Things Real.

Things, as that word is used in the law, are the subjects of property; or the subjects in which an interest or estate, can be enjoyed.

Things are divided into two classes, Real and Personal—things that are always either Real or Personal.

Things Real are such as are permanent, fixed and immovable, as Lands or Tenements. And all other things or subjects of property, are personal in this nature, as money goods, &c. chattels, being of the latter. 2 B. C. 16 384. 1 T. L. 118. 2 D. 269. 44.

Things Real are said to consist of Lands, tenements & hereditaments. The term Lands, includes in the steps all things of a permanent or substantial nature.

Tenement is somewhat of a greater extent. In its legal sense, it limits every thing of a permanent nature, corporeal or incorporeal. Lands is always corporeal; Tenement includes lands, therefore it is of greater extent. Not only lands, but incorporeal rights, as rents to, and tenements, but these latter never free under the denomination of land. 1 B. C. 6. 17. 28. 2 B. C. 17.

The word Hereditament is still more general in its signification, for it includes not only lands & tenements, but also whatever may be inherited. Even the thing inhereed in is not in its original nature Real, neither Land nor Tenement. The word Hereditament, thus includes all things whether real or personal, whether corporeal or incorporeal, or mixed, which may be inherited. However, their form is a hereditament. It is not lands, because it is not permanent; it is a personal chattel, which by custom is descendible; therefore it is a hereditament, the neither Land nor Tenament. 2 B. C. 269. 44.

All these words real, lands, tenements, hereditaments, are descriptive of the subject, in which an interest may be had, but not of the quantity of estate, which may be enjoyed. Thus if a conveyance,
Things of Real.

To 3. under the name of Hereditament, it does not follow of course that a particular estate is conveyed.

Hereditaments there are of two kinds. Corporal and Incorpo-
real. A Corporal Hereditament consists of some substantial or uman.
ent object; as these may however be included under the term
land; for the word lands, used in the law, comprehends not
ly any grounds, soil or earth, but also waters and buildings upon
ale beneath it. Inst. 2, B. 2, C. 7, p. 5, 10.

An action lies never to recover a piece of
water or water courses, but where one wishes to recover the use of wa-
ter, he must sue for the land covered with water, because in
water one can have but a transient usufructuary property.

Land, also, in its legal signification, has an indefinite ex-
tent upwards & downwards. Hence if A builds a house so as to
overhang B's land, B may have an action for the nuisance, but
it does not touch his land at all. Sedem.

And for the same reason a conveyance of land conveys all
the minerals & fossils contained in it, as well as the water & water
so it. Sedem.

There particular subjects however viz. wood, buildings, min-
erals etc may be conveyed by their own proper names. E.g. if A con-
his house I not put the lands on which it stands. But this can't be true
as to water; the grantee in a conveyance of water will receive
ly a right of fishing. The reason is that the property in water is trans-
continually changing. Inst. 2, B. 2, C. 18, 19.

An Incorporeal hereditament is a right hence out of an
need to, or concerning, or exercisable without a thing corporate.
Thus if A has a right of common on the land of B, it is an incor-
poral hereditament for by the supposition he does not own the
land. So of a right of way, rent & the similar out of a thing corporate.
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For the different heads of Incroft & Easements see 2 Poth. 21, 22.

I have no marks to make, as it seems, or two of these heads (belong to a right of Common). This is a right which one has to a benefit in or upon the land of another. Thus if A has a right to depart his beasts upon the land of B, he has a right of Common: but he has no interest in the land at all. So if he has a right to fish in another men's ponds, it is a right of Common, as he has no interest in the land. This is called Common of Fishery. 2 Poth. 32.

As to Common of Fishery, the rules in case of a navigable river, are not navigable is different. As to navigable river, the way is, that there is the right of soil or bed of the river, to Prima Facie to the King or the State. But for fishing it is Common to all the subjects. In a river not navigable, the right of soil or bed of the river and fishing is exclusively to the adjoining proprietors. If there be two persons one bounded by a river, not navigable, the right of each extends to the centre of the river.-2 Cub. 276. 4 T.R. 437. 2 B. R. 472.

So observed in case of Navigable rivers, because of the sea, that the soil is in the King or State. But this right of soil or fishing may be granted to an individual. Thus for instance, that it is not necessarily in the King or but may be a subject of grant to an individual. 3 Co. 10, 328. Vartanov, Tract 12, 100, 105. 3 Poth. 325. 4 T.R. 437.

The same distinctions as given in case of navigable rivers apply to the land shore, as between these two marks of Prima Facie in the King. The right of fishing is in the subject, but may both be granted to individuals. 2 B. R. 472. 5 Co. 387. This point settled in our English law in the case of 2 Poth. 437.
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But when a grant of land is made to an individual, bounded by the sea, it extends to low water mark. The rule is the same as to a navigable River, or arm of the sea. The consequence is of the king granting a tract of land bounded by the sea, it extends to low water mark, but the exclusive right of fishing estuaries common to the subjects, and this right extends also to _their_ fish; the lands between high and low water marks may be dug for that purpose.

Of Estates in Sands, Tenements and Freeholds.

An estate in sands is the interest which the tenant has in them. Thus if one conveys also his estate in the parish of A to B, this being his party with all the interest, he has in that parish, 1st. 3 rd. 2 B.C. 103. 1712. 61 m. 411.

The word Estate however, is sometimes used to signify the subject, in which there is an interest; the original is it signifies the interest itself. Thus if A conveys also his estate to B for his natural life, it signifies his object is not to convey his whole interest, for he has himself a free in the sands; if he does not convey one thing more than a life estate to B, the same. The word Estate here means the same as lands. 1st. 3 rd. 2 B.C. 103. 1712. 61 m. 411. 3 994. 132 414.

The quantity of interests which a tenant has in its sands, tenements and freeholds is measured by the duration of that interest. As soon as it is that the property division of estates is into Freeholds and Freeholds holds. This division is founded on the duration, the local state of the subject does not determine the quantity of interest, therefore an estate in a free of a quarter of an acre of land, is a greater estate than a life estate of an infinite number of acres. 2 B.C. 103 3 rd. 104.

A Freehold estate is one, to the possession whereof, liberty of devise is necessary. In every script which where the interest is incorporeal, incorporeal burdens cannot be determined by liberty of devise, for corporeal possessions cannot be given of and
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incorporate subject. But the rule holds with regard to corporeal
encroachments. This is the true daily criterion, which decides the
question. Whether an estate is a freehold or not, if liberty of intercourse is necessary,
it is freehold, otherwise it is not. See text 559. 1 B.C. & 1 Exh.

Estates of Freehold again, are either Estates of Inheritance or not.
Of Inheritance, the former are again divided into inheritance abso-
lute or limited.

I am next to treat

Of Freehold Estates of Inheritance.

These Estates are either absolute or limited. An absolute Estate
of Inheritance is an Estate which one holds to himself, with
no personal
absolutely, without restriction to any particular heir. 56, 561

And here it may be proper to mention, that the word fee, has the
same meaning in law as the word free or free, is contradistinguished
from inheritance. The latter signifies an Estate, which a person holds
for his own right, by no superior, the over which he has the absolute do-
minion. On the other hand, a fee simple is an Estate held of some
superior, in whom the ultimate property resides. In Eng. then, in all
federal Countries, the land are also held mediately or immediately
of the King. There is no such thing as an absolute Estate in England.
The highest Estate a subject can have is a fee simple, that is, no
thing more than a fee. In Eng. it has been declared, by Stat. of
three; lands are held to one, this heir, it is absolute. The conse-
quence is there cannot be born, be such as thing as an Escheat in case of an ex-
terdion of heirs, unless it be by positive Law. But in Eng. descent are
common. Stat. 2 & 3 16.

This word fee, however, is now seldom used in its original sense,
but is ordinarily used to denote the continuance or quantity of Estate as
has in England, 2 B.C. 106.

This word, then, in its present application, is used to denote an Es-
tate of inheritance, and when used without any appurtenances, is with
words.
"Simpliciter, it is undue in contradistinction to pecunia conditionis, to talk.

The word 'pecuniary' is used to denote a fee simple, that is an absolute or unconditional one.

If a limited fee is intended - words expressive of the limitations must be used. 2 Bl. 166.

The fee simple regularly resides in some person, or in other words, it cannot in general be in abeyance or in expectation.

Indeed it is a general maxim of the C. L. that the fee cannot be in abeyance; consistently with the rule there may be several inferior estates arising out of the fee simple estate, and the holders of the several concurrent estates, and the owner of the land will hold his right.

This if a man leases for life in years - the fee simple continues in the life and having never been diverted the inheritance is in him. It is not to become his in future, but is now his. 2 Bl. 167.

Justice cotextual - says the man leases life, but if a grant is made to B. for life, and remainder to the heirs of B. the fee is in abeyance till the death of B. for till the death he has no heirs.

But it has been abundantly settled since, that in such case if an estate is limited with a remainder to the heirs of B. the fee continues in the grantor till the contingency happens and then it vest in the remainder.

Supposing that the estate is given to D. for life with remainder to an under son of D. in fee simple on all this D. is sure the fee remains in the grantor till the contingency happens, and if the grantee dies, the land will revert to the grantor's heir subject to be divided in the
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happening of the contingency: that is the birth of the English

23d & 167 Carter 207. Frame 275 35 6 267 363 Heath 207. 207

There is indeed one question upon this subject which
does not appear to be well settled. It is whether a person
and individuals can be in abeyance. Littleton, and 155,
say that if a birthright be given to a corporation, it is al-
ways in abeyance; for the successor is not known till the
death of the predecessor.

It is a speculative case, and not important, which way
it is decided. If it is in abeyance, it is an anomaly in the
laws; and if real, this is not the correct doctrine.

But as he whose appointed, acquires all the intermediat rights
and can receive the rents to which have accrued since the death
of the predecessor, it would seem that the fee real in him at
the moment of the predecessor's death; if so, it certainly can
not be in abeyance.)
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With respect to the mode of creating or perfecting a future
estate, positive rules are to be observed, partly of a general
origin, to make a fee simple, or any other inheritance by
grant. The word "fee" is indispensable, and the intention to
make the fee by grant, without this word, cannot be inferred.
This rule you see is a positive one, for however clear
the intentions might appear to be from the words used, yet
the law will not infer that intention, without the word
"fee". If then a man says, I give grant to A. He only takes
an estate for life, or if he says to A for ever, or to A and
his assigns forever, nothing more than a life estate will be created.
The usual operative words are to "A and to his heirs".
Yet the word for ever, or any other word of perpetuity is unnecessary.

And here it is very important to be observed, that words used
are thus used in a grant, it is a word of limitation, and not a
word of description or substance. By this is meant that the word
"fee" is not descriptive of person, but a description of the
quantity of estate. Thus if land is conveyed to "A and his heirs"
the word "heirs" does not describe the person who is taken for
the. It is description of the quantity of estate A himself takes.

For you will perceive, if it was a word of description or
substance, the heirs would be considered purchasers, and
then they would be remembered over, and he held only for
life—by the way the several descriptions used have been
of the same meaning.

An instance of the word then, that this phrase operates
both if given as indivisible in itself to the first taker.

The word first locates the idea that an inheritance by
grant, can only pass without heirs, since we have to conceive
and consider it to have a more definite construction, than it,

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For the intention appears, all inheritance, it may be inferred from other words used in the devise or will,
Coop. 42, 2 Bl. 102.

In many other cases, it will be found that a manifest and clear meaning of construction is to be adapted as to decide than as to deeds. One reason is, that devices are of later origin, when a more literal method of thinking prevails.

Besides, the rule as to the construction of deeds is adopted, in feudal times, and it is out of the power of courts to alter them.

Thus if one devisee land to A "in fee simple," or take a fee simple, for it is manifest that a fee simple was intended to be passed. In a deed, only a life estate would pass.

Again, "I devise my hands to A forever" or to B, and his assigns forever," it takes a fee simple, the intention is manifest: A fee simple is the only estate which can last forever; the intention would be defeated unless he devise a fee simple. Doug. 322. 2 Bl. 393. 1 Bl. 183. 672.

4 Burr. 2572. 2 Bl. 610. 2 Term 115.

But if one devisee hands to A, and his assigns with a word of perpetuity, a fee will not pass, because an intention to pass it is not manifest. So one having a fee simple, devises in this form, "I give, bequeath, and devise all my estate to A, without any word of inheritance or perpetuity, et. will take a fee simple. And as I observed before, the word "estate" prima facie, elevates the interest in right, which the party using it has. — Luke 231.

Coop. 62, 1 Bl. 1417. 2 Bl. 657. 1 Bl. 93. 3 Bl. 152.

6 Bl. 34. 6 Bl. 852. 1 Bl. Bl. 223. 2 Bl. 154.

Some opinions have taken a distinction in obviously
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between the words "all my estate," and "all my estate lying in so and so," and that in the latter case, it is descriptive of the interest, and in the former case, on account of the words of quantity. It was contended, they were merely description of the subject according to late opinions. This distinction is not peculiar, and that a feu will pass in both cases. 1 P. 13. 14. 2 P. 124. Conf. 133, 12. 1st. 24. 2 Rep. 691.

1 N. 41. 4. 41. Co. 306.

There is however, one particular case in which the question of construction, is not always settled, as if a devise is made in this form, "all my estate is the occupation of S." now I think nothing more than a life estate will pass for in no propriety of speech, can it be said that S. occupied the feu of the land, that he was the land itself.

1 Ross 227. 228.

Again, by the words, "all my estate, real and personal," when used in a devise, a feu will pass in the real property. Conf. 12. 1 Cor. 33. 37. and 516. 2 N. 3. 893.

It also a prima facia been held to pass under these words. "All I am worth" used in a devise. These you presume an imposition to the rules of construction, in case of words, and apply to devises only. 1 Pet. 132. 137. 11 T. 5. 66.

But the word "benefit" does not bear so many an in- formance, or it vnites many of the subject in which the person has the interest, and not the interest itself. Do convey a feu some other words must be used. 2 D. 537. Hence it one devises "all my beneficata to S."

but take only a life estate. 6 D. 171, 151. 2 D. 27. 2 555. 3 D. 27. 557.

But a devise in these words "I give to S. all my property" will prima facie carry a feu; for the words property is considered a description of the quantity and not of the subject.
subject. I. Dec. 3, 1812.

And the word "legacy" has been held to signify a devise of a Real Estate, and will pass the fee, if the intention is manifest. 1, P. U. 192. Doug. 39. 1, 13 Mr. 211. 3, J. B. 116. 1, Cast. 31.

The example last given, all form exceptions to the general C. L. rules of constructions. Therefore it is always more liberty of construction in wills than in deeds, for it is supposed to be made when the person was in good health, and in these cases a life estate only, would pass, if such words were used in a deed, and even in will, if the words were.

"I give "all my lands" to A. It will pass only as life estate; for the word lands, like the word "security" above, is descriptive of the subject and not of the interest.

If he gives one devise his "land" to another, "the devise paying a gross sum" as debts. Because if the devise will carry a fee, not by reason of any thing operative in the word "land," But on account of the condition, "paying a gross sum" &c, for otherwise the devise might be a lesser by accepting the devise, for he may die, homeless, and be subject to pay the debts. In such a case the devise will be a lesser, and the law is always favoring a benefit to the devisees. Therefore the law will construe this to be a devise in fac. 6, 66, 162, 2, 184, 313, Pow. on Dec. 502, 50. 3, Beale, 1629, 3, 184, 319, 1, 87, 1, 100, 1, 80.

You will observe that the fee does not pass on account of any thing operative in the word "lands," but in account of the condition annexed, and therefore if one devises thus, "all my lands" to B. and paying such a sum out of the profits of it, or by a life estate paper. For there are no words of perpetuity, we in..."
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suitable words, nor any condition by which the devisee can be a loser. It is not bound to pay any more than
the amount of the profits. And there was no reason why
the general rule, should not have its operation. 2 Co. 16.
Cowell 237. 2 Miss. 314. 3 Cor. 327.

A devise of land, of a given annual value, it pays
and the devise being required to pay an annual sum
amounting to life than the annual value, it pays only
an estate for life, and yet you recollect in a former
case, when it was to pay a great sum, an inheritance pays.
In the one case he is a loser, in the other he cannot be.
C.C. 16 3 I. B. 19, 3 Park. 1238, 1619, 1628, 2 Bl. 6, 3 Bl.

For determining the intention of the Testator as to
the quantity of interest, resort is often had to the gen-
eral introductory words. It is usual to begin a devise thus
"as to all my worldly estate." But these general intro-
ductive words, will never alone have the effect to force a
fee, unless there is something in the body of the will, which
shows that intention also. There may assist, in the construction,
what other words are ambiguous. 2 J. F. 18, 14, 363, 3 Bl. 1699.
Comp. 299, 360, 666, B. T. 207, 2 Y. 67.

The circumstances of a wills being estaticile, as a will to
pay that estate must be, is not of itself, sufficient to show
the intention was to force a fee; for out of abundant caution
these introductory words are often put to a devise of personally
property. Yet it is one circumstance, which with others, may be consid-
ered in.
1 T. R. 116, 2 St. 240, 7 Park. 97.

