County Palatine, is of the same Nature with the Tenure in Capit of the King, and to be coming in the Crown, shall be Tenure in chief of the King, as it was before of the County Palatine. And the Reason of this Difference appears fully in 19 H. 6. 12. Resolved per Cur. Dav. Rep. 67. a. Trim. 9. Jac. in the Exchequer, the Case of the County Palatine of Wexford.

† D. 344. b. 344. At-David's Case, 3 S. C. cited D. 359. b. Marg. pl. 5. and that it was only a Meine Tenure —— 5 S. C. cited Arg. Dav. Rep. 59. b. in the Case of the County Palatine of Wexford, and Ely's, see the Statue of Magna Charta, cap. 53. and the Book of 28 H. 6. 11. b. to this Purpose.

8. If the King grants Land to hold of any of those ancient Honours Ley's Rep. by Knight Service, and not in Capite, this is a Tenure as of the Honour, and not a Tenure in Capite. Whence Cholmly said that this was one Clark's Case, in the Court of Wards. 7 Car. 10 resolved per Curiam.

that the Land was held of the Honour of Peverell by Knight Service, and not in Capite; and the Doubt was, because it appears 29 H. 8. Br. Livery 59. that but Part of Peverell is in Capite; whereupon the Chief Justices and Chief Baron Affiliates resolved that it was a mean Tenure by Knight Service; for the express finding it not to be in Capite, imports the Land to be Parcel of that Part of the Honour of Peverell which is no Parcel of the old Honour of Peverell; And it was decreed accordingly.

9. If a Man holds of a common Person, as of an Honour or Manor it seems by Knight Service, and this Honour or Manor comes to the King by Echelate, that is to say, Attainder or by Purchase, or the like, he shall hold the Land, as of the Honour and Manor as before, and shall not hold in chief. D. 30 H. 8. 44. 27. 1 Ch. 168. 18 D. Palatine 63. Magna Charta, cap. 31. 1 29 H. 8. S. 113.

of the King to defend their Persons, and their Crown and Royalty against Enemies and Rebels. D. 44. pl. 28. Gilbert's Case.

* Co. Litt. 1:8 a. S.P.
† Br. Tenures, pl. 61. cites 29 H. 8. S. C. ——Br. Livery, pl. 57. cites S.C.

10. If the King gives Land to hold of him, as of an Honour or Manor, it is all one nor, which is not any of the Ancient Honours, this is not a Tenure in Capite. D. 30 H. 8. S. 113.

nobis et de Manero &c. in Capite, and where the Words are transposed, viz. De nobis in Capite et de Manero &c. For when in the Beginning or End it is expressly limited to be held Ut de Manero, the Tenure of the Person is abundant. 12 Rep. 135. Elywick's Case —— This was held as a Meine Tenure, and not a Tenure in Capite. Ibid. 136. cites Baron Lake's Cafe.

11. A Tenure in Capite ought to commence and take its original Creation by the King himself, and not by any Subject. D. 30 H. 8. 44. 29. [30] For this Tenure, which is created by a Subject, cannot by any Means after be a Tenure in chief.

12. A Tenure in Capite is a Tenure of the King as of his Crown, and not that is, as King, and of his Person. Co. Lit. 108. when it is held of the King, as of any Honour, Cattle, Manor &c. Co. Litt. 108. a. —— F. N. B. 5. (K) accordingly, and that because the Writ of Right, in such Cap of its being held of an Honour &c. shall be directed unto the Bailiff of the Honour or Cattle, or Manor to do Right. But when the Lands are held of the King as of his Crown, they are not held of any Manor, Cattle, or Honour, but meere of the King as King, and of the King's Crown as of a Seigniory by itself in grofs, and in chief above all other Seigniories —— D. 42. b. Mich. 39 H. 8. pl. 44. 3 S P. Gilbert's Case; and that if Writ of Right be brought of Lands held of the King in chief, the Writ shall be directed to the Sherriff.

13. If a Man holds of a common Person in grofs, as of his Person, S. P. Arg. and this Seigniory echoes to the King (by it be by Attainder or Treason) he heldeth [of the ] Person of the King, yet he doth not hold in Capite, because the Original Tenure was not created by the King. Co. Litt. 108.

14 If
14. If the King purchases a Manor, of which J. S. holds in Chivalry; and after the King grants over the Manor to J. D. excepting the Services of J. S. Now J. S. holds of the King as of his Person, yet he shall not hold in Capite, that is to say, to subject him to the Prerogative of the King of a Capite Tenure, but shall hold as he held before; for the Act of the King shall not prejudice the Tenant. 29 H. 8. S. 113.

15. If the Prince, before Quia Emptores Terrarum, had created a Tenure of his Person, and after he had been made King; yet this is not a Tenure in Capite, because in the Creation it was not a Tenure in Capite. D. 30. H. 8. 44. 30. [31]

16. If the King Lord, Mefne, and Tenant are, and the Mefne holds of the King in Capite, and after the Mefne dies without Heir, or is attainted of Felony, or dies, and the King is Deir to him, or the King purchases the Mefnality, yet the Tenant shall not hold in Chief, because this Tenure was not derived from the Crown, but by a Mefne. D. 30. H. 8. 44. 30. [31]

17. If the King at this Day gives Land in Tail, to hold of him in Capite, this Tenure is a Tenure in Capite of the Person of the King, and not incident to the Reversion, nor shall pass by Grant of the Reversion. D. 30. H. 8. 44. 35. [36]

He that holds of the King, mulf hold of the Person of the King, and not of any Honor, Barony, Manor, or Seigniory; and it appears farther in our Books, that he that holds of the King in Chief, must not only hold of the Person of the King, but the Tenure must be created by the King, or some one of the Progenitors, or Predecessors, Kings of this Realm, to defend his Person and Crown, otherwise he shall have no Prerogative by reason of it; for no Prerogative can be annexed to a Tenure created by a Subject. Note, here is not named the Honour of Lancaster, which was an ancient Honour ever since the Conquest, which E. 3. ratified to a County Palatine, as in the 4 Part of the Institutes, cap. Duch. of Lancalifer, appears. 2 Inst. 64. cites 29 H. 6. 11. per Tous les Juicbes. 1 E. 6. Bro. Trav. 33. Stamford Preog. 29 b.

* This is intended of Common Escheats. Br. Livery &c. pl. 38. cites 29 H. 8.——Lord Coke says, some Quelion has been made of the Words; for some have said, that these Words are to be understood of Common Escheats, as where the Lord dies without Heir, or where he is attainted of Felony. But whereas the Lord is attainted of High Treason, there the King has the Land by Forfeiture of whomever the Land is held, and not in respect of any Escheat by reason of any Seigniory. And therefore where William Ripavare, a Norman, held Lands in Fee of the King, as of the Honour of Peverell, and Ripavare forfeited his said Land for Trefaion, and the King seized it as his Escheat of Normandy. In this Case the Land so forfeited was not Part of the Honour, as it should have been, if it had come to the King as a common Escheat; for it comes to the King by reason of his Person and Crown, and therefore if he claims it over &c. the Petecome shall hold it of the King in Chief, and not of the Honour. And all this is to be agreed; but yet the Tenants that hold before of the Honour by Knights-Service, cannot hold of the Land in Chief. For that they hold not of the Person of the King, but of the Honour. 2. Because the Tenure was not created by the King, or any of his Progenitors, as has been said. 2 Inst. 64. 65. And so does Bracton, who wrote soon after the Statute, enjoin this great Charter to extend to Baronies of Barons for Trefaion, as of the Normans. 2 Inst. 65.

And yet, to make an End of all Ambiguities and Questions, the Statute of 1 Ed. 6 was made, which is, as the Words be, a plain Declaration and Resolution of the Common Law. Likewise the Statute of
Tenure.

E. 1. which provides, That where the Land that is holden of the King, as of an Honour, is aliened without Licence, no Man shall be thereby grieved, is also a Declaration of the Common Law. 2 Inf. 65.

By this Chapter it appears, that a Subject may have an Honour. 2 Inf. 65.

19. Complaint was made at the second Parliament in Anno 1 E. 3, as appears cap. 13. That Lands, hold of the King as of Honour, were aliened for Fines for Alienation, as well as if they had been held in Capite, by which the King wills, that such Seitures afterwards shall not be made. Brooke says. And to see that such Tenure is not in Capite. Br. Tenures, pl. 100.

20. In Alise the Plaintiff was of an Office, viz. that he held the Usury of the Exchequer, whereas the Serjeanty of C. B. is Pardoned, in Chief of our Lord the King. Br. Tenures, pl. 25. cites 8 Aff. 7. Brooke says, Quod non est, an Office held in Capite.

21. It is admitted, that a Man may hold of the King in Capite so as well as in Chivalry ; And the Law at this Day clear. Br. Tenures, pl. 46. cites 47 E. 3. 26.

22. Note per Bromley, that it is held, That if [it be found that] a Man holds of the King by Dutech of Lancaster, Per quae Seruiit ia foatares ignorants, it shall be taken as Service of Chivalry in Capite as in other Cases of the King; For Dutche Land given by the King pails from the King by Livery of Selin, and shall be as it had been in Manibus Ducis. Br. Tenures, pl. 1. cites 26 H. 8. 9.

23. The King may create a Tenure of him in Chief, if he reserves it to his Person and as a Service in Groves; But if he reserves the Tenure as of his Manor, Honor, or Caiile, this clearly is no Tenure in Chief; for the Services are regardant to the Manor, Honor, or Caiile, and not relating to the King's Person. D. 44. pl. 29. Mich. 30 H. 8. Gilbert's Cafe.

24. Grand Serjeanty is Tenure in Chief; For such Tenure is of none but the King. D. 44. b pl. 32. Mich. 31 H. 8.

25. A Tenure of the King as of his Honor of Gloucester, whereof two Parts came to the King by Defaint or Purchase, and the third Part by the Attainer of the late Duke of Buckingham, shall not be accounted a Tenure in Chief of the King, as of his Person, nor shall give Prerogative of other Lands to the King. D. 53. pl. 6. Trin. 36 H. 8. says, it was fo decreed in the Cafe of the Heir of Attur at Clapton, who was in Ward to the King, by reason of the said Tenure by Service of Chivalry ut de Dono, as above.

26. 2 E. 6. cap. 8. Enails, That where an Office is found by these Words, or the like, Quod de quo set de quisuis tenementa predita tenentur, juratores praed ignorant, or find them holden of the King, but per quae seruiitis ignorant &c. it shall not be taken for an immediate Tenure of the King in Chief, but in such Cases Melius inquirendum to be awarded, as has been accustomed of Old Time. This Branch has been well enlarged, for if the first Office find a Tenure of the King, per qua seruiitis &c. yet if, upon the Melius Inquirendum, the Tenure be found of a Subject, the first Office has left his Force per Enim supr. Statuti, and need not be travelled; and the Melius &c. is in Nature of the Diam Clauit extremum, or Mandamus &c. And this was but a Declaration of the ancient Common Law, as by the Words of the Statute (as has been accustomed of old) it appears; but if, upon the Melius, it be found again as uncertainly as before is said, then it is in Judgment of Law a Tenure in Capite ; and fo it was the making of this Act, and 8 are the Books that speak hereof to be intended. But if, upon the Melius, a Tenure be found of the King Ut de manente per qua seruiitis &c. it shall be taken for Knights Service. Co. Litt. 75. b

27. Of ancient Time every Earldom and Baroney were holden of the Co Litt. 8; King in Capite. 2 Inf. 7.

and before the Statue of Magna Charta, cap. 25, and that the King would not suffer them to be divided or sever'd; but that at this Day Earls and Barons are without such Earloms and Baronies of the King in Chief. K k

28. The

29. A Man seised of Land held in Capite of the King before the Statute of Quia Emptores Terrarum enfeoffed one J. F. of Part of the Demesnes in Fee, without saying any thing more. The Feoffee enfeoffed another to hold of the Feoffor and his Heirs by the Rent of 1 l. 6 s. 8 d. a Year Pro Omnibus Servituis & Demandis. This Land clearly is not held in Capite and the first Feoffalty is held of the Feoffor, as of the Manor by Service of Chivalry. D. 299, b. pl. 33 Pach. 13 Eliz. Anon.

30. If before the Statute of Westminister 3. the King’s Tenant in Capite had made a Feoffment to hold of him, so as now there is Lord Mefne and Tenant, and afterwards the Mefnalty came to the Crown by Attainder &c. If by the coming of the Mefnalty to the Crown, the Seigniory Paramount be extinct, Then the Tenancy is not held in Capite; But if the Mefnalty be drownd in the Seigniory it is otherwise. Some held that there was a Difference where the Mefnalty comes to the Seigniory, and where the Seigniory comes to the Mefnalty; By Manwood Ch. Baron. 4 Le. 214, pl. 347. Mich. 29 Eliz. in the Exchequer. The Biphop of London’s Cafe. — But there is added a Quare.

31. Certain Lands called S. were helden of the Manor of P. by Rent and Suit of Court; P. was holden of the Manor of G. by Rent and Suit of Court; The Manor of G. came to the Crown by the Statute of Disfolutions; The King H. 8. granted the Manor of G. to J. S. and his Heirs, to hold by Knight Service in Capite; B. purchafed the Manor of G. and afterwards he purchased the Moiety of the Manor of P. and the Lands called S. Afterwards B. died, and the Lands purchased by him descended to his Son, who purchased the other Moiety of P. and afterwards enfeoffed C. of the Lands called S. It was resolved in this Cafe, that the Lands called S. were held in Capite by one intire Knights Fee, Mo. 729. pl. 1015. Pach. 38 Eliz. Resolved by Popham and Anderfon, Ch. J. Crefwell’s Cafe.

32. It was found upon a Diem clauft &c. that J. S. held Bl. Acre of A. and allo Wb. Acre of Q. Eliz. as of her Minor of V. by Feoffy and 35. Rent, but Per que alia Servititia ignotant. Upon a Mulos Inquirendum, it was found, that J. S. held Wb. Acre of the late Queen by Knight Service, Hobart Ch. J. and Tanfield Ch. B. resolved, that Wb. Acre upon both the Inquisitions should not be construed to be held of the late Queen by Knight Service in Capite, but only by Knight Service, as of a Mefne Tenure, as of her Manor of V. and decreed accordingly. Ley. 59, 51. Trin. 13 Jac. French’s Cafe.

33. It was found by Inquisition, that J. S. died seised of certain Land, Ex quod tenentur de Domino Rege ut de uno Groffo, per vicinam partem unus Fodi Militis. This was ruled by Hobart Ch. J. and the Ch. Baron, Abfente the Ch. Justice, to be a Tenure by Knight Service in Chief. All Tenures in Chief are in Gros, and the Words (ut De uno Groffo) are scarce of any Sense, but of no certain Sense at all in Law, and fo stand as void. Hob. 90. pl. 123. Hill. 13 Jac. Sparthurt’s Cafe.

An Office

Jenk. 295.
pl. 57: a Tenure of the King
Per Servitium
Military in Gros is a Tenure in Gros. —

An Office

found, Quad tenet de Domino Regina per Servitium Military, generally, and Brooke, Saunders, Grif.

Attorney, Stamford and Dyer, thought it ought to be traverfed, in as much as it shall be intended the bell for the Queen viz. a Tenure in Chief. D. 161, b. 162. pl. 47. Anon.

(M) In
(M) In what Cases the Law will create a Tenure in Capite without Reservation. Of whom.

1. If the King grants Land without expressing any Service, this is in Capite. 29 H. 8. S. 113.
2. If the King grants Land to hold of his Person, this is in Capite.
3. So if he grants to hold of him, this is of his Person, and so in Capite. 29 H. 8. 113. Dd. 1. 66. v.

Br. Livery, pl. 17, cites S. C.—S. Cited Arg. D. R. Rep. 66. b. in the Case of the County Palatine of Westford—If the King is left others to hold of him, they shall hold as of his Crown in Chief, per Finches. Br. Tenures, pl. 9, cites 4; E. 3. 21.

4. If a Count Palatine (who has Power to create Tenures in See (L) his Person, this is not a Tenure in Capite; for tho' he has such Power, yet his Person is not changed. Contra Davies 1. County Palatine. 66. the principal Matter.
5. If the King purchaseth Land which is held of another, all the Seignories by this are extinct, and if the King grants it to another to hold of him he shall hold as of his Crown in Chief. 47 C. 3. 21. b.
6. When an Honour is seised into the Hands of the King, if a Manor held of the Honour falls to him by Escheat, as of a Common Escheat, if he aliens to hold of him, he [the Heir] shall hold by the same Services as it was held before of the Honour. 47 C. 3. 21. b.
7. But when an Honour is seised into the Hands of the King, and a Manor comes to the King by Forfeiture of War as his Escheat of Normandy and others, which is by Reason of his own Person, and he is seised and enfeoff another, he shall hold of him in Chief. 47 C. 3. 21. b.

(N) Tenure by Knights Service. What Estate may be held by Knight Service.

1. A Man may lease Land for Life to hold by Knight Service. 25 C. 3. 47. admitted, (and it seems that the Leesee shall do the Service of a Knight) but his Heir shall not be in Ward. 2. Lands in Gavelkind are held in Socage and not in Chivalry. Br. Tenures, pl. 72, cites 9 H. 3, and Firzh. Prescription. 63.
3. If, before the Statute of Quia Empores terrarum, a Man being seised of one Acre of Land, leases the same to a Stranger for Life; and afterwards grants the Reversion in Fee unto another Stranger, to hold of him and his Heirs by Knights-Service, this is a good Tenure; but the Grantor shall not disnair for the Services, during the Life of the Leesee &c. Perk. S. 658.
4. If before the Statute of Quia Empores terrarum, a Man seised of one Acre of Land leases for Life, and afterwards relieves all his Right therein to the Leesee, to have and to hold unto him and his Heirs &c. or confirms the Estate of the Leesee, to have and hold the same to him and his Heirs,
Tenure.

Heirs, to hold of him by Knights-Service; the Releasor may disfrain for such Services, or any of them in the Land whereof the Leafe, Releas, or Confirmation was made, as often as the same shall be behind &c. Perk. S. 659.

(O) Knights-Service, * Castle-Guard. How it is to be done.

1. Magna Charta, cap 20. Nullus + Constabularius diringat aliquem Militem ad dandum Denarium pro Cuftodia Cæliti, ipsis eam facere voluerit in propria Perfona sua, vel per alium profum hominem faciæ, illum eam facere non possit propter rationabilém Caufam. Et [i] nos adducerimus vel misericordiam eum in Exercitu, ut Quicquid de Cuftodia Cæliti intersectum fcrundum quantitatem quos per nos lucerit in Exercitu de Feodo pro quo fecit fervitium militare in Exercitu.

* Constabularius is taken here for Castellanus. See 2 Inf. 52. cap 19. 34. cap. 20——This Act (constating upon 2 Branches) is declaratory of the Common Law. The 1st. That he, that hold by Castle-guard, viz. to keep a Tower, or a Gate, or such like, of a Castle in Time of War, might do it either by himself, or by any other sufficient Person for him, and in his Place. And some hold by such Service, as cannot do it in Person, as Joyners and Commonalty, Dean and Chapter, Bishops, Abbots &c. Infants being Purchasers, Women, and the like, and therefore they might make a Deputy by Order of the Common Law. If 2 Jointenants hold by such Service, if one of them perform, it is sufficient.

2dly. If such a Tenant be by the King led, or lent to his Hoft, in Time of War, the Tenant is excluded and quit of his Service for keeping of the Castle, either by himself, or by another, during the Time that he be forces the King in his Hoft; for that when the King commands his Service in his Hoft, he dispenses with his Service, by reason of his Tenure, for that one Man cannot serve in Person in 2 Places; and when he serves the King in Person in one Place, he is not bound to find a Deputy in the other; for he is not bound to make a Deputy, but at his Pleasure; and this is also declaratory of the ancient Common Law. 2 Inf. 54. cites Co. Litt. 111. 121.

* Tho' Littleton speaks of Enemies, yet it seems that to keep Castle in Time of Infurrection and Rebellion, (tho' in Propriety of Speech, Rebels are no Enemies) is a Tenure by Knight-Service.

3. By the ancient Custom none but a Knight might be charged with the Guard of a Castle belonging to the King; for the Letter of this Law mentions only such; and therefore to hold by Castle-guard is a Tenure in Knights-Service. And it seems, that Rent for Castle-guard originally was consistent with Knights-Service, and that it was not annual, but promiscuously Knights might either perform the Service, or pay Rent in lieu thereof; and upon Occasion did neither, if the King lent them into the Field. And lastly, that a Knight might either do the Service
Tenure.

in his own Perfon, or by his Efquire, or another appointed by him thereto. Bacon of Government, 267.

(P) Tenure by * Knights-Service, What. [And what See (F. a) pl. 17.]


was created and provided for the Defence of the Realm, to perform which Service the Heirs are not accounted in Law able, till the Age of 21 Years. Therefore, during their Minority, the Lord shall have Custody of them; not for Benefit only, but that the Lord might see, that they be in their young Years taught the Deeds of Chivalry, and other virtuous and worthy Sciences. Co Litt. 75. b.

There was no certain Sort of Profits arose by Lands held by Knight's Service; for they were not for the King's Provision, but his Defence. These were to attend the King in Arms, according to the Array that was made on every Expedition; and whoever fail'd in coming, or rendering his Quota of Men according to his Tenure, his Lands were originally liable to be forfeited into the King's Hands for not doing his Duty. Gilb. Hist. View of the Exch. 21. cap. 2.

† See Spelm. Gloff. Verbo Drenches, Drenchus, Drenchagium, which Words he says gave him great Perplexity a long time.


12. cites S. C. But Brooke says, he wonders that Foreign Service is Service of Chivalry, unless the next Lord holds by Servitium Militare of his own Lord.

It is call'd Servitium Forficicinum, quia pertinet ad Dominium Regnum & non ad Capitalem Dominii nisi cum in propriis persona proprietatis pertinet in servitio, & nisi cum pro servito suo satisfaciatur Domino Regi, &c. idem forficinum dicto potest, quia sit & capturit foris sine extra servitium, quod sit Domino capitale. Co. Litt. 69. b. cites Bract. Lib. 2. 26.——S. P. And it is also call'd Regale Servitium, quia specialiter pertinet ad Dominum Regnum. Ut si dicatur in Carta, faciendo inde forficinum servitium, vel Regale servitium, vel servitium Domini Regis, quod idem est, &c. And another says: Et sine quodam servitio forficinum non dictum poterunt Regiae ut vide ad futuram praedationem, & inde habemus scutum, & ratione scut pro feodo militari repetatur &c. So as in respect of him that does it, it is call'd Servitium Militia; but in respect of him for and whom it is done, viz. to the King, and for the Realm, it is call'd Servitium Regale, or Servitium Domini Regii, &c. Co. Litt. 74. b. 75. a.

3. A Fine was levied of a Knight's Fee. 5 C. 3. 213. 16 C. 3. Brief 655.

4. 11 H. 3. among the Rolls in the Tower of London Rot. 13. Willielmus de Erderellis petit versus S. D en certacum, foedum unus militum cum pertinentibus in S. The Defendant pleaded Recovery of the Advowson, which once appertain'd to the said Land, &c. which the Demendant acknowledged. And therefore, because Demendant petit * dimidium foedum cum pertinentibus, nulla facta Excepcione de advocacione illa, Consideratum est quod Defendens non respondat ad hoc Breve, & ipse fine die &c. and the Plaintiffs in Dilectiora.

5. Vide Dower, 161. 196. 165. adjudged that Writ of Dower lies of a Knight's Fee.


Tenure.

There is a Writ Quod clamat tenere de &c per servitium unde tot Carucata terra, vel tot Hidæ terra, vel tot Bovata terra, vel tot Virgate, terræ factum leodium unius militis. And see the printed Register, vol. 2, quæ folet eis such Write.


Brady's Hill of England, 62a. in the Reign of Henry 2 says, that all the Sheriff's of England were amerced each 5 Marks, because they did not divest every one that had to a Year in their several Counties, to come to the King and be knighted; but they obtained Repatria of the King, according to his Writs to them directed.

11. In the Treasury with Master Bradshaw in the Bag of Tenures there is a Roll, whereof the Title is De feodis Militium & partibus Feodorum, unde Johanna de Bohun Comitissa Hereford dotata fuit 5 Juni 48 E. 3. In which Roll every Fee, and the Value thereof, is set down whereof the was endow'd, where it appears that a Ship holds sometimes by 2 Fees Land of the Value of 13l. and sometimes of the Value of 15l. and sometimes more and sometimes less, and oftentimes by a Fee Land of the Value of 5l. and this is for the most Part, and according to this Rate, and rarely by more, but no Certainty according to the Value.

12. Talis tener dimidium Feodum Militis vocatum Beacons in London de hereditate Mountfich is tener ulterius de Regis, this shall be intended the Service of a Society of a Knight's Fee, it no other Tenure be expressly made and found. D. 16 Cl. 329. S. 15.

13. Si dicitur in Charta faciendo inde * fornicum Servitium, vel Regale Servitium five Servitium Domini Regis, quod idem est secundum modum Feodationis, simulac, quantum pertinet ad Feodium unius Militis, vel duorum in eadem villa, vel de eodem Feodo, vel ad Scutagium 100 s. 2 Marcas, vel 3 &c. Sed si dicitur * Redendo inde per Annum tuncum, e faciendo tales Sæctas pro omn Servitum, excepto regali Servitum, vel talvo fornicato, tunc videndum erit imprimit Feodium illud in ipsta Dominatione fornicalem debuit ad initium vel non, ut autem nullum debuit ab initio, nec fit certum fornicacum in Charta expressum, nunquam præstabilitur nec peti poterit propter ineptitudinem. Bracton lib. fol. 36. Co. Litt. 75.

14. A Ban may give Land to hold by less Service than he himself holds, ut si ipse teneatur ad fornicum Dominæ & Feodaliori suo tenens ipse poterit aliunde utulus Feodare fine fornicato. Bracton, lib. 2. fol. 21 b. [cap. 7. S. 3.


Tenure.

16. Dictas pro Homaggio & Relievio, If there be 
& pro Servito forinseco quantum pertinet ad unum feodum Militis. Lord and 
& Tenant by Knights Service, and the Tenant give the Tenancy in Tail faciendo forinseco Servitium quantum ad einem Terram pertinet, by the Words the Denee shall hold of the Donor by Knights Service &c. Jenk S. 654.

17. Time of C. 2. 88 b. there is pleaded a Gift in Fee of Land, 
Tenendum liberu pro Homaggio & Servitio, & per forinseco Servitium, 
which, ad Scutagium 20 s. quando venit duo solidos & unum quadrans & ad plus &c.

18. 31 E. 1. Rot. Finitium, B. 9. Per forinseco Servitium Co- He that holds by 
Holds by Knight Service. Co. Lit. 68, b. — Litt. S. 156, is, that it is said that in the 
Marches of Scotland some held of the King by Courage, that is to say, to wind a Horn, to give Men of the Country Warning when they hear that the Scots, or other Enemies, are come, or will enter into England, which Service is Grand Service. But if any Tenant hold of any other Lord than of the 
King by such Service of Courage, this is not Grand Service, but it is Knights Service.

19. The Statute 1 E. 2. [S. 3.] is, That he who holds Lands in 
Bosage of other Moors than of the Hanors of the King being no 
foreign Service, the Rolls of the Chancery shall be searchd, and it 
shall be done as before. By which the Statute implies that he is not 
competent to be a Knight. (And by * Foreign Service is intended, as it seems, Knight Service.)

20. Capitula Ecclesiae in Magna Charta, fol. 163. Item si Religiosis, &c. pl. 14 
vel Ecclesiastico pernoe a Conquestu Anglice aliquas Terres seu aliquas 
Tenementa de Servitio militari, vel aliquo alio Servitio in detentionem 
Regni operata acquirerunt, quis remanet operatus de illis Servitibus forin- fectis & de capiscuince Feodo fiunt &c.

21. If a Man gives Land in Tail, rending Rent & faciendo forin- 
fee Servitium, in this Case he shall have both, because all is one 
Service. Redivov inseri Temporis 123; by Noble.

22. In the Book of the ancient Charters of the County of Corn- 
wall, there is in 31 Charter a Feodament of Land rending 12 d. 
Rent for all Exactions, Salvo Servitio Domini Regis forinseco quantum 
pertinet ad quique aeras liberue Terrae de Feodo tuo. And there in the 
46th Charter, the Lord of Bodmin gave to Richard Earl of Corn- 
wall 3 Awas, faciendo de ejdem tribus aeras Ingeramo de Bray, & heredibus suis Regale Servitium quantum pertinet ad predictas tres Aeras. And there in the 160th Charter, John de Gartecen gave the Manor of Lery to the Earl of Cornwall, Rededuco Annuatione 2 Calcaria 
demaran, Salvo etiam fili & heredibus suis Servitio forinseco debito & 
concepto pro omni Servitio.

If there 
be Lord and 
Tenant by 
Knight serv- 
vice, and the 
Tenant does 
give the 
Tenancy in 
this Case, J. D. for all 
Services sal- 
vo forinseco 
service, in 
this Case 
this Salvo shall make the Denee to hold of the Donor by Knights Service, and yet the same was not 
in the Donor before, but the Donor was chargeable with Knights Service for the same Land unto him of whom he held it. Perk. S. 617.

23. Some held by Caution to pay the Moteley, or the 4th Part of Litt. S. 98. 
the Sum at which EICeage was attac'd by Parliament ; and became the 
Eicage which they should pay was uncertain, they held by Knights Ser- 

24. Tenure by Courage, if it be of any other Lord than the King, is 
Knight Service. 2 Ind. 9. cites Litt. S. 158.

25. Every Tenure by Eicage is a Tenure by Knights Service; but every 
Tenant that holds by Knights Service holds not by Eicage. Co. Litt. 69. a.

26. Sir Rich. Rokley Knight did hold Lands at Seaton by Ser- 
jeanty to be Vindacium Regis, that is to be the King's Fore-formin
Tenure.

when the King went to Gafcoigne, Donec perusus fuit Pari solarearum Preci 4 d. that is, until we had worn out a Pair of Shoes of the Price of 4 d. And this Service being admitted to be performed when the King went to Gafcoigne to make War, is Knight Service. Co. Litt. 69. b.

(Q) Tenure by *Escuage.

1. Escuage was due, if the King had gone a Voyage Royal into Wales. Fitzh. Na. 83. c. 5 E. 1. Rot. Scotiae.

And 6 E. 1. Rot. Claudiarum Hiberniae 2, 20 E. 1. Liber Parliamentorum, 2 E. 1. Rot. Claudiarum Hiberniae 4, it appears by an Inquisition, that there was an Escuage Roll in 41 H. 3, upon a Voyage Royal to Wales. 7 E. 1. Claudiarum Hiberniae 9, a Writ is directed to the Treasurer and Barons of the Exchequer to cause Escuage to be levied in all Counties, and there in the End it is Secundum quod huicmodi Scutagium pro alius Exercitibus Walliae in cafo continuo levari conuenit. 19 E. 1. Rot. Marchall, the Names of those who did their Services and that paid their Fines. 14 E. 2. Liber Parliamentorum, the King demanded Escuage of the Heirs of the 15. 10. 20. 12. 4 E. 2. for the Wars of Wales and Scotland. 8 E. 2. Rot. Finium Hibern. 10. Commission to levy Escuage for the Heirs of the 28. 34 & 31 E. 1. Rot. Scotiae de 1, Rique 12 E. 2. for the Escuage of the 34 E. 1.

If the Tenure be to go to Scotland, Ancient Tenures, vol. 1. b, because Scotland is of Right appendant to the Realm of England.

2. Escuage was due if the King had gone a Voyage Royal into Scotland. 13 E. 1. Rot. Scotiae. There is an Escuage Grant entered in the Court Rolls of the Heirs of the Earl of Devon, there are 2 Rolls of Accounts made 9 E. 2. one of the Fees of the Honour of Oakhampton, and the other of Plympton for the Escuages received of the Tenants of the 13th Honour pro Exercitibus Regis in Scotia de Amis 28 & 31 E. 1.

3. 31 E. 1. Rot. Scotiae. There is an Escuage Grant entered in the Court Rolls of the Heirs of the Earl of Devon, there are 2 Rolls of Accounts made 9 E. 2. one of the Fees of the Honour of Oakhampton, and the other of Plympton for the Escuages received of the Tenants of the 13th Honour pro Exercitibus Regis in Scotia de Amis 28 & 31 E. 1.

4. 31 E. 2. made one or more Royal Voyages into Scotland, but no Escuage was paid; but it seems this was because Aids were granted to him for this Purpose by Parliament; but see the Pardon of 50 E. 3. where Forfeits, Reliefs and Escuages
Tenure.

Tenures made, fallen or chanced within the Realm of England are pardoned.

Ecclesiastical for his Voyage into Scotland. Pryme's Cat. Rec. Abr. No. 40.—Co. Litt. 72. b.

5. So the Pardon of 14 E. 3. cap. 3. Reliefs and Ecclesiastics till the King shall go into Brabant [were] pardoned; but for the Ecclesiastical Roll of the County of Lincoln, where an Ecclesiastical is levied for the Voyage of the King to Scotland, the Year 1 E. 3. which Roll is in the Exchequer with Walter Bradshaw.

6. He who holds by Ecclesiastic ought to go with the King in a Voyage Royal upon a Rebellion, not [where it was to conquer that which the King had not before 2 E. 1. Rot. Clauso Hembrania 8. the Clause is to express, still, to suppress the Prince of Wales and other Rebels; and to 3 E. 1. Rot. Scutage, Honib. 7. An Ecclesiastical was levied for the Voyage of the King into Scotland.

4. 2. as appears by 13 E. 2. Rot. Finium 3. iiij. b. 16 E. 2. 3. 5. 28 P. 3. Ecclesiastics was granted to the King, still, 3 Marks for every Knight's Fee upon the Return of the King out of Britain, where he was to suppress the Rebels and the French. Speed 526.

9. No Ecclesiastic is due for a Voyage to Flanders, 25 E. 1. in the History of the Bank of Scutage; this is contained in a Petition to the Commons.

10. Ecclesiastics is properly to sustain War between those of Wales and Scotland, and not between other Lands, because these shall be of Right appellant to the Realm of England. Ancient Tenures, fol. 1. b.

11. It seems that Ecclesiastics is due upon every Voyage Royal made in the Realm for Defence of the Realm. A Voyage Royal is not only when the King is at War, as Littleton says, but also when his Lieutenant, or Deputy of his Lieutenant, shall be garrisoned with an Ecclesiastical in the Realm last, as an Incident to Ecclesiastics, and not by the Constable and Marshal, or any other; & for it is.

12. Statutum de Religiis 7 E. 1. in Magna Charta, fol. 79. b. in fine Statuti, Hoc satum per Annum completum a tempore qua simulandi Episcopi et. Terrae & Tenementa hiusti:qui capitae in Hominum nostrum aut aliis inde stellatus per quos Serviutus nobis inde ad Defensionem nostre servanda, salutis Capitulorum Dominus Federorum illorum Wurchus Regnum & Ecclesias & aquis ad ipsas pertinentibus & Servicius inde debitus & consuetuds.

13. Mirror of Judicet. Fol. 2. b. cap. 1. S. 4. of the Remnant of the Land they should enjoin the Earls, Barons, Ltrzym, Serjeants, and others, to hold of the Kings by the Servicius provided and ordained for Defence of the Realm.


15. Tenant for Life may do Ecclesiastics; For it seems that Ecclesiastics does not draw at his Homage, but where the Tenant has Effects of INTERFERENCE; For Tenant for Life cannot do Homage. Br. Tenure, pl. 65. cites 19 E. 3. Fitz. Fine, 74.

M m m 16. A$
Tenure.

16. He that holds by Homage, Fealty, and E nuanced, holds by Seca

17. Homage and Knight Service are incident to Escaage, and by the
Grant of Services, E nuanced pays with the rent. Co. Litt. 69. a.

says, That some hold by such Cus tom, that if E nuanced be assailed by
Parliament to any Sun, that they shall pay only the Money of the
Sun, and some only the 4th Part of that Sun.

(R) E nuanced. * Of what Service it is Due. E nuanced is
not due for any Service of Grand Serjeanty.

1. The Constable of England ought by his Office to go with the
King in a Voyage Royal, or otherwise he shall pay E nuanced.
(And yet this is grand Serjeanty.) 5 C. i. Rot. Seutaquf Demb. 6.
 admitted. For there it is entered that he is acquitted because he
is in Peron; And 10 C. i. Rot. Barchfcalli Demb. 5. he left ano-
ther.

2. So the Marshall of England ought by his Office to go in the
Voyage Royal, or otherwise he shall pay E nuanced. (And yet this is
Grand Serjeanty.) 5 C. i. Rot. Seutaquf Demb. 6. admitted, and
3. 10 C. i. Rot. Barchfcalli Demb. 4. Diminuiun Serjeantie &
facit per J. S.
4. 5 C. 1. Rot. Seutaquf Demb. 7. All the Bishops and Abbots,
finem secerunt, or pro quo fatisferunt, and to C. i. Rot. Bar-
chfcalli Demb. 6. Some Abbots and Bishops are exalted for Vacancy
at the Time ; By which it appears that E nuanced is due from Bis-
stocks and Abbots, and they hold their Vacancies by Grand Ser-
jeanty.
5. The King shall not have E nuanced of such as hold by Grand Ser-
jeanty, unless they hold of him by E nuanced. Litt. S. 158.

(S) To be Assailed by Parliament.

Magna

K.

Charta, cap.
37. was that
E nuanced
should be taken as it was in the Time of H. 2. But Bacon of Government 2.6. 22. says, that the Charter
of King John hath superseded hereunto this ensuing Provision viz. There shall be no E nuanced set in the
Kingdom, except for the redeeming of the King's Peron, making of his eldest Son a Knight, and one
Marriage of his eldest Daughter; And for this there shall be only reasonable Aid: And in like Manner
shall
(T) Escuage. By whom the Service is to be done.

1. Emes and Abelles on the Services always by others. 10 C. 1. Litt. 8. 96. S P. and so of other.

Perfons of Religion. — And Ed. Coke in his Comment, pag. 70 b. fays, That the Word (Religion) is taken largely, viz. not only for regular or dead Perfons, Abbots, Monks &c. but for secular Perfons also, as Bishops, Parfs, Vicars &c. for neither are bound to go in proper Perfons.

2. It seems by all the Escuage and Parishsea Rolls, that all Co. Litt. 70 b. Lay Perfons for the most part in good Health, ought to do the Service in proper Perfons, and not by another.

Man maim'd, blind, Deaf, of decrapt Age &c. are not bound to go in proper Perfons.


4. Generally of right, they who hold by Escuage ought to be in the Army in Perfons; and it is not sufficient to find another to be there. Contra, Co. Litt. 70.

5. In the Exchequer, with Mr. Bradshaw, there is a Roll which is intitled, Negotia Adiurata de Statuari ad Parliamentum Regis apud Karliuom in Octabis Sancti Hilarii, Anniv 35 E. Regis. In which there is this, That Rogerus le Ware, who, upon Summons, came to Parliament, and said, That whereas he was summont'd to be at Carlisle, 34 E. 1. Personalliter cum servitio fuit, He acknowledg'd, that he held by Knight Service, and that he was there according to the Summons.


7. If there be Lord, Mesie, and Tenant, and each holds of the other by The Lord Escuage, and the Tenant goes a Voyage into Scotland, the Lord shall not shall not have Escuage of his
Tenure.

Tenure, un-

shall be only one Service done for one and the same Land; quare inde. Br. Tenures, pl. 89. cites 6 H. 3. & Fitzh. Tit. Avowry, 242. & con-


War in Person. Br. Tenures, pl. 103. cites F. N. B. 83, 84.

Hawk. Co. Litt. 112. because the Service originally re-

served on the Tenure, was per-

form'd —— If there be Lord and many several Meffies and Tenants, and each holds by several

Knights Service, if the Tenant paravail of the Land does the Service, and goes with the King in War,

&c. the same shall excuse all the other Meffies; For, for one Land but one Service can be demanded,

viz. to go, or to find a Man to go &c. And so the Meffe Paramount here is excused, because the

Service is done by the Tenant &c. F. N. B. 84. (D)—— S. P. Br. Tenures, pl. 103. cites F. N. B.

85, 84.

10. An Abbot, or Prior &c. that holds Lands by Knights Service, al-

beit he ought not, in respect of his Profession, to serve in War in proper

Person; yet must he find a sufficient Man, conveniently array'd for the

War, to supply his Place. And if he can find none, then must he pay

Escuage, &c. for his Profession does not privilege him, but that the

King's Service in his War must be done, that belongs to his Tenure.

Co. Litt. 99. a.

(U) Escuage. Who shall have it.

S. P. And so

1. The King shall have Escuage of those who ought to pay Escu-

age to his Ward. 31 E. 1. Rot. Scutagii Hemb. 2. 7 E. 1

Rot. Finium Hemb. 17.

of the Vacation of

Bishoprick; and so shall a common Person, if he has Estate for Life or Years of a Seigniory. Co. Litt.

73. b.

2. If the King grants over to another the Custody of his Ward, and after there is a Voyage Royal, the Grantee shall not have Escuage of the Tenants of the Ward, but the King.

3. 19 E. 1. Rot. pro Scutagii levando Hemb. 2. But there the Escuage was granted to the Grantee ex Gratia Speciali. And to Hemb. 3.

4. So the Grantee of the King of his Ward cum Feodis Militum & Advoctionibus shall not have Escuage of the Tenants of the Ward, but the King himself. 31 E. 1. Rotul. Scutagi Hemb. 1.

De Jure; But the King granted this to him De Speciali

Gratia.

5. He who was not with the King in the Voyage, nor sent any one

for him, nor had any lawful Excease for his Absence, nor had made

Agreement with the King for his Escuage due to the King, he shall

not have any Escuage of his Tenants. This appears by all the

Rolls of Escuage. Fitz. Ra. 83. q.

S. P. For he should have no Benefit by the De-

fault of others, who was guilty of

the like himself. Hawk. Co. Litt. 113.— But if the Tenant goes with the King, and dies in Exercitum,

in the Field or Army, he is excused by Law, and no Escuage shall be demanded. Co. Litt. 72. b.

6. He
Tenure.

6. De, who was with the King in another Place at the Time of the Voyage by Command of the King, shall have Ecuage of his Tenants. 10 E. 1. Rot. pro Scutagio levando. 9. 1 & 4. 31 E. 1. Rot. Scutagii Hemb. 2.

7. Bishops, Abbots, and Women, who had Servitium cum Rege, shall have Ecuage. 31 E. 1. Rot. Scutagii Hemb. 2.

8. He who was not in the Voyage, nor lent any one for him, if he made a Fine with the King for the Ecuage, shall have Ecuage of his Tenants. 10 E. 1. Rot. pro Scutagio levando Hemb. 3. &c. Hemb. 2. for him qui Regi satisfecit pro Servicio suo. 31 E. 1. Rot. Scutagii Hemb. 2. 8 E. 1. Rot. Finitium Hemb. 8. Fitz. Nat. Bre. 83. (3) Contra Co. Litt. 72. b.

&c. then he shall have Ecuage of his Tenants that hold of him by such Service, which must be ascertained by Parliament. But if the King's Tenant does not go with the King, then he shall pay for his Default, Ecuage, and shall have no Ecuage of his Tenants. Co. Litt. 72. b.

9. If the Tenant of the King in Socage has diverse Tenants by Knight Service, he shall not have upon a Voyage Royal Ecuage of his Tenants, if he does not go in the Voyage, or agree with the King for it; but he shall have it if he goes with the King, or agrees with him. Fitz. Nat. 83. (4)


11. He who was with the King, tho' he holds of the King but in one County, yet he shall have Ecuage of his Tenant in every other County of England. 10 E. 1. Rot. pro Scutagio levando, Hemb. 3.

12. The Executors of him who was the King, shall have Ecuage. 10 E. 1. Rot. de Scutagio levando, Hemb. 3.


15. If Ecuage be granted, and after the Heirs grants the Services to another, and then Ecuage is levied of the Grantee, he may levy this again of the Tenants. 1 E. 3. 6. b.

16. So if Ecuage be granted in the Time of the Ancestor, and levied upon his Heir, the Heire shall have the Ecuage of the Tenants. 1 E. 3. 6 b.

17. The King or other who has Seigniory for Term of Years, or for Life, or has Seigniory in Ward, or by the Tenoralties of the Bishop, or such like, shall have Ecuage, and yet he shall not have Homage. Br. Tenures, pl. 103. cites F. N. B. 83, 84.

18. The Lords of whom lands were held by Ecuage, should have it when affiled for the Lords at first came from the Lords, and it is not intended that they were given by them to the Tenants, to defend them as well as the King. And the Lords might distrain for it, or have a Writ to the Sheriff to levy it for them; but of such Tenants as held of the King by Ecuage, that went not to the War, the King should have it. Hawk. Co. Litt. 116, 117.

N n n (N) Ecuage.
Tenure.

(X) Escuage. Summons.

1. 19 Eliz. 1. ROY. Clauarum Hemb. 7. in Doris, Summeritio Serviciu, Mandamus Vobis in Fide & Homagio, quibus nobis tenemini, quod cum Equi & Armis & tali Servitio, quod nobis debitis, itis ad nos apud Northamp toniam ad locandum Servitium veltrum C. & Nomina eorum qui summonentur C. Edmundo Fratri Regis, Johanni Ballivo Archiepiscopi Eborum &c.

2. 5 Eliz. 1. Rot. Scutagii, Hemb. 8. Breve de Sumeritione, Quod interfitis cum Equi & Armis & cum Servitio veltrum nobis debitis apud Wigorn tali Die &c. parati nobis cum ex inde profici in Expeditionem nostram &c. et velociter Summons to each.


4. See 11 Eliz. 1. Rot. Wallis Hemb. 2. in Doris, and 3 in Doris, the manner of the Summons.

(Y) Escuage. Trial.

1. If it be not enrolled in the roll of the Marshal, that I. S. was in the army, yet he may be tellified by the King, by a Bishop, by the Chancellor, by the Chamberlain, or other Men of Credit; and thereupon he shall have his Escuage of his Tenants. 10 Eliz. 1. Rot. pro Scutagio scetando, Hemb. 3.


3. In the way of Tenures in the Exchequer there is a Roll, of which the Title is: Negoxtia Adiutata de Scaccario ad Parliamentum Regis, apud Carlisburn, in Octabvs Sancti Hilarii, Anno Regis Edwardi 35. Where Theobaldus de Verdon fuit Attacharius ad Respondendum quare non venit apud Carlisburn in quindene Sancti Johannis cum Servitio suo quod Regi debuit in Exercitu Scotiae, Anno 34. &c. Et ipse venit & dicit quod fecit Domino Regi Servitium suum quod Regi &c. & inde vocet ad Warrantum Recordum Conflatulariorum & Marecallorum exercitum Regis, & datus est ei Dies de habendo Warrantum suum ad Parliamentum praedictum. And so in the same Roll: Rogerus De la Ware attacharius ad respondendum Regi &c. qui venit & dicit quod fecit Domino Regi Servitium suum in exercitu praedicto, & petivit Deum de habendo Warranto suo &c. Et ad hoc Dies datus est ad Parliamentum Praedictum.

Litt. S. 102.

4. When the Lord drastained for Escuage affilesd by Parliament, if the Tenant would aver, that he was with the King all the Days required, and the Lord averd the contrary, it should be tryd by the Certificate of the Marshal of the King's High, under his Seal, fent to the Justices.

Hawk. Co. Litt. 117.
Tenure.

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every Tenant might have his Certificate into the Court of Exchequer; and upon such Certificate the Baron disqualified him out of the King's Rent Roll; for such Certificate of the Marshal, issued in the Court of Exchequer, was an Authority to the Baron to discharge the Pipe Roll of an Eicuage upon such Tenant, that so no Distress was issued upon such Eicuage. If the King's Tenant had not inroll'd his Certificate, then the Distresses regularly issued; but the Tenant might plead such Certificate at the Return of the Distresses, and get the Distich. But however the Distresses did originally issue, because he had not inroll'd his Certificate; where it was inroll'd, it was never in Distich to the Sheriff; where it was pleaded upon the Return of the Distresses, the Sheriff was for'd till such Certificate produced. If any inferior Tenant was displeaded by his Landlord for Eicuage, he might reply; and if upon such Reply he could plead, That he was with the King in the Expedition, and they his Certificate from the Marshal, the Tenant might have a Recordari of such Plaintiff before the Sheriff, and thereby bring it before the Justices in Eyre; and upon produce such Certificate before the Justices, the Justices granted a Writ de returne, liberando of such Distress. Gilb. Hist. View of the Exch. 24. 25.

(Y. 2) Frankalmoign.

1. Prior held in Frankalmoign and infeoff'd f. s. in Fee, and the Lord after the Limitation of All the Services, and brought Cessavit for not doing them; and it was laid, That the Feoffee cannot hold by Frankalmoign, as the Prior held; therefore he shall hold by the Services accrued,' or by Fealty only; or as the Donor held over, and yet the Demandant was bar'd upon his Count of Services accrued.' Br. Tenures, pl. 39. cites 31 L. 3. and Fitzh. Cæsavit 22.

2. In Treffas it was in a manner agreed Arguedo per Cur. That where the Lands of the Templars, which were dissolved, and held of the King in Frankalmoign, and their Lands given by Act of Parliament to the Hospital in Fee, to hold by the same Services as the Templars held, their Words do not make Frankalmoign; for Frankalmoign is not any Service, and by force it cannot be, because Frankalmoign cannot be but of the Donors. But Brooke fays, it seems to him that it may; for tho' it cannot be but of the Donors by the Common Law, yet otherwise it may be by the Act of Parliament, which may make a new Law varying from the Common Law. Br. Tenures, pl. 5. cites 35 H. 6. 56.

3. At this Day a Man cannot give Land to hold in Frankalmoign to an Abbot in Fee; for by the Statute of Tenures, he shall hold by the Lord Patron, of whom the Donor held. Contra before this Statute, which is call'd Quia Emptores terrarum. Per Littleton. Br. Tenures, pl. 39. cites 12 E. 4. 3. 4.

(Z) Tenure in Socage.

1. If Tenant by Eicuage had made Feoffment, before the Statute, to hold of him by the Services of 6 d. &c. is this 6 d. solidus debet Scutagium tantum &c. quantum pertinere ad tantam terram. This is but b Socage Tenure. 27 M. 52. Per Curiam.

Tenure in Socage is where the Tenant holds of his Lord by certain Service, as Fealty and certain Rent, for all Services. And at this Day every tenanted Tenure of a common Person is in Socage; for tho' in a strict Sense, it only signifies that in which the Service of the Plough was originally refer'd, yet largely taken it comprehends all others that have the like Effects and Incidents; As if a Roie, Rent, or doing of an Office were originally refer'd; and at Law every temporal Tenure of a Subject that was at Knolly's Service, was Socage. Socage signifies that the Subject, as. a Plough; and anciently such Tenants ought with their Ploughs for certain Days in the Year, to plough and sow the Lord's Demesne, or do other Works of Husbandry. And afterwards such Services were changed into annual Rent, and yet the Name of Socage remain'd; such Charge must be before Time of Memory; for at this Day they cannot be changed by Release, Confirmation, or any other Conveyance.
Tenure.

ance, so long as the Seigniory remains. And in some Places they still do such Services with their Ploughs to their Lords. Hawk. Co. Lit. 123, 124.

† S. P. So that this Tenure which at first was slightly efeemed of, is now accounted much the better; for the original Labours are converted into a moderate Sum of Money, only the Value of the yearly Rent is exacted for Relief, and it is obliged neither to Ward or Marriage. Cowell's Inquiries, Lib. 2. Tit. 3. S. 21.

‡ S. P. And Brooke says, the Reason seems to be inasmuch as the 6d. is certain, and therefore it cannot be but Ecsauge certain, which is Sogage, as appears in Littleton's Tenures. Br. Tenures, pl. 29. cites S. C.

Incidents.

2. If at the Common Law a Man had given Land in Fee, to hold by Knights-service, and had granted to the Donee and his Heirs, that they should pay so much for Relief, when it is to be paid for Ward, Marriage, and all Exactions, the Donee should hold by Knight's-Service, and yet he should not be in Ward, tho' it be incident to Knight's-Service, but not irparable. 31 Ass. 15. Dilectitiae.

3. So it is in the said Case, tho' it be also granted generally, that he shall not be in Ward, nor shall pay nothing for his Marriage 19 E. 2. Abowly 224. By Herle said to be adjudged, tho' it be Knight's-Service.

4. If a Man gives by Deed to a Prior and Coendent Land ablique Homaggio & Fidelitate, Habendum & Tenendum de fe, & hereditas suis Redendo inde annuatim 10 s. tantum pro Homaggio & Fidelitate & pro omnibus que de dicta terra exigi poterunt, Salvo camen Scutagio Domini Regis quando currit. Tho' this be Knight's-Service, and tho' Damage and Fealty are incident to Knight's-Service, yet he shall not allow for them against the Deed. 19 E. 2. Abowly 224.

5. If a Man holds by Fealty, and 12d. Rent, and the Lord releaves or confirms the Estate of the Tenant, to hold by 2d. for all Services and Demands; this shall bar the Lord of Relief. Kelso-ray incurt temporis, 136.

6. If a Man holds Land at Will, rendering Rent, this is not a Rent-Service; for Fealty is not incident to it, but it is a Rent Discountable of common Right. Co. Lett. 37. b.

7. If a Man holds his Land to pay a Rent to his Lord for Castle-guard, this Tenure is Tenure in Sogage; but where the Tenant ought by himself, or by another, to do Castle-guard, such Tenure is Tenure by Knights-Service. Lett. S. 121.

8. Lands held of a Manor in Ancient Demeuse, shall be held, by no other Service than Sogage. F. N. B. 13. (D) and 14. (B)

9. Every Tenure which is not Tenure in Obovately, is a Tenure in Sogage. Co. Lett. 86. a.

10. If a Man hold by Homage, Fealty, and Ecsauge, viz. by an Half-penny, when Ecsauge runs at 40 s. this is a Tenure in Sogage, and no Knights Service, for 2 Caues; first, it is Sogage Tenure, because of the Certainty; for to the Tenure in Sogage certa Servitio do ever belong, to as the Husbandman may the rather live in quiet. 2dly, Ecsauge is to be paid at every Time when it is affis'd, and here it is not to be paid but when it amounts to 40 s. Co. Lett. 87. a.

11. He
Tenure.

11. He that held by Esnuage certain, i.e. to pay his Lord a certain Sum for it, at what Rate ever the Parliament affeeds it, held in Socage. If one speake generally of Esnuage, it shalbe intended of Esnuage certain, because that is the worthiest Senfe. Haw. Co. Litt. 116.

12. The Service which is performed by Tenants in Fee Farm, is Socage, in regard Fee Farm cannot be where Ward and Marriage are referred to the Lord by Charter. And the same is to be understood of Tenants in Femand Bank. Cowell's Institutes, Lib. 2. Tit. 3. S. 26.

(A. a) Alteration. In what Cases the Tenure shall be See (L. 2) chann'd, and How.

1. If there be Lord Mefne and Tenant, and the Tenant by his A& Br. Tenures, [as] by Purchase, Forcudger, and the like, is Party to the Alteration of the Tenure, there he shal hold as the Mefne held before; for he comes in loco Medii; And on the contrary, where the Mefnalty is determined by the Act of God, as by Escheate without Heir, and the like; for there the Seigniory will merge in the Senfalty, and the Seigniory will remain, and the Tenant shall hold as before. Brook Tenures 97.

Defect, or other lawful Means comes to the Lord in Fee-simple; the Tenure and all Things incidental to the Tenure, are extinct and gone, because the Lord cannot hold the Land of his own Tenant. But tho' the Seigniory is extinct, yet the Rent is not gone; if no Rent due from the Mefne to the Lord, then all the Rent continues; if any Rent, then it continues for the Surplusage, as Rent Service inalienable of Common Right. But so long as the Land continues in the Hands of the King, the Disburse is suspended, and the Remedy is by Petition. But when the King grants it over, then the Mefne shall disfrain the Plaintiff. Refolved. Jo. 234. Pat. 7 Car. R. Faulker v. Bellingham.

2. [So] if there be Lord Mefne and Tenant, and the Tenant holds by more Services than the Mefne, and the Mefne is attained of Felony, by which the Senfalty escheats to the Lord, the Lord shall have the same Services of the Tenant as the Mefne had of him before; for he is now become Tenant to the Lord, by reason of the Senfalty to which his Services were annexed. 1 E. 3. 6. by Cond.

3. So shall it be in the Case aforesaid, though the Tenant held by less Services of the Mefne than the Mefne held before, yet he shall pay but the same Services which he paid before, for his Tenancy is not altered; But the Senfalty to which the Services are annexed is come to the Lord Paramount. 1 E. 3. 6.

4. [So] if Lord Mefne and Tenant are, and the Senfalty is a Ma- nor, and held of the King in Capite, a Tenant Paravail, who holds of the Manor by Socage Tenure, obtains a Release of the Mefne, and his Tenure (19) immediate of the King in Capite, as the Tenure of the Manor was, because the Senfalty is extinct by his own Consent; and volenti non fit Injuria. D. 19. 20 Cl. 359. 1. Ex. County Palatine 67.

5. If Lord Mefne and Tenant are, and the Mefne releases to the Tenant, the Tenant shall hold of the Lord by the same Services as the Mefne held for the Cause aforesaid. 7 E. 4. 12. 22 E. 3. Brook Tenures 97. Fitzherbert Dower 131.

Mefne, the Mefne shall hold by the same Service as he did before. 2 Inst. 512.
Tenure.


7. If Lord, Seize, and Tenant are, and Tenant holds in Frankalmoigne, and Seignalty doth feems to the Lord upon Death of the Seize without Herit, there the Tenant shall hold of the Lord by the same Services as the Seize held; because he cannot hold in Frankalmoigne as he held of the Seize, the Lord being a Stranger to the Blood. 7 E. 4. 12 (It seems he shall hold it as near it as may be, that is to say) by Fealty only.

8. If the Tenant forjudges the Seize, he shall hold of the Lord by the same Services as the Seize held before of the Lord; for it is his own Service. 22 E. 3. Dower 131. Brook Tenures 97. 10 M. 29.

There, Lord, Seize, and Tenant are, and the Tenant forjudges the Seize, and is in Arrear to the Lord, he accepts the Services by the Hands of the Tenant, (as he ought) yet he may differ him, and upon him for the Services of the Seize; for it is the Folly of the Tenant to forjudge the Seize. And the bell Opinion was, that the Tenant may rebut the Lord by Debt made to the Seize for an Inreundant of the Lord, as the Seize himself may. Br. Tenures, pl. 85. cites 7 E. 3. Pnth Abourey 125.

* S. P. For the ancient Seignity remains, and the Tenure wills this. But where Lord, Seize and Tenant are, and the Tenant holds of the Seize by 3 Halfsence, and the Seize over of the Lord by 4d. and the Seize dies without Herit, the Lord is left of the 3 Halfsence, and may bring thereof Abbitt upon Difflin, and recover upon the Matter; for the Seignity is extinct in the Mefnaky, 6 that he shall have only the Services which the Seize should have had, and not the Services which the Seize paid to the Lord; qual dom. Br. Tenures, pl. 57. cites 10 M. 29.

9. If Lord, Seize, and Tenant are, and the Seignalty comes by Purchase to the Lord, the Tenant shall hold as he held before. Davies County Palatine 67. D. 30. 8. 44. 30.

10. If the Seignalty descends to the Lord, the Tenant shall hold as he held before. Davies Reports 67. D. 30. 8. 44. 30.

11. If Lord, 2 Meshes a Tenant are, and the last Seignalty descends to the first Mefnaky, this first Seignalty is entering, because he by this comes more near to the Tenancy, and yet the first Seize shall hold of the Lord paramount as he held before. Co. Lit. 99 b.

If there be Lord, Mefnaky, and Tenant, and the Mefnaky dies without Herit, and the Seignalty doth feems to the 2d Mefnaky; or if the Mefnaky grants the Seignalty to the Mefnaky, the Seignalty which is descent to the Tenancy doth drow the more remote Seignalty, and the Tenant shall hold per eadem Servita & confuetudines, as he held before; but the 2d Mefnaky shall hold of the Lord, paramount per eadem Servita & confuetudines, as he held before the Extinguishment of his Mefnalty for the Castle aforefaid. 2 Inft. 502.

12. If Lord and Tenant are by Castle-guard, and the Lord grants over the Seignity, the Castle-guard is gone, because the Grantee has not the Castle. Co. Lit. 83 a. and this is not a Tenure by Knight Service, as it was before.

13. If A. holds of B. as of his Manor of D. by Fealty and Suit of Court, and B. grants over the Seignity, the Suit is gone, because the Grantee has not the Manor. Co. Lit. 83 b.

14. But if Lord and Tenant are by Castle-Guard, and the Castle be utterly ruined, yet the Tenure remains by Knight Service, and this
Tenure.

This goes in Benefit of the Tenant as to the Guard of the Castle, till it be rebuilt. Co. Litt. 83. c.

15. If the King makes Release to his Tenant in Capite to hold by a Penny and not in Capite, this is a void Release and does not alter the Tenure; for it is merely incident to the Person and Crown of the King. D. 39 D. 8. 45. 35. [36.]

16. * 18 E. 1. cap. 1. For furnishing as Purchasers of Lands and Tenements of the Fees of great Men and other Lords, have many Times heretofore entered into their Fees, to the Prejudice of the Lords to whom the Feeholders of such great Men have sold their Lands and Tenements to be holden in Fee of their Feoffors and not of the Chief Lords of the Fees, whereby the same Chief Lords have many Times lost their Receipts, Marriages, and Wardships of Lands, and Tenements belonging to their Fees, which thing seemed very hard and extreme unto those Lords, and other great Men; And moreover in this Case manifest Disherence.

milner 1, and the other called Weinfiller 2; in respect whereof, and the Excellency of it, this Parliament being holden at Westminster is called Weinfiller 2. 2 Inft. 500.

Before this Statute, if Tenant by Knight Service had made Feoffment, the Feehee by the Law should hold as the Tenant held over, viz. by Knight Service, and if the Feehee had after procured a Release to hold in Socage, the Feehee should hold in socage likewise. Per Doderidge J. quad fait conce pills per Cole Ch. J Roll Rep. 126. in Case of Spinks v. Tenants. 49 E. 5. But before this Statute had made a Gift of Land to one in Fee, to repair a Bridge or to keep such a Caffle, or to marry annually a poor Virgin of S. this had been a Tenure, and the Dosor might have di- ftrait'd and made Away, and is not a Condition; But if a Person gives Land to a Man to marry her, this is a Codiion in Effect, and no Tenure. Per Fitzherbert, quad nono negativ. Br. Tenures, pl. 55. citeth 24. H. 8.

At the Common Law, if A. had made Feoffment in Fee to B. Reddend' inde five Tenants de fe &c. • when the Petition is filed per 6 d. pro annibus avowitis, & facit annulas deniales. &c. at this Case by the first Reddend' or Tenend' the Land had been holden of the Feoffee, and all the Services due shall be done to him; for to do Service for a Man, is to do it to him; Qui pro me a liquide fact, mihi auctile videtur. 2 Inft. 501.

Our Lord the King in his Parliament at Westminster after Feoffey, the 18th Year of his Reign, that is to wit, in the Quincentenary of St. John Baptist, at the Influence of the great Men of the Realm, granted, provided and ordained, that from henceforth it shall be lawful to every Free- man to sell at his own Pleasure, his Lands and Tenements, or part of them,

whole Tenancy, to be helden of the Chief Lord; But notwithstanding the Lord might, during the Life of the Feoffee, take him for his Tenant, and avow upon him (in respect of the former Fealty, Service, and Privyty) albeit the Feehee gave Notice and tendered him all the Arrearages, which this Statute hath altered. 2 Inft. 501.

† i.e. Liber or tenant, to every Freeholder. Hereby are excluded, not only Nativi, but also Native Tenantes, Copyholders, or Tenants at Will according to the Custom of the Manor. 2 Inft. 501.

‡ This is not only taken for a Sale, but for any Alienation by Gift, Feoffment, Fine, or otherwise; But Sale was the most common Allusion. 2 Inft. 501.

* So that the Feehe shall hold the same Land and Tenements of the Chief. * The General Words of this Act

* Take not away necessary Incidents, as that the Feehee of all, or of part, shall give Notice, and tender the Arrearages before the Lord shall be compelled to avow upon him; Neither do these or the former Words (De custero licitar) take away the Fine for Licensce of Alienation &c. of Lands helden of the King in Capite, for that belongs to the King by the said Statute of Magna Charta. See Magna Charta, cap. 82. 2 Inft. 501.

These general Words have a tacite Exception, viz. unless all the Lords mediate and immediate do otherwise. For Qualiter renunciare potest beneficio juris pro se introduct. 2 Inft. 501.

† This is taken for the next immediate Lord, and so by Degrees upward to every Lord Paramount; albeit the Act speaks in the singular number; And it is to be known, that all the Lands and Tenements in England, are helden either mediate or immediately of the King, and therefore he is Summus Dominus supra omnes. 2 Inft. 501.
Tenure.

* A Man held Tenures of J's by
  Knights Service, and given the same to B, in Fait, to hold of him in Socage; B makes a Feevoment in F, for the Feoffee shall not hold of the Lord in Socage as the Feoffor held, but by Knigbts Service, as the Donor held; for by the Feevoment the Reversion in Fee holden by Knights Service, is drawn out of the Donor, and pas to the Feoffee, and the Feoffee in this case cannot hold of the Donor, and this Feoffee is not against the Letter of the Law, but within the Intent and Meaning thereof; for the Meaning of this Law was, That the Feoffee should hold of the Lord, as the Feoffor did when the Feoffee held of the same Lord; and this Act was made for the Advantage of the Lords; and therefore in Construction the Feoffee shall hold, not as the Feoffor, but as the Donor hold.

 If, the Tenant that holds by Priovity makes a Feevoment in Fee, the Feoffee shall not hold by Priority; for this Act day's Per eadem Servitius, by the same Services, and not according to every collatellar Quality. 2 Ind. 502.

 The Tenure of Frankalmoigne aliens in Fee, the Feoffee shall not hold of the Lord Per eadem Servitius, albeit he be a Man of the Church; but he shall hold of the Lord by Fealty only; for by the first Words of this Act he shall hold of the Lord, but he cannot hold of the Lord Per eadem Servitius, because it is against the Nature of the Tenure in Frankalmoigne to hold of any but of the Donor or His Heirs, and general Words of an Act shall not be taken to work any thing against the Nature of the Thing, or the Rule of Law, but he shall hold by Fealty only, which was as free a Tenure, and as near to the Former as can be, and therefore by Contrauction (eadem Servitius) the same Services shall be taken As if the same Services as may be. 2 Ind. 502.

 The Archbishop of C. fealed of Land in Right of his Archibispore, and held of the King in Frankalmoigne, after this Statute made a Feevoment in Fee to J. S. and the Dean and Chapter confirmed it. The Question was, if the Lord shall be held of the King in Capite by Service of Chivalry or Socage in Capite? It was resolved upon this Statute, that the Land shall be held of the King in Socage, and not in Capite. For this is the Case of Tenures, as was taken out of the Statute; for before this Statute he should hold of the Bishop, and not otherwise; But now this Statute provides that it shall be lawful to alien his Land, but the Statute is Fainde, Note hoc &c. 501. that the Feoffee shall hold the Land of the Chief Lord of that Fee. I. The same Services as his Feoffor held before, which cannot be in this Case. For he cannot hold of the King in Frankalmoigne, nor by the Services which the Feoffee held by; and therefore he shall not hold in Capite by the Meaning of this Statute, which shall be taken the most reasonably for all Parties concerned. 2 And. 211. pl. 50 in the Court of Wards, Rotheram v. Wood.

 A Diversity was taken, when the King grants Land, and refeal no Tenure, or when a Clauze is Albus aliquo volendis, there the Law creates a Tenure, the Bell it can for the King; But when the Land pas ses from a Subject, and the Law, of Necessity, changes one Tenure into another, it will create One as near the Freedom of the first Tenure as may be; As if a Bishop or other Man of the Church had held Land of the King in Frankalmoigne, and at the Common Law had infeoff another, and his Heirs of the same Land, in that Case the Feoffee should hold of Fealty only; for this is as near the Freedom of the Tenure in Frankalmoigne as may be, and so it was resolved in the King's Case. And the reason of this Diversity is, because in the first Case the Land moves from the King, and therefore shall be subject to such Tenure as the Law will create; But when Tenent in Frankalmoigne infeoffs another, the Feoffee is in by a Subject and not by the King, so as the King parts with nothing; Besides, in the left Case the Law does not create any Tenure originally as it does in the first Case, but only changes one Tenure into another, viz. Frankalmoigne into Fealty only. 9 Rep. 172 a 8. Trin. 5. jac in the Court of Wards in Lowe's Case. — Litt. S. 159. and Coke's Comment upon it, pag. 98 a S. P. This Act extends to Lands holden by Fee Feam. 2 Ind. 502.

 This Custom is here taken for Services, as in the Writ de Consequentibus & Servitibus, and not for Customs 2 Ind. 502.

 If the Tenancy comes to the Misdiny by All in Law, as by Ejelecat or Defent, the Mene shall hold Per eadem Servitius as before referred, as he held before; for albeit the Tenure between the Tenant and the Meine in their Cases be extinct, yet the Scionry paramount, which also was lving out of the Tenancy, remains still. 2 Ind. 502.

 The King may licence A Man to alien, and to make a Tenure at this Day, where he is his Tenure innominate; and the King and the other major Lords may licence other Tenants to alien and make Tenure at this Day. But the Lords only cannot; for the Statute was for the Advantage of the King and Lords, and the King is not bound thereby; and to the King and the Lords may dispence with this Statute. Br. Tenures, p. 65, cit. F. N. B. fol. 211.

 S. That the King is not bound by this Statute, because all Land must be held, and therefore if he shall not hold of the King, he will hold of no body. Roll Rep. 165. in the Cafe of Smith v. Warren, alias, Magdalen College's Cafe.

 * By such Services and || Customs as his Feoffor held before.

 * A Man held Tenures of J's by
  two federal
  Tenures and
  by 5 s. Rent, and
  the
  Lord
  freed the
  Easement of
  the Tenant to hold by 5 d. for all Services, it was held that this shall not make the Tenant to hold by one entire Tenure where he held by several Services before. Br. Tenures, pl. 59. cit. 2 H. 6. 9. 3.

 [But it seems it should be 9 H. 6. 8. b. 9.]

 17. If a Man had given Land before the Statute to hold of the Chief Lord, the Feoffee should have held of the Chief Lord; And if the Lord had released and confirmed to the Tenant to hold in Frankalmoigne, he should have held in Frankalmoigne thereby. And to see that Tenure may be altered by Confirmation. But it seems that it is only a diminishing; For he does no Services. Br. Tenures, pl. 71. cit. 4 E. 3. Fitzh. tit. meine 41.
Tenure.

On Confirmation to the Tenant the Lord can't reseve new Services, as Hawk for Rent, or Rent for Hawk. 9 Rep. 142. Patch to Jac. in the Court of Wards in Beaumont's Cafe.

18. In Assise; the King Lord, Miscne and Tenant are, the Tenant held of Br. Tenures, the Miscne by Socage, and the Miscne over in Chivalry; the Tenant gave his Land to his Daughter with her Baron in Frankmarriage rendering 12 d. per Annum for all Services falso Forinisco Scrutio; And it was held that the Donor cannot have Service of Chivalry by these Words (Forinisco Servi- 

rect) the Reason is, because he himself held only in Socage; for it appears there, that the Foreign Service are such Services by which the Donor holds over. But per Wilby, There are such Services by which the Land is held, and the Miscne holds over by Chivalry, tho' the Tenant holds only by Socage; and he judged accordingly, which was contrary to the Opinion of several, and therefore Error was thereof brought in B.R. And it was said, that this Word * (Salvo) is insufficient to save that which is in Esle, which was only Socage here; but it is not sufficient to reserve that which is not in Esle, as Service of Chivalry here, if he does not say Red- 
dendo vel faciendo. And per Wilby and Green, that of which the Donor is charged over may be reserved by this Word (Salvo.) And per Wilby Escoage certain is Socage, and Escoage uncertain is Service of Chivalry; And a Man may hold by Homage and yet not in Chivalry, but in So- 
cage, per Wilby. And the beil Opinion was, that by these Words 

Salvo Forinisco Servi, the Donor shall have only such Services by which he himself is charged over, and not such Services which his 

Miscne or other Lords Paramount is charged for the same Land; quod 


& faciendo Costali Domino Servitium debuit pro Feoffator & Hereditus suis, that which he shall do for him he shall do to him, and therefore he holds in Chivalry. But Monbray Contra for the first (for all Services) discharge him, and the last Words are not sufficient to contraddle the first. And Brooke says, the Law seems to be with him; for the Deed shall be taken more strongly against the Feoffor, and there is no Reservation nor Exception of Escoage, Br. Tenures, pl. 31. cites 31 All. 50.

* S. P. Br. Referment, pl. 53. cites 31 All. 50.

19. Lord and Tenant by Service of 6 Marks, and to find a Chaplain for ever, the Lord refersed by Fine in Writ of Culoms and Services to hold by 6 Marks, and renting half a Mark for the Chaplain, and after devised the 6 Marks and died, and in Assise all was found by Verdict at large, and the Plaintiff recover'd. Brooke says, Quod Mirum! that he may change the Services, or reserve Rent upon Fine of Release. Br. Tenures, pl. 49. cites 26. All. 37.

20. In Assise Deed was shewn by which Land was given to A. B. and his Heirs to hold of the Feoffor and his Heirs by 6 d. for all Services, and ex 

ills fec Domini Scutagium faci debet quam quoniam quantum pertinet ad tertiam partem unius acres terrae, And per Seton he holds in Socage by 

by these Words (6 d. for all Services.) And these Words (Scutagium debit &c.) are not Words of Refermentation, as Reddendum Scutagium, 

nee Salvo Scutagio, therefore it is only Socage. Br. Tenures, pl. 31. cites 31 All. 50.

21. If a Man gives Land in Tail Tenendum libere & quiete, the Remain- 
nder over Tenendum in forma praedita, reddend. 2 s. per Annum, the first Ef- 
tate is discharged of the 2 s. and not the Remainder, otherwise it seems if 

22. If Manor be converted into a Priory, yet the Tenure remains, and the 
Lord may disfrain ; For Alteration shall not prejudice the Lord. Br. 
Tenures, pl. 55 cites 42 E. 3 7.

23. If a Man holds an Acre of Land of J. S. by Fecality and Suit as of S. P. Br. 
his Manor of Dole, and J. S. is allo feoffed of another Manor called T. 
and J. S. grants unto the Tenant that he shall do his Suit at his Manor of T., 
P P P

this for le Sta-
Tenure.

24. And if J. S. in the same Case had granted unto his Tenant that he shall give unto him 12 d. yearly for his Suit; This Grant shall not determine nor alter the Tenure. Perk. S. 70.

25. If Lord and Tenant be, and the Tenant infeoffs the Lord of the Tenancy upon Condition, the Lord may grant his Seigniory, and yet it is not determined nor extinguished; For if the Condition be broken, and the Tenant enters, the Seigniory is revived. But if before the Entry of the Tenant the Lord infeoffs a Stranger of the Tenancy, and then the first Feoffor, that is to say, the Tenant enters, the Seigniory is not revived but is determined, because that the Lord departs with the Tenancy to his Feoffee discharged of the Seigniory. And to in the same Case the Lord may depart with his Seigniory by such Means &c. Perk. S. 89.

26. If there be Lord and Tenant by Knights Service, viz. by Homage, Fealty, and Esjeuage, and 12 d. Rent, and the Lord grants the Rent unto a Stranger paying unto him his Seigniory, it is a good Saving; but notwithstanding that, the Lord shall have the Esjeuage, and yet it is not but a Payment of Money if the Tenant will, and the Grantee shall have the 12 d. Rent as a Rent Seck &c. Perk. S. 648.

27. If before the Statute of Quia emptores Terrarum, there had been Lord, Mesne, and Tenant, and the Mesne and the Tenant had intermarried, the same should not have altered the Lord’s Avowry; or if the Tenant had infeoffs the Mesne of the Tenancy, it should not have altered the Avowry of the Lord &c. Perk. S. 654.

28. If Lord, 2 Jointtenants mesne, and Tenant had been, and every of them held of the other by Fealty, and 12 d. and the Tenant had infeoffs one of the Joint Mesnes before the Statute of Quia emptores Terrarum of the whole Tenancy, it seems the Feoffee shall hold one Moiety of the Tenancy of him who was his Joint mesne by Fealty, and 6 d. Rent. Perk. S. 655.

See Berdall, 116. pl. 149
S. C. says, this was before the Statute of Quia emptores Terrarum, and the Fine was given in Evidence in an Issue to be tried in the Manner of a Writ de Valorie Maritagiis in Sufflac, at the Suit of the Executors of the old Duke of Norfolk v. Keels.

30. If a Man has Lands which were Parcel of the Poffession of a Chantry &c. and came to the King by the Statute of Dissolutions, and before were held of a common Person by Rent and Fealty, or by Service in Chivalry, now the Patron of the King shall hold according to the Patent, and not of the ancient Lord, or of his Heirs by the former Services, but he shall pay the same Rent, which before was Rent Service, as Rent-charge disferrable of Common Right only by the former Lord and his Heirs; and so the faving in the Statute was expounded. And. 45. pl. 115. Mich. 16 & 17 Eliz. Stroud’s Cafe.

31. A Writ of Difceit by the Lord of the Manor in Ancient Demefne, upon a Fine levied of Land there; the Defendants pleaded that the Lord of the Manor in the Time of H. 2. released to one who was Tenant of the same Land by Fine de camebis Servituis & confuetudinis, falsis Servituis infrascriptis, viz. pro una virgata Terra. 2 s. Rent, Suit of Court, and Relief. And the Release was de uno Mefuagio & una virgata Terra. It was held, That the Custom of the Ancient Demefne was extinct by the Release, but that
Tenure.

that the Rent, Relief and Suit of Court remained as Parcel of the Seignory by the foregoing, And adjudged accordingly. Mo. 143. pl. 295. Mich. 25 & 26 Eliz. Griffith v. Clarke.

32. King Edw. 3. was Lord, Abbots of W. Meine, and C. was Tenant. C. was attained of treason. Office was found. The King granted the Land to M. and his Heirs, Tenendum de Nobis et Successoribus usfrvis et aliis Captalibus Dominis Foodi illius per Servitia inde prius debita, de Jurj contrecta. It was argued, (among other things) that this was now a Tenure of the King immediately, and not of the Meine, because the Words were not per Servitius (Ante Proditionemn) or (Ante Attinentiam) inde prius debita &c. and diverse Offices and Licences of Alienations and other Records were shown to the Court, by which it appeared that the Law had been so taken all along, that the said Manor was held of the King in Capite. But as to the said Offices, Licences, and other Records, the Barons said, that since by Conconstruction of Law upon the said Letters Patents, it appears that there is no immediate Tenure of the King, notwithstanding it has been found otherwise in Offices, or admitted in Licences or other Records, yet this cannot alter the true Tenure which originally appears of Record to them as Judges; and that the Connuendo fit magnum Authoritatis, nunquam tamen prejudicat Veritati.


33. A. seated in Fee of Land held of Queen Eliz. as of the Fee of Crowland, whereof he was seated in Fee by Admittance, procured a Licence from her, and suffered a Common Recovery, and made a Joindre on his Wife. A. and the Wife died, and the Land descended to B. as Coulin and Heir of A. B. sold the Land to C. who died seeded, and the Land descended to D. as Son and Heir to C. This was found by Office; and further, that the Inquisition was held of C. Decease of Queen Eliz. and at the Inquisition was held of the King now by Knight Service in Capite. Resolved by Coke and Tanfield, that the * suing the Licence of Alienation is no Conclusion to the Party, so as to make the Lands to be held of the King in Capite, because the Words of the Licence are (Quae de Nobis tenantur in Capite, ut dicuntur) but yet that the same may be us'd as some Part of Evidence for the King to prove such a Tenure. And decreed that the Tenure should be taken as a Meine Tenure, and not a Tenure in Capite. Ley 16. Mich. 7 Jac. Davison & Dymmock's Cafe.

by Bene & verum etc. &c. For in such Cases the Plea is a Conclusion.

34. Two Tenants held of C. by unequal Rents. C. gives, grants and confirms &c. the said Rents, Services, and Seigniories to them 2 and their Heirs; this is an Extinguishment of a Moiety of every of the Tenures, and for the other Moiety they hold one of another; it was said that if the Acres and Rent had been equal, then that should be extinguished in all; but, as it was, there was a cross Tenure between them as to one Moiety, and that shall not move as a Releafe Redendo singula Singulis. Noyl 113. Goldwell v. Navenden, cites D. 319. 11 H. 7. 12. 3. 39 H. 6. 2. 49 E. 3. 40.

35. A. seated of the Manor of W. held in Capite, purchased a Freehold of 7 Acres held of the same Manor in Sowage. Resolved by the Lord Ch. J. Mountague, and Hobart, and Tanfield Ch. B. That the 7 Acres purchased by A. is held of the King in Capite by Knight Service, as the Manor of W. is held, and of which the said 7 Acres were held in Sowage till such Purchase. Ley 63, 65. Patch. 17 Jac. Mountague's Cafe.

(B. a) Ex-
Tenure.

(B. a) *Extinguished.* What act will extinguish it.

1. If the King purchases land which is held of others, by this all the services are extirpate. *47 Eliz.* 3. 21. *b* by Finchden.

2. If my tenant infeoffs the King, and retakes estate from the King, my tenures is extirpate. Contra *45 Eliz.* 3. 6. He shall hold of both.

S. C. That he is my tenant in right, and shall hold of the King also; *Per Finch.* Brooke says, Quare his holding of me; for the tenures was once extirpate by the possession of the King.

3. If the King has land by forfeiture of treason, by this all tenures are extirpate as well of the King as of others. *Co. 6.* *Molyneux.*

D. 154. *b.*

4. If Lord Mefne and tenant are, and the tenant gives the land in tail, the remainder in fee to the King, if he assents to the remainder the Mefnality is extirpate, because the King can hold of none (and the particular estate and remainder are all one estate in law, and both hold of the Lord Paramount.) *D.* 43, 5 *Bd.* 154. *Co.*

2. Bingham 92. *b.*

5. If there are Lord and tenant in frankalmoigne, and the Lord releases to the tenant all his right, the seigniory by this is extirpate; and therefore quare, how the tenant shall hold over after. It feems as the Lord held before the release made. Br. Tenures, pl. 74. cites 18 *E. 2.* and Fitzh. Release 51.

6. If a man holds by homage, fealty, rent, and castle-guard, and [the Lord] grants the services, and the tenant attorns, the grantee shall not have the castle-guard; for he has not the castle. But per Berr. & Spi-gurnel, he shall have money for it, as contributor. Quere inde; for it feems, that that service is lost. Br. Tenures, pl. 58. cites 19 *E. 2.* & Fitzh. Alisile 399.

7. If Lord Mefne and tenant are, and Mefne is attainted of felony, the Lord shall have the services of the tenant which the Mefne had, and no more; for the seigniory is merged in the Mefnality; per Cand. but Tond. contra. And per Devon. the Lord in chivalry may relinquish the Ward, and disfrain for the services, if he will; quo* Tond.* concil. Br. Tenures, pl. 91. cites 1 *E. 3.* Fitzh. Avowry 168.

8. The Lord granted his rent, saying to him his seigniory, the grantee cannot disfrain; for it is rent-Sek. Brooke says; and to fee, that by express words feudal may be fever'd from rent-service. Br. Tenures, pl. 79. cites 7 *E. 3.* and Fitzh. Avowry 142.

9. In Celfavit it was agreed, that suit is not severable; so that if 3 tenants hold of the Lord, and the part of the one comes to the Lord, he shall not have any part of the suit; and the reason seems to be, inasmuch as he cannot take the suit, and be contributor to the suit which he himself takes. Br. Suit, pl. 1. cites 40 *E. 3.* 40.

In such cases the Lord cannot make contribution to the suit, nor take contribution, and therefore the suit shall not be apportioned. Br. Suit, pl. 5. cites 34 Aff. 13.

So if 3 hold by a lord, or other intire thing, and the Lord recovers the part of the lord by Celfavit, the entire rent is extirpate by the recovery; for this is the act of the Lord. Br. Tenures, pl. 164. cites *P. N. b.* 299.

10. Confirmation with warranty therein, that an abbot shall hold *Libere & Quiritus de Gilde, Pluchiris & Lapelis, Alidonebus & Demandis omni*
Tenure.

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only suspeted; quod nota. Brooke says, Quere; for the Manor was once defeated.

12. It was held, that by the Unity of Possession of the Land in the Lord, all Customs and Services annex'd to the Seigniory, or to the Lord, are extinct for ever, as Heriot, Custum, Ancient Deed, Fine for Alienation, or Custum to be Beld to the Lord, or to collect his Rents &c. are extinct. But contra of Custom, which runs with the Land as Gavel-kind, Burgh-English, Deedment of the entire Lands &c. for this runs with the Land, and there Unity of Possession in the Lord, and after Feoffment made to another, shall not change the Custom; for it runs to a Number, and throughout the County or Vill, and not to the Lord as a singular Person, as in the other Cases before. Br. Awoory, pl. 46. cites 14 H. 4. 2.

13. If Lord and Tenant are, and the Lord confirms the Estate or the Tenant Redden'd vel solvend' d, pro omnibus hereditatibus, by this is the Tenure, which was before the Confirmation, is determin'd. But if it had been referred vel tenent' by t. there the first Tenure remains; Per Brian Ch. J. But Brooke makes a Quære thereof; for none made any Answer thereunto. Br. Tenures, pl. 49. cites 21 H. 4. 62. 73.

14. If there be Lord Mejie and Tenant, and the Lord releases to the Tenant &c. the Meffality is extinct; for he has it only in respect of the Charge which he brings to the Lord, and by the Release all this is determin'd. But per Littleton, Tit. Rents in his Book, if there be a Surplusage of Rent, the Lord shall have it; quod nota. Br. Tenures, pl. 48. cites 8 H. 6. 24.

15. If the King grants Land to J. S. in Fee, to hold as freely as the King is in his Crown, yet he shall hold of the King; and if he aliens without Licence be shall make Fine; for this is vested in the King by his Prerogative, which is not extinct by such general Words. Br. Tenures, pl. 52. cites 14 H. 6. 12.

16. If Lord and Tenant be of 3 Acres of Land, viz. white Acre, and 2 other Acres, and the Lord grants unto the Tenant by Deed, that he shall not digrain in white Acre for his Rent and Services; this Grant shall not enure to such Inheritance of the Seigniory in any Part, but shall enure by way of Covenant; so that if the Lord digrains in white Acre for his Services, the Tenant shall have an Action of Covenant. Perk. S. 69.

17. If Lord and Tenant are of 2 Acres, and the Lord releases unto the Tenant all the Right which he hath in the one Acre of the same Land, it is a Determination of the whole Seigniory. Perk. S. 71. cites 7 E. 4. 25. 20 H. 6. Extinct. 2.

Fall, and a Release in Law; for if they purkase one of the Acres in Fee, which are holden of him, that is no Determination but of the Rate of the Services, which are annual and servile, and he shall have the whole Corporate Service. But if the annual Services be entire, as a Heriot, a Hatch &c. then all the annual Services are gone by the Purchase. But if one of the Acres be given by the Lord, then if the annual Services be entire he shall have the entire annual Services out of the Remain of the Tenancy. But if it was servile, as Rent &c. then it shall be appoin'ted according to the Rate of the Land. Perk S. 71. cites 4 Ll. 8. 46 E. 4. 45. 44 All. 13.

But if the Lord discharges the Tenant of the Part of the Tenency, the whole Seigniory is suspended; for a Seigniory shall not be suspended in Part, and in Effe for either Part to every Intent servile & servile in one Person, if not in Special Cases; for a Seigniory may be determined in Part, and in Effe for other sever servile & servile &c. Perk. S. 71. cites 19 E. 4. 1.
Tenure.

18. By Feoffment made by the Tenant unto one Jointenant Moine there is but a Moiety of the Manerly extinct, viz. the Moiety, which in right does belong unto the Feoffee, and no more &c. so as for one Moiety of the Tenancy there are Lord, Moine, and Tenant; and for the other Moiety of the Tenancy Lord and Tenant. Perk. S. 655.

19. Resolved, that the Seigniory and Tenure of Obist, or Chantery-Land, is extinct by Possession of the King, by the Act of 1 Ed. 6. notwithstanding the Saving in the Act, Proper Absurditate. But for the Rent-Parcel of the Tenure, the Lord may detain the Patente of the King, and make Arrears upon the Matter, but not upon the Person within his Fee and Seigniory. D. 313. pl. 91. Trin. 13 Eliz. Anon.

20. Abbot, before the Dissolution, held of J. S. by Fealty and Rent, and after the Land came into the King's Hands by the Statute; the Seigniory is but suspended; and if the King grants the Land to another, the Patente shall hold of the Lord as before, and the Lord shall have his Rent; but whether as Rent-Service as before, some doubted. D. 213. Marg. pl. 91. cites Trin. 23 Eliz. C. B.

21. B. was Lord, and D. was Tenant of the Manor of M. by Knight-Service. B. held the Manor of N. of A. an Abbot, as of his Manor of L. which came to the Crown by the Statute of Dissolutions. Afterwards B. purchased the Manor of L. of the King, and being so feised of both Manors of L. and M. died seised. C. Son and Heir of B. conveyed both Manors to Trustees to the Use of himself and E. his Wife for Life, and to the Heirs of C. Afterwards C. purchased the Tenancy parvatile, and thereof enfeoff'd J. S. Manwood held, that by B.'s. Purchase of L. being also seised of M. the Seigniory between the Abbot and B. was extinct, and that D. held of the Manor of L. which was held over of the King in Capite by Knight Service; then when C. enfeoffed the Trustees, and after purchased the Tenancy, now the Tenancy became Parcel of the Manors, and was held, as the Manors were, of the King in Capite; and when C. enfeoff'd J. S. he held as C. the Feoffor held it before. Shute held, that before C. purchased the Tenancy, D. held of C. and his Wife; and tho' after the Purchase of the Tenancy by C. the Tenancy presently became Part of the Manor held of the King, yet the Seigniory is not merely extinct against the Feme: For if C. dies leaving E. then J. S. shall hold of E. during Life, there being no Reason that the Purchase or the Baron should prejudice the Wife. But if the Uses had been limited before the Marriage, then by the Purchase of the Tenancy a Moiety of the Seigniory had been extinct, and the Baron should hold the other Moiety of the Feme, and when the Marriage had taken Effect, then this part is suspended. And to this Manwood and Clench agreed. Sav. 21. pl. 52. Patch. 24 Eliz. in the Exchequer. Hutton's, Or, Gifford's Cafe.

22. A. held Land of B. in M as of his Manor of N. by Fealty, Rent, and Suit of Court of the said Manor. B. by Deed indented and inrolled bargains, and fell to C. and his Heirs all his Tenements, Rents, Services, and Hereditaments in M. The Suit of Court is extinguished. 2. And 5 pl. 3. Mich. 36 & 37 Eliz. Anthony v. Burton.

23. Where Purchase of Parcel of the Land out of which &c. by the Lord shall extinguish the Services, and what, See Heriot (H) pl. 2.
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(B. a 2) Revived.

1. 7 E. + 5. Enacts, That Lands held of a Common Person by Fealty, Rent, or other Service, coming to the King's Hands by Act of Parliament, and being afterwards granted by the King to another, shall be held as if such Attainder had not been; And that every Person not attainted, his Heirs, Assigns and Successors in the same Lands &c. being in the Hands of any other than the King, may disclaim for the Rent, as they might have done if the said Attainders had not been.

2. If Lord and Tenant are, and the Tenant is attainted of Treason by Act of Parliament, and to forfeit all his Lands, and after is pardoned and restored by another Parliament, Habendum to him and his Heirs, as if no such Attainder nor former Act had been, now he shall hold of the common Person as before, and yet at one Time the Tenure is extint by the Forfeiture of the Land to the King. Br. Tenures. pl. 70. cites 31 H. 8.

3. If Lands held of the King are given to the King in Tail, the Remainder over, the Tenure so long as it is in the Hands of the King, is suspended; but after his Death without Issue, it shall revive. D. 102. a. pl. 82. Trin. 1 Mar. The Queen v. Lord Barkley.

(C. a) Services. In what Cases the Services shall be multiplied.

1. If a Copyholder in Fee holds by Fealty, Rent, Suit of Court, and to pay a Heriot, that is to say, Optimum Animal upon every S. C. adjudged, and to surrender, and after he surrenders Parcel of the Land he shall pay a Heriot; for it cannot be divided, it being entire and a Heriot Service, and therefore shall be multiplied; For if he shall expect till all be surrendered, or adventure no Heriot shall be paid, for then he may surrender all but a little Parcel, and to no Heriot shall be paid. Hill. 20 In. B. R. between Snagg and Fox by Dodd and Chambr. But Boughton doubtful.

2. If a Man holds by Homage and dies having Issue diverse Daughters, in this Case the eldest Daughter shall do Homage for her and all her other Sisters. Co. Litt. 67. b.

3. But in the Land Case if the Coparceners make Partition, then every one of them shall do Homage, because it is not una for diversa Heredras. Co. Litt. 67. b.

4. So where there are 2 Coparceners who hold by Homage, and the one enfeoffs J. S. of his Part; Now J. S. shall do Homage for his Part, for it is a Partition in Law of this Part. Co. Litt. 67. b.

5. [So] where there are diverse Coparceners, who hold by Homage, and the eldest does Homage for her and her other Sisters, and after the youngest enfeoffs J. S. of her Part, J. S. shall do Homage for it; For by this the Coparcenary is destroyed. Co. Litt. 67. b.

6. If there are several Jointtenants of Land held by Homage, they all shall do their Homage jointly. Co. Litt. 67. b.

7. If there are several Tenants in common of Land held by Homage, every of them shall do Homage. Co. Litt. 67. b.

8. If Tenant by Homage makes Feoffment of Part of the Land, the Feoffee shall hold by Homage. Co. Litt. 67. b.
And if several possessed were of
Land, or any
of the Suit, the
Lord shall have only
one Suit, but
this is where they are
jointly in
fequezed.
Quere, if
they are severally in
fequezed, then
it seems as if
Skipwith
said, that the
Lord may
dissain when
he pleases, and if the one makes the Suit, the others shall have thereof Advantage, and so the Lord shall have but one Suit; quod nota. And Tit. Tenure, 64, and Bar in Fitzh. 311, every one shall make Suit by himself. Br. Suit, pl. 4, cites 24 E. 3, 73.

10. If a Man grants Parcell of his Rent Service, and the Tenant attorns, this is good, and he shall do two Fealties if the Service be Fealty only.
Br. Grants, pl. 4, cites 9 H. 6, 12.

Br. Avovery, pl. 110, cites 34 c. 8, 184, S. C.

Br. Tenures, pl. 64, S. P. cites 42. cites 22 E. 4, 36.
cites 29 H.
6—Br. N. C. 29 H. 8, pl. 124, S. P.

12. If a Man makes Feoffment of a Moiety of his Land, the Feoffee shall hold of the Lord by the entire Services by which the entire Land was held before; for the Statute Tenendo pro Particula does not hold Place here for Moiety nor Part. Contra of one Acre or two Acres in certain. Contra of a third Part &c. which goes throughout the whole. Br. Tenures, pl. 64, cites 29 H. 8.

13. If there be Lord and Tenant of 3 Acres of Land by Homage, Fealty, Suit of Court, Easement, and the Rent of a Horse payable at the Fealt of Eater, or by the Rent of a Hawk or of a Rose &c. And the Tenant after the Statute enfeoffs one Man of one Acre Parcel of the Tenancy, and another of another Acre Parcel of the Tenancy, in this Case every of them shall hold of the Lord by Homage, Fealty, and Suit; but the Easement shall be apportioned, and the Relief, when it falls, as a Rent severable, shall be apportioned, and the Lord shall have but one Horfe, or one Rose; or one Hawk of them all, not apportionable. Perk. S. 684.

14. All intire Services, whether Things of Profit or Pleasure, as Ox &c. or Faulcon, Dog &c. shall be multiplied by Alienation of Part of the Tenancy; but if the Lord purchafe Parcel before any Part alien’d, all is extinct, but if after Alienation no more is extinct than remain’d on the Parcel purchased. 8 Rep. 105, b. 106. Hill. 7 Jac. in Talbot’s Cafe.

15. Some personal Services shall be multiplied, and some not, as Homage and Fealty is multiplied, and is not extinct by Purchase of Part by the Lord, and so of Knights Service, and such Services as are pro Popo Publico & pro Defensione Regni; but Personal Private Services, as to be the Lord’s Butler, Carver &c. or where the Tenure is ad Convivandum Dominum &c. femel in Anno &c. there shall be no Apportionment or Multiplication, and Purchase of Parcel by the Lord shall extinguish such private personal Services; But where such Private Personal Services shall
Tenure.

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shall not be multiplied, the Lord may 
dirain every one for not doing them, tho' they shall be done only by one of them. And manual Labour, as to cut the Lord's Corn or Grains &c. which is to be done upon a certain Thing, shall not multiply. 8 Rep. 105 b. Talbot's Case.

16. There is a Difference between every Lord and every Tenant, and between Donor and Donee, or the Lessor and Leetee; for in Cafe of very Lord and very Tenant, as well the annual as the casual entire Services shall be multiplied, as appears in Stuciton's Case, 6 Rep. 1 b. 2 a. and in the 8 Rep. 105. in Talbot's Case. But in the Cafe of Donor and Donee, or Lessor or Leetee, the entire Rent referred shall not by any Division either of the Reversion or of the Possession, by Act in Law be multiplied. 10 Rep. 107 b. Per Coke in Leitheld's Cafe.

17. If a Man makes a Gift in Tail of 2 Acres (one of the Acres being Borough English Land, and the other at Common Law) referring a Horfe, he shall not multiply the Horfes, but shall pay one Horfe for which of them he will, but not 2 Horfes; Per Coke Ch. J. 3 Bulit. 154. Mich. 12 Jac. in Cafe of Moody v. Garnance.

(Ca. 2) Services abridged.

1. If a Man had given Land before the Statute rendering 3 d. pro omni-
bus servitutis falvo detegatio quam currit & oblique Homaggio & Fidelita-
tes he should not have Homaggio, tho' it be incident to the Ecunage; Per Herle, Wilby, Bowes, and Muffe' but several contra. And if Lord grante for him and his Heirs to the Tenant and his Heirs, that they shall never have Ward nor Marriage, the Heir shall refund the Lord in Ailie by this Deed to claim Ward; quod adjudicatur for Law, per Herle. Br. Tenures, pl. 87. cites 19 L. 1. and Fitzh. Avowys 224.

2. If there be Lord and Tenant, albeit the Lord confirms the Esstate, where the Tenant has in the Tenements, yet the Seigniory remains entire to the Lord as before. Litt. S. 535.

3. If there be Lord and Tenant, which Tenant holds by Fealty and 20 s. Because Rent, if the Lord by his Deed confirms the Esstate of the Tenant to hold by there is Pri-
vity between the Lord and his Ten-

7. But where there is Lord, Meanfe, and Tenant, and the Lord confirms the ESstate of the Meanfe to hold by Lea Services, this is good; for he is Tenant in Possession of the Meanfe, and there is no other Possession. Br. Confirmation, pl. 8 cites 14 H. 4. 12. And as there is required a Privy when the Lord abridges the Services of his Tenant by Confirmation, so must there be also when he abridges them by Release. And therefore the Lord Paramount cannot re-

9. And as there is required a Privy when the Lord abridges the Services of his Tenant by Confirmation, so must there be also when he abridges them by Release. And therefore the Lord Paramount cannot re-

the Tenant Paravall, saving to him Part of his Services; but the Saving in that Cafe is void. Co. Litt. 335 b.

4. If there be Lord, Meanfe, and Tenant, and the Tenant is an Abbot that * As long

holds of the Meanfe by certain Services yearly, the which has no Caufe to as the a-

in the Cafe of the Land have Acquaintance against his Meanfe for to bring a Writ of Meanfe &c. if it continues, it

the Meanfe confirms the ESstate of the Abbot in the Land, to hold to him and

by his Successors in Frankalmoigne &c. this Confirmation is good, and the Lord's

Abbot holds of the Meanfe in Frankalmoigne, because no * new Service is referd'; for all the Services specially specified be extinct, and no

Rent is referred to the Meanfe, but the Abbot shall hold the Land of with any

him as before the Confirmation; for he that holds in Frankalmoigne new Service.

ought Co. Litt. 335 a.
ought to do no bodily Service; so that by such Confirmation the Tenant shall not reserve any new Service, but that the Land shall be held of him as it was before; and in this Case the Abbot shall have a Writ of Mene, if he be distrained in his Default, by Force of the said Confirmation, where percafe he might not have such a Writ before. Litt. S. 540.

5. A Man cannot abridge a * Rent-charge or Common of Pasture by a Confirmation; but a Rent Service, in Respect of the Privity between the Lord and the Tenant, may be abridged by a Confirmation. Co. Litt. 305. a.

6. A Tenure may be abridged by a Confirmation. Co. Litt. 305. a.

(D. a) * Relief.

Before the Time of H. 1. the King and other Lords us'd to make for ancient Authors Ely, Anglorum 79. and give this Reason. Quia hereditas qua faciere aut per Antecessoris decreta, releverat in manum heredom, & pecuniae, quatenus furtum vel confinentur erit ab herede quoads praestare, sed nullus Relevatium. And in Domesticky it is call'd Relevamentum & Relevatio. Co. Litt. 76. a.—See Lt. Coke's Copyholder 56. S. 25.

2. But H. 1. abrogated this civil Custom, and ordain'd [that] the Heirs of the dead Tenants of the King, and of other Lords, relevant terras de Dominis suis, non redimenter. Janus Anglorum. 79. & 116. 79.

What.

3. Relief is a Profit of the Seigniory. 17. E. 3. 64. Co. 3. Pennant. 66.

4. Relief is not a Service, but incident to the Service. 4. E. 2.


2. Inf. 95. S. P.—It is not any Service, but a Flower of the Service, and shall go to the Executors. Cro. J. 28. in the Case of Mackworth v. Shipward.—It is only an Improvement of, or an Incident to the Service. Co. Litt. 83. a.

5. It was said, that Relief is only a thing personal. Br. Reliefe, pl. 11. cites 39 H. 6. 31.

6. The paying a Relief is a putting the Lord in Seisin, and an acknowledging him for his Lord; fo as of ancient Time, Relief, is call'd Simpex Seifina. 2 Inf. 134.

7. Relief on Alienation is not properly a Relief, tho' call'd fo in divers Books; but is properly a Fine for Alienation. And this may be by Tenure, by Special Relevation, by Custom. Agreed per tot. Cur. Jc. 133. Trin. 2 Car. B. R. Hungerford v. Haviland.

(E. a) Re-
Tenure.

(E. a) Relief. Of what Tenure or Service it is to be paid. [And what it is, pl. 3. How much to be paid, pl. 2, 3, 4]

1. He, who holds by Petre Serjeanty, shall not pay any Relief. 28 E. I. Statute of Wards and Reliefs.

2. He, who holds in Socage, shall not pay any Relief, according to the proper Signification of the word. 28 E. I. Statute of Wards and Reliefs. Ancient Tenures, vol. 3, b. But only shall double his Rent; for anciently always it was put as a Badge of Knight Service, Ward, Harrowage, and Relief. Bracton, Lib. 2. fol. 83. b. S. 8.

3. But of late Time the Doubling of the Rent by Tenant in Socage, that is to say, the paying of so much as his Rent is by one Year over the Rent, is called Relief. Litt. 28 S. 126. Doctor Student, 14. b. 31. Art. 15. Brev. Lib. 2. fol. 85. b. S. 8. It is the Death call'd Quedam praetatio ab Haredes proper Dominum & Dominii Recognitionem. Ancient Tenures, 3. b. lps, that he shall double the Rent. 13 C. 2. Aud. 89. 26 C. 3. Aud. 131. Brutton, fol. 178. shall give this in Acknowledgment of the Signitory. Helloway, incert temporis 176.

Tit. Raviishment de Gard; and this appears Tit Socage in the old Tenures, That the Heir in Socage shall not pay Relief, but shall double his Rent in Name of Relief.

4. If Tenant holds of the Lord by Fealty, and to pay 10s. Rent every 2 or 3 Years, tho' it be not any annual Rent, yet he shall pay 10s. for Relief. Co. Litt. 91.

Emprestererrarum, to hold by 12. d. and Fealty for all Servits, Alliament, and Demands; yet he should pay Relief; for this is incident to the Tenure; Per Skrene, ad quod non est responsum. Br Reliefs, pl. 10. cites 14. H. 4. 8.—Br. Incidents, pl. 22. cites S. C. per Skrene; but Hank contra, therefore Quere inde.

Where the Tenure is by Fealty only, there is no Relief due; for all other Services except Fealty are 'bearable. Co. Litt. 97. 4.

5. A Fee Farmer shall not pay any Relief, for the Rent is intended Br Relief, the very Value of the Land, or the 4th Part of it at least. 45 E. 3. pl. 5. cites V. Ten. 3. 15. Ancient Tenures, fo. 4. b. because he ought not to do other thing, but to as is contain'd in the Fealtyment. Brit. 1d. 61. De duobturte Bracton, Lib. 2. fol. 86. S. 9.

per Finch.—But if the annual Value be shirk'd by every Redundant, the Grantee of the Fee-Farm shall pay Relief. Mo. 168. pl. 301. in the Case of Saffron Walden.

6. He who holds in Frankalmoine shall not pay any Relief. Brit. fo. 61.


[8] 11. As if the Tenant in Socage holds by Service of attend- ing upon his Lord at Christmas, he shall not double this Corporal Service for Relief. Co. Litt. 91. b. It seems because it is impossible to do this Service double, being to be done by his own Perun at one and the same time.

there the Relief must be 10s. because the other cannot be doubled, & sic de similibus. Co. Litt. 91. a.
Tenure.

[9.] 12 But if a Man holds in Socage by Service to do certain Work-days at the Lord's Harrett, he shall double this Corporal Service for his Relief, because the particular Time of doing it is not prescribed, but only to be done in the Harrett; the which may be done by his own Preton, or may be done by the Labour of any other Man. Autumn Vacation 1 Car. So held by Walter Herbet, Reader of the Inner-Temple. Contra Co. Litt. 91. b.

[10.] 13 So it is when it is to plow the Lord's Land by certain Days, or to work about a Hedge by certain Days, or such like.

[11.] Abbot nor Prior shall not render Relief; for they do not come in by Deed. But because the Prior and the Covent granted by their Deed to the Lord to hold in Chivalry, and to render 100 s. for Relief at every Avoicance of the Prior, the Lord disstrain'd, and avow'd for Relief, as upon his very Tenant, and the Avowry awarded good. Brooke says, Quod miror! Br. Tenures, pl. 77. cites 20 E. 3. and Fitzh. Avowry 124.

[12.] Relief and Heriot Service are all in one, and the same Condition, and the same Law holds Place in all Cases. Per Frowike Ch. J. Kelw. 84. pl. 7. Pasch. 21 H. 7. Anon.

(F. a) Relief. How much shall be paid.


2. All intire Earldom shall pay 100 l. for Relief. Dott. Student.


4. All intire Baronys shall pay 100 Marks for Relief. Doctor Student.


6. A Marquisdowm, which consists of the Revenue of 2 Barones, which amounts to 800 Marks, shall pay for Relief 200 Marks.


9. All that Relief the King of the Isle of Man, or Waight, shall pay. Co. Litt. 83. b. This is not limited by the Statute of Magna Charta.


8. And, pro Ratu, according to this Value, if it be less. Litt. 24. b.

9. Tenant by Knight Service, by a Custom, may pay for an entire Fee but 200 Marks for Relief. 40 C. 3. 9.

10. Upon
Tenure.

10. Upon the Creation of a Tenure any Sum may be reserved, if more or less than the Law appoints, 31 Am. 15.

11. If a Baron be created an Earl of a County, and that he shall have the 30 Penny of the Profits of the County, this is clearly such Earl as shall pay 100 l. for Relief, within the Statute of Magna Charta; for this was the ancient Use of Creation of Earls. See Selden's Titus of Honor, 131.

12. [So] If a Baron be created an Earl of a County, and that he shall have Pro tercio Denario ejusdem Comitatus, vel pro Nomine ejusdem Comitatus 20 l. or such Sum, this is such Earl as shall pay 100 l. for Relief, tho' he has but 20 l. Value, which was the Body of his County; and the Relief is according to the Value of 400 l. for the Relief is not paid according to the true Value, but according to the Dignity of an Earl. See Selden Cit. Honor, 131.

13. [So] If a Baron be created an Earl of a County by Letters Patents, et ulterior Rex concedit to him 20 l. Annuity, ut Honorum & Dignitatum praebetur honorificatus supportare valeat, that this is not any Part of the Body of theEarldom, but only an Annuity for the Supportation of his Honour, yet he shall pay 100 l. for his Relief as an Earl; for of late Times the Creations of Earls have been made in this manner. Contra Litt. 83. b.

14. [So] If the King creates J. S. Earl of a County, and does not grant to him any Land or Annuity for the Supportation of it, yet he shall pay 100 l. for Relief, because the Relief is not to be paid according to the Value of the County, but as Earl. Contra Co. Litt. 83. b.

15. If the King creates J. S. Earl of a Vill, or of a Place within the County, yet he is such an Earl as shall pay 100 l. for Relief.

16. If A. be a Feudal Earl, that is to say, holds his Land as an Earl, and he alienates Part of the Land which is the Body of the Earldom, he shall not pay 100 l. for a Relief for his Earldom which remains; but his Relief shall be abated according to the Value of the Land which is alienated. 16. B. 5. in the Exchequer, Er parte Reimortatoris, ubi insolvi. 9. D. 5. in the Exchequer, it is admitted upon the Pleading, where the Earl of Devon pleaded such Plea; and it was adjudged no Plea, because he does not shew what Persons had the Lands to alienate, by which the King might have Relief against them for their Relief.

17. If the King gives Land in Fee abjusque alioquo inde Reddendo, this is a Knight Service in Capite, because it is the best Service general, that is to say, Service for Defence of the Realm; but because it is not expressly in the Reservation by what Part of a Fee shall hold, and the Law cannot make it an entire Fee, or other Part of a Fee, according to the Value, it seems that he shall pay the Value of the Land by a Year, according to a Grand Serjeancy. Annual Reading 1635. held to by Master Herbert Reader of the Inner Temple.

18. So it is, if the King gives Land, and does not express any Tenure, it shall be a Tenure by Knight Service in Capite; and because it cannot be made certain any Way by what Part of a Knight's Fee he shall hold it, it seems he shall pay for Relief the Value of the Land by a Year, having Relinquishment to a Grand Serjeancy; for Relief is out of the Statute of Magna Charta, c. 3 there being no certain Knight's Fee, and then ought to be restored to as was before the said Statute.

19. De Serjeantis vero nihil certum exprimitur, quod vel quantum habeant hecatem & hecetem, juxta Volumtem Dominorum Dominis latissimis pro Relevio, dom rnen iphi Domini trium, vel mensurantis non excedant. Basseton, liv. 2. fol. 84. b. S. 7. Ser-
Tenure.

20. In divers Provinces by the Feudal Law there used, the Rent of a Year of the Feud shall be given to the Lord for Relief; and in other Provinces in other manner Relief is given. Conti Historia 47.

21. By the Law of England the Tenant (in Socage) ought to double the Rent for Relief, that is, he ought to pay for Relief as much as the Rent is by the Year, and ought to pay his Rent also. 16 H. 7. 4. b. Doctor and Student. 14 b. 28 E. 3. Statute of Wards and Relief. Bracton, lb. 2. fol. 85. b. S. 8. Litt. 28. S. 126. The Rent be payable at 4 or 5 Terms of the Year. Kell. incerti Temporis 136. 4 E. 2. Tiptow 200.

S. C. at pl. 9.

22. Tenant by Knight Service by a Custom, may pay for an entire Fee but 2 Marks for Relief. 43 E. 3. 9.

23. It was agreed, and not denied, that where a Lord avows for 100s. Relief, where by Custom of the Country, or otherwise, he ought to have but 13s. 4d. there, if the Lord has Judgment to have Return for 100s. the Tenancy shall be charged with 100s. for Relief for ever. Br. Estoppel, pl. 25. cites 40 E. 3. 9.

(G. a) Relief. Who shall pay.

If the King's 1. He that ought to be in Ward, if he had been within Age at the Death of his Ancestor, shall pay Relief, if he be of full Age at his Death. 17 E. 3. 64.

Heir of full Age, the Heir shall the Primer Seisin, and shall pay his Relief. Contra of Heir within Age, and in Ward of the King, and dies Livery, he shall not pay Relief. And the Heir in Socage, Tenant of the King in Chivalry, shall pay Relief, and his Heirs shall find Surety for their Relief upon the Suiting out of the Primer Seisin. Br. Relief, pl. 12. cites F. N. B. 254. And says, See Ibidem 262. That where the Tenant of the King in Chivalry has Issue two Daughters, and dies, the one of full Age, the other within Age, the eldest shall give Livery for her Moity, and shall pay for Relief for her Moity, and the other shall be in Ward quodque &c.

See (I. a) pl. 7.

2. If the Tenant be disseised, and dies, his Heir of full Age, he shall pay Relief; for he ought to be in Ward if he had been within Age, 17 E. 3. 64.

3. Two Coparceners; one dies, her Heir of full Age; he shall not pay a Relief; for if she should pay any at all, the shall pay but the Moity, and that she can't do; for a Relief cannot be apportioned, for Coparceners are but one Tenant to the Lord. 3 Le. 13. pl. 30. Mich. 8 Eliz. C. B. Anon.

(H. a) Who,
Tenure.


1. A Purchasor shall not pay Relief, but only he who comes in by Defec. * 40 C. 3. 9. 11 H. 4. 74 b. 17 E. 3. 63. b. Cites S. C. * Br. Re- descent. 1

2. If the Tenant at Common Law had alien'd in Fee to his eldest Son and died, the Son being of full Age, he shall not pay Relief; be- cause he was in by Purchase. Bracton lib. 2. fol. 85 17 E. 3. 64.

3. If the Tenant intessest his eldest Son and dies, the Son being of full Age, he shall pay Reliet tho' he be in by Purchase, because he ought to be in Ward, if he had been within Age, by the Statute of Marborough; (And it seems Relief is within the Equity of it, or otherwise it cannot be Law.) 17 E. 3. 63. b. 64. 7. C. 3. Relief. 1. Neverthelcss Fitzherbert says, Credo quod non est Lect. Relief either by the Common Law, or by the Statute of Marbridge, cap. 6. But now the Statute of 15 Eliz. cap. 5 has cleared that Question, and that the Lord shall have Relief where the Conveyance is made to any Perfon by Collusion & Co. Litt. 84 a. 3. 26

4. If the Tenant aliens in Fee, and dies before Notice of the Scroff- ment to the Lord, his Heir of full Age, no Relief shall be paid, be- cause the Heir is not his Tenant; For the Privity of the Avowry is determined by the Death of the Alienor, for the Heir shall not be in Ward. Dubitatur. 17 E. 3. 64.

5. If a Fene pays Relief, and after takes Baron, and has Issue by him and then dies, the Baron shall not pay new Relief, because he does not succeed as their. Bracton. lib. 2. fol. 84 b. 5. 7.

6. A Baron shall not pay Relief being of full Age, but where, if he See (G. a) had been within Age, he should be in Ward, and e convertio. 26 H. 8. 6. pl. 1. — See by Knaigheley and to be a Ground.

7. A Purchasor shall not pay the Relief. 26 E. 3. 71 b. Bracton, lib. 2. fol. 84 b. 6. 3. But only he he who comes in by Defec. Britton, fol. 177 b.

8. But, by the Custom in Cornwall, the Purchasor shall pay it. 14 D. 4. 5. b.

9. A Corporation aggregate shall not any Relief, for it is a perpetual Corporation. Co Litt. 70 b. 6

10. An Abbot or Prior who is in by Succession shall not pay Re. * Br. Re- lief. 20 E. 3. Relief 8. and Abowry 124. 30 E. 3. Relief 9. 3 D. 4. cites S. C. — Every Bishop in England hath a Baro- ncy, and that barony is helden of the King in Capite, and yet the King can have neither Wardship or Relief. Co Litt. 70 b. — 2 Iltt. — S P — And yet the Successor of a Bishop or Abbot may pay Relief by Prescription or Grant. Co Litt. 84 a. No Relief if due upon Succession unless it be by Special Retention in Point of Tenure, or by Custom also; agreed per trin. Car. Jo. 14. Trim 1 Car. B. R. Hungerford v. Hayland. * S P. per Thirm. Ch. J. But not by the Common Law by the Tenure. Br. Relief, pl 9. cites 3 H. 4. 2. — see the Note on pl. 9.
12. If a Tenant gives the Land to his Son and his Feme in Tail, and dies, by which the Reversion descends upon the Son, tho' he has
the Estate Tail by Purchase, yet he shall pay Relief for the Reversion
descended. 26 E. 3. 71. b. laid to be adjudged by all the
Courts.
13. But if the Tenant aliens in Fee upon Condition to lease to him-
sell for Life, the Remainder to his Son in Tail, the Remainder to his
own Right Heirs, and it is performed, and after he dies, his Son
shall not pay Relief for the Remainder descended, because he has the
Tail by Purchase. 26 E. 3. 71. b. Dubitatur.

14. An Heir Female shall pay Relief as well as the Heir Male.
Doctor and Student. 14 b.
15. If Land descends to an Infant it being held in Soveraignty, he shall
pay Relief. Doctor and Student. 14 b.
16. Grandfather, Father, and Son, the Grandfather held by Relief and
died, the Father entered and enfeoffed his Son and died; there the Lord
may distrain the Son for the Relief of his Grandfather before he accepts
him for his Tenant, and shall make Avowry for the same Relief; Con-
tra if he first accepts the Feoffee for his Tenant; For upon an Alienation
the Lord is not bound to change his Avowry before he be satisfied of the
Arrears due before; And here the Son is Purchaser, but if he was in as
Heir and not as Purchaser it had been otherwise. Br. Relief, pl. 7. cites
45 E. 3. 9.

17. If a Man be seized of certain Lands which is holden in Soveraignty, and
makes a Feoffment in Fee to his own use, and dies seized of the Life, (his
Heir of the Age of 14 Years or more) and no Will by him declared, the
Lord shall have Relief of the Heir; and this by the Statute of 19 H.
cap. 15. Litt. S 126.
18. Relief is not due to the Lord, but only from his very Tenant in
Fee Simple. Per Frowike Ch. J. Kelw. 82. pl. 2. Patch. 21 H. 7.
Anon.

(I. a) Relief. To whom it shall be paid.

S. P. Co. 1. If the King has the Wardship of Land held by others, by Reason of
his Prerogative, yet the Heir at full Age shall pay Relief to every
83. D.
Prerogative, and the Lord upon every Dissent ought to have either Wardship or Relief.

* S. P. And per Hilliar, the other Lords shall sue to the King by Petition, and shall have their
Rents also. Brooke says, Quere inde; for it seems that their Seigniories are extinct. But see now the

S. P. But the King, or this Lord who had the Ward shall not have Relief also. But where a Man
holds of several common Persons several Lands in Chivalry, and the one has the Ward within Age by Priority,
and the others have the Ward of the Land held of them, there none shall have Relief; for every Lord has the

See the Note on pl. 7.
2. If an Infant be in Ward to J. S. his Guardian in Chivalry, he
shall not pay Relief to him at his full Age.

3. With
Tenure.

3. With this accords the Law of Scotland. Shene Regiam Bajestarum, 68.

4. If there be Lord Mesne and Tenant, and the Tenant aliens, the Mesne shall not have the Relief. 14 H. 4. 5. b.

5. But by the Custom in Gloucester, the Lord shall have the Relief upon Alienation of the Tenant. 14 H. 4. 5. b.

6. If the Tenant dies, his Heir within Age, and the Lord waives the Ward, and takes him to his Seigniory, in this Case the Lord shall not have Relief at his full Age, because he might have had the Ward of the Body and Land. Co. Litt. 83. b.

7. If the Tenant be disseised, and Distressor dies seized, and after the Tenant dies, his Heir within Age, and after at full Age he recovers the pl. 2. Land of the Heir of the Distressor, the Tenant shall have Relief; because he could not be in Ward till the Recovery, because of the Delection to the Heir of the Distressor. Co. Litt. 83. b.

8. Tenant for Life should have Relief, &c. 2 Inst. 234.


(K. a) Relief. What thing shall be paid. [Disjunctive.]

1. If Tenant in Socage holds to pay a Pair of Gilt Spurs, or 5s. in Money, at the Feast of Easter, it is in the Election of the Tenant to pay which of them he will for Relief; but if he does not pay when he ought, the Lord may distrain for which of them he pleases. Co. Litt. 90. Upon S. 126.

2. [But] If the Tenant in Socage be to attend upon his Lord at Christmasts, or to pay 10s. there the Relief ought to be 10s., because the other cannot be doubled. Co. Litt. 91. Upon S. 126.

(L. a) Relief. At what Time it shall be paid.

1. If Tenant in Socage dies, his Heir within Age, he shall pay Relief for Tenures, immediately, as well as if he had been of full Age. 31 Ast. 15. pl. 59. cit. by Tank. 2. But if Tenant by Knight Service dies, his Heirs within Age, he shall not pay Relief before full Age. 31 Ast. 15. Admitted.

3. After the Death of the Tenant in Socage, Relief is due immediately of what Age the Heir be, tho' he be not past the Age of 14, because such Lord cannot have the Ward of the Body, nor of the Land of the Heir. Litt. S. 127. Co. Litt. 91. where it is laid that the said Words in Litt. (So that he be past the Age of 14 Years) are not any Part of Littleton, but added after thereo.
Tenure.

4. If the Tenant in Socage dies before the Rent-day, yet the Heir ought to pay the Relief presently before the Rent-day comes. 16 H. 7. 1. 3. Lit. 89. See (M. a). pl. 1.

5. Properly this ought to be paid before the Homage or any other Service shall be received. 17 C. 3. 64. See (M. a). pl. 1.


7. If the Tenant in Socage holds by Fealty and 10 s. or a Pair of gilt Spurs, if the Heir be not to feem as conveniently as he may, all Circumstances considered, after the Death of his Ancestor ready upon the Land to pay his Relief, the Lord may distress for which of them he will; for upon Default of the Tenant, the Election is given to the Lord. Co. Litt. 91.

8. If the Tenant in Socage holds by a Bushel of Wheat, he ought to pay it for Relief presently after the Death of his Ancestor, and the Lord is not bound to carry all Harvest; for this is to be had at all Times of the Year. Co. Litt. 91. b. 92.

9. But if the Tenant holds by a Rohe, or a Bushel of Rouses to be paid at Midsummer, he is not bound to pay it for Relief after the Death of his Ancestor till the Time of the Year comes for the Growth of them; for the Law does not compel him to do impossible Things, nor to preserve them by Art to other Time than Nature has ordained them. Co. Litt. 92.

10. But if Tenant holds to pay certain Saffron, he ought to pay it for Relief presently after the Death of his Ancestor, before the Time of Growth, because it may naturally be preserved as well as Corn, and it is to be had at all Times of the Year. Co. Litt. 92.

11. It was held by Frowike and Kingmil for clear Law, That if I make a Leafe for Life, the Remainder over in Fee, and after the Tenant for Life dies, yet the Lord after his Death shall not have Relief, notwithstanding that his Teneant be chang'd; but if he in Remainder dies living the Tenant for Life, now by his Death the Right of a Relief accrues to the Lord, but it is not leviable during the Life of Tenant for Life, because he is always Tenant to his Avowy, but immediately after the Death of the Tenant for Life the Lord may distrain for Relief due by the Death of him in the Remainder. Keilw. 83. b. pl. 7. Paich. 21 H. 7. Anon.

12. If Lord and Tenant are, and the Tenant gives the Land in Tail, the Remainder over in Fee, and he in the Remainder dies, and after the Tenant in Tail dies without Heir of his Body, quare if the Lord shall have Relief by Reason of the Death of him in the Remainder, as well as if this Remainder had been dependent upon a Lease for Term of Life? It feems he shall not. Keilw. 84. a. pl. 7. Anon. And says, See like Matter 11 H. 4. pl. 154. Scire facias.

(M. a) Relief. What shall be a Bar of Relief.

1. If the Lord accepts Homage of his Tenant, he shall not have Relief of him himself. 3 C. 2. Avowy 190.

2. A Man gave in Tail pro Homaggio & Servitius the Donee reddend. 6 d. pro omnibus Servituis. Et per Judicium Cur. By this the Donee shall be discharged of Homage and of Relief; but the Reporter says it is not Law. Br. Tenures, pl. 76. cites 13 R. 2. and Fitzh. Tit. Avowy 89. But Brook says, See Ibidem 99. Anno 19 E. 3. A Man gave Land Tenendum by 10 d. pro omnibus Servituis, Escafferlibus, Confiscat & Demand...
and yet the Tenant was compell'd to pay Relief; for this is incident as well to Chivalry as to Sorge; Quod nota bene. Br. Tenures, pl. 76.

3. It was said, That Annos. 18 E. 2. a Man avow'd for Relief upon the Heir in Sorge for double the Rent, the Heir pleaded Footment to hold by Fealty and 10 Sh. promptius servitus & Demandus, and yet Judgment was against the Heir, and that this should not discharge the Relief; for it is not due nor in Esse till the Ancestor dies, and therefore was not in Esse to be released. Br. Relief, pl. 8. cites 5 E. 4. 42.


1. It was said, That Relief is only a Thing personal, and yet where there are Lord, Mefne, and Tenant, and the Tenant is disfranc'd by the Lord for the Relief of the Mefne, he shall have Writ of Mefne against the Mefne to discharge him thereof. Br. Relief, pl. 11. cites 39 H. 6. 31.

2. And, per Rolf, 7 H. 6. 13. if the Relief be due to the Lord, he shall have Action of Debt thereof; but if he dies, his Executors shall have thereof Action of Debt against the Tenant; quod non negatur. Br. Relief, pl. 11.

3. And Brooke says, see 32 H. 8. Ro. 528. in C. B. Debt was brought by Executors of the Lord, of Relief due to the Tenant. And the Defendant pleaded in Bar, and traversed the Tenure, and fo to Ilue; and therefore it seems clearly, that Debt lies for the Executors. Br. Relief, pl. 11.

4. The Statute of 32 H. 8. of Avarities, extends only to Rent Suit, or Service, fo as Relief is not within the Purview of the Law, because it is no Service, but a Duty, by reason of the Tenure or Service. 2 Inf. 95.

5. A. the Grandfather died seised, leaving B. his Son (the Father of C. the Defendant) at Age. B. made C. his Executor, and died. O. S. 44 Eliz. as Executor of an Executor, brought Debt against C. for Relief. It was B. R. Lord agreed by the Court, 14. That an Executor may have an Action of Debt for Relief by the Common Law, without Fealty 32 H. 3. and that Seisin of the Services need not be alleg'd, when the Executor brings the Debt the Plaintiff,
Tenure.

Debt for Relief; otherwise when the Party himself avoweth. 2. That Debt may be brought for it in a Foreign County, and the Defendant cannot plead Niloh Debt; for Relief is made certain by the Statute of Magna Charta cap. 2. 3dly, That Debt well lies against an Executor for Relief; the Executor could not waive his Lien for that, because it is certain, and a real Duty. Also in the Case of Relief, there was a real Controversy in the Creation of the Tenure. Poph. said, That in Debt, for Relief, the Plaintiff ought to shew the Tenure in Special; and by what Part of a Knight's Fee the Tenure is, that the Court may judge what is due for Relief. And Judgment was given for the Lord St. John, and after Error was brought; but the Judgment was affirm'd. Nov. 43. Oliver St. John v. Bawdrip.


6. If Relief be due by Tenure, then Diffrets is incident; but if by Caution, no Diffrets lies, unless special Custom warrants it. Jo. 133. Trin. 2 Car. B. R. Hungerford and Haviland—cites 11 Rep. 44.

(O. a) Tenures taken away.

Mr. Madox. 1. 12 Car. 2. E Naets, That all Tenures by Knights Service of the King, cap. 24 S. 1. or of any other Person, and by Knights Service in Capite, and by Socage in Capite of the King, and the Fruits thereof, shall be taken away. And all Tenures of any Honours, Manors, Lands, Tenements, or Hereditaments, held either of the King or of any other Person, shall be turned in Free and Common Socage. makes the following Obervations.

On this Statute. He says, It is wonderful to see how much the Notion of Tenancy in Capite, which is in itself plain and simple, has been obciured and perplex'd by Writers within the Time of Man. There have been easier Difficulties about the Tenants in Capite. By what I have read of the Controversy, I cannot perceive, that it was ever agreed amongst the Difficulties, what Tenancy in Capite was; or that they had a distinct Notion of it. There is one thing here to be remember'd, which may justly seem strange. I must speak of it with great Sublimity. It was intended, by the above Statute, to take away and abolish Tenure by Knight-Service, whether of a King or of a Subject, with the Fruits and Appendages thereof, viz. Wardship, Marriage, Relief, Ecuse, &c. and to take away Wardship, Marriage, Relief, Ecuse, and other Feudal Profits or Services incident either to Tenure by Barony, or by Servante. But there are some Clauses in that Statute relating to Tenures, which, if I do not mistake, are worded in Terms so complex and difficult, that, like a two-edged Sword, they cut both ways.

In general, as to the Nature of Tenancy in Capite, one may presume to say, it has not been sufficiently cleared by the common Lawyers, or even the Statuaries of our Nation. Sir Edward Coke has no Lock in the Explication he gives of it in his first Inst. p. 182 a. Nor is his Opinion in the Case needed to be recited here. Mr. Sedlen speaks as if he thought a Baron and a Tenant in Capite was all one. (N. & Specil. & Eadn. p. 868. & Tit. Hon. p. 5:8) And Sir Henry Spelman says, That in the Time of King Hen. 2. every Tenure in Capite was accounted a Tenure by Barony. (Glofkar. ad vocem Baro. p. 17. Col. 2.) In this Case, both Mr. Sedlen and Sir H. Spelman, altho' in Part they are not far from the Truth, have fallen short of giving a clear and just Explication. I think it may be rightly said, that in the ancient Times (suppose about the Time of King Hen. the 2d) most of the Tenants holding the Title of Tenants in Capite, were real or reputed Barons; not barely because they held of the King of Capite, but partly for that Reason, and chiefly because they held of him large Seignories. And there was, as I take it, so great a Likeness between a Baron and one of the King's Tenants in Capite, who held a large Seigniory, that in the Reign of King H. 2. 2 they made little or no Difference between them. There was also another Thing which made Tenancy by Baronies, and Tenancy of the King in Capite, by Knight-Service, so like the one to the other; and that was the indeterminate Quantity or Number of Knight's Fees necessary to compose a Barony. For whereas some Baronies or Honours were excessive large, constituting of a very great Number of Fees; others again were so small, that by the Quantities of them, or the Number of the Fees whereof they consisted, they could not be known to be Baronies. In some, every Baron, properly so call'd, was a Tenant in Capite; but every Tenant in Capite was not, by reason of his Tenure in Capite, a Baron, or reputed Baron. From the Reign of King Henry 3. downwards to the succeeding Ages, the Tenants in Capite came very numerous; so that it sometimes happen'd that a Man was the King's Tenant in Capite of the Half, or a Quarter, or a 10th Part of a Knight's Fee, which small Tenancies in Capite were far different from Baronies. Again, if a Man held of the King in Capite by some other Tenure than Barony or Chivalry, such Person, altho' he was a Tenant in Capite, was by no means a Baron. Men seem to have been lead into their confused Way of Speaking upon this Subject, by confounding Tenure in Capite to have been a distinct Kind of Tenure, in like manner as Tenure by Knight's Service, Socage, and others.
Term-Time.

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others were, which Supposition is fallacious and untrue. For Tenure in Capite was so far from being a defined Sort of Tenure by itself, that it might be predicated of the several other Tenures, that is to say, a Man might hold of the King in Capite, either by Baroni, or by Knight Service, or by Serjeanty, or by So-
cage, or by Fee Farm. And if it be said that a Man held of the King in Capite, without mentioning ex-
pressly by what Service, it is to be understood, that he held of the King immediately, in Opposition to his holding immediately of another; and that Phrase was used in such Case, when the Service was not in Quest-
ion, but the Tenure only, to wit, whether it was Mediate or Immediate. But the fallacious Supposi-
tion above-mentioned, did enter into the Minds of Men long before the Reign of King Charles 2d.

For Example: Queen Elizabeth by her Letters Patent, dated at Westminster the 19th of November, in the 2d Year of her Reign, granted to Richard Rogers and John Burgo, Gentlemen, the Manor or
Lordship of Borcombe in Wilts, and divers other Lands in Fee-simple; The Tenure was ser-
ved in the Words Tenendum de nobis, Heredibus & Successoribus nostris, ut de neuerus nosfro de East-
Greenwich, in Comitatu nostro Kancha per feidetatem tenantium in loco & communi Socage, &c in Capite,
noe per SeruiciUum Militarem, prc omnibus alias Redditionibus, Servitutis, &c. (To be held of us, Our Heirs
and Successors, as of our Manor of East-Greenwich, in the County of Kent, by fealty only, in Free
and Common Socage, and not in Capite, nor by Military Service, for all other Rents and Services).

Ex. S. Parne Orig. 2d. Eliz. Rot. 17. The same Queen, by Letters Patent, dated the 15th Day of March, in the same 2d Year, granted to Sir John Spencer, in Fee-simple, the Site of the Priory of West-
ington in Sulliex &c. Tenendum de nobis, &c. in the same Words as above in the Grant to Ryves. ib.
Rot. 10. And many other Letters Patent, made in the Reign of that Queen, and afterwards, are of
the same Tenure; whereas the later Words (uf non in Capite) are (with great Sublimity) repugnant to
the former, Tenendum de nobis. And therefore the Tenure (if any) referred to the Crown by those
Patents, was, in Truth, Tenure in Capite by Socage. — Dr. Brady, in his Glossary Verbo, Tencer; in
Capite de Rege, says, that besides the Tenants in Capite by Military Service, and such as were bound
to Military Service in and by their Tenure in serjeanty, there were small Tenants in Capite by Petit
Serjeanty.

* Misprinted for 168.

For more of Tenure in General, see Dowary, Distrefs, Guardian, &c. Prerogative, and other Proper Titles.

(A) Term-Time.

1. A Sumsuit &c. and declared of a Promisse made 5 June, to pay Mo-
ney in Trinity-Term next ensuing, and avered, that the next
Trinity-Term after the said Promisse began the 7 June, 30 Eliz. and ended
on the 26 Day of the same Month, and that the Defendant had not paid.

Defendant pleaded Non-Allumpht. The Plaintiff had a Verdict. It Opinion that
was moved in Arrrell of Judgment, that the E£jogm-Day of the said Tri-
inity-Term was the 3 of June, 30 Eliz. and to the Term in which the Pro-
mise is to be performed must be Trinity-Term in 31 Eliz. and to the
Action is brought too soon. But some of the Court held, that the Plain-

iff ought to have Judgment; for, according to common Intent, it is a Year lon-
net Term until full Term; and therefore, when the Promisse was made ge-
to the Plaintiff, between the E£jogm-Day and the common Day of Appearance in Court, the other 3 J.
common People look upon the Term to be when the Judges fit in Court; held strong-
but others c contra. But however they gave Judgment for the Plain-
iff; for 3 Judges held, That when the Defendant pleaded Non-Allump-
fit, he had agreed, that there was such a Term as the Plaintiff had al-
leged, though, in Truth, it commenced before the Promisse; for the
Defendant should have set it forth in his Plea, or have given Evidence of the
Truth of this Matter to the Jury, which not having done, the Court is not bound to enquire the Truth thereof, any Lither than any other the Alin-

U u u

Matter
Term-Time.

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And Matter in Fact not appearing to them. And. 240. pl. 256. Pach. 32

savs, that


Judgment was given for the Plaintiff, but does not mention the particular Reason of such Judgment,

— Cro E. 210 pl. 6. S. C. and that the other 5 Justices held contrary to Anderson, because the Plaintiff had expressly alleged, that the Term began in June, and the Defendant had not denied it, and the Court Ex officio are not to search the Rolls of the Court &c, but admitting they ought to do, and tho' in Law the Elizion Day is the first Day of the Term, and Writs may be return'd then, yet in common Speech that is the first Day, when the Court sits; And Anderson against his own Opinion gave Judgment for the Plaintiff. —— 5 Rep. 57. a. S. C. but S. P. does not appear.

* * * * *

2. The whole Term is but as one Day, and all the Judgments in

Geed 53. in B.R. are entered as upon the 1st Day of the Term; Per Cur. 3 Buill. 114. Mich. 13 Jac. Anon.

S.P. 5 Rep. 74. in Wymark’s Café.—Tho’ to some Purposes the Term is but as one Day in

Law, yet to other Purposes it is not so. As, for Instance, if there be Continuances, there can be no

Judgment before they are entered. Arg. and admitted by the Court. 8 Mod. 190. Mich. 10 Geo. in

Café of Miller v. Bradley.

3. Midsummer-Day was on a Wednesday, and if that had not been, that Wednesday had been the last Day of Trinity-Term, but now it was on a Tuesday; for, per Holt Ch. j. Trinity-Term may begin, but can’t end on Midsummer-Day, and in such a Year there can be no Return

In Tres Septiman' Term. But it must be Die Jovis post Tres Septiman, Trim. And this, he laid, had not happen’d in 100 Years before. Parr. 17. Pach. t Anna, B.R. Anon.

4. Tho’ the next Day after the last Day of the Term be not, in Strict-

ness, Part of the Term, and therefore (as Mr. Vernon infin’d) could not be a Day to make any Motion on the Petty Bag, Side, yet as to other Purposes it is Part; and therefore a Motion then made, to destitute a Bill for want of Prosecution, on a Certificate from the Six Clerk, that no Prosecution had been within 3 Terms, of which the last Term was one, was denied by the Matter of the Rolls. Wms’s Rep. 522. Mich. 1718. Anon.

5. So where the last Seal continued 3 Mornings, and computing the 3d

Morning according to the Day of the Month, it would be a proper

Time to move to make a Report absolute, viz. it would then be above

8 Days after Service. It was held by the Matter of the Rolls, that

the Report cannot as yet be made absolute; for tho’ this Seal lasts 3 Days,

yet it is all a Continuance only of the first Day, and fo the Time not yet


tion 1721.

And in a

Note added

by the Edit-

ator at the

End of Page

522, it is

said that the

like Deter-

mination was

made by Dr.

C. King in

1730.

For more of Term-Time in General, see Executions, Judgments,

Title, and other Proper Titles.

Testatum.
Teftatum.

(A) Good.

1. I recover Goods by Action brought in Middlesex, I may, upon a Teftatum, have a Capias into any foreign County; Per Williams. 2 Le. 67, pl. 90. in Noon's Cafe.

2. Teftatum is grounded upon a former Return filed, that the Party has nothing in the County where the Action is brought. Yelv. 179. Trim. 8 Jac. in Cafe of Goodier v. Junce, cites 18 H. 6. 27. and 2 H. 6. 9.

3. A Ca. Sa. was awarded with a Teftatum, where no Capias had been awarded before, and for that Reason it was reversed. Cro. J. 246. in Cafe of Goodyere v. Ince, says a Precedent was cited between Jones and ....

4. An Action was brought by Original, and Judgment was had the last Paper Day of Trinity-Term. It was objected, that this Judgment could not be sign'd till after the Quarto Die post &c. of the present Michaelmas Term, and therefore a Teftatum Ca. Sa. being brought in this Michaelmas-Term must be irregular; because there could be no Ca. Sa. on a Judgment not sign'd, and consequently nothing to ground a Teftatum Ca. Sa. upon, especially this Action being brought by Original. But it was answer'd, that when the Judgment was sign'd, tho' in the latter End of Trinity-Term, this, by Relation, is a sufficient Foundation to sue out a Capias the first Day of Michaelmas-Term, which will be a Warrant to found a Teftatum returnable Tres Trim. and so good. Per Cur. This, by Relation, is a Judgment of the first Day of the Term, in which it was obtain'd, which is sufficient to ground a Ca. Sa. and consequently a Teftatum Ca. Sa. And it there is no Difference between an Action by Bill and by Original, it is regular: But if Continuances had been enter'd, no Execution could be prior to such Entry. 8 Mod. 189. 190. Mich. 10 Geo. B. R. in Error on a Judgment in C. B. Miller v. Bradley.