Thus far as to the exceptions of the rule of construction,
in case of devise. There are some other exceptions to the general
rule of C. S. that the word "heirs" is indispensable to create an
fee simple. Thus the word "heir" is not necessary to fall a
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It is in a suit or common recovery, for there pay a fee by operation of law, it is a judicial remedy. 2 B. 105. 3 B. 387.

As also in grants of land to a sole corporation, the vex is not necessary to pay a fee; nor is it not proper — the word successor should be used, and is indispenible.

And in a grant to a corporation aggregate, neither the word heirs nor successors is necessary to pay a fee — for if the grant is construed to be made, only to the corporation during life, it will last forever; for an aggregate corporation never dies. It is usual however to insert the word successor, the word necessary. 1 B. 6. 6 B. 109.

And upon the same principle it is not necessary, in England, to use the words heirs or in a grant to the King, for he never dies, in contemplation of Law. Austin.

I observed before, that the word "heirs" is a word of limitation, and not of description or purchase: that is, it is a word expressive of the quantity of interest, and not of the persons, who are to take. Thus if A. holds to himself and his heirs, he may sell the estate. He has the dominion over it; and may diminish the "heirs." Again, suppose an estate is limited to A. for life, with the remainder to his heirs; yet A. takes a fee simple, and his heirs could take only thine him by inheritance.

Again, suppose an Estate is given to A. for life — remainder to B. for life, then the limitation to the heirs of A. — now A. will take a fee simple at first, subject only to the limitation of B. It then has a fee simple, which will pass to A. in B.'s remainder, and so his death his heirs will take it as such, and not as purchasers.

From 21. to 31. 42. to 46. 79. to 81. 90. to 92. 101. to 107. 112. to 123. 124. 1. Co. 98. 104. 3. 11 Co. 79.
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In both cases I have given the remainder, with immediately in the ancestor by its vesting is meant, that it vests in interest. In the former case, it vests in possession at the creation of the estate. But in the latter case, it does not vest in possession till the intermediate remainder of B. is closed.

The same rule applies mutatis mutandis to the case of an estate tail. If an estate is given to A. for life, and remainder to the heir of his body — it takes an estate tail in the first instance, as in the above example, he took a fee. And to give an example of the second kind, if an estate is given to A. for life, remainder to B. for life, and remainder to the heirs of the body of A. — it takes a fee tail, as in the above case, he took a fee subject to the intermediate remainder of B. vested.

I have no doubt these cases will appear arbitrary — it might be considered so, if the word heir was considered a word of purchase, but however it is not. There is another reason, if the word heir was not used as a word of limitation. I do not know what word could be made use of as an operative word, to prefix the fee. If the word was to be considered as a word of description, or purchase, the heirs would take an estate for life as remainder——men, because no words of perpetuity are inserted; for you can't use the word "heir" in both cases, in 2 words of perpetuity & of purchase too.

You must use it, one, or else the other, and that exclusively.

If you construe it as a word of description, you will give effect to the particular intent, which is contradictory to the general intent. And when these are contradictory, you are to give the general intent, an effect, rather than the particular intent. The reasons then are two, that if
the word "tenure" is a word of limitation.

If it was used as a word of purchase, the particular and not the general intent would be enforced. There is said to be on other reason, which in prudential times hard effect, the more it has ceased. It was that when being took as hired they paid a nine to the Lord. This is now done away.

Hence, being regularly a word of limitation, a clause to the heirs of A., conveys no estate, and if the less in the testament, the devise before, none at heirs' rents. vide


So laying down the divisions, I said free holds were divided into freeholds of inheritance, and freeholds of inheritance, all that freeholds of inheritance are divided into absolute and limited. I have treated of limited and absolute freeholds. I have treated of limited freeholds of inheritance, as we call them, with conditions, and these at C. S. are of the kind, 1st qualified on base fees, and 2nd free conditional, which latter are always called free conditional at C. S. The reason why so called is, that since the statute of alienation these fees have been converted into free fees. 2 P. 109.

A freehold is one which has a qualification annexed, and whose most determinate, when the qualification is at an end, is in the common example of a grant to A. and his heirs, tenant, of the manor of Dale. Their continuing tenant is a condition of his tenure, and when they cease to be tenants their estate determines. 1 Part. 29, 3 P. 109.

A freehold, conditional on C. S. is one restrained to some particular heirs of the grantor, or to the "heirs of his body" or the "heirs male" or "female." It differs from a free simple, in this, that a free simple is a fee to a man and his heirs generally, whether lineal, collateral, and the free

8 If, however, from any other words in the instrument it appear that the word "tenure" was used not as a word of limitation, but as a word of description or purchase, the freehold may take, and take as purchaser. Thus, if I come to the heirs of A., I would say, it is manifest I mean the freehold, and that I mean there was not by him in the literal meaning of the word, and therefore his heirs, according to the tenurial meaning of the word, and therefore his heirs, according to the tenurial meaning of the word, I would say, the freehold is a fee to a man and his

1 Troit. 421. 2 Bl. R. 100. 2 Bl. R. 1102.

In the title given to one of his by him, and be qualified, or absolute of any of its legal incidents. Therefore, a tenancy to one who has been provided shall not be determinable, this provision of right, is "provided the will of consent," or "when it shall be consented," for if it is subject to the nature of the estate. 1 Part. 10, Pagn. 329, 3 Bl. R. 161.
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...to some particular tenant, as to his heir, Sect. 45. 

A fee, that is limited, is called a fee conditional—because there is an implied condition, that in case he dies without issue, it reverts to the donor, by virtue of this implied condition; this species of fee, is called a fee conditional.

Now the extinction of a man's life, here, is not a warranty, but Fbed, 1st, it being a term of his life, it is, that the estate reverts to the donor. Clas. 241. 2 B. 107.

In a case of a fee conditional, however, if the grantee had issue, as was described in the grant, the condition was considered as performed, and the estate absolutely, from the birth of that issue for three purposes. The birth of issue, however, does not make the estate absolutely so to all purposes but to these it does, 1st, to enable the grantee to alienate, 2nd, to subject the land to forfeiture for his crimes, and 3rd, to impress the grantee to encumber the land, so as to hinder his issue.

1. Sect. 17. 2 B. 132. 4. 2 B. C. 5. 111.

But on the other hand, the the grantee had issue, yet if he did not alienate the land, and the issue dies before him, the land in his death reverts to the donor—for here he has not alienated during the life of the issue, and he can't afterwards. This issue having failed during his life, he dies without issue, and therefore the land reverts to the donor.

It is to be observed however that if in such case he left issue, the estate became an absolute fee in the issue.

2 B. C. 111.

According therefore, of the construction of the gift, Sect. 41. that by the birth of issue the estate will alter, and the Statute of Westminster 2nd. 1st. 15 Edw. 1st, and 2nd, and so States, "in hemos conditionibus" was made, and for the purpose of restating the same mode of operation, for that statute provides...
that the donee should not alienate the land, so as to defeat the
right of the remainder or of any one. If he did not leave any heirs
that he should not alienate so as to prevent the vesting of the
land in the donee. It required the will of the donor should be
conformed. But in the construction of this statute, the
judges held that the death of issue was in performance
of the condition, so as to enable the donee to alienate— but they
decided the estate into two kinds—one they called a free title,
and they treated as vested in the donee, and descended to his
heirs; but the ultimate fee essential they called a possession
which existed in the demesne and from this originator in
estate title— for at C. S. no estate title was known, whatever
was in the statute was a free tail, was at C. S. a fee conditional.

12 T. L. 127, 12 Th. 12, 13, 1 Acro. Ch. 380.

But this statute did not contain every fee conditional
at C. S. into a free title— for the only word used in the statute
to designate the subject of this species of estate was the word
tenement.

This word includes all corporeal hereditaments, and incorpo-
real, but saving of the residue, now of an incorporeal heredita-
tion, saving of the residue is limited, it is an estate title.

But an incorporeal hereditament, not saving of the res-
idency is not an estate title. And therefore such a tenement is a
fee conditional at C. S. But they are the only subjects in
which a fee conditional now exists. Every thing else is by
the statute converted into a fee tail.

So ninety C. p. is an incorporeal hereditament, not sav-
ing of the residue; for it is not chargeable on the land, but
on the person of the donee. If then it is granted to one and the
heirs of his body, he has a fee conditional at C. S.

1. 5 Th. 127, 20, 1794. 2. S. 1. 113, 1820. Ch. 322.
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You will perceive, then, that if an incorporeal hereditament, not consisting of tenancy or the soil of his body, the grantees may alienate or the heir of issue.

A more personal chattel, can't be so alienated—nor if granted to one, and the heir of his body can it create a re

conditional at s. l. The reason is a chattel interest does not admit of so high an estate. If the son has a chattel interest for 1000 years, and limits it to A. and his heirs absolutely, it does not create a fee conditional at s. l., nor a fee tail, nor any other lie. But he is entitled to it the same as if the words "heir of his body" had been omitted.

(Proct. 20. 277, 174, 373. 10. 60. 797. 28. 94. 30 P. R. 249. 202, 304. 334.)

But an estate tail cannot be created in a personal chattel, yet a remainder, in a chattel interest may be limited

even after a life estate, by way of executory devise.

The distinction of this, will be treated of hereafter. An executory devises remainder may be thus limited, by words which in no conveyance of real property would create an estate tail by implication. As if a chattel interest is limited to A. after a life estate to B. if B. dies without heir, it will in an executory devise, vest the remainder in A. for it manifestly implies the grantee should take, if B. died without heir. And the

three words used in a conveyance of real property, would create an estate tail, by implication, and then a fee tail, not in created in a chattel interest, in such a devise these words will limit the remainder for life. 1417. 663.

20. 239. 10. 60. 197. 1303. 4. 213

The C. j. above, anticipated this rule, that an estate tail may in a devise, be created by implication. The in died it


176. 276. 276. 276.

So also if a devise is made to A. and "his heirs forever."
Things Real

which words may at first give a fair count of the words without loss of his body to 2.

It takes an estate tail for the generality of the clause "his issue pass" is restrained by the subsequent clause "hereof his body" - they can't both stand. If there are to receive their strict legal import, it will create a palpable incongruity, and it is evident that the meaning of the clause which if no issue without heirs of his body, it should go over to 2, and this is the precise case of an estate tail - a break of a devise out of a grant. See 170, 201, 2, 74-5, 2, 76.

And it has been settled, that if a devise is made to 2, w.

the heirs issue", and if he die without heirs, remainder to 2, if it will be an estate tail in 2. - provided 2. is a collateral heir to 2, otherwise not - for there are no other words which so on.

The reason of the rule is manifest for if 2. is a collateral heir, it is apparent he could not have the word heirs generally, to denote heirs general - but heirs of his body.

In 2, Bk. 4, 1 P. 127, 6th, 146, 6, 96, 2, 218. For different views of estate tail see 2, Bk. 118-121.

They are divided into general and special, tail male.

and tail female - tail male special, and tail female special.

See 2, Bk. 118-121.
Things Real

The reason why he cannot inherit is because his mother being a female, could not inherit— it follows that his right of inheritance must be traced through her—but he cannot for it never passed in her.

Is the word being indispensable in order to create a fee of any kind or the word "body" or some other word of possession is necessary to create a fee tail. To create an inheritance there must words of inheritance used. To create a fee tail must also be words of possession as well as inheritance—for without, then no particular heirs are designated—and therefore the heirs general take it. 1 Port. 20. 2 PJC 114. 4. 31.

If there be no words of inheritance, or of possession, are omitted in a grant a fee tail cannot pass. Then if an estate is limited to himself and his issue, his heirs will not take; it only will create a life estate— for it is indispensable the word "heir" be used to create a fee. If of the word Children, Offspring, or are used it will create only a life estate. Fellow—

In some cases they may take as tenants in common, with heirs—as children by & by—but when this is not the case, they may take nothing at all.

If words of inheritance are limited by other words, there are words of possession. In the former restrictive words have no effect for if they had, a new species of estate would be created, wholly unknown to the Law. If then an estate is limited by these words "to his heir male," it will pass a fee simple— and as if the heir male. It does not create a fee tail, because there are no words of possession. If there had been "of his body" then it would have been an estate of speciality.

The reason why an estate must be created to give effect specially to this word is— that no new estate is permitted to be created—and the reason why a fee simple is created is be-
Things Real

such a grant in England, by the thing or its no estate.
The rules of construction yield to the royal prerogative.

But a devise, couched in these very words, creates a fee tail
because the intention is a devise, as in deeds, is, to be consulted,
and because in a devise it may be inferred from other words than
those which in deeds, the Law has made absolutely necessary.

This then is a case, when an estate tail may be created
in a devise, without words of prescription. In deeds you
recollect these words as well as those of inheritance are indis-
fensable. And on the other hand - a fee tail can be created
in a devise without words of inheritance, as to "A and his
issue to A and his posterity." 1 Bl. 447. 2 Bl. C. 38. 116.

So also in feu suissure of the same rule, if land is devised
to A and his Children, he having no Children at the time,
a fee tail passes. Why does a fee tail pass? Because it is
manifest that the intention was to give to the issue in some
way. But they cannot take with the father, for they are not
infees. Nor are they intended to take as remainder men,
for they would take as purchasers, and the devise would
be executory. But then it is immaterial. As are the heir
to this estate to take as heirs of the body - for they are
to take with the father, or as remaindermen, or as
heirs of the body. And if not in this form they cannot take at all.

But under a devise to "A and his Children," he having
Children at the time, they will take as joint tenants for
life.
Things Real

They don't take an inheritance for the word "he is omitted. And it is further to be observed that there children only, if an intent at the time of the devise will take — or mean there are persons sufficient to satisfy the words of the devise — and the existence of children at the time, until the assumption that the future children were intended to take. 6 Co. 16: 17. 1 Geo. C. 143. Camp. 314. 11 T. 111. 164. 360.

But if a devise to A and after his death to his children and having children, he will take in estate for life, and the children a remainder for life, for an inheritance can pass, or no "heirs" is inserted — and the words children being a word of description, and not of limitation, the will take as remainder men in life. This is manifestly the intention — they can't take with A, for the words after his death will prevent. The after born children will take however as well as those born at the time the devise, for words "to the children" is prospective, till the time of his death — it is not to his children in effect at the time it is made. A posthumous child will take. 6 Coke 16: 11 T. 111. 2 Penn. 314. 3 Co. 306. Camp. 307. 314.

This rule in this case is clear, where the limitation is to A. If a devise is made to A, and after his death to his children, he having no children at the time, but they will take the bove after the time of the devise, for the operative words are prospective, and the words of the limitation are not in immediate devises, but a complete future birth of them. 6 Co. 171. Camp. 314.

The first the rule is an exception to the case, in Deco. 16: 17. But I believe the rule to be the same in the last as in the former case.

An estate is limited to A, and the heirs male
Things Real

of his body, his female issue will take or alien in tail.

The case is that if any estate was limited to the heirs male of the body, the female issue take in tail, and it is a clear case that the female issue have no right to take in tail, and if in tail. The female issue take in tail, for the reason is that the female issue have no right to take in tail, and if the estate is limited to the heirs male of the body, the female issue have no right to take in tail.


The case is that if any estate was limited to the heirs male of the body, the female issue have no right to take in tail, and if in tail. The female issue take in tail, for the reason is that the female issue have no right to take in tail, and if the estate is limited to the heirs male of the body, the female issue have no right to take in tail.


The case is that if any estate was limited to the heirs male of the body, the female issue have no right to take in tail, and if the estate is limited to the heirs male of the body, the female issue have no right to take in tail.


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Things Real

There is no need in Connecticut to suffer a line or common nuisance for the purpose of stocking an entailed estate, for it is provided by a statute that every estate tail shall become an absolute fee simple in the immediate issue of the heir prime.

Our statute here then directs the estate tail on the death of the heir prime, as an estate tail is thought to be inconsistent with our laws, then an equal distribution of property among the heirs is to be made.

This is precisely the case of a fee conditional of coming. For on the death of the first donee, his immediate issue take a fee. Statute Connecticut 13. Thus far of freeholds of inheritance. Now

Of freeholds not of inheritance

Freeholds not of inheritance are estates for life or lives and this is the lowest species of real property. Strictly speaking, a freehold is real estate. And anything else is not real estate. A term for years, even so great, is a chattel mortise.

These freeholds not of inheritance are either conventional (that is, those created by agreement or by the act of the parties), or legal (that is created by act and operation of law) 481, 122.

Conventional estates for life, may be for tenants over life or for the life of another, or for any number of lives. Thus an estate may be granted to A for his own life, or for the life of A, or for the lives of A and B; or in which latter case the tenure continues till all named are dead.

Legal estates for life, are always for the life of the tenant. In these words creates an estate for the life of another. For estate upon another it always conventional. Section.

Now you perceive when an estate is created for the life of
Of Freeholds not of Inheritance.

another the estate may continue after the death of the tenant.
In such case, it is a rule of law, that all the tenants died (as you say) and there is a limitation to B's heirs. The heir will take as legal successors. But if it be not thus limited, it

shall be for the first occupant a jaczug hereditatis, and any one

may take it and hold it for the life of B. Now suppose by

the Statute 19 Geo. III. and 20 Geo. III. an estate holden for the life

of another, and he dies first, he may devise it – and if he does

not, it will pass in a course of distribution to his personal representatives.

Now than than if no such thing in England as a jaczug hereditatis,

for by the Statute it is not given for the first occupant, for he

may devise it if he will; and if he does not, it will be

distributed among his personal representatives. 2 Bl. 126. Littell

&3d. 1 Marsh. 111. 2 Bl. 3. 2 84 to 2 61.

It may perhaps admit of a question whether this species

of Estate in Conn. will admit of a devise. But supposing

it will on account of the generality of the terms of one

Statute, which reads as 'lands or other estates.' This is

an estate and one continuing after the death, and not

such an one as can defeat the right of any one

therefore I think he may devise it under the words

and 'other estates.' Stat. Conn. 42. If it is not desirable

what is to be done with it? There no doubt but one

Courts would adopt the English Statute. I distribute

it among his personal representatives. An Estate, for life

being a freehold, it cannot be perfected without being

of nuncup at C. T. This rule of C. T. is now enacted

by 3. dud of lease (release). The deed of bargain and

sale. – Pett. 839.

A general grant of lands, documents & hereditaments

without defining any specific Estate or quantity of interest

passes a life Estate, and for the life of the Grantee.

He shall take the largest Estate the words will bear

which is a life Estate, and for his own life. Thus if

the words are for term of life generally, without naming
Things Real.

having whose life, it is a life estate, for granting own life. 1. St. x. 42, 46. 2. P. 1. 21.

And here an important rule is that any estate, except of will or suffranguis, which having no determinate duration in the grant which by the possibility of it may last during the Tenancy life of a life estate, as if an estate is given to a woman during widowhood, it is a life estate for the may die a Widow. So to one that he shall marry" or "sell his leases the realm," then an life estate. He may receive many, 3 Co. 26. 1. St. I. 42. 2. P. 1. 21.

The incidents to a life estate whether legal or conventional are principally these. 1. The Tenant, if not restrained by Covenant or Agreement, may by common right take reasonable stores, agree to burn, to make instruments of husbandry, to reap, mow, etc. But he has regularly no right to cut timber for any other purposes than the immediate to the days he is guilty of Waste, and will forfeit his Estate, and be liable in damages. He has this right to reasonable slaves, to uphold his estate, to keep the estate in repair, but he has no right to take wood itself, or to build new buildings. He may flay the Estate in its state, 1. St. 47. 53. 2. P. 35. 122.

If an interest for life is not to be injured by any building destruction of his estate, unless it is determined by his own act. And if after reaping a Crop, he dies before harvest, the personal Representatives have a right to the Emoluments and may levy myself, it is expressly to take them off. The rent is paid on extenuation of the law "alter De non minant injuriam."
Things Real

The word "Emblen's" in the law signify things growing by annual labour. Thereon the personal representative are not to have a Crop of Fruit, or of any of the fields, he holds by a rent free, and the latter day in the rent. The Tenant has a right to the Crop for it is the act of God. (Isa. 35. 26th 123)

The rule is the same, where the estate is determined by operation of law. Thus if the estate is limited to man's wife during Coverture and a divorce a vinculo, it takes place between the time of sowing and harvest, the husband takes the Emblen's but the wife - for he is entitled to her labour during Coverture. (5 Co. 116.) But if an estate for life is determined by the tenant's own act - the tenant is not entitled to the Emblen's - for the principles of natural justice do not allow a like for like - as if the tenant between sowing and harvest commits a forfeiture of the estate, the he has no right to complain that the Emblen's go with the estate. So if the tenant holds during widowhood and marries, she cannot take the Emblen's, for by her own act voluntary act her estate is forfeited.

3. But as to lives of Tenants for life, this has not only the same, but in some cases greater privileges than the original Tenant for life, as if the determination of the estate happens by the voluntary act of the original life, which he the second life could not control, he will be entitled to the Emblen's, as if the Tenant for life holds during widowhood, and marries; but if he concurs in the act, he will forfeit it, and if he marries the Tenant himself. There is no such example as this, but it is analogous to analogy and reason. (Co. 6. 1161. 1 Rol. 27. 2 Malt. 124.)
Things Real

And at C.S. an under-tenant, with the death of the original tenant, may leave the premises, and avoid all the payment of rent from the last day of payment, now it is a general rule, that if the lessor's estate, determined between the days of payment, he is not bound to pay since the last pay day for rent at C.S. is not apportioned, remaining till the day of payment. But now by the statute 11 Geo. II. he is obliged to pay for rent - a reasonable apportionment is to be made 10 & 9. 124.

And it is true of every tenant for life, that if he unduties for years and dies during the term, the lease is determined by his death, unless it is confirmed by the remainder or remainder man, as if S.S. who holds an estate for life, leases for 20 years to T.N. and dies in 10 years after T.N. lease is determined, for S.S. cannot create an estate greater than he himself held, or one to continue after his has determined. But if the estate for years is confirmed by the remainder man to be will hold it. Lett. 1516. 3 Rep. 397. 10 St. 103. 17 B. 86. Thus for of non-intentional Estates.

Life Estates created by operation of law are of three kinds, 1st. called Tenant in True after possibility of issue extinct. This is an estate held by a person of whom an estate in special kind has been limited and the person from whose body the issue was to spring has died without issue, or having had issue it is become extinct. Then if an estate has been limited to a ? and the
Things Real

here of his body by his Wife S. and she dies without issue, or having had issue they are extinct. If in Tenanths tail after possibility of issue extinct. It is now impossible this Estate should descend. The person from whom the issue was to spring is dead, and if she had one issue they are now extinct: therefore from the moment that the estate dies the possibility of an issue is extinct. Lett. 832. B.C. 124.

Now this species of burden is called an estate for life, for because it is impossible it should descend. It seems to be an inheritance, that is one way this species of Estate can be created only in the manner mentioned above. It cannot be created by grant. A tenant in fee simple can create an Estate for life with the same incidence, but it is not an estate of this kind, it will be a conventional estate.

If then an Estate is limited to A. and by Wife and to the issue of both their bodies and they are done under a vinculo matrimonii this is not an Estate of the possibility of issue extinct, for by the supposition they are both alive. They have a life estate it is not descendent. I art. 28.

But the law always supposes the possibility of issue to exist; till that possibility is extinguished by the death of one of the parties, therefore whoever may be the age or inferiority of the parties, this species of Estate cannot exist, while both are alive. Lett. 837. B.C. 125.

This Estate is of a mixed nature, it is in most respects like an Estate for life, but it does not lose all the incidents of an Estate of inheritance. This he is like a Tenant for life, because he forbids his Estate by
Things Real

alining in fee, but he is like a tenant in tail, because he does not forfeit by committing waste. The law has seen fit to deprive him of his estate if he

diies in fee to destroy the reversion. But the law does not consider the commission of waste as sufficiently injurious to the reversion, as to punish them for the commission of it with forfeiture of the estate.

13th 27, 63.

But tho' he does not forfeit the estate for committing waste as by cutting timber &c, the timber belongs to that person living at the time, who had the first remainder of the inheritance. But if an estate limited to A. in special tail, remainder to the unborn child of B. and remainder in fee to C. and A. commits waste before the birth of B.'s child, the timber will belong to C. for he is living at the time and the intermediate remainder man is not living. 1 D. N. 2. 40. 266. C. 173.

I suppose the reason of it is this, that the timber being cut being personal property, subject to be removed and to decay, it is not proper that the property should rest in a contingencies and should be vested in a person who is dead and may never live in fee. In all other cases however than that of Waste, a tenant of this species is primarily a tenant for life, and hence he may make a deed of exchange with tenant for life. 1 De. 126. 323.

2.7 A legal frehold of the Duchy of the P. is called a tenancy by the Curtesy, of England. This is to be explained rather by description than by definition.
Things Real

When a man marries a woman seized of an estate of inheritance, and has by her issue born alive, capable of inheriting the estate if surviving her, is tenant by the courtesy. Lett. 33. 32. Do this.

There are four requisites, marriage, issue of the wife, issue born alive, and death of the wife.

1st There can be no such thing as a tenant by the courtesy until there has been a marriage. This marriage too must be legal, for a man cannot acquire the mutual rights under a void legal marriage. If there has been a marriage de yde to be tenant. The

2d requisite is issue. She must have been actually seized, a bare right of possession is not sufficient to entitle the husband to the tenure—nor if there had been issue, they could not inherit the not being seized, therefore he cannot have a courtesy for he can have it only in those cases in which he could have an heir to the land. 2 Scr. 26.

2 Bk. 127, 31. 1 Inst. 11. 15°. 29. 40.

In the case of Bush v. Bradley determined in the Court of Errors in 1810—it was held that actual seized of the wife was not necessary to entitle the husband to courtesy and the reason, I understand was that the issue could inherit in our law tho' the ancestor was not seized. This is true. But I doubt the correctness of the decision though the issue might have inherited on the principles of the O. C. pronounced by us. But it is not of great importance. 3 Day 166.

It is a consequence of the English rule that the wife must be actually seized. I that the husband
Things Real

and have a Curtisy or a remainder of a reversion
for the wife was not actually seized, but of the
reason assigned in the case of Buck, ante, when the
husband may have Curtisy, for it is an intrest
able Estate. The truth is the reason why the husband is
not entitled to Curtisy when he is not seized is
that he is considered in fault for not making an
Entry & keeping the inheritance out of danger—this
is not the only reason but is a sufficient one.

There are two or three cases in C. Litt which
were cited in our Court. Case where the children might
intest, and yet he could not have Curtisy. There
is an exception to the rule too in case of incorporeal
hereditament, I.e., the husband may have Curtisy
without actual seizure in the wife and in an
incorporeal hereditament the case has actual
seizure, but then should be what istantaneous
is an actual seizure in Corporeal property. Idem.

If a man marries an idiot he cannot have
Curtisy, for there is no actual marriage). 2 B. R. 127,
130. Plow. 263. 1 Ast. 30.

3d. requires it be born alive. Idem

And the law upon this point is so very scrupu-
losus that the issue must be born during the life
of the wife. Therefore, if the issue is born after
her death, the husband cannot have Curtisy. I do
not see any reason for this very great scrupulus, but
its value scrupula. 1 Ast. 29. 2 B. R. 127. 8.

And the issue must be capable of inheriting the
estate. Here by the Estate is limited to a woman
in such male and she has only daughter the husband
Things Real

can have no Curtesy, for the daughters can inherit them.

The time of the birth of the issue is immaterial if during the coverture, whether it is born before or after migration is of no importance, and whether it is dead or alive at the time of the death of the estate is of no importance.

And a husband may have a Curtesy even in an equitable interdiction of the wife that she has no legal estate. Thus if the wife mortgages her estate, he is entitled to Curtesy in the equity of redemption, if other things will admit of Curtesy. Now it is very remarkable that, in the coverture of the case, she is not entitled to divorce. Page 1 to 115. Sect. 603.

By the birth of the issue the husband becomes tenant by the Curtesy, initiate, and his estate as tenant by the Curtesy is consummated by the wife's death. Sect. 30. 3 P. C. 128.

Sect. 15. May 26th, 1818

The 2. species of R. E. Estates created by operation of law is tenancy in Dower.

If a husband seized of an estate of inheritance dies, the wife has a life estate of one third part of all the land, of which he was probably seized at any time during the coverture, provided any issue should have had right by possibility have inherited it.

This tenancy you see extends to a third part only when as a tenant by the Curtesy extends to the whole. Sect. 36. 2 P. C. 129.

The widow in this case is called Tenant in Dower and to entitle her to this estate, she must have been actually his wife at the time of his death, for the
Things Real

right of Dower accrues out of the relation of the time of
death; of course if they are divorced a vinculo matrimo-
nio, she cannot have Dower, for the relation does
not exist out of which the right accrues. 2 Bl. 130.

But the wife is not barred of her right of
down by a divorce a vinculo of theirs, for this
does not dissolve the marriage contract. It is as if
saying they shall live separated. She is the wife still
1 Cal. 32.

It was formerly held, if a woman married
an idiot she on his death was entitled to Dower;
but this has been overruled for there has been
no actual marriage. 100 Sel. 31, 2 Bl. 130.

By the old C.I.S. the wife's Dower was forfeited
by the Treason or Felony of the Husband, because
he forfeited all his Estate, and the Kings right
was paramount to that of the Wife. It was abro-
gated by the Statute Edw. 6. But was restored by
the Statute 5 & 6 Edw. 6, so for as respects Treason.
2 Bl. 130, 131.

But we have no Statute in Conn. of the kind
we can think of by a Statute of the United States
for the Constitution provides that the forfeiture
for Treason shall continue no longer than the
life of the offender and that those shall be
misdemeanors of Treason shall not work corruption of blood
or forfeiture, except during the life of the person
attainted. Therefore, they cannot make a Statute de-
serving a wife of her right of Dower, the the

If a man marries an alien she cannot be endowed
in the C.I.S. or generally by Statutes in the different States.
In such case it is usual to procure an act entitled to
be Dower. Such acts are frequently passed in England.
Things Real

and in United States. The reason of the rule is that an alien cannot hold Real Property and the marriage does not divest him of his character of alien aged. Except to the rule in England in favor of the Queen Consort. 1 Feb. 31, 2 P.R. C. 131.

No female can be endowed unless she be above nine years of age. The C. S. has fixed the age that she must be above nine. But she may be entitled to it for, but if the husband dies before she is not entitled to it. Dower. Silence.

The estate in which the wife may have Dower must be one in which any issue which she might have had, might by possibility have inherited. It does not require she should have had issue actually. Thus, if a man marries in fee marries a wife and has a son and then marries another wife. This is entitled to Dower, for he son may die before the father, and there is no issue of any issue inherited. But if one holds an estate of inheritance limited to him and the heirs of his body by his wife, if she die, and he then marries B. now B. cannot have dower for by no possibility can her issue inherit it. Sett. $36. 53. 2 P.R. C. 131.

With regard to the issue of the husband, the law does not require it should be actual to entitle her to dower. A successor in Law which is a right of present possession is sufficient.

The diversity between this and the case of a married woman is that the wife have actual issue to entitle her to an actual estate by the Curtesy, is that so this case she cannot be supposed to have it in her power to obtain the possession, but it is in his power to reduce his estate into actual possession. If he does not.
Things Real

not be is to blame and is not entitled to Curtesy U.S. 1. Co. C. 303.

And a urged of the Husband for a time however short is sufficient, so far as respects this requisite of urgency to entitle her to Dower. The where the urgent goes to him and from him to another so instance she is not entitled to Dower. Thus when a man has urged of of land before and he recovers it by the same fow, she is not entitled for the urge passed thru him in transit. Co. S. 615. 2 Co. 67. 3 Bl. 132.

And the husband cannot by C. S. divest the wife of the right of Dower by any alienation of his own. If he alien during cohabitation his right remaining for it is concurrent to the rights of Husband and Purchaser. Foot 32. She may be divested by a forfaiture, but this is a positive rule.

The rule is the same in N. Y. & Mass. and probably in other States. But in Conn. it is not so for there the wife is not entitled to Dower in any lands but in those of which the deed recite the owner made not his actual however. He may expel her right by alienation Stat. C. "Dower"

In England the wife is not entitled to Dower in the husband's equity of redemption upon a Mortgage in his name only a husband is entitled to a Curtesy in the equity of redemption in a wife's Mortgage. The reason of this diversity I conceive to be this that the right of dower was established upon the equity of redemption in a mortgage was considered a mere trust and the debt mortgaged wife was entitled to dower and the mortgagor's wife then could not have it for if so then Dower
Things Real

be two financies in down on the same estate, and they
difficulty would increase the more mortgages there was
as if he mortgaged to half a dozen all would be in
titled to power. But it has long since been settled
that mortgages wife is not entitled to down.

Yet down the the Chancellor felt the in
propriety of the rule yet they say the authorities
are too hard for them. The rule as to the husband
ought then was established of a much more ass
uous sprit for his interest, that that as to
the wife. But principals would dictate that if
there was any diversity it should be in favour of
the wife. But established Contra 1 Atk. 66 W. 3 P. N.
Brv. Ch. 137. 2 Blk C. 138

The husband is presumed to be able to raise the mort-
gage on the wives estate, but she cannot on his, therefore,
the rule on principle is incorrect.

The question has been once or twice raised in Conn.
and decided, she is entitled to Power in such case and this
is the true rule on principle.

But in England the Mortgagor’s wife is entitled to
power in the reversion expectant foi the Husband’s mort-
gage for life or for years.

Thus if the husband having an inheritance makes
a term for life by way of mortgage, she cannot have
down in the mortgage for life, tho in the reversion expectant she may. So if a man makes a term for
twenty years by way of mortgage, she cannot have
down in this twenty years, not only for above reasons, but
also because it is a chattel interest, in which they cannot
be
Things Real.

To down. But after the expiration of the Estate she has a right of dower, but it is not in the equity of redemption, but in the USC/2/2/2021

Doc. 19. 1835. 2 Vam. 483.

Dower by E. J. is to be assigned to the Widow by the husband's heirs, or if he is under age by his guardians. For on the death of the husband the heir and Dowager are not in any sense of the word tenants in common or joint tenants. But the heir becomes tenant of the Whole for hold by his entry, which he has a right to make and the widow a tenant under him. Hence he is to assign her down. 1 Jast. 34, 5. 2 Beav. 135, 1861.

If indeed the husband the case may be, his guardian has not assign her down, or assigns it unequally, she has a remedy by an action at Law and judgment given on her former the Sheriff is appointed to assign it. [Footnote. Stat. Conn. 2440.