5. In an Action of Covenant arising in London, a Teftatum Capias issued to the County Palatine of Durham, and a Copy thereof having been serv'd on the Defendant, the Court was moved to stay Proceedings; and Counsel being heard on both Sides, the Court gave their Opinions severally, that the Teftatum Capias to the Bishop was not the Proceeds that the Defendant should be serv'd with, pursuant to the Stat. 12 Geo. I cap. 29, but that the Capias which the Bishop issues, is the proper Proceeds whereby he should have serv'd, and upon which he would have been arrested, if this Act had not been made, and the Act has not altered the Law in that Particular; and thereupon the Court stayed the Proceedings which had been had on the Service of the Teftatum Capias. Rep. of Præct. in C. B. 38. Mich. 1 Geo. 2. Beale &al. v. Smith At.

6. A Capias in Middlesex, and a Teftatum Capias may be sued out both together. Arg. Barnard. Rep. in B. R. 392. Mich. 3 Geo. 2. in the Cafe of Soldier v. Jones, it was laid to have been lectted about 3 Years ago in the Cafe of Stone v. Stone.

7. A Motion was made in Easter-Term 1735. to stay Proceedings on a Teftatum Capias, a Copy of which had been serv'd on the Defendant in the
(B) Necessary. In what Cases.

1. An E legit is sued into the County of Lancaster, which mentioned another E legit is sued before into London, and returned Nihil. and upon the Teflatum it was commanded to extend all the Goods and Land &c. But in Truth, no Writ was awarded before into London. This was held to be a manifest Error by Reason of the Teftatum, whereas without a Teftatum the Plaintiff that recovered might have had an E legit into as many Counties as he had pleaded. Cro. J. 246. pl. 4. Trin. 8 Jac. in the Exchequer. Goodyere v. Ince.

2. A man is outlaxed in Middlesex a Capias ut legatum may be sued out against him into any other County without a Teftatum. Venit. 33. Trin. 21 Car. 2. B. R. in a N ota there.

3. A brought Debt in London and had Judgment and sued out a Fieri Facias directed to the Sheriff without a Teftatum Fieri Facias into London, by Virtue whereof the Defendant's Goods were taken in Execution in Middlesex, and for this Reason the Judgment was set aside as irregular. 8 Mod. 282. Trin. 12 Geo. 1725. Goddard v. Gilman.

4. So where an Action was brought in the County of S. and upon Judgment for the Plaintiff he took out a Fieri Facias directed to the Sheriff of W. without a Teftatum; Execution was set aside. 8 Mod. 282. cites Mich. 1725. White v. Cornwall.

5. A Seve Facias was sued out into Middlesex against the Defendant as Bail, and a Fieri Facias sued to the Sheriff of that County who returned Nulla bona, then a common Fieri Facias was executed in London, without mentioning it to be a Teftatum. And the Court held it good, and laid, there was no Occasion to insert the Form of a Teftatum in the Writ, in Order that the Writ itself might have been a Teftatum; And that if it had been necessary, they would have given Leave to amend. Rep. of Praet. in C. B. 79. Mich. 6 Geo. 2. Oades v. Forrest.

(C) Return thereof.

1. On a Judgment in Staffordshire, the Plaintiff sued out a Fi. Fa. with a Teftatum into Worcesterfide. It was moved that this ought to be set aside, because no Fi. Fa. had ever gone into Staffordshire, and the Sheriff of Staffordshire made Affidavit that he never returned any Fi. Fa. in the Caufe. Sed non Allocatur for the Fi. Fa. upon which the Teftatum is founded, is returned of Caufe by the Attorneys theretofore, as Originals are; if you search the File you may find one, and that is sufficient. 2 Salk. 589. pl. 2. Mich. 7 W. 3. B. R. Palmer v. Price.
Testatun Exilfit.

2. Executors brought 2 Scire facias's of the same Testatun, but different Returns, the one filed October 22, returnable November 14, the 2d returnable November 23. So by Rule of Court Defendant had 4 Days from the Return of the 2d Scire facias to plead, which indeed was all that remained of the Term. Defendant did not plead. Plaintiff takes out a Fi. Fa. returnable the same last Day, to warrant a Testatun. And per Cur. it was well; for tho' Defendant has 4 Days to plead after the Return of the 2d Scire facias, yet that is in Favour to him when he does not plead; the Judgment is of the Day of Return of the 2d Scir. fa. and he may take out a Fi. fa. after to warrant the Testatun; and the Secondary remember'd a Create where a Fi. fa. was returnable before Judgment afind'red was held good in Favour of Execution, to warrant a Testatun. Par. 138. Hill 1 Ann. B. R. Audin v. Crisby.

For more of Testatun in general see Bail, Debaulavit, Executions, Teite, and other Proper Titles.

Testatun Exilfit.

(A) Pleadings by Testatun Exilfit. Good or not.

1. IN Covenant the Plaintiff declared, Quod cum per Indenturum Testatun exilfit, that the Defendant insoff'd the Plaintiff of such Lands, and therein covenanted to save him harmless from all Deposits and Incumbrances, which he had not done &c. Upon a Demurrer to this Declaration the Plaintiff had Judgment. Upon Error brought it was af-

2 Roll Rep. 110. Buttifant B. Holman, S. C. And it was said Arg. that it was resolved Mich. 51 & 2d Eliz. that such Pleading as here is good, because the Pleading is pleaded only by Way of Indemnity of the Action, because this Action is only to recover Damages; and that in the New Book of Entries are 3 Precedents, where Testatun Exilfit was pleaded, as in our Case, and held a good Plead. 1st Upon a Bargain and Sale, Testatun eft good bargain and sale. 2dly, Upon Demise of a Lease for Years, viz. Testatun eft good Demise, the Case of which Record is reported in 9 Rep. S. Bradford, 5th. Of a Grant of an Annuity, viz. Testatun eft per Indenturam good conceit. And Dodridge J. said, if there was any Difference between those Cases and the Case at Bar, it is, that in those Cases the Grant took Effect by the Deed only, whereas in the Principal Case, a further Act is to be executed viz. Livery of Seisin, but it seems that there is no Diversity; for tho' nothing pul'ded by the Pleadem by Reason of its Injustice, yet the Plaintiff has good Cause to have Action of Covenant, and since the Covenant is in the same Deed by which the Land was conveyed, he may as well have it as he may plead the other, Quod Cooke and Haughton J. conceifumm; 'And the Judgment was affirm'd, Absence Meunetque Ch. —— 1 Turk. 517, pl. 63; S. C. and taken Notice of the Difference where the Pleading is by way of Barr or Replication, according to Cro. J. as above.

2. In Replein &c. the Defendant avowed for that the Place there. &c. 2 Law. 11 was Parcel of the Manor of F. &c. and that Time out of Mind the Manor fealthy.

Ex.
3. Debt was brought upon an Indenture of Charter-party not made between Parties, in which there was a Covenant with the Plaintiff, who was a Stranger to the Indenture, and no Party thereto; and the Plaintiff declared by Teftatum exstit. And the Court were all of Opinion, that the Declaration by Teftatum exstit is good, tho' it be in Debt, and not in Covenant, and brought by him alone to whom the Debt is due; and gave Judgment for the Plaintiff. 2 Lev. 74. Hill. 24 & 25 Car. 2. B. R. Cooker v. Child.

For more of Teftatum Exitit in general, see Covenant, and other Proper Titles.

* Tefte.

(A) What Time there ought to be between the Teffe and Return of Writs.

1. In Allife, the Justices saw by the Teffe of the Patent that it was brought within the 15 Days before the Allife; and therefore they would not take the Allife. Br. Allife, pl. 316. cites 30 All. 44.
2. 13 Car. 2, Stat. 2, cap. 2. In all Personal Actions and Actions of
Equities Firma by Original Writ in B. R. or C. B. after Issue joined and
judgment bad, there shall not need to be 15 Days between the Telle and Return
of any Venire Fastics, Hedex Corpus Jur. or Dyfr. Jur. Fieri Fastics,
or C. B. other than Cap. ad Sat. whereas a Writ of Exsicct after Judg-
ment is to be awarded and Cap. ad Sat. against the Defendant, in order to
make a Bait balle.

This Act shall not extend to Popular Actions, Except Debt upon 2 E. 6.
of Tittes.

3. In Writ of Appeal of Murder there ought to be 15 Days between
the Telle and Return, but the want thereof is cured by Appearance and
Tiler.

4. It was resolved, it was not necessary to have 15 Days Return of
Procefs in a Franchise; For the Reasen of them in the Court or Wiff-
minster is, because that Time is judged necessary for People to come from
the remote Parts to which the Procefs of those Courts do extend, which
does not hold in Franchities. 12 Mod. 524. Trin. 13 W. 3. B.R. Bidolph
v. Veal.

5. One was outlawd for Murder and brought Error, and the out-
lawry was reversed, and the Defendant committed to Newgate to un-
dergo his Trial next Sessions; And Holt Ch. J. said, that to try the
Defendant in B. R. there must be a Venire Fastics returnable at the Common
Day, and 15 Days between the Telle and Return of it. 12 Mod.

6. Defendant had obtained a Rule for Plaintiff to shew Cause why
Writ of Capus ad respondendum should not be qualled, there not being 15
Days between the Telle and Return thereof. The Rule was discharged,
this being Matter of Error, and not of Irregularity. Barnes's Notes in

7. Attachment of Privilege bore Telle 29d, returnable Jan. 31. De-
fendant moved to quall the Writ for want of 15 Days between the Telle
and Return, and a Rule was made to shew Cause, which was after-
wards made absolute, the Court considering the Attachment of Privilege

The Reporter makes a Queere
Whether it is not have been taken Advantage
of by Plea in Abatement, or by Writ of Error. Ibid.

Rep. of Pratf. in C. B. 149. S. C. and the Prothonotaries said they did not know that the Practice re-
quired 15 Days, but usually there were 8, and sometimes 4. The Court observed, that then nothing
seems settled by the Practice, and said, that the Common Law requires 15 Days between the Telle and
Return of all Writs; And if the Practice has not settled it otherwise, the Law ought to prevail in this
as well as in other Cases; And so the Rule was made absolute.

(B) Good or not. And where it shall be said to be
Prior to the Cause of Action.

1. If the Tenant in Affte or Prêcipe quod reddat aliens the Day of the Br. Briefs,
Telle of the Writ, yet the Writ is good, and shall not abate; For pl 279. cites
this Day is all the Day of the Plaine in Law; quod nota. Br. Jours. S. C.
pl. 44. cites 17 All. 21.

2. In Formedon the Tenant may appear at the first Day, and may abate
this Writ; And new Writ may be brought bearing Date thefr between the
14th Day and the 4th Day, and therefore it shall not abate. Br. Jours. S. C.
pl. 33. cites 24 E. 3. 24.

3. Scire
3 In Sire Pciae the Praye in Aid call Protection bearing Date the 7th Day of January, to continue for a Year, and after the Plaintiff brought Regarnishment, bearing Date the 7th Day of Jan. then next after, Sclifte, the last Day of the Year, and well, Per Finch; For a Man may bring a new Writ the same Day that his Writ abates, quare, For by 4 H. 6, 7. A Man may bring Writ the same Day that the Diffeifon was made. Br. Brief, pl. 40, cites 40 E. 3. 18.

4 And yet the Tefte of the Writ to some Respect's shall serve for all the Day, for Aliemation such a Day or Jointenancy this Day shall not abate the Writ, for the Writ shall have Relation to all this Day that it bore Tefte; And therefore it is pending the Writ. Br. Brief, pl. 40, cites 40 E. 3. 18.

5. Note per Catesby J. That if the Recordire bears Date before the Plaintiff affirmed, or if Mutilious bears Date before the First came into the Chancery, or if Writ of Error bears Date before Judgment, or if Indisitment be taken after the Tefte of the Controversy which comes to remove it; Yet if thole are removed the Courts to which they are removed shall hold Plea. And so it is put in Use at this Day of Writ of Error, for all, are the Courts of the King; And yet the Writ of Error is Si Judicium inde reddition fit. And therefore lee that the first Court, to which it comes, needs not to lend the Record till the Judgment be given; but if they lend it, then the Higher Court may proceed upon it. Contra often in Court Baron. Br. Caule de remover &c. pl. 32. cites 1 R. 2. 4

6. In Affile the Seifin and Diffifin was found for the Plaintiff, and that it was done the 15th Day of May, and the Writ of the Affile bore Tefte the same Day, and yet the Plaintiff recovered by Award, after long Debate; And per Wiltin if a poster. and yet per Ellerker and Fulth. all this Day is the Day of the Writ; For the Writ bore Tefte before the Diffeifin. Br. Jours. pl. 34, cites 4 H. 6, 7. 4

7. Upon Trespafs or Robbery, the Party may have Action bearing Date the same Day; quod initiante die fecit tranigr. &c. Br. Jours. pl. 34 cites 4 H. 6, 7. per Roll. 8

8. Bond was made 29 Aug. 13 Jac. and the Lattitae borne Tefte before the Bond Sclifte the 29 June, 13 Jac. yet being Returnable in Mich. Term 'tis good; And the Procsals always bears Tefte the last Day of the Term before. Cro. J. 561. Hill. 17 Jac. B. R. Pigor v. Rogers.

9. In Cafe, the Plaintiff declared, that the Defendant took out a Lattitae 21 January, 32 Car. 2. ac etiam Bills &c. whereas he owed him nothing. Upon Not guilty a Special Verdict was found, that the Lattitae was Tefte 29 Novembris, 32 Car. 2. but was really taken out 21 January 32 Car. 2. Pemberton Ch. J. said, The Court of the Court to the Lattitae taken out in the Vacanting, as of the Term preceding; and the Cafe
Telle.

Courts of the Court is the Law of a Court; he might have declared, that the Defendant filed out a Latarat the 21st Jan. Telle the 28 Nov. preceding, and if he be not ciopp'd to declare so, surely the Jury may find the whole Matter; and so Judgment was given pro Quer. 1 Vent. and the Telle of the Writ must peculiarly be in the Term, tho' the Writ be protested after.—Skin. 32. S. C. adjudged, and that it was said that if he had pled it as taken out 21 Jan. Telle the 28 Nov. it would have been unquestionably good, and that to it should be now, the Court being known.

Original Proofs may bear Date out of Term, because it infuses out of Chancery, which is always open; but judicial Proofs illuses out of those other Courts which are open only in Term-time, and therefore must bear Date in Term; Per Doderidge J. Lat. 11. in Case of Ramly v. Mitchell —118. S.C.

10. In Debt for Rent, the Defendant pleaded an Exception by Elegit. Telle In Debt on a 15 July; and adjudged 3 Will. & Mar. that the Elegit was void; for the Court will take Notice that it was filed out of Term. Ex relations Mr. Place. Ld. Raym. Rep. 4. Pack. 6 W. & M. C. B. Ball v. Rowe. The Writ was

fixed out in the Long Vacation, out of Term-Time, and Exception was taken; for that the Court must judicially notice the beginning of the End of the Terms, as well moveable as immovable; and that the 18th of July was after Trinity-Term was ended, and therefore that the Writ was a void Writ, for it was not possible to be filed out of the Court of B. R. then sitting at Westminster, the 18th of July, when it was Vacation-Time, no such Court being then sitting at Westminster. And the Writ being void, the Arrest was illegal, and the Bail-Bond thereupon given void also; the Court being unanimous of Opinion, that it was ill, and that it was not according to the Truth of the Fact, for it could not on the 18th of July be filed out of the Court of B. R. then sitting at Westminster, when the Court did not, nor could not, sit out of Term. The Plaintiff desired Leave to discontinue, which was granted him May 13, 1729. 2 Lord Raym. Rep. 1557; 1558. Edw. 2 Geo. 2. B. R. Utter Edw. v. Edward Cooke.

11. It was moved to refer the Regularity of a Judgment in Debt; 1 Salk. 60. the Declaration was of Hillary Term, and Judgment by Confession, which pl. 15, Mich. was signed after the Terms; and after the Signing, viz. the 10th of April, B. R. S. C. the Defendant died, and the Execution before Telle the 23rd of January; and out S. P. it was intimated that it appeared that the Execution was before the Judgment. Sed non allocutus; for Execution may be laid out after the Death of the Defendant, except against a Purchasor, and the Writ of Execution may bear Telle of the preceding Term, even of the first Day of that Term. Comyns's Rep. 117. pl. 62. Pack. 13 W. 3. Parsons v. Gill.

For per Cur. The Practice is always fo, and well enough.

12. An Action being limited to be brought within a Year, the Plaintiff gave Instructions for an Original to the Curator four Days before the End of the Year, but the Writ was not sealed till after the Year, tho' antedated as of the Day of the Instructions given; and upon Debate whether this was good or not, Ld. C. Parker refer'd it to the Principals and Affiliates of the Society of Curators, who certified that it was the confiant Practice of the Office to file original Writs against Hundreds, Corporations, Heirs, and in several other Cases, the same Day the Writs are before the present Cafe; and that they never knew it otherwise, or that the Practice was ever cancelled before the present Cafe; and his Lordship decreed accordingly. Wms's Rep. 437; 438. Trin. 1718. Price v. Chewton Hundred in Somersetshire.

13. The Capias ad Respondendum was directed to the Sheriff (singular) of London, telled the 13th of February, which was the Day after the End of last Hillary Term. It was moved to quash it, alluding Defendant has no other Remedy to take Advantage thereof, because he cannot have Oyer of the Writ; we shall it appear upon the Record in case of a Writ of Error. A Rule was to file Cause, which was afterwards made absolute. This Writ bearing Telle in Vacation is void. Barnes's Notes in C. B. 291, 292. East. 7 G. 2. Bennet v. Sampson.
(C) In whose Name.

1. If the King dies in the Morning, all Process and Papers shall be in his Name all this Day, and not in the Name of the new King; but Ellerker & Pulth. Br. Jours, pl. 34. cites 4 H. 6. 7.

2. The Lord Chief Justice of the King's Bench died about 11 in the Morning, and all the Writs which were sealed that Day, bore Title in his Name, and all those which were sealed the next Day, bore Title in the Name of the second Justice of the King's Bench. Cro. C. 393. pl. 3. Hill. to Car. a Memorandum.

For more of Title in general, see Executions, Tessaturn, and other Proper Titles.

(A) Time. Day. In what Cases the Day shall be taken Exclusive.

* S.C. cited Arg. 3 Lev. 458. in Case of Hatter v. Ahe.

Hob. 149 pl. 190. in Case of Norris v. the Hundred of Gawtry.—3 Rep. t. Mich. 27 & 2 Eliz. B. R. Clayton's Case.—Mo. 879. said by Hobart to have been so adjudged.

3 But if a Lease be made, Habendum from the Day of the Date, or from the Day of the making, the Day shall be taken exclusive. Co. Litt. 46. b.

But Trin. 8 W. 3. C. B. it was adjudged by 3 Judges against Treby Ch. J. that such Habendum includes the Day of the Date. 2 Saik. 413; pl. 1. Haths v. Ahe.—3 Lev. 458. S.C. by the Name of Letter b. Ahe. and was of a Lease made by a Prebendary for Life Habendum a Day, and adjudged accordingly by Neville, Powell junior & junior. Treby Ch. J. being now e contrary, thou' hisfelf at first was of the same Opinion, but chang'd it, and was not present when the Judgment was given, but, as it was suppos'd, abjured himself purposely; and note also, that Powell junior was at first of Opinion for the Plaintiff, but afterwards chang'd it, and was of Opinion for the Defendant, by which Variety and Change had there been in this Case.—Ed. Raym. Rep. 84. S. C. And there it was urg'd, that this Co. Litt. 46. is objected to the contrary, yet that Book is founded upon 3 Rep. 1. b. Clayton's Case, where...
5. If A. makes an Obligation to B. dated 1 Day, and B. the Rider after makes Release to A. dated the same Day, of all Actions till the Day of the Release, this shall not release the Obligation. 

Dobart's Reports 188.

was made of all Trespasses; afterwards on the same Day another Trespass was done. In Trespass brought for a Trespass generally done on that Day, the Defendant might plead generally the Release given on that Day, and then the Plaintiff in his Replication must divide the Day, to show that the Trespass was done after the Release in that Day. 

Moor 396. pl. 272. Trin. 35 Eliz. in Case of Plane v. Bynd.

6. In case of a Protection, the Year shall be accounted from the Day of the Date, excluding the Day of the Date. Dobart's Reports 188.

Dobart's Reports 188.

7. A Deed of Bargain and Sale may be inroll'd within six Months, after the Day of the Date, excluding the Day of the Date. 

Dobart's Reports 188.

8. An Action to be brought upon the Statute of Hue and Cry upon a Robbery, ought to be brought within a Year after the Robbery done, including the Day upon which it was done. Dobart's Reports 188.

9. If a Man leaves for Years, rendering Rent for one whole Year, Cro. E. 155. a Feito Sancti Michaelis * utique ad Finem Termini predicti; in this Case the Rent shall be due on the Feast Day itself; for the Premises of the Refutation are generally, rendering Rent, for one entire Year, which is from the Time of the Refutation, and therefore the Feast is not excluded. And when he goes further, and says, vs. a Feito Sancti Michaelis, those Words are void, insomuch as they are repugnant to the Premises. 

Dobart, 43 Eliz. B. R. per Chisholm, between Udall and Fifer. 

* The in Pleauses Utique ad Finem Termi will exclude that Day; yet, in case of a Refutation, it is to be governed by the Intent. Ven. 292. Hill. 27 & 28 Cas. 2. B. R. Pigot v. Bridges.

10. If a Man in Debt for Rent declares, that 23rd March, 15 Jac. he leased certain Land to the Defendant, Residually above, for a Rent, rendering so much Rent half-yearly at the Feast of St. Michael, and the Annunciation, by equal Parcels, during the Term. For the said Rent, due at the said 2 Feast, he brings the Action; and moved in regard of Judgment, that the Lease commenced the 23rd Day of March, and so all this Day is taken inclusive; and then the Lease ended the Day before the said 25th Day of March, and so the Rent reserved after the Term ended, and therefore no Action was for it. But relating, that by the Word Residually, the 23rd Day of March being future midnight, the said 23rd Day shall be taken exclusive, and so the Rent reserved after the Term. Stig. 2 Cas. between Bonded Hill and Door. E. Bridges.

11. 37
11. If the Condition of an Obligation be to fund to the Award of J. C., its quod flat upon or before the first Day of . And an Award is made upon the last Day of between 6 and 7 o’Clock, post occident Solis. This is a good Award within the Condition; for it is be within the natural Day it is sufficient, and not like to the Payment of Money to bind Men to attend it. 11, 11 Car. V. B. R. between Church and Greenwood. Adjudged per Curiam, upon a Special Verdict. Intraut Mitch. 10 Rot. 497. Note, that, Bailer Vobage, an Attorney of Staple’s Inn, he’d afterwards to me a Precedent of Mitch, 18 & 19 El. B. between Raves and Lyram, adjudged accordingly, upon a Special Verdict, per Curiam, because they said that the Day to this Purpose has Continuance till Midnight.

Cro E. 28, pl. 4. C. adjudged for the Plaintiff; but it does not appear that any Exception was taken there to this Point, or that the Court took any Notice of it. — Le. 220, pl. 295, S. C. but nothing said as to this Point — But Croo E. 507, pl. 16. Bynde v. Plaine, S. C. affir’d in Error, where this very Matter was affir’d for Error.

12. Assumpsit on the 11 Sept. to deliver certain Goods to the Plaintiff, if they were not claim’d by any other before the 14 Day of September; and alleged, that there was no Claim made after the 11 Day unto the 14 Day. After a Verdict for the Plaintiff, it was moved in Arreft of Judgment, that the Declaration was ill; because the Plaintiff should have alleged, that no Claim was made after the Promise, (and not after the 11 Day of September) unto the 14 Day &c. But adjudged well enough; for the special Matter on the Division of the Day, ought to come in by the shifting of the other Side; or otherwise it shall not be intended.


13. Habendam a Dato, and a Die Datus, are all one. Roll. Rep. 387. in S. C. says, in Cafe of Bacon v. Baller. Arg. cites it to have been adjudged, Mich. 8 Jac. in the Cafe of Luelling v. Hargan. But Serjeant Athow and Moore seem’d e contra. But Crook and Haughton thought them all one; but Coke was not then present, and the Court said, they would agree in Opinion, ac- cording to the Judgment given in Luelling’s Cafe, that the same is all one. — Built. 177 Trin. 9 Jac. Anon. Fleming Ch. J. held a Die Datus to be exclusive, but that a Datum was inclusive of the Day. And he took this Difference, Where it is in a Cafe and Point of Interest, that is convey’d or pass’d from one to another, As in case of a Lease for Years, or any other Interest that is pass’d; and to S. Ch. v. Hargan’s Cafe, Coke 5, pl. 16. 1. But Where it is in Matter of Account, where no Matter of Interest is to be pass’d or convey’d; if one be to be accountable to another, and that by Deed, be the same a Die Datus, or a Datum, in this Cafe no Interest pass’d by the Deed, be the same a Die Datus, or a Datum, it is all one, and no Difference between them; as was clearly held by Fleming Ch. J. and so agreed by the Court.

S. C. and same Difference cited Arg. Lord Raym. Rep. 85. Trin. 8 W. 5. in Cafe of Hatter v. Ahn. And of this Opinion was Powell, Sen. but the others said nothing.

S. C. cited 2
Lutw. 1197.
by the Re-
porter in a
Nota, in the
Cafe of Bel-
Isav. Heler.
12 Mod. 256.
S. C. — Lord
480 S. C.

14. If a Submission be to an Award, so as it be made within 6 Days af-
fter the Submission, an Award made on the same Day on which the Submis-


15. Inference of H.‘s Life for a Year. H. died on the last Day. The
Insurer is liable. 2 Salk. 625. pl. 3. Trin. 11 W. 3. B. R. at the Sit-
tings at Guildhall, Sir Robert Howard’s Cafe.

16. When the Computation is to be made from an Act done, the Day in
which the Act was done must be included; because there is no
Fraction in a Day, that Act relates to the first Moment of the Day in
which it was done, and was as if it were then done. But when the Computation is to be from the Day itself, and not from an Act done, then the Day in which the Act was done must be excluded by express Words of the Parties. As if a Lease be made to commence a Die Datus, the Day
is excluded; but if it be a Confessione, which is an Act done, the Day of the making shall be included. Per Powell & Nevil J. Contra Treby. LD. Raym. Rep. 281. Mich. 9 Will. 3. in Cafe of Bellafis v. Hetter, cites Clayton's Cafe. And Treby Ch. J. admitted that Cafe to be good Law.

17. The Law will never account by Minutes or Hours to make Priorities in a single Day, unless it be to prevent a great Mischiefe or Inconvenience; as if a Bond be made the 11th Day of January, and this Bond is releas'd the same Day, the Bond may be aver'd to be made before the Release. So if a Time sole binds herself in a Bond, and the same Day marries, one may aver, that she married after the Bond deliver'd. In Allife it appears, that the Dilefsum was done the same Day on which the Writ was file; yet this shall not abate the Writ, because the Allife might be purchased after the Dilefsum; Per Cur. LD. Raym. Rep. 281. Mich. 9 W. 3. in Cafe of Bellafis v. Hetter.

18. A. was born Feb. 1, at 11 at Night; and January 31, at 1 in the Morning, A. makes a Will of Lands, and dies. 'Tis a good Will, for he was then of Age; said, per Holt Ch. J. to have been so adjudged. Salk. 625. 1 Salk. 44. Mich. 3 Anax. B. R. Anon.


(A. 2.) Day. How to be computed.

1. Where the King dies one Day, and another King is made the same Day, this Day shall be the Day of the old King; Quod quere; for otherwise it was computed in E. 6. and if he mithakes his Day, this shall be at his Peril in Mortmain. But it is said that it was not greatly argued by the Court, nor adjudged. Br. Jours, pl. 49. cites 7 H. 7. 5.

2. Citra Festum Solei Johannis; Per Frowike Ch. J. The Feast in our Law commences in the Morning, and ends at Night, and the Natural Day begins at Orum Solis, and ends at Occam Solis, and so is taken and adjudged in our Law; but the Feast, by the Law of the Church, commences at Noon in the Vigil, and continues till the next Day at Midight; and the Night as to Burial commences at Occam Solis, and continues at Orum solis. Keilw. 75. Mich. 21 H. 7.

3. There is no Fraction of a Day but in Special Cafes, and then the Day of Payment, (viz. of a Bill of Exchange payable one Day after Sight) shall commence after Midnight, and from this Time he shall have an entire compleat Day, confuting of 24 Hours, to pay the Bill; for a Day to this Purpofe commences always at Midnight, and always confuits of 24 Hours; Per Treby Ch. J. 2 Latw. 1593. in Cafe of Bellafis v. Hetter.

(A. 3.) Where there shall be a Priority and Posterity, as to Things done on the same Day.

1. If a Man brings Allife, and the Tenant aliens the same Day that the Allife is purchased, yet the Writ is good; for this Day is adjudged in Law all the Day of the Plea; quod nona. Br. Briel, pl. 275. cites 17 Aff. 21.
2. In False Imprisonment the Defendant justified, for that on the 29th Sept. he was chosen Mayor of Lynn, and that a Plant was levied in the Court there against the Plaintiff; for which he was committed by the Mayor to the Goal there. Upon Demurrer it was objected, that the Defendant did not answer to the Time of the Day before he was chosen Mayor; for the Commitment might be the same Day before he was chosen Mayor: But adjudged for the Defendant; for the Justification shall be intended for the whole Day, and if the Commitment was before he was Mayor, the Plaintiff ought to have it. Cro. Eliz. 168. pl. 4. Hill. 32. Eliz. B. R. Smith v. Hellier and Clerke.

3. A. became indebted to B. for Wares, and in Consideration thereof Poitea Eodem die promised to pay it; and such Declaration was ruled good, not as a Promise in Law, but as an actual Promise raied upon a Consideration continuing; which shews that little Distance of Time (the same Day) alters the Intendment of the Law; cited per Roll. Allen 79, as 14 Jac. the Cafe of Hodge v. Vavasor.

4. If a Writ abates one Day, and another Writ is purchased which bears Telle the same Day, it shall be intended after the Abatement of the first. Allen 34. Mich. 23 Car. B. R. in Cafe of the Earl of Northumberland v. Green.

5. Error was brought to reverse a Judgment in an Action for Words, and aligins for Error, that the Plant was entered the same Day that the Words were spoken, which was faid ought not to be, because the Action should be brought after the Words spoken, which shall not be intended to be, if it be the same Day; for the Law admits of no Fractions of Time, which will be it the Day be divided into several Parts as it here must be, for there must be one Hour suppos'd when the Words were spoken, and another Hour when the Plant was entered. But Roll Jutt. faid, It was well enough, and ordered the Plaintiff to take her Judgment Niti Caufa, before the End of the Term. Sty. 72. Mich. 23 Car. Symons v. Low.

6. If 2 Informations are preferred the same Day, which refer to the first Day of the Term, yet it may be examined which of them was first preferred. Per Levins Accoucells Arg. 2 Lutw. 1591. in Cafe of Bellatis v. Hellier.

So in the Cafe of an Exention, if where 2 Fieri Factori's are delivered to the Sheriff the same Day, there is a Prius & Posterior, and that which was first delivered was told after the other, yet it shall be preferred. Otherwise the Sheriff is liable. 12 Mod 147. Smallcomb v. Buckingham. —— 1 Salk. 520. pl. 4. S. C. —— S. C. cited Arg. 6 Mod 292 by the Name of Smallcombe v. Crowle.

7. There is no * Division of a Day, unless in Cafe of Necessity as in Co. Litt. 135. and 6 Rep. 33. b. where there was a Priority of an Initant. Arg. 5. Mod. 377. in Cafe of Smallcomb v. Buckingham.

*Fieri Factori's*

(B) Year. How it shall be accounted.

1. P E R Statutum de Anno bifiexstili editum, 21 H. 3. it is ordained that to avoid the Doubt which has been made, Compteur dies Exercens in Anno bifiexstili in ipso Anno, & sic habeasur de menbe illo in quo exercerit & continetur dies ille exercens in integrata Ann pradicti & deputentur dies ille & dies proximo procedens pro uno die.
2. If a Condition be that it a Rent be Arrear at Mich. by a Quarter of a Year after, it shall be lawful to re-enter, the Quarter of a Rent shall be accounted by the Days of the Year which is that 91 Days make a Quarter, and for the 6 Hours over the Law has not any Regard.

D. 17. 18 Ct. 343. 5.

3. Declaration in Debt for Rent Pro Reditu Unius Anni finiti a Figio Mich. primo ad Felicem Anno Secundo Caroli, After Verdict Judgment was arrested, because this cannot be a Year, being between the Feasts. Palm. 531. Pach. 4 Car. B. R. Bligh v. Treffry

4. Where Time mentioned in any Statute is expressed by the Year, Half Year, or quarter of a Year it is always computed in Law by Solary, viz. 3 Jac. B. R. Months, viz. 12 Calendar Months for a Year; but where Months are mentioned in a Statute and not Years, these are always computed by the Moon, viz. 4 Weeks to the Month. And to the Statute against Deer stealing, appointing the Prosecution to be within 12 Months after the Fact, S. P. ——- 2 Show. 226. pl. 28. &c. — 24. Trin. 24 Car. 2

B. R. the King v. Spiller. S. P.

5. It was moved to set aside an Execution for Irregularity, upon Suggestion, that when he confessed the Judgment the Plaintiff and he agreed, that Execution should not be taken out till a Year after; the Plaintiff intimated that he had paid a Year; for the Warrant was in a Long Vacation, and the Judgment was entered as of Trin. Term before, and the Execution was after Trin. Term following; and so the Plaintiff had waited a Year after Judgment entered. But the Court was not agreed, Whether in such Case the Year was to be reckoned from the Date of the Judgment, or of the Warrant. 6 Mod. 14. Mich. 2 Anna B. R. Dillon v. Brown.

(C) Month. How the Month shall be computed.

1. In all Statutes where Mention is of a Month, 28 Days shall be intended the Legal Computation. Trin. 5 Ja. B. R. Catesby's Statutes, which are only directions for an Offence, which was at Common Law, is not a Penal Statute; and in that Case the Month shall be computed according to the Calendar, and not 28 Days. Sed 186 Pach. 16 Car. 2. B. R. on Stat. 13 H. 4. 1. of Rions. King v. Carless & al. —— See Cro. E. 835. pl. 6. Trin. 43 Eliz. B. R. in an Information on the Statute of Liveries. S. P. Dormer v. Smith.

2. The 6 Months for Proof of a Surmise in a Prohibition according Hob. 179. to the 2d E. 6. shall not be accounted by 28 Days to the Month, but according to the Calendar. Hobart's Reports 242. between Copby and Collins released.

Hubbard. Mich. 27 Car. 2. C. B. held accordingly.

3. If an Information upon the Statute of unlawful Games be against I. S. for 7 Months Exercise of the Game, in this Case the Month shall be reckoned by 28 Days to the Month, and shall not be reckoned according to the Calendar. B. 11 Ja. B. R. Whethored's Cafe, per Curtiam.

4. If
4. *If a Rate be put upon Ale and Beer by the Paper and Chief Officers of a Town,* according to the Statute of 23 H. 8. to continue for 6 Months next ensuing; *This shall not be reckoned according to the Calendar,* but according to 28 Days to the Month. [P. 7] Car. B. R. adjudged in the Case of one Evans, and divers others Brewers of Exeter, where it was averred that they sold contrary to the Rate between the Time of the Rate made, and such a Day, which was the End of the 6 Months, according to the Calendar; but *was not 6 Months and 2 Weeks according to 28 Days to the Month,* and for this the Indictments quashed. [D.]

5. The Words *Six Months, in the Statute of *Uffy and Labourers,* are to be expounded half a Year; (for the Year is mentioned in those Statutes) and they shall be reckoned according to the Calendar, as in the Case of a Lapel. [Jen. 252. pl. 8.]

6. In the Case of Policy of Assurance made to warrant a Ship, one was bound to warrant a Ship for 12 Months; and the Truth was, he did not perih within the Time of the 12 Months, being accounted according to 28 Days; but being accounted by the Calendar, as January, February &c. it was held &c. 1 Le. 96. pl. 125. Mich. 29 Eliz. in the Exchequer, in Sir Wollaston Dixie's Case, Arg. says it was faid and holden that the Infrurer had not forfeited his Bond.

7. *Tempest Sememfere to prevent a Lapel is to be computed by the Calendar.* [J. 141. Bish. of Peterborough v. Catesby. — And ibid. 167. pl. 6. in S. C. Yelverton said that Justice Walmifley thereof a precedent in the Time of E. 1. (which was immediately after the Statute) where it was resolved that Tempest Sememfere should be taken for the Half-Year, and not for six Months only. — Per Menes non per Hebdoadem. D. 327. b. pl. 7. and in Marg. cites Mich. 5 Eliz. 1 Rot. 100. Queen Eleanor v. the Bishop of Lincoln — Jenk. 282. pl. 8. — Cro. E. 835. Dormer v. Smith — Verba accipienda sunt secundum Subjectam materiam; and therefore because this Computation of the Months concerns the Church, it is great Reason that the Computation should be according to the Computation of the Church, which they held know. 6 Rep. 62. Catesby's Case.

But where a *Preface was refused for Insufficiency,* and Notice was given of such Refusal, and the Cause thereof, it was agreed and resolved by the whole Court, that in the Computation of the 6 Months, in all Cases the Reckoning ought not to be reckoned by the Kalender, but according to 28 Days. Le. 51. pl. 59. Trin. 27 Eliz. B. C. Albany v. the Bishop of St. Alaph.


8. A *Twelve-month in the innticular Number includes all the Year according to the Kalender; but Twelve Months shall be computed according to 28 Days for every Month.* 6 Rep. 62. Mich. 3 Jac. C. B. Catesby's Case.

9. It was agreed by all the Court, that in a *Condition for Rent,* as 33 H. 6. 7. and in Case of Involvements, as 5 Eliz. D. 218. and in Case of a *Lei held within a Month after Easter and Michaelmas,* it shall be accounted 28 Days. Cro. J. 167. pl. 6. Trin. 5 Jac. B. R. in Case of Bishop of Peterborough v. Catesby.

10. It was moved to quash an *Indissupment upon the Statute 13 H. 4. cap. 7. for a Rap,* for that the Inquiry was not within a Month, (viz.) 28 Days after the Offence committed; but the Court said, that the Time shall not be confined to 28 Days, but to an Almanack Month. Sid. 186. pl. 9. Pach. 16 Car. 2. B. R. The King v. Cotins.

Keb. 695. pl. 13. fay, the Court would not quash it on this Exception without Plea. — S. C. cited per Car. 4 Mod. 186. Pach. 5 W. & M. in B. R. in Case of Barkdale v. Morgan.

Show. 568. *Barton v. Woodward,* seems to be S. C. Ad- journatur. — 4 Mod. 95.

11. Upon the Statute of *1 W. & M. which appoints all Bishops &c. to take the Oaths,* the Question was, Whether the 6 Months mentioned in the Statute are to be accounted Kalendar Months or Lunar Months? Per Holt & Curiam, abtente Gregory. This being upon the Contraction of an Act of Parliament, it ought to be construed according to our Law, that the 6 Months shall be accounted Lunar Months. And Holt ob- serv'd,
273
in the Act for Fellows of Colleges Burton v.
and ask'd whether the 6 Months y^podward.
iliould be reckon'd Lunar Months lor them in this Claufe, and Kalen!?Combdar Months as to Bilhops &c. in the other Claufe, and fo the fame Word 191. s. C.
And he faid. No. Curia Adjornatur.
in the fame Aft be taken in 2 d liferent Sen fes ?
But they feem'd ripe to give Judgment that the 6 Months
advifare vult.
lliouJd be accounted Lunar and not Kalendar Months ; and Dolben and
Eyre doubted of COplCP aUll COlUngl'fj Cilfe ; And Holt faid, that that
Cafe alone ftuck with him, and notwithltanding he inclined tbrtitcr ut

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R. Woodward

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The Defendant,

of 20 Guineas paid him by the
Plaintiiij did covenant^ i/pofi Payment 0/500 /. more, -'iZ-itbin one Month
next tollowing, to transfer to him upon Notice, certain Kafi -India Shares
&c. the Plaintiff averr'd that he tendered the 500 1. within a Month &c.
The Defendant pleaded that the Plaintiff did not tender it within a
IMonth i lor that before the Tender 28 Days were pall from the Day of
the Date of the Agreement.
And the Truth was, that the Plaintiff ten^
Per Cur.
der'd the Money after 28 Days, but within a Kalendar Month.
12.

in Conlideration

In Common Parlance a Month is taken to be 28 Days in all Cafes but in
aQuare Impedit i and Words and Phrafes of Speech mult be governed
by the common Acceptation of the People, and as they are generally underltood j And io held that the Computation in this Cafe mull be after
the Rate of 28 Days to the Month.
M. in
4 Mod. 185. Pafch. 5 W.
B. R. Barkefdale v. Morgan.
13. In Debt upon the Statute 5 £//z. 4. for tifaig a 'Trade, the Computation by Kalendar Months was lield fatal, but being after Verdift, it
was aided. 12 Mod. 641. Hill. 13 W. 3. B. R. Strechpoint v. Savage,

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The King v.

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freaks of the Feaji of St. Michael, and does not fay
Michael, it fliall be intended St. Michael the Archangel, which is the moll notable, and not St. Michael in Tumba.
Br.
Jours, pi. 5. cites 20 H. 6. 23.
2. But if a Man fpeaks of the ¥eafi of our Lady, and does not fhew
which Feall, it is faid that this is not good, Br. Jours, pi. 5, cites 20
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Pkadhigs of Time. Neceffaiy to be pleaded,
what Cafes.

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London, it is ufual to put the Ten and Day oftheDiffei/Jn. See (F)
other Affile ; for it is not ufed but
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Br. Pleadings, pi 62. cites

6.

^^'here a Man declares upon an Obligation without a Date, he
ought to declare .^nando faiiinn ftiit. Br. Obligation, pi. 66. cites
3
H. 4. 5. per Richill'.
3. In Trcfpafs, if a
jujtifies for Tithes as Parfon at the Time of the
2.

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Trefpafs

&c.

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becaufc he docs not fay, that he was Parfon
as
4 A.

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Time.

as well at the Time of the Seouncing as at the Time of the Taking. Br. Pleadings, pl. 15. cites 35 H. 6. 48.

4. So of Villeinage, and Seizing of Goods, he ought to say, that he was his Villain as well at the Time of the first Taking as at the Time of the second Taking. Br. Pleadings, pl. 15. cites 35 H. 6. 48.

5. And where a Sheriff jusifies an Arrest by Copyas, he shall say, that he was Sheriff as well at the Time of the Arrest, as at the Time of the receiving of the Writ. Br. Pleadings, pl. 15. cites 35 H. 6. 48.

6. Trespasses de claudo tracio; the Defendant said, that the Place is a Piece of Land, and that J. W. was seized of a House in D. of which this Piece was Parcel, and unseffed J. W. in Fee, who unseffed J. B. in Fee who had issue W. and died selfed, and W. entered as Haur and unseffed the Defendant, and gave Colour by J. W. The Plaintiff said, that he was seized of a Lane in the same Vill in Fee, of which the Place is Parcel, and that the Defendant did the Trespasses selfe, that it was over Parcel of the said House, Prout &c. to which the Defendant said, That it was Parcel of the House in the Possession of J. B. and the others contra, and it was found for the Plaintiff; And Exception was taken inasmuch as he did not answer if it was Parcel of the House at the Time of the dying seised of J. B. and yet good by the Opinion of the Court; For when he says, that it was Parcel when J. B. was seised, this shall be intended all the Time that J. B. was seised, therefore it was Parcel at the dying seised, and it suffices to say that W. ut Filius & Harris entered, for this Word (ut) is Tantamount, that he is Son and Heir in Fact. Br. Trespaes, pl. 304. cites 3 E. 4. 27.

7. Trespasses of Goods taken at A. in the County of E. the Defendant said, that the City of London is an Ancient City Time out of Mind, and that there is a Market there every Day except Sunday, and that H. was possesed of the Goods at London, and on Friday before the Trespasses sold them to the Defendant, and did not sell any Years. And yet good per Casesby, Chocke, and Littleton, because he said, that there is a Market there every Day except Sunday. Br. Pleadings, pl. 100 cites 12 E. 4. 1.

8. If a Man pleads that A. was seised in Fee to the Use of B. and that B. gave to him the Trees, this is not good if he does not say precisely, That A. was seised to the Use of B. at the Time of the Gift; For Alteration may be Meline between them. Br. Pleadings, pl. 79. cites 6 H. 7. 3.

Br. Replei-
der, pl. 51. cites S. C. — So in Tres-
pas, when a Man jus-
tifices by Command of Coffy que Us, he shall say, that the Trespasses were seised to this Us at the Time of the Com-
mand. Br. Pleadings, pl. 166. cites 22 Eliz. 3. 20.

So 'tis if he says, that the Place is his Franktenement, he shall say, that at the Time of the Trespasses, the Place was his Franktenement, &c. Br. Pleadings, pl. 9. cites 6 H. 7. 5. — Cases of Things which may be intended to last Continuance. Br. Pleadings, pl. 79 cites 6 H. 7. 5.


10. The Time of Seifin in a Quare Impedit is immaterial, and Seifin generally in the Time of Peace, in the Reign of such a King, being alleged, it is sufficient. Per Holt Ch. J. Skin. 660. in Case of the King v. the Biscop of Chester.

11. Attempt to run a Horse at such Time and Place as the Plaintiff should appoint, and the Plaintiff declares, that he did appoint such a Day; It was doubted, Whether this was appointing a Time, which is more certain and determinate than a Day: But Curiam, by appointing a Day the Law will supply the Rest, and fix it to the most usual and convenient Time of that Day. 3 Salk. 346. pl. 1. Trin. 11 W. 3. B. R. Scott v. Hegion.

13. In *Transitory Actions* Time and Place are not material, but the Plaintiff may declare at any Time or Place. 10 Mod. 251, 348. Hill. 3 Geo. 1. B. R. Cae. v. Hawkins.

(F) Pleadings. In what Cases a Day must be shewn certain.

1. *In Trespass* the Defendant pleaded a Gift of the Plaintiff; and the Plaintiff said, that after this Gift, and before the Trespass, the Defendant re-gave it to the Plaintiff, by which he was poifled till the Trespass, and the Defendant maintaine'd his Bar, aboque hoc, that he re-gave after the first Gift; and this Plea admitted, without alleging a Day certain. Br. Pleadings, pl. i. 4. 119. cites S. C. 8.

2. In *Debt upon Account by an Executor*, the Defendant said, that the Testator made the Plaintiff and one W. his Executors at London, who is in full Life, not named in the Writ, Judgment of the Writ; and the Plaintiff said, that after this the Testator made him his Sole Executor at C. in the County of Middlesex, Judgment &c. To which the Defendant said, That the Truth is, that he made the Plaintiff his Executor Sole, but after this he made both his Executors; aboque hie that he made the Plaintiff's Sole Executor after this. And he was compell'd to shew Day certain, viz. that such a Day he made Both his Executors aboque hoc; that he made the Plaintiff Executor Sole after this. For, per Prift, if all was alleg'd in one County, then the County may inquire of the Time well enough; or if all was alleg'd in two Counties which might join, Vifne should be of both Counties; but London cannot join with any. Therefore, by him and Moile, Day certain shall be alleg'd, and the Vifne shall come where the Affirmative is alleg'd. Br. Vifne, pl. v. cites 33 H. 6.

3. Where a Man is bound [that J. S. shall] enter into such Land be-So where five Michaelmas peacably, it is sufficient to lay, that he enter'd into it the Conditions, pl. 79. cites 37 H. 6. 18.

not enter nor claim such a Land; and the Defendant said, that he did not enter nor claim. Keble said, he claimed; Prift. Brooke says, it seems that he ought to lay that such a Year and Day he claim'd. Br. Conditions, pl. 152. cites 4 H. 7. 13.

4. *Trespass of a Clay broken &c.* The Defendant justified, that J. S. Br. Count., held of him, and alien'd in Mortmain, and be entered for the Alienation within the Year. And no Plea; per Cur. Because he does not flow what Day the Alienation was made, so that it may appear whether he enter'd not intend-ed that he enter'd within the Year, if it be not shewn; for the Time there is Parcel of the Subpliance of the Bar, and it shall not be a good Plea there to lay, that he enter'd within the Year, without shewing the Day certain, for the Notice of the Jurors. Aug. Pl. C. 27. b. in Cafe of Colthirt v. Bepulm.—S. P. 35. b. in S. C. by Mountague Ch. J.

5. *But in Forseodon, if the Tenant pleads Nontenure, and the Den-ffand said that he was Tenant, and made Alienation to Persons unknown, to the latent &c. and that he took the Profits, and that he brought his Action within a Year of the Title accrued;* There he shall not shew Day of the 8. cites S. C. Alienation, but when the Action accrued to him. Agreed, per tot. Cur. &c. 9 H. 6.

Br. Jours, pl. 49. cites 7 H. 7. 5.

6. *And in Damajuin infraestion* he shall not shew Day of the Alienation. Br. Jours, pl. 49. cites 7 H. 7. 5.

7. But
8. If one be bound in an Obligation to incoff another between the Date of the Obligation, and the Featt of St. Michael next ensuing, there, if Action be sued upon the Obligation, it is no Plea to say that he incoff'd him, but he ought to shew the Day certain; for the Time is Parcel of the Substance of the Bar, and if it be omitted it shall never be intended. And also the Plea should not have been good, if he had said that he incoff'd him before the Feast of St. Michael, without shewing the Day certain, for the Information of the Jurors, it illuse be join'd. Arg. Pl. C. 27. b. Patch. 4 E. 6. in Cafe of Colthirft v. Bejufhin.

9. Lefliff brought Bill of Covenant against Leffor, who had covenanted with him, that if he was lawfully ejected of any Part of the Land, that he should have so much other Land of the Leflor during the same Term, and he shewed that he had been ejected of such a Piece of the Land, and did not say when; and it was held that he ought to have shewn the Day certain, inasmuch as it is Matter of Substance. Arg. Pl. C. 27. b. in Cafe of Colthirft v. Bejufhin.

12. It is to be noted always for a general Rule, That if he who pleads in Bar is preferred to a certain Time, he ought to shew the Day of his Action certain; Per Mountague Ch. J. Pl. C. 33. b. in Cafe of Colthirft v. Bejufhin.

Noy 95. S. C. but S. P. does not appear.

11. In Repelvin the Defendant made Comanye for a Rent due to 7. 8, who was seised as Remainder-man in Tile, and averred that the Tenant for Life was dead, but did not allege the precise Time when he died. It was * argued, that he need not, because an Avowry (which is in Lieu of an Action) is a real Action, and in Real Actions the precise Day need not be alleged. Poph. 203. Mich. 2 Car. Dicker v. Moland.

Palm. 508. Hill. 3 Car. B. R. S. C. and S. P. argued accordingly; but the Opinion of the Court seemed against him, and advised the taking a new Diftrift, becaufe here the Time of the Death of Tenant for Life does not appear whether it was before the Rent Arrear, or not.

* 3 Nelf. Abr. 287; cites Poph. 201. Ditcher v. Mortland as adjudged, that he need not shew the precise Time; but this seems to be an Error of the Pref.

12. In Affimpt, the Plaintiff counted, that Defendant in Consideration of 2 s. promised to carry such Goods aboard a Ship, if Plaintiff would deliver them to him, and shew'd that he delivered them, but Defendant did not carry them aboard. But Exception was taken, because he said only Delivered, without shewing when or where, and then the Law fays they were not delivered. Per Jones J. The fame is but Matter of Inducement to the Promise, and ought not to be shewn'd so precifely. Godb. 404. pl. 484. Patch. 3 Car. B. R. Mole v. Carter.
(G) Pleadings. Good. Where Time is made Parcel of the Issue.

1. IN Replevin Defendant avow'd, for that J. S. was seized and made a Lease to B. for 21 Years, who being polled'd, assigned his Term to H. the Avowant, by which he entered, and was polled'd; and on the 1st Dec. 18 Car. 2. at F. demur'd for Part of the Term to the Plaintiff rendring Rent; and for so much Rent Arrear he avow'd the taking the Beasts. The Plaintiff pleaded in Bar, that the Avowant upon the said 1st December 18 Car. 2. aforesaid at F. did not demur Modo & Forma, as the Avowant has alleged, Et bee &c. Unde &c. After Verdict and Judgment for the Plaintiff in C. B. it was align'd for Error in B. R. that this was an immaterial Issue, by making the Day and Place Parcel of the Issue; for a Demurr at another Day and Place would maintain the Avowry, and the putting them in is only for Conformity in pleading, but the Plea should have been general, Non demur Modo & Forma &c. The Court could not tell for whom to give Judgment according to the Right of the Matter; and after the Matter had been twice argued, whether this Case was remedied by the new Statute which eures Defaults where the Right is tried, the Court were of Opinion that it was not, and doubted what to do. But afterwards, upon other Exception taken by Hale Ch. J. to the Avowry, the Judgment was affirmed. 2. Lev. 11. 29. Trin. 23 Car. 2. in B. R. Holbeck v. Bennet.

2. In Account the Plaintiff dec'd, that upon the 1st March, 22 Car. 2. and thence to the 1st May, 27 Car. 2. the Defendant was his Receiver &c. Defendant pleads, that from 1st March 22 Car. 2. to the 1st May 27 Car. 2. he was not his Receiver &c. The Plaintiff demur'd specially, because the Time from the 1st March to the 1st May are made Parcel of the Issue, which it ought not; because Plaintiff must allege a Time for Form's sake, and Defendant ought not, Receiver Modo &c. Besides the Defendant was charged as Receiver on the 1st Day of March; and he pleads, that he was not Receiver from that Day; to the Day was excluded, which the Court held an incurable Fault, and that the Time ought not to be made Parcel of the Issue. And Judgment, quod compter. 2 Mod. 145. Hill. 28 & 29 Car. 2. B. R. Brown v. Johnson.

3. When by a Traverfe the Time is made Part of the Issue, such Traverfe is never good; per Cur. 5 Mod. 286. Mich. 8 W. 3. Blackwell v. Eales.

For more of Time in General, see Arbitrement, Condition, Limitation, Payment, Stocks, Tender, and other Proper Titles.
Title.

(A) What is.

1. **Possession** is a good Title, where no better Title appears. See Maxims, *In equali Jure melior est Conditio possidentis*; and *Qui prior est tempore, potior est Jure, in equali Jure*.

2. A Prescription, that is to claim a real Interest in Alieno solo, is a Title, and as a Title must be strictly and curiously pleaded; Per Sir Francis North Arg. Vent. 386. in Cafe of Potter v. North.

(B) Preference. Where a Man has several Titles, which shall be preferred.

1. When 2 Titles concur, the best shall be preferred; as where Dis- feiser leaves the Land to the Disfesee for Years, or at Will, if be enters, the Law will say that he is in of his Ancient and better Title. Finch's Law 16. a. S. 95.

2. It was enacted by Act of Parliament, that all the Lands of S. should be forfeited to the King, of whomsoever they were held. S. held some Lands of the King; the King had that Land by Escheat by the Common Law, and not by the Statute. Arg. Godb. 309. cites Sir Ralph Sadler's Cafe.

3. Abbot feigned in Right of his House, committed Treason, and made a Lease for Years, and then surrender'd his House to the King after the Statute 26 H. 8. 13. 'Twas adjudged that the King was in by the Surrender, and not by the Statute, and so should not avoid the Lease. But if the King had it by Force of the Statute, then he should have avoided the Lease. Arg. Godb. 411. cites the Abbot of Colchester's Cafe.

4. Tenant in Tail, Reversion to the King. Tenant in Tail makes a Lease for Years, and is attainted of Treason, the King shall avoid the Lease upon Construction of the Statute of 26 H. 8. 13, which gives the Land to the King for ever. Arg. Godb. 311 cites Pl. C. 369.

5. If a Devise be made of Land to the Heir at Law, of the same Estate as would descend, it is a void Devise; for the Descent shall be preferred. Per Doderidge J. Godb. 412. pl. 489. Trin. 21 Jac. B. R. in Sommers's Cafe.

See more of this at Tit. Devise.

(C) Excuse.
(C) Excuse. Coming in by Title, How far favour'd in Law.

1. If a Man diffeis me, and makes a Feoffment, and I re-enter, I shall so by Title, for he is in by Title, and no Trefpaflor to me. Br. Trefpafls, pl. 35. cites 34 H. 6. 30. by the best Opinion.

pl. 35. cites 34 H. 6. 30. —— Trefpafls lies for Diffeisee against Feoffee of Diffeiector; Per Keble and Wood. But Contable, Kingsmil, Frowlke, and others seemed e contra. For by the Common Law, he that was in by Title should not be punifh'd. For if the Heir of Diffeiector had Lands which defended, no Damages should be recovered against him, any more than where he was in by Feoffment, and that was the Reason of making the Statute of Gloucefter, That every one fhould Answer for his own Times; So where Diffeiector sells Trees, and the Vendee cuts and carries them away, but where the carrying away is to the Use of Diffeiector, it is otherwife. But where Feoffee was Party to the Disputation by Covin &c. he should be punifh'd. As if I diffeis a Man, and infed of my Father, who dies feit, Affife lies againfi him. Hill. 15 H. 7. 15. b. pl. 11. —— See Trefpafls (D) pl. 8. and the Notes there.


(D) Pleadings. Declaration. In what Cases a Title must be fet forth in the Declaration.

1. In Affife of Common the Plaintiff shall make Title in his Plain; so in Affife quod nota: Tho' the Defendant or his Bailiff cannot challenge it; of Common of Pifcharia; of Common the Plaintiff was com-pelled to shew Title, because it was against Common Right, and fo he did; And this seems to be in his Plain, by which he faid, that S. was feited of the Manor of D with the Pifcharia Appendant, and gave him the Manor with pertinentiis and as part of Pifcharia &c. and alleged Selins Per my & per toat. Br. Titles, pl. 43. cites 34 Afl. 11. —— Br. Plain, pl. 17. cites S. C.

2. The Plaintiff need not to make Title in the Plain, but where the Plain is of such a Thing, of which Affife did not lie at Common Law but by Statute, As of Common, Office, Exfeftor &c. for it lay of the Land and Rent at the Common Law. Br. Titles, pl. 25. cites 22 Afl. 45. Where a Office, Common &c. there a Man shall make his Title in his Plain; but of a Rent e contra, tho' it be a Rent-Seek or Rent-Charge. For that does not appear to be against Common Right; for it may be Rent-Service by Intendment till the Title be made; and when the Plaintiff has the Appearance of a Thing which may be intended to land with Common Right, there the Plaintiff is not always compell'd to make his Title in his Plain. Br. Affife, pl. 13. cites 35 H. 6. 6.; —— Br. Plain, pl. 1. cites S. C.

3. In Quod permittat of a Way &c. the Plaintiff shall make his Title in his Count; per Cur. Br. Titles, pl. 60. cites 30 H. 6. 6.

4. So in Selins Molinda &c. because it is a Thing effing out of another's Soil. Br. Titles, pl. 60. cites 30 H. 6. 6.


6. Where a Man is not to recover the Thing, but Damages for the Thing. As in Trefpafls there, Vi. & Arns. Has, with a re-nt of the Affise, &c. where he may recover the fame Thing. Note the Diverlity. Br. Titles, pl. 3. cites 34 H. 6. 28 & 43.

like. the Defendant shall not lay, that the Place is his Frankement, Judgment, it without Title.
Title.

For this Action is in the Plaintiff, and only Trepass to recover Damages, and not to recover the Warren. Er. Titles &c. pl. 2. c. 54 H. 6. 28 & 45. — Br. Warren, pl. 2. cites S. C.

Heath's Max. 93; cites S. C.

7. Entry in Nature of Assise of Common; the Defendant pleaded Non Dicem; and the Plaintiff gave Precumion in Evidence, and did not allege it in his Count, and yet it was permitted; for it seems that Title cannot be made in the Count in this Action, as in the Plant of Assise, and therefore does not lie of the Common. Er. General Issue, pl. 68. cites 4 P. 41.

8. Assise of an Office, the Plaintiff made Title in his Plaint, and it seems that he ought to do so; for this is of a Thing of which Assise does not lie by the Common Law. Er. Titles, pl. 54. cites 2 H. 7. 12.

9. In Assise, when the Defendant makes Default at the Grand Distribut, or in a Quare Impedit, or in an Action, in such Cases the Plaintiff ought to count; But he has no Occasion to count of a Year and Day; for the Defendant in one Case, and the Plaintiff in the other, where such Default is, has no Day in Court to make a Defence; but in both Cases a good Title ought to be flown. Jenk. 124. in Case 52.

10. For the Office of Parker or Steward, there is no Occasion for any Title; for they are Offices of Common Right. It is otherwise of a Rent-Charge, or Rent-Sick, which are against Common Right. In an Assise of these, a Title ought to be made. Jenk. 150. pl. 64.

11. Action for a Case, supposing that he was seized in Fee of the Manor of H. and of a Fair to be held there every Atencion-Day, and that the Defendant disturbed him to take Toll &c. The Defendant pleaded Not Guilty, and found against him. And now moved in Arret of Judgment, that the Declaration was not good, because he doth not file a Title to the Fair by Grant, nor by Preccumtion, fo he hath not any Cause of Action, Sed non allocutur; because it is but a Conveyance to the Assise, and is not any Claim thereof, as to the Right, as in a Quo Warranto; and therefore the Declaration, without Special Title comprised therein, is good. Wherefore it was adjudged for the Plaintiff. Cro. J. 43. pl. 9. Mich. 2 Jas. B. R. Dent v. Oliver.

12. The Plaintiff declared in Action for Case for disturbing his Cattle, and lays no Title but only in using their Common in such a Case, but lays no Title; and Judgment by Nil dict. And afterwards, upon a Writ of Error, Exception was taken, for that he lays no Title, which he ought in this Case, where he claims an Interer, and a Charge in the Soil of a Stranger, especially here, being upon a Nihil Dict, or upon a Demurrer. After a Verdict, it is true, it will be well enough; for it shall be presumed the Judge, upon the Trial, made them file their Title. Pollexen, on the other side, said that this Action being upon the Possession, is well enough; and compared it to a Way, to a Case of Lights, to a Water-Course &c. and cited Cases where such Actions had been brought. And cited, 1 Cr. 75. the Case of Sandeo v. Treflius, where an Action for Stopping the Water-Course, without laying a Title, was held good upon Demurrer. Skim. 113. Trin. 35 Gar 2. B. R. Brown v. Booking. — Cites 2 Cr. 121.—1 Cr. 325. 499. 757.—2 Cr. 673.

13. Where a Common or Way is claimed, the Title ought to be set forth in the Declaration, but for a Fair or Franchize, which is no Charge to another's Soil, there Habere debuit is good without more; Per Holt Ch. J. 12 Mod. 35. Pach. 5 W. & M. B. R. Anon.

14. Where Action is brought upon the Possession, and is founded upon a Wrong done upon the Possession, and not to the Title, as if brought by a Commoner for digging Coney-burrows, so that he cannot enjoy his Common in tan ample Modo, he need not set a Title forth either by Grant Precumtion. 12 Mod. 97. Trin. 8 W. 3. B. R. Birt v. Sterode.

S. C. cited per Holt J. 6 Mod. 315.

15. A Seizin in Fee is not necessary to be set forth, but where a Preccumtion is to be made, and therefore a Declaration on the Possession where
where no Prescription is made, is as good as upon a Suit in Fec. 12 in Case of Tenant v. Goldwin. * 16. Covenant by an Heir against an Assignee for Rent; it seems that this being brought on the Title, the Title ought to be set forth in the Decl., and that the Want thereof will not be made good by Verdict. See 11 Mod. 179. Trin. 7 Ann. B. R. Willet v. Bescomb.

A. was poss'd of a Close adjoining to a Close of B.' the Fence be- tween the said 2 Closes had Time out of Mind been repaired by the Tenants and Occupiers of B.'s Close. The Fence was not repaired; so that B.'s Cattle came into A.'s Close; A. brought an Action on the Close against B. setting forth this Matter, and had Judgment in C. B. and upon Error brought in B. R. this Judgment was affirmed. And per Cur. This is a Charge upon the Defendant against common Right; for the Law burdens every Man's Property, and is his Fence, and this is obliging another to make a Fence for him. And where a Charge is imposed upon formerly, another against Common Right, and the Charge is laid on him as Owner of the Soil, or Tertenant, the Plaintiff in his Declaration must make himself a good Title; but where he declares against the Defendant as a Wrong-doer only, and not as Tertenant, it is sufficient that the Plaintiff declares on his Pселicion. 1 Salk. 335, 336. Mich. 9 Ann. B. R. Starr v. Rookesby.

(E) In what Cases a Title must be set forth in the Pleading.

1. In Assign's, if the Tenant makes Bar by H. who was Heir of N. and shows certainy &c. the Plaintiff cannot traverse that H. was not Heir of N. without making to himself Title; Quod nota, for in Assign's the Plaintiff shall always make to himself Title. Br. Titles, pl. 21. cites 14 All. 10.

2. Affile against 2, the one pleaded a Release of all Actions Personal, and the other Jointnecy with a Stranger, and none took him the Tenancy, and the Plaintiff chose him who pleaded the Release for his Tenant, and the S. C. Affile awarded to inquire of the Tenancy, which found for the Plaintiff; by which he so pleaded the Release pleaded it again without taking the Tenancy, and the Plaintiff said that after the Release he was seized and dispossed, and found for him; by which he recovered, and the other brought Writ of Error, because the Plaintiff chose his Tenant, who pleaded in Bar, and the Plaintiff did not make Title; and yet because the Defendant who pleaded the Release did not take the Tenancy, therefore the Judgment was affirmed. Br. Error, pl. 115. cites 17 All. 25. and 19 All. 3.———But 17 All. 25. the Opinion of the Court was against the Plaintiff in the Affile. Br. Ibid.

3. In Treps, the Defendant said that he gave to W. in Trust, who had Issue M., who married Q. and had Issue, and died, and the Issue died without Issue, and Q. Tenany by the Curtesy a'ed to the Plaintiff in Fee, by which the Defendant entered for Alienation to his Ditterison; and the Plaintiff said that Q. Ne aliena pas, and a good Plea without shewing Title; quod nota. And so it seems that a Man shall not be compell'd to shew
Title.

... Title in Trespass; for he by his Possession has Title against all who have no Title; Nota; for Trespass is supposed in the Possession. Br. Trespa's, pl. 38. cites 40 E. 3. 5.

The Plaintiff. 4. If a Man trespasses the Bar, the Defendant need not make Title may trespass in Trespass; Otherwife it is in Aff'ise. Br. Titles, pl. 6. cites 40 E. 3. 5.

... content making Title in Trespass; Per tot. Cur. except Brian. Br. Titles, pl. 52. cites 18 E. 4. 10.

5. In Mortdancor &c. it is agreed that the Tenant may say that the Plaintiff has an elder Brother alive, or that he is not heir &c. without making Title; for the Action affirms him [Tenant.] Contrary against a Trespassor; Note the Diversity. Br. Trespa's, pl. 57. cites 47 E. 3. 5.

6. In Cognage, the Plaintiff intituled himself as Confin and heir, and the Tenant said that he who is supposed to die feised, had Issue W. born and begotten at D. who is alive; Judgment in Actio; and a good Plea without intituling himself; for he has the Possession; And therefore if he can prove that the Demandant has no Title, it is sufficient. Br. Bar, pl. 17. cites II H. 4. 56.

7. But in Trespa's, if the Defendant intitules a Stranger, yet this is no Plea without intituling him to do the Trespa's; for there the Plaintiff was supposed to be in Possession at the Time of the Trespa's; Note the Diversity. Br. Bar, pl. 17. cites II H. 4. 56.

8. In Trespa's upon Anno 5 R. 2. it is a good Plea for the Master of an Hospital, that J. S. his Predecessor was feised and died, and he was elected Master, and entered, and give Colour; for if he conveys to himself a lawful Entry, it is sufficient. But contrary in Aff'ise, for there he shall make Title; for it is not as a dying feised, and a Defent; Quod nota differentiam by several. Br. Alde, pl. 11. cites 34 H. 6. 27.

9. In Trespa's, if the Defendant pleads Bar, and gives Colour, the Plaintiff ought to make Title. Br. Titles, pl. 44. cites 9 E. 4. 46.

10. But where the Defendant pleads Bar, and gives Title in the same Title without making other Title. Br. Titles, pl. 44. cites 9 E. 4. 46.

11. As in Trespa's the Defendant says, that he was seised, till by B. dis-seised, who infecff'd the Plaintiff, upon whom he entered; there it suffices to say, that B. did not disseise the Plaintiff. Br. Titles, pl. 44. cites 9 E. 4. 46.

12. And in Aff'ise, if the Tenant says, that he infecff'd the Plaintiff upon Condition, and for the Condition broke he entered; there the Plaintiff may say, that they were not broken. Br. Titles, pl. 44. cites 9 E. 4. 46.

13. So it the Tenant says, that he within Age infecff'd the Plaintiff upon whom he re-enter'd, there it suffices for the Plaintiff to say, that he was of full Age Tempore Possessamenti, without making other Title. Quere; for it is but the Opinion of some, and several contro. Br. Titles, pl. 44. cites 9 E. 4. 46.

14. So if he says, that he leased to the Plaintiff for Life who aliened in Fore, and he entered, the Plaintiff may say, that he Ne infecff'd pas. Per Pigor and Jenney. Br. Trespa's, pl. 188. cites 9 E. 4. 49.

15. In Trespa's the Defendant justified for Titles as Parson imparsome, and was compelled to shew how he came to the Parsonage and to he did. Br. Pleadings, pl. 117. cites 21 E. 4. 65.

16. If in Calle, for disturbing his Common &c. Plaintiff counts on his Possession, and after it appears by pleading, that Defendant is Owner of the Land, there a Title must be let out. As in Trespa's for taking and chaining his Cattle, if Defendant justifies as in his Freehold, and that he took them Damage, &c. the Plaintiff must shew forth from Title in his Replication, in Answer to that of the Defendant's in his Bar.
But in a Declaration, where the Defendant may be as well supponed a Stranger as an Owner, there no Title is necessary to be shewn. Per Holc Ch. 3, in delivering the Opinion of the Court. 12 Mod. 98. Trin. 8 W. 3. B. R. in Cafe of Birt v. Strode.

17. Replevin, the Defendant avow'd for Rent, that he was possi'd of a Horse for divers Years then, and yet to come; and that he had it to the Plaintiff from Year to Year &c. The Plaintiff replied, Nil habit in Tenements. Defendant rejoind'd, Quod factis habit in Tenementis. And upon Demurrer to the Rejoinder it was alleg'd, that the Defendant in the Rejoinder should have forth a Title. But Northey for the Defendant moved, that there was no Necessity fo to do; for tho' in Deeb for Rent, if the Defendant pleads in Bar Nil habit in Tenementis, the Plaintiff in his Replication must shew a Title; because in Debt for Rent, the Plaintiff is not obliged to shew a Title in his Declaration, but Quod conti- dunt is sufficient. Yet in an Avowry it is otherwise, for in an Avow- ry some Kind of Title must always be shewn, as was here, viz. that he was possi'd for divers Years then and yet to come; which being done, there is no Necessity to set out a Title again in the Rejoinder. Where- on the Court took Time to consider. And after Northey said, he could not make good the Avowry, and therefore pray'd Leave to amend, paying Co'ts. Quod Cur. consecutiff. 12 Mod. 138. Patch. 10 W. 3. B. R. Chaloner v. Claiton.

is being a personal Action, the Title need not be let forth; and if it should, would be unnecessary, and therefore need not be answered, as it ought to be in this Case. And the Case of Simons v. Paff, 199, 2 Jac. 2. was cited as Authority in Point; and the Court inclined to that Opinion. Sed Adquiratur—salk. 326. pl. 1. S. C. according to 12 Mod. and that the Demurrer was to the Rejoinder, and that Mr. Northey moved to amend it ; for that he said he could not make it good for want of setting forth a Title, and that is not proper in a Rejoinder. In an Avowry a Title must be shewn; per Holt Ch. J. 11 Mod. 225. Patch. 3 Anne, in Cafe of Harrington v. Baff.

18. In Replevin for taking a Horse, the Defendant avow'd, that he was possi'd of the Cloke, being the Locus in quo &c. for a Term of Years yet to come, and being so possi'd, the Horse was Damage-Feasant there &c. The Plaintiff replied, that the Defendant was an who kept up his Hces round the said Cloke, but that the same being down, and out of Repair, the Horse escaped into the Cloke for want of good Fences, upon which they were at Fri; and at the Trial the Plaintiff was non-suited; And now it was moved in Arrest of Judgment, that this Avowry was ill, because in all Avowries for Damage Feant the Avovent must shew where the Xeis is, and how the particular Esiate is derived, quod iuit concepiment Curian, if there is a Demurrer to such Avowry; but because the Plaintiff by his Replication had waived the Matter, and confessed and admitted a Possi- fion in the Avovent, that is sufficient to justify a Diftrefs Damage Feant, and has cured this Defect in the Avowry. 3 Salk. 307. pl. 3. Trin. 12 W. 3. B. R. Freeman v. Jugg.

19. Trespafs for going over the Plaintiff's Cloke with Horses, Cows, and Sheep; the Defendant justify's, that he has a Way for Horses, Cows, and Sheep, and says, that such a Day be went over Horses; And upon Demurrer it was adjudge'ed ill; For 'tis a Julification only for Horses. Judgment for the Plaintiff. Sed quare. 11 Mod. 219. pl. 7. Patch. 8 Ann. B. R. Roberts v. Morgan.

20. Action of Trespafs for taking Cattle, the Defendant pleads quod Pof- sionatus fist of the Cloke, and that he took them Damage-Feant. The Question was, Whether in this Cafe Possessionatus fist was sufficient, or whether the Defendant should have set forth his Title. Holt Ch. J. said, That he thought the Title could not come in Quetion; For the Ac- tion is brought only for taking his Cattle. If he had claimed the Land, the Action should have been for enterin' the Land; but where the Tres- pafs is only for a personal Act, as beating or taking Cattle, Possessionatus that the Defendant pleaded, is sufficient. And Judgment for the Defendant. 11 Mod. 219, 220. pl. 9. Patch. 8 Ann. B. R. Harrington v. Buth.
21. If A. is possessed, and B. comes and treads down his Corn, and A. molliter manus imposuit to put B. out of his Corn, for which B. brings Assault and Battery, A. may plead Quod Poelicionatus suit &c. and that he molliter manus imposuit to put C. out of his Corn; And it is good without setting forth a Title, for the Action is Transitory and can't be made local but by a Clayfima fregit. Indeed in an Avowry a Title must be shown; but that is not like this Cause. Per Holt Ch. J. Powis and Gould of the same Opinion. 11 Mod. 220. in Cafe of Harrington v. Buhl.

(F) Pleadings thereof, How. And the Difference thereof in the Writ or Count, or in Bar.

1. IN Scire Facias a Man pleaded, that his Father was seised of the Manor, and died seised, and it descended to him as Son and Heir; and per Cur. he ought to shew what Estate his Father was seised; quod nota. Br. Pleadings, pl. 33. cites 24 E. 3. 75.

2. Error: A Rent was granted of all his Lands and Tenements in B. and the Title was, that he was seised of certain Lands and Tenements in B. and yet Judgment affirm'd; for it was said, that it is apparent; but Brooke says, Quod mirum, for Uncertain. Br. Pleading, pl. 17. cites 8 H. 4. 19.

3. In Affise, the Tenant said that A. held for Life, the Reversion to J. S. who granted it to his Father. The Tenant attorn'd and died; the Father entered and died, and he entered as Heir, and gave Colour; and there it was held, that he ought to shew of what Leafe the Tenant for Life was seised; and therefore he shew'd of whole Leafe. But Brooke says, it seems that in Pleading he ought to shew, that A. was seised in Fee, and leased &c. But in Writ or Declaration he may say, that A. gave or demised &c. without alleging that A. was seised, and gave or demised. Br. Pleadings, pl. 18. cites 9 H. 4. 5.

4. Avowry by Tenant in Dover, after Endowment pleaded, assigned to her, he need not allege what Day her Dover was affigned. Br. Pleadings, pl. 19. cites 11 H. 4. 63.

5. If a Man makes Title in Affise, or pleads Fine between him and a Stranger, or a Recovery, he shall say, that the Parties to the Fine or the Tenant in the Recovery were seised at the Time of the Fine or Recovery, and this by way of Title or Pleading; But Contra by way of Formedon or other Action, or by way of Declaration. Br. Titles, pl. 59. cites 10 H. 6. 21.

6. By Way of Title or Pleading, as in Barr, Title &c. a Man shall say, that he was seised &c. and leased or gave, but by Way of Writ or Count he shall say, that he gave or demised, without shewing that he was seised and leased, or gave; Note a Diversity. Br. Pleadings, pl. 13. cites 34 H. 6. 48.

7. Precogn quod reddat of 45 s. Rent, the Plaintiff in his Title said, that the Tenements put in View, out of which the said Rent arises, was a Mensage and 10 Acres of Land in S. which makes the Hope and Manufactory of S. and so they did make and were time of Mind situate upon the said 10 Acres &c. Br. Pleadings, pl. 29. cites 9 E. 4. 19.
Title.

8. Debt upon a Lease for Years by the Plaintiff to the Defendant, who said, that E. was seised in Fee andleased to the Plaintiff at Will, who leased to the Defendant, upon whom E. entered and ousted him, before which Entry Riers Arrear; and 'twas held that it suffices for the Plaintiff to say, that E. did not lease to him at Will, without making other Title, Quod nota & quære. Br. Pleadings, pl. 48. cites 21 H. 7. 26.

(G) Pleadings. What shall be said the Title, or only Conveyance to the Title.

1. IN Affise of Rent, the Plaintiff made Title that A. his Ancestor had been seised of the Rent Time out of Mind in Fee, and that A. granted the Rent to C. in Fee, and that it is devisable by Custom &c. and that C. devised to D. which D. devised to the Plaintiff, who was seised and devised, and showed the Deed; and well; for the Prescription is the Title and all the rest is only Conveyance. Br. Titles, pl. 50. cites 38 Afl. 28.

(H) Pleadings. Where it must be set forth at large.

Execute of him who had Land deliver'd to him by Elegit brought Affise, and made general Plant; and good. Br. Titles. pl. 25 cites 22 Afl. 45.

2. In Affise the Tenant pleaded by Esebat of his Tenant, and gave Colour to the Plaintiff, and good, and the Plaintiff said, that J. N. was seised, and intended him, and so was he seised till devised &c. and no Title per Cur. For he has not travers'd the Bar, nor confessed and avoided it; And so it seems, that it is no Bar at large, quære inde. Br. Titles, pl. 46. cites 27 Afl. 71.

3. A Man need not make Title at large unless in *Affise only, and in no *Br. Titles, other Adjoin, per Moile; which was not denied. Br. Titles, pl. 4. cites pl. 12. S. P. cites 21 H. 6. 46. 5 H. 7. 15. — S. P. Br. Traverse per &c. pl. 185. cites 5 H. 7. 11. 12.

(I) Pleading Title. Without showing how his Ancestor, or himself came to it after a Feoffment &c. alleged.

1. IN Affise the Tenant pleaded in Bar Deed of Feoffment of the Grandfather of the Plaintiff with Warranty as Affisee, and showed both Deeds; the Plaintiff said, that not confessing the Deed, his Grandfather was seised in Fee and Right, and died seised, by which he entered as Cousin and heir, and was seised, and a good Title, without showing how he came to it after. Br. Titles, pl. 19. cites 9 Afl. 11.
2. In Affife, Release with Warranty of the Ancestor of the Plaintiff was pleaded in Bar, and the Plaintiff said, that the Ancestor died seised after, &c. non Allocator without showing how he came to it after. Br. Titles, pl. 20. cites 10 Aff. 23.

3. In Affife, the Feeoffment of the Ancestor of the Plaintiff, whose Heir &c. was pleaded in Bar, and the Plaintiff said, that the same Ancestor was seised and died seised, and he enter’d as Heir, and was seised and dispossessed, and a good Title by Award, without showing how he came to it after; quod nota; by which the Affife was awarded. Br. Titles, pl. 23. cites 17 Aff. 18.

4. In Affife, Deed of the Ancestor was pleaded in Bar, and the Plaintiff said, that his Ancestor was seised, and died seised, after whose Death he enter’d as Heir, and was seised and dispossessed &c. and the Affife awarded; and yet he did not shew how he came to the Land after. Br. Titles, pl. 31. cites 29 Aff. 25.

5. In Affife of Rent, Deed of the Ancestor was pleaded, and by Award the Plaintiff was received to say, that the same Ancestor died seised of the same Rent, without shewing how he came to it after; as well as in Affife of Land. Br. Titles, pl. 32. cites 30 Aff. 33.

6. In Affife, if Recovery is pleaded in Bar against the Ancestor of the Plaintiff, it is no Title that after the Recovery the Ancestor was seised in Fee, and died seised, without shewing how he came to it after. Br. Titles, pl. 55. cites 32 E. 3.

7. Mortdcoff of Seisin in Fee of J. Ancestor of the Plaintiff &c. The Tenant said, that H. Father of the Plaintiff, whose Heir &c. was seised in Fee and the Land is decensible by Custom, and he devise d to A. for Term of Life, the Remainder to this J. in Tail, and the Remainder in Fee to be hold, and that the Tenant for Life and the said J. are dead without Issue, and conveyed himself to the Land by the Sale of the Fee Simple, and seised the Testament of the Father; Judgment if Affife &c. And per Cur. in this Case the Plaintiff shall not say, that he was seised in Fee, ab fines bo, that he had any thing by the Devise, without shewing how he came to it after, by Reason that the Devise binds as a Deed intent ed. Br. Titles, pl. 48. cites 35 Aff. 1.

8. Formedon of the Gift of R. to B. Father of the Demandant, in Tail &c. Rede said that before the Gift A. was seised in Fee, and leased to the said R. for Life, which R. after gave to B. in Tail, and the said A. enter’d after the Gift made to his Disinheritance. Hill said, After this Gift, and the Entry by A. this same R. was seised, and gave the Land to B. in Tail, of which Gift this Action is brought, and no Title, without shewing how R. came to it after the Forfeiture; by which Hill said, that after the Death of A. the T. was seised, and indefeasibly R. in Fee, who gave to the Father of the Demandant as in the Writ and Declaration &c. Rede said, T. whom you suppose to give, nothing had &c. and the others contra. Br. Titles, pl. 43. cites 3 H. 4. 17.

9. In Trelaps the Defendant pleaded in Bar, and gave Colour to the Plaintiff by Lease made to the Father of the Plaintiff at Will, and the Plaintiff thinking that his Father had died seised in Fee enter’d &c. The Plaintiff said that his Father died seised, without shewing how he came to the Fee. And good per Cur. Because the Defendant in his Bar does not bind the Plaintiff.
Plaintiff by Matter of Record to the Estate at Will. Br. Titles, pl. 57. cites to H. 6. 1.

10. A Man shall not make Title after Act of Parliament, Fine, or Recovery, but by Matter of later Time; for by such Act against his Father, if he enters again, and dies seised, and his Heir enters, this shall not make Title to the Heir, without pleading Title after the Recovery &c. Br. Titles, pl. 63. cites to H. 7. 5.

(K) Pleadings by Confessing and Avoiding the Bar by Elder Title.

1. In Trespa's, the Defendant made Bar, that J. P. was seised, and infected M. who leased to the Defendant &c. The Plaintiff said that before that J. P. any Thing had, W. was seised in Fee, and infected two, who gave to W. and his Feme in Tail, the Remainder in Fee to W. and after W. and his Feme died without Issue, and M. as Heir of W. entered, upon whom the Plaintiff entered, to whom the said M. releas'd all his Right, upon whom J. P. entered and infected 4, who leas'd to the Defendant, upon whom the Plaintiff entered, and the Trespa's Mone; this is a good Plea per tot. Cur. Br. Titles, pl. 58. cites to H. 6. 14.

(L) Pleading Title by Recovery. Good in what Cases, and How.

1. In Affise, the Tenant pleaded Lease by R. his Ancestor, whose Heir &c. to K. for Term of Life, who alien'd in Fee; by which he entered for the Forfeiture as Heir of his Ancestor, and the Plaintiff claiming as Heir of R. where he was a Baffard, entered &c. The Plaintiff said Proteftando, that he is not a Baffard, pro Placito that he brought Affise against the Lease and the Ancestor, and recovered, at which Time this new Tenant had nothing, nor ever before, and because the Judgment was against a Stranger, which does not bind this Tenant, and can have no other Effect than to put him in the Possession which he had before, the Court was of Opinion that Plaintiff ought not to have Affise, and so he was nonsuit'd. See Fitzh. Tit. Title, pl. 7. and Br. Titles, pl. 45. cite to 20. By which the Plaintiff said that at another Time the Plaintiff brought Cause in Vita of the same Land against A. But it shall be admitted; and a good Plea; for by this was the Land discharged of Affise. Br. Titles, pl. 35. cites 33 Aff. 5.

2. In Affise by a Feme, the Tenant said that at another Time the Plaintiff brought Cause in Vita of the same Land against A. But it shall be admitted; and a good Plea; for by this was the Land discharged of Affise. Br. Titles, pl. 7. cites 47 E. 3. 13.

3. Where a Recovery is pleaded against a Man, there, Per Finch, The Act where a Man eis'd of Land takes a Wife, and makes a Title, and assays the Fee's, and he recovers by Affise, the same brings Dam: the Defendant pleads the Recovery.
Title.

4. In Trespas, a Recovery is a good Title without shewing Matter in arrest; Per Prior. Br. Titles, pl. 51. cites 39 H. 6. 25.

5. So of a Recovery in Formedon, without alleging that the Dower was seised and gave, Per Prior. Br. Titles, pl. 51. cites 36 H. 6. 25.

6. And the same Law of an Affife, and so in the Case of a Writ of Right of Advoision, it is a good Title without alleging Prefsentment. Br. Titles, pl. 51. cites 39 H. 6. 25.

7. Contrary of a Recovery in Quare Impedit, without Prefsentment; for Quare Impedit may be against Deforecement, who claims nothing in the Patronage, and there he can recover only the Prefsentment; and a Writ of Right of Advoision lies not but against the Patron, and then he recovers the Advoision. Note the Diversity; Per Prior, which none denied. Br. Titles, pl. 51. cites 39 H. 6. 25.

(M) Pleading Title of his own Possession.

1. IN Affise, the Plaintiff said that he himself recover’d the Tenements by Affise against one J. then Tenant, and the Estates, which the Plaintiff here has was by Abatement upon J. pending the Writ &c. Judgment &c. and it was awarded a good Bar; to which the Plaintiff said that a long Time before this Writ brought he was seised &c. And the Affise upon this Title was awarded, without shewing how he came &c. Contra in Imit. Derby, Per Herle, where the Recovery was alleg’d against the Plaintiff; and lee that he did not shew how he was seised before the Dileit in upon which the other recover’d, but only before his Writ brought, and the Title good, and the Affise awarded; Quod quere; for at this Day the Plaintiff shall not make Title upon his own Possession, unless in special Case. Br. Title, pl. 18. cites 9 Afl. 10.

2. In Affise, the Tenant pleaded Bar by Custom, that the Widow shall hold the whole for her Life, if she remain’d sole; and that if she marry the Lord shall have it for her Life; and that such a Widow married, and be as Lord enter’d &c. The Plaintiff said that she was seised in Fee before the married the first Baron; and it was awarded a good Plea, without shewing Title, and yet it is of her own Seisin; Querat at this Day. Br. Title, pl. 27. cites 25 Afl. 11.

3. Trespas by the Prior of C. upon Anno 5 R. 2, the Defendant said that T. D. was seised in Fee, and gave to W. N. in Tail, and conveyed several Defents, but he did not allege any dying seised to the Defendant, and gave Colour to the Plaintiff by him who last died; and the Plaintiff said that he was seised in his Demise as of Fee and of Right in Juve Ecclesiastical, till the Defendant entered where Entry was not to him given by Law, albeit he too that T. D. gave in Tail, prout &c. and to Hife, and found for the Plaintiff, who pray’d Judgment; and it was pleaded in Arriv of Judgment, that this was no Title, because it was upon his own Possession, without shewing how the Hife came to it. And by severall it was argued long, that the Title was not good, and Markham Ch. J. was strong that the Title was not good, but the greater Number, and the best Opinion was,
For more of Title in General, see Right, Toll, Traverse, Trespass, and other Proper Titles.

* Toll.

(A) What is Thorough Toll.

1. **Thorough Toll** is properly where a Toll is taken of Men for passing thro' a Vill in the High Street. + 22 Att. 58. ib Thorpe. Hist. 41. 42 El. B. R. iii || Smith and Shepherd's Case.

† Information against B. Farmer of Newgate market, for Extortion, in taking divers Sum of Money of the Market-People for Rent for the Use of the little Stalls in the Markets, and diverse great Sums for Finis, and was found guilty. It was held by the Court of B. R. and by Holt Ch. J. at Guildhall, that if the Defendant erects several Stalls, and does not leave sufficient Room for the Market People to stand and feel their Wares; so that for Want of Room they are forced to hire the Stalls of the Defendant, the Taking of Money for the Use of the Stalls in such Cales, is Extortion. But if the People have Room enough clear to themselves, to come and sell their Wares, but for their farther Convenience they voluntarily hire these Stalls of the Defendant, without any Necessity compelling them, there it is no Extortion, the Defendant takes a Fine and Rent for the Use of them. The Law has not appointed any Stalls for the Market People, but only that they shall have the Liberty of the Market, which the Defendant does not abridge, having left them Room enough besides the Place where the Stalls are set; and then if they will enjoy the Convenience of the Stalls, they must comply with the Defendant's Terms. LD Ravn Rep. 148. 149. Hill 8 & 9 Will 5. The King v. Burdett.

‡ S. P. St. for passing Publick Ferries, Bridges &c. 1 Sid. 454. in pl. 24. cites Blount's Law Dict.

Tilt. Toll.


cites Anno 3 E. 5. that it is where Toll is taken of Beasts and Merchandizes which pass thro' the Vill, tho' they are not fold.

§ S. P. Arg. Because it is to be taken in the King's Highway. Mod. 251. in the Case of James v John. 

|| Cro. E. 710. S. C.

2. **Thorough Toll** improperly is when Toll is taken of Men for passing thro' a Vill, in a Place which is not the High Street. 22 Att. 58. by Thorpe. Toll Traverse, What.

* Br. Toll, pl. 6. citing S. C.

‡ Mo. 572. S. C. — Cro. E. 710. S. C.

§ S. P. And yet the Owner of the Land cannot justify the Taking, unless such Toll has been used to be taken for a Cafe.
Toll.

out of Mind; for otherwise he may take the Beasts Damage seantant. Finn. Tit. Toll, pl. 3, cites Trin. 20 E. 3.

S. P. 50 for passing Ferries and Bridges which are private. 1 Sid. 454, cites Blount's Diet. Tit. Toll. And Toll-Turn is a Toll paid upon return of Beasts from a Fair. Ibid.—Br. Toll, pl. 12, S. P.—S. P. Br. Quo Warranto, pl. 5, cites It. Not. fol. 21. and 32 E. 5.

4. The Words Toll-Thorough and Toll-Print are used promiscuously. Arg. And the Court seem'd to agree. Mod. 232. in Case of James v. Johnfon.

(B) Thorough-Toll. [Pl. 1, 2, 3, and Toll-Travers, Pl. 4. In what Cases payable.]

|| Br. Toll, pl. 6 cites S. C. || The Toll-Through, simply cannot be claim'd, according to 22 Alt. [58.] Yet when it is in Consideration of Repairing a Bridge, and Paiment of their Street, and Repayment of the Sea Bank, it is well claim'd; and to it is Toll-turn. Jo. 162. pl. 2, Trin. 5 Car. B. R. The King v. the Corporation of Bolton.

Toll for passing thro' a Vill may be good; for it may be a vaster Way, and he who has the Toll is bound to repair it. Per Holt Ch. J. Comb. 297. Mich. 6 W. & M. in Case of Warrington v. Mofley.

Toll-Thorough may be by Prescription, without any reasonable Cause alleged for its commencement; for having been paid Time out of Mind, the True Cause of its Beginning in the Intendment of the Law cannot be known. Arg. and agreed to per Car. Mod. 232. pl. 21, Hilt. 23 and 29 Car. 2. C. B. in Case of James v. Johnson.—2 Mod. 143. S. C. but S. P. does not appear.

‡ Mo. 574. S. C.—Cmr. E. 716. per Popham, S. C.

2. And the King cannot have such Toll for passing in the High Street, as in the Case beforecited, for the Cause before-cited. 22 Alt. 58. by Thorpe.

3. A Man cannot prescribe to have Thorough-Toll of Men for passing thro' a Vill in a Place which is not the High Street; for it is more than the Law allows to go there. 22 Alt. 58.

4. A Man may prescribe to have Toll-Travers of Men passing over his Soil in a Way which is not a High Street, and the Prescription shall be good. 22 Alt. 58.

See (H)

[B. 2.] Toll. [How much.]

2 Hilt. 222, cites the same Book; but says, that * Fol. 523
at this Day there is not one certain Toll to the Market taken; but if that which is taken be not reasonable, it is punishable by this Statute; and what shall
shall be deemed in Law to be reasonable, shall be judged, all Circumstances considered, by the Judges of the Law, if it come judicially before them.

1. Orig. is (per Ue.)
2. Orig. is (de dire Sors.)
3. Orig. is (all afferent.)

[2.] 6. Among the Cities of the County of Cornwall of 30 E. 1. See (D) inter Placita Corona, & infra Hundredum de Reveure, (which see, with Ealter Bradshaw in the Exchequer) there is presented, that in Helston Borough they take De novo de quolibet Animali grosslo, Siciliciet Bove &c. tam de Empore quam de Vinditoribus one Penny, where they ought to take but one Penny de Empore; and that they take of all Merchandise exceeding 12 d. of the Buyer a Halfpenny, and of the Seller an Halfpenny, where they ought to take but an Halfpenny of the Buyer. See the like here in other Hundreds.

3. The King may grant a Fair, and that Toll shall be paid; but it must be of a very small Sum, as 1 d. or 2 d. or lefs, but not more. Per 514. pl. 680. Popham. Cro. Eliz. 559. Haddy v. Wheeler, or Welhoufe. held 1 d. a Beart unreasonable.

(C) Toll. For what Things it shall be paid.

1. Of Things bought by any for his own Use, no Toll shall be paid. Br. Toll, pl. 7. cites S. C. per Thorp, Green, and Seton, for Law.

2. De Communi jure, no Toll shall be paid for Things brought to the Fair or Market, unless they be sold, and then Toll to be taken of the Buyer. But in ancient Fairs and Markets Toll may be paid for the Standing in the Fair or Market, tho' nothing be sold. 2 Init. 221.

Noy 57. in Eickman's Cafe, says, he cannot have Toll if the Things be sold; and cites D 222, 228. But it seems mis-printed by leaving out the Word (not.)

Toll may be due by Custom for every Thing brought to Market, and for the Standing of the Seller there, tho' the Things are not sold. Arg. Le. 218. in Cafe of Lord Cobham v. Brown — Adjudged, Mo. 835. pl. 1124. Trin. 12. Jac. 8 Ill. b. cakirk, that a Custom to take Toll of Corn brought into the Market, but not sold, is good; but without a special Custom no Toll is due in such Cafe.

3. No Toll is due for Hens or Geese, or for many other Things of such Nature. Per Clench. Ow. 109. Trin. 36 Eliz. B. R. Eicott v. Lanreny.

(D) Payable. By whom.

1. Note, the King shall go Toll-free in all Markets and Fairs, for The King. Things bought &c. for the King shall not be prejudiced by his not Grant of any Liberty which appertains to his Perfou &c. But Quere if Pay Toll or Toll-Preveter, if he shall pay it? It seems that he shall. Fitzh. Tit. Toll, pl. 5. cites 23 H. 3.

6 27.—S. P. 2 Init. 221. cites S. C.

2. The Buyer shall pay Toll, and not the Seller. Br. Toll, pl. 2. cites Fitzh. Tit. Toll, pl. 7. cites S. C.

Agreed clearly.—S. P. unless it be by Special Custom F. N. B 232. (E) —Ibid. in the New Notes there (b) the 2d Paragraph, cites 20 E. 3. Avowry, 129, and 911. 6. 45. that Goods of the Vendor were distrain'd for Toll.

3. If
(E) Discharged. Who and how.

Toll. 1. Tenants of ancient Demesne shall be quit of Toll for Things sold and bought in Fairs and Markets, for Provision of their Household, and to manure their Land. Br. Toll, pl. 3, cites 7 H. 4. 44.

S. P. Br. Toll, pl. 4, cites H. 6. 66 — F. N. B. 228: (E) cites * H. 4. That a Tenant in ancient Demesne may merchandise buy and sell, and shall pay no Toll, and says, that the same agrees with the Register.

* F. N. B. 228: (E) in the new Notes there (b) says the Cafe; H. 4. 44 was in Treffand against A. Quod Tclicom arfipavcit, & Hid falvere reculevati; (It was held that the Writ was good, and the first Words as to the Afpavat void;) The Plaintiff counts that the Defendant had bought 12 Beasts in his Market, and that the same were Marked in the next Week, and sold 6 of the Beasts (Oxen) and the other 6 at a Fair held there, at the Pealt of &c. Defendant pleads, that he is a Tenant of ancient Demesne &c. and that all those Tenants have been free to buy and sell Beasts, for manuring their Lands &c. without Toll &c. Time out of Mind, and that he bought Ut supra, and some he used for manuring his Land, and some he put to Paltus &c. to make Graffes, and after convenient Time sold them &c. The Plaintiff offers to aver, that he bought the Beasts to re-sell them, and that he re-sold them Ut supra; The Defendant demurs; but the Opinion of the Court being against him, he became Non fut.; So that it seems for Things bought for their Sustenance, or manuring their Lands, or concerning Husbandry they are discharged, but not to merchandise; And the Merchandise of these is different from other Merchandise, and cites 9 H. 16. 56. 66 3 E. 5 (Toll) 138.

† The Words are (Por eux faire gros & Plais able a vendre & puis apres eux vend'al Faire &c.) which is (that put them to Paltus to make them fat and more fit for Sale, and sometimne after sold them at a Fair &c.)

Br. Toll, pl. 1, cites H. 6. 25. That they shall be discharged of Toll in every Fair, Market, or Place, for the Things arising of the fame Tenements for selling or buying for their Sustenance, according to the Quantity of their Tenements, as for Beasts and other Things necessary for their Ufe within their Hous, By all the Jüfites. — Fitzh ut. Toll, pl. 8. cites S. C. — F. N. B. 228. (E) cites S. C. accordingly; But says, that for other Things, it is a Quæstion; but forsooth as they shall be quit of Pontage, Munage, and Pailage, he conceives that they shall be quit of Toll generally, altho' they do Merchandise with their Goods. — And ibid. 228 (A) says it appears that they shall be quit of Toll for their Goods and Chaffels which they merchandise with others, as well as for their other Goods, for the Writ is general, Pro bonos & resubs fuis. And it appears, that that Writ may be fued by all the Tenants, as a Writ of Monftravertum shall be fued; and all that every particular Person who is griev'd, may fute forth the Writ if he will.

They shall be free by their Tenure of Toll of all Things which they sell, if it be sold upon the fame Soil, and of all Things which they buy to manure their Soil. But Br. makes a Quere if they shall be free of all Things which they sell and buy &c. Br. Ancient Demesne, pl. 22, cites 19 H. 6. 66.

2 Inft. 221. Says, That for Things coming of thofe Lands they shall pay no Toll, because at the Beginning by their Tenure: they applied themselves to the Manurance and Husbandry of the King's Demesne, and therefore for thofe Lands so holden, and all that came and renewed thereupon, they had the said Privilege; But if such a Tenant be a Common Merchant for buying and selling of Goods or Merchandifes, that rife not upon the Manurance or Husbandry of thofe Lands, he shall have the Privilege for them, becaufe they are out of the Rejon of the Privilege of Ancient Demesne; And the Tenant in Ancient Demesne ought rather to be a Husbandman than a Merchant by his Tenure, and fo are the Books to be intended. And herewith agrees an Ancient Record, the Effect whereof is Quod hii qui clamant elfe immunes de theologia praefide, ut tenentes in antiquo dominio, vel per chartas Regiwm, non debent diffingiri pro alioono theologia pro Merchandifis ad ususuros principis usipis; immo pro Merchandifis qu' emergunt vel veniderunt ut Mercores, debeat folvere proeli.

By the Cutfom of the Realm they ought to be quit of Toll &c. in every Market, Fair, Town or City throughout the Realm; and upon that every one of them may sue to have Letters Patent under the King's Seal, to all the King's Officers, and to Mayors, Bailiffs &c. And also the Tenants of Ancient Demesne may have a Writ direct to the Bailiffs, or Mayor, or others who will compel them to pay Toll, that they suffer them to go quit &c. — F. N. B. 228 (A).

The Lord in Ancient Demesne, 2. If Lord dwells in ancient Demesne in a little Tenement, he shall be discharged of Toll for Things touching his Sustenance, to the Quantity of himself shall the Tenement only; quod nota. Br. Toll, pl. 1, cites 9 H. 6. 25. be as well acquitted of Toll throughout the Realm as the Tenants in Ancient Demesne shall be; and that appears.
appears by the Register of an Attachment filed by the Lord of the Manor in Ancient Demise against the tenants of C, because they took Toll of him. F. N. B. 228. (B)

3. Non Maleficio was awarded to the Mayor of Calice out of Chancery, that he shall not take Toll of the Tenants of D. returnable in B. R. and to Alias and Plurites, and no Writ was returned, by which, the Opinion of the Court, Attachment fined to the Lieutenant of Calice against the Mayor. Br. Procfs, pl. 181. cites 21 H. 7. 31.

4. If Citizens or Burgesses have been quit of Toll throughout the Realm by Grant or Prebension, and afterwards the King's Officer demands Toll of them, they may make a Writ not to molest them, and thenceupon an Alias, Plurites, and Attachment. F. N. B. 226. (I) 227. (A) chancels which they buy in another Town or Place, if any of them be compelled to pay Toll. all the Corporation may bring the Writ by the Name of their Corporation, and may have an Alias, and Attachment thereupon, if Need be. F. N. B. 227. (E)

5. Note, If the King grants to one to be quit of Toll, this does not extend to Canons as it seems, nor is it any Bar to a Demand of Toll, by them who have Toll by a Prior Grant made to them. F. N. B. 227. (A) in the new Notes there (c) cites 39 E. 3. 13. and says, fee 18 E. 1. Lib. Parl. 10. 6. As well those Tenants who hold of the Manor which is Ancient Demise in the Seilin, or the Poffeflion of another Man, as the Tenants which hold of the Manor in Ancient Demise in the King's Hands and Poffefion, shall be quit of Toll. F. N. B. 225. (A) * S. P. Br. Toll, pl. 1. cites 9 H. 6. 25.

7. * Tenants at Will within Ancient Demise shall be discharged of Toll as well as Freemen, Tenants for Life, or Years of Land, in Ancient Demise, shall be discharged of Toll for their Goods &c. F. N. B. 225. (D) cites 9 H. 6. 14.

8. If the King or any of his Progenitors, have granted to any to be discharged of Toll either generally or specially, this Grant is good to discharge him of all Tolls to the King's own Pairs or Markets, and of the Tolls which together with any Fair or Market have been granted after such Grant of Discharge; but cannot discharge Tolls formerly due to Subjects either by Grant or Prebension. 2 Inst. 221. afterwards the King granted to the Mayor and Citizens of York to be discharged of Toll through the whole Realm; and afterwards the Archbishop exchanged his Manor of Rippon with the King for another Manor. It was moved, if now the Citizens of York should be discharged of Toll for the Grant to the Archbishop was given to the Grant to the Citizens of York to be discharged of Toll in Rippon. Dyer conceived that they should not be discharged, for the King had no Right; and when the King grants over the Manor of Rippon, the Grantee shall have the Toll notwithstanding the Grant made to the Citizens, for the Grant made to them was void, as to discharge them of Toll at Rippon; For the Grant to the Citizens shall not take Effect after the Exchange, for the Grant was void ab initio: But if the Grant of the King to the Archbishop had been but for Life, then the Grant afterwards made to the Citizens should have taken Effect after the Elate for Life determined. And the better Opinion of the Court was, That Toll should be paid. 4 Leon. 214. pl. 546. Mich. 16 Eliz. C. B. York Archbishop's Case. — 4 Leon. 168. pl. 2; 4. S. R.

9. King H. 3. did grant to the Abbot of L. and his Successors, Quod iphi & homines fui futi quieti ab omnibus | theolomio in omni | & in omnibus | mundinis &c. and there it is resolved, that the Abbot should have this Privilege by Force of this general Grant in this Manner, Quod iphi & Homines fui futi quieti a Prettiatione theolomii in vanditionibus & emptionibus pro suis necessariis, ut in ecclis, cellis, & similibus & hoc ad opus proprio iuipius Abbasis & Hominum Suorum. 2 Inst. 221.

10. In 16 E. 3. The King by Letters Patent for the Considerations therein mentioned, Concessit profe & Hereditas suis H. Earl of Lancas- ter, and the Heirs of his Body lawfully begotten (among other extraordinary Grants) that the said Earl and his heirs &c. homines suis in perpetuum futi quieti de Parvagio, Paffaggio, Pataggio, Leo-baggio, Stallaggio, Tollismo,
agio, Caragio, Pefagio, Pikagio, &c Terragio per totum Regnum &c. After the Death of the said Earl, the said Patents being produced by his Son and Heir before the said King and Council, they were declared to be the Difference of the Kings, and by Affent of the King and Council, and also of the said Earl the Son, were revoked, cancelled, and annulled; and it was agreed, that all Patents before granted should be restored and of no Force or Effect. Afterwards, 25 Sept. 23 E. 3. The same King restoring the said first Grant, and that the said Son had voluntarily resigned the same and all Right and Claim by Reason thereof, in Consideration thereof granted to the said Son all the Liberties &c. in the said first Grant mentioned for his Life. In Replevin, tried before Mr. Justice Price at Exon Alisfes, at which these Charters were produced, there was a Verdict given for the Defendant, but a Rule to itay &c. in Common Form. And afterwards, on attending the Judge at his Chambers, he was of Opinion, that the first Charter was surrender'd, and that in the 2d Charter there were not Words sufficient to exempt the Plaintiff from the Toll in Question; and thereupon was enter'd up a Nonfuit of the Plaintiff, and the Defendant had the Cofts thereof. MS. Voyley v. Tottle.

(E) Grant Good. In respect of the Manner &c.

Mo. 41. 4 pl. 623.

1. In Trespass for taking a Cow, the Defendant justified by a Grant of H. 7. of a Yearly Fair to the Mayor &c. of N. Cam omnibus Libertatibus, & liberis conuentudinis ad hujusmodi seriam Spectantibus &c. and that at a Fair there held, J. S. sold a Cow to the Plaintiff, whereupon the Defendant demanded 1 d. for Toll, and because he refused to pay it, he distrained the Cow as Bailiff &c. Popham, Gawdy and Fenner, delivered their Opinion, that by a Grant of a Fair cum omnibus Libertatibus &c. Toll was not due nor demandable, because 'tis not incidental to Fair, but that it may be due if it had been granted by express Words in the Letters Patents; Cro. E. 558. pl. 17. Patch. 39 Eliz. & pag. 591. pl. 29. Mich. 39 & 40 Eliz. B. R. Hedy v. Wheelhouse.

Popham said, The Case may be, that by the King's Grant with such Words as here, Toll may pass; As where one has a Fair by Grant or Prefcription, whereby Toll has usually been paid, which afterwards is forfeited to the King, who then grants it, Cum omnibus Libertatibus ad hujusmodi seriam Spectantibus, now by this Grant the Grantee shall have Toll; because Toll was formerly belonging thereto, and therefore the King's Grant did not grant a New Fair, but the Ancient One, which was not extinct by the King's Punishment. Cro. E. 551. in S. S. C. cited Palm. 78, 79. Hill. 17 Jac. B. R. In Case of the King v. the Corporation of Maidenhead; And Doderidge J. said, He well remembered it, and that he argued it at the Bar. And Mountague Ch. J. said, That the Parties sued in Parliament to get it reversed, but that it was affirmed there. S. C. cited 2 Inst. 220.

2. If the King grants a Fair or Market, and grants no Toll, he cannot after grant a Toll to such Free Fair or Market, without Quid pro quod some proportionable Benefit to the Subject. 2 Inst. 220. cites it as resolv'd in the Case of Northampton.

* S. P. because it was once a Free Market, and when once a Market is in the City, that being with a Custom for a Sum certain, they can never raise it but may lessen it. Arg. 2 Show. 266. In Case of Quid Warranto.

3. If the Toll granted with a Fair or Market be outrageous or unreason- able, the Grant of the Toll is void; and the same is a Free Market or Fair. 2 Inst. 220. cites it as resolv'd in the Case of Northampton.

4. The King granted to the City of London, That all Persons bringing into London saleable Commodities, should pay so much for Toll; This was held to be a good Grant, and yet generally speaking, it may seem to be against

5. A Grant of such Toll as was us'd to be taken Ibi & Alibi infra Regnum Angliae, and averring Payment at another Place, but not there, was held ill for Uncertainty. See Prerogative (F. c) pl. 1. Lightfoot v. Levec. But Newbery, who argued for the Corporation, said, that no Judgment was given for the King in this Case, but that the Corporation enjoyed the Privileges notwithstanding this Action brought. Palm. 86. at the End of the Cafe. And see there the Cafe argued somewhat fully. A Prescription to Toll, and lays not what in certain is void, and so is a Grant from the King of such uncertain Toll. Arg. 2 Show. 266. cites Palm. 79.—Agreed Arg. on the other Side, that a Prescription to have a Toll Uncertain, and as often as Occasion requires to affect it, is ill. But that in London it is good, tho' it would be so nowhere else. 2 Show. 275. Hill. 34 & 35 Car. 2. B. R. in Cafe of the Quo Warranto v. the City of London.

7. The King cannot grant a Toll for Things not brought to Market to be sold. 2 Lucw. 1502. Per Powel J. in Cafe of Kirby v. Whichelow.

(G) Toll. Due in what Cases, and how.

1. A Man cannot justify for Toll of Waggoners (Charretouers) &c. nor for Toll for passing of Men by Land or by Water, unless by Usage or Prescription. And Tho' that a Man cannot justify it by Grant of the King, but may have Toll by the King's Grant of such as buy in his Fair or Market. Fitzh. Tir. Toll, pl. 2. cites Hill. 50 E. 3.

2. Toll-traverse lies in * Prescription, but not Toll-through; for it is an Oppression of the People. F. N. B. 226. (l) in the new Notes there (b) cites 22 Aff. 58. and says, yet fee a Common Person may prescribe for Toll-through, if he shews a reasonable Cause, and proves that the Country has a Recompence; and cites 14 E. 3. Bar. 275. 5 H. 7. 10. and to the King may prescribe for Toll-through; Quere if without shewing Cause, and cites 11 H. 6. 39.

3. A Man by Law shall not pay Toll for any Thing brought to a Fair, but for Things sold; but by Custom he may pay for every Thing brought to the Fair, and be shall pay for his Place, viz. his Standing, tho' he fell nothing. Br. Toll, pl. 2. cites 9 H. 6. 45.

4. Note, Toll-through is in the Highway, but Toll-traverse for passing over another's Land; yet it seems if a Highway be in a City or Town, Toll-through may be there by Prescription. F. N. B. 227. (A) in the new Notes there (c) cites 5 H. 7. 10. 13 H. 4. 15. And Pontage, Murage, or Ferry, may be demanded in a Highway by the King's Grant, but not in a private Way; and cites 13 H. 4. 15. and says, see there that the King may grant Tronage, and good.

5. No Toll is due either on the Part of the Lord, when he has a Fair or Market, and nor any Toll, or on the Part of the Market-man who ought to be discharged of Toll, or of the Thing sold that is not tollable. 2 Init. 220.
Toll.

6. No Toll for any Thing tollable brought to the Fair or Market to be sold, shall be paid to the Owner of the Fair or Market before the Sale thereof, unless it be by Custom Time out of Mind used, which Custom alone can challenge that claim the Fair or Market by Grant within the Time of Memory, viz. since the Reign of King R. 1. which is a Point worthy of Observation, for the Suppression of many outrageous and unjust Tolls inserted upon the Subject, to be punished within the Pur-view of this Statute. So note, it is better to have a Fair by Prescription than by Grant. 2 Inf. 221.

7. Toll is not of Common Right incident to a Fair, and none shall have Toll in a Fair, unless he has it by Grant or Prescription. Mo. 474. pl. 680. Mich. 39 & 40 Eliz. B. R. Heddy v. Wellhouse. adjournatur.


8. The Owner of a Port may have Toll by Prescription, without alleging any Confession, said by Treby Ch. J. 2 Lucr. 1536. Trin. 2 Jac. J. Leight v. Pym.

See (B. 5)

(H) How much. Punishment of Taking more than due.

In the troublesome and irregular Reign of if any do in the King's own Town which is let in Fee Form, the King shall have Toll in his own Hand the Franchise of the Market. outrageous Tolls were taken and usurped in Cities, Boroughs, and Towns, where Fairs and Markets were kept, to the great Oppression of the King's Subjects, by Reason whereof very many did refrain from the coming to Fairs and Markets, to the Hindrance of the Commonwealth; for it has ever been the Policy and Wisdom of this Realm, that Fairs and Markets, and specially the Markets, be well furnished and frequented. 2 Inf. 210.

* That is, where a reasonable Toll is due, and excessive Toll is taken, or where no Toll at all is due, and yet Toll is unjustly usurped; for it is an Outrage to do such a common Injury and Wrong. Sometimes it is called Superfluum vel indebitum, vel iniquum. 2 Inf. 220.

† That is, in a City, Borough, or Town of Merchandise, where Fairs and open Markets are kept for Merchandising, and Buying and Selling. 2 Inf. 220.

This is intended of Toll to the Fair or Market. 2 Inf. 220.

‡ That is, shall seize the Franchise of the Fair or Market until it be redeemed by the Owner. But this is intended upon an Office to be found; for in Statutes, Incidents are ever supplied by Intendment. 2 Inf. 222.

¶ This Word here includes as well a Fair at a Market; for Forum, from whence Fair is derived, signifies both; and a Mari is a great Fair held every Year, derived a Mercia, because Merchandizes and Wares are thither abundantly brought; and Mercatus is derived a Mercando. 2 Inf. 221.

* That is, And if it be another's Town, and the same be done by the Lords of the Town, the King shall do in like Manner; and if it be done by a Bailiff without the Command of his Lord, he shall render to the Plaintiff as much again for the outrageous Taking as he had taken from him, and shall have 40 Days Imprisonment.

* This former Part of the Act in these Words, Inhibitum est ne quis in Villis Regis merchandiae, que similia sunt; et comminatus ad Peoli firmam, indebita et injusta capiat Theologia; quod quis fact
Toll.

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cerit extern co ipso petier Rex Libertatem mercati in manuum suam; codem modo factid Rex, hic in al-
terius villa praemittit hici cartis tertii, si Sallius hic fecisset sine voluntate Domini fiat, reddet tamen que-
regni quantum cepisset Sallius ab eo, si toluerit aportus, & nihilominus habet pridem 40
Dierum. 2 Ind. 222.

Touching Citizens and Burgesses, to whom the King or his Father has * Mora-
granted " Marge to enuclde their Towns which take such Murage otherwise
than it was granted, and of this are attainst, they shall not lose their Grant for
ever, and shall be grievously aneved.
cinclde with Wall a Town, under which Word is here included a City and Borough. It is a rea-
able Toll to be taken of every Cart, Wayne, Harle laden coming to that Town, for the incfssio of that
Town with Walls of Defence, for the Safeguard of the People in Time of War, Insurrection, Tumults
Or Upouos, and is due either by Grant or by Prescriction. But if a Wall be made which is not de-
finable, nor for Safeguard of the People, they ought not this Toll to be paid; For the End of the Grant or
Prescriction is not performed. 2 Ind. 222.

He that has Burgh granted to him, is discharged of Murage granted afterwards; and altho' Mu-
rage be here particularly named, Yet there are Grants of like Nature within the Purview of this sta-
tue, as Pontage, Pavirage, Kevage &c. 2 Ind. 222.

† Here the while Franchise is forfeited; and in note a Diversty between the Words (Shall lose the Fran-
chize &c.) and the Words (Shall lose the Grant) the one implying a Seifure, as has been said, and the
other a Forfeiture for ever, for it is a Miser or Abuter. And thereof Bracton says, Hapuddi au-
tem Libertates &c. Statim quafi transferuntur, & quafi pollicentur &c. donee amiferit per asum, vel
non uum. 2 Ind. 222.

Ifea renders this last Part of this Chapter in these Words, Item qui Muragium ad Villam clauden-
dum gravius cepirti, quam conc tionam fuerit per Cartum Regis, perdere extimus grani tiam non concessio-
nis & praevia american. And preently after the making of this Act, the Efeet thereof for
Juries in Eyre to inquire of it, was inquired in the Chapters or Articles of the Eyre. In these Words,
Item de his qui cepissent superflius, vel indebita trinita in Civitatibus, Burgess, vel alibi contra com-
modum uum Regini. Item de Civibus & Burgensi qui de Muragio per Dominum Regem ei cons-
cello, plus cepissent quam faciere deberent secundo concensionem Domini Regis Patam. 2 Ind. 222.

The Mirror says touching Murage thus, Le Point que voct que ceux qui iufuent Murages les per-
dent ne faut moindre dacier effect, ex. Law vaet, 2e Chfeun veridixi fuiurcfrshne que malisfrs; Sct
this Statute was made in the Point for 2 Purposa, viz. to abtrim the Common Law, and to add a fur-
ther Punishment, viz. to be grievously anerc'd. 2 Ind. 223.

(I) Remedy.

1. A Di'ffas is incident to every Toll. Noy 37. in Hickmans's Cafe. It was
cites 30 E. 3. 20.

that if Toll be due, a Ditffes my be taken for it. Cro. E. 558. pl. 15. Pach. 39 Eliz. B. R. in Cafe
of Heddy v. Wheelhouse.

2. The Party has no Remedy for the Toll, if the Goods are carri-
d out of his Jurisdiction. Noy. 37. in Hickman's Cafe, cites 20 H. 7.

3. Action upon the Cafe was brought by the Mayor and Burgeses of Br. Toll, pl.
Gloucester, against the Burgesses and Commonality of B. because they 5 cites N.C.
have used, Time out of Mind &c. to have Toll of every Boat which pays'd — In Cafe
the Water of Severne by the Toll of Gloucester with any Merchandise &c. declared of a
and that the Defendant pays'd with a Boat and 20 Pipes of Wine, and did Tol-Tran-
not pay Toll, where they ought to pay for every Pipe 3d. for Toll &c.
Marowe, of Counfel with the Defendant, said, that if a Man pay'd over the Bridge
Land which ought to have the Toll, and the other did not diltrain for at Ware;
the Toll in his Land, but permitted him to pay's without Payment or Dis-
and that the De-
defendant had carry'd so many
Lakes, 36 Bar

by over that Bridge; that the Toll thereon, at so much per Cart, amounted to 40 l. which the Defendant re-
quired to pay, &c. Upon a Demurrer it was infulfid, that an Action would not lie for a Toll-Forre
for paying two' the High Way without forcing a Tole, and Confederation. Besides this Action was
brought for a Non featurice, (viz.) not paying &c. for which (if any thing is due) an Action of Debt,
and not on the Cafe, should be brought. But on the other Side it was inwer'd, that an Action lies
without

G
4. If a Man ought to have Toll in a Fair &c, and his Servants are disturbed to gather the same, he shall have Trefpafs Vi & Armis for Alluit of his Servants, and for the Loss of their Service, and for the Disturbance made unto them, and for losing the Profit of his Toll, and all in one Writ. F. N. B. 91. (A)

5. An Ox Hide was brought into Leaden-hall Market on the Market-Day, and sold, and the Bailiff of the Mayor &c. of London, and by their Command, took it there Damage feasant. But it was agreed by all, that this Ox Hide, brought into the Market and sold, cannot be dis-train'd Damage feasant: Cro. E. 627, 628. pl. 21. Mich. 40 & 41 Eliz. B. R. Sawyv v. Wilkinton.

1 Saltz 248. S. C. adjudg'd accordingly.

5 Mod. 539. and Sails, being distain'd, it was adjudged that they were well taken.


7. If A has a Market and Toll, and B is coming with Goods to the Market, for which, if sold, Toll would be due, and C binders B. coming to the Market, the Lord of the Manor may have an Action, because of the Possibility of Damages. Per Powell J. 6 Mod. 49. Mich. 2 whereby


—Per Wild J. 2 Vent. 26. in Cave of Turner v. Sterling.—Ibid. 27. per Tyrrel J accordingly.—Ibid. 28. per Vaughan Ch. J. accordingly.

8. An Indebitatus Assumptit was brought for Toll. It was objected, that this Action would not lie for Toll, but the only Remedy was Distresses. But the Court inclined to think it would, if the Corn is the Duty; but gave time to move this and other Exceptions at another Time. Afterwards the Matter was moved again, and the Rule for staying Judgment was discharged. 2 Barnard. Rep. in B. R. 243. Pach. 6 Geo. 2. and 484. Hill. 7 Geo. 2. Cock v. Vivian.

(K) Writ and Declaration. Good or not.

Trefpafs by the Vicar against A. that where he and his Predecessors ought to grind without Toll, there the Defendant has taken Toll, Vi & Armis, viz. of one Quarter of Rye, and one Quarter of Corn, and of all the Corn that he ground there, from such a Day to such a Day. The Defendant said, that he is only a Servant; Judgment of the Writ; Et non Allocatur; and the Writ was awarded good Vi & Armis, by which he pleaded to the Writ, because the Plaintiff has not alleg'd the Price of the Toll; Et non Allocatur, because he has pleaded more high before. By which he traversed the Prescription, and prayed Aid of the Tenant for Lipe, to whom he was Deputy; quod nota. Br. Trefpafs, pl. 47. cites 44 E. 3. 20.

Br. Brief, pl. 113. cites 6 illud foveane recausavi. Whereas Toll, not paid, cannot be carried away; and therefore Asportavit is false. And notwithstanding that this be void or
Toll.

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or Surplusage, yet because the other Word solvere recuvalit are fulli- for le Care, cient, therefore the Writ awarded good, and yet safe, n.pugnant, and and Surplusage; quod nota. Br. Negation, pl. 9. cites * 7 H. 4. 44.

which the

Defendant justified as Tenant of Wrenber, which is ancient Demesne, by the Custom of ancient Demesne, to go Gure of Toll for Beasts to manure their Land or (maintain their) Houles, hold or bought; by which he bought 8 Beasts, with Part whereof he manured his Land, and the rest he fed to fell. Judgment &c.

And the Plaintiff said, that the Defendant was a common Merchant, and sold and bought every Day for Profits; And the Defendant demur'd in Law; And as to the other Beasts he bought them one Day, and sold them next Day, and his merchant. And the Defendant demur'd in like manner. And the Opinion of the Court was with the Defendant, and the Plaintiff was non judicata. Brooke says, quare que, and whether the Opinion was only for the left Plea, or for both; for, upon the first Plea, it seems the Law is with the Plaintiff, unless this Buying by Falling and Sale be one kind of Manurance of Nature-Land.

Quere. Br. Toll, pl. 2. cites S. C.

* S. C. cited by Coke, 2 Bull. 218. in Case of Wilamore v. Bamforde ; for the Rule is, Utile per inutile non vitiatur.

3. Trespass for hindering him from taking the Profits of his Fair in S. Br. Toll, pr. viz. Pro uno Equo vendito 4d. for Toll. And because he did not flow of E. N. B. whom the Buyer bought the Horse, therefore ill, by the Opinion of the Court; in which the Buyer may have Notice of the Name of the Vendor, the new Contra in an Action of Wreck, or against an Hotter. But where he justifies the Buying of a Horse in Market overt to change the Property, he shall shew of whom he bought. Br. Count, pl. 3. cites 9 H. 6. 45.

4. If a Man prescribes to have Toll of every Boat which passes by the Will Br. Toll, pl. of B. he ought there to count upon what Water, by Name, the Boats were, and cites S. C. paying. Br. Prescript. pl. 92. cites 21 H. 7. 16.

5. In Case the Plaintiff declared of a Lease for Years of the Toll, and Clerks took Profits of the Markets and Fairs, within the Manor &c. of T. and that an other Exception, the Defendant disbar'd him in taking divers Pieces of Wool; it was objected against this Declaration, that the Plaintiff did not shew that his Users was seized at the Time of the Denial. Sed non Allocatur; for that the Plaintiff, in this Action, is to recover Damages only, and the Right or Title of Land is not in Question. But contra, if it were in such Action in which the Right of the Toll had come in Debate. Ow. 109. Trin. 36 Eliz. B. R. Efcot. v. Lanreney.

Geoffe, or for many other Things of such Nature, and to it might be that Toll was not due for Wool. Fenner was of the same Opinion; but Popham contra, who said, that the Plaintiff had declared, that the Defendant had disturbed him from the Toll of divers Pieces of Wool; and by that is implied, that Toll ought to be paid for Wool. And at another Day Judgment was given for the Plaintiff. Ow. 109. Efcot v. Lanreney.

6. A Claim in Quo Warranto, to have Toll in Specie of Grain exposed to Sale, whether fold or not, Ratione Manueri was adjudged to be ill, because it ought to have been Ratione Mercatus. Noy 37. 41 Eliz. Hickman's Cafe.

7. In Action for le Cafe against the Town of Uxbridge, for taking Toll of a Thursday Market there. The Plaintiff made Title by Conveyances under the Lord Derby, to whom it was granted heretofore, and allow'd in 38 H. 8. and 8 Car. I. in 2 several Quo Warrantos's, and the Town disclaim'd. Twifden J. excepted, because in the Count it was not laid by Grant or Prescription, but on a Seisin only. 3 Pecb. 3. in 16. Patch. 24 Car. 2. B. R. Cook v. Baker.

8. In Cafe, the Plaintiff let forth, that the City of Norwich has a common Wharf and Crane, and a Custom that all Goods brought down the River, and passing by, shall pay each a Duty. It was objected, that this S. C. it was is for Toll Thorough, which is Malum Tolsutum. Twifden said, that he alleged, that
Toll.

9. When Toll is claimed generally, it shall be intended Toll-borough.

Per Atkins J. Mod. 232. in Case of James v. Johnson, and said that to is the Case in Cro. E. 710. Smith v. Shepherd.

(L) Pleadings.

Br. Custom, 1. A MAN cannot prescribe in the Negative to pay no Toll, but in the Negative with an Affirmative, viz. that he and all &c. have used to Buy and Sell &c. without paying Toll. Br. Plead. 17. cites 7 H. 6. 32. and 8 H. 6. 3. Per Paltton.

2. If a Man prescribes to be quit of Toll, he ought to have been allowed and put in Use; Quere. Br. Patents, 27. cites 14 H. 6. 12. Per Vamp.

Cro. E. 117. pl. 2. Mich. 30 & 31. Briz. in the Exchequer Chamber. A Trespass against him for taking a Quarter of Corn, he justified for that it was within the Town of L. and it was Damage seaman in his Freehold; the Defendant pleads that they were by Charter in the Time of Queen Mary incorporate &c. and a Market was granted to them, and the Place where &c. was appointed for the Market Place, and he brought his Corn on the Market-day, and let it there, and the Defendant took it; and upon Demurrer it was adjudged without Argument, that upon this Matter the Mayor could not justify the taking. Cro. E. 75. pl. 34. Mich. 29 & 30. Briz. B. R. The Mayor of Lawlion's Cafe.

3. Trespass against him for taking a Quarter of Corn, he justified for that it was within the Town of L. and it was Damage seaman in his Freehold; the Defendant pleads that they were by Charter in the Time of Queen Mary incorporate &c. and a Market was granted to them, and the Place where &c. was appointed for the Market Place, and he brought his Corn on the Market-day, and let it there, and the Defendant took it; and upon Demurrer it was adjudged without Argument, that upon this Matter the Mayor could not justify the taking. Cro. E. 75. pl. 34. Mich. 29 & 30. Briz. B. R. The Mayor of Lawlion's Cafe.

4. In Trespass for taking an Ox-bide, the Defendant justifies that the Mayor &c. of L. was feitel in Fee of &c. and that it was Damage seaman, and therefore he took it by Command of the Mayor of L. as Bailiff. The Plaintiff replied, that the Place where &c. is a Market, and that he on a Market-day bought the Hide in the Market of one W. B. and delivered it to J. S. to carry away, who put it in a Basket; and in carrying it
it away on his Shoulders from the Market, the Defendant took it away &c. which he is ready to aver &c. Defendant demurred, &c. Because having justified Damage leaveth, the Plaintiff's Replication shews this Matter to take from Defendant his Authority for the Taking, whereas the Plaintiff derives from the Manner of the Taking, & does not conclude Quae eft eadem &c. 2dly. Because Defendant justifies for a Taking, which is intended upon Lant Damage leaveth; but the Plaintiff's Replication is of another, and does not traverse; Sed non allocatur; for the Plaintiff shewing the special Cause of the Hide's being there, and that therefore the Defendant had Colour to take it, but that by reason of the Matter in Law which he then'd, his Taking was not justifiable, it seems that the Replication was good, and needs no Traverse; and that the Conclusion of the Plea, Quae eft eadem Tranqiiilis, is not requisite, he having agreed in the Time and Place of the Caption, but shews Cause why it is not drainable. But Popham held that the Plaintiff ought to have travers'd, because he does not agree in the Manner of the Caption; but Gawdy and Fenner e contra, because it is his Matter in Lieu. Adjudged for the Plaintiff. Cro. E. 27, 628. pl. 21. Mich. 40 & 41 Eliz. B. R. Sawyer v. Wilkinson.

5. Trespass for taking of his Sheep, the Defendant justified as Servant Cra. E. 710. to the Lord B. by Preijcription to take 2 d. for every 20 Sheep passing by &c. trans the Hill; and if it was dado upon Request, to detain one Sheep of every 20 till Payment. Upon Demurrer it was adjudged for the Plaintiff, because the Preijcription was not good to take Toll for passing in via Regia, for that the Inheritance of every Man for passing in the King's Highway is precedent to all iijcriptions; but if the Party pays Canse for the Toll, as it he is bound to repair a Bridge or Confection &c. This would be good, but no such is shown here; but it is clear that a Man may prescribe for Toll Traverse, because it is a Pajiage over his own Freehold, but not for Toll-thorough. Besides, the Defendant should have it own that the Sheep were passing through the Town before he took the Distresses, otherwise it does not suit with the Preijcription to drain them. No. 574. pl. 793. Trin. 41 Eliz. Smith v. Shepherd.

that this Statute intended only Distresses for Rent and Services, and not such Things of which no Distresses can be but in the Highway. And Exception being taken, because the Canse was alleged to be, That if the Sheep of any Foreigner be driven thro'; a Toll shal be paid; and if detained by any Foreigner that drives them thro', a Distress may be taken, and it is not avered that he who drove them thro' was a Foreigner, but only that the Matter was a Foreigner; Sed non allocatur; for the Driving of the Servant is the Driving of the Defendant, and if it be a Foreigner it suffers. Another Exception was, because he justif...
Sum for Stallage, and that 5S. was a reasonable Sum; the Plaintiff demurred, because this was [not] to drain only, but to take and keep the Goods until the Sum is paid. 2dly. It is not said certainly what, but a reasonable Sum; Nor, 3dly, how much 5S. was a reasonable Sum, that the Court may judge it so; But per Twilfen J. The Pre-
scription for a reasonable Sum is as sufficient as for Fine of Copyhold, without knowing what Sum; for this is titulable: But the Justification of the taking at the Place agreed, and carrying to another part of the County, 3dly, that it was not done in bad faith; and Judgment for the Defendant. 2dly. Bufbels for the Goods by the Disposition, and Judgment for the Defendant.

8. In Trepsafs for taking his Cattle, the Defendant justified by Pre-
scription to have Toll for all Beasts driven over the Manor of B. A special Verdict found that the Manor &c. was Parcel of the Possessions of the Priory of B. That the Prior had such a Toll by Prescription as appur-
tenant to the Manor; that by the Disposition it came to the Crown, and so to J. S. in whose Right, and as Servant to him, the Defendant justified, and concludes, that if the Defendant may claim by a Que Estate, then they find for him, if not, then for the Plaintiff. It was argued, That Toll may be appurtenant to a Manor, as well as any other Profit appre-
nder; and for the Que Estate, tho' a Thing which lies in Grant cannot be claimed by a Que Estate directly by itself, yet it may be claimed as appurtenant to a Manor, by a Que Estate in the Manor. And to this the Court agreed, and gave Judgment for Defendant. Mod. 231. pl. 21. Hill. 25 & 29 Car. 2. C. B. James v. Johnson.

9. If Defendant prefers for Toll for passing the Higheway, he must show some Caufe to intitle himself to the taking of it, as by doing something of Pulbeck Advantage. Admitted Arg. 2 Mod. 144. Hill. 28 & 29 Car. 2. C. B. in Case of James v. Johnson.

10. In Trepsafs for taking a Bushel of Oatmeal, the Defendant as to all besides the Quart, pleads Not Guilty, and as to that he justified for Toll in the Market at Penzance, and made a Title to the Market and Toll by Prescription &c. The Plaintiff replied that before the Defendant had any Title to it, Queen Eliz. was seized of the Market, and by Letters Patents, quieting that R. I. and K. John had granted to the Burrough of Hil-
sdon, that it should be a Free Burrough, and quit of Toll, of Pontage, Pas-
lage, Stallage, and Stallage tho' all Cornwall; She incorporated the said Bur-
rough, and preferred to them all the said rented Privileges. Then he sets forth, that he was born in, and a free Burrough of Hilston, and so exempted. The Defendant replied, that the Burgesses of Hilston had always paid Toll, and upon Demurrer the Court said it was a Doubt whether this Toll be within the Word Stallage, or any other particular Word of Dis-
charge, and that the Word Thorowum will not extend to all the Particulars after mentioned. And their Opinion was, that the Charter of Queen Elizabeth did not discharge the Plaintiff, and to give Judgment Quod nil capiat. 2 Jo. 118. Gill v. Prior.

11. In Trepsafs for taking a Bushel of Wheat at 4 several Days, (viz.) 2 in the Market-place in Lancaster, and 2 more in the House of J. S. &c. The Defendant as to all but 16 Pints, pleads Not Guilty, and as to these Aetio non, and justifies as Servant to the Mayor and Commonalty of Lan-
celton, and by their Command &c. for Toll in the said Market; and that he took the 16 Pints at two several Markets, (viz.) 12 Pints for 12 Bushels exposed to Sale &c. and 4 Pints for 4 other Bushels &c. quis eff edem capio. Plaintiff demurred, because the taking in the several Places mentioned in the
the Declaration are not answered severally, so that it might appear whether the Pints of Corn were taken in or out of the Market; for tho' the Taking may be justified in a Market, yet it cannot be justified out of it: Sed per Curiam, the Plea is good; for it is sufficient for the Defendant to answer the Taking in the Vill, and the very Place where taken is not material in Trespass, as it is in a Replevin; and had the Taking been out of the Market, the Plaintiff ought to have shewed it. And Judgment quod nil capitum. 2 Jo. 207. Pach. 34 Car. 2. B. R. Specon v. Carpenter.

12. In Trespass for taking his Corn, the Defendant justified for Toll, but did not set forth that the Corn was sold; and Exception being taken for this Reason, because none can otherwise be due, unless by special Custom, Judgment was given for the Plaintiff. 2 Nutw. 1329, 1336. Trin. 2 Jac. 2. Leight v. Pym.

13. Trespass for taking two Lambs at F. The Defendant pleads in Bar a Grant of 2 Fairs to W. R. and his Heirs, to be held every Year in F. with all Tolls &c. to these Fairs belonging &c. That a Fair was held there 3 Aug. &c. and that the Plaintiff bought 600 Sheep and Lambs, for which 6 s. became due for Toll, of which he gave Notice; but he refusing to pay it, the Defendant, as Servant to W. R. distrained the two Lambs for Toll, and took and carried them away, which is Reddunum Transgression &c. The Plaintiff replied, that he was Inhabitants in T. within the Dutchy of L. and so prescribed to be quit of Toll, and that he gave Notice to the Defendant. Upon Demurrer it was objected, that no Toll was expressly granted, and therefore none is due by Law. The Grant is (as belonging, or accustom d to the Fair) which cannot be by Prescription, which ought to be averred. 2dly. For that the Defendant set forth, that he did take and carry away the Lambs for the Toll not paid, but did not lay Nonnie Distressions, as was resolved Cro. E. 710, 711. in Smith and Sheppard 3 Cafe, but in this Cafe it was said that he distrained the Lambs for Toll. But admitting the Plea good, the Court were of Opinion, that the Prescription for Inhabitants to be quit of Toll is good, and so the Replication and Count being good, tho' the Bar was not, the Plaintiff ought to have Judgment, and so he had for this Reason. 2 Nutw. 1377. Pach. 4 Jac. 2. Osbulton v. James.

14. Trespass for taking Deal-boards; The Defendant prescribes to repair a Wharf, and Rutinone ejus to have a Toll of 2 d. per Trim of all Merchandise landed within the Manor, (but did not lay upon the Wharf) and for Non-payment to afflict a reasonable Part of the Goods. The Plaintiff replied De injuria fat Propria, and transverses the Prescription; upon which they were at Little, and there was a Verdict for the Defendant; and now it was objected that this Prescription was void, because without any Consideration, it being for landing Goods on the Manor, and not on the Wharf; so that this is as a Toll-thorough, and without Consideration, and not good. But the Court held, that this is rather Toll-transverse than Toll-thorough, and gave Judgment for the Plaintiff. 3 Lev. 424. Trin. 7 W. 3. C. B. Crifope v. Befwood.

15. In Trespass, &c. the Defendant prescrib'd for a Fair every Year on such a Day, to be held in the Place where &c. and to have reasonable Toll, (viz.) inter alia, one Shilling for every double or large Stall, and for the Ground near it and about it. Upon Little join'd, the Defendant had a Verdict. It was moved in Arreit of Judgment, that Toll could not be due for Stallage, for they are different Things. Sed non Allocatur; because Tolometio may well signify Stallage, as a general Word for all such Duties and Payments. 2. It was objected, that the Defendant had prescrib'd for Toll, inter alia, (viz.) 1 s. for a large Stall, which is uncertain; and since the Prescription is intire, the Jury ought to be for too, Sed non Allocatur; for the Defendant need not set forth more than what the present Occasion required. 3dly, The Words near and about the Stall were objected as uncertain and void. Sed non Allocatur; for this

In Trespals of Goods taken, the Defendant justified, that R. Bishop of W. was feited in Fee of a Market in C. and that he, as Bailiff, disfurnad them Damage sedulant. Plaintiff replied, a Grant by Letters Patent to f. late Bishop of W. and alleges, that he brought the Goods into the Market for Sale, when the Defendant took them of his own Wrong. The Defendant, by his Rejoinder, erased Oyer of the Patent, and said, that Plaintiff did not pay Toll, and therefore Defendant denied him to remove his Goods; which not being done, he disfurnad them &c. Plaintiff demurrd, because Defendant demanded Oyer of the Patent, which was not pleaded with a Protee; that he did not allege, that any Toll was due, nor for what, or in what Manner, nor that any was denied; and that the Rejoinder is a Departure from the Bar. The Defendant's Counsel agreed, that the Rejoinder could not be maintained: But said, that the Replication admitted his bringing the Goods for Sale into the Market; but that Plaintiff, before his doing so, should have tender'd Stallage to the Lord's Bailiff; and cited 2 Roll's Abr. 123. relating to the Town of Cambridge. But the Court declared, they were by no means satisfied that Toll or Stallage was due to a Market, without any express Clause in the Grant, or Premiss, for that Purpose; But if those Duties were incident to Markets of common Right, they thought that Stallage could not be necessary to be tender'd before the Goods were brought into the Market; and that it was enough to do it after they were brought in. And as to the Cafe cited out of 2 Roll's Abr. 123, the Ch. J. and Judge Page declared, that they doubted whether it was Law. Accordingly Judgment was given for the Plaintiff, unless Cafe, on Thursday next. 2 Barnard. Rep. in B. R. 161, 162. Trin. 5 Geo. 2. Bigley v. Pechey.  

(M) Verdict.  

If it be found, that the Corporation &c. are bound to repair &c. the Thing, on Account whereof the Toll is to be paid, it is sufficient, without finding that it was then in Repair; for it is the Obligation which lies on them to do the Thing, and not the Performance of the Thing itself, which is the Consideration of the Duty; Per Holt Ch. J. And Judgment accordingly. Carth. 359. Trin. 7 W. 3. B. R. Vinkinstone v. Eiden. But same Point does not appear.  

See Market (I. 4)  

Ow. 27.  

S. C. accordingly by Windham and Rhodes.  

A. Stole a Horfe, and sold him in Market Overt; but he enter'd a falfc Name in the Toll-Book. This does not alter the Property of the Thing toll'd. Le. 158. pl. 225. Mich. 31 Eliz. C. B. Gibbs's Cafe.  

If one takes my Horfe, and sells it in a Market Overt, and pays Toll for it, though he enters.
For more of Toll in General, see Market, Prescription, and other Proper Titles.

(A) Construction of Law, relating to Torts.

1. *If a Man sells a Distrefs* which he took and impounded, and after rebuys it, and impounds it again, yet the Selling is not excused. Per Moufangue J. And Knightly seem'd of the same Opinion, and cited 5 E. 4. D. 35. b. pl. 34. cites in Marg. 2 E. 4. 55. a. 28 H. 6. 5. b.

2. *The same of Trees cut by Lefsee, and by him sold, and afterwards S. P. Co. by him bought again, and employ'd for Repairs.* D. 35. b. pl. 32. Trin. Litt. 53. b. So if Lefsee cuts Trees, and

*sells them for Money, and with the Money repairs the House, it is Wafe.* Co. Litt. 53. b.

3. A. deviſed a Term to B. and makes C. Executor, and dies. The Executor takes a new Leaf, which is a Surrender and a Devallavit. The Deviſee enters without Affent of the Executor, by which he is a Diffelior, and then grants his Interest to the Executor. Adjudged that this shall ensue as Affent of the Executor first to the Term deviſed; and this makes the Deviſee to be in by Right, and then he is in of such Term in Eſtate, as he may grant. No. 358. pl. 457. Trin. 36 Eliz. Carter v. Love.

4. When a Man enters, *having a good Title*, he shall not be faid to enter by a tortious one. Arg. No. 363. pl. 494. in Bulkie's Case, cites 12 Ait. where the Lord difſee'd his Tenant by Knight-Service, who died his Heir within Age. This purg'd the Diffelio. So 38 H. 6. Tenant pur Auter Vie is difſee'd, Cef́y que Vie dies, he shall be Occupant, and the Diffelio purg'd.


6. *Where a tortious Poffelior shall be liable to answer consequential Damages,* the a Poffelior bona fide, shall not in the like Cafe, See Hob. 100. in Cafe of Moore v. Whitley, cites 8 E. 3. 52. and 8 E. 3. 45.
**Tout temps Prist.**

7. When Right and Wrong do meet together, the Right shall ever be prefer'd. See 3 Bulst. 47. in Case of Harris v. Aultin. And see Roll Rep. 214. in S. C.

For more of Tort in General, see Distress, Ratification, Release to Distressors, and other Proper Titles.

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(A) Tout temps Prist. [And Uncore Prist.]

1. In Debt upon Obligation, upon Condition of Payment of a less sum, if Defendant pleads a Tender, and Refusal by Plaintiff, yet he ought to lay Uncore Prist. 10 P. 6. 16. b. 11 P. 6. 27. * 14

But if the Money was to be paid to a Stranger, he need not to say Uncore Prist. And. 4. pl. 7. Patch. 5 & 4 P. & M. in Case of Pannel v. Nevel.

Where a Man is bound in 60 l. to pay 40 l. if he pleads Tender of the 40 l. in Action of Debt brought against him of the 60 l. he ought to say that he is yet ready, and always has been ready to pay the 40 l. and bring the Money into Court, because the less Sum is Parcel of the greater Sum express'd in the Obligation, and there Refusal of it shall not serve, for it is Parcel &c. Br. Tout temps &c. pl. 51. cites 20 E. 4. 1. per Brian & Cur. — But Ibid. pl. 52. cites 21 E. 4. 42. 52. That it was held, per tot. Cur. in such Case, that he need not say, that he is yet ready to pay; qualia non. But it is said, that 21 H. 6. is contrary, and so are several other Books thereof.

But if the Obligation be of 60 l. to espress the Plaintiff by such a Day, or to deliver to him a Horse, or such like, which is not Money, Tender by the Defendant, and Refusal by the Plaintiff, is sufficient for the Defendant for ever. And there in Pleading the Defendant need not to say, that he has been always ready, and yet is, but in the one Case and the other the Penalty is faced. Br. Tout temps &c. pl. 51. cites 20 E. 4. 1. per Brian & Cur.

2. If A. covenants with B. to pay him 10 l. after Michaelmas, and before Easter; in Debt upon this Covenant, if Defendant pleads, that within the said Time he tender'd to the Plaintiff the said 10 l. and Plaintiff refused it, it is not good without laying Uncore Prist &c. Hill. 1649. between Newton and Newton, in 2 Actions. Adjourn'd upon Demurrer. Intratur. P. 1649. Rot.

3. In Debt upon Obligation, if Condition be, that a Stranger shall make another Deed to the Plaintiff; if he pleads a Tender to the Plaintiff, and Refusal by him, he need not lay Uncore Prist. 10 P. 6. 16. b.

4. The same Law would be, if the Defendant himself ought to make the Deed. Contra, 10 P. 6. 16. b.

5. In Debt upon Obligation upon Condition to perform an Award if the Defendant pleads a Tender and Refusal of the Sum awarded, he need not to say Uncore Prist. 14 P. 6. 23. Curia. Contra 11 P. 6. 27.


6. If
6. If I deliver to I. to another without Deed, to my Use, and make a defeasance by Deed, if he pays $1. &c. if he pleads a Tender at the Day, he need not to lay Unco're Prift. Contra 18 E. 3. 39. b.

7. In Debt upon Obligation, where a defeasance is made by another. S. P. That Deed to pay a small Sum, if he pleads Tender at the Day, he need not to lay Unco're Prift. Contra 18 E. 3. 53. b.


As in Debt upon an Obligation, it was held, That where an Obligation is made, and afterwards a defeasance is made thereof, if he pays a leffer Sum &c. there, if he pleads the defeasance and the Tender of the leffer Sum, he need not to lay, Tout temps prift; for by the Tender he was discharged of all. But otherwise it is an Obligation, with a Condition to pay a leffer Sum. Cro. Eliz. 755. pl. 16. Patch 42 Efiz. in C. B. Cotton v. Sir Gervase Clifton.

8. The same Law is where the defeasance is upon a Statute, Contra S. P. 9 Rep. 79. b. in Peytoe's Cafe. cites 52 H. 6. 2. a. b.

9. If a Bail confims Land to a Man in Fee upon Condition of Payment of certain Time, if he pleads a Tender of the Time at the Day, he need not to lay, &c. Unco're Prift. Quere 30 Ait. 11.


11. It was said, that in Debt upon an Obligation, it is a good Plea that the Defendant has been always ready to pay &c. if he could have Acquittance. Br. Touts temps &c. pl. 59. cites 1 R. 3. and Fitzh. Verdict 13.

Heath's Max. 125. cap. 5. cites 1 R. 3. and S. C. and

adds, that by this it should seem that the Plaintiff in that Case ought to offer an Acquittance as he is to demand Rent that is payable on the Ground, Quere inde.

12. When a Bond is for Payment of Money in Discharge of a Debt, Tout temps prift must be pleaded, notwithstanding a Tender; But where the Payment of the Money is in Defeasance of some other Collateral Matter, as a Bond to save Harmless &c. it need not be pleaded. Arg. 10. Mod. 282. cites Co. Litt. 207. a.

13. A Difference taken between a bare Debt and a Penalty to pay a Debt, So in Arfumpstir where the Defendant impairs'd fes'tion, without laying, that he was always ready; But when it is for a cally, bare Debt, there he must plead, Tout temps prift. And the Court a-greed the Difference between an Obligation with a Penalty and a bare Debt. Freem. Rep. 205. pl. 209. Mich. 1675. in Cafe of Serle v. Bunnion.

now ready, as in D. 37. if it might have been good, but now it seems he is eloped to plead Always ready. And Atkins inclined to this, Cestus abstantibus; Sed advisa volume Freem Rep. 134. pl. 166 Mich. 1675, in C. B. Bone v. Andrews.—5 Salk. 222. pl. 9. S. C. but not S. P. —2 Mod. 70. S. C. but not S. P.

14. If a Promisi be to pay Money on a particular Day, there a Tender with 2 Salk. 622. a Tout temps prift is good enough; but it is otherwise where the Money is to be paid on Request; For there might be Laches before the Tender. Per Holt Ch. J. Cumb. 444. Trim. 9 W. 3. B. R. Giles v. Harr.

(B)
At what Time he may plead this Plea.

If the Defendant in the Action of Debt takes his Delays by Ebtone and comes by the Grand Distraint, yet he may plead Tout Temps Prist. 18. C. 3. 53. 6.

Tout temps Prist.

1. If the Defendant in the Action of Debt takes his Delays by Ebtone and comes by the Grand Distraint, yet he may plead Tout Temps Prist. 18. C. 3. 53. 6.

Lehath's Max. 12 S. cap. 5. cites S. C. * S. P. and does no Wrong to a Demand be made Ca. L. 16. 2.

S. P. Br.
Tout temps &c. pl. 56. cites 7. H. 16.

Heath's Max. 12 S. cap. 5. cites fame Cases

Heath's Max. 12 S. cap. 5. cites S. C.

Br. Tout temps &c. pl. 52. cites S. C.

In Debt upon an Obligation, the Defendant, after Oyer of the fame, impaired, and now pleaded that he was ready to pay the Money at the Day and Place, and that none was there to receive it, and that he is now ready, and tendered the Money in Court, and that not Tout temps, and a good Plea as it seems; for he had excused the Forfeiture by the Plea above, and he shall not be stopped by the Imparlance to plead the Plea above, for several Juliates, but Leonard Collins Brevium after testitit. D. 500. pl. 7. 56. Pa. 13 Eliz. Anon. — Cro. J. 627. pl. 22. Mich. 19 Jac. B. R. Steward v. Coles. S. P. and the Plaintiff offered to demurr because the Defendant did not plead Tout temps with, and the Plea above, and he tendered it at the Day, whereby he fared it for the Time, yet if he pleads not this Plea, it shall be intended that he has forsook his Obligation, and whether he should have Judgment or not was much doubted: So that the Defendant darr, not infilt upon his Plea; but by Direction and Mediation of the Court he paid 500 in Satisfaction of the Debt, and 100. Costs and Damages. — Tis true in Debt upon bond such Plea is good after Imparlance, because it is to face the Penalty. Arg. cites D. 500. but when a joile Dut is demanded, and the Party is invited to Damages for Non-payment, the Plea of Tout temps prist is not good. Arg. 2 Mol. 62. Anon. (And Judgment according to the half Part of the Divinity.) — The Case of D. 500 is good Law. Per Holt. Cumb. 33. Thim. 5 W. 3. B. R. Broom v. Plea. Assumpst
Tout temps Prift. [And Uncore Prift, after Verdict for Defendant on the Tender.] 309

Atumpsfit for Money due for Work, the Defendant has a special Imparlance, Salvus omnibus exceptibus tam brevi quam narrationi ( & advantages omitted) and then comes and pleads that he tendered the Money, and was always ready to pay him, and Uncore prift. The Plaintiff in his Replication shews, that the Defendant did impair Ut Supra, and demands Judgment, whether or no, after this Imparlance, he shall be permitted to plead a Tender, and that he was always ready. And it is insisted, that it is a conditional tender; besides, the Entry is laying all Exceptions to the Work and the Declaration, and he shall not have more than he has reserved, and cites Br. Tout temps prift 23. accordant. 2 H. 6. 15. Windham J. perhaps if you had pleaded your Tender, and that you are Now ready, as it is pleaded in Dyer 300. it might have been good; but now it seems that you are effeffed to plead that you were always ready. And Atkins inclined hereto externa abditiis; sed adfuturate volunt. Pream. Rep 134. pl. 159. Mich. 1673. Bone v. Andrews in C.B.

It cannot be pleaded in an Insolvency afterfit after Imparlance; for it is contradictory to such Pleas, for the Money was due on the Day of the Appurtenant. Carth. 415. Giles v. Hart. 2 Salk. 622. pl. 1. Mich. 9 W. 3. S. C. 12 Mod. 152. S C.

So in Debt for Rent, the Defendant implies generally, and then pleads Tout temps prift. The Court held this Pleas could not be pleaded after a general Imparlance; for it is * contradictory to say, he was always ready, and yet to take Time to Answer to the Declaration. Pream. Rep. 263. pl. 299. Mich. 1679. Bunt v. Bunnion.


Upon Point of Pleading of Tender this Diverjity was taken by Holt Ch. J. That Tender at the Day is no Pleas to a single Bill but only in Parts of Damages, in which Case you must plead it before Imparlance with a Tout temps and Uncore prift &c. and Tender at the Time is a good Plea to a penal Bond in Day, because it saves the Forfeiture, and therefore may be after Imparlance. 12 Mod. 514. Patch. 12 W. 3. in Case of Hope v. Lutins. — But the Reporter cites 1 Hift. 20. a. 21. Ed. 4. 25 pl. 59. and says, This seems to hold only where the Penal Bond is for doing a collateral Thing and yet where it is for Payment of Money, but says, Vate the Case in Dyer 300 a. That in Case of a Bond for Payment of Money, he may plead Tender and Uncore prift after Imparlance. 12 Mod. 354. In Case of Hope v. Lutins.

6. In Debt, at the Capias the Defendant came and found Surety, and had Superfederus, and tendered the Money, and said that he has been always ready &c. and yet is, and tender'd the Money. And per Littleton, He may plead this well, because he was return'd Nihil upon the Original, and had not Conulance till the Capias. Contra if he had had Conulance before. br. Tout temps &c. pl. 30. cites 3 E. 4. 9.


But if there be a Verdict, then is the Sum of the Value made a Thing entire, whereof the Plaintiff is not bound to receive Part without the whole.

8. In Debt upon a single Bill, or for Rent, the Plaintiff declares that the Defendant hath not paid him Lisert epius requisitius; the Defendant may plead that he was always ready and still is ready, and pray Judgment of Damage; and then the Plaintiff, if he will have Damage, must reply, and shew a special Request; Per Holt Ch. Comb. 334. Trin. 7 W. 3. B. R. Broom v. Pine.

(C) Tout temps Prift. [And Uncore Prift, after Verdict for Defendant on the Tender.]
(D) How the Pleading shall be. Where he shall bring the Thing, [viz. Money] into Court.

1. If a Plaintiff pleads a Tender of Money with an Uncore Prist &c. it is no good Plea without bringing the Money into Court. Witby 1652, between Whittam and Little adjudged upon Demurrer. Lactrarum Ill. 1649. Rot. 121.

Debt upon an Obligation
for'd, ready to pay'd 10 l. at D. such a Day, that then &c. And he said that he was there that Day, and tendered it, Br. loc. &c. Tirwhit said, You ought to tender it in Court now. Et non allocatur: for he is not bound to pay it at another Place than is comma'd'd in the Condition; As in Replevin in the Defendant avow'd, the Plaintiff avow'd Tender upon the Land Tempore Captions, and he refused, and good without Tender now; for the Rent is only payable upon the Land. Br. Tout temps &c. pl. 35. cites 5 H. 4. 18. But Tender, pl. 6. cites S. C.

But in Debt by Obligation of 60 l. upon Condition to pay to l. at such a Day and Place, the Defendant said that he was ready at the Day and Place, and offer'd &c. and the Plaintiff refused, and the Plea challenged, as much as he did not say that he has been always ready after, and tender the Money to Court; and the Defendant said that he is not bound to tender it, unless at the Place express'd in the Condition. And yet per tot. Cur. He ought to tender it Now. Contra 4 H. 4. 18. supra. But this Book is taken for the Debt Law at this Day. Br. tout Temps &c. pl. 47. cites 4 E. 5.

So where the left Sum was to be paid at the Holt in the Mansion house of the Obligor, at a certain Day, and the Obligor pleaded that he was ready at Holt to have paid, but Nobody came to receive it, but did not pay Uncore Prist; and therefore hold no Plea. And 4. pl. 7. Petch. &c. P. & M. Panell v. Neil. D. 45. pl. 84. Trin. 3 &c. P. & M. S. C. And because he did not pay Uncore Prist, with a Tender of the Money in Court, nor say Uncore Prist to pay at the Holt, the Court without Argument adjudg'd it no Plea; but that it would be otherwise if the Condition had been to be a collateral Act, and not to pay Money, which is of the Nature of the Sum in the Penalty, and the very Part, by Incum- bement of Law, for Security whereof the Obligation of the greater Sum was made, and cited 4 E. 4. But per Carlin and Griffin the Arrows, General, the Law is not fo, because the Place of Payment is Particular of the Condition, and it ought not to be paid else where. And fo is the Diversity in H. 4. where a Place of Payment is put, and where not &c. —— Bendil. 54. pl. 90. S. C. adjudg'd no Plea by all the Justices, because the Sum remains a Debt still, notwithstanding the Tender at the Holt; and cites 4 E. 4. according to this Judgment, that in 4 H. 4. it was adjudg'd contrary; but they did not hold this to be Law now. And the Reporter adds a Quære, if he had pleaded that he was Uncore Prist to pay this Sum at the Holt aforesaid, whether this would have been a good Plea?

Debt upon an Obligation upon Condition to stand to Arbitrare, the Defendant pleaded that the Arbitrators awarded that he should pay in such a Place, which he has been always ready to pay, and yet is, and did not tender the Money in Court; But you yet good by the Opinion there, because it is payable at another Place, and he is ready to perform the Award. And so it seems that if the Place certain had not been in the Award, he ought to have tender'd the Money in Court. Br. Tout temps &c. pl. 41. cites 11 H. 6. 27.

3. The same Law is, where the Condition is to perform an Award, which was to pay a Sum at D. It is not good to pay, Ready at D. (Admitting that he ought to pay Uncore Prist. Contra 11 H. 6. 27.

4. In Allife of Rent the Tenant pleaded to part a Reliefe, and to other Part Dehison of the Land for a Time, to suspend the Rent, and to the rest that he has always been ready, and yet is, and tender'd the Money in Court; Nota. Br. Tout temps &c. pl. 25. cites 5 All. 35.

5. Cov-
5. Covenant by the Lessor against the Lessee for o ws of .h,, of his Term, the Defendant pleaded in Bar a Clause of Re-entry for Rent Arrear, and the Plaintiff to Part of the Rent pleaded Accord to recoup it for boarding the Defendant, and to the rent pleaded Tender, and that the Defendant refuses it and outwits him, and yet is ready &c. and tender'd the Money in Court; Quod nota, and demanded Judgment, and præd. Restitution, and his Term and Damages. Br. Tout temps &c. pl. 5. cites 47 E. 3. 24.

6. In Trepassi the Defendant pleaded Arbitrement to pay 10 l. &c. This is no Plea, per Marten, if he does not say that he has paid it, or say that he has been always ready, and yet is, and bring the Money into Court, and this seems to be where the Day of Payment is past. Br. Tout temps &c. pl. 15. cites 8 H. 6. 25.

7. In Debt the Defendant as to Parcel said that he has been always ready to pay, and yet is, and brought the Money into Court, and to the rent pleaded in Bar, the Plaintiff pleaded in Etoppel to the saying that he has been always ready &c. for that he impart'd the Life Term; Judgment if he shall be receiv'd to say that Always ready &c. And per Danby, the Plaintiff shall not have the Money here till the other Iluïe be tried, and this by reason that the Damages shall not yet be tried till the other Iluïe be tried; but per Prior, he may have Judgment of his Debt of this Parcel, and his Damages, & Ceilier Executio; for those may be well alleï'd by the Court as to this Parcel, but the Plaintiff shall not have it till the other Iluïe be tried, by Reason that the Costs shall be entire, which cannot be tax'd till the other Iluïe be tried; and when the Plaintiff pleaded the Etoppel above, the Defendant pray'd to have his Money again. And per Prior, he shall re-have it, quod non futi cœnqium; for he has confes'd of this Part. And by him, if the Plaintiff will relinquish his Etoppel, he shall have Delivery of the Money without Damages and Costs; and the Plaintiff afterwards relinquish'd the Etoppel, by which the Money was delivered to him. Br. Tout temps &c. pl. 22. cites 36 H. 6. 13.

8. Debt upon an Obligation of 10 l. to pay 40 s. such a Day; the Defendant payment of 20 s. at the Day, and that be offer'd 20 s. Recovered there the same Day, and the Plaintiff refused it, and that he has been always ready to pay it, and yet is, and tender'd the Money in Court, and the Plaintiff tend'red to over that he did not tender the 20 s. at the Day. Per Cur. Now the Defendant shall have the Money again, and so he had; and if the Iluïe be found for the Plaintiff the Obligation is forfeited, and if it be found for the Defendant, the Plaintiff has lost the 20s. Quod nota; for he has relied it by Matter of Record, and took the other Iluïe at his Peril. Br. Tout temps &c. pl. 32. cites 21 E. 4. 25.

9. In Indebitatus Allumpin, & quantum meruit, the Plaintiff laid a special Request at such a Day and Place, and that the Defendant refused to pay, the Defendant pleaded that such a Day before the Request be tender'd, and the Plaintiff refused, and that afterwards Semper paratus fuerit, & pretend be in Cur. Holt Ch. J. said, that where the Agreement is to pay at a certain Time, there a Tender at that Time, & fémper paratus is a good Plea; but where the Money is due, and payable immediately by the Agreement, there the Defendant must plead Semper paratus from the Time of the Promis. 2 Salk. 622. pl. 1. in Cafe of Giles v. Hart. Nor thought they should have paid, that all Times after the Promis. they were ready, & till Die tendere &c.—— 3 Salk. 545. S. C.—Carr. 413. S. C. and adjudged ill upon Demurrer, because the Defendant has not said any Time as to the Time between the Promise and the Request, and the Money was due on the Day of the Promise; and therefore the Defendant should have pleaded the Tender on that Day, and that he from that Day was always ready; for the special Request laid in the Declaration is only Sur-prefus, and therefore the Day on which the Request was made is immaterial; and when once the Caus of Action accrued, a Subsequent Tender could not take it away. But Per Holt Ch J. In these Cases, the best Way of Pleading is to plead generally Semper paratus &c. & pretend he in Curis, without pleading our Tender. — If he pleads that he was always ready, this refers to the Time of the Promise made, and not to the Time of the Tender; Per Holt Ch. J. Id Raym. Rep 214. S. C. and says that Judgment was given for the Plaintiff, and that if the Defendant had pleaded Tout temps Pris, the Plaintiff should have replied, and flown the Request, and the Time when it was made.

10. There
Tout temps Prist.

Where Debt is brought on a Bond, condition'd to pay Money at a Day certain, if the Defendant pleads a Tender at the Day, and that he has been always ready &c. it is good. But in Affirmpt, or Debt upon a single Bill, he must plead, that he has been always ready. Lud. Raym. Rep. 254 per Holt Ch. J. in Cause of Giles v. Harris.——3 Salk. 355. S. C.


(E) Where he shall bring the Thing into Court.

In Detinue of 1. If the Thing in Demand be so ponderous, that it cannot be carried, he may plead Uncore Prist, without bringing it into Court. 11 H. 6. 29. b. 30 aff. 10. 2. But in such Case he ought to plead so; that is to say, that it is so ponderous, that it cannot well be carried. 11 H. 6. 29. b. 30 aff. 10. to plead.

Heath's Max. cap. 5. cites S. C.——3. In Ward, he, who pleads that such a Writ is brought against him, and that he is ready to deliver, to whom the Court shall award, and says, that he does not claim any thing but by Cause of Nurture, ought to have the Infant ready at the Bar. Br. Tout temps &c. pl. 17. cites 24 E. Ward, pleaded, that he claimed nothing &c. but for Nurture; and that W. has brought such a Writ against him; and prayed, that they interplead, and that he is ready to render him to whom the said Award is given; but he has not. Boden says, for it is in Peril of Death, and in Peril of Water at S. Et non Allocatur. But it was awarded, that the Plaintiff recover the Marriage. Quare of the Damages; quod nota. For Green said, that to those Matters the Plaintiff cannot have Anwss &c. Quare if this be the Reason. Br. Tout temps &c. pl. 19. cites 24 E. 5——Br. Gard. pl. 49. cites 24 E. 3. 66. S. C——Heath's Max. 125. cap. 5. cites S. C.

Where two several Writs of Ward are brought, and the Defendant says he is ready to render the Infant to whom the Court shall award, and has not the Infant, there he shall find Mainprise to have the Infant there at the Day. Br. Touts temps, pl. 38. cites 8 E. 5. and Fitch. Gard. 25.——Heath's Max. 125. cap. 5. cites S. C.

Br. Arbitrement, pl. 12. cites H. 4. 51. S. C.

Heath's Max. 125. cap. 5. cites S. C.

4. He who pleads Arbitrement in Trespass, to give a Piece of Cloth, shall say, that he has been always ready to give it, and yet is, and bring the Cloth into Court; quod nota. Br. Tout temps &c. pl. 9. cites H. 4.

5. In Detinue of 10 Quarters of Barley, the Defendant, as to four Quarters, said, that he has been always ready to deliver them, and yet is, which he could not have in Court for Portage, but is ready to deliver them &c. and to the rest waged his Law. And the Plaintiff to the four Quarters said, that after the Bailment, and before the Action brought, he requir'd him at D. in the County of S. and he rebutted &c. Br. Touts temps &c. pl. 28. cites E. 4. 11.

(F) Uncore
(F) **Uncover Prift. Necessary to be pleaded, or not. In what Cases.**

1. In Audita Querela, the Plaintiff declared upon Defense to pay 10l. at such a Day, and 15l. at another Day, and that he paid the first Sum at the Day, and tender'd the last at the Day, and be is yet to pay, and tender'd the Money in Court; quod nota. Br. Tout temps &c. pl. 6. cites 47 E. 3. 25.

2. Debt upon an Obligation. Newton said, It is ushered upon Condition, that if J. N. shall stand to the Award of W. P. of all Matters between him and the Plaintiff; if the Award be made before such a Day, or that the said J. N. render himself to the Plaintiff about the same Day, that then &c. And said, that the Arbitrators did not make any Award; but the said J. N. about the aforesaid Day, prefer'd himself to the Plaintiff, and be is yet to pay, &c. Judgment in Actio &c. Caund. said, You ought to pay, that you are yet ready, As upon Obligation of 40l. to pay 20l. But the Court held the Plea good, and a great Diversity between the Cazes. The Reason seems to be, inasmuch as the one is to do an All delors, and the other of Payment of Money. Br. Tout temps &c. pl. 21. cites 14 H. 6. 23.

3. In Debt upon an Obligation of 25l. to pay 10l. if the Defendant Br. Tout pleads Tender and Refusal, he shall pay, that he has been always ready; and yet is. Br. Debt. pl. 98. cites 22 H. 6. 39.


4. But if it be an Obligation to hand to the Arbitrement, which awards to pay 10l. before Christmas, and Debt is brought after Christmas, and he pleads Payment and Refusal, he need not pay; he has been always ready, and yet is &c. Br. Debt. pl. 98. cites 22 H. 6. 39.

be ready to pay before the Day, where the Day is past. Contra by him, if it had been to be paid at a Day which is to come, and in this Case he may have Deft upon the Arbitrement, over and above the Obligation. S. P. Br. Ibid. pl. 42. cites 16 H. 1. — For the Sum awarded by the Arbitrement is not any Part of the Sum in the Obligation — Heath's Max. 122. cap. 5. cites S. C. S. P. Ibid. pl. 1. cites 19 H. 8. 12. For it is an exterior and collateral Act. S. P. Arg. Snow. 129 in Case of Carter v. Dowlin, cites 1 foll. 237. Perrot's Caf. 9 Rep. 79. — S. P. per Littleton. But by him, in Action of Debt upon Arbitrement, he shall pay, that he has been always ready &c. Quod non negatur. Br. Tout temps &c. pl. 4. cites 53 H. 6. 5.

5. B. brought Debt for 40 Quarters of Malt, and counted upon 2 Obligations, in which the Defendant acknowledged himself to owe 20 Quarters, to be deliver'd at L. such a Day, and if he fail'd, to forfeit 40 Quarters; and aver'd, that he did not deliver the 20 Quarters. The Defendant plea'd Tender, and the Plaintiff refused to receive them. Judgment &c. The Plaintiff demurred, and had Judgment; and he remitt'd 20 Quarters &c. For Defendant ought to have paid, that he was Uncover prift to deliver the 20 Quarters. D. 24. b. pl 154. Mich. 23 H. 8. cites Trin. 12 H. 8. Brickhead v. Wilton.

This seems to come within the Reason of D. 170. pl. 84 that the Thing to be paid is of the Nature of the Sum in the Penalty, and the very Duty by Indemnity of Law, for Surety whereof the Obligation of the greater Sum was made —— 9 Rep. 79. a. b. Mich. 9. Jan. C. B. in Perrot's Caf. cites it as held in 22 H. 8. according to Carroll's Report of it, that the Obligor need not plead it with an Uncover Prift; because this Corn is Bannum Peritturum, and it is a Charge to the Obligee to keep it —— Co. Lit. 107. a. accordingly.

4 L. 6. In
6. In Debt upon an Obligation of 20l., which is indexed, to pay to the Plaintiff so much Money for such a Trespass as J. N. shall affix, it is a good Plea, that J. N. affixed 10l., which he offered to the Plaintiff, and he refused, without saying that he is Uncore Prift, and tendering the Money in Court; for it is an exterior and collateral Act. Br. Tout temps &c. pl. 1. cites 19 H. 8. 12.

7. Where J. S. is bound to me in 20l. that W. shall perform the Covenants contained in a certain Indenture &c. which Covenant is, that W. shall pay to me 10l. &c. if the Defendant says, that W. tendered the Money to me, and I refused it, this is a good Plea, and need not lay, that he is Uncore Prift, and tender the 10l. &c. And the Reason seems to be, inasmuch as the Defendant is a Stranger to the Payment. And also the Condition is to perform the Covenants in the Indenture; and it is not as an Obligation of 20l. upon Condition that the Obligor shall pay 10l. by a Day. Note the Diversity. Br. Tout temps &c. pl. 2. cites 27 H. 8. 1.

8. A Legacy is devised to H. and the Executor gives Bond to perform the Will, and yet he is not bound to tender the Legacy without Request. And in Debt upon the Bond, Tout temps Prift, and Uncore Prift, is a good Plea; for the Bond has not altered the Nature of the Legacy, but the same remains payable as before upon Request. Le. 17. pl. 20. Patch. 26 Eliz. B. R. Fringe v. Lewes.

9. In Debt on Bond, no Place being named, if the Defendant pleads that the Plaintiff was beyond Sea at the Day, he ought to lay Uncore Prift. Sid. 30. pl. 7. Hill 12 Car. 2. B. R. Hobson v. Rudge.

10. Condition of a Bond was to pay Money to B.'s Administrators within 2 Months after B.'s Decease; tho' no Letters of Administration were granted within 2 Months after B.'s Decease, yet to an Action of Debt for the 200l. Defendant must plead Uncore prift; for the Debt is not lott. 2 Show. 143. Mich. 32 Cal. 2. B. R. Lee v. Garret.

* Per Gould. Where the Thing in its Nature requires a Demand, a Bond for doing thereof is not forfeited till Demand; and in that Case the Defendant must take Advantage of the Want of Demand, by pleading that he was always, and still is ready to pay it; for if he plead Performance generally, and Plaintiff affirms a Breach in his Recollection, the Defendant shall not repine, and allege Want of Demand; for that would be a Departure; quod Holt concilium. 12 Mod 414. in Case of Levinus v. Randall, cites 1 Cro. 75. 77.

11. Uncore Prift is nowhere necessary but where the Duty is * demanded; therefore is only Covenant, which is not to recover the Duty, but Damages. But were it otherwise, whereover the Money is payable to a Stranger, or at a particular Place, there needs no Uncore prift. Arg. and Judgment accordingly. Show. 129. Mich. 1 W. & M. in Case of Carter v. Downith.

12. There is no Necessity for Uncore Prift in any Case of Covenant where Damages, and not the Debt, is in Demand; Per Pollexen Ch. J. Show. 130. Carter v. Downith.

13. Debt on Bond conditioned to pay to Obligee, or such as he should appoint, he appoints it to be paid to J. S. and the Defendant tender'd it to J. S. who refused, it is good without an Uncore Prift. Arg. Show. 130. in Case of Carter v. Downith.

(G) Uncore Prift. Necessary to be pleaded, or not. In what Actions, and How.

1. A Sife of 10½. Rent, and 40 Acres of Land put in View, and the Tenant said that the Plaintiff himself is seized of 15 of the Acres, and he himself is Tenant of the rest, and said that he has tender'd the Services for the
the Portion of the Land which he has, and yet is ready &c. Br. Tour
temps &c. pl. 24. cites 4 Atl. 5.

2. In Dower the Tenant said that the Demandant detained from him cer-
tain Evidences concerning the same Land, and if the will deliver the Evi-
dences, he is and always has been ready to render Dower, Judgment

3. Annuity of Arrears by 5 Years, the Defendant said that it was granted
still to be promised the Plaintiff to a competent Benefice, and be tender'd to him
a competent Benefice pending the Writ, and be refused; and a good Plea with-
out saying that he is Uncoor priff; for by the Refufal the Annuity is de-

4. Divitme of a Writing, the Garnishee came by Proces., and said that it was
delivered to the Defendant, upon Condition to stand to the Arbitrament of
J. N. that then he shall re-burse it, and that J. N. awarded that he should
d. pay to the Plaintiff 40 s. which be tender'd, and the Plaintiff refused it, and
did not offer the Money now in Court, nor say that he is Uncoor priff &c.
and yet good per Cur. Because the Money is not now in Demand; good nota. Br. Tour temps &c. pl. 23. cites 36 H. 6. 26.

5. Where the Defendant in Trespays of Goods makes a good Jufification,
he shall not say that he has been always ready, and yet is to deliver
them to the Plaintiff, notwithstanding that he has confes'd that they be-
long to the Plaintiff. Br. Tour temps &c. pl. 29. cites 7 E. 4. 3.

6. In a Quantum Merit, or other Declarations, it is usual to plead
Uncoor priff specially, viz. that the Plaintiff deserv'd only so much, which
the Defendant was always ready to pay. Sid. 365. a Nota of the Re-
porter's, at the End of the Cafe of Ludlow v. Stacy.


DEBT upon a Lease for Years rendering Rent, payable annually at D. The
Defendant said, that he has been always ready to pay, and yet is, and
tender'd the Money to the Court. The Plaintiff pledged Effoppel; that the
Sheriff return'd the Defendant's demand, and after return'd him attack'd,
and after return'd Disfiring. Nikel; By which Capias issu'd till the Pluries,
when he came in View of the Sheriff, and Day given over. At which Day
he made Default, and Disfiring issu'd, and return'd that he had nothing; and
Capias issu'd again, returnable &c. at which Day he was come and pleaded
Judgment, if against this Record he shall say always ready. And per
Hank and Hill, the Return of the Sheriff is no Effoppel; but Thir
contra, & Adjoinatur. And much Default was laid to be in the De-
fendant, because he appear'd and had Day over, and made Default, and
after came again; so that it cannot be that he has been always ready
&c. And per Norton, he ought to plead this Tender at D. according
to the Reservation. Quære inde. And fo, per Hill and Hank clearly,
he shall not be effoppel; for it may be that he was never summons'd, or-

S. P. And the Demandant said that he is, and always has been ready to render the Evidences, by which the said Judgment immediately; and yet it does not appear that the Defendant has been ready to render the Evidence immediately.
Town and County.

1. A Count upon Receipt in Newcastle upon Tyne, brought in the County of Northumberland, the Defendant demanded Judgment of the Writ; for Newcastle is a County in itself; and because it was made a County after the Tale of the Writ, therefore the Writ awarded good. Br. Brevi, pl. 530. cites 2 H. 4. 18.

2. Trespas; the Writ was put T. D. of Norwich Gentleman, the Defendant demanded Judgment of the Writ, because Norwich extends into the County of N. and into the County of the Vill of N. And yet the Writ good per Cur. But if it was against T. D. of the County of Devon, or of Devon, which is a County, and not a Vill, it is ill. Contrary to this which is a Vill and County. Br. Brevi, pl. 23. cites 27 H. 6. 4.

3. A Man in Plea of Land in the County of York recovered Land which lay in York, and after, before Execution, the Vill of York was made a County, by which he sued Scire Facias to the Sheriff of the County of the City of York, and not to the Sheriff of the County of York. Br. Varience, pl. 8. cites 28 H. 6. 1.


5. King R. 3. made the City of Gloucester a County, with a Clause of Exemption from the County of Gloucester, and from the Power of the Officers of the County and Magistrats, saving to the King and his Heirs, Liberty for their Justices of Assize, God-Delivery and Peace, to keep their Sessions there. And upon the Resolution of all the Justices at Serjeant's-Inn, this was a good Saving, and that those Justices in their Sessions to be held within the City, may hear and determine Offences done in the County, but no Offence done in the City, tho' done in Time of the Sessions. This was a Question moved by Prriram Ch. J. of Assize there, Anno 35 Eliz. Mo. 661. pl. 905. 35 Eliz. at Serjeant's-Inn. The City of Gloucester's Cafe.

And likewise there was a Saving for the Sheriff of the County to hold his Courts there and to keep their Sessions and for any Matter arising out of the said County of the Town aforesaid, and that they shall have a Mayor, a Sheriff, and one Recorder, and that the Ministers of the Sheriff of the County shall not enter to execute there any
any Thing whereunto their Office of Sheriff appertaineth or any Ways to intermeddle with it, except for the Sheriff of the County to hold his County Courts, and the Mayor and Aldermen, and their Successors &c. to determine &c. all Things which Judges of Peace of the said County did before, and the Judges of Peace of the County not to intermeddle. Poph. 16. S. C.

6. Where a Corporation is a County, there the Sheriff is Mi-

nister to this Court, and shall be charged with the Prisoners here at

Wienminster; Per Jones J. Lat. 19. Hill. 1 Car. in Cafe of Walden v.

Veley.

City is a County also, if the Sheriff or Bailiff does Execution, he shall not perchance take the Fees li-

mited by the Statute; and Jones J. said it would be a Quellion if an Execution issued out of the County
to take one in a City, and the Sheriff makes a Mandate to the Bailiff there, if he shall have the Fees by the Statute. But if the Town be also a County, and an Execution comes out of B. R. he ought to have his Fees. And to this Doderidge and Whitched acceded.

7. Formerly Black-Fryers was not within the Franchise of the City; yet it is and always was within the County of London. Per Hole Ch. J. 12 Mod. 155. Mich. 9 W. 3. B. R. Brown v. Burlace.

8. A Mandaamus was directed to the Mayor of the City of Lincoln in the County of Lincoln, and not in the County of the City of Lincoln; and was quelled, there being no such Person. 12 Mod. 190. Patch. 10 W. 3. B. R. The King and Morrice v. the Mayor &c. of Lincoln.

For more of Town and County in General, see Trial and other Proper Titles.

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Trade.

(A) What Trade is within Statute of 5 Eliz. cap. 4.

1. A Brewer is within the Statute. See (K) pl. 1.

2. None can hold a Cook's-shop to sell to others unless he has been an Apprentice &c. For they are expressly named in the Act as Arts and Mysteries. 13 Rep. 12. Mich. 6 Jac. in Cafe of Taylor v. Shoiles.

3. The Act of 22 H. 8. cap. is explained, That a Brewer, Baker, Surgeon, and Scrivener Aliens, are not Handicrafts mentioned within certain Penal Laws: But the same does not proceed, but that they are Arts or Mysteries; for Art or Mility is more general than Handicraft, for the same is restrained to Manufactures. Per Cur. 13 Rep. 12. pl. 4. Mich. 6 Jac. Taylor v. Shoiles.

4. A Miller is of an Art and Faculty. 2 Inst. 621.

5. The Court all inclined that an Upholsterer was not a Trade within the Restraint of this Act; But pronounced no final Judgment. 2 Bulk. 186. 191. Hill. 11 Jac. The King and Allen v. Tooley.

S. C. adnotatur. The Reporter remarks, that it seems to be great Skill to make Valence, and the Appurtenances of a Bed.
After a Verdict for the King, in an Information at the Sessions in Middlesex for using the Trade of an Upholster; The Cause was removed into B. R. and an Exception (among others) being taken that an Upholster is not a Trade within the Statute, and cited the Case of 2 Bulft. 256. and Calth. City Law. 48 & 59. But contrary to these 2 Authorities, after 2 several Debates, the Court were of Opinion that it is a Trade within the 5 Eliz. and they said, they knew not the Reason of the Cause above Sed. 265. pl. 2. Thr. 29 Car. 2. B. R. The King v. Sellers. S. C. and the Court; viz. Kelling, Twidell, and Windham, held it a Trade within the Statute, and affirmed the Judgment. — S. P. cited by S. Peggs Ch. J. and Doblen J. to have been lately ruled to be within this Act. Vent. 526. Hill 53 & 524. art. 2. in B. R. in Calf of the King v. Plume. — Halt Ch. fild. that 2 Bulft. 186 is nor Law. 2 Salk. 611. pl. 5. Hill 11 W. 5. B. R. in Calf of the King v. Maugher.

6. There is a Corporation of Gardeners, and yet a Gardner is out of the Statute of 5 Eliz. for every one, that will, may be a Gardner. Per Coke Ch. J. 2 Bulft. 191. Hill. 11 Jac. in Calf of the King and Allen v. Tooley.

7. In an Information for using the Trade of a Baker within the City of Norwich, not having been an Apprentice 7 Years, the Informer had a Verdict. It was moved in Arret of Judgment, that a Baker is not within the Statute by the Name of a Miftrey; but it was ruled that it is. Then it was moved that it was not said he was a Common Baker; But this was disallowed. Mo. 886. pl. 1245. Hill. 14 Jac. Davison v. Barker.

8. An Information was brought upon the Statute 5 Eliz. for exercising the Trade of an Ironmonger, not having been an Apprentice, and after Verdict and Judgment for the Plaintiff, the same was affirmed in Error. Cro. C. 316. pl. 8. Thr. 9 Car. Anon.

9. In Error on a Judgment in London, upon an Information upon the Statute 5 Eliz. it was held per tot. Cur. that a Humpdreffor is not within the Statute; for it is not a Trade requiring much Learning or Skill, and every Husbandman uses it for his necessaries Occasions, and it is not within the Words or Intent of the Statute. Cro. C. 499. pl. 4. Patch. 14 Car. in B. R. The King &c. v. Fredland.

10. An Action of Debtor was brought against a Tagger of Points, for using that Trade, not having served &c. which is a Trade of low and mean Concernment. To which he pleaded the Custom of London, that a Man who had served an Apprenticechip to one Trade might exercise any other. And the Custom was found against him, and Judgment given against him accordingly. Hard. 54. pl. 1. Patch. 1656. in Scace. in Calf of Hayes v. Harding, cites it as Mich. 14 Car. B. R. Appletoft v. Sturton.

11. Action was brought for using the Trade of a Draper. After Verdict for the Plaintiff, it was moved in Arret of Judgment, That the Statute does not name the Trade. But it was answered by the other Side, That the Trade is comprised in the Meaning of the Statute, because it was a Trade used at the Time of making the Statute. Sty. 223. Thr. 1650. Naylor v. Ath.


13. Upon
13. Upon an Indictment on the Statute 5 Eliz. the Question was, if a Tradesman of a Faller-Chandler is within it. But adjourned. 2 Sid. 177, 178. Hill. 1659. B. R. Stubbington’s Cafe.

within the Statute. See 4 Lea. 9. pl. 59. at (C) And sec (D) the King v. Coller.

14. In an Action on the Statute 5 Eliz. for using the Trade of a Barber, Twyden J. hesitated at first whether it was a Trade within the Statute; but at length all agreed that it is. Lev. 37. Mich. 14 Car. 2. B. R. Anon.

seems to be S. C. and held accordingly.— Vent. 326. Hill. 29 & 30 Car. 2. B. R. in the Cafe of the King v. Plume. Arg. it was said, that in 14 Car. 2. an Indictment was for using the Trade of a Barber, but no Judgment given. But other case, that in this Case Judgment was given for the King.— 2 Lev. 256. in the Cafe of the King v. Plume, S. C. Arg. this Point was adjudged, and that it was agreed.

Sid. 367. pl. 4. Trin. 20 Car. 2. B. R. in Cafe of the King v. Collets, it was said, per Cur to be commonly held that the Law is, that a Barber is within the Statute.— Lev. 243. S. C. the Court said, it had been resolved that a Barber is a Trader within that Act.

15. The using the Trade of a Butcher in selling Meat, was conceived per Cur. not to be within the Statute 5 Eliz. 4. 2 Keb. 391. pl. 76. Trin. 20 Car. 2. B. R. the King v. Jackson.

16. The Court said, that the Law is commonly held to be, that a Mercer is within the Statute of 3 Eliz. Sid. 367. pl. 4. Trin. 20 Car. 2. B. R. in the Cafe of the King v. Cellers.

17. The Court said, that it had been resolved, that a Taylor is a Trader within the Statute 5 Eliz. Lev. 243. Trin. 20 Car. 2. B. R. in the Cafe of the King v. Cellers.

18. Whether a Silk-Weaver is. See 2 Mod. 246. Trin. 29 Car. 2. Forest qui tam &c. v. Wire.

19. P. was indicted upon the Statute 5 Eliz. for using the Trade of a 2 Lev. 256. Fruiterer, not being Apprentice to it for 7 Years. Upon Demurrer to the Indictment the Court was divided; two Judges thought it was a Mility within the Statute, there being great Art in chuling the Times to gather and prefer their Fruit. The other Judges seem’d of Opinion otherwise; but the Court took Time to deliver their positive Opinions, & Adjournatur. Vent. 326. Hill. 29 & 30 Car. 2. B. R. and Ibid. 346. Hill. 31 & 32 Car. 2. B. R. the King v. Plume.

Argually, that it is not a Trade within the Statue. Rainford dubitante, Wilde absent, adjournatur.— 2 Sid. 411 pl. 5. in Cafe of the King v. Plume, Arg. i.e., that Patch. 4 Jac. 2. such Indictment was revered.

Roll Rep. to Patch. 12 Jac. 2 B. R. in the Cafe of the King v. Plume, it was cited by Coke Ch. J. to have been adjudged and affirmed in a Writ of Error, that a Pin-maker is not within the Statue, because it requires not any Skill to execute this Trade.— S. P. cited by Coke Ch. J. 2 Ball. 159, 190, to have been adjudged and affirmed in Error; for the Statue speaks of Mility or Trades, and they resolved there was no Mility in buying of Puppins.

20. In the Cafe of the King v. Plume, Vent. 346. Hill. 31 & 32 Car. 2. B. R. it was said by Scroggs Ch J. and Doblen J. to have been lately ruled, that a Clock-maker is within the Act of 5 Eliz.

21. Upon Demurrer to an Indictment, the sole Question was, Whe— 2 Keb. 66c. ther a Salesman was within the Statute of 5 Eliz. because it seems’d to be pl 47. Hill. a new Trade. But resolved it was a Trade then used, and so within the Statute. Raym. 385. Trin. 32 Car. 2. B. R. the King v. Ellinop. the King v. Grindnap.

the Court conceived it no Trade at the Time of the Statue.

Trade.


24. S. was indicted on this Statute for using the Trade of a Feh-, menger, not having been Apprentice for 7 Years. It was urg'd, that it is a Buits of which requires no Skill. Per Holt Ch. J. If in the Indictment it be aver'd to be a Trade at the Time of making the Statute, we will not quash it; for whether it was a Trade or no, or whether Skill is required or not, is Matter of Fact proper for the Inquiry of a Ju- ry; and there are many Trades within the General Words and Equity of this Act, besides such as are mention'd therein. And the Court would not quash the Indictment. 2 Salk. 611. pl. 2. Hill. 11 W. 3. B. R. the King v. Slaughter.

25. It was affirm'd by Holt Ch. J. that the Trade of a Wool-comber is within the Statute, tho' the contrary has been adjudged 4 Jac. 2. 12 Mod. 312. Mich. 11 W. 3. in Case of the King v. Slaughter.

26. Exception was taken to an Order of Justices for discharging an Apprentice, because it appeared upon the Face of the Order, that the Miter was a Collar-maker, and Non confit what the Trade is, nor that it is within the Statute, like Comfort's Cafe, where one was bound to a Mantua-maker, when there was no such Trade within the Statute, not at the Time of the Statute. 2 Salk. 490. pl. 53. Patch. 13 W. 3. B. R. in Ditton's Cafe, but nothing was answered thereto.

27. Whether a Seam'fress's be or not within the Statute. See (K) pl. 2.

28. Merchant Taylor is not within the Statute. See (K) pl. 14.

29. It was moved to quash an Indictment against a Woman, for using the Trade of a Millener, not having served an Apprenticeship. But the Court reolved to quash it, and Holt said it ought to be tried if it was within the Statute, or not; for it did not appear to the Court but that it might be a Trade at the Time of making the Statute, and all Trades are not enumerated in the Statute, but yet they may be within the Meaning. 11 Mod. 63, 64. pl. 5. Trin. 4 Ann. in B. R. Anon.

30. Whether the Trade of a Barber-Surgeon is within the Statute, was argued, but adjourned. 11 Mod. 110. Patch. 1707. 6 Ann. B. R. The Queen v. Standish.

31. One was indicted for using the Trade of a Saltier, contrary to the 5 Eliz. not having served 7 Years Apprenticeship. An Exception was taken, that this Mystery was not within the Number of those mentioned in the Act, and consequently not punishable by that Statute. But it was answered, that this Act had provided a very proper Remedy for the Advancement of Trade; and therefore was not to be confined barely to those Mysteries mentioned in the Act; but where there are like Trades, that require Knowledge and Experience, they are within the Intention of it, and the Mysteries mentioned in the Act are only set down for Examples. Accordingly the Court over-ruled this Exception. Barnard. Rep. in B. R. 30. Mich. 1 Geo. 2. 1727. The King v. Litter.

32. A Rope-maker was thought by Page and Probyn J. not to be a Trade within the Statute 5 Eliz. tho' Page J. said it might be otherwise wife of a Candle-maker. 2 Barnard Rep. in B. R. 225. Hill. 6 Geo. 2. The King v. Langley.
(B) *What is an Using a Trade within the 5 Eliz. cap. 4.*

1. The making Candles for a Man's own Use, or for a Servant's making them for the private Use of his Master, without making any Sale of them, is not using the Trade of a Tallow-chandler, so as to be punishable within the Intent of the Act; for the Sale is the wrong, and Trade is in Treading, which is to deliver over; Per Coke, to which Polter and Daniel agreed. 2 Brownl. 289. Mich. 7 Jac. C. B. Waggoner v. Firth.

2. Debt on the Statute 5 Eliz. for using the Trade of a Clothworker, not being brought up Apprentice; The Jury found that the Defendant was a Turkish Merchant, and exported Holland Cloths thither; and that he employed Clothiers, who had served Apprenticeships, to work the Cloths in his own House at his own Charge, and with his own Materials, which he sent into Turkey as Merchandize; but that the Defendant never served an Apprenticeship. Per Cur. The Defendant is the Trader, because he employs the rest, who work but as his Servants, and the Loss and Gain is to be his: That this is a Trading within the Statute, because the Cloth is not confined to be used in his Family, but to be sold by Way of Commerce. 2 Salk. 610. pl. 1. Trin. 3 W. & M. B. R. Hobbs v. Trin. &c. v. Young.

3. If a Man uses to trade 14 Days in one Month, and then ceases, and uses again 14 Days in the next Month, he is not punishable by the Statute. 12 Mod. 642. Hill. 13 W. 3. B. R. Strechpoint v. Savage.

(C) *Service. What is a Service sufficient.*

1. An Information upon the Statute of 5 Eliz. cap. 4, against one for exercising the Trade of a Chandler, not having been an Apprentice to the same by the Space of 7 Years, it was held by the Justices, That forsooth much as he had been Apprentice to a Taylor for 7 Years, which is one of the Trades mentioned in the said Statute, that the Penalty thereof did not extend to him: But Judgment was given against the Informer; for it was held clearly upon the said Statute, That if one has been an Apprentice for 7 Years at any Trade mentioned within the said Statute, he may exercise any Trade named in the said Statute, altho' he has not been an Apprentice to it. 4 Le. 9. pl. 39. Mich. 33 Eliz. in the Exchequer. Anon.

2. Aroo was indicted at Hicks's-Hall upon 5 Eliz. cap. 4, for using the Trade of a Weaver, not having served as an Apprentice 7 Years; the Evidence was, he served 6 as an Apprentice, and had since as journeyman in the same Trade work'd above that Time; And by all the Justices, the serving 7 Years is sufficient either Way; and the Defendant was found Not guilty; and so by Thompson for the Defendant, it was resolved by Hale Ch. Justice at the Nth Prins at Westminster, for Middlesex, in the Cause of the Hamme. But Offly said that 15 Car. 2. in T. 25th. Caffe, at the Guildhall, it was held by Hale Ch. J. as Party per Pale, and no sufficient Service; which was agreed if the Service were not in 4 N.
the same Trade. 3 Keb. 400. pl. 106. Mich. 26 Car. 2. B. R. The
King v. Moor and Dibloc.

Upon Indictments for undertaking Trade contrary to the Statute of Eliz. 21 Eliz. 12. we allow in evidence the following:

the Trade for 7 Years to be sufficient without any Binding, this being a hard Law. 2 Salk. 615, pl. 7. Patch. 5 Ann. B. R. The Queen v. Maddox.

But where one was indicted for using the Trade of a Grocer, and he offered to give Evidence of his having served 7 Years as an Apprentice, we held that the evidence was insufficient to make the offences Tantamount to Apprenticeship, as the Statute required him to have served as an Apprentice for 7 Years or 7 Times.

4. One Brother living with another at the Trade of a Tallow-Chandler for 7 Years, may set up the Trade, tho' there be no Indenture, and he is a good Apprentice within the Statute of Eliz. Per Eyres J. Comb. 234, 255. Patch. 6 W. & M. in B. R. The King v. Collier.

A Man that has forced an Apprentice beyond Sea, is thereby qualified to use a Trade in England. 1 Salk. 67. Patch. 11 W. 3. B. R. King v. Pen.

So it was resolved earlier, by the Court upon the 5th of Eliz. that forcing 5 Years to a Trade out of England and 2 in England was enough, and satisfied the Statute. But there must be a Service of a full Time either in England or out of England; Therefore serving 5 Years in a Country, where by the Law of the Country more is not required, will not qualify a Man to use the Trade in England. 10 Mod. 70. Mich. 10 Ann. B. R. The Queen v. Morgan.

6. A Wife living with her Husband 7 Years, may after his Death continue the Trade; for the Act does not require a Man or Woman to be an actual Apprentice; but the Words are tantamount an Apprentice. 10 Mod. 70. Mich. 10 Ann. B. R. The Queen v. Morgan.

If a Man lives with another that uses a Trade, which other is not qualified for using it, 7 Years, he may set up the Trade as well as if he had lived with one never so well qualified. 10 Mod. 70. The Queen v. Morgan.

(D) Service. In what Cases a Man may Use a Trade without Service &c.

But 12. Ann. 13. enables disbanded Soldiers to use such Trades as they are apt for in any Town or Place within the Countries where they were born. — At Common Law no Man was restrained from working at any lawful Trade, or using as many Arts and Mysteries as he pleased. 11 Rep. 54. Mich. 12 Jac. in the Taylors of Ipswich's Cafe. — Show. 266. Hobbs v. Young. 8 P. — Per Tirrel J. Cart. 115. cites Hob. 211. but says a Caution may restrain, and cites 43 Eliz. 5. 32. — Per Bridgman Ch. J. ibid. 120.
2. In an Information against T. for using a Trade different from that
unto which he had served an Apprenticeship, he pleaded a Custom in Lon-
don, that every Citizen and Freeman of London may buy and sell his Trade by
common Law or no; "ninth that the Statute of 5 Eliz. 4, which restrains it, was
lawful for every Man to use what Trade he would: For altho' he had not been Apprentice by the Space of 7 Years, it may be alleged and her
Allegation certifying it, was lawful for every Man to use what Trade he would: For altho' he had not been Apprentice by the Space of 7 Years, it may be alleged as being the Common Law of the Realm, that a Man might use any 'Trade at all; but he said, that the Custom is not that one brought up by Way of Custom in London, but it ought to have been the law as the Custom of the Realm; for that which is the Common Law of the Realm, is the Custom of the Realm. It was answered and agreed, that as this Custom was alleged in this Information, the Allegation of it was warrantable in the Law, and it may well be said to be a Custom be-
fore the Statute of 5 Eliz. 4. for first the Custom is restrained by a Citizen, Smith, Mercer and Freeman of London, so as he is not a Citizen and Freeman may be not enjoy the Benefit of this Custom; and it being restrictive of the Common Law, which gives Power unto all, as well Freeman as Citiz-
ens, to exercise what Trade they will, stands well in Custom and may well be alleged by Way of Custom. 2. This is alleged to be the Cu-
ustom of London, and so is tied to a particular Place; and Howsoever it may be the Common Law of the Realm in other Places, yet in London, which is for the most Part governed by their particular Custom, it may well be said a Custom, and to the Plea in Bar good enough as to this Exception. Calch. Rep. 15, 16, 17. Hill. 12. B. R. Allen v. Tolley.

3. Indictment for using the Trade of a Woolen-Draper at F. in Suffolk, Saund, 311. not having been Apprentice to that Trade for 7 Years; the Defendant pleaded the Patent of H. 3 to London, that every Citizen &c. hereafter should freely trade tam per Mare quam per Terram, and said that he was a Freeman of London, and for justly and traverised his using it Alter ver also Modo. Upon a Demurrer, the Court held the Traverse and also the Plea, because a Patent cannot be pleaded in Bar of the Statute; and tho' the Customs of London are confirmed by Parliament yet this Statute in-
tends to include all but their Custom concerning taking Apprentices, and not their Customs in general. And Judgment for the King. Sid. 427. Mich. 24 Car. 2. B. R. The King v. Kilderly.

and fillther. But this he did not mention in his Certificate, but generally that there is no such Custom as is pleaded. Cro. C. 561. pl. 1. Pritch. to Car. B. R. The King v. Baghaw — S. P. certified according by the Record r. with the Difference of Manual Trades and Trades of Buying and Sell-

4. 5 Eliz. is a Negative Statute, and no one shall exercise a Trade Show 266 against it until by Virtue of a Custom, As the Widows of Trade men, who are by custom carry on the Trades of their Husbands, which the Court held S. C. nor within the Statute. 2 Salk. 610. pl. 1. Trin. 3 W & M. B. R. Hobbs v. Young.

(F.) In
(E) In what Cases a Man may use several Trades. And what Trades.

1. A N Information was brought upon 5 Eliz. cap. 4. (for using the Trade of a Dyer, whereof he had not been an Apprentice) at the Quarter-Session in Southwark, and was removed by Certiorari and Traverse taken; and upon the Evidence it appeared, that the Defendant was a Feltmaker; and that the Feltmakers for the Space of 60 Years last past have used to dye Felts; And many Haberdashers deposited, that the Colours dyed by them was better than that which was coloured by the common Dyers. And it was adjudged by the Court, that that is part of their Trade of Feltmaker. And the Jury found accordingly for the Defendant. Noy 133. Hunter v. Moore.

2. He that uses one Trade can't use the Trade of another for or about the same Commodity used in his own Trade; as a Coachmaker can't make the Wheels of his own Coaches; a Wheelwright can't use the Trade of a Smith. Per Holt Ch. J. Show. 267. Trin. 3 W. 3. E. R. Hobbs. v. Young.

3. A Comb-maker press'd and Smooths Hanks for his own Use in his Trade, this was held at the Affairs to be within the Statute 5 Eliz. and the Counsel were well satisfied with the Judgment. Cited by Holt Ch. J. Comb. 180. Trin. 3 W. and M. in B. R. in the Cafe of Hobbs v. Young.

4. A Man is a Mercer and he sells Hats, and the Party is Apprentice to him as Mercer, he may use the Trade of a Hatter (in the Petty Towns it is usual) because he served him who did so. Show. 242. Arg. in Cafe of Hobbs v. Young cites it as a Shrewsbury Cafe of Rotherham v. Morris.


(F) In what Cases Securities given in Restriction of Trade are good.

1. 23 H. 8. N O Master, Wardens &c. shall cause any Apprentice or Journeyman, by Oath or Bond, or otherwise, that he after his Term expired shall not set up nor keep any Shop, House or Cellar, nor occupy as a Freeman without Licence of the Master, Wardens &c. nor take of any such Apprentice or Journeyman, nor any other occupying for themselves, nor of any other Persons for them after their Years expired, any Money or other Things for their Freedom or Occupation otherwise than is appointed in the Act 22 Hen. 8. cap. 4. upon Pain to forfeit 20 l. the one half to the King &c. and the other half to the Party that will sue &c.

2. N. bound himself Apprentice to a Mercer at Nottingham and after the Master took Bond of him not to exercise his Craft in 4 Years in Nottingham.
Trade.

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ingram. In Debt upon the Bond, it was held that the Action is not maintainable. No. 115. pl. 259. Patch. 20 Eliz. Anon.

3. A Bond condition'd that the Obligor should not exercise the Trade of a Blacksmith in South-Mims in Surrey, was held void by all the Justices; and the Condition is against the Necessity of the Commonwealth in some Place within the Realm. No. 342. pl. 379. Mich. 29 Eliz., that the Bond was void and against Law. — 5 Le. 21st. pl. 288. Mich. 37 Eliz. S. C. in the same Words—But as was observed by Sir Bartholomew Shower in his Argument in the Case of the Taylors of Exeterc. Clarke. 2. Show. 572: this was an Extra-judicial Opinion.

4. In Debt upon a Bond of 30l. the Condition was, that if R. B. Cro E 8-2. Son to the Defendant, did use the Trade of Haberdasher, as Journeyman, Servant, or Apprentice, or as a Master, within the County of Kent, within the Cities of Canterbury and Rochester, within 4 Years after the Date of the Bond, he should pay 20l. upon Demand, to the Plaintiff, this being the Prohibition to be absolute, not to exercise the Trade, but that if he exercise it he shall pay 20l. and so was paid to differ from the Case of 2 H. 5. 36. and the Court said it was an one; for he ought not to be abridg'd of his Trade and Living.—S. C. cited Nov. 17. in Case of the Appeal of the Plaintiff v. Horse, by the Name of Claygate v. Batchelor.—S. C. cited All. 6; Trin. 24 Car. B. R. in Case of Charley v. Coll. and agreed by Roll Ch. J. for Law; but said, that if there was a Confideration for the Retract, as the taking off braided Ware, such Bond or Promiss is good; and so it was adjudged in Edward's Case, upon a Writ of Error out of Bridgenorth. But a Refrain General throughout England is void, notwithstanding a Confideration.

5. The Defendant, in Consideration of so much by him paid to the Plaintiff, promised not to exercise the Trade of a Journeyman to the Plaintiff, nor to use the same as a House to him demised for 21 Years, durante Termiino præstii. All the Wms's Reps Court agreed clearly, that as this Case here is, for a Time certain, and 186. in Case of a Man may be bound and refrain'd from using of Matter of his Trade; and so, by the whole Court, here is a good Breach of Promiss align'd, which well inticles the Plaintiff to his Action, and that the Declaration is good. And so, by the Rule of the Court, Judgment was given, and so entered for the Plaintiff. 2. Build. 136. Mich. made upon a good and adequate Consideration, so as to make it a proper and useful Consideration, it is good. Tho' he said, that the Lay. Rep. reported, as appears by the Roll, which he had caugh to be fear'd; for it is B. R. Trin. 11 Jac. 1. Rot. 227: And said, that the Resoloutio of the Judges was not grounded upon its being a particular Retract, but upon its being a particular Retract with a Consideration; and the Streis on the Words, as the Case is here; tho' as they stand in the Book they do not item material.


7. In Affirmptive Plaintiff declared, that the Defendant was a Mercer, and kept a Shop in N. and had his Shop furnish'd with old sail'd Wares; and the Plaintiff had a Shop there furnish'd with new and fresh Wares; and in Consideration the Plaintiff would buy his Wares, and pay for them such the Ex-

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Prices as he paid when he first bought them, the Defendant promised he would no longer keep any shop at N. and alleged he bought the Defendant's Wares, and paid 300 l. for them, the Price the Defendant bought them at, whereas the Wares were then not worth 100 l. and yet the Defendant, contrary to his Promise, kept his Shop there, and furnished it with new Wares &c. to the Plaintiff's Damage 500 l. On a Verdict for the Plaintiff it was said, that this Promise being to refrain Trade, was against Law; but all, except Haughton J. held the Affirmation good; for that it is voluntary, and a Man upon a valuable Consideration may refrain himself from using his Trade in such a particular Place; and it is usual in London for one to let his Shop and Wares to his Servant when out of his Apprenticeship; as also to covenant not to use that Trade in such a Shop or Street; so for a valuable Consideration, and voluntarily, one may agree that he will not use his Trade; tor Volenti non fit Injuria.


S. C. but the Cause was first in C. B. and the Judgment then affirmed in B. R. by Mountague Ch. J. Doderidge, and Chamberlain J. but Haughton contra.——Mar. 12. pl. 121. Trin. 16 Car. C. B. S. P. cited by Littleton Ch. J. to have been adjudged in B. R. which seems to mean this Case; but that if one be bound that he will not use his Trade, it is no good Bond.——Noy 98 Jullit v. Broad. S. C. resolved, that the Action well lies; for it was a voluntary Promise for a good Consideration, and is restrained to a Place; otherwise it had been a general Retraint, or upon a Co-action, without Consideration.

8. In Debt against a Surety in a Bond to perform Covenants, one of which was not to set up a Trade in Cieffer. To which the Defendant demurred, because void, being Encouragement of Ideniefs and the Defendant's being a Surety does not alter the Cafe. Windham said, that an Apprentice might be bound on this Condition, as Hall v. Dawes, 9 Car. 1. when the * original Taking and Instruction is on these Terms. But he doubted this Case; for he said, to oblige a Lawyer not to give Council to any Man in Salisbury was held void by Jones; and the Court inclined it was void here; but adjourned. 2 Keb. 377. pl. 35. Trin. 20 Car. 2. B. R. Ferby v. Arrowmyth.


2 Show. 345. pl. 535. Patch. 36 Car. 2. B. R. the Taylors of Goffe. S. C. Citred, in B. R. states it, that the Condition of the Bond was to pay 20 l. within a Month after he shall use the Trade of a Taylor in Exeter, otherwise than as a Journey.

9. A. in Consideration that B. would marry her Daughter, promised, inter alia, to assign over her Shop in Bazingsague to B. and that he would not use her Trade in Bazingsague any longer. Upon an Action brought, the Plaintiff had a Verdict and Judgment in C. B. and now that Judgment was affirmed in B. R. Allen 67. Trin. 24 Car. 2. B. R. Pragnell v. Goffe.

10. Debt on a Bond conditioned not to use the Trade of a Taylor in Exeter, the Defendant pleaded that he was an expert Taylor, and skilful in that Art; and that the Plaintiff, pretending that no one, who was not a Member of the Company of Taylors there, ought to use that Trade there, did many Ways vex and trouble the Defendant, which to get clear of, he gave this Bond, which is against Law, and void; the Plaintiff replied that the Defendant feald and deliver'd the said Bond as his Deed. And it was adjudged in B. R. that the Bond, being only to refrain Trade in a particular Place, was good. Whereupon Error was brought in the Exchequer-Chamber, and this Judgment was reversed, and the Bond held void. But an Affirmation, upon a good Consideration not to use a Trade in a particular Place, they held would be good; because in such Cafe, Damages only being to be recover'd, the Jury may affles the same, having Respect to the Consideration upon which the Promise was made. But in this Cafe all the Penalty is forfeited, be the Consideration what it will, and tho' the Offence be never so little; and such Promises upon good Considerations have always been allow'd in such Cafes, because the Jury may try of what Value the Consideration was, and what

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Damage the Use of the Trade is to the Party to whom the Promise was made; and if he leave the Town on 45 Days Notice, then Geo. Clerk v. Taylors of Exeter, judge, that the Bond was good. But at the End of the Case, p. 254, says, that in the Exchequer-Chamber the Bond was held void, and the Difference between a Bond and Affimipit agreed, because of the Confirmation, without any regard to the Confirmation implied in Law, upon sealing and executing the Bond; and to the Judgment was reversed.

11. A Bond recited, That whereas the Defendant had assigned to the Plaintiff a Lease of a House and Bake-house, in such a Parish, for the Term of 5 Years. Now if the Defendant should not exercise the Trade of a Baker within that Parish, during the said Term; or, in Case he did, should within 3 Days after Proof thereof, pay to the Plaintiff the Sum of 50 l., the Court were all of Opinion, (as the fame was deliver'd by Parker Ch. J.) that a special Confirmation being set forth in the Condition, which shews it was reasonable for the Parties to enter into it, the fame is good; and that the true Distinction, in this Case, is not between Promises and Bonds, but between Contracts with or without Confirmation, and that wherever a sufficient Confirmation appears to make it a proper and useful Contract, and such as cannot be set aside without Injury to a fair Contractor, it ought to be maintain'd; but with this constant Diversity, viz. where the Restrain is a general, not to exercise a Trade throughout the Kingdom, and where it is limited to a particular Place; for the former of these must be void, being of no Benefit to either Party, and only oppressive. Wms.'s Rep. 191, 182. pl. 44. Hill. &c. 1711. Mitchell v. Reynolds. The Restraint must be upon good Consideration, and the Balance of it must apparently tend to the Damage of the Oblige, or otherwise the Restraint is void, tho' for a particular Place. Per Ld. Ch. J. Parker, in delivering the Judgment of the Court. Wms.'s Rep. 183. Mitchel v. Reynolds. In Debt by A. against E. on Bond of 100 l. condition'd, that whereas A. at the special Request of E. is to take E. into her Shop for her Servant, to attend in her Shop, and inspect her Customers, and to assist A. in her Trade of a Linnen-Draper. And whereas the said A. consents to hire and take the said E. upon her express Agreement, that after her leaving A.'s Service she will not exercise such Trade, either by herself or any other, directly or indirectly, in any Shop, Room, or Place, within half a Mile of A.'s now Dwelling-house in Drury-Lane, or other House she may remove to; nor shall assist any other Person to carry on such Trade &c. which Agreement is the sole Consideration of A.'s taking the said E. into her Service. The Breach allign'd was for assisting J. S. in carrying on the said Trade within half a Mile of A.'s House in Drury-Lane, and Verdict and Judgment for the Plaintiff, and afterwards affirmed in B. R. and afterwards in the House of Lords, with the unanimous Opinion of all the 12 Judges, and with 40 l. Costs. 2 Ld. Raym. Rep. 1456. Hill. 13 Geo. 1. Chefmam v. Nainby. An Action was brought on Articles, by which the Defendant agreed not to exercise a certain Trade within the Weekly Bills of Mortality. Judgment was given for the Plaintiff. And in Error brought it was said, that such Agreement was determin'd to be good in the Case of Talbot v. Lamper, Hill. 13 Geo. 1. and likewise in the Case of Mitchell v. Reynolds; for which Reason the Court affirmed the Judgment directly. 2 Barnard. Rep. in B. R. 463. Trim. 7 Geo. 2. Clerk v. Crot. (G) Retrain'd.
(G) (G) Refrain'd. By Charter, Custom, or By-Laws.

1. 1 & 2 P. E Nacts, That no Person dwelling out of any City, Borough, Corporate, or Market-Town, shall sell by Retail any Woolen or Linnen Cloth, Haberdashery Wares, Grocery or Mercury Wares, within any of the said Cities, Towns Corporate, or Market-Towns, or Liberties of the same, except in open Fairs, or on Pain of 6 s. 8 d. for every Offence, and the Forfeiture of all Wares so offered to be sold, one Moity to the Crown, and the other to the Prosecutor, to be recovered in any of their Majesties Courts of Record.

Provided, that this do not extend to any such Wares to be sold by Wholesale.

Provided also, that every Freeman in such Town Corporate, or Market-Towns, dwelling within the same, may sell the said Wares by Retail as before.

Provided also, that all Persons may sell by Retail, or otherwise, all Manner of Cloth, Linnen or Woolen, of their own making, in every such Town Corporate or Market-Town as before.

This Act shall not be prejudicial to the Privileges of the Universities of Cambridge and Oxford.

2. Upon a Return, that the Custom of London was, That no Person not being free of the City, shall, directly or indirectly, either by himself or any other, keep any Shop inward or outward, for putting to Sale any Wares &c. by Way of Retail, or use any Art, Trade, Mystery, or Handicraft, for Hire, Gain, or Sale, within the City, upon Pain of Forfeiture of 5 l. it was resolved this was good by Way of Custom, but not by Way of Charter or Grant to the City; and therefore no Corporations made within Time of Memory can have such Privilege, unless by Act of Parliament. 8 Rep. 124. b. 125. a. Hill. 7 Jac. The City of London's Cafe.

3. One found guilty of having us'd the Trade of a working Jeweller, and a working Jeweller, not having serv'd as an Apprentice to the Trade, was committed in London; and being brought into B. R. it was flown for Caufe why a Procedendo should not be granted. That the Declaration is founded on a By-Law founded on a Custom; and that it either be not in all Parts good, the Declaration is naught; and here the Custom is certified in the Negative, and is contradictory, and that the By-Law certified is uncertain and unreasonable; for every Stroke the Defendant strikes is using his Trade, and to pay 5 l. for every Stroke is unreasonable. And, That the Declaration is not applied to the By-Law, because doing a Thing one Day is not a Using to do it, and the Words Doresis Vivicius do not help it; nor is it said that he gain'd his Living by the Trade or Sale of the Commodity wrought, and the Words pro Lucro & Proprio do not help it; for perhaps he uses it to his private Use, which is to his Profit, tho' he sells it not. And that it is unreasonable a Stranger be restrained by a By-Law made 40 Years ago, whereas he had no Notice, and yet punish him for doing what the Common Law allows, viz. the getting his own Living. Besides, it is said Non exsistent Liber Homo ulius of Arte &c. which is uncertain; for to every Apprentice may be punished, he not being Liber Homo. The other Side cited 5 E. 3. that a Negative with
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with an Affirmative implied, is good, and that it is exclusive of Strangers, and inclusive of Citizens, and that the Officer, and not the Time of using the Trade, is the Matter; and as to the Apprentice, he uses not the Trade for himself but his Master’s Benefit. The Court directed Books, &c. adjournatur. Sty. 226. Trin. 1650. B. R. London (City) v. De-reoy.

4. In Case, the Plaintiff declared of a Custom in Derby, that every Butcher in Derby having served an Apprenticeship for 7 Years, might use that Trade oblique Damnum alterius, vel ab altero; but that the Defendant not being a Freeman, nor having served an Apprenticeship, sold Flesh in Derby on such a Day, not being a Market-day, by Reason whereof the Plaintiff could not sell so much as otherwise he might, ad Damnum &c. The Defendant demurred, because the Custom is not had * positivè, but only potentially, (viz.) that he might use that Trade; besides, there is no By-Law to restrain Foreigners, and without a By-Law, or a Custom, any Foreigner may sell in Market-Towns, except on the Market-days. And as to the Declaration that he sold Flesh, it is not sufficient; for it may be a Horse or a Dog. And upon these Exceptions Judgment was given for the Defendant. Lev. 262. Hill. 20 & 21 Car. 2. B. R. Wilnout v. Nixon.


6. Restrains of Trades by By-Laws are 3 several Ways. 1st. To exclude Foreigners, and this is good, it only to enforce a precedent Custom by a Penalty; Per Parker Ch. 1. in delivering the Opinion of the Court; and cited Cart 68. 14. and 3 Rep. 125. But that where there is no precedent Custom, such By-Law is void; and cited 1 Roll. Abr. 364. Hob. 210. 1 bullit. 11. and 3 Keb. 808. But said that the Case in 3 Keb. is misreported; for there the Defendants did not plead a Custom to exclude Foreigners, but only to make By-Laws generally, which was the Ground of the Reformation in that Case. 2dly. All By-Laws made to restrain Trade, in order to the better Government and Regulation of it, are good in some Cales, viz. if they are for the Benefit of the Place, and to avoid Publick Inconveniences, Nutances &c. or for the Advantage of the Trade and Improvement of the Commodity; and for this cited Sid. 284. Raym. 285. 2 Keb. 27. 573. and 5 Rep. 62. Wms’s Rep. 184. Hill. 1711. B. R. Mitchell v. Reynolds.

(H) Proceedings and Pleadings.

See (D) pl. 5.

1 In Information for using the Trade of a Goldsmith, not having been Apprentice to that Trade; the Defendant pleaded the Custom of London, that one having been an Apprentice there for 7 Years, and made a Freeman of London of any Trade, may use any other Trade in that City; and then pleads that he serv’d an Apprenticeship 7 Years in the Art of a Cordwainer, and was made a Freeman of London, and so justified. Upon Demurrer it was objected to the Plea, because it was “Quod uti pollit any other Trade; and not Quod ubi facit.” It was answered, That this being alleged by Way of Custom in the City, and not a particular Prescription, it was well enough; and to that Opinion the Court inclined. Cro. C. 347. pl. 9. Hill. 9 Car. B. R. The King v. Baghaw.

and that it may be good in Evidence, yet it is not so in a Return. And he said that all Customs ought to be alleged in Facto—See (D) pl. 2.

* See (G) pl. 4.

4 P
2. In Action for Statute 5 Eliz. for using the Trade of a Grocer, the Defendant pleads a former Act depending in the Exchequer in Bar, which should be in Abatement; Et per Curiam no Respondens outier, but absolute Judgment for the Plaintiff as on Plea in Bar. 2 Keb 716. pl. 102. Mich. 22 Car. 2. B. R. Smith v. Poyner.

3. Debt upon the Stat. of 5 Eliz. for using the Trade of making Charles Piets, Anglice, Playing Cards, from the 23d of February till the 23rd of January following, viz. Per duodecim menses integras, not having serv'd his Time for 7 Years. After Verdict it was moved in Arrêt of Judgment, that the Computation here is by Kalender Months, whereas by the Statute it must be by Lunar Months; and for this was cited the Case of the King's Stowbridge, Mich. 6 W. 3. And if this should be continued, that it used it for the Time mentioned here, he must have used it for 11 Lunar Months of Necessity, then it will be uncertain when they will begin the Computation, and the Defendant may be again charg'd for Part of the Time for which this Recovery now is, and cannot plead this Recovery in Bar; and the right Way had been to say, that from such a Day Per duodecim menses prox' frequent he used it. And per Cur. it would be fatal, but is help'd by the Verdict's finding him guilty of 2 [12] Lunar Months next after the 23d of February. And if a Man use a Trade 14 Days in one Month, and then ceases, and uses again 14 Days in the next Month, he is not punishable by the Statute. 12 Mod. 641. Hill. 13 W. 3. B. R. Stretchpoint v. Savage.

It was agreed that such Custom in London might be, good, because there Customs are confirmed by many Acts of Parliament; but it was doubted if such Custom was good in any other City or Borough. But it was agreed per tot. Cur. That the Declaration was naught; for Non conflat the Corporation has any Guild Mercatoria; nor does it appear who the Homines Liberi de Gilda Mercatoria are, so as they may be the whole Corporation, or some Part of them; and anciently the King's Grant to have Guillem Mercatoriam, made them all a Corporation, viz. all the whole Vill. 3 Salk. 349. S. C. — 2 Ld. Raym. Rep. 1129. S. C. argued by Counsel, and spoke to by the Court; And Holc Ch. J. said, he would give Judgment for the Plaintiff if he could tell why; but Judgment was entered Quod sententes nil capiant per Billam, upon the Exceptions to the Declaration. —— 6 Mod. 21. Mich. 22 Ann. S. C fays, Note this Action was not grounded on any By-Law, nor for any Penalty. And Holc Ch. J. said, It was a Point not determined whether such a Custom was good, tho' many Corporations did pretend to it; and that some Corporations pretended a Right by Custom to exclude Foreigners, but he thought they could not support it. And the Reporter fays, that in Patch. 4 Ann. Judgment was Iay'd upon Pauls in the Declaration; and the Court declined saying any Thing upon the Merits, which, they said, was a Question of great Consequence.

(I) For-
(I) Forfeitures for using a Trade by 5 Eliz. 4.

1. 5 Eliz. 

Provided that the Forfeitures mentioned in this Statute (except those otherwise limited) shall be divided between the Queen and the Procurator; and all Justices of Peace, or any two of them, (1 Quor.) and every Head-Officer, shall have Power to hear and determine the Breach of this Statute, upon Indictment or otherwise, and to award Proceeds and Execution accordingly, and shall yearly in Michaelmas Term by Effray certify into the Exchequer the Fines which accrue upon this Statute, in Manner as they ought to do in other Causes.

S. 45. Provided that all Manner of Amercements, Fines, Issues, and Forfeitures which shall arise &c. by Reason of any Offences or Defaults mentioned in this Act, within any City or Town Corporate, shall be levied, gathered, and received by such Persons or Persons of the same City or Town Corporate, as shall be appointed by the Mayor or other Head-Officers mentioned in this Act, to the Use and Maintenance of the same City or Town Corporate, in such Cases and Conditions as may Manner of other Amercements, Fines, Issues, or Forfeitures, have been used to be levied and employed within the same City or Town Corporate, by Reason of any Grant or Charter Party from the Queen's Majesty that now is, or of any of her Grace's noble Procurators, made and granted to the same City, Burrough, or Town Corporate, any Thing or Clause in this Act to the contrary notwithstanding.

(II) Indictments, or Informations, as to using Trades.

1. Information Qui tam on 5 Eliz. 4, because the Defendant at S. the 8 Rep. 129. 11th December 3 Jac. and continually after till 12 Nov. 4 Jac. (which was until the Day of the Information) for the Space of 11 Months, and more, exercised and occupied the Art and Occupation of a Brewer, being an Occupation used within the Realm 12 Jan. 5 Eliz. ubi of London, revera, he did not exercise the said Trade the 12 Jan. 5 Eliz. nor was ever brought up for 7 Years, as an Apprentice in the said Art, conform Statuti &c. The Defendant pleaded Not guilty, and found against him; and after Verdict moved in Arrest of Judgment, first, that the Art of a Brewer is not such a Trade; the using whereof is prohibited by the Statute; Sed non Allocatur; for by the express Words of the Statute,
Trade.

2. An Indictment on the Statute, for using a Trade not being Apprentice 7 Years; but it was qual'd, because it did not set forth that it was a Trade us'd at the Time of the Statute; for the Court doth not take Cognizance of that, and the Statute says (Trade at this Time lawfully used.) Palm. 528. Pach. 4 Car. 2 B. R. Anne Stafford’s Cafe.

T. was inferior for exercising the Trade of a Mercer, not having been an Apprentice; Exception was taken, that it is said that it was a Trade 14 Feb. 5 Eliz. whereas the Parliament began 12 Feb. But the Court held it well enough, and it might have been omitted that it was a Trade 5 Eliz. for that Exception is worn out. Comb. 2 B. R. Trin. 6 W. & M. in B. R. The King and Queen v. Tall.

2. But 2 Silk. 4. pl. 2. 1648, is a good Exception that it is not aver'd in the Indictment, that the Trade therein mentioned was a Staple Trade at the Time of making the Statute. Trin. 4 Ann. B. R. The Queen v. Harper.—And the Time Term between The Quire and Cornhill, it was moved to quash an Indictment for using the Trade of a Draper, not having served as Apprentice; and the Court refused, because it was set forth in the Indictment as a Trade in England at the Time of making the Act; where

the Words are, Any Court, any Trade, or Occupation in use. So that if this Trade of a Beamalder be not within the Act, the Defendant would have the Advantage of it upon the Trial. Ibid. 2—2 L. R. Ryn. rep. 1188. 1189. in Case of The Quire v. Sharpe, cites S. C. accordingly; and the Court refused to quash the Indictment, because they said they could not take Notice what was, or what was not, a Trade within the Statute.

It was moved to quash an Indictment, for exercising the Trade of a Baker, the Defendant not having served a legal Apprenticeship. The Exception took to it was, that the Trade was not laid to be used inf. Rege Regnant. Anno. at the Time of the Act. The Court said the Trade of a Baker was within the Words of the Act; and no Averment of the Trade's being used at the Time of the Act is necessary, but where the Trade only falls within the general Conclusion of the Clause at last. Barnard Rep. in B. R. 277. Hill. 3 Geo. 2. The King v. Munroe.

3. Information for using the Trade of a Draper in Norwich, was qual'd, because it was not aver'd that he did not use the same Trade at the Time when the Statute was made. Hard. 54. Arg. in the Case of Dapper v. Darlence, cites it as adjudg'd Mich. 22 Car. Johnson v. Wilmeridion.

Years Apprenticeship, contrary to 5 Eliz. and does not say he did not use the Trade at the Time of making the Act; and it was qual'd, but agreed and declared by all the Court, that this Exception should never be allowed for the future; and now they would intend that no Man did use that Trade at that Time. 2 Show. 212. 211. pl. 218. Trin. 54 Car. 2 B. R. The King v. Green.

4. An Alien was indicted for using a Trade upon the Statute 22 H. 8. cap. 13. But the Indictment was qual'd, because it was not set forth that he was born out of the Power of the Commonwealth, but only that he was born out of England; but Roll Ch. J. said, if it lays that he is alien genius, it implies all. 2dly, The Indictment did not say that he is an Alien born out of

S. P. Keb. 84. pl. 83. Hill. 14 & 15 Car. 2. 6 R. The King v. Hoppin. The Indictment was qual'd for this Reason. See 2 Barnard Rep. 147. The Case of The King v. Chingbour, cited in the Case of The King v. Britton.
of England; and this was held a good Exception. Syr. 256. Pach. 1651. 
Hamman v. Jacob.

5. An Indictment upon the Statute 5 Eliz. for using the Trade of a Draper, not having served as an Apprentice &c. was quashed, because it was laid, that he used the Trade in the Year 1632, and did not say, in the Year of our Lord. Style 448. Pach. 1655. B. R. Anon.

6. Indictment on 5 Eliz. 4. for using the Trade of a Carrier, not saying that he had not served in any Art, Mystery, or manual Occupation; but only that he had not served as a Carrier for 7 Years; which the Court conceived ill, and quashed. Keb. 473. pl. 88. Hill. 14 & 15 Car. 2. B. R. the King v. Hubbard.

7. It was moved to quash an Indictment on 5 Eliz. for using the Trade of a Hoifer, in which he had not been educated, according to the Form of the Statute, (not saying, at Apprentices) and a good Exception; per Cur. And the Indictment was quashed. Keb. 558. pl. 80. Trin. 15 Car. 2. B. R. the King v. Harlow.

8. Exception was taken to an Information by Common Informer, for exercising the Trade of a Barber, not saying he set up publicly; Sed non allocatur, the Statute being in the Disjunctive. 2. It is not laid contrary to, Sed per Curiam, that is never done in Suit by common Informer; and if the Defendant did not set up publicly, he may be found Not Guilty. Keb. 562. pl. 79. Hill. 16 & 17 Car. 2. B. R. .... v. Corny. 5th Year.

9. Exception was taken to an Indictment on 5 Eliz. 4. being before Indictment for using the Trade of a Barber was quashed, and do not say * Domino Regis, Sed non allocatur. 2. It was for using the Trade of Mercator, Angl. a Merchant; Sed non allocatur. 3. It was not said where they were justices, for which exception, Cause it was quashed. Per Twifden, the reit being absent. 2 Keb. 385. pl. 58. Trin. 20 Car. 2. B. R. the King v. Lambe.

10. Moved to quash an Indictment upon 5 Eliz. cap. 2. for exercising Vent. 2. a Trade in Cheesemong in Hertfordshire, not having been an Apprentice to the Statute, it for 7 Years, because the Statute lays, they shall proceed at the Quarter Sessions, and the Word Quarter is not in the Indictment, Twifden, That to that Word ought to be in; and I believe the using of a Trade in a Country Village, as this is, is not within the Statute. Moreton accords. Rainstord said, It will be very prejudicial to Corporations not to extend the Statute to Villages. Twifden said he had heard all the Judges say, that they will never extend that Statute further than they needs must. Obj. the Statute, further; that there wanted these Words, viz. * Ad tune & habebi onus et juri; for which all the 3 Judges, Keeley being absent, conceived it ought to be quashed. 1 Mod. 26. pl. 69. Mich. 21 Car. 2. B. R. the King v. Turnith.
11. Upon a Motion for quasing an Indictment against a Baker, the Exceptions were taken. 1. He is indicted for using Facultates Physicorum, and does not say Panis communis. 2dly, It is for baking Panis tritici, Ariglice, Flatbread Bread; whereas it signifies only Bread made of Wheat, and not Household Bread, for that may be made of other Corn. 3dly, For baking Panis Alis, without a Dish for Panis Alisfe. Upon these Exceptions it was quashed. Styl. 24. Pach. 23 Car. Anon.

12. B. was indicted for using the Art of a Brazier, contra 5 Eliz. cap. 4, for averting it a Trade then, and abi revoca he had not forced 7 Years, according to the ancient Custom in the Town of Nottingham. After Verdict this was excepted to in Arreirt of Judgment; and per Curiam, it is ill both in the Averment, and also in drawing the Necellicity of Service to a particular Town; whereas it should be, that he had not served generally any where. 3 Keb. 550. pl. 35. Mich. 27 Car. 2. B. R. the King v. Boot.

An Indictment for exercising a Trade, not having served to it the Space of 7 Years, inde Resumum Alisfe ant Alisfe was quashed for this Exception, for it should be and William. 12 Mod. 251. Mich. 10 W. 3. B. R. King v. Fox.

13. Indictment for using a Trade, not having forced 7 Years Apprenticeship in England, or Dominion of Wales, was held naught; because limited to England or Wales, when the Statute is general. 2 Show. 155. pl. 141. Hill. 32 & 33 Car. 2. B. R. Anon.

S. C. & S. P. cited Ld. Raym. Rep. 1189 accordingly, that they could not understand what a Merchant-Taylor is, and that there was no such Trade. And the Reporter says further, that it seems to him that what a Craft, Mistery, or Occupation is, is Matter of Law.

15. Two cannot be indicted jointly for exercising a Trade, not having been Apprentices, because the not being Apprentices is that which makes the Crime and Forfeiture, and that must of necessity be severall. 1 Salk. 382. pl. 32. Pach. 5 Annoz, in Cade of the Queen v. Atkinson, cited and admitted the Cafe in 2 Roll. 81. [Indictment (N) pl. 6. Brooke's Cafe.]

16. Bason and Feme could not be indicted for exeercising a Trade, not being qualified, because it is the Exercis of the Husband. If the Wife be qualified, that qualifies the Husband, but still it is the Exercis of the Husband. 2 Ld. Raym. 1248. Eait. 3 Ann. Per Holt Ch. J. in the Cade of the Queen v. Atkinson, &c.

17. It was moved to quash an Indictment against a Surgeon-maker for dying his own Serges, he not having served as an Apprentice to the Dying Trade; for that it was not said in the Indictment, that he was a common Dyer, and that he might lawfully dye his own Wood. And it was laid to be so adjudged in a Cafe where, because it was not laid a Common Baker, it was held ill; for any Man may bake for himself, and to he may dye &c. But the Court held the Indictment well enough, being not like the Cafe of a Baker, for many People bake their own Bread; but a Dyer is a separate Trade. 11 Mod. 189, 190. pl. 4. Mich. 7 Ann. B. R. the Queen v. Prew.
18. An Indictment for using the Trade of a Salter was excepted to, because it said that the Trade was "infra locum Regnum Angliae at the Time of the Act," whereas there is now no such Kingdom. It was argued on the other side, that this being a Trade expressly declared within the Act to be used at the Time of the Act, the Clause of "infra locum Regnum" shall be rejected as surplusage; but adjudged. 2 Barnard. Rep. 1 B. R. 147. Patch. 4 Geo. 2. 1755. The King v. Britton. — Ibid. 172. Trin. 5 Geo. 2. S. C. The Court thought it to clear a Point against the Prosecutor, that they immediately gave judgment for the Defendant. And Lee J. said that the Case of the Queen v. Robinson, Trin. 13 Ann. was the first determined on this Point after the Union. — In arguing this Case ibid. 147 for the Defendant were cited the Cases of The Queen v. Robinson, Easter 1714, and The King v. King, Trin. 9 Geo. 1, and The King v. Paris, determined on the Case of The King v. Bag, and the Case of The King v. Windegrove, Hill. 3 Geo. 2.

19. An Exception taken was, That the Indictment was in the Borough of Colchester, and no County laid wherein that Borough is. And 2dly, that the Indictment only charges in general, that the Defendant exercised this Trade the first Year of the present King, without paying in what Month of the Year it was. Now he said, the Act of Parliament gives to much a Month Porticure for the Time the Offence is committed, and therefore it was material for the Indictment to have charged how many Months the Defendant exercised it. The Court laid the first Exception was clearly fatal, and therefore made the Rule absolute. Barnard. Rep. in B. R. 285. Hill. 3 Geo. 2. the King v. Kendal.

20. Indictment on the 5 Eliz. for exercising a Trade &c. It was seen the moved in Arrest of Judgment, that it does not appear when or where the King v. Turnith, pl. juryn were secur'd; For the Caption of the Indictment is Juratores pro Domino Regis juravit pro &c. omitting the Words autem & ibid. Hereupon Judgment was arrested. Gibb. 266. pl. 11. Patch. 4 Geo. 2 B. R. The King v. Morris.

For more of Trade in General, see Actions tan quam &c. Appren-
tices By-Laws, Trade and Navigation, and the References there, and other proper Titles.

Trade and Navigation.

(A) Cases relating to Trade and Navigation.

1. If a Ship freighted for a Voyage be made Use of for a longer Voyage, or for several Voyages in one, there be no Prize against it, and the Ship infers any Damage in the Voyage not allowed of, the Damage shall be equally paid. Mige's Laws of Wisby 15. S. 11.
Trade and Navigation.

lost, and they shall be discharged against the other. If one dislike the Voyage and doth not expressly
refuse navigating the Ship, and the Ship goes the Voyage and is lost, in such Case he shall not be aw-
tered his Part; But if the Ship return, he shall have an Account for what is earned, and it shall be
intended a Voyage with his Consent, without any express Prohibition proved. As if 4 are Tenants in
Common of Land, and one or more flock the Land and manage it, the rent shall have an Account of
the Profits; But if a Lost com, as if the Sheep &c. die, they shall bear a Part. Per North Ld.
Winston S. C. accordingly. For Qui rentit Commodum lente debet & Cae.

2. If there be several Owners of a Ship and they fall out, the Ship not-withstanding this Variance may make one Voyage upon their common Charge and Adventure before they shall be so much as heard to dissolve the
Partnership; but it after that they cannot agree, he who desires to be free
is to offer to the Rest his Part at a Price as he will either give or take,
which if he will not do, and yet refuses to sell the Ship forthwith, the
Rest may rig the Ship at their own Charge and upon the Adventure of the
Reliever to far as his Part extends, without any Account to be made to him
of any Part of the Profit at her Return. But they must bring her home
safe or answer him the Value of his Part. Molloy, lib. 3. S. 14. cites Lex
Mercatoria, 120, 121.

3. But if the Partners who have the greatest Share of the Ship refuse
continued the Partnership with one who hath but one Part or a small Share
therein, and who cannot without great Losses fall or part therewith at the
Price set nor is able to buy their Parts, then they must all put the Ship to
an Appraisement, and if dispose of her by Sale or letting forth on the
Voyage according to such Appraisement. Molloy, lib. 3. S. 14 cites Lex
Mercatoria, 120, 121.

4. No Subject ought to trade within any Realm of Infidels without Li-
cence of the King, because he may turn Infidel. Per Coke Ch. J. and
says, he had seen a Licence in E. 3's Time, reciting that he having spec-
ial Trust and Confidence that his Subject will not decline from his
C. B. Michelborn v. Michelborn.

5. In an Information the Cae was that the Ruffes Company was incor-
porated in 1 and 2 Ph. and Mar. and it was granted to them, that no Per-
son not being of their Company should trade therin without their Leave, un-
der the Penalty of forfetting Ship and Goods; Afterwards by Act of Par-
liament 8 Eliz. those Letters Patents were confirmed, and it was enacted,
that no Person Subject or other, should trade therin without their Leave. The
Question was, Whether a Person free of their Company might trade therin
without their Leave. The Court inclined to be of Opinion that he could
not; For the great Inconvenience was the single and separate Trade of
thofe of the Company, and not of Foreigners who could not trade without Leave of the Company, and the Act is sincere Act of Cre-
ation and to regulate thofe of the Company who trade separately to the Preju-
dice of the Joint-Stock; And if it was an Act of Confirmation, it would
be void because the Letters Patents themselves are void, being to appro-
priate a Trade, which the King cannot do by Law. Hard. 108.

6. In Cafe the Plaintiff declared that he was Owner of one 16th Part
and the Defendant of another 16th Part of the fame Ship, and that the
Defendant fraudulently and deceitfully carried the said Ship ad hoc trans-
marina, and disposed of her to his own Use, by which the Plaintiff lost his
16th Part to his Damage; on Not Guilty pleaded and Verdict for the
Plaintiff, it was moved in Arret of Judgment that the Action did not
lie; for tho' it be found deceptive, yet this did not help it, if the Ac-
tion did not lie on the Subject Matter. And here they are Tenants in Com-
mon of the Ship; and by Littleton, between Tenants in Common there is
not any Remedy, and there cannot be any Fraud between them, be-
cause the Law supposes a Trust and Confidence betwixt them; and upon
these Reafons Judgment was given Quod Querens nil capiat per billam.

Lett. S. 222. but it seems misprinted for S. 325. —— But see now the Statute &. 5 Anne, cap. 16.
as to Tenants in Common.
Trade and Navigation.

7. Mr. Skinner's Case pretend'd to the Judges from the Council-Board. After a Petition presented by him to the Lords of the Council he stated his Case as follows, viz. That in the Year 1657, when Trade was open to the East-Indies and free for all, he set forth a Ship of his own from London and arrived at Jamby in 1658, and possessed himself of a Warehouse on the Riverdye on which his Ship rode wherein he put great Part of his Goods; he also had possessed a Houfe at Jamby and Goods therein, and purchased of the King of Great Jamby to him and his Heirs the Islands of Baratha, and built a Houfe and had contracted for the Planting of Pepper; That in the Year 1657, the Agents of the East-India Company with above 30 Men armed with Muskets, Swords, and half Pikes, set upon his Ship, boarded her and took her; they assaulted and took his Warehouse and all his Goods on Shore, and with above 20 Men armed as aforesaid, they assaulted his Perfon at Jamby and wounded him and tore him, broke open his Houfe, spoiled him of his Goods and Papers, and the said Agents with Men armed as aforesaid, did assaults the Islands of Baratha and possessed themselves of the fame, built a Houfe, cut down Timber, and do till (as he believes) poiftels the fame; and upon this Case he propounded these Questions,

1d. Whether Mr. Skinner is not relietable properly in the Contable and Marshall's Court? 2dly. Whether he can have a full Relief in any ordinary Court of Law? Upon which by an Order dated the 12th of April 1665, the King's Majesty being present, the State of his Case was sent to the 2 Lord Ch. Justices, and the Lord Ch. Baron and the rest of the Judges then in Town to consider of the said Questions and make a Report of their Judgment thereupon, upon which we met accordingly, and after Advice made the Report following.

1d. That we are of Opinion that Mr. Skinner in the Order mentioned, is not relietable for any of the Matters in his Case propounded in the Contable or Marshall's Court, they having no Jurisdiction in Matters of this Nature.

2dly. That his Majesty's ordinary Courts of Justice at Westminster can give Relief for the taking away and spoiling his Ship Goods and Papers, and assaulting and wounding his Person, notwithstanding the fame was done beyond the Seas.

3dly. That as to the possessing and detaining of the Houfe and Islands in the Case mentioned, he is not relietable either in the Contable and Marshall's Court, or in any ordinary Court of Justice.

8. Upon an Information sum quam, grounded upon the Act of Navigation, for importing Goods in a foreign Ship contrary to that Act, the Question was, whether or no, if a foreign Ship naturallizd by the new Act, being a Prize taken in the late War with Holland, be afterwards sold to a Foreigner, who sells her again to an Englishman, whether or no the Oath now must be taken again according to the new Act. And adjudged that it need not, because that the Ship was once lawfully naturallizd. Hard. 511. Titn. 21 Car. 2. in the Exchequer, Martin v. Verdew.

9. A Bill was brought to be relieved against Actions of Trespass, for seasing their Goods in the Island of &c. on the Pretence of breaking an Inhabitition of the King of Denmark, whereas by Articles of Alliance between the Crown of England and Denmark, free Trade was allowed to all English in all Ports of the Kingdom of Denmark, whereas the Island was a Port; But in regard Sentence was given in the Court there for the Plaintiff on the Surety, the Bill was dismist. Chan. Cate 237. Mich. 26 Car. 2. Blues v. Bampfield.

10. In Evidence, Hales Ch. J. said an Indebitatus by one Joint Part-Owner of a Ship for his Share of Freight was joint or several at the Plaintiff's Election; and Evidence of the Custome of Merchants to bring it alone was sufficient, and one can't release the other's Part. Also if one takes
Trade and Navigation.

but a Moiety or less of what belongs to his Share for Freight, yet the other may sue for his whole Share of it, and so 'twas said to be held in the Cafe of Coal-Merchants; but the Matter ended by Reference. 3 Kebr. 444. pl. 63. Hll. 26 and 27 Car. 2. B. R. Stanley v. Ayles.

11. By the Act of Navigation 12 Car. 2. c. 18. certain Goods are prohibited to be exported here under Pain of forfeiting them, one Part to the King, another to him or them that shall inform, feise, or sue for the same; and it was adjudged in this Case, that the Subject may bring Detinue for such Goods as the Lord may Replevin for the Goods of his Villein dispossessed; For bringing the Action vefts a Property in the Plaintiff. Salk. 223. Pach. 8 Wili. 3. B. R. Roberts v. Wetherall.

By Rookby J. the very Offence devotes the Property, tho' not then in the Plaintiff, yet when the Action is brought it is brought in it by Relation. And Judgment for the Plaintiff. Comb 561. S. C.

So where there were 3 or 4 Owners of the Ship, and others would not consent, upon which they procure the Ship to be arrested by Process out of the Admiralty, and compelled those who intended to send the Ship a Voyage to enter into Recognisance there, conditioned for her safe Return. After which the Ship began a Voyage and was lost, and upon this the Persons bound were sued in the Admiralty. Prohibition was moved for. 1. Because the Recognizance not being in Nature of a Stipulation, the Admiralty had not Power to compel the Party to enter in it. 2. Because this Suit being in Nature of Debt upon a Recognizance, that Court had not Cognizance of it. But the Prohibition was denied by the Court (absent Holt Ch. J.) because this Suit is between the Part-Owners of the Ship, and the Property is admitted; and therefore it is properly connotable there. 3. If the Admiralty had not Power to take such Recognisances all Navigation must be obstructed if one obitinate Part-Owner would not consent that the Ship should make a Voyage; And e contra it is very reasonable that he have Security that the Ship return in Safety, since he does not consent to the Voyage. Ex relatione m'ri Shelley. Ld. Raym. Rep. 223. Edis. 9 W. 3. Lambert v. Acretree.

12. Some Part-Owners of a Ship were deficient that she should go to Sea, and others would not consent, upon which they procure the Ship to be arrested by Process out of the Admiralty, and compelled those who intended to send the Ship a Voyage to enter into Recognizance there, conditioned for her safe Return. After which the Ship began a Voyage and was lost, and upon this the Persons bound were sued in the Admiralty. Prohibition was moved for. 1. Because the Recognizance not being in Nature of a Stipulation, the Admiralty had not Power to compel the Party to enter in it. 2. Because this Suit being in Nature of Debt upon a Recognizance, that Court had not Cognizance of it. But the Prohibition was denied by the Court (absent Holt Ch. J.) because this Suit is between the Part-Owners of the Ship, and the Property is admitted; and therefore it is properly connotable there. 3. If the Admiralty had not Power to take such Recognisances all Navigation must be obstructed if one obitinate Part-Owner would not consent that the Ship should make a Voyage; And e contra it is very reasonable that he have Security that the Ship return in Safety, since he does not consent to the Voyage. Ex relatione m'ri Shelley. Ld. Raym. Rep. 223. Edis. 9 W. 3. Lambert v. Acretree.

For more of Trade and Navigation in General, see Court of Admiralty, Factor, Freight, Hypothecation, Master's Wages, and other Proper Titles.
Traversé.

(A) Notes and Rules.

1. A traversé signifies in Pleading the denying of some Point, Matter, or Thing alleged on the other Side, with an Abique hoc, that such a Thing was done or not. Heath's Maxims. 103, cap. 5.

2. When the Matter of a Plea is not good, there a Traversé is not good; by the Justices of both Benches. Br. Appeal. pl. 122. cites 37 H. 8.


5. No Traversé ought to be taken, but where the Thing traversed is immovable. Cro. J. 221. pl. 3. Patch. 7 Jac. B. R. in Case of Bedel v. Lull.

6. When the Defendant traverses any Part of the Plaintiff's Count or Declaration in a Quare Impedit, it ought to be such Part as is both inconsistent with the Defendant's Title, and being found against the Plaintiff does absolutely destroy his Title; for if it does not, however inconsistent it be with the Defendant's Title, the Traversé is not well taken; Per Vaughan Ch. J. Vaugh. 8. Hill. 17 & 18 Car. 2. C. B. in Case of Tufton v. Temple & al.

ought to traverse that which will reduce the Point in Debate to a Conclusion; and therefore the traversing an immaterial Averment was ill, and it was to be held.

7. If one will take a Traversé to a Declaration, he ought to traversé that Part of it, the doing whereof will make an End of the Matter for which the Plaintiff declares, and then is the Traversé good. Patch. 24 Car. 2. B. R. clee not; for then it is to no Purpofe. 2 L. P. R. 589. Tit. Traversé.

8. The Essential Part of a Traversé is but the Denial of a material Matter alleged by the Plaintiff or Defendant respectively; the formal Part is Abique hoc. But that a Traversé is good without the Words Abique hoc, is expressly resolved 1 Saund. 22. Fenner v. Fikkins. Arg. Ld. Raym. Rep. 356. in Case of Pullein v. Benfon.

(B) Of
(B) Of the Inducement to a Traverfe.

1. A Traverfe ought to have an Inducement to make it relate to the foregoing Matter, or else it is not good and formal. Mich. 22 Car. B. R. For else it cannot be known what is traversed thereby. 2 L. P. R. 587. Tit. Traverfe.

2. Where the Inducement to the Traverfe is ill, and the Traverfe is well taken, this is good upon a general Demurrer; but upon a special Demurrer, this for Caufc, it is naught. 2 L. P. R. 588. Tit. Traverfe, cites Mich. 5 W. & M.

3. The Inducement to a Traverfe ought always to contain sufficient Title, but it is not material whether the Matter is true or false. 3 Salk. 353. pl. 5. Patch. 9 W. 3. Anon. cites Cro. C. 265, 266.

4. Per Holt Ch. J. A Man ought to induce his Traverfe, and the Reason is, because he ought not to deny the Title of another, till he shew some colourable Title in himself; for if the Title traversed be found naught, and no Colour or Right appears for him who traversed, it would happen that no Judgment could be given. 3 Salk. 357. pl. 12. Patch. 9 W. 3. Anon.

5. Where a Traverfe goes to the Matter of a Plea &c. all that went before becomes Inducement, and is waived by the Traverfe; but where a Traverfe goes to the Time only, what was set out in the Plea before does not become bare Matter of Inducement, nor is it waived by the Traverfe; Per Holt Ch. Justice. 2 Salk. 642. pl. 12. Ann. B. R. Green v. Goddard.


(C) Traverfable, What. Cause; In what Cases.

1. In Affife, if the Warranty of the Uncle, whose Heir &c. is pleaded, it is a good Plea that he never had such Uncle. Br. Traverfe per &c. pl. 329. cites 44 Aff. 1. 2. A Vill was indicted of the Death of a Murderer, and that A. and B. had 100l. of the Money of the Offender, who was fued; and he who was supposed to have the Money, came and traversed the Cause, inasmuch as it was only an Inquest of Office. Br. Traverfe per &c. pl. 321. cites 47 E. 3. 26.

2. Issue was taken whether Bond was taken for 10 l. Parcel of a Contrail of 20l. or for other Cause. Br. Traverfe per &c. pl. 46. cites 3 H. 17. 4. If a Man removes Plaint of Replevin out of the King's Court for Cause, and the Defendant tenders to traverse the Cause, and the other Party demurs, and it is adjudged against him who traverses, this is Peremptory, and the Plaintiff shall recover; but the Court shall not suffer the Traverfe of the Cause, unless in Ancient Demofine, as they laid there. Br. Peremptory, pl. 79. cites 27 H. 6. 4.

3. In Precepe good reddar, a Man prayed to be received, and the other travers'd the Cause; And this was held Jeofail; for he ought to traverse the Reversion, and because he did not, therefore it is Jeofail, as it was held. Br. Repleader, pl. 42. cites 33 H. 6. 39.

6. Tref-
6. Trespass by W. Babington against N. B. Quare M. P. Prisoner in the Fleet, in Caflodia quenitis euid W. eapis &c. The Defendant said that E. Venor was Warden of the Fleet at the Time of the Trespass, and that the Prisoner was bound in a Recognisance, and that the Justices commanded E. Venor the same Day to have the Prisoner before them, by which the Defendant as Servant of the said E. Venor, brought him to the Justices to the Court, and carried him back to the Fleet by Command of the same Justices, and as he was carrying him in Westminster, the Plaintiff took him out of his Possession, and he retook him aligine loco that he was Warden at the Time of the Trespass. And by the Opinion of the Court it is a good Plea; for if he was not Warden he cannot have Action of the Taking. Br. Trespass, pl. 305. cites 4 E. 4. 6. 9.

7. The Cause shall be travers'd in several Cases; as to clear the Land by Reason of Tenure, he may say that he has not the Land per quam &c. or that the Way is not a Highway, or in Battery of his Servant, to say that he is not his Servant &c. Br. Traverse per &c. pl. 182. cites 5 S.C. H. 7. 3.

8. Where the Cause of Voucher is shown, the Cause is traversable. Jenk. 12. pl. 20.

9. The Cause why the College of Physicians fine and imprison ought to be In Affiat certain, for it is traversable; for tho' they have Letters Patents and Act of Parliament, yet inasmuch as the Party griev'd has no other Remedy, neither by Writ of Error nor otherwise, and they are not made Judges, nor Court given to them, but have Authority barely to do it, the Cause of their Commitment is traversable in Action of False Imprisonment brought against them. 8 Rep. 121. Hill. 7 Jac. Per Cokel Ch. J. in the Conclusion of his Argument in Dr. Bonham's Case.

Praef, they set forth their Authority, and said 'they were their Power and Part to be within their Jurisdiction as Courts; And Per Holt Ch. J. This is not traversable in this Collateral Action, because they are male Judges to hear and determine; and therefore not liable to an Action for what they do by Virtue of their Judicial Power; and whenever a Statue gives a Power to fine and imprison, the Persons to whom such Power is given, are Judges of Record, and their Court is a Court of Record. Carth. 494. Patch. 11 W. 3. B. R. Dr. Greenvelt v. Dr. Burrell.—And per Holt, As to that Point in Dr. Bonham's Case, it is only an Opinion delivered, and not a Resolution, and is not Law. Ibid Marg.—Ld. Raym Rep. 364, 468. S. C. and same Points accordingly.—12 Mod. 589. S. C. and same Points. And the Plaintiff had no Remedy in any other Court, it does not follow that the fact upon which such Conviction is grounded is traversable in a collateral Action, because the Power which the Courts have is given to them by the Statute by which they are, as it were, a Jury to try the Fact whether the Praxis is good or not. And if a Jury find contrary to Evidence, yet no Action lies against them, because they are on their Oaths; therefore what they find cannot be travers'd. Carth. 494. Dr. Greenvelt v. Dr. Burrell &c.

10. An Action upon the Case brought upon a Bargain for Corn and Grains Ravn. 109. &c. The Defendant pleads another Action depending for the same Thing. The Plaintiff replies that the Bargains were severall, abique hoc, that the other Action was brought for the same Cause. The Defendant pleads specially; for that he ought to have concluded to the Country. It was intimated that when there is an Affirmative, they ought to make the next in Issue, or otherwise they will plead in infinitum; and accordingly Judgment was given for the Defendant. 1 Mod. 72. pl. 26. Mich. 22 Car. 2. in B. R. Hamavn Truant.

Traverse was held good, and allowed for putting the Matter more singly in Issue.

11. If a Sentence of Deprivation be pleaded, you need not shew the Cause; it is not traversable, even in a Villation, when it is by the全域旅游 Power. Skin. 495. Trin. 6 W. & M. B. R. in Case of Phillips v. Bury, cites Raffles's Ent. Pl. 11 H. 7. 27. and 7 Co. Kenn's Case.

12. In Case for a Pound-Breach, and taking thence a Mare impounded by the Plaintiff for Damage leasant, the Defendant pleaded that he gave the Plaintiff'd. in Satisfaction of the Trespass, and that Plaintiff ac-
cepted. 4 S. 8.
Traverse.

cepted it, and gave Leave to Defendant to take the Mare out of the Pound, and that he took her accordingly the Gate being open &c. Plaintiff replied De Injuria sua propria abique tali Cauze. After Verdict for the Plaintiff, it was mov'd in Arreit of Judgment, that the Replication was ill, because the Plaintiff should not have travers'd the Cause generally, but the Acceptance in Satisfaction. Sed non Allocatur; for tho' such litige is improper, and had been ill on Demurrer, yet it is aided by the Verdict. 1d. Raym. Rep 194. Mich. 8 W. 3. Costworth v. Betifon.

13. Cauze for which a Fine is set, is never traversable. 1 Salk. 397.

See Trefpa.

(D) Command.

HE Command is not traversable unless in Special Case, where the Command determines the Interest of the other Party. Arg. 2 i.e. 215. in Case of Fuller v. Trimwell, cites 13 H. 7. 12. 13.

2. In Replevin, the Defendant justifies, for that J. S. was seised in Fee of the Place &c. where; and that he as his Servant, and by his Command did take the Cattle there Damage sejant, and fo justifies. The Plaintiff repies, and confies it, but lays that J. D. was seised in Fee long before, and leas'd to him as Will, abique hoc that J. D. did command him for to enter, and to take the Cattle. Upon Demurrer the only Question was touching the Validity of the Traverse. And by the whole Court it was ruled good; for the Plaintiff in this Case could not traverse any other Matter but the Command. And so Judgment was given for the Plaintiff. 1 Bulso. 189. Pach. 19 Jac. Horne v. Harrison.

3. In Conufance for Rent in Replevin by Bailiff, the Command is not traversable, because that goes to the Right. But in Conufance for Damage sejant, the Command is traversable in Replevin. Per Holt Ch. J. in delivering an Opinion of the Court. Raym. Rep. 315. Hill. 9 W. 3. in Case of Britton v. Cole.

(E) Dates and Delivery of Deeds.

1. Deed against the Successor of a Person upon a Grant of his Predecessor of an Annuity with Penalty for Non-payment, and Confirmation of the Patron and Ordinary, which bore Date before the Grant, and he declared the first Delivery to be 4 Days after the Grant; and the Defendant said that it was delivered the Day that it bore Date. And the Opinion was, That it is no Plea without traversing that it was not delivered after the Grant; for it seems that the Day is not traversable, but whether it was delivered after the Grant, or not. Br Traverfe per &c. pl. 59. cites 8 H. 6. 6.—And fo is 37 H. 6. 17. 18.—And see Fitzh. Bar 131. the Plea not good for Default of Traverfe. Ibid.

2. Where the Deed is pleaded, bearing Date such a Day, and the first Delivery another Day, and the other pleads Release Mofue; this is no Plea without traversing the first Delivery &c. Per Judicium. Br. Traverfe per &c. pl. 186. cites 1 E. 4. 9. and Fitzh. Bar 131. and 18 H. 6. 8.
4. In Quare Impedit the Plaintiff counted, that W. N. was seized, and presented J. S. his Clerk, who at his Presentation &c. and after, by his Deed dated the 1st Day of May, W. N. granted the next Presentation to the Plaintiff; and after J. S. died, by whose Death the Church is now void, and so it belongs to the Plaintiff to present, and the Defendant disputed it. And the Defendant said, that true it is, that W. N. granted to the Plaintiff by Deed, dated the first of May &c. but this was first delivered the fourth Day &c. before which Day the said W. N. granted to the Defendant the next Presentation &c. And no Plea, per Rede, Fineux, and Vivistor, because he did not traverse the Plea, that the Deed was not delivered the first Day of May; for it shall be intended, that it was delivered the Day that it bore Date, if other Matter is not shewn to the contrary, as to allege primo Deliberatum alio die &c. But Keble, Bryan, and Townshend contra; for the writ is but Supposal, and therefore the Bar, which is the Matter in Fact, is good without Traverse, for he has confessed and avoided it. Br. Travers, per &c. pl. 186. cites 1 E. 4. 9. and Fitzn. Bar 131. and 13 H. 6. 8.

5. In Debt on Bond the Plaintiff declared, that the Defendant, 26 Die Novemb. acknowledged himself indebted &c. The Defendant pleaded, that the Bond was first deliver'd 30 Novemb. & non Atea, and flows, the writ on which he was in Custody was returnable quod Martius, so that the Bond was taken after the Return, and then relies on the Stat. H. 6. The Plaintiff demurred, and had judgment. The Court agreed, that mere Matter of Supposal, Matter alleged out of due Time, or immaterially alleged, is not traversable; but they held the 25 Novemb. to be an express Allegation, and that the Defendant's Plea had made it material; for the Validity of this Bond turn'd wholly on the Day of the Delivery, so the Defendant should have traversed the Delivery on the 26th. And the Court held the Non Atea non Traverse, because it is what cannot be and that reitled upon, but the Party must dilate more further Matter before he comes to conclude. 2 Salk. 623. pl. 2. Mich. 10 W. 3. B. R. Pullen v. Benion.

Court, for want of the Traverser. —— Ibid. 536. is a Note at the Bottom of the Page, that Mr. Jacob, said, the Reacton Holt Ch. J. gave was, that in this Case one cannot conclude to the Country, because there ought to be other Matter alleged to make the Date material; otherwise where that is the single Matter of the Plea. —— 12 Mod. 253, 264. S. C. and per tor. Cur, the Plea was held ill; for here the Date was material; for supposing the Arrest was before the Return of the Writ, and after the Return of the Writ he took an ante dated Bond, this Bond is void; and therefore the Date is material, and ought to be traversed, wherefore the Plaintiff had Judgment. —— 3 Salk. 512. pl. 2. S. C. by the Name of Buller v. Benion accordingly.

(F) Day or Time.

1. Trespasses the Defendant justified for Common, and the Plaintiff * Br. Tref: would have traversed whether he had Common the Day of the 19th, pl. 176. Taking or not. But per Curtiam, the Day is not traversable in Writ of * S. P. —— Trespass, nor in Replevin, without special Matter shown. Contra, if he Br. Tra-
Traverse.

has Common there once in the Year, and not all the Year. Br. Traverse, per &c. pl. 44. cites 2 H. 4. 24.

† In Replevin the Defendant awan'd for Rent-Service &c. The Plaintiff replied, that the Taking was Notte ejusdem Diet. The Defendant rejoin'd, that it was tempore Diurna ab igiue for, that it was Notte ejusdem Diet. The Plaintiff demur'd, pretending that the Traverse ought to be abique hoc, that that the Day is material, if the Day be peaceably, and generally; for that the Day is not material in this Action, nor in Troops. But resolved, abique Haughton, that the Traverse is good; for where the Parties are agreed on the Day, as in this Case, it is not sufficient, if found to be done at another Day; but where they do not agree upon the Day, if it be found or proved on any other Day, is not sufficient, and there the Traverse ought to be a general, Modo & Forma. And in this Case the Defendant has not made the Day material by his Plea, that the Distress was made in the Night; and for Rent-Service he cannot claim in the Night, as he may for Damage feasant, and therefore ought to have aver'd in tempore Diurna, and no Judgment was awant. Palm 208. Pach. 20. Jac. B. R. Heyden v. Godfalle. Palm 150. S. C. but not S. P. — Hov. 265. S. C. but not S. P. — Gods. 247. pl. 341. S. C. but not S. P. — 2d Bulle. 159. S. C. but not S. P. — Cro. J. 334. S. C. but not S. P.

2. Debt against a Feue, the Plaintiff count'd of 10 l. that the Defendant bought of him a Bond of 20 l. in which N. her Baron was bound; and count'd, that she for 10 l. bought of him the Bond the 2d of July, such a Year; and she said, that she bought it of him the first Day of July in the Year aforesaid, at time she was Covert of Baron of the name abique hoc, that she bought it the Day in the Court; and held a good Plea. Quod nota. Br. Traverse, per &c. pl. 69. cites 19 H. 6. 9.

3. Where a Man is bound to enter into such Land peaceably before Michaelmas, so that the Plaintiff may bring Affir against him, and he says, that such a Day before the Feast he enter'd peaceably; this is a good Plea. But if the other says, that such a Day the Defendant enter'd by Force, abique hoc, that he enter'd peaceably the Day in the Bay, this is not a good Replication, for the Day is not traversable; but shall say, that he enter'd with Force abique hoc, that he enter'd peaceably, quod nota. And per Prior, it is sufficient for the Defendant to say that he enter'd peaceably before Michaelmas, without expelling any Day; and the other may say that he enter'd with Force abique hoc, that he enter'd peaceably, Prout &c. Br. Traverse, per &c. pl. 140. cites 37 H. 6. 17.

4. Where the Justification of the Defendant lies in a special Matter, there the Plaintiff has Eleotion to maintain the Travers of the Time, or to traverse the special Matter; as in Troops Anno 7. the Defendant pleads a Relenc Anno 6. abique hoc, that he was guilty after the Relenc; the Plaintiff may say Non est factum, without maintaining the Day or Time; for if he be not his Deed, he is not guilty any Day. Br. Traverse, per &c. pl. 230. cites 10 E. 4. 2.

5. In Replevin the Defendant intituled himself by a Copy granted 44 Eliz. The Plaintiff intituled himself by Copy granted 1 June 43 Eliz. The Defendant maintain'd his Bar, and traversed abique hoc, that the Queen 1 June 43 Eliz. granted the Land by Copy, Modo & Forma &c. The Court held, that the Day ought not to be made material, unless the Queen had granted by Copy before the Grant to the Defendant; and the Traverling the Day, where it ought not, is Matter of Substance; because thereby he makes it Parcel of the Illue, which should not be. And so adjudg'd for the Plaintiff. Cro. J. 202. pl. 2. Hill 5 Jac. B. R. Lane v. Alexander.

Yeov. 122.
S. C. and a Discrect was taken by Yeoverton, Arg. that where the Act done may indifferent be intended at the one Day or the other, there the Day is not traversable. As in Case of Pleasment by Death such a Day, there the Day of the Pleasment is not traversable, because it passeth by the Libery, and not by the Deed; and the Libery is the Subsance, and the Day only Surplusage. But where a Man makes his Title by a special Kind of Conveyance, as in this Case by a Copy, there all contain'd in the Copy is material, and the Party cannot depart from it; for he cannot claim by any other Copy than that which is pleaded. As 18 H. 6. 14. in Affoin against J. S. for taking his Servant, and commit by Deed on Monday in such a Week; it is no good Plea to say, that the Retainer was the Friday after, abique hoc, that the Plaintiff return'd him the Monday. And so of Letters Patent, the Day and Place are traversable, because they are the especial Conveyance of the Party, from which he cannot depart. But per tui. Cur. the Day is not traversable; but whether the Queen granted a Copy to the Lessee of the Plaintiff before the Copy granted to the Defendant, and to the Traverse should be abique hoc, that the Queen granted Modo & Forma to the Lessee of the Plaintiff; and that the Law is the same as to Letters Patent. But Penner J. contra, for the Rention render'd by Yeoverton.
Traverse.

Yelverton. And by him and the Ch. J. it is sided by Statute 18 Eliz. because it is only Form; for if the Jury find a prior Grant to the Lessor of the Plaintiff, tho' at another Court, it suffices, and consequently the Day is not material in Substance. But Williams. contra; and adjudged by all but Fenner, that the Traverse is ill; for thereby the Juries will be bound to find a Copy at such a Day, which ought not to be; and also it is Matter of Substance * not sided by the Statute of 18 Eliz. —— Brown. 143. S. C. but sees a Translation of Yelv. 122. —— S. C. cited 2 Mod. 145. Arg. in Cafe of Brown v. Johnson. * See Holbech v. Bennet, at Tit. Time (G) pl. 1.


(G) Inducement.

See (P) pl. 13. & 22.

1. THE Inducement to a Traverse can never be traversed, because that S P. 3 Salt. would be a Traverse after a Traverse, which would be not only infinite but absurd; because it would be to quit his own Title, and fall upon the Title of another. 3 Salt. 353. pl. 5. Patch. 9 W. 3. B. R. Anon.

2. Debt against an Executor, who pleaded several Judgments in Bar &c. The Plaintiff replied, that the Judgments were satisfied, and kept on Foot by Covin to deceive the Plaintiff. The Defendant traversed the Satisfaction of the Judgments. The Plaintiff demurred, because the Satisfaction was but an Inducement to the Fraud and Covin, and Matter of Inducement shall never be traversed; and Judgment was given accordingly for the Plaintiff. Latch. 111. Hill. 1 Car. Beaumont's Cafe.

3. The King may not traverse the Inducement to a Traverse more than a Subject; and that it is laid in the old Books that the King may traverse the Inducement, this is to be understood upon an Office found; for heretofore the Subject could not traverse the King's Title found by Office, without inducing his Traverse with a Title on his Part; in which Case the King might traverse the Inducement of the Subject's Title, but in no other, and so are the Books to be understood. But if the Traverse be ill, there the King may traverse the Inducement, and so may a Subject. Per Holt Ch. J. Skin. 657. Mich. 8 W. 3. B. R. The King v. the Bishop of Chester.

(H) Intention.


1. THE taking insufficient Bail, with Intent to defraud the Plaintiff of his just Debt, is not a Matter traversable, and therefore ought not to be answer'd. Sid. 96. pl. 24. Mich. 14 Car. 2. B. R. Bentley v. Hope.

2. Trespafs &c. for breaking his Cloe call'd the Balk and the Hade, and cutting and carrying away his Grafs. The Defendant did claim any Title in the Plaintiff's Land; but said, that he had a Balk and Hade next the Plaintiff's; and in mowing his own, he inadvertently, and by Mistake, took some Grafs growing on the Plaintiff's Balk and Hade. 4 T.
Traverses.

Intending only to move the Graf's on his own Balk and Hade, and carry it away, Que eft eadem &c. and that, before the Writ issued out, he tendered 2s. in Satisfaction &c. And upon Demurrer the Plaintiff had judgment, because it appears the Fact was voluntary; and Intensions are not traversable, nor can they be known. 3 Lev. 37. Mich. 33 Car. 2. C. B. Bafely v. Clerkson.

3. Intention of an Indenture is not traversable, because the Court cannot know it but only by the Words in the Indenture. 3 Lev. 167. Trin. 36 Car. 2. Kidder v. Weil.

4. Intention in some Cases is traversable, As if A. be indebted to B. by Bond and by simple Centraff, and pays Money to B. the Intention to which Debt it shall be applied, is traversable. 1 Salk. 196. Mich. 5 W. and M. B. R. Griffith v. Harrison.

(I) Matter or Thing Alleged, Or Matter or Thing not alleged.

It is a Rule 1. A

An Abique hoc ought to be taken to a Thing expressly alleged before, and is induced with a former Plea, viz. ut prins dixit, where he has shewn a cross Matter contrary to the Plea of the Plaintiff. D. 355. B. pl. 33. Mich. 21 and 22 Eliz. in Sir Fra. Leak's Café.

Where a Traverse is taken of a Matter not alleged it is but Form. Ld. Raym. Rep. 2.:8. in Cafe of Powers and Cook.

Where a Traverse is taken of a Matter not alleged it is but Form. Ld. Raym. Rep. 2:8. in Case of Lambert v. Cook.

2. A Man cannot traverse Diffessor with Force, and Detainer with Force, where the Plaintiff alleges Diffessor with Force only; the Reason seems to be that he shall not traverse that which is not alleged. Br. Traverfe, per &c. pl. 146. cites S. C.

3. In Trefpaces upon 3 R. 2. the Defendant said that W. was seised and infected him and gave Colour to the Plaintiff, and the Plaintiff said that W. was seised and infected him Abique hoc, that he infected the Defendant before he infected him, Et non Allocatur; for he traverses that which is not alleged in the Bar, by the Opinion; by which he said that W. infected him, and after defined him contrary to his own Feoffment, and infected the Defendant, upon whom he entered, and was seised till the Trefpafs; And there it is said that a Que Estate is traversable if both Parties claim by one and the same Man. Br. Traverfe, per &c. pl. 231. cites to E. 4. 6.

4. Assaultits, the Defendant granted to the Plaintiff 1000 Trees to be cut within 3 Years, and afterwards they agreed that when the Plaintiff had cut 800 no more should be cut within the 3 Years, and that Defendant promised, after the Explication thereof, in Consideration of Forbearance till after the 3 Years, to give the Plaintiff Licence to cut them then, which he refusing, the Plaintiff brought this Action. The Defendant pleaded, that before the Promiss supposed to be made, the Plaintiff had cut down 1000 Trees, Abique hoc, at the Time of the Promiss he had cut down 800 Trees only &c. Upon Demurrer it was objected, that the Traverse was Idle, and the Plea had been good without any; for his laying that he had cut 1000 Trees was a full Answer, and would make an Illue. But per tor. Cur. the Traverse is good; for the Plaintiff by alleging the cutting 800 Trees only, which is a Matter Jubilable, has given Advantage to the Defendant to traverse as he has done; for every Matter in Fact alleged by the Plaintiff may be traversed and Defendant by Way of Traverse may answer the Matter alleged.
Traverfe.

 alleged in the same Words as the Plaintiff alleged them; and then the Plaintiff by Demurrer upon the Bar has confined the cutting 1000 Trees which was his full Bargain, and fo no Consideration to ground the Affirmat upon. Yeh. 195. Mich. 8 Jac. B. R. Tatem and Poulter v. Perient.


 6. Ecape, The Defendant pleads Reception upon fresh Pursuit. The Plaintiff replies, De Injuria faa propria abique hoc that he retook &c. upon fresh Pursuit, Et ab Huius detinet. The Defendant demurs, and shews for Calfe, that the Plaintiff had traversed Matter not alleged in the Plea, viz. Quod adhibit detinet, which ought not to be; for if the Defendant has suffered J. S. to escape a Month after the Reception, yet the Plaintiff shall be barred by the Reception for the old Ecape, and shall have a new Action for the new Ecape; Quod Holt Ch. Juit. negavit, for both are but one Ecape. Judgment for the Plaintiff. Mr. Wott. 1 Ld. Raym. Rep. 39. East. 7 W. 3. Meriton v. Briggs.

 6. But in Debt upon an Obligation against the Defendant as Execlutrix of J. S. the Defendant pleaded that J. S. died intestate, and that Administration was committed to her, and petit judicium li ipfa ad billam pra-floor, respondere debit &c. Upon this the Plaintiff demurred, and in- diated that the Defendant should have traversed Abique hoc, that the inter- meddled before Administration committed to her; for if she did she made herself liable as a tort Execlutrix; and cited 3 Cro. 566. 819. 102. 3 Leon. 197. Yehv. 115. Brownl. 97. Holt Ch. J. and Cur. fuch a Tra- verfe had been ill; for such intermeddling is not alleged, and the Defen- dant ought not to traverse that which the Plaintiff does not allege in his Declaration. 1 Salk. 298. pl. 9. Trin. 9 Will. 3. B. R. Powers v. Coot.


(K) Names &c.

1. In Praeipe quod reddat R. G. came and tendered his Laco of Non-Som- mous, and at the Day came one R. G. ready to have made his Laco, and the Defendant saile, that he is Son of the Tenant and of the same Name, and a good Averment and the Demandant had Judgment to recover, for the Father shall not Change his Name for the Son; But per Herle if the Son be Tenant and be ousted by this Judgment he shall have Affiz. Br. Traverfe, per &c. pl. 349. cites 9. E. 5. 20.

2. If a Man brings Action, as Warden of a Prison, Pardon of a Church, Abbot, or the like, and the Action is founded by this Name; it is a pl. 205. cites good Plea that he is not Warden nor Pardon, or is not Abbot; but he makes Title Pro forma, abique hoc that the Plaintiff is Warden, Pardon or Abbot &c. Br. Traverfe, per &c. pl. 314. cites 4. E. 4. 6. 9.

3. A Man was outlaw'd and taken as Mainpernor, and said that he was dwelling at another Vill Abique hoc, that he was ever Mainpernor, and per Cur. he shall not have such Traverfe; but may say that there were 2 of the Name and the other was Mainpernor and not he. Br. Traverfe, per &c. pl. 317. cites 21. E. 4. 71.

4. In Traverfe and Convension of Harley, Defendant pleaded that the Dean, Archdeacon, President and Chapter of L. were leefed of a Parsonage in Fee, and by the said Name kefted it to him. Plaintiff replied that the

Arch-
Traverfe.

Archdeacon and Chapter of L. were seized in Fee, and haled it to him, Abscon loc., that there was any such Corporation as Dean, Archdeacon, President, and Chapter; the Defendant demurred. The Point was argued. Tanfield Ch. B. teem’d to think the Traverfe was not good; but Baron Henr seemed that it was; but he was once of Counsel with the Plaintiff; and it was moved that the Case should be compounded. Lane 18. Pach. 4 Jac. in the Exchequer. Richards v. Williams.

5. The Defendant was sued by the Name of John, and he pleaded, that he was baptized by the Name of Benjamin, and traversed, that the said Benjamin was ever known by the Name of John; and upon a General Demurrer Holt Ch. J. said, 'This Traverfe is repugnant in itself, and very immaterial, for it had waived the Precedent Matter of Baptism, which was well pleaded, and was now become the Substance of the Plea itself; for now the Issue must be by what Name the Defendant was called or known, and not by what Name he was baptized, whereas he ought to have relied on his Name of Baptism, and concluded with it without a Traverfe; for a Man can have but one Name, therefore it implies a Negative in itself, without saying he was never known by the Name of John &c.


(L) Offices, Presentments &c.

Br. For Richt, pl. 3. cites S.C. 1. FA LSE Presentment taken before Justices in a Forest was traversed in B. R. and Scire Facias thereupon against the Party who made the Claim before the Justices of the Forest. Br. Scire facias, pl. 105. cites 21 E. 3. 43.

But Presentment before Justices of the Forest in Scamunite by Foresters, Verderors, Regarders, and Agisters is not traversable before Justices in Eyre. Br. Presentments in Course, pl. 4. cites 45 E. 3. 7. — Br. De for Torr. pl. 7. cites S.C. Presentment before a Steward of a Forest and Verderors, or in a * Loct is not traversable, per Thorpe, if it does not touch Fourfieldment or Inheritance, and then he ought to make Title, and not to traversable generally. And so it terms always that he who will traverse against the King shall make Title. Br. Alliff pl. 459. cites 50 E. 3. and Fitch. Alliff 444.

* See pl. 6.

Br. Traverfe de Office, pl. 36. cites S.C. 2. If a Man flies for Felony which is found before the Coroner, this shall not be traversed; for this is an ancient Law of the Coroner; Contra to say that he was not Felo de Fe, this may be traversed. Br. Corone, pl. 150.

The Coroner’s Inquisition finds a Man Felo de Fe. The Question was, Whether or no this was traversable? And the Court inclined that it was; for (per Hale) the Reason why an Inquisition, that finds a fugax fictum, is not traversable, is, because all the Parties that were present at the Death of the Party are bound to attend the Coroner’s Inquest, and their not appearing there is a Flying in Law, and cannot be contradicted; but that Reason does not hold in Felo de Fe. Freem. Rep. 459. pl. 556. Alisn. 165. Anon. — 2 Lec. 152. Mich. 25. Car. 2. B. R. The King v. Aldenham, such Traverse was granted by Hale, Twidwell and Wild, silemte Rainsford; but it was said that a Fugax fictum found before the Coroner is not traversable.

3. The Statute which gives Traverse is only of Ward, and of Fine for Alienation, which are only Chattels, and of those there was no Traverse at Common Law; but of Franktenent Traverse was at Common Law. Br. Petition, pl. 15. cites 9 Ed. 4. 51.


4. Note, It was touch’d that Traverse of a Thing real was not at Common Law, but Petition or Montrans de Droit. Contra of Chattle. Br. Petition, pl. 30. cites 13 E. 4. 8.

5. The
Traverfe.

5. The Attorney of the King, when a Man traverfes an Office, may maintain the Office, or traverfe the Title of the Plaintiff, but the Plaintiff after his Title traverfed the Office. Br. Traverfe per &c. pl. 246. cites 13 E. 4. 7.

6. Pretentions of Nuance, or in Leets &c. which touch the Person, and do not touch any Frankenmeunt, shall not be traverfed. Br. Traverfe per &c. pl. 183. cites 5 H. 7. 3. but if they touch Frankenmeunt, there a Traverfe lies. Br. Traverfe per &c. pl. 183; cites 5 H. 7. 3. and in Cases where Process shall be made, there lies a Traverfe thereof; which Brooke says seems to be good Reason; for it is vain to make Process, if the Party shall not have Answer when he comes. Br. Traverfe, per &c. pl. 183; cites 5 H. 7. 3.——Br. Pretention in Courts, pl. 15. cites S. C. ——

7. An Office is found, that A. died seised of the Manor of B. and held the same in Capite by Knight Service, his Heir within Age; this Office is traverfed that A. infant of him, who traverfed, in Fee, and traverfed the dying seised. Whereupon the King takes Issue, and hanging the Traverfe it is found by another Office, that the said Premise was by Collusion, and after the Issue was found against the King: Whereupon, by the Rule of the Court, the Party had Judgment, and an Amoveas manum; for the Office found dependant the Traverfe shall not give the Party, for he might be infinitely vex'd; but in a Sac. ja. by the King upon the latter Office he shall answer &c. (An excellent Case for the Benefit and Speed of them that are given to Traverfe.) 2 Inst. 693. cites 11 H. 4. 18. 13 H. 4. Tit. Traverfe 16. and 13 H. 4. Tit. Livery 21. 13 H. 4. 6. 7. Tit. Traverfe.

8. It was found by Office, that A. died seised of Estate Tail, which descended to B. his Son and Heir. This Office was traverfed, abique hoc that he died seised of ESTATE TAIL; and found for the King in B. R. It was moved in Arrest of Judgment, that the Dying seised of ESTATE Tail is not traverseable, but the Gift according to 15 E. 4. 2. 14 H. 7. 22. 15 H. 6. by which it was an ill Issue; and this is not aided by the Statute of Joachts, it being in Cause of the King, and not between Party and Party. But it was resolved for to Cur. That the Traverfe here is good; for it is the Office intitles the King to the Wardship, and not the Gift; and the Effect of the Office ought to be traverse'd, because it is not the Right of the Party that gives Wardship to the King, but his Dying in Possession; for were it not for the Statute 32 H. 8. which gives to the King the 3d Part after Alienation, there ought to be a Dying seised of the Tenant to intitle the King to the Ward: But in an Action, who questions the Right of the Tail, as Formed, there the Gift only is traverseable, and Judgment for the Judgment. Palm. 330. Hill. 29 Jac. B. R. Young's Cafe.

9. It was found by Office, that A. was seised of Bl. Acre in M., and Wb. Acre in N. held in Swage, and also of a Piece of Ground inclosed out of the Manor of O. and that A. had 5 Daughters, and that J. S. married one of them, and found the Defeat of the Lands &c. J. S. traverse'd the Office in 3 Points. 111. He pleaded Demise [Devise] to him by A. abique hoc that the Lands seised. Several Exceptions were taken to it: 111. Because the Heir shall not be received to traverse his own Title found for him; and cites 27 Alb. 1. that the Heir may traverse the Tenure, but not the Title; and that this is often put for a Rule in Stuand. Prerog. and Dyer 366. [Vernon's Cafe] accordingly. 2dly. That the Traverse is repugnant, because he did not plead Entry after the Demise [Devise] and so it demises; and that therefore he should have pleaded the Demeis [Devise] with-

Roll Rep. 3d, The King v. Summers. S. C. and is almost the same with this of Palm. but much misprinted, that in some Places it would be difficult to read out the
Traverfe.