The wife forfeits her down in England by Statute, W. 3, 4, by Compromise with an adulterer, must until the husband is afterward voluntarily reconciled to her. So by a legal divorce. If she is an alien. In most cases too by the husband's treason, and if she with holds the title duty from him, this duty (this operates only as a bar title the rest being them), and finally by Statute Gloucester she forfeits it by alienation of the land she holds down. 1 Jast. 39, 2 Beav. 136.

And the wife may bar her right of Dower by her own act as by leaving a fine of suffering a numerous common moving during coventer. She cannot
Things Real
in any other way dispose himself of the right — but in the above case he cannot because he is able to join in a judicial conveyance so as to bind himself, but because it is incompetent for him to aver against the Record that she was a prime court at the time it was stopped. But if the jointure ended or granted she is not barred for this will not stop her of arriving the countern at the time.

137. In Conn. the wife is not barred of Dowery even by a total divorce until the way the faultly cause of J. Where the husband procures a divorce from her for his fault she is not entitled to if she is not to blame but gets a divorce from here she is entitled. This is a Statute provision it must exist at C. L. Stat. Conn. 239.

Nor under the Constitution of U.S. can she forfeit it by the husband's treason. Art. 3. § 3.

But in Conn. in England the may be barred by so taking a jointure should before marriage In equity they may be barred in some cases to execute after marriage. 2 Bl. 13. "Pen Wilmot"

It has been a (most questionable matter) under our Statute a jointure which will bar her down may consist of Personal Property for this Statute after mentioning Lands, Houses & mentions or any other Estate. But it has been determined in the case of "Sillick" in A.D. 1811 that it must consist of Real Property and this is the English rule. And if I think the correct one.

All debts for life neither conventional or legal are forfeited not only by treason but filing at C. L. but also by waste, by alienation without or in fact;
Things Real:

or for the life of any other than him for whom it was granted. Thus an Estate of Freehold, Stat. 34. 15. 4. Stat. 251. 25 Ch. 267. 272.

(Of Estates less than Freehold)

There are three kinds; Estates for years; at will, and by sufferance. There is hardly such a thing as Estates of will, but of this hereafter.

An Estate for years is defined to be an Estate for some determinate period, or an Estate for any fixed determinate period of an Estate for years. Thus an Estate for Twenty years, or Three years, or Three months, an Estate for years. The Law in distributing Estates takes no notice of any period less than a year. I do not mean that an Estate for three months will continue for a year, but fully under the denomination of an Estate for years. 2 B. C. 240. Stat. 213, 6.

A who creates such an Estate is called the Lessee, the tenant or owner is called the Lessor, it year at C. It is a solar year, but a month means a lunar month, I.e., four weeks, not so in Sex altimilia, it is a solar month.

If then an Estate is leased for a year, it is held for an entire solar year. But if leased for four weeks, months, it is forty weeks and if for twelve months, it is forty eight weeks; but if for a twelve mo. it is held for an entire year, 6 B. 61. 2 B. C. 71.

And in general the Law takes no notice of the fractional spark of a day. If a lease is made
Things Real

at any time before 12 o'clock at night on the first
day of January, it expires at 12 o'clock at night
on the 31st of December, a day is considered what
Mathematicians call a Janiculum, most indescribable.
1 Inst. 135.

And upon the same principle it is if one is born
at any time before 12 o'clock on the first day
of January, he is considered of age on the first
moment of the 31st day of December, this he may
not be 21 years of age by 1/8 hours, and this
rule is precisely the same between the 4th of
Debts of Estates and it is of importance to under
stand, as a question may arise as to what moment
the debtor is entitled to writ.

Every Estate which must expire by its own
limitation at a certain prefixed period is an
Estate for years, and for this reason it is often
called a term for years. 2 Bl. 143.

It is said every Estate for years must have a certain
beginning as well as an end, this is true, for if no day is
mentioned it commences at the date of the lease; if
the day should remain or afterwards become uncertain
or contingent it may be rendered certain by proving
when it did commence, as if to commence at the day
of his marriage, it can be rendered certain at
before. Then there will be a day of commencement
assumed. 2 Bl. 143. 1 Inst. 46.

And with respect both to the commencement
and duration of an Estate, it is a maxim, "in certe
et quod potest reddi certum." That is certain which can
be made certain by reference to a known standard
which is certain."

That
Things Real.

Thus a lease for any number of years which I.S. will name is a good lease if he will name them (C. 35). But an Estate for so many years as John Stiles shall live is good, because the duration of his life is not fixed or certain, nor is it capable of being made certain while the lease lasts. But why is it not good when an estate granted for 1 during the time which I.S. shall live is good, for this is a good freehold estate.

Now it can be an Estate for his life, because there is no living of years nor can it be a lease for years, because there is no prefixed duration. So another reason is that it was intended that the Estate should be a life estate. Still however, a lease for forty years, "if I.S. shall so long live," is a good one - for here there is a certain fixed period beyond which the estate cannot endure, as it may determine sooner. The main requisite of an Estate for years is here observed. (Inst. 45. 219. C. 1443.

An Estate for years is a chattel interest - and in judgment of Law inferior to an Estate for life. A life Estate to A. 99 years old is of a higher nature than a lease to B. for a thousand year, the one first may determine tomorrow. Living of years is not necessary to create or transfer it. Therefore it may be made to commence in future. A freehold cannot - and one reason is Living of years is necessary to create a freehold, and takes immediate effect. Moreover, the Estate from the nature of the thing
Things Real

The word "lease" for years can never in strict propriety be said to be void. It is said to be perpetual for the word "void" ex uiu timere implies a falsehood. The profession of the falsehood is called 

Therefore, no Lawyer will declare he was justified of a few simple & 46. 213. E. 144.

The word "lease" is used to signify not only the time or duration of the Lease, but by a natural transition the interest or property the lease has. Hence it is often said, the term expires before the time fixed has elapsed. It may expire as by Perfection. If a lease is made to A. for three years and after expiration of term to B. and A. dies in one year, B. remainder takes effect immediately. But it is to take effect after the expiration of B.'s term. 1 Inst. 45. 213. E. 144.

Sect. 6. May 27th 1813

With regard to the incidents of an estate for years, observe, that the Tenant has, if not restricted by agreement, the same estovers as a Tenant for life. 2 R. 212. 144.

But with regard to Enclavements on the determination of the estate, he is not in general entitled to them, as a Tenant for life; for it is known to him when the estate will determine, and if it expires between sowing and harvest, it is his own folly to lose them, there is no sudden determination of his estate. Litt. 568.

If however a lease for years is defeasible on condition timely and is actually defeased before the time limited, other than by his own act, he is entitled...
Things Real

to Emblements. This if a lease is made to A. for twenty
years, if I. shall so long live. Now if I. S. dies before
the twenty years expire, it is a sudden determination
of the Estate, he is entitled to the Emblements. So if
Tenant for life underrises to a tenant for years and
the Tenant for life dies, the undertenant will take
the Emblements. 1 Inst. 3b. 2 B. & C. 145.

If a lease for years is determined between the time
of furning & harvest by the Lessor own act he is not entitled
to the Emblements. 1 Inst. 35.

An Estate at W. I. will is defined to be one held
at the will of the Lessor, i.e. one determinable at
by pleasure. It is however determinable at the
Lessor's pleasure. It would be a more correct
definition to say it was an Estate held at the will
of both and determinable at the pleasure of
either. 1st. Part 868. 21 B. & C. 145.

It is manifest then the Lessor has no certain
indefeasible Estate for any period however short,
whenever the Lessor determines the Estate (determining the Estate) meaning the Lessor is held to the Emblements
1 Inst. 3b. 21 B. & C. 145.

But if it is determined by the act of the
Lessee himself he is not entitled to the Emblements
(See Lea.)

As to the manner in which the spie of Estates
may be determined. It may be determined in
the first place, by the explicit declaration of the Lessor
that the Lessor shall hold no longer. It must
however be made upon the Land, or notice of
grant to the Lessee, that he shall hold no longer.
It may also be determined by the entry of
the Lessor upon the Land and exercising any act
of ownership as by cutting timber. 1st. Part 218.
Things Real.

In Estate at Will, is also determined by the Lessee making a cessionment or a lease of it, to commence immediately; for the cessionment cannot stand consistently with the Estate at Will, the latter then determining. But if a lease is made to commence in future, the Estate at Will does not determine till the time of the lease arrives. Roll 766, 2261. 88.

It may also be determined by the Lessee assigning his interest; by committing waste, or refusing to hold any longer, and finally by the death or outlawry of either of the Parties. It is determined by an assignment, because it is not a thing which does not admit of an assignment. It is not in its nature assignable. Committing waste is a forfeiture of course, as it is a future of higher estate, death will determine it, because it is not any longer possible that the party can consent that the relation should continue. For the same reason, outlawry determines the estate for a judgment of Law, he cannot continue his will that the estate should continue. 5 Co. 116, 1661. 52, 55, 62, 2 Ch. 146.

If the Lessee determines the estate, the Lessee has a right to the Easement, provided it is determined during a season of harvest. 55, 569.

If rent is payable quarterly or at any other period and the Lessee determines the will, he must pay the rent, to the end of current period. 30001, if Lessee determining at. Sed. 339, 341. 414.

But these estates which were formerly called Easements of Will, have of late been construed as tenancies from year to year, so long as the parties
Things Real

Please: Courts began to construe them estates from year to year in those cases where there was annual rent reserved—because it was fair that the estate should not be determined by the lessee in the middle of a year. But now all that which were estates at will are now construed in the Courts of Westminster Hall, to be tenancies from year to year. 2 H. 1447-1451 Ch. notes. 1 S. R. 3. 360; 460—3 Bar. 1689.

Now the main difference between a tenancy at will and one from year to year is that the latter cannot be terminated at the pleasure of either party except at the end of the year and then not without reasonable notice to the other party which is generally understood to be half a year. 1 S. R. 1347-437; 3 S. R. 156; 457—487. 361; 78. 6485—87. 3.

And the either of the parties should die, yet notice is necessary as to both now living. Thus if the lessee dies, by his heirs, if he could determine the estate, must give notice to the other party. If the lessee wishes he must give notice to the lessee if he would determine it, notice must be given to the Crown. 2 S. R. 159.

3 W. 23. 149. 3—Ch. notes.

By the English Statute of Fraudulently

It is declared that for the lease for any term exceeding three years shall be construed to be leases at will yet they have been construed to be leases at will and tenancies from year to year. It cannot be a lease for years because by the Statute such must lie in issuing. 1 S. R. 3. 27. 145.
Things Real

In Count no parcel less for any time however short, is valid as a lease. It operates as a licence to occupy a tenancy, but not a lease at will giving a right. (Statute) Count. 324.

Estate at will then you perceive can hardly be said to exist. And according to the modern rule it is to be universally the case that what were formerly estates at will, are at present in England converted into tenancies from year to year.

It follows from the rule before laid down that notice to quit by the Lessor, at any other time than at the end of the year, is not operative. If then notice is given before the end of the year to quit, the end of Ten months it does not effect, or if it is to quit Two months after the end of the year it is not operative, he will continue that year likewise and he will continue till regular notice is given him to quit at the end of some year. 12 R. 137.

Still however when general notice to quit is given and no particular time is specified the party giving it is presumed to mean the end of that year, viz. the good. 12 R. 137. 14 C. 147 Ch. note.

If the Landlord, after having given notice to quit at the end of the year, for any rent which accrued after the end of that year, he is considered as waiving the notice, and the Tenant will hold the succeeding year, and must give a fresh proper notice when he wishes the Tenant to quit, renewing Kind he affirms the tenancy for the year. 12 R. 217. 14 C. 811.

2 R. C. 148. Ch. note.
Things Real

If the notice given does not conform to the requisites of law for the year in which it was given, it cannot operate for any succeeding year. Suppose he gives notice to quit at the end of eleven months. Now, as the notice is not good for that year, so neither is it good for any succeeding year.
2 Ch. 161. 38c. 147 note.

But want of notice can never be set up by a Tenant who denies the title; he cannot be considered as a Tenant from year to year, and if not so, he is not entitled to notice. A tenant at will holds by the consent of the parties, and if he denies the title he abjures the character of a Tenant under him.
2 Pio Ch. 161. 38c. 147.

If there is a lease for a year and the Tenant continues in possession after the lapse of the year with the Lessee content, he is considered Tenant for another year. But he is not considered a Tenant from year to year, but a tenant for one more year; on the original terms, this is implied from the tacit agreement of the Lessee in suffering him to remain. 15 H. 162. 1 Bowe 135. 258.

Thus for of Tenancies at will.

Of States at Sufferance

If an occupant possesses of land by lawful title and afterwards keeps possession without any title, he is considered as Tenant at Sufferance. If as a lease is made to A for one year, and after the expiration of the term he continues in possession without lease or permission, he is a Tenant at Sufferance. 2 Bl. 130.
Things Real

Formerly if a lease at will were made to A., and the Tenor doubt (which determined the will) be continued in possession without lease, he was considered a Tenant at sufferance. But now he is considered tenant from year to year.

3 Will. 25. 2 H. 157. 2 Pl. 157. Ch. 169.

This Estate may be determined at any time by the entry of the true owner. But before entry he cannot maintain an action of trespass. If the tenant for hold or acquire possession lawfully and pone upon lawful possession till some act of ownership is made. The tenant must manifest that unlawful holding by the public act of Entry.

If then a Tenant holds over, and being Tenant at sufferance, the lessor can sue him in an action of Trespass as Trespass till after entry is made. For if he does, the lessor will recover, for there is a positive rule of law agreeably an Entry to what presumption of the law setting of his possession. 11th. 57.

The Lessor may maintain an action of Trespass after making an actual entry and not before. In ordinary cases if Trespass the presumption is tresspass, but here the original possession being lawful an Entry must be made. 11th. 384. 2 H. C. 151.

In conclusion I do not think that actual entry is necessary in any case whatever for the purposes of maintaining Garment. It is not necessary even by fiction of law. Our Courts have decided that a formal or formal entry on Trespass did not enhance the goodness of the title, nor not maintain.
Things Real

It follows then that an Estate at Sufferance is not known in Law. He may be considered as a test for Entry is not necessary. I think in any case--this being of course is almost unknown in the English practice. 2 Bl. 151.

A Tenant at Sufferance you will perceive this, and must in England be an Entry--and the action may be brought immediately after 13 H. 33-163, 2 Bl. 151-157. Notes--

Of Estates in Possession, Remainders, &c., Reversions.

I would premise that there has always prevailed among students an idea that this latter is of extreme intricacy--but I think it is unfounded. I believe it may be made plain to perfectly intelligible with attention. It is of great importance (and is not a bundle of matter only without any reason or rule in thing alone) it is true particular cases will involve intricate questions and so will particular cases in every other title of the Law.

For these far less considering Estates with reference to the quantity of interest in the owner. I shall now proceed to consider them with reference to the term of their enjoyment. Estates under this view are divided into two kinds, Estates in possession, and Estates in expectancy.

Estates are also of two kinds, one created by act of the parties called a Remainder; the other by operation of law called a Reversion. 2 Bl. 163.

Of Estates in possession there is hardly any necessity for a definition, I shall the Estates spoken of in the
Things Real

Boys are considered estate in possession until the contrary appears, and not estates in expectancy. All that estates before treated of are estates in possession.

It is more easy to describe than to define an estate of possession. By an estate in possession a present interest in land as well as a right of present enjoyment. It follows then that an estate in possession in contradistinction from an estate in expectancy that actual possession is not necessary. Whoever has present interest in land and a right of present enjoyment has an estate in possession, and these two united distinguish an estate in possession from one in expectancy. Indeed these two exhibit are the universal characteristics of an estate in possession.


Suppose that A. casually to B. a deed of a farm of land to hold in fee simple. Now as the estate does not by the terms of the conveyance depend on a contingency or to take effect in future if is not an estate in expectancy but an estate in possession, to the grantor should refuse to deliver it up.

An estate in remainder is not limited to take effect and be enjoyed after another estate in the same subject is determined. Thus if A. and is leased to B. for years and after the expiration of B. estate the remainder over to R. B. has an estate after the estate of A. is determined. This falls within the definition precisely. Post 143. 2 Bl. C. 164.

These two estates are in the law considered but as one estate. Both together are considered no more than one fee, all together as one thing one whole one estate. So if there are a number of estates, to e. t. B. C. and
Things Real

remainder to it in fact, they all amount to an introduction on the mathematical rule, that all the parts amount to one whole, and are only equal to it. 2 Bl. 166. 

It follows that no remainder can be limited on a fee simple, for a fee simple includes all the interest which can be enjoyed in a given subject.

2 Ch. 154.

The most proper word to create a remainder is the word "remainder" itself, it is the most appropriate, but it is not endurable; other words showing an intention to limit a remainder will create a remainder, as I give grant to A for life and then to P. 2 Bl. 154 - 159 170.

Certain general rules apply to remainders in general.

1. To create a remainder, there must be a particular estate precedent to the estate in remainder in all cases, for the purpose of supporting it when a future remainder is created. This precedent estate is called the particular estate and includes a particular estate, and a remainder is correlative. Every remainder is preceded by a particular estate. Every particular estate is followed by a remainder. 2 Bl. 165.