Meaning without the Help of the Statutes which give Traverfe, give it to all that are grieved, and they ought to join; and constitutes 42 All. 23. of Jointenants. 5thly, That the Venire fac. was from M. N. and the Manor of O., whereas it ought not to be from the Manor of O., because the Parcel of Ground is severed from it by the Diffeife. But it was resolved by Lea Ch. J. and Dodderidge and Haughton J. for the Plaintiff as to all, and they laid, 1st. That the Venire fac. is good; for the Polliſſion only is severed from the Manor, but this Parcel is not severed in Right by the Diffeife, nor is the Situation altered thereby. 2dly. That Defence may be traversed, and cited 5 Eliz. D. 227. that this prevents Remitter; and to 49 Eliz. 3. Coxe's Caffe of Elcheat. 3dly. That he may traverse the Defent in this Caffe, without making Title, and that for the Milcheif which otherwise might happen; for here we find a Seilin of the Socage Land, and of Parcel held in Capite, whereas in Truth he did not die seised of this Parcel; so that if the Diffeife [Defence] cannot traverse it, his Defent shall be destroyed for 2 Parts; and therefore he shall not be constrained to make Title. 4thly, The Coheirs need not all join in the Traverfe, it being to their Disadvantage, and J. S. claims as Purchafo for their Disinheritance. But he had claimed as Heir all should join, because they claim by the same Title. Palm. 372. Trin. 21 Jac. B. R. Summer's Caffe.

He, 1. S. C. 2dly, pursued the Plaintiff's Title to the Advowson, as in prep. and presented M. and died seised, which defended to B. the Plaintiff's Husband, who 9 Mar. 8 Jac. by a Deed granted it to D. and L. in fee to the Use of the Plaintiff for her Jointure, and after of himself in tail, and died seised, and that the Church became void by the Death of M. and to the ought to be presented. The Defendant said he was Parson Inheritance of the Presentation of the King, and thereupon, That the Plaintiff's Husband died seised in Fee, as of an Advowson in gross, and of the Manor of P. his Son and Heir within Age, holder of the King by Knight's Service in Capite, and that an Office found the Tenure and Defent; whereupon the King was seised, and presented the Defendant, who was instituted and incumbered, abufe hoc that the Husband granted the Advowson to D. and E. The Plaintiff travers'd the Inquisition. It was holden by the Court in this Caffe. That inasmuch as 2 Titles are comprized in the Bar for the King, viz. The dying seised within Age, and the Tenure by Knight's Service, whereby the Wardship is vested in the King, and a Title to present without Office; therefore in the Replication they both ought to be answered, and it was not sufficient to traverse the Inquisition, but the Plaintiff ought to have answered to the Tenure, and to the Defent allledged of the Manor, if the Defendant had relied upon them; but because the Defendant did not rely upon them, but made them Inducements to the Traverfe of the Grant, which is the Plaintiff's Title, that Title ought to be maintained, and not to traverse the Inducements to that Traverfe.
Traverse.


(M) Of the Place. Necessary. In what Cases.

1. A Peal of Mayben in the Ward de Cheap, the Defendant said that the said Day and Year the Plaintiff assaulted him in Combell Ward, yans; Per Petri John; the Defendant said that there was no Plea without traversing the Mayben in the other Ward, by Award; for the Trefpafs is the Effect, and not the Place. Br. Traverse per &c. pl. 173. cites 41 All. 21.

2. In Premier it was said, that in Precipe quod reddat in D. it is no Plea that the Land is in S. if he does not traverse Adique hoc that it is in D. For it is alledged in the Writ, and that which is contrary to the Writ ought to be traversd. Br. Traverse per &c. pl. 124. cites 9 E. 4. 16.

3. Replevin of taking in White-Acre in D. Pigot said that White-Acre is in S. and made Armony for Damage feant to have Return. Per Car. You shall lay Adique hoc that W. is in D. and so he did; quod nona. Br. Traverse per &c. pl. 353. cites 20 E. 4. 2.

4. In Debt upon a Bond made at B. it is a good Plea that it was made And in Action at S. without saying Adique hoc that it was made at B. Br. Traverse per &c. pl. 279. cites 22 E. 4. 39.

5. There is a Diversity between Trespass and Replevin; for in Replevin the Place is traversable, for where he declares in one Place, and the Defendant avows in another Place, there he ought to traverse the taking in the Place in the Declaration. Contrary in Trespass; Per Brian and Starkev. Br. Trespass, pl. 369. cites 22 E. 4. 50.

6. In Replevin of Goods taken in the Parish of St. M. the Defendant avow'd the Taking in the Parish of St. P. and therefore was held ill, because he ought to have travers'd the Taking in the Place alleg'd in the Count. 2 Lutw. 1147. Mich. 2 Jac. 2. Petree v. Duke.

(N) Of the Place. Good; In what Cases.

1. In Debt, the Plaintiff counted that the Defendant retain'd him at B. in the County of K. to force him in the War in France, where B. was in France, and yet good; for the Place is not traversable. Br. Count, pl. 94. cites 48 El. 3. 2. 3.

2. In Debt upon a Duty due by the King, assign'd to him by Tally delivered, he counted, that be such a Day, Place, and County, should to the Custom the Tally, at which Time he had enough to pay, and would not. To which the Defendant said, that such a Day in April he delivered to him the Tally, at which Time he had nothing, nor ever after; adique hoc, that the first County, he should the Tally before this Day, and well. Br. Traverse, per &c. pl. 18. cites 27 H. 6. 9.

Therefore there the Place and County shall be shown in the Ear in this Case; but in the other Cases he
Traverfe.

need not to shew the Place nor County in the Barr, and then it shall be intended to be where the Plaintiff has counted by his Count; per Cur. quod miror. Br. Traverfe, per &c. pl. 18. cit. 27. H. 6. 9 —

Contra of Battery, or God's carry'd away, which may be continued, and are transitory, thence he shall Traverfe all the County. Br. Heath's Max. 168. cap. 5. cit. S. C. and says, that always in Replevin the Place of the Taking istraversable.

3. Nufance, that he levied a Mill in D. in the County of K. to the Nu
sance of his Frank-tenement in the same Vill. The Defendant saith, that he and all his successors &c. have been seized of a Mill in D. in the County of E. and the Mill fell by Tempest, and he re-edified it, as lawfully he might; abque hoc, that he is guilty of any Nuissance in D. in the County of K. and did not Traverfe all the County. And yet well, per to. Cur. because the Thing is local, and annex'd to the Frank-tenement. Br. Traverfe, per &c. pl. 252. cit. 18 E. 4. 1.

Ibid. —And accordingly in TrefPASS for Damage feasant; the same Year, fol. 11. ibid.

Heath's Max. 168. cap. 5. cit. S. C.

4. In Replevin of taking at W. in the County of O. in a Place called P. the Plaintiff said, that the Taking was in P. in the Vill of O. Abique hoc, that he took them in W. Keeble saith, the Traverfe is not good; for it extends to the Vill, and not to the Place. But by the Opinion of the Court, the Traverfe is as well to the Vill as to the Place; but a Man cannot plead Misnominator of the Place, but he may well Traverfe the Place. Br. Traverfe, per &c. pl. 356. cit. 16 H. 7. 7.

Heath's Max. 168. cap. 5. cit. S. C.

5. Action for making false Cloths in Bartholomew-Fair against the Statute. The other saith, that he made them well and truly at D. in the County of F. Abique hoc, that he made them in Bartholomew-Fair in L. Prout &c. and a good Plea. Br. Traverfe, per &c. pl. 363. cit. 34 H. 8.

4 Ec. 4. pl. 14, and 106. pl. 17. S. C. accordingly, and in much the same Words.

6. Trover &c. for Goods in Ipswich. The Defendant pleaded, that the Goods came to his Hands at Dunwich in the same County; and that the Plaintiff gave him the Goods, which came to his Hands at Dunwich; abique hoc, that he was guilty of any Trover &c. at Ipswich. And by the Opinion of the Court the Pleading is good, by reason of the special Justification. But where the justification is general, the County is not traversable at this Day. Godb. 137. pl. 163. Mich. 27 & 28 Eliz. B. R. Strangden v. Barnell.

If a Man justification in a Place in Suffolk, abique hoc, that he is guilty out of the County of Suffolk, this is not a good Traverfe. Rolle's Rep. 265. pl. 37. Mich. 13 Jac. B. R. in Case of Cotton v. Stickle, it was said by Helle to have been adjudged in the Exchequer the same Term, between Taylor and Downe.

As in Traverse &c. of so many Hogheads of Cyder in London, the Defendant pleads Bailment of them unto him, to redeem to another in the County of Oxon, to pledge in his Houfe; which accordingly he had done, and takes a Traverfe, abique hoc, that he conveyed the same at London, out alibi extra Com. Oxon. Upon this Plea the Plaintiff demurred in Law. Dodderidge J. saith, The Plea here, in Effect, is no more than Non culp the general Issue, and is not good.

7. When a justification is local, as where a Man justifies by Warrant of a Justice of Peace, or such particular Matter, the Place where &c. may be traversed, but where the Matter is transitory, and not local, it is otherwise. 3 Bult. 209. Trin. 14 Jac. Phillips v. Weeks.

8. When a justification is local, as where an Action against a Carrier was brought in London for Goods deliver'd in Yorkshire, to redeem at London, the Defendant pleaded a Robbery at Lincoln, abique hoc, that he left them at London. The Court held the Traverfe ill, because the Justification was not local; tho' Strogs J. was of a contrary Opinion. And Judgment was given for the Plaintiff. 2 Mod. 270. Mich. 25 Car. 2. C. B. Barker v. Warren.

(O) Things
Traverfe.

(0) Things doubtful to the Jurors.

1. WHERE Preprofession of Vileimage is alleged in the Plaintiff; and in his Blood, the Plaintiff may say, that his Father was a Bastard; and a good Plea without Traverfe, because the Matter is doubtful to the Jurors; and yet both are in the Affirmative. Br. Traverfe, per &c. pl. 185. cites 5 H. 7. 11. 12.

2. And in RDUment of Words, if the Defendant says that he holds in Socage, and not in Chivalry; and he as Prochoin Any took the Infant; this is not a good Plea; for the Jurors do not know what is Socage, nor what is Service in Chivalry; and therefore he shall say, that he holds by Feudal and such Rent, or the like &c. which is Socage, and traverfe the Chivalry; quod nota. Br. Traverfe, per &c. pl. 185. cites 5 H. 7. 11. 12.

(P) Traverfable. What other Things, in General.

1. NOTE, that it was put in Issue in Trespass brought by the Master of Saint L. if He was Master, or the Plaintiff; quod nota, that this traverfable. Br. Traverfe, per &c. pl. 39. cites 43 E. 3. 29.

2. The Words in a Writ, Master, Most Reverend, Nephew, Doctor, or the like, are not traverfable. Contrary of Knight, Taylor, Carpenter, &c. Br. Traverfe, per &c. pl. 32. cites 35 H. 6. 55.

3. That which is alleged in Protestation, and not by Matter in Fait, is not traverfable. Br. Traverfe, per &c. pl. 162. cites 39 H. 6. 5.


6. Arrefting of a Man for Subficion is good Caufe, and the Subficion is traverfable; quod nota; and it seems to be Law. Br. Peremptory, pl. 39. cites 4 H. 7. 2.

7. Every Thing which is material is traverfable. Br. Traverfe, per &c. The Traverfable must always be of the material Matter of the Plea only. This was laid down as a Rule. Arg. Lat. 12. in Cafe of Contable v. Chobery, and cites 19 E. 4. 2. 19 H. 8. 7. 52 H. 6. 16. 2 H. 5. 2. 5 H. 6. 55; Rep. Lightred’s Cafe. — No. 75. S. C.


Feme in the Reverfion, upon Default of the Tenant for Life, by Attorney, because the is properly Entitlement, this Surnume is not traverfable tho’ it be false. Quod Sunt consequens. Pl. C. 56. a — So the Surname of Damages in a Curia Claudenda is not traverfable. Br. Petition, pl. 26. cites 5 E. 4. 119. — So of a Recital that the Defendant has made an Attorney, because he is Vick. the being Vick. is not traverfable &c. F. N. B. 55 (1). — But where Suggestions are in Cafe of the Spiritual Court or Admiralty, they are traverfable. L. P. R. tit. Suggestion — * See pl. 29.

9. Sciens. As the knowing of a Deed to be forged, or of a Dog being Br. Traverfe, per &c. pl. 4 X. accoulemned to bite Sheep is not traverfable, but must be proved in Evi- dence.
Traverfe.

10. Condition precedent is traverfeable. Nov. 75. in Cafe of Contable v. Clobery; cites 48 E. 3. 34. 9 E. 4. 3. b. 3 H. 6. 33.

12. The Point of the Suggestion in a Prohibition is always traverfeable.
13. As in a Prohibition against Churchwardens, the Plaintiff declared that his Lands were charged with the Payment of 15ths and 5s. yearly to the Poor, and that the Surplus of the Profits were for his own Use; the Defendant maintained his Libel, and averred that the Surplus of the Profits were to go to repair the Church, and the Residue to charitable Uses Abique boc, that the Surplus &c. was for the Use of the Plaintiff; And upon De- murrer it was objected that the Traverfe was ill, because that which was traverfed was only an Inducement to the Plea, and Inducements must not be traverfed. Fleming and Williams agreed that the Traverfe was good because it is the sole Negative and the Point of the Libel, and no other Issue could be taken; And per tot. Cur. Judgment against the Plaintiff. 2 Bulle. 20. Mich. 10 Jac. Aultin v. Clifton.

14. An Acquiesce is in any [forme] Cafe traverfeable and ifusuable; For [as] it an Executor pleads that he has no Goods, nor ever had, whereas he should have pleaded Plene Administratitv, and So Nothing in his Hands; Per Doderidge J. And Mann the Secondary affirmed it with other Cases. Brownl. 225. Pach. 11 Jac. in Cafe of Miles v. Jones.

Circumstances are not traverfeable.
15. Where, as where it was made to the Date of a Bond, it was not material; For a Deed bearing an Imposible Date is good enough; per Crew Ch. J. Lat. 61. Pach. 1 Car. in Cafe of the Bishof of Norwich v. Cornwallis.

16. So where in Covenant the Plaintiff declared on Indenture of Cove- nant, that a Ship should sail with the next fair Wind; and that the Mer- chant should pay so much for Freight, the Defendant traverfed Abique boc, that the Ship did sail with the next fair Wind. And upon Demurrer Crew Ch. J. Doderidge and Jones J. held the Traverfe ill; for Crew said a Circumstance cannot be traverfed, and Wind is alterable. Poph. 161. Pach. 2 Car. B. R. Contable v. Clobery.

Nov. 75. S. C. accordingly; for the Voyage is the Substance of the Covenant, and not the going; as the next Wind, which is uncertain every Hour. —— S C. Palm. 57. held accordingly. —— Lat. 12. and 49. S. C. and the Traverfe held ill. —— S C. cited Arg. Hard. 69. in Cafe of the Protesetot v. Holt.

18. But when the Party will allege the Circumstances and need not, there this is traverfeable; quod nota. Br. Traverfe, per &c pl. 179. cites 4 H. 7. 9.

The Court denied a Sheriff's Return to be traverfeable, as in Cases of Devastavit returned upon a Fieri Facias, the Party cannot traverfe, but is put to his A- tion fur Cafe, which is the Way the Law allows to Remedy the Party upon a false Return. Skin. 76. Mich. 34 Car. 2. B. R. in the Lord Grey's Cafe.

S. C. & S. P. As where in Debit on Bond the Plaintiff expressly asers the Defendant was of full Age when he delivered the Bond, yet the Defendant may plead Infancy and shall not traverfe that he was of full Age, and that for this Reason, because it was alleged out of Time. Per Holt Ch. J.

21. Matter

22. A Record may be pleaded by Way of Indemnity, which is not See pl. 28 traversable, and thereto Null tuel Record is no Plea. So if Record of an Inferior Court be pleaded, it is not traversable, because not a good Plea; Per Holt. 12 Mod. 351. Patch. 12 W. 3. B. R. in Cafe of Creamer v. Wickett.

23. There is a Diversity between a Fine and an Amerciament; if a Fine be imposed it is not traversable, but Amerciament is. 12 Mod. 391. Patch. 12 W. 3. B. R. in Cafe of Dr. Grenville v. College of Physicians.

24. Where H. aff'as as a Judge, his Act is not traversable; Otherwise of a Confiable or Officer committing for the Peace. 1 Salk. 397. Trin. 12 W. 3. B. R. Groenvelt v. Burwell.


Foot by Fraud must be traversed, and whether they are paid or not, is but Evidence. Keb. 762. pl.

26. A Man's being the King's Creditor in a Quo Minus is traversable, if the Party comes in due Time to do it; Per Holt Ch. J. 12 Mod. 535. Trin. 13 W. 3. B. R. Wilbrahim v. Lownds.

27. Whatever is necessarily understood, intended, and implied in a Plea, may be well be travers'd as what is express'd. 2 Salk. 629. pl. 6. Patch. 3 Ann. in Cafe of Gilbert v. Parker.

S. C. and S. P.


As in Debt, the Plaintiff declared on a Judgment obtained 1st May &c. before the Mayor and Bailiff of Newbury, at a Court then held there according to the Custom &c. the Defendant pleaded that the Court there held according to the Custom, is held before the Mayor; and travers'd that the Plaintiff obtained a Judgment at the Court held 1st May before the Mayor and Bailiffs; and upon a Demurrer it was objected that the Plea was ill, because the Defendant had travers'd Matter of Record, which is not to be tried by a Jury; And this was adjudged ill upon a Demurrer, but it had been otherwise, when the Plaintiff had taken a Verdict. Lev. 195. Mich. 18 Car. 2. B. R. Dring v. Refpa.

29. What is set forth only by Way of Recital, may be travers'd; for the Pleas of Non Affirmavit and Non est Fulmen are both of them Pleas which traverse Matters in those respective Actions that are pleaded by Way of Recital; Per Parker Ch. J. 10 Mod. 191. Mich. 12 Ann. B. R. Setfern v. Gibber.

(Q) In what Cases. Abatement, Entry, or Gift in Tail.

1. In Aff's, the Tenant pleaded Bar that his Father was seised in Fee, and by Protestation died seised, and was entered as Heir, and gave Co-lom; and the Plaintiff said that F. N. was seised in Fee, and inf'ed him, by which he was seised till by the Defendant diffeied; to which the Tenant said that his Father was seised, and by Protestation died seised, and after F. N. abated and inf'ed the Plaintiff, upon whom the Tenant as Son and Heir entered, and was seised, till by the Plaintiff diffeied, upon whom D. entered, upon whom the Tenant re-enter'd; and the Plaintiff said that the Father of the Tenant inf'ed the said F. N. who inf'ed the Plaintiff as above &c. abisse but that F. N. entered after the Death of the Father of the
Traverfe.

the Tenant; and the Tenant said that be enter'd as above &c. and for the Issue, and found for the Plaintiff. And per forfeul, The Issue is jeofail; for the Traverfe is to no Purpofe, the Reafon feems to be innumafh as he ought to have travers'd the Abatement, and not the Entry; Quære for ad


2. Entry, the Tenant intended himself by Gift in Tail made by T. to his Ancestor &c. the Demandant made Title, because W. was feifed and gave in

tail to the Father and Mother of the Demandant; the Father died, the Mother survived him, and died feifed, and the said T. abated and gave in Tail to the Ancestor of the Tenant upon whom the Demandant re-enter'd, there, Per Prifer clearly, The Tenant may maintain his Bar, and traverse the Abatement, and shall not be compell'd to traverse the Gift in Tail to the Ancestor of the Demandant. Br. Traverfe per &c. pl. 159. cites 39 H. 6. 18.

(R.) Abatement, or Dying feifed &c.

2. Trefpafs upon § R. 2. the Defendant pleaded Feoffment of J. N. and gave Colour to the Plaintiff; and the Plaintiff said that L. was feifed, and

died feifed, and after J. N. abated and infeif'd the Defendant, and [that] one F. as Cofain and heir of L. and them how, entered and infeif'd the Plaintiff, who was feifed quamque &c. Catesby said, before that L. any thing had b. was feifed, and infeif'd L. and J. and after L. died, and J. survived, and was sole feifed, and infeif'd the Defendant as above, abique hoc quod J. abated; and the Traverse of the Abatement was not held good; for it is confeif'd and avoided, by which the Party reinfift'd the Traverse, and held him to the ret; But per Markham, Yel

verton, and all of the Common Pleas, he ought to traverse the sole dying feif'd of L. for it shall be intendment that L. died sole feif'd by all such Pleasings as above. Br. Traverfe per &c. pl. 209. cites 1 E. 4. 9.

Heath's

Max. 113.

cap. 5. cites

S. C.

3. Entry in Nature of Affife, the Tenant said that E. was seif'd in Fee, and infeif'd him, and gave Colour to the Plaintiff; the Plaintiff said that before E. anything had, T. was seif'd in Fee, and gave to J. and K. his Feuds in Tail, who died seif'd, and had Issue C. and the said E. abated and in

efif'd the Tenant, and the Issue enter'd and infeif'd the Demandant, who was seif'd till by the Tenant defeif'd; the Tenant maintain'd his Bar that E. was seif'd &c. and infeif'd the Tenant, abique hoc that E. abated after the Death of J. and K. proat &c. and the Rejoinder was challenged, becaufe he ought to answer to the former Pleifion. And by the Opinion of the Court, the Plea is good; for the Demandant avoided the Feoffment made to the Tenant by the Abatement, and so the Abatement is traversable well enough. Quæd nota. Br. Traverfe per &c. pl. 209. cites 1 E. 4. 137.

4. In Trefpafs, the Defendant said that D. was seif'd in Fee, and in

efif'd E. and the Defendant as Servant of E. did the Trefpafs, and gave Colour
Traverfe.

Colour to the Plaintiff. Catesby replied, that a long Time before D. any thing bad J. H. was seifed, and had hisse two Daughters A. and K. Fines of the Plaintiff, and died seifed, and D. abated and seifed the said E. and the Plaintiffs in Right of their Wives entered, and were seifed till the Trespafs. Jenney said, a long Time after the Death of the said J. H. W. D. was seifed, and died seifed, and D. entered as Son and Heir of W. D. and seifed E. as above. Per Littleton, This is no Plea; for it may stand with [the Allegation] that W. D. died seifed after the Death of J. H. and yet D. shall not have thereof Advantage; for it D. abated after the Death of J. H. and seifed W. his Father, and W. died seifed and D. entered, the Entry of the Parties is lawful, because D. the Abater seifed his Father, of which Defent to himself he shall not take Advantage. And yet Cur. accordingly, by which Jenney said that after the Death of J. H. W. Father of D. died seifed &c. as above, abdque loco that D. abated after the Death of J. H. and before the Death of W. his Father. Catesby said these Words, Before the Death of his Father, is more than is alleges, therefore you ought to traverfe the Abatement generally; And yet by the Opinion of the Court the Traverfe of Jenny is good, by which Catesby maintained his Replication as above, abdque loco that W. D. died seifed of the said Land. And this was held a good Plea per tor. Cur. quod nota, one Sans ces taken upon another Sans ces. Br. Traverse per &c. pl. 109. cites 15 E. 4. 22.

5. In Trespafs the Defendant pleaded Feasment of one A. and gave Colour to the Plaintiff; and the Plaintiff said that before A. any Thing had, his Father was seifed, and died seifed, and A. abated and seifed the Defendant, and the Plaintiff entered and was seifed, and the Defendant did the Trespafs. And by all the Judges, the Defendant may maintain his cites S. C. Bar, and traverfe the Abatement, or the Dying seifed at his Pleasure; for it is the Title of the Plaintiff, and if the one Point or the other be fals, the Title is not good. Br. Traverfe per &c. pl. 251. cites 18 E. 4. 1. 26.

6. In Trespafs upon the 3 H. 6. the Defendant said that J. N. was seifed in Fee, and leased to the Defendant for one Year, and gave Colour to the Plaintiff; and the Plaintiff replied that A. was seifed in Fee, and gave Colour to the Ancestor of the Plaintiff in that who died seifed; and the said J. N. abated and made the Lease as in the Bar; and the Plaintiff entered and was seifed till dispossesed by the Defendant, who did the Trespafs; and the Defendant maintained his Bar, abdque loco that J. N. abated. And by the Reporter, this is no good Issue; for the Gift and the Dying seifed is not denied, which tolls Entry. But contra upon Dying seifed for Life and Intrustion, there the Intrusion may be traverse'd; for the Dying seifed for Life does not toll Entry, and in Intrusion the Intrusion is traverseable. Br. Traverfe per &c. pl. 178. cites 3 H. 7. 7.

7. In Trespafs Ubi intergessis non datur per Legem, the Defendant said, that J. S. was seifed in Fee, and leased to the Defendant for Life, and gave Colour to the Plaintiff. And the Plaintiff shewed Defent to him, and that J. S. abated and leased, upon whose be entered, and was seifed till the Trespafs. The Defendant said, that the Father of J. S. after the Death of the Ancestor of the Plaintiff, was seifed, and died seifed, and the said J. S. entered and made the Lease, and did not traverfe the Abatement; and good, per tor. Cur. except Durers, without Traverfe; for Traverfe will barres the Matter in Law; that is to say, if J. S. abated, and infeoff'd his Father who died seifed, and J. S. is Heir to him, if he shall be in by Defent, or only as Abator, because he is Party to the Tort. Br. Traverfe, per &c. pl. 184. cites 5 H. 7. 6.

4 Y (S) Of
Traverse.

Sec (C)

(S) Of the Conveyance.

THE meane Conveyance may be traversed, as Ne bis in bis in Writ of Entry in Confessu Capi, viz. that he who is suppos'd to lease to the Tenant for Life, did not lease to him Prout &c. Br. Traverse, per &c. pl. 343. cites 7 E. 3. 54. and Fitzh. brief. 947.

2. In Quere Impudit by the King, who made Title by the Heir in his Ward, because J. S. was seized of 4 Acres of Land in D. with the Advowson apppellant and presented, and it descended to the Heir as Son of N. Son of W. Son of M. Son of the said J. S. There it is no Plea, that no such W. in Rumn. Natw.; for W. is in the meane Conveyance, which is not traversable. Br. Traverse, per &c. pl. 353. cites 43 E. 3. 7.

3. Treipas of beating his Servant, the Defendant said, that it was his Servant, and not the Servant of the Plaintiff; and the others contra. And to fee the meane Conveyance traversed here, and yet it amounts to Not Guilty; quo warranto. Br. Treipas, pl. 13. cites 3 H. 6. 54.

4. Debt for Salary by one, who was retained in Husbandry, the Defendant said, that he did not retain him in Husbandry; and a good Plea, to traverse the Contract, or the meane Conveyance, where he cannot wage his Law; quo warranto, per Cur. and here he cannot wage his Law. Br. Traverse, per &c. pl. 160. cites 38 H. 6. 22.

5. Where a Man may wage his Law, he shall not be suffered to traverse the meane Conveyance. Br. Pleadings, pl. 119 cites 2 E. 4. 13.

6. When the Defendant intitles himself by a Gift, or the like, it shall not be intended, that he has another title than his own; and so it is sufficient to traverse it. Br. Traverse, per &c. pl. 200. cites 5 E. 4. 133.

7. In Replevin the Defendant challeng'd J. S. because he was Cousin to a Nu of the House, who avow'd, and shew'd How he was Cousin; and it was said, that the Conveyance is not traversable, but if he was Cousin or not. Br. Traverse, per &c. pl. 344. cites 7 E. 4. 4. 5.

So it is of a Gift; it is no Matter if he was Godfather to a Son, or to a Daughter, nor to what Daughter. Br. Traverse, per &c. pl. 344. cites 7 E. 4. 4. 5.

8. So where a Juror is challenge'd because he holds 2 Acres of the Party, it shall not be traversed How he holds of him, but if he holds of him or not. Br. Traverse, per &c. pl. 344. cites 7 E. 4. 4. 5.

9. Where a Relese and several meane Conveyances are alleged against the Plaintiff, or him by whom he claims, the Relese shall be traversed, and
and not the meane Conveyance; for the Defendant has Possession, and cites therefore the Plaintiff ought to make good Title, because he demands the 8th.

Br. Traversel, per &c. pl. 116. cites 15 H. 7. 2. 3.

16. But, per Finesse & Kebble, where several Conveyances are alleged in one Title, or in one Replication, which are on the Part of the Plaintiff there the Defendant may traverse which of them be pleasing, and may traverse any of the meane Conveyances. Br. Traversel, per &c. pl. 116. cites Heath's Max. 119.
cap. 5. cites S. C.—Br. Double Plea, pl. 143. cites S. C.—Contr where it is in a Bar, and so fee a Difference between Bar and Title or Replication; and no Difference is taken there as to those Pleadings, be they in Affiz or in Trefpass. Quod non. Br. Traversel, per &c. pl. 116. cites 15 H. 7. 2. 3.—Br. Repleader, pl. 24. cites S. C.—Br. Double Plea, pl. 143. cites S. C.

11. The Defendant may traverse any Part of the Plaintiff's Conveyance of his Action, and not be forced to the General Issue. Brown's Anal. 10.

12. Where the Conveyance to the Action is in which doth entitle the Plaintiff to the Action, it may well be traversed, if the Defendant cannot wage his Law; otherwise where he may wage his Law. Per Gawdy J. Cro. E. 169. Mich. 32 Eliz. B. R. in Cafe of Kinnerly v. Cooper. Cites 8 H. 6. 5. 22 Ed. 4. 29. 7 Ed. 3. 54. 31 H. 6. 10. 26 H. 8. Br. Traversel, 5 H. 7. 3.


14. In Trefpass Vi & Arms for cancelling a Deed, and set forth, that J. S. the Defendant being seised of Land in Fee, interfeft'd A. and his Heirs with Warranty, reverting Rent with Clause of Distres; and afterwards by Deed bargain'd and sold the Rent to the Plaintiff, who casually left the said Deed, and the Defendant found and cancelld it; but did not expressly show that he was, at any Time before the Action brought, possessed of this Deed, but only by Implcation argumentatively. The Defendant traverse the Bargain and Sale of the Rent. It was inferred for the Plaintiff, that this is only Matter of Conveyance to his Action, and so not traversable. But it was answ'rd, that the Plaintiff by shewing his Title gives the Defendant Advantage to traverse it. And per to. Cur. clearly the Grant is not traversable in this Cafe; and so the Traversel is not good. Bull. 214. Trin. 10 Jac. Suckfield v. Constable.

(T) Descent, or Gift in Title.

1. In Formadon the Gift only is traversable, and not the Dependants. Br. Double Plea, pl. 16. cites 33 H. 6. 32.

2. If a Man conveys to himself Descent of Estate in Title, it is sufficient to be in Tres- traversel the Gift, without anfwering to the Descent; quod fictum. Br. Traversel per &c. pl. 210. cites 2 E. 4. 15.

In Traversel, the Plaintiff anfwer'd that before that the Defendant any thing had, was seised in Fee, and lead to S. for Term of Life, the Remainder to the Father of the Plaintiff in Tail, and after S. surrendered &c. by which &c. seised in Tail &c. and died seised, and the Land continued to the Plaintiff as Heir and Heir, and he entered, and was seised in Tail, and after lead'd a N. at Will, who interfeft'd the Defendant for Life, and the Plaintiff interfeft'd the Defendant said that before it was seised in Fee, the Remainder over, he interfeft'd a L. in Fee, and convey'd to his own P. former catted him, and made the said Fees, and after the said L. before the Surrender, and in the Life of the father interfeft'd the Tenant for Life, and interfeft'd a L. by which &c. and a good Plea per Cur. by which is the other fact that L. called S. Tenant for Term of Life [in the Life] of the Father in the Matter &c. and the others concur. Br. Confits and Avoid, pl. 42. cites S. C.—Br. Dette, pl. 148. cites S. C. Brooke says, And therefore see that Tail and Defendent is not double.

(U) Difficult.
(U) Diffeisn or Conveyance, as Release &c.

1. WHERE the Diffeisn is the Effct of the Bar, it ought to be travers'd by the Plaintiff; but where it is only Colour for the Plaintiff to bring his Action, there the other Matter, which is the Effct of the Bar, shall be travers'd, and not the Diffeisn. Br. Traverfe per &c. pl. 232. cites 10 E. 4. 7.

2. In Aife, the Tenant said that J. B. was seised and diffeis'd by W. to whom T. B. made a Release, and contrary to his own Deed, diffeis'd W. and infeis'd 5 Persons, who infeis'd the Plaintiff upon whom W. re-enter'd, whose Estate the Tenant has; and the Plaintiff for Title said that T. B. was seised, and infeis'd the 5 Persons who infeis'd the Plaintiff who was seised, till by the Tenant and the others diffeis'd, abique hoc that T. B. diffeis'd W. And per Priorit and Pole, This is not traversable; for it is only a Conveyance; and because the Plaintiff claims by the fame Perfon by whom the Defendant claims, whose Title is bound by the Release, therefore he shall traverse the Release; and so he did at laft. Br. Traverfe per &c. pl. 377. cites 30 H. 6. 7.

3. In Ejecution the Defendant pleaded, That before T. B. the Lessor of the Plaintiff had any Thing in Fee, and let it the Defendant for Life, and died infeis'd of the Recover, which defseis'd to B. who entered and diffeis'd the Defendant, and let to the Plaintiff. The Plaintiff says that A. was seised in Fee, and died seised; and it defseis'd to B. who entered and leaved to the Plaintiff &c. and traverses abique hoc, that A. let's to the Defendant prent &c. And it was thereupon demur'd, because he traverses the Diffeisn, and not the Lease, which is but a Conveyance. But after Argument it was adjudged for the Plaintiff that the Traverfe was good, and that he might traverse the one or other at his Election; for when both Parties make their Conveyance from one and the fame Perfon, there always the mean Conveyance is traversable; Wherefore it was adjudged accordingly. Cro. Eliz. 793 pl. 46. Mich. 42 Eliz. in C. B. Fawkner v. Powel, cites 4 H. 7. 9.

(W) Diffeisn or Descent.

1. Dif for Rent referred upon a Leafe for Years; the Defendant pleaded that before the Plaintiff any Thing had in the Lands &c. one J. S. was seised, and died seised, and his Heir entered, and the Plaintiff entered upon him and seised him; and made this Leafe, and before the Rent-day the Son entered; the Plaintiff by Pretention said that J. S. was not seised, nor died seised, and pro Placito that he did not seise the Son. The Defendant demur'd, the Quetion was whether Difcent or Diffeisn was traversable; And adjudged that the Diffeisn was. Moor 339. pl. 708. Pasch. 39 Eliz. Banister v. Lilley.

2. In
Traverse.

2. In Trespas and Ejectment ; the Defendant pleads that the Plaintiff did distress J. S. of the Land, and then made a Lease of it to him, and that afterwards the Land did descend to the Plaintiff. The Plaintiff replies that he was seised of the Lands, and traversed the Distress supposed to be made to J. S. And to this the Defendant demurs, and for Cause shews that he ought to have travers'd the Defendant, and not the Distress. But Roll Ch. J. said, That the traversing of the Distress makes an End of all, and therefore it is well taken, as being the most material Matter, at theDefent might have well enough been travers'd; and therefore let the Plaintiff have Judgment Nisi. Sty. 344. Mich. 1652. Wood v. Holland.

(X) Distress, or Dying seised.

1. IN Trespas, if the Defendant says that His Franktement, and the Heath's Plaintiff says that his Father was seised, and died seised, and he entered and was seised, and distress'd by the Defendant upon whom he entered. S. C. and the Trespas misuse &c. in this Action the Distress shall be travers'd. S. C. cited and not the Dying seised. Br. Traverse per &c. pl. 359. cites 30 H. 6. Arg. Hunt. 124. Trin. 9 Car. in Cafe of Edwards v. Laurence.


(Y) Dying seised, or Descend.

1. In Nature in Assise, the Tenant intituled himself by dying seised of R. S. Danby said, After the dying seised of the said R. S. was seised in Fee, and died seised, and the Land descended to the Plaintiff as Copy and Heir &c. and he'd how Cousin, by which he entered, and was seised and distress'd. Arderne said R. was seised as above, and died seised, and the Land descended to K. who entered, and leased to the said J. for Term of Lill, of which Estates he died seised, and K. entered and died, and the Land descents to C. who intefol'd us, abque hoc that J. died seised in Fee, &c ad Patrimon. Br. Traverse per &c. pl. 98. cites 22 H. 6. 23.

2. In Trespas the Defendant said that his Father was seised in Fee, and died seised, and he as Heir entered, and gave Copy; the Plaintiff said that before the Father anything had, he himself was seised in Fee, and gave to the Father and his Heirs in Tail, and after the Father died without Issue, and the Heirs held in, and after he died, abque hoc that the Father died seised in Fee, &c. Per Fairfax, This is not a good Plea, by which he said abque hoc that the Father died sole seised in Fee, &c. and so it was accepted; but it seems that he may have Traverse abque hoc that the Father died seised in Fee, &c. Quere; for per Fairfax, dying seised in Tail tolls the
Traverse.

Entry, but not as here where he dies without Issue of his Body; for then there is no Defent. Br. Traverse p. &c. pl. 256. cites 21 E. 1 + 65.

3. Trespass upon the S H. 6. the Defendant said that T. was seised and died seised, and the Land seised to him as Son and Heir, and be entered &c. and the Plaintiff said that T. was seised, and married K. and had Issue the Plaintiff, and died seised, and the Land seised to the Plaintiff &c. abique how that it descended to the Defendant &c. Quere if this be a good Issue &c. Br. Traverse p. &c. pl. 152. cites 21 H. 7. 31.

4. Trespass by M. the Defendant pleaded Service in Fee in J. N. who gave in Guilt to W. N. and conveyed by Defent, and gave Colour to the Plaintiff by the Donor, the Plaintiff said that T. transMiss in the Conveyance of the Tail inoff'd W. who inoff'd the Plaintiff, who was seised till the Trespass, abique how that the Land seised to the Defendant in modo & forma, and did not deny the dying seised of the Father of the Defendant alleged in the Bar: And therefore by the Justices the Plea is not good; for he cannot traverse the Defent but the Dying seised; for where the Dying seised is not denied, there it shall be intended that the Land seised to the Heir; Quod nota. Br. Traverse p. &c. pl. 114. cites 13 H. 8. 23, 24.

5. In Trespass, the Defendant said that F. was seised, and died seised, and he is Confin and Heir to him, viz. Son of M. Sisler of F. by which he entered, and gave Colour to the Plaintiff; and the Plaintiff said that F. had a Daughter named E. and conveyed to herself by F. and so he was seised till the Defendant did the Trespass. And a good Plea by the Opinion of the Court, and by all except Shelley; for the Dying seised is the Effet of the Bar, and therefore if F. had a Daughter the Bar is contested & avoided, and so he need not to take Traverfe abique how the Defendant is Confin and Heir; And so note the Dying seised is traverseable, and not the Defent. Br. Traverse p. &c. pl. 1. cites 19 H. 8. 6.

6. In Allife, the Defendant pleaded that J. A. was seised in Fee, and died seised, and the Land seised to him, and gave Colour; and the Plaintiff said that before that J. A. any Thing had, W. S. was seised in Fee, and inoff'd the said J. A. and W. P. in Fee, and J. A. died, and W. P. survived, and inoff'd the Plaintiff, who was seised till dispossessed by the Defendant, & hoc &c. and did not traverse the Defent; for the Dying seised is the Effet, and traverseable only, and not the Defent, and the Dying seised here is contested & avoided by the Jointenancy; and the Defendant said that J. G. was seised, and inoff'd the said J. A. in Fee, who was seised, and died seised, and all as in the Bar, abique how that the aforesaid J. A. at the Time of his Death, held jointly with the aforesaid W. P. & hoc &c. And to see the Joint-teneure put in Issue, and not if W. S. inoff'd them jointly, or not. Br. Traverse p. &c. pl. 6. cites 27 H. 8. 22.

7. In Trespass the Defendant conveyed by 6 Descents in Tail; the Plaintiff confess'd the Entail, and conveyed a Feoffment to him by the Heir of the Dowre, which was a Discontinuance, and travers'd the Dying seised of the same Feoffor. This was held ill, and that he should have travers'd the very last Defent; for otherwise it may be intended that one of the Meine Descents came to the Land, and thereof died seised, and so the next Heir remitted. And at length, by Advice of the Court, the Plaintiff confess'd the Tail, and took all the Dying seised, except the last, by Propitiation, and for Plea that he which is suppos'd to be last &c. inter'ed the Ancestor of the Plaintiff, from whom it descended to him, abique how that the last Ancestor of the Defendant died seised Mado & Firma &c. and altho' the Feoffment be false, yet the Defendant ought to maintain his first Saving, and if it be false he will be trick'd. D. 10. pl. 25. Mich. 1 & 2 P. M. Vivion v. St. Aubin.

8. In Feoffment (supposing a Demise by the Ld. C. the Defendant said that before the Plaintiff or the Ld. C. any Thing had, one B. was seised in Fee, and inoff'd one Andrews who died seised, and his Son held to him, and that he was polishted till cydied, and that the Son was dispossesed by the said...
9. The Avowant conveyed a Title to himself as next Heir of the Lord Bland. 319. Bowers, who died feised in fee without issue, and the Land defended to him; accordingly, the Plaintiff conveyed the dying feised, but conveyed a Title to himself by the Deed of the Lord Bowers alone fee, that the Land defended &c. And upon cited Arg. producing a Record of the Case of FDUILLINGS Patch. 14 H. 8. it was ad-
judged according to that Case, that the Traverfe was ill because the Ti-
tle of the Avowant was contested and avoided; and in such Case there
ought not to be a Traverfe. D. 366. a. b. pl. 36, 37. Mich. 21 & 22 Eliz. but says,
that if the Parties do
not claim by one and the same Person, or the dying feised nor contested or avoided, there the Dying
feised shall be traversed and not the Defendant.——Heath's Max. 110. cap. 3, cites S. C. and so is 19 H.
6. 6e. But otherwise as it seems, if he had claimed by Survivhorship, or in Coparcenary.

10. In Covenant the Plaintiff set forth, that the Lessor made a Lease
for Life rendering Rent, and devised the Reversion to his Wife and died; she
married the Defendant, and the Husband and Wife sold the Reversion to B.
G. for Life and the Rent to the Plaintiff, and covenanted that he should quiet-
ly enjoy it without any Disturbance from any Person, charging under the said
B. G. who died feised of the Reversion, and the same defended to his Heir;
and the Breach alledged was, for that the Heir claimed the Rent by Reston
of the Grant of the Reversion to his Ancestor; the Defendant pleaded the
Grant of the Reversion to B. G. alone fee, that it defended to his Heir;
and upon a general Demurrer this was held an ill Traverfe, because he
ought to have traversed that B. G. died feised &c. for that is the Sub-
stance, and the Defendant is only the Consequence of the other. 3 Nels.
D. 366. seems to mean pl. 46

Vernon's Cafe, Alias, Fowler v. Clayton & al' which see at pl. 9 above.

11. If the Eldest Brother pleads Descent of Land to him in Borough
English, the youngest has no other Plea but to traverse the Descent; per

12. So of Descend, if he makes a Title against the Heir he must traver-
se the Descent; per Dodridge J. and Lea Ch. j. said, that it would be
repugnant to law. Verum et, that it defended & pro placito; that the

(Z) Dying
(Z) Dying seised, Or Gift in Tail.

1. I N Affife where the Tenant makes a good Bar, and the Plaintiff makes Title after by Gift in Tail, and dying seised, there the Gift shall be traversed, and not the dying seised; for no dying seised can be * by Gift in Tail without dying seised. Br.Traverse per &c. pl. 12. cites 9 H. 6. 22.

2. Trespass upon the 8 H. 6. by J. N. against 2 Barons and their Femes and another; the Defendant said, that N. C. Grandfather of the Femes was seised in Fee and died seised, and the Land defended to M. as Son and Heir, who proved and died seised, and the Land defended to P. as Son and Heir of M. who died proved and seised without Issue, and the Land defended as the Femes as Sifers and Heirs, and gave Colour, and the Plaintiff said that before N. Cany thing had, R. was seised in Fee and gave to the said N. C. in Tail, who had Issue as in the Bar, and also had Issue the Plaintiff, and died seised and all as in the Bar, and the Defendant maintain’d the Bar, Allque fee, that the Donor gave in Tail Proxt &c. and by the Reporter the Replication confesses and avoids the Bar without traversing the dying seised; For now it shall be intended that the Done was seised in Fee after Disentailment, and died seised; and then this is a Remitter: But if it had been alleged that N. C. had been seised in Fee, and died by Postestation seised, then the Seizin in Fee shall be traversed; for there is no other Thing to be traversed; for there can be no Remitter without dying seised in Fact; and so note the Difference by him. Br. Traverse per &c. 177. cites 3 H. 7. 5.

3. Trespass by T. C. against F. and S. his Feme upon the Statute of 5 R. 2. who pleaded that N. Grandfather of S. the Feme of the Defendant was seised in Fee and died seised, and the Land defended to J. C. his Son as Son and Heir &c. who entered and was seised, and by Postestation died seised, and the Land defended to S. Feme of the Defendant as Daughter and Heir of the said J. C. by which E. and S. his Feme as Cousin and Heir of the said N. entered and gave Colour to the Plaintiff; the Plaintiff repied, that before N. any Thing had, Martin and others were seised in Fee, and gave the Land to the said N. in Tail to the Heirs Males, and N. died seised of such Estate, and had Issue the said J. C. and the said T. C. now Plaintiff, and after J. C. died without Issue Male and had Issue S. Feme of the Defendant, and the said T. C. Plaintiff as Son and Heir Male of the said N. entered as Brother of J. C. Son of the said N. and the Defendant maintained his Bar, and traversed the Gift in Tail to the said N. and the Issue found for the Plaintiff, that they gave &c. And the belt Opinion was, that it is feas fail, and that the Replication is not good, because where the Defendant alleges Seisin in Fee in N. and that he died seised; the Plaintiff alleges Gift in Tail to this same N. and that he died seised of an Estate Tail, and did not traverse the dying seised in Fee; for he cannot die seised in Fee and die seised in Tail, and it cannot be intended by this Pleading that he dis continued and retook in Fee and died seised, so that the Heir in Tail may be remitted; for tho’ he may be remitted, yet N. the Grandfather died seised in Fee and not in Tail, and therefore the Heir is not con seised nor avoided in Fact nor in Law; and by all he ought to be con seised and avoided in Fact or in Law, or traversed. For a Man shall not make the Title at large in any Case unless in Affise; Per Cur. Br. Traverse per &c. pl. 185. cites 5 H. 7. 11. 12.

(Aa) Dying
(Aa) Dying seised, Or Mesne Conveyance.

1. I N Affrse the Tenant made Bar by a Stranger and gave Colour, the Br. N. C. Plaintiff made Title by the same, by whom the Defendant made his Bar, viz. that J. S. was seised and gave in Tail to his Father who seised S. W. N. who seised the Tenant, upon whom A. B. entered and seised the Grandfather of the Plaintiff, whose He is in Fee, who died seised, and the Land descended to the Plaintiff; and so he was in in his Remitter until S. C. by the Defendant dispossessed, and in Truth A. B. never entered nor never seised the Grandfather of the Plaintiff which remitted him; for this binds the Entry of the Tenant, and is the most notable Thing in the Title; quod noni. Br. Traversee per &c. pl. 154. cit. 4 E. 6. Coeks v. Green.

2. Scire Facias upon a Recognizance in Chancery, issued out of the Petty Bag against the Tenants of Yarway; the Sheriff returned Seire Feis against several, two of whom pleaded in Bar, that Yarway and J. S. were jointly seised, and seised in Fee, and so seised the said Yarway died Abiqua loc, that he was sole seised at the Time of the Recognition acknowledged. The Plaintiff replied, and contended that Yarway and J. S. were jointly seised, but that they being so seised, did by Bargain and Sale enrol'd &c. convey a Moity of the Lands to the said 2 Defendants in Fee and seised that Yarway died seised Homo & Buriae. Excepton was taken to the Traversee, because when it was shewn that Yarway and J. S. had made a Bargain and Sale in Fee, this had sufficiently contested and avoided the dying seised, alleged by the Defendants, and then the Plaintiff ought not to traversee the dying seised also; for tho' the Confor had died jointly seised with J. S. yet by the Bargain and Sale a Moity of the said Lands was liable to the Execution, notwithstanding they should have a Reconveyance, or that they had dispossessed the Purchaser, and afterwards Yarway had died seised, and J. S. had survived; and so the seised died in this Case not material nor traverseable; and of this Opinion were the Court. 2 Saund. 23. 24. 25. Hill. 21 & 22 Car. 2. Jeffreys v. Morton and Dawton and al.

much as the Money (being an Infant's) might otherwise be lost, and the same was granted Nisi Gaudo.

as Saund. 28. says, that both Parties contented to alter the Defendant's Plea, and the Plaintiff to reply what Matter he would, and that so it was done.

(B.a) Feoffment, or Disseisin.

1. ENTRY in Nature of Affrse, the Tenant said that J. N. was seised and interested him, and after disposed of him and seised the Plaintiff, upon whom he re-enter'd; the Defendant said, that J. N. gave it &c. pl. 86. to the Plaintiff by Fine, before which Fine the Tenant had nothing of the Feoffment of J. N. and no Plea without traversing the Disseisin or the Feoffment, and so only Argument; whereupon he pleaded the fine as above, by which he was seised till by the Tenant dispossessed Abiqua loc, that the J. N. was Tenant was seised him.
Traverfe.

3. Trefpafs upon the 5 R. 2. by J. N. the Defendant said that R. and W. were feized in Fee, till the Plaintiff disfeted, and the Defendant as Servant to them, by their Command entered; the Plaintiff said, that T. was feized and disfeted by the said R. and W., which R. and W. were disfeted by the Plaintiff, upon whom T. re-entered and injoyned the Plaintiff, and he was feized till the Defendant did the Trefpafs, and the Defendant maintained his Bar, Abique hoc that the Plaintiff any Trefpafs upon the Title of T. after the Diffenfe made by the Plaintiff to the said R. and W. And the belt Opinion was that he ought not to traverfe the Proffes; but maintain what is defended by the Title, for otherwise it shall be a Departure from his Bar, and to him did gratis after. Br. Traverfe per &c. pl. 239. cites 1 E. 4. 5.

4. In Trefpafs the Defendant said, that he himself was feized and lefay at Will to R. who injoyned the Plaintiff, and he entered; the Plaintiff shall not traverfe the Lege at Will, but the Feoffment. Br. Traverfe per &c. pl. 218. cites 5 E. 4. 4.

5. In Trefpafs of a Clofe broken, the Defendant said that R. was feized in Fee, and before the Trefpafs injoyned the Defendant in Fee, and gave Colour by R. the Plaintiff said, that the said R. was feized &c. and injoyned B. in Fee, upon whom R. contrary to his Feoffment entered and disfeted B. and so feized by Difeiten, he injoyned the Defendant as in the Bar, upon whom B. re-enter'd and injoyned the Plaintiff who was feized till the Trefpafs, and the Defendant rejoined that R. did not diffuse B. prett &c. And it was challenged becaufe the Difeiten is not traverfable, but the Feoffment. Per Needham J. the Rejoinder is good; For he may traverfe the Feoffment or the Difeiten at his Pleasure: And per Danby Ch. J. he may traverfe the Difeiten clearly if he will; for this is material in the Replication. Br. Traverfe per &c. pl. 201. cites 5 E. 4. 136.

6. Entry for Difeiten of Difeiten done to himself, the Tenant plaid Recovery by himself in Forretden against N. and the Possession of the Plai-
tiff. Mefue between the Gift and the Recovery. Young, not confifting the Gift, nor that the Tenant is Heir pro Placito, said, that the Demandant was feized till by the Tenant disfeted, who injoyn'd N. pending this Writ, and recover'd by Forretden pending this Writ, and so the Recovery false and void in Law. And, per Danby, clearly in this Caze he shall not say that he Ne injoynia pas, but shall traverfe the Diffenfe, and not the Feoff-ment. But, per Littleton and Choke, he may traverfe the Peoffement if he will. Br. Traverfe per &c. pl. 224. cites 7 E. 4. 19.

7. In Trefpafs of a Clofe broken, the Defendant said, that the Place was his Frankenement &c. The Plaintiff said, that J. N. was feized in Fee, and lefay to the Plaintiff at Will, and was injoyn'd till the Defendant injoyned him, and disfeted J. N. and the Plaintiff by Command of J. N. re-enter'd, claiming his just Estate, and the Trefpafs mene between the Diffenfe and the Re-enter. And by lome he may re-enter without Command. And the
the Defendant maintain’d his Bar, abique hoc, that J. N. lefled Prout &c. and the Ilue accepted; for it is necessary to shew who made the Leaf, as of Gift in Tail, or for Life, or for Years, he ought always to shew who was feised, and gave or lefled, and so the Gift or Lease is transferable, for it is material. But in Trefpafs, if the Defendant pleads in Bar, and the Plaintiff intitels himself, that is to say, that J. B. was feised, and infecf’d the Plaintiff in Fee, who was feised till by the Defendant diffeis’d; there he shall traverse the Difeisin, and not the Feoffment, for the Feoffment is only a Conveyance there, for he need not to have alleged the Feoffment in Trefpafs, and so it is not transferable. Controry in Affice; for there he shall make Title, and there the Feoffment may be traversed. And all the Court agreed this Cate of Trefpafs, and so it seems, that every Thing which is material is transferable. Br. Traverfe per &c. pl. 239. cites E. 4. 3.

8. In Trefpafs the Defendant pleaded his Frankenstein. The Plaintiff said, that A. Mother of the Defendant, and two others, were feised in Fee, and infecf’d the Plaintiff, by which he was feised till by the Defendant diffis’d, upon whom the Plaintiff re-enter’d, and the Trefpafs was infecf’d. The Defendant said, that B. was feised, and gave to the said D. in Tail, by which the Land descendent to him as Son and Heir of the Douce, by which he enter’d &c. Abique hoc, that the said A. and the other 2 infecf’d the Plaintiffs, Prout &c. and the Ilue found for the Plaintiff. And it was pleaded in Arrêt of Judgment, because the Feoffment was traversed where the Difeisin ought to have been traversed. Per Keeble: Where the Plaintiff and Defendant claim by one and the fame Person, the Feoffment shall be traversed, and otherwise the Difeisin shall be traversed, for that which is not traversable at the Commencement, may be traversed by Mutter ex post facto. And Daverce and Brian Ch. J. accordingly; but Hawes and Townsfend, Judices, contra. And yet Townsfend contends the Ground put by Keeble, and took a Difference, because the one claims by A. only, and the other claims by A. and two others. Br. Traverfe per &c. pl. 179. cites 4 H. 7. 9.

(C. a) Feoffment, or Dying Seised &c.

1. WHERF a Man pleads Feoffment in Fee and Dying Seised, there the Dying Seised shall be traversed, and not the Gift; for a Man may be feised in Fee by Difeisin, without Feoffment: quod nota. Br. Traverfe per &c. pl. 12. cites 9 H. 6. 22.

2. In Trefpafs the Defendant said, that W. was seised and lefled at Will to A. and be, as Servant to A. did the Trefpafs, and gave Colour. The Plaintiff said, that S. was seised, and died seised, and the Land descendent to him, and be enter’d, and was lefled till the Defendant did the Trefpafs. To which the Defendant said, that a long Time before S. any thing had, J. and P. were seised, and infecf’d W. named in the Bar, who lefled to the said A. at Will, who infecf’d the said S. who died seised, the said W. being within Age, by which W. enter’d for Alienation to his Disinfeisement: and afterwards again to A. to hold at Will, as in the Bar. To which the Plaintiff said, that the said S. was seised, and died seised, and the Land descendent to the Plaintiff’s who enter’d &c. Abique hoc, that the said J. and P. infecf’d the said W. in Life of the said S. And ill Pleading, per Cur. for 2 Causes; one because he held, that J. and P. did not infecf W. in the Life of S. whereas it may be, that they infecf’d him before S. was born and then the Ilue is found for the Plaintiff, and yet he shall be barr’d: for it ought to be, abique hoc, that they infecf’d W. before the Death of the said S. Quod nota. Br. Repleader, pl 5. cites 44 H. 6. 49.

5. Another.
3. Another Case is, because the Defendant initiated hims 5f by Feoffment of \( f \) and \( p \) made to \( w \). by Lease at Will, by \( w \) to \( a \). And the Plaintiff initiated hims 5f by \( s \), who is a Stranger; and traversed, that \( f \) and \( p \) did not in 5f \( s \), where he does not claim by \( f \) and \( p \). But contra, it he had claim'd by them; therefore it seems if he had said, that the said \( f \) and \( p \) had in 5f \( s \), who died feised as above, abique hoc, that they had in 5f \( w \), before the Feoffment made to \( s \), then good. But Quare, if no Feoffment was made by them to \( s \). Br. Repleader, pl. 5. cites 33 H. 6. 49.

4. In MortdanceCTOR, if the Tenant pleads Matter of Fall, as Feoffment of the same Ancestor, there he ought to traverse the Dying Seised. Contra where he pleads Fine or Recovery; for there the Heir shall be estopp'd to say he died feised, contrary to the Record, without showing how the Ancestor came after to the Land in the Affise; quod nota. Br. Mortdancector, pl. 52. cites 6 E. 4. 11.

5. Treпис upon S R. 2. the Defendant said, that \( b \) was seised, and in 5f \( a \), who in 5f \( d \), the Defendant, and gave Colour to the Plaintiff. The Plaintiff said, that \( r \) was seised before that \( b \), any thing bad, and died seised, and the Land defended to the Plaintiff as Heir, and be entry'd abique hoc, that \( b \) in 5f \( a \). Prout &c. And a good Traverse by all the Julices; for if the Conveyance be false, the Bar is not good; and if the Plaintiff in his Replication alleges a Feoffment to \( b \) and Dying Seised, the Defendant may traverse the one or the other. Quare, for it was not denied. Br. Traverse per &c. pl. 253. cites 18 E. 4. 26.

6. In Affise against \( a \), who says, that the Plaintiff in 5f \( d \), has Father in Fee, who died seised, and be entry'd as Heir &c. The Plaintiff says, that he brought Affise against the Father of the said \( a \), and recover'd, and had Execution. There he ought to traverse the Feoffment made to the Father of the Tenant, and not the Dying Seised; and yet at the Commencement the Feoffment was not traversable. Br. Traverse per &c. pl. 179. cites 4 H. 7. 9.

7. Where several Feoffments, with a Dying seised, are alleig'd, the Dying seised shall be traversed, and not the mere Conveyance. Br. Traverse, per &c. pl. 116. cites 15 H. 7. 23.

(D. a) Feoffment, or * Que ESTATE &c.

1. If \( a \) brings Affise against \( b \) and \( b \), says, that \( f \) N. recover'd against \( a \). Que Estate \( b \) has, whereas \( b \) is in by Dasstes, \( a \) shall say, that after the Recovery \( f \) N. in 5f \( b \), by which \( a \) was seised till by \( b \). seised; abique hoc, that \( b \) has \( f \) N.'s Estate; per Rogers. But, per Markham, contra; for \( a \) shall say, that after the Recovery be entry'd, and in 5f \( b \). and contrary to his own Feoffment, be entry'd and in 5f \( b \), the Tenant, upon whom \( a \) enter'd and was seised, till the Tenant seised; and to contest and avoid it, and not traverse the Que Estate, and \( b \) can traverse nothing but the Feoffment which was made after the Recovery; quod Billing cancellit. Br. Traverse per &c. pl. 226. cites 7 E. 4. 26.

2. In Affise, Feoffment is pleaded of one \( f \). \( n \). to \( t \), whose Estate the Tenant has. The Que Estate is not traversable, unless the Plaintiff claims by the same Person, and then the Que Estate is traversable; per Keble. Br. Traverse per &c. pl. 179. cites 4 H. 7. 9.

So of a Feoffment pleaded in Affise, if the Plaintiff claims by another; but if he claims by the same Person the Feoffment is traversable. Br. Traverse per &c. pl. 179. cites 4 H. 7. 9.
3. In Replevin the Defendant aver'd for Damage feant in his Freehold. The Plaintiff replied, that long before the Defendant had anything therein, he himself was seised of the Place where &c. till by A. B. and C. dispossessed, against whom he brought Affire, and recovered; and that the Estate of the Plaintiff was mine between the Affire and the Recovery therein. The Defendant rejoind'd, that before the Plaintiff bad any thing therein, one G. was seised, and infeoff'd him, alike he, that A. B. and C. or either of them, had any thing therein at the Time of the Recovery. Walmley J. held the Bar not good, because it did not say, that A. B. and C. were Tenants tempore Recuperationis, which should be shew'd in every Recovery where it is pleaded. But Windham contra, because the Affire may be brought against others as well as the Tenants, as against Difficulties; but other real Actions must be against the Tenants only, and therefore need not shew they were Tenants at the Time of the Recovery; and allo the Traverle here is well enough. Le. 191. pl. 277. Mich. 31 and 32 Eliz. C. B. Rigden v. Palmer.

4. In Trepasss the Defendant pleaded, that A. was seised, and infeoff'd B. who infeoff'd C. who infeoff'd D. One Estate the Defendant has. The Plaintiff may traverle which of them he will. 6 Rep. 24. a. b. by the Reporter in Read's Case, cites 15 H. 7. 3. and 16 H. 6. Double Plea, 83.

5. In Trepass the Defendant pleaded, that A. was seised, and infeoff'd the Defendant. The Plaintiff said, that J. S. was seised, and died seised, and the Land descended to him; and traverled, abique loco, that A. infeoff'd B. and adjudged it a good Traverle. 6 Rep. 24. b. in Read's Case, by the Reporter, cites 15 H. 4. 26 and says, that fo is 21 H. 7. 33. and that this is true in all Cases, where the Defendant does not claim by any of the me Ve Conveyances from the Plaintiff himfelf, for then it is traverfable.

(Ea) Leave &c. or Meifie Conveyance.

1. Trepass by the Prior of T. for entering into a House, the Defen- dant said that the Predecessor of the Plaintiff feant to J. N. for 14 Yeers, who was possessed, and granted it to J. N. who made J. his Feme Executrix, and died, and A. married J. and after A. and J. granted to T. B. to the Use of T. T. and after T. T. granted the rest of the Term to the Defendant by which he entered, Judgment & Action; the Plaintiff said, that he was seised in Fee in Right of the House till the Defendant did the Tre- pass, abique loco that A. and J. granted &c. proe &c. and so traver'd the Meifie Conveyance, and not the Leafe of his Predecessor under the Common Seal which bound him, and were at Hufe, and bound for the Plain- tiff, and this Matter alleged in Arreft of Judgment. And per Fineux, Brian, and Wood Justices, it is Jeofall; for he ought to traverle that which binds him when he makes his Bar from the Plaintiff, or devery his Title by the Plaintiff, and binds him. Contra Filler and Davers; but at the last it was agreed in a Manner by all the Court, that it is a Jeofall for the Cattle aforefaid. Br. Traverle per &c. pl. 116. cites 15 H. 7. 25 3.

2. Note in Trepass, if the Defendant pleads a Leave of the Plaintiff Heath's Max. 119. cap. 5. cites S. C. C. cited Winch. 15. in Case of Sir George Savil v. Thoron.

3. Re-
Traverse.

3. Replevin; the Defendant averred by reason of a Copyhold granted to him by C. Bishop of W., Lord of the Manor; the Plaintiff said, that before C. was Bishop, H. was Bishop, by whose Death the Temporalties came to the Queen, during which the Copyhold escheated, and the Queen granted it to the Plaintiff in Fee, and traversed the Grant by C. The whole Court held, that the Traverse was good, and that the Grant by the Queen of the Copyhold escheated, was good, and that this Traverse ought to be; for there is not any Confessing and Avoiding, because he does not confess the Seisin and Grant by Copy; but if he had confessed that C. had entered and granted it by Copy, then there need not any Traverse; and it was ruled accordingly. Cro. E. 754. pl. 17. Paish. 42 Eliz. C. B. Covert's Cafe.

(F a) Lease or Reversion.

1. In Precipe quod reddat, the Tenant made Default after Default, and one prayed to be reversioned, because he leased for Life to the Tenant &c. There the Reversion shall be travers'd, and not the Lease. Br. Traverse per &c. pl. 364. cites 33 H. 6. 38.

In Trespass, if the Defendant says that F. was seised, and leased to F. for Life, and prays Add of him, the Plaintiff shall make Title, and shall traverse the Lease. Br. Traverse per &c. pl. 366. cites 5 E. 4. 1.

But if the Defendant pleads that it is the Franktenment of F. who leased to him &c. and prays Add, the Plaintiff shall make Title, and shall traverse the Franktenment, and not the Lease, per Heydon. And Brooke says it is not much to the Purpose. Br. Traverse per &c. pl. 366. cites 5 E. 4. 1.

Heath's Max. 116. cap. 5. cites S. C.

3. Where the Defendant in Trespass of Entry into a Close says, that J. S. infessed him, and gives Colour to the Plaintiff, and the Plaintiff says that R. was seised, and leased to S. at Will, who infessed the Defendant, and after R. entered and infessed the Plaintiff, absque hoc that B. any Thing bad, unless at Will; this is a good Traverse, but shall not traverse the Lease at Will. Br. Traverse per &c. pl. 217. cites 5 E. 4. 1.—But in the Time of E. 6. he ought to say absque hoc that J. S. was seised in Fee Moto & Forma, prout &c. ibid.

(G a) Matter of Record, or Matter in Fact.

1. Where Matter of Record and Matter in Fact are jointly pleaded together, as in the Foreign Attachment in London of Debt in another's Hand, so that the Matter of Record is not good, but by reason of the Matter in Fact, there the Matter in Fact is traversible, notwithstanding the Record, As to say that no such Cauton. Br. Traverse per &c. pl. 276. cites 22 E. 4. 30.

2. And where Recovery is pleaded by Defendant in Affise or Precipe quod reddat, the Tenant ought to aver that the Tenant was Tenant of the Franktenment at the Time of the Recovery, and there the Defendant shall have Answer to it that he was not Tenant of the Franktenment at the Time &c. Br. Traverse per &c. pl. 276. cites 22 E. 4. 30.

3. And
3. And in Foredon, if the Tenant pleads a Recovery by Default against
his Ancestor in Precipe quod reddat, and aver that he had Assises per De-
scend, as he ought, the Defendant may say Rents per Descend; and so in
all such like Cases, where the Matter in Fide is material, as here. Contrs
where it is not material, as of a Que Estate &c. Br. Traverfe per &c. pl.
276. cites (E. 4. 30
4. Where Matter in Fide is alleged by the Defendant, As if the Defen-
Heath's

dant says that the Plaintiff in Appeal named Heir is a Bastard, the Plaintiff
shall say that Matter, and not Bastard. Br. Traverfe per &c. pl. 279. cites (E.
22 b. 4. 39.
5. Where a Recovery with several Messe Conveyances are alleged against
the Plaintiff, or him by whom he claims, there the Record shall be traver-
s'd, and not the Messe Conveyances. Br. Traverfe per &c. pl. 116.
cites (E. 7. 2, 3.

(Ha) Que Estate, or Confirmation.

1. A Vowry for 10 s. the Tenant said that J. late Lord there Que Estate
the Tenant has in the Seigniory confirmed to D. then Tenant Que
Estate the Tenant has in the Tenancy, to hold by 1 d. pro omnibus Servituis,
and they'd the Deed &c. And the Defendant said that the Tenant and his
Ancestors have held of the Defendant and his Ancestors from such a Time &c.
by 10 s. &c. abhace hoc that he had the Estate of J. and the Traverfe was
rejected; for he ought to travers'd the Confirmation, or that J. had nothing
in the Seigniory at the Time &c. or that D. did not hold of him at the Time &c.
Per Cur. by which he travers'd that J. had nothing in the Seigniory at

(1a) Seisin in Fee, or Conveyance.

1. M Ordescoror of the Seisin in Fee of J. the Ancestor of the Plaintiff
&c. the Tenant said that H. Father of the Plaintiff whose Heir &c. was seised in Fee, and the Land is devisable by Cutoff, and he devise'd to A. for Term of Life, the Remainder to this J. in Tail, and the Remain-
der in Fee to be sold, and that the Tenant for Life, and the said J. are dead
without Issue, and conveyed himself to the Land by the Sale of the Fee Simple,
and seised the Testament of the Father, Judgment if Affile &c. And per
Cur. in this Case the Plaintiff shall not say that J. was seised in Fee, ab-
sique hoc that he had anything by the Devise, without shewing how he
came to it after, by reason that the Devise binds as a Deed indicated. Br.
Titles, pl. 49. cites 35 Afl' 1.
2. Recordare; A was seised in Tail, and seised to B and C. for 2 Years,
and after A. B. and C. leased to F. N. for Term of 25 Years rendering Rent,
and A. died, and M. his Son court the Lease, before which Outer nothing
Arrest; and this was pledged in Bar of the Avowry, which was that A. B.
and C. were seised in Fee, and all as above; and a good Bar to the Avowry
without traversing that A. B. and C. were not seised in Fee at the Time of the
Devise; for if they were seised of any Estate of Franktenement, they
may lead for Life; for in Affile if the Tenant says that E. was seised in
Fee, and infecrit him, and gives Colour, the Plaintiff may lay that be-
fore 2 E. 5. 11
fore this he was leased, and leased to E. for Term of Life, who made Fee, and he entered for Alienation; and good without traverfe the Seisin in Fee, Per Littleton and Choke. Br. Traverfe per &c. pl. 209. cites 2 E. 4. 11.

3. In Formeden, the Tenant said that before the Gift the Donor himself was seized, and unseized the Donor in Fee, who gave to the Donor and his Fee, the Baron feised within Age, who had lishe the Mother of the Defendant, the Fee and, the Baron took another Donor and had lishe the same Tenant, Judgment in Actio; and the Reason of the Bar seems to be, that when the Infant made the Fee, and the Fee was re-gave to him in Tail, he is remitted in Fee by Reason of the Nonage, and so conies d and avoided the Gift; for the Entry of the Infant was lawful, by which the Defendant said that the Donor gave as above, abIQUE hoc that the Donor unseized the Donor in Fee, Prout &c. Danby said he ought to traverfe the Seisin before the Gift, and not the Fee, but the other judices held the Traverfe good, and Littleton the like. Br. Traverfe per &c. pl. 219. cites 5 E. 4. 5.

4. In Dun fut infra stentor, nothing shall be traverfed but the Deputy per Littleton. And by others it was agreed, that the Seisin may be traverfed, but not if he had any thing or not. Br. Traverfe per &c. pl. 219. cites 5 E. 4. 5.

5. In Affiple, if I say that I leased to A. at Will, who unseized the Plaintiff, and I entered; this is sufficient, and the Agreement shall not be traverfed; per Catesby. Br. Traverfe per &c. pl. 219. cites 5 E. 4. 5.

6. In Formeden in Defender the Tenant said, that before the Donors anything had, be him self was seized in Fee, and unseized the Donor, being within Age in Fee, by which they were seized, and gave &c. and after the Tenant within Age re-entered, and was seized in Fee in his Restorer, & hoc &c. And the Defendant maintain'd the Gift abique hoc, that the Tenant unseized the Donors, Prout &c. And by some the Traverfe is not good; for he ought to traverfe the Seisin of the Infant, now Tenant; for the Fee is only a Convenant; and it he was disfesse by the Donors, or if they abated and gave, yet the Tenant-Infant may re-enter. And, per Needham and other Juries, the Court shall not argue nor appulse other Title than the Tenant him self alleges, tho' he was an Infant; and if because he alleges Fee, it has the Force of the Bar, and suffices to traverfe it. And yet Danby Ch. J. and others were con- trary, and that the Seisin was very material; therefore Quere. Br. Traverfe per &c. pl. 190. cites 5 E. 4. 9.

7. In Trefpals the Defendant said, that M. was seized in Fee, and left to him for Life, and gave Colour to the Plaintiff; and the Plaintiff said, that before this, D. was seized in Fee, and leased to E. for Life, and died, and the Reversion descended to A. of the said M. which granted the Reversion to the Defendant for Life, and the Tenant attorn'd, and M. died; and after A. granted the Reversion to the Plaintiff, and E. attorn'd; and after E. died, and the Plaintiff entered, and was seized till the Trefpals; abique hoc, that M. was seized in Fee, Prout &c. But, per Choke and Littleton, he ought to traverfe, abique hoc, that M. leased, Mode & Forma. Quere. But the Grant of M. was void, because he died before his Fee, and before E. Tenant for Life. Br. Traverfe per &c. pl. 233. cites 10 E. 4. 8.

8. In Trefpals upon 5 R. 2. the Defendant said, that the Baron and Feme were seized in Fee, and the Feme died, and after the Baron died, and the Defendant entered as Heir of the Baron, and gave Colour by the Baron and Feme. The Plaintiff said, that before the Baron any thing had, the Feme was seized in Fee, and married the Baron, who leas'd a Fine to F. S. in Fee, who granted and rendred to the Baron and Feme, and the Heirs of the Feme, and after the Feme died, and the Baron also, and the Plaintiff as Heir of the Feme entered, and was seized till the Defendant ousted him; abique hoc, that the Baron was seized in Fee, Prout &c. And the best Opinion was, that
that the Traverse is well taken, notwithstanding the Fine which gave
the Right of Baron. Quere. Br. Traverse per &c. pl. 259. cites 21
E. 4. 17.

9. In Trespafs the Defendant said, that his Father was seised in Title of but if a Man
the Gift of N. and died profoando seised &c. and be entered as Heir &c.
In Trespafs.
The Plaintiff said, that the Plaintiff’s Father seiff’d A. in Fee, who fell be diverse
led to B. for Life, the Remainder to C. in Fee, whose Effeate the Plaintiff Tresments,
has. The Defendant said, that his Father died profoando seised, abique as to say,
that A. was seised, and
were’d B. the Father of the Defendant. Br. Traverse per &c. pl. 117. cites 15 who seiff’d
C. who seiff’d D.
effeate the Defendant’s Eas, and gives Colour to the Plaintiff by the self Seif, this is not double; and
the Plaintiff may traverse which of the Feoffments he will, for now he conveys by a Stranger; Per Finchus,
&c for Carr. Br. Traverse per &c. pl. 117. cites 15 H. 7. 11.— Heath’s Max. 119. cap. 5 cites
S. C.

But if the Defendant says, that he was seised, and seiff’d B. who seiff’d D. Colour Effeate
the Defendant’s Eas, now the Plaintiff cannot traverse any of the Feoffments but only the self, because he
conveys by the Plaintiff, and destroys his Right; per Finchus. Br. Traverse per &c. pl. 117. cites 15 H.
7. 11.

10. In Trespafs, if the Defendant says, that A. was seised in Fee, and but if the
seil’d him, and so he was seised till by the Plaintiff’s Tresment, and be re-
entered &c. And the Plaintiff says, that B. seiff’d him, by which he
was seised till the Defendant did the Trespaft. He ought to fay, abique and pass to
he, that be disaffed the Defendant, and shall not traverse the Feoffment.
Br. Traverse per &c. pl. 117. cites 15 H. 7. 11.

In the Trespass the Defendant says, that T. S. was seised in Fee, and in
so if he fays, seiff’d him, and gives Colour; there if the Plaintiff says, that before this
be was seised of the Manor of D. whereof the Place is Parcel, and held by the said
Copy, and lead it to the said T. S. by Copy of Court Roll, and be seiff’d T. S. and
the Defendant, upon whom the Plaintiff entered, he need not traverse the
Seiln of T. S. in Fee; for by his Entry to make Feoffment, and exec-
cuting of it, he is seiff’d by Diffeilin. Br. Traverse per &c. pl. 5. cites
27 H. 8. 4.

confaid and avoided. Br. Traverse per &c. pl. 5. cites 27 H. 8. 4.

12. In Trespafs the Defendant says, that J. N. was seised in Fee, and Br. N. C.
and lead to him for 21 Years, and gave Cohort. ‘The Plaintiff said, that his
Father was seiff’d, and died seiff’d &c. and he entered, and was seiff’d;
still the Trespaft; abique hoc, that the faid J. N. any thing had at the Time Hull & 22
of the Doile, and an ill Traverse: But shall fay, abique hoc, that J. N. Pl. & M.
was seiff’d in Fee, Modo & Forma proat &c. Br. Traverse per &c. pl.
372. cites 4 E. 6.

the Traverse was held a Jefufide, per mor Car. and that the Jury ready at the Bar was difcharged.
And there in the Margin it is faid, that the Traverse ought to have been upon the Seifn in Fee.—
Heath’s Max. 117. cites S. C.—S. P. Heath’s Max. 116. cap. 5. cites Br. Traverse 372. and E. 2. [but
it seems it should be 4 E. 2.]

13. In Intrufion brought by the Heir upon a Leafe made by his An-
ccestor, the Tenant traversed that the Anfior never had any thing in the
Lond, Prift, and this was held a good Plea; and the Demandant
maintain’d the Seifn of his Ancestor, and his Leafe also; but upon the
Seifn only the Jury fball be charged. D. 122. b. pl. 23. Mich. 2 P. & M. 
in an Anonymous Cafe, cites Trim. 43 E. 3.

5 C

14. In
Traverfe.

14. In Trespass the Defendant pleaded, that J. W. was seised, and in
seised of M, and so conveyed a Title to himself. The Plaintiff replied, that
his ancestor was seised, and to the Land descended to him, absolute hue, that
J. W. was seised. Anderson said, The Seisin is not traversable but where
it is material, and therefore clearly the Traverfe is not good; and so
was the Opinion of all the Court clearly. Gold. 31. pl. 4. Mich. 29

Mich. 41 &
42. Eliz.

15. In Trespass &c. the Defendant pleaded, that J. S. was seised, and
made a Leafe to him for Years, and gave Colour to the Plaintiff. The
Plaintiff replied, that after J. S. was seised, G. the Father of the new Plai-
thiff was seised, and died seised, and that the Lands descended to him, absolute
hue, that J. S. made a Leafe to the Defendant. The Defendant demurred.
And adjudged for the Plaintiff, because he had sufficiently confuted and
avoided the Seisin of J. S. and aptly traversed the Leafe. N<v. 574. pl.
792. Peach. 41 Eliz. Rede v. Armiger.

Brown. 183:
Mich. 20
Jac. 8. C
but seems
mis-printed
for 2 Jac.
and other
wife seems a
Translation from
Yel-verton.

* Cro. J.
44. pl. 24.
Mich. 2 Jac.
S. C. And
Gowdy J.
was of Op-
nion, that the only Thing material was, How B. was seised, and therefore the Ifue taken was ill. But
all the other Judges held, that in regard the Seisin in Fee is especially alleged in E. and the Convey-
ance of the Reversion to B. as it ought to be of Necessity; (for otherwise the Reversion cannot be
convey'd unto him) therefore the Seisin alleged in her might be well traversed; and if it be not an Apt
Ifue, yet it is aided by the Same of 52 H. S. for it is an Ifue, altho' it be not an Apt Ifue; where-
fore it was adjudged accordingly for the Avowant.

362. Bar. &

17. Trespass. The Defendant pleaded, that A. was seised in Fee, and
made a Gift in Tail to B. which descended to 4 Daughters &c. The Plain-
thiff replies, that A. was seised in Fee, and gave the Lands to B. and to his
Heirs Male; and the Plaintiff claims the Intail as Heir Male, and the
Defendant's under the General Tail, absolute hue, that A. was seised in Fee.
Dodderidge J. said, The Seisin in this Case is traversable. And
Ley Cj. J. said, Take away the Seisin, and then no Gift, and therefore
the Seisin here is traversable. Haughton and Chamberlain, Juitices,
Agreed. The Court resolved, that either the Seisin in Fee, or the Gift
in Tail, is traversable. And Dodderidge said, If they both convey
from one and the same Person, then they must traverse the Conveyances;
Traverse.

and cited 6 Rep. 24. where the Books are cited which warrant the Tra-
verse of either; and it was adjudged for the Plaintiff. Godb. 427. pl.
der the En-
tail; the Pluniff re-
plied that A. was feised in Fee, and made a Perfonn thereof to him, and he continued feised till the De-
fendant did the Trefpafs, aboufe hoc that A. infed to J. D. in Fee; and adjudged ill, because he
ought not to traverse the Conveyance, when the Claim is from several Perfons; for there the left Leffor
or left dying feised is traverseble only; but when both Plaintiff and Defendant claim from one Perfon,
the Conveyance may be traversed. — Cro. J. 81. pl. 18. Baker v. Blackman, S. C. adjudged for the
Plaintiff, that in this Cafe he might traverse either the Seifin in Fee alleg'd in the Bar, or the Gift in
Tail.

18. In Trefpafs the Defendant pleaded, that C. S. was feised in Fee of the Land, and that it was extended on an Outlawry; and that he, by the Sheriff's Command, entered upon a Levari facus &c. The Plaintiff re-
plies Protregando, that C. S. was not feised, say's, that the Matter and Fel-
lovs of &c. were feised in Fee, and that, before the Outlawry, and the In-
quition thereon, they denfus to the Plaintiff, aboufe hoc, that the Clofe,
in which &c. was cautium in the Inquisition. The Plaintiff had a Ver-
diet. It was moved in Arrest of Judgment, that the Traverse was ill,
and that the Seifin in Fee, and not the being compriz'd in the Inqui-
tion, ought to have been traversed. But per Cur. the Traverse is good;
for any Part of that which the Defendant makes his Title, is traverse-
able. Besides the Seifin in Fee is not material in this Cafe, because the
Judification is by Command of the Sheriff, who had Authority by Virtue
of the Extent and Levari fac. tho' C. S. never had been feised. Judgment
for the Plaintiff. Hard. 316. Mich. 14 Car. 2. in the Exchequer,
Moor v. Pudley.

19. In Trefpafs, if the Defendant alleges a Seifin in Fee in J. S. and a
Demand to himself, the Plaintiff may traverse either the Seifin in Fee or the Demne at his Election. Hard. 317. Mich. 14 Car. 2. in Cafe of
Moor v. Pudley.

20. In Trefpafs S. the Defendant pleaded that A. was in Fee and lefse'd to B. In this Cafe
Windsam
Gild,that in Trefpafs the Defendant
pleads that
he was Le franchises, aboufe hoc, that A. was feised in Fee when he made the
Lease. Defendant concedes, that A. was Tenants for Life and enfeof'd B. but
but before A. was feised, W. R. was feised and lefse'd a Fine to the Use of him,
and the Plaintiff restrains, that T. R. redivus to T. R. who enfeof'd the Leifor of the Plaintiff, De-
dendant reprimis and confines the Fine but said that T. R. died before A. Abifig
hoc, that T. R. enfeof'd the Leifor of the Plaintiff. The Plaintiff demurred,
and the
Plaintiff re-
plies that he
had been feised in Fee and lefse'd to J.

Windham conceived the Traverse was most proper, and it is not like
the Confining that Leifie for Years enfeof'd, which would be admit-
ting a Fee in him, but no le of Tenant for Life; And further the Seifin
of A. is not here sufficiently enfeof'd without a Traverse; for if A. had a
Fee, the Under-Leas is good, else not. And Judgment for the S. for Life.

Abijig hoc, that J. S. was feised in Fee it is

good; And per Curiam, this not the Cafe at Bar cannot be pleaded otherwise. Keb 374. in Cafe of
Helden v. Swindall.

21. In an Action upon the Cafe for a Nulitanc in flopping Lights; upon
Raym. 8.
Demurrer it was ruled per Cur. That if in Trefpafs or Action upon the
Cafe, one declares that J. S. was feised in Fee and lefse'd to him, and the De-
fendant pleads that J. N. was feised in Fee and lefse'd to him &c. this
Seifin of J. N. shall be intended by Diffilicen; for the Defendant ought to S. C. but
have traversed the Seifin of J. S. and to say that a long Time before, J. N. of S. P. does not
one was feised &c. Sid. 227. pl. 22. Mich. 16 Car. 2. B. R. Palmer v.
Fleheces.

22. In Trefpafs the Defendant justified by Licence made the Day before the
Trefpafs, 'by S. who was lefse'd; The Plaintiff demurred because he
does not say that S. was feised at the Time of the Trefpafs, and to the Plain-
tiff
Traverse.

till can make no Traverse; fed Curia contra, the Plaintiff may traverse the Licence, which will bring the Frehold and Seisin of S. in Hie, or he may take the Licence by Protestation, and traverse the Seisin of S. because his Seisin shall be intended to continue, albeit the Pleading had been more formal to pay Tempore quo, and long time before S. was seised; but this is not Matter of Substance; and judgment pro Plaintiff Nifi. 2 Keb. 266. pl. 25. Mich. 19 Car. 2. B. R. Thacker v. Cumberbach.

23. In Repelzen the Defendant avows for the Moety of certain Rents, and sets forth, that A. B. Anno 83, demised to one H. rendering Rent, and afterwards assigned the Moety of the Reversion &c. The Plaintiff replies, that the Defendant at the Time of the Disvays was seised of a Moety, and M. C. heretofore was, and her Son now is seised of a Moety; The Chief J. said he should have traversed the Original Seisin at the Time of the Leafe. Judgment for the Avowant. Comb. 230. Mich. 5 W & M. in B. R. Turner v. Fuller.

(K. a) Seisin in Fee, in Tail, or Franktenement.

1. In Trepass, The one intitled himself by Special Tail by Gift to his Father and Mother and the Heirs of their Bodies, who had Issue the Form of the Defendant; the other said that the Gift was to the Father and Mother, and the Heirs of the Body of the Father, who had Issue the Son now Plaintiff by a Second Wife; And no Plea without traversing the Special Tail in the Bar. Br. Traverse per &c. pl. 286. cites 9 H. 6. 9.

2. Entity in Nature or Allile; The Tenant said that W. was seised in Fee, and infessted him and gave Colour to the Plaintiff, and the Plaintiff said that W. was seised in Fee in jus Usoris, and had Issue by her, and the Form died, and W. was seised as Tenant by the Curtesy and infessted the Tenant, Ablque hoc, that W. was seised in Fee Modo & Forma &c. and the others e contra; And some doubted if he need traverse or not, therefore quære; but it seems the Traverse is well taken. Br. Traverse per &c. pl. 375. cites 30 H. 6. 4.

3. In Trepass the Defendant justified the Entering and Cuttine of Corn, because C. M. was seised of the Place in Fee, and seised the Land, and the Defendant as Servant to him &c. entered and cut it &c. The Plaintiff said that the Land was his Franktenement at the Time &c. Ablque hoc, that it was the Franktenement of C. M. And per tot. Cur. he ought to traverse the Seisin in Fee, quod nota; For the Franktenement of C. M. was not pleas'd in the Bar, but his Seisin in Fee. Br. Traverse per &c. pl. 234. cites 18 E. 4. 3.

4. [In Trepass.] The Defendant alleged that his Father was seised in Fee, and the Plaintiff said that if S. was seised in Fee and leased it for 9 Years, and after he held over his Term, and the Leffer entered and gave to the Plaintiff in Tail &c. And a good Plea without traversing the Seisin in Fee in the Father of the Defendant; for when he holds over his Term it is a Doubt in the Law, whether he has Seisin in Fee thereby. Br. Traverse per &c. pl. 277. cites 22 E. 4. 38.

5. Avowsy was made for a Rent Charge in Fee, supposing the Grantor seised of the Place where &c. in his Deceuage as of Fee at the Time of the Grant. The Plaintiff shewed that the Grantor was seised of an Esbate Tail at the Time of the Grant, and shewed of whose Gift the Tail was, and that the Grantor was dead, and that he was his Issue and Heir of his Body &c. This is not good without traversing the Fee-Simple, by the Opinion of Mounfon,
Traverse.


by way of Traverse may answer the Matter alleged in the same Words.

7. In Walse the Plaintiff set forth that he was feised in Fee, and made a Lease to the Defendant for Years who committed Walse; the Defendant pleaded that R. H. was feised in Fee, who conveyed to the Defendant in Fee, who re-granted to the Plaintiff and his Heirs for so long as R. H. should have Issue of his Body, WHEREUPON the Plaintiff entered and made the Lease to the Defendant proot &c. and that R. H. died at D. without Issue of his Body; The Plaintiff had Judgment in C. B. and it was affirmed in B. R. for the Seisin in Fee set forth by the Plaintiff as in himself shall be intended an absolute Fee since the Defendant does not disfroce any Estate but a determinable Fee in the Plaintiff which differs from that alleged by the Plaintiff, and so not good without a Traverse. Yelv. 142. Mich. 6 Jac. B. R. Ewer v. Moile.

(Cro. E. 171. 1)

see Arowry.

(L.a) Seisin, Or Tenure &c.

1. In Resoons the Seisin is not traversable; for a Man may dispose &c. but the who never was feised. Br. Seisin pl. 29. cites 5 E. 4. 62.


2. Contra in Replevin; for there the Seisin is traversable. Br. Seisin, in Replevin the Defendant made Consonance as Bailiff to the Earl of B. and shewed that the Lands were Parcel of such a Chantry, which came to E. 6. by the Stat. of Ed. 6. and pleaded the Seizing in the Statute, by which the King's others were fixed, and shewed that so much Rent was behind &c. The Plaintiff replied that the Lands were out of the Fee and Seignory of the Earl &c. This was ruled to be no Plea, because he content'd so much by the Arowry; but this is for Rent referred by the Seizing of the Act of Parliament, and is a Rent-folk definitive for the Privilege which was before; but he may traverse the Tenure, (viz.) alhume fee, that at the Time of the making the Statute, or ever after the Lands were taken of the said Earl. Winch. 77. Patch. 22. Jac. Stephens v. Randall.


4. And in Writ of Ejecheat the Tenure shall be travers'd, but not the Seilin. Br. Seilin, pl. 29. cites 5 E. 4. 62.


Ward, the Defendant pleads Feoffment of the Father of the Infant, he shall say Abique hoc that he died his Tenant, and not that he did not die feated. Br. Traverefe per &. pl. 49. cites 14 H. 4. 16 — Br. Elytione &. pl. 5. cites 13 H. 4. 15. S. C.

The Possiflion, nor the Seilin in Ravishment of Ward, nor in Ejecheat of Ward, is not traversable. Br. Traverefe per &. pl. 50. cites 14 H. 4. 24. Per Thirm and Hill.

Per Catsby, if lord and Tenant are, and the Tenant is defeited, and dies, and the Lord brings Writ of Ward, fupposing that the Tenant died in his Homage, this dying feated is not traversable; for the Lord fhall have the Ward, tho he does not die feated, because he died in his Homage. But Brooke fays, See the Writ and the Count thereof among the Entries; for it fews that the Lord fhall fay that he died in his Homage, and not that he died feated of the Land. And in Writ of Ward by the Lord of the Ward of the Heir of the Meine, fupposing that the Meine died feated in Fee, this is not traversable. But fee that the Entry in Writ of Ward, and in Ravishment of Ward, is no more but that he died in his Homage. Br. Traverefe per &. pl. 255. cites 16 E. 4. 5.


S.P. Ber in

6. So in Trespass the Tenure fhall be travers'd, and not the Seilin. Br. Acowry, the Seilin, pl. 29. cites 5 E. 4. 62.

which is in the Possiflion, the Seilin is traversable, and not the Tenure; for the Avowant fhall have Judgment there to have Return for the Services. And fo the Difference has always been taken between Action of Trespass and Acowry. Keliw. 31. b. pl. 5. Mich. 15 H. 7. Anon. Per Fineux and Rede J.

Arin Replevin the Defendant avow'd, because the Plaintiff hold of him one Acre by Homage, Fealty, and Efinger, and 2. Rent, and alleged Seilin by the Hands of the Plaintiff as his very Tenure &. for 24. Years at Eater he avow'd. Vafiior fays he ought not to avow; for we hold this Acre by Fee. Br. Fealty. and 2. of which Services &. abique hoc that he bore of you by Homage, Fealty, and Efinger, and 2. Rent, Mote &. Forma &c. Per Huiley, he ought to avow the Seilin, and not the Tenure, as here. And Per Brian Ch. J. he shall traverse the Seilin; for the Acowry makes the Service of Chivalry, and the Defendant has al'd Seilin in the other Services, and not in the Tenure: and therefore he shall traverse the Seilin of them all, as of the A. and of the Homage; for all of may be Seilin: and therefore he shall traverse the Seilin of that which makes the Seilin Tenure, but not the Service of that which makes the Service of Chivalry. Br. Acowry, pl. 104. cites 20 E. 4. 16.

And per Huiley, in Acowry for Tenure by 10d. and alleging Seilin &. the Plaintiff may fay that he holds of him by a H独角兽, abique hoc that he holds of him by 10d. and shall not acow the Seilin; good Brian conceift. Br. Acowry, pl. 104. cites 20 E. 4. 16.

*S. P. Per Fineux and Rede J. And per Rede J. the Tenure is traversable, tho they do not own in the Tenure, in any Cases in Acowry; As if the Avowant fhes the Co/nament of his Tenure, and he fheews before the Nature of, and since Time of Memory, and fheews when his Ancifcer was fefied of the fame Lands where the taking &c. and infeft'd &c. to hold of him by Fealty and certain Rent payable &c. and for so much &c. In this Cafe the Tenure is traversable, and not the Seilin. Keliw. 31. b. pl. 5. Mich. 15 H. 7. Anon.

9 Rep. 35. 5. in Bucknall's Cafe, it is obferved by the Reporter, that where it is faid that when the Lord varies in the Nature and Quality of the Services, that the Tenure is traversable, this is true when the Tenant confefes the Tenure in Part, but he cannot traverse all the Tenure; as if the Defendant in Replevin avow's upon the Plaintiff for Rent and Services, as upon his very Tenure, the Plaintiff cannot fay that he holds the fame Lands of a Stranger, abique hoc that he holds of the Avowant; but he mufl abique or plead Hoc de fon Fee; and fays that with this agrees to H. 6 6. b. and 7. a. 35 H. 6. Tit. Acowry 2. 5. H. 6. 22. 3. 11. H. 2. 11. 9. E. 2. Acowry 222. 15 E. 2. Acowry 224. 1. S. P. Mar. 17. 5. Hill. 1. Car. C. B in Cafe of Layten b. Cranige, by Banks Ch. J. that where the Lord and Tenant differ in the Services, the Traverefe shall be of the Tenure and not of the Seilin; but where they agree in the Services the Tenure may be travers'd; and cites 21 E. 4. 64. and 84. 20 E. 4. 17. 22 Aff. 68. and 9 Rep 38. Bucknall's Cafe.

8. In Affife of Rent, the Tenure is traversable, and not the Seilin; Per Fineux and Rede J. Keliw. 31. b. pl. 3. Mich. 13 H. 7. Anon.

9. In Replevin in the Defendant avow'd, for that the Plaintiff feld of him one Acre of Land in the Place where &c. by Fealty, and 16s. Rent payable at two Feals; the Plaintiff replied that he held of the Avowant the same Acre, and two more by Fealty, and 16s. Rent payable at one Day, abique hoc.
Traverse.

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Ibid

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Traverse.

...verde of the sole Freehold of the said Sir Anthony, but Welth and Dyer eontra; and at length Ilifie was joined upon the Coparcenary, and not whether the Intire was the Coparcenary of Sir A. which is only Suppos-
...al as a Declaration; and this Plea of Coparcenary is only in Abatement of the Answer in Effect. D. 280. b. pl. 15. Mich. 10 & 11 Eliz. Sir Ant. Cooke's Cae.

7. In Replevin the Defendant avow'd, for that a Copyhold was granted to the Defendant and B. C. D. and E. and that C. D. and E. died, and afterwards B. died, whereby the Defendant was in by Survivourship, and so is sole feised, and took the Cattle Damage feasant; the Plaintiff confess'd the Grant, and that C. D. and E. died, and that B. and the Defendant survived; but lays that B. afterwards surrendered his Part to a Stranger, who surrendered to the Plaintiff, allege for that the Defendant was sole feised at the Time of the taking. It was objected that the sole Sein was not traver-
...verible, but the Survivourship only; and that the Jointenancy and Sur-
vivourship are confes'd and avoided, and to the Traverse is double. But per ter. Cur. the Traverse is good, for the sole Sein being aliq'd by the Defendant by Way of Bar precisely and materially, it ought to be traver'd. Cro. E. 795. pl. 41. Mich. 42 and 43 Eliz. C. B. Cowper v. Temple.

8. In Trespasses brought by M. Widow &c. the Defendant pleaded that before the Trespa's B. for Husband was feised in Fee, and so feised died, whereby the Lands descended to C. his Son and Heir, who densify'd it to the De-
...tain, by Virtue whereof he entered; the Plaintiff replied that before C. any thing bad &c. A. his Grandfather was feised in Fee, and in Considera-
tion of a Marriage between B. and M. the Plaintiff, be made a Feoffment to them and to the Heirs of B. on the Body of B. to be begotten, Remainder to B. in Fee, and that B. died feised in Fee Modo & Forms pren't &c. Upon Demurrer it was adjudged for the Plaintiff, because no dying feised is pleaded to as it might be travers'd, but with a Sir Sein's obit. And the only Matter traversable here is the Sein in Fee Modo & Forma; for the Replication has confes'd a Joint-Sein of B. and M. and to the Heirs of the Body of B. with a Fee-imble in B. and that is good with the Traverse. Hutt. 123. Trin. 9 Car. Edwards v. Laurence.

Freem. Rep. 202. pl. 239. S. C. says, it was agreed that when a Dying fees'd is alleg'd generally, it shou'd be ir-
tended a sole Sein. And says, it was argued, that the Plaintiff ought to have traversed the Sole Sein, because otherwise there are only 2 Affirmatives, and yet no Concluding nor Avoiding neither; and 2 Affirmatives cannot make any Ilifie And he cited 22 H. 6. 23. 1 Bulifh. 43. 3 H. 7. 10. 11. And that there was a great Difference between Jointenancy pleaded in a Court or Declaration, and when it is in the Replication, when a Sole Sein is alleg'd in a Court or Declaration, and when it is in the Replication, when a Sole Sein is alleg'd in the Bar; but the Court is but as (upon), and to need not be travers'd; as the Bar mull, where it is contradicted, because the Bar mull be more cer-
tainly and positively alleg'd, and cited 1 Ed. 4. 9. Bro. Trav. 279. Yelv. 142. 143. and 3 Cro. 250.

6 Mod. 15 S. C. and Holt Ch. J. for the al-
...erging him-
...felt to be Tenant in Common with him, is not a Con-

10. In Replevin for taking his Cattle, the Defendant made Conformance, that A. was fees'd of the Place where &c. in Fee, and that by his Command he took the Cattle Damage feasant. The Plaintiff replied, that he was fees'd of one 3d Part, and put in his Cattle, alleg'd that A. was sole fees'd. Upon Demurrer the Plaintiff had Judgment; for the Defendant made Conformance that his Matter was fees'd, which mull necessarily be intended sole fees'd; and whatever is necessarily intended, or implied, is travers-
...erable, as well as if it were expres's'd; therefore tho' the Defendant alleged
alleged a Seisin in Fee generally only, yet that being intended a sole feission and Seisin, the Plaintiff may traverse the sole Seisin; and since the Plaintiff makes himself Tenant in Common with the Defendant, it had not been enough to say, that he is Tenant in Common with the Defendant, without traversing his sole Seisin, or that he was leisued Medo & Forma. 2 So [above] had been objected, he said, that the Court were divided upon it. And added, there may be a Difference between Copartners and Jointtenants, and Tenants in Common; for the two last are said, per H. & per Tour; but the last has several Seisins; and here, to introduce his Traverse, he must make himself some Title, to enable him to controvert with the Defendant.

(N. a) Seisin in General.

1. it was held, that if a Man brings Writ of Right, and counts upon Seisin of his Ancestor, or upon his own Seisin, this Seisin is not traversable; but he may tender the Hall-Mark to inquire of the Seisin. But if such Recovery by Writ of Right be pleaded in Bar in another Action, the Demandant may traverse the Seisin by Way of Pleading; and note, that at this Day the Seisin in every Action is traversable by the Statute of new Laws. Br. Traverse per &c. pl. 338. cites 10 E. 4. + 9.

2. A Writ of Entry, in Nature of an Assize, was brought against A. who pleaded, in Abatement of the Writ, that before the Seisin and Disseisin alleged, E. was seised in Fee of the Land, and being a malevolent, leisued the Land to him and his Wife for their Lives, and that his said Wife is to live at Dale, and is not named in the Writ. The Plaintiff replies, that long after the Seisin of E. of the Lands aforesaid, he was seised in Fee of the said Lands, and leisued them to E. for Life; and that E. being so seised, made the said Leases for Lives to A. and his Wife, and that he entered for the Forfeiture, and was seised till A. entered and ousted him. This is a good Replication, without traversing the Seisin in Fee of E. for that was confessed and avoided before; for when E. made a Lease for Life to the Husband and Wife, he gained a wrongful Fee to himself by this Lease; which Fee is destroy'd by the Entry of the Demandant for the Forfeiture, as is also the Jointtenancy between A. and his Wife. Jenk. 105. pl. 1.

3. Where Seisin is materially alleged in a Real Action, in a Bar, Replication, or Title, it ought to be traversed; and the Confession and Abandonance of joint Seisin and Survivorship will not serve; for the Allegation of Seisin is positive, and is to be understood sole Seisin. Jenk. 117. pl. 34.

4. In Replevin &c. the Defendant alleged the Taking &c. Damage of the Seisin, letting forth, that one J. was seised in Fee &c. and demised the Land to him for 21 Years &c. The Plaintiff replied, that before J. was seised, King H. 8. was seised in Fee &c. and made a Grant thereof, by Copy of Court-Roll in Fee. It was objected, that the Plaintiff should have traversed the Seisin in Fee in J. who might come to the Land by a good Title of Patnience Time. Way said, there is no Question but where the Defendant alleges a Seisin in one from whom he claims, there the Plaintiff cannot allege a Seisin in another from whom he claims before the Seisin.
Traverse.

not answer'd; Seitin of &c. without travelerling, confelling, and avoiding the Seitin for that the Plaintiff in the Action ought to have concluded thus, (viz.) And so he was seiffed by the Custome till the Avowant, Pretenue of the said Leafe for Years, entered; and so it was adjudged.—5 Le. 94. pl. 186. S. C. in the fame Words.

(O. a) Title, or Intrusion.

Heath’s Max. 115. cap. 9. cites S. C.

Detinue of a Box of Charters, bail’d by T. to the Defendant to deliver to the Plaintiff. The Defendant said, that they concern’d the Manor of B., whereof he himself was seiffed, and was possesse of the Box of Charters till the said T. took them, and after he bail’d them to the Defendant, as in the Declaration; by which he retained them, as lawfully he might. The Plaintiff said, that before that the Defendant anything had, R. was seiffed of the Manor, and possesse of the Charters, and gave them to the said T. who deliver’d them to the Defendant, and after R. died seiffed, and the Defendant intruded. And the Defendant rejoind, and maintain’d the Bar, abique bec, that he intruded alter the Death of R. prout &c. And, per Cur. this is not traversable; for the Substance is the Title of R. which ought to be traversed. Br. Traverse per &c. pl. 196. cites 5 E. 4. 85.

(P. a) Necessary in what Cases.

Every Bar ought to be answered by Confession and Denial, or Traverse, unless in Special Cases, (or by Denial thereof may be added; for this is commonly said to be Part of this Rule.) 2 Lurw. 1625. Trin. 1 Amne, in the Appendix, by the Reporter in the Case of Walters v. Hodges.

2. In Trespafs the Defendant said, that the Place is his Frankenement &c. The Plaintiff said, that if P. was seiffed in Fee, and infeoff’d him, by which he was seiffed till the Defendant did the Trespafs; and he re-enter’d, and brought the Action. The Defendant said, that N. was seiffed, and died seiffed, and his Heir enter’d, and died without Issue; and the Defendant as Heir enter’d, and there’d How Heir &c. and of such Estate he was seiffed at the Time of the Trespafs. And the Opinion was, that it is no Plea; for he has not travers’d the Replication, nor confesse’d and avoided it; for it may be, that the Defendant dispossess’d the Plaintiff, and infeoff’d N. who died seiffed, and to whom the Defendant is Heir, and he shall not take Advantage of this Defent. Br. Replication, pl. 18. cites 7 H. 6. 31.

As in Defeat, because the Defendant refused the Plaintiff in Debt in the Name of M. without his Affent, the Defendant said, that he retain’d him at B. &c. by which he fund him with Affent of M. without Traverse, and well. Br. ibid.

4. In
Traverse.

4. In Trespass the Defendant said, that he and A. did the Trespass, to which A. the Plaintiff has replied &c. by this Deed &c. The Plaintiff said, that A. did not do the Trespass, but thereof is Not Guilty; and a good Replication. Br. Replication, pl. 64. cites 11 H. 6. 35.

5. Where against R. and J. — R. pleaded Nontenure generally; and J. answered as Tenant of the Ennity, and pleaded in Bar; and no Plea, without saying aliqua legatio, that R. anything bad, by which he said accordingly. But after Newton agreed the Plea good without the Traverse. Br. Several Tenancy, pl. 17. cites 22 H. 6. 44.

6. Where the one Party traverse, the other, who rejoins to him, shall not traverse also, but it suffices to maintain the Writ. Br. Maintenance de Brief, pl. 14. cites 9 E. 4. 36.


8. In Affid the Tenant pleaded Feoffment of the Ancestor of the Plaintiff with Warranty, whereof Har be is. The Plaintiff said, that the same Ancestor is yet alive as D. in the County of N. and a good Replication. Br. Replication, pl. 63. cites 11 E. 4. 18.

9. In Affid, if the Tenant pleads Feoffment with Warranty of the Father of the Plaintiff jointly, the Plaintiff may say, that it was upon Condition, without Traverse, that it was not imply; for it is no Defect in the Bar. Br. Nagation, pl. 15. cites 15 E. 4. 24.

10. In Appeal of Death by the Heir, it is a good Plea that he has an el. Brother who is Har, without traversing that the Plaintiff is Har; Per Huliey Ch. J. Br. Traverse per &c. pl. 279. cites 22 E. 4. 39. So in Appeal of Death by a Tone, to say that the deed was not fraudulently accepted &c. Br. Ibid — — to allege Outlawry. Br. Ibid. — —— And in those he shall not traverse the next Heir, nor the heir's Heir. Br. Ibid.

11. In Formedom, if the Tenant pleads Feoffment of the Ancestor with Warranty and Afts defended, it is a good Replication that after the Afts defended, and before the Action brought. J. N. had recovered the Afts by other Title, and had filed Execution; Quod nota by all the Justices Arguedo in Traspas. Br. Replication, pl. 66. cites 1 E. 5. 3.

12. Where the one alleges Dying seised in Tail, and the other dying seised in Fee, there are 2 Affirmatives; and therefore there ought to be a Traverse, and because not, therefore ill by the best Opinion. Br. Confes & Avoid, pl. 64. cites 5 H. 7. 11. 12.

13. In some Case Plea shall be good without Traverse for the Mischief of a S. P. Per the Trial, as where a Man pleads Bastardy, the other says that Miller, Huliey Ch. and well; Quere inde, without saying, And not Bastard. Br. Traverse per &c. pl. 187. cites 6 H. 7. 5. Per Huliey and Fairfax.

14. But where the Thing is to be tried ultra Mare, there it is good Law, that he need not traverse. Br. Traverse per &c. pl. 187. cites 6 H. 7. 5. 4-59. cites 22 E. 5. 3.

15. Where one justify by Lease from J. S. the Plaintiff says that J. S. instoff'd him before, it is not good without Traverse. Cro. E. 753. pl. 17. Patch. 42 Eliz. C. B. in Covert's Cafe.

16. When a Matter is expressly pleaded in the Affirmative, which is expressly answered by the other Party in the Negative, if a Traverse is needless, because there is a sufficient Issue joined; as 36 H. 6. 15. is. Cro. E. 755. pl. 13. Huliey v. Phillips.

17. As where X. was bound in a Statute Merchant to B. the Defendant Yeal. 58. in 6001. to the Use of C. defendant, that if he paid such Sums at such Days, the Statute should be void. In Anlita Querela by A. he proved that he was Plaintiff at the said Days and Places to pay, &c. last the said Sums, Patch 1 Jac. 2c. Philips v. C. Aed. Philips v. C. Aed.
Sums, and C. was not there to receive them. The Defendant pleaded that at such a Day C. was at the Place where &c. and demanded the Sum, and neither the Plaintiff, nor any for him, were there to pay it, oblige be that the Plaintiff deixt the said Sum at the said Day &c. and thereupon the Plaintiff demurred. It was held, That the Traverfe was not good; for there being an exprès Affirmative before, Quod paratus fuit, & obtulit &c. and Non Obtulit being an exprès Negative, there shall not be any Tra-

18. In second Deliverance the Case was, that J. being Loffee for Years 9 Eliz. affiz'd his Estate to A. the Plaintiff. The Defendant pleaded that before the Grant to A. viz. 3 Eliz. J. affiz'd his Estate to the Defendant, without traversing the Grant to the Plaintiff. Williams said, there needs no Traverfe, for being granted the 3 Eliz. it is impossible it should be granted 9 Eliz. and cited 2 Ed. 6. and 1 H. 5. But Anderfon held that he ought to traverse; for it is impossible to confefs and avoid a Grant by Confeffion that was granted to another before; for if it were so, the 2d Grant is void, and being confessed, here ought to be a Traverfe; Walm-

20. In all Actions where the Plaintiff makes a Title to the Thing in Dem-

24. North Ch. J. said, He had always taken the Law to be, that when you come to the Replication, the omitting of a Traverfe where it ought to be taken, was Matter of Subjace; for if they should not be bound to traverse, they might plead on ad infinitum. And he said to he had often seen it ruled in B. R. that Hoc paratus cit verificare, instead of Hoc pe-

22. He who pleads in the Negative, shall never take a Traverfe; for he must only maintain his Bar; Per Jones and Whitlock. Palm. 511. Hill.

23. Where any thing pleaded is directly contrary to the Matter in the Declaration, such Plea is not good without a Traverfe, but it is in the Elec-

21. When a Man justifies all the Fall, there needs no Traverfe. Mo. 864. pl. 1192. Hill. 13 Jac. Weaverv. Ward.

25. Where a Person, who in the Declaration, made Title to a Thing, by his own Confession, or any other Person, to which Title he makes a Claim, and he pleads in the Negative, that it was his own, then he shall not be bound to traverse. Plowman 511. Hill.
Traverfe.

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tit quo inquiratur per Patriam, or De hoc ponite super Patriam, was Matter of Substantia, Freem. Rep. 293. pl. 295. Mich. 1675. in Case of Snow v. Sir Wm. Wileman.

25. In Replevin, the Defendant made Consequence as Bailiff to Sir P. W. 3 Mod. 318. pleading forth, that he was seized in Fee of the Place where &c. and to justify the taking Damage-tenant; The Plaintiff replies and confesses the Seisin of Sir P. W. but pleads, that Sir G. W. his Father was seized &c. in Fee, and made a Leaf to W. R. for 3 Lives of the Place where &c. that W. R. was dead, and that W. B. entred as Occupant, and made a Leaf to the Plaintiff. The Defendant demurred, for that the Plaintiff had not traversed the Seisin in Fee of Sir P. W. the Son. It was held per Curiam, that either in Trespass or in Avowry, if a Freehold is pleaded it must be traversed, unless the Party does wholly confide and avoid it by a defeasible Title, only with this Difference, That it in Action of Trespass a Freehold is pleaded, the Party may traverse it generally, without inducing his Traverfe by a Title; but in Avowry, the Traverfe must be induced by setting forth a Title; Er per Curiam, the Want of a Traverfe is Matter of Substantia in the Principal Case, because there are 2 Affirmative Substances in the Pleading, and that will not admit any Trial without a Traverfe; therefore 'tis not helped by a general Demurrer; but a supersicious

Traverfe is only Matter of Form, because it doth the other Party no Injury.


Manor Tempore captivatis; for tho' it was granted that the Reversion of the Locus in quo remained Parcel of the Manor after the Demise for three Lives; yet the Place itself and the Freehold were severable by the Demise, and by Consequence they were not Parcel of the Manor Tempore quo &c. therefore the Plaintiff ought to have traversed that which the Defendant had affirmed (viz.) that the Locus in quo was Parcel of the Manor of A. Tempore quo &c. And as to this Matter there is a Difference between Replevin and Trespass; And the Court held that the Seisin in Dominio of the Place where &c. was not traversable; for 'tis not expressly alleged in the Consequence, that Sir P. W. was testied in Dominio of the Place where, but only by Consequence as it was Parcel of the Manor of Alley, of which he (Sir P. W.) was testied in Dominico; therefore if he had traversed the Seisin, it must have been all of the same Manor. The Judgment was affirmed.


(Q. a) Necessary in what Cause, Where there is a Con-

fessing and avoiding.

W H E R E the Matter is confessed and avoided it need not be traversed. 3 Salk. 353. pl. 4. Patch. 9 W. 2. Anon.

2. In Annuity the Plaintiff declared upon Prescription, the Defendant

said that it was granted upon Condition, which is broken on the Part of the Plaintiff; and no Plea per Cur. without traversing the Annuity by Prescription; For Annuity by Prescription, and Annuity by Grant upon Condition; cannot be extended to one and the same Annuity. Br. Contests and avoids, pl. 63. cites 32 H. 6. 4.

Condition &c. without traversing &c. for it may be intended one and the same Feoffment; but the Diversity. Br. Contests and Avoids, pl. 63 cites 32 H. 6. 4.

3. Where the Plaintiff confesses as much as the Defendant alleges and sets forth, he need not traverse. Br. Traverfe per &c. pl. 143. cites 37 H. 6. 34.

4. D. and 40 Acres of Land in the Place where &c. The The Plant & said the 5 E.
Traverse.

had no Common there, but during the Time he dwelt in the said House, and he did not dwell there at the Time of the Trespass, after he that he had Common there in other Manner; but Choke where the Plaintiff confesses all that which the Defendant has said and more; he need to traverse; Further Prior he ought to traverse; for he does not confede all that the Defendant has said, for he claimed Common there at all times; And the Plaintiff said, that he had not Common there, but when he dwelt in the House to which &c. By which he traversed the Common Mode & Forma &c. Br. Confes and Avoid, pl. 22, cites 17 H. 6, 56.

For in Affid if the Tenant pleads Trespass of the Party of the Plaintiff with Warranty; and the Plaintiff says, that it was upon Common &c. and that he entered as Host for the Common broken, he need not to traverse &c. for he has confeded all that the Tenant said and more, which Stephus avoids the Bar of the Tenant Per Choke. Br. Confes and Avoid, pl. 22, cites 17 H. 6, 56 — 5. P. ibid. pl. 57, cites 6 H. 7, 5. per Wood. — Heath's Max. 111. cap. 4, cites S. C.

So elsewhere, if the one alleges eject, seised, and the other alleges Device of him who died seised; which Ground was admitted there for Law. Br. Confes and Avoid, pl. 22, cites 57 H. 6, 56.

Br. Traverse, per &c. pl. 214, cites S. C.

4. In Trespass the Defendant said that R. H. was seised in Fee, and infossed 2, who infossefd 3, who infossefd 5, and one died, and the 4 infossefd the Defendant and gave Colour to the Plaintiff; and the Plaintiff said, that before R. H. any Thing had, J. H. was seised in Fee, till the said R. H. dispossessed who occupied at Will, which R. H. infossefd the 2, who infossefd the 3, who infossefd the 5 and 4 others, by which they were seised, and showed how the Defendant came to the Possession by them, and he re-enter'd, and was seised till the Defendant did the Trespass, and the Defendant rejoind that R. H. did not dispossese J. H. And a good Plea, and need not to traverse that the 3 did not inform the 5 but the 5 only; for he confesses all that the Defendant has said and more; quod nota. Br. Confes and Avoid, pl. 43, cites 3, E. 4, 17.

5. Where one confessest by a Leaf from ST. and the Plaintiff says, That the said ST. infossefd him before, and after the Possession entered, and dispossessed him and made the Leaf, and afterwards re-enter'd. This is good without Traverse; for thereby he confessest and avoids the Leaf allegfled, and for Cur. Cro. E. 754. pl. 17. Patch. 42 Eliz. C. B. in Covert's Case.

For a Confessing and Avoiding is a full Answer of the Matter allegfled, and so there needs no Traverse of it, or Denial of the Thing. L. P. R. tit. Traverse cites Buck. 24 Car. B. R.

See (W) pl. 2. (R.a) Good or not. Where there is a Confessing and avoiding.

For by that Means the Party denies what he had before confessed. Jenks. 105, pl. 1.

W H E R E the Plea is fully confessd and avoided, and then a Traverse moreover is taken; this Traverse vitiates the whole Plea. Ld. Raym. Rep. 238. Trin. 9 W. 3, in Case of Lambert v. Cook, cites Brook confes and avoid 65, 33 H. 6, 28.

2. In Plea anent the Defendant pleaded in Bar that the Dean &c. of Windover were seised and made a Leaf for Years to W. R. who assignd it to the Defendant, who was possesed till the Seizor of the Plaintiff ousted him and dispossessed the Dean &c. and being so seised made a Leaf to the Plaintiff, upon whom the Defendant re-enter'd, the Plaintiff replid, and confessd the Sign of the Dean &c. and made Title to the Term by the Assignment made by the Seizor to his own Seizor before the Assignment made to the Defendant, and traversed.
Traverfe.

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Covered the Difference. The Court held clearly that the Traverfe was ill, because the Plaintiff had confessed and avoided, and also traversed, whereas he should have left the Matter upon the Affirmation of the Term without any Traverfe, so as the Defendant might have traversed the Affirmation in his Rejoinder, which is the only material Point in Variance; for if the first Affirmation was made to the Defendant it was a Difference, but it to the Lesser of the Plaintiff it was no Difference. So that the Point was upon the Priority of the Affirmation, and ought to be in Illu. Mo. 557, pl. 757. Trim. 40 Eliz. Townsend v. Kingmulli.

3. In Ejectment upon a Lease made by E. the Defendant pleaded that before the said E. had any Right in M., that M. was seised in Fee and had Issue H., to whom the Lands descended after his Death, and that the said E. entered, and was seised by Abatement, and died; The Plaintiff replied, and confessed the Seisin of M. and that he devised the Lands to E. in Fee, and so claimed under the Devise, and traversed that she was seised by Abatement Mode &c. Forms. And upon Demurrer it was adjudged for the Defendant, for the Plaintiff need not both to confess and avoid and also to traverse the Abatement; for the Plaintiff made Title under E. the Devisee of M. and to her Entry legal and not by Abatement, and so the Traverfe over makes the Replication vacant; for no Traverfe should be taken but where the Thing traversed is titulable, and the Devisee here is only the Title Illusible. Besides the Traverfe was not good as to the Manner of it; for he should not have traversed Abique hoc, that E. was seised by Abatement. But it should have been Abique hoc, that the said Abate &c. Cro. J. 221, pl. 3. 7 Jac. B. R. Bedel v. Lull.

and was seised by Abatement; Quad Nott.—S. C. Yelv. 151, accordingly.

4. In Trespass for Trespasses done in an Acre Parcel of the Manor of D. the Defendant pleaded that R. was seised of the Manor and the Acre εικέθεται to him who conveyed the Manor, of which the Acre is Parcel, after the Eikèthate by means Conveyance to A. in Fee, and that A. 12 Eliz. infrifed B. of the said Manor of which the said Acre is Parcel, and so justified by Conveyance from B. to the Defendant; The Plaintiff replied that 10 Eliz. R. infrifed C. of the said Acre, Abique hoc, that he enfristed B. of the said Manor of which the said Acre is Parcel. The Defendant demurred generally. It was argued that the Traverfe was good and alleged 38 H. 6. 49. for the same Traverfe, and that here when the Defendant had pleaded that the Acre had ekéfètæ and alleged a Feoffment of the Acre, the Plaintiff may traverse that which is not expressly alleged, and cited 34 H. 6. 15. But Hobart Ch. J. said that the Traverfe is not good; for by the Feoffment made 12 Eliz. he had confessed and avoided the Feoffment made the 10 Eliz. and so there needed no Traverfe. Adjournatur. Her. 37, 38. Mich. 20 Jac. C. B. Johnson v. Norway.

5. Debit upon Bond dated 30 November. 21 Jac. to perform an Award, so as to be made before the first Day of June; the Defendant by his Plea confessed the Bond dated 30 November, but said it was primo deliberat. 22 April 23 Eliz. 10 Jac. after which Day, and before the 15th Day of June following there was no Award made, abique hoc quod cognovit se teneri Mode & Forms &c. It was held that the Traverfe was repugnant; for he had confessed the Bond, but denied it by the Traverfe; for by Doderidge J. the Traverfe Abique hoc, goes to the Deed itself. Lat. 59. 61. Patch. 1 Car. The Bishop of Norwich v. Cornwalliss.

(S.a) Good
Traverfe.

Sec (S) pl. 5. (S. a) Good or not. Where the Party may wage his Law.

Br. Dette, pl. 88 cites S. C. — 64. cites 8 H. 6. 5.


1. Where a Man may wage his Law, there he cannot traverfe the Cause of the Debt nor the Contrat. Br. Traverfe per &c. pl. 88 cites 8 H. 6. 5.

2. As in Debt upon * Buying and + Lending or the like, he shall not say that he did not buy nor did not borrow, but shall plead that he owes him nothing or wage his Law. Br. Traverfe per &c. pl. 64. cites 8 H. 6. 5.

S. P. Br.

3. So in Debt upon Arbitrement, the Defendant shall not plead No such Iud. Pl. 27. 5. Submission; for he may wage his Law, and there he cannot traverfe the cites 22 E. 4. 6. 5. Cur. except Brien.

But Br. Traverfe per &c. pl. 245. cites 13 E. 4. 4. It was said that in Debt upon Arbitrement, he may traverse the Arbitrement, or wage his Law. — — S. P. Br. Ibid. pl. 246. cites 21 E. 4. 55. that he may say No such Arbitrement, and yet he may wage his Law. Brooke says Quere inde — S. P. Because this Arbitrement lies in Notice of a 5d Person, and so the Law People may have Conscience of it, and for this Cause the Plea has been held good. Keilw. 59 pl. 4. Trin. 15 H. 7. Anon.

* S. P. Br. Traverfe per &c. pl. 245. cites 13 E. 4. 4. It was said that in Debt upon Arbitrement, he may traverse the Arbitrement, or wage his Law. — — S. P. Br. Ibid. pl. 246. cites 21 E. 4. 55. that he may say No such Arbitrement, and yet he may wage his Law. Brooke says Quere inde.

S. P. Br.

4 Contra in Debt upon a * Leafe for Years, or upon + Arrears of Account before Auditors, there he cannot wage his Law; therefore there No distinct &c. or Null tial Account is a good Plea. Br. Traverfe per &c. pl. 223. cites 8 E. 4. 3. but he may traverse the Lease. — — Br. Traverfe per &c. pl. 264. cites 21 E. 4. 55. That he may say Null tial Account, and yet may wage his Law. Brooke says, Quere inde.

S. P. Br.

5. In Detinue of Charters, the Defendant may traverse the Bailment, because he cannot wage his Law. Br. Traverfe per &c. pl. 228. cites 8 E. 4. 3.

4 55 — But in Detinue of a Chelc sealed with Charters, the Defendant said that it is a Box sealed with Charters which the Prior predecefsor of the Plaintiff delivered to the Defendant, in Pledge for 100 s. borrowed, which he took to re-deliver when the 100 s. shall be paid, abique hoc that he detainted such Charter of Charters; and a good Plea, and yet he might have waged his Law, because he did not count of any Charter special. Br. Traverfe per &c. pl. 272. cites 22 E. 4. 7.

As in Detinue of a Bailment, by all the Justices. Br. Traverfe per &c. pl. 228. cites 8 E. 4. 3.

6. But where he may wage his Law, there he shall not traverse the Bailment; By all the Justices. Br. Traverfe per &c. pl. 228. cites 8 E. 4. 3. Hose to re-hall when &c. the Defendant said that he hal'd it to him to Beall to a Stranger, which he has done, abique hoc that it was hal'd to him to re-hall, front &c. And per tot. Cur. is it no Plea, because he may wage his Law, and so shall not traverse the Bailment. Br. Traverfe per &c. pl. 264. cites 21 E. 4. 55.

So in Detinue of Goods, and counted of Bailment, the Defendant said that the same Day &c. and at another Time he the Plaintiff gave to the Defendant the same Goods, abique hoc that he hal'd them to the Defendant front &c. And per tot. Cur. except Brian, it is no Plea; for it is only Argument; And also when the Defendant may wage his Law, as here, he shall not be suffer'd to traverse the Meine Conveyance,
(T. a) Good or Necessary. *Where the Writ or Count is See (D. B)*
of more or less than it ought to be.

1. Upon the Enterpleading in Detinue of Goods, the one said that they were delivered upon Condition to stand to the Arbitrement of W. P, who awarded that he should do such an All, which he has done, and that the other miscro him, which he has not done, and pray'd Livery; and the other said that he awarded this, and that the other should be bound to him in 101l. which he has not done, abique hoc that he awarded as above. Per Aconough, Where a Man alleges an Award where the Award was *of this,* and more, there the other shall fay that he awarded this and such another *S. P. Per Prior and Danby, and* the bell Opinion. Br. Traverse per &c. pl. 68. cites 19 H. 6. 3. 19.

2. Detinue of two Bonds, the Garnishoe pleaded Arbitrement made between the Plaintiff and him, that the Plaintiff should make Partition of the Manor of B. and of 100 Acres of Land in C. and pay to the Garnishoe 10l. and said that the Plaintiff had not made the Partition, nor paid the 10l. in the Plaintiff said that they awarded as above, and also that the Garnishoe should deliver to him a Deed of Annuity &c. abique hoc that they awarded as above only. And per Patron, the *only* cannot make illue. Br. Traverse per &c. pl. 88. cites 21 H. 6. 18. 15.

3. By which the Plaintiff said that the Award was, that he should make Partition of the Manor by itself, and of the Land by itself, abique hoc that they awarded that the Partition should be made of the Manor and Land altogether prout &c. and found Patrimon; and it was said there that 19. the (only) was not fuffered to make illue ait; quod Miror; therefore see. Br. Traverse per &c. pl. 88. cites 21 H. 6. 18, 19.

4. In Debtor of 41. the Plaintiff counted of a Leafe of 20 Acres of Land, rendering 4l. per Annum. and the Defendant said that he leased the 20 Acres, and 12 other Acres for the same Term, rendering the 4l. per Annu. Judgment of the Count; and the bell Opinion was that he ought to traverse, abique hoc that he leased the 20 Acres only prout &c. Br. Traverse per &c. pl. 381. cites 32 H. 6. 3.

5. Debt upon a Leafe of 4 Acres of Land for 41. Rent, the Defendant demanded *Judgment of the Count, because the Plaintiff leased the Acres, and a Retrory, and 10s. Rent, and View of Frank-piege for the same Sum,* and did not traverse abique hoc that he leased the Land only for this Rent. And the bell Opinion was, that he ought to traverse; for the Leafe of the 4 Acres is not a Leafe of the Retory and Rentiaue. Br. Traverse per &c. pl. 33. cites 35 H. 6. 38. S. C. cited Le. 24 pl. 56. Arg. in the City of Exeter.

Court clear of Opinion, that for Want of such Traverse the Plea is not good.

6. But in Debt upon a Leafe, it is a good Plea to the Writ, without traversing that the Plaintiff and another leased who is alive, or that the Leafe was made to the Defendant, and another who is alive; for there every 5 G.
Traverfe.

&c. the De. one leaves the Entire, and the Entire is lefted to every one. Br. Traverfe per &c. pl. 33. cites 35 H. 6. 38.

Acres said, that Ne left a 5. and to the 10 Acres that he lefted to him and bis Teme who is albe not named, Judgment of the Writ; And by the Opinion of the Court he shal say that he lefted the 10 Acres, abique hoc that he lefted the 14 Acres, prunt &c. Br. Traverfe per &c. pl. 249. cites i; E. 47.

7. So of Selling a Horse by 2, or to 2, and the Action is brought by one, or against one. Note the Diversity. Br. Traverfe per &c. pl. 33. cites 35 H. 6. 38.

Br. Avowry, pl S. cites S.C. Br. Double, pl 97. cites S.C. Brian said that the

Plaintiff could not plead otherwise; for there is no Reason that for the False Avowry the Plaintiff should be at any Mishief, but he ought to have an Answer to it then, and then if he was never sold of more than 10s. and he alleges 12s. he cannot travers the Tenure, abique hoc that he holds by 12s. and as to the 2s. Reidue Ne unques Seife, because then he ought to agree with him in the Quantity of the Land, which here he does not; but Keble contra, as here, Mich. 6H. 7. 5. pl. 1.

9. If White-acre and Black-acre be adjoining, and are helden the one of J. S. and the other of J. D. and J. S. distress, and acres for both Acres, he may well traverse the Tenure; Per Periam J. Godb. 24. in Case of Throgmorton v. Terrimage.

(U. a) Not good, by its not ansevering the Point of the Writ, or being only to Part.

1. In Account against Guardian in Socage, it is no Plea that the Ancestor held of him in Chivalry, by which he felled the Ward, unless he traversed abique hoc that he held of him in Socage, prunt &c. Quod nota; for he shall anwer the Point of the Writ. Br. Traverfe per &c. pl. 373. (bis) cites 10 H. 6. 7.

2. In Case for stopping 3 Lights totaliter, the Defendant justified the Stopping 2 Lights, and Part of the 3d, and traversed that he stop'd the 3 Lights alter, vel aulo Modo. Williams J. said this was no Anwer to the Declaration, but should have said Guilty or Not guilty, as to the Residue, and not have travers'd at all, and the Abique hoc goes to the 2 Lights, and as to the 3d it is no Anwer; and thereupon the Court gave Judgment for the Plaintiff. 2 Built. 116. 117. Patch. 9 Jac. Newall v. Barnard.


(W. a) Of an Immateriel Traverfe.


1. WHER the Plea, or Matter of the Plea, is not sufficient, there the Sams eco shall not aid it, tho' the Sams eco is Traverfe be good. Br. Traverfe per &c. pl. 132. cites 9 E. 4. 40.
Traverfe.

2. In Treplotus the Defendant said, that J. Long, and Alice his Feme, were seized in Fee jointly, and J. survived Alice, and died by Prostitution seized, and convey'd to the Defendant as Heir by Defent, and gave Colour. And the Plaintiff said, that before the said J. any thing had, the said Alice was seized in Fee, and took J. to Baron, by which he was seized in Right of the said A. and after they granted the said Tenement to two by Fine, who re-inseff'd the said J. and A., and to the Heirs of the said A., and the Plaintiff convey'd to him as Heir of A. Abufe hoc, that the said J. was seized in Fee; and fo to filie, and found for the Plaintiff. Per Brian, the Traverfe is void; lor if J. was seized in Fee or not, yet by the Fine, which is confefs'd by both, his Interest in Fee was determined, fo he ought to have traversed, that J. was not seized in Fee after the Fine; quod Prioit Confeffit, that the Traverfe is void for the Calfe afofDaid; but Catesby contra. Br. Traverfe per &c. pl. 271. cites 21 E. 4. 83.

3. In Replevin the Defendant aver'd the taking Damage fe&ant. The Plaintiff reply'd, that J. S. made a Leave to him, by which he enter'd, and put in his Cattle. The Defendant rejoind, that before the Leave made to the Plaintiff, J. S. made a Feoffment to him. The Plaintiff maintain'd the Leave, abufe hoc, that J. S. Seifus feoffavit. It was held, per tot. Cur. that the Word sefofitus is idle, and ought to have been left out; for a Man cannot make Feoffment, unlefs he is fief'd. Godb. 111. pl. 152. Mich. 28 and 29 Eliz. Hales v. Home.

4. In Replevin &c. the Defendant aver'd &c. and the Plaintiff reply'd in Bar, that the Prior and Convent of N. were seized in Fee, and so convey'd a Title to himfelf by a Leave &c. The Plaintiff [Defendent] rejoind, abufe hoc, that the Prior and Convent were seized in their Demifne as of Fee &c. Upon a Demurrer the Judges agreed, that this Traverfe was good, notwithstanding it was faid a thing impoffible, (viz.) that the Prior and Convent can be fief'd of Land, whereas the Monks are dead Persons in Law, and therefore can have no Seilin, but the Prior alone; the Monks being in Confeffion of Law as Dead Persons, and therefore it shall be taken as if it had been pleaded, that the Prior was fief'd, without mentioning the Convent; fo that the Traverfe is good, and the Word Convent fuperfluous. And. 268. pl. 276. Trin. 32 Eliz. Eden v. Downing.

5. In Debt upon an Obligation, where the Condition was, That one Lea should be his true Prisoner, and pay every Month for his Diet, and the Fees due to the Plaintiff, by reason of his Office, the Defendant pleads the Statute of 23 H. 8. and that this Obligation was made for the Eafe and Favour of the Prisoner by Colour of his Office. And the Plaintiff reply'd, that the Fleet is an ancient Prison, and that Time out of Mind &c. they used to take fuch Obligations, abufe hoc, that this Obligation was made for the Eafe and Favour, contrary to the Statute; upon which the Defendant demurr'd generally. But Atchowe pray'd Judgment, for that the Traverfe waivs the Matter before, which was but an Inducement. And in 23 H. 6. there is an Exception of the Warden of the Fleet, and the Warden of the Palace of Weftminster, that they might take fuch Obligations which they used; to which the Court agreed. And for that the Traverfe ever destroys the Bar, the Defendant ought to have joind in that; upon which Judgment was given for the Plaintiff, if &c. Het. 146. Mich. 5 Car. C. B. Harris v. Lea.

6. Where a Traverfe is immaterial, unlefs there be a Special Demurrer to it with the Copies fitem, it shall not vitiate the Pleadings; but it is naught upon a Special Demurrer. 2 L. P. R. 593. Tit. Traverfe, cites Mich. 6 W. & M.

7. Replevin. The Defendant aver'd Damage feoffant in his Freehold. The Plaintiff in Bar reply'd, that B. was rite & legitime such a Day seized in Fee of the Manor of W. whereas the Place is, and Time out of Mind has been Parcel, and lays a Caution for the Copyholders to have Common in the Place where; and then fets out a Grant of a Copyhold Tenement &c. 5 Will. pl. 9. S. C. accord.
Traverfe.

8. Declaration in Prohibition, that Defendants in Error were defled Common Council-men, that the Plaintiffs (Defendants in Error) intending to draw their Election into Question, exhibited a Petition to the Common Council-men with Design to remove them; whereas the said Common Council have no Power to examine concerning such Elections; for that, Time out of Mind, such Election belon'd to the Court of Mayor and Aldermen. Defendants by their Plea affirm, that the Common Council, Time out of Mind, have bad, and ought to have Jurisdiction to examine into such Elections: And aver, that the Court of Mayor and Aldermen have not such Jurisdiction. Plaintiffs reply, that the Common Council have not such Jurisdiction. Defendants demur. The Traverfe is immaterial, and the Illue ought to have been join'd upon the Jurisdiction of the Common Council; for the Mayor and Aldermen should have no Jurisdiction, it does not follow, that the Common Council have. N. S. Tab. 1718. Belton & Bridger v. Jesses.

9. Where in Treppafs there is a good Jurisdiction, a Traverfe of the Time, when the Treppafs was done, would be wholly immaterial. 8 Mod. 31. Hill. 7 Geo. 1721. Carvell v. Manly.

(X. a) How. General or Special. And where it amounts only to the General Iffue.

1. Wher the Defendant justify's to take a Vagrant for Sustenance, the Plaintiff may say, that De non Tort demrise, alhough told Causa, but shall not say De non Tort demine, alhough he, that he was a Vagrant. for he shall not traverse the Special Matter, but where it is Matter of Record, or of Writing, and not where it is Matter in Fact. Br. De non Tort deminede, pl. 20. cites 2 E. 4. 9.

2. Where the Matter in the Declaration and in the Replication is of one and the same Nature, the Defendant shall take the General Traverfe; per Choke. Br. Treppafs, pl. 38. cites 21 E. 4. 75, 76.

3. Treppafs for entering his Clofe, and fauling his Grazfs &c, and taking and driving his Beasts to Places unknown. The Defendant pleaded, that the Place where &c. is a Wafte, Parcel of his Mauer, and the Plaintiff's Beasts were there mixt with the Beasts of Strangers, who had no Right there; and because he could not separate the one from the other, he drove them all together to a Pead in the Wafte to part them, and then drove the Stranger's Beasts out of the Wafte, and left the Plaintiff's in it. The Plaintiff replied, and as to the Plea of entering into his Clofe demurred, because it amounted only to the General Iffue. But it was resolved, that the Bar being intire, tho' such Plea be only the General Iffue, as being his own Act, yet being joint with the Special Matter of Jurisdiction in one entire Plea, it is good. 3 Lev. 49, 41. Hill. 33 Car. 2. C. B. Thomas v. Nichols.
Traverse.

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the Rejoinder was adjourn'd till; besides it is multifarious, and he should have traversed one single Point, and not all together. 3 Lev. 40. Thomas v. Nichols.

And as to the Replication, it was adjourn'd till; for the Plaintiff could have traversed the Law, viz. either, first, that the Defendant did not leave the Beads in the Wake after severance; or, 2dly, that he might have sever'd them without pounding them; or, 3dly, De Injuria sua propria abiniti toll Cuius; and then the Defendant in this Issue must have proved the Necessity of impounding them. 3 Lev. 40. 41. Thomas v. Nichols.

4. In Covenant for not keeping and employing his Apprentice, the Defendant pleaded, that from such a Time to such a Time, he did keep and employ him; and that then be subject to fines (the Defendant) dequit & reliquit, & ab eo decept & uterius in servitio suo remunere neglect & abhine posset hanc; ad loco necquita spesam elogant & obfoluta. The Plaintiff replied, and traversed, alleging he had served (of the Defendant) debeat vel requiritur & vel co deceptus, vel in servitio suo remunere (omitting neglect) vel spesam elogant. And upon a Demurrer to this Replication it was objected, that the Traverse was multifarious, consisting of so many Particulars in the Disjunctive; and that by omitting the Word (Neglect) it was not Sente. Sed per Cur. the Traverse is good; for it is pertinent to the Defendant's Plea, which may be traversed, as he has pleaded it; and that Part of it which is Noniente will not hurt, because the Traverse is good without it. 3 Salk. 355. pl. 8. Patch. 2 W. 3. B. R. Newdigate v. Selwin.

5. Every Thing that is traversable must be express'd in Certainty; and then if it be a good Plea, and not traversable, it is not questionabl. Skin. 486. in Cale of Phillips v. Bury.

6. In Replevin the Defendant avowed for a Rent-charge in Arrear; the Plaintiff replied De injuria sua propria, abique hoc Revenia est in Arrear; 641. S. C. and upon a special Demurrer, for that this Replication and Traverse and held accounted to no more than the General Issue, the Court held that this is not cordially a proper Inducement to the Traverse; the natural and proper Plea to this Demurrer, is Naught, as the General Issue; the same Thing in Issue, and no other Evidence can be given but such as might have Effect with giving upon the proper Issue; therefore this Circumlocution is ill, because it proceed's the Cause, by enforcing the Avowant to an unnecessary Replication; and tho' it is not more than Matter of Form, because it does not alter the Evidence, yet Per Holt Ch. Junt. This being upon a Special Demurrer, is naught. 3 Salk. 356. pl. 11. Hill. 12 W. 3. B. R. Newpin v. Lewin.

7. Justification on a Publick Act of Parliament: may be travers'd gene-

12 Mod. rally. 3d Raym. Rep. 792, 791. Mich. 13 W. 3. Chauncey v. Windle. 588. S. C. and in arguing the Cate it was agreed, that when the Plea consists of a Justification, Part Practice of Matter of Record, the Replication ought to be with a special Traverse. Agreed Arg. 12 Mod. 581. 2d in Cale of Chauncey v. Win & al. But 'twas said that this Rule for its Exception; for if Matter of Record be made Use of in Way of Indemnity, to the Part of Justification, there it is not necessary to reply specially, and cited 2 Lat. 102. and that that general Rule only holds Place where such Matter of Record is pleaded, to which the Plaintiff may be an answer, as it is a Stock Matter &c. but here there can be no Answer to a Justification under an Act of Parliament, as it the Principal Case. And he likewise agreed, where one claims Common by Precedent, Report by Grant, Goods by Sale &c. and to justify a having Interest, there the Plaintiff must answer directly to the Issue, and not with a general De Injuria sua propria abiniti toll causa. But where, as to the Justice for his &c. Parliament, especially a General Act, which none can traverse, then he may well reply De Injuria sua propria abiniti toll causa. And by Holt Ca. J. The Act of Parliament here, if it had not been pleaded, would have been taken Notice of by the Court; therefore is being pleaded being superfluous, will be no Hindrance to the Replication, with this general Traverse. 12 Mod. 581, 582. Mich. 13 W. 3 in Cale of Chauncey v. Win & al.

(Y. a.) How
(Y. a) How, as to Time. Where it must be of the Time before, or of the Time before and after, or of the Time after.

1. In Affise, the Tenant intituled himself, because W. was seised in Fee, and made Recognizance to the Defendant in 40 S. by Statute Merchant, and he fled Execution, and swore the Record certain &c. The Plaintiff said that W. two Years before the Statute infed'd the Plaintiff, which if it be continued till by the Defendant dismissed, abjure hoc that W. the Day of the Statute, or ever after, any Thing bad, prifn, and the other that he was seised the Day of the Statute, but was not suffered to file the Day of Statute, and after; for it is double on the Part of the Tenant, and yet well for the Plaintiff. Br. Traverfe per &c. pl. 170. cites 24 Aff. 2.

And by some, the Defendant shall shew what Hour of the Day he was infed'd, and that he took them the same Day after; for if he took them in the Morning, and was not infed'd till the Noon of the same Day, he cannot justify before the Noon. Br. Traverfe per &c. pl. 195. cites 5 H. 4. 124.

But by 9 E. 4. fol. 4. it is sufficient, prima facie, without shewing the Hour, by which he pledged the Feoffment above at 6 in the Morning, & by which he took them there after on the late Day Damage fequest, abjure hoc that he was guilty before or after the 15th Day &c. Br. Traverfe per &c. pl. 199.

In Traverfe, the Plaintiff alleged that the Defendant till May 28 Eliz. out demisd Pistori's House of the Plaintiff at D. The Defendant justified, because the Freehold of the House in April 27. Eliz. goes to J. S. and that he by his Commandment the same Day and Year did the Traverfe &c. The Plaintiff demurred, because the Defendant did not traverfe, without that there that he was guilty before or after. And the Opinion of Wray was, that the Traverfe taken was well enough, because the Freehold shall be intended to continue &c. 7 H. 7. 5. But all the other 3 Judges were of a contrary Opinion; but they all agreed that where the Defendant does justify by Reason his Freehold at the Day specified in the Declaration, there the Traverfe (before) is good enough. And afterwards Judgment was given against the Defendant. 1 Lc. 51. pl. 125. Hill. 56 Eliz. in B. R. Higiam v. Reynolds. —— Gro E. 87. pl. 9. S. C. that the Defendant traverfe'd, abjure hoc that he was guilty of any Traverfe before the 10th April 27. Eliz. but did not traverfe the Time after &c. And the Court inclined that when he pleads his Freehold, it shall be intended to continue, except the contrary be shewn, and therefore need not traverfe the Time after, but they would advise; but afterwards it was adjudged for the Plaintiff.

* S. P. Per Littleton, Pizer and Nele J. And that it is a good Replication that No infed's pas. Br. Traverfe per &c. pl. 195. cites 5 H. 4. 124.

3. Contra in Traverfis in the Land the 2d Day of May, and he pleads Feoffment the 14th Day of May, abjure hoc that he is guilty before, this is sufficient in Traverfis of * Claudio traeco, Grafs fed, and the like; for the Soil remains to him after the Feoffament. Contra of Taking of Goods. Br. Traverfe per &c. pl. 199. cites 5 H. 4. 124.

4. Traverfis of Assault and Battery done to W. H. His Servant, Anno 7 H. 6. at B. end of entering into the House of the Plaintiff; the Defendant said that Writ of Summons was deliver'd to him to serve upon the Plaintiff, by which he served it Anno 18 H. 6. and the Plaintiff and his Servants carried him to the House of the Plaintiff in sight of his Teeth, and detained him there for half a Day, which is the same Traverfe, and to any Traverfis before this Day Not Guilt'; and to the Battery of the Servant, said that it was an Assault done the Anno 18. and to the Traverfs before this Day Not Guilt'; and by the Reporter he may justify the Traverfs or maintain another Day which the Plaintiff does not count of without any Traverfe; And in * Battery when
Traverse.

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when he justifies at another Day which the Plaintiff does not count of, he shall plead Not Guilty to all before that Day and after, Quere. Br. Traverse per &c. pl. 144. cites 22 H. 6. 49.

5. Trefpafs Anno 17, the Defendant said that the Place &c. Anno 18 was the Frakntement of J. N. who leaded to the Defendant for 10 Years, and as to any Trefpafs before Not Guilty. Br. Traverse per &c. pl. 105. cites 22 H. 6. 49.

Where the Defendant was the Plaintiff's Servant by a Lease for 10 Years, he shall traverse before, and not the Trefpafs after; for it is Lawful after by his Leave. Br. Traverse per &c. pl. 144. cites 7; H. 6. 5.

And it was said that the Lease be determined yet he need not to traverse after. Br. Traverse per &c. pl. 144. cites 7; H. 6. 5.

But ibid. pl. 222. cites 5 E. 4. 5. it is said by Genney and Coke, that if the Lease be determined he shall traverse before and after. —S. P. Heath's Max. 106. cap 5. cites S. C.

But where the Lease continues he shall not traverse the time after. Br. Traverse per &c. pl. 220. cites 5 E. 4. 5.


7. In Trefpafs the Defendant justified the taking of the Cattle 3 Days after Br. Trefpafs the Day of the Trefpafs Supposed by the Declaration, by Virtue of a Precept of the Sheriff to make Releaves, absolute hoc that he was guilty before the 3d Day. Laken Serjeant said, that he ought to traverse before and after, but Pri- fot said No, but before only, and not after; for the Precept is an Au- thority to him to make Deliverance at any Day after, and continues till Deliverance be made. Br. Traverse per &c. pl. 144. cites 37 H. 6. 37.

Streif of the County to attach the Cattle, by which he attached her such a Day and took her with him, ob- sive see that he is Guilty before the 3d directed to him and after the Return of it. And the Traverse admitted good; quere. Br. Traverse per &c. pl. 189. cites 9 H. 7. 6. ——Br. Traverse per &c. pl. 285. cites S. C.

8. But where a Man pleads Releaves, he shall traverse all Times after, S. P. Ibid. for the Releaves discharges that which was before. Br. Traverse per &c. pl. 144. cites 37 H. 6. 37.


10. In Trefpafs of Goods taken, the Defendant said that the Plaintiff's was poss'd of, and sold to F. who let them remain with the Plaintiff, and after F. sold to the Defendant, and he took them, the Plaintiff said that he was poss'd of till the Day in the Declaration when the Defendant took them, abique hoc that he sold to F. before the said Day, and the others contra; for it is a good Plea per Cur. and by this means the Plaintiff shall punish the Trefpafs done before the Sale to F. Br. Traverse per &c. pl. 302. cites 2 E. 4. 16.

11. Trefpafs de Clavo profitibus Order, Anno 1 E. 4. against the Peace of a S. P. the said King E. 4. the Defendant said that 8 January 39 H. 6. the Place Heath's was his Frankenchampion, abique hoc that he was guilty after the said 8th Day of January, and well, rh' he did not say before and after, because he was in it
that Writ he cannot be guilty before, cites S. C. 2d after, because he might be guilty after the Day, in the Time of H. 6. and in the Time of E. 4. also he amended his Traverfe, and twice of that he can not guilty after the said Day and Time of E. 4. and then well; Quod nota. Br. Traverfe per &c. pl. 212. cites 2 E. 4. 23, 24.

If he pleads he shall have said that His Fraudence such a Day in the Time of E. 4. there he shall traverse before and after. Note the Divinity. Br. Traverfe per &c. pl. 212. cites 2 E. 4. 23, 24.

If he pleads In Traverfe, and the Defendant ought to traverse all Times after; for that excutes all times before. Br. Traverfe per &c. pl. 268. cites 21 E. 4. 66.

But where he says that it was his Fraudence such a Day, he shall traverse all the Time before; and this seems to be either the Day, that the Plaintiff counts of, or before, and shall be intended his Fraudence always after. Br. Ibid. S. P. Br. Ibid. 520. cites S. C. and 12 E. 4. 6. S. P. Br. Ibid. pl. 242. cites 12 E. 4. 6 — S. P. Br. Ibid. pl. 222. cites 5 E. 4. 5.

In Traverfe of Imprissonment; the Defendant said that such a Day in the Day in the Declaration, he arrested the Plaintiff by Warrant of the Peace, and carried him to Gaol, abjure hoc that he is guilty before; And per Jenny and Choke, he ought to traverse before and after. Br. Traverfe per &c. pl. 220. cites 5 E. 4. 5.

Heath's

14. In Traverfis the 2d of May if the Defendant pleads Licence the 4th of May there he shall say abjute hoc that he is Guilty before or after; for Licence does not continue, but extends only to the Day in the Licence. Br. Traverfe per &c. pl. 220. cites 5 E. 4. 5.


5. When a Matter which amount only to a Licence is pleaded at another Day than is mentioned in the Declaration, the Defendant ought to traverse both before and after. Std. 294. pl. 13. Trim. 18 Car. B.R. in Cape of Dame Madrid, says it seems to be agreed.

15. Traverfis was the 22 June 36 H. 6. the Defendant said that J. N. was seized in Fee, and infeffed the Defendant 3 May 57 H. 6. and gave Colour by the Peer for Anno 37 H. 6. abjure hoc that he is Guilty before this Day; and a good Plea, tho' he claims by a Stranger and not by the Plaintiff, and gives Colour by the Stranger. Br. Traverfe per &c. pl. 195. cites 5 E. 4. 79.

16. Traverfis of Cutting his Wood the first Day of August, the Defendant justified by Prescription that the Lords of the Manor of D. have used to have 20 Load of Wood there yearly between Michælmas and Christmas; and he being Lord of D. cut the 20 October between Michælmas and Christmas, abjute hoc that he is Guilty before Michælmas and after Christmas: The Plaintiff said, that he cut as in the Declaration, and traversed the Prescription of the 20 Load Modo & Forma. And well per Cur. for where the Defendant alleges Title, the Plaintiff shall not be compelled to maintain his Day if the Defendant has no such Title; and so he has Election to maintain his Day or to traverse the Title of the Defendant; and so the Traverfis upon Traverfe. Br. Traverfe per &c. pl. 304. cites 10 E. 4. 2.

17. Tref
17. Trepals de Clanyo frato in D. 6 July, the Defendant justified for Tithes seceded from the 9. Parton as Parson the 15th Day of Argyll, abique hoc that he is Guilty until's after the Tithes seceded and till they were carried away ; and it was held clearly that every Parton may enter to collect his Tithes and to turn them till they are dry, and of this the reasonable Time shall be tried; and a good Plea, and shall be committed to say that he is Not Guilty before nor after ; for he is Guilty every Year after the Tithes seceded. Br. Traverle per &c. pl. 242. cites 12 E. 4. 6.

18. So of Common, from the Time of the Corn secon till they are re-secon ; for they Things are uncertain. Br. Traverle per &c. pl. 242. cites 12 E. 4. 6.

19. Where a Man justifies another Day for Rent arrear at Easter, he shall traverse that he is Not Guilty of any Entry, but to discharge when the Rent was Arrear. Br. Traverle per &c. pl. 242. cites 12 E. 4. 6.

20. Account as Receiver, the Defendant said that he accounted before that the Plaintiff himself for the same Sum the first Day of April, abique hoc that he was his Receiver after. And no Plea per Cur. for it does not go for this Time only, and not for the Time before; or it may be that he received the like Sum diversie Times before, and so he ought to traverse before and after. Br. Traverle per &c. pl. 309. cites 21 E. 4. 66.

21. In Second Deliverance the Defendant said that A. leased to B. for 20 Years, which B granted his Interest to the Defendant, and so went a Drainageenant ; and the Plaintiff said that such a Day and Year B. granted to him his Interest, abique hoc that he granted his Interest to the Defendant before that he granted his Interest to the Plaintiff, and admitted for good. Br. Traverle per &c. pl. 113. cites 14 H. 8. 17.

22. In a Square Imped the Plaintiff declared that the Defendant being Parson of the Church in Question was presented to another Benefice, and was induced 15 April, by which the first became void &c. The Defendant pleaded, that he was qualified 15 April abique hoc, that he was induced 15 April. The Court was at Opinion (abente Anderlon) that the Traverle was not good ; for he ought to have laid generally abique hoc, that he was induced before the Day on which he had alleged he was qualified. Gold. 111. pl. 131. Mich. 25 & 29 Eliz. C. B. Anon.

(S.a) How. Where the King is Party.

1. A Man was enter'ed d' Felony, and aliqu'ed his Land to J. N. by which Scire Facias issued against him, who came and would have traversed the Felony; and the Court doubted if he might traverse it, by Reason that he is a Stranger to the Record. But per Pigot 7 E. 4. 2; he cannot traverse it in Cafe of Felony; he being a Stranger to the Record; contra in Cafe of Trepals; by which it was pray'd for the King that Year, Day and Waile be adjudged for the King immediately; and so it was immediately from that Day till a Year and a Day next after; quod nota. Quere if the King may take the Year and the Day.
Traverfe.


1. If A. be found in a Bond to 2, and after the one is seised de se and found by Office, by which the King claims the entire Bond, the other may traverfe that he did not spill himself feloniously. Br. Traverfe per &c. pl. 229. cites 6 E. 4. 3. by the beit Opinion.

2. Where a Man makes Title or pleads a Plea against the King and takes a traverfe abique hoc &c. against the King, there the King may choose to maintain the Matter of the Abjuge hoc, or to traverfe the Title or Plea of the other Party, and not to maintain the Abjuge hoc; Contra of a common Person. Br. Traverfe per &c. pl. 207. cites 3 H. 7. 3.

3. In Trespafs Quare clausum fregit, the Defendant pleads that H. 8. was seised in Fee, and so the Lands descended to the King that now is, and that be as Servant &c. The Plaintiff replies, that H. 8. granted to the Plaintiff, and does not traverse the dying seised of King Cha. 1. and it might come to the King otherwise. Twidten J. Laid, a Traverfe needs not, and if it came to the King again, this ought to be flown in the Rejoinder; the late Seisin shall be traverfed it [for] it might be gained by Difficult. Raym. 137, 138. Trin. 17 Car. 2. B. R. Thatcher v. Tillocke. Traverfe and of the Defendant, which the Court held a Departure; but if the Replication be ill, the Plaintiff cannot have Judgment. And Keeling agreed that the Plaintiff ought to have traverfed, but Twidten doubted; but it being a trivial Action against 3 Schoolboys, for playing in a Court-yard near the School, where they had long used to do Adjoynatur.

See (S) pl. 15. — (I. 5)

(A. b) How, Where both Parties claim by one and the same Person.

1. WHERE the Plaintiff and Defendant claim by one and the same Person, there the Traverfe of the Gift is good; per tot. Car. Br. Traverfe per &c. pl. 278. cites 5 E. 4. 133.

2. In Trespafs if the Defendant says that A. was seised in Fee and infected B. who infected C. who infected the Defendant, and gives Colour by A. There it is sufficient to say that A. was seised, and infected the Plaintiff abique hoc, that be infected B. pretit &c. For now the Plaintiff and Defendant claim by one and the Perfon; and there it is sufficient to traverse the first Feoffment. Br. Traverfe per &c. pl. 200. cites 5 E. 4. 133.

3. It was said, that a Que Estate is traverfable, if both Parries claim by one and the same Person. Br. Traverfe per &c. pl. 231. cites 10 E. 4. 6.

4. In Trespafs the Defendant said, that J. S. was seised of the Place &c. and infected B. who infected C. And no Plea, unless the Plaintiff conveys by the same, by whom Defendant conveys'd. Br. Que Eestate, pl. 36. cites 18 E. 4. 10.

5. In Formedon in Remainder the Deed is not traverfable; but if the Demandant claims by the same by whom the Tenant claims, the Deed is traverfable, and he may chuse to traverfe the Deed or the Gift. Er. Traverfe per &c. pl. 179. cites 4 H. 7. 9.

6. In
Traverse.

6. In Replevin the Defendant said, that B. was seized in Fee, and leased to E. for 60 years, and E. granted his Interest to the Defendant, Anno 38 H. 8. by which B. was possessed, and distrained for Damage feasant. The Plaintiff said, that this same B. was again seized in Anno 32 H. 8. and granted his Interest to H. He shall not traverse the Grant in Anno 38, for he has demised it and avoided it by the later Grant obtained. Br. Confess and Avoid, pl. 65. cites 2 E. 6.


In Replevin by H. against W. the Defendant made Confeance as Bailiff to H. because A. in E. 6. leased to B. for 90 Years, who affigned the Term to C. who granted it to D. who granted it to E. who granted it to H. The Plaintiff confess'd the Assignment to C. and said, that D. took to Baron J. S. who granted to the Plaintiff; and traversed the Grant to E. Adjudged that this Traverse was ill; for a Leafe for Years cannot be gain'd but by a lawful Grant, and therefore the last Leafe ought not to be traversed by him; but the other Party ought to traverse the first Leafe, or shew how he came to it again, to enable him to make the 2d Grant. 6 Rep. 24. b. Hill. 41 Eliz. B. R. Helyar's Cafe.

8. But in Cafe of a Feoffment, the first Feoffee must confess and avoid the last Feoffment, as by Delilien &c. For a Differior may gain an Eatter in Fee, whereas a Leafe for Years can be only by lawful Conveyance. But when H. claim'd by a former Assignment of a Term, it would be imprudent to traverse, that he after allign'd his Interest; for perhaps he did allign all his Interest without having any. 6 Rep. 25. a. in Helyar's Cafe.

10. In Replevin &c. the Defendant justifl'd, for that M. was seized in Fee, and upon the 29 Sept. 1 W. & M. demis'd the Premises to him for a Year, and he enter'd, and fo avow'd for Damage feasant. The Plaintiff confess'd the Seafed of M. but said, that before the Leafe to the Defendant, viz. 5 June, 1 W. & M. was demis'd to the Plaintiff for 6 Years &c. and traversed the Leafe made to the Avowant. The Avowant demis'd generally. Pollexfen Ch. J. inclin'd, that the Traverse was no Cafe of De- murrier, tho' it might have been omitted, and that there were divers Authorities against Helyar's Cafe; and that the Books generally are of Denney only, that there needed no Traverse, as the Cafe of the Bishop of Baffbury v. Hunt, Cro C. 531. and Keelaud v. White, Cro C. 494. But the other Juftices doubted, by reafon of Helyar's Cafe, and &c. &c. &c. (R B) and Harleceen's Cafe, where it is said, that fuch a Traverse makes pl.

11. Treflays of taking Cattle at D. The Defendant justifl'd, that J. S. was seized of Bl. Acre, and demis'd it to the Defendant for 3 Years, from Lady-Day 8 W. 3. who by Virtue thereof contain'd, and took the Cattle Damage feasant &c. The Plaintiff replies, that before the Demis to the Defendant, J. S. demis'd the fame to him, to hold De Anno in Anna quaintia omnibus parteis plenius; and that he enter'd, and put in his Cattle, and the Defendant took them within the 2 Years, alfo. Le. 7. S.
Traverse.

J. S. demurred to the Defendant made & forma &c. The Defendant demurred, for that the Plaintiff did not traverse the last leaf &c. Exception was taken to the Traverse of the last leaf, because the Plaintiff had sufficiently avoided it before. And the same Diversity was taken between Leaves and Feoffments, as in Heath's Case above; and then intimated, that such Traverse is ill upon a General Demurrer. But after several Arguments at the Bar the Court was of Opinion, that when the first Termor (admitting that the Lessor had ouled him, and made a subsequent leaf) re-enters, the 2d leaf is become void; so that to traverse the 2d leaf is to traverse a void leaf, which would be ill upon a General Demurrer. But the Court resolved, that this Demurrer was a Special Demurrer; for as to the († Non,) since it is contrary to the Record, they said they would reject it as Surplusage; and therefore Judgment was given for the Defendant. Ld. Raym. Rep. 237, 238. Trin. 9 W. 3. Lambert v. Cook.

† See supra.

(B. b) Where several Things of the same Nature are traversable, which of them shall be traversed first.

1. In Trespass, if the Defendant says, that A. was seised, and infused C. who infused D. whose fiate the Defendant has, and gives Colour by A. there per Cur, the Plaintiff may traverse any of these fragments, because the Bar is at large, and does not bind him. Br. Traverse per &c. pl. 346. cites 16 H. 6.—Contra where the Bar binds the Plaintiff, as this Bar here does not. Br. ibid. cites 15 H. 7. 3. and Fitzh. Double Ple. 83.

2. A Bishop brought Trespass against a Prior, who pleaded, that his Predecessor was seised in Fee, and died, and he elected Prior, and entered, and gave Colour. The Plaintiff replied, that before this his Predecessor was seised in Fee in Jure episcopatus, till by J. displaced; upon whom the Predecessor of the Defendant entered, and his Predecessor died, and he was elected Bishop, and entered, and was seised till the Trespass. And the Defendant maintained his Bar, alleging, that the Plaintiff, Predecessor of the Plaintiff, and well; for it is no Traverse, that the Predecessor of the Defendant did not displace J. by his Entry upon him; for the Diffellin to the Predecessor of the Plaintiff is the Matter which binds, and the meane Conveyance nothing to the Purpese. Br. Traverse per &c. pl. 355. cites 35 H. 6. 59.

3. Evidence. The Plaintiff declared on a Leaf made by J. B. The Defendant pleaded, that the Land was Copyhold, Parcel of the Manor of S., of which the King was and is seised, who by his Steward granted the same to the Defendant in Fee, to hold &c. The Plaintiff replied, that before the King had any thing in the Lands, the Queen was seised in Fee, in Right of the Crown; and by her Steward, at such a Court, granted the Lands to the Plaintiff in Fee, to hold &c. The Defendant demurred to the Replication, supposing that the Plaintiff should have traversed the Grant alleged by him in his Bar. But the Court held the Replication good, because the Plaintiff had confessed and avoided the Defendant's Title, by a former Copy granted by Queen Eliza. and therefore needed not to traverse the Grant made to the Defendant. Cro. J. 299. pl. 2. Patch. 10 Jac. 3. B. R. Rice v. Harvetton.

S. C. by Name of Bar B. Carris, accordingly; and William I. said, that it appearing by the Replication, that the Grant to the Plaintiff, being first in time, had avoided the Defendant's Lease, being the
Traverfe.

(C. b) Supposal of the Writ &c. Traversable in what Cases.

1. WRIT of Entry by A. that the Tenant has not Ingress, unless by J. N. who dispossessed the Plaintiff. The Tenant said, that the Defendant interposed J. N. by his Deed; Judgment is against his Deed &c. Per Thorp, this is contrary to the Writ &c. by which he said, that A. interposed J. N. abique hoc. That J. N. dispossessed A. Quod nota, that where the Plaintiff is contrary to the Supposal of the Writ, it is not good without traversing the Point of the Writ. Br. Traverfe per &c. pl. 56. cites 38 E. 3. 1. and 15 E. 4. 28. 4 H. 6. 29. 8 H. 6. 2. 3. 9 H. 6. 32. and 15 H. 7. 16, 17. accordingly.

2. In Motsaglor for the Tenant may allege joint-seisin in himself, and in the Father of the Demandant; and this is a good Plea, without traversing the sole Dying Seised; and the Reason seems to be, because the * Writ and Declaration is only suppos'd. But where the Jointenancy is alleged for Bar in Allife, or other Action, or in a Title, there the sole Dying Seised is traversable. The Reason seems to be, because the Bar Title, and Replication are Matters in Fact, and not suppos'd. Br. Traverfe per &c. pl. 185. cites 5 H. 7. 11, 12.

3. In Formecon it is a good Plea, that the Ancefor is alive, without traversing the Death, because the Death is not alleged but by Supposal. *Contra where it is alleged by Matter in Fact; for where one alleges Life in Fact, the other shall say that he is dead, abique hoc, that he is alive; and where Death is alleged, the other shall say that he is alive, abique hoc, that he is dead; and where the Abique hoc is alleged, there shall come the Vifne. Br. Traverfe per &c. pl. 187. cites 6 H. 7. 5.

(D. b) By whom, or in whose Name to be taken. Plaintiff &c. or Defendant, Tenant &c.

1. WHERE F. the Tenant takes no Saus cec in his Plea, there the Demandant shall take no Saus cec in his Replication, but shall maintain that which the Tenant has traversed. Br. Traverfe per &c. pl. 70. cites 19 H. 6. 13. per Newton.

2. But where the Tenant takes no Saus cec in his Plea, there the Demandant ought to take a Saus cec in the Replication. Br. Traverfe per &c. pl. 70. cites 19 H. 6. 13. per Newton.

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*Stranger not named, of the Gift of J. N. Judgment of the Writ; there the Demandant shall say that he 5 K
Traverfe.

3. In Outlawry it was said per Young, that where a Man is attainted was attainted of Felony by Verdict, his Fees nor his Mainperners for his good Behaviour by Conviction; for our final not traverse that he was Not Guilty. Br. Traverfe per &c. pl. 322. cites 7 E. 4. 2.

4. In Dett for Rent the Plaintiff declared that he demised to the Defendant 26 Acres rendering Rent; the Defendant pleaded that he demised to him the 26 Acres, and also 4 Acres more abisse hoc, that he demised the 26 Acres tantum; and the Jury found that the Plaintiff demised 21 Acres only; the Court doubted for whom to give Judgment; but Shelley said, that the Defendant needed not to have traversed, he having confided that and more, and then the Traverfe ought to come on the Part of the Plaintiff, viz. abisse hoc, that he demised the said 4 Acres proot &c. and then the Charge of the Jury would be only upon the Surplusage, viz. the Demise of the 4 Acres; whereas here it is upon the whole 26.&c. but he would advise. D. 32. b. pl. 7. Patch. 28 & 29 H. 8. Anon.

5. In Dett for Rent, the Plaintiff declared on a Demise of 4 Acres at 5 l. The Defendant pleaded that the Demise was of the said 4 Acres and one Acre more, viz. Wb. Acre, and that before the Rent due the Plaintiff exert'd it to Wh. Acre. The Plainti affirmed, because the Defendant did not traverse abisse hoc, that he demised the 4 Acres only; but it was laid on the other Side, that the Traverfe ought to come on the Part of the Plaintiff, viz. That he should have maintaine'd the Demise abisse hoc, that he demised Wh. Acre. It was anwer'd, that this would be a Departure and therefore the Traverfe should be by the Defendant; because when he pleads other Leaf, than that on which the Plaintiff declared he should traverse the Leaf upon which the Plaintiff declared, viz. he should have pleaded the Leaf of Wh. Acre abisse hoc, that he demised the 4 Acres tantum; And of this Opinion was the Court, and gave Judgment for the Plaintiff. Lev. 263. Hill 25 & 21 Car. 2. B. R. Salmon v. Smith.

Raym. 125. S. C. very short and no Judgment mention'd.— Sid. 425. pl. 15. Samson v. Smith, S. C. that Judgment was given for the Plaintiff because Defendant had not concluded his Plea, abisse hoc, that the Plaintiff had demised Modo & Forma.— Saund. 206. S. C. adjudged accordingly. But Saunders who argued for the Defendant, says at the End of his Report of the Case, it seems to him that the leaving the Matter at large in the Plea, and so for the Traverfe to come on the Part of the Plaintiff in his Replication would have been the most apt and substantial Manner of Pleading; but that the Court was of another Opinion, as he had before reported.

(E. b) How much.

1. In Forcible Entry the Declaration was of 2 Houses, and 100 Acres of Land, the Defendant said that A. B. was seized of the Manor of D. of which the Houses and Land is Parcel, and conveyed himself to it by Tenure and Escheat of the Manor, and gave Colour of the Houses and Land only, and the Plaintiff intitled himself to the Manor, and so he was seized of the Houses and Land till by the Defendant disfeded, and travers'd the Dying seized of the Tenant [of] the Defendant of the Houses and Land alleged in the Bill of the Escheat, and did not answer to the entire Manor, as his Titl. was
Traverse.

in the Premises; and yet well, per Judicium. Br. Traverse &c. pl. 156. cites 36 H. 6. 19.

Action is only of the House and Land. — And he need not traverse, but only that of which he complains who brought the Action, and it may be that the House and Land were Parcel of the Manor at one Time and not at another. Br. Traverse &c. pl. 156. cites 36 H. 6. 19.

For where a Fine is levied of the Manor, and he brings Sche Facts of 5 Acres Parcel, there it is otherwise; for he alleges the entire Manor to be in the Fine. Br. ibid.

2. A Man may traverse more than is alleged; Per Wangl. Br. Traverse For where per &c. pl. 26. cites 33 H. 6. 49.

Arbitrement to confufi in one Point, the other Party may say that it was upon this Condition and another, and from what, abfique hoc, that it was upon the one only, or that they arbitrained this Point, and another abfique hoc, that they arbitrained this Point only. Br. ibid.

And if the Tenant, the Plaintiff, the Tenant alleges Grant of the Recrency from the Father in his Life, to which he attend'd, the Plaintiff may say he did not attend in the Life of his Father. Br. ibid.

And in Affirm, if the Tenant pleads that his Father was seised in Fee, and died by Proteftation seised, the Plaintiff may make fuite by a Stranger, abfique hoc, that the Father of the Tenant ever any thing had. Br. ibid.— And it 1. Ed. P. R. 38. H. 8. that he may lay abfique hoc, that the Father was seised in Fee &c. ibid.


So where a Write of Privilege was brought by the Defendant in Trefche as Servant of an Officer of the Exchequer, the Plaintiff replied, that the Defendant was Servant in Husbandry, abfique hoc, that he is a Servant attending at the Office. And Prior held this a good Issue; And none but Laken denied it. Br. Traverse per &c. pl. 27. cites 54 H. 6. 15.— But Brooke makes a Quare if he ought not to traverse, abfique hoc, that the Privilege extends to all the Servants, prout &c.

3. Where the Jufification goes to a Time and Place not alleged' by the Plaintiff, there must be a Traverse of both. 2 Mod. 63. Hill. 25 & 29 Car. 2. C. B. Wine v. Rider.

4. Judgment was given in Debt in C. B. The Defendant brought Writ of Error, and affirmed the Want of an Original, to which the Defendant in Error pleaded a Release of Errors. The Plaintiff in Error replies, that Defendant had obtained two Judgment against him in the fame Term, and traversed that the Release of Errors pleaded was a Release of Errors in that Judgment of which the Writ of Error was now brought. Holt Ch. J. said the Plea is good now, after the Release is let out upon Oyer; for now it appears to be a Release of this Judgment, and it shall not be intended that there was another Judgment between the fame Parties of the fame Term. And your Replication is not good; for if there were another Judgment to which this Release might be applied, you should have pleaded it specially and certainly, and have aver'd, that this Release was a Release of the Errors in that Judgment, and fo have given the Plaintiff an Opportunity of anwering that Judgment, as by pleading Nul tiles Record; for if there be no such Record, the very Foundation of your Replication is gone; for if there be no other Judgment, this Release releales this Judgment, and the Traverse is of a Thing in the Air.


(F.b) What must be alleged, tho' it be not traversable.

1. In Formerdon the Explees ought to be alleged, for otherwise the Br. Attacl. Count is not good; and yet when they are alleged they are not traversable. Per Martin. Br. Explees. pl. 6. cites 9 H. 6. 61.

2. Attachment upon a Prohibition, the Writ was tenant placentum contra S.C. Prohibitionem inprosim, and did not count that Prohibition was delivered to the Defendant, by which the Defendant demanded Judgment of the Count for this Default; and per Cur. he ought to count it; and yet it is not traversable. Br. Attachment for Prohibition, pl. 1. cites 9 H. 6. 61.

3. In Formerdon in Remainder, Dic of Remainder ought to be shewn, and yet it is not traversable. Br. Traverse per &c. pl. 324. cites 14 H. 6.

4 H.
4. He who prays to be received ought to shew Cause, and if the Cause be not sufficient the Damandant may demur; and yet he shall not traverse the Cause. As a Man may demur for a Thing formal, as the Year and Day in Trespass, and yet they are not traversable. Br. Replev., pl. 133. cites 32. H. 6. 12.

5. If a Man disjuffles me I may have Trespass for the ensuing Profits tho' I do not re-enter, but in Pleading I ought to allege Re-entry; but this shall not be traversed; quod nota per Pigot, and none denied it. Br. Traverse per & c. pl. 131. cites 9 E. 4. 38. at the End.

6. In Replevin, if the Defendant says that he took them in another Place than where the Plaintiff counts, it is no Plea if he does not shew Cause of the taking, as to make Avowry & c. and there the Cause or Matter of the Avowry shall not be traversed, but the Issue shall be taken upon the Place; Quod nota; it is tender'd, which shall not be tried. Br. Replevin, pl. 45. cites 21 E. 4. 64.

7. Condition of an Obligation was, that the Obligor should not enter or claim such a House; and the Defendant said that he did not enter nor claim. Keble said he claim'd, Pritt. Per Brian, You ought to say that he came to the Land, and claim'd the Land, and entered into it, and yet nothing of the Entry shall be travers'd, but only the Claim; Quod nota. Brooke makes a Quare of this Opinion; for there he alleges both Points of the Condition & c. Br. Conditions, pl. 130. cites 4 H. 7. 13.


9. So in an Action for Trespass, the Conversion is material, but not traversable; Per Wray and Fenner J. Cro. E. 201. pl. 27. in Cafe of Smith v. Hitchcock.

10. Trespass for killing & c. a tame Deer; the Defendant pleaded in Bar that he was possessor of such Lands for a Term of Years, and that a stray Deer came thereon, and that he not knowing it to be a tame Deer, killed it, Quae est eadem interjutio & c. And upon Demurrer the Court inclined, that the Plaintiff should have rover'd in his Count that the Defendant knew the Deer to be tame, otherwise they inclined that he is excusable; but afterwards they ordered the Declaration to be amended, and Defendant to plead Not guilty. 2 Lutw. 1359. Patch. 3 Jac. Atkinson v. Hunter.

(G. b) What Thing is traversable in one Action which is not so in another Action.

1. A Nuuity. Per Danby, Prior, and others, Anno 30 H. 6. A Patron shall have Aid of the Patron without Cause plenu, otherwise than to lay that B. was seized of the Manor of D. to which the Advowson was appertaining, and presented him, and that he found the Church disenchazd & c. and pray'd Aid; and the Cause is not traversable where he shews Cause, as it shall be where Land is demanded against Tenant for Life; for be shall shew Cause, and the Cause is traversable of the Aid, and not in Writ of Annuity; Note the Diversity. Br. Aid, pl. 89. cites 22 H. 6. 47.

2. Replevin. The Defendant makes Confiance as Bailiff to J. S. The Plaintiff traverses, abique hoc that he is Bailiff: The Defendant demurs, and
Traverse.

and Judgment for him; for the Difference is between Trespass and Replevin. In the former such a Traverse may be taken, but not in the later.


3. A Pretentmen in a Court Leet is traversable, but no Action lies against the Steward, for awarding Process upon it. Such Pretentmen is traversable in Replevin, not in Trespass, nor in Action against the Judge.


(H. b) By what Words, or what will amount to a Traverse.

1. THE Words Abique hoc are not necessary. See Saund. 22. in the Cafe of Bennet v. Filkins.


3. Non Atea in some Cases will make a Traverse; Per Holt Ch. J. See: Salk. 628. pl. 2. S.C. 22. 4. Parties Finis nihil habuerunt &c. is a sufficient Denial of the Sefijn alleg’d at the Time of the Fine, and is a Traverse in Effect, tho’ not inlde’d with the formal Words of Abique hoc &c. 2 Lutw. 1625. Trin. 1 Ann. in some Observations of the Reporter on the Case of Walters v. Hodges.

5. Noc Affundis, and Non est Fadina, are both of them Pleas which traverse Matters in those respective Actions that are pleaded by Way of Recital; Per Parker Ch. J. 10 Mod. 191. Mich. 12 Ann. B. K. Seltern v. Cibber.

(I. b) Aliiter, vel alio Modo. Good or Necessary, in what Cases.

DEBT against Executors, who said that the Party died intestate, and § P. Heath’s the Ordinary committed the Administration to N. and they as Servants Max. 118. of N. sold the Goods, and render’d to him an Account, abique hoc that they administered in other Manner. Br. Traverse per &c. pl. 379. cites 31 H. 13 H. 6. 15. 6. 13.

2. Debt against the Marshal, upon an Escape of one T. who was condemned to the Plaintiff in Affire in 10 l. and brought Writ of Error; and the Judgment was affirm’d, and he committed to the Marlhalles, and suffered to escape, the Defendant said that a great Number of the King’s Enemies broke the Prifon, and took them out, abique hoc that he escaped ali-ter, vel alio modo. And the Opinion was, that it is no Plea, if he does not show some reason of why they were strange Enemies, as of France &c. For if they were of their Nation, and not Quad ignorant ecerrunt &c. Ibid. cites 33 H. 6. 1.

3. Trespass of Grafs out, the Defendant justified, because he was seized of a House, and 100 Acres in Fee, to which he and all those whose Elrate &c. 5 L.
13. and 16. And good Parson, Parson Succeffor, Br. Annuities, Mich. other and tie Br. but adjornatur. So Heath's Predeceffor he be he retained I'refpafs Aliter, has been charg'd; he had been doubly to be the Plea that he had Common he has Common but that he has Common any other Manner, is not good; quad Curia; conceffit, by which he has advocae hoc that he has Common there Medio & Forma, prove &c. and the others contra. Quere of the Diverity of thefe Traverses well. Br. Traverfe per &c. pl. 143. cites 37 H. 6. 34.

4. Trefpafs upon the 5 R. the Defendant justified, becaufe Diffrefs was awarded against the Plaintiff in the Court of B. and he at the Defire of the Bailiff aided him to diffrain, which is the fame Entry of which &c. and no Plea by 2 Juftices, becaufe he claims nothing in the Soil by fuch Entry, by which he laid further, abfque hoc that he entered in any other Manner; and then a good Plea, Per Coke Juftice; for the general llufre is obfcure to the Lay Jury, but Alton and Markham contra; for Per Needham, he fhall fay abfque hoc that he entered as the Writ Suppifes; and Alton contra, and that he fhall have the General llufre, and grew the Matter in Evidence. Br. Traverfe per &c. pl. 215. cites 4 E. 4. 13.

5. Trefpafs upon 5 R. 2. the Defendant justified his Entry into the Land to make Watercom by Precept &c. abfque hoc that he entered in other Manner; and held no Plea becaufe he did not anfwer to the Entry and Expulfion of the Plaintiff, by which he faid abfque hoc, that he entered as the Writ Suppifes: And the Plaintiff imparfd; fo this flalt Plea was held a good Plea by the Juftices. Br. Traverfe per &c. pl. 192. cites 5 E. 4. 26. 54. quod nota.

6. An Abbot by Name of the Abbot of D. recovered an Annuity againft a Vicar, the Defendant died, and the Abbot brought sure facas againft the Successor, who laid that where the Abbot recovered by Preffcription of Name of Abbot, he faid that the Abbot had the Annuity, as Parfon Imparfaion of W. and fo the Recovery not naming him Parron void and null in Law; and becaufe he did not fay Abfque hoc that the Abbot had other Annuity; therefore no Plea per Judicium; fo it may be that he had two Annuities, the one as Abbot and the other as Parfon. Br. Traverfe per &c. pl. 325. cites 10 E. 4. 16.

So in Ammany againft the Prior of St. John of Jerusalem in England by Preffcription; the Defendant pleaded that he is Parfon Imparfaion of C. and that he and his Predeceffors were used to pay it as Parrons of C. and not as Priors, abfque hoc that the Plaintiff has been fefled at any Annuity in other Manner; and after he faid, abfque hoc that the Plaintiff or his Predeceffor has been fefled of any Annuity other than this Annuity; Judgment of the Writ, and this was laid a perilous llufre, by which he faid Abfque hoc that he was fefled of this Annuity in other manner, Prift; & adjurament; and this a good Plea that he is charg'd as Parfon, and not as Prior; for otherwife he may be doubly charg'd with two Annuities. Br. Traverfe per &c. pl. 280. cites 22 E. 4. 43. 44.


So in Debu upon Efcap, the 18th December, the Defendant pleaded the Efcap the 16th December, and a Re-taking upon Freth Suit the 17th December, and that he retained him, abfque hoc that he is guilty Alter, vel alio Medio; it was moved that this Traverfe of Alter, vel alio Medio, anfwers not to the Time, but to the Manner of any Thing alleged; and cited 35 H. 6. 29. and 37 H. 6. 67. And of that Opinion were all the Juftices at this Time, besides Popham, that the Plea was fit for that Courfe; but adjurament. Cro. E. 439. pl. 55. Nich. 37 & 38 Eliz. B. R. Grills v. Kirkgway.

So in Trefpafs for breaking and Entering his Houfe at Norwich, on the 10th Day of November &c. the Defendant justified by a Process out of an Inferior Court, by Virtue whereof he entered the Houfe on the 11th.
Traverse.

8. Indictment for using a Trade at H. in Suffolk, not having served an Apprenticeship to that Trade &c. The Defendant pleaded the Custom of London to buy and sell anywhere, and that he being a Citizen and Freeman at London, did reside at F. to buy and sell Goods prout ei bene licuit, which is the same Using the Trade, as in the Indictment, abique hoc that he used it Aliter, vel alio modo; The Court held the Traverse and Plea ill. The Reporter in aNota says he thinks the Plea ill, because the Defendant had confuted the Using the Trade, and yet has travers'd abique hoc that he us'd the Trade Aliter, vel alio modo, which he fays is idle and absurd to traverse the using the Trade Aliter, vel alio modo; for he was not charg'd by the Indictment of using it Aliter, vel alio modo; and therefore the Traverse ought to have been omitted. Saund. 311, 312. Mich. 21 Car. 2. The King v. Kilderby.


1. In Avowry, if the Plaintiff agrees with the Assignant in the Services, but wants in the Quality of the Land, the Traverse may be Abique hoc that he holds Modo & Forma. 9 Rep. 35. b. in Buckhill's Case cites it as resolved 5 H. 5. 4. b.

2. Annity of 10 s. The Plaintiff counted by Prescription, the Defendant said that he held the Advowson of B. of him by the 10 s. which is the same Rent now in Demand; Judgment of the Writ, and he was put to answer over; for it is only Argument. Br. Traverse per &c. pl. 23. cites 33 H. 6. 27.

3. By which he said that he held 3 Acres of Land in B. and the Advowson of B. of the Plaintiff by 10 s. which is the same Rent of which the Plaintiff demands the Arrears, alisque hoc that the Plaintiff and his Predecessors Time out of Mind &c. were seized of any yearly Rent of 10 s. except of the said Rent of 10 s. for the said Advowson and 3 Acres, & hoc &c. and the Plaintiff demurr'd, and the said Opinion was that the Traverse is not good; for he ought to have concluded with Modo & Forma, and not with an Except of &c. For this is repugnant to his Plea; for the one and the other is Annual. Br. Traverse per &c. pl. 23. cites 33 H. 6. 27.

4. Debt upon an Obligation with Condition to stand to the Award, so for in A ffe, that it be made before Octab. Mich. &c. the Defendant said that the Arbitrators such a Day before the said Octab. made such Award &c. which the Defendant was ready to perform, in case the Plaintiff would perform his Part; to which the Plaintiff said that after the making of the Obligation, and before the said Octab. Mich. and before the Day whereof the Plaintiff speaks, Plaintiff pleads Peffam made to him by the same Stranger before the Award to the Defendant, viz. such another Day, they made Award &c. and them what, which he was ready to have performed, in case the Defendant would have performed his Part; and the Defendant maintained his Plea, abique hoc good for from the Law Arbitrators, & Judicium quod &c. and so to Ilue, and it was Judgment per Judicium Cur. For those Words Tilia reality, so only to the Article, and not to the Time, where it ought to have been to the Time only; and therefore he ought to have said abique hoc that they awarded Modo & Forma, or good Peffam abique.
Traverfe.

abique hoc that they awarded before the Day in the Bar; Quod nota. Br. Traverfe per &c. pl. 24, cites 33 H. 6. 28.

1. 

Recipe quod reddat against 2, the one pleaded Non-tenture, and the
other Jointainance with a Stranger, abique hoc that the other named in
the Writ any thing has; the Demandant shall say that both named in
the Writ are Tenants, as the Writ supposes, abique hoc that the Stranger any
Thing has, and so Traverfe upon Traverfe. Br. Traverfe per &c. pl.
351. cites 9 H. 6. 1. 2.

2. Where the Tenants first have taken a Traverfe, there is no need for
the Demandant to take other Traverfe; for one Traverfe suffices to make
the Illue. Br. Maintenance de Briel, pl. 2. cites 34 H. 6. 16.

3. Trefpas of cutting Wood the 1st Day of August, the Defendant justi-
fied by Preffcription, that the Lords of the Manor of D. have used to have 20
Load of Wood there annually, between Michaelmas and Christmas; and be
being Lord of D. cut the 25th of October, between Michaelmas and Christ-
mas, abique hoc that he is guilty before Michaelmas, and after Christmas;
the Plaintiff said that he be cut as in the Declaration, and traverfs the Pre-
scription of the 20 Load Modo & Formas. And well per Cur. For where the
Defendant alleges Title, the Plaintiff shall not be compelled to maintain his
Day, if the Defendant has no such Title, and so he has Election to main-
tain his Day, or to traverse the Title of the Defendant. And to see Traverfe
upon Traverfe per &c. pl. 384. cites 10 E. 4. 2.

4. Tref-
4. A Traverfe upon a Traverfe was adjudg'd good, where the Place is. Pop. 101.

aerial; as in False imprisonment in the Ward of F. in London. The S. C. and per
Defendant justified by Recovery in Debt, and Writ of Execution in Earnest: The Car. If the
Defendant lived in Sandwich in Kent, and the Taking and Imprisonment there, Abogue the alleged
huc, that he is Guilty in London. The Plaintiff replied, that he is in the Co-
Guilty in London: abogue huc, that there is such Record in Sandwich,

5. Traverfe upon a Traverfe, is only where the Matter traversed is but

6. There never shall be a Traverfe upon a Traverfe, but where the Trave-
verfe in the Bar takes from the Plaintiff the Liberty of his Action, for the
Place or Time, or such like. There the Plaintiff may maintain his Action
for the Place or Time, and may Traverfe the Inducement to the Trave-
Yere, and needs not to join with the Defendant in the Traverfe; but at
his Pleasure may do the one or the other. But when the Inducement is
made and concluded with a Traverfe of a Title feized by the Plaintiff, then
the Plaintiff is enforced to maintain his Title, and not to Traverfe the
Inducement to the Traverfe. Arg. cites 10 Ed. 4. 3. & 49. 12 Ed. 4. 6.
2 Ric. 3. Title Ille 121. Dyer 107. And of this Opinion was the
whole Court. Cro. Car. 103. Hill. 3 Car. C. B. in Cafe of the Lady
Chichelley v. Thompson and the Bifhop of Ely,

of Norwich, Reeve, and Dobbendr.

7. Trefpafs de Claude Frasto. The Defendant justifies his Entry by
the Command of J. S. The Plaintiff replies, that J. S. was seized in Fee,
and let unto him at Will, and Traverfe the Command of J. S. The De-
defendant maintains, that J. S. commanded him to enter, and that he enter'd
by his Command, and Traverfe the Lease at Will. And hereupon it being
demur'd, 'twas adjudged for the Plaintiff, that the Command was traversal;
and that the Defendant's Rejoinder to make a Traverfe upon a Traverfe, as this Cafe is,
was not good; wherefore Judgment was
given for the Plaintiff. Cro. C. 386. pl. 5. Trin. 16 Car. B. R. Thorn
v. Shering.——And cites Patch 38 Eliz. in Parker's Cafe adjud-
guded, that the Command is traversable.

8. A Traverfe ought not to regularly to be taken upon a Traverfe. But
the Difference is where the first Traverfe is good, and taken to the material
Point, and goes to the Substance of the Action, then shall need be no
other Traverfe after. But where the first Traverfe is idle, and not
well taken, nor pertinent to the Matter, there, to that which was suffi-
ciently confes'd and avoided before, the other Party may well take another
Traverfe, after such immaterial Traverfe taken before. Per Saun-
ders, Arg. Saund. 22. in Cafe of Wennek v. Filkins, and cited the Cafe of
* Digby v. Fitzherbert.


9. In the Cafe of a common Person the Books are clear, that he can
not take a Traverfe upon a Traverfe for those Reasons. 111. If you will re-
cover any Thing from another, you must not only destroy the Defen-
dant's Title, but you must make your own better than his; for you must

M
not recover by the Weakness of his Title, but by the Strength of your own. 2. If the Plaintiff should make it appear, that the Defendant's Title is not good, and make no Title for himself, the Court could have no Inducement to give Judgment for him, Quia in aqua] jure melior est conditio polliceris. 3. It would be to no End for the Plaintiff to set forth any Title at all, if he can force the Defendant to make out his Title, and is not bound to make good his own. And thence Reasons hold as well in the Case of the King as of a common Perfon; by Vaughan Ch. J. Freem. Rep. 7. pl. 6. Mich. 1670. in Cafe of the King v. Hinckley.

10. Where a Traverfe is not good without a Special Inducement, there a Traverfe may be to that Inducement; As in Trefpafs, where the Jufification is local by Virtue of his Office, or the like; and in Hobart in Diego] Fitzherbert's Cafe; per Hale Ch. J. 1 Vent. 248. Mich. 25 Car. 2. B. R. in Cafe of Hinckman v. Iles.

11. Trefpafs against A. B. C. D. and E. for breaking his Clofe, and taking his Fihf in his Several and free Fishery; A. B. C. and D. plead Not guilty, E. justified; for that D. was fized in Fee of a Clofe next the Plaintiff's Clofe, and fo prefcribes to have the fish Fishing in the River which runs by the said Clofes, with Liberty to enter the Plaintiff's Clofe the better to carry on the Fishing; and that he be Servant of D. and by his Command, did enter &c. abjuge hoc that he was guilty Alter, vel alio modo. The Plaintiff replied De injuria fua propria, abjuge hoc that D. his Master has the Sole Fishing. It was argued that the Traverfe in the Plea was immaterial; for having answered the Declaration fully in alleging a Right to the Sole Fishing and Entry into the Plaintiff's Clofe, it is insignificant afterwards to traverfe that he is guilty Alter vel alio modo. And the Plaintiff had Judgment by the Opinion of the whole Court; for the Traverfe in the Plea is naught, because where the Jufification goes to a Time and Place nor alleged by the Plaintiff, there must be a Traverfe of both; and as to the Replication they held it good, and that the Defendant ought to have traverfed the Plaintiff's Free Fishery, as alleged by him, which not having done, the Plea is ill. 2 Mod. 67. HilI. 27 & 28 Car. 2. C. B. Wine v. Rider.

12. In Que. Imp. the Plaintiff alleged, that H. fized in Fee of the Manor of D. to which the Advocation was Appendant, presented J. S. and then granted the next Avoidance to the Plaintiff; and that J. S. being dead, it belongs to him to present. The Bishop claims nothing but as Ordinary; but the Incumbent pleads, that at the bringing the Writ the Church was full by Collation of the Bishop on a Lapse. The Plaintiff replied, that H. fized as before, did Tali Die & Anno preffent hius as Clerk, abjuge hoc, that the Church was full by Collation. The Defendant rejoins Protestando, that the Church was full Tali Die; for Plea faith, that it was full of the Collation of the Bishop tal Die, abjuge hoc, that H. did tal Die &c. preffent the Plaintiff &c. and so traverfed the Plaintiff's Inducement to his Traverfe. It was argued, that the Rejoinder was not good; for that when Defendant pleads a Matter in Bar, and the Plaintiff hath traverfed the fame, the Defendant should take Itufes upon that Traverfe, and to maintain his Bar, which he has departed from by traverfing another Matter. And the Court held the Pleadings not good. 2 Mod. 183. HilI. 28 & 29 Car. 2. C. B. Stroud v. the Bishop of Bath and Wells and Sir Geo. Homer.

13. Where a Traverfe in the Bar is idle and frivolous, the Plaintiff may well traverf the Substance of the Matter of the Bar.—As in Debt on a Specialty, wherein the Defendant bound himself to pay the Plaintiff 200l. when demanded, if he did not marry her; and alleged the Breach, that he had tender'd herself to marry the Defendant, but that she refused, and after married another Woman. The Defendant pleaded, that after giving the Specialty, he offer'd to marry the Plaintiff, and she refused;
Traverse.

fused; *abique hoc,* that he refused to take her for his Wife, before he refused to take *him* for her Husband. The Plaintiff replied, that she tender'd herself to marry the Defendant, *abique hoc,* that the Defendant offered himself to marry the Plaintiff, & *hoc &c.* Upon Demurrer it was infur'd, that the Traverse in the Replication was ill, because the traverser that which was Inducement of the Traverse in the Bar; so that it is a Traverse upon a Traverse, which the Law will not allow. But it was answer'd, that the Traverse in the Bar is ill, because too large; it being of more is alleg'd in the Declaration, viz. *abique hoc,* That he refused to take the Plaintiff for his Wife, before he had refused to take him for her Husband, so that he intended to make this Circumstance of Time Partial of the Issue; whereas such Circumstance is not alleg'd in the Declaration, nor any Affirmation, that Defendant had refused before Plaintiff had; and to the Traverse in the Bar being idle, the Plaintiff might well traverse the Substance of the Matter of the Bar; and of this Opinion was the Court, and Judgment for the Plaintiff. *Carth.* 99. *Mich.*

1. Where a Traverse is merely Surplusage, and not necessary, as where one traverses a Thing which he had before confess'd and avoided, the other Party may traverse that Traverse, and also the Inducement to it. *Carth.* 166. *Mich.* 2 W. & M. in *B. R.* Bradburn v. Kenmerdale.

(M. b.) *Two several Traverses, or more.*

1. **THREE** Traverses were suffer'd in one Plea to a Presentment of

Nance, for not making a Bridge, by 3 *Abique hoc's*; for the King was Party, and so it is used in the Exchequer at this Day, where the King is Party; *quod nota.* Br. *Traveller per &c.* pl. 301. cites 38 *Att. 15.*

2. Action upon the Statute of Marlbridge, Anno 12. for discharging in the High Street &c., and detaining them till the Plaintiff made Fine; where this second Point is not in the Statute, and yet the Defendant was compell'd to answer to both; by which he said, that he took them in his Several Damage sequeftr'd, *abique hoc,* that he took them in the High Street; and *abique hoc,* that he detain'd till he was made Fine; and the *Illusia* taken upon both Br. *Traveller per &c.* pl. 135.

because they are several Trifles; and so it was said there, that the first Matter is by the first Statute, and the other is by the Common Law, and yet the Joining both in the one Writ is good; for the one is purportant to the other.

3. Cenfus it that the Tenant held of *him a House and 20 Acres of Land,* and *cenfus &c.* Defendant pleaded, that he held the 20th Part of a House in the same Vill, which is Part of the Land in Demand by Fealty and a Pence; and another Parcel lying in a Croft called B. by Fealty, and a Penny for all Services; and another Acre in the same Vill, and Parcel of the same Land in Demand by Fealty and a Penny, for all Services; *abique hoc,* that the
(N. b) Parcel. Where one Thing's being Parcel of another Thing is traversed, How it may be.

See (L) pl. 9. (O. b) Without making Title. In what Case it may be.

If in Affîse the Bar is not good, the Plaintiff may have the Affîse without making Title; but if he makes Title which is not sufficient, upon which

4. In Trespass upon R. 2. the Tenant pleaded Gift in Tail to his Father, and gave Colour &c. And the Plaintiff pleaded Recovery against the Tenant in Tail by the Defendant, upon a Voucher and Recovery in Value. The Defendant said, that after the Gift in Tail, and before the Recovery, his Father Tenant in Tail disconïnued, and re-took another Tail, of which Estate he was seized at the Time of the Recovery, and died before the Recoveror entered. Abique hoc, that the Recoveror entered in the Life of the Father, and abique hoc, that his Father had other Estate at the Time of the Writ and Recovery, beliefs by the said second Tail; and abique hoc, that the Recoveror was seized as in the Replication, and so the Recovery false, and faint in Law, and all the three Traverses permitted. Br. Traverse per &c. pl. 244. cites 12 E. 4. 14. 19.

(N. b) Parcel. Where one Thing's being Parcel of another Thing is traversed, How it may be.

Sec (L) pl. 9. (O. b) Without making Title. In what Case it may be.

If in Affîse the Bar is not good, the Plaintiff may have the Affîse without making Title; but if he makes Title which is not sufficient, upon which
Traverse.

which the Affidavit is awarded, and the Seisin and dilution found; the Plaintiff shall not recover; by the Opinion of all the Judges. Br. Repider, pl. 65, cites 11 H. 7. 28.

4. In Repelition &c. is sufficient for the Avoiunt to plead his Freehold; but if the Plaintiff will traverse it, he must make a Title to himself, per Cur. (Anderson abente.) But per Peryam, it is not sufficient to make it of his own Seisin; but it must be Paramount. Goldsb. 65. pl. 6. Mich. 29 & 30 Eliz. The Lady Rogers's Case.

5. In Repelions against Husband and Wife; they pleaded that J. S. was seized &c. and made a Lease to them for Years &c. The Plaintiff replied, De jus tertio demusque, albique hoc, that he leased &c. And per Cur. the Traverse is not good without the Plaintiff's making himself a Title. Otherwise if the Defendant claims Common or such like, and not Possession of the Land. Goldsb. 67. pl. 11. Mich. 29 & 30 Eliz. Foster v. Pretty.

(P. b) What Plea may be pleaded at the same Time.

1. WHERE the Party pleads a Plea and traverses the other Matter, it is not material whether the Matter of the Plea be true or not; for he cannot say any Thing but maintain the Traverse. Br. Departure de fon Ple. pl. 4, cites 11 H. 4. 81.

2. Note that a Man cannot traverse and also say Not guilty to one and the same Thing. Br. Traverse per &c. pl. 144. cites 37 H. 6. 37.

(Q. b) Ill Traverse. Aided by what.

1. WHERE a Traverse is merely Surplusage and not necessary; as where one traverses a thing which he had confessed and avoided before; This is merely form and aided upon a General Demurrer. Carth. 166. Mich. 2 W. & M. in B. R. Bradburn v. Kennerdale.


For more of Traverse in General, see Formedon, Jointenants, Nullace, Office found, Prescription, Presentation, Due Estate, and other proper Titles.

5 N (A) Treasure
(A) Treasure trove.

1. N O T H I N G is said to be Treasure trove but Gold and Silver. 2

2. Treasure trove cannot be claimed unless by Grant, and cannot pass by the Word Leet. Br. Incidents, pl. 38. cites Itin. Cant. 6 E. 3.

3. It was presented that J. S. had found 100 Marks of Gold and Silver, which came to the Hands of A. who came and said that nothing came to his Hands, Prit; And so fee that Coin found, 'tis not be hid is Treasure trove, as it appears here. Br. Prefentments in Courts, pl. 24. cites 27 Aff. 19.

4. He to whom the Property is, shall have Treasure trove; and if he dies before it be found, his Executors shall have it; for nothing accrues to the King, unless when no one knows who hid that Treasure; As in Cafe of Ireland M. 22 H. 6. Br. Corone, pl. 198. cites the printed Book of Abridgment of Aliis, fol. 61.

S. P. and such Treasure trove belongs to the King, or to some Lord, or by the King's Grant, or Precept: The Reason of its belonging to the King is a Rule of the Common Law, that such Goods whereof no Person can claim Property belong to the King, as Wrecks &c. Quod non capiat Christus, capiat hicus &c. It is anciently called Fyndaringa, or finding the Treasure. 3 Infl. 152. cap. 58.

5. It was said where Money, Plate, Silver, or Bullion is found, the Proprietor or Owner not known, this is Treasure trove, and the King shall have it. But all Mines of Metal, except Mines of Gold and Silver, belong to the Owner of the Soil, and the Mines of Gold and Silver to the King, as appears Libro Raiftal, and by the Records of the Tower. Br. Corone, pl. 175.

6. If any Man happen to find in the Sea, or Sea-floor, Precious Stones, Fishes, or the like, which no Man was ever a Proprietor of, it becomes his own, because he is the first Finder. Miege's Laws of Oleron 11. S. 33.


7. If any seek for Gold or Silver lost on the Sea-floor, and finds it, he ought to restore it all to the Owner, without any Diminution thereof. Miege's Laws of Oleron 11. S. 54.

8. And if a Man going along the Sea-floor to fish, or do any Thing else, happens to find Gold or Silver, he is likewise obliged to make Restitution, yet he may pay him four for his Day's Work; and if he do not know whom to make Restitution to, he ought to give Notice to the Neigh-
Neighbours, where he found the said Gold or Silver. In this Case he must advise with his Superiors; and if he be poor, they ought to consider his Condition, and advise him to the best, according to true Godliness and a good Conscience. Mige's Laws of Oleron 11. S. 35.

9. As to the Place where the Finding is, it seems not material whether it be of ancient Time hidden in the Ground, or in the Roof or Walls, or other Part of a Castle, House, Building, Ruins, or elsewhere, fo as the Owner cannot be known. See 3 Init. 132. cap. 58.

10. If Treasure be taken and carried away, this is not Felony. See St. Pl. C.

11. The Charge of Treasure trove belongs to the Coroner, as appears by the Statute De Officio Coronatori, Anno E. 1. 3 Init. 133. cap. 58. and says the ancient Authors Braughton, Britton &c. agree hereunto.

12. The King may dig in the Land of the Subject for Treasure trove; for he has Property. 12 Rep. 13 in the Cafe of Salt Pete.

13. It seems to be agreed, that Seizers of Treasure trove belonging to the King, may be inquired in the Sheriff's Lawn; but it seems questionable whether a Presumption in a Court Leet to inquire of the Seizer of such Things belonging to the Lord of it, being a Subject, be good or not; since it is against the general Rule of the Law for the Court Leet to take Conulance of Treipuflies done to the private Damage of the Lord, because that would make him his own Judge. 2 Haw. k. Pl. C. 67. cap. 16. S. 58.

For more of Treasure trove in general, see Precogattue, and other Proper Títles.

* Trees.

(A) Disputes between Leffor and Leffe, as to Trees.

1. WHERE a Man leaves a Wood which is only great Trees, the Leffe cannot cut it, but shall have only the Grain. Br. Waife, pl. 126. cites E. 4. 8.

2. And Per Fairfax and Jenny, if Tenant for Years lops Trees, or cuts them, the Leffor cannot take them, but shall have Action of Waste. Br. Waife, pl. 126. cites E. 4. 8.

* Trees are no Part of the Thing identified, but are as Servants; as if one has Pitchery in another's Land, the Land adjoining is as it were a Servant, viz. to dry the Nests. Arg. Godb. 117. pl. 136. Mich. 29 Eliz. C. B. in Cafe of Lewinor v. Foed.

3. And the Trees, and the Fruits of them, are but part of the Thing identified. Pitt. 27 Eliz. 2c. 2. 5. C. B.
Trees.

of the Law, that if Leflror cuts them down he shall have them, and the Leflror shall have treble Damages for them—But in Rep. 81. 9. Patch. 13 Jac. 3. was held that Leflror for Life or Years cuts Timber, the Leflror shall have it; and that the same was ratified the Term before in R. 50's Case; and that because the Leflror has the general Ownership, Right, and Inheritance, and the Leflror only a particular Interest; and therefore by whatever Means they are diverted from the Inheritance, the Leflror shall have them in respect of the general Ownership, and because they were his Inheritance.

3. If Leflror cuts a Tree growing on the Land demifed, and carries it out of the Land, Leflror shall have Trephals, and recover treble Damages, as the Leflror should recover against him in Waifte. Agreed No. 7. pl. 23. Patch. 3 E. 6. Anon. Vent. 45. Mich. 21 Car. 2. B. R. in Case of Pomfrett v. Roycroft.

4. A leafes to B. for Life, and grants that it shall be lawful for B. to take Fewel on the Premisses, Proviso that he do not cut any great Trees. Per Cur. If Leflror cuts any great Trees, he shall be punished for Waifte, but the Leflror shall not re-enter, because that Proviso is not a Condition, but only a Declaration and Exposition of the Extent of the Grant, and Leflror for Life, or Years, by the Common Law cannot take Fewel but of Bushes and small Wood, and not of Timber Trees; but if the Leflror in the Leaf grants Fewel expressly, if the Leflror cannot have sufficient Fewel as above, he may take great Trees. 3 Le. 16. pl. 38. Mich. 14 Eliz. C. B. Anon.

5. Leflror for Years, the Trees being excepted, has Liberty to take the Skrews and Loppings for Fewel, but if he cut any Tree, it shall be Waifte as well for the Loppings as the Body of the Tree; Per Hobart & tot. Cur. without Question. Noy 29. Rich v. Makepeace.

6. Where Trees are excepted on a Leaf, the Leflror may enter and take the Trees, tho' there be not any Clause of Ingress or Regress; Per Foster J. Godb. 173. pl. 239. Patch. 8 Jac. 3. in Case of Heydon v. Smith.

7. Leflror for Years cuts down Timber Trees, and lets them lie, and after carries them away; so that the taking and carrying away be not as one continued Act, but that there be some Time for the distinct Property of a divided Chattle to settle in the Leflror, an Action of Trefphals Vi & Armis will lie against the Leflror; and in such Case Felony may be committed of them, but not where they were taken and carried away at the same Time. Allen 82. 83. in Case of Wal e. U. Wall, cites it as the Case of Boug v. Heard, which commenced 20 Jac. and continued 7 Years.

8. A demifed Ground to B. which was Pasture, except the Trees; B. put in his Cattle to feed, which barked the Trees; A. cannot have Trefphals against B. Ruled by Holt Ch. J. upon a Point made and referred to him at the Assizes atbury in Lent 12 W. 3. upon hearing of Counsel several Times, tho' at first he was of a contrary Opinion. Ld. Raym. Rep. 739. Glenuham v. Hanby.

(B) Disputes between Lord and Freetholders &c. as to Trees.

1. Kitchin of Court-Lects, 68. Tit. Ways, says he collects upon the Opinion of the Book of 2 E. 4. 9. and of 8 E. 4. 9. and of 27 H. 6. 9. and 6 E. 3. Way, 2. That where a Lord of a Manor has Land upon both Parts of a High-way, he shall have the Trees growing in the High-way;
Trees.

Highway; and all where a Way is over a Waste of the Lord's. But where a Freeholder has Land of each Part of the Highway, he shall have no Trees growing in the Highway; and where he has Land joining but upon one Part of the Way, he shall have no Trees growing upon that half of the Way. But says, that Britton, fol. 111. says, that a Freeholder shall have Trees, if it be not in the common Highway.

2. The Custum was, that the Lord should have Quoegu. caleret ad Maerenum, and that the Freeholders should have Randalas. Per Hobart, Ch. I. that contains all the Arms and Boughs; for whatever is not Maerenum is Ramillum. Godb. 235. pl. 326. Mich. 11 Jac. C. B. Bishop of Chichester v. Strowwick.

3. And it was held in the Case above, that the Non Use, or Negligence in not taking the Boughs, did not extinguish or take away the Custums, as it has been often resolved in the like Case. Godb. 235.

4. So where the Lord by the Custum is to have Maerenum, and that the Tenants shall have Residuum; this shall be inteded the Boughs and Branches. Godb. 235. pl. 326. cited in the Case of the Bishop of Chichester v. Strowwick.

5. To the Owner of the Soil on both Sides the Way, of common Right belong the Trees that grow in the Lane, whether he be Lord or Freeholder. The best Badge of Truth is the Usage of taking the Profit of the Trees. Brownl. 42. Nota.

(C) Disputes between Tenants in Common.

TWO Tenants in Common; one sells the Trees, and lays them on his Freehold. If the other enters into the Land, and carries them away, Trespass Quia clautum Treasit lies against him, because the taking away of the Trees by the first was not wrongful, but that which he might well do by Law; and yet the other Tenant in Common might have left them before they were carried off the Land. Godb. 282. pl. 423. Mich. 18 Jac. B. R. in Polly's Case.

(D) Disputes between Tenant for Life and Remainderman, or Reversioner in Fee.

...
he was reduced to great Want; that the Trustees had no Power to cut
the Timber, and pray'd to Leave to cut, allowing what Damage he did.
The Court decreed a Commission to take Timber, not exceeding the
Value of 500 l. for the Plaintiff's Relief and Support. 2 Vern. 218. pl.

(E) Disputes between Neighbours.

1. If Trees grow in the Hedge, and the Fruit falls into another's Ground,
   the Owner may go in and take it. Per Doderidge J. Poph. 163.
in the Case of Millen v. Fandry, cites 8 E. 4.
2. If the Branches of your Trees grow out into my Land, I may cut
   them. Per Croke J. Roll Rep. 394. pl. 15. Trin. 19 Jac. B. R.
3. A Tree grows in A's Close, and roots in B's, yet the Body of the
   main Part of the Tree being in the Soil of A. all the Residue of the
   Tree belongs to him also. 2 Roll Rep. 141. Hill. 17 Jac. B. R. Mat-
   ters v. Pollie.

(F) Power of Trustees, as to cutting Trees.

1. A Seised of Lands in Fee demised the same for 500 Years to B.
   C. and D. in Trust to pay Debts, and for a Charity. B. purchased
   the Reversion of A's Heir at Law, and cut down 1800 l. worth of Tim-
   ber; but left sufficient for the Tenants for Repairs and Borees. The De-
   mise was not without Impeachment of Walle. Ld. C. King said it was
   plain that B. as Purchaser of the Reversion, could not enter upon the Pre-
   mises to cut down the Timber, and thro' another Trustee, confentrated
   to the Cutting down (which was a Breach of Trust in C.) B. ought not
   to take Advantage of it; but something ought to be paid to the Charity
   for their Leave. And on his Lordship's proposing 220 l. both Parties
   agreed thereto; and so the Matter was compromised. 2 Wms's Rep.

(G) Stranger. Who shall have Trees cut down by
Strangers. And what Remedy Lessor or Leifie has for
the Cutting them down.

1. If a Stranger cuts down Woods in a Forest, and there is no Fraud or
Collusion between him and the Owner of the Soil, the Owner of the
Soil shall have them; and yet the Owner could not cut them down, but
Trees.

but is to take them by the Livery of one appointed by the Judge.
2. If a Stranger 

3. A Stranger enters into Lands leased for Life, and cut down Timber Trees, and bark'd them; and the Leffer before Suffer brought Traveller for the Bank, and had Judgment to recover, tho' the cutting down and Barking was all at one time. Allen. 82. in the Case of Ufford v. WDAR D. Uaff, cited per Cur. as a Cafe commenced 20 Jac. and depended 7 Years between Bury and Heard.
5. In Trefpafs brought by the Plaintiff for cutting down his Trees, the Plaintiff was nonsuited, because it appeared that he was only Leffe. Barnard. Rep. in B. R. 392. Hill. 3 Geo. 2. Odel v. King.

(H) Grant of Trees by whom, and How.

1. If a Man sells certain Trees growing, and aliens the Land to another before that the Vendor has cut the Trees, yet the Vendee shall have them; per Newton. Markham laid we can say no more. Br. Trefpafs pl. 400. cites 20 H. 6. 22.
2. Grant of all his Woods which shall grow hereafter or in time to come is not good, because it's not of a thing in Elle; per Harper J. 3 Le. 29. 15 Eliz. C. B. in an Anon. Cafe.
3. A demises to B. to a Manor for 3 Lives and by the same Deed in another Clause bargains and sells the Trees. The Habend' is of the Manor only and limits Estate of that for 3 Lives without mention of the Trees. Per Winch J. they shall pass as a Chattel immediately on Delivery of the Deed before any Livery made thereon to pass the Manor, and if Livexy never had been made, yet Leffe shall have the Trees. 2 Brownl. 193. Trin. 10 Jac. C. B. in Cafe of Rowles v. Mann, and 197. per Warburton J. accordingly, and 201. per Coke Ch. J. accordingly in S. C. but by Grant of Manor and Trees Habend' the Manor for 21 Years without mentioning of the Trees, the Leffe can't cut and sell the Trees; for that was all in one Sentence, viz. the Grant of the Trees and the Demise of the Manor. Per Winch J. 2 Brownl. 195. cites D. * 579. 18. 25 Eliz.
* It should be 574 b. pl. 18.
5. Bargain and Sale of a Manor, and all the Trees growing thereon, if the Deed is not enrolled, the Trees shall not pass without the Manor. 11 Rep. 43. Liford's Cafe.
6. Grant of all my Trees within my Manor of G. to A. and his Heirs, A. shall have Inheritance in them without Livery and Suit. 11 Rep. 49. b. Liford's Cafe.
7. A. feitied in Fee Simple makes a Lote, excepting the Trees, and afterwards covenants to stand feitied de Teneuntibus pretendentius una perim. superius dimissis &c. The Trees pass with the Inheritance, as Things annex'd to it, notwithstanding they were not demitted. 11 Rep. 50. b. Liford's Cafe.
8. By a Grant of Trees by Tenant in Fee Simple, they are absolutely passed away from the Grantor and his Heirs, and vested in the Grantee, and go to the Executors or Administrators, being in Understanding of Sale by a Tenant in Law divided as Chattles from the Freehold, and the Grantee hath

Trees.

Mich. 2 Jac. Power incident to the Grant to fell them when he will, without any other special Licence. Hob. 173. Hill. 12 Jac. Stukely v. Butler.


(I) Windfalls, Dotards &c. Who shall have them.

Godb. 117. 1. Eflor shall have the Windfalls. Arg. Godb. 117. cites Culpeper's Anderdon Ch. J. ac. according, but Rodes J. contra — Per Anderdon in Lebstock's Cafe. 4 Le. 166. — S. P. resolved in & allow'd it in Cafe. 4 Rep. 63. b. Patch. 31 Eliz. B. R. in cafe they have no Timber in them; but that if they have, then it is otherwise. — And in Lewis Boulton's Cafe, 11 Rep. 81. b. the Resolutions in Harlakenden's Cafe were affirmed for good Law — Mo. 815. 814. pl. 1099. Mich. 8 Jac. Per all the Juslices of Serjeant's Inn in Fleet-street, S. P. in the Counsells of Cumberland's Cafe.

Bendl. 217. pl. 251 S. C. adjudged for the Plaintiff.

2. Leesforr cannot justly cutting down Pollards, by saying that they were dry, hollow, and rotten, and not Timber fit for Building. Mo. 101. pl. 246. Mich. 15 & 16 Eliz. Sir Roger Manwood's Cafe.

3. It Trees are excepted &c. and they become Dotards during the Leafe, yet that can't divest the Property of the Leesforr; Per Holt Ch. J. Cumb. 453. Trin. 9 W. 3. in a Nofa to the Cafe of Park v. Fisfield.

(K) Timber Trees. What are, and what shall be said to be such for a Collateral Respect &c.

2 Inft. 645. 1. Great Wood specified in the Act of 45 E. 3. is intended of Wood cites S. C. and says that the whole Court upon Hill. 17 Eliz. Soby v. Molyns, deliberate Advice held it to be no Law, and that Beech, Horfebeche, and Hornbeam are Great Wood, because they ferve for Buildings or Reparation of Houfes, Mills, Cotages &c. And in the Margin there it is faid it was adjudged Patch. 2 Jac. between Hall and Fettypace.

Mo 812. pl. 2. Birch-Treees were decreed to be Timber-Treees. Toth. 151. cites 8 1099. S. C. decreed, be- cause it appear'd that fuch Treees, in the Country where they grew, were uf'd and ferviceable for building Sheepe-houfes, Cotages, and fuch mean Buildings; and all the Juslices of Serjeant's Inn in Fleet-street, upon a Conference had with them, were of Opinion, that in this Country they were Tim- ber, and belong'd to the Inheritance, and could not be taken by a Tenant for Life.

3. A. articulated to fell Land to B. for 20,000 l. and the Timber to be valued and paid for by B. over and above the Purchase-Money. Upon a Reference to the Master he made his Report, and estimated fome Thoufands
Trespass.

Thousands of Saplings at 12d. or 18d. a-piece, and also Pollards, some of which were rotten, or contained no Timber, and so of Walnut-Trees as worth 20 or 40l. a Tree; also Poplars, 12l. a-piece, and Horie-Chefsnuts, were by him valued as Timber. And Exception being taken thereto, Lt. C. King said, That it is the Custom of the Country that makes some Trees Timber, which in their Nature, generally speaking, are not to, as Horie-Chefsnut and Lime Trees; and so of Birch, Beech, and Apple. And as to Pollards, notwithstanding what is said in Hobly and Holm's Cafe, Pl. C. 470. that these are not Timber, and that Tithes are to be paid of their Loppings, (which could not be if Pollards were Timber) yet if the Bodies of them are found and good, he inclined to think them Timber; otherwise, if not found, they being in such Cafe fit for nothing but Fuel. And his Lordship said, that if a Timber Tree, not worth 3 or 4l. shall be valued or paid for in the Purchafe, why shall not Walnut-Trees, some of which may be worth 10 or 25l. or even 50l. a-piece? However, as they seem of a considerable Value, if the Parties cannot agree to lump the Valuation, and as it is the Custom of the Country which ascertains what are Timber-Trees, making some esteem'd such, which, in their own Nature, generally are not, especially in Countries where Timber is scarce. His Lordship said, he should direct an Office to try whether any and which of those Trees are, by the Custom of the Country, to be accounted Timber. Trin. 1731. 2 Wms's Rep. (623.) (626.) Duke of Chandos v. Talbot.

For more of Trees in General, see Coppold, Hacresme, Waffe; and other Proper Titles.

Trespass.

(A) With Continuando.

1. Trespass lies with Continuando by divers Days together, and the Party shall not be compell'd to bring several Actions. 29 E. 3. 35. adjudge'd; for it is one Trespass.

(A. 2) Assault. What. [And Menace.]

1. If a Man holds me by the Arm, this is an Assault in Law. It seems 3 H. 4. 9. will warrant it; but there it seems it was

2. If a Man faith, that he will cut my Arm, it is an Assault. 37 H. 6. 22. b.

3. If a Man faith to another, that if he will appeal him of Treason, he will defend himself by his Hands upon his Body; and rather

than
Trespa.s.

standing the than he shall kill him, he will kill him; this is an Assault in Law.

* 37 H. 6. 3. Curta.

*B. 7. So if a Man calls me Traitor, and I say to him Mentiris in Capite, and if he will appeal me of Treafon, I will defend myself by my Hand upon my Body, during the Life of one of us. This is an Assault, tho' be upon a Condition precedent. 37 H. 6. 20. b.

*N. B. There is no pl. 5.

Br. Tref-
pa.s, pl. 197. cites 57 H. 6. 2. 3. Per Prifon.

Br. Tref-
pa.s, pl. 197. cites 57 H. 6. 2. 3. Per Prifon.

4. If a Man calls me Traitor, and I say to him Mentiris in Capite, and if he will appeal me of Treafon, I will defend myself by my Hand upon my Body, during the Life of one of us. This is an Assault, tho' be upon a Condition precedent. 37 H. 6. 20. b.

6. If a Man says to me, that if I will not cease my Suit, which I have agaunt him, he will beat me; this is an Assault, tho' conditional. 37 H. 6. 20. b.

7. So if a Man faith, in Prefence of the Court, or in a Church, to another a false Batter, and the other replies, that if he will come out of the Court or Church into the Field, and say fo, he will break his Bones, this is an Assault. 37 H. 6. 20. b.


10. If a Man strikes at me with a Hatcher, tho' he does not touch me, per this is an Assault in Law. 22 C. 60. adjudged.

Br. Tref-
pa.s, pl. 336. cites S. C.

per Thorpe And the Cafe was, that the Defendant came to a Tavern in the Night to buy Victuals, and the Doors being shut, he struck upon the Doors with a Hatcher; and the Plaintiff, who kept the Tavern, pulled his Hand out of the Window, and bidding the other to leave off, he struck against him with the Hatcher, but did not touch him.—— S. C. cited by Doderidge. J. 2 Bulk. 539. Hill. 12 Jac. in Cafe of Wilton v. Dodd. — Roll Rep. 177. S. C. cited by Doderidge, must fail conciliation, per Cafe Ch. J. in Cafe of Wilton v. Dodd — And Id. 528. Hill. 15 Jac. B. R. in Cafe of Curtis v. Dowte.

S. P. Hawk. Pl. C. 153. cap. 62. S. 1. And so if a Man strikes at me without a Weapon, it is an Assault.

S. P. And so if he holds up his Hand against another, and says killing, it is an Assault. But if one strikes another upon the Hand, Arm, or Breast, in Difcoure, it is no Assault, there being no Intention to assault. Mod. 5. pl. 13. Mich. 21 Car. 2. B. R. per Car. in an anonymous Cafe.

11. If a Man delivers to another a Subpena, this is an Assault. 

Tein. 13 Jac. 2. between Elpin and Hutton, per Curiam.

2 Keb. 134.

12. In Assault, Battery, and Wounding, the Evidence to prove a Pro-

vocation was, that the Plaintiff put his Hand on his Sword, and said, if it was not After-Time, I would not take such Language from you. Adjudged no Assault; for he declar'd he would not assault him, the Judges being in Town, and the Intention, as well as the Act itself, makes an Assault. Mod. 3. pl. 13. Mich. 21 Car. 2. B. R. Anon.

bent his Fiji at the same Time that he laid his Hand on his Sword and spoke the Words; and the Court held it no Assault, as it would be without that Declaration. But it was further sworn, that the Plaintiff with his Elbow push'd the Defendant, which, if done in earnest Dicoure, and not with Intent of Violence, is no Assault; nor then is it a Justification of Battery after a Rebut.
Trespass.

13. Drawing a Sword, and brandishing it in a menacing Manner against the Plaintiff, but did not touch him, is Assault, but no Battery; and for shall have no more Costs than Damages. Vent. 256. Patch. 25 Car. 2. B. R. Anon.

This is only as to the Point of Costs, but does not affect the Manner of the Affault.

14. Bailiff being within Reach of Defendant, Defendant having a Fork in his Hand keeps off the Bailiff from touching him and retreats into his House, Bailiff has no Remedy but an Action for the Affault; for the holding up the Fork at Law, when he was within Reach, is good Evidence of that. Salk. 79. Trin. 3 Ann. B. R. Genner v. Sparks.

Such a Distance as the fors would reach him, an Action of Affault would have lain against him. S.P. Hawk. Pl. C. 153, cap. 62. S. 1.

15. Every Battery includes an Assault, therefore on an Indictment of Affault and Battery, in which the Affault is ill laid if the Defendant be found guilty of the Battery, it is sufficient. Hawk. Pl. C. 134, cap. 62. S. 1.

(A. 3) * Battery. What shall be said a Battery.

1. If a Justice of Peace makes a Warrant to J. S. to arrest J. D. and to bring him before himself and J. N. comes in Aid of J. S. and lays his Hands miliarly upon the Shoulders of J. D. [and] says to J. S. this is the Man, this is not any Battery. Hull. 12a 3a B. R. between 4 Trin. and Deeds by Coke.

2. If a Man delivers a Subpoena to another, this is not any Battery. Trin. 13a 14a B. between Eppon and Hutton. Per Curiam.

3. Upon Evidence in Battery, Popham, Fenner and Williams, directed the Jury, that if A. assaults B. and in fighting A. falls to the Ground and then there B. beats and worthwhile him, that this is an Affault in B. not justifiable. Noy. 115 Hudson v. Crane.

Self Accuser had laid A. in his Arms, and then B. strikes him, that Affault is a Battery in B. not justifiable &c. and the Jury found accordingly. But Yelverton and Tandfield on the Contrary, because it is but a Continuance of the former Affault. And that all is De for Affault Demadne. Noy. 115 Hudson v. Crane.

4. In Action of Affault and Battery, the Plaintiff counted that the Defendant struck the Plaintiff’s Horse, whereby the Plaintiff fell; This was held good and no material Variance, because great Factions requirites is only Muter of Form. Arg. Hard. 4t. in Case of Harris v. Ferrand, cites it as Mich. 15 Car. B. R. S. 8.

5. The last touching of another in Anger is a Battery. Ruled per Holt Ch. J. at Nisi Prius, 6 Mod. 149. Patch. Anne in the Case of Cole v. Turner.

6. If two or more met in a narrow Passage and without any Violence or Fat if Design of Harm the one touches the other gently, it is no Battery. Per the Violence of being another in Cole v. Turner.

In a Passage in a rude inordinate Manner or if any struggle about the Passage to that degree as to &c. hint, 11a.
Trespass.

7. Spitting in one’s Face is a Battery. Per Holt Ch. J. 6 Mod. 172. Patch. 3 Anne B. R. The Queen v. Cotefworth.

(B) Trespass. Against whom it lies, in Respect of Interest.

If A has the 1. If my Beasts are in the Keeping of J. S. and during this time do Trespass to another, he shall have Trespass against me or J. S. at his Election; But he shall not have Satisfaction against both. 7 H. 4. 31. h.

Yard, if there do a Trespass to the Land of C adjoining, A shall be punished in Trespass, and this the B’s Servant did wait upon ’em. Clat. 52. Dawtry v. Huggins. If negligently Cattle do a Trespass, the Owner of the Soil where &c. shall answer for that Trespass, cited in the Case of Dawtry v. Huggins. Claty. 53: as Bateman’s Case.

2. A Man shall not have Trespass against him who has the Franktenement as Defeifier &c. before Regents made upon him; per Newton where the Defendant pleads his Franktenement, there the Plaintiff in his Replication ought to shew a Regestr, for Defeifier has the Franktenement and ought to have the Profits, till it be reformed by Entry or Action mixt or real. Br. Trespass, pl. 127. cites 19 H. 6. 23.

3. If I Bail Goods and the Bailee gives and delivers them, I shall not have Trespass; for he had lawful Possession. Br. Trespass, pl. 295. cites 2 E. 4. 4.

4. Note Finch’s Law, li. 3. c. 6. That no Action of Trespass will lie for a Leaser for Years against the Leaser, altho’ he diatrain without Cause. And see there the Reason. Q. per Holt Ch. J. 11 Mod. 209. pl. 13. cites 9 Rep. 76. Yelv. 148; Wing’s Max. 1. 703.

See (A. 5) (G) (F. a) (C) Trespass of Assault and Battery. What will be a good Cause of Justification.

Br. Trespass, 1. If a Man be in a Rage and does great Mischief, his Parents may pl. 235. cites S. C. but says nothing of the Beating being by Parents.

Jo. 249. pl. 3. S. C. but reports that it was a Standby and not A. the Person cheated that laid hold of the Cheat, and carried him

2. If B. plays at Dice with B. in the House of a Justice of Peace, the which B. is a common Cheater, and there cheated A. of his Money; the Defendant in an Action of Battery may justify that he for the Cause aforesaid put his Hands upon him to bring him before the said Justice of Peace, and that he brought him accordingly; and the Justice bound him over to the Sessions where he was indicted and found guilty of the said Cheating. And this is a good Pia for the Defendant was not any Officer; for it concern’d himself and was for the Publick Good. Rich. 7 Car. B. R. between Holles and Oxen-bridge
Trespass.

bridge adjudged upon a Denmurrer, where the Justice was Sir Arch chias Cary in Surr ey.

a good justification. — ——Cro. C. 2:4, 2:5 pl. 16. S. C. according to Roll, and Judgment for the Defendant by 3 Justices (abint the Ch. J.) and they held it to be Pro Bono publico tolay such Offenders.

Hawk. Pl. C. :7; Cap 12. S. 20. cites S. C and says, that from the Reason of this Case it seems to follow, that the Arrest of any other Offenders by private Persons for Offences in the Manner, scandalous and prejudicial to the Publick, may be justified.

3. If A. incites a Dog upon B. an Infant, and upon this C. comes to A. and lay his Hands hastily upon him, to the Intent to stay his Hands, so that he shall not incite the Dog upon B. this is lawful and justifiable in Action of Assault and Battery brought by A. against C. Nich. 10 Car. 2. R. between Walter and Jones per Curiam upon a Denmurrer, but adjourn'd upon the Pleading. Intracue Trin. 10 Car. Rot. 489, and after Issue taken by Content.

4. In Trespass of Battery and Wounding, the Defendant said that W. affaulted the Defendant and took him with a Knife, and the Defendant the Handle of the Knife in his Hand, and the Plaintiff came in Aid of W. and took the Blade of the Knife in his Hand, and cut his own Hand with the Blade of the Knife, abufe hoc that he beat or wounded him, Prift. The Plaintiff replied that he beat and wounded him as above, Prift: and the others contra. Br. Trespass, pl. 235. cites 22 All. 56.

5. Trespass of affaulting him and taking his Horse, the Defendant said that J. C. had the Tithes of B. in Farm for 6 Years, and certain Barley was sown from the 9 Pains, and the Plaintiff took and carried them to D. and the Defendant came and found the Horse there in the same Barley, Damage sejunit, and be by Command of the Defendant took the Horse and the Barley, and the Plaintiff would have dispossessed him; so that the Ill which he had was De for Assault demenie, and in Defence of the Goods, and a good Plea. Br. Trespass, pl. 134. cites 10 H. 6. 65.

6. A justification for a Battery is no justification for wounding &c. F. N. B. 86. (K) in the new Notes there (d) cites 21 H. 6. 27.

7. Trespass of Assault and Battery; the Defendant said that at the time of the Trespass he was a Justice of Peace, and the Plaintiff made an Assault upon B. and for Confusion of the Peace be came to the Plaintiff, and charged him to keep the Peace, and he said that he would not, and the Defendant put his Hands upon him peaceable, and arrested him to find Security for his Good Behaviour &c. which speaking and putting of Hands are in the same Assault and Battery of which &c. and the Court held it a good Plea, without saying that he had to go without Security for Peace, and the Defendant did the arrest, as above, and that after he escaped out of his Custody &c. Br. Trespass, pl. 177. cites 9 E. 4. 3.

8. There are some actual Assaults on the Person of another, which do not forfeit a Recognizance of the Good Behaviour, as where an Officer having a Warrant against a Man, who will not submit to him, beats or wounds him in the Attempt to take him, or where a Parent reasonably chafis his Son, or a Master his Servant, or a Schoolmaster his Scholar, or a Governor his Prentice; or as some say, a Husband his Wife; or where one in a proper manner confines and beats a Friend who is mad &c. or where one forces a Son from another, who threatens to kill a Man with it; or where one gently lays his Hands on another, and lays him from inciting a Dog upon a Man; or where I beat one (without wounding him, or throwing at him a dangerous Weapon) who strangely endeavors with Violence to dispossess me of my Land or Goods, and will not desist upon my laying my Hands gently on him, and disturbing him; or where a Man attempts to kill any other; or where a Man threatens to kill the man who

Q
puts him in Fear of Death in such a Place, where he cannot safely fly from him; or where one imprisons them when he sees Fighting, till the Heat be over; or where a Man beats, or as some say, wounds or maims one who makes an Assault upon his Person, or that of his Wife, Parent, Child, or Master; or, as some say, where one beats another in Defence of his Servant.

Hawk. Pl. C. Abr. 151, 152. S. 16.

Hawk. Pl. C. at Large 130, 131 cap. 60. S. 23, 24. And says that therefore these are justifiable, Ibid. 134. cap. 62. S. 3.

(D) If that Person may justify it. [In Defence of another &c.]

Br. Trespas, 1. That the Baron may justify the Battery of another, in Defence of his Feme; for the is your [his] Chattel. * 19 P. 6. 31. b. 66.

—So in Trespas by Husband and Wife, for an Assault and Battery on the Wife, the Defendant pleaded for Assault Beneficent of the Wife; The Plaintiffs replied, that the Defendant was going to wound her Husband, and that it for Injurious feck to defend him. Upon Demurrer, it was infinced that Injurious feck was wanton, and that they should have pleaded Motter manus impoluit. But the Court held, that a Wife may justify an Assault in Defence of her Husband, and if the Defendant was holding up his Hand to strike the Husband, the Wife might make an Assault to prevent the Blow. And Judgment for the Plaintiff.


* S. P. Br. Trespas, pl. 128. in the large Edition, cites 29 H. 6. 51. but it should be 19 H. 6. 51. and fo are the smaller Editions.

2. The Master may justify the Battery of another, in Defence of his Servant; for the Servant is in a manner his Chattel. * 19 P. 6. 31. b.

Br. Trespas, pl. 54. cites 19 H. 6. 65. and 66. But cites 9 E. 4. 48, contra.—Ow. 150 in Cafe of Seraman v. Cuppedewa, where In Trespas of Assault and Battery the Defendant justified in Defence of his Servant, viz. that the Plaintiff had assaulted his Servant, and would have beaten his &c. Yet he held the Bargood; for that otherwise he might lose his Service, and cited 19 H. 6. 65. a. but Williams J. contra. And Cake said that a Man may defend his Servant, but he cannot break the Peace for them; but that if another assaults the Servant, the Master may defend lain, and strike the other, if he will not let him alone. —A Master cannot justify in Defence of his Servant, because he might have an Action per eundem Servitium amittit. Per Cur. 1 Salk. 497. pl. 2. Mich. 7. W. 5. B. R. in Cafe of Leeward v. Balfiere. —Id. Raym Rep. 62 accordingly in S. C.

* S. P. Br. Trespas. pl. 128. in the large Edition, cites 29 H. 6. 51. but it should be 19 H. 6. 51. and fo are the smaller Editions.


S. P. But Sergeant Hawkins says, it is said that a Servant cannot justify beating another in Defence of his Master's Son, that he were commanded by the Master to do, because he is not Servant to the Son; and for the like Reason it is said, that a Tenant cannot justify beating another in Defence of his Landlord &c. Hawk. Pl C. 151. cap 61. S. 24. —Ibid 152 cap 62. S. 5

2 Luw. 149; at the End of the Cafe of Shangliton v. Smith, is a Note of the Reporter, that it was said in that Cafe by Powell J. that a Servant may justify in Defence of his Master, but he can not justify a Battery in Defence of the Goods of his Master.

4 If a Lunatick beats a Man, this shall not excuse him in Trespas, because it is but to repair him in Damages, but otherwise it is in Cafe of * Fesony, because he cannot do it with a Reesonus In tent. Hobart's Reports 181.

b in a Note of the Reporter's in Beverley's Cafe. —Hob. 134. pl. 179. in Cafe of Master v. Mead; and says that therefore no Man shall be excused of a Trespas.

5. The
(E) Trespass. Assault. What will be good Cause of Justification.

1. If a Man comes to stop my River which runs to my Mill, I may hold justly the holding of him by the Arm. 3 D. 4. 9.

2. If a Man has Licence (by him who has Power to give it) to erect a Booth in a Fair, and when he is about making of it, another comes to break it down, he may well justify the holding of him by the Arm to stay him from the breaking it down. 11 D. 6. 23.

3. If a Man calls another Traitor, upon which he lays that he men- See (A. 2) titur in Capiro, and that if he will appeal him of Treason, he will defend himself by his Hand upon his Body during the Life of one of them, according to the Form of the Law; this is a good Justification of the Assault. 37 D. 6. 3. 22.

4. If a Servant departs from his Master, or if an Heir in Ward departs from his Lord, it is not lawful for the Master, nor for the Lord, to retake them with Force, nor to lay their Hands upon them, but require them &c. And if they refuse, then to take their Actions. Br. Faux Imprisonment, pl. 57. cites 38 H. 6. 25. Per Markham, &c nemo dedixit.

5. Trespasses of Battery and Imprisonment. The Defendant justified in-much as the Plaintiff lay in Wait at D. to rob the People, and made Assault upon A. and commanded him to deliver his Purse, by which the Defendant took him and put him in the Stocks. And the Lying in Wait, and the Aff- sayr upon A. is not double, because some Act ought to be done, as where a Man justifies for Suspicion; quod nota. Br. Double, pl. 138. cites 6 E. 4. 27.

6. In Action of False Imprisonment, the best Opinion was, that it is a Every Man good Plea, that the Defendant was a Watchman, and the Plaintiff was a may take Night-walker, and the Defendant cast his Hands upon him peaceably to see wattle who his Vizage, which was the same Imprisonment &c. Br. Faux Imprisonment, pl. 39. cites 4 H. 7. 2. common Profit. Per Hufsey and Fairfax. Br. Faux Imprisonment, pl. 15. cites 4 H. 7. 18. at the End.

7. A. takes B.'s Horse.—B. the same Day requested A. to re-deliver it, but A. refused.—B. said, if A. would not deliver him, he would take it in spite of his Teeth; and takes up a Stick lying on the Ground, and made it towards A. with the Stick. This is an Assault justifiable. Keb. 92. pl. 4. 22 H. 7. Anon.

8. Striking a Man's Horse is such an Assault upon a Man's Goods, as will justify striking the Person; and stepping the Horse is stepping the Man. Cl. 129. Booth v. Jenkinson.

(F) Trespasses.
Trespass.

(G) Trespas. Assailst and Battery. Justification. What will be good Cauze of Justification.

1. "It is no good Cauze of Justification, that all the Companies of Soldiers of London were commanded by the Privy Council to murder, and that the Plaintiff and Defendant were under one Captain, and their Captain skirmish'd with another Captain, and the Defendant in this Skirmish discharged his Gun, which casuallly, against his Will, hurt the Plaintiff (viz. because it was discharged in his Face.) Tho' this was in the Service of the Commonwealth, that is to say, in the Practice to make them able to defend the Realm; yet it will not excuse, because he does not say, that he could not do otherwise; As if he had said, that the Plaintiff ran across his Piece when he was discharging it, or had expres'd the Cause with the Circumstance, (and so it had appear'd to the Court, that it had been inevitable; and that the Defendant had not been guilty of any Negligence to give Occasion to the Hurt." Hobart's Reports 181. between Weaver and

(F) Trespas. Assailst and Battery. What will be good Cauze of Justification of Battery. Assault to the Person.

S. P. per Markham, quod Curia concistit. But Brooke says, it seems, that I may beat him, if I cannot otherwise escape without Stripes or Maimen, as well as for Life. Br. Trespas, pl. 71. cites S. C.

1. I If a Man assails me, and I can escape with my Life, it is not lawful for me to beat him. 2 D. 4. 8. b. Curia.

2. [Sod] If a Man assails me, I am bound to go from him as much as I can, and not presently to beat him. 19 H. 6. 31.

3. [But] If a Man assails me, I am not bound to attend till the other has given a Blow; but I may beat him before in my Defence, for perhaps I shall come too late after. 2 H. 4. 8. b. Curia.


5. Where a Man, in his own Defence, beats another, who first assaulted him &c. he may take an Advantage thereof upon an Indictment, as well as upon an Action; but with this Difference, that in the first Cafe he may give it in Evidence upon the Plea of Not Guilty, and in the latter he must plead it specially. Hawk. Pl. C. cap. 62. pl. 3.

Fol. 143. See (G)
and Ward adjudg'd, because it is but to be repair'd in Damage for the Hurt.

In Trespass for an Assault, Battery, and Wounding, by shooting out the Plaintiff's Eye. The Defendant pleaded in Law, that he was a Collector of the Hearth-money; and for the better securing the Money collected he rode with Fire-arms, and having a Pistol in his Hand, and intending to discharge it, to prevent Assault, he being now coming that may do discharge it; and on his discharging it, the Plaintiff directly came that it, and if it received any Hurt, it was against the Will of the Defendant, qua alluded transgress. The Plaintiff demurr'd, and had Judgment, and upon a Writ of Error brought, Judgment was affirmed, nothing being urged besides the Plea, which the Court held insufficient; for the Defendant shall not be excused in Trespass, unless upon an excuse necessary, which was not shown here. Besides he did not traverse Abijah but after well also most, as was done in Clarke and Ward's Case, in the like Plea; and yet in that Case the Plaintiff had Judgment. 2 Mo. 295. Pith. 54. Car. 2. R. Dickerson v. Watton.

Serjeant Hawkins says, it seems, that a Man shall not forfeit a Recognizance for the good Behaviour, by a Hurt done to another merely thro' Negligence, or Mistake; as where one Soldier hurts another by discharging a Gun in Exercise, without sufficient Caution; for notwithstanding such Person null, in a Civil Action, give the other Satisfaction for the Damage occasion'd by his want of Care, yet he is not to have offended against the Purport of such a Recognizance, unless he be guilty of some wilful breach of the Peace. Hawk. Pl. C. 151. cap. 91. S. 27.

(G. 2.) Entry into Land.

[1.] 2. A Man may justify the Battery of another, in Defence of One may his Possession. Trin. 3 Jac. B. demurr'd in Law. justifi an Battery in Defence, or for the Preservation of his Possession of Lands or Goods. 2 Inf. 316.

[2.] 3. If a Man comes into the Forest in the Night, the Forrester cannot beat him before Resistance made by him. Pitch. 14 Jac. in the Star-Chamber, resolved by the Chancellor and Judges in Buckner's Case, and Buckner had Recovery against him at the Common Law in Action of Battery.

[3.] 4. But if the Party, who comes so into the Forest, resists the Forrester, he may justify the Battery of him, as was agreed in the Case aforesaid. The Statute of Malaetactors in Parks, of 21 E. 1. gives as much. See the Statute of 21 E. 1.


[5.] 6. If a Man be making a Booth in a Fair by good Licence of the Owner, and a Stranger disturbs him, and breaks it down without Cause, yet he cannot justify the Battery of him. 11 D. 6 23.

[6.] 7. A Man may justify the Battery of one who will enter into his House; for it is his Castle. D. 7 Ja. B. Lawrence's Case, per Curiam.

[7.] 8. If a Man enters into my Clofe, and there with an Iron Slugge and Bar breaks and displaces my Stones there being in the Land, being my Chattel, and I require him to deliver, and he refuses, and

5 R. speaks
In Defence of Goods.


If a Man will take my Money out of my Purse, I may justify the Battery of him in Defence thereof.

If a Man takes the Beasts of another Damage seaman to his Coat, and a Stranger will take them out of his Possession, he may well justify the Battery of him in Defence of them. 19 H. 6. 66.


5. In Assault &c. the Defendant pleaded for Assault demerit. The Plaintiff refused, that he was Servant to A. to take Care of his Horses, and that the Defendant would have beaten one of them; whereupon he, in Defence of the Horse, laid his Hands on the Defendant, and thereupon the Defendant assaulted him. The Defendant rejoind'd, that B. another Servant of A. was going to break the Hedge, and leap a Horse of A's into Black Acre, a Close of the Defendant's Master, whereupon the Defendant forced him, and endeavour'd to hinder him; and thereupon the Plaintiff came up and alleged
(G. 4) Assualt and Battery. Declaration. Good or not.

1. Trespass of Assault, that he imposed such and so many Threats of his Life and menacing him, that he could not go about his Business in Publick; and did not say about his Business there, and yet well; per Cur. Br. Brief, pl. 230. cites 37 H. 6. 2. 3.

2. In Trespass the Plaintiff counted, that the Defendant menaced him, by which his Business in this County, and in the County of S. was not done, and said How, viz. in Collecting Rents &c. Repairing such Houses &c. And the lane where he says, that he dared not attend his Business, he shall have in what he Business. Br. Count, pl. 46. cites 37 H. 6. 19.

3. In Trespass of Assault at D. & ipsum verberavit vulneravit, & Male tracavit, all shall be intended in the first Place; and yet it may be, that it was at divers Places. Br. Sumnife, pl. 27. cites 5 H. 7. 17.

4. In Trespass of Assaulting him, nec non unum equum pretii 6 l. a Persona ipsius (the Plaintiff) aducne & ibidem cepti. After a Verdict it was moved in Arrest of Judgment, that the Declaration was ill, because the Plaintiff did not suppose any Property in the Horse, but ought to have said, Equum sium; tor it might be the Defendant's, and then he might lawfully take her; or it might be the Plaintiff's, and then tortious; and the Construction being indifferent, it shall be taken stronger against the Plaintiff. And the Jury having aftefs'd intire Damages for both Trespasses, and there being no Cause for one Trespass, the Verdict is not good; quod fuit concepium per Fennr & Yelverton J. no other being in Court. Vellv. 36. Patch. 1 Jac. B. R. Purcel v. Bradley.

5. In Action of Assault, the Plaintiff declared, Quod eum the Defen- 
\[\text{St. C. by the Name of}
\]
\[\text{of Sheriffland}
\]
\[\text{b. Autin;}
\]
\[\text{And Coke}
\]
\[\text{Ch. J.}
\]
\[\text{seem'd to think it}
\]
\[\text{good, and influenced in an Ejcetction, and also in Debt for Rent, that a Quod cum dimitt is good. But}
\]
\[\text{it being moved at another Day, and the Cafe of Sherrifite, b. Bridge, Trin. 37 Eliz. cited as adjudg'd in Point in a Writ of Error to be good, tho' the Cullom, is to declare in such Cases with a De co quod ipsa &c. the Court (abente Coke) held accordingly.} \]
\[\text{2 Bulk. 214. S. C. and the whole} \]
\[\text{Court declared they would be directed by Precedent, and accordingly Precedents were produced, and}
\]
\[\text{all (abente Coke) were clear of Opinion that the Declaration was not good. And Man Secondary, in-}
\]
\[\text{form'd the Court, that he had a Precedents directly in Point adjudg'd upon a Declaration to be in-}
\]
\[\text{sufficient, being in this Manner as here with a Quod cum. But Coke J. said, if the Declaration here}
\]
\[\text{had been Quod cum, he was to Place Domini Regis, the other did assault and beat him contra}
\]
\[\text{Pacem, this had been good; for here is a good Relative to the Quod cum, which always pre-supposes}
\]
\[\text{some Matter subsequent to be depending upon it, which is not so here, and therefore the Declaration}
\]
\[\text{here not good, and to the Rule of the Court was Quod quorem nil capiat per Billam.}
\]

6. After
6. After Verdict, Judgment was arrested, because no Place was alleged where the Battery was done. Lat. 273. Mich. 2 Car. Edsil v. Bengor.

7. Upon hearing Counsel on both Sides, 3 Declarations in Assault, Battery, and False Imprisonment, were ordered to be reduced into one, appearing upon the Face of the Declaration to be all for one and the Same Act; and in each of the 3 the Plaintiff declaring against one of the Defendants for an Assault &c. Simul cum the other 2. Notes in C. B. 249. Hill. 7 Geo. 2 Carlin v. Elliot, Hunt, and Drew.

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(G.5) Pleadings. Good or not.

1. Trefpafs of Battery, Wounding and Maihem, and it was demanded Judgment of the Writ, inasmuch as of the Maihem he ought to have Appeal of Maihem, Et non Allocutur. Br. Trefpafs, pl. 261. cites 43 Aff. 39.

Br. Appeal, pl. 138. cites S. C. Sergeant Hawkins says, that however the Law may stand in Relation to this Matter; if such Action be brought for the Battery only, without mentioning the Maihem, he fears not how it can be bar'd by such a Non Suit, because it is generally held, that in an Appeal of Maihem, no Consideration can be had of the Battery, but only of the Maihem; and if to, it seems strange that a Non Suit in such an Appeal should bar an Action of a different Nature brought from a Matter which the Appeal had nothing to do with. However it seems clear that a Non Suit in an Action of Trefpafs is no Bar of an Appeal of Maihem; also he takes it for granted, that a Non Suit in an Appeal of Maihem, before the Plaintiff has appeared to it, is not a Bar of any other Appeal or Action, because the Writ, for what appears to the contrary, might be purchased by a Stranger in the Name of the Plaintiff. 2 Hawk. Pl. C. 160. cap. 25. b. 26.

2. By which the Defendant said, that the Plaintiff at another Time, brought Appeal of Maihem of the same Afi, and was nonjured after Appearance; and good clearly per Knivet Ch. J. And to see that Non Suit in Appeal of Maihem is peremptory. Br. Trefpafs, pl. 261. cites 43 Aff. 39.

Br. Pleading in Courts, pl. 4. cites S. C. All the Editions of Brooke are (Defendant) but the Year-Book is (Plaintiff.)

3. In Trefpafs, the Defendant said that he was Forester of the Forest of B. and the *Plaintiff* was indicted by the Foresters and Verderors, Regarders and Agiters, for taking of Deer, by which he came to him, and prayed him to find 1 Lodge to answer before the Justices of the Forest, and be would not; by which he took and imprisoned him till he performed the Statutes, Judgment &c. And the Plaintiff said, that De son tort Demesne abique tali Causa, and the was Ilfine received by the Court. And it was said, that before Justices in Eyre, he shall not have Avermert contrary to such Premeant of the Foresters. Br. De son tort &c. pl. 7. cites 45 E. 3. 7.

4. Trefpafs of Battery, the Defendant pleaded Not guilty, the Plaintiff pleaded Effoppel, because at another Time the Defendant being indicted owned the Trefpafs before Justices of Peace, and upon this Process issued against him to answer to the King, who came and pleaded that the Ill which the Plaintiff had, was de ion Assault Demesne, and so to Ilfine; and before Verdict the Defendant came and confessed the Trefpafs, and put himself in Grace of the King, and made Fine, and demanded judgment, if he shall be required to plead Not guilty; and the Record came in by Writ of the Chancery: And the Court held that he shall not plead Not guilty, contrary to his Confession, by which he pleaded De son Assault Demesne. And the other demurred, inasmuch as he pleaded it against the King, and after waved it, and confessed the Trefpafs. And after Writ was awarded to enquire of Damages; and so it seems that he shall not plead contrary to his Confession. Br. Trefpafs, pl. 96. cites 11 Hil. 4. 65.
5. Trespasses of Affault and Battery; the Defendant said that the Plaintiff came upon his Land, and would have occupied it, and the Defendant disturbed him, and took him by the Hand, and charg'd him to go off; which is the fame Affault and Battery; and admitted for a good Plea. Br. Trespass, pl. 413. cites 11 H. 6. 23.

6. Trespass of Battery of his Servant, per quod servicium Servientis fuil predicti &c. The Defendant said, that he was retain'd with him before that he beat him, and departed and came to the Plaintiff; and yet it feems that it is no Plea; for he cannot take him, nor beat him, without Request to his second Matter. Br. Trespass, pl. 139. cites 21 H. 6. 8. 8.

7. Trespass of breaking his Clofe, and Battery, Menace, and Wounding A. and B. his Servants in N. The Defendant said, that he was fensed of 2 Acres in C, till defented by the Plaintiff, upon which he entered and did the Trespass, aboue boc, that he is Guilty in N. And a good Plea; and to The wounding Not guity; for per Car. wounding cannot be judg'd; and to The faid, the Defendant said, that he was foened of the fand 2 Acres in C, till defented by the Plaintiff, and the fand A. and B. Servants of the Plaintiff came with the Plaintiff upon the Land, and the Defendant re-enter'd upon the Plaintiff's, and found A. and B. upon the Land occupying to the Use of the Growths of the Plaintiff, by which he put his Hands upon them pleasantly, and faid, that if they would not go off the Land, he would perfuade and chaftife them according to the Law of the Land; which is the fame Menace and Battery, of which the Action is brought, aboue boc, that he is Guilty at N. And a good Plea without the Traverfe; for it is a Trespass 2 Transitory. Br. Trespass, pl. 143. cites 21 H. 6. 29, 27.

8. In Trespass of Affault in the County of N. by which he left his Bafiefs in the County of N. and S. it is no Plea that he had not any Businesses, or did not live his Bajiefs in the County of S. Br. Traveller per &c. pl. 136. 37 H. 6. 2, 3.

9. And if he fays that by the Menace of the Defendant he could not grather in his Debts, nor place his Land in S. it is no Plea that he has no Debts there; for the Affault or Menace is the Effect of the Matter, and the Affault is to increase Damages. Br. Traveller per &c. pl. 136. cites 37 H. 6. 2, 3.

10. Trespass by F. for Affault upon M. his Servant, and beating and wounding him, 5 August Anno &c. and imprifoning him, and carrying him from L. to N. and there imprifoning him by 3 Days per quod fornication &c. perditit; the Defendant faid, that 4 August he was rob'd of such Goods, to the Value &c. at Midnight, by which he lev'd the Cry, and came to D. Commander of S. and to W. N. Bailiff of the Hundred, and fbro'd the Matter, and praid them to search for fuspicious Persons, and take and arrete them; by which they there search'd accordingly, and found the faid Servant going not be car- ried and watching fuspiciously in the Streets; in the Night, and could have ar-refted him and he fied. and the Defendant praid, took, and carried him to W. N. to have him carried to God; and because he was fick, and could not be car- ried, they held him for 3 Days and after carried him to God, which is an Aboue the fame Affault, Battery, and Imprifonment &c. And no Plea, because he makes not any Judgment for himfelf. Br. Trespass, pl. 297. cites 2 E. 4. 8.

II. In Trespass, the Defendant fowed that the Plaintiff would have taken 6d. of the Money of the Defendant from him, and he put his Hands upon the return of Langrida. Br. Trespass, 297. cites 2 E. 4. 8.
upon him, and did not suffer him. And by the Justices, it was a Man takes my Goods, I may put my Hands upon him, and disturb him, and if he will not leave me may beat him rather than suffer him to carry them away, by which the Plaintiff said that De fon tort Demene abique tali causa; and this was in Trespafs of Battery. Br. Trespafs, pl. 185. cites 9 E. 4. 28.

12. Trespafs of Menace, the Defendant said that the Plaintiff was indicted to him, and be said to him that he would sue for it by the Law, and imprison him if he could, which is the same Menace. And per Cur. this is no Plea; for the one is a Tortious Menace, and the other is a lawful Menace. Br. Trespafs, pl. 388. cites 16 E. 4. 7.

13. Trespafs Vi & Armis in D. infulthum facit, verberavit vulneravit, & male tractavit, & tales, & tantas minas impoluit quod &c. the Defendant to the Vi & Armis pleaded Not guilty, and to the Refudae of the Trespafs that at the Time of the Trespafs &c. the Plaintiff made an Assault upon him, and the Defendant prayed him to suffer him to be in Peace, and if not, that he would defend himself, and rather than be should beat the Defendant, that the Defendant would beat him, and yet the Plaintiff would not surcease his Assault, by which the Defendant in his Defence beat him, which is the same Assault and Menace of which the Action is brought; and a good Plea, and shall not be compell'd to say generally, that De fon Assault Demene, and in his Defence; for then the Menace shall not be answer'd; Quod nota per Cur. Br. Trespafs, pl. 533. cites 16 E. 4. 11.

14. In Trespafs of Assault and Battery, the Defendant said that diverse Felonies were committed in the Place where &c. and said that he was watching in his House, and come out into the Highway, and the Plaintiff came at the Hour of 11 in the Night, and the Defendant came and put his Hands upon him in a peaceable Manner, and look'd in his Face, and when he saw that he was a true Man he departed, which is the same Assault and Battery of which &c. Per Keble, By the Statute of Wincheiter, cap. 3. Watchmen may arrest Nightwalkers, but such Watches ought to be assigned by the Vill. And per Cur. Suspicion is sufficient Caufe to arrest a Man, and is traversable. And per Hulfey, Watchmen may oppose Nightwalkers from whenceever they come; and Fairfax J. agreed thereto, and for a good Plea. Quere it double. Br. Trespafs, pl. 268. cites 4 H. 7. 1. 2.

15. Trespafs of Assault, Battery, and Wounding; the Defendant said that the same Place and Day he had a warrant to arrest the Plaintiff, by which he there put his Hands upon him peaceably, and arrested him, which is the same Assault, Battery, and Wounding &c. Per Finesse this is no Plea; for this is no Assault, Battery, nor Wounding; but if he had said that he arrested him by a Warrant at the Time &c. and the Plaintiff made Assault upon him, and the III which he there had &c. was De fon Assault Demene &c. This had been a good Plea. Br. Trespafs, pl. 218. cites 21 H. 7. 39.

16. In Trespafs of Assault, Battery, and Wounding, the Defendants justified by Warrant from the Mayor of S. to take the Husband, and that when they were taking him the Wife hinder'd them, whereupon they had their Hands on her Moliier to make her defile. Quæ eft odatam Transgredi &c. It was object'd that they did not answer to the Battery, nor traverse it. And it was held ill. Cro. E. 93. 94. pl. 3. Pach. 3 Eliz. B. R. Jerome v. Phear.

17. In Assault, Battery, and Wounding, the Defendant pleaded that he was able of D. and for such a Misdemeanor by the Plaintiff, ho laid his Hands on him, and put him into the Stocks, Quae eft odatam transgredi &c. and upon Demurrer it was adjudged for the Plaintiff, because the Defendant did not plead Not Guilty to the Wounding, or justifying it; but if one pleads that the Hurt which the Plaintiff had was of his own Assault; this is a good Answer to all, and the Plaintiff had Judgment. Cro. E. 268. pl. 3. Hill. 34 Eliz. B. R. Pendlebury v. Elmer.
Trespass.

18. A Boy proij'd to get into a Cock-pit, to see the Game, and the Master of the Pit endeavoured to put him forth; the Boy refrif'd, the Master there-upon pull'd him by the Ear, so that it bled; and the Boy by his Guardian files Action of Battery. And the Master pleaded Not guilty, and for this it was against him; but by Damport Judge, some Opinion was, that by good Pleading in this Caffe the Master of the Pit might have justified the Act well enough, but could not plead Not guilty. Clayt. 24. pl. 41. Rigg's Caffe.

19. In Affault and Battery, the Defendant justified by Mollier manus Impofuit upon the Plaintiff, who entered his Clofe. And the Opinion of the Court was, that he ought to show what Estate he had in the Clofe, and that the Plaintiff came there and endeavoured to ejfull or diffeafe him. Mo. 846. pl. 1142. Mich. 13 Jac. Smith v. Bull.

20. If a Battery be outrageous, so that a Mollier manus Jmpofuit be not true, it ought to be specially proven, otherwise it fhall be a good Jufification. Skin. 327. pl. 22. Mich. 5 W. & M. B. R. King & Uxor v. Tebbart.

21. In Trespafs and Affault the Defendant pleaded that he was riding in the Highway, and his Horse being frighted ran away with him, and that the Plaintiff and others were called to to fend out of the Way, which they did not; and that the Horse ran upon the Plaintiff against his Will &c. And it was, in Demurrer to this Plea it was adjudged Ill, because the Defendant had justified a Trespafs, and did not confefs it; but if he had pleaded Not guilty, upon this Evidence he might have been acquitted. 2 Salk. 637. pl. 5. Patch. 7 W. 3. B. R. Gibbon v. Pepper.

because there the Fact was confeffed; but the Battery is not answered here. —— Ld. Raym. Rep. 53. &c. and fays that in this Caffe the Defendant justified a Battery, which is no Battery. And fo was the Opinion of the Court; and Judgment for the Plaintiff.

22. One cannot plead his Possession in Bar without more, except it be in the Cafe of Battery, where it may be merely collateral; and the true Diversity is between a Declaration and a Plea, for one may count upon his Possession without more, but not justify by Virtue of it; and you can never give Possession in Bar, without making a Title; Per Powell J. 12 Mod. 508, 509. Patch. 13 W. 3. in Caffe of Pell v. Garlick.

23. In Trespafs an Exception was taken, that the Plea was difcontined, because the Declaration was of an Affault, Taking, Arrefting, and Imprisoning, and the Defendant pleaded to the Trespafs, Affault and Imprisonment, but pleaded nothing as to the Arreft. But per Holt Ch. J. The Imprisonment in Iudes the Arreft; for Imprisonment cannot be without an Arreft, nor an Arreft without Imprisonment; for an Arreft is an actual Imprisonment. And the Plaintiff had Judgment. 2 Ld. Raym. 1192. Hill. 3 Ann. Blackmore v. Tidderley.

not S. P. of the Difcontinuance.

24. In Trespafs, Affault and Battery, laid in Octob. 3 Ann, the Defendant as to the Force pleas Not guilty, and as to the Refidue pleas, that long before &c. (viz.) on September 13. a Stranger's Bull broke into his Clofe, which he was driving out to impound him; and that the Plaintiff came into the Clofe, and with Force hindered him, and would have refcued the Bull; to prevent which the Plaintiff Parvum plagium super quemcum molliet imputat, which is the fame Refidue of the Trespafts, and traversed that he was guilty at any Time before the faid 13 Sept. Exception was taken, becaufe the Defendant fhould have required him to go out of his Clofe before he beat him, and that Plagium molliet imponere was repugnant, and that the Traverse was fhort, becaufe it did not anfwer the Trespafs after Sept. 13. Per Cur. The Quod eft idem reftitutum is good without a Traverse, and therefore not material tho' it be fhort; for it goes only to the Time where
where the Quod eft idem avers it to be the fame. 2 Silk. 644. pl. 12.


25. In Affault and Battery, the Defendant pleaded that he was Servant to R. and that the Plaintiff being assaulted R. at a certain Time and Place, he did then and there assault the Plaintiff in Defence of his Master. Exception was taken that a Servant could only justify defending his Master, and not assaulting the Plaintiff in the Defence of him; and cited 11 H. 6. 8. Besides the Affault of [by] the Plaintiff might have been of a Time past; for the Words of the Plea are, That the Plaintiff being assaulted R. And the whole Court (absente Lee) were of Opinion that the Plea was not good, and gave Judgment for the Plaintiff. 2 Barnard. Rep. in B. R. 327. Mich. 7 Geo. 2. 1733. Markweth v. Reynolds and Wiltwood.

(G. 6) Jusification. Good, or not.

1. In Trefpafs of Battery at D. there, if he justifies at another Place in the same County, this is good without alleging Continuance of the Trefpafs; Per tot. Cur. Br. Trefpafs, pl. 37. cites 35 H. 6. 59, 51.

2. In Trefpafs of Battery, the good desperabatur &c. it suffices to justify the Battery, without assuming to the Jeopardy of Life. Br. Faux Imprison- ment, pl. 3. cites 35 H. 6. 54.

3. In Trefpafs of Battery, the Defendant said that he is Servant, and arrested him upon an Affault, and pleaded all certain; and the Plaintiff made Reflexus, and the Servant pursued him, and he fled, and because he could not otherwise take him he beat him, which is the same Trefpafs &c. Per Littleton, If I come to distrain, and the Party chose the Cattle upon another's Land, or into another County, I may pursue and retake; for when they are in my View they shall be adjudged in Law in my Possession; The Reason seems to be inmuch as they are contary. So where it is said to a Man I arrest you, and he flies, I may pursue him and take him, and this in another County. Per Markham Ch. 1. Yet you cannot beat him when he flies; but if he be then arrested in Fact, and made Reflexus, or would stand in his Defence upon the Arrest, there he may beat him to take him. Br. Trefpafs, pl. 296. cites 2 E. 4. 6.

4. In Trefpafs of Menace of Life and Member; a Man cannot justify the Menace of Death; by which he said Not guilty, and to the rest said that he menaced him from going in his Way, and made Affault upon him; by which he was said to that he would go in his Way, and would defend himself in their Affault, and rather then be menaced himself that he would mayhem him; and do to Blue. Br. Trefpafs, pl. 319. cites 10 E. 4. 6.

5. In Trefpafs of Affault, Wounding, and Imprisonment by one Day; and the Defendant justified the Wounding, because the Plaintiff made an Affault upon him the same Day, Year, and Place, and the Wrong which he had was De for Affault Demesne in his Defence; and to the Imprisonment he said that he was Confidant of the same Vill, and because the Plaintiff made an Affault upon him and broke the Peace, he took and carried him to Gaol for Confiscation of the Peace; And a good Plea per tot. Cur. tho' the Affault was made upon him. Br. Trefpafs, pl. 272. cites 5 H. 7. 6.

6. In Trefpafs for an Affault, Wounding, Taking, and Imprisoning, the Defendant quoad the Affault and Wounding pleaded Not guilty, and quoad the Taking and Imprisoning justified by a Warrant from the Lord Mayor, but shows neither Time or Place when or where it was made, and said nothing as to the Affault; and upon Demurrer the Plea was held ill, by Reason of omitting
omitting the Assault; and so it was a Discontinuance, and therefore ordered to begin again. 2 Blit. 335. Hill. 12 Jac. Wllton v. Dodd.

And ibid. 116 S. C. accordingly, and the Court as to the Place was admitted by Coventry of Counsel for the Defendant. It was imputed by the Counsel for the Plaintiff, that where the Things to be answered are of diverse Natures, there ought to be a particular Answer to each; but where the one answer is sufficient, he does not answer the other, and so in this Case, for there cannot be an Imprisonment without an Assault, to say that the Imprisonment which is justified includes the Assault; But Coke Ch. 1. said that there might be an Assault without an Imprisonment, and so they are distinct, as Wounding includes an Assault; but if he directs his Plea to the Wounding, it is no Answer to the Assault. And Doderidge said the Plaintiff did not intend the Assault comprehended by Implication in the Imprisonment, but another distinct Assault.

7. It was objected, that the Traverse De Injuria is not good, where the Justification is by Reason of a Freehold, or a Lease for Years; but notwithstanding the Plaintiff shall have Judgment, because the Justification is not merely in the Realty, but must with the Personalty; and where it is mixed with the Personalty, Injuria in proprias is a good Traverse, and he need not to traverse the Title, as the Defendant pretends; and cites 8 H. 6. 34. Besides, the Justification is not here upon the Lease, but upon the Assault upon him by laying his Hands Molliter upon him, to remove him from his Possession; so that the Realty is not Inducement only to the Justification. Lat. 273. Patch. 2 Car. Hall v. Gerrard.

8. In Trespass of Battery and Imprisonment, the Defendant justified as Bailiff, by Virtue of an Execution, and that he Molliter means impiotit upon him, and arrested and imprisoned him. It was objected that the Molliter means impudite did not answer the Battery, and the Court inclined that it did not sufficiently answer it, but that he should have pleaded that the Plaintiff required him, by which he in his Defence beat him. 3 Lev. 423, 424. Mich. 6 W. & M. in C. B. Patrick v. Johnfont.

the Laying on his Hands is Battery, if he had no Warrant to justify it. And ibid. 235. For, that up on this Exception and another Counsel advised vult; and the Plaintiff being satisfied that the Exceptions would not help him, discontinued. — But see 2 Laws. 299, where this Remark of Lev. 424. 425. It was valid and denied by Sergeant Lucus in the Case of Carpenter v. Johnfont.

9. Where an express Battery is laid, it is not enough to justify the Imprisonment upon Legal Process, which includes a Battery, but the Defendant must go on, and shews that he arrested the Plaintiff, and the Plaintiff offered to revenge himself, and so the Defendant was compelled to beat him; for otherwise if he be not upon some Occasion, a Man cannot justify a Battery in an Arrest. And Judgment was given by the whole Court for the Plaintiff. Lt. Rvm. Rep. 231, 232. Trim. 9 W. 3. in Case of Truscott v. Carpenter and Man.

(G. 7) De non tort Dextrae. Good Plea, in what Cases of See (G. 5) Assault and Battery &c.

1. In Trespass of Menacing, it is no Plea De non tort Dextrae &c. For if a Man affails another, it is not lawful for the other to say that he would kill him, and to menace him of Life and Member; but if he, upon whom the Assault is made, flies, and the other pursues him so near that he cannot escape, or if he has him under him upon the Ground, or has chasad him to a Wall, Hedge, Water, or Dike, so that he cannot escape him, there is lawfull for him to say, that if he will not depart, hein Salvation of his Life will kill him &c. Per Priot, quod non negatur. And Brooke says such Manner of Form is good Se desendendo in an Indictment upon the Death of a Man Se desendendo. Br. Trespa, pl. 28. cites 33 H. 6. 18.
2. In Trespass the Defendant justified to see if Waife be done in the Land which the Plaintiff held in Execution against the Defendant by Statute Merchant; and the Plaintiff said that De fon tort Demefne abique tali Caufa. And per Brian, where a Man justifies his Entry by the Law, and by no Perion certain, as to enter to see Waife, Entry into a Tavern for Viata, or the like, there De fon tort Demefne is no Plea, by which the Plaintiff wai'd the Littu, and said that he claim'd the Land to be his own Land; and a good litle. Br. De fon tort &c. pl. 49. cites 12 E. 4. 10.

3. In Trespass of Affault and Battery, the Defendant justified that J. S. wore poffes'd of a Dog ut de Beinis propriis, and delivered it to him to keep, and that the Plaintiff would have taken it from him, in which he reflied him, and in Defence and Custody of his Dog he beat him, and the Hurt which he had was De fon tort Demefne; and to this the Plaintiff was put to anwer, and replied De fon tort &c. which proves a Property in the Dog when he justifies the Bearing of one in Defence of it. Arg. Cro. E. 126. in Cafe of Ireland v. Higgins, cites 13 H. 7. Rot. 35.

4. Where Defendant in Trespass, Affault, Battery &c. justifies in Defence of his Poffeffion, the Plaintiff may reply De fon tort Demesne, because the Title of the Land does not come in Queftion; Per Powell J. Ld. Raym. Rep. 120. 121. Mich. 8 W. 3. Serle v. Darford.

See (G. 5) (G. 8) De fon Affault Demesne, a good Plea. In what Cafes.

1. In Trespass of Battery, the Defendant said that the Plaintiff beat W. to Death, and the Constable came to arreft him, and be stood in Defence, by which the Defendant came in Aid of the Constable &c. and the Ill which he had was De fon Affault Demesne; Judgment &c. The Plaintiff said that De fon tort Demesne &c. Br. De fon tort &c. pl. 11. cites 38 E. 3. 9.

2. Battery against two Defendants; they pleaded Son Affault Demesne, and this was aliign'd for Error, because the Affault of the one could not be the Affault of the other; and therefore they ought to have pleaded severa Pleas, but it was adjudged good, because the Affault may be joint. Mo. 704. pl. 983. Penraddock v. Errington.

3. Tho' one cannot justify a Battery by Son Affault Demesne, by pleading it to on Indictment, yet he may give it in Evidence on a Nor guilty, and he may be thereupon acquitted; Per Holt Ch. J. 6 Mod. 172. Pach. 3 Ann. B. R. The Queen v. Coreworth.

4. In Trespass for an Affault, Battery, and Maikem, Defendant pleaded Son Affault Demesne, which was admitted to be a good Plea in Maikem; but the Quetion was, What Affault was sufficient to maintain such a Plea in Maikem? Holt Ch. J. said that the Meaning of the Plea was, that he struck in his own Defence; That if A. strike B. and B. strikes again, and they clofe immediately, and in the Scuffle B. maims A. that is Son Affault; but it upon a little Blow given by A. to B. B. gives him a Blow that maims him, that is not Son Affault Demesne. Powell J. agreed.
Trespass.

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agreed, for the Reason why Son Assault is a good Plea in Maihem is, but takes his because it might be such an Assault as intender'd the Defendant's Life. 3 Salk. 642. pl. 13. Patch. 3 Ann. B. R. Cockcroft v. Smith.

upon him, and beats him, in this Cafe Son Assault is no good Plea, but in such Cafe he ought to plead what is necessaries for a Man's Defence, and not who struck first, this cair he had been the common Practice, but which he did he was after'd; for Hitting a Man a little Blow with a little Stick on the Shoulder, is not a Reason for the other to draw Sword, and did the other &c. 4 And the Principal Cafe was, that the Plaintiff in a Scuffle ran his Finger towards the Defendant's Eye, who bit off a Point — S. C. cited Ld. Rom. Rep 177. In a Note at the End of the Case of Caff. b. tilt. Cas that Hol. Ch. I directed a Verdict for the Defendant, the first Assault being the Thitting a Foam or Seat upon which the Defendant lay, whereby he fell, and the Maihem was that the Defendant bit off the Plaintiff's Finger — 6 Mod. 250. & 205. S. C. but upon other Points.

(G. 9) Replication in Assault &c. Good, or not.

1. Assault and Battery, the Defendant pleaded, that at the Time &c. he was seized of the Kelovery of D. in Eye, and that Corn was sever'd from the 9 Parts, and be came into the Ground to carry away the Tithes, and in Defence thereof, and to hinder the Plaintiff from taking it, he stood there to defend it, and the Hurt which he had was of his own Wrong; The Plaintiff replied, De injuria sed propriis efigies tali Causa: And upon Demurrer the Plaintiff had Judgment, because by his Declaration, he did not claim any Thing in the Soil or in the Corn, but only Damages for the Battery &c. which is collateral to the Title. Where the Plaintiff makes Title in his Count, and the Defendant pleads any Matter in Deduction of such Title, or of the Plaintiff's Caufe of Action, there the Plaintiff must reply specially, and shall not say abique tali Causa. Yelv. 157. Trim. 7 Jac. B. R. Tailor v. Markham.

2. Trespass of Assail, Battery, and Wounding, 1 Aug. 13 Car. the Defendant pleaded Son assault Denempie, upon Jutie the Defendant gave in Evidence an Assault and Battery by the Plaintiff, 2 July 13 Car. and that it was in his own Defence, and produced Witnesses to prove it; the Plaintiff shewed that the Battery he intended was 9 July 13 Car. and produced also divers Witnesses to prove it. It was insisted for the Defendant that this was no Evidence; for the Plaintiff ought to have made special Replication, and shew'd that special Matter; but all the Court held that it was not requisite; for if he had shewed another Day in the Replication it had been a Departure; but it's sufficient to shew it in Evidence, that there was an Assault; for the Day is not material. Cro. C. 514. pl. 12. Mich. 14 Car. B. R. Thornton v. Lifter.

3. In Battery, the Defendant pleaded Son Assault Denempie, the Plaintiff replied that he was standing at his Gate, and that the Defendant being on Horseback offer'd to ride over him, whereupon he molliiter assaulted the Plaintiff in Defence of his Person, &c. and upon Demurrer, this Replication was adjudged ill, because he had now confessed the first Assualt; but he should have said molliiter manus impostrat upon the Plaintiff to hinder his riding over him. Judgment for the Defendant. Lev. 228. Jones v. Treffillian. Hill. 21 & 22 Car. 2. B. R.

Med. 26. pl. 86. S. C. but somewhat varying, viz. The Defendant pleaded Son assault Deempie; the Plaintiff replies, That the Defendant could have forc'd his Horse from him, whereby he did Molliiter manus facere upon the Defendant, in Defence of his Person. To this the Defendant demurred. Morton, said, that Molliiter mansum facere is a Contradiction, suppose you had said that Molliiter you thrust him down. And Twidell said you cannot justify the Beating of a Man in Defence of your Possession, but you must say that you did Molliiter manus impostrat &c. Keeling said you ought to have replied, that you did Molliiter manus impostrat, que efi eadem Transitio. And per Car. Qui? Nil captat per illiam, unless better Cause he fhew this Term —— 441. pl. 12. S. C. but states it that the Defendant pleaded specially in Defence of the Possession of a Ship, and concluded his Plea by the Molliiter mansum facere,
Trespass.

1. Trespass of Assault and Battery. They are at Issue, and 'tis found that he assaulted him, but he had no Hurt, and that he was not beaten, and paid Damages at half a Mark, and the Plaintiff recovered by Judgment. Br. Damages, pl. 19, cites 42 E. 3, 7.

2. Trespass for Assault on a Day. The Defendant pleaded Not Guilty. The Jury found the Assault on this Day, and another Day to the Damage of 20l. The Plaintiff shall have Judgment of the 20l for the Assault; and

(G. 10.) Judgment and Damages. How. And where several Defendants plead several Pleas, and one or more is found guilty of the Battery, and the others of the Assault only.

3. In Trespass of Assault and Battery, the Defendant pleaded for Assault demene. The Plaintiff replied, that the Defendant came into his House, and continued there after the Plaintiff desired him to depart; upon which he commanded his Wife to put him out of the House, quæ molliter manum super Deponent impuniter, & cee &c. but does not say Quæ est eadem Transgressio. And adjudiq'd a good Replication; for it being eadem Tempore quo, it is good without such a Conclusion; but if they vary in Time, then it is necessary to say Quæ est eadem Transgressio. Skyn. 387. pl. 22. Mich. 5 W. & M. in B. R. King & Üx. v. Tebhart.

4. Assualt, Battery, and Wounding. The Defendant justified, that he being Master of a Ship, commanded the Plaintiff to do some Service in the Ship; and on his refusing he, the Defendant, moderate Castigavit eum. The Plaintiff maintained his Declaration, abique hoc good moderate castiga
tavit. After Verdict for the Plaintiff it was moved in Arrest of Judgment, that the Issue was not well joined; for No moderate castigavit does not necessarily imply that he beat him at all, and so direct Traverse to the justification, which immodeate Castigavit would have been; but de injuria sua propria abique tali Causa would have been the most formal Replication. However, it was held good after a Verdict. Vent. 70. Pach. 22 Car. 2. B. R. Aubrey v. James.

5. In Trespass of Assault and Battery, the Defendant pleaded for Assault demene. The Plaintiff replied, that the Defendant came into his House, and continued there after the Plaintiff desired him to depart; upon which he commanded his Wife to put him out of the House, quæ molliter manum super Deponent impuniter, & cee &c. but does not say Quæ est eadem Transgressio. And adjudiq'd a good Replication; for it being eadem Tempore quo, it is good without such a Conclusion; but if they vary in Time, then it is necessary to say Quæ est eadem Transgressio. Skyn. 387. pl. 22. Mich. 5 W. & M. in B. R. King & Üx. v. Tebhart.

6. In Trespass of Assault and Battery, the Defendant pleaded for Assault demene. The Plaintiff replied, that the Defendant came into his House, and continued there after the Plaintiff desired him to depart; upon which he commanded his Wife to put him out of the House, quæ molliter manum super Deponent impuniter, & cee &c. but does not say Quæ est eadem Transgressio. And adjudiq'd a good Replication; for it being eadem Tempore quo, it is good without such a Conclusion; but if they vary in Time, then it is necessary to say Quæ est eadem Transgressio. Skyn. 387. pl. 22. Mich. 5 W. & M. in B. R. King & Üx. v. Tebhart.
and it is taken as one and the same Assault; quod mirum, and fo Judgment pro Querente. Br. Damages, pl. 32. cites 45 Eliz. 3. 24.

3. Trespass against de Verberatione & Vulneratione. The one justified the Wounding, and the Blows by Assault of the Plaintiff, and are at Issue. And the other pleased Not Guilty. And per Cur. If the Plea of him who justifies be found against him, he shall be charged of the entire Damages; and it shall be inquired how the others did, for they may make an Assault, and not wound him; and then of the this the Damages shall be against all, and of the wounding against him who struck only, quod mirum. For in Trespass there is no Accesary, and he who came and did not strike is Principal, if the others struck. Br. Trespass, pl. 278. cites 6 H. 7. 1.

[Who shall have it. In respect of his Estate.]


2. [So] If A. tried in Fee of a Close, grants the Pature of the Mo. to B. for Years, B. shall have Trespass Quare Clasium fregit. 453. S. P. v. for a Trespass done to him; for the Close itself is intended to Pature, and not the Pature to be taken by the South of his Beasts. Mich. 14 Car. by Barkey.


3. Trespass was brought by the Lessee against the Lessee for Life for Cutting of Trees, which were reserved upon the making of the Lease; and it lay well, tho' the Lessee had a Lease; therefore Quare, if by the Reversion the Soil be not reserved, for it was Quare Clasium fregit, and awarded good by Referation of the great Wood. Br. Trespass, pl. 55. cites 46 Eliz. 3. 22.


5. Trespass was brought by Grantee of the Profition of such a Mind, viz. the Ear-Grafs. The Jury found, that Ear-Grafs is such Grafs as is upon the Land after Mowing till Lady-Day. Such Grantee cannot bring Trespass Quare Clasium fregit; but he may have Action for spoiling his Grafs. 3 Le. 213. pl. 282. Mich. 30 & 31 Eliz. B. R. Hitchcock v. Harvey.

6. He that has the Crop and Possession of Land's as Lat Acres, to his Lot Cro. E. 421. every 3 or 4 Years, shall have Trespass Quare Clasium fregit. No. 302. pl. 453. Hill. 34 Eliz. Welden v. Bridgwater.

To make Time out of Mind, may be good by Prescription; and by the Allotment it is the proper Soil and Prechold of him to whom it is allotted, and so may well maintain this Action.
Trespass.

So if a Man be outlaid in a Personal Action, and the King has the Profits of the Land, and lets the same to another, he shall have Trespass, Quare Clausum fregit; per Clench J. which Shute granted. 3 Le. 213. pl. 282. Mich. 52 & 53. Eliz. B. R. in Case of Hitchcock v. Harvey.

Partition was made between Coparceners, that the one shall have the Manor of D, for one Year, and the other the Manor of S. and that every 2d Year they shall exchange. Now each of them for their Time have a several Freehold, and shall have Trespass alone Quare Clausum fregit. Cro. E. 421. pl. 17. in Case of Welden v. Bridgewater, cites F. N. B. 62. Cro. E. 421. pl. 5. Mich. 27 & 38. Eliz. B. R. S. C. 4 Rep. 50. b. pl. 23. S. C. 4 Mod. 186. S. C. per Car. the like Action was brought in 46 El. 3. 11 for fishing in Libera Piscaria; and it does not appear by the Book, but the Action was maintainable; but it’s a Fault thus cured by the Verdict; and it shall now be intended that they were the Plaintiff’s own Fish. — 2 Salk. 63. pl. 4. S. C. and Holt Ch. J. held as reported in Carth. ButSalkeld says Nota that Carteth (who moved inArrest of the Judgment) said that there were several Writs in the Regifter against Law. — Slin. 342. pl. 9. S. C. says that Holt likewise cited 17 El. 4. 4. where Such Writ was brought, and therefore the Regifter, and F. N. B. being fo, and the old Book of 46 El. 3. 11. agreeing with it, they did not regard the Cales cited, or 1 Inf. but gave Judgment for the Plaintiff; Nis.

Carth. 286. in the Margin, cites 1 Inf. 122. a. Cro Carr. 545. and a Case adjudged between Thab and Tuckirt, Hil. 1 & 2 Jac. 2. B. R. where Judgment was arrested upon the Motion of Mr. Polledan for this very Cause.

(I) Trespass.
(I) Trespass with Continuando. Of what Thing it may be.


2. It does not lie of a Corce, for it cannot be continued. 46 C. 3. Breaking of a House. Houfe Ecc. which are done in an Infant, the Plaintiff shall not by Transgression illam Continuando, for these cannot be continued. Contrary to Grafs fed Ecc.