If the inquiry arises why a particular estate must precede a remainder, I answer the word remainder is correlative term. It implies something preceding it. The rule which says it must be preceded by a particular estate does imply that there can't be an estate in futuro made without a particular estate. For a future estate not of future hold may be thus created. But it will not be a remainder, it falls under another head. Suppose there is an estate for years subject to commence twenty years hence. This is all future
Things Real

Estate, but it is not a remainder, for it is not a vestimentary part of an interest departed off. This may be termed an Estate made to commence in future without any particular Estate preceding it. 2 Bl. 163.

But a freehold Estate can at C.L. under any circumstances be created to commence in future. A freehold remainder may be created to commence in future.

A freehold commenced tomorrow is void, so if a man grants a life Estate to A to commence tomorrow it is absolutely void. A freehold Estate must take effect i.e. vest immediately either in possession or remainder.

The reason why a freehold cannot be created to commence in future, and 1. Because living of reign is necessary and the estate instantaneous. The Grantee is necessarily seized the moment living is made. 2. There must always when there is a subject in which there may be an Estate of reversion, there must be at common law a tenant to the possession. If there is not there is no under whom the real owner may maintain an action to recover the land e.g. of claiming the fees makes a conveyance in fee simple to commence to morrow. Now there is no person to whom an action may be brought to dyke for to dyke there is no tenant to the possession and if it may be created one day hence, so it may be granted to commence twenty years hence, and if this were allowed there could be no real action brought on the Grantee because he is not in possession and none on the Grantee because he has only an Estate for twenty years. The remedy would be totally suspended during the term. 5 Co. 74. 3 Jac. 234. 2 Bl. C. 165.

This is an exception to the rule in case of a Freehold.

And grants do move. There can't in this case be living of reign and there is no such thing as vesting the real owner or grantor,
Things Real

The object of the rule, that the freehold could be created to command in future, is to prevent the freehold from being in obedience. The levy of rent is one of the reasons of the rule. For 1. The freehold being in obedience tended to justify the freehold, and it could not be altered, while in obedience. 2. While it was in obedience, there could not be a tenant to the seigneur (feudal lord). It became according to the feudal rule, it was not permitted to be in obedience, because the Lord during that time would have deprived of his feudal services. 2 Wood 294. 2 Will. 166. 2 Bl. 374.

The meaning of this rule as applied to estates in remainder, is that when a freehold in remainder is created, a freehold must pass from the Grantor at the creation of the particular estate. If the word "a" be used, the word "the very" incorrectly as if the freehold must pass from the "grantor." The word "a" means only that a freehold must pass. He means the freehold or a freehold of a particular kind as a freehold remainder. In the case of contingent remainders, a freehold remainder does not pass, if it did it would not be a contingent remainder, the rule does not require that the freehold should pass.

It is true, for a graceful foundation of the rule has ceased to exist, that is that the land can be a tenant to the seigneur if create to command in future, it has ceased because real actions had almost ceased to exist and given way with the action of Grootmark. So too has the reason originating from the feudal services ceased.
Things Real

And the majority of another ground in lieu of rights, issued except in future of land and has been furnished by two sufficient modes of conveyance, viz., deeds of lease and release, and bargain and sale.

So illustrate the rule that where a freehold remainder, created a freehold interest passes from the grantor at the time of creating the particular estate. Suppose a grant to A for years, remainder to B, and if B, now the freehold is immediately in B. He has a present fixed interest.

To commence in future.

But suppose the estate is limited to B, for years and the remainder to C, the unknown son of B. Now suppose the remainder is not good for no freehold passes at the time of creating the estate, for the grantor the remainder is not in B. If it is granted to A for life, remainder to the unknown son of B, the remainder is good. The freehold does not pass but a freehold passes to B at the time of creating the life estate.

A lease at will is not sufficient to support any remainder. It being at times and for various an estate depending on the will of the party, as not to be deemed as a part of the inheritance. If it be a cause of instauration may be created to commence in future, but it is not good as a remainder.

If the particular estate is void in its creation, the remainder is not to be limited upon it, most multiply fail. For in this case there is no particular estate, without a particular estate, a remainder cannot take effect. E.g., an estate given to the unknown son of A, for life, remainder to the unknown son of B. Now this is absolutely void, then if no particular estate. If indeed the estate was limited to the unknown child of A and remainder to B, for years. It may
Things Real

take his remainder as a chattel interest to commence in future but if it was a remainder in fee  to B (as in the 1st example) it could not according to the C. L. take effect in any way for it is a present estate to one not in the eye of all being of grants and not of Executory Devices, of death in the proper place. 1 T司art. 278. B All 415.

Under a devise to one not in the for life with a free hold Remainder to A the latter will take the not by remainder but by executory Devices. Such a limitation by deed cannot take effect at all. Plowd. 414. B Wood's 179 note.

And if the particular Estate the good in its creation is defeased afterwards and before the remainder can vest in possession, the remainder must fail. Thus if an Estate for life is limited to A with a condition and the remainder to B and the condition is broken and the grantor enters and defeats the particular Estate the remainder fails, no particular Estate remains to support it.

This rule however does not apply generally to vested remainders, but to those only which are contingent. For if an Estate is limited to A for life and remainder to B in fee and A perfects his Estate, now the remainder will take effect on the for future. For the act of A does not operate in favour of the Grantee but in favour of the remainder man. The rule thus of Justice Blackstone is too broad for it does not apply to vested remainders.


Thus in a real and clear case in which the rule holds as to vested remainders, 2 Bl. 167, the remainder depends upon the Livery of seisin made to the particular Persons, if that livery of seisin is defeated by the Grantee; entry for breach of the condition the remainder the vested fees, for the
Of Title to Things Real
By Purchase.

I. In Easement, Occupancy, Presumption of Servitude, 2 Inst. 244, 245. So too Alienation by sale, or under A Grant of the 13th s. 444, 383.

1. Of Purchase by Devise.

A Devise is a mode of alienation to which the law gives no effect, having the effect of a testamentary disposition of real property, or a disposition of real property to take effect on the death of owner. (Don 9. 13, 5 Inst. 417.)

I will, what? 1st 12.

The right of devising existed among Anglo-Saxons, but was abolished on the introduction of the Feudal Law, it being inconsistent with the principles of feudal tenure. 2 Inst. 373, 57. (Don 8. 13.

The right was preserved, however, in some parts of Eng. by local customs, or by privileges granted by the Conqueror. (Don 3. 6, 2 Inst. 154, 77. Reg. 8976. 1 Ed. 79. 2 Inst. 218, 379.) as in fact it is.

Terms for years of chattel interests generally were not affected in this particular, by the feudal system, being personal only. (Don 6. 2 Inst. 379. 2 Inst. 7. 206.)

The tenure for years be created in lands, de novo, or at L.D.? (Don 10. 143, 107573.

The suspension of this right continued for many
Title to things real by Purchase. Devises.

Contents. - From the reign of Hen. 2. to the latter part of Hen. 8. But the restriction was raised by the doctrine of uses - a devise of the use of lands enforced by exclusiveness. 2 Bl. 375. Pow. 8. Plow. 414.

This practice was checked by Stat. of uses 27th 14. 8. which transferred the legal estate to the uses, thus consolidated them. Distinction between the destruction by this statute. 2 Bl. 375. Pow. 613. 8. Co. Ed. 111. n. Pow. 236. 42. 142 43. 150. 616.

In the 32. year of Hen. 8. a Stat. enacts that all persons having a sole estate & in fee simple, or a customary or a common of menors, lands & shotts have power to dispose of 2/3 of those forests by devise, the whole of sokeage by devise.

This Stat. was explained by Stat. 34 Hen. 8. The first of these is called the Stat. of Wills. 2 Bl. 375. Pow. 218. 140. 17. 13. And now all Engl. tenures, except copy-hoys, being converted into sokeage by Stat. 12 Car. 2. all lands, except copy-hoys are devisable. Pow. 42. 10. 2 Bl. 375. 77.

Further regulations were made as to the mode of making devises, by the Stat. of wards 1. 29 Car. 2. Pow. 97. Of which post.

Our statute authorizing devises is similar to those of Hen. 8. except that it extends the privilege further. Stat. C. 20. we have also a Stat. similar to those respecting devises in the Engl. Stat. of wards. Stat. C. 257. infra. - see instructions given in those statutes as generally adopted here.
Selle to things real by Purchase. Of Devise.

The power of devising, that. defined at Eng. 2 Stat. 37 Tit. 8. § 1. flanx, by Stat. 34 Tit. 8. The mode of devising is prescribed by the Stat. of Tracts, ch. 29, Sec. 1. 25. 47. 2 B. 378.


Of the Instrument, under the Stat. £ 23.

A devise under the Stat. of £ 23. is an irregular instrument in writing," i.e., these Acts, having prescribed no form of words, any writing, manifesting an intention to make a testamentary disposition of lands, having the formalities required by law, will suffice to a devise, under them, provided such intention is not contrary to the established rules of law. Doug. 377, 378. 14, 13, 13. 48. E.g. an instrument in the form of a deed, and delivered as such, 1 By. 1st. 2, 248.

Finch. Cl. 195. 3 Text. 310. 1 Web. 117.

So a devise (or a will) may be written at different times; on different sheets of paper, which need not be joined together. Doug. 15, 10, 10, 82, 3, 1 Shaw, 69, Comb. 176. and they all constitute but one devise, if so intended. 1 Shaw. 548.

Doug. 15, 16. E.g. one by one instrument devised 10 acres to day; by another 20 acres, two years hence. Doug. 176.

1 Shaw, 112, 545, 155.

In the last e.g. a devise makes several partial dispositions of such parts of his estate, as he may so. Doug. 17, 18.
Title to Things real to Purchase.  Of Devises.

In this case however the instrument must not be declared upon as his last will generally but particularly as that testator made his last will of such a part of his property. (Paw 18. 1 Pho 549.)

So also one may make several devises of different interests in the same estate, e.g., devise of lands to testator's youngest son, this heirs, afterwards some lands are devised to testator's wife for life. She may such a word to the son. Both kinds, as if made in one instrument. (Paw 18.19. 2 Pho. Eps. 20. Pho 182.) The last as, in effect, only a revocation profits.

So a latter instrument may on the same principle modify a devise made in a former one, e.g., it may diminish the former, or annex conditions to it. Paw 19.20. 2 Ath. 268.

So a devise may cover these states, by reference to a devise in another instrument, e.g. devise all the rents expressed in a certain sheet. So of a direction by testator to exec. to dispose a certain sum as he should by 3d's appoint, the makes of appointment. Paw 22.3. 1 Pho 117. 2 Ath. 273. 1 Pho 653p. 2120. Paw 41.9. 3 Pho 228. Page

So after a will or devise is made or published, testator may make a Codicil or Codicily, explaining altering restraining or enlarging it disposition before made. (Paw 24. 1 Pho 653 p. 2120. 1 Pho 653 p. 2128. 2120. The same annexes Codicily to the devise becomes both as one instrument (Paw 23. 568.
Title to things real by Purchase.

Title to things real by Purchase. Of Deeds

213 242. 161 157. By a devise, is meant an appurte-

age to a devise, a devise explaining to at supra. Cow 23 24.

But a more recital in a devise of something

contained in another instrument, is not itself a devise.

213 22 55 7. 35 42 7. 23 22 23 22.

In the construction of the deeds of 16 21, it was held

on that every devise of lands to must be entirely in

writing. 213 26. Cow 34 5. But the judge took the

word writing in its most extensive sense, viz., including

loose notes, memoranda, even letters expressing every


And it was held unnecessary that the

writing should be made or authorized by the devisee.

A devise written by an attorney, in pursuance of insti-

tions by devisee, but in his absence, i.e. not even read to

him, was good. Cow 26. 7 7 72.

So it was held, that if one, in extremis has

declared his intention, to devise by parole, another

without any direction or authority had written it to

writing in the owner's lifetime, it is to a good devise.

Cow 26. 7 7 7 79. 7 4 71 113.

But these two last opinions were soon overruled

by. 213 26 8. 7 7 100. By 7 72. 7 4 2 2 23 345. 7 7 7 7 7 113.

And it was held, that the devise must be completely reduced to writing, during devisee's life,

before 45 7 7 7 7 7 7 7. e.g. If a devise was to be made to A. this

happened upon facts. Before the cause was written devisee

died, it was all void. Cow 23 9. 7 7 72. 45 7 7 6 7 7 7 7 7 7 2 72.

But while devisee directs personal disinter
of Devises.

Devises. If after one was completed, but before the other was written into the same, was adjudged poiss. 

Case 29. 3d 31.

So it was held, that a devise might be good in part to void in part. E.g. Previous annuity is a condition to the devise without authority must void devise, good. (Carr 32. Dyer 2. 412.) Seen, where the devise was to devise one and the devise written without condition. (Carr 30. Rutter 480. Mo. 356.) Hence the devise is not written in his latter lifetime.

Signing by devisee holds, unnecessary in these states. Not necessary that his name should appear on the instrument. (Carr 30. 4th 3d. 352. 2d 35. 3d 79.)

Indeed it was held, that any writing the devisee signed, sealed, not written by devisee was sufficient, and that the evidence of one writing was sufficient to establish it. (Carr 30. 2d 128. 3d 315.)

A decision to this effect probably occasioned the clause relating to devising in the State of grants.

Interest's Estates not Devisable.

Formerly, it was held, that contingent interests merely in possibility e.g. not to devise under Stat. of Wills. (Carr 34. 3d 427. 2d 291.)

NOW clearly settled that they may be in possibility coupled with an interest, are devisable before the interest vested. (Carr 34. 234. 449. 680. 134. 65. 222. 176. 156. 35. 73. 160. 239. 248.)

But an estate, which is founded on a mere right is
of Devises.

not within the purview of the Stat. of 1803, as a
revision discontinued, e.g. Tenant in Tait 6th Rev. 
becomes joint in a Lease for Life - Revisions cannot
devise 2 or more - it is discontinued. Cov. 15, 16, 
670 C. 254, 293 or 387, 405 vist. 212, 198, 9.

An estate for after use is not devisable
under Stat. 16, 5. - For they are confined to persons, haing
land &c. or few pecul. Clay 218, 167, 8, 5th 334, 
670 C. 58, 60, 61, 218, 150, 218, 32. So of an estate
for several lives. Cov. 37, 3. 5th, 168, 173, 43.

So of a lease for, or perhaps a devise from
an estate for. e.g. tenant in last grant to A, this
lives. A cannot devise his interest. Cov. 16, 268, 

But now by Stat. 29, 1. 10, 2. estates for after
use are devisable. Cov. 37, 3. 218, 269, 66.) until there
is a special occupant.

Our statute authorizes devises for after
use. The words are "shall have power to make their
wills &c. of their lands & other estates," which seems to
include all estates, which may continue after the
owner's death, & to which no other person has a claim
which he (the owner) did not make by his own act. It
does not thus include estates in tate. 218, 269, 70.

And by the 2d section of our Stat. 84, 1872
one may devise any interest remaining after his death
which he might have transferred by bid in his life

Signatures, offices & franchises, the things of
Of Devises.

An devise, in Eng., are not devisable—"not within y. Stat. of the 8. 9td 360325 10th 381. In cor. Offices are strictly personal, except that in some cases they may be exercised by deputy—not devisable, or devisable.

Copyhold estates, not devisable in Eng.—there must be a surrender to ipse use of the will—not with-er the Stat. 8. 14. 4th. 22th. Acts 135.

A right of re-entry on lands depending on the non-performance of a condition by grantor is not devisable. For he has not the land, the breach of the condition. No estate in the land; strictly speaking. Stat 16. 18th. 13th. 23th. 422. 4th. 2. 31th.

Of the Devises itself (i.e. instrument) the subject-matter of devises within the Eng. Stat. of

Friends, & our own Stat. (1. 357)

The clause relating to this subject in the Eng. Stat. of Friends' "Enacts," "That all devises of lands to "shall be in writing, signed by the party devising, or "by some other person in his presence. By his "direction, and subscribed in his presence, by three or "more credible witnesses." (P. 17. 8. 238. 376.

Our Stat. Enacts that "no will to," wherein there, "shall be any devise of real estate, shall be to go to "if they are not witnessed by three witnesses, all of them "signing, in the presence of the testator." Stat. 1. 28. 78.

Substantially speaks with 1. Eng. except that "there is no express provision made with respect to devises"
Deeds.

signings. Same rule, however, adopted by our courts, I suppose, as a test by piping.

The object of these provisions is to guard men in extremis against fraud, the threat being at hand.

Paw 47.

"All Deeds" v. No form being prescribed, any more than by the Stat. of 1681, any writing which would have been good as a deed under the Stat. of 1681 will now be valid, if solemnities prescribed by the Stat. were observed, i.e., if signed & witnessed as the latter Stat. requires, Paw 48, 9.

Hence (as under the Stat. of 1681) a devise, executory according to the Stat. may, by reference to another instrument, make the latter a part of itself, the latter instrument, referred to, is not thus executory. E.g., A by a will only executes under this Stat. changes his lands, his legacies, of his by another instrument not thus executed gives legacies, these legacies will change. Land, Paw 19, 486, 2 Atk. 338, 117, 202. 2 Atk. 349.