In the one Cate the Jutilication refers to the Day of the Breaking only, and in the other it refers to the Continuance of the Trespass. Per Finchden Justice. Br. Trespass, pl. 374. cites 46. Aff. 9. — S. P. Br. Nutance, pl. 6. cites 46. E. 3. 25.

* S. P. Br. Trespass, pl. 441. cites 20 H. 7. 2. See pl. 9.


14. — * Br. Trespass, pl. 441. cites 20 H. 7. 2. S. C.

5. A Trespass of Grafs Corn in the Blade may be with a Continuando diversis dieibus & temporibus by 2 Years. The» there cannot be a Con- tinuance of such Trespass by such Time together. P. 5 La. B.'King's

Cafe.

6. A Trespass of Goods carried away, that is to lay 2 Load of Wheat, and 5 Load of Barley may be with a Continuando diversis dieibus & victus from such a Day to such a Day. 21 H. 6. 43. a. b.

7. It was re- solved that Trespass cannot be laid of foie Chatter with a Continuando, as 100 Load of Wheat with a Continuando from such a Day to such a Day. And therefore per Powel J. no Evidence can be given, but of the taking at one Day. Ld. Raym. Rep. 242. in Cafe of Foltheroy v. Aylmer.

8. A Trespass Quaere Equum cepit, cannot be with Continuando. Br. Trespass, pl. 444. cites 20 H. 7. 3. for this cannot be continued.

9. A Man may have an Action of Trespass for breaking his House or Trespass for Clofe, and allege a Continuance of the Trespass, and of the Breaking thereof, from such a Day unto such a Day, as well as he may for tread- ing of his Grafs, or cutting of his Corn &c. F. N. B. 91. (L)

after Verdict for the Plaintiff, it was moved that the Plaintiff had declared with a Continuando for breaking his House, which he could not do; for the entry is one Act done and ended at the going out again; And therefore if he entered it is a new Trespass, and the Continuando is only alleged for the Aggravation of Damages, and cited 2 R. 3. 15. 10 E. 5. 19. 16 E. 5. 24. That a Continuando cannot be for breking sic Houfe; but Dodderidge and Houghton J. the reft being silent, thought it might be alleged with a Continuando; for altho' it might be that if he went forth and recivered, it should be a new Trespass, but if upon his first Entry he continued divers Days, it might be alleged with a Conti-
Trespass.

nuando, and cited F. N. B. 91. (L.) Brownl. 225, 226. Trin. 10 Jac. in Case of Sutcliffe v. Cont-
flable.

Were the Trespass may be laid with a Continuando, depends much upon the Consideration of good Suce;
therefore where Trespass is brought for breaking of a Hedge or a Hedge, this may well be laid with a Con-
tinuando, for the pulling away of every Stick is a Breach, which may be done one at a Day and an-
er on another Day, or one Stick may be pulled out of a Hedge one Day and another another; but Trespass
cannot be laid with Continuando for the Procreation of a Hedge; for when the Hedge is once thrown
down, it cannot be thrown down again. The same Law of the throwing down of a Hedge, per
Trey and Nevil. But Powel J. was of Opinion that a Man may bring Trespass for throwing down of a
Hedge with a Continuando, because one Part may be thrown down at one Day and another at another.
The same Law of a \( \text{Hedge} \) Resolved per Car. Ld. Raym. Rep. 42. Trin. 9 Will. 5. in Case of Cont-
flerny. v. Aviner.

10. In Trespass of Battery at D. in the County of Effe., the Defendant
pleaded that the Plaintiff pleased made an Assault upon him at B. in the County of
Hill, and the Defendant fled, and the Plaintiff pressed him continually
unto D. aforesaid, at which Place the Defendant did defend himself, and in
the Hurt which the Plaintiff had was of his own Assault, and demanded
Judgment if Action. The fame is a good Plea without traversing of the
County; for a Battery may be continued from one County to another.

Arg 1 Le. 39. pl. 49. Mich. 28 & 29 Eliz. in the Exchequer. In Case of the
Queen v. Ld. Vaux &c. cites 34 H. 6. 15, 16.

Frem. Rep. 44. 45. 53. King v.
Rote Mich. 9. 
16. 75. M. it to be S. C.
but nothing
was laid
there at this Point; but ibid. 536. pl. 48. Rote v. King v. fays it was accepted that a general Chau-
lim fregit pedibus ambulando and breaking down
his Fences continuando tranfgredion. prad. from such a Day to such a
Day, ad damnun &c. And after Verdict upon Non culp. it was moved in
Arrêt of Judgment, because there can be no Continuando in breaking
was laid

11. Trespass Quare Claustrum fregit pedibus ambulando and breaking down
kis Fences continuando trasgressio. prat. from such a Day to such a
Day, ad damnum &c. And after Verdict upon Non culp. it was moved in
Arrêt of Judgment, because there can be no Continuando in breaking
was laid

6. Mod. 39. 41. Mich. 2 Ann. B. R. It was said, per tot. Car. to have been adjudged, that Trespass
for goring a Bench (which seems mis-printed for Fence) with a Continuando, had been held good,
which means this very Case.)—See pl. 9. the last Note.

B. R. B. R. of
name of
Bohun
V. was
adjudged for
the Plain-
terminating in trespasses, and being once done cannot be done again, as
34. killing a Hare or 5 Hares, or cutting and carrying away 20 Trees, it ought
to be alleged that diversus diebus & vicibus between such a Day and
such a Day he kill'd 5 Hares &c. and where a Trespass is laid with a
Continuando that cannot be continued, Exception should be made at the
Trial, because the Plaintiff ought to recover but for one Trespass. And
the Court held that hunting might be continued, as well as spoiling and
confusing or cutting his Grants. And Judgment for the Plaintiff. 2 Salk.
638. pl. 7. Hill. 1 Anne B. R. Monkton v. Pahiley.

12. Trespass for entering his Close, and hunting such a Day continuando
transgressio quod the hunting diversus diebus & vicibus from the Day of
the Trespass alleged till such a Day; Holt Ch. J. held that of AIs which
be hare or 5 Hares, or cutting and carrying away 20 Trees, it ought
to be alleged that diversus diebus & vicibus between such a Day and
such a Day he kill'd 5 Hares &c. and where a Trespass is laid with a
Continuando that cannot be continued, Exception should be made at the
Trial, because the Plaintiff ought to recover but for one Trespass. And
the Court held that hunting might be continued, as well as spoiling and
confusing or cutting his Grants. And Judgment for the Plaintiff. 2 Salk.
638. pl. 7. Hill. 1 Anne B. R. Monkton v. Pahiley.

(1.2) Trespass
Trespasses. Pleadings.

1. Trespass of a Clothe broken, and Goods carried away Contra Pacem Richard late King of England, & Contra Pacem notinram, and counted of Perce of the Trespasses in the Time of King Riccbard, and Perced in the Time of H. 4. So that the Writ supplanted in a manner Joint Trespasses in the Time of both Kings, and the Count supplanted several Trespasses; and yet because Trespasses may be continued, & redditio singula jungulis, the Writ is good, and therefore was awarded good. Br. Trespas, pl. 91. cites 1 H. 4. 15.

2. In Trespas, the Plaintiff counts that the Trespass was committed such a Day &c. diespas diespas &c. vicibus, without showing the Days of the Continquence of it, yet this Count is good. The Continuance of the Trespasses is to be proved in Evidence for the Increate of Damages. Jenk. 124. in Case 52.

3. Trespas &c. for taking 10 Loads of Wheat, 10 Loads of Barley, and Sid. 319. pl. 10 Loads of Oats 1st April, Continuando the said Trespasses from 1st April to the 1st June. After a Judgment for the Plaintiff, it was alledged for Error, that the Trespasses being laid 1st April, and so all one Day, the Continuando must be ill; for what was done 1st April cannot be done at another Day. But judgment was affirmed; for tho' for the doing a single Act, as Killing a Hors &c. a Continuando is ill, yet where diverse Things may be done at several Times, as in the principal Case, tho' the Trespasses be first said to be done the first Day, the Continuando shall make a Distribution of them, (viz.) that Part was done on one Day and Part on another, within the Time declared. Lev. 210, Patch. 19 Car. 2. B. R. Butler v. Hedges.

4. In Trespas by Men and Beasts (with a Continuando) and found for the Plaintiff, and Damages pro Tranfligellione praelita. It was mov'd in Arrest of Judgment, that this cannot be; for Trespasses by Men cannot be with a Continuando. And Twilten J. doubted, but the other Justices thought that Judgment should be for the Plaintiff, and that the Damages shall be intended for this Part of the Trespasses, which may be within a Continuando. Sid. 379. pl. 3. Mich. 26 Car. 2. B. R. Pave v. Brown.

5. In Trespas for Filling in his several Fisberys, and taking 25 Baftels of Offers &c. Continuando Plicationem praelita from such a Day to the Time of the Action brought, the Plaintiff had a Verdict. It was mov'd in Arrest of Judgment, that the Filling in the Continuando was altogether uncertain, not expressing the Quantity or Quality of the Fish. And of this Opinion were Wylde and Jones J. upon the Authority of PlaWy Cale. But Hale Ch. J. seemed to think it well enough, and said that that Case had not been well approved of late Years, as to the Necessity of expressing the Kinds of Fish, which has been since hazed needless. And the other Justices thought the same reasonable, but thought themselves tied up by the Authorities, and that Playter's Case had remained unhaken. But adjournatur. Vent. 329. Trin. 30 Car. 2. B. R. Hovel v. Reynolds.

106. pl. 199. Howell v. Reynolds, says, that upon Motion in Arrest of Judgment, it was left well. [Note: No further details are provided for this portion of the text.]
6. Trespass for breaking his Close, and spoiling his Grasfs, and trampling and eating other Grasfs (of the Plaintiff's) with Haggons &c. and also with his Waggons &c. subverting and spoiling other Grasfs, and the Soil of the said Close, and therein did dig and carry 2000 Load of Tobacco Pipe Clay, to the Value of &c. continuing the said Trespass denovers Diosbus & Vicibus. And as to the trampling and eating the Grasfs with their Cattle, and to the Subverting and Spoiling of other Grasfs with Waggons &c. and to the Digging in the said Close from such a Day to such a Day, the Defendants demur'd, because the several Continuances of these Trespasses were several Trespasses by themselves, and ought not to be declared upon with a Continuando; but Curia contra. And it items that these Words, Diversus Diesbus & Vicibus made the Action good. But adjournatur. Raym. 396. Trin. 32 Car. 2. B. R. Nappier & al' v. Curtis.

7. Trespass for breaking his Close, spoiling his Grasfs, and taking up and carrying away 200 Potts field in the Ground, Continuando tranfgrellion predic. to such a Day; there was a Verdict for the Plaintiff, and intire Damages and Judgment for the Plaintiff. Error was brought, and it is said that there could be no Continuando as to the Potts; but Curia contra; for when the Continuando is De tranfgrellion predic generally, and the Trespasses conflit of diverse Parts, some whereof may be with a Continuando, but others not, the Continuando refers only to such of which the Continuando may be, and not to the others; but had it been of the Potts particularly, it had been otherwise. And Judgment was affirmed by all the Court. 3 Lev. 93. 94. Mich. 34 Car. 2. Gillam v. Clayton.

8. Trespass for breaking his Close, spoiling his Grasfs, and taking up, and pulling down a Wall 2 April. 2 W. & M. with a Continuando to the 20th February 1 W. & M. The Ch. J. and Eyres held, That the Continuando is void, because it is impossible, and the Damages shall be continued for the Trespass only. Comb. 193. Patch. 4 W. & M. B. R. Horner v. Bridges.

9. Trespass for breaking his House, and taking Vigniti modius trieiti (Anglice, 4 Loads of Wheat) Continuando totam tranfgrellionem, from 27 Octob. to 27 November. Judgment was given in C. B. by Nil diet, and on Error to the B. R. the Errors adjourn'd were, that Modius signifies a Bushel, and that it is not possible to make 4 Loads of 20 Bushels; besides, the Continuando cannot be for a Month; for a Man must have some Time to rest. It was anwered that the Anglice was Surplajig, and the Continuando lhes the Taking not to be all at the same Time, but was only to have...
Trespass.

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shew how it was done; and that where a Continuando is not well laid, and intire Damages given, it shall be intended for that only which might have a Continuance. And so was the Opinion of the Court; for the Taking the Corn is laid to be on such a Day, Continuando Tranfgreffionem præedita* from that Day to such a Day, which is infensible. If it had been Continuedo Tranfgreffionem præedita generally, it had been well enough, but it is Tranfgreffionem, which cannot be for breaking the Houle. The Judgment was affirm'd. 5 Mod. 178. Hill. 7 W. 3. such, were in that Country called by the Name of Loads, and to 4 Sacks, containing 20 Bushels, were there called 4 Loads of Wheat (distinguishing it from 4 Load, without an (s)).

10. Trespass for Breaking and Entering his Cows on the 2d of April, and Tending down his Grazes, and Taking and Carrying away 10 Poplars, and 10 Load of Underwood, the said Trespasses till 27 April diversis Dibus & Vicibus continuando. It was resolved that the Continuance as to the Poplars and Underwoods was imposible, and could not be; and that where there is a Continuando of such and such Things in particular, and they lie not in Continuance, it is naught, even after a Verdict. 2 Salk. 639. pl. 8. Hill. 1 Ann. B. R. Brook v. Bihop.

a Day, A Diversi altis Dibus & Vicibus, between such a Day and such a Day, the Defendant did fe and fo; and cites to H. 6. But in this Case the Continuando is imposible; and therefore no Damages could be given for it; and the only Milkchief posible would be that of giving other Acts of Trespass in Evidence by Preteece of it; but that ought not to be suffered, and therefore not to be intended. — Com. c. 42. in an Anonymous Case 1697. in C. B. adds a Note, that Powell J. said the true Way of Proceeding is as above; for otherwise if it be laid on a certain Day with a Continuando, they can give in Evidence but one Day; (the' they may chuse their Day;) for which is done on one Day cannot be continued. And that Treby Ch. J. agreed that they may either do so, or make several Counts for the several Days —2 La. Raym. Rep. 323. S. C. accordingly.

(K) Trespass with Continuando. At what Time it lies.

If a Man be disilluced, he shall not have Trespass with a Continuando, after the Difficelin, before that he has re-entered; be- cause the Frankenthen in the Difficelin at all Times after the

Difficelin. 19 H. 6. 27. b. 79. 71. b. 

Trespass, pl. 57. says, Notes be all the Judges, that a Man shall have Trespass of a Trespass done by the Difficelin without Entry; but of Trespass done after the Difficelin, he shall not have Trespass unless he re-enters: for the Illies of the Land ought to be his who has the Frankenthen, and that he shall punish the Trespass &c.

2. But after his Re-entry he shall have Trespass with Continuando, from the Difficelin till his Re-entry. 9 H. 6. 27. b. admitted.

3. But if the Eftate of a Man be determin'd by Limitation, or Act of God, after the Difficelin or Oultier, so that the Difficelin cannot re-enter; there, for Neeceffity, he shall have Trespass with Continuando for all the Time after the Difficelin, without any Re-entry. 19 H. 6. 28. a. b.

4. As if Tenant pur Auter Vie be disilluced, and after Celfy que vie dies, he may after have Trespass with Continuando for all the Time after the Difficelin, without Re-entry, because his Entry is taken away by the Act of God. 19 H. 6. 28. b.
Trespaqs.

5. If a Lease for Years be ousted, and after the Term expires, he may have Trespaqs with Continuando for all after the Duties without Re-entry, because he cannot re-enter. 19 H. 6. 23. b.

6. But if the Entry of the Defendant be taken away by his own Act, there shall not have Trespaqs with Continuando for the Trespaqs by the Defendant, because it was his own Folly to toll his Entry.

7. As if a Man be distressed, and afterwards releases to the Defendant, he shall not have Trespaqs with Continuando after the Distress, because it was his Folly to toll his Entry by this Release; and this Release shall not entire as an Entry and Restitution in this Case. Contra * 9 H. 6. 23. b.

P. brought Trespaqs against W. and R. for breaking his fences; and eating his grasses. 15 Eliz. Continuando the said Trespaqs diversis diebus & vicibus, until the Writ purchased, which was 28 Eliz. Upon Evidence it appeared, that W. and R. had entered, and occupied for half a Year; and afterwards P. entered upon them, and occupied for a Time; and after R. entered, and after that P. entered, and after R. re-entered, and occupied it till the Day of the Writ purchased. The Question was, if this Entry by P. be not such an Interruption of the Trespaqs, that he shall be forced for every Trespaqs to have several Actions, or that one Action with a Continuando will serve for all. And the Court held clearly, that one Action of Trespaqs with a Continuando will serve for all; and it may well be brought with a Continuando. Cro. E. 182. pl. 2. Patch. 32 Eliz. B. R. Sir Francis Willoughby, and Ralph Sacheverell, v. Patrick Sacheverell &c.

(L) Trespaqs. Trespaqs in Forest, Park, Warren &c.

Trespaqs lies at Common Law for breaking his Park, and cutting his Trees. 46 G. 3. 12. b.

2. But Trespaqs for breaking his Park, and taking his Savages, not lie at Common Law. 46 G. 3. 12. b. admitted.

3. But in such Case Writ is given by the Statute. 46 G. 3. 12. b.

It seems it is the Statute. * Welsh. 1. cap. 20.

4. If A. has a Free Warren in the Soil of B. A. shall not have Action of Trespaqs Pi & Armis against B. Quere in libera Varrenna uti lavabit ejusdem, Varrenna propriament & obscurum per quod Cunulta de eadem Varrenna inquietur; but A. is put to his Action upon the Cate against the Owner of the Soil for this Tort. Ditch. 9 Car. 2. between Sir William Weston Knight Bishop Bishottson of Castleman in Ireland, and others Plaintiffs, and John Staples and others Defendants, adjudged per Curiam. Intratur. Ditch. 8 Car. Rot. 1727. Myle.

5. Trespaqs
5. Trespass. Where a Damam shall interdict. It was objected, that the Writ ought to be Where a Damam shall Domesticam interdict; for, of Savage Beads he shall not have Recovery, unless he supposes that he took them in his Clofe or Park, or Warren or Chase. And afterwards the Writ was abated. Sec. Fitzh. Tit. Briet, pl. 564. cites Trin. 43 El 3. 4.

6. Trespass. Where Warrenam interdict apud W. & Cuniculos cepit & aportavit. It was objected, that the Writ should be Et in codem Cuniculos cepit & aportavit; as in Trespass of Goods carried away, he shall say Et ibidem bona sua cepit; but the Writ was awarded good. Fitzh. Tit. Briet, pl. 563. cites Patch. 43 El 3. 13.

7. Trespass against 2 for Hunting in his Park, and killing 2 Deer; both pleaded Not Guilty; and the one was found guilty, and the other acquitted. And the Plaintiff prayed Damages according to the Statute; and the Court Opinion was, that he shall not have it, because he did not bring his Action upon the Statute. Br. Action for Le Statute, pl. 6. cites 9 H. 2.

8. In Trespass for entering into a Park, Warren &c. it is no Plea to say it is no Park or Warren; but he must plead Non cul. and give the Master in Evidence. F. N. B. 86. (L.) in the new Notes there (1) cites 10 H. 6. 16. 19 H. 8. 9. And says, that therefore it is held clearly, that if one has a Warren, if be enclosed or impark without the King's Licence, and another hunts there, and he brings Trespass of Parco facto, the other may plead Non cul. and give this Master in Evidence; for none may have a Park without the King's Grant, or by Preemption. Note also, the Plaintiff in this Writ does not make any Title to the Park in his Count; and therefore it is no Plea, that he had no Park by Preemption or by Licence; for how can Judgment be given on a Title where none is alleged, and cites 18 H. 6. 21.

(L. 2.) Trespass for taking of the Wife. [And Pleadings.] Fol. 531.

1. In Trespass de uocre abdutct cum bonis viri. Never accoupled in Lawful Matrimony, is no Plea; because it is not lawful to take her, if it be a Marriage in Fact. 9 D. 6. 34 B.

2. But the Defendant may say, that the Pene was espoused to him before he was espoused to the Plaintiff, by which he retake his Pene. 9 D. 6. 34 B.

3. Writ. 2. 13 El. 1. cap. 34. Of Women carried away with the Goods At the Con- of their Husbands, the King shall have the Suit of the Goods so taken away.

This is also prohibited by the Statute of Writminder the 1 cap. 13; and a further Punishment inflicted than was at the Common Law; and therefore in the original Writ de Uxore abdutct cum bonis viri, it is concluded, Contra formam Statutis in Hujusmodi causis praevista, meaning the said Statute of Writm. for this Act of Writm. 2. extends only to the Suit of the King; and if the Writ be brought at the Common Law, omitting these Words, Contra formam Statutis, then it is St A. secerti &c. tuno pine &c. sed quad &c. But if contra formam Statutis be added, then the Writ is St A. secerti &c. attaches D. habet quod cum habet &c. 2 Inf. 454.

The Statute of W. 1. 13 El. 1. cap. 13. enables any Person to sue within 20 Days; But if no one commences the Suit within that Time, the King shall sue; and such are sued incapable shall suffer 2 Years Impri mement, and make fine at the King's Will; and if they have not whereof, they shall be punished by larger imprisonment, as the Trespass requires.

Note, The Party shall not have the Punishment enjoined by the Statute, but where he is first by a Writ that makes mention of the Statute. F. N. B. 59. (257) in the new Notes there (d) cites 9 H. 6. 25.

2. Hawk. Pl. C. t. 5. cap. 23. 8. 2. says, that this Statute of 5 El. 1. cap. 13. is repealed. 5 Y. 

* The
Trespass.

* Tho' the Word in the Statute is (Mulieribus) yet that is the same as to fly (Uxoribus,) for of ancient Time Mulier was taken for a Wife. 2 Inst. 424.

If the Wife be taken away, and after is divorced, or if she die, yet the Husband shall have his Action de Uxore abducta cum bonis vitri; for in this Action he shall not recover his Wife, but Damages; and he cannot have an Action for taking her away as his Servant, because the Law gives him an Action in another Form. 2 Inst. 424.

Where a Man marries a Wife before she is of the Age of 12 Years, and after she comes to 12 Years, and before she marries another Man, and also after she is a Bride, and not before, the Action shall not be for Trespass de Muliere abducta cum bonis vitri; for it is not properly a Marriage till the affinities. Brooke makes a Quare of the Action; for it seems that it shall be intended a Marriage till the affinities. Br. Trespafs, pl. 426, cites 47 E. 5.

† S. P. mention'd 2 Inst. 434. But Lord Coke says, he holds the Law to be contrary; for she is Uxor till Disagreement.

The Plaintiff must in his Count find the Goods in certain. 2 Inst. 435.

Albeit the Words of the Writ be Repair, yet here it is taken for a violent taking away, and not when Civil Knowledge is had; so as this Action may be brought against Women as well as Men. 2 Inst. 435.—And it being affirmed for Error, because it was said (cepit & abductis) where it was objected that it ought to have been (rapit) and that fo is the Reporter of Writs brought in such Cases. The Objection was disallow'd, because it may be both Ways. And Judgment was affirmed. Cro. J. 538, 539. pl. 6. Trin. 17 Jac. B. R. Hyde v. Seyffor.

† As albeit the Words be, that the King shall have the Suit, yet may the Husband also have his Action, as is aforesaid. 2 Inst. 435.

4. Trespafs de Muliere abducta & rapta cum bonis viri aportatis, against Baron and Feme, and others; and well against the Feme; for one Feme may affect and aid to the Recovery of another Feme, and may carry away the Goods; and there it is agreed, that it is no Plea that the Plaintiff and the Feme are divorem. for he is not to recover his Feme, but Damages; and if she was Feme tempore &c. this faileth. Br. Trespafs, pl. 43, cites 43 E. 3. 23.

5. Trespafs of taking his Feme. Little said. Actio non; for a Debate was between the Plaintiff and his Feme, by which the Plaintiff gave Licence to the Defendant to take his Feme to his House, which he did accordingly, to treat the Feme to be amiable and well-disposed to her Baron. Judgment &c. Laiton said, This is no Plea; for it is not lawful to take the Feme against her Will. But per Markham Ch. J. it is lawful against the Baron, Plaintiff, who gave the Licence. And so to carry his Feme from one Place to another, by which the other traveled the Licence. Br. Trespafs, pl. 294, cites 1 E. 4. 1.

6. Trespafs of taking his Feme and Goods, and said, that the Feme pray'd him to put her upon the Horse, and to carry her to Westminter, to sue a Divorce between her Baron and her, and he did so. Per Conisby, This is a good Plea. And per Fineux, to sue a Divorce is good Caue for Discharge of Conscience. And adjournat. Br. Trespafs, pl. 440, cites 20 H. 7. 2.

(L. 3.) In what Cases it lies for intermeddling with the Feme.

1. A Man may aid a Feme who falls upon the Ground by a Horse; and so if he be sick; and the fame if her Baron would murder her; Per Conisby. And the same, per Rede, where the Feme would kill herself. And per Fineux, a Man may conduct a Feme in a Pilgrimage. Br. Trespafs, pl. 442, cites 20 H. 7. 2.

2. Trespafs for carrying his Feme, without the Assent of the Baron, to L. to sue a Divorce. Per Fineux, the Action does not lie, for it was lawful for the Defendant to carry her; for it shall be intended, that there was Cause of Divorce. Br. Trespafs, pl. 297, cites * 12 H. 1. 3. 5.

3. And...
3. And where the Feme is going to Market, it is lawful for another to see the suffer her to ride behind him upon his Horse to Market; Per Fineux. Br. Trespaus, pl. 207. cites 12 H. 1. 37.

4. And if a Feme says, that she is in Jeopardy of her Life by her Father, and prays him to carry her to a Justice of the Peace, to obtain a Warrant of the Peace, he may lawfully do it; and a Man may lawfully sue to have Judgment in the Law; Per Fineux. Br. Trespaus, pl. 207. cites 12 H. 1. 37.

5. And a Man may lawfully pursue to reverse a Judgment; per Fineux. So if a Feme a Man to aid her to reverse the Ouster, it is lawful for him to aid her; Per Fineux. Br. Trespaus, pl. 507. cites 12 H. 1. 37.

6. Where my Feme is out of her Way, it is not lawful for a Man to take her to his House, if she was not in Danger of being lost in the Night, or of being drowned with Water; per Bradnell. Br. Trespaus, pl. 213. cites 21 H. 7. 27.

(L. 4.) Quare Filium & Haredem rapuit &c. or other Injuries done to a Child.

1. Trespaus de Filio & Harrede querentis abducent &c. & capo vi & armiss. Skrene prays'd Judgment of the Writ; or it is not said Cujus maritigium ad ipsum pertinet. Per Hanke, It is intended by the Law, that the Marriage belong'd to him; and adjournatur. But it seems, that he shall lay as Skrene said, for otherwise it may be that the Father had married him before the Taking. Nota. Br. Trespaus, pl. 191. cites 12 H. 4. 16.

that the Writ shall be Cujus maritigium ad ipsum pertinet. And adjournatur.

2. Trespaus against W. T. quare R. Filium fium & Hered' apud T. inventum rapit & abduxit. YetERTON protestando, That he such a Day delivered' the Infant to his Father, pro Placito dicti, that it was moved in * The other Editions are The Other. The other Editions are (il faut que) but are not seen by the * Br. Garde, or that he shall, for otherwise a Father may be seen to be Senti to be taken, as lawfully he might. Per Paion, If a Man sees an Infant in the Street in Peril of Death, and takes him and delivers him to his Father, this is no Tort. But per Newton, If a Man ravishes my Son, and after re-delivers him, it does not excute the Rape; but the Cales are not alike. And per Portington, It is not lawful for any to take an Infant out of the Custody of a Nurfe to whom he was put by the Father. But Newton said, That if an Infant is put to Nurfe, and I see him in Peril of a Deg, or of a Horse, and I take and deliver him to the Father, this is no Tort, by which the Irrui is good above, and therefore it reeds; quod nota. Br. Trespaus, pl. 147. cites 21 H. 6. 14.

3. Every Abducter, Male or Female, shall have Trespaus, or Writ of Ravishment of Ward, against every stranger who, of his own Tort, ravishes the Heir Apparent of any Person, by the Heir Male or Female; and the Writ shall lay, Cujus maritigium ad ipsum pertinet; and it matters not of what Age the Heir Apparent is in such Case. 3 Rep. 38. by Hill. 34 Eliz. B. R. Ratcliff's Cafe.—Cites 32 E. 3.
Trespass.

4. But such Action did not lie against Guardian in Chivalry, but only for the Father; who might have Action against such Lord, where his Son and Heir Apparent was ravill'd by him. Ibid. cites Litt. S. 114. and 13 E. 3. 25. 30 E. 3 17. 29 E. 3. 7. & 19.

5. In Trespass for injuring one on his Son, an Infant, under the Age of Discretion, and breaking his Thigh-bone, whereby the Plaintiff was at great Labour and Charges in the Cure &c. Upon Not Guilty pleaded, the Plaintiff had a Verdict, and Damages 51. It was moved in Arrett of Judgment, because the Plaintiff sustaine'd no Wrong, and he was not compell'd to expend any Money, or procure his Son's Cure. Raymond thought the Action did not lie for the Father, it not being led per quod Servitum annuit, nor that the Child was leis capable of procuring a Fortune with a Wife; but that the Child should have brought the Action. But Mountague Ch. B. and Atkins clearly for the Plaintiff, and Judgment was given for him. Raym. 259. Paich. 31 Car. 2. in the Exchequer. Hunt v. Wotton.

(L. 5.) Threatning the Plaintiff's Tenants, so as they depart. And Pleading.

In Trespass Quare tales & tautas minus Tenentibus suis imposuit ita quod de Tenuris suis receffentur, the Plaintiff ought to declare their Tenures, and how much Land they held, and of what Value, by reason of the Recovery of Damages; per Cur. Br. Trespals, pl. 144. cites 21 H. 6. 31.

2. In Trespass of menacing his Tenants, per quod receffentur a Tenementis suis, it liues to justify the Menacing, without answearing if they receffentur a Tenementis suis &c. Br. Faux Impriuiment, pl. 3. cites 35 H. 6. 54.

3. Action upon the Cafe Quare Servientes, or Tenentes suos Verberavit, per quod a Servito, or Tenuris suos receffentur, is a good Writ, without shewing the Names of the Servants or Tenants, where it is plural. Contra if it were Servientem or Tenentem singularly; Per Choke. Br. Brief, pl. 375. cites 14 E. 4. 7.

4. Trespass of Menace of his Tenants at Will of Life and Member, ita quod recefferunt de Tenuris suis of the Plaintiff, to the Damage of the Plaintiff 101. Yaxley said, The Defendant was seized till by the Plaintiff dispossessed, who leaped at Will; and the Defendant re-enter'd, and paid to the Tenants. That if they would not depart, that he would sue them as the Law wills, which is the same Menace &c. and to the Menace of Life and Member, Not Guilty. And this Menace to sue them, if they would not depart, is a good Plea; per tot. Cur. For he does not menace them to sue them for their Possession, which they had before his Regress; and therefore this is in Nature of Menace; and to the Life and Member he pleads Not Guilty, and to the Plea is good in toto. Br. Trespals, pl. 283. cites 9 H. 7. 7.

(L. 6.) Beating
(L. 6) Beating Servants. And taking them out of their Service. And Pleadings.

1. Trespass of taking his Servant Vi & Armis; It was objected that he had not counted How the Servant was out of his Service; and yet well; It seems that this shall come in Evidence. Br. Trespass, pl. 196. cites 39 E. 3. 39.

2. In Trespass of retaining his Servant who departed &c. the being in the Service of the Plaintiff is not traversable, but the Retainer in Service. Br. Travers per &c. pl. 319. cites 41 E. 3. 29.

3. Trespass of his Servant and certain Sheep taken Vi & Armis; the Defendant said that he found him Vagrant and retain'd him. The Plaintiff said, that he retain'd him first by a Year, within which Term the Defendant procur'd him to depart, which he did, and the Defendant retain'd him; and the Opinion of the Court was that the Replication is contrary to the Writ. And this is not Trespass Vi & Armis; by which the Plaintiff said, that he procur'd him Prift. Tem. said, you ought to traverse the Vagrancy, &c. and Allocatur, by which the Defendant maintain'd his B-bar aliqua loc., that be took him, and so to Iflu. And per Thinn and Culpeper the Writ lies well. Contra Hank and Hill. Br. Trespass, pl. 92. cites 11 H. 4. 23.

4. Trespass of taking a Servant retain'd; the Defendant said that before Br. he was retain'd with the Plaintiff he was retain'd with him, by which be pl. &c. cites found him Vagrant, and took him; and the Plaintiff said that he was not first retain'd with the Defendant. And per Martin this is not good Pleading; for the Plaintiff shall lay in his Replication, that such a Day he was retain'd with him, before which Day he was not retain'd with the Defendant. And Roll. did fo. Quære of this Manner of Pleading. Br. Iflues joins, pl. 2. cites 3 H. 6. 31.


6. Where a Man beats him who serves me at Pleasure, or an Infant F. N. B. 912 whole Covenant is void, yet I shall have an Action upon the Cafe for the Battery for the Lofs of my Service. And the same Law where I retain a Man who is beat &c. And here it lies for the Matter Vi & Armis. Br. Action for the Cafe, pl. 35. cites 21 H. 6. 8. and 9. and the 4. 2. per. Register 102. and 182.

* Br. Labourers, pl. 29. cites N. C. In Trespass of beating his Servant, the Plaintiff need not to Count of Retainer; for if a Man serve me at his Pleasure, and he is beaten by which I lose his Service, Trespass lies by me. good nota. Br. Trespass, pl. 14. cites 22 H. 6. 42.

In Trespass for beating his Servant, it was held not necessary, that he be a hired Servant as the Statute of Eliz. declares &c. to have this Action; but if hired for any Time certain, it suffices; and note the Servant in this Cafe was only to help to load Corn, and was not entertain'd in the Plaintiff's House, but went to his own House every Night. And holden the Action not maintainable for beating such a Servant, Clayt. 153. 174. pl. 244. Summer Aff. 1629. before Thorpe J. Linley v. Baxter. And Sergeant Yelverton ibid., a Man may be laid a hired Servant within the Statute of Eliz. though the hiring be for les. Time than a Year. Ibid.

7. In Trespass of Battery of his Servant, per quod Servitium siue in Trespass amissi &c. It is no Plead that Non amissi Servitium Servientis predictæi, for by this the Battery is contenf'd, and then the Law implies that the Muller taken, it is a good Plead.
Trespass.

that he was not his Servant at the Time.


* S. P. Trespafs, pl. 54. cites 34 H. 6. 28.45.

8. The Mafter shall not have Trespafs of Battery of his Servant, if he does not lay * Per quod Serventius Serventis Sui amittit &c Contrary to Battery of Venue Coerati or Villain, for there the Baron and Lord shall have Action. Per Frowike, Kingsmill, and Fihier, Justices. Br. Trespafs, pl. 442. cites 20 H. 7. 5.

In Trespafs for breaking his Cloke, and beating his Servant; upon Not guilty plead-
ed, the Plaintiff had a Verdict, and the Jury atti'd Intire Damages; and because the Plaintiff had no Cause of Action for Battery of his Servant, he not having aver'd that he had Service; it was ruled that the Plaintiff. Nil capat per billiam. 5 Rep 108 in Sir H. Conftable's Case, cites it as adjudg'd, Mich. 14 & 15 Eliz. B. R. Poolty v Osburn. — S. C. cited to Rep. 178 b in James Osborne's Case.


Bendil. 17. 9. W. A. brought Trespafs against W. S. and others, and the Writ pl. 217. S. C. was Quare Clausum iregerant & in Homines & Servientes suis infilutum fecerunt &c. and counted that the Defendants in Homines & Servientes suas, viz. in Scouldam W. A. filiam Queritatis ut Ufusdam Clerk & Win-

fied Copin Servientes suis infilutum tecerunt &c. It was found for the Declaration of the Writ; because the Writ is in Homines &c. infilutum icerunt, and the Decla-

ration is of one Man only, and the Writ was abated. Bendil. at the End of Kelw. 211. b. pl. 30. Mich. 8 & 9 Eliz. Armitced v. Steedman.

— And 15. pl. 28. S. C. accordingly, but as to the Declaration not mentioning Men, the Reporter says Quare of this Reason; for Homines is a Word which contains in it as well the Female as the Male, but what these Words Homines has intend, and what shall be the Sentt thereof, Quare.

Gibl. Hift. 10. Trespafs by Bill filed Hill. 18 Jac. that the Defendant 20 Jan.

17 Jac. assaulted and wounded his Servant per quod Servantius mistress pag-

num tempus silecat a predicto 20 Mart. 17 supra dictriu. Martii tempus

pros' sequent' perdita ; Upon nihil dicte, a Writ of Inquiry found Dam-

ages 101. It was moved that the 20 March was a Misprision, and

should have been 20 Jan. till the 1 March. But the Court held it not
good, nor aided by Intendment. And here the Lob of the Service is

the Point of the Action which ought to be certainly shew'd; for that

only enables him to the Action, and if the Time be not expresst there-

in, the Count is not good, and therefore the Silect and what comes af-

ter it is materiel; which being ill alleg'd, the Count is not good. And


B. R. Hanbury v. Ireland.

and the Plaintiff having laid a different Month from the Battery, there is nothing in the Record to de-

termine the Court to the 20th of January, and to reject the Word March as repugnant, and if the Lob of the Service stands on the Month of March, viz. 17 March following, it takes 5 Months of the Time elapsed, after the Time of the Action brought, for which the Jury was not authorized to give Damages.

11. Trespafs Quare? Vi & Armis J. S. being the Plaintiff's Servant capt & obtusat at D. in Efex; the Defendant pleaded that J. S. was Va-

grant into the same County, and that not having Notice that he was another's Servant, he retain'd him &c. Hobart feem'd to think the Plea good, and

Winch feem'd to agree; and by Hobart and Hutton, an Action for re-

ceiving and entertaining a Servant may not be laid to be Vi & Armis. Winch 51. Mich. 20 Jac. C. B. Anon.

12. No
(M) Trespass. Who shall have the Action, [In Respect of Special or General Property.]

1. He that has Goods to agit may maintain a Trespass for taking any of them. 48 E. 3. 20. b.

Br. Trespass, pl 67, cites S. C. and the Defendant said, that the Beasts were the Property of J. N. who sued a Replevin and had Deliverance; the Plaintiff replied that J. N. agitated them to him before the taking. It was objected that the Writ should be in Custodia vestra existendi, but it was answered that there is no such Writ in Chancery, tho' the Writ of Execution shall be so, and that in this Case neither the one or the other may have the Writ; but per Persif. when the one recovers, the Action of the other is gone; and afterwards Issue was joined whether they were agitated to the Plaintiff or not.

2. He who has Beasts for a Year to feed his Land, may have General Trespass against a Stranger, if he takes them within the Year. 11 D. 4. 24. b.

3. So he shall have Trespass against the Lessor himself, if he takes them within the Year. Contra. 11 D. 4. 23. b.

Goods at a certain Time, shall have a General Action of Trespass against him that has the General Property; and upon the Evidence Damages shall be mitigated. 15 Rep. 69. in Case of Lyjoun v. Smith, cites 21 H. 7. 14.


5. The Agitor of the Goods may have Trespass for the taking of them. 48 E. 3. 20. b.

6. If the Lord seizes the Goods of his Villein, and leaves them in his Possession to his Use, and after the Goods are taken out of his Possession, he shall not have Trespass, because they are the Goods of the Lord. 11 D. 4. 1. b. (It seems because he is not chargeable over.)

7. The Bailee of Goods to keep, shall have Trespass against any who takes them out of his Possession. 14 H. 4. 28. b.

Clearly the Bailee, or he that has a special Property, shall have a general Action of Trespass against a Stranger, and shall recover all in Damages, because he is chargeable over. 15 Rep. 69. cites 21 H. 7. 14 b.

8. If a Man takes my Servant out of my Service with my Goods, Trespass lies of Goods carried away, and Servant taken. 14 H. 4. 32. b.

9. Where a Thing certain is devised, and a Stranger takes it, the Devisee shall have Trespass before the Livery of the Executors. But contra of a Thing incertain, as a 3d Part of the Goods &c. Br. Trespass, pl. 25. cites 27 H. 6. 8.

10. If Executors are, and the one has the Goods, and a Trespasser takes them, and the Executor from whom they were taken dies, the other Executor shall have Trespass; for the Possession of the one Executor is the Possession of both. Br. Trespass. pl 346. cites 20 E. 2. 18. Per Tresmial Justice.

11. If I buy Goods to a Man who gives or sells them to a Stranger, and the Stranger takes them without Delivery, I shall have Trespass; for by the Gift or Sale the Property is not changed, but by the Taking; but if the Bailee delivers them to the Stranger, I shall not have Trespass; Per Pineux and Tresmial.
Trespass. What Person, in respect of Estate, shall have the Action.

(N) Trespass. What Person, in respect of Estate, shall have the Action.

He shall have the Action in respect of his Possession. 13 Rep. 69. Per Cur. in Case of Eydon v. Smith, cites 50 H. 6. Trespass is. [But the sense seems not right there] and Firth. Tit. Trespass, pl. 10, which cites S. C. says he cannot have the Action, because he cannot intrude himself to the Land by such Sufferance; for he cannot make it his.

Firth. Tit. Trespass, pl. 10, cites Trin. 30 H. 21 C. 3. 34.

6. that he may. — 13 Rep. 60. Per Cur. in Case of Eydon v. Smith, 21 H. 7. 15, and 11 H. 4. 25. That he may have such Action.

Trespass, B. R. of a Cliff broken, and Grafs spoil'd, Transgression predict. continuand. by 8 Years. The Defendant pleaded in Frankominc]]; the Plaintiff said that before that the Defendant any Thing had, I. was theri to; and by his Term of Life, and A. leased to H. all his Estates, and H. leased to the Plaintiff at his Will, by which he was professed till the Defendant cut him, and defendant H. and did the Trespass, upon whom the Plaintiff re-entered, claiming his Estate, and brought the Alien of Trespass, and aver'd the Life of H. The Defendant maintained the Bar, and travers'd the Disjunct, and to to His, and found for the Plaintiff; and the Tenant aledged in Avis of Judgment, intimated the the Tenant as H, who by suffered cannot re-enter; for by the Disjunct the Will of the Lease is determined, and the Lease cannot have any Alien to recover his Interest; for he cannot have Affid. nor Ejectman firma, because his Estate is not certain, and also he has not aver'd the Life of H. his Lesfo, and yet the Plaintiff recovered by Award. And so it items that Tenant at Will, who is suffer'd by Disjunct, may have Disjunct without Commandament of his Leesor, and that the Life of H. shall be intended without Averment, and if H. be dead, then the Plaintiff is an Occupant. But by the Reporter the Life of H. ought to be aver'd, but Dubia, within after. And he that this Action was not only for the first Entry, but for the Continuance of the Trespass after the Entry; for it is Transgression predict. continuand. by 8 Years. Br. Tit. Trespass, pl. 22. cites 38 H. 6. 27.

So if Lesfor at Will be suffer'd, and the Estate of his Lease determines by his Death, now the Lesfor shall have Trespass with a Commandando without Regrets; for when he may not enter, the Law supplies it, and the mean Profits and Emblems belong to him; Per Gawdy J. Goldsb. 135. pl. 63. Hill. 43 Eliz. cites 38 H. 6.
Trespass.

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Lessees at Will may have Trepsa against if their desir but not against any one that enters by colour of title. 


3. If a Man subverts the Land in Lese at Will, the Lesees may have a Trespass against him, and shall have Damages for the Profit. Br. Trespa, cites 151. pl. 264. cites and the Lessor may have other Trespass, and shall recover Damages for Destruction of the Land. 19 D. 6. 45.

4. If Trees are cut upon the Land of Tenant at Will by the Custom, br. Trespa, he may have Action of Trespa. 2 D. 4. 12. And the Lord also other Trespa. cites S. C. and he shall recover his Damages by Judgment, tho' the Franktenement be another's.

5. The same Law is of a Lese for Years. 2 D. 4. 12.

6. Lesees for Years shall have Trespa for Trespa done upon the Land. 18 D. 6. 1. 21 C. 3. 34.

7. If a Man beats my Servaunt, I shall have Trespa, and the Servaunt another Trespa, Diversis Rerpectibus. 19 D. 6. 45. Br. Trespa, pl. 151. cites S. C.

8. If Baron leaves for Years the Land of the Feme, and after Feme dies, the Heir of the Feme shall not have Trespa against the Lese before Entry. (For the Lese is Tenant at Sustancce.) 9 D. 6. 43.

9. A Commoner shall not have Action of Trespa of Grafs trodden and spoild, because tho' he has Common there, yet the Grafs is not his. 22 Inf. 43. Cuius.

10. Where the King has the Profits of any Land by Reason of Outlawry in Action Personal, and Damage is done in going over the Grafs or Corn, he shall have Action of Trespa; for he has an Interest in the Land, and yet he has not the Land itself. Br. Trespa, pl. 172. cites 15 H. 7. 2.

11. Guardian in Knight Service, who has Custodiam Terrae, shall have Trespa of cutting down the Trees of the Heir that has the Inheritance. 13 Rep. 69. Per Car. in Cae of Newdon v. Smith, cites 2 H. 4. 12.

12. Trespa Vi & Armis does not lie for Locking or Breaking a Seat in 2 Roll Rep. the Obueal, in which the Plaintiff claims no Interest, but only Sedere 142. S. C. there; but otherwise if he conveys to himself therein; By the Opinion of all. Palm. 46. Mich. 17 Jac. B. R. Dawtrie v. De.

13. It has been much doubted whether a Bargainie before Actual Entry can maintain an Action of Trespa. Arg. Vent. 361. Hill. 33 & 34 Car. 2. B. R. in the Cae of Perry v. Bowes.

14. Trespa is founded only on the Possession; so that he in Receision shall not have Trespa against a Stranger for drowning the Land and rooting the Trees. 5 Lev. 209. Hill. 36 & 37 Car. 2. and 1 Jac. 2. C. B. Biddlesdor v. Onflow.

15. If a Peron preach in a Parish Church without Leave of the Parson, he is a Trespaier; Per Holt Ch. J. 12 Mod. 420. Mich. 12 W. 3.

B. R. Anen.
Trespass.

See (G. 2) Sheriff (b. 2) (O) Trespass. Against whom it lies. In what Cases against Sheriff, or other Officer of a Court.

If a Bailiff of a Court upon Summons to him directed, attaches the Party by the Goods of another Man, Trespasses lies against him; for he ought to take Justice of the Goods of the Party. 11 H. 4. 91.

So if he attaches the Servant by the Goods of his Master. 11 H. 4. 90. b. adjudged, being in Possession of the Servant. 13 H. 4. 90. b. adjudged Same Case.

The same Laid, if a Sheriff upon an Execution takes the Goods of a Stranger. 11 H. 4. 90. b.

But if he attaches the Defendant by the Goods of another Man being in his Possession, it is justifiable. 11 H. 4. 90. b. for he is chargeable over.

If the Sheriff takes one Man for another, False Imprisonment lies against him. 11 H. 4. 91.

If the Sheriff, upon a Replevin filed by J. D. delivers the Beasts of a Stranger, upon shewing of J. D. the Owner of the Beasts may have Action of Trespasses against him. 14 H. 4. 25.

Whether the Beasts are the same, on Pain of rendering Damages. Br. Notice, pl. 23 cites 14 H. 4. 24.

If the Sheriff comes to make Replevin of Beasts impounded for another Man's Soil, if the Place be implored, and has a Gate open in the Lane Inclosure, he cannot break the Inclosure and enter thereby, where he may enter by the open Gate. 20 H. 6. 23.

But if the Owner hinders him, so that he cannot go by the open Gate for fear of Death, he may break the Inclosure, and enter there. 20 H. 6. 23.

If the Sheriff makes a Warrant to the Baily of a Franchise, to take the Goods of a Man in Execution, and he mistakes the Goods, and takes the Goods of another Man, the Bailies are Trespassers, and not the Sheriff. 9. 7. A. B. Per Curiam.

If a Man be arrested by the Bailies of the Sheriff, and thereupon he shews them a Superfested to discharge him, and the Bailies refuse it, and detain him after Silver, he shall have False Imprisonment against the Bailies, and not against the Sheriff. 17 I. 2. Per Curiam.

If Execution be executed upon Goods by Force of a Judgment, and after the Judgment is vacated, yet neither the Sheriff or his Alliata shall be punish'd by Trespass; tho' the contrary was adjudg'd in the Case of Turner v. Felgate. 2 Sid. 125. But this Judgment was afterwards disallow'd. See 1 Sid. 272. in Case of Baily v. Running, and Lev. 95. where the Case of Turner v. Felgate is cited by T. Adam and Wincham J. who said they remember'd it to be adjudg'd.

(P) Trespass
(P) Trespass and False Imprisonment. Against whom, as aiding, or Allistant to Officers.

1. If a Man sues a Plaintiff in a Court, and upon the Attachment the Bailiff takes the Goods of a Stranger, without the Shewing or Procurement of the Plaintiff, Trespass does not lie against him; for he is no Party to the Tort. 1 D. 4. 91. 13 D. 4. 2.

2. The same Law it is, where one Man is taken for another by the Sheriff or supra. 11 D. 4. 91. b. False Imprisonment does not lie. 13 D. 4. 2 b.

3. But otherwise it is if he procures the Bailiff to take those Goods, or fluxes them to him. 11 D. 4. 9. 4. 90 and days, that in such Case both are Trespassors. (And the 49 here seems misprinted for 90)—Br. Trespass, pl. 99 cites S. C. accordingly.

4. So it is if he procures the Sheriff to take one Man for another, or fluxes them to him. 11 D. 4. 91. 13 D. 4. 2 b.

5. So in a Replevin, if the Plaintiff fluxes the Beasts of a Stranger see (O) pl. for his own Beasts, and the Sheriff takes them, Trespass lies against the Plaintiff. 14 D. 4. 25.

6. The Plaintiff in a Replevin may flux the Entry into the Close of the Defendant, to flew the Beasts to the Sheriff to make Delinquent. 3 D. 6. 37. b.

7. Trespass against Baron and Feme of taking of a Horse, it was said for the Baron that he brought Plant in the Court of C. against the Plaintiff, and the Bailiff attacked the Horse, and he came in Aid of the Bailiff; and for the Feme it was said that the same in Aid of the Bailiff; and held a good Plea for the Feme as well as for the Baron, by which the Plaintiff said that they took De fon tort Desmène, abique tali Caufa; and the others e contra. Br. De fon tort &c. pl. 4. cites 41 E. 3. 29.

8. Trespass, the Defendant justified the Imprisonment by Virtue of a Precept to arrest the Plaintiff, which he did, and the other Defendant came in Aid of him; Queo Nunc, the coming in Aid of an Officer is a good Plea.
Trespass. Who shall be said the Trespassor.

2. But it seems, if my Wife puts my Beasts into another's Land, I myself am Trespassor, because the Fences cannot gain a Property from me. Contra 12 H. 7. Kelloway 3. b.

3. If several come, and the one does the Trespass, and the others do nothing but come in Aid, yet all are principal Trespassors, and shall render Damages, and shall be imprisoned; Nota. Br. Trespass, pl. 232. cites 22 All. 43.

4. If a Man enters into Land as Defender or Trespassor to my Wife, and I agree to it, As by taking of Profits after, or by granting of it over &c. I am by this principal Trespassor, and Action lies against me leaving out the other, and there the Plaintiff shall recover; Quod nota. Br. Trespass, pl. 256. cites 38 All. 9.

5. He who commands a Trespass to be done, or agrees to a Trespass, Entry &c. done to his Wife by any without his Command, is principal Trespassor; for in Trespass there is not any Accrual. Br. Trespass, pl. 113. cites 38 E. 3. 18.

6. Hue and Cry is a good Cause to take a Man upon Suspection of Felony, and if it be made without Cause he who made it shall be punished, and not the other who arrested the Man. Br. Trespass, pl. 213. cites 21 H. 7. 27.

7. A. brought an Action of Trespass against B. Pedibus ambulando; the Defendant pleads this special Plea in Justification, viz. That he was carried upon the Land of the Plaintiff by Force and Violence of others, and was not there voluntarily, which is the same Trespass for which the Plaintiff brings his Action. The Plaintiff demurs to this Plea; in this Case Roll J. said, that it is the Trespass of the Party that carried the Defendant upon the Land, and not the Trespass of the Defendant; As he that drives my Cattle into another Man's Land is the Trespassor against him, and not I who am Owner of the Cattle. Styl. 65. Mich. 23 Car. Smith v. Stone.
(R) Trespass. Against whom it lies.

1. Baron may have Trespass against a Feme and others for Revill- Fresh Tit. ment of his Feme; for the may be affenting, 43 S. C. 3. 23. Action for
le Statute, pl. 12, cites S. C.— Ibid. pl. 22, cites 44 Aff. 13. In the same Words with pl. 12. and cites 44 Aff. 15. but it is a Mistake; for that it is quite a different Point.

2. He that has a special Property of the Goods at a certain Time, shall have a general Action of Trespass against him that has the general Property, and upon the Evidence Damages shall be mitigated. 15 Rep 69.

Per Cur. in the Case of DEPEN v. SMITH, cites 21 H. 7. 14. b.

3. Trespass lies against a Servant who is intrusted with his Master’s Goods, it he takes them away; and if he imbezles them, it is Felony; by Name of Per Anderson. Goldsb 72. pl. 18. Mich. 29 & 30 Eliz. Bloffe’s Café. Gold v. Larpent.

and the Court were clear of Opinion, that Trespass & Armis lies against such Servant.—Ow. 52. S. C.— see Master and Servant (M. 2) pl. 5.

4. There is a Difference between an Interest and Authority; for if a Man has Authority to do a Thing in general, an Action of Trespass lies; but where a Man has an Interest during such Time, his Mistake shall not be punished by a general Writ of Trespass. But in Case of a Tenant at Will, he cuts down the Trees, or pulls down the Houses, a general Action of Trespass lies; for thereby his Interest is determined, and he is become a Stranger; for that he voluntarily had done such an Act which could not be done by his Interest, and determines his Will; Per Popham Ch. J. and Judgment accordingly. Cro. E. 784. pl. 22. Mich. 42 and 43 Eliz. C. B. in Case of the Countess of Salop v. Crompton.

(R. 2) Against whom. Commander, or Servant, or both. See (Q) pl. 5; (U) pl. 2.

1. If a Man commands another to do a Trespass, and he does it, and dies, S. P. That
Action lies against the Commander for the Trespass, and he might it lies have join’d both in one and the same Writ of Trespass. Br. Trespass, pl. 148. cites 21 H. 6. 39.


2. If I command my Servant to distrain for me, which he does, and But if I brings to me the Dilref, and I work or occupy it, Trespass lies against me, but not against the Servant. Br. Trespass, pl. 211. cites 21 H. 7. 22.

Houses, and rides upon it, Trespass lies against him, and not against me; for Trespass does not lie against him who does only a lawful Act, but against him who does unlawfully, or trespasses. Br. Trespass, pl. 211. cites 21 H. 7. 22.

6 B (R. 3)
(R. 3) Against whom. After Trespassors.

S. P. And so of Lands.
Contrary in Appeal against a second Felon, as appears elsewhere; for a Felon does not claim Property as a Trespassor does; Quod Nota. Br. Trespas, pl. 256. cites 38 Ail. 9.

(R. 4) Against whom.  Diffeifor or his Feoffee &c. Persons in by Title.

I N Trespass, the Defendant is seised, because the Prince seised the Body and Land of the Plaintiff, as Guardian by Chivalry, and granted to the Defendant, by which he entered and did the Trespass; and the Plaintiff said that his Father held the Prince in Socage, Prift, and De son tort Demesne &c. And per Cur. Because the Plaintiff acknowledges the holding of the Prince in Socage, therefore if he seised, as Guardian, and granted to the Defendant who did the Trespass, Action of Trespass does not lie against the Grantee, by which he ought to answer to the Grant made to the Defendant; quod nota. Therefore it seems that without Regress Trespafs does not lie no more than against Feoffee of Diffeifor. Br. Trespafs, pl. 46. cites 44 E. 3. 18.

2. If a Man disfifes me, and makes a Feoffment, and I re-enter, I shall not have Trespaps against the Feoffee; for he is in by Title, and no Trespassor to me, by the best Opinion. Br. Trespafs, pl. 35. cites 34 H. 6. 30.


4. But where Diffeifor commands his Servant to do an Act upon the Land, and I re-enter, Trespaps lies against the Servant, by the best Opinion. Quare Br. Trespafs, pl. 35. cites 34 H. 6. 30.

5. If the Diffeifor enters upon the Feoffee or Leafee of the Diffeifor, he shall not have an Action of the Trespapr for the same Trespaps against the Feoffee or Leafee, because they come in by Title. And at Common Law, before the Statute of Gloucester, no Damages for mean Occupation against the Feoffee or Leafee; by all the Justices. Het. 66. Hill. 3 Car. C. B. Symons v. Symons.

(S) Trespafs.
(S) Trespass. What shall be sufficient Possession to maintain the Action. [Of Land.]

1. A Man who has a Franktenement in Law, if he has not the actual Possession, cannot have Action of Trespass.
2. As the Heir shall not have Trespass against the Abator, before he has entered. 19 D. 6. 28. 6.
3. If a Man be dispossessed, he may have a Writ of Trespass for the Trespass done in the Distress, without Re-entry; for he himself was leased at the Time of the Distress, which is sufficient Possession to maintain the Action. 19 D. 6. 28. 6. All agreed.
4. But if a Man be dispossessed, he shall not have Writ of Trespass for any Trespass done by the Distessor before Re-entry, because then the Franktenement was in the Distessor, and not in the Distresser. 19 D. 6. 28. 7.
5. So he cannot have Trespass against any Stranger for any Trespass done by him after the Distress without Re-entry, because he had not any Possession at the Time. 19 D. 6. 28. 6.
6. If a Man dies intestate, and the Bishop sequesters the Goods, and J. N. Br. Ord. disseizes him, the Ordinary shall have Trespass by reason of his Possession. Br. Trespass, pl. 83. cites 7 H. 4. 18.
7. But where he sequesters by Office or Contumacy, there he has no Possession, and there he shall not have Trespass. Note, the Diversity. Br. Trespass, pl. 83. cites 7 H. 4. 18.

to the Spiritual Court: for the Ordinary, by the Possession as above, shall have Trespass; but he shall not have Debt; and yet he to whom he commits the Administration shall have Debt; for this is by Statute, which gives it to the Administrator, and not to the Ordinary, as it seems elsewhere. Br. Ordinary, pl. 5. cites S. C.

8. In Trespass the Defendant said, that A. and B. were seised in Fee to the Use of the Plaintiff, and that the Plaintiff sold the Land to the Defendant for 20l. by which he entered and made a Feoffment; and did not say whether he paid the Money, nor whether a Day of Payment was agreed between them, and then no Bargain, per Yaxely, and then this does not change an Use. But, per Fineux, it is a good Bargain, by reason that the Vende enter'd and took the Land, and made a Feoffment. But Brooke queries of his Opinion, because it is not deliver'd to him. Nevertheless he says it seems to him, that if a Man pleading that he has bought any Thing, it shall be intended a lawful Buying, without special Matter shewn to the contrary, by these Words Emitte &c. for if it he not a perfect Bargain, then Non emetat. Br. Contrasts &c. pl. 18. cites 21 H. 7. 6.

9. If Tenant for Life surrenders to him in Reversion out of the Land, to which he agrees, the Franktenement by this is immediately in him, and he is Tenant to the Action to be brought by Precipice quod reddat, without Entry; but he shall not have Trespass without Entry. Br. Surrender, pl. 50. cites 21 H. 7. 7.
10. If Lease for Life or Years cuts Timber and sells it, the Lessee may have Action of Trover or Trespass, tho' he never was parties'd of them. See Maceraine (A) pl. 3.
11. A. levies Fine to B. for Conveyance de Droit &c. Now the Conunee has Possession in Law, but not in Fact; and if before the Entry of Conunee 7. S. enters, and dies (sup), he has no Remedy, for he had no Possession in Fact, so as he might have Affile or Trespass. 2 Le. 147. pl. 142. in

Cale
(T) Trespas by Relation. What shall be sufficient Possession to have the Action by Relation [and after Restitution for Trespas done Mh.][1]

Br. Relation, pl. 46 cit. S.C.
—A. made a Will and the Plaintiff
Executor;
Administration was granted to the Defendant, who took the Goods; the Plaintiff proves the Will and then brings Trespas against the Defendant, for taking of these his Goods; for now by the Probate it is a Will, and the Plaintiff Executor from the Death of the Testator. And by the whole Court clearly, an Executor shall have Trespas Vi & Armis before Seisin, because he has a Property by being made Executor, and this Action well lies, otherwise an Administrator may trick any Executor, by getting the Goods into his Hands before Probate of the Will, and so Judgment for the Plaintiff 2. Built. 265, Nich. 12, Jac. Filer v. Young.

Br Relation, pl. 34, cites S. C.
Ibid. 24, 56, cites S. C.
S. C. cited Mo. 15, pl. 28.

If a Man abates after the Death of the Ancestor, after the Heir has entered he shall not have Trespas against the Adversary for the Trespas done before his Entry, for it cannot so relate to settle the Possession in him ab initio, where he had not any before. Contra 19, pl. 6. 28 b.

If the Testator dies intestate possessed of Goods which after his Death comes to the hands of a Stranger who converts them, and after Administration is granted, yet the Administrator may have a Trespass and

Cafe of Berry v. Goodman. Per Coke Arg. and he said, that to the Law is now taken.

12. If A. intrudes upon the Possession of the King, and B. enters upon him, A. shall not have Trespas for that Entry; for he who is to have and maintain Trespas ought to have a Possession which in such Case A. has not, nor every Intruder shall answer to the King for his whole Time, and every Intrusion supposes the Possession to be in the King; Per Anderson Ch. J. which all the other Justices agreed, except Periam, who doubted of it; and Rhodes J. said, and vouche'd 19 E. 4. to be that he cannot in such Case lay, in an Action of Trespas, Quare Clauum Suum legit. 4 Le. 184. pl. 254. Nich. 30 Eliz. in C. B. Anon.

13. He that claims an Estate by Virtue of the Statute of Uses ought to have an actual Possession before he can have Trespas, per Walmiley and Glanvil. Nov. 73. Green v. Walwyn.

14. There is an actual Possession in Law, and an actual Possession in Fact. As if a Man bargains and sells Lands, presently the Bargaine hath actual Possession; he may surrender, assign, attorn and Release; yet he cannot upon this Possession bring a Trespas, and so he hath no such actual Possession, but the actual Possession which gives him Power to bring an Action for the Profits. Per Bridgman. Ch. J. Cart. 66. Pasch. 18 Car. 2. C. B. in Case of Geary v. Bearcroft.
and Conversion for those Goods upon this Matter shewn, because the Administration relates to settle the Property of the Goods in him from the Death of the Tenantor. P. 11 Car. 2. R. between Whittinghall and Sir Miles Sands, adjudg'd this being moved in Action of Judgment after Verdict for the Plaintiff, where it was alleged that the Tenantor died the first of August 3 Car. and the Conversion the 3 August 3 Car. and the Grant of the Administration Sept. 5 Car. But it was alleged that Sept. 5 Car. the Administration was granted, and that after seilcet 3 Aug. 3 Car. the Defendant convicted, and so that which comes after the Seilcet will be void. But the Court did not insist upon it, but upon the other Matter before. Seilcet the Relation. Inns. Trav. Cr. 10 Car. Kot. 702. P. 11 Car. it was affirmed per Curiam in Writ of Error, in the Exchequer Chamber.

3. If a Man be diffied, after his Re-entry he may have Action of Trespass against the Diffidtor for any Trespass done by him after the Diffidion; for by his Re-entry his Possession is restored Ab initio, and all Times after. 19 H. 6. 28. b.


6. So after his Re-entry, he may have Action of Trespass against any Stranger for a Trespass done after the Diffidion. 19 H. 6. 28. b.

7. As if B. diffele A. and C. dillele B. and A. re-enters, he shall have Trespass against C. for his first Entry, for he has by his Re-entry reduced the Possession to him Ab initio. D. 39 El. B. R. agreed between Holcombe and Rawlins. Contra Co. 11. Leford 51.


8. So if a Difflidtor leaves for Years, or Life, or gives in Tail, or enrolls B. upon whom the Diffide re-enters, he shall have Trespass against the Leifter for his first Entry, tho' he comes in by Title, because by Relation, the Difflidtor has been always leister of the Land. D. 39 El. B. R. between Holcombe and Rawlins, adjudg'd upon Defidtor. Contra Co. 11. Leford 51. Contra 13 H. 7. 15. b. 16.


9. In Writ of Damages, it was said that for any Trespasses done upon the Land after the Judgment given, the Party may have Action of Trespass; Quere how this is to be understood, for if it be in Plea of Land, where his Entry is told, he shall not have Trespass before Execution; But if he was in Possession, and a Man enters and does Trespass, which continues pending the Writ, it seems that there he may have Trespass for Trespass done after the Judgment. Br. Tresp. pl. 312. cites 7. E. 4. 5.

10. Where a Man was attainted by one Parliament and after was respire'd S. P. Br by another Parliament, as if no such former Act had been. [The Question was] Whether the Patentee shall punish a Trespass done before the Attinder and the Restitution. Per Brian he shall not have Trespass for the meane Trespats; but Vavil and others Contra. Br. Tresp. pl. 270. cites 4 H. 7. 10.

A Man who was attainted and restored; and he pleaded the Act, and the Plaintiff demurred; and it was adjudg'd that the Plaintiff should take nothing by his Writ. After Attinder annulled by Parliament, the Party attaint shall punish meane Trespats. Mo. 12. pl. 173. in Case of Bovil v. the Corporation of Bridgewater cites 3 H. 7. and 15 H. 7. Saiiilger's Case.

11. And if a Man recovers erroneously, and he who lost does a Trespass but where upon the Land and after recovers the Judgment, he who recover'd first shall a Man recove

6 C.
The document is a legal text discussing trespass and battery. Here is the text with proper formatting:

**Trespass.**

Not have Trespass; for Fineux and Rede; for per Rede, it shall be recoup'd in the Refitution of the Profits, as where a Lord disfiefes his Tenant, the Tenant brings Alliace and recovers, the Rent due to the Lord, shall be recoup'd in the Damages. Br. Trespass, pl. 270. cites 4 H. 7. 10.

(U) **What Act or Thing shall be said a Trespass of Battery.**

If a Man comes in Aid of B. who beats me, tho' A. does nothing against me, yet he is a Trespassor as well as B. 22 M. 43 adjudg'd. 27 Ann. 4.

Quo facit per Aulum, facit per E.

2. If a Man commands another to beat me, and he does it according-ly, he is a Trespassor as well as he who did it. 22 M. 59.

(X) **Trespass. What Act shall be said a Trespass.**

But not if he that enters be the Landlord, and comes in to see if Waste be done. Br. Trespass, pl. 97. cites S. C. —— Br. Replication, pl. 12. cites S. C.

So if a Man buys Beasts in a Market, and in driving them along the Street they enter my House, this is a Trespass, tho' the Doors are open; for I am not bound to keep my Doors shut; Per Danby and Choke. 10 E. 4. 7. b. pl. 19.

2. If a Man has Land adjoining to the King's Highway, and another drives Cattle in the Way which enter the Close in Default of Inclosure of the Owner, which he and tho' Que Etitle &c. have used to inclose Time out of Mind, and they are freely pursed and chas'd back, this is not a Trespass punishable. 10 E. 4. 7. a. pl. 19.

3. If Grain grows in a common Field near the Way, and the Beasts feed, the Defendant shall render Damages; for there the Plaintiff is not bound to inclose; Per Danby and Littleton. Br. Trespass, pl. 321. cites 10 E. 4. 7.

4. The Intent shall not be construed in Trespass. Contra in Felony; Per Rede Ch. J. Br. Trespass, pl. 213. cites 21 H. 7. 27.

As where a Man having at Bests kills T. N. it is not Felony; Per Rede Ch. J. Br. Trespass, pl. 213. cites 21 H. 7. 27.

As where a Tyller drops a Stone which kills a Man not knowing it. Br. Trespass, pl. 213. cites 21 H. 7. 27. But in those Cases, if they lame or hurt a Man Trespass lies; for there the Intent is not to be construed. Br. Trespass, pl. 213. cites 21 H. 7. 27.

And where Executive takes of the Goods of J. N. amongst the Trespassor's, Trespass does not lie; for the Executor, prima facie, cannot know the Goods of the Trespassor from another's Goods; Per Rede Ch. J. Br. Trespass, pl. 213. cites 21 H. 7. 27.

5. If another's Sheep are amongst my Sheep, I may chase them to a Strait, so that I may sever them, for they cannot be sever'd but at a Strait; Per Rede Ch. J. Br. Trespass, pl. 213. cites 21 H. 7. 27.

5. Every
(X. 2) Where Trespass lies, tho' for an Act in itself lawful. *Hunt of Care &c. to avoid it.*

1. Trespass's Quare Vi & Armis Clausum fumum [iregit &c. & herbam fumum] pedibus ambulando confutavit in 6 Acres, the Defendant as to all, except the 6 Acres, pleaded Not guilty, and to the 6 Acres Alibi non; for he said he had an Acre in which a Hedge of Thorns is adjoining to the said Acre, and at the Time of the Trespass he cut his Thorns, and they Ipso Natura fell into the Acre of the Plaintiff, and the Defendant came freely into the Acre, and took them, which is the same Trespass &c. and the Plaintiff demurred. And by the said Opinion, and almost all, it is no Plea; and per Choke J. it is no Plea that Ipso Natura they fell upon the Land of the Plaintiff; for he ought to say that he could not do otherwise, or that he did all that he could to save them out. Br. Trespass, pl. 310. cites 6 E. 4. 7.

2. But where the Wind blows my Tree upon the Land of my Neighbour, S. C. cited Arg. Lat. 15. in Case of Millen v. Hawtry. I may take it, and this is no Trespass; for this is the Act of the Wind, and not of me; Per Choke Jutt. Br. Trespass, pl. 310. cites 6 E. 4. 7.

(X. 3) Trespass or Trespassor. What, or who. By Con- see (Q) pl. 5. sent, Agreement, or Sufferance &c.

1. If a Man says that he will disseise J. N. to my Use, and I say that I am content, he is sole Dilettor, and this is no Command but Sufferance. Br. Dilettor, pl. 15. cites 21 H. 7. 35.

2. If a Man says to me that he will beat J. S. and I say do as you will, this is no Tort in me. Br. Dilettor, pl. 15. cites 21 H. 7. 35.


(X. 4) What
(X. 4) What shall be said Trespasts, and what Felony.

1. A Man took the Feme of another by Rape, with the Goods of the Baron, and it was adjudged Felony, and well, as seems to me; for the taking of the Feme be not Felony, they remain therefore in the Custody of the Feme as the Goods of her Baron, and when he took the Feme and the Goods, this is Felony in him. Br. Corone, pl. 77. cites 13 Alf. 6.

2. And the like was adjudged before of a Vicar who took Feme and Goods, and was deliver'd to the Ordinary by his Clergy. But this seems to be where the Feme is taken against her Will; But Quere, if the Feme takes the Goods, and go with another Man with his good Will. Ibid. and so is 13 E. 4. 9. where the Feme took and delivered them to W. N.

(Y) Trespasts. Against whom it lies. Gift of the Action. 

[Trespasts or Detinue.]

Firth. Tit. 

Trespasts, pl. 187. cites S. C.

1. He that comes to the Goods by Delivery of the Plaintiff, cannot be charged in Trespasts; but he ought to have Detinue. 43. E. 3. 30.

Trespasts, and not Detinue.

2. If A. posses'd of Goods, sells them to B. and after B. leaves them in the Possession of A. and after A. delivers them to C. to carry to another Place, who carries them there accordingly. B. shall not have Trespasts against C. upon this, but Detinue; because he came to the Goods under the Delivery of the Plaintiff himself. 16 P. 7. 2. b. 3. Per Curiam.

3. So if A. buys Goods of me, and after leaves them in my Possession, A. shall not have Trespasts against me for the Detaining after, but Detinue; because he comes to the Goods by lawful Means, by Delivery of the Plaintiff himself. 16 P. 7. 2. b. Per Curiam.

4. He who comes to the Thing by the Law, cannot be charged in Trespasts.

5. As if a Man comes to Goods by Delivery of the Sheriff upon Replevin tried, Trespasts does not lie against him. 44 E. 3. 20. b.

6. If Goods are cast into the Sea by Tempelt, and a Stranger takes them, and delivers to the Servant of the Owner, for the Profit of the Owner, no Trespasts lies against him. 46 E. 3. 15.

7. If a Contable takes my Goods lawfully into his Possession, to the Use of the Owner, upon Waiver of them by a Felon, tho' he afterwards refuse to deliver them to me upon Demand, yet no Trespasts lies
Trespass.

lies against him, but Deemne. Trin. 4 La. B. R., between Wals. Contable took a Felon who had

bb'd B. of 201. and found the 201 about the Felon, but because the Place where he took the Felon was of no Strength, he was carrying it to another Town, but was rob'd by the Way; and whether he should be charg'd in the Doubt, Williams J. held, That he ought to keep the Money safely, and because he did not, he is liable to this Action. Popham fled, he might have pleaded Not Guilty; for he told, that if a Town has the Possession of my Goods a Deemne lies, and not a Trespass; but if a stranger takes them out of their Possession, there a Trespass lies; and therefore he conceived, in this Case, that the Plaintiff should have brought a Trover and Conversion, and not a Trespass, quod all Juicarian conscientious; and therefore the Case was deferr'd till next Term, to be argued upon the General Issue.

8. If Leflee at Will does voluntary Waite, as in Abatement of Doutes, or cutting of Trees, a General Action of Trespass lies, for

this determines the Will. Lit. 15. Co. 5. Countess of Slop, 13 b. 22. E. + 5. b.


9. If I bail to B. my Beasts to keep, or for special Purpose, as to compost or plow his Land, and after b. kills them, Action of Trespass lies; for thy he comes to them by my Deliverly, yet if he does the Thing, the Justice determines, and General Trespass lies.

Lit. 15. Co. 5. Countess of Slop, 13 b. 22. E. 4. 5. b.}

Cur. cites Litt. fol. 15, and 11 H. 4. 17, a. and 22. b. — Lit. S. 1. S. P. — Co. Litt. 57. S. P. and says, that I may have Action of Trespass on the Cafe for this Conversion, either the one or the other at my Election.

If a Man has my Beasts to draw in the Plough, and kills them, I shall have Trespass; per Moyle. Br. Trespass, pl. 295. cites 2 E. 4. 4. Contract if they are bail'd to him, and he kills them; per Moyle. Br. Trespass, pl. 295. cites 2 E. 4. 4.

10. In Trespass it is a good Plea, that T. S. was seized of the House, and made him Executor, by which he enter'd, and took the Chrift in the Declaration. Per Thorp: The first Possession of the Goods and Chrift is in the Executor, tho' Evidences are in the Chrift; for they cannot know what is in it till it be open'd, and if Charters are in the Chrift, the Heir may have thereof an Action of Deemne, but not Trespass; quod Cur, concludes. Br. Trespass, pl. 399. cites 43 E. 3. 24.

11. If a Man defrauds, and alter the Tenant offers the Rent, and the Br. Deemne Lord refuces it, the Tenant shall have Deemne of the Diftrefs, but not de biers, pl. Trespass, but if the Lord kills the Beasts, or labours them, Trespass lies. Br. Trespass, pl. 29. cites 33 H. 6. 26. 27.

12. If a Man takes my Goods as a Trespassor, I may have Replevin, tho' the Trespassor has Property by Tort, for this is of the Property which I had at the Time of the Capition. But I cannot have Deemne; for this is of Property which is in me at the Time of the Action taken; Per Brian. Br. Replevin, pl. 36. cites 6 H. 7. 9.

13. Where the Sheriff levies the Condemnation, and does not return the Writ, Action of Trespass lies; Per Kingmill J. Br. Faux Imprisonment, pl. 12. cites 21 H. 7. 22.

14. Deemne does not lie of Hawks, Hounds, Apes, or Monkeys, or such Br. Property, like, which are Things of Pleasure, and are made tame, and were Felon. Pl. 24. cites Nature; and yet Trespass lies of them well, and the Plaintiff shall recover Damages of the Taking; Per Brudnell, & non negatur. Br. Deemne de Rienis, pl. 44. cites 12 H. 8. 5.

6 D

(Y. 2) Trespass,
Trespass, and not Cafe.

Sec (L) pl 50. 4. — Actions (M. c) (N. c). pl. 36. 27.


11. If a Man takes a Servant out of my Service, and retains him, Trespass lies against him. * 11 H. 4. 23. b. 24. Tr. 15 Ja. between Whetley and Stone, agreed per Certam in Writ of Error at Servant's Inn. 39 El. 3. 38. adjudged. 43 El. 9.

But if he does not take him out of my Service, but procures him to go out of my Service, and retains him, Trespass does not lie against him, but Cafe; for he does not do it contra Pacem. 11 H. 4. 23. b.

No Action in this Cafe against the Retainer at Common Law, and for that Reason the Statute of Labourers was made. Br. Labourers, pl. 21. cites 11 H. 4. 21. 22.

If a Servant departs out of my Service, no Trespass lies against him. 11 H. 4. 23. b.

If a Servant departs out of my Service, no Trespass lies against him. 11 H. 4. 23. b.

If a Servant of London, or Bailiff in a Counter, takes a Man upon a Capitas in Proceeds at my Suit, and J. S. renews him out of his Possession, I may have a general Writ of Trespass against him, because the Servant is my Servant to this Purpose, as well as Servant to the King; and therefore the Taking out of the Possession of the Servant, who is my Servant, is a Taking out of my Possession. Tr. 15 Ja. between Whetley and Stone adjudged in a Writ of Error at Servant's Inn. See the same Cafe Dobart's Reports 242. and at Servant's Inn there were cited these Proceedings. Dick. 34. 35 El. B. R. Rot. 169. Ableit and Rudge adjudged in Point. Dick. 42. 43 El. Rot. 468. B. R. Pattison and Marriot. Dick. 37. 38 El. Rot. 192. between * Fenner and Plasket, both adjudged in Point.

But in the Cafe aforesaid, I may have Action on the Cafe at my Election. Tr. 15 Ja. between Spire and Stone adjudged, and the Judgment affirmed in Writ of Error at Servant's Inn, at the same Time that the general Action was affirmed.

that the Recount were ili Vi & Arms, yet it would bear either Trespass Vi & Arms, or Trespass upon the Cafe; but the Plainti must beware that he follow his Original, if it be by Writ; for if that he Vi & Arms, or upon the Cafe, the Judgment must be suitable. And so it must be in a Bill in B. R.
Trespass.

but if the Bill be Trespass general, neither Vi & Arms, nor upon the Case special, he may use it to either.

7. If a Man beats the Femme of J. S. by which he loses the Con- 471
forthip of his Femme, J. S, alone, without naming his Wife, may have a general Action of Trespass against him for the Battery of the Femme. Per quod Confortium admitt by 2 Months, tho' this Action be grounded upon the Los of the Conforthip. Diet. 16 Fa. B. R. between Guy and Levesey adjudged by Admissitane, that the general Ac-

tion of Trespass lies.

it is brought for the particular Los of the Husband's, for that he lost the Company of his Wife, which is only a Damage and a Los to himselfe, for which he shall have this Action, as the Mudder shall have for the Los of his Servant's Service.

8. So the Baron alone may have a general Action of Tres- 17
pafs for Menacing and Battery of the Femme per quo Negotia sua in
tegra remanente. Tr. 27 El. B. R. Rot. 227. between Cobham and Coney adjudged.

28 Ellis. In B. R. And another Precedent was cited to be in the Exchequer in Popli's Case, that such an Action was adjudged good.

9. If the Sheriff upon a Writ of Extent takes a Furnace fix'd to 18. Cro. E. 32. 4 to the Land, and sells it to J. S. and he takes it, no Action of Trespass lies against J. S. 169. if it be admitted that the Sheriff could not law-
fully sell that which was fix'd to the Land, for J. S. comes to it without any Care done by himself. Hill. 37 El. B. between Dyer, Aftin and Bishop, Per Curiam.

the Defendant, because he has it by the Delivery of another, and not by his own Taking; but that this Matter was not much infixed upon, because he was present, and took it, and so he was an imme-
diate Trespassor; and cites 42 El. 3. 6. 20 H. 7. 13, and 21 H. 6. 20. - Ow. 72. S. C. says, that the Court held it is a good Discharge. - Cro. E. 398. pl. 3. S. C. but not S. P.

10. Where a Man lends Beasts to another to compeoffter his Land, and a 9. Br. Action Stranger takes them, Trespass lies Vi & Arms; but contra if the Owner takes them within the Term; for there lies only Action upon the Case; for it Trespass Vi & Arms should lie, he should recover the Value against the proper Owner; Per Hank, quod Hill & Culpeper conceifte-

11. In Diet against 2, as Executors, where the one is not Executor, and 11. Br. Action he appears and confesses, and the other makes Defence, and the Plaintiff re-
covers, the other shall have Defect, but not Tresps; for he is Party to the judgment, Per Littleton. Br. Trespas. pl. 180. cites 9 E. 4. 13.

12. If a Man lends his Horse to ride to York, and he rides further, Tresps 12. Br. Action general does not lie, for this is the Authority of the Party, but Trespas up-
on the Case; but where he misuses the Authority of the Law, he shall have Trespass general; as if a Man distrains, and kills the Distreis &c. Br. Trespass. pl. 327. cites 12 E. 4. 8. Per Brian.

13. In Trespass the Defendant justified entering into the House by Licence Contra of Li- 13. Br. Action of the Plaintiff; and the Plaintiff saith, that he broke his Door and Win-
dow, of which he has brought his Action, and no Plea; for of Licence in 
افت, as that, he shall not have General Action of Tresps, but upon the Case. Br. Trespas. pl. 339. cites 21 E. 4. 73, 76.

drink, and taking the Bowl, or entering to see Waffe, or to distrain, and after breaking the Walls, or killing the Distreis, there lies General Writ of Trespass. Contrary above of Licence in Fact. 161.

14. If a Man distrains Beasts, and impounds them, and another takes them, he who distrains shall not have general Action of Trespafs; for he has his Property. Contrary of Goods buildt; Quare of Eldray. Br. 

Property. pl. 52. cites 20 H. 7. 1.

15. A. Leffe
Trespass.

15. A Lessor for Years of a House, demised it for 6 Months, and afterwards permitted him to occupy the House for 2 Months longer, during which Time he shall not have Damages for the Tr.elpafs. The Court conceived that either Cafe or Trespass lay, and that the Matter was the most proper Action to recover so much as he was damm'd, because he himself is subje& to an Action of Waste, and Judgment for the Plaintiff. Cro. C. 187. pl. 7. Patch. 6 Car. B. R. West v. Trede.

16. It was holden, that where an Action is brought by the Master for beating his Servant, by which be left his Service, that this is Trespass Vi & Armis, and not upon the Cafe; but in this Cafe the Matter shall not have Damages for the Beating, but for the Loss of Service only. Gayt. 17. pl. 27. Aug. 1633. Swallow v. Stephens.

17. In an Action for stopping a Round, and dreening a Cafe, and thereby spoiling the Trees, it was held, that Cafe lies for him in Reverion, and Trespass for the Tenant in Potelion; but during the Term the Reverioner cannot have Trespass, that being founded only upon the Potelion. 3 Lev. 299. Hill. 36 and 37 Car. 2. C. B. Biddlesford v. Onflow.

18. Trespass Quare Vi & Armis, for a Nulmice in laying Dung, and casting sinking Water in his Yard to run to the Walls of the Plaintiff's House, and by piercing them run into his Cellar. After a Verdict it was moved, that Trespass Vi & Armis does not lie against the Defendant for this, because a Man cannot be a Trespaflor with Force and Arms in his own Ground; but that he ought to have brought an Action on the Cafe. The Court seem'd to be of Opinion against the Plaintiff; but afterwards they gave Judgment for him, after great Waverings in Opinion, pro & con. Hard. 69. Trin. 1656. in the Exchequer. Preston v. Mercer.

19. In Cafe the Plaintiff declared, that he was poss'd of a Cafe, and the Defendant dog Pits in it &c. per quod &c. And after Verdict it was adjug'd, That the Action will not lie; because the Cause of Action was properly Trespass, for which the Party might have an Action of Trespass, but could not turn it into an Action upon the Cafe. Arg. Ed. Remy. Rep. 188. Ed. 9 Will. 3. in Cafe of Shapcott v. Mugford, cites Hill. 4 and 5 W. and M. in C. B. Thornton v. Authen.

[Y. 3] [In what Cafes, and at what Time, Trespass lies, where the Matter is Felony.]

[1.] 19. If a Stranger takes my Horse, or other Goods, and sells it to J. S. and J. S. takes it accordingly, no Action of Trespass lies against him. Hill. 37 El. B. in the said Cafe of Dry. Per Curiam.

[2.] 20. No Trespass lies, because it appears to the Court to be Felony; for this appertains to the King only to punish. Tr. 4 Ed. 25. R. Huggins's Cafe.

[3.] 21. As Action of Trespass does not lie for the Baron for Battery of the Feme, by which the Feme languished by 6 Weeks, and then died
Trespass.

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died of the Stroke; For this is Felony. Tr. 4 Ja. 25. R. Huggin's 542. in Case of Dawkes, Coveineigh.

[4.] 22. [So] If A. robs B. of 3000 l. of Money in Bagges, for which he is after indicted and convicted, and after B. brings Trespass against A. for taking of the Money, and he pleads this Matter in Bar, it seems that the Action does not lie; because, when it appears that the Act was Felony, the Party ought to sue him by way of Appeal, if he will have his Goods again; or prosecute him by Indictment, and then he shall have his Goods again by the Statute of 21 H. 8. for otherwise no one will prosecute Felony for the Publick Good, to punish such Offenders, but only to have Trespass for his private Interest, Contra, Digest. 2 Car. 23. R. between Markham and Cobbe, by Dodridge and WhiUock; but Jones e contra, because he cannot answer against the Verdict. But it seems he may ater against it, be being a Stranger to it. Intracist. P. 1. Car. Rot. 112. The Bar was adjudg'd nil upon the Pleading, not upon the Matter in Law.

Procurement is not sufficient; and for that Reason Judgment was given for the Plaintiff.—— Jo. 127. pl. 6. S. C. agreeable to Roll, together with the Reason of Jones; and in the Conclusion says, Quere bene; for it is a Point of great Consequence as well of the Part as of the other.—— Lat. 133. S. C. and the Defendant in his Bar having aver'd, that it is the same Offence, it was said by Dodridge to be ill; because by the Indictment it was found Burglary, and here it is only Trespass, which cannot be the same Offence; but he might have aver'd, that it was for the same Caption. And Jones and WhiUock agreed to this, tho' they differ'd as to other Matters.—— S. C. cited per Roll Ca. J. Stry. 34. in Cafe of Dawkes v Coveineigh.

[5.] 23. So in Trespass of Goods taken, if it appears upon Evidence that it was Felony, it seems the Action does not lie for the Cause aforesaid, and per he cannot plead it. Contra in the said Cafe of Markham. Agreed per Curtiain.

[6.] 24. If A. enters into the House of B. and there robb's him feloniously, and after B. indict's A. for this Felony, and upon Not Guilty pleaded he is found Guilty, and has his Clergy, and is burnt in his Hound, and lo deliver'd; in this Cafe B. may bring an Action of Trespass against A. for Entry of his House, and taking 300 l. of his Money; for here is not any Inconvenience by it, for he has prosecuted him according to the Law as a Felon, at the Suit of the Common wealth, and it was a Trespass also to the Party; and therefore there is good Reason, that he shall have Remonence for the Wrong done to him also, inasmuch as he has done his Duty in the Prosecution, according to the Law, for the Felony at the Suit of the King. 1652. between Dawkes and Coveineigh. Adjudg'd per Curtiain upon a Special Verdict in London. Intracist. Vol. 1650. Rot. 673.

have his Remedy before, he shall not lose it now; for now there is no Danger of compounding for the Wrong; and the rest of the Juries agreed with Roll, and so Judgment was given for the Plaintiff.—— See (A a) pl. 3.

* Orig. is (Bien Publique.)

(V. 4.) Trespass, or Trover. See (Z) pl. 5. the Note.

THE Defendant's Billiff for'd the Plaintiff's Beast for an Harlot, Cro. Eliz. 824. where none was due. The Defendant agreed to the Satisfaction; and converted the Beast; whereupon the Plaintiff brought Trover. It was 34. Eliz. C. B. S. C. indicted, that the Property was gone by the Taking, so as the Plaintiff cannot


cannot dispose of the Beasts, and therefore the proper Action is Trespass. And of this Opinion was Daniel; but others e contra, and that he had Election to bring either of the Actions at his Pleasure. And so it was adjudg'd for the Plaintiff. Cro. J. 50. pl. 21. Mich. 2 Jac. C. B. Billhop v. Lady Montague.

2. In Trespass &c. the Plaintiff declared, That he was robb'd of 20l. and that he purfied the Robber to jick a Town, and there freed him to the Defendant, who was Confess'd, and he apprehended him, and finding the 20l. about him took the same, and detailed it in his Poffiffion. The Defendant confess'd the taking the 20l. as above, but that it being a Place of no Strength, he was carrying it to the next Town, and was robb'd of the Money. Popham thought the Plaintiff should have brought Trover, and not Trespass, to which the other Justices agreed. Owen. 120. Mich. 3 Jac. B. R. Walgrave v. Skinner.


1. The Obligor may have Trespasses Vi & Armys against the Obligee, for taking of the Obligation. 20 L. 6. 24. b.
2. If he who has Charters breaks the Seals, Trespass lies. Br. Trespafs, pl. 29. cites 33 H. 6. 26. 27.
3. Trespass lies of a Couple of * Hounds, and of Partridges, and Feasts taken; but he shall not say At Valentiam. Br. Trespass, pl. 315. cites 8 E. 4. 5.

Trespass of a Hound taken, and the Defendant de- murred in Law, and the Plaintiff recover'd 6s. 8d. for Costs and Damages, notwithstanding the Hound be a Beast of Pleasure, and that Nature, and of which a Man does not pay Tithes, and Appeal of Felony does not lie thereof, nor Action of Detinue: But if a Man takes it and kills it, Trespass lies; for when it is made tame the Master has thereof a Property, and it may be Pleasure or Profit to the Owner, as to guard his Beasts, or to kill Deer or Vermin &c. quod nota. Br. Trespass, pl. 457. cites 12 H. 8. 3.

4. Trespass by the Lady Wiche against the Parson of D. who took a Coat, Armor, certain Pendants with the Arms of Sir Hugh Wiche her Baron, and a Sword in a Chapel where he was buried; the Parson said that he took them as Oblations. Yelverton said, I have a Seat in the Chancel, and have a Carpet, Book, and Culfion, and the Parson shall not have those Choses in Action. Per Pigot, the Parson cannot take a Grave-stone, Quere, for by the Reporter Oblations shall be taken according to the Intent of the Donor. Br. Trespafs, pl. 181. cites 9 E. 4. 14.


For the taking of a Heck (re- claim'd) a Man shall not have Trespass, but Trover and Conversion. And the Count ought to be that he is re- claim'd; and is not sufficient to say he was posseff'd of him as of his proper Goods. F. N. B. 86. (L) in the New Notes there (f).

6. If a Man draws Wine out of the Vessels and puts Water in the same to fill them up again, he shall have an Action of Trespass. F. N. B. 88. (F).

7. In Trespass for taking a Greyhound with a Collar, the Defendant pleads that the Dog was courting an Hare in his Land, and therefore he took and let him away. Whereupon the Plaintiff demurred; and adjudg'd for the Plaintiff, because the Plea is frivolous. Whereby it incurs Trespafs lies. Cro. J. 463. pl. 10. Hill. 15 Jac. in B. R. Asifh v. Corbet.
Trespass.

8. Trespass will lie against a Man for frightening another out of his Money. As where several Persons threatened to tend A. to Newgate by Colour of a Warrant, and to indict him of Perjury unless he would give them Money and a Note, which he did through their Threats. And every Extortion is an actual Trespass. Per Holt Ch. J. 11 Mod. 137. Mich. 6 Anne B. R. The Queen v. Woodward.

(A. a) Trespass. At what Time it lies.

1. If a Man marries by Niece I shall not have Trespass supposing the Trespass at the Day after the Marriage, for then he was free by Marriage before. 46 Eliz. 3. 6.
2. If a Man takes my Goods, and after I grant them to another, yet I may have Trespass for the taking. 42 Eliz. 3. 2.
3. It was agreed, that if a Man be indicted, arraigned, and acquitted of See (Y.) Robbery of J. S. he shall not have thereof Trespass, for the Trespass is extinc't in the Felony, and Omne majus trahit ad le minus; Quere inde. Br. Trespafts, pl. 415. cites 31 H. 6. 15.
4. If an Ait be made Felony by Statute, as Hunting or the like, and after a Man encroaches in it, and then the Ait is repeal'd by Statute, there the Hunting is punishable; for there the Law by which it shall be tried is repeal'd. But where Trespass is done upon a Term, and after the Term expires, the Trespass is punishable; for there the Interest expires, but not the Law. And to see a Diversity where the Interest expires, and the Law remains, and where the Law is repeal'd and does not remain. Br. Corone, pl. 202. cites 2 M. 1.
5. If I limit Use and revoke them and limit new Uses, the Uses settle without Entry or Claim; yet not so as to bring Action of Trespafts. Per Bridgman Ch. J. Cart. 78. Trin. 18 Car. 2. C. B. in Case of Thomasin v. Mackworth.

(Aa. 2) At what Time. Before Possession had by the Plaintiff of the Thing taken.

1. If a Man have Waif and Stray within his Manor by Prescription, and another Man takes the Waif or Stray out of the Manor &c. he who has the Manor shall have an Action of Trespass for them &c. and that without any Seifure of them before. F. N. B. 91. (B)
2. If a Man have a Wreck by Prescription, or by the King's Grant &c. if Goods be wreck'd upon his Lands, another takes them away, he who has the Wreck shall have an Action of Trespafts Quare vi & Armis for this taking without Seifure thereof before. F. N. B. 91 (D)
3. If an Abbot or other Man has a Hundred, and has all Felons Goods within the Hundred, if any Felon within the Hundred be attainted, and the Sheriff takes the Goods of the Felon within the Hundred, he who has the Hundred and such Liberty shall have an Action of Trespafts against
(B.a) Trespass. In what Cases it may be justified. Justification for the Publick Good.

1. In Trespass for cutting his Land Prohibits ambulands for Hunting and digging the Land, the Defendant cannot justify this, and the Digging of the Land by Reason of the Hunting a Badger, and to draw him out of his Hold, tho' he fills up the Hole again with Earth afterwards, tho' it be for the Publick Good. Cr. 11 3d. 2d. R. between Gages and Minn.

2. In a Trespass Quare Claustrum sregit & herbam &c. The Defendant cannot justify this Trespass for Cause of Hunting the Fox. 6th. 37 S. between Nicholas and Badger by Fenner.

3. Trespass for digging his Land, the Defendant said that it is 4 Acres adjoining to the Sea, in which all the Men of Kent have used Time out of Mind when they fish in the Sea, to dig in the Land adjoining, to pitch Stakes to hang their Nets to dry. Nele said he ought to show what Men. Per Choke and Littleton, this is no Custom; for it is contrary to common Right and Reason. But per Danby, Fishers may justify the going upon the Land to Fish; for this is for the Common Weal, and for the Sustenance of several &c. and it is the Common Law, quaed facit concepcion; but per Fairfax the Digging is the Destruction of the Inheritance, therefore it is no Custom &c. Br. Custom, pl. 46. cites 8. E. 4. 13. 19.

4. Trespass of cutting of Grafts, the Defendant said that there is such a Custom in the County of Kent, that when any Enemies come to the Sea, it is lawful for all the Men of Kent to come upon the Land adjoining to their same Coasts, in Defence and Safe-guard of the Country, and there to make their Trenches and Bulwarks for the Defence of the same Country, and said that at the Time of the same Trespass' Enemies came &c. by which they dug to make Trenches and Bulwarks &c. Per Jenney this is at Common Law to do so in Defence of the Realm, but Catesby Contra inde &c. quare. Br. Custom, pl. 45. cites 8 E. 4. 23.

5. Every Man may arrest a Nightwalker; for this is for the Commonwealth; Per Huffle and Fairfax. Br. Trespass, pl. 416. cites 5 H. 7. 5.—And so it was agreed, 4 H. 7. 18.

6. In Trespass for taking his Horse; the Defendant justified by Virtue of a Comitatio directed to the Contables by the Post-Master General, and that the Contables made a Warrant to him; and held good. Noy. 114. Garrons v. Banbury.

7. In Trespass for flinging down Materials erected towards the Building of a House; the Defendants pleaded that the Erection was for Building a House upon the King's Highways, and that they threw down the Materials, And Holt Ch. J. leem'd to agree that the throwing down the Nuisance was justifiable. Comb. 417. Hill. 9 W. 3. B. R. Lovey v. Arnold.

(C.a) Trespa.

1. If the Sheriff arrears a Man upon Process, and lets him to Bail, and after returns a Capi Corpus, and after a Habeas Corpus comes to the Sheriff to remove the Body, the Sheriff cannot justify the re-taking of him upon this Writ, after he had let him to Bail before, but he ought to add himself upon the Bail. 

2. In a False Imprisonment against a Trespass of B. R. for imprisoning him for 8 Months, if the Defendant justifies for 6 Hours because he was a Servant to Sir John Lenhail, the Marshal of B. R. and appointed by him to attend and execute the Commands of the Chief Justice of B. R. for the Time being, and that there is a Custom a Tempore et. that such Servant is appointed by the Marshal for the Time being, had used to execute the Commands of the Chief Justice and that after upon Complaint of J. S. to Sir Thomas Richardson then Chief Justice, against the Plaintiff according to the Custom in such Case for the Chief Justice for the Time being, a Tempore et. ultimam, the said Chief Justice mandator cernit Sarecteally quod exerceat the Plaintiff a cum labore custodiscet is quoad habeas cum coram eodem Capitaii Judicisquorum et sanctionem justi ceo et ad respondendum et e super his esse et partes non Damnum Regn. obtenientur et cae parte. By Force of which Warrant he took the Plaintiff as Servant to the Marshal and by his Command, and detain'd him by the Space of 6 Hours, and after, at the End of the 6 Hours, delivered him to the said Marshal Salvo Custodiendo quoque. This is a good Justification, that this Warrant was by Parol and not in Writing, it being by Custom, and that No Caule was express'd in the Warrant, muchmore so as it is adher'd to be according to the Custom, and it may be greatly prejudicial to the King's Service to express the Cause in the Warrant, and that the Warrant is to quo habere cum coram eodem Capitaii Judicisquorum et sanctionem justi ci ceo et ad respondendum et e super his esse et partes non Damnum Regn. obtenientur et cae parte. And the Signification of the Words Quorum et sanctionem et sanctionem the Party, who complains, will complain against him, and tho' the Defendant does not make any Answer, what the Marshal did with him after his Delivery of the Plaintiff to his Custody, but he only says, that he is not content of it, per the Plea is good; for if the Marshal afterwards detains him unjustly, per the Defendant is excited, because he has done legally before. P. 11 Car. B. R. between Sir George Throgmorton and Allen adjudy'd upon a Denatur. 

3. In false Imprisonment, the Defendant said that the Commissioner of the If a Commis. King such a Day was directed to them and others to take those who were no. for false to taxing or Trespassers, not with standing that they were not taxed, and this is against Law, and that the Plaintiff had wounded a Man to whom the Commissioners directed their Precept to take the Man, and that he made this Justification upon the Matter, and not the Com mis sioners themselves. Br. Faux Imprisonment, pl. 9. cites 21. 3. 9. to this Act, by this said Commision Br. Trepsa's, p. 372. cites 42 

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4. It was agreed Arguedo, that where a Capias Issued to the Sheriff without an Original, and he forces it, false Imprisonment does not lie; for it is not the Default of the Sheriff; Per Hunk. in Trespass. Br. Faux Imprisonment, pl. 12. cites 21 H. 7. 22.

5. In Deed it was said by Hill J. That if the *Sheriff takes a Man by Capias, and does not return the Writ, false Imprisonment lies; but not against the Bailiff, if the Sheriff does not return the Writ; for the Default of the Sheriff shall not condemn the Bailiff as it is said elsewhere. Br. Faux Imprisonment, pl. 5. cites 11 H. 4. 58.

If the Sheriff does not return the Capias, False Imprisonment lies; but otherwise it is of an Attachment of Goods out of an Inferior Court, Because the Capias is conditional, but the Attachment General. Arg. Lat. 225. in Cae. of Turveil v. Tipper cites 14 H. 7. 14. per Keble

Fieri Facta & Capias ad referendum, have these Words Is a good hebben Capitas ejus licet ad respondere &c. ought to be return'd in Pain of Action of Faux Imprisonment; but Capita eae ad Satisfacionem, which has no such Words in it. Br. Faux Imprisonment, pl. 12. cites 21 H. 7. 22. per Kingmull J.

6. In Trespass of Imprisonment, the Defendant justified by Warrant of the Peace to him directed to make the Plaintiff to find Surity of the Peace. And it was held that he shall say first, that he was required him to find Surity, and he would not, by which he arrested him; for he shall not arrest him if he does not refuse to find Surity, and there it is agreed that he may arrest him diverse Times; for if he arrests him, and he breaks from him, he may retake him, and to several Times; quod nota. Br. Faux Imprisonment, pl. 18. cites L. 5 El. 4. 12.

If a Capable has a Warrant to be a Person before a Judge to find Surity of the Peace, and shall Return to carry him to Goal &c., if upon carrying the Person before a Judge to refuse to give Security, the Officer without any New Warrant or Command may carry him to Prison by Virtue of the Words of the Warrant, viz. (And if he shall refuse &c.) 5 Rep. 39. a. b Hill 52 Eliz. Br. R. in a Note of the Reporter in Foller's Case, alias Foller v. Smith.

7. In False Imprisonment, the Defendant justified the Imprisonment for a quarter of an Hour by Capias directed to the Sheriff against the Plaintiff, who commanded the Defendant to arrest him, by which he took him and did not give Precept. Per Myole, where the Sheriff comes to arrest a Man he need not swear Capias, but if the Defendant demands his Warrant, he ought to shew his Warrant; but Choke laid, No; for the Sheriff or Bailiff Errant who is known and sworn, needs not shew Warrant, for the Party is bound to take Conformance thereof; but where the Sheriff commands another to arrest the Party, he ought to shew Warrant; for otherwise the Party may make Reckous. Br. Faux Imprisonment, pl. 29. cites 8 El. 4. 14.

8. A Man may justify in False Imprisonment insomuch as Supplicavit came to the Sheriff, and he awarded Warrant to the Defendant to take him, which he did, and yet the Sheriff cannot give his Power to another to take Surity there. Br. Faux Imprisonment, pl. 34. cites 9 El. 4. 30.

9. If Action be brought against J. N. Son of W. N. if the Sheriff by Capias arrests J. N. Son of F. N. Action of False Imprisonment lies, tho the Party, who is arrested, be the same Person against whom the Plaintiff has Cause of Action, which was agreed Arguedo in Detinue. Br. Faux Imprisonment, pl. 38. cites 10 El. 4. 12.

10. If the Sheriff of London arrests a Man in London by Capias directed Vicecontibus Midd. Writ of False Imprisonment lies. Br. Privilege, pl. 44. cites 16 El. 4. 5.

11. Where
11. Where a Justice of Peace awards Warrant of the Peace, and the Officer arrests him, and will not suffer him to come before such of the Justices of the Peace which he chooses, to find Surety of the Peace, the Party shall have Action of False Imprisonment against the Officer; Per Fineux Ch. J. Brooke lays, Quere inde; for as it seems, it is at the Discretion of the Officer to carry him before such Justices as he will. Quere, if the Officer of Malice will carry him to a Justice who inhabits 10 or 60 Miles distant, where there are other Justices of Peace who inhabit within two Leagues [or 5 or 6 Miles] of the Place where he arrested him. Quere, if Action upon the Cause does lie or not. Br. Faux Imprisonment, pl. ii. cites 21 H. 7. 21.

12. If Bailiff, by Precept of the Sheriff, arrests a Man, and does not carry him to the Sheriff, False Imprisonment lies; Per King's J. Br. Trespass. pl. 211. cites 21 H. 7. 22.

13. A Justice of Peace cannot make a Warrant to arrest a suspected Person, unless he be indicted; and yet he does make such Warrant, and the Bailiff serves it, he shall be excused; for they are Justices of Record. Br. Faux Imprisonment, pl. 33. cites 14 H. 8. 16.

14. If the Sheriff takes J. S. by Force of Process awarded out of an Assize Court, which has no Jurisdiction of the principal Cause, he is a Trespasser. 21 T. 2. But otherwise if the Court has Authority of the principal Cause; there if the Process be misconceived, it is only erroneous; Per Manwood Ch. B. Ch. J. and agreed to by the Court.

15. If an Arrest be by Process out of an Inferior Court, in a Cause not arising within their Jurisdiction, the Party arrested may have Action against the Plaintiff, who shall be intended Contumacious where the Cause of Action arose; but not against the Judge or Officer who has entered the Plaintiff, or the Officer who has arrested him, but the proper and just Remedy is against the Plaintiff. 2 J. 2. 13. in the Case of Olivet v. Pecky.

16. If the Plaintiff commands the Sheriff to discharge the Defendant before his Imprisonment, and makes to the Sheriff a Release of that Suit, and yet the Sheriff imprisons the Defendant, it is false Imprisonment. S.C. And per Doderidge J. If the Cause be, that the Sheriff has no Confinement of the Prisoner, and therefore refuses to discharge the Prisoner, he must plead fo. 1 Co. 379. pl. 7. Mich. 13 Jac. B. R. Withers v. Henly.

17. If the Sheriff has not any Writ, and makes a Warrant; to J. D. to arrest J. S. Action lies for this Arrest against J. D. and the Sheriff also. Per Jones J. 1 Co. 379. 1 H. 11. Bar. R. in Girling's Cafe.

18. Where a Capias issues out of an inferior Court, and no Summons was first issued, tho' upon a Writ of Error, this Matter is not assignable, because a Fault in the Process is aided by Appearance &c. yet False Imprisonment lies upon the Arrest. And an Officer cannot justify by Process out of an inferior Court, in like manner as upon Process out of the Courts of Westminster. For suppose an Attachment should go out of the County Court without a Plaintiff, could be, that executes it, justify? Yet a Sheriff may justify an Arrest upon a Capias out of C. B. tho' there was no Original. But * Ministers to the Courts below must see that Things be duly done; Per Hale Ch. J. and Judgment accordingly. Vest. 220. Trin. 24. Car. 2. B. R. in Case of Read v. Wilmor. S. C. cited by Sir John Powell, Baron of the Exchequer, in his Argument in the Case of Summit v. Donie, 2 Lawr. 158. 166, but says, that this certainty is only.

Process arresteth Oderne, and only erroneous, and that it was so held in the Case of Hard b. Gilliat. Gro. 1. 201. and in Palm. 449. Stare b. Larby, and that no Causum of any Inferior Court will make this Process good, and cites 2 Roll Abr. 27. Banks v. Pemberton, nor would it be so by the Causum of London, but that it is confirmed by Act of Parliament, and otherwise it would be only erroneous; that where Process issues out of an Inferior Court without Process, it is only Error, cites 4 Jac. 12. Sabbe and Knight. And Note, there is no Authority cited by Hale to support the Judgment in the Case of Read v. Wilmor, and there seems no Reason that Officers of Inferior Court should be
Trefpafs.

more knowing than those of Superior Courts, to judge of the Legality of Process under the Peril of being subject to an Action, and that it would be hard Deceitine; but the true Reason, why they are not liable, is, where the Court or Judge has Jurisdiction of the Matter, they are only Ministers and cannot give the Legality of the Mandates directed to them.

But in South Carolina, and since the chief Justice, C. H. being argu'd, that it was hard to punish an Officer for his Obedience to what he is bound to do, and that if he does an Act by Command of the Court, whether the Act be just or unjust, he is executed, in the Court he has Jurisdiction; but otherwise he is liable to an Action of False Imprisonment, but the last was adjudged.

18. If a Bailiff of a Liberty arresteth J. S. out of the Liberty, and delivers him to the Gaoler of the Liberty, who detains him, yet the Gaoler is not liable to an Action of False Imprisonment; for he knew not that the Arrest was tortious, nor is he obliged to inquire about it. And if he had been informed of it, (without being of the Court or Practice in it) yet he ought to detain J. S. being deliver'd to him with a good Warrant for the Arrest, tho' the Execution of it was illegal; for had such Information been fall'n, the Gaoler, by letting J. S. at large, would be liable to an Escape. And a Judgment in C. B. was revers'd. 2 Jo. 214. Trin. 34. Car. 2. B. R. Ollet v. Belfy.

by the Name of Ollet v. Reffer, adjournmr—C. S. cited per Powell J. in the Case of Gwinn v. Pohl, Laur. 1568.——Skin. 62. CHID v. Belfy, S. C. in B. R. and it was argued against the Judgment in C. B. that if the Gaoler had later'd him to depart after the Bailiff had brought the Prisoner to him, it had been an Escape; and likewise if the Gaoler had refused him, it had been an Escape; to that he punished the Gaoler for an Escape if he refuseth him, and for False Imprisonment if he receives him, is unreasonable. And that the main Reason in C. B. was, for that the Bailiff of a Liberty and the Gaoler were but one Officer, yet its plain that is a Misdakc, as was said here by the Court; and they said, that in this Case the Gaoler should be punished for doing but his Duty, and yet be without any Remedy. "Twas said by the Court, that in this Case, tho' Notice had been given to the Gaoler, yet 'twere not material. Upon this the Court pronounced their Reverend, Nif.——Lambert & Ollet v. Belfy. Raym. 421. S. C. argued by Raymond J. who conceived the Judgment ought to be affirmed.——Raym. 46. Belfy v. Belfy, S. C. and the same Argument of Raymond J. in Support of the Judgment of C. B. but they say, the other; Juices resolved, That the Gaoler was not chargeable, because he could not have Notice whether the Prisoner was legally arrested or not, and yet he is compellable to take him into his Custody, and if he let him go it will be an Escape.—S. C. cited by Powell J. 2 Laur. 1568. in the Appendix, in the Case of Gumb v. Doule 4 & 5. Tha the Gaoler not being Privy to the Tort, shall not be punished for doing his Duty in keeping his Prisoner.

19. If an Officer intermeddles in, or does nothing but what belongs to his Office, he is not liable to pertinent tortious Acts. 2 Jo. 214. Ollet v. Belfy.

20. If an Action be brought in an inferior Court for a Mutter which does or else within its Jurisdiction, and the Defendant be arrested thereupon, yet no Action will lie against the Officer that arrested him, tho' it will against the Plaintiff. Skin. 131. pl. 6. Mitch. 35 Car. 2. B. R. Per Cur. in the Case of Hudson v. Cook.

was said to be resolved 1 Car. 2. in the Exoncher, when Ld Ch. J. Hale sat there, in the Case of Copwer v. Cowper.——2 Show. 258. pl. 253. 8. C. but not S. P. and S. C. cited 2 Laur. 1568 by Powell J. in his Argument in the Case of Cullin v. Doile, and says he knows not any Authority against it, unless the Case of * Martine v. Dallif, in Roll's Rep. which he says is a Misreport of that Case, because the Ld. Holburne, who was Ch. J. when this Judgment was given, reports it otherwise.

* Hob. 63. pl. 64. and 2 Roll 109. 116.

21. If one has a legal and an illegal Warrant, and arrests by Virtue of the illegal Warrant, yet he may justify by Virtue of the legal one; for it is not what he declares, but the Authority which he has, is his Jurisdiction; per Holt Ch. J. 12 Mod. 367. Pach. 12 W. 3. B. R. in the Case of Dr. Greenville v. College of Physicians.

22. If upon an Escape-Warrant a Prisoner is taken by the Md., without any Officer, and deliver'd to the Sheriff, per Holt, 'tis as if there had been no Warrant at all; nor can the Sheriff detain him by grafting legal Imprisonment on an illegal one; if he does, False Imprisonment will lie against him. He is bound not to receive him from any body but the Constable, or other Peace Officer; but if such affirms himself to be

1. Deceptus de Facie is no Excuse for the Sheriff's arresting a wrong Peron by Virtue of a Writ. Arg. in the Case of iWake v. Vill. Built. 149. cites 13 H. 4. 2. Per Hankford.

2. In False Imprisonment the Defendant justified, because B. F. Justice of Peace &c. found the Plaintiff guarding a Manor with Force and Arms, and arrested him, and sent him to the Goal of L. where the Defendant was Con- stable, by force of a Warrant &c. made to him by the said Justice to receive him, by which he received and imprisoned him there, pront &c. which is the same Imprisonment. Yelverton said, De fon tort Demesne albique talis Causa, and held no Plea; for the Defendant justified by Matter of Re- cord. Yelver. De fon tort Demesne, abique hoc; thereafter. And because it was dubious how this Matter should be tried, whether per Pais, or by Certificate of the Justice to certify it upon a Writ to him directed, therefore he said, That De son tort Demesne abique hoc, that the Justice of Peace illic ei mitit; and the others e contra. Br. De fon tort &c. pl. 16. cites 21 H. 6. 5.

3. And in 16 E. 3. the Defendant justified to make Execution for Damages recovered; and the other said, that De son tort Demesne abique talis Causa. And the illeue received, and P. 13 E. 3. accordingly; for notwithstanding his Authority, he may take the Goods de son tort Demesne. Nato bene, and Study of the belt; and fee the Book for the Pleading of the Bar above at large. Br. De fon tort &c. pl. 16.

4. In False Imprisonment the Defendant said, that Capias issued out of the Exchequer against the Plaintiff to the Sheriff of M. to take the Plain- tiff, by which he took and imprisoned him, by Virtue of a Warrant to him directed thereupon by the Sheriff, the Defendant being a Bailiff fecun et kno- wun. And the Plaintiff demurred, because the Defendant did not prove Place where the Warrant was made, and did not shew if the Sherifôt retained the Writ or not. And as to the Place it is good by the best Opinion; for if the Plaintiff denies the Warrant, the Defendant may re- join, That it was made at D. &c. And as to the Return, it is good for the Bailiff cannot compel the Sheriff to return the Writ; but this is the Default of the Sheriff. But where the Sheriff himself justify, he ought to allege, that he has returned the Writ; but per Redo J. the Defendant ought to say, that he returned the Body to the Sheriff, or brought the Prisoner to him. And then a good Justification, & adiornatur. Br. Faux Imprisonment, pl. 12. cites 21 H. 6. 22.


† In Trespas of Imprisonment the Defendant pleaded, That he took the Body as Servant of the Sheriff, and by his Command. And well, without knowing that his Master had returned the Writ; for the Lords of the Master shall not provoke the Servant; but contrary of the Master himself; Per Littleton. Br. Tres- pas, pl. 533. cites 18 E. 4. 9.
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5. Trefpafs. If a Serjeant arrests a Man, and one comes in Aid of him, or if the Party shews to the Serjeant, or the Sheriff, the Man who shall be arrested, there, in Trefpafs or Falle Impriphonment, the Serjeant, or he who shews or comes in Aid, justifies as above. There the Plaintiff shall not say, that De fon tort Demefne abjique tali causa, against the one or the other; but shall traverse abjique hoc that he had fuch Cipias, or made any Refons, or fuch like &c. Br. De fon tort &c. pl. 19. cites 2 E. 4. 6.

6. In Falle Impriphonment the Defendant justified, that he at another Day, after the Day in the Declaration, arrested him by Warrant of the Peace, and carried him to the Gaol, abjique hoc that he was guilty before &c. But it was faid, that the Jufification is no Plea without faying, that he carried him to Gaol. Br. Faux Impriphonment, pl. 21. cites 5 E. 4. 5. 6.


8. In Falle Impriphonment the Defendant justified as Sheriff of M. and arrested him by Cipias, Judgment &c. And per Catefby, this is no Plea, without anfwering to the Falle Impriphonment; but it femea a good Plea, if he fays, that it is the fame Impriphonment. Br. Faux Impriphonment, pl. 29. cites 22 E. 4. 47.

9. In Falle Impriphonment, where the Bailiff makes an Arreft, De fon tort Demefne &c. is a good Plea. Contra where the Sheriff buiffift makes the Arreft, and is prohibited. Br. De fon tort &c. pl. 53. cites 16 H. 7. 3. Per Keble.

10. Faux Impriphonment. The Defendant justified, because the Plaintiff faid to J. 8. that the Mayor of Barnfable was a Fool, which the Mayor hearing of, commanded the Defendant, being an Officer &c. to imprifon him. And upon Demurrer it was adjudg'd no Plea; but for fuch Words he might have bound him to his good Behaviour, but was not to imprifon him. Yet if the Mayor had been in publick Place of Juflication, and he had call'd him by fuch opprobrious Words, he might imprifon him. Cro. E. 79. pl. 38. Mich. 29 and 50 Eliz. B. R. Simons v. Sweete.

11. In Falle Impriphonment the Defendant justified, that he was Conftable, and the Plaintiff being in the Presence of a Justice of Peace, who, not having Opportunity to examine him, commanded the Defendant to take the Plaintiff into his Caffody till the next Day, which he accordingly did, which is the fame Impriphonment. It was adjudg'd a good Jufification, tho' not alledged what Cause the Justice had to imprifon the Plaintiff, or any Warrant in Writing, it being in the Justice's Preufe. But the Jufification is as proper for another as for the Conftable. But because the Defendant justified the 16th, where the Impriphonment is supported the 15th, the Plaintiff had Judgment. Mo 408. pl. 551. Trin. 37 Eliz. Broughton v. Mullhoe.

12. In Falle Impriphonment, if the Defendant justifies by a Cipias to the Sheriff, and a Warrant from him, there De injuria fua Propria generally is no good Replication; for then Matter of Record will be Parcell of the Caufe, (for the Whole makes but one Caufe) and Matter of Record ought not to be put in Iffue. But he may reply De injuria fua Propria, and traverse the Warrant, which is Matter of Fact. But upon such Jufification, by Force of any Proceeding in the Admiralty, Hundred, or County Courts &c. not being Courts of Record, there De injuria fua Propria generally is good; for all is Matter of Fact, and the Whole makes but one Caufe; Per Cur. 3 Rep. 67. a. Mich. 6 Jac. in Crogate's Cafe.

13. In Trefpafs of Faux Impriphonment against a Sheriff and Bailiff, they justified by Warrant on Writ to the Sheriff. The Plaintiff replies, that no Writ was then taken out. To which the Defendant demurred, and Judgment
Judgment pro Plaintiff; for albeit the Bailiff has a Warrant, yet he is liable, if there be no Writ. Contra if the Writ be void, if deliver’d.

16. Trespass of Battery and Imprisonment. The Defendant justified by a Writ out of R. B., directed to the Sheriff, and a Warrant thereupon made to him. The Plaintiff demurred specially, because it was not pleaded that the Writ was deliver’d to the Sheriff as the usual Form. It was answered, that it need not be pleaded; for if in Truth a Writ be found he made a Warrant before it came to his Hands, it is lawful; and the Precedents are both Ways, as Dr. Johnson’s Case, Co. 8 Rep. and other Cases cited; and of such Opinion was Hallas and all the Court, and gave Judgment for the Defendant. Levington of Counsel for the Defendant. 2 Lev. 19. Mich. 23 Car. 2. B. R. Jones v. Green.

17. In False Imprisonment &c. the Defendant justified under a Lattain. S. P. 5 Silk, and Warrant, and Arrest thereupon at D. Abogue hoc, that he is guilty at any other Place or Time. The Plaintiff replied De injuria aboque talis condit. The Defendant demurred, and Judgment for him; because upon General Demurrer it is ill to put Matter of Record, and Fact, and Variety of Matters in one Hue, as the Warrant, the Arrest &c. Besides the Replication wanted Conclusion, viz. Et petit hoc quo Inquiretur per Parriam; for the Replication in this Case ought to make Ilue of itself, whereas here those Words are wanting. 3 Lev. 65. Trin. 34 Car. 2. C. B. Furdon v. Weeks.

18. In Trespass and False Imprisonment, and detaining him in Prison, quousque finem fecit ad Damnurum 1001. The Defendant pleaded Not Guilty as to all, except the Imprisonment; and as to that, he justified by a New Quittance &c. It was offered for Error, that the Defendant was charged for Imprisonment of the Plaintiff, quousque finem fecit pro Deliberatione, which is not answer’d; for the Imprisonment only is justified, and not the Finem tecit. But the whole Court thought the Plea good notwithstanding, because he pleaded Not Guilty as to all, besides the Imprisonment. Ryam. 497. Trin. 34 Car. 2. B. R. Bellamy v. Elliot.

and where it had been objected, that the Gaoler might, in this Case, have Action for Cade against the Bailiff, the Court doubted of it. And where it was urg’d, that if the Gaoler keeps one imprison’d for not paying unreasonable Fees, that now the Imprisonment becomes falls ab initio, the Court doubted of it.

19. In Trespass, Affluence, Battery, and False Imprisonment, the Defendants justified under a Plain levied against the now Plaintiff in an inferior Court, for a Debt of 201. and that a Capias issued, whereupon he arrested him. The Plaintiff replied, that the Cause of Action did not arise within the Jurisdiction of the Court. And upon a General Demurrer Judgment was given for the Defendants. 2 Loe. 535. 1566. Mich. 4 W. & M. in the Exchequer, Gwinn v. Poole & al.

20. In Trespass of Affluence, Battery, Wounding, and Imprisonment, the Defendant, as to the Affluence and Imprisonment, justified as Bailiff under a Judgment and Execution in an inferior Court of Record, and that he at D. Meiller manus &c. and arrested him &c. The Plaintiff demanded Oyer of the Execution, which appear’d to be fixed out more than a Year after the Judgment. And then replied, that no Execution emanating infra Annun. And upon Demurrer it was resolved, That fixing out the Execution
tion after the Year was not void, but only voidable by Writ of Error; so that till it is revered, it is a good Justification. 3 Lev. 423 Mich. 6 W. & M. in C. B. Patrick v. Johnson.

19. In Tresfpaßs, Assault, Battery, and False Imprisonment, the Defendants, as to all but the False Imprisonment, pleaded Not guilty; and as to that they justify by Virtue of their Charter confirmed by Act of Parliament, and by the Statute 14 H. 8. empowering them to fine and imprison pro non bene utendo Facultate Medicina &c. and to justify the Imprisonment Pro mala Praxi, by a Warrant in Writing under the Hands and Seals of the Censor &c. The Plaintiff replies De Injuria sua propria, & Non Virtute Warranti praecludi, & hoc petit quod inquiratur Per Patriam; and Holt Ch. J. who delivered the Opinion of the Court, held the Replication ill, and that the Plaintiff does not say there was no such Warrant, nor traverses it, but only says he was not arrested by Virtue of it. He had denied that there had been any such Warrant, it had been a good Traverfe, for then the Defendant would not have had Authority to arrest the Plaintiff; but if the Plaintiff was arrested for other Cause, and not upon this Warrant, then the Plaintiff should have shewn the other Cause; as if there were two Warrants, the one good, and the other ill, and the Plaintiff had been arrested upon the ill one, he ought to shew it specially, and a Traverfe that Defendant did not take him by Virtue of such Warrant, is ill; but he should have traversed that there was any such Warrant, or have said that it was granted afterwards, abique loco that there was any such Warrant at the Time of the Arrest. Ld. Raym. Rep. 454. Exeter-Term 11 W. 3. Groenvelt v. Barwell & al. Censors of the College of Physicians.

(D. a) Imprisonment justifiable by Officers. What shall be good Cause of Justification of Imprisonment by Officers.

1. If a Man comes thro' a Vill, driving certain Beasts, and a Hue and Cry pursues him, the Bailiff of the Vill may justify the Imprisonment of him &c. without other Cause, that is to say, of itself. Seduction, or Indictment. 29 C. 3. 39. abdomined.

2. If an Hue and Cry be issued upon a Man, it is good Cause of Imprisonment of him by an Officer, without any other Cause. 29 C. 3. 39 b.

3. Upon a Quitt in the Chancery between A. and B. if an Order be made by the Court that the Warden of the Fleet shall take B. and imprison him for diverse Contemps done to the Court till he has made an Obligation to A. and the Warden of the Fleet, by Force of this Order takes him accordingly, this is justifiable in an Action of False Imprisonment against A. who comes in Aid of the Warden by Force of such naked Commandment without Writ. 29 C. 3. B. R. between Taylor and Beale.

4. False Imprisonment against R. who came Vi & Armis, and beat and imprisoned him, the Defendant said that he was Contable, and the Plaintiff beat R. almost to Death, by which Hue and Cry was issued, and the Defendant would have arrested him, and the Plaintiff rejected the Arrest, by
Trefpafs.

by which the Constable took Power to arrest him, and the Damage which he had was becauße he disturbed the Arreft; and to the Imprisonment he said, that because the Plaintiff beat R. almost to Death, he imprisoned him by 4 Days, till be perceived that R. would live; and then let him at large; judgment &c. and no more is thereof said; and therefore it seems that it is a good Plea. Br. Faux Imprisonment, pl. 6. cites 38 E. 3. 6. And see 38 H. 8. that a Man cannot arrest him after the Affray is over without Warrant. Contra before the Affray, and in the Time of the Affray &c. And so of a Justice of Peace.

3. A Man cannot justify Imprisonment by Writ de Nativo habendo, or by jurisdiction; for these are only Commissions to hold Plea, and the Body shall not be taken but by Process out of Court of Record, and the Court of the Sheriff by thefe is not of Record. Br. Faux Imprisonment, pl. 30. cites 2 H. 4. 24.

6. If the Sheriff does not return the Writ, yet the Servant who makes the Arreft, may justify; for the Act of the Matter shall not lose the justification of the Servant, Per Danby and Choke; but Moyle and Littleton contra, but agreed of the Ballift of the Franchise that it shall not hurt him. And so alter, that the Sheriff himself cannot justify without returning the Writ; and yet he may, Per Choke, in case the Parties notify to him that they are agreed. Br. Faux Imprisonment, pl. 23. cites 8 E. 4. 18.

7. If a Man makes Assault upon the Constable, he may justify to arrest him who made the Default, and to carry him to Gaol for breaking the Peace, tho' he himself be Party, viz. the Constable upon whom the Assault was made; Quod nona. Br. Faux Imprisonment, pl. 41. cites 5 H. 7. 6.


10. Where a Man arrests another, and has no Warrant at the Time of the Arreft, but after a Warrant is directed to him for this Purpose, this is no Cause to justify; Per Cur. Br. Faux Imprisonment, pl. 8. cites 14 H. 8. 16.

11. In False Imprisonment the Defendant justified, for that Sir R. L. Brown, 224, the Lord Mayor of London, and who was a Justice of Peace, commanded him, being Servant at Nine, pro desperatus causis acceperat Maioris bene cognitius, to imprison the Plaintiff &c. All the Court held it no good Plea; for the Cause of Imprisonment ought to be shewn, fo as the Court may adjudge whether it were lawful, or not; tho' a Magistrate may lend for any to examine him, without shewing Cause in the Warrant, or telling the Officer what the Cause is, which might not always be proper to discover, yet when he is committed, the Cause is then discovered. Cro. J. 81. pl. 4. Mich. 3 Jac. B. R. Boucher’s Cafe.

The Commitment was by the Lord Mayor, as Mayor, or as Justice of Peace; and that his Power as Mayor was not known to the Court, but ought to be shewn in the Placing. —— S. C. cited 2 Hawk. Pl. C. 57, cap. 13. 8. 11. by Name of E. Fether’s Cafe. And the Servant says it seems to be holden in this Cafe, that where an Officer arrests a Man by Force of a Warrant from a Magistrate, pro certis Causis, without shewing any Cause in particular, he cannot justify himself in an Action brought against him for such Arrest, without setting forth the particular Cause in his Plea, and yet in this very Report it seems to be allowed, that such a general Warrant is good; and if this, it seems strange that the Officer should not be justified by setting forth the Truth of his Cause, since if there were no good Cause to justify the granting of the Warrant, the Magistrate ought to a Twelve for it, and not the Officer.

12. In Trefpafs of taking his Servant out of his Service &c. the Defendant justified that A. was possessed of Corn at S. and that the Service by 6 H.
Command of his Master, had carried the same away; and that the said A. defied the Defendant, being a Constable, to detain the Servant until he could get a Warrant from a Justice of Peace &c. And upon Demurrer the Plea was held ill, because a Constable cannot detain any person but for Felony. Brownl. 198. Mich. 11. Jac. Ringhall v. Woolsey, or Welch.

13. In False Imprisonment, the Defendant justified, that he was Sheriff of London, and having arrested one T. S. be escaped, and being in Pursuit after him in February, he met the Plaintiff about Nine at Night, who us'd him indecently, thrashing him against the Wall, and giving him foulminded Language; and thereupon finding him wandering in the Street in the Night-time, and misbehaving himself, the Defendant imprisoned him; and upon a Demurrer it was objected, that it was ill, because circa nonam Horam was uncertain as to the Time, neither was it a Time to be committed for a Night-walker, it being usual for Men at that Time to be about Business; and that the thing him uncivilly is too general, and the thrashing him against the Wall might be by Accident. Sed per Curiam, taking it all together, the Justification was good; but if it were so that the Thrashing him against the Wall was casual, this ought to have come in the Replication, and not to have demurred; and Judgment per tot. Cur. against the Plaintiff. Roll Rep. 237. pl. 8. Mich. 13. Jac. B. R. Chune v. Pyot.

14. In Trespass of Assault, Battery, and False Imprisonment, the Defendant justified as Deputy-Governor of the Isle of Scilly, setting forth a Custody there to chajle and punish by Imprisonment any Soldier &c. who neglects or misbehaves himself in his Duty, or obstinately refuses to obey the Orders of the Governor or his Deputy, and being required thereunto gives controuls Words to the said Deputy Governor; and then sets forth that the Defendant disobeyed the Orders of the Deputy Governor, and gave him opprobrious Words, whereupon he imprisoned him Prout ei bene licuit; and upon Demurrer the Plaintiff had Judgment. 2 Jo. 147. Paclf. 33 Car. 2. B. R. Ekins v. Newman.

15. If a Process be unduly obtained, and the Party, against whom it is had, be thereupon taken and imprisoned, an Action of False Imprisonment lies by the Party imprisoned, against him at whose Suit he is imprisoned, but not against the Officer who executes it. Mich. 24. Car. 1. B. R. L. P. R. 595. Tit. False Imprisonment.

(Da. 2) Imprisonment. Justification by Officers without Warrant. Pleadings.

1. T

2. In False Imprisonment, the Defendant arrested the Plaintiff without Warrant, and after Warrant came to him, and be justified by the Warrant; and the Plaintiff said, that he had any such Warrant, and gave the Matter in Evidence; and the Warrant...
was of a Justice of Peace to arrest him. Br. De fon tort &c. pl. 17. cites 14 H. 8. 16.

3. In False Imprisonment, the Defendant justified that York was a City by Pre-Script, incorporated by Name of Mayor &c. and had Time out of Mind a Court of Chancery for all Causes of Equity arising in the City between the Citizens &c. and that the Mayor had always used to direct Precepts for Appearance, and to impress for Contempt of Orders; and that a Bill was exhibited against the Defendant, who being summoned did appear but refused to answer, and thereupon an Order was made that he should answer or stand in the Matter in Controversy for which he was taken, did so; and brought him into Court, where he was in open Court committed, and to justified &c. And upon Demurrer this Plea was adjug'd ill, because the Pre-Script being laid for the Mayor to direct Precepts for Appearance, those must be understood to be in Writing, but the Precept to the Defendant to arrest the Plaintiff was by Word only, and if that were void which is made Part of the Cause of the Judgment of the whole Plea is vicious that the Commitment in Court was good; besides the Plea is ill in Substance, because a Court of Equity did not lie in Grant and much less in Pre-Script, as here it is alleged, it being a Jurisdiction to be derived from the Crown, and it had been resolv'd by all the Judges of C. B. that the King could not grant to the Queen to hold a Court of Equity, and that the Courts of Chancery in Chelsea and Durham are Incidents to a County Palatine, which had Jura Regalia. 


Hitcham said that it was the Opinion of the Court of C. B. that a Court of Equity cannot be by Pre-Script, but true it is, that in London they have such Court, but their Judges are confirmed by Act of Parliament; but in Contra it was laid that the Court of C. B. gave no such Opinion, and that Montague Ch. J. demanded of Hitcham, why a Court of Equity may not be by Pre-Script; and cited in Jurisdiction the like Plea, where it is held that a Court of Equity may be by Pre-Script. Haughton J. said, that the Cause Poitein have had a Court of Equity by Pre-Script; but Hitcham said that they have likewise an Act of Parliament for it in H. 6. and that in the Chancellor of Oxford's Case, it is doubted whether a Court of Equity may be by Pre-Script or not--S. C. cited a Law 1645 in the Case of Gurney v. Poole in the Argument of Sir John Powell who says, Nots that this was for want of Jurisdiction in the Court as to the Processt, and that this was the Reason of the Judgment, and not for want of Averment, that the Cause arose within the Jurisdiction of the Court, as is laid in Roll Rep. 159 which Report he says is certainly mistaken. And ibid. pag. 1568 says that it is misreported, because the Lord Hobart, who was Chief Judge, when the Judgment was given, reports it otherwise.

4. In Trespass, the Plaintiff declared that the Defendant 1 Apr. &c. Vi = 2 Ke 27 &c. &c. &c. &c. The Defendant, as to the Affault Battery and Wounding, pleads for Affault done; and as to the Imprisonment, except for 11 Hours, he pleads traversed, Not guilty; and as to those 11 Hours be pleads in Bar that it was on the 10th January &c. at the City of Coventry, in the County of that City, and that he was then Sheriff thereof, and in the Execution of his Office, by watching the Common Goal there, left the Prisoners should escape; and that the Plaintiff at 11 a Clock at Night, being an unseemly Time, struck the Defendant with his Fist, and hinder'd him in the Execution of his Office, whereupon he, to keep the Peace, imprifon'd the Plaintiff till the next Morning, and then carried him before a Justice of Peace, who bound him over to the next; and or any Affliss &c. And upon Demurrer it was objected that the not an serving the Vi &c. &c. &c. had made both the Pleas ill. But the Court held that the Vi &c. was only Matter of Form, and sided by the Statute 27 Eliz. Cap. 5. of General Demurrers. Sault. 81. Trin. 19 Car. 2. Law v. &c. &c. <

King.

verse is sufficient, and the Plaintiff may reply, and flew if there were any other Affault or Imprisonment; also the traversing the Time before, and after, does not lock up the Plaintiff from alleging another Day and Place, especially the Thing being local. Twidwell on 1 Cro. 554. l'd this would be a Departure. Judgment pro Defendant.

(E. a) Im-
(E. a) Imprisonment. For what Causes or Things those Persons may be imprison'd.

1. A Man may imprison another to prevent apparent Mischief which may ensue.

Br. Faux. Imprisonment, pl. 29, cites 1 C. That the Plaintiff brought Action of Imprisonment against the Defendant for imprisoning of his Feme; the Defendant said that he declared himself to the Feme that her Baron was taken and imprisoned for a Scot, and the Feme took as if she had been mad or Lunatick, and the Defendant to avoid Mischief, took her and put her in his House for an Hour, which is the same Imprisonment. And per Fairfax. 1. is no Plea; for you cannot have the Jury to try your Conscientious Mind, which cannot be, but you ought to shew in Fact that she was mad, and supposed that she would have killed herself, or done other Mischief, as burnt a House.

* The Words are omitted in the large Edition.

S. P. Br. Faux Imprisonment, pl. 28, cites 1 C. 2. But if he fees 2 quarreling, and having many Words as if they would fight, yet it is not lawful to take the one or the other and put in any Place; for notwithstanding the Words, the one will not pre-adventure strike the other, and so it shall be intended. 22. E. 4. 45. b.

3. If a Man sees two Men fighting, so that perhaps one would kill the other, it is lawful for him to part them, and put one in an House till the Rage be over. 22. E. 4. 45. b.

* As by striking or offering to strike or drawing their Weapons &c. or upon the very Point of entering upon an Affray, as where one shall threaten to kill, wound, or beat another, he may either carry the Offender before a Justice of Peace, to the End that such Justice may compel him to find Sureties for the Peace &c. or he may imprison him of his own Authority for a reasonable Time, till the Heat shall be over, and also afterwards detain him till he find such Sureties by Obligation. But it seems that he has no Right to imprison such an Offender in any other Manner, or for any other Purpose; for he cannot justify the committing an Affray to Gaol till he shall be punished for his Offence; And it is said, that he ought not to lay Hands on those who barely contend with him Words, without any Threats of Personal Hurt, and that all, which he can do in such a Case, is to command them under Pain of Imprisonment to avoid fighting. Hawk. Pl. C. 15. cap. 65. S. 14.

4. If a Man be in a Rage and does a great deal of Mischief, his Parents may justify the taking and binding of him in a House, and there to lie him in such a Manner as shall be reasonable to reduce him to his good Sense again; for it is for the Benefit of the Party and of all others for the Mischief which he may do if he were at large. 22. E. 4. 45.

5. In False Imprisonment, the Defendant said that the Plaintiff was Lunatick, and would have killed himself, or would have burnt a House in B. by which he took and imprisoned him; the Plaintiff said, that De fon tort demoine abique tall cauts, and the others contra. Br. De fon tort &c. pl. 11. cites 22. E. 4. 44.

6. In False Imprisonment, the Defendant justified because the Plaintiff and others assaulted J. F. and beat him [almost] to Death, by which Hurt Br. Der. 1 C. said, and the Defendant, as Steward of the Vill, him took, ar.

Faux Imprison'd and kept, till they were afford of the Life of J. F. &c. And the other ment, pl. 35. said that De fon tort demoine &c. Br. Trefpals, pl. 235. cites 22. Aff. cites S. C. 44. S. P. 56.

Ibid. pl. 44. cites 1 H. 7. 26.

7. A
Trespasses.


9. If I see a Man going to kill 7. N. I may take and hold him from it; per Moyle and Needham. Br. Trespasses, pl. 184. cites 9 E. 4. 26.

Serjeant Hawkins says that any one may lawfully lay hold on another whom he shall see upon the Point of committing a Trespass or Felony, or doing an Act which may manifestly endanger the Life of another, and may detain him so long till it may reasonably be presumed that he hath changed his Purpose. 2 Hawk. Pl. C. 77 cap. 12. S. 19.

10. In Trespasses of False Imprisonment, the Defendant said that the Plaintiff feloniously robb'd W. N. by which he took and arrested him, and delivered him to the Constable of D. to carry him to Gaol; and a good Plea, tho' he does not say that the Constable did carry him to Gaol, Contrary of Arrest by Capias, and not returning the Writ; for this is upon Condition ita quod habeas Corpus ejus tali die &c. Br. Faux Imprisonment, pl. 24. cites 10 E. 4. 17.

Serjeant Hawkins says it at the Common Law; But per Cur. if lie sends him to Gaol by his Servant, who suffers him to escape, Action does not lie against the Master; per Cur. And so if the Plaintiff had been refused out of the Possession of the Defendant, Action does not lie for the Plaintiff; for there is no Default in the Defendant. Br. Faux Imprisonment, pl. 24. cites 20 E. 4. 17.

11. Where a Man arrests a Felon, and offers him to the Gaoler, and he will not receive him, the Party himsclF may keep him. Br. Faux Imprisonment, pl. 25. cites 11 E. 4. 4.

12. In Faux Imprisonment B. the Defendant said that he was robb'd in another County, and the Voice and Name was, that the Plaintiff did the Robbery, by which he arrested him for Sufficient in the County of B. The Defendant said that De fon tort Demine abique tali Causa; and well per Catesby; but per Brian and Townend, he shall say that De son tort Demine, abique hoc that there was any such Felony done; &c adjournatur. Br. De son tort &c. pl. 52. cites 2 H. 7. 3.


14. Justices of the Peace cannot award Warrant to arrest a Man, for that he bad broke the Peace, but they may award Warrant to arrest him for Peace, that he will break the Peace for the future; this is not for the breaking which is parr. Br. Faux Imprisonment, pl. 41.

Serjeant Hawkins says it seems clear, that regularly no private Per- son can of his own Authority arrest another for a bare Breach of the Peace after it is over; for if an Officer cannot justify such an Arrest without a Warrant from a Magistrate, a tortorii a private Person cannot. 2 Hawk. Pl. C. 77. cap. 12. S. 20.