3 Burr. 1375.

"Of any lands or tenements." Description of the subject matter of the vesting part. (Paw 52) lands in our Stat. "Lands of other Estates." (St. 6, 23) Real Estates.

St. 6, 25,

Decision that the Stat. does not extend to such English Colonies as were planted before Stat. passive. Secs. as to those settled afterwards. Paw 52, 2 Atk. 375, 209. 411. (vid "Municipal Law, page")

But a devise made in a foreign country of lands...
of Devises

lying here, must be executed according to our Statute
Paw. 32.8. 9. M. 29.

Secoii, in cases of personal property, it has no local
Paw. 32. 32. 111. 12. 13.

These words do not extend to copyhold lands. Paw.
32. 19. 44. 25. 311. 12. 12. 8.

These words do not extend to a bequest of a chattel
interest. Paw. 35. 3. 16.

A trust of an inheritance is within Stat. 2.

A trust of an inheritance is within Stat. 2.

An appointment of land under a power, if made
by will, must be executed according to the Stat. of power
i.e. an estate, is conveyed to trustees to such uses as the
appointor by will appoint. (Paw. 34. 6. 136. 12. 746.
22. 285. 23. 177). By "will" is meant such a will,
as is proper for disposing of land. (cf. 2. 318.) This is the
same.

General rule, that a writing, importing the
will, if void as such, cannot constitute an appoint-
ment. Secoii the mischaps to be prevented by the
illus. Paw. 33. 12. 8.

And if a legacy is given originally out of
land, the will creating it, charges, must be executed
according to the Stat. Such a charge is in effect a
disposition of part of the lands by devise. (Paw. 39.
25. 26. 338. 385.) Different from the case of an instant
inheritance or in a devise. (last page)

Cases arising out of land are without prejudice ej. Fact.
(Paw. 39.
Of Diverses.

So a will giving a power to sell to sell lands, must be executed according to the Stat. (C. 59. Sec. 20.)

For this is indirectly disposing of lands; i.e., ennulling other disposals to do it.

The Engl. Stat. of fees to all cases of rents, deviseable either by the Stat. of wills only itself, or Stat. of fees, or by any custom. C. 59. 60.

Of the solemnities required in Devises by the


First. The devises must be "in writing." This requires it to be signed under the Seal of wills, C. 60. Sec. 25.

"Seco. 135." It is also necessary under our Stat. the "writing" must be "in writing" is not as the Stat. C. 22. 25. (Sec. 226. But the provision as to witnesses implies that it must be written.

This rule adds no illustration further than has been already given as to instrument (ante p. 39.)

Secondly. "Signed by testator, or by some other person in his presence by his express direction." C. 69. 60.

Signing not expressly required by our Stat. Stat. C. 23. 20.) But in the construction of such Stat. the rule of the Engl. Stat. as to signing is ignored? Sec. 326. Of course our laws under this head is the same as the Engl.

Sealing is usual in law, but not necessary either here or in Eng. Sealing instead of deeds is a feudal solemnity, mark of distinction between families. C. 61. 76. Vell. B. E. 241. 1 Sess. 326.

Signing what? As has been noted that sealing,
& Devises.

alone amounts to signing within the Stat. (C. 64, 3 Dec. 1, 3 Mod. 219, C. 64, div. 60, 3 to one). Same point holden by 3d May 2 (2 Jan. 64, C. 64, 4) Yosten Carolin. 25 Nov. 2. C. 64, 4, 311 (C. 64, 313). The latter seems the better opinion. The former facilitates the forming of devises.

But the name of the testator, written by himself, or any part of the instrument is construed a signing, unless it appears that it was not so intended, e.g. where made, or (C. 64, 6, 340, 6, 219, 6, 159, 6, 405.

But if it appears, that the name written in the body of the instrument was not intended as a signing, it will not operate as such; as if there was no such intention to sign formally, if the intention was defective, e.g. the devise being in 2d Story, testator signed at 2 page. But there would be no sign, the others, but for it. Doug 241 a 229. C. 65, 60, 105, 180.

The onus probandi in this case lies upon him, who opposes the devise. The presumption of law (incent devise being certain) is that the name written in the body of the instrument was intended to be a signing.

Devise subscribed by 3 witnesses and declared by 2 others in their presence, to be his will, tho not signed by him. Holvins will op. 608, 39, 39, 42.

"Attested and subscribed, (in his presence) by 3 or more credible witnesses." The general effect of this clause is to prevent the hand contingent upon the legal execution of devises. C. 65, 49, 60, 49, 49, C. 65, 67. 65, 113, 116, 116.

The attesting witnesses are to attach to their object.
1. The sanity of testator (Prov. 68), 2. The fact of his signing, (ib. 89. 7, 77), 3. The fact of publication (ib. 80).

1. They are to judge of his sanity or state of mind for the signing which they are to attest, included in law not only the physical act of writing testator's name, but also the mental power or capacity of making legal effective signature. An idiot may sign his name. (ib. 69. 71, 72, 93, 8, Prov. 169. 13, 15).

2. When the devise is only for profit, the testator's sanity must be proved—ones or devisees—proving the execution to have been formal, not suff. (ib. 69. 70, 2 Ath. 36. Bull. 264. 136. Fr. 365).

Hence, the lot. of land will not establish a devise on all of attesting witnesses are examined. For, if they have a right to require proof of testator's sanity from one of them. (ib. 70. 39. 93, 8. But, giving it in evidence at the close of this will, page)

But the testimony of the subscribing witnesses is not conclusive, as to testator's sanity or signing or even as to their own subscriptions. Bull. 264. Prov. 169. 62.

It is to attest the fact of testator signing. But necessary, however, that the witnesses be have actually seen testator sign. (ib. 129, 72). By him to them, that his name affixing upon the instrument was written by himself is sufficient. (ib. 72).


But, testator saying "this is my will" is not sufficient evidence of the fact of signing.
acknowledgement of that fact. (Para. 730.) 2. (Para. 182.)

It seems however, that a written declaration in the hand writing of the Devisor that his name was written by himself, is suffice: evidence to a jury of the fact of signing: an implied acknowledgement. (Para 767.) Shinnie 227 270 &c. 271 e.g. Sign’d “as my last will,” &c. For it, whether an actual acknowledgement is not necessary. (Para. 80 221 234. 3. They are to attest to the publication.

As publication was neccessary before the Testa. of goods, & is not taken away by it, it is still hoton neccessary (Para. 82 1 123. 3. (Para. 155.) analogous to the ceremony of delivering a deed. (Para. 86 7.)

By the publication of a will is meant some act by testator amounting to a declaration that the instrument is his will. (Para. 81.) No form of publication necessary. (Para. 82.)

Any act or declaration importing solemn intent or testament to dispose of his estate by the instrument is sufficient. (Para. 81. 8 b 69 125.

Hence delivering the instrument as a deed has been hoton a suffice: public. (Para. 81. 8 b 69 125.) In a case where the instrument was received to support the instrument. to be a deed. (Para. 312. 4. P 62 8 15.

So declaring to the witnesses “This is my last will” is suffice. (Para. 82. 8 b 69 52.

So publication may be inferred, e.g. when the form of the attestation, was in the testator hand writing: in these words “Sign’d sealed published declared &c. presence of us.” This? to them “take notice. it was hoten”
a sufficient publication. 8 Co. 92, 6 B. 19, 2. 119.

But the publication must be in the presence of the witnesses. And at least this is held sufficient as the publication. 8 Co. 662. 1 Mcq. 381.

Nor shall it be present at the time of allegation. If it is in several parts, one of which contains the testimony of witnesses, whoever heard the story, it is not an execution. 6 Co. 37. 3 Mcq. 263. 1 Elq. Co. 64, 403.

But unless there is positive proof, it is not in the power of the party. If the case be contrary, it is a law for their consideration. 6 Co. 37. 3 B. 1772. 1187. 307. 407. 422. 454.

As to the subscription of the witnesses. Nothing that if a devise is made on three sheets of paper not joint together, each witness subscribes one sheet, the subscription is sufficient. 8 Co. 90. 101. 108. 682. 3 B. 1775. 218. 377. 1 B. 138. 486. 1 Co. 185. 274. 2. 487. 3 Mcq. 203.

So if the loose sheets in the last case were wrapped up in a blank cover, their subscription after that it is done, will be sufficient. 2 Co. 90. 682. 3.

"In the presence of the Testator." The word is synonymous with the words "within the view," to if they subscribe within his view, the subscription is sufficient. 2 Co. 90. 215. 377. By the latter word "view" is meant impartial view. For if the testator might have seen part of the subscription, and of subscription is on his premises, 2 Co. 683. 395. 688. 1 Ch. 37. 12. 1 Ch. 403. 3. 1 Elq. Thus he might have been into a gallery, to a glance down it.

So if the curtains of his lid are closed, yet a sub...
Of Devises.

... subscribed in the same room, it is said, is sufficient (Conn. Stat. 375.) Because it is in his power to witness.

Not merely that, lest later readings be in some house, e.g. The in his carriage, they in all others. Conn. Stat. 1132, Ch. 29.

But the subscription, the in a contiguous building is not good, unless testator might have seen it. Conn. Stat. 1134, Ch. 29. Conn. Stat. 1366, Conn. Stat. 222, Ch. 38, Sec. 239.

The the witnesses (must subscribe) at least by request, ye. above only supplied. Conn. Stat. 223.

For this clause, in seems, is intended to prevent notoriety, yet any mistake, as to the identity of the instrument. Conn. Stat. 210, Sec. 77, Conn. Stat. 223.

If there testator is conscious, at the time of subscription, the corporally present, the attestation is not good. This presence, whether in construction or statute, presence also a knowledge of the transaction. Conn. Stat. 229, Ch. 241.

So, the the attestation is in the same room with the testator, the of disposing minds, yet if events clear distinctly, not suffice. But in his presence, within the meaning of the Test. 12, account of the transaction. Conn. Stat. 17, Sec. 779.

The the witnesses must subscribe in testator's presence, yet the fact that the subscription was at his instance, need not appear on the face of the instrument. It is a fact for the consideration of the jury. Indeed of the instrument, the instrument, it must be proved. Conn. Stat. 239, Sec. 53.
By three or more credible witnesses.

Under these words it has been decided that if a devise is subscribed by A. 10, and afterwards a codicil by B. 12, the devise is not signed by the witnesses within the Stat. (C. 100. 110. 680 2. b. 35. c. 170. 142.
S. c. 174. 3. 208. 262. 1706 68. 2 270.) and that if the devise is not witnessed, a codicil with three witnesses will not make it good. 2 Barn. 597. 280. 2. Rau. as to the principles. It does not appear except in one case (2m 1354. 104. 5.) that the devisee was present when the codicil was executed. (17 T. R. 140.) the devisee, however, appear clearly to have proceeded upon the distinction between a devise to the codicil, to devise to several times and several distinct parts. (288. 108 107.
184. 108. 5.) in which last case an attestation of one part is sufficient. What is the difference? For the will and codicil constitute but one instrument. (223. 363.)
A codicil (I suppose) is considered as being intended to affect an instrument already complete. Not to
consummate the instrument or to give it validity. Attestation of the codicil, or devise not essential as to the original devise. (288. 270. 170. 270. 2 1877.) But an attestation of one part of the original devise is intended to give authenticity to the whole.

But when there is a will and a codicil on one piece of paper, the
De. whether the subscription of the codicil to one or both
is a fact to be determined by the jury. (285. 106 2 107.)
An Act to the Rev. whether a Subsequent Variation is a Codicil, or a distinct part of the original devise, it seems of the 7 Subsequent part relates to personally only, disjunctly, according to that, this circumstance furnishes presumptions, one that it was not intended as a codicil. Poc. 109, 1 Bl. 345.

Not necessary of the witnesses subscribe on each other presence, on at the same time. Poc. 107. 2 Bl. 109. 3 Bl. 177. 2 Bl. 429. 3 Bl. 109. 2 Bl. 177.

But it is most safe: for the oath of one witness is sufficient to prove, that all signed in testator's presence but unless all were present together, proof cannot be thus made (Bull 264. Poc. 708. 1 P. Ma. 741. 1 St. 184. 2 Bl. 366. 4 Bl. 2224.) and if one is living, the handwriting of the other cannot be proved (Poc. 709.) in such case, proof that the others signed in testator's presence cannot be had, unless all were together (Poc. 113. 720.)—(Note the difference between proving the execution, ballot, or the devise in a particular suit at law, which cannot be done by one witness. Poc. 708. 1 P. Ma. 741.) else established on formal probate of it in chy, for which purpose all must be examined. Poc. 70. 718. 2 Bl. 212. 2 Bl. 177.

"Credible Witnesses" (credibly not in our text.)

1. Who are such? The word "credible" seems to have meaning, the credibility of the witnesses, sure, requisite. (Bro. 417.) If it means competent, it is "competency, compen- tency explicit in the word witnesses." (Bro. 417. 3 Bl. 113.)

Decide: that a devisee is not such a witness as: 3 Bl. ...
requires clearly so, as to his own devise. One who is no
witness, cannot be a credible witness. Pec 114, 116. Willes
88 Jennings, 38 cist. 314, B. Rop. 65, 12. H. 3277 (Thuc
910). — Interests, 383. 1253. The rule extends to interest
5 witnesses generally, as he a good witness as to the other
devises in the same instrument? (Post.)

So don't help of persons under incompetent, by
being cancel give evidence of their subscription. (Pec 116
85, Bunn. E. S. 98.) As when before attestation witness
was convicted of larceny.

25th, can a subscribing witness, who is a sub-
see, or otherwise interests at the time of attestor to
be un-
dent competent, by any thing ex post facto, as by
lose,) So as to establish the devise? In other words,
if the witness, the interests at the time of attestor is com-
pliant to testify at the time of examination, can the
devise be established? (Pac 116.) is it still attested?

Vicar, certificate by Sec. C. P. in Baptist 38. Reasoning
that the witnesses may not be competent at the time
of attestation. (Pac 1253, Pac 116, 119.) The witness's
had an interest charged on land, not released, interest
subsisting, as in Holland 56. Jennings. This case was cited
to the Exchangers chamber, difference of opinion, case con-
fi

The case was directly decided in favor of devise
under such circumstances in Magath & Obliger.
(113, 8. C. 124.) The witnesses were all minors, the
devise charged on land, paid before the time of examination,
— devise lost on duly attests. — Same opinion manifested.

3
by W. Hudson, &c. P. 5. St. L.s. 559. 2. 1837. P. 123.

The case of St. Augustine's wills is in point to this
same purpose. (St. 627. 1. P. 135. 6.) The witnesses
all had legacies charged on land by wills. Subject
therefore, to the estate of the testator's death (not before) which was estab-
lished. Previous bias.

Same point, decided in Hudson v. Hoyle.

P. 120. 132. Pratt Ch. J. contra.

Powell's statute of frauds. p. 133.

Wadsworth v. Camp, decided in favor of the

3. It is questionable, indeed, whether the de-
vise to the witness is not void at initio, so that
he might testify, as to the others, without exculpa-

(Bar. 528. 10. P. 557. 8. Bart. 514) - not positively.

ap. Stan. n. 53. decided contra in Wadsworth v.
Camp.

The Stat. 25th, p. 2. (being declaratory) is not only
in support of the opinion, that the devise to a witness
is not initio void, but that he is a competent wit

(Cow. 122.) That it is declaratory vid. P. 129. 133.

Bar. 514. See also P. 133. 4.

That Stat. provides that devisee of legacies
to attesting witnesses shall be void, if they attempted
to testify, and that witnesses whose debts are charge on
the testator's lands, take no witness whose hand was.
it as witness, notwithstanding. Cow. 122. 3. So back
Stat. here.

General principles of Civ. L. that a release
by an interested witness, notifies him to competency. Sup.
May, 36, Bow. 1812. Doug. 1813.) Objection. Temptation to per
at the time of attestation: what this? Same objection
in every case at C. S. Stat. of proof intended to regulate
rules of evidence in C. S.

Objection: Practice. Jurat's duties. As in every case,
Objection: Infant's lunatics infants. (They C. S. oc
judges of the execution. Suppose same case at C. S.
Objection: "Three Englishmen" required. (Ouah!
Objection is intelligible as referring to attestation. 2. But
"competent witness" is not.)

But a Legatee (or devisee) is a good witness of
will, as his interest. Bow. 1815, Tal. 691.

As to one having no beneficial interest under the
devisee is a good witness to prove testamentary sanity. Doug. 1814.

[Page 389]

So a Legatee, who is a subscribing witness,
is competent. If it is indifferent to him, whether his
shares or not. E.g., if he has the same legacy by two
will, to one of which he is a witness. Bow. 1815, Tal. 627.

It seems that a testamentary disposition of
real and personal property may be good as to
the latter, the void as to the former. Bow. 118, Tal. 1255.
For want of due attestation. Bow. 327, 328, 1828.

314, 327, 332, 337

Who
Who may Devise.

The exp't rule is that all persons who may convey are not disqualified at law, or by the expressness of the Statutes, to wills may devise. See 189.

But by the words "all Persons," in the Stat. 32 VER., are meant natural persons, as distinguished from civic or body corporate. Corporations cannot devise under this Stat. Pow 139. 10 Co. 608. 3 Com. 14.

As to natural persons, there are 4 positive disqualifications, in the Stat. 32 VER. as explained by 34 VER. Bad. Coverture, infancy indigent, and sound memory. Pow 140. 2. Byr 139. 6. 105. 310. 34 VER. disabilities.