15. A Constable took a Midman, and put him in Prisifon, where he died, and the Constable was indicted of this, but was discharged; for the Act was legal. Cited by Glenvill. Arg. Ow. 98. Hill. 31 Eliz. C. B. in Case of Scale v. Catter, as a Case which he heard in that Court in 10 Eliz.

16. Trespasses for Faux Imprisonments; the Defendant justified as Com. stable of A. because the Plaintiff brought a Child of 2 Months old, and laid it in the Church-yard of A. to the Intent to have destroyed it, or to charge the Parish with the Keeping of it; for which he did arrest him, and put him in the Stocks. And upon Demurrer it was held a good 6 l

Justifi-
Trespass.  

17. It seems clear, That all Persons whatsoever who are present when a Felony is committed, or a dangerous Wound given, are bound to apprehend the Offender, on Pain of being fined and imprisoned for their Neglect, unless they were under Age at the Time. 2 Hawk. Pl. C. 74. cap. 12. S. 1.


1. Trespass of Imprisonment, the Defendant pleaded that the Plaintiff assaulted him, and would have beat him, by which the Defendant came to the Constable, and pray’d him to arrest him to find Surety of the Peace, who did so, and be came in Aid of the Constable; Judgment in Aetio, and admitted for a good Plea in the written Book. Br. Trespass, pl. 79. cites 3 H. 4. 8. 9.

2. In Trespass of False Imprisonment, because the Defendant assaulted, beat, and imprisoned the Plaintiff till he made Fine. The Defendant said that Aetio non; for he said that in the Time of the Rebellion of Jack Cade, one W. S. and other Malefactors in the Vill of B. where &c. made Insurrection, and would have cut off the Heads of all that were not their Friends, and they took the Plaintiff, and carried him to the Grofs, and would have cut off his Head, and the Defendants came and laid their Heads peaceably upon the Plaintiff, and carried him to the House of the Mayor, and pray’d him to keep him in his House all that Night, in Salvation of his Life, by which he was there all the Night, which is the same Assault, Battery, and Imprisonment of which the Aetio is brought; and said that he did not make any Fine &c. And the best Opinion was, that it is a good Plea, without saying that the Rebels were there watching all the Night, so that they could
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could not hit the Plaintiff at large sooner than they did; and a good Plea, without traversing abiguas see that they imprisoned him till he made Fine; for then he traverse that which he justified before, and also the Imprisonment ought to be answered; for otherwise he shall recover Damages for the one, and for the other. Br. Faux Imprisonment, pl. 3. cites 35 H. 6. 54.

3. Trespa of Imprisonment; the Defendant justified, because he him-
sel brought Action of Debt against the now Plaintiff in the Court of the Tower of London, and it was return'd Nihil, by which Captus iudicis to the Bailiff there to take the Plaintiff, and the now Defendant proc'd the Plaintiff to the said Officer, by which the Officer took him by his Warrant, and return'd Ce-
pit Corpus &c. which is the same Imprisonment of which the Plaintiff has brought his Action; and the Plea was challeng'd, because it is an Im-
prisonment by the Bailiff or Officer who arrested him, but is no Imprison-
ment by the Defendant who heu'd it to the Officer; and so Per Cur. it is no Plea, unless he says further that he required the Officer to arrest him by his Warrant, by which he did it, and then this Request, with the Arrest by the Officer, is a lawful Imprisonment in him who required him; Quod nota. Br. Trespa's, pl. 327. cit. 4 E. 4. 36.

4. Imprisonment was justified, because the Defendant was in Company of
Theves, who had killed J. S. and the Voice and Fame was that he was guilty. The being in the Company is traversable, but not the Voice and Fame. Per Markham Ch. J. Br. Trespa's per &c. pl. 339. cites 7 E. 4. 20.—But see 11 E. 4. 6. that the Illue was taken upon the Voice and Fame; Quod nota. Ibid.

H. S. 9. 7. E. 4. 20. But this is to be underlioud, if the Cause for which he was taken be Publick, but not where the Cause is Private, as for taking a Man's Goods in a private Manner, there he must shew spe-
cially that the Goods were found with him, and in his Possession, and not to go by Belief, and to give Credit to every particular Man, but he must shew some good and apparent Cause to the Court. Arg. Bullit. 149 and lays fo is: E. 4. 27. —Ibid. 150. Per Croke J. The Difference is where an Offence was committed, and Sufpicion withal, Common Fame will excuse, but not where no such Offence was committed, in Case of Wale v. Smith.

5. In Trespa the Defendant justified the Imprisonment of the Plaintiff, because he assaulted J. N. to have rob'd him, by which the Defendant took him and put him in the Stocks. The Plaintiff said that De fen tort Demeine abiguas tali Causa; and a good Plea, and to illue. Br. De

6. Trespa of Allaut, Battery, and Imprisonment at F. the Defen-
dant said that a Man was rob'd by J. S. and R. such a Day, who came to the House of the Plaintiff, and the Constable arrested the Plaintiff, because S.C. he had Sufpicion of him, and because he would not obey him, he commanded the Defendant to affh him, by which the Defendant put his Hands upon him, which is the same Battery; and after he went with the Constable to D. in Aid of him, and there delivered him to the Gaoler, which is the same Imprison-
ment &c. and a good Plea; for it is as well the Imprisonment of the Defendant as of the Constable, and is not double, viz. the Power which every Man has to arrest a Felon, and the Command of the Constable; but it is not good unless the Defendant shews Sufpicion in the Plaintiff, as to say that he was a Man of ill Fame, or a Vagrant doing no Work; by which he pleaded so. Br. Trespa's, pl. 335. cites 17 E. 4. 3.

7. Fallo Imprisonment against an Abbott, and Commion; the Abbv
said that W. S. came to him such a Day and Year, and said that he was in
Trouble of his Life by R. who intended to kill and destroy him, and prayed his Advice and Counsell, who commiss'd him to go to T. N. Jusitice of Peace for a Warrant of the Peace, by which he obtained a Warrant, whereby the Plaintiff was arrested to the Peace; and the Officer said that it he would not find Surtety, that he would carry him before the Justice of the Peace. And the Opinion of the whole Court was, that the Plea

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TRESPAS.

amounts only to Not guilty; for the Defendant justifies no Imprisonment; and his Counsel was lawful. But per Rede, if he had said that he came in Aid of the Officer &c. this had been a good Plea; quod non negatur. Br. Faux Imprisonment, pl. 17. cites 12 H. 7. 14.

8. In False Imprisonment, it is no Plea that diverse Oxen were stole, and becaufe he suspected the Plaintiff that he had stole 6 Oxen, he arrested him; for he ought to say precisely that the Oxen were stole; for otherwise he cannot arrest him. Per Fitzh. quod nemo negavit. Br. Faux Imprisonment, pl. 1. cites 27 H. 8. 23.

9. In False Imprisonment, where the Defendant justifies for several Causes, and some of them are found good, and others not, the Defendant shall not be amerced for this Falsity; for there was good Cause for the Arrest, and this is only a Defence, and not by Way of Action, as an Avowry is. Jenk. 184. pl. 77.

(F. a) Imprisonment. Justification. For what Causes it may be.

Br. Falsè Imprisonment, pl. 13. cites S. C.—Br. De son tort &c. pl. 46. cites S. C.

1. If a Tenant by Knight-Service has 2 Sons, and the eldest is taken by the Scores, and carried out of the Realm in the Life of the Father, and after the Father dies, the Lord may justify the Taking the younger Brother as his Ward, till the eldest comes back into England, and he has Consequence of it. 22 El. 85, admitted. It seems it is intended, that he had not Consequence in his Absence whether he was alive or dead.


(F. a. 2) Trespass justifiable by Officers. [By Warrant.]

Cro. C. 394. pl 6. S. C. accordingly, and the Court said, that it is not like to an Officer’s making an Arrest by Warrant out of the King’s Court, which, if it be Error, the Officer must not contradict, because the Court

1. If there be the Parish of D. and there is also a Vill call’d S. which in truth is within the Parish of D. but for a long Time, that is to say, 60 Years and more before the Statute of 43 El. cap. of the Poor, and all Times after has been reputed a Parish by itself. But the Church-Warden’s of the Parish of D. conceiving that by Force of the Statute of 43 El. they had Power to tax the Inhabitants of S. to the Poor of the Parish of D. far’d them accordingly, and thereupon, for Default of Payment thereof, have a Warrant from the Justices of Peace, according to the Statute, directed to the Church-Wardens to levy it. Whereupon the Church-Wardens take a Distress of the Inhabitants of S. who being an Action of Trespass, and the Church-Wardens justify by Force of the Warrant of the Justices. This is no good Justification nor Erect of the Trespass, tho’ they do it by Force of the Warrant of the Justices, and tho’ (as was said) they cannot dispute the Authority of the Justices, much less as the Church-Wardens nor Justices have any Power to charge them, and so they ought to take Consequence of the Law at their Peril. Hill.
Trespasses.

Hill 19 Car. 2. R. between Nicholso and Walker adjudged, upon a habe a Gene-

Special action found at Bar. Tr. 15 Car. 2. Rot. 222.

here the Judges of Peace have, but a particular Jurisdiction to make Warrant to relieve Rates well

affeed.—Jo. 554. pl. 4. S. C. adjudged that Trespass lay.—S. C. cited Arg. 4. Mod. 549. in the

case of Crump v. Herford.

2. If A. brings Action against B. in an inferior Court of Record, in

S. C. cited

which C. is Bail for B. and binds by Recognizance his Goods and

lands, that B. shall render his Body to Prision if he be condemn'd

or that he shall pay the Damors recover'd; and after judgment is given

against B. and a Precept is directed thereupon to the Bail of the Court

in Nature of a Capias ad Satisfacnicm, to take B. if he be found, and

in his Default to take C. And thereupon the Bail returns, That be-

cause B. was not found, he took C in Execution; tho' by this Recog-

niitance C. does not bind his Pruion, to that the Capias does not lie

against him; and tho' a Capias does not lie at the same Time

against the Principal and Bail by a Custom, (as was alleged) but a

Capias ought to be first against the Principal, and after a Seire

Pacias against the Bail, and tho' it was apparent in the Precept to be

against Law, that the Bailift might have taken Notice of it, pee

because the Court has Jurisdiction of the Cause, and he did it by

Force of the Precept of the Court, it shall excuse him. Hill 15

Car. 2. R. between Sewbrone and Noverne, adjudged. Per Curiam

upon Denmomm. Intrac. Tr. 10 Car. 2. Rot. 572.

3. In Bill of Trespass it is not denied by the Plaintiff, but that the

One of Sheriff, by Capias awarded upon Judgment of Trespasses, may break the

a House of Bailiff, or of the Doors of his Cloze, to serve the Arrest. Br. Trespasses, pl.

238. cites 27 Aff. 37. but fee thereof 18 E. 4. 4.

Fieri Facias; per Cur. But he may take the Goods or Body for Execution. Br. Trespasses, pl. 597

cites 18 E. 4. 4.

4. What an Officer does by Colour of Justice or Office, is excusable. See

Kelw. 66. b. pl. 8. 20 H. 7. Anon.

5. When a Court has Jurisdiction of the Cause, and proceeds Inverso

As in Tres-

paks the de-

nent judi-

fied takin

ng of the

Court.

Revol.

10 Rep. 76. Mich. 10 Jac. in Case of the

Marshalla.

was Bailiff of the Manor of D. and J. S. recover'd Damages upon Plan't against the Plaintiff in the Court-

Baron: and the Defendant, by Precept to him directed, made Execution. The Plaintiff said, that J. S. sued

against him for Plnc of Frankentenon there by Plaintiff, where none shall answer of Frankentenon there,

under by Wet, by which he demand'd upon it; and yet the Court award'd Damages against him for not

defending, and the Defendant took the Beaks for the Damages, where the Judgment was Grant

ed, and demanded Judgment, and prav'd Damages, and by Award he took nothing by his Bill; for

the Officer shall not be griev'd as here, for the Judgment is not void; but shall have Error or False

Judgment; but shall not have Avice; because the Land lies within the Jurisdiction of the Court, that they

ought to have held the Plea by Wet. Br. Trespasses, pl. 298. cites 22 Aff. 64.

As if the Sheriff arrests a Peer on a Capias in Debt out of C. B. he is excusable, because the Court has Jur-

isdiction of the Cause. 10 Rep. 76. b. in Case of the Marshalla.

Trespass against an Officer, who justified by a Process out of an inferior Court; but because the Cou-
tom was not pursed, Judgment was against him. Hale Ch. 1. took this Difference: If an Officer, for

his Exeute, justified by Process according to Custom, out of an inferior Court, the the Custom be bad, the, the

Officer shall be excuted, and the Judgment is not void, but voidable; but if the Custom be not pursed, the

Officer shall be excuted; as if a Custom be alleged in a Court after a Pleine levied to take out

Proces, and he alleges that Proces was take out, (but alleges no Pleine levied) he is a Trespafor.


6. But when the Court has not Jurisdiction, all the Proceeding is Co-

As where

ram non Juduce, an Action lies against them, without regard to Precept

or Proces. Revolved. 10 Rep. 76. in Case of the Marshalla.—2

6 K.
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Trespass.

Contrariwise, Built. 64. Weaver v. Clifford, S. P. Per Fleming Ch. J. and Dods-
ridge J.

which was made out of

of the Jurisdiction, or of Land which lies out of the Jurisdiction, and the Plaintiff or Demandant recovers, has Execution, there Trespass lies; for it was Coram non Justice. Contrary here, and to a Diversity where the Court may have Jurisdiction of the Thing by some Means, and where it cannot have Jurisdiction by any Means. 6a Trel. pl. 64. cap. 23. cit. 23. s. c. accordingly.

But where a private Act of Parliament erected a Court of Confidence in E. for all Matters under 40s. and enacted, that all Judgments for such Matters elsewhere should be merely void; yet a Judgment had in the Town-Court for a Matter under 40s. where this Matter was not pleaded, is a Judicature of the Officers for taking the Defendant in Execution. Carth. 274. Patch. 5 W. & M. B. R. Prigg v. Adams—2 Saik. 674. S. C. accordingly.—Inn. 530. 566. 407. S. C.

So if a Justice of Peace makes a Warrant to arrest one for Felony, who is not indicted, tho' the Justice errs in the Warrant of it, yet False Imprisonment lies not against him who executes it. 10 Rep. 76. b. in Case of Warrant all the Marshalsea, cites 14 H. 8. 16. a.

7. If Justice of Peace makes a Warrant to arrest one for Felony, who is not indicted, the Justice errs in the Warrant of it, yet False Imprisonment lies not against him who executes it. 10 Rep. 76. b. in Case of Warrant all the Marshalsea, cites 14 H. 8. 16. a.

8. No Action of Trespass will lie against Officers for taking Goods or Cattle by a Replevin, unless he who has the Possession claims Property when the Officers come to demand them, and they take them, notwithstanding such Claim of Property; and this special Matter must come in by way of Replication by the Plaintiff; Per Holt Ch. J. Carth. 381. Trin. 8 W. & M. B. R. in Case of Hallet v. Byrt.

9. And so there is a Difference between a Replevin and other Process, in respect to Officers; for in Replevin they are expressly commanded what to take in Specie. But in Writs of Execution the Words are general, viz. To levy of the Goods of the Party; and therefore it is at their Peril if they take another Man's Goods; for in that Case an Action of Trespass lies; Per Holt Ch. J. Carth. 381. in Case of Hallet v. Byrt.

10. In Trespass and False Imprisonment for such a Time, quoniam the Plaintiff paid 11s. The Defendant justified under the Statute 3 Jac. 1. cap. 15. for erecting a Court of Confidence in London; and that on such a Day the Court did order, That he should be carried to the Counter, and imprison'd until he paid 7s. Debt, and 2s. 6 1/2 d. for Cofts, by Virtue whereof the Defendant, being an Officer, took him and detain'd him 6 Hours. And upon Demurrer it was held, per Cur. that tho' the Defendant did not answer the Demurrer, quoniam the Plaintiff paid 11s. yet the Plea is well enough; for the Imprisonment, and not the Quo-nique, is the Cause of Action; but the Quo-nique is only Matter of Aggravation. And if he had paid nothing to the Money, the Justification had been good; and if, after Payment of the 9s. 6 1/2 d. he had been detain'd, he ought to have replied it. But they held the Plea ill, because the Order was to carry the Plaintiff to the Counter; and tho' he confesses be detain'd him 6 Hours, he does not show it was in the Counter, or in carrying him thither. And this differs from the Case of a common Arrest; for in such Case the Officer may make any Place his Prision, because the Writ is In quo quod Habeas Corpus ejus Coram &c. apud Welth'; which is a general Authority; but here it is a Special Authority to carry him
Trespass.

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Hillary Term, for this Reason, Judgment was given for the Plaintiff—Skin. 664. pl. 2. S. C. and Holt Ch. J. Gld. If the Plaintiff would take Advantage, he ought to shew that he paid the 9 s. 6 d. and that the Plaintiff detain'd him afterwards; otherwise the Quæfique is only in Aggravation, and ought not to be answer'd; and that it should be a Variance, yet the Conclusion, Que eft cadem Tranfregio, aids it.——3 Salk. 219. pl. 6 S. C. by the Name of Swinstead v. Smith, adjudg'd. And Holt Gld. If the Detainer had been after Payment of the 9 s. 6 d. it had been material; but then the Plaintiff should have set it forth in a Replication.

11. If there be no Judgment, and a Ca. Sa'. or other Execution is taken out, the Sheriff and all other Persons acting under him in the Execution are justifiable, tho' there be no Judgment. But if a Stranger of his own Head interposes, who is not concern'd, and he sets on the Sheriff to do Execution, he cannot justify this. Or suppose it be the Plaintiff who sued out the Writ, he must in his justication plead the Judgment; for if there be no Judgment he is a Trespassor; Per Holt Ch. J. in delivering the Opinion of the Court. 12 Mod. 178. Hill. 9 W. 3. B. R. in the Case of Britton v. Cole, cites Ray. 73. Turner v. Felgate.

12. Where a Judgment is illegally enter'd, and afterwards Execution is sued out thereupon, and executed, the Officers who execute it are excused, but the Plaintiff is liable; for the Officers are in no Fault; they do but obey the Precells of the Court. 2 L. P. R. 266. Tit. Office and Officer.

13. In Trespass for taking Goods, the Defendant pleaded a Plaint in 12 Mod. Replevin in the Sheriff's Court in London, and that he was Servant at Mac. and a Precept came to him to repley those Goods, which he did accordingly. The Plaintiff demurred. And per tot. Cur. the Plea is ill for want of shewing a Return; for whenever a Principal Officer is to justify under a returnable Precell, he must shew that the Writ was return'd as he is commanded to do, and shall not be protected by it, unless he shews he paid a full Obedience in acting under it; but any subordinate Officer, as a Bailiff, may. In this Case the Defendant is a principal Officer; and this Precell, under which he justifies, was a returnable Precell; and Judgment was enter'd for the Plaintiff. Salk. 409, 410. pl. 5. Hill. 12 Will. 3. B. R. Freeman v. Blewitt.

for executing them, he cannot justify without shewing a Return—5 Salk. 220. pl. 8. S. C. says, that because the Officers Replevin commands the Sheriff to repley the Goods, vel Caufam nobis lignifices, therefore he must return the Writ, otherwise this Inconvenience might happen, (viz.) that if the Defendant should appear, and be Nonfuit (for he is the first Actor) the Court would be at a Loss how to give Judgment whether Pro Returno Habendo, or a Capias in Withernam, or a meer Nonfuit.—Ld. Raym. Rep. 652. S. C. adjudged accordingly.


(Fa. 3) Trespass justifiable by those who are aiding Officers.

1. If a Latent comes to a Sheriff to take J. S. and the Sheriff makes his Warrant to arrest Bailiffs to arrest him, and the Bailiffs arrest him, and after the Arrest J. S. upon the Imprivity of the Bailiffs keeps the Prisoner in his Custody till he is delivered by the Sheriff; this is good Matter of Justification for J. S. in an Action of False Imprisonment brought against him by J. S. Will. 11 Car. 11 S. C. Wm. 3. B. R. Wm. 3.
Trespass.


See pl. 1. above.

2. If a Stranger after an Arrest of a Prisoner by Bailiffs upon a Proces of Latifrat, or Capias comes in Aid of the Bailiffs, and assists them to keep the Prisoner in their Custody, and this upon the Command of the Bailiffs, it is justifiable by the Stranger in an Action of False Imprisonment. Hill. 11 Car. B. R. in the said Case of Girling and Allen. Per Curiam.

3. Trespasses of Battery by J. The Defendant said that J. wounded B. to Death and one W a Constable of the Ward came to assist him, and he stood in Defence, and he came in Aid of the Constables, and the Ill which he had, was De fon tort demene &c. Judgment &c. The Plaintiff said that De fon tort demene &c. Br. Trespafs, pl. 110. cites 36. E. 3. 9.

4. Trespasses against 2 of a Horfe taken, the one said that he is Bailiff, and attach'd it by Plaint enter'd by R. against the Plaintiff, and the other said that he came in Aid of the Bailiff. Br. Trespafs, pl. 402. cites 41. E. 3. 29.

5. Assault and Battery by Husband and Wife against the Defendant, a Constable, and 2 others, who pleaded to all but the Assault Not guilty, and as to that, the Defendant justified that the Wife was presented in the Leet to be a common Scold; whereupon the Steward made a Warrant to the Constable to punish her according to Law, and the Defendants went to the Plaintiff's House to execute the Warrant, and the Wife assaulted the Constable; wherefore be commanded the other Defendants to lay Hands upon her, and take her, which they did Molliter. It was holden by the Justices to be a good Justification, altho' they neither shew the Day when the Leet was holden, nor that the Plaintiff's House was within the Jurisdiction of the Leet, nor the Steward's Warrant; for that there were all but Inducements to the Bar and Justification, and the Substance is the Prefentment and the Command of the Constable. Mo. 847. pl. 1147. Hill. 13 Jac B. R. Curteys's Case.

6. Trespasses for entering into Plaintiff's House, and taking his Goods; Defendant justifies by Virtue of a Reprieve out of the Sheriff's Court in London, and a Process thereupon to J. S. an Officer, and Defendant came in Aid of him. Plaintiff replies. That before the taking away the Goods be claimed Property in them, and gave Notice thereof to the Defendant. And the Question, upon a special Verdict was, whether the taking away after Claim of Property, and Notice thereof, did not make him a Trespafor ab initio? And held per to. Cur. That he was a Trespafor ab initio; for tho' the Claim ought to be to the Sheriff or Officer, and that a Claim to a Perfon that comes in Ailiffance, be not enough to the making the Execution illegal, if the Officer does not delit, yet if it be notified to him that comes in Aid, that Claim of Property is made, he at his Peril ought to desist. 6 Mod. 139, 140. Palfch. 3 Ann. in B. R. Leonard v. Stacy.

7. It is a good Plea for a Stranger, that he enter'd into a House in Aid of a Bailiff who had a Writ of Execution, and took the Goods, and be need not say that he did it by Command or Defire of the Bailiff; for every one not only may, but is by Law, bound to assist Officers in Execution of Justice. 10. Mod. 24. Trin. 10 Ann. B. R. Templeman v. Cafe.

(Fa. 4 ) Juf-
Trespass.

1. Trespass. J. N. rid upon the Horse of his Master to C. and there one afghaid a Plaint against the said J. N. and attacked the Horse, by which the Master of the Servant brought Trespass against the Bailiffs, who attacked the Horse and recover'd by Award; for the Defendant said the Arrest was by others and not by him, and did not release the Tort done by him, and to the Plaintiff recover'd; for the Officer is bound to know whose Goods he attaches. Br. Trespass, pl. 99. cites 11 H. 4. 92.

2. The Defendant justified to make Execution upon the Land as Officer of the Admiralty, for the Sum of 20 Marks there adjudge'd to J. N. and the Plaintiff said that De non tort demeine without such Cause. Velerton said, this is no Plea; for where a Sheriff justifies by Fieri Facias to him directed &c. it is no Plea that De non tort demeine without such Cause, quod Newton & tort Curia conscient; but if the Sheriff makes Warrant to his Servant, and he serves it, and justifies thereby, there De non tort demeine is a good Plea against him; quod non, Diversity being Matter of Record and Matter in Fait, and immediate Officer and other Officer, and therefore as here he was compell'd to answer to the Cause, per Cur. quod nota. Br. De non tort &c. pl. 14, cites 19 H. 6. 7.

3. Trespass for Beating and Imprisoning his Wife &c. the Defendant justified by Warrant from the Sheriff; the Plaintiff replied De injuria sua prorsa abjiciente nullum causam. The Plaintiff had a Verdict, and it was mov'd for a Repleader, because De injuria sua prorsa is not a Plea to Matter of Record, but the Plaintiff ought to have travers'd the Warrant; but adjudged good after a Verdict. Raym. 50. Mich. 13 Car. 2. B. R. Collins v. Walker.

4. In Trespass the Defendant, as Bailiff, justifies by Warrant on Recovery in Assizes in Court Bacon, not allowing the Cause thereof to arise within the Jurisdiction of the Court; for which Cause the Plaintiff demurred, and per Cur. it is ill. 1 Keb. 845. pl. 26. Hill. 16 & 17 Car. 2 B. R. Hoyland v. Bacon.

5. In Trespass of Battery, the Defendant justifies by Process to arrest one Wood, and the Plaintiff would have refused him, whereupon he did Militum imposuer; the Plaintiff replied De injuria sua prorsa abjacente; that the Defendant had taken him by Virtue of such Warrant as that by which the Defendant justified; to which the Defendant demurred. And per Curiam the Justification is sufficient, and better by the Admittance in the Replication, than if the Illae had been offer'd De injuria sua prorsa generally without such Travers; and Judgment pro Plaintiff. 2 Keb. 293. pl. 77. Mich. 19 Car. 2. B. R. Haywood v. Wood.

6. In Trespass, the Defendant justified by a Judgment in Ejectment, and an Habere Facias Possessionem, and Warrant thereon, by which he was commanded to put the Plaintiff in Ejectment in Possession, by Virtue whereof he enter'd into the House &c. and took the Goods and put them in the Highway, and the Plaintiff refusing to go out, thereupon militur imposuer to spem illam, and the de injuria sua prorsa asserted him, by which he defended himself, abjacente, by the Illae before the Warrant or after Return of the Writ; the Plaintiff replied De injuria sua prorsa, without any Travers, or without saying Abjacente nullum causam. Replied upon Demurrer that this Replication was ill, because De injuria sua prorsa is no good Cause in any Case without the Words Abjacente nullum causam; but in this
Trespafs.

this Case either the Writ of Possession or the Warrant upon it ought to be traversed. 2 Latw. 1581. Pach. 4 Jac. 2. Rodoway v. Lowder.

7. Trespafs for entering her Houfe and taking her Goods; the Defendant justified by Virtue of a Fieri Faecas against the Goods of one Dunn, and a Warrant thereon, by which he entered the House and took the Goods aforseid. And upon Demurrer the Plaintiff had Judgment, because the Plaintiff counted of the Goods taken as of his own Goods, and the Defendant did not aver that the Goods which he took were the Goods of Dunn; and if he had made such an Averson, yet he should have alleged that they came there by the Fort of the Plaintiff, or some other Matter by which he might justify the entering the House of the Plaintiff to take them. 2 Latw. 1385. Trin. 4 Jac. 2. Gardner v. Peyton and Chapman.

8. Where an Action is brought against an Officer, or his Affidavit, for executing of a Capias ad situslacendum, he need not set forth the Judgment, but only the Writ and Warrant; because he is an Officer of the Court to execute the Proces of the Court; And if the Proces be erroneous, or there is no Judgment to ground the Proces upon, yet the Officer shall not fail, for he doth but his Duty to obey the Court, who will protect him. But if the Action he brought against the Plaintiff in the Execution, he must plead his Judgment. Hill. 5 W. & M. B. R. 2 L. P. R. 259. tit Office and Officer.

9. Trespafs Quare clausum fregit & Averia cepit & asportavit, the Defendant came and justified, and pleaded a By-Law &c. and that he, as Bailiff, took the Beasts as a Distress for Breach of the By-Law by the Plaintiff; and upon prolix Pleadings, which were drawn up on the Precedent of Tintancy's Case in 1 Cr. and March, the Plaintiff demurred, and many Exceptions were taken, but in the Resolution of the Court, Holt Ch. J. said that the Pleadings are ill, because that the Defendent had not shown a Precept to make the Distress; for he could not do it ex Officia, no more than a Sheriff might execute a Judgment of B. R. without a Writ, and the Command in this Case is traversable; for this is the Difference between a Jurisdiction in Trespafs, and an Averia in Replevin, that the Jurisdiction there is in the Right, and therefore not traversable. But in Trespafs it is only by Way of Esceae; also in Trespafs it is sufficient to say, Preceptum existit, but in Averia he ought to shew the Thing was done, as well as Precentatum existit. Skin. 587. Mich. 7 W. 3. B. R. Lamb v. Mills.

10. Trespafs against the Officers will not lie for taking Goods &c. by Virtue of a Replevin unless he that has Possession claims a Property when the Officers came to demand them, and they take them notwithstanding such Claim; and this special Matter must come in by Way of Replication by the Plaintiff; and so there is a Difference between a Replevin and other Proces of Law, with Respect to the Officers; for in the first Case, (viz.) in Replevin, they are expressly commanded what to take in Specie, but in Writs of Execution, the Words are general, (viz.) To levy of the Goods of the Party, and therefore 'tis at their Peril if they take another Man's Goods, for in that Case an Action of Trespafs will lie. Per Holt Ch. J. Carth. 381. Trin. 8 W. 3. B. R. in Case of Hallet v. Burt.

(G. a) Trespafs
(G. a) Trespass ab Initio. What Act shall make a Man [Officer or other] Trespasser ab Initio.

1. If a Man enters into a House by Authority of Law, and abuses The Café that Authority, he is a Trespasser ab Initio for the first Entry.

For it shall be intended that his first Entry was to that Purpose.

Ca. 8. The six Carpenters. 146. d. 11 D. 4. 75. b.

Quint of Wine which they sold for, but went out again, and refused to pay for the Wine. 8 Rep. 146.

The Non-payment did not make the Carpenters Trespassers; for that was The Café, and no Non-feasance shall ever make a Man a Trespasser ab Initio; Per Coke Ch. J. Roll Rep. 130. Non-feasance cannot make the Party that has Authority or Licence by Law to be a Trespasser ab Initio. 8 Rep. 146. b. Mich. 8. Jac. The Six Carpenter’s Café.

If a Man diddrain Girn in Shelves, and dresses it, or comes to a Tavern, and feeds a Hamper, in these Cases they are Trespassers ab Initio, and the very Entry is punishable, which at first by the Licence in Law was good. Otherwise it is a Licence in Foul, as Yelv. J.; that for this excuses the Entry, tho’ so torious Act enters, and the Party shall be punished only for this in which the Act is torious, and for nothing more. Yelv. 66. Hill. 4 Jac. B. R. Bagshaw v. Gaward.

If the Law gives a Man a Liberty to a certain Intent, and he uses this Liberty to another Intent, or mistakes it, he shall be a Trespasser from the Beginning, if not that it be in special Cases. Perk. S. 192.

The Difference is between a Licence in Foul, and a Licence in Law. Perk. S. 191.

2. As if a Person enters into the House to see if Waife be done, and * Br. Tres- 
thay Summer Night, he is a Trespasser ab Initio. * 11 D. 4. 75. b. phi. 97.

B. Replication, pl. 12. cites S. C. — First Tit. Trespasses, pl. 176. cites S. C. — S. P. Br. Li-

cence, pl. 17. cites 21. E. 4. 75. — So if he enters to see Waife, and breaks the Hedges. Yelv. 96. Bagshaw v. Gaward.

3. If the Purveyor of the King takes my Beasts, as for the Houshold of the King, and after tells them in a Barter, he is a Trespasser ab Initio. 18 D. 6. 9. b.

4. If a Person searches certain Sculls, and unpacks them, and lane go, 
lays them in the Dirt, by which they are impur, tho’ the Search S. C. Info, 
was lawful, yet this Houshold of this Authority in Law will make him a Trespasser ab Initio. 8. 8 Ja. in the Treipalor. Gibbon’s Café, Per Curiam.

5. If a Man comes to a Tavern, and will be there all the Night, the * Br. Tre-
Cavernor is not bound to watch with him, nor wait upon him all 
the Night; and therefore if he prays him to go out, and he will not * Or if when 
but continues there all the Night, he is a Trespasser ab Initio. 
* 11 D. 4. 75. b.

away the Gap without the Will of the Taverner, now he shall be punished for his first Entry; for it cannot be intended that his Entry was unto any other Intent but to Real the Gap; for the Law cannot judge his Intent against his Act done, ex palla facts. Perk. S. 191. — — 8 P. Br. Trespa. — 562. cites 21. E. 4. 5.

So if he breaks open a Hamper, or strikes a Servant of the House. Br. Replication, pl. 12. cites S. C.

6. If a Constable takes my Goods in his Ptw, being waiv’d by a Pe-
non who robbed me of them, and keeps them to the Use of the Owner; so that his first Act was lawful, tho’ he refuses to deliver them to me on Demand, he is not a Trespasser ab Initio. Co. 4 Ja. 25. R. be-

between Wakepore and Beyger.

7. If a Man takes my Sheep Damage feasant, and I render him suffi-
cient Amend before the Impounding, and he refuses it, and drives the
Trespas.

9. If a Serjeant of London arrest a Plaintiff enter'd in the Counter, upon which Action J. S. tends Bail to the Serjeant, and prays him to go to the Court of the Counter to accept the Bail, and the Serjeant retires it, per Action of False Imprisonment, the Courts do not hear, but he is put to his Action upon the Cafe; for this does not make him a Trespasor ab Initio, the Caption being by lawful Proceeds. Tr. 6 Car. between * Salmon v. and Pervicat. Adjudged B. R. Pitch. 14 Car. B. R. between Percival and Bridger. Adjudged per Curiam in Arrest of Judgment, in Case of a Bailiff of another County. Interret. Tr. 24 Car. Rot. where the Place was upon the Retual, and the Court held that it was not the Office of the Bailiff to take Bail, but of the Sheriff or Under-Sheriff.


10. [So] if a Capias for the Good Behaviour be directed to the Sheriff by the Judges of Assize, and thereupon the Sheriff makes a Warrant to J. S. to take him who takes him accordingly, and the Party tenders to J. S. sufficient Bail for his Appearance, and J. S. refutes it, and keeps him in Prison after, yet this does not make him a Trespasor ab Initio, for it was not the Office of the Bailiff to take Bail, but the Sheriff himself ought to do it. P. 10 Car. B. R. between Adams and Bailiff, Per Curiam, this being mov'd in Arrest of Judgment. Interret. B. 9 Car. Rot. 159.


If a Man takes Steer, Damage feant, and after thereof 13 Ja. B. Per Hubbard.

12. If the Lord of a Fair has used to have Tolll upon every Sale, and for Non-payment of the Toll the Lord seizes one of the Beasts to hold, and works it, this makes him a Trespasor ab initio. Dich.

13. If
13. If the Custom of a Vill be, that the Bailiffs of the Vill shall have 2 d. for every Hide of every Sheep, Cow, or Or which is killed within the said Vill, and for Non-paiment of it to lose the Hides &c. and after the Bailiffs do take certain Hides for Non-payment accordingly, &c. and tamp them, and convert them into Leather; by this they are Trespassers ab initio; for tho' they do it for Necessity, because otherwise the Hides would perish, yet this will not excuse them, in all which as the Damage by the Trespassing will be only to the Owner, and not to them; for they may have Action of Debt for the 2 d. 501 42. 43 Cl. B. R. between Dunce and Reeve adjudged.

14. If upon a Latitavit a Warrant be made by the Sheriff to certain Special Bailiffs, to take the Body of the Party mentioned in the Writ, and they by Force thereof take him, and J. S. a Stranger, S. C. ad. comes in their Aid, and by their Command, and after the Sheriff does not make any Return of the Writ, yet no Action lies against J. S. who comes in Aid of the Bailiffs, because his Act was lawful, and the Default of the Sheriff in not returning the Writ shall not put him to Prejudice, and make him a Trespasser ab initio. Hill. 11 Car. B. R. between Girling and Allen adjudged upon Dunncrere, that no False Imprisonment lies against J. S. who came in Aid, for the Courts' ordnance. Innturtive Cl. 11 Car. Rov. 529.

15. But [spc] if a Sheriff takes J. S. upon a Latitavit, or other Capias in Process at my Suit, and by my Biewing, and does not return the Writ, a False Imprisonment does not lie against me, because I have not done any Wrong, nor is it my Default in not returning the Writ, nor was I the Servant of the Sheriff in Delivery of the Writ, and Biewing of the Party to the Sheriff. Contra 8 E. 4. 17 b. by Hyde.

16. If a Sheriff, upon a Fieri Facias to him directed against J. S. Cro. E. 181, makes a Warrant to J. S. (R. S.) to execute the Writ, and he does it pl. 16. S. C. accordingly, and the Sheriff makes a False Return, (Truth, that the Writ came to me but [spc]) by which he himself is Trespasser ab initio, yet this false Return does not make the Bailiff the Trespasser, pl. 47. null and void, as it was legally done by him; and by this Execution by Wills v. the Bailiff the Party, against whom it was executed, is discharged. Ratiner, S. C. but 31. 32 Cl. B. R. between Parks, Plaintiff, and Mosby and Hess, Defendants. Per Curiam. But adjudging p. 32 Cl.

144. pl. 20. S. C. adjudged accordingly.

17. If J. S. be a Scarcher of Stuffs, and certain Strangers come to the others as Servants to the tailor J. S. to search and unpack the Stuffs, and put it into the Dirr, by which it is much unpar'd, though the Strangers did it without the Precedent Appointment, or Agreement of J. S. yet if J. S. after approves the Scarch, without any Interest to the Absent, yet he shall be a Trespasser ab initio. M. S. In. in the Eschequer. Gibbons's Case. Per Curiam.


18. If a Captas be directed out of an Inferior Court to the Officer of the Court, to take J. S. and he takes him accordingly, and does not return the Process, he is a Trespasser ab initio, because it is his own Default,
Trespassers.

Default, unenforced as he himself is the Officer who ought to return it, and is as Sheriff within this Jurisdiction. 12th, 15 Car. B. R. between Kirk and Arkins. Per Curiam adjourned upon Demurrer, upon an Imprisonment in the Honour of Peereville. Infirmary Tr. 14 Car. Rot. 51.

[19.] 3. If a Capias in Process issues against J. S. and the Sheriff takes him, and he returns Non et Inventus, he is Trespasser ab initio, and False Imprisonment lies against him. 8 C. 4. 18. 11 H. 4. 19.

The Diversity is between Capias in Process, and Capias ad Satisfactionum, for if the Capias in Process be not return'd, the Arraft is torious; because there the Intent of the Arraft is, that the Party shall appear and answer the Plaintiff. But in all other Writs of Execution, which are made by the Sheriff alone, if the Execution be duly made, it is good, that the Writ be not return'd; unless in Cases of Elegit, where the Intent is made by an Inquirit, and not by the Sheriff alone, and otherwise. 5 Rep. 93. Trin. 42. Eliz. in the Exchequer, Hen's Case — And Ibid. 93. b. in a Note of the Reporter, it is said, that there the Words of the Writ of Pi Pa. are Ita quod Habens Corpus ejus at the Day of the Return Made in Curia. 16 B. 7. 14. 3 D. 7. 3. b. 8 C. 4. 17. b. 9 C. 4. 3. 21 H. 6. 5. 18 E. 4. 9. b. Co. 3. Hie 93. 2 D. 6. 26.

[20.] 9. So if the Sheriff does not make any Return upon the said Writ, False Imprisonment lies against him; for he is Trespasser ab initio; for the Writ is Ita quod Habens Corpus ejus at the Day of the Return Made in Curia. 16 B. 7. 14. 3 D. 7. 3. b. 8 C. 4. 17. b. 9 C. 4. 3. 21 H. 6. 5. 18 E. 4. 9. b. Co. 3. Hie 93. 2 D. 6. 26.

The Bailiff is but the Sheriff's Servant, and has no Means to make the Sheriff return the Writ, and the Arrest made by the Bailiff was illegal, and shall not be made illegal by the Sheriff's Act in not returning the Writ. See Cro. C. 44. Girling's Case. — Jo. 573. S. C. — Per Powell J. upon a Writ the Bailiff who acts by a Warrant from the Sheriff is not liable in Trespass, if the Sheriff does not return the Writ. 2 Vent. 95.

† Kelw. 86. b.

[21.] 10. Upon a Capias in Process, if the Sheriff makes his Warrant to the Bailiff of a Franchise to execute it, who does it accordingly, and makes Return of the Body and Warrant according to the Sheriff, and the Sheriff after does not return the Writ, yet this shall not make the Bailiff a Trespasser ab initio, because he has done his Duty, and no Default in him, and he is the Officer of the Franchise, and not of the Sheriff. 8 C. 4. 17. b. * 21 H. 7. 23.

[22.] 11. [50] If a Capias in Process be awarded to the Sheriff, and he makes his Warrant to a Bailiff Errant, who is sworn, and a known Bailli in the same County, to take him, and he does it accordingly; if the Sheriff after does not return the Writ, this makes him a Trespasser ab initio, because he is but the Sheriff's Servant, and therefore ought to be subject to the Tort done to the Party, as his Master is. 23 H. 7. 13. † 21 H. 7. 22. 19 Car. B. R. between How and Stockenham adjudge'd. Infirmary Tr. 14 Car. Rot. 41. upon Demurrer.

[23.] 12. But in the said Case, if the Bailiff Errant returns the Body and Warrant to the Sheriff, tho' the Sheriff does not return the Writ, yet he is excused. 20 H. 7. 13. b. by Read, and 21 H. 7. 22.

[24.] 13. [50] If the Sheriff upon such Process makes special Bailiffs, and they take the Party, and the Sheriff does not return the Writ, tho' there be not any Default of the Bailiffs, yet they are Trespassers ab initio, because they are but Servants to the Sheriff, and by his Appointment. Contra H. 11 Car. between Girling and Allen. Per Curiam.


[25.] 14. If a Man makes his Executors and dies, and after the Executors find, amongst other Goods of their Testator, an Obligation,
tion, by which their Teller was bound to J. D. and they thinking that the Obligation was discharged, because the Day of Payment was past, break the Seal, they are Trespassers ab initio, that they come lawfully to it, Hunter, by Trover. Hill. 11 Ja. B. between Hugginsottom and Scodard adjudged.

26. If a Man may justify the Taking at one Time, it cannot be tortious after without special Matter, as Misdemeanor after, as it leµs. Br. Trespas, pl. 311. cites 7 E. 4. 3.

27. The Defendant justified by Prescription for 10 Load of Wood every Year to burn, and 10 Load to repair Pales between Michaelmas and Chrîfmas, absolute he is guilty before Michaelmas, and after Chrîfmas; and the other said that he cut the Day in the Declaration, abîque he that the Defendant and his Ancellors &c. and traversed the Prescription, and if he expend it in other Purposes than in Burning or Repairing Pales, Trespas lies; Quod non a Misdemeanor after makes Trespas to be. Br. Trespas, pl. 318. cites 10 E. 4. 2.

28. If the Lord comes upon the Tenancy, and takes and leases away a Beast, and impounds it, the taking shall be deemed as for a Distress; but if he * kills the Beast, this subsequent Act is a Declaration of his Intention ab Initio, and will make him a Trespailler. 9 Rep. 11. a. Per Cur. in Downham's Case, says this accords 12 E. 4. 8. b. 28 H. 6. 5.

29. If there be Lord, Mifsne, and Tenant, and the Lord discharges the Beast of the Tenant for Rents &c. paid by Mifsne, if the Lord will not suffer the Mifsne to take the Beasts of the Tenant out of the Pound, he is a Trespailler ab Initio. 9 Rep. 22. b. in B. R. in the Cafe of Awory, cites 13 E. 4. 6. a. b.

30. If one takes a Distress Damage seizure, and drives it into another County, and there finds it, this makes him a Trespailler ab Initio. And.


32. If the Sherîff has not any Writ, and makes a Warrant to J. D. to arrest J. S. an Action lies for J. S. against J. D. for this Arrest, and against the Sherîff Likewife; Per Jones J. Jo. 379. pl. 9. Hill. 9 Car. B. R. in Girling's Cafe.

33. Aciôn of Battery against a Contable, who had made a Search in the Plaintiff's House for stolen Goods, by Virtue of a License of Peace his Warrant, to search in all culpicious Places; and upon the Evidence it appeared the Defendant in this Search did pull the Cloths from off a Woman's Bed, then in her Bed, to search under her Sleeck; And this was holden to be a Misdemeanor in the Contable, and all with him, and did make all their Proceedings in this Place illegal from the Beginning, Summer Allies 1636. Coram Barkley J. Clayt. 44. pl. 76. Ward's Cafe.

34. If uno imprisoned be detained by the Gaoler for not paying unenforceable Fees, it seems that this does not make it a False Imprisonment ab Initio. Skin. 51. Trin. 34 Car. 2. B. R. in Cafe of Elliot v. Beley.

35. In Battery and Imprisonment the Defendant justified by Attachment out of Chancery, that the Sherîff after Delivery of the Writ to him made his Warrant to him 27 May, by which he took the Plaintiff the same Day, and traversed all Time before the Warrant or after the Return of the Writ. The Plaintiff maintain'd his Declaration and traversed that the Writ was deliver'd to the Sherîff before the Battery and Imprisonment. The Defendant rejoind that before Return of the Writ he was deliver'd to the Sherîff, viz. on the last 27 May, and that before the
the Arrest he had no Notice of its not being deliver'd to the Sheriff. The Plaintiff fur-rejoind, that before the Arrest the Writ was not deliver'd to the Sheriff. The Defendant rebutted as before, that he had no Notice &c. Ex de hoc ponit so &c. Upon Demurrer, Judgment was given for the Defendant; For 1. It is not material whether the Writ be deliver'd to the Sheriff before the Warrant and Arrest or not, to long as in Rei Veritate there is a Writ which warrants the whole. 2. There being a Writ and a Warrant thereupon, the Bailli shall not be charged for the executing it; for he was neither privy nor had Notice of the Time of its Delivery to the Sheriff, and he has tender'd an Issue of Notice, which the Plaintiff has refused to accept. 3 Lev. 93. Mich. 34 Car. 2. C. B. Osborne v. Brookhouse.

36. A Fieri facias was awarded against T. tills apr. 27. April, and afterwards, viz. the 28th of April, he became a Bankrupt, and the 29th of April the Sheriff took the Goods by Virtue of the Fieri facias; afterwards an Extent issued out of the Exchequer, whereby the Goods are taken out of the Sheriff's Hands; After which the Commissioners of Bankruptcy make an Assignment to the Creditors, and the Assignee brings Trespass against the Officers, who took the Goods by Virtue of the Extent. The Court were of Opinion, that a Construction should not be made to render the Officer a Trespasser by Relation; for the Taking was lawful at the Time, and Bailey and Running's Cafe in Siderfin was agreed per Holt and Doblen; Judgment for the Defendant Niti. Comb. 123. Trin. 1 W. & M. in B. R. Lechemere v. Thorowgood.

37. Where it is apparent to the Officer, that the Cause of Action ariseth out of the Jurisdiction, he is a Trespasser by executing it: Otherwise where it is not apparent. 1 Salk. 292. pl. 5. B. R. Lucking v. Denning.


1. If the Sheriff arrest J. S. upon a Latitat, and he escapes, the Sheriff cannot enter into the House of J. D. and there break a Chest of J. N. after Demand of the Keys, to seek his Prisoner there, upon Information that he was fled into the said House: But he ought to take it upon him that he was in the Chest; For otherwise the Sheriff upon such Pretexts may search the Houses of all Men within the County. P. 1 Car. between Bennett and Gray adjudged, the Declaration being that he was informed that he was in the Ward House &c. This is enter'd Mich. 22. 3d. B. R. Rot. 15.

2. Trespass of Goods taken &c. the Defendant justified as Officer, because A. recovered against W. N. 10 l. at B. in a Fair in the Court of Pleaders, and he did the Execution, and sold the Goods, and delivered the Money in Execution, and admitted for a good Plea. Br. Trespass, pl. 244. cites 22 Alf. 92.

3. If Recovery in Affid is had in Ancient Demesne of Land and Damages after a Fine there be levied at Common Law, so that the Land is made Frank-free, yet the Officer who served the Execution for the Damages recovered
Trespasses.

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covered in the Affidavit, shall not be blamed, nor the Lord who held the Plea, tho' in Actus

the Recovery be Common Justice; for they are not bound to take Con-

nuance of the Fines; Quod nota. Br. Office & Off. pl. 6. cites 7

H. 4. 27.

4. In Replevin of taking Beasts, it is a good Justification that A. re-

cover'd certain Land and Damages in Ancient Demesne, and that he is Bar-

iffs, and by Precept directed to him be made Executor, viz. he sold the

Justification; for a good Justification is to excuse the Defendant of

money to the Plaintiff in Execution. And 

tort only, and not to have Return of the Beasts; but Atwory or Co-

currence is to have Return Quod nota discriminated. And so far it is that it is

admitted that Bailiff in Ancient Demesne may sell the Beasts to levy a Sum

to make Execution; Contra it was said in other Court Baron, which is not


5. In Trespasses the Defendant justified by breaching the Land to the Sheriff

to make there the View to the Demandant in a Writ of Foremedon brought by

this Defendant against this new Plaintiff; and the Plaintiff said that De-

font tort demontic aliquo tali Caufa, and the Defendant said that such


Pitca. rit. 112c. 60. Brooke adds Nota, that it was of a Houfe; and he

said that he found the Doors open and enter'd and made the View.

6. In Precipe good redit the Court awards a Cape by which the Sheriff

brings the Tenant, he shall not have Falfe Impriphon'th' they amend

pl. 1, the Proceeds alter into Grand Cape; for the Act of the Court shall not Pre-

cite S. C. Br. Conspicacy, pl. 1. cites 20 H. 6. 5.

7. Trespasses quare Clauum fugit &c. the Defendant justified because for Land

the Plaintiff was amerced in the Court Baron of J. S. &c. and he by Com-

mand of the Court entered, finding the House and the Clofes open, and took for

Difregis. And a good Plea, without saying How the Clojfe was included or


8. Trespasses for breaking his Houfe; The Defendant justifies his Entry

virtue avertit of the Sheriff upon a Fieri Facias to levy such a Debt De bonis,

et catallis que fuerint Philippis Bischope Teftatoris; tempore mortis in manibus

Lucertis Bischope his Executrix, and says, That the Executrix was in the

Plaintiff's Houfe cum bonis suis, and for that the Door froid open, he enter'd to

levy that Debt &c. And it was thereupon demurred, and adjudg'd to be an ill Bar; because he does not allege that bona Tefiatoris were in the

Houfe but bona proprias Ejecutrices, which were not liable to Execution; but if bona Teftatoris had been there, it was conceived that the

Entry had been justifiable. Wherefore it was adjudg'd for the Plaintiff. 

9. By the Common Law no Houfe can be broken by the King's Officer at

the Suit of a common Perfon (but otherwife at the Suit of the King.)

But by the Statute of 22 Jac. of Bankrupts, Commissioners may break the

Houfe of the other for Debt of the Debtor; And if Bankrupts convey their

Goods to a Neighbour's Houfe, the Commissioners cannot, but the Sheriff may,

break the Houfe, because he is a sworn Officer of the King. The

Commissioners may break the Booth or Ship of the other to come at the Bank-

ruptcy Goods. Per Mr. Batchdile Lecturer of Lincoln's Inn in Lent 1627.

D. 36 b. Marg. pl. 41.

10. Sheriff on a Fieri Facias may break the Door of a Barn, without Re-

quest, to take Goods in Execution, unless the Barn is adjoining and Part


6 N 11 H
Trespass.

11. If there be a Difteripro of a Manor, and a Recovery in that Contro- 
Baron, the Officer may well justify executing the Proces; for he that is in 

(Ha. 2) Trespass justifiable. [Entry into Land or 
House.]

1. If a Man leased of Land in Fee has certain Loads of Timber 
upon the Land and dies, his Executor may justify the Entry 
into the Land to take the Timber. 9 D. 6. 11.

2. So if the Executor sells it to another, the Vendee may justify 
the Entry into the Land to take the Timber. 9 D. 6. 11.

3. If a Man has a Pitsary in another's Soil, he may justify the put-
ting the Pales in the Soil, or doing other Thing. 20 D. 6. 4.

4. If certain Persons unknown, in a felonious manner, come into 
my Garden, and eradicate and pull up certain Apple and Pear Trees, 
and carry them away into the House of J. S. and the Common Voice 
being that the said Trees are in the House of J. S. per I cannot justify 
my Entry into the said House to take the said Trees, much less as 
the stealing those Trees being annex'd to the Frankencent, was 
not Felony, but only a Trespass; and so the Case is no other; but 
that if the Trees had been taken by a Trespassor and put into the 
said House, then it had not been lawful for me to take them without being 
and Andrews, adjo'ing upon a Demurrer.

5. But otherwise it had been, if the stealing of the Thing had been 
Felony, and I had upon fresh Suit taken it in his House, this had been 
justifiable in a Trespass against me. Mich. 16 Ja. B. R. in the said 
Cafe of Higgins and Andrews, per Curiam agreed.

6. Trespass by a Chaplain of a Chamber broken, and Gold Rings taken 
and carried into London; the Defendant said, that in London is a Counter 
feit, Time out of Mind, that when a Chaplain has a Feme in his Chas-
mer, of whom a Man has an ill Suspicion, that Man shall come to the Con-
gable of the Ward, or to the Beadle, and enter the Chamber and search; and 
that he was related to such a Feme, and delivered the same Rings to the Feme, 
who brought them to the Chamber of the Chaplain, and there the said Chap-
lian demanded the Feme and the Goods by a great Time by whose he and the 
Beadle entered the Chamber and seized and found the Goods, and carried 
them away, as lawfully he might. Judgment, if Action of the Goods or 
breaking the Chamber ought he to have; and because the Plaintiff by 
Possession of the Goods for the Time had Property, therefore it was held 
a good Plea to the Goods, and to the breaking; quod nona, that this is 

7. If
Trespasses.

7. If a Vicar has Offerings at my House or Chapel, he cannot by Colour thereof break my House or Chapel to take them out &c. Br. Trespasses, pl. 77, cites 2 H. 4. 24.

8. In Trespasses, the Defendant said that the Plaintiff distrain'd his Beef's, and he filed a Replevin, and came with the Sheriff to show him the Beef's, which is the same Trespasses &c. Judgment Si Actio, and the Defendant imparl'd. Br. Trespasses, pl. 11, cites 3 H. 6. 37.

9. In Trespasses the Defendant justified, because J. S. was seized, and deserv'd it to the Plaintiff for Life, and that the Defendant should sell the Reversion &c. and that he found the Door open, and entered to see if there was any Walse, and to see the Value of the House to sell it, and a good Cafe; quod Plea; and in there granted that such Entry is lawful to see if Walse be done, but he cannot break the Door nor Windows to enter. Per quod the Plaintiff replied that he broke the Door and Windows, and the other & contra. Br. Trespasses, pl. 16, cites 9 H. 6. 29.

Bridge, he may come upon the Land of any one that adjoins to the Bridge to repair the Bridge, and this without Licence of them. Br. Trespasses, pl. 260, cites 45 Alr. 57. Per Knivet Ch. J.

10. In Trespasses for Breaking his Close and Hunting, Defendant pleaded Not guilty to the Hunting; and to the Breaking he said that a Variance was between him and the Plaintiff for a House, and he saw him Hunting in his Park, and entered by the Gate, which was open, to show him his Residence to the House, which is the same Breaking &c. and a good Justification by all the Justices; Quod nota. Br. Trespasses, pl. 23, cites 20 H. 6. 37.

11. If Trees are blown down by the Wind, it is no Trespasses to enter the Land into which they are blown down to take them. Lat. 13. Per Crew Ch. J. in Cafe of Milen v. Havery, cites 6 E. 4. 7.

... into another Man's Land, and he goes and takes them, Trespasses lies; Per Crew Ch J. Lat. 10. cites 6 E. 4.

12. If a Man takes my Goods, and puts them upon his Land, I may enter and retake them. Contrary upon * Bailment of Goods; Per Littleton. Br. Trespasses, pl. 186, cites 9 E. 4. 35.

S. P. Per Littleton; for in the one Cafe it is Tort, and in the other not. Br. Nuance, pl. 14, cites S. C.

* When a Man makes Goods to another to keep, it is not lawful for him, tho' the Owners are open, to enter into the House of the Bullets, and to take the Goods, but ought to demand them; and if they are denied, to bring Writ of Detinue, and to obtain them by Law. Br. Trespasses, pl. 258, cites 21 H. 7. 13.


14. If a are fighting in a House, I may justify Entry into the House to part them, because it is for the Preservation of the Peace, which is a Thing that concerns the Commonwealth; Per Yaxley, quod Frowike Ch. J. concinnat. Kelw. 46 b. pl. 2. Mich. 18 H. 7. Anon.

15. If Beef's are Damage feoff in the Lands of another, a Stranger cannot justify entering into the Land to turn them out, upon a Presumption that it is to the Advantage of the Owner of the Land; for it prevents the Owner from taking the Benefit of distraining them for Satisfaction of the Damage; Per Frowike Ch. J. Kelw. 46 b. Mich. 18 H. 7.

16. In Trespasses of Breaking a Close, Per Rede, it is not lawful to say that the Defendant had Timber lying there, and came to see his Timber. Br. Trespasses, pl. 208, cites 21 H. 7. 13.

17. If my Beef's are in another's Land Damage feoff, I cannot justify Entry to enter to reclaim them; Per Rede Ch. J. Br. Trespasses, pl. 213, cites 21 H. 7. 27.

Put enter and rechuse them; for the Tort comncnent in another Premises. Per Rede Ch J. pl. 215, cites 21 H. 7. 27.
Trespass.

18. In Trespass for entering his House, and taking his Goods, the Defendant pleads that the Goods were B.'s, who sold them to the Defendant, and that he came to the House, and demanded them, and the Plaintiff being absent, his Wife licenced him to enter and take them; whereupon he entered and took them. And upon Demurrer it was adjudged ill, it not appearing how the Goods came, viz. either as Trespass &c. and therefore cannot enter of his own Head, and the Licence by the Wife was not sufficient; but Gawdy contra; for it may be intended the Goods were there by the Plaintiff’s Licence, and then he might well enter and take them. Cro. E. 245. pl. 3. Mich. 33 & 34 Eliz. C. B. Taylor v. Fother.

All 523 S. C. adjudged, that his Fear is no justification, and the Defendant has Remedy against those that compelled.

19. In Trespass Quare Claiusum fregit, and taking of a Gelding, the Defendant pleaded that he is, for Fear of his Life, and Wounding of 12 armed Men, who threatened to kill him if he did not the Fals, went into the House of the Plaintiff, and took the Gelding. The Plaintiff demur’d to this Plea. Roll J. This is no Plea to justify the Defendant; for I may not do a Trespass to one for Fear of ‘t Threatnings of another; for by this means the Party injured shall have no Satisfaction, for he cannot have it of the Party that threatened; therefore let the Plaintiff have his Judgment. Sty. 72. Mich. 23 Car. Gilbert v. Stone.

20. If Tresament at Will owns the Land, and then determines his own Will, he cannot break the Hedges to carry away the Corn. Vent. 222. Trin. 24 Car. 2. B. R. in Cae of Perrot v. Bridges.

21. If the Sheriff upon a Fieri Facias sells Corn growing, the Vendee cannot justify an Entry upon the Land to reap it. Until such Time as the Corn is ripe; Per Twylden. Vent. 222. in Cae of Perrot v. Bridges.


1. Trespass. If a Man seizes an Ox &c. to the Use of the King, he who has Property cannot re-take it. And so it seems that the King may be intitled to a Charte by Seifure, or other wise, without Office, as appears by this Case. See the Book. Br. Trespass, pl. 375. cites H. 29 E. 3. 2. If a Man takes my Swan’s Eggs, which after produce Cygnets, the first Owner may take the one and the other; per Fairfax. Br. Trespass, pl. 323. cites 12 E. 4. 4. 5.

So where a Man took the Sex of another which produced Fowls, the owner brought Replevin of both, and recover’d Damages for both; Per Littleton. Br. Trespass, pl. 525. cites 18 E. 5. 45.'

'Tis agreed to, among Civilians, that in all Cases where the new Form may be reduced to the former State, the Property remains to him that hath the old Substance; but otherwise not. Arg. Raym. 529. in Cae of Lantingham v. Bates, and says, that with this agrees 16 H. 7. 16. pl. 6. Mo. 19. pl. 67.

S. P. Arg. 5. As in Trespass of Shoes and Boots taken, the Defendant said, that he was possess’d of 3 Dickens of Leather, and built them to W. S. who gave 10
Trespass.

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to the Plaintiff, who made thereof Sack and Boots, and the Defendant took them; and the Rest-taking good and lawful, for the Nature remains. Br. Property, pl. 23. cites 5 H. 7. 15.

6. So where a Man takes Cloke, and makes thereof a Robe, the Owner may retake it; for the Nature is not chang'd. Br. Property, pl. 22. cites 5 H. 7. 15.


8. But, per Cur. where Grain is taken, and made into Malt, or * Avo.* If a Man ney taken and made into a Cup, or † a Cup made into Money, these cannot be taken; for Grain cannot be known one from another, nor One Piece of Money from another. Br. Property, pl. 23. cites 5 H. 7. 15.

† Plate alter'd in Fashion may be retaken, but not if converted into Coin. Arg. 2 Brownl. 114. in Cafe of Cros v. Welfwood.

9. And if a Man takes Timber, and makes thereof a House, this cannot be retaken; for the Nature is alter'd into Franktenement. Br. Property. pl. 23. cites 5 H. 7. 15.

yet the Owner may retake it; for it may be known. Br. Property, pl. 23. cites 5 H. 7. 15—S. C. cited Arg. 2 Brownl. 114, 118.

in Trespass &c. the Defendant justifi'd under a Lease, and that afterwards a entered, and cut down Trees there growing, and made them into Timber, and brought it on the Land where the Trespass was happen'd, and gave it to the Plaintiff, whereupon he (the Defendant) entered on the said Land, and retak his Timber. Upon a Demurrer to this Plea it was objected, that by making them into Timber the Defendant could not know it to be his Tree, and to the Property alter'd; but adjudg'd, where anything is wrongfully taken, and alter'd in the Form, yet if that which remains is the principal Part of the Subsistance, then the Nature is not left, and therefore if he finds them into Boards he may retake them; but if they are laid upon the Land, or a House be made of the Timber, it is otherwise. Quere, The House now is the principal Subsistance. Mo. 19. pl. 67. Mich. 2 Eliz. Anon.

10. If a Man takes Fowl, he who has the Water may retake them; per Keb. Kelw. 30. a. pl. 2. Mich. 13 H. 7.

11. Trespass for breaking his Cloke, Et quedam averia ibidem ex- elent cepit & aportavir. Defendant pleaded, that the Cattle were his own Goods, and that J. S. took the Cattle by Wrong, and put them into the Plaintiff's Cloke by the Plaintiff's Affent; and the Defendant finding them there, took them &e. The Court held the plea good; for the Plain- tiff does not aver the Property of the Beasts to be in him, but lays only Quedam averia. And when the Beasts are taken from him by Wrong, and are not out of his Possession by his own Delivery, he may justify the Taking of them in any Place where he finds them. Cro. L. 329. pl. 3. Trin. 36 Eliz. B. R. Chapman v. Thimblerthorp.

12. A lends a Horse for Hire to ride to D. and within the Time the Horie is lent, for A meets the Rider at a Place further distant than D. yet A. within the Time can't seise his Horse; for the Perion that hired him has a good speical Property for the Time he hired him for, against all the World. And if he seises the Horie in riding to any other Place, that is to be punisht'd by Action on the Cafe, and not by seising the Horie. Telv. 172. Hill. 7 Jac. B. R. Lee v. Atkinson and Brook.
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13. A found the Goods of B. and bad them over to C. for Money; in that Cafe the Owner may take them again; Per Doderidge. J. Arg. 3 Bull. 17. in Cafe of Will. v. Danger, cites 22 E. 4.

14. Milk made into Cheese cannot be retaken; Res Corruptæ & Transformæ albiflæ videtur; A Thing arising from the Parts is not any of the Parts. Arg. Raym. 329. in Cafe of Bambridge v. Bates.

15. A Mafter of a Ship may keep the Goods till he be paid his Freight; but if he once parts with the Possession of them, he can't retake them; Per Holt Ch. J. 12 Mod. 511. Pach. 13 W. 3. B. R. Anon.

16. If A. makes a Bill of Sale to B. a Creditor, and afterwards to C. another Creditor, and delivers Possession at the Time of the Sale to neither; and after C. gets Possession of them, and B. takes them out of his Possession, C. cannot maintain Trespass, because the first Bill of Sale is fraudulent against Creditors, and so is the second; yet they both bind A. and B.'s is the Elder Title, and the naked Possession of C. ought not to prevail against the Title of B. that is prior, where both are equally Creditors, and Possession at the Time of the Bill of Sale is deliver'd over to neither; Per Holt Ch. J. 2 New Abr. 606. Baker v. Loyd, cites Trin. 1706.

(H. a. 4) Plea good. In Trespass for taking or retaking Goods.

1. IN Trespass of Goods and Chattels, the Plaintiff shall not count of Monies taken; for he ought to have had a special Writ. Br. Count, pl. 90. cites 34 E. 3. 23.

2. Trespass of Corn carried away. The Defendant said that he was seized, and leased to W. N. for Life, who died, and the Defendant entered and seized the Land, and we came, and cut and carried away, and awarded a good Plea; and therefore it seems that this is Colour in itself. Br. Trespass, pl. 114. cites 38 E. 3. 28.

3. Trespass of Trees cut and taken, Per Finch. You Yourself gave them to us, and a good Plea. Br. Trespass, pl. 304. cites 42 E. 3. 23.

4. If I receive Danger, and the Sheriff delivers to me your Goods in Execution, you cannot have Trespass against me; for I am not Tranfgreffor; Per Finchd. & tot. Carr. Br. Trespass, pl. 48. cites 44 E. 3. 29.

5. Trespass of taking of Goods; the Defendant said that they were cast into the Sea by Tempefl, and the Defendant took and kept them, and when he came to Land he bailed them to the Servant of the Plaintiff to his Use, ab fique hoc that he took other Goods, or in other Manner, and admitted for a good Plea; therefore Quere of the Vi & Arms. Br. Trespass, pl. 54. cites 46 E. 3. 15.

6. Trespass of Goods taken in Middlesex, a Taking by Gift in London is no Plea, without traversing the Taking in Middlesex; Quod nota. Br. Trespass, pl. 89. cites 11 H. 4. 3. 4.

7. Trespass of a Move, the Defendant justified as Distress for Rent of A. of whom the Land is held, and the Defendant at the Desire of the Plaintiff
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tiff intreated A. so that the Dilators was re-deliver'd to the Plaintiff, upon Condition that if the Plaintiff did not pay the Rent by such a Day, that he should re-take the Dilators &c. and he did not pay &c. by which he re-took it and re-deliver'd it to the Plaintiff, and admitted for a good Plea without Argument. Br. Trefpafs, pl. 410. cites to H. 6. 3.

8. Trefpafs of Goods taken. The Defendant said, that the Plaintiff &c. elsewhere at D, in the County of C, sold it to J. N. by which he took it, as lawfully he of a Gift, might, as Servant to J. N. the Vendor, and by his Command; and admitted for a good Plea. Nota. Br. Trefpafs, pl. 124. cites H. 19. See pl. 6.

6. 8. 9. In Trefpafs the Defendant said, that the Property of the Goods was in J. N. who made the Defendant his Executor, and died, and we took as Executors, and gave Colour to the Plaintiff as Executor, where he is not Executor &c. which is the same Taking, and a good Plea. Br. Trefpafs, pl. 126. cites H. 6. 12.

10. In Trefpafs of Goods taken in C. it is a good Plea, that the Plaintiff bad't them to him at D. to had them ever, which he has done ob sicne loc, that he is guilty of the Carrying away at C. and a good Plea; Per rot. Cur. and yet C. and D. were in one and the same County. Br. Trefpafs, pl. 386. cites H. 19. 6. 43.

11. Trefpafs of Battery of his Servant, per quod servitium Servientis sui praescidet &c. The Defendant said, that he was retain'd with him before he beat him, and departed and came to the Plaintiff. And yet it feems that it is no Plea; for he cannot re-take him, nor beat him, without Requcst to his second Master. Br. Trefpafs, pl. 139. cites H. 6. 6.

8. 9. In Trefpafs it is no Plea, That A. was posses'd as of his Property, and bail'd to the Defendant, and the Plaintiff took them, and the Defendant re-took; for there is no Colour. Contrary where he says, that A. was posses'd, and bail'd to B. who gave to the Plaintiff, and A. retook and gave to the Defendant. And per Newton, it is a good Plea, that the Defendant was seised still by the Plaintiff desesed, upon which he re-enter'd and did the Trefpafs. Br. Trefpafs, pl. 146. cites H. 6. 36.

12. Trefpafs by Administrators of Goods carried away. The Defendant said, that the Trefpafs was posses'd as of his proper Goods, and made J. S. his Executor, and died, and after the Goods came to the Hands of the Plaintiff, and the Defendant by Command of the Executor took the Goods, and after the Executor refus'd before the Ordinary, who committed the Administration to the Plaintiff, Judgment. And per Laco, Prior, and Moyle, this is a good Plea, and the Colour is good; for the Defendant acknowledg'd Possession in the Plaintiff; and the Power of the Administrator, by the Committing of the Administration, shall have Relation to the Death of the Intestate; and therefore this is Matter in Law, at leaft if the Justification be now good or not. And when Matter of Law is, then there needs no Colour; for it is Matter in Law (when the Administration is so committed) if the Administrator shall have Trefpafs of the Taking before the Committing of the Administration or not. And by them the Plea is good; for when the Defendant had good Cause to justify at the Time &c. this shall not be lost by the Refusal of the Executor, since he is a third Person. Br. Trefpafs, pl. 222. cites H. 6. 7.

13. Trefpafs of Goods taken in T. The Defendant said, that the Plea where &c. is a Hous of which J. B. was feised in Fee, and injerff'd him, and he found the Goods Damage sejant &c. and ill Pleading; for in Trefpafs of Goods &c. it is not the Form to say, that the Place where &c. is
such a House, or such Land; for by Intendment it is stipulated that the Place is a Vill. Contrary it is in Trespasses done of Land. Br. Trespasses, pl. 293. cites 7 E. 4. 124.

15. Trespasses of a Cofle broken, and Goods carried away. The Defendant, as to the Cofle broken, pray'd Judgment of the Writ; for the Plaintiff has no thing in it, unless in Common, & pro indiviso with W. N. nam'd in the Writ. And as to the Goods, be awarded Judgment of the Writ; for before the Plaintiff any Thing had, S. was poss'd of it de Trespass, and made the Plaintiff and A. his Feme his Executors, and died; and A. took the Goods, and was thereof poss'D, and made the Defendant her Executor, and died; and the Defendant found the Goods, among others Goods, in the House of A. and took them to keep to the Use of the Plaintiff; and therefore the Plaintiff ought to have Dehine, Judgment of the Writ. And it seems there, that he ought not to take the Goods of the first Tresfator, another Executor being alive; wherefore be said, that his Tiflatoor put these Goods, and others of his proper Goods, together in one Chest, and so he found them. This is a good Juflication, for he cannot fever them; but where the Goods are sever'd, it is not lawful for him to take them which do not belong to him; quod Paintax and Choke confeffor. And a good Plea, without saying that he is, and at all Times has been, ready to deliver them; for if he may justify the Taking at one Time, it cannot be tortious after without Special Matter, A. Mythenarer after, as it feems. Br. Tres-

pafs, pl. 311. cites 7 E. 4. 3.

16. In Trespasses of Goods carried away, it is a good Plea, That they were the Goods of two Alien Enemies of the King, and the Defendant seiz'd them, as lawfully he might; for it was said there, that every Man may feife the Goods of Enemies of the King brought into England, and retain them to their own Use. Per Vavior, it was adjudg'd in the Time of this King, that he who takes such Goods shall retain them as above. Br. Trespasses, pl. 313. cites 7 E. 4. 13.

17. Trespasses of taking his Hauk. The Defendant justifiz'd for Damage fealfant in his Prigion-House; and it was admitted. And per the Judges, Trespasses quare Columbus cepit does not lie, for he has no Property. Br. Tres-
passes, pl. 387. cites 16 E. 4. 7.

18. Trespasses of taking his Horse. The Defendant said, that the Plain-
tiff lent it to him till he had finish'd his Business; and said, that he had not yet finish'd his Business. And a good Plea, per Brian and Littleton, notwithstanding that the Time is uncertain. Quod nota. But no Mention of the Uncertainty of the Business. Br. Trespasses, pl. 337. cites 17 E. 4. 8.

19. Trespasses of taking Beasts in A. in D. The Defendant said, that he was seiz'd of Land call'd C. in D. aforeraid; and the same Day found the Beasts Damage fealfant in C. aforeraid, and took them, and seiz'd them towards the Pound, and they escap'd, and went into A. aforeraid, and the Defendant justly seiz'd them, which is the same Taking of which the Action is brought. Pigor protefiando, that the Place of C. is not the Frankenment of the Defendant, and pro Placita, that before the Taking al-
ledged by the Defendant, the Defendant took the Beasfs in A. aforeraid, and seiz'd them to his Land call'd C. aforeraid, and they escap'd into A. and the Defendant took them at his own &c. upon which first Taking we have brought this Action. Bridges chang'd his Plea, and said, That the same Day, before the Trespas appe'd by the Plaintiff, he found the Beasts Damage fealfant in C. his own Soil, and took them, and they escap'd into A. aforeraid, and he therein pursu'd and took them in C. &c. Pigor said, he took them in A. abique hoc, that he first took them in C. &c. Medo & Forma, prout &c. and to ille. Br. Confes and Avoid, pl. 52. cites 21 E. 4. 64.

20. Trespasses of Trees and Oaks cur. The Defendant said, that the Plaintiff lead'd to him 10 Acres of Land for Term of Years, of which the Place &c. by Force of which he was thereof poss'D, and cut the Trees &c.
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§ 13. and a good Plea; and yet the Writ of Waite lies. Br. Trefpafs, pl. 430. cites 13 H. 7.9.

21. And in Trefpafs of Goods taken, the Defendant said, that the Plaintiff leas'd to him a House in D. for a Year, and the Goods were his before the Lease, and he put them into the House, and the Plaintiff immediately after the Year determined took the Goods Damage fo'siant, and the Defendant retook them. And no Plea, per Cur. for he ought to carry his Goods out at the End of the Term; and if he leaves them there, he cannot after jufly to enter and retake them. Br. Trefpafs, pl. 430. cites 13 H. 7. 9.

22. Trefpafs of Goods taken. The Defendant said, that the Plaintiff put them within the Doors of the Defendant; and after, because the Plaintiff was indebted to the Defendant in 10l. it was agreed between them, that the Defendant should retain them till he was paid, by which he took them, and the Plaintiff has not yet paid. And a good Plea, by the Opinion of the Court, without showing Cause of the Debt; and a good Plea, without showing other Taking; for the Putting into the House is no Delivery; but when he accepted them by the Agreement, this is the Taking; for if he had pleaded Delivery, it had been Not Guilty argumentatively. Br. Trefpafs, pl. 259. cites 21 H. 7. 13.

23. In Trefpafs it is a good Plea that the Plaintiff gave them to the Defendant, by which he took them. Br. Trefpafs, pl. 259. cites 21 H. 7. 13.

Gift of the Plaintiff of all his Goods by Deed &c. at which Time the Boat belonged to the Plaintiff. Judgment, and a good Plea; and so the Gift in Trefpafs a good Plea; and the Plaintiff was not received to fay, that at the Time of the Trefpafs the Boat was the Boat without Shewing how he came by it after &c. by which he said that at the Time of the Gift it was the Boat of one A, who gave it to him after, and the Defendant carried it away; and the Defendant said that at the Time of the Gift it was the Boat of the Plaintiff Deed &c. Br. Trefpafs, pl. 42. cites 42 E. 2. 1, 2.

In Trefpafs the Defendant pleaded a Gift, the Plaintiff said that after the Gift and before the Trefpafs the Defendant received the Gift by Deed, and the Defendant maintain'd his Bar absolute, that he re-gave after the first Gift, and it was accepted; Quære if it be pregnant. Br. Negativa &c. pl. 55. cites 21 H. 6. 16, 17.

So in Trefpafs of a boat taken, and the Defendant pleaded a Gift by J. N. and the Plaintiff said that J. N. took it out of the Possession of the Plaintiff, and gave &c. The Defendant maintain'd the Gift absolute, that the Plaintiff had any Thing before the Gift; and well, and not pregnant. Br. Negativa &c. pl. 55. cites 53 H. 6. 25.

24. Where things are not in such Danger, but that the Owner may remedy As in Trefpafs of Carn taken, the Defendant said they were secur'd from the 9 Parts, and were in Danger of being lost by Beasts in the Field, by which he took and put them into the arms of the Plaintiff, Parish of the Vill; and by the Opinion of the Court it is no Plea, for they cannot be in such Danger in the Field, but that Men may guard them. Br. Trefpafs, pl. 213. cites 21 H. 7. 27.

And it is not lawful for a Man to take my Horse, saying that it was in Danger of being stolen. Per Bradnell. Br. Trefpafs, pl. 213. cites 21 H. 7. 27.

Nor where my Fowl is out of her Way, it is not lawful for a Man to take to his House, if she was not in Danger of being lost in the Night, or to be drowned with Water. Per Bradnell. Br. Trefpafs, pl. 213. cites 21 H. 7. 27.

But where Goods of another are in Danger, by Water, Fire &c. of which the Party cannot have Remedy, there I may take them to save them. Per Redech. J. Br. Trefpafs, pl. 215. cites 41 H. 7. 27.

6 P (I. a) Trefpafs

1. If A be trespassed in Fee of Copyhold Land next adjoining to the Land of B. and A erects a new House upon his Copyhold Land, and some Part of the House is erected upon the confines of his Land next adjoining to the Land of B. if afterwards B. digs his Land so near to the Foundation of the House of A. that on no Part of A's Land, by which the Foundation of the House and the House falls into the Pit, yet no Action lies by A. against B. for it was A's own Fault that he built his House so near the Land of B. for he by his Act cannot hinder B. from making the best Use he can of his own Land. P. 15 Car. 2. B. between Wilde and Musterley, per Curiam after a verdict for the Plaintiff. But it seems that A who has Land next adjoining to my Land cannot dig his Land so near my Land that thereby my Land shall go into his Pit; and therefore if the Action had been brought for this it would lie.

2. In Trespass Natale Clavilium fretit. call'd S. in the Parish of D. if Defendant justified because his Sheep were stolen by Persons unknown, and that the Plaintiff afterwards chafed the said Sheep with his own Sheep in the same Parke, and that he suspected that his Sheep were chafed into the said Close of the Plaintiff, in which &c. and upon this he went into the said Close where &c. to search for his Sheep, and not finding them there, he went out of the Close as soon as he could, doing as little Damage in going and returning as he could. This is not a Good Justification, because he did not enter to search for the Felon, which was for the Commonwealth, but for his private Interest to inquire for his Goods; for by the same Reason he may come into the Lands of any other Men, with a Pretext to search for his Goods, and here he does not shew any Cause of Suspicion that the Sheepe were in this Close. Sibb. 1649. between Topclady and Scally. Adjudg'd upon Denuinrur per tocam Curiampressor Justice Jeremy, who was e Contra. Intratur Sibb. 24 Car. Rot. 596.

Br. Trespass, pl. 192. cites S. C. and that the other replied that his Cafe was hard on both Sides, but that the Court gave Judgment for the Plaintiff Nisi &c.

3. If a Man ought to repair a Fence between my Land and his Land next adjoining, if he does not repair it, by which my Beasts enter into his Land for Default of Reparation, this is justifiable in a Trespass brought by him. 19 D. 6. 34. 39 C. 3. 3 b. Hedge was sufficiently inclosed. [And so this Point was admitted.] —— S. P. Br. Trespass, pl. 143. cites 21 H. 6. 39. ——And in such Case I. may pursue and rescut them. Per Frowicke. Kelw 30 pl. 2. Mich. 13 H. 7. Anon. ——See Infra, pl. 26.

4. So in the said Case it is lawful for me to go into his Land to recate my Beasts, and rechafe them into my own Land. And this is justifiable in Trespass, because it comes by his own Act. 13 D. 7. Rellouwy 30. Per Brian Ch. J. The Forester can not enter into any Man's Land out of the Forest, nor into the Land which should have been inclosed against the Forest, because the Property of Savages...
6. If Beasts are impounded in a Place inclosed which has a Gate open, if the Sheriff comes to make Replevin, and the Owner of the Close hands with Bones and Arrows in the Gate to show at him, B. Jotham by which he is in fear of Death, he may, to avoid Death, break the Close and enter there, and make the Replevin. And this Trespass is justifiable. 20 H. 6, 28.

7. If my Land be open to the Highway, and the Beasts of a Stranger enter upon the Land, this is not justifiable. 39 C. 3, 3.

8. If a Man does a Nuisance in his own Soil to my Mill, House, or as if a Man Land, I may justify the Entry into his Soil, and bring down this Nuisance, because it was of his own Wrong. 9 C. 35; Cato, 8 C. 4, 5. Cd. 9. Bute, 55.

the Ditch with which the other has dug out. Per Damby. Br. Trespass, pl. 186. cites 9 E. 4, 35.

9. If a Man takes my Goods and carries them into his own Land, I may justify my Entry into the said Land to take my Goods again; for they come there by their own Act. 9 C. 35. 2 Le. 202. pl. 254; cites S. C.

10. If a Man by Negligence sufers his House to be on Fire, I, who am his Neighbour, may break down his House to avoid the Peril, which may come to me by the burning of it. 9 H. 4, 35. b.

11. If a Man tortuously impri ses me in his House, I may justify the breaking the Windows and Door to go out. 9 C. 35, b.


12. If my Tenant, seeing me coming to distress, drives his Beasts out of the Land held of me into Land held of another Man, I may justify my Entry there to take the Distress because it was by his own Tort. * 9 C. 35.

any other, to prevent the Lord to distress, drive the Cattle out of the Fee of the Lord into some Place out of his Fee, yet may the Lord freely follow and distress the Cattle, and the Tenant cannot make Reckons, albeit the Place wherein the Distress is taken, is out of his Fee; for now in Judgment of Law the Distress is taken within his Fee, and so shall the Writ of Reckons happen. But if the Lord coming to distress had no view of the Cattle within his Fee, tho' the Tenant drive them off purposely, or if the Cattle of themselves, after the View, go out of the Fee, or if the Tenant after the View remove them for any other Cause than to prevent the Lord of his Distress, then cannot the Lord distress them out of his Fee; and if he does, the Tenant may make Reckons. — 2 H. 15, 8. B. — And altho' in such Case the Distress be taken out of his Fee or Seigniory, yet it is within the Statute of 21 H. 8. cap. 19. For in Judgment of Law the Distress is lawful, and is as if taken within his Fee and Seigniory. Co. Lit., 268. b. — S. P. For when they are in his View they shall be adjudged in his Possession. Br. Trespass, pl. 256; cites 2 E. 4, 6, and says the Reason seems to be, because they are transitory.

* Br. Trespass, pl. 186. cites S. C.

13. If a Man has an Heap of Grain by my Heap of Grain, and takes S. P. Arg. an Handfull out of my Heap, I may justify the taking an Handfull again out of his Heap, because he shall not take Advantage of his own Wrong. C. 12 3d. B. R.

not to take more than the other took from him. Ibid. — See Title Property (E) pl. 6. 7; & 8. and the Notes there.

14. If I have an Heap of Grain or Money, and another comes and calls his Grain or Money into my Heap, I may justify the carrying away all, because otherwise he will by his Tort bar me to take my own
15. In Trespass for chasting of his Beasts, it is good Justification that the Beasts were in his Cloze Damage feasant, and he with a little Dog chased them out of the Land; for inasmuch as they came there of their Innucl, the Owner is not bound to impound them, but may reprove the Tort done to him, by chasing of them out of the Land. Co. 4. Tyringhams 38. b. Relatved.

16. If 2 Tenants in Common of Timber or other Goods are, and the one takes it, and puts into his several Land, the other cannot justify the Entry into the Land to retake it, because he may retake, yet inasmuch as there is not any Tort in Law when one takes all to his own use, because the Law has allowed him to do for the Trust which is between them, he cannot justify a Trespass in the Land to retake it; but he ought to take it when he can without Trespass. P. 13. B. R. between Masters and Pelley. Per Currant.

17. If a Man comes into my Cloze with an Iron-bar and Sledge, and there breaks my Stones, and after departs, and leaves the Sledge and Bar in my Cloze, in an Action of Trespass for Taking and Carrying of them away, I may justify the Taking of them and Putting of them in the Cloze of the Plaintiff himself next adjoining, especially giving Notice of it to the Plaintiff, as it was pleaded, inasmuch as they were brought into my Cloze of his own Tort: and in such Case of Tort I am not bound to carry them to the Pound, but may well remove the Wrong done to myself by them by Tort of the Plaintiff. P. 11. Car. B. R. between Clee and Maunder adjudged upon a De nocturne. Intract. Hill. a. Rot. 592.

18. Trespaes good Arbores lucidit & aportavit; Fulth. said the Plaintiff sold to the Defendant Horsey Wood, except of the left Abies, and the Plaintiff to carry them within 2 Years next; and after he came and required the Plaintiff to cut and carry them, and he would not; and because the Defendant by his Bargain had but 3 Years to take the Wood, he left 40 of the belt Abies, and cut and carried the rest; Per Caund. You abated our Wood, abique hoc that we were warn'd, prout etc. and said no more. Br. Trespaes, pl. 399. cites 44 E. 3.

19. Trespaes of Trees [Grafs] spoil'd, and fed with the Cattle of the Defendant, who said that the Plaintiff to the Intent to have the Defendant in his Power, commanded his own Servant to chase the Beasts of the Defendant into his Land, which he did accordingly, and the Defendant as soon as he knew of it, chase d'them out; Judgment is农田, and a good Plea, and was not compell'd to say Not guilty. Br. Trespaes, pl. 148. cites 21 H. 6. 39.

20. Trespaes of a Cloze and House broken, and Grafs spoil'd, his Servant beare, and his Oxen taken. Laycon said that he had a Highway going to D. against the said House where &c. and the Defendant rode in the said Way, and when he was against the House, the Plaintiff and others came with Bows and Arrows &c. and assaulted the Defendant, and he left his Horse, and fled into the House, and ever into the Cloze, and came back into the Way, which is the fame Trespaes &c. and as to the Grafs spoil'd, pleaded the same Matter, and when he came back into the Way his Horse was in the Cloze, by which he freely re-enter'd and retook his Horse, & hoc &c. and
to the beating the Servant he said as above, that they made an Affault upon him, and the Damage which they had was of their own Assault &c. Br. Trefpas, pl. 204. cites 37 H. 6. 37.

21. And as to the Oxen refus'd, that before the Trefpas A. B. affirm'd Plain of Replevin before the Sheriff of Beifs taken, and he made Precept to the Bank to make Deliverance, by which the Bank, and this Defendant by his Command, made the Deliverance three Days after the Trefpas supped, and attach'd the Plaintiff to answer, abique hoc that he is guilty before the third Day. Chose he said ought to be paid if the Way be in the same Vill as the House, or where it is, and also he does not say whether the Doors of the House were open when he entered, by which he said to. Br. Trefpas, pl. 224 cites 37 H. 6. 37.

22. It was said for Law, that if all the Neighbours of the Vill carry their Grain out of the Common Field, except one who would not carry for Frankence or Negligence, there the others may put their Beifs in the Field, and shall not be Trefpaters to the other. Br. Trefpas, pl. 352. cites 21 E. 4. 41.

23. Trefpas for chaling his Cattle at S. the Defendant justified for Brownl. 221. S. C. and was a translation of Yelv. but that some Words are not appear. Cro J. 231. pl. 1. S. C. but not S. P. - Roll. 14. pl. 12. S. C but demurr'd, and had Judgment; for the Defendant pleaded a good Bar and the Plaintiff made a good Replication, and shewed the Fault to be the Defendant's, by not inclining between Bl. Acre and Gr. Acre, and the Cattle to the High way, which was the Valley of the Lord, who thereupon brought Trefpas, but the Court disconsider'd the Action, which fee at (N. 4) pl. 11.

24. In Trefpas of treading his Grafs, entering his Clofe called the Yard, and pulling down his Gate &c. The Defendant justified for a Paffage by and through his Yard, and that at the Time when &c. a Gate was erected in the Paffage, so that he could not pass with his Beifs, whereon he broke the Gate, and in pulling along he Aliquantulum trod the Grafs, which is Idem Reidisum. The Plaintiff objected, that he could not justify pulling down and breaking the Gate, he not having seen that it was lock'd or railing, so as he could not pass. But per Cur. He having pleaded that the Gate was put there, so as he could not use his Paffage, it shall be intended lock'd or railing, or that the Way is thereby heightened that he could not pass, and the Plea good; and that the Replication

Trefpas.
Trespass.

25. In Trespass of entering his Close, and killing two Maltiffs, the Defendant pleads that they were set upon his Hogs, and were like to kill them, to prevent which he entered into the said Close, and killed the Maltiffs. And per Hale Ch. J. The Justification of killing the Maltiffs is well enough; for one cannot set Maltiffs upon Pigs to kill them, but he may hunt them with a little Dog. Freem. Rep. 347. pl. 432. Mich. 1673. King v. Rofe.

26. A. was seized of Bl. Acre, B. of Gr. Acre, and C. of Wh. Acre, which 3 Clothes adjoined to one another. B. was to repair the Mound between A. and B. and C. was to repair the Mound between B. and C. — 1. puts his Beasts into Bl. Acre, which stray'd into B.'s Close for want of Fences between Bl. Acre and Gr. Acre, and out of Gr. Acre into Wh. Acre, the Mounds being out of Repair between B. and C. — 2. brought Trespasses, and A. pleaded the special Matter. The Question was, whether it would not, when the Beasts of A. stray into the Close of B. for Default of Repairs by B. and so were no Trespassers there, and then stray into the Close of C. for Default of Repairs by C. this should excuse the Trespasses of A.'s Beasts, as it would for the Beasts of B.? The Court deemed to incline that it would not; for tho' C. was bound to repair between him and B. and so B.'s Beasts would have been excused if they had stray'd into his Close, yet the Prescription that binds him to repair, is only personal against B. and his Beasts, and not against all Beasts that come into his Close. Twifden said, if this were a good Plea, the Right of repairing the Fences between B. and C. would be tried between A. and C. but he thought A. must be put to his special Action on the Case against B. for not repairing, per quod &c. Sed Cur. advistre vult. Freem. Rep. 379. pl. 495. Mich. 1674. Right v. Baynard.

(K.a) Trespass. Justification. What shall be good

Justification. A Thing of Necessity.

1. If a Man has a Way over my Land for his Beasts to pass, * if the Beasts feed the Grasfs by Mortels in passing, it is justifiable.

2. If there are diverse Passengers in a common Paffing Barge upon the Thames, and one of them has a Pack with him, in which are bound up Bones and Things of great Value, and a Tempest arising, all the Goods in the Barge are cast into the Sea for Safety of their Lives, among which the Pack foreclosed is cast into the Sea, the Buyer of the Barge not having Notice that there were any such Things of Value in it; In an Action for the Pack, and Things therein, this is justifiable, because it was done for the Preservation of their Lives. D. 12 Car. B. R. by Coke said, that it was so resold in Bank in the Case of Gravesend Barge.

*See pl. 5. supra.


If a Man has a Way over the Land of another for his Cattle, and upon the Way he scares his Cattle, so that they run out of the Way upon the Land of the Owner, and the Driver freely pursues them &c. if Trespass be bought, he that had the Way may plead this special Matter in Justification; Per Richardson Ch. J. Het. 166. Bill 6 Car. C. B. Anon.
Trespass.

3. If a Chimney be on Fire, I may enter and take the Goods in Safety, which are in jeopardy to be lost; &c. Per Palms. Br. Trespass, pl. 213. cites 21 H. 7. 27.


[L. a] Trespass justifiable. In what Cases a Trespass may be justified.

1. If a Man lets a Faulcon fly at a Pheasant in his own Land, which pursues the Pheasant into the Warren of another, and there takes him, yet he cannot justify the Entry into the Warren of the other to take the Faulcon and Pheasant. 38 E. 3. 10. b. 12 d. 8. 10.

2. If a Man hunts with a Tumbler in my Warren, yet I cannot justify killing the Tumbler with my Maltiff by my Incitation. B. 5 de. 2. Levin's Case.

Defendant pleaded, that Sir F. W. was seised of a Warren in D. in the same County, and was Warrener; and that the Dog was divers times there killing Conies, and therefore there, tempoque quo &c. running after Conies, he kill'd him. And all the Court held the Justification good, it being alleged, that the Dog used to be there killing of Conies. Cro. J. 4. pl. 17. Mich. 2. Jac. B. B. Wadlifurt v. Damme. S. C. cited Sound. S. 4. Arg. in Case of Wright v. Rainier.

3. In every Case where a Man may awo be may justify; but not a contra, per Yong, & non negatur. But see elsewhere, that if he justifies he shall not have Return of the Beasts. Contra upon Avowry. Br. Justification, pl. 16. cites 5 E. 4. 6.

4. If A. takes the Cattle of W. S. without Cause, it is not lawful for 7. N. to take them from him; for he has Title against all, undeis against the very Owner; Per all the Justices. Br. Trespass, pl. 433. cites 13 H. 7. 10.

5. Trespass. Tenant at Will justified for digging a Trench to avoid the Water, which surrounded the Common in another's Land, appendant to the other Land which he bad at Will, and to keep his own Land from being surrounded. And it was held double; for there are two Matters, and the Plaintiff demand'd. Therefore Quare; for two Justices were against two. And there are divers Cases what a Man may do for the Benefit of a Stranger. And there is a Diversity where it is in Defence of the Person of a Stranger, and where of his Goods or Land. And for the Commonwealth, a Man may extinguish the Suburbs of a Will, or an House which is on Fire.
Fire. Br. Trefpafs, pl. 406. cites 12 H. 8. 2. 15. And cites the Time of E. 4. that a Man may make a Bulwark upon another’s Land in Defence against Enemies.

6. If Trees grow in my Hedge, hanging over another Man’s Land, and the Fruit of them falls into the other’s Land, I may justly my Entry to gather up the Fruit, if I make no longer Stay there than is convenient, nor break his Hedge. Lat. 120. per Doderidge J.

7. In Trefpafs the Plaintiff declared, that the Defendant kill’d his Maltiff &c. The Defendant pleaded in Bar, that the Plaintiff the same Day &c. suffer’d his Maltiff to go in the Street, not muzzled; and that he kill’d another Dog of B. his Maltiff, which she kept for the Security of her House; and that he, as her Servant, advin’d & advised him to do any further Damage. And upon Demurrer it was argued, that a Maltiff is a valuable Thing; and therefore the Defendant cannot justly the Killing it, without a reasonable Cause; that he might justly the Beating the Maltiff to prevent any further Mischief to the other Dog, but not the Killing it, unless it could not otherwise be prevented; and he has not said, that he could not have faved his Maltiff’s Dog without killing the Maltiff. And of this Opinion was the Court, and gave Judgment for the Plaintiff. Saund. 84. Tit. 19 Car. 2. Wright v. Ramclote.

8. In Trefpafs of killing 2 Greyhounds, the Defendant justified, because they chase a Deer in his Park, and kill’d him there. The Plaintiff rep’d, that the Deer was out of the Park in his Land eating his Grasf, and therefore he set his Greyhounds on to chase him out of his Land, and they follow’d him into the Park, and there kill’d him. Adjudg’d upon Demurrer, that the Replication was ill, for not saying that he did his Endeavour to stop the Greyhounds at the Side of the Park, to hinder their entering into it. But it was then objected, that the Bar was ill; for tho’ it was not lawful to chase in the Park, yet the Defendant ought not to have kill’d the Greyhounds, when he had taken them; and cited 2 Roll Abr. 567. [See Supra, pl. 2.] Lewin’s Case. And e contra was cited 2 Cro. 44. * Wadhurst v. Dan. And at another Day, upon Consideration of both Books, Judgment was given for the Defendant. 3 Lev. 28. Mich. 33 Car. 2. C. B. Barrington v. Turner.

(M. a) In what Cases a Man may justify, as incident to another Thing.

See Tit. Grants (Z) pl. 16. and the Notes there.

S. P. by Twilden J. Vent. 43. Mich. 21

If a Man bargains and sells all his Trees growing upon certain Land whereby he is settled, the Bargainee has Power given to him as incident to the Grant, to come upon the Land, and cut down and carry away the Trees at whatever Time he pleases; and the Conning upon the Land is justifiable. Cr. 15 Ja. between Stakeley and Adjudg’d per Curiam.

2. If a Man grants to me, to make a Trench in his Soil from such a Fountain unto my House, so that I may put a Pipe to convey the Water to my Place [or House] in a Conduit; if after my Pipe be stopped, I may...
Trespafs.

1. May dig the Ground to amend the Pipe; for it is incident to the Car. 2 B. R. Grant. 9 El. 35. d. Curia.

2. Trespass; for Quanto abiquid conceditur, conceditur & id sine quo res ipsa uni non potest. — A Partner of the King of a Capital Messenge makes a Conduct to convey Water to his House, through the Land of a Citizen of the Mayor, and afterwards the King grants the Capital Messenge to A. with the Apparances; and the Copyhold was granted to another Person. Adjured, that the Partner may dig the Ground to amend the Pipe; because Terra transit cum Quere. Mo. 644. pl. 89. Trin. 43 Eliz. B. R. Guy v. Brown.

3. So if I hate such Pipe by Prescription, I may justify the Digging of his Land to amend it, without prejudice to do it, for it is incident to the Thing preferred. 9 El. 35. Curia.

4. Trespass of taking his Servant and a Scapery, viz. a Garment, was brought by the Prior of Grey-Priars in London. The Defendant said, that the Friar took his Son and Heir apparent, now named Servant, and put him into a Friar's Habit; and the Defendant came into the Church, and the Son came to him with the Scapery, and was only 11 Years of Age, and by Award of the Mayor of London he took the Scapery. And it was challenged to be treble, viz. that he was Son and Heir, and was taken and carried away, in which Case he might take him; and another, that he came to him; and the third, the Award of the Mayor of London. And per Hank, he may take his Son and Heir, if he be under 21 Years, pl. 152. in if he be not prostrated. And by the Opinion of the Court, because the justification is good of the Taking of the Body, therefore it is good of the Garments upon his back, and therefore a good Plea for the Scapery. And it was held there, that where a Man puts another into Apparel, it is a Gift in Law. And per Hank, if an Alderman takes the Feme of a Man, and cloaths her well with New Cloaths, the Baron may retake the Feme with the Cloaths. And after it was awarded, that as to the Entry into the Church, and the Taking of the Infant and the Scapery, that the Plaintiff take nothing by his Writ. Br. Trespafs, pl. 93. cites 11 H. 4. 31.

5. Trespass of a House broken and Goods carried away. The Defendant said, that the Plaintiff's Husband was seized in Fee of the House, and possessed of the Goods, and made the Defendant Executor, and died; and the Defendant found the Door open, and entered and took the Goods, and the Plaintiff supposing that he had been Executor, took them &c. And this was admitted good Colour, and the Plea was awarded good per Cur. notwithstanding that the Plaintiff brought the Action for his Goods, and the Defendant justfied of the Goods of the Tresfator. Wherefore the Plaintiff said, that the Tiltator defrauded them to her, and the Defendant delivered them to her after the Tiltator's Death, and after took them. And the Defendant protestando, that they were not defrauded, and pro Plauto said, that he did not deliver them, and so at first. Br. Trespafs, 9. cites 2 H. 6. 15.

6. Trespass Quere Clausum fragit, & Averia cepit. The Defendant said, that the Plaintiff commanded N. to deliver him the Beasts, by which he entered and received them of N. And per Huliey and Brain, the Defendant may justify the Entry by the Command given to N. But per Choke, here the Party may receive the Beasts at the Park-Gate, and cannot enter by the Command given to a Stranger, by which the Defendant chang'd his Plea. Br. Trespafs, pl. 342. cites 15 H. 4. 25.

7. Where a Men is bound to make me a House before Michaelmas, and he is no Carpenter, he may justify to bring a Carpenter there to make the House. Br. Trespafs, pl. 342. cites 15 H. 4. 25. Per Huliey and Brain.

8. And where a Man makes a Letter of Attorney to deliver Trespafs to W. S. there W. S. may justify the Entry to take the Liberty. Br. Trespafs, pl. 342. cites 15 H. 4. 25. Per Huliey and Brain.

9. In Trespafs the Defendant justified by Colson of Fulhove by Prescription of all Cuttie which pertain to such a Common &c. the Plaintiff said that
Trespass.

that De non tort Demefne without such Cause. Br. De non tort &c. pl. 31. cites 5 H. 7. 9.

(M a. 2 Trepsafs justifiable. By Lord. [Or Reversion. Entry.]

PL. 15. a. in Maxell's Cafe.

1. In Reversion may well enter the House in Leafe for Life, to see whether it be well repaired, if the House be open. 9 H. 6. 29. b.

2. But he in Reversion cannot enter into the House where it is fasten'd up or lock'd, and break the Windows. 9 H. 6. 29. b. Curia.

(M a. 3) Justification by Command. And Pleadings.

1. In Trespass of Goods carried away, it is a good Plea that the Owner was outlaw'd, and be as Servant of the Efcheator by his Command took the Goods; Per Littleton. Br. Trespsafs, pl. 339. cites 18 E. 4. 9.

2. In Trespass the Defendant pleaded the Frankentemente of one A. and be by his Command entered, and did the Trespsafs: the Plaintiff said that before that A. had any thing, he was seised till by A. disfessed, and be re-enter'd, and the Trespsafs unzue; and no Plea, but was compel'd to say that he was seised till by the Defendant disfessed to the Use of A. and he re-enter'd, and the Trespsafs unzue, and well. Br. Trespsafs, pl. 429. cites 11 H. 7. 21.

3. In Trespsafs of Goods taken, Per Keblo, Where a Man derives Interest from the Owner, as by Command, De non tort &c. is no Plea. Contra where he justifies in another's Right, as to say that the Frankentemente is in a Stranger, and he by his Command &c. Br. De non tort &c. pl. 53. cites 16 H. 7. 3.

4. In Trespsafs of chaiting his Cattle, the Defendant as Servant to a Copyholder of the Manor of T. laid a Prescription in the Lord for Common Pasture for him and his customary Tenants of the said Houfe, and so justified the Chaiting by Command, and as Servant to the said Copyholder, and that he Moller drove them out of the Common. The Plaintiff replie de injuria sua propria abique tali caufa. And upon Demurrer it was resolved that these Words, Abique tali caufa relate to the whole Plea, and not to the Command only; for all makes but one Caufe, and neither of them without the other is any Plea by itelf; and that here the Illue will be full of Multiplicity of Matter, whereas an Illue ought to be full and fingle; for in this Case Parcel of the Manor demisable by Copy, Grant by Copy, Prefcription for Common &c. and Commandment will all be Parcel of the Illue. And Judgment against the Plaintiff. 8 Rep. 66. b. Mich. 6 Jac. Crogate's Cafe.

5. In Battery the Defendant pleaded a Judgment, and Execution had by E. his Father against J. S. and that the Plaintiff assailed the Bailiffs to rescue the Goods, whereupon be in Aid of the Bailiffs, and by their Command Moller made them inpotent upon the Plaintiff to prevent the Rescue. The Plaintiff replie de injuria sua propria, and travers'd the Command &c. The whole Court resolved that the Travserfe was ill; for he might have done
Trespass.

(M a. 4) Justification by Licence. And Pleadings.

1. T trespass of Choosing in his Free Choice; the Defendant pleaded Licence of the Plaintiff to chace there; the Plaintiff said that the Defendant refused to let him do that, which is the same Trespass; and the Defendant pleaded that the Plaintiff shall not say Demesne abigu tali Causa, Prifit, and the others contra. Br. De fon tort &c. pl. 33. cites 42 E. 3. 2. Contra 8 E. 4.

2. In Trespass it is a good Plea that the Place where is the Common Goal of the Sheriff of L. and that W. N. is Gaoler, who licensed the Defendant to enter to speak with a Prisoner, by which he did it, which is the same Trespass; and a good Plea Per Choke J. Br. Trespass, pl. 332. cites 14 E. 4. 8.

3. So where a Parker licenses a Man to drink with him in his Lodge, that the Licence is derived by a Servant, and not by the Owner; Per Choke J. Br. Trespass, pl. 332. cites 14 E. 4. 8.

4. In Trespass the Defendant pleaded Licence of the Plaintiff to enter, and the Plaintiff said that he broke his Door and Windows; this is no good Replication without traversing the Licence, in truth as it is a Licence in Fact. Br. Replication, pl. 55. cites 21 E. 4.

5. Trespass for entring his House and taking his Goods. The Defendant pleaded quoad the Goods Not guilty, and quoad the Entry that the Plaintiff's Daughter licensed him, and that he entered by that Licence. The Plaintiff replies Non intraverit Per Licentiam suanam. The first issue was found for the Defendant, and the second for the Plaintiff, That he did not enter by the Licence, and Damages assessed to 80l. It was moved in Arrest of Judgment that he ought to have travers'd the Licence, and not the Entry by the Licence, or the Entry by itself, or the Licence by itself, and not both together; And of that Opinion were Williams and Vepltvon, to which Popham agreed, had it been at the Common Law; but being tried, it is made good by the Statute of 32 H. 8. which aids misjoining of Issues; for an Issue upon a Negative pregnant is an Issue; Per quod adiuvatur. Cro J. 37. pl. 13. Mich. 3 Jac. Br. R. Myn v. Cole.

(M a 5) Jufi-
(M. a. 5) Justification. Pleadings.

1. Trespass for breaking his House and Close. The Defendant justified, that the Plaintiff was his Tenant for Years, and he entered to see if he and Waife &c. The Plaintiff said, that he said there by a Day and a Night; and a good Replication. Br. Replication, pl. 12. cites 11 H. 6. 32.

2. Trespass of Nuance, and of stopping a Gutter, to the Nuance of the Plaintiff in surrounding his Land. The Defendant preferred to amend the Gutter, and to stop the Water during that Time. The Plaintiff said, that De son tort Demesne &c. and traversed the Prefcription Modo & Forma; and so to Itlue. Br. De son tort &c. pl. 48. cites 39 H. 4. 75.

3. In Trespass for pulling down his Hurdles in his Cloze, the Defendant justified, for that one B. was Lord of the Manor of D. and that the said B. and all those whose Estate he had in the said Manor, had had a free Course for their Sheep in the Place where &c. and that the Tenant of the said Cloze could not there erect Hurdles without the Leave of the Lord, and that B. let to the Defendant the said Manor, and became the Plaintiff erected Hurdles without Leaue &c. in the said Cloze, he could them down, as it was lawful for him to do. The Plaintiff replied of his own Wrong without Cause &c. It was helden by the Justices to be an ill Plea; for the Plaintiff ought to have traversed the Prefcription. 4 Le. 16, 17. pl. 59. Trin. 26 Eliz. B. R. Ruffbrook v. Pulanes.

4. In Trespass of breaking his Fences, and eating up his Grazes with Hogs, the Defendant pleads, the fences were out of Repair. The Plaintiff demurs, because the Defendant does not say that they are the Plaintiff's Fences, nor that the Plaintiff's Cloze was contrary adiacens. Per Hale Ch. J. The not alleging that it was the Plaintiff's Mound seems not good, and then the Plaintiff shal have Judgment; and so he had. Freem. Rep. 347. pl. 432. Mich. 1673. King v. Rofe.

5. All Strangers who justify under Process of Execution, (except Officers) ought to set forth the Judgment; and so must the Party who is Plaintiff, if he justifies; Per Holt Ch. J. Carth. 443. Hill. 9 W. 3. B. R. in Cale of Britton v. Cole.

Contra to former Judgments, as in Cro. C. 138. Skevil v. Avery.

And 2 Mod. *o. Scarle v. Banion. — And 3 Mod. 52. Langford v. Webber. — And Carth 9. S. C.

— See Presumption (1) pl. 2.

* Lutw. 1492. S. C.

(N. a) Trespaes.
(N. a) Trespass excurable. What Act or Thing will excute a Trespass.

1. If my Beasts escape (not contra Dacem) into the Land of J. S. and tramples his Corn, this Escape shall not excute me of Trespass, but a libit of Trespass lies against me for Default of good Keeping of them. 27 M. 50. adjudged. 12 P. 7. Bell. 3. b.

2. If A. leaves Land to B. for Life, and after leaves it to C. for Years to commence after the Death of the Lesteece, and then B. sows Part of the Land, and dies before Sevance of the Corn, and afterwards C. enters into the Residue of the Land not sown, and puts in his Beasts, and the Beasts go against his Will and feed the Corn; This shall not excute him, but the Eexecutor of B. shall have Action of Trespass for it; for he ought to take care of his Beasts, that they do no Damage to another Man. And here the Enmblements belong to the Executor of B. and he has Liberty to permit them to grow there till a convenient Time for their Sevance. D. 10 Car. II. between Pitts and Calliheere adjudg'd upon a Demurrie. Infracifie Tr. 19 Car. Rot. 573.

3. In Falle Impromment, the Defendant said, that the Father of the Plaintiff sold his Mafter by Service of Chovrty, and died, the Plaintiff being within Age; and he, by Command of his Master, seized him, and detained him six Months; and after one E. an elder Brother of the Plaintiff, who was remis'd into Scotland, came back; and the Defendant perceiving it, ward the Plaintiff, and seized E. Judgment n Actio, and a good Plea. Br. Notice, pl. 19. cites 22 Aff. 85.

4. If the eldest Brother goes over the Sea, the Youngest thinking that he is dead, cannot Jullity to enter into the Land; Per Portington. Br. Trespass, pl. 141. cites 21 H. 6. 14.

5. If an Infant delivers Goods to the Defendant, it is a good Excuse in an Action of Trespass; but a Gift by an Infant is void. Br. Trespass, pl. 150. cites 22 H. 6. 3.

6. In Trespass of cutting Trees &c. it is a good Plea, that the Plaintiff bid him to cut for 8 d. by which he cut, as lawfully he might &c. Br. Trespass, pl. 383. cites 33 H. 6. 55.

7. In Trespass the Defendant said, that the Close where &c. adjoins to the King's Highway from such a Vill to such a Vill, and he chased his Catle in the Way, and they entered the Close in Default of Inclusion of the Plaintiff, which the Plaintiff, and those whose Eitate &c. have used, to include Time out of Mind. And the Defendant freely pursued and re-chased &c. by which the other said, that it was sufficiently included, prifit &c. Nevertheless, per Danby and Littelton, if Grain grows in a common Field near the Way, and the Beasts feed, the Defendant shall render Damages; for there the Plaintiff is not bound to include. Contrary above. And the Issue was join'd upon the Sufficient Inclosure, and not upon the Inclosure only. Quod nona. Br. Trespass, pl. 321. cites 10 E.

8. And where a Man has a private or particular Way, which is not the Entit if a Man King's Highway for all, there if he, who has Title, chases Catte which he has to enter Roger's of
Way there, *enter and feed,* Trespass does not lie, tho' it be not inclosed; Per Moyle and Choke. Br. Trespafs, pl. 321, cites 10 E. 4. 7.

9. If a Man has Common in D. and one W.S. has Land adjoining, which he is not bound to fence, as in the Field Country; there the Commoner is bound, when he puts his Beasts in the Common, to keep them that they do not go into the Land of W. S. Per 2 Justices. Br. Trespafs, pl. 345. cites 20 E. 4. 10.

10. Jure suadendi in Trespafs for subverting his Soil, and feeding the Gras, by a Custom, *that where he ploughs he may turn his Plough upon the Land adjoining,* by which he did so, and his Horses in the turning subverted a Foot of Land, and took a Monthfull of Gras against his Will; and well. Br. Trespafs, pl. 351, cites 21 E. 4. 28. and 22 E. 4. 8.

11. Trespalls Quare Clausum tregit; it appear'd that the Defendant had a Clofe adjoining to the Highway, which was supposed to be the Lord's Waste, and that the Cattle coming out of his Clofe did casually stray in the Highway, and for this the Action was brought. Croke J. said, that if the Cattle stay any Time on the Waste, and depart there, the Lord may have an Action of Trespass. And Fenner said the Cattle ought not to feed in the Highway; and as it appear'd to be Alta Via Regina which made it the stronger against the Plaintiff, he was against the Action; and the whole Court unlike much of it, and were of Opinion against the Plaintiff; but the Matter being upon Compromise, they deliver'd no Judgment. Bullif. 157. Trin. 9 Jac. Durand v. Childle.

12. In Trespafs, the Defendant pleaded that the Plaintiff's Sheep were trespassing in his Ground, and that he chased them out with a little Dog, and he immediately re-call'd his Dog but the Dog pursu'd them into the Plaintiff's Ground adjoining. Upon Demurrer, it was held that the Action does not lie. And Doderidge J. gave for Reason, there was no Hedge. And Judgment was given for the Plaintiff. Poph. 161. Patich. 2 Car. B. R. Millen v. Pandrye.

13 No Excuse is good in Trespafs, but by inevitable Necessity. 2 Jo. 203. Patich. 34 Car. 2. Br. Dickenlen v. Watdon. See (G) pl. 1. in the Notes, the Cafe more large.
(O.a) Trespass. What will be a Discharge of a Trespass. Death.

1. If Trespass be done to the Goods of the Testator in the Hands of the Executor, if the Executor after dies, his Executor shall not have Trespass for it, but Moritur cum Persona. Contr. 13 p. 6.

2. If a Man beats my Servant by which I lose his Service by diverse Yelv. Sa. Months, and after he dies, yet I shall have Action of Trespass against the Trespasser; for this was a distinct Trespass to me. Tr. 4 Jac. B. R. Huggins’s Case by Williams.

3. But if a Man beats my Feme, by which she languishes by diverse Months, and after dies, I shall not have Action of Trespass against him for this Trespass, because the Trespass was not done to the Feme, to that the Feme ought to have stood in the Servant, and I only for Conformity. Dubitatat. Tr. 4 Jac. B. R. Huggins’s Case.

Damages shall be given to the Feme for the Tort offered to the Body of her.— Brownl. 205. Huggins v. Butcher S. C. and S. P. by Tanfield. And per Cur. the Action will not lie; for the King only is to punish Felony, except the Party brings an Appeal.

(P.a) Trespass. At what Time. In what Cases it shall be defeated by Manner Ex post Facto.

1. If one ravish my Feme, and after we are divorced Causa frigida, tatis, yet I may have Trespass for Ravishment of my Feme with my Goods taken &c. 43 C. 3. 23. 44 All. 13. adjudged.

2. So if a Man ravish my Feme, I may have Trespass against him after the Death of the Feme, for Ravishment of my Feme with Goods taken; for in this Action he is not to recover the Feme, but Damages. 44 All. 13.

3. If a Man who has no Right draysains in his own Right and after justifies as Bailiff in Right of the Lord, this is no good Justification, the rightfull Lord agrees to it after. Br. Justification, pl. 14. cites 7 H. 4. 23. per Gascoigne.

4. If, and after the Lord agrees and he justifies as Bailiff, this is a good Justification, per Gascoigne; but Brooke says the Law seems to be otherwise, for he was one a Trespasser; for he had not any Authority at the Time of the taking, and therefore Agreement after will not serve. Ibid.
4. If Trespass be brought of Beasts generally, and the Plaintiff has the Beasts again, this shall he give in Evidence; for otherwise the Plaintiff shall recover in Value. Per Culpeper. And per Hank where the Value of the Beasts is alleg’d in the Writ, it is a good Plea that the Plaintiff himself is feized of the Beasts. And per Hill where the Value is alleg’d, the Justices of Nfn Prius shall enquire of the Value, not having regard whether the Plaintiff has the Beasts again or not. Br. Trespasses, pl. 93. cites 11 H. 4. 23.

5. If a Man abates after the Death of my Father, and I re-enter, I shall have Action of Trespass; but contrary if I release; Per Newton. Br. Trespasses, pl. 127. cites 19 H. 6. 23.

6. If Trespass be done upon Tenant for Years, and his Term expires, he shall have Trespass without Regrets; for his Term is ended. Per Fullthor. Br. Trespasses, pl. 127. cites 19 H. 6. 23.

(Pa. 2) [Defeated by] Act of the Party.


[2] 4. After a Trespass upon my Land, if I alien the Land, yet I may have Trespasses for the Trespasses done before. 19 D. 6. 28. b.

[3] 5. If Baillee of Goods brings Trespasses, and Bailor other Trespasses, he that first recovers shall suit the other of his Action. 48 E. 3. 21. 20 D. 7. 5. b.


But he shall not have Trespass in the Case of the Release of the Trespass done after the Different; but contrary of the Trespass which is the Different; Per Newton. Br. Trespasses, pl. 127. cites 19 H. 6. 23.

5. If a Man breaks my House, and oufles me, and another Man disfeizes him, and I release to the 2d Disfessor, yet I shall have Trespasses against the first Disfessor; Per Afcough. Br. Trespasses, pl. 127. cites 19 H. 6. 23.

6. If A. recovers Land by Judgment against B. and then J. S. does a Trespass, and after B. reverses the Judgment for Error, yet A. shall have Trespasses against J. S. For B. cannot have Remedy but only against A. and not against Strangers. And as the Law charges A. with all the Mene Profits, so it gives him Remedy, notwithstanding the Reverfal, against all Trespassers in the Interim. 13 Rep. 21. 22. in Ninian Menvil’s Case.


Br. Contract. 11 H. 4. 23. cites 11 H. 4. 23. Con-
Trespass. 


That if such Sale extinguisheth the Action of the Lessee; and Hank. was precise in it; Quod minus! for Trespasser has Property, and then the Sale of the said Owner is void; Quod suaere.——Br. Trespass, pl. 92. cites S. C. accordingly by Hank., and compared it to the Case of a Delegation of A. by B. and then B. is diffused by C. and afterwards A. relates to C. now the Action of B. is determined.

(Q a) Trespass. Gift of the Action. In what Cases it lies for an Act done by Virtue of an Office.

1. If a Man be adjudged to pay 1st by Force of a Commission, and Br. Quinzime, pl. 3. had been assessed in Time before, per if he ought not to pay it. Trespass lies against the Collector, if he levies it. 11 H. 4. 35. cites S. C. Per Hank. That if a Collector doth receive for Fifteenth the sum, which ought not to pay it, Trespass does not lie.——But it is said there, that where a Man is adjudged to Seventeen for his Breach in D. where he has no Breach there, and it is granted by the Collector, he shall have Trespass against him, and he shall not have Aid of the King. Ibid.

2. If a Sheriff serves a Capias where there is no Original, Trespass does not lie; Per Hank. Br. Quinzime, pl. 3. cites 11 H. 4. 35.

3. Where the King or the Escheator seizes by insufficient Office, which Br. Patents, does not intitle the King by the Law, a Man shall have Trespass against the Escheator or Grantee of the King &c. Reaion of a Writ where the King has not Title. Br. Trespass. pl. 15. cites 9 H. 6. 20.

(Q a 2) One or several Trespass. What shall be said to be.

1. Trespass against 2 of Trees cut. The one justified for Himself of Common there, and the other for Common there for Himself, and are found guilty, and Damages taxed entirely; And by the best Opinion it is well; for it is but one and the same Trespass, tho’ the Answer be several. Br. Damages, pl. 202. cites 11 H. 7. 19. 20.

2. Contra in Trespass against two of 2 Horses taken; for it is a several Trespass. Br. Damages, pl. 222. cites 11 H. 7. 19. 20.

3. If a Man cuts a Tree, and carries it away presently, it is not Felony, but an entire Trespass; Per Hale Ch. J. Freem. Rep. 23. pl. 29. Hill. 1671. in Case of Emerson v. Amell.
Trefpafs.


This Branch.

1. Marlb. 3. 9

In 52 H. 3. E

This Act, That if any distrain his Tenant for Services and is interpreted, that the Lord shall pay no Fine, and therefore by a Consequent, since this Act no Action of Trefpafs Quare Vi & Armis lies against the Lord in this Case; for he should pay a Fine. But at the Common Law Trefpafs Vi & Armis did lie. 2

* If the Leffer casts the Leffer for Years, Trefpafs Vi & Armis lies, notwithstanding the Statute that the Lord shall not therefore be punished by Redemption; for he may distrain or fine Waffe, but not retain the Potleffion; for this Act is not done as Lord, and so out of the Case of the Statute. Br. Trefpafs, pl. 584. cites 38 E. 3. 53. and 43 E. 3. 6. and 5 H. 7. 10. — 2. 106. 8. P. and cites Some Cases, and 28 Eliz. 1. 2d. Trefpafs Quare Vi & Armis Crefton, fearing, and taking his Beoff; the Defendant said that he leased the Land to the Leffer for Years, and so out of the Case of the Statute, and so to the Close broken he was compell'd to answer by Award; quasi nota. And if the Writ Vi & Armis lies against Leffer and Leffer adjournat; therefore quare. Br. Trefpafs, pl. 65. cites 38 E. 3. 4. — Br. Brief, pl. 511. cites S. C.

And another such Case was brought by the Leffer and J. E. and said there, that because Covertant lies of the Holder against the Leffer only, and not against the other who was not Party to the Leafe; therefore Trefpafs Vi & Armis lies against both. Br. Trefpafs, pl. 65. cites 48 E. 3. 6. And says, See 38 E. 3. fol. 33; that it lies against the Leffer alone; and herewith agrees 5 H. 7. 10. Ibid.

Trefpafs Vi & Armis lies by the Leffer against his Leffer for Years, by the Opinion of the Justices; for Leffe for Years shall 60 7 Feeaty, and therefore the Leffer hath Fee there; by which the Plaintiff said that the Leffe hath nothing but in Rent of his Wif, who is dead since the Leffe, and never had flue Quare; for then it seems that the Intercession is devoted to the Heir of the Pem; and then the Defendant hath not Fee there; and the Defendant's Plea was that he leased for Years to the Plaintiff rendering 10 s. Rent, and for the Rent Arrear he entred and distrained; Judgment of the Writ Vi & Armis, and this Case was not adjudged. Br. Trefpafs, pl. 18. cites 9 H. 6. 45.

† 2. 106. says, that the Word (Dominus) in this Act is extended to the Leffer upon a Leafe for Life, or for Years; for the Leffe for Years shall do Feeaty 40 s. — And Br. Trefpafs, pl. 544. cites 30 E. 4. 2. accordingly. That it shall be intended as well to the Leffer for Term of Years, as between other Tenants and his Lord; Per Cur. — But Ibid. pl. 227; cites 5 H. 7. 10. It is said, per Cur. that it is intended between Lord and Tenant, and not between Leffer and Leffe.

Trefpafs Vi & Armis, the Defendant justified as Bailiff for Rent Arrear, within the Fee of his Manor, and demanded Judgment of the Writ Vi & Armis. Hill said, that the Writ is good enough against the Bailiff Vi & Armis, notwithstanding the statute of Marlbidge, cap. 5. that the Lord shall not therefore be punished by Redemption. Contrary against the Lord himself. Br. Trefpafs, pl. 92. cites 11 H. 4. 7. and 9 H. 5. 1. S. P. Ibid. pl. 220. cites 1 H. 6. 3. per Cur. — S. P. Ibid. pl. 57. 2. cites 2 H. 4. 4. for the Statute is to be taken strictly. — S. P. 2. 106. for the Bailiff is not Dominus.

2. In Trefpafs the Defendant aecord'd for Herit Arrear &c. And the Plaintiff said that De fon tort Demenef without fuch Caufe, and the Defendant tender'd Demurrer, because the Writ is Vi & Armis where he is Lord, and yet the Defendant was compell'd to join the Plaintiff; Quo vadis. Br. De fon tort &c. pl. 5. cites 44 E. 3. 13.


3. Trefpafs Vi & Armis. The Defendant said that the Plaintiff held three Acres of him by Feeaty and 3d; and for the Rent Arrear be distrained; Judgment of the Writ Vi & Armis, and a good Plea. Br. Brief, pl. 115. cites 8 H. 4. 16.

Br. Trefpafs, pl. 92. cites S. C.

4. In Trefpafs, if a Feme Convent delivers the Baron's Goods to W. N. Trefpafs Vi & Armis lies against W. N. Per Skrene, which Hank. denied; the Reason seems to be because Feme has lawful melting with Goods of the Baron. And it is agreed that fuch Taking is not Felony; but quere of Trefpafs. Br. Baron and Feme, pl. 36. cites 11 H. 4. 24.

5. Trefpafs.
5. Trespass of a Close and House broken Vi & Arms, the Defendant pleaded Not Guilty to the Force and Arms; and to the rest, that he was seized, and hated to the Tenant for Years; and came there to see if Waffle was done. Judgment; and a good Plea; Per Hill and Hank; but Th'rn contra. Br. Trespa, pl. 97. cites 11 H. 4. 75.

6. If the Lord dixtrains his Tenant for Rent, where none is Arrear, or S. P. Exsd. such like, which may be intended to be done as Lord, Trespasses does not lie Vi & Arms. Br. Trespa, pl. 16. cites 9 H. 6. 29.

7. Where a Man beats him who serves me at Pleas, or an Infant Br Labour, whole Covenant is void, yet I shall have Action upon the Case for the Damage. Br, Trespa. and for the Loss of my Service. And the same Law where I retain a Man who is coit &c. and here it lies for the Matter Vi & Arms, Br. Action fur le Cafe, pl. 55. cites 21 H. 6. 8. 9. and Register 102. and 182.

8. Trespa Quare Vi & Arms Caien, and cutting his Trees. And to the Entry the Defendant said, that the Plaintiff held of him by Fealty and Rent, and demanded Judgment of the Writ Vi & Arms. And per Cur. it is no Plea, unless he says that the Rent was Arrear, and that he came to discover it; and yet it shall not be traveled. But if no Rent be Arrear, he cannot enter unless as a Stranger, who shall be a Trespasser; by which the Defendant pleaded accordingly; and as to the Trees cut, Not Guilty. And per Cur. this is no Plea to the Writ above, but to the Action; for the Action does not lie Vi & Arms against the Lord, who demans himsel as Lord; by which the Plaintiff said, that he held of B. and not of the Defendant. And it was said, that Writ of Trespas of Close broken does not lie without Vi & Arms; but Jusificies may be obtained without Vi & Arms. Br. Trespa, pl. 317. cites E. 4. 15.

9. In Replevin, if the Lord claims Property and will not aow, Trespa lies Vi & Arms, and he shall make Fine and Random. Br. Trespa, pl. 317. cites E. 4. 15.

10. Trespas Vi & Arms. The Defendant justified for Disrefs by Tenure of him by Rent and Services. And the Plaintiff pleaded, that Rents wereArrear, and found for the Plaintiff, by which he demanded Judgment. And the Defendant alleg'd the Statute of Marlbridge, that the Lord shall not therefore be punished by Redemption, and by all the Justices, because the Statute is Negative and restraining; and it appears in the Record, that the Defendant is content'd to be Lord, therefore the Plaintiff shall not have Judgment. Br. Judgment, pl. 124. cites 10 E. 4. 7.

11. Trespas Vi & Arms does not lie where my Building cuts Trees Br. Trespa, without Cattle, or kills my Cows, Sheep &c. nor where my Building or Br. Trespa, S. C. breaks my bezel &c. for he has lawful Possession of them. And yet fee 13 E. 4. 10. 9. that if he steals them it is Felony; for it is the Possession of the Maker. But in the first Case, Trespa lies upon the Case. Quod nota. Per Chokke and Gatesby. Br. Action fur le Cafe, pl. 99. 8. cites 22 E. 4. 5. cites 18 E. 4. 27.

12. If a Man takes my Cattle out of the Possession of him to whom I hold them, I shall have Trespas Vi & Arms; Per Colow. Br. Trespa, pl. 362. cites 22 E. 4. 5.

13. Trespa Quare Vi & Arms be cut his Trees. The Defendant justified as Servant, and by Command of the Tenant at Will of the Lease of the Plaintiff. And per Brian, the Plea is not good; for the Tenant at Will himself cannot do it; because he cannot grant the Land over, for he has strict Interest, and therefore Trespas Vi & Arms lies. Br. Trespa, pl. 362. cites 22 E. 4. 5.


15. Trespa Quare Caien, & avena capt, & abductit. The But it was in a manner agreed, that the Defendant said; that the Place was his Franchise. And the Cattle were Damage seized, by which he took them. The Plaintiff pleaded Laidge for the De-
Trespass.

Trespass was made by the Defendant, which yet continues. And the Defendant de- nies it, because it was VI & Armis; and yet the Writ is good, per Cur. by reason of the breaking of the Close. Br. Trespass, pl. 273. cites 5 H. 7. 10.

16. In several Cases a Man who is Tenant of the Frankentenement shall be
17. Trespassed by Trespass VI & Armis for an Act done in his own Frankentenement.
Br. Trespass, pl. 273. cites 5 H. 7. 10.

As Lord of the Vi. etc.
Trespass, & Armis, against the Owner, Quare VI & Armis Warrantam from intrinis. Br. Trespass, pl. 273. cites 5 H. 7. 10.

And if a Man grants a Frankentenement for Term of Years, and the Greater takes the Venture, there the Greater shall have Trespass VI & Armis. Br. Trespass, pl. 273. cites 5 H. 7. 10.

So if a Man sells his Trees, and after cuts them, the Vendee shall have Trespass VI & Armis. Br. Trespass, pl. 273. cites 5 H. 7. 10.

And so of other Liberties and Profit in another's Land, which was agreed by all the Justices. Br. Trespass, pl. 273. cites 5 H. 7. 10.

* S. P. per Littleton. —

17. * If the Lord does an Act in the Land of his Tenant, which does not be-

18. long to him to do as Lord, as labour the Deftreis, or * kill it, or * cut Trees,

19. S. P. So if he breaks a Door, or a Window &c. which cannot be intended as Lord, then the Tenant may have a Writ of Trespass Quare VI & Armis against the Lord, notwithstanding the Nature of Marshallbridge, cap. 2. Br. Trespass, pl. 16. cites 9 H. 6. 29. —— S. P. And so if he feeds the Ground of his Tenant, or the like. 2 Inst. 106. So if the Lord breaks the Gates or Hedges, Trespass lies VI & Armis. Br. Trespass, pl. 544. cites 20 E. 4. 2.

18. The Lord cannot break the Close to distress; but shall have Affile, if it be so inclosed that he cannot enter to distress. Br. Trespass, pl. 273. cites 5 H. 7. 10.

19. Holt Ch. J. declared for Law, That no Action of Trespass VI & Armis would lie for a Tenant at Will against his Landlord for the Lord's Entring or Distrainting for Rent &c. 11 Mod. 239. pl. 13. cites D. 119. 10 E. 4. 7.—2 Inst. 105.—Mo. 105.

(Qa. 4) VI & Armis. In what Cases Trespass lies VI & Armis. In Respect of the Thing &c.

Br. Quod permissit, pl. 5. cites S. C.
—S. P. Br. Trespass, pl. 47. cites 44 E. 3. 20.

1. If a Man ought to grind his Grain Toll Free, and the Miller takes Toll, Trespass lies VI & Armis, and not Action upon the Case; quod nota. Br. Trespass, pl. 41. cites 41 E. 3. 24.

2. It was awarded for Law to be a good Plea in Trespass of taking of Goods VI & Armis, to say that the Defendant had Deliverance thereof by Replevin; Judgment of the Writ; for after this the Plaintiff shall not have Trespass, but shall pursue by the Replevin; and such Deliverance is by the Law, and not as Trespass, and therefore the Defendant who obtain'd Deliverance of it by Replevin, is no Trespassor, nor Trespass VI & Armis does not lie of such taking by Replevin; Quod nota. Br. Trespass, pl. 49. cites 44 E. 3. 20.
Trefpafs.

3. If Vi & Armis be at the Commencement, it shall refer to all the Matter ensuing. Br. Trefpafs, pl. 112. cites 38 E. 3. 15. 16.

4. Trefpafs Quare Vi & Armis, he took his Boat and Nets, the Defendant said that this taking was in the County of H. and there was Deliverance made by the Sheriff, Judgment of the Writ Vi & Armis, and adjoynatur; it seems that of Deliverance made by the Sheriff Trefpafs does not lie Vi & Armis. Br. Trefpafs, pl. 76. cites 2 H. 4. 16.

5. Trefpafs upon the Cafe, inasmuch as the Defendant Vi & Armis stopped a Seer or L. by which 40 Acres of his Land are surrounded to the Damage &c. And the Writ Vi & Armis awarded good of Stopping, contra Lockes of Nonence, or not repairing &c. by which the Land is surrounded, there the Writ shall not be Vi & Armis. Br. Action fur lie Cafe, pl. 46. cites 12 H. 4. 3.

6. In Abte, the Difficulty shall not be supposed to be with Force, if it be not inquired and presented. But in Trefpafs, if the Issue passis against the Defendant, it shall be intended to be with Force and Arms, and the Party shall make Fine; Note the Diversity. Br. Trefpafs, pl. 119. cites 1 H. 6. 42.

7. In Trefpafs, if a Man breaks my Hedge to the Damage of 4 d. and Benfits of the Common enter and do much Damage, I shall recover Damages against him in Respect of all the other Damage, per Jenney and Finch. Brooke makes a Quare if he shall have Trefpafs Vi & Armis, and give all in Evidence, or shall have it Vi & Armis of the Breaking, and Action upon the Cafe for the other Damage by the Entry of the Beasts; and says it seems, that he shall recover all the Damages by the General Action of Trefpafs Vi & Armis. Quare if Trefpafs Vi & Armis, and upon the Cafe may be all in one and the same Writ. Br. Trefpafs, pl. 179. cites 9 E. 4. 4.

8. Trefpafs Quare Vi & Armis Columbus suas cum pantello & aliis ingenii capte; and by the Serjeants the Action Quare vi & Armis does not lie; but de Colombiano fratello & Columbus capite, Action lies Vi & Armis; Quare, for there is no Property. But there in the next Cafe Trefpafs was brought of a Goldhawke, and Hawk taken and carried away. Br. Property, pl. 39. cites 16 E. 4. 7.

9. If a Man comes into a Tavern, and takes the Cup, or beats the Servant of the House, Trefpafs lies Vi & Armis for this Misfortune alter, and yet his first Authority was good; per Colow. Br. Trefpafs, pl. 362. cites 22 E. 4. 5.

10. In Trefpafs, the Defendant said that the Plaintiff himself was seized in Fee, and led to the Defendant for 6 Years, and that after the Term ended, the Defendant held himself 12d. and did the Trefpafs of which the Plaintiff has brought this Action before any Entry. Judgment &c. And by all the Justices, Trefpafs Vi & Armis does not lie before that the Plaintiff has made Regres, as here; quod nota. Br. Trefpafs, pl. 365. cites 22 E. 4. 13.

11. If the Writ of Trefpafs be returnable, then these Words Vi & Armis shall be in the Writ; and if it wants those Words it shall abate, unless they are Writs of Trefpafs upon the Cafe, which Writs shall not have these Words altho' they are returnable in C. B. or B. R. and if they have the Words Quare Vi & Armis, it shall be good Cause to abate them. F. N. B. 86. (H)

12. If Beasts are taken in a Common, or other Land which belonget not to the Owner of the Beasts, yet he shall have Trefpafs Vi & Armis, but not Quare Clautum friget. Br. Trefpafs, pl. 421. cites 3 M. 1.

13. In Trefpafs of Assault, Beating and Wounding the Plaintiff, and taking a Bag with 100 l. in it, but because there was no V & Armis in the Declaration, which must necessarly be in Trefpafs, and is not Matter of Form but Substance, and not aided by any of the Statutes, a Judgment in B. R. was revers'd. Cro. J. 445. pl. 19. Mich. 15 Jac. in the Exchequer Chamber, Taylor v. Welcke.
Trespasses.

Trespasses for breaking his House and taking away his Dibbes, the Defendant justified under a By-Law; but that being ill the Plaintiff demurred; but because the Declaration wanted the Words Vi & Armis, the Court held it naught upon a General Demurrer, being an Omition of the Substance; for it alters the Judgment from a Capitain to a Miserere; besides it belongs to the County Court if it be Trespasses without Vi & Armis. 2 Salk. 637. pl. 3. Trin. 3 W. & M. B. R. Wildgoose v. Kellaway.

But see now the Statutes of 16 & 17 Car. 2. cap. 8. and 4 & 5 Ann. cap. 16. at Tit. Amendment and Jeofail.

(Q. a. 5) Contra Pacem. In what Cases it shall be Contra Pacem.

1. Trespasses of taking his Beasts contra Pacem, the Defendant justified for Dibbes for a Tenure, by which he distrain'd with the Peace, and not contra Pacem. The Plaintiff said, That De fon tort Demene, and contra Pacem, without such Cauze; and the others contra; and so to Hine without Exception. Br. De fon tort &c. pl. 37. cites 24 E. 3. 72.

2. Trespasses of Cattel trampled. The Defendant said, that Not Guilty. The Jury found that the Beasts trampled it by Ecage, to the Damage of 5 s. but not contra Pacem. Tank. said, in this Case he ought to have a Bill without these Words contra Pacem. And because it was in Default of good Keeping, therefore the Plaintiff recover'd. Br. Trespasses, pl. 239. cites 27 Aff. 56.

3. Trespasses of taking the Horse of the Plaintiff at D. of the Price of 10 l. and carrying it to P. and there killing him contra Pacem; and because there is a mean Time between D. and P. and so the Defendant as Trespasser had Property, and then the Killing at P. cannot be of the Horse of the Plaintiff, therefore per Opinionem the Bill shall abate; by which he brought another Bill that the Defendant had killed the Horse of the Plaintiff as P. contra Pacem, and then well. Br. Trespasses, pl. 230. cites 27 Aff. 64.

4. Trespasses upon the Cafe, for not repairing and amending his Bank, and [scouring his] Rivers, by which 30 Acres of the Plaintiff's Land was surrounded, so that he lost the Profits thereof for 5 Years, to the Damage of 30 l. But because the Writ was contra Pacem it was abated. Br. Action fur le Cafe, pl. 20. cites 45 E. 3. 17.

5. In Trespasses the Plaintiff declared of chafing his Cattle, Vi & Armis, into the Close of J. S. who took them Damage feasant, and compelled the Plaintiff to pay him 40 s. for the Damages. After Verdict it was moved in Arrest of Judgment, that the Declaration had not contra Pacem, as it ought to have; because the Bill is in Placito Tranfregelionis, and the Declaration was Vi & Armis. But it was anwer'd, that the Action was not brought merely for the Chafing the Cattle, but for chafing them into another Man's Lands, so as they were Trespassers, and he was forced to compound for the Damage; and its being Vi & Armis does not prove it to be an Action of Trespasses; for those Words may be in an Action on the Cafe, as in 9 Rep. 50. The Call of Salesp's Cafe. And tho' the Recital of the Bill be in Placito Tranfregelionis, it is not of Necessity to be Trespasses only, but may serve for Trespasses on the Cafe. And all the Court being of that Opinion, it was adjudg'd for the Plaintiff. Cro. C. 325. pl. 7. Mich. 9 Car. B. R. Tyfillus v. Wingfield.

6. Trespasses.
6. Trespass. The Words contra Pacem were omitted in the Declaration; and therefore after Execution of a Writ of Inquiry, Judgment was arrested upon Motion. But Holt Ch. J. seem'd to incline, that it would have been good after Verdict. Mr. Knott. 1 Ld. Raym. Rep. 38. East. 7 W. 3. Melwood v. Leech.

7. It was said, Arg. that since the Capiatur pro Fine is taken away, it is not necessary to allege the Trespass contra Pacem. But Holt Ch. J. denied it, and said, It is the Vi & Armis that may be omitted. 2 Ld. Raym. Rep. 985. Trin. 2 Ann. in Cafe of Day v. Muskett.

(Q. a. 6) Writ and Declaration. Good or not.

1. The Writ in Trespass contains only a General Complaint, without the Expression of Time or Damage, which might have been at any Time done, and was intended to defend the Elaborate itself against the Invasion of the Neighbours, and seems to have been thus generally allow'd before the Definition of Bounds; and therefore the Vill only was alleged where the Trespass was supposed to be done, and the Plaintiff might count of any Trespass committed before the Suing out of the Original. G. Hift. C. B. 3. cap. 1.