According to the construction of the Stat. 32 VER., these persons who before the Stat. 32 VER. committed sin during their lives cannot devise under that Stat. devise this. Pow 41. See 1st rule supra.

1. Certain parts of Eng. infants may devise by custom. Pow 143. 4. 10 Co. 226.


2. An idiot is one who has no understanding from his nativity a natural fool. 100 Co. 303. Pow 144. Dy. 1436. 203. 6.

A person is not an idiot if he has any "glimmering of reason" as if he can take his age, count to 20. Pow 145. 1st. 18. 238.

A person deaf, dumb, blind cannot devise.
4. A feme covert cannot devise or in any case be supposed to be feme by her conscience. She wants free will. *Con. 146, 4 Co. 61, 760, 622, 68, 112 b.* By 3543, Swint 38, *C. Titus, 7th wife,* expressly disqualified by Stat 11, 8 (Con. 140.)

And it has been noted, that a custom for a feme covert to devise was not good, *unreasonable.*

**Con. 147, 8, 9, 3, 16.**

Decided in Con. that a feme covert may devise real property, even to her husband. *Bellopp v. Andrews.* Con. 146, 730.

Suff. Co. decided contra. (Mich. 195, 639.) In the case of a feme covert, who is devisable, except as far as that is necessary to be violated by the disposition. *Con. 2 East 532, 5.*

*E.g.* That if she sold a separate estate of real estate. *531, 531, 3 Ed. 1, 2 Ed. 3, 4th 695, 409, 2 Ed. 204, 1 Ed. 126, 140, 2 46, 32, 316.

**Objection.** She cannot devise personally with husband consent. *Con. 9, 502, 2 D. 695, 109, 891.
of Devises.

This rule relates, it seems, to personal property belonging to the husband by marriage (Blackstone 66) or which he has a right to control (211, 2 East 552, 1 Blackstone 310. "Because it is her wife of his goods." (211, 2 East 307, 4 Tho. 73. 11.) is equitable this purpose,) so of her personal estate, anciently (211, 2 East 307) So, according to some of her paraphernalia (211, 2 East 307)

So she may appoint an executor of goods or chattels which she holds, as formerly, without his consent (2 East 552.) cannot be with them even even, even with his consent, for they are not devisable. 511. 340, 493. 3 Crook 326. 2 East 629. 412.

But even here, she cannot deprive, her of estate, whereas, he is entitled to it. See judge Love's essay, The division by the lot of E. was approved by the legislature in petition for new title. Decision contra in Fortis & Brainard, et. of E. 1805.

But if here it is barred for life, wife may make a will (or devise I suppose) for she is as a joint sole, it may in all things, act as such. 211, 2 East 307. 493. 419. 2 East 604. 211, 2 East 49.

And in England, these are ways in which a joint sole may retain a power of same power over her estate real as well as personal as is possessed by joint sole, i.e., the power of claiming a devise (9, 2 East 404)

This may be done by either of two means, or else

1. By way of trust. 2. By way of power over assign.
Of Devises.

(Pow. 156. 2 Tit. 695.) Such settlement may be made before or after marriage. If it be done before marriage, it must be by instrument. Pow. 142. ("huswife").

And it seems that now a conveyance for either of these purposes, will be sufficient. The settlement is not actually made. 2 Tit. 695. 6 Bro. P.C. 156. 2 Vin. 191. Pow. 166, 168, i.e. the heir will be compelled in equity to make a conveyance in pursuance of her appointment. E.g. considering as done, that which is agreed to be done.

1. By way of Trust: as if a woman having real estate, convey it before marriage or by jointure afterwards, to trustees in trust for herself, for separate use, during coverture, & afterwards in trust for such persons as she shall by any writing appoint. A devise by her will be a good declaration of the trust supported in equity, not called a devise, but a writing in nature of a devise. Pow. 163. 2 Vin. 612.

2. By way of power over a use: as if a woman conveys real estate (not supra) to the use of herself for life, remainder to the use of such persons as she shall by any writing appoint. A devise or lease the appointment supported in equity (Pow. 156.) 20. T. 695. 2 Vin. 64. 612. 3 Bro. P.C. 388. 4 Vin. 168. 3 Ath. 727. 2 Eq. C. P. 15775. 7 Lord on Pow. 52.) Or now supported in Ct. of Law (20. T. 695. Pow. 162.) i.e. devise as under a power of uses, not so I suppose, in case of trusts supra. Uses are now legal estates.

Every power thus executed, takes effect as by limitation or the intestate of appointee had been.
contains or the usage expresses or gives, creating the power. The disposition is considered as taking place when the power is created; so the nomination of an appoint to does not take place till the execution of the power. The right of settlement is considered as the due of alienation. Cow. 168, 4, 181, 388, 111, 112.

The appointment by devise in these cases must be executed according to the State of found. Cow. 43, 39, 158.

But if the donee is an infant, she can not, to execute a power over her estate. Dissolution wants. Cow. 163, 9, 33, 297, 298, 308. So of infants generally. Cow. 43, 47, 2, 133, 26, 298, 304.


Restrains, derives, &c. menace of imprisonment, are disqualifications — these are such at Co. L. Not so, if a point is not in Stat. 34, 7. 2, this implies from the words, at his "free-will & pleasure." Cow. 170, 143, 35, 384, 127.

Same rule doubts it is now, for free-will of same which is essential to the making of every contract is wanting. 10 Co. 136, 50 to 119, Cow. 6, 180.

So, hence, that if a sick man is induced by excessive inactivity to make a will, that be may obtain quiet, it is by restraint. Cow. 170, 143, 327, 138, 82. 1st. Com. 1st Div. 1st.

But there must be actual proof of undue inactivity or restraint. Cow. 170, 2, 138, 125.

If either of the above disabilities exists at a mention of the deviser (i.e., at its execution or publication),
it will be seen, the the disability to devise, before its commencement, by testament, death — for the commencement is founded on the inception which is void, e.g., common law. Infancy, &c. Pow. 172. 3. 495. Holt. 246. 11. 180. Aug. 87. 183. 162. Lamb. 90. Plow. 343. St. 258.

A joint tenant cannot devise; in Eng. This is the rule as to devise by custom, before the state of title. For the survivors claim by right, by a title paramount to the claims of the deceased, the devisees after the death. Per "The 1st. (Pow. 174. 5. 82 82. 

By title 183. 82 82. 555.) and hence cannot be a joint devisee. 180. 262.

Same rule, under Stat. of N. E. not disqualifies by these statutes, but the title by 39 176. like expressly enjoining persons to sign, or by necessity, espouse as an absolute. "Either that unto. 180. 176. 628.

180. 172. 8.

So, if a joint tenant, makes a devise of his part, surviving his companion dies, it is not good void, ab initio. He has nothing then to devise. (Pow. 176. 178.

180. 176. 178. 3 Bar. 1488. Poph. 87. 3 Co. 31. Formerly doubtful.)

(Pow. 176. 180. 172. 82 82. 555.)

In E. one joint tenant may devise, as survivorship

words of the Stat. gen.

General rule: A man cannot devise land which he has not, or is not situate at the inception of devise, i.e. the time of its execution or publication. This is the U. S. rule as applicable to devises by custom. 180. 176. 2. 1 180. 176. 2. 401. Pow. 171. Sal. 237. Holt. 296. 550. 750.
Devises.

E.g. Testator devises all his lands to afterwards purchaser, on proof, he must make new devise; devise is in nature a conveyance in present to take effect in future. 

The owner must have a present interest. (Covenants containing devise, P. 185.)

So in devises by Custom, it is necessary that devise be signed. For the conveyance is not consummated till testator's death. E.g. If owner of land, after devising it, is deceased, continues to title his death, devise is void. P. 184. c. 56. 611. Holt. 748. 1 Peth. 216. — Secures, in an assignment by fraud and conveyance, good in equity. P. 611. 1 Peth. 378. 1 Eg. 274.

Same rules obtain under the Stat. of 1786.

P. 183. 178. 201. 2. 2 H. 52. 1 Met. 27. Holt 251. 2. 263.

P. 341. P. 198.

But if the owner, being devisee after devisee, re-enters, and signs, devise is good. For he considered as having been signed continuously. 2 H. 52. 1 Pe. 279.


So, if devisee is signing at the time of making his devise, but afterwards enters a continuous signed till his death, devise is good. For, he is supposed to have been signed at either, he is signed by relation, action for...
for more profit. Prov. 15:6, 2Bac 52, Sal. 255.

It has been much doubted, whether a devise of lands not owned at the time by devisor, but specifically described at afterwards purchased, is good. Dunker's 'Canty' opinions. Within the same reason, as if not so described. Pov. 200.2, Plowd. 344, 7607, 2513, 243, S. Aug. 438, Sal. 207, 3Bac, 1451, 7556, 606.488.

Upon the same principle, a devise by mortis, of the lands only, will not pass the estate of the afterwards purchased by him. Pov. 202.3 by Egg.

On both sides by devise is not necessary. Ownership sufficeth. "Having" or seized not used in our Stat. So in descents by our Law. Right of geft. equivalent. Here, for most purposes, to actual possession.

And in Eng. a person having an equitable estate in lands, i.e. a claim to those in Eng., may in Eng. own the lands themselves, i.e. equity and agreement by A. to sell land to B. Before conveyance to devisee thus disposed in Eng., Eng. consents as done. (Pov. 200.5, 7, 12.) 2Bac 144, 9607, 78, Pov. 320, 209, 192, 181, 197, 437, 496. Bender is a trustee in Eng. for vendor, on a title by geft. latter p. 606.2, decree a specific performance, Pov. 202.

This is not treated as a devise of a future estate. The land belongs to vendor from the agreement, in equity. But if land is not part by a devisees, being by p. geft. agreement, is made. No present interest in Eng. Pov. 213, 28, 1615, 629, Secun. 5, by Egg. If the devisee was for pay.

mos of dills. Pov. 213, 2 Ch. 152.) Fix R. 383.
Of Things desirable, under Stat. 7. B. Pour our.

1st. As to the subject matter. All lands "not devisable by custom, nor devisable under those statutes" are "lands" here denote the subject matter, not the law and estate. "Pour 229. All estates are not devisable, but all lands are, i.e., if the tenant has a devisable interest in them.

Tenements and instruments "not valuable or not devisable under those statutes, as personal parcels, ways to (Pour 229, 230, 41, 45, 260, 5, 675, 674, 673, 672) words in title of X. 1. "of annual value."-traps not devisable here. Suppose no estate easement only words "lands to other estate.

Admissions devisable being valuable. Pour 220 and 6, 236, 14th, 619.

But rents are devisable, under Stat. 11, 8 (e. g., the owner has a devisable interest in them. Pour 220, 5, 4, 335, 203, 305, 304, 233, 8.)

An annuity in free is also devisable. If, from a rent in that it is a yearly sum charged on the person of the grantor. Pour 229. Code 1. 444.

2nd. What estate is devisable under Stat. 11, 8, and ours, i.e., what interest devisee must have inysi.

Being to devise.

In Eng., no other than a free simple estate is devisable under Stat. 11, 8. The words "estates of inheritance" in 32, 11, 8, being declared by 34, 11, 8, to include estates in fee simple only, Pour 218, 229.

The words of our Stat. being general, "lands other estates" include also estates from absoluteLAT.
Of Devises.

Chattel interests are devisable at will (Pow. 6, 235, 374, 2 Inst. 7), as terms for years.

There are several estates of inheritance in lands, called estates in fee simple. 1. Fee simple absolute. 2. determinate. 3. base for. 4. Conditional. Pow. 230, 27. Law 537, 2 Bl. 109, 10. Since the Stat. de densis fees conditionals are confined to personal hereditaments, e.g., an annuity, descends. Pow. 232, 237, 239, 166, 189, 188, 461, 428.

All these are devisable by Stat. of 23, 3 Febr., 7, as it is most general sense, but distinguished from estates tail, a fee in moiety. Pow. 232, 3 Bulst. 184.

So estates in fee simple may be in joint tenor, in joint family, as they have been in continuity of opinion, always held to be devisable, Pow. 232, 3.

These simples not in joint tenor may be divided into 1. Reversionary. 2. Rests remainder. 3. Contingent remainder. Executory devise. 4. Estate subject. to a condition of re-entry. Pow. 232, 4, 5, 5. 19.

These interests are all devisable, except that (Pow. 232, 4, 3 Bulst. 184.) the formerly held that 3. 2d class was not. Pow. 34, 600, 29, 222, 176, 203, 340, 281, 283, or 307, 403. "Estates in joint tenor." 2. 19.

As to devise of reversionary vid. Pow. 232, 4, 62, 423.

As to devise of reversionary vid. Pow. 232, 4, 62, 423.

A reversionary estate, or an estate tail, is devisable, under the Stat. of 23, 10, 81, 87, 393.

So a remainder in reversion, or an estate tail, is devisable, Pow. 235, 600, 611, 89. Also that is a wild case. 2 Wood 351, 2, 184, 5, 192, 766, 292, 293, 306, 483, 49. "Estates in joint tenor." 5.
In like there can be neither reversion nor remainder in an estate tail. Stat. 64.

Estates in fee simple, may be legal or equitable, but the deviser in any state. H. 8. Laws. E.g. as in estates in fee simple. His title must pass. (Pare 165, p. v. Rev. 97.) If an estate is granted by A. in trust for B. this heirs, 13, may devise it. (Pare 235, p. v. 1287.) Like cases before 6. ch. 76. 76. (Pare.)

3. What estates may be created by devise. Tenants in fee simple absolute, may devise an absolute fee simple. So of course any other fee simple which can be created in the subject by act of a party. Pare 237, 8. (Pare.)

So one having an absolute fee simple in possession, may devise create a fee tail. Pare 237, 6. (Pare.)

And a devise of a fee simple after a future event, e.g. in the event of his dying without heir, etc. (Pare. 237, 9. 10. 1897, 3. Rev. 207, 208.) This rule however relates to devises conditional as dispositions in present trust to his devisee, by these the rule is now treated. Pare 237, 10. 207.

Pare 238, 10. 207. But the case states by way of example, to be void by way of equity. (Pare 238, 230. Contingent too remote, see, in short, on page 238, 10. 207.) It is void, because devised as in fee, devised, see estates in prior. (Pare 238, 230. Pare 248, 270. 10.

So tenant in fee may devise to one for his life, or for his heirs. devisee may enter in these cases, in the death of devisee, Pare 248, 270.

The reversion in these cases, descends to the heirs of devisee. Pare 248, 270.

So tenant in fee, after having devised for life or tail, may devise another estate out of the estate remaining un}

D. De vises.
in both (i.e. the devisee) till the whole property is exhausted. The latter to take effect upon the expiration of the former, e.g. to A for life, then to B in tail, then to C in fee. Pow. 241, 277, 156, 285, 2 Nisi 29, 35, et qd. 144.

And a limitation of the ultimate estate, remaining in devisee (as supra) may be either by way of remainder or by devise of a residue (as above). See "estates in possession." See also term for years in lands may be created by devise (Pow. 242, 1067, 181) to devisee or tenant for years in lands created out of lands, devisee to use at will (Pow. 6, 243, 265, 374).

Estates created by devise may be absolute or conditional. E.g. to A for life, generally, or to B for life on paying a certain sum to the heir, etc. Pow. 245. 6, 67, 126. 345.

And these conditions may be precedent or subsequent. Pow. 246, see "estates in condition and in possession."

There are no technical words to distinguish these two species of conditions. Every condition is to be construed as precedent or subsequent according to the apparent intention of the deviser. Pow. 246, 57, Table 169.

But a condition describing a qualification of devisee to take, is, in its nature, precedent, e.g. to C provided he marries with consent of testator's sister, marriage with their consent is a condition precedent. Pow. 248, 2 Nisi 287, 346.

But a devise to A, his heirs, upon condition that within 3 mo. after testator's death, he execute a lease, does demand to B, subsequent devisee a present interest. Pow. 248, 1 Nisi 620, Table 168.

Estates created by devise may be either legal or equitable. A devise of lands, or where devise has the lega...
Of Estates.

Estate, or of a use, since the Stat. of use 27, 16. 8, is a devise of a legal estate. (P. 270. 1) For the Stat. executus,
use, transfers a legal estate to it. 2 Bl. 370, P. 236. 271. 1.

But a devise of a use, before a legal estate, was for an executory estate only. (So at this day, is a devise of a trust
in land by P. 271.) Property is to be held in trust unless
legal title is vested in one in trust for another. P. 235.

Uses are devisable at C. L, before the Stat. of us.
P. 271. 3.

If land is devised to one, no use being vested in it, it cannot be managed to the use of any other than the devisee. For this is to be contrary to the intent upon the face of the instrument. P. 271. 476.

But if a use is limited, it will serve to vest a use, will be executed by the Stat. of uses. P. 271. 279 and 316.

If land is devised to A. this heir, to the use of B. for life only, the use of the first is in devising heir. P. 272. P. 4.

1. So an equitable estate may be devised, thus: the
remainder of a trust. P. 235. Property is to be held in
trust, when the legal estate is vested in one, or the remain
der in trust for another. P. 235. 2 Bl. 335. 6.