2. In Trespass Vi & Armis for cancelling a Deed, and for forth, that Yelv. 222; S. C. by J. S. the Defendant, being seized of Land in Fee, intailed A. and his Heirs with Warranty, referring Rent, with Clause of Distresses; and afterwards by Deed bargain'd and sold the Rent to the Plaintiff, who casually lost the said Deed, and the Defendant found and cancelled it; but did not expressly shew that he was at any Time, before the Action brought, possessor of this Deed, but only by Implication argumentatively. By the whole Court, the Plaintiff ought here in his Declaration to have rec'd, that he was possessor of the Deed before, which he has not done; and for this Omission, the Declaration is not good. And the Rule of the Court was, Quod quæres nil capiat, per Billam. 1 Bull. 214. Trin. 10 Jac. Suckfield v. Contable.

3. In Trespass for entering his Cattle on such a Day, and detaining Possession of the same Exhibition Bills; and did not allege what Day the Bill was exhibited. The Plaintiff had a Verdict. It was objected, that it ought to have appear'd to the Jury how long the Defendant had deriv'd the Possession, that they may proportion the Damages accordingly, and that its appearing to the Court of Record is not material; and of this Opinion was Doderidge J. And Broome inform'd the Court, that the Ufage was to limit a Day certain in the Declaration. 2 Roll Rep. 135. Micn. 17 Jac. B. R. Shiford v. Goodricke.

4. In Trespass for taking his Cattle and Chettals, it was adjudg'd, that if the Words Proce and ad Valentiam are omitted, after a Verdict 'tis aided by the Statute of Jealouys. Sid. 39. pl. 1. Patch. 13 Car. 2. B. R. Uiler v. Bulshell.

5. In Trespass the Entry was Quod cum præcedit. &c. and this being moved in Arret of Judgment, it was staid per Cur. Keb. 130. pl. 52. Mich. 13 Car. 2. B. R. Shepherd v. Tomkins.

6. In Trespass for Chafing and driving his Cattle to Places unknown, if that he left them, the Court was of Opinion, upon Demurrer, that the Declaration was ill, because hereby the Plaintiff shall have Damages as well for Chafing as for Driving to Places unknown, whereby he lost his Cattle. Sid. 295. pl. 16. Trin. 13 Car. 2. B. R. Cooper v. Courtfield.

Trespasses.

7. In Trespasses for taking Goods it was moved in Arrêt of Judgment, because it was not said (sta.) And per Cur. it is ill, and Judgment itaid; but in Caesarea sua existent were sufficient. 3 Keb. 102. pl. 44. Hill. 24

8. Trespasses of carrying a Close, and pulling down and carrying away Pews &c. As to the Polls, on Not Guilty, and Justification of Entry for a Way, found against the Defendant, and Damages. And judgment. The Defendant allign'd for Error, that it was not said Ad Valentiament, which as to Chartres, distinct from Freehold, ought to be; Sed non allocatur; for per Curiam, this is but Form, and aided by 21 Jac. cap. . and judgment affirm'd. 3 Keb. 78. pl. 13. Hill. 28 Car. 2. B. R. Hingly v. Saunders.

9. Trespasses for that on 1 May &c. he broke and enter'd his Close, and digg'd his Land, and carried away 20 Loads of Soil, Valoris 405. Continuando the said Trespasses as to the Digging, Taking, and Carrying away the Earth and Soil aforefaid, from &c. ad Damnum 30. Adjudg'd ill, because no Value is mention'd of the Soil carried away during the Continuando. 2 Lev. 230. Mich. 30 Car. 2. C. B. Strode v. Hunt.

10. Trespasses for Taking and Carrying away Averia iphis quar. viz. Unum equum &c. nec non unum Galerum Anglice, one Hat. After Verdict it was moved in Arrêt of Judgment, that as to the Hat there's no Property laid in the Plaintiff; and Judgment was flay'd. 2 Show. 395. pl. 365. Mich. 36 Car. 2. B. R. Damer v. Collingdell.

11. In Trespasses the Plaintiff declared Quare Vi & Armis claunum fregit; and after Verdict for the Plaintiff Judgment was arrested; for Quare is not positive but interrogatory, and much worse than Quod cum. Salk. 646. pl. 2. . . 1 W. & M. B. R. Hore v. Chapman.

12. Trespasses Quare Claunum fregit & folum & fundum, viz. Duas acras Terrae did Dig, subvert, and Carry away. After Verdict it was mov'd, that the Declaration was insufficient as to the Digging and Carrying away the Soil; for Duas Acras Terrae signifies only the Magnitude and Extent of the Ground where the Digging was, and not the Quantity of Soil carried away. And for this Reason Judgment was flay'd per t.or Cur. 2 Vent. 174. Pach. 2 W. & M. in C. B. Highway v. Derby.


14. The Writ was Quare Vi & Armis he broke the Plaintiff's House, and took and carried away Bona sua; but the Declaration was of Breaking the House, and taking Bona & Catalia, but left out (just) and also (Vi & Armis.) After Judgment by Default, it was moved in Arrêt of Judgment, that the Declaration was ill, because of the Omission of Vi & Armis. 2dly. Because it did not allege that he had Property in the Goods, but it was anwered that in * C. B. the Writ is Part of the Declaration; and that the Omissions objected in the Count are mentioned in the Writ to which it refers, and thereby the Declaration is made good; and the Plaintiff had Judgment. 2 Latw. 1509. Hill. 12 W. 3. Daile v. Coates.

15. Trespasses for breaking his Close, and throwing Bricks and other Materials there lying Erga Confectionem Demus de Novo erect, into the Sea. It was held that the Declaration was repugnant and insensible; for there could not be Materials towards the Building a House which was De Novo erect, for then it is already built. 2 Salk. 458. pl. 3. Mich. 9 W. 3. B. R. Lodie v. Arnold.

16. Trespasses of Affaunting and Beating the Plaintiff &c. and Breaking and Entaring his Houe, and alo that they assaulted and menced his Sons and Daughters, see now E. N. feram saec. & alia evemia &c. Upon Not guilty pleaded the Plaintiff had a Verdict. It was objected that the
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the Matter could not maintain Trespass for beating his Servant, without some special Damage, which ought to be shew'd; but resolved that this Action was for Breaking and Entering the House, and the further Description is only to shew the Enormity of the Trespass, and by Way of Aggravation of Damages for the Breaking and Entering the House. 2 Salk. 642. pl. 14. Trim. 5 Ann. B. R. Newman v. Smith.

(Q. a. 7) **Pleadings in Trespass. Good, or not. And what shall be a good Plea.**

1. *Trespass in C.* it is no Plea to the Writ that the Place where &c. is in K. and not in C. but he may justify in K. oblique hoc that he is guilty of any Trespass in C. And so he did for Common appendant in the Place where &c. and the Defendant was not compell'd to the General Habe Not guilty in C. but shall have the special Plea with Travers, as above, by which the Plaintiff was compell'd to reply that Guilty in C. prout &c. Prift; Per Cur. Br. Trespafs, pl. 176. cites 4 H. 6. 13.

2. *Trespass of Breaking his Closet,* and spoothing his Gown in D. Chaunt. said the Place is a Cave of Land called A. in which the Defendant, and those whose Estate he has, have held in Common with the Plaintiff, and whose Estate he has Time out of Mind, and held in Common the Day of the Writ purchase'd, by which he entered &c. and a good Plea per tot. Cur. Br. Trespafs, pl. 122. cites 8 H. 6. 16.

3. In Replevin it is a good Plea that the Property is in a Stranger. Contrary in Trespafs; for there he may plead Not Guilty; Note the Diversity. Br. Trespafs, pl. 382. cites 20 H. 6. 18.

4. In Trespass of Goods taken in Coventry, the Defendant pleaded Delivery in London, by which he took them in London, and no Plea, by which he pleaded Delivery at L. by which he took them at C. and no Plea; for if they were delivered he has Poflefon immediately; But Gift in L. by which he took them in C. is a good Plea; Quod nota, per omnes &c. per Priort. Br. Trespafs, pl. 35. cites 14 H. 6. 5.

5. In an Action in which the Thing shall be recover'd, as in *Quod Permittere,* Affe &c. and in Trespafs of Goods, it is no Plea to say that the Plaintiff had no Goods; for this amounts to Not Guilty. Br. Trespafs, pl. 34. cites 3 H. 9. 28. 43.

6. *Trespass of a House broken,* and Goods taken, the Defendant said that the Plaintiff at the Time &c. held the House of him by 10 s. Rent &c. and for so much Rent Arrant such a Day, he took the Goods as Direct. The Plaintiff said that he did not hold the House of him, First, and the others contra; And a good Plea per Cur. for in Replevin and Releas Hors de fon Fee is a good Plea. Contrary in Trespafs; for here he cannot declaim or answer to the Fee, for the Defendant does not suppose that he has Fee there, but that he holds of him; and therefore that he does not hold of him is a good Plea; Quod nota. Br. Hilias Joines, pl. 26. cites 38 H. 6. 26.

7. In an Action by Warden or Sheriff, it is a good Plea that he was not Warden nor Sheriff at the Time &c. Br. Trespafs, pl. 326. cites 12 E. 4. 7.

8. *Trespass for Breaking his House and the Walls of the same,* the Defendant to the Breaking of the House pleaded Not guilty, and to the Walls justified. And by the Opinion of the Court he shall not have both these Pleas; for one is repugnant to the other; for by the Justification he confesses himself guilty, tho' it be excusable, and the House and the Walls are all one, and he cannot plead Not guilty, and justify to one and the same Thing. Br. Bar, pl. 51. cites 21 H. 7. 21.

9. S.
9. S. brought Trefpafs against C. for divers Things; as to part the Defendant pleaded that it was in Default of Indicture by the Plaintiff, and as to the Rodyne Not guilty; and the same was true. But before the Trial, the Plaintiff confess'd the Bar, and no Proseque ulterius entered, and after the issue is found for the Plaintiff; and well. For the Defendant had relating to the Part without Benefit of the Bar; and for that had pleaded Not guilty. S, by Prepham if it had been for a Trefpafs in two several Acres, and the Defendant justifies in one, and as to the other pleads Not guilty; the Plaintiff may confess Part, and have Issue and Verdict for the other. Judgment in our Cause for the Plaintiff. Nov. 42. 44. Stephen v. Carter.

10. In Trefpafs of breaking a House and Close, the Defendant pleaded that he by Compulsion, and for Fear of his Life entered the said House, and returned immediately through the said Close, which is the same Trefpafs. The Plea was held ill, as well for the Matter as the Manner, because he did not shew that the Way to the House was through the said Close. All. 35. Mich. 23 Car. B. R. Gilbert v. Stone.

11. In Trefpafs, the Plaintiff declared of Chasing and taking his Cattle, and carrying away three Heifers of the Plaintiff; the Defendant justified the taking and carrying away three Heifers of one P. another Defendant, by Virtue of a Warrant from the Sheriff in Replevin &c. The Court took Exception that this was no Answer to the Declaration. And the Reporter says, that this without Question was a fatal Exception; for he ought to have pleaded Not guilty to the taking and carrying away the Plaintiff's Beasts. 2 Lutw. 1372. Hill. 3 & 4 Jac. 2. Dale v. Philipon & al.

12. In Trefpafs of breaking his Close and digging Stones; the Defendant preferred to enter and dig Stones for the Reparation of his House, and Forces, by which he dug and took them for Repairs, but does not say that he used them, which he should, or at least should say Forces se retinent ad reparandas; and so Judgment was given for the Plaintiff. 3 W. & M. in C. B. Dinby v. Hodgson.

13. In Trefpafs of Assault, Battery, Wounding and Imprisoning &c. The Defendant, as to the Force and Wounding, pleads Not guilty, and Quoad residuum transfregnantiz, Injulns & Imprisonments he justifies as Bailiff by Virtue of an Execution. It was objected that the Plea was ill, because in the Quoad residuum he had omitted the Battery, and said only Quoad residuum transfregnds Infinit & Imprisonments; so that the not answering the Battery was a Discontinuance of the whole. The Court agreed that Quoad residuum had been sufficient, but when in the Quoad he enumerated the other Exceptions, omitting the Battery, by this the Battery is excluded in the Quoad residuum; but upon citing the Cause of * the making of a Carne advisare vult. But the Plaintiff being afterwards satisfied that the Exception would not aid him, he put to prevent the Judgment of the Court against him, discontinued. 3 Lev. 403. Mich. 6 W. & M. in C. B. Patrick v. Johnson.

† This is denied by Sergeant Lorwich 2 Lutw. 929. S. C.

14. In Trefpafs of taking Goods, the Defendants justified under a Precept to the Bailiffs of the Borough, delivered to the Defendants, then Bailiffs of the Court to be executed; but Judgment was given for the Plaintiff, because they aver that they were Bailiffs of the Court and Officers, but not that they were Bailiffs of the Borough; and if they were not, then, they might be Bailiffs and Officers of the Court, yet the Precept was not directed to them, and it could not execute it or justify under it; for there might be both Bailiffs of the Borough, and Bailiffs of the Court too, and they
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(Q. a. 8) Pleadings. How. Where there is a Diseision and Re-entry.

1. In Trespass, the Defendant said that he was seised till by D. diseised, which D. was seised till by the Plaintiff diseised, upon whom the Defendant enter'd at the Time of the Trespass; which was adjudg'd a good Plea. Br. Tresps, pl. 320, cites 10 E. 4. 6.

2. Tresps Quae Clausum trepig &c, and the Defendant said that it was the Franktenement of A, and be by bis Command, enter'd and did the Tresps; the Plaintiff said that he himself was seised till by the Defendant and the said A. diseised to the Use of A. and the Plaintiff re-enter'd, and the Tresps were &c. And per Cur. this had been no Plea, unless the Plaintiff had made the Defendant prizy to the Tort; for he who does a Trespass after the Diseision shall not be punish'd by the first Dilefence. Br. Tresps, pl. 348. cites 25 E. 4. 18.

3. It is no Plea in Tresps that A. was seised till by D. diseised, who But if he had interested the Plaintiff, upon whom the said A. re-enter'd, whom Eflate the fend that he himself was Defendant has, because the Eflate of the Defendant is not immediate upon the eised till by Eflate and the Diseision of the Plaintiff; per Brian. Br. Tresps, pl. 274. D. diseised, who interested the Plaintiff, upon whom the Defendant re-enter'd; this had been a good Plea; per Brian. Br. Tresps, pl. 274. cites 5 H. 7. 11.

4. And in Tresps it is a good Plea that the Plaintiff diseised the Defendant, upon whom he enter'd; but it is no Plea in Affife, for it amounts but to Null tort; per Brian. But Vavifor held all one, immediate Entry or not, and no Diversity between Tresps and Affife. Nevertheless all the King's Bench held with Brian. Br. Tresps, pl. 274. cites 5 H. 7. 11.

5. In Tresps, the Defendant justified in 42 Acres for Common Appendant, the Plaintiff said to 20 Acres that they were Parcel of his Weife, and he approv'd them, fancying to the Tenants sufficient Common, and the Defendant enter'd after the Approvment and did the Tresps; and to the other 20 Acres, he said that he was seised and diseised by the Defendant, and re-enter'd; and the Tresps were &c. Note good Pleading. Br. Tresps, pl. 423. cites 10 H. 7. 14.

(R. a) Bars of a Tresps.

1. If Monies are paid in Satisfaction of Tresps, it is a good Bar, S. P. of Graves 193. cit. 59 E. 7. 20.

2. If a Tresps be done to the Lord of a Leet, for which he is a merced in the Leet, which is not lawful, if the Amcerement be levied

and
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and 8 received, this shall be a Bar of the Trefpafs. 12 H. 4. 8 b.
39. E. 3. 20 b. adjudged.

If all of its Horse; for the Aacement is not lawful for Trefpafs to the Lord himself, but only of common Nance, yet as it is paid, it is a Satisfaction and good Bar in Trefpafs. Br. Trefpafs, pl. 1.国立s 12 H. 4. 8 —— br. Replication, pl. 1. cites 5 C.

So in Trefpafs, the Defendant said that the Defendant was amerced for the same Trefpafs in the Court of the Plaintiffs, and offered to do which the Plaintiff had inclined; Judgment Etc. And the Plaintiff said that he did another Trefpafs there, prelit; and the others e contra. And so see that a Repiomence is allotted for a Bar and Satisfaction. Br. Trefpafs, pl. 61. cites 4 H. 3. 19.

So where the Defendant said that he was amerced, which was aoired to 2 s. of which he had made Good to the Lord; and held a good Plea by the Acceptance of it, tho the Aacement in the Court Baron be Extortion; quod nota. Br. Trefpafs, pl. 66. cites 48 E. 5 b.—S. P. ibid. 254. cites 22 All. 51.

3. So if he had held Court in his Chamber, and amerced him, and leaved it, this shall be Bar of Trefpafs (for he has a Satisfaction.) 12 H. 4. 8 b.

4. A Nonuit in an Appeal of Maihem, is not any Bar in Action of Trefpafs of the same Battery. Contra 43 All. 39.

5. If a Man recovers in an Appeal of Maihem, this shall not be any Bar in Trefpafs for the Battery. 22 All. 82. by Thorpe.

So in Trefpafs of Beasts taken brought in B. R. it is a good Plea that the Plaintiff has Replevin pending of the same taking in C. B. to which the Plaintiff has appeared, Judgment of the Writ; quod nota. Br. Trefpafs, pl. 257. cites 40 All. 31.

Br. Ifiues joined, pl. 46. cites S. C.

6. Trefpafs of a Horse taken. The Defendant said that he had a Leet in D. and f. N. was amerc'd therefor for Purpofe, which by which he was amerc'd to 10 s. by which we discharged the Horse of J. N. for the Aacement, and the Illus was taken of the Horse belong'd to the Plaintiff at the Time of the Taking, or to f. N. Brooke makes a Quere of this Pleading at this Day. Br. Trefpafs, pl. 59. cites 47 E. 3. 12.

8. Trefpafs by a Prior of Trees cut, and Frankentenamt taken, and Servants beaten; the Defendant pleaded Arbitrement, which by Protestation he is ready to perform, & pro placito that the Trefpafs was in the Time of his Predecessor; to which the Plaintiff taking the Arbitrement by Protestation said for Plea that the Trefpafs was in his own Time, Prelit, and the others e contra; and this Plea was pleaded to the Writ. Br. Trefpafs, pl. 60. cites 2 H. 4. 4.

9. Trefpafs in Bank of Goods carried away; the Defendant said that the Plaintiff fired Plaintiff of the same Trefpafs in the County, and had Delivcrance, and a good Plea; for by this Action he is to recover the Value &c. which ought not to be where he has received the Goods. Br. Trefpafs, pl. 52. cites 7 H. 4. 15.

But it is no Plea that the Defendant was amerc'd till by the Plaintiff diffcild upon which the Defendant entered, of which Entry the Plaintiff has brought his Action, and admitted clearly for a good Bar, and all the Argument was upon the Replication of the Plaintiff. Br. Trefpafs, pl. 17. cites 9 H. 6. 32.

10. In Trefpafs the Defendant said that he himsell was seized till by one A. defiler, who intclessd the Plaintiff upon whom the Defendant entered, of which Entry the Plaintiff has brought his Action, and admitted clearly for a good Bar, and all the Argument was upon the Replication of the Plaintiff. Br. Trefpafs, pl. 17. cites 7 H. 6. 32.

11. Trefpafs
11. Trespass against J. N. who said that at another time the Plaintiff brought Trepsa of the same Goods against him and T. N. [who] appeared, and the Plaintiff recovered against him, which T. N. is in full Life not named. Judgment of the Writ; And the beg Opinion was, that it is a good Plea, without saying that he had Execution; for Recovery without Execution, if it was against this same J. N. is a good Bar in Trespass. Br. Tresps, pl. 20. cites 20 H. 6. 11. and 40 E. 3. 27. 39.

12. Tresps of Trees cut and carried away. The Defendant to the Trees pled Gist of the Plaintiff before the Tresps, by which he took them and the Cutting Not guilty. Littleton said Not guilty of the Cutting goes to all. But Petor said No, he shall have both; for he may be found guilty of the one, and acquitted of the other. And the same Law that Gist is a good Plea. 42 E. 3. 23. Br. Tresps, pl. 27. cites 33 H. 6. 12.

13. It is a good Plea in Tresps, that the Plaintiff was seized, and hused to him for Years, by which he cutred and cut the Trees, and yet it is Wiste, but Tresps does not lie; Per Moyle Jilt. Br. Tresps, pl. 29. cites 5 E. 4. 64.

14. Tresps. The Defendant pleaded Leave to him for Life made by the Plaintiff; Per Wood, this is no Plea, no more than an Affile. But Brian and Vavilor contra; for the Defendant has Colour by the Recession to enter and see the Wesps. Br. Tresps, pl. 295. cites 6 H. 7. 14.

15. In Tresps of breaking his House, and carrying away 1000. in. Jo. 145. pl. 285, the Defendant pleaded that he and one A. were intrusted by Procurer of the Plaintiff for the same Offence; and that A. was found guilty as Principal, and the Defendant as Accessor; and had his Clergy, Judgment fi Actio &c. Jones J. thought the Action would not lie, because being found Felony, the Party shall not be admitted now to make it Tresps; but Doderidge and Whitlock e contra, because an Indictment is at S. C. according to the King's Suit; but otherwise it had been by Appeal. Noy 82. Markham v. Cobb.

agree that Judgment was unanimously given for the Plaintiff upon the Defelt of the Plea, by not shewing that the Plaintiff gave Evidence; for otherwise he shall not have Reification, and the alleging his Procurement is not sufficient.

16. Tresps for Riding his Horse; the Defendant pleaded that postea, 2 Kea 69. viz. such a Day, the Plaintiff Exercised, cum of the said Tresps. Upon pl. 24. Demur to the Action was held no Plea, and Judgment for the Plaintiff; and it seems it cannot be a Plea in Tresps in any Case, tho' it may in Affile before Breach of the Promise. Sid. 293. pl. 12. Trin. 13 Car. 2. B. R. Welthake v. Perve.

17. Where a Distress escapes, the Distraiter cannot bring Tresps, 12 Mod 68, unless it be shown to be wholly abique separis; for (abique abinance S. C. adjudged accordingly.) But if the Distress had duk, the Action revives, because it was by the Act of God. Adjudged by 3 Contra Gould J. and there


18. It was agreed, that if a Distress is taken Dumage moment, it is a Case of Tresps against the Distraiter, 12 Mod. 663. in Case of pl. 3. S. C. and S. P. Vasper v. Edwards.

6 Y (S. a) Tresps.
Trespass.

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See S. a) Trespass. Bar. What shall be a good Bar of Trespass. [Tender.]

1. In an Action of Trespass for a negligent Escape, as where Beasts escape into my Land, it is a good Plea in Bar that he tender'd to me sufficient Amends before the Action brought. Cr. 9 Ta. Sir G. Walgrave's Case, by Popham and Williams.

2. But in an Action of Trespass for a voluntary Trespass, As for putting in my Beasts into his Land, or breaking his Hedges, it is not any Plea, that I tender'd to him sufficient Amends before the Action brought. Cr. 3 Ta. B. R. Sir G. Walgrave's Case, by Popham and Williams. D. 7 Ta. B. Hawton's Case, Per Curtin.


1. In Trespass in D. the Defendant said, that the Place is an Acre, and pleaded in Bar. And the Plaintiff said, that it is 4 Acres otherwise than in the Bar; and inasmuch as he did not answer to the Trespass in this, Judgment &c. the Defendant may plead a new Bar to this. Br. Trespass, pl. 359. cites 21 E. 4 75, 76.

2. And in Affid of Rent, the Tenant pleads Hors de son Fee. The Plaintiff makes Title to the Rent, the Tenant may plead in Bar of this Title; per Vaviler. And all the Justices said, that it is clear that he shall have a new Bar in those Cases. Br. Trespass, pl. 359. cites 21 E. 4 75, 76.

3. And where the Defendant justified by Licence to enter into his House, and the Plaintiff said, that the Defendant enter'd the same Day, and came back, and after the same Day enter'd and broke his Door and Windows, of which Trespass the Action is brought. And to this the Defendant pleaded Not Guilty. But per Catesby j. in such Case the Defendant shall not be compell'd to plead Not Guilty, but may make Bar or justify; for now it is as if it had been comprised in the Count. But per Brian Ch. j. he shall plead Not Guilty. Br. Trespass, pl. 359. cites 21 E. 4 75, 76.

4. And where the Matter in the Declaration, and in the Replication, is of one and the same Nature, the Defendant shall take the General Traverse; and of killing of Diftres, he shall say that he did not kill; Per Choke. Br. Trespass, pl. 359. cites 21 E. 4 75, 76.

(U. a) Pleadings
1. In Trespafs the Defendant justified the taking as Distress in the Hundred by Default of the Plaintiff, who was Deceased, because he and all his Predecessors, and all those Que Estate he has, have been seised of the Hundred &c. Time out of Mind. And per Hill, clearly he cannot preserve by Que Estate without showing Deal thereof; and Hull accordingly, in Action upon the Cafe, 1 H. 4. 7. Br. Que Estate, pl. 9. cites 11 H. 4. 89.

2. In Trespafs the Defendant made Title by Assignment of Dower to E. S. Que Estate the said E. has, which E. is yet in Full Life. And so it seems that he who conveys by Que Estate of him who has but a particular Estate, ought to aver the Issue of the particular Tail, by which &c. Br. Que Estate, pl. 46. cites to H. 6. 1.

3. In Trespafs upon the Statute 5 R. 2. the Defendant said, that W. was seised in Fee, and inoff'd N. in Fee, Que Estate he has, and gave Colour &c. and a good Bar by Que Estate, without pleading How he has his Estate, and this in this Action, and the like in Præcipi quod reddat. Br. Que Estate, pl. 32. cites 4 E. 4. 15.

4. In Trespafs of spoiling his Grazes, and breaking his Close, Carr. said Br. Traverse, the Place where &c. is 120 Acres of Land &c. and his Father brought Ajsse of Commone, and recover'd against J. then Tertenant, by which he used the Common at the Time of the Trespafs &c. Que Estate in the Land the Plaintiff had at the Time of the Trespafs. Jenney said, that W. was seised, and inoff'd us, by which we were seised till the Trespafs, abisse hoc, that he has the Estate of J. against whom the Recovery was. And the others contra; and a good liue, per Littleton; for now the Plaintiff claiming by J. shall be eitopp'd as J. himself should be. Br. Que Estate, pl. 35. cites 12 E. 4. 5.

5. In Trespafs the Defendant said, that J. N. was seised in Fee, Que Estate he has, and gave Colour; and by the Opinion of the Court a good Plea. Brooke says Quod mirum? for he ought to say, that A. was seised &c. and inoff'd J. N. in Fee, Que Estate he has, or the like. But the Plaintiff demurr'd as above, and the Defendant durft not stand to his Plea, but pleaded another Plea; and the same Term a Que Estate was traversed, and Híue join'd upon it; quod nota. Br. Que Estate, pl. 43. cites 9 H. 7. 14.

6. In Trespafs it is no Plea, that A. was seised in Fee, and inoff'd B. Que Estate C. has, who inoff'd the Defendant; for the Que Estate shall be allow'd in the Defendant, and not in any who is in the meijse Conveyance; quod nota. Br. Que Estate, pl. 49. cites 1 E. 6.

(U. a. 2) Pleadings. Regress. In what Cases a Regress must be shown.

1. There is a Diversity where the Defendant pleads his Frankencement, and where he says, that J. S. was seised in Fee, and inoff'd him, and gives Colour to the Plaintiff by J. S. There it is a good Plea.
Trespass.

1. In Trespass, the Defendant pleads, that it is his Frankenteem, the Plaintiff may say that he was seized, and disposed by the Defendant, without alleging Regress in the Land, House, or Close. Contrary of Trees cut &c. there Regress shall be alleged, which is traversable; 25 Prifot. Br. Trespass, pl. 322. cites 11 E. 4. 3.

2. Where the Defendant in his Bar gives the Plaintiff a Title, and destroys it, it is sufficient for the Plaintiff to maintain the same Title without Regress; Per Afcough. Br. Trespass, pl. 127. cites 19 H. 6. 23.

3. And it is sufficient to destroy the Title of the Defendant without more; and when the Title of the Plaintiff may stand with the Bar, there it is sufficient for the Plaintiff, without shewing Regress, to traverse the Title of the Defendant; Per Newton. Br. Trespass, pl. 127. cites 19 H. 6. 23.

4. In Trespass, if the Defendant pleads, that it is his Frankenstein, the Plaintiff may say that he was seized, and disposed by the Defendant, without alleging Regress in the Land, House, or Close. Contrary of Trees cut &c. there Regress shall be alleged, which is traversable; 25 Prifot. Br. Trespass, pl. 322. cites 11 E. 4. 3.

5. After Diffusien or vortions Of for the Party cannot have Trespass before that he makes Regress, and there in Trespass of the Trespass Mefne the Regress is traversable. Br. Trespass, pl. 322. cites 11 E. 4. 3.

6. Trespass does not lie against Diffusier before Regress. Br. Eftates, pl. 46. cites 22 E. 4. 38. per Hufley Ch. J.

7. Second Deliverance; where a Man leaves for Years upon Condition, and after the Condition is broken, the Lesser shall not have Action of Trespass before that he has entered again; per Brudnell. Br. Trespass, pl. 169.

(Ua. 3) Plea
(Ua. 3) Plea in Abatement. What is a good Plea in Abatement.

1. Trespass in C. near S it is no Plea that C. is a Hamlet of S. And to see that Action of Trespass may be brought in a Hamlet. Br. Trespafs, pl. 371. cites 29 All. 33.

2. Trespass of Cattle taken in C. V. & Arnis, the Defendant said that the Plaintiff himself had brought Replevin of the same taking in N. which is a Hamlet of C. return’d at this Day, to which Writ he has counted, and by this Writ he does not suppose the taking to be V. & Arnis; Judgment of this Writ V. & Arnis; and a good Plea, by which the Plaintiff aver’d that the Replevin was sued of another taking. Br. Trespafs, pl. 115. cites 38 E. 3. 35.

3. Trespass against three, the one said that the two were dead before the Writ purchased; Judgment of the Writ; Et non Allocatur, but against the two. And to see that the Death of some shall not abate the Writ against all, but Mirum, as here before the Writ purchased; for then it is laffe &c. But Death pending the Writ, it all not abate all the Writ. And after the other said that the two bought the Wood of the Plaintiff to the Use of the King; and this Defendant came to measure the Wood &c. And if he tender’d upon the Bargain. Br. Trespafs, pl. 60. cites 47 E. 3. 18.

4. In Trespafs, the Defendant said that before the Trespass the Plaintiff lodged to N. which Term yet continues; Judgment. This is no Plea, per Caund. without Privity of the Lessee. Br. Trespafs, pl. 62. cites 47 E. 3. 19.

5. Trespass of Cattle taken generally, Patton prayed Judgment of the Writ, for the Plaintiff himself is possi’d of the Cattle, by which he ought to have had Writ Quod cepit & Derinit per tantum tempus per quod proferre &c. amitt. To this Bab. bid him to Anfwer, quod nota. Br. Trespafs, pl. 221. cites 1 H. 6. 7. — And cites M. 11 H. 4. the like Matter in Trespafs; and said there that the Defendant in this Cafe is not at any Milichet; for he may give it in Evidence to diminish the Damages; Quod nota. Br. Trespafs, pl. 221.

6. Trespass in C. It is no Plea to the Writ that the Place where &c is in K. and not in C. Br. Trespafs, pl. 176. cites 4 H. 6. 13.

7. Trespass in D. It is no Plea to the Writ that there are two D’s, and Trespass in one without Addition; for it suffices if he be Guilty in one. Br. Tref- D. the De- pasfs, pl. 14. cites 9 H. 6. 5. But per Babbd. by 9 H. 6. 29. * Nul tit delendant said Vill as D. &c. Judgment of the Writ is a good Plea, and 6 H. 7. 3. is accordingly Ibid.


8. In Trespafs, it is no Plea but the Vill is in Another County; but shall say that Nul tit del Vill in This County; nota. Br. Trespafs, pl. 19. cites 9 H. 6. 62.

9. It is no Plea in Trespafs, that the Trespass was done by the Defendant and another, who is alive, not named &c. Br. Trespafs, pl. 20. cites 20 H. 6. 11 & 40 E. 27. 39.

10. Trespass of entring into his Houfe and breaking his Clofe; Dan- by said, the Houfe and the Clofe are all one and the same Place, and not di- verfe, Judgment of the Writ; but per Alcoagh and Porting, then you may plead Not guilty to the one, and justify to the other; and therefore it was awarded no plea to the Writ. And yet in Precipe quod rediat it is 6 Z.

11. Trefpafs De claudo fraedo by B. and C. the Defendant said that the Place is 20 Acres, of which D. and the Plaintiff are possessed in Common, and joined &c. Judgment Si Aetio; and against C. he said Not guilty. The Court held that he could not justify against the one, but that this is a justification against both, and he cannot be Guilty against the one but against both, for it is a joint Action; but per Movele he may plead to the Writ against the one who has nothing in the Soil, as to say that the one is to the one only, and justify abque hoc that the other on the Day of the rent pur chased had any Thing in the Soil. As in Replevin by two, he may say that the Property is in the one abque hoc, that the other has any Thing; Judgment of the Writ; quare for alter he pleaded Nor guilty against both. Br. Trefpafs, pl. 306. cites 2 E. 4. 22.

12. Trefpafs of breaking his Close in O. and H. Young demanded Judgment of the Writ, for H. is a Hamlet of O. and was &c. And per tot. Cur. it is no Plea in Trefpafs. Contra in Precept quod reddat, and yet the Mischief of the Vine was mention'd, &c. and the Defendant awarded to Anwer. Br. Brief, pl. 303. cites 7 E. 4. 18.

13. Trefpafs was brought by the Baron and Feme of Battery of them. The Defendant pleaded Not guilty, and the Damages taxed for the Baron 10l, and for the Feme 40s. And because the Feme cannot join with her Baron for Battery of the Baron, therefore for this Part the Writ was abated; and for the Battery of the Feme they recovered, for of this they may join in Action. Br. Trefpafs, pl. 190. cites 9 E. 4. 51.

14. Trefpafs of Trees cut, and Land defaileated in K. Norton said there is no such Vill as K. without Addition in the same County, Prift; and the Plaintiff was compel'd to answer to it by Reason of the Vine; Quod nota. Br. Trefpafs, pl. 94. cites 11 E. 4. 61.

15. Trefpafs by Baron and Feme of Cloe broken and Grafs spoil'd, the Defendant said that A. was seized in Fee, and had Issue the Feme of the Plaintiff and the Feme of the Defendant, and died, and the Daughters entered, and the one married the Plaintiff and the other the Defendant, and to the Defendant and his Feme held in Common with the Plaintiff's; Judgment Si Aetio; quod nota, by which the other made folio Title. Br. Trefpafs, pl. 163. cites 15 E. 4. 2.

(U a. 4) Pleadings. Where there is a New Assignment.

1. Trefpafs of a Cloe broken, and Grafs spoil'd in D. Chaunt. said the Place is a Carve of Land call'd A. in which the Defendant and those whose Estate be has have held in Common with the Plaintiff and those whose Estate be has Time out of Mind, and had in Common the Day of the Writ pur chased, by which he entered &c. and a good Plea per tot. Cur. by which the Plaintiff assign'd the Trefpafs in this Land and another, and that of this Land he was sole feid, abique hoc that the Defendant held in Common, and the others contra; and as to the Trefpafs in the reit, Not guilty. Br. Trefpafs, pl. 122. cites 8 H. 6. 16.

2. In Trefpafs in one Acre of Land in D. the Defendant pleaded the Leaf of the Plaintiff of the same Acre, by which he did the Trefpafs &c. To which the Plaintiff said that he was seized of 2 Acres, and made a Leaf of the other Acre. And the Joint Opinion was, that it is no Plea, but shall say that he did not lease the Acre in which the Trefpafs was done &c. But per Patton, He may say that he leased one Acre, and the Defendant enter'd, and
Trespass.

and did the Trespass in the one and the other, ably haw that he lefled the Acre in which he supposed the Trespass. Br. Traverse per &c. pl. 15. cites 9 H. 6. 64.

3. Trespass for Breaking his Close, and Digging and Spelling his Land with Cart and Plows. Defendant said the Place where &c. is 3 Acres, and that he and all those whom Plaintiff has in such a Capacity, have had a Way there Time out of Mind to 12 Acres &c. with Cart and Plows to carry and re-carry, and that he at the Time of the Trespass &c. came with his Cart and Plows &c. Plaintiff replied, that besides the said Way the Defendant had broke his Close in another Place, and that Defendant answered nothing to that; whereupon Defendant justified in this Place also for another Way, as above &c. Per Moyle and Prior, this is good; for as well as the Plaintiff may allege the Trespass in a new Place, and the Defendant shall have a new Answer, so where he assigns it in another Place in the same Land, as here the * Defendant cannot justify for both together; for a Man may have two Ways in one and the same Land, and Common in the same Land and Fences, and Digging of Turves, or of Clay, and he cannot allege all those at the Commencement, but one only; but if he has Way thro' all the Land, there it ought to be alleged accordingly at the Commencement. Contrary where he has a Way in the one End only, and another Interset in another Parcel, there he may be a Trespaflor in another Parcel of the same Land; quod Cur. concinit.

And per Prior, the Plaintiff in his new Adjournment ought to allege in what other Part of the same Land the Defendant has done the Trespass, and the Defendant in his justificatio shall show in what Place of the Land, viz. in the East End or West End &c. and the Plaintiff in his new Adjournment shall show that the Defendant did the Trespass in the South Part or North Part of the same Land, so that a Dittinction may appear between them; and by him where the Plaintiff assigns the Trespass in other Land, the Plaintiff ought to give it a Name, and if he assigns it in the same Land where the Defendant has justified, he ought to give such special Notice that the Difference may be perceived, by which the Plaintiff amended his Replication according to the Opinion of Prior; Quod nota bene. Br. Trespas, pl. 283. cites 47 H. 6. 36.

4. Trespass Ului ingressus non datur per Legem; the Plaintiff after Bar S.P. Per pleaded by the Defendant shall not assign the Trespass in a new Place, because the Writ comprehends Certainty, viz. quod ingressus est in 4 Acres of Land and 8 Acres of Meadow &c. Br. Trespas, pl. 224. cites 38 H. 6. 7. H. 7. 6.—Extra in general Writ of Trespass, for there is no such Certainty in the Writ; Per Moyle and Choke. But per Prior, it is no good Pl in Trespass upon the 8 H. 6 and therefore it seems the like in this Action, and after the Avenment was received, and the Plaintiff maintained his Writ. Br. Trespas, pl. 224. cites 38 H. 6. 7.—S. P. Per tot Cur. Br. Trespas, pl. 284. cites 9 H. 7. 6.

5. Trespas of a Close broken, and 20 Stacks of Corn taken and carried away, the Defendant said that the Place is 5 Acres called White Acre, and justified there for Damage Seizant. The Plaintiff said that the Place is 3 Acres called O., wherein he was seized in Fee, and there was 20 Stacks of the Stacks till the Defendant took them &c. And no Plea, by which the Plaintiff was above, ably haw that the were Damage Seizant at the Time &c. in the 5 Acres called W. prout &c. Br. Traverse per &c. pl. 193. cites 5 E. 4. 53.

6. In Trespass, where the Plaintiff in his Count gives the Place, where the Defendant, the Trespass is supposed, a Name, there the Plaintiff shall not assign the Trespass in a new Place; Per Choke, which none denied. Br. Trespas, pl. 422. cites 9 E. 4. 24.

7. Trespass of Breaking his Close, and Subverting his Soil with his Cart, and shew'd how much of the Land was subverted, as he ought, as it is laid, viz. two Acres of Land. The Defendant said that the Place where &c.
Trefpafs.

is 2. Acres of Land called E. and pleaded in Bar. Per Townend, where the Trefpafs is alleged in Certainty, as here, the Defendant shall not give the Place a Name, no more than in Trefpafs upon 3 Rich. 2. or upon 3 H. 6. And the whole Court held contrary to him, that in this Action he may plead, as above, and give Name, notwithstanding the Certainty in the Court; for it may stand with his Count, and it was not denied but that he shall do so in Action upon 5 R. 2. or 5 H. 6. Br. Trefpafs, pl. 350. cited 21 E. 4. 18.

8. Trefpafs of Breaking his Close, and Subverting his Soil, viz. 30 Acres. The Defendant pleaded Footment of the Manor of D. of which the Place &c. at the Time of the Trefpafs was Parcel, and gave Colour to the Plaintiff; and the Plaintiff said that the Place where is a Rod of Land called S. other than the Defendant has answered to; and because the Defendant had not answer'd to it, he prayed his Damages; To which the Defendant pleaded Not guilty, and found for the Plaintiff to the Damage &c. And there the Opinion of the Court was clear, that he shall not make another Affirmgment when he has shew'd it in his Count, viz. 30 Acres; to which the Defendant has answered that this is Parcel of the Manor &c. For the Certainty appears; and there is no Diversity when the Certainty appears in the Count, and when in the Replication. Br. Trefpafs, pl. 284. cites 9 H. 7. 6.

And to be a Diversity where the Plaintiff in Trefpafs counts in 20 Acres, and the Defendant makes Bar that this is Parcel of a Manor; and where the Defendant says that the Place is 70 Acres, and that the Plaintiff trod to him &c. for there the Plaintiff may assign the Trefpafs in a new Place. Br. Trefpafs, pl. 284. cites 9 H. 7. 6.

But where the Plaintiff assigns the Trefpafs in another Place, the Defendant may justify it to, or plead Not guilty. Br. Trefpafs, pl. 4. & 24.

14 H. 8. 4. and 24.

But upon such an Affirmgment the Defendant cannot justify in another Place; assign he that it is guilty in the Place pleaded by the Plaintiff; for this amounts to Not guilty there. Br. Trefpafs, pl. 168. cites 14 H. 8.

9. In Trefpafs, the Defendant justified in a Place called Black- acre; the Plaintiff assign'd the Trefpafs in White-Acre; the Defendant said that the Places are all one and the same Place. And per Cur. He shall not have it for a Plea, but may plead the same Justification to it. And per Brudnell, Pollard, and Brook, in this Case the Defendant may plead Not guilty to this new Affirmgment; for the Plaintiff by this has confess'd that he claims nothing in the Place where the Defendant justified, and so he shall be trick'd upon the Evidence; Quod nota. Br. Trefpafs, pl. 168. cites 14 H. 8.

Trefpafs, pl. 4. & 24.

168. cites 14 H. 8. 4.

Hence it follows, that if the Plaintiff counts the Place certain at the Commencement, the Defendant shall not have this Pleading as above. Br. Trefpafs, pl. 168. cites 14 H. 8. 24.

* * * And upon a Demurrer it was adjudged without Argument to be no Plea; for it is repugnant to say they are both one, when the Plaintiff by his Replication has affirm'd upon Record that it is another; for when he lays Alius it cannot be Idem; and so are 14 H. 8. 4. 2. H. 8. 7. And Walmsley said it was to adjudged 25 Eliz. wherefore it was adjudged for the Plaintiff. Cro E. 555. pl 13. Mich. 36 8. 37 Eliz. in C. B. Fresson v. Stanford & al. —— Poph. 109. pl. 5. Mich. 36 & 39 Eliz. S. C. by Name of SCOTCH's Cafe, says it was adjudged for the Plaintiff, because that in such a Cafe upon a special Affirmgment, it shall be taken merely another than that in which the Defendant justifies, insomuch as the Plaintiff in such a Cafe cannot maintain it upon his Evidence given, if the Defendant had pleaded Not guilty to this new Affirmgment, that the Trefpafs was done in the Place in which the Defendant justifies, alo'th' be it known by the one and the other Name, and that the Plaintiff hath good Title to it, because by his special Affirmgment, saying it is another than that in which the Defendant justifies, he shall never after say that it is the same in this Plea; for it is quite contrary to his special Affirmgment. And upon this a Writ of Error was brought in the King's Bench, and the Judgment was there affirm'd this Term for the same Reston; Quod nota. — Cro. E. 492 pl. 10. S. C. by the Name of FRANCIS B. CROUCH accordingly, by Popham, Grench, and Fenner; and because the Plaintiff is effopp'd to give Evidence in that which the Defendant hath pleaded, the Defendant should have pleaded in Bar to the Place newly align'd, or have pleaded Not guilty, according to 14 H. 8. 4. and 27 H. 8. But Gawdy e contra, who held the Law to be with 21 H. 6. 21. For it is not reasonable, that if they are all one Place, but he may plead it, and not to stand upon an Elloppel, and put it upon Evidence to a Jury; but because the other Justices were of a contrary Opinion, he affented that Judgment be affirm'd — Memo. 460. pl. 631. S. C. by the Name of CROUCH B. FRANCIS, that where the Plaintiff makes a new Affirmgment the Defendant ought to plead Not guilty, and cannot aver that the Place where &c. is one and the name.

10. Trefpafs.
Trespasses.

10. Trespasses. The Defendant justified in a Place called A, which is his Frankentenement; the Plaintiff assigned a new Trespafs in B, which is other Place than A, and because the Defendant did not answer to the Trespafs in B &c. The Defendant said that A and B are one and the same Place, and not diverse. And per Cur. This is no Plea; for by the new Aflignment of the Trespafs the first Bar is waived, and the Defendant may plead Not guilty to the Trespafs in B. and if the Plaintiff gives Evidence in A, the Defendant may eflop him by the first Matter in the Refusal of A. Quod non, and then the Defendant pleaded other Matter; and in Affidavit if the Defendant pleads Hors de fon Fee, and the Plaintiff makes Title, the first Bar is waived. Br. Trespafs, pl. 3. cites 27 H. 8. 7.

11. In Trespafs for breaking his Close, the Defendant lays the Place where is 6 Acres in D, which are his Freehold, the Plaintiff replies His Frankentenement and not the Frankentenement of the Defendant. If the Plaintiff has 6 Acres there, and the Defendant has other 6 Acres, the Defendant cannot give in Evidence that he did the Trespafs in his own 6 Acres, but his Plea shall be intended to relate to these 6 Acres of the Plaintiff, because till Defendant gives a Name to the Place where the Trespafs was done, the Plaintiff need not make any new Aflignment, since the Defendant hath not varied the Meaning of the Plaintiff, as by saying that the Place where &c. is 6 Acres called Greenhead &c. D. 23. b. pl. 147. Mich. 28 H. 8. Anon.

12. If the Plaintiff in Trespafs makes a new Aflignment, and gives a special Name to the Place, and also assigns Boundaries on every Part of the Place, viz. East, West, North, and South, and names the Boundaries, it was held by several that he ought to prove there to be true, as well as the Name of the Place, because every Word, which is put in the new Aflignment to make the Place plain and certain to the Jury before the Words Alias quam in Barras, is effective, and the Burials are Parcel of the new Aflignment; but quere, because the Opinions are differing. D. 161. b. pl. 48. Trin. 4 & 3 P. & M. Saunders v. Lord Burgh.

13. In Trespafs Quare Clauum fregit &c. the new Aflignment was (viz.) in one Acre of Land or Meadow lying in a Field in 8. aforesaid called a Northfield &c. The Defendant, as to the Trespafs de novo Aflignavit in præd. Acre terreat, pleaded Not Guilty. But the Jury was discharged, by the Opinion of the Court, for the Uncertainty in the New Allignment, it being of Land or Meadow, and there being no Burials or Name to the Acre; and also the Answer was to the Acre of Land only. And the Plaintiff might have 2 Acres, one Land and the other Meadow. D. 264. pl. 39. Trin. 9 Eliz. Anon.

This new Aflignment is as Parcel of the Declaration; otherwise could not be that the Witte abate it, but rather ought to be a Repleader, and to commence at the new Allignment, which was not done for the Reason aforesaid.——Bendl. 177; pl. 222. S. C. that the Pleading was adjudge'd void of both Parts.

14. Trespafs of breaking his Close and House. The Defendant in his 4 Le. 14 pl. Plea put the Plaintiff to a new Aflignment, (viz.) an House called a Stable, 56. 33 Eliz. a Barn, and another House called a Cart-House, and Granary. Per Gawdy J. the same is good enough; that the Word Domus in the Declaration very same is nomen Collectivum, and contains every Thing mention'd in the new Words Allignment, and so was the Opinion of the whole Court. 2 Le. 184. pl. 230. Mich. 32 Eliz. B. R. Hore v. Wridtleworth.

15. When in Trespafs the Defendant pleads in Bar, and the Plaintiff makes a new Allignment, it is reaonable that the Defendant may answer to this new alligned Wrong; for by 27 H. 8. after a new Allignment the Defendant old Bar is waived, and out of the Book, and the Defendant shall plead to the Declaration of the new Allignment as if he had never pleaded before; per Gawdy J. To d. m. it is unjusted which the Taking
Trespass.

which the other Justices agreed. Goldsb. 191. pl. 128. Hill. 43 Eliz.
in Cae of Bodyam v. Smith.

in Pl. Acr. 20, and that it was his
Trespass for Damage to Land; and the Defendant justified for Herlot Service. Goldsb. 191. Bodyam v. Smith—The Court were all clear of Opinion, that the Defendant might vary in his J ustification upon the new Affirmation, and so a Judgment in C. B. was reversed, and this upon Conference with the Justices of C. B. and great Deliberation. Mo. 54-5. 714, Mich. 55 & 56 Eliz. Oldham v. Smith. And 296. pl. 396. S. C. but S. P. does not appear. Cro. 399. 590. pl. 27. Mich. 59 & 60 Eliz. B. R. the S. C. And the Court held the Pleading well enough; for by the new Affirmation the Bar is out of Doors, as if it never had been pleaded; and cited 29. H 8. 5. And it may be that he took the Ox in Bl. Acre, being his own Land, for Damage to the Herlot, and in another in Wh. Acre, as for the Herlot, and if they may well stand together; and if the Case be so, he could not have pleaded it otherwise.


S. C. cited by North Ch. J. who said that it had formerly been doubted whether a new Affirmation might be in a Trespass for taking Goods, till it was reserved in this Case that it may, but that it is generally used in Trespass Quaere Clau tamil freget. Freem. Rep. 253. pl. 253. Mich. 1677. Cockley v. Pegrave.

16. Trespass of taking his Bears at K. and chassing them &c. The Defendant justifies in such a Clofe for Damage to Land. The Plaintiff replies, that the Place where was another Clofe &c. Whereupon the Defendant demur'd, pretending that the Plaintiff never made any new Affirmation, but where the Wir is Quare Claument freget. But the Court held the contrary, wherfore it was adjudged for the Plaintiff. Cro. J. 141. pl. 18. Mich. 4 Jac. B. R. Batt v. Bradley.

17. In an Action of Trespafs, and a new Affirmation made &c. the Issue is found for the Plaintiff, and the Wir of Enquiry of Damages was General, without any Mention of the new Affirmation. And yet 'twas ruled by the Court, that Judgment shall be enter'd for the Plaintiff, altho' that the Clerks lay in ordinary Course it is otherwife; and with that Judgment agreed the Cae of Dillon and Eafon, H. 43 Eliz. B. R. Rot. 941. for the new Affirmation is not the Declaration of the Certainty of Accompt. Nov. 26. Sendall v. Sendall.

18. In Trespafs for taking and carrying away 100 Leaks of Lurf at L. the Defendant pleaded, that the Lacs in quo &c. (whereas there was no Place alleg'd) was 2 Acres called Bl. Acre in L. which was his Freehold. The Plaintiff replied, that the Lacs in quo &c. was 2 Acres containing 20 Acres in L. mutis quam &c. The Defendant rejoind'r, that good asmall Transferreffer in practico 20 Acres, Not Guilty. After Verdict for the Plaintiff it was moved, that this was no Issue, because there were neither 20 Acres, or any Place certain in the Declaration. But adjudg'd for the Plaintiff; for tho' it was not in the Declaration, yet it was not a Particular, because both Parties agreed that the Trespafs was done at L. so that the aligning a more particular Place in L. stands with and reduces the Declaration to a greater Certainty, and supplies it; and so is help'd by the Statute of Jeofails. Hob. 176. pl. 197. Hill. 14 Jac. Plint v. Thorley.

19. In Trespafs of his Clofe broken, against J. and 2 others, the Wir was General, but the Declaration was of plowing half a Rodd, and in digging another half Rodd; and after in his new Affirmation he said it to be a Selion, containing by estimation an Acre. And it was found for the Plaintiff, and Damages attid'd to 20s. And now it was moved in Arreit of Judgment, because the new Affirmation is more large than the Declaration; and the Opinion of the Court was, that because this was but an Action of Trespafs, where Damages only is to be recover'd, that this is very good; but otherwife it is, perchance it had been in an Ejeclment. Win. 65. 62 Jac. C. B. Avls v. Gennie & al.

20. Battery was laid at D. The Defendant justified at S. in the same County, in Aid, and the Command of Bailiffs, to prevent a Refuse of Goods taken.
Trespasses.

took by them in Execution. But the Plea was held to be ill; for the Bailiffs have Authority throughout the whole County, and so the Cause of Justification in the same County not local; and therefore he should have justified in the same Place (being in the same County) where the Plaintiff declared; and if the Place had been material, he should have travell'd at all other Places in the same County; And Judgment for the Plaintiff. Lev. 113. Mich. 35 Cur. 2. C. B. Bridgewater v. Betheway.

21. Trespasses for taking his Cattle in Newmore. The Defendant pleads that the Place where was Stone-Hill, and justifies that it is his Fronteament. The Plaintiff replies that there is a River runs through Newmore, and on the North-side of it is Stone-Hill, but that he took the Cattle on the South-side of the River; and concludes Hoc parasus est verificare; and because the Defendant has not answered to the Trespasses in this Place now assign'd, demands Judgment. The Defendant demurs generally; and it was urg'd that this Replication was not well concluded; for he ought to have stopp'd at Hoc parasus est verificare, and not have demanded Judgment for not answering the Trespasses new assign'd, when it was impossible he should answer it before it was alleged. But per Curiam, this is but Matter of Form, and tho' not so formal, yet the Defendant not having shewed it for Caufe, cannot take Advantage of it, altho' it had been proper only to have aver'd it, or else he might have travers'd, abique hoc that he took the Cattle at Stone-Hill. Frem. Rep. 238. pl. 250. Mich. 1677. Cockley v. Pagrave.

22. If a Man brings Trespasses for taking his Cattle in Black Acre on such a Day, and the Defendant justifies the Taking at another Place Damage feasuant, the Plaintiff may make a novel Allignment, if there were 2 TAKINGS. So if there were 2 Batteries on one Day, and the one were on the Plaintiff's own Assaynt, and the other not, if he will justify one Deon Allault demesne, he may make a new Allignment of the other Battery. Agreed per tot. Cur. 6 Mod. 120. Hill. 2 Ann. B. R. in Cafe of Elwis v. Lombe.

(W. a) Pleadings. Quae est eadem Transgresio. Good

or necessary in what Cases.

1. Trespasses. The Defendant saith, that the Land is 5 Acres, of which he was seized in Fee till by the Plaintiff dispossessed, upon which he entered; which is the same Entry of which the Action is brought. And a good Plea, per tot. Cur. because the Action was of Entry into the Close of the Plaintiff, and the Defendant has aver'd that 'tis the same Entry, for otherwife it is no Plea; for if otherwise, then it seems that he shall say that it was his Fronteament &c. or make Title and give Colour &c. Br. Trespasses, pl. 357. cites 21 E. 4. 74.

2. Trespasses of breaking his Close the 1st Day of May. The Defendant Jenk. 62. pl. pleaded Licence of the Plaintiff the same Day, by which he entered. Judgment in Aciro, and a good Plea, without saying that it is the same Trespasses. Br. Trespasses, pl. 219. cites 21 H. 7. 39.


So in Trespasses of Batter, and he justifies the same Day and Place, it is good, without saying that it is the same Trespasses. Br. Trespasses, pl. 219. cites 21 H. 7. 39.

But if he justifies at another Day, or another Place, then he ought to say, which is the same Trespasses &c. And this per Confiable, Sergeant, which was affirmed by all the Court for clear Law. Br. Trespasses, pl. 219. cites 21 H. 7. 39. Jenk. 62. pl. 78. cites S. C. S. C. cited by William J. Balli. 138. Tira. 9 Jac. in Cafe of Vattenege v. Taylor.
3. Trespass for Affriss, Battery, and Wounding at D. in the County of Suff. 26 Sept. 21 Eliz. The Defendant pleaded, that P. Earl of A. was seized of 60 Acres of Pasture called S. in Trefford in the said County, and let them to R. W. 28 Eliz. for 21 Years; and that the Plaintiff temporis quo Clausum prorogavit & continuus ipsius R. ibidem inventus cum capere & altis ingressis capere velut, for which the Defendant, as Servant to the said R. and by his Commandment, molliiter manus impo
tuit upon the Plaintiff at T. in the said 60 Acres, to hinder him from carrying away the said Conies quae eft emadum &c. Abique hoc, that he is guilty of Transfigritions & Injuncts &c. ab ilibi vel ali modis in dict. Com. Suff. prout &c. & hoc &c. And upon Demurrer it was adjudg'd for the Plaintiff. Cro. E. 242, 243. pl. 7. Trin. 53 Eliz. B. R. Barrett v. Havelker.

4. Trespass for taking his Cattle at D. and driving them to Places unknown. The Defendant pleaded, that S. was seized in Feo of 12 Acres in M. and that the Cattle were there Damage severely, and by the Command of S. drove them to D. and thence to F. in the same County, where he impounded them, which is the same Taking: Abique hoc, that he captit averia praedicat apud D. Adjudg'd the Plea was ill, for that the Traverfe is a Departure from the first Plea, and repugnant to the Matter which induces it. And it was laid there needed no Traverfe, because the Matter of the Jüflication is traverfable, and not local; but it judicates that he jüfifies in another Place. Cro. E. 667. pl. 21. Patch. 41 Eliz. C. B. Sir Walter Sands v. Lane.

5. Trespass of Affriss and Battery in London. The Defendant pleaded, That the Plaintiff entered into his House in Waltham, in the County of Essex, and he molliiter manus impo
tuit upon him, to put him out of his House, quæ eft emadum &c. Abique hoc, that he is culpabilis extra Waltham. Upon Demurrer it was moved, that this Trespass was traverfible, the Place is not traverfable; but if it was, yet he ought not to conclude his Plea Quæ eft emadum &c. But all the Court held the contrary; for the Cause of the Jüflication being local, viz. the maintaining of the Possession of his House, he may well jüfity there, but not elsewhere, and he may traverfe every other Place; as where one jüfifies as Contable, or by Force of a Warrant. And therefore Popham said, The Difference is between this Case and the Case of Hattinge, which was jüdged in this Court. That where one jüfifies by reason of an Affriss in another County, and traverfes the County in the Declaration, that is not good; because the Jüflication is personal and traverfible, and might be alleged in any Place as well as the Battery. But where it is local, as here, it is otherwise, and the Conclusion Quæ eft emadum Transfigriffio &c. is good enough; for it concludes, that it is the same Cause of Action, but with a Traverfe, as it ought to be of Necessity. But if the Avermation Quæ eft emadum Transfigriffio had been omitted, it had been good enough. Wherefore, upon the first Argument, it was jüdged for the Defendant. Cro. E. 705. pl. 27. Mich. 41 Eliz. B. R. Peacock v. Pockton.

6. If a Declaration be general, Quæ Clauflum fregit, and does not ex
d the exact Place, there the Defendant may mention the Trespass at another Day, and put the Plaintiff to a new Affirmation; but if he say Quæ Clauflum vocat Dale fregit &c. there the Conclusion, Quæ eft emadum tranfigriffio, will not help; Per Hale Ch. J. 1. Mod. 89. pl. 54. Mich. 22 Car. 2. B. R. Anon.

7. In Trespass for breaking and cutting his House on the 19 November, &c. the Defendant jüdged his Entry 11 Nov. by Proceed out of an inferior Court &c. Quæ eft emadum fregit &c intrufto, and traverfes that he was Gullly Aliter et also Modo; upon a Special Demurrer, it was revolv'd inter
inter alia, that if Trespasses be alleged on 10 Nov. and the Justification on 11 Nov. yet if there be an Averment Quæ cœt eadem transgrediens, as here the Plea is good without the Traverse; And that tho' the Plea was sufficient in Matter of Substance, yet the adding the Traverse (tho' merely Surplusage) being specially shown for Cause of Demurrer has made it ill. 2 Lutw. 1452. Hill. 9 W. 3. Hargrave v. Ward.

(X. a) Pleadings. Giving a Name to the Place where the Trespasses was done. In what Cases and how.

1. Trespass in W. of breaking his Close and spoiling his Grass; the Defendant justified in T. absque hoc, that he is Guilty in W. Mudo. The Plaintiff said that T. is a Hamlet of W. And per Newton &c. and Markham, by this Replication they are agreed that W. and T. are absque hoc all one and the same Vill, and then the Justification remains not answered. Quære if the Plaintiff shall answer to the Justification in his Replication; for it was not adjudged, but Issue was taken that T. was a Replication known Place Prifon, and the others contra; and per Newton and Markham, it is not sufficient to say that T. is not a Hamlet of W. but shall Hamlet of D. to say that it is a Hamlet of another Vill, or Vill by itself, or Place known. Br. Replication, pl. 4. cites 20 H. 6. 23. and demurred &c. For now the Plea amounts to a Justification, and the Traverse amounts to Not guilty, which are repugnant. Br. Replication, pl. 52. (45) cites 22 E. 4. 50.

2. In Trespass, the Plaintiff, in his Count, gave the Place a Name certain, viz. Greenclofe, and the Defendant answered to a House only; and per Brian and Littleton, this giving of the Place a Name is Surplusage, and not traversable. Br. Nucation, pl. 15. cites 15 E. 4. 24. and.

Green clofe was struck out. Brooke says, quod nota, that the Name of the Place shall not compel the Defendant to answer to it.

3. Trespass of breaking his Close and subverting his Soil, viz. 2 Acres of Land &c. the Defendant said, that the Acres are called White Acres, and pleaded Bar; and well per Brian and Choke Justices; for the Defendant may give Name in his Bar, tho' the Plaintiff has not given Name in his Count, and if the Defendant pleads in Bar without giving Name to the Place, there the Plaintiff in his Replication may give Name to the Land where &c. For otherwise, if the Plaintiff have several Acres in the same Vill, and the Defendant has justified in some, and in some not, he shall lose his Justification; and when the Plaintiff has given Name in his Replication, he may say that the Trespass was done in this Land named &c. But in Action upon the Stat. of 5 Rich. 2. he shall not plead to a Name, for there the Certainty of Acres is comprised in the Writ; contrariwise, in Trespass, quod Catesby conceivis; but by him, where the Plaintiff gives Name in his Count the Defendant may vary from it; and to note the Diversity. Br. Trespass, pl. 36. cites 21 E. 4. 80.

4. Trespass, the Writ and the Count were Quare Clausum fregit, viz. one Acre of Meadow, and half an Acre of Pasture; the Defendant said that the Place is called B. and was his Franktenement &c. Per Fairfax Justice, where he gives Name in his Writ you cannot vary from it, but contrary where the Writ is Clausum fregit generally, without thewung Name or Quantity, there he may vary, tho' he gives Name in his Count; but not where he gives Name in his Writ, or in the Writ and Count: And per
Trespass.

Hulley Ch J. where the Writ is Quare Clausum fregit containing 20 Acres or 10 Acres, the Defendant cannot say that the Place &c. contains 6 Acres &c. or more, by which he may plead by Prostatfation that the Place is named B. and pro Placito that the Place is his Frankentenuem; and therefore he pleaded accordingly; quod nota. Br. Trespafs, pl. 366. cites 22 £. 4. 17.

5. In Replevin of taking in D. the Defendant justified in C. abufe loc that he took in D. The Plaintiff said that the Place is known by the one Name and the other; and to the Plea pleaded by the Manner, No Law puts him to answer &c. Br. Replication, pl. 56. cites 1 H. 7. 21.

6. Action upon the Stature of 8 H. 6. of Entry into a House, and 20 Acres of Land with Force, the Defendant pleaded in Bar and gave the Acres a Name, and was not suffered to give Name any more than in Affile or Precipe quod rededit, because the Plaintiff has given Certainty in his Declaration; and so the Defendant shall plead to it at his Peril; As in Writ of Entry in Nature of Affile, he shall not give a Name. Br. Pleadings, pl. 134. cites 5 H. 7. 28.

7. In Trespafs, the Plaintiff supposes the Trespass to be done in the breaking of his House and Clofe in such a Town; the Defendant justifies in a House and Clofe in the same Town, and finds which, to put the Plaintiff to his new Alignment; to which the Plaintiff replied that the House and Clofe of which he complains is such a House, and gives it a special Name, upon which the Defendant demurs; and adjudg'd that the Plaintiff take nothing by his Writ; for albeit a House may have a Curtalge which pales by the Name of a Mesleage with the Appurrences, yet this shall not be in this Case, for by the Bar the Plaintiff is bound to make a special Demonstration in what Mesleage and what Clofe he supposes the Trespafs to be done, as to say that the House has a Curtalge, the which he broke, and it shall not be taken by Intendment that the Mesleage had such a Curtalge to it, if it be not specially named. Poph. 109. pl. 4. Mich. 38 & 39 Eliz. Anon.

8. Trespafs of breaking his House and Clofes; the Defendant pleaded that the House is called C. and one of the Clofes is Bl. Acre, and the other Wb. Acre, and that they are his Freehold, and so justifies. The Plaintiff replies that the Trespafs done was in C. and in Bl. Acre, which are his Freehold abufe loc, that they are the Freehold of the Defendant; and that the Trespafs was done in another Place containing 20 Acres, alias grant Wb. Acre &c. Upon Demurrer, all the Justices, prater Walmley, held that in regard the Defendant has hit some of the Places wherein the Plaintiff intended the Trespafs, and pleaded thereto; the Plaintiff may well answer to that Part, and the Defendant shall have no other Answer; as if the Defendant had hit one Place and had confest the Action therein, the Plaintiff needed not make any Answer thereto; and the Defendant shall not wave his Answer, and Answer to all de Novo. Wherefore it was adjudg'd for the Plaintiff. Cro. £. 812. pl. 18. Hill. 43 Eliz. C. B. Prettyman v. Lawrence.

9. Trespafs &c. for immoderately beating, wounding, and chaffing Horses and Beasts at R. &c. The Defendant pleaded that the Place where &c. was call'd Speltriggs in R. and is his Frankentennon, and so justified for Damage-Feasant by gently chaffing and striking them with a little Stick doing no Damage Que futrem cadem &c. The Plaintiff replied, that de injuria sua propria absume Causa the Defendant Graviter & immoderate per- currit the Horfes &c. It seems that upon Demurrer, Judgment was given for the Defendant, because the Words (Apud R. praditum) were omitted in the Replication. See 2 Lutw. 1394. and 1398. Trin. 4 W. & M. Dundal v. Hodgson.

(Y.a) Plead-
In Trespass, the Defendant pleaded Feoffment of the Father of the Plaintiff with Warranty, whose Heir &c. made to the Defendant; and no Plea per Alton, Newton, and Porting, by which he waived it and pleaded the same Plea with Colour; to which no more was said. Br. Trespass, pl. 156. cites 22 H. 6. 42.

2. In Trespass, the Defendant said that Place is 20 Acres, and pleaded a Release of all the Right with Warranty from the Ancestor of the Plaintiff, whose Heir he is, made to J. N. Tenant of the Land whose Estate he has, and relied upon the Warranty. Per Suliaird this is no Plea, but if he had given Colour it had been a good Plea; but several contra, and that it is no Plea, unless when the Fraughtement comes in Debate and by Way of Conclusion, it is then a good Plea, and not as here; for the Action stands indifferent, for it may be brought by Tenant of Fee-Simple, Fee-Tail, for Term of Life or for Years; and this is a Real Bar, which is no Plea in an Action merely personal; for it may be that the Plaintiff is Tenant for Years, or by Execution by Elegit, Statute Merchant or such like, and therefore no Plea. Br. Trespass, pl. 361. cites 21 E. 4. 82.—And cites 22 E. 4. 4. by the Opinion of the whole Court there, except Catesby it is no Plea; quod nota.

Title. In what Cases a Title must be shewn in the Count or after Pleadings.

1. If A. brings Trespass against B. of Goods carried away, and B. says that the Property was in C. who made D. his Executor, and died, and the Ordinary sequestr'd, and committed the Administration to A. and A. administered, and after D. proved the Will and administered, Judgment &c. This is a good Plea without making Title to B. And the same in Debt by Executor, to say that the Teforet died outlaw'd without making Title. Br. Trespass, pl. 347. cites 21 E. 4. 5. per Brian Ch. J.

2. Where a Man justifies in Trespass for Distres for Rent, which he recover'd by a Stranger, issuing out of the same Land, it is no good Justification to plead the Recovery only, but ought to shew Title also; for it he has no Title, the Tenant who is a Stranger, is not bound by it; per Movye and Billing. Br. Judgment, pl. 7. cites 35 H. 6. 10.—But fee 39 H. 6. thereof; for by them Avowry is in the Possession, and Seint ought to be alleged and not the Recovery only. Ibid.

3. Trespass. The Defendant justified that W. was seised in Fee, and held it for Years; that the Plaintiff claiming by Colour of a Deed of Feoffment, where nothing was entered &c. The Plaintiff replies by Pro-tertiation, that W. was not seised in Fee, pro Placeto, says Quod non dimisit. And being found for the Plaintiff, it was moved that the Plaintiff has not made any Title to himself in his Replication. But all the Justices to differ held it good enough; for in this Action a Man need not make any Title to himself; but otherwife in an Affise or other real Action; Also by the Defendant's Plea, that the Plaintiff entered by Colour of a Deed of Feoffment,
he admits him to be Tenant at Will, which is not destroyed. And it was adjudged for the Plaintiff. Cro. E. 288. pl. 4. Mich. 34 & 35 Eliz. in B. R. Justice Fenner v. Fisher.

Trefpafs.

in Trefpafs in some Cases the Plaintiff may traverse the Bar, or Part of it, without making any other Title than what is acknowledged to the Plaintiff by the Bar; but this always ought to be where a Title is acknowledged to the Plaintiff by the Bar, and by another Means destroyed by the same Bar; for there it suffices the Plaintiff to traverse that Part of the Bar which goes to the Destruction of the Title of the Plaintiff comprised in the Bar, without making any other Title; but if he will traverse any other Part of the Bar, he cannot do it without making an efectual Title to himself in his Replication, where by the Bar the first Possession appears to be in the Defendant, because although the Traverse there he found for the Plaintiff, yet notwithstanding the Record in such a Case the first Possessions will still appear to be in the Defendant, which suffices to maintain his Regress upon the Plaintiff; and therefore the Court has no Matter before them in such a Case to adjudge for the Plaintiff, unless in Cases where the Plaintiff pleads a special Title under the Possession of the Defendant.

As for Example: in Trefpafs for breaking of his Close, the Defendant pleads that J. G. was feized of it in his Demesne as of Fee, and instead J. K. by Virtue of which he was feized accordingly, and to being feized, instead the Defendant of it, by which he was feized, until the Plaintiff claiming by Colour of a Deed of Feoffment made by the said J. G. long before he instead J. K. (where nothing paid by the said Feoffment) entered, upon whom the Defendant did re-enter, here the Plaintiff may well traverse the Feoffment supputed to be made by the said J. G. to the said J. K. without making Title, because this Feoffment only deprives the Estate at Will made by the said J. G. to the Plaintiff, which being destroyed, he cannot enter upon the Defendant, albeit the Defendant comes to the Land by Diffelin, and not by the Feoffment of the said J. K. For the first Possession of the Defendant is a good Title in Trefpafs against the Plaintiff, if he cannot shew or maintain a Title Paramount. But the Feoffment of the said J. G. being traversed and found for him, he has by the Acknowledgment of the Defendant himself, a good Title against him, by Reason of the first Estate at Will acknowledged by the Defendant to be to the Plaintiff, and now not defeated; but in the same Case he cannot traverse the Feoffment supputed to be made by the said J. K. to the Defendant without any special Title made to himself; for albeit that J. K. did instead the Defendant, but that the Defendant disfied him, or that he comes to the Land by another Means, yet he has a good Title against the Plaintiff by his first Possession not destroyed by any Title Paramount by any Matter which appears by the Record upon which the Court is to judge; and with this accords the Opinion of 51 E. 4. 4.

4. Trefpafs &c, Quare facum summa capit: Upon Not guilty pleaded the Plaintiff had a Verdict; and it was moved in Arreit of Judgment that the Declaration was ill, because he had not pursu’d his Title made in the Declaration. But Coke Ch. J. said, that Quare facum summa capiit is sufficient. And the Court held clearly the Declaration good; for it is only Matter of Surplusage for a Plaintiff in Trefpafs to make Title in his Declaration; and if he makes a Title, and does not pursue it, or if his Title be not good, it is not material, being only Matter of Surplusage, and Nagatory. And by Doderidge: the Plaintiff needs not make any Title, in an Action of Trefpafs, the same being a pollitifory Action; but if he do make a Title in the Way of Evidence, he ought then to pursue the same, and make it good; but he needs not to make any Title in his Declaration, saying that this Hay was for Tithe belonging to his Farm, which is more than he needed to have done; this is but Surplusage. And Judgment for the Plaintiff. 2 Bull. 288. Mich. 12 Jac. Willamore v. Bamford.

5. In Trefpafs for Striking and Killing Accipitrem iphus the Plaintiff. After a Verdict for the Plaintiff, it was moved in Arreit of Judgment, that the Plaintiff did not shew what Kind of Herrk it was, whether a Goffhaw or Lanner &c. for Accipiter is the Genus, and he ought to shew the Species thereof; nor does he shew that the Herrk was reclaimed; for being Feræ Natura, no Man can have Property, unless reclaimed. But the Court held the Declaration good enough, being in Trefpafs for Striking and Killing &c. which he only may have who has the Possession. Cro. C. 18. pl. 11. Mich. 1 Car. C. B. Sir Fra. Vincent v. Lefney.

6. In an Arreit of Judgment in an Action of Trefpafs for carrying away 24 Load of Timber, the Exception was, that the Timber is not naid to be the Timber Ipbus quernitis, and no Caufe of Action. Upon this, Judgment was arrested. Styll. 53. Mich. 23 Car. Wood v. Saltier.

7. In
Trefpafis.

7. In Trefpafis Quare clausius fregit, and threw down his Fences. The Defendant pleaded "Not guilty" to all, but the breaking of the Fences, and for that he justified; for that he was possess'd of certain Corn in the Place where, as of his proper Goods, and made a Breach in the Fence, as was necessary for the carrying of it away. The Plaintiff demurs specially, because he did not plead what Title he was possess'd of the Corn. And the Court were of Opinion that for that Cause the Plea was insufficient; and Twidge said, if the Sheriff upon a Fieri facias sells Corn growing, the Vendee cannot justify an Entry upon the Land to reap it, until such Time as the Corn is ripe. 1 Vent. 221. 222. Trin. 24 Car. 2. in B. R. Perrot v. Bridges.

8. Trefpafis Quare clausius fregit, herbas concideravit, & diversas careola: S. C. cited was tritici idem apportionavit. After Verdict it was mov'd in Arrest of 2 Leb. 116. Hill. 27 & Judgment, because the Plaintiff did not set forth where Wheat it was; for 28 Car. 2. it was not said Idem creceon', but ibidem apportionavit. Adjournatur. Vent. in B. R. in 278. Mich. 27 & 28 Car. 2. B. R. Holland v. Ellis.

Cafe of 

[Stradbroke, as a Cafe at the Michaelmas Term before, as in Trefpafis for eating up so many Loafs of Wheat there and there being, with Cattle; and because the Plaintiff did not say labus injustus, Judgment was thay'd.---5 Keb. 524. pl. 6. S. C. but that had been ibidem creceon' it would be intended fun; but here being Careola it is [to be intended] fever'd, and may be a Stranger's Goods; Per Wild J. which the others agreed, and Judgment said ---S. C. cited Arg. Ld. Raym. Rep. 259. in Cafe of Testimoniab. J. plaint. and says that Hale Ch. J. then said, that if it had been a new Point, he would not have arrested Judgment for this Cause; for since the Plaintiff has said that it was his Cose, the Corn there should be intended prima facie his Corn; but he said that there were so many Precedents to the contrary, that because he would not over-rule them, he arrested the Judgment for this Cause. And there in the Principal Cafe of Fonteray v. Aylmer, the Court in Trefpafis was of Fidger in his general Fidger, or Fidger contra; and Exception being taken for not saying (fides) and so had not invited himself to the Action, he not having laid any Property of the Fifth in him, the Court from to incline strongly that this Exception was not very considerable for the Reasons that Hale Ch. J. gave against his own Judgment in that Cafe of Holland.]

9. In Trefpafis of Breaking his Cofe, and taking his Goods, the Defendant justified the taking Nominis Distriictus, by Command of the Lord of the Manor for Non-payment of Rent. The Plaintiff replied that the Place where &c. is extra, abIQUE bee that it is Infra fenden. The Defendant demurred specially, because the Plaintiff, pleading Hors de fon Fee, should have taken the Tenancy upon him. But the Court held that this is to be intended in Cofes of Allike, and fo Co. Litt. 1. b. is to be understood; but the Principal Cafe is an Action of Trefpafis brought upon the Possession, and not upon the Title; so that if the Plaintiff destroys the Defendant's Justification, it is well enough. 2 Mod. 103. Trin. 28 Car. 2. C. B. Sheppard v. Smith.

10. Trefpafis Vi & Armis for taking the Mare Ipsius quenrentis, nec non Bona & Catalla quenentropy, &c. and fums them up, but does not say they were the Goods Ipsius quenrentis; and thereupon the Defendant demurs; and resolved the Plaintiff may have Judgment for the Mare, and releafe the Action for the Relieu. Raym. 395. Trin. 32 Car. 2. B. R. Curtforhay v. Taylor.

11. In Trefpafis of Clofing of his Sheep, the Defendant made Conformis as Bailiff to T. for Damage tenant in the Acre of Ground, of which T. was possess'd; and there was a Demurrer to the Plea, because he did not know what Title or Estate he had, nor any Seizin or Fiefholds; and therefore Judgment was given for the Plaintiff. Arg. 3 Mod. 419. Patch. 7 W. 3. B. R. in Cafe of Strode v. Bvr, cites it as Trin. 4 Will. & M. in C. B. Godfrey v. Rock.

12. Trefpafis for Breaking his Cofe at D. Et duas Eyuus apud D. and 6 Mod. 14. 20 Buffels of Wheat de Bons propouit ipsius &c. did take &c. the Defendant pleaded Not guilty as to all but the Horses, and as to them justified by Diffrents for Rent. After Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Horses were not alleg'd to be the Goods of the Accouenting-Plaintiff. It was held that the Plea did not confes a Property; for a fry; and the Diffrents
Trespass.

Diftrefs might be of a Stranger's Goods for the Rent, and that the Copus
larius (2) did not let it into the subsequent Part of the other Sentence, to as
make the Hories come under the Words (De Bonis Propriis.) 2 Salk.

16. Refolved Plea for Littleton laid two Cows from his Land in Del, and also 2 Horses of the Goods of the Plaintiff from the said Dale; so that laying a Venue for the taking of the 2 Cows closes up the Sentence, and interrupts its being coupled with the 2d Sentence, or the Matter of Description which follows.

13. In Trespass for taking Cows in the Plaintiff's Close, Defendant pleaded in Bar, That they were Damage Seafant, by CamtIon. Plaintiff demurs, because he set forth no Title to the Close. Resolved that it was well without it; for a poolefly Right is sufficient to maintain an Action of Trespass. And this Difference was taken, that where the Defendant julifies to a Place specially laid down in the Declaration, there a Title must be shewn; but where no Place is specially laid down, as here there is none, then he need not. 10 Mod. 37. Trin. 10 Ann. B. R. Otway v. Britlow.

(A. b) Plea good, without showing Title in himself, or Authority from him who has.

1. Trespass against 2, the one said that the Plaintiff was his Villed, Judgment &c. and the other said that the Plaintiff would not be justified, but foon'd hisifelf, and the Lord took him as his Villed, and the Defendant came in Aid of him; and the other said that Frank, and of Frank Estate; and so fee there and in several other Books, he take justified by coming in Aid, does not say that he by Command, or as Servant of the other, nor at his Request, came in Aid, and yet well; therefore quære if the Law implies Request or Command; for it seems that he cannot do it De fon tort Demenef. Br. Tresfaps, pl. 193. cites 39 E. 3. 16.

But in Mort-
damenfer &c. it is agreed that the Tenant may say that the Plaintiff has is Leilur. Br. Tresfaps, pl. 57. cites 47 E. 3. 5.

2. In Trespass the Defendant said that the Plaintiff himself tested the Land to J. N. for 40 Years, which Term yet continues, Judgment &c. and no Plea by Award, without answering that he by his Command, or as Servant to the Leifur, did the Tresfaps; for this amounts but to Not guilty, and that the Termor should have the Action, and not the Plaintiff, who an Elder Brother alio, or that he is not next Heir &c. without making Title; for the Action affirms him. Contrary against a Tresfapers, Noe the Diversity. Br. Tresfaps, pl. 57. cites 47 E. 3. 5.

(B. b) Plea. What setting forth of Title is sufficient.

1. Trespass of breaking his Close, and spoiling his Grazs; Littleton laid the Place is a great Field inclosed round, thro' which Field is a Way common for Horse and Man to pass, and the Plaintiff made there a Gate over the Way, and at the Time of the Trespass the Defendant open'd the Gate, and went in by the Way, &c. and a good Plea, tho' he did not lay the Field is the Frankement of the Plaintiff; for this shall be implied
And sufficient; for he does not convey Title to the Defendant; but it he had convey'd Title to any whole Estate the Defendant has, then well, as to say that J. S. was seised in Fee, and died seised, and the Land descended to M. who entered &c. whose Estate he had, or that J. S. was seised in Fee, and in seque'd N. &c. whose Estate he had, 'tis good. Br. Bar. pl. 74. cites 9 H. 7. 14.

3. Trefpafs of a Close broken. The Defendant said, that the Place where &c. is an Acre of Land, of which he and M. his Feme were seised in their Demesne as of Fee before, and at the Time of the Trefpafs. And the Defendant entered, and did the Trefpafs, and Exception was taken, because he did not say that they were seised in Free Usurio, or jointly, &c. and Allocatur; for per Lineux Ch. J. it is sufficient for the Defendant to intitle himself to any Part of the Land, in whatsoever manner it be. Br. Pleadings. pl. 83. cites 12 H. 7. 24.

4. In Trefpafs the Defendant pleaded, that he leased the Land to the Plaintiff for another Man's Life, and that he, for whose Life it was, was dead, upon which he entered. And it is adjudged, that it sufficient for the Plaintiff to maintain that Cefius que Vie was yet living, without making any other Title. Poph. 1. 2. pl. 1. Mich. 34 and 35 Eliz. in B. R. in Case of Fenner v. Fisher, Arg. cites 2 E. 4. 101.

5. In Trefpafs for taking his Cattle, the Defendant pleaded, that he was posses'sd of a Close for a Term of Years, and the Cattle trefpafs'd therein &c. The Plaintiff demurr'd, and Judgment was given for the Defendant, tho' he shew'd no Title, but justified upon a bare Possession. And this Difference was taken by Holt Ch. J. where the Actio is transitory, as Trefpafs for taking Goods, the Plaintiff is foreclosed to pretend a Right to the Place, nor can it be contested upon the Evidence who had the Right, therefore Possession is Justification enough. But in Trefpafs Quare Clausum fregit it is otherwise, because there the Plaintiff claims the Close, and the Right may be contested. 2 Salk. 643, pl. 16. Pach. 8 Ann. B. R. Anon.

(C. b) Pleadings. His Franktenement. That the Place where &c. is his Franktenement, or the Franktenement of his Master.

1. Trefpafs of trampling his Grofs, the Defendant pleaded his Franktenement. The Plaintiff said, that the Defendant took his Grofs Mado & Forma, prout &c. and was not suffer'd to have this General Averment against this Special Matter, by which he made Title to the Land. Br. Averment, pl. 7, cites 36 E. 3. 11.

2. In Trefpafs the Defendant said, that the Place was his Franktenement the Day of the Trefpafs suppos'd, Judgment fi Atio. The Plaintiff said, That the Defendant dispossessed his Father, who died, and the Plaintiff enter'd; Judgment &c. And the Defendant durst not demur in his first Plea:
Plea; for, by all the Justices, the Difperfion may well be tried in Trefpafs &c. And it does not appear if the Trefpafs was before the Entry or after, but it was tempe}re Ingratias &c. as it feems by the Pleading, and was of Grafs spoif'd &c. Br. Trefpafs, pl. 80. cites 7 H. 4. 4.

2. Warranty to him, his Heirs, and Assigns, it is a good Eioppell against the Defendant to say, that the Land where &c. is his Frankenement Quod nota, (by the Allignee;) but the other took Ilue with him gratis; therefore quare &c. For in Trefpafs the fame Year, io. 35, 36. the Defendant pleaded his Frankenement; and the Plaintiff pleaded a Reffent by Deed of J. P. Ancestor of the Defendant, whofe Heir he is, to N. S. whose Estate he has; and demanded Judgment, if he againft the Deed of his Ancestor, whole Heir he is, shall be admitted to lay his Frankenement; but at laft he was compell'd to conclude upon the Frankenement, becaufc 'tis only an Action of Trefpafs; quod nota. Br. Elloppel, pl. 65. cites 14 H. 4. 13.

4. In Trefpafs of spoiling his Grafs the Defendant faid, that the Place, at the Time of the Trefpafs, was the Frankenement of his Mafter, by which, by his Command, he enter'd and did the Trefpafs. Judgment &c. The Plaintiff faid, that De fon tort Denefind, without fuch Cauca; and held a good Plea. And yet it the Mafter himfelf had been Party, and had pleaded his Frankenement, there this had been no Plea; but the Plaintiff had been compell'd to have made Title, or to have anfwer'd to the Frankenement; but now the Authority of the Defendant is in Ilue, and not the Frankenement. Br. De non tort &c. pl. 13. cites 8 H. 6. 34.

5. In Trefpafs the Defendant justified, that it was the Frankenement of his Mafter E. by which he, by his Command, enter'd and did the Trefpafs. The Plaintiff faid, that before that E. any Thing had, W. was fefled, and infeff'd the Plaintiff, who was fefled till by T. diffeifed, who infefif'd the fame E. and the Plaintiff re-enter'd, and the Trefpafs muft be between the Diſſen and the Re-enter. The Defendant faid, that N. was fefled, and infeff'd E. Judgment & non Allocatur; by which he faid as above, and traversed the Diſſen, and fo to Ilue. Br. Traverfe, pl. 138. cites 21 H. 6. 5. 6.

6. In Trefpafs of entering into his Clote, if the Defendant faies, that J. S. was fefled, and infeff'd him, and gives Colour, the Plaintiff may fay that R. was fefled, and leafe'd to J. S. at Will, who gave to the Defendant, and R. re-enter'd, and infeff'd the Plaintiff, abſque hoc, that J. S. any Thing had, unless at Will; and admitted for a good Plea. Br. Trefpafs, pl. 308. cites 5 E. 4. 1.

7. If a Man justifies in Trefpafs as his Frankenement, it is no Plea that it was the Frankenement of the Defendant, abſque hoc, that the other leafe'd. Br. Counterplea de Aid, pl. 21. cites 5 E. 4. 2.

8. In Trefpafs the Defendant faies, that the Place is 20 Acres, which was the Frankenement of S. and he, as his Servant, and by his Command, enter'd, and S. took the Beaufs Damaſe feasant, and deliver'd them to the Defendant, to put them in Pound &c. which he did &c. and it was held a good Plea; for by fuch Taking, the Property is not out of the Plaintiff; for if it was, then the Plaintiff cannot have Trefpafs againſt the second Trefpaf fer; and the Plaintiff traverser the Frankenement, and would have pleaded another Plea for the Beaufs, and was not fuffer'd, for the first goes to all; for if be not the Frankenement of the Defendant, he cannot diltrain Damaſe feasant. Br. Trefpafs, pl. 329. cites 12 E. 4. 10.

9. Trefpafs of Beaufs taken in A. in B. The Defendant faies, that he himſelf was fefled of 4 Acres called C. in B. aforeſaid, and the fame Day found the Beaufs Damage feasant in C. and took them and caſfed them towards the Pound, and they escaup'd into A. and the Defendant freely retook them, which is the fame Taking &c. Pigot faies, of your own Tort without fuch Caufe. And, per Brian and Check J. this is no Plea; for
where the Defendant intitles himself to the Soil by the Plaintiff, or his Ancestors, or as his Franktenement, this ought to be answered specially, and shall not be answered generally, that De non tert. Decline; quod nota. And after, per Brian, the plea is good enough; for, by the plea, it is proved that he took them before. Br. De non tert. &c. pl. 22. cites 21 E.

4. 64. 10. In Trespas of Goods carried away, the Defendant said, that the Place Br. Pleads is his Franktenement, and he found the Goods Damage seelant. And per ing. pl. 153. Cur. it is no plea without showing the Certainty of the Land, because he has made to himself Title to the Goods, and therefore shall he shew the Certainty as well as if he had made Title to the Franktenement in Trespas de Ciauso Frankteto. Br. Pleadings, pl. 77. cites 5 H. 7. 28.

11. But in Trespas de Ciauso Frankteto the Defendant may say, that the S. P. Br. Place where &c. is his Franktenement, without showing the Certainty of the Land; because the Writ and the Plea are general, and he does not make Title to the Land; quod nota, per tot. Cur. Br. Pleadings, pl. 77. cites 5 H. 7. 28.

Land; for his Franktenement is no Title, because it may be by Diffelion; quod nota, per tot. Cur.

12. Trespas Quare in separata Piscaria fuit piscatus fuit. The Defendant pleaded Franktenement; and a good plea, per Brian and Keble. But Wood contra. Quare if it had been in Liberum Piscaria fuit; for it feems that a Man may have Liberam Piscarium in another's Soil; but several Piscary shall be intended in his proper Soil. Br. Trespas, pl. 426. cites 10 H. 7. 24.

13. Trespas for taking and carrying away his Trees. The Defendant pleaded the common Bar, viz. That the Place where the Trespas was supposed to be, is his (the Defendant's) Freehold, and so justifies as in his Freehold &e. But adjudg'd ill; for this is no plea in Trespas De Bonis apportionis, but pertinent only to a Trespas Quare Ciausum fequit. Quod nota. Carth. 176. Hill. 2 & 3 W. & M. B. R. Allfone v. Hutchinson.

14. In Trespas for breaking his Close, and carrying away his Wood and Stones &c. the Defendant justified &c. that the Place where &c. is called R. Close, and is his Freehold. The Plaintiff replied, that it was his Freehold, and that the Defendant, de Injuria sua Propria, did break and enter &c. and carried away the Wood and Stones &c. and traversed that it was the Freehold of the Defendant. And upon Demurrer the Defendant had Judgment, because the Plaintiff ought to have concluded his Replication to the Country, for there was no new Affigment; for this always alleges, that the Place mention'd therein is alias quam in Barra, so that the Place being agreed on both Sides to be the same, the Traverse of the Freehold must be ill. Therefore the Plaintiff ought to have concluded his Replication thus, viz. That it was his Freehold, and not the Freehold of the Defendant, &c. hoc petit quo inquiturium per Patriam. 2 Lutw. 1399. Trin. 5 W. & M. Hüllier v. Raines.

15. There are 2 Ways of pleading Liberum Tenementum; the one without any Manner of Certainty, the other with a Certainty. 1st, If there be any Certainty, as that the Place is Black-Acre, Liberum Tenementum of him, then the Way to reply is to make a new Affigment. 2nd, If there be no Certainty, the Way is to affirm the Place, and to make himself a Title to it in the Replication. Arg. And per cur. if a Man declares Quare Ciausum generally in such a Vill, the Defendant may plead Liberum Tenementum; and if the Plaintiff traverse it, it is at his Peril; for the Defendant, if he has any Part of his Land in the whole Town, shall justify it there; and therefore, in that Case, the better Way is to make a new Affigment. 6 Med. 119. Hill. 2 Ann. B. R. in Case of Elwin v. Lombe.

(D. b) Pleadings.
Trespass of Grafs cut. Per Newton Ch. J. if the Defendant justify,
as and instills himself specially, as by Defent, Footment &c. he
ought to shew the Quantity of the Land, as to say that the Place contains
20 Acres of Land &c. But contra where he says, that the Place where &c. is
his Frankentement. Note the Diversity. Br. Trespafs, pl. 153. cites

In Trespafs, the Plaintiff, declared
Quare cum. It was
moved in
Arreit of
Judgment,
but no Rule
was made,
the Court
being of
Opinion,
that though
the Came in the Count, if it stood alone, might be bad, yet the Recital of the Original, which
Clarke v. Lucas, Mich. 2 Geo. 2. which was removed into B. R. by Writ of Error, and remains
there undetermin'd.

3. Trespafs Quare Clausum fregit, & siuis sius at Valentiam succidit.
After Verdict, upon Not Guilty, and found for the Plaintiff, it was
moved in Arreit of Judgment, that the Declaration was not good, becaus
he does not shew the Quantity of the Loads, or Load, and so it is uncer
tain; as in the Case, Cok. 5. fol. 34. Plater's Case, Trespafs Quare
plices siuis eipit; and of that Opinion was the Court, but they would
advise. Afterwards being moved again, in the End of the Term, many
Precedents were shewn for the Maintinance thereof, wherefore it was
Johns v. Wilfon.

4. In Trespafs inter alia, for taking and carrying away 40 Loads of
Corn in the Straw. After Verdict for the Plaintiff it was moved, that
the Declaration was uncertain; for the Plaintiff had declared for 40
Loads of Corn in the Straw, and it does not appear whether they be
Horse-Loads or Cart-Loads, or what other Loads of Corn they are. But
Glyn Ch. J. answer'd, that it is well enough express'd; for it being of
Corn in the Straw, it shall be intended Cart-Loads, and therefore let
Wilcocks.

5. Trespafs Quare Clausum fregit, & arbores succidit ad Valentiam de-
cem Librarum. To which the Defendant demurr'd generally. The
Plaintiff pray'd Judgment for breaking of his Clofè; but as to the
other, the Declaration was insufficient, because not express'd what kind of

6. Trespafs &c. against P. and T. of breaking his Clofè, chasing and
taking his Beafs. P. pleaded Not Guilty. T. justified by a Warrant in
Replevin, setting forth, that P. was possess'd of the Cattle, and that the
Plaintiff took them unjustly, whereupon P. complain'd to the Sheriff, who
made a Warrant to the Defendant to replevy the Cattle. Upon Demurrit
it
Trespass.

it was objected, that it was not said that P. was possess'd of the Castle ut de Bonis propriis. 2dly, That no Place was express'd where the Complaint to the Sheriff, nor where the Warrant by him, was made. 3dly, That he ought to have pleaded, that the Warrant was in Writing. But none of these Exceptions were resolved, because the Court agreed that the Declaration was ill, as to the Chaining of the Beasts, because it did not shew what Sort of Beasts they were; and so the Parties agreed to amend on both Sides. 2 Lucr. Rep. 1372. Hill. 3 & 4 Jac. 2. Dale v. Phillipan & al.

7. Trespass for taking 200 Bushels of Salt. The Defendant justified under the Statute 10 W. 3, for having a Duty on Salt, and that it was fhip'd to be exported, and not weigh'd: and that he was an Officer &c. and seized it. The Plaintiff replied, de injuria sua propriis abjusse tali Casta. Upon Demurrer, Holt Ch. J. said, That where a Defendant justifies by Authority at Common Law, as a Contable by Arrest for a Breach of the Peace, under Proces of the Admiralty &c. there de injuria sua propriis &c. is a good Replication; and fo'tis where the Defendant justifies by Authority of an Act of Parliament, because that a General Law can be no Part of the Itius. And the Court held the Plea ill, because the Defendant did not shew what Sort of Salt this was, whether Bos-Salt, Pig-Salt, White-Salt &c. for the Statute does not extend to all. 2 Salk. 628. pl. 3. Mich. 13 W. 3. Chance v. Weedon.

8. Trespass &c. for entering his House, and taking several Keys for opening the Doors of the said House. Upon Not Guilty pleaded, the Plaintiff had a Verdict. It was objected, that the taking of each Key was a distinct Trespass, and might require several Anwers, and that the Kind and Number ought to be ascertained. But it was resolved, this was sufficiently ascertained by Reference to the House. 2 Salk. 643. pl. 15. Pach. 8 And. R. Layton v. Grindall.

(E. b.) Traversé necessary in what Cases.

1. In Trespass of Grass carried away, the Defendant pleaded his Frank-tenement, and so justified. The Plaintiff replied, that long before the Defendant any Thing had in the Frank-tenement, one A. B. was seized in Fee, and he left to the Plaintiff for Years yet continuing, by which he cut, and caused the Plaintiff to believe that he was possessed till the Defendant did the Trespass; and held good, without setting anything more. D. 171. b. pl. 9. cites Fitzh. Tit. Replication and Rejoiner, Trin. 41 E. 3.

2. In Trespass of Grass cut, which is local, a Man cannot justify in But in Tres-pan, the County, and traverse the County in the Writ, but shall plead Not Guilty; for if the Jury finds him guilty generally, and expressly in ano-ther County, the Verdict is void; and if he says Guilty generally, Mudo as of Grass & Forna, where it was in a Foreign County, Attains lies. Br. Traveller carried away, or of Battery, which may commence in one Vill, and continue in another, the Defendant may justify in another Vill in the same Coun-


4. And in Replication in D. he may say, that he took them in C. in another County, and traverse that he did not take in D. and make Answer to have Return &c. and shall make their Writ; per Martyn, good non negatur. Br. ibid.
3. In Trespass the Defendant said, that the Plaintiff bad the Beal to A. in Pledge for Debt, who bail'd it to the Defendant, who re-bail'd it to the Plaintiff, which is the same Taking. The Plaintiff said, that R. gave it to him, and the Defendant took it, aboue box, that he bail'd to A. and a good Plea, without traversing the Bailment to the Defendant; for he has traversed the Bailment in Pledge, which answers to all; quod nota, per Cur. Br. Trespas, pl. 412. cites 10 H. 6. 25.

4. Trespafs in D. of Trees cut. It is no Plea, that there are 2 D.'s, and none without Addition; for it he be guilty in any of the 2, the Plaintiff shall recover; and it he has satisfaction in any of the 2, he may plead it, aboue box, that he is guilty in the other. So in Affile or Account; contra in all other Actions. Br. Br.iet, pl. 341. cites 3 E. 4. 26. — And see 2 E. 4. 10. not adjudg'd. — But 9 H. 6. 5. it is no Plea. Ibid.

5. In Trespafs, if the Defendant says that S. was seised, and in sefft'd him, and gives Colour to the Plaintiff, and the Plaintiff says that he himself was seised till desseased by the said S. who in sefft'd the Defendant, and he re-enter'd, and the Trespafs misuse &c. And the Defendant says that a long Time before the Plaintiff any Thing bad, the Father of S. was seised, and had Issue of S. and died, and the Plaintiff enter'd, upon whom the said S. entered and in sefft'd the Defendant; this is no Plea, without traversing that S. did not dessease the Plaintiff, because the Diffusis is alleg'd by Mater in Fall; but otherwise it is where the Diffusis is alleg'd by * Supposfil. Br. Traverse per &c. pl. 109. cites 15 E. 4. 22. Per Catesby.

Writ is but a Supposital. Br. Traverse per &c. pl. 109. cites 15 E. 4. 22.

And if the Plaintiff in Trespafs
Quarrel claim'd from Finnum in S. called D. Freget &c.
there is the Defendant justifies in another Place, he ought to traverse the Trespafs in the Place in the Declaration; Per Sterkey. And so see a Diversity where Name is given in the Declaration, and where not. Br. Trespafs, pl. 369. cites 22 E. 4. 50.

S. C. cited in the Case of Lease 9.
Sibbille, Lev. 283.
Hill 21 & 22 Car. 2.
B. R. which was Trespafs for Chafing his Cattle, so that they died of the Chafing. The Defendant pleads, that the Place where &c. is holden of him by such Services, and he disfain'd those Beasts, and imputed them in a Pound overt; and that they died there of Hunger in Default of the Plaintiff, which is the same Trespafs. And it was thereupon demurr'd, and without Argument adjudged for the Plaintiff; for when the Plaintiff alleged that they died of the Chafing, and he pleads that they died of Hunger, that is not any Plea without a Traverse that they did not die of the Chafing. Cro. Eliz. 384. pl. 5. Patch. 37 Eliz. Hill v. Prideaux.

its quad they were dammified, and one of them died; the Defendant justifies Damage feoffant in his Frontement; the Plaintiff replied, and claimed Common in the Place where &c. the Defendant rejoins and justified by Endosnum, taking sufficient Common &c. And upon Demurrer it was inferred, that the Plea not answering to the Dying of one of the Sheep, was ill; for he ought to have travers'd the Chafing upon which he died. But it was answered, this coming only under the Its quad, is only to aggravate the Damages, and he needs not to traverse it. Keeling Ch. J. held the Bar good for this Reason, and the other held that it is cord'd at least by the Replication over; and Judgment was given for the Defendant. Lev. 283. Hill. 21 & 22 Car. 2. B. R. Leech v. Mutsgley. — Vent. 54. S. C. by the Name of Leech v. Widlley, adjudged. — — Raym. 185. Anon. S. C. adjudged.

8. In Trespafs of a Battery in London, the Defendant pleaded that the Plaintiff assailed him at D. in the County of S. and if he had any Harm, it was De fon Adiant Demesne, and in his own Defence, aboue box that he was guilty in London. Upon Demurrer it was adjudged no Plea, that both the Julicitation and Traverse were not good; for a Battery in his own
Trespasses.

own Defiance is not local; and therefore he may justify in any Place, and therefore he cannot plead it in another Place, and traverse the Place alleged. Cro. E. c. 832. pl. 21. Trin. 43 Eliz. C. B. Purser v. Hutchins.
9. Trespasses of Battery in such a Parish, and Ward in London. The Defendant justifies in the County of Cambridge, and arresting him there by Warrant from the sheriff there, and traverses the Battery in the Parish, and Ward in the County mentioned; and for this Cause it was demurred, and adjudged for the Plaintiff that the Traverse was ill to traverse the Place, but he ought to have traversed the County. Cro. Eliz. 866. pl. 31. Mich. 43 Eliz. in C. B. Johnson v. Burton & Shut.
10. In Trespasses Quere Oves &c. generally, the Defendant preferres for Evex, and says they were Oves matres. The Plaintiff replies that they were Oves currens; this is not good without a Traverse, abque hoc that they were Oves matrices; Per Richardson & Crook. Her. 29. Trin. 3 Car. 3. B. in Case of Johnst the """"
11. In Trespasses Vi & Arms of breaking his Close, and taking his Cattle, the Defendant as to the Force and Arms pleads Non. culp. and as to the rest justifies that the Cattle went in for Default of the Plaintiff's Fence. The Plaintiff replies that they came into the another's Fence. The Defendant demurs, because the Plaintiff does not assign where the Place of the other Close lies, and such the Cattle came. Plaintiff laid it is not necessary to shew where it lies; for they went not in where the Defendant has alleged, and so the Traverse is well taken. Defendant answered that here is a new Alignment, which answers not the Trespasses for which the Act is brought; and because it is a new Alignment, a new Answer must be given, and therefore Plaintiff must shew the Place where the new Alignment lies. Rolfe, Ch. J. laid he pleads no more but that the Cattle came in at another Place than is pleaded, and he needs not shew the Place. Judgment for the Plaintiff Null. Sty. 357. Mich. 1652. Baker v. Andrews.
12. In Trespasses for Entry, and Pulling down of Posts of a Filleury, the Defendant pleads he was Lord of a Manor, wherein was a River of Aven, in which he had a Filleury; and because the Plaintiff set up Posts there, he pulled them down; for which Cause the Plaintiff demurred, as amounting only to the general Issue, and so ill, unless there had been a Traverse, abque hoc that he pulled down the Posts in the Plaintiff's Filleury, to which the Court inclined. Judgment pro Plaintiff Null. 2 Keb. 57. pl. 23. Trin. 18 Car. 2. B. K. Hely v. Raymond.
13. When the Plaintiff in his Declaration has assign'd a Day of the Trespasses done, and the Defendant justifies the Trespasses upon the same Day, there the Defendant needs not traverse the Day, because the Day is agreed on both Sides. 2 Saund. 295. Hill. 22 & 23 Car. 2. Per Cur. in the Case of White v. Stubbs.
14. In Trespasses of breaking his Close, and carrying away his Goods, the Defendant pleads Not guilty to the breaking of the Close, and justified the taking of the Goods at a Time varying from that alleged in the Declaration, and concludes Que eit eadem transgresso; upon which it was demurred, because he did not traverse the Time before and after it; and it was adjudged for the Plaintiff. 1 Vent. 184. Hill. 23 & 24 Car. 2. in B. K. Smith v. Butterfield.
15. In Trespasses of taking his Goods, the Defendant justified by Recovery in an Inferior Court, and Execution thereupon by a Parti personis, Que eit eadem capito. And upon Demurrer it was objected that the taking was alleged on one Day, and the Defendant in his justification varying from that Day, ought to have travers'd any other taking, because the same Goods may be taken at several Times, and that the Que eit eadem is not sufficient. But it was laid per Curiam, he having averred that it was Eadem Capito, the Defendant was sufficient; and the Parties by Consent afterwards pleaded to Null. 2 Jo. 146. Pach. 33 Car. 2. B. K. Allen v. Chalmers.
Trespafts.

(F. b.) Traverfe. Good. In respect of the Thing.

1. The Use and Prescription of Common appurtenance was put in Issue in Trespafts, and yet this is in the Right, and the Action is in the Possession. Br. Prescription, pl. 89. cites 22 Alb. 63. and 30 Alb. 42. and 40 B. 3. 31. and 22 H. 6. 51. and 7 E. 4. 26. accordingly, and yet 46 E. 3. 10. he was put out of this Plea. Ibid.

2. In False Imprisonment, the Defendant justified to seifie the Plaintiff by Command of his Master, as Ward of the Lord of D. his Master, of whom the Father held in Civvy, and the Plaintiff was within Age, and retained him 6 Months, and then came one J. next Hie, who was repulsed into Scotland in the Life of his Father, by which the Defendant said it him; Judgment in tory &c. Finch said the Father held his Land of J. S. and not of the Master of the Defendant. And so De son tort Demesnie without such Cause, and was not suffer'd to traverse the Tenure, by which he said that De son tort Demesnie &c. Br. Faux Imprisonment, pl. 13. cites 22 Alb. 85.

3. Trespafts in one Acre of Land in D. The Defendant justified by Lease of the Plaintiff of the same Acre, where in Truth the Leffer had two Acres in the same Vill. And the Opinion was, that it was dangerous for the Plaintiff to say that he did not lease this Acre, tho' the Trespafts was done in the other Acre; but the bell Opinion was, that he shall be aided in this Form. viz. to say that he was seized of 2 Acres, and heeded the one, and the Defendant entered into it, and also into the other, and did the Trespafts, abjure but that he heeded the Acre in which the Trespafts is supper'd. Br. Trespafts, pl. 381. cites 9 H. 6. 64.

4. Trespafts against the Lord upon Tenure. The Plaintiff may traverse the Tenure, but in Accracy the Defin. Br. Trespafts, pl. 411. cites 10 H. 6. 3.

5. In Trespafts, the Defendant pleaded his Franktenement; the Plaintiff said that he was seized till by the Defendant defiered, by which he enter'd, and the Trespafts which &c. the Defendant said by Protestation, not concerning the Difference, for Plea said, that the Plaintiff did not re-enter; and the Opinion was, that it was a good Plea, and that the Regrets is traversible. Br. Trespafts, pl. 367. cites 22 E. 4. 21.

6. In Trespafts, if the Defendant pleads Satisfaction, this is only traversible; per Brian. Br. Traverse, &c. pl. 179. cites 4 H. 7. 9.

Brown v. Banks. Plaintiffs reply'd de Injuria juxta propriam abjure talis causa. The Plaintiff should not have traversed the Cause generally, but the Cause, but being only a Matter of Form, 'tis help'd by the Statute of Jeofails, for abjure talis causa contains the Custom and more. Hob. 76. pl. 97. Banks v. Parker.

(G. b.) Tra-
(G. b) Traverse of the Command. Good or necessary. In what Cases.

1. In Trespafs, if the Defendant justifies by Command of the Owner, the Command is transferable. Br. Traverse per &c. pl. 325. cites 14 H. 4. 32. 9 H. 6. 21 H. 6. 46. 22 H. 6. 34. 33 H. 6. 41. 42. 37 H. 6. 7. 13 H. 7. 13.

2. In Trespafs, if the Defendant says that the Ancestor of the Plaintiff held of J. N. by Service of Chivalry, and be by Command of J. took the Inventor Plaintiff as Warden; the Plaintiff shall not say that the Owner took the bad Service of the Warden, nor the Plaintiff shall not say that the Owner took the goods of the Warden, for the Plaintiff's taking the goods of the Warden was without the knowledge of the Owner.

3. In Trespafs of Barley, and a Horse taken; the Defendant alleged Property in a Stranger, and that the Plaintiff took them and the Defendant by the Command of the Stranger retook &c. and the other said, that the Defendant took the property when the Horse was not in the possession of the Stranger. Br. De fon tort &c. pl. 42. cites 14 H. 4. 32 & 33 H. 6. 41.

4. In Trespafs, the Defendant justified by Command of J. N. The Plaintiff said that the Defendant did not deme his Case, but De fon tort demene abique hoc, that J. N. commanded; by which the Plaintiff said accordingly, and so to Issue. Br. De fon tort &c. pl. 2. cites 15 H. 6. 41.

5. In Trespafs the Defendant said that the Franktement is J. N.'s, and be, by his Command, entered; the Plaintiff made Title by Lease of a Stranger, by which he was possessed till the Trespafs abique hoc, that the Defendant entered by Command of J. N. And a good Traverse per Cur. Br. Traverse per &c. pl. 197. cites 37 H. 6. 7.

6. In Trespafs, when the Command is the Effect of the Barre, it is transferable, and otherwise not. Br. Traverse per &c. pl. 222. cites 7 E. 4. 2. per Markham Ch. J.

7. In Trespafs for Graft cut, the Defendant justified as Servant of J. S. Heath's Max. and by his Command for using the Common of the said J. S. and the Plaintiff said that the Defendant put in his proper Beasts, whereof he brought his Action; and a good Plea without Traverse; for it may be that he put in the Beasts of J. S. and also his own Beasts, but the Defendant may say that he put in the Beasts of J. S. abique hoc, that he put in his proper Beasts; Perrot. Cur. Br. Traverse per &c. pl. 358. cites 11 H. 7. 8.

8. In Trespafs brought for Cargo taken &c. and the Defendant justified as Bailiff to J. S. and by his Command that he distrained them Damage-Fraffit; if the Owner did not Command him, he shall be a Trespifter. The same Law for a Diffrift or Rent Arrear, for the Command is transferable; Per Holt Ch. J. in delivering the Opinion of the Court. Ed. Raym. Rep. 329. 310. Hill. 9 Will. 3. in Cale of Briton v. Cole.
(H. b) Traverse of the Day or Time. Good or necessary.

In what Cases.

1. In False Imprisonment such a Day the Defendant justified another day by Commission to bear and determine Trespasses &c abique hoc that he took at another Day, and the other e contra. Br. Traverse per &c. pl. 115. cites 24 E. 3. 3.

2. Trespa's of Beasfs of the Place taken the first day of May; the Defendant justified at another day for Services due, and that there were no other Beasfs there, and traversed the day; and ill, for he ought to traverse the Time of the taking only, and not the Day. Br. Traverse per &c. pl. 312. cites 33 E. 3. and Fitzh. Brief 915.

3. Trespass of Battery of his Servant the 11 Day of May; the Jury found the Battery another day; upon Not guilty pleaded, the Plaintiff recover'd. And to the day not traversable. Br. Trespas, pl. 191. cites 39 E. 3. 1.

4. Trespa's by a Bishop; the Defendant swore certain medlyng by him at the Time when the Temporalities were in the Hands of the Archbishop of Canterbury, abique hoc, that he did any such Afft after that the Temporalities came to the Hands of the Plaintiff, and the Plaintiff maintain'd as here, prit; and yet the Answerer amounts only to the General Issue, as it seems, Br. Trespa's, pl. 194. cites 39 E. 3. 19.

5. In Trespa's of Assault the Monday, where in Truth it was the Saturday, and he pleaded Not guilty Mudo & Forma, and the Jury finds the Truth, the Plaintiff shall recover; and therefore the Defendant said, that such another Day the Plaintiff made an Assault upon him, and the Ill which he had was De non Assault deponens, and in his Defence, abique hoc that he was Guilty before or after the same Day that he justified; and to this he was compell'd by the Court, quod nota. Br. Traverse per &c. pl. 75. cites 19 H. 6. 37.

6. In Trespa's of Assault and Battery the 10th Day of August Anno 17. H 6. the Defendant justified De non Assault deponens the 14 Day of Jan. Anno 18 H. 6. Abique hoc that he is Guilty the 10 Day of Aug. Anno 17. &c. And per Newton and Paffon clearly, he ought to traverse abique hoc that he is Guilty before or after the said 14 Day of Jan. for if he he found Guilty any other Day he shall be condemned; and Markham would not traverse so, by which Yelverton demurred. Br. Traverse per &c. pl. 16. cites 20 H 6. 14. 15.

7. Trespa's of taking his Cow; the Defendant justified because the Property was to H. R. who fold it to him at S. in the County of C. &c. The Plaintiff said, that the sale to the Defendant was the third Day of October Anno 22. and before this, that is to say the 4 Day of August, in the Year aforesaid, the said H. R. fold it to the Plaintiff at C. in the County of N. And the other said, that he fold it to him abique hoc, that he fold it to the Plaintiff before that he fold to the Defendant, and fo to Iliue; for Portington would not traverse the Day but the Time. Br. Traverse per &c. pl. 94. cites 21 H. 6. 41.

8. In Trespa's the Defendant justifies the taking of Beasfs by Precept of Wythernam to him directed such a Day before Wythernam; the other said De non demone abique hoc, that he had Precept to him directed before Wythernam, whereas the day that the Plaintiff counted was the Monday before
Trespafs.

fore H. *Hirmitzide Anno 19 H. 6. Prift. Danby said he took the Beasts of the Plaintiff by Force of the Warrant before the said Fees; Prift; Et he ad Patriam. Br. Traverlie per &c. pl. 163. cites 22 H. 6. 36.

9. Trespafs. The Defendant justified, before at another day after, the Place where &c was the Soil and Frankrenement of T. N. who fled to him for 10 Years &c. and as to any Trespafs before Not guilty. And in Trespafs Annno the 18. the Defendant justified by Defendant from his Father the 19. and to any Trespafs before Not guilty. Br. Trespafs, pl. 160. cites 22 H. 6. 49.

10. In Trespafs, the Defendant pleaded Award made at W. in the County of M. to pay 10 s. which he has paid ; the Plaintiff said that before this the Arbitrators awarded him to pay 10 s. and a Horse at D. in the County of C. and he has paid the Horse; the Defendant answered his Bar adverse be that they did Award in the County of C. pront &c. before the Award made at W. Prift. and the others e contra; and so note the County and the Time traversed. Br. Traverlie per &c. pl. 107. cites 22 H. 6. 52.

11. In Trespafs, note, always where a Man traverses the Time, it is As in Trespafs, note, always where a Man traverses the Time, it is As in Trespafs, note, always where a Man traverses the Time, it is. Br. Traverlie per &c. pl. 165. cites 39 H. 6. * 45. * Misprinted in all the Editions, and should be 44. pl. 7.

12. Trespafs upon 5 R. 2 by A. against B. The Defendant said that before the Entry J. N. was seized and forfeited the Defendant, and gave Co- lour &c. The Plaintiff said that before J. N. any Thing had, be himself was seized in Fee till by B. diffused, who forfeited the said J. N. who in- feudal the Defendant, upon whom be entered and was seized till the Trespafs. Littleton said a long Time before the Plaintiff any Thing had B. was seized and forfeited J. N. So in feudal the Defendant, and the Plaintiff claiming as above, entered and was seized till B. entered upon and diffused him, abique hoc that B. diffused the Plaintiff before the Seizure made by B. to the said J. N. Prift &c. and the others e contra; a good Issue per ton Cur. Brook says he wonders that the Time was traversed as here; for he says it seems that the Diffusia only shall be traversed. Br. Traverlie per &c. pl. 264. cites 1 E. 4. 6.—And that it was said for Law in C. B. 6 E. 6. per Hale Justice and others, and that this Book is not Law. Ibid.

13. In False Imprisonment, the Defendant justified at another Day after, abique hoc that he was guilty before &c. And there per Danby, the Plaintiff ought to reply that guilty the Day in the Declaration, prift &c. and yet if he be found guilty any Day that the Defendant has not justified, the Plaintiff shall not recover; but the Plaintiff cannot reply that guilty modo & Forma pront &c. for this goes as well to the Day that the Defendant has justified, as to other Days, which is ill; quod Danby concealit. Br. Re- plication, pl. 40. cites 5 E. 4. 5.

14. Trespafs of Alias the 1st of July, Anno 2 R. 3. Defendant said that per se, viz. 4 the January in the same Year, the Plaintiff made an Al- ias upon the Defendant, and be best him in his Defence, abique hoc that he was guilty before or after the said 4th Day of January. The Plaintiff said that Def for tort done in abique talia causa; and it was said that the Plaintiff ought to reply that guilty modo & Forma &c. But he may give other Day in Evidence. Brook makes a Quare and says Motus; be- cause the Day only is now in Issue. Br. General Issue, pl. 92. cites 2 R. 3. 11. Say sup fed that the Defendant was guilty after, and the Issue was joined upon the Release; Quod mirum est by the Reporter; Scire Legem; for it is only a Note. Ibid.

15. False
15. False Imprisonment. The Plaintiff supposed the Trefpafs and False Imprisonment to be 10 December 29 Eliz. The Defendant pleads that he by a Warrant of the Sheriff &c. did arrest and imprison him 2 & 3d Die Decemb. before, abIQUE hoc that he was guilty before or after &c. The Plaintiff replied he was guilty &c. after the 3d Day of Decemb. prout in Narratone tua specificatur; it was found for the Plaintiff. It was moved that the Hoc was not well join'd; for it is that he was guilty &c. after the 3d Day &c. but says not, and before the Action brought. But it was ruled to be well join'd; for when it is said he was guilty after the 3d Day &c. prout &c. it is to be intended between the 3d Day and the Day of which he counted. And the Plaintiff had Judgment. Cro. E. 93. pl. 6. Pach. 30 Eliz. B. R. Richardson v. Pricket.

So in Trefpafs for taking into Hands in Suffer 10 Jan. 15 Car. 2 The Defendant justifi'd for Sale there as in a Case by Precept at G. in Kent, on Sept. 14. 53. Cur. 2. Soc. que ef eodem Transgrello. And upon Demurrer this was held a good Plea by 3 Judges.

2. The Defendant justifi'd for Sale there as in a Case by Precept at G. in Kent, on Sept. 14. 53. Cur. 2. Soc. que ef eodem Transgrello. And upon Demurrer this was held a good Plea by 3 Judges.

16. Trefpafs was alleged to be done 7 Mins. The Defendant justified on the 10th of May, and concluded his Plea thus, Que ef eadem Transgrello. And upon Demurrer this was held a good Plea by 3 Judges.

2. The Defendant justifi'd for Sale there as in a Case by Precept at G. in Kent, on Sept. 14. 53. Cur. 2. Soc. que ef eodem Transgrello. And upon Demurrer this was held a good Plea by 3 Judges.

17. Trefpafs for entering his Close and taking his Goods 9 Oct. 20 Car. 2. the Defendant pleaded that R. was felled in Fee, and 23 July 20 Car. 2. densified the Place where to the Defendant, and that he 16 July densified to the Plaintiff for a Quarter of a Year, which ended 16 October 20 Car. 2. and because the Goods were there after the Quarter of a Year ended, he took them Damage feasant, abique hoc that he took them 9 October, or on any Time within the Quarter of the Year. The Plaintiff replied De injuria sua propria abique talia causa; upon which the Defendant demurred. It and was resolv'd that the Replication De injuria &c. abique talia causa was ill; for it may be that he took them before the Quarter of the Year, and before the Demise to the Defendant by R. by which Judgment was given for the Plaintiff. And it seems that the Trefpafs ought to be Abique hoc that the 9th October, or any Time before the 23d July, or during the Quarter of the Year &c. Lev. 327. Hill. 22 & 23 Car. 2. B. R. White v. Stubbs.

18. In Trefpafs the Defendant justified by a Precept out of a Hundred Court, and traversed that he was guilty before the Delivery of the Precept, or after the Return. And upon Demurrer it was objected, that this Trefpafs is not good; 3 it should have been before the Trefe, or after the Return of the Precept; Sed non allocatur; for if the Trefpafs is too narrow, 'tis to the Prejudice of the Defendant, and not of the Plaintiff. 2 Lev. 81. Hill. 24 & 25 Car. 2. B. R. Doe v. Parmiter.


20. In Trefpafs, Affluat, and Battery, the Defendant pleaded a General Release of all Mates &c. from the Beginning of the World, &c. at the time of the said Release. And it happened, that the Battery was done upon that very Day in which the Release was dated; so that it was held that this Action was not discharged, for the Release did not include that Day. The Defendant should have traversed all &c. after the Day of the
Trespass.

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the Date of the Release. 4 Mod. 182. Patch. 5 W. & M. in B. R. Dixon v. Terry.

21. In Trespass laid to be done 1st of August, the Defendant justifies for Right of Common after the Corn is cut, and that after it was cut he put in his Cattle, abique hoc quod est culpabilis alter vel alter modo. And upon a Demurrer to this Plea it was adjudged ill, because it did not answer the Trespass done 1 August, it being no Reference to that Time. 3 Salk. 357. pl. 14. Patch. 9 Will. 3. Anon.

22. In Trespass of Battery and False Imprisonment, the Defendant justifies under a Capias, teste the 27 Ian. and returnable 10th of April following, and says, that by Virtue thereof he took the Plaintiff the 9th of March, and discharged him the 10th; abique hoc, that they were guilty at any Time before the Trespass, and after the Return of the Writ; so that there is a Time not traversed, in which the Defendants may be guilty, notwithstanding anything that appears to the contrary, viz. between the 10th of March, which was the Day of the Difcharge of the Plaintiff, and the 10th of April, which was the Return-Day of the Writ. And they cited Carter 84. * Atkins v. Cleaver. And of this Opinion was the whole Court.

**Ld. Raym. 231. Trin. 9 W. 3. in Case of Truscott v. Carpenter and Man.**

(I. b) Traverfe of the Place necessary in what Cafes.

1. In Trespass of Battery at B. the Defendant said, that the Plaintiff the same Day assaulted him at S. and the Ill which he had was De jure Ac- scientiae, and in his Defence, abique hoc, that he assaulted him at B.

And the Plaintiff said, that De jure torti deminuere, without such Cause; and well, per Cur. without maintaining the Place, because B. and S. were in one and the same County, and the Trespass transitory. Br. Traverfe per &c. pl. 38. cites 43 E. 3. 29.

2. Contra where the Place was in another County, or if it was of Tres- Heaths' pes local; per Cur. in the Absence of Thorp. But some of the Perions presente said, that he ought to have maintain'd his Writ. Br. Traverfe per &c. pl. 38. cites 43 E. 3. 29.

3. In Trespass in Middlesex, of Goods carried away, the Defendant justifies the Taking in London, by reason of a Gift; and no Plea, without traversing the taking in Middlesex. Br. Traverfe per &c. pl. 47. cites 11 H. 4. 3.


4. In Trespass of cutting Reeds in D. it is no Plea, that the Place B. Traverfe, where &c. is in S. and not in D. but may justify in another Place by pl. 105. cites special Matter, abique hoc that he is guilty in D. Br. Traverfe per &c. pl. 55. cites 9 H. 5. 9.

5. In Trespass Local in D. the Defendant justifies in S. in the same Trespass County, and to the Trespass in D. Not Guilty; and well; for he ought to traverse in Trespass local, Contra in Trespass transitory. Br. Traverfe per &c. pl. 291. cites 14 H. 6. 21.———1———8 H. 6. 36.

we make little, nor is it traversable, no more than in Trespass upon the Case of an Allomost, and the Case may be continued. Contrs. of Trespass local, as Trees cut, and Grain made. Note the Diversity. Br. Traverfe per &c. pl. 233. cites M. 2. M 1.

* This Case was Mich.

38 Car. 2. in G. R. but adjourned. Curt. 86.
Trespass.

Trespass of Assault and Battery in London. The Defendant justified in the County of N. by a Warrant from the Sheriff of N. upon a Layman, Quaestor eodem Tranfgrellio, abique hoc that he was guilty in London, or else where extra Coram N. But it was denied because to justify, and alfo Trespass. But the Court held it well enough, because it ratified being in another County, the County where the Action is brought ought to be transferred, and the Plaintiff may maintain the Action and Illue if he will, or traverse the Plea at his Election. Cro. J. 32, p. 1. Trin. 13. Jac. B. R. Bateham v. Woodcock.---Roll Rep. 251, pl. 20. S. C. adj. accordingly, tho' it was objected, that the Plea is double; for the justification in N. Quaestor eodem Tranfgrellio, had been justified without more, and then the Trespass makes it double, and said he had a Report in Point adjudged accordingly. But the Court told him, that he could not take Advantage of this upon a General Demurrer.

6. In Trespass again? J. N. of F. it is no Plea, that he was dwelling at B. the Day of the Writ, unless he says and not at F. Quod nota. For the Negative makes the Illue. Br. Traverse per &c. pl. 67. cites 19 H. 6. 1.

7. Bill of Defects, for that the Defendant, Deputy of the Sheriff of B. imbusfill'd a Writ of Habeas Corpus in the County of Middlesex, and brought the Bill in Middlesex. The Defendant said, that the High Sheriff of B. by J. N. his Under-Sheriff, commanded him at B. in the said County of B. to retain it after the Delivery, and before the Subftration, and not to return it, by which he retain'd it, which is the same Subftration &c. And by the bell Opinion, because he said, that it is the same Subftration, which is in another County, and does not traverse the Subftration in Middlesex all'd in the Bill, it is no Plea. Br. Traverse per &c. pl. 71. cites 19 H. 6. 50. 71.

8. So of False Imprisonment in Middlesex, and the Defendant justifies in Essex, he ought to traverse in Middlesex; Per Markham. Br. Traverse per &c. pl. 71. cites 19 H. 6. 50. 71.

9. Trespass of Battery and Imprisonment at W. the Defendant justified at S. because the Defendant would have robbed at S. abique hoc, that he imprisoned him at W. And the Abique hoc was outl'd for he may justify by this Matter in any Place in this County. Br. Traverse per &c. pl. 127. cites 9 E. 4. 26. Trespass of Battery in C. the Defendant may justify in B. if it be in the same County, without saying that the Assail continued, and without traversing the Assault in C. Quod nota, which the Court granted. Br. Traverse per &c. pl. 287. cites 35 H. 6. 50. 51.


11. Trespass of cutting and carrying away in C. the Defendant justified in B. And because he does not answer to the Trespass, Judgment was given for the Plaintiff; for he ought to have traversed Abique hoc, that he is guilty in C. But otherwise it is in Trespass of Battery. 2 Roll Rep. 495. Hill. 22 Jac. B. R. Oxford (Bp.) v. Adams.

(K. b) Traverse of the Place. Good or not.

1. In Trespass of Screes taken, the Defendant justified for Titles, and the other the like, both as Passions of 2 Parishes; and the Illue was, if the Place was in one Parish or the other. Br. Traverse per &c. pl. 340. cites 50 E. 3. 20.

2. In Trespass of Goods taken, the Defendant said that before the Plaintiff any Thing bad, J. S. was possess'd &c. and build'd to W. N. in another Place in the same County, who made the Defendant his Executor, and died, and the Defendant failed them as Executor in another Place in the same County which the Defendant did not count of, and the Plaintiff took them, and the Defendant

Heath's Max. 108. cap. 5. cites S. C.
Defendant re-tok them, abojte hoc that he took them in the Place where the Plaintiff count'd; Per Babb. Jul. This is no Plea, where the * whole is in one and the same County. Contra if it was in diuere County; for then you shall have the Traverle, by which he omitted the Traverle. Br. Traverle per &c. pl. 62. cites 7 H. 6. 35.

3. Treipafs in D. in the County of Derby. The Defendants justified in T. in the County of Nottingham, abojte hoc that they are guilty in D. Mole & Forma. And per Cur. Nothing was entered but Not guilty; for he cannot justify in another County, abojte hoc that he is guilty in the County named in the Writ; for in Treipafs in D. upon Not guilty, the Jury may find him guilty in another Tiff in the same County, but not in another County; for this is a void Verdict. Br. Treipafs, pl. 19. cites 9 H. 6. 62.

4. Treipafs upon the Caffe, for that the Defendant sold to him certain Wood at N. for 20L and fhew'd a Portion of that which was good and merchantable, and warrantted the rest to be as well marked as the Portion was, whereas the Remnant was defective, to the Damage of 20L. Newton said he told him certain Wood at B. and warrantted this Wood good and merchantable, that is to fay for such a Sum and fo many. * Parcels as the Plaintiff had declared, which was good and merchantable, abojte hoc that he sold to him at N. prout &c. and a good Plea per tot Cur. Br. Br. Traverle per &c. pl. 150. cites 14 H. 6. 22.

5. Treipafs of Imprisfonment and Battery at B. in the County of H. [till] he made Fine. Yelverton said Aetio non; for as to the Vi. & Armis Affiftant and (Parcels.) Battery Not guilty, and to the Imprisfonment that he fued Attachment against the Plaintiff, directed to the Sheriff of London to arreft the Plaintiff, returnable such a Day, to answer him of a Treipafs &c. by which A. B. Munfer of the Sheriff at B. in the Word of B. in London, by Virtue of the Attachement arrefted the Plaintiff, and carried him to the Compters, and the Defendant came in Aid of him, abojte hoc that he is guilty of the Imprisfonment at B. Mole & Forma, and to the Fine pleaded Not guilty. Markham said Guilty at D. in the County of H. prift &c. and the others e contra. Quere of this Traverle; for it feems that it ought to be Abijc hoc that he is guilty in the County of H. Br. Traverle per &c. pl. 73. cites 19 H. 6. 35.

6. In Treipafs of Goods taken at E. Forefacle pleaded Aetio non; for before the taking the Plaintiff himfelf deliver'd the Goods to the Defendant at C. in the County of Middlefex, to deliver to S. N. which he has done, abojte hoc that he is guilty of the taking at E. & hoc &c. and demanded Judgment of Aetio; and upon Argument it was held a good Plea per tot Cur. Br. Br. Traverle per &c. pl. 74. cites 19 H. 6. 43.

7. Treipafs of Goods taken at E. in the County of York. Forefacle said the Plaintiff baid to us the fame Goods at N. in the County of Middlefex to buy to J. S. &c. abojte hoc that he is guilty at E. in the County of York, prift &c. and the Opinion of the Court was, that it is a good Plea. Brook fays, Quere if he shall not traverle the Taking in the County of York; for the Place certein is not much to the Purpofe. Br. Br. Traverle per &c. pl. 75. cites 19 H. 6. 43.

In the County of Middlefex, abojte hoc that he is guilty in the County of E. and not at B. in the County of E. and good, and the other e contra; quod nota, the County traverle, and not the Place, for if he be be guilty at Any Place in this County, it is Sufficient for the Plaintiff. Br. Br. Traverle per &c. pl. 55. cites 21 H. 6. 9. — Heath's Max. 108. cites S. C. — Br. Br. Traverle, pl. 207. cites S. C.

So in Treipafs of, omis his Caffes at D. in the County of D. the Defendant justified at S. in the County of S. abojte hoc that he is guilty at D. in the County of D. Eftion Allocatur; for by the Opinion of the Court he ought to traverle the Treipafs in the County of D. and not the Place; by which he did accordingly, and good Plea per Cur. Quod nota. Br. Br. Traverle per &c. pl. 152. cites 22 H. 6. 75.

In Treipafs the Plaintiff declared on a Battery at D. in the County of Middlefex, the Defendant pleaded Sum Affiftant at S. in the County of G. abojte hoc that he was guilty at D. in the County of Middlefex, upon Demurrer it was infull'd that the Traverle was not good, and put a Difference between Jufification local and tranfary. And it was adjuged after many Motions, that the County was not traverleable, and fo
Trefpafs.

8. Trefpafs in A. in the County of B. the Defendant justified by Precept of the Sheriff &c. at S. in another County, abique hoc that he is guilty in the County of B. and the other said that guilty at B. prift, and to this he was received; and yet if he be found guilty in any Place in the County of B. the Plaintiff shall recover, notwithstanding the Rejoinder in B. but it seems that he shall pay. Guilty in the County of B. prout &c but quare inde. Br. Traverfe per &c. pl. 79. cites 19 H. 6. 37.

9. Trefpafs of a Close broken, and Battery at N. The Defendant to the Close broken justified in C. abique hoc that he is guilty in N. and well, because it is all in one and the same County; for otherwise it seems that he shall say Not guilty, if it was in another County, as in 9 H. 6. and to the Battery be justified in C. abique hoc that he is guilty in N. and the Traverfe was oulled, because it was a Trefpafs transitory. Br. Traverfe per &c. pl. 90. cites 21 H. 6. 26.

10. Where the Defendant in Trefpafs of Corn intitles himself to the Tythes sever'd &c. as Parfou of A. alleging that all the Vill of B. is in the Parish of A. and that those Tythes grew in B. and the Plaintiff intitles himself by Sale of the Tythes by the Parfou of O. for 7 Years, and that they grew in a Place called P. in B. Abique hoc that all the Vill of B. is in the Parish of A. this is a good Traverfe by Award. Br. Traverfe per &c. pl. 95. cites 21 H. 6. 43.

11. In Trefpafs of Affault to his Servants at B. it is held a good Plea that the Servants were cutting the Grafs of the Defendant at C. by which he prohibited them, and laid his Hands upon them and commanded them to go out of his Land, abique hoc that he assaulted them at B. And yet Contra 'tis said, where the Defendant justifies by the Affault mad by the Plaintiff himself to the Defendant. Note the Diversity; for in the first Case the Justification arises by Reafou of the Soil, Contra in the second Cafe, and therefore in the one Cafe the Place is traverfable, and in the other not. Br. Traverfe per &c. pl. 17. cites 27 H. 6. 9.

12. In Trefpafs of Beans wrongfully taken in D. The Defendant said that he was seized of 2 Acres in S. and found them there Damage Foefants, and he took them there, abique hoc that he is Guilty in D. And a good Plea without traverfing all the County, otherwise it is of things which may be continued, as Battery or Goods carried away. Br. Traverfe per &c. pl. 306. cites 11 E. 4. 9.

13. Trefpafs of Goods taken at D. in the County of Middlesex, Defendant pleaded that before the Trefpafs suppofed J. S. was poffiff'd thereof, and baid'd them to the Plaintiff in the County of E. for safe Keeping there, and after J. S. commanded the Defendant to take the Goods of the Plaintiff in the County of E. by which he took them at N. in the County of E. and delivered them to the said J. S. abique hoc that he took them at D. in the County of Middlesex; and because his Warrant was to take them in the County of E. therefore a good Plea for the Los of his Evidence, and shall not be compell'd to take the General Issue. Br. Traverfe per &c. pl. 278. cites 22 E. 4. 39.

14. In Battery &c. the Afections was laid in London, when in Truth it was done at Ubridge; the Defendant pleaded that on such a Day and Year the Plaintiff at A. in the County of H. made an Affault upon him. and the Harm &c. abique hoc that he is guilty in London. The whole Court held it a good Plea. Goldsb. 2. pl. 5. Pach. 28 Eliz. Webler v. Paine.

15. Replevin. The Defendant aves the taking in Wb. Acre Damage feants! The Plaintiff replies that they were taken in Bl. Acre, abique hoc that they were Damage foent in Wb. Acre; and it was thereupon demur'd. The Court without Argument ruled it to be an ill Traverfe; for he ought to have travers'd the Place of the Taking, and not that they were
were Damage lesseants; and adjudged for the Avouant. Cro. E. 372. pl. 11. Hill. 37 Eliz. B. R. Watts v. Hagden.

16. In Trespass for killing his Dog at E. the Defendant justified in D. within the same County as Warren there, and that the Dog was killing of Cows as he had done before, abique hoc &c. that he is guilty apud E. prout &c. And it was thereupon demurr'd, because he traverses the Place only &c. and does not traverses all other Places. But all the Court held that the Traverse was good when his Cause of Justification is Local, and that he needed not allege any more than that Place. Wherefore it accordingly was adjudg'd for the Defendant. Cro. J. 445. 45. pl. 13. Mich. 2 Jac. B. R. Wadham v. Damme.

17. Trespass of False Imprisonment at C. The Defendant justified as a Bulif. 326. Steward of the Court of the Stannaries at A. by Proces of the Court there; abique hoc, that he was guilty at any Place extra Jurisdiction Currer Stannarie; but neither justifies or traverses the Imprisonment alleged at C. which might be within the Jurisdiction, and was not answer'd to; and therefore Judgment was given against the Defendant for Default in the Plea. 264. pl. 15; because the Traverse was not large enough. 2 Laww. 1563. in the Appendix, in the Argument of Sir John Powell in the Case of Suffolk v. Horn-Hill, cites 1 Roll Rep. 264. Lilly v. Sleoly.

18. Trespass of breaking his Close, and digging his Soil. The Defendant pleads, that the Place where is 2 Acres call'd Bl. Acre, which is his Freehold, and so justifies. The Plaintiff replies, that the Place call'd Bl. Acre is His Freehold, abique loc, that it is the Freehold of the Defendant. The Defendant demurr'd, because it is but a common or blank Bar, and is only to inform the Plaintiff to adjourn his Trespass in a Place certain, the Declaration being general, and to the Bar not traversable; and of that Opinion were Doderidge and Chamberlain. But Houghton e contra, and the Plaintiff may adjourn a new Place, or traverse this Bar at his Election; per quod adjournatur. Cro. J. 594. pl. 16. Mich. 18 Jac. B. R. Rickman v. Cox.

19. In Trespaes for breaking and entring his Close call'd Horn-Hill in the 2 Laww. Parish of R. and chafing, taking, and impounding his Sheep there found &c. The Defendant as to all, besides the Chafing, Taking, and Impounding places Not Guilty; and as to that, he justifies that he was seiz'd in Fee of a S. C. with Close call'd Orchards in R. and took the Sheep there Damage found &c. the Excep- tions and Observations and Answer-notes, and some Observations demurr'd specially, and adjurg'd for him because the Traverse is ill, it being of Matter not alleg'd; for the Plaintiff does not say that the De of the Re- peatant took the Sheep in the Close call'd Horn-Hill, but says (Ibidem inventas) which (Ibidem) refers to the Parish, and not to the Close; it serves any beacuse Horn-Hill was the Plaintiff's Soil, fo that the Defendant could shew by not impounding the Plaintiff's Sheep in the Plaintiff's Soil. 26ly, Ibidem is the Court always refer'd to the Vill, that the Venue may come from thence, which cannot come out of a Close. But the Court thought this an idle Traverse, and would have been Surplice on a General Demurrer; but being upon a Special Demurrer, it vitiates the Plea. Ld. Raym. Rep. 121. Mich. 8 W. 3. Nevil v. Packman.

(L. b) Trespafs,
(L. b) Trespass. Prohibited or punished by Statute.

1. 43 Eliz. Enactts, That if any lewd Person shall cut, or unlawfully take cap. 7. away any Corn or Grain growing or rob any Orchards or Gardens, or break or cut any Hedge, Pales, Rails, or Fence, or dig or pull up, or take up any Fruit-Tree or Trees in any Orchard, Garden, or elsewhere, to the intent to take and carry away the same, or shall cut or strip any Woods or Underwoods, Pales or Trees standing (not being Felons) such Offenders, their Procurers or Receivers, knowing the same, being convicted by Confession, or one Witness, before one Justice of Peace, Mayor, or other Head Officer, shall make such Satisfaction to the Party, and within such Time as such Justice or Head Officer shall appoint; and if such Offender shall not be thought able or sufficient to make Satisfaction as aforesaid, then the said Justice shall commit the Offender to the Constable to be whipped; and for every future Offence shall also receive the same Punishment of Whipping.

And if any Constable do refuse, by himself or some other, to execute the said Punishment, he shall be committed to the Common Goal until the said Offender be punished as aforesaid.

Provided that no Justice of Peace do execute this Statute for any Offence done to himself, unless he be associated with one or more Justice of Peace not concerned in the Matter.

2. 21 Jac. 1. cap. 16. Enactts, that in Costs of involuntary Trespass Tender of amends may be pleaded in Bar. See Tender (S) and the Notes there.

As to what Punishments shall be inflicted, and what Costs and Damages shall be recovered in Prosecutions and Actions of Trespass, see Tit. Damages and Costs, Tit. Game (A), and Tit. Woods.

For more of Trespass in General, See Actions, Common Dilectts, Nuinance, and other proper Titles.