Indeed such uses as are not executed by the Stat.
are called trusts. P. 235. 7. 2 Bl. 335. 6. (E. 465. 333. 57, 5.)

As to the origin of trusts, see 2 Bl. 335. 6, P. 235. 289.

The former carries the legal estate, the
latter does not. P. 252.
of Devise.

For the distinction between trusts created by conveyance, see Con. 236. 7. 10th 381. 1. Where the trustees are directed in the instrument, creating the trust, to execute a conveyance of the legal estate, it is executory. 2. Where no further conveyance is directed it is executant. But this executant trust does not include a legal estate; it is like an equitable interest—"equitable trust." Con. 236. 7, 10th 381. A decree for conveyance of the legal estate is unnecessary in the one case as the other. (4th.)

Thurso says, that all trusts are, in their nature, executory. Con. 237. 10th 381. 2, 483, 323.

One may devise, not only devisable interests, but an authority over such interests, e.g. devise that, "I shall have the disposing, setting, letting, and voltage of these lands. Such a devise, however, gives devise to power only to manage the land as he pleases, to lease it at will—nolo to sell or lease it for years; for he has no interest.

Con. 239. 240, 292. 484, 5th. 381. 7, 394, 341, 7, 70, 73.

But if one devises "that his devisee shall sell and resell," or orders that his lands shall be sold by them or appoints, constitutes or empowers them to sell, they have authority to sell. Con. 240, 5, 180, 334, 6th. 110, 586, 119, 336, 144.

Devises "if my personal estate is insufficent, to my land to 18th, as it may be to sell for payment of debts; all the residue of my real estate to the personal estate to 18th, and to take all real, immediately." Con. 242. 2d. May. 334, 292.

Authorities devised one lands are of 2 hills. 1. Nol. 2d. 4, 334, with an interest. Con. 292. Con. 2d. 3d. 4, 2d. 334, 292, 3d. 4, 2d. 334. 2d. 4, 2d. 3d. 4, 2d. 334, 292, 3d. 4, 2d. 334, 292, 3d. 4, 2d. 334, 292.
Of Devises.

... the only modifications of uses. See p. 262, 266.

1. A naked authority is a bare power to sell the interest devised, as in the last note supra. Per 292. 302. 6c. 116. 113. 236. 288. 799. vid. loc. cit. 113. 2.

2. 36. 192. 6c. 39. 466. d. 1165. 2.

... in these cases of prehosp deserts to a heir, the rule. 292. 315. 116. 236. 1165. 2.

And a release of such authority by the person in possession, is void, e.g. it's on power to give released to a heir, ... release passes no interest. For it was alone. Per 292. 9. 6c. 466.

Such authority must be strictly pursued, the execution of the power must, therefore, be construed with reference to the power itself. Per 294. 295. 296. 297. 2 East 776. 120. 267. 298. 267. 268. 260. 176.

So, the authority is strictly personal not transferable to persons. If there are two persons the other cannot execute it. So the both are ejus, for they are not in annis but as instantes. Per 296. 49. 49. 114. 115.

Of course, the power does not survive to the devisee of the original devisee in the 2nd case.

So if the devisee is, that his land shall be sold by his devisee, or the ejus of his devisee, concerning ejus appointed devisees; they cannot devise, for they are not ejus to both the original devisee. Per 296. 269. 61.

But a sale, satisfying the ends of the devisee, will be good in this respect. E.g. one appoinite devised his son's to be sold 'by his devise.' Where devisee only
by the other two is good. 20b. 1. 20c. 20d. 20e. 20f. 20g. 20h. 20i. 20j. 20k. 20l. 20m. 20n. 20o. 20p. 20q. 20r. 20s. 20t. 20u. 20v. 20w. 20x. 20y. 20z.

If testament devises that his land shall be sold, with out naming the person, by whom, his execs are the profite present to sell. 30a. 30b. 30c. 30d. 30e. 30f. 30g. 30h. 30i. 30j. 30k. 30l. 30m. 30n. 30o. 30p. 30q. 30r. 30s. 30t. 30u. 30v. 30w. 30x. 30y. 30z.

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In the last case but one, the surviving son may sell alone for they take no execs - tributes office up on the same principle, it seems, that the son of the testor might sell. 29a. 29b. 29c. 29d. 29e. 29f. 29g. 29h. 29i. 29j. 29k. 29l. 29m. 29n. 29o. 29p. 29q. 29r. 29s. 29t. 29u. 29v. 29w. 29x. 29y. 29z.

If the person thus empowered to sell, refrains to do it, then for whose benefit the sale was intended, pay in b'g compar to him to sell. 30a. 30b. If the person affirms to sell, the gift of b'g is fully extinguished, etc. 30a. 30b. 30c. 30d. 30e. 30f. 30g. 30h. 30i. 30j. 30k. 30l. 30m. 30n. 30o. 30p. 30q. 30r. 30s. 30t. 30u. 30v. 30w. 30x. 30y. 30z.

1. A devise of land for of an estate, to be sold or to be sold, is a devise of an authority coupled with an interest. 30a. 30b. 30c. 30d. 30e. 30f. 30g. 30h. 30i. 30j. 30k. 30l. 30m. 30n. 30o. 30p. 30q. 30r. 30s. 30t. 30u. 30v. 30w. 30x. 30y. 30z.

As of one devises the profits of land to b'g. b'g. 30a. b'g. 30b. 30c. 30d. 30e. 30f. 30g. 30h. 30i. 30j. 30k. 30l. 30m. 30n. 30o. 30p. 30q. 30r. 30s. 30t. 30u. 30v. 30w. 30x. 30y. 30z.

In these cases the deviser, not the heir, shall have the estate, the property of the donee limited. If deviser the devisee dies, his wife is to have it during her life limited. 30a. 30b. 30c. 30d. 30e. 30f. 30g. 30h. 30i. 30j. 30k. 30l. 30m. 30n. 30o. 30p. 30q. 30r. 30s. 30t. 30u. 30v. 30w. 30x. 30y. 30z.
Of Devises.

2. L. 221, 10, *203, 3*, Leonard 72.) for it is his estate during the term.

So, the estate of devises will continue the perpetuation of the object of the devise should it be sooner answered, e.g. if the son (supra) shall die before Sec., *208, 6. By *208, 196. By 210. The rule is otherwise as to reversionary authorities.

Under the limitation of an estate to "such children" of A. as B. shall appoint, an exclusive appointment to one of A's children is a good execution of his power.

10, *208, 210, 18, *210, 18, 18th 210.

A power to appoint by devise is not executed by a mere residuary devise, e.g. A having a legal estate in trust with a power to devise to either of his sons, devises "all his heir estate" to his son B, the payment of his debts," etc. Trust estate does not pass by Stat. 110, 27, *210, 18, 18th 210, 22, 2 Do, ch. 297), as such in

18th 210, 22.

A power to appoint by will is no execution of a power to appoint by devise, *208, 269.

Who may take by Devise.

In general all persons not incapacitated by positive law may be devisors.

Under the Stat. 32, *208, as explained by Stat. 33, *208, devises in mutuius are not allowed, i.e. devises to corporations as bodies politic. The Stat. 43, *208, authorizes devises to corporations for charitable uses, but it requires the munificence by Stat. 9, Sec. *208, 18, 18th 210, 22, 2 Do, ch. 297, 18th 210, 22, 2 Do, ch. 265.
Of Devises.

In Cor. Corpora: not incapable to take, by devise.

There then are corpora: which can purchase that land, may be devised.

Devices may then, be natural, or civil persons, except, in Eng. so far as the latter are disqualified by above

Articles, Cor. 315.

1. Natural persons, capable of taking by devise may be either in esse or not in esse, Cor. 315.

Those in esse, may be devises without prevented by some civil disqualification, Cor. 315.

Coverture is no disability. No. 245. in 3 Ed. 3d. is not

Law, it fall of devise by disagreeing to it, but they will, in person to prevent him from injuring the wife. Cor. 315. P. 97. S. 41. 4.

So, too, may be devised, to hus. the she cannot be

granted, for devise does not take effect till his death. Cor. 315. 316. 2 ed. 3d. Cod. 112. 6 ed. 114. 6dott. 244.

An alien may take as devises, but he can hold only the office found of estate that rests in the King, here in this State, 1 Supers. Cor. 316. 12. 2 ed. 66. 4 Le. 314. 3d. 141.

315. 238. 9, as to office found.

An illegitimate child cannot be devised, like be

has acquired a name, by reputation, but he may then be able by that name, e.g. Devise to the son of A. not good.

he being a bastard, like he has acquired a reputation of being. As son. To devise to B. if he having acquired that name is found. Cor. 319. 3d. Cod. 112. 6 ed. 313. 9th. 3d.

P. 250. 2d. 97. 2d. 119. 1st. 610. 66. 66. 66. 2d. 94.

But, if a devise is made to the children of A, his legitimate
...with his illegitimate children (C. 340. 8, Note.)

A Y 35.) Suppose such a devise to be in favour of bastard. Per

Fenwick, Ser. 6. 346. 345. 120. &c. 340.

2. As to natural persons not in the ascendants

inventories, it appears at the devisees death. "Per

Este. 4, &c. 60."

Distinguish formerly taken between a present de-

vise to an infant in coverture so, a devise by way of re-

undancy. If latter was above good of the infant was

been, when the particular estate deviation, see 8. Co.

720. 1 St. L. 2 T. 275. 6. No. 62. 6. 278. 228.

But now by Stat. 10. 14. 3, if an estate is limit-

done with a contingent remainder to his bastard

child being not in the, shall take, as of whose the

jovenship. (2. St. 139. 3. Bac. 124. 4. No. 312.) 328 Dec. whether this last

duration to devise? (Ser. 228.) Ser. 62. 60.

So, a distinction has been taken between a devise

to a person not in the, per verba de present, and per

verba de future. If the latter case, it is not settled if

the person may take. Ex. to an infant's children, when it shall

be born. (Bow 322. 1 Ed. 3. 173. 3. 2. Salt. 275. 1. 12. 136. 6. 228. 6.

135. 6. 228. 6. 1073. 3. Bac. 124. 4. 224. 5. 226. 1.

The latter is good by way of executory devise

3. Bac. 124, 4. the subject descends to the heir with the near


The last distinction does not contemplate re-

maining, but direct devise to infants in coverture.

A devise a devise to such children, as I should have living

at his death, a posthumous child to take. 3. 5. 12. 126. 3. Bac. 226. 6. 278. 2.

126. 3. 199. 183. 5. 269. 6. 269.
Of Devised.

But whether a devise to an unborn infant for curative purposes is good, he being unborn at devise or death (as is not settled in Eng. according to Lord 32223. opinions contrary, by 322. Albion 332, 2 Inst. 272. 276. 
2129. Lay. 32. Moore 177. 120. 135. 156. Freer 249. 2 Inst. 
295. 106. 105. 105. 180. 175. 32) e.g. devise to the unborn son of 
A. be. The weight of opinion is in favor of the devise. 

The objection to the infants taking in such a case is, that as he has no capacity to take when the devise takes effect, the devise must be a nullity although he is born if he takes at all. Row 324. 3 Bae. 124.

But why does not the objection (if it amounts to any thing) hold in the case of an executory devise to such an infant, which is dearly good? The precedents disclosed to the aliens in both cases, as the infant is born. 2 Moir. 
Row 326. 1 col. 349. They are not accountable for the infantio 
prohib 3. 3 T. 57. 58. 526. bed. 113. 115.

At any rate, if there are express words used in the devise authorizing an inference that testament was aware of the devise's incapacity to take immediately, he shall take as by a future devise e.g. "To the antebos. child of it, when he shall be born." By "if such a child shall be born," devise to be taken. 
Row 332. 3. 125. 135. 140. 175. 32. 2 Hob. 320. 175. 175.

And according to the more modern abolition of any devise to an unborn child, must offend both an inference because it implies a disposition to take effect. 

20.
at its birth, if it be an executory or future disposition. 4 Dan. 270; 3 Me. 312; 3 Me. 310, margin. 46. 236. 2 Me. 463. 465. 1 Me. 225.

As to devise in intestate with a conditional limitation, see Coop. 40. Com. Dig. 2. Cy. co. ab. 364, Moore 4767.

Civic persons may be devises, as by an adms. e.g. devise to the dying of T. T. is good. (Page 336.) To civic per- sons, not in spec. if the intent is clear, e.g. to persons of T. T. (Page 336.)

But parishioners are not such civic persons as
can take in that character. Page 336. 2 Me. 310.

Every devise must be properly designated, or he cannot take. The designation may be by either naming or describing him, and the title name is mistaken, she or he is sufficiently designated by description to may take. (Not of the name applicable to any other person, 293, Co. Litt. 32, 661.) 2 Me. 310. Page 495. p. 357, 671. (This position requires to be taken with some qualifications. And evidence may under certain restrictions be admiss-ible to explain the ambiguity of the phrase. E.g. applying "the Governor of the state," to "the treasurer." 2 Holt 32, 30, 30. So if "the bank of Mackenzie" instead of "the bank of Mackenzie," 2 Holt 32, 30, 30. Page 495, 495, 495. 2 Me. 310, 310, 310.

And the description of the real estate applicable may be made good by implication, e.g. "lots," if for- mally being named. Page 338. 2 Me. 410.

But this rule does not hold in favor of a devise made it for he must take.
of Devises.

of taking, if at all, at the time of his death, but he can't
yet pass of reputation of being child to any one, but by the
continuance of being? Con 338, g. 6245 50g. 10. 6266, g.66.
126, 1 147 526. Besides, if birth of such a child is possible
remotely comes, it's stated in pgs. 85.

Then is also, a devise to all the natural children
of A. will not ensue to the benefit of one in utero same.
Con 339, 66. 736.

A woman may take a devise under the description of
"the wife of A." if she is reputed to be his wife, tho'
she is not his lawful wife. Con 340, 86. 736.

So, a devise may be constatles by an equivo-
cal or inaccurate designation, e.g. to a devisees son
first person of the devisee, a daughter may take, if it
appears to have been the intent, tho' the precise words
designate a son, (Con 340, 476. Dy. 337, Rom 1095.
Ex 26. 32.) and in any case under the description to
the exclusion of an elder daughter.

So, a daughter may take under the description
"proximo fraterno" of the devisee, tho' the adjective is
masculine, as if there is no son. So the elder daugh-
ter, in this case, excludes the younger. (Con 342, Cod 16.
Pam 11, 303 g. C. 312. 3. 2 Bl. 106.

The word "child" as "children" is a suffix, e.g. "to A. for life to and towards his children". As "children" take a life estate in remainder. (Con 343, MSS. 22. 56197.)

description personam.

The word "children" is properly as descriptive per-
senam, or as word of description, as in this case figur
described to take as purchasers. E.g. last case, as, of an es-
tate is devised to A. This child X (he then having chil-
de his own) they take a joint estate as purchasers. Pow. 841. 660.7.
660. 870.

But if it is the last case here, at the place of a
devise, as child X, "child X" is a word of limitation in
of child X take as heirs. They cannot take in remainder
as purchasers, because there are no words of remainder,
and they cannot take a present estate as purchasers.
not in the case, A takes an estate last. Pow. 503. 660.7.
 Doug. 302. 10. 770. 660. 460. 180. 20. 27. 32. 612. 244.
The description of a devisee may be general or spe-
cial. Pow. 365. 6. By a general description is meant a
designation of any person who may happen to assume
the description...

1. General. As if one devisee to A, or his heir,
to the first heir male of devisee. The who happens to
be first heir male, is constituted devisee. Pow. 346.

So, devisee may be constituted by a devisee and a
slave, "slave," or "slave," it will create by heir
principal," of the house, or family, Pow. 346. 760. 33. 293.

If a devise is made to "the person," of the
principal heir of the testator, his male, male, male,
and female, shall take, if not, the collat-
eal heir of the whole blood. Pow. 347. 12. 60. 290.

If a devise is made to "the son," of the
testator, it must relate of his name whether male,
female, shall take. Pow. 347. 660. 33. 760. 32.

So a devisee may be descended by the words
"son of his," or "son of his," in which case the person assuming
the
that description, by the rules of computing the degree of
kinship were taken. Per 347. 168. 876. 3 East 278.

And if a particular estate be another, it is impossible
that the words "next of kin" are construed to include those
in their only, who answer the description at the time of testa-
tory death. 4 B. & C. 207. 5 Kel. 70. 239. 3 East 278. 294.

So the words "the nearest relation of my name" is
a good description. But in this case "relation" is never
collectively, it includes all testator's nearest relations
of the degree mentioned. Or all his brothers & sisters
unmarried, if he has no nearest relation. Per 497. 357 R.
1826. 335.

If testator explains whom he means by "nearest
relation," persons not falling within that description
may take. E.g. to my nearest relations, viz. the Smiths and
the Johns. From the latter the test. so near is kindred
as the former where take Per 350. 1 Per 67. 62. 358. 729.
374. 405. 467.

If one devises to his nearest relations, according
to the Act of Distributions, his wife takes no part.
For she the 2d, be entitled to a part under that Act, she
is not his relative, i.e. is not related by consanguinity.
Per 350. 1. 1826. 358. 3 East 76. 320. 761.

If one as supra. designates personal property
thus, "to my nearest relations, those relations who com-
take under the Act of Distributions, are the Sages. If
omission of the words were "my relations." Per 351. 378.
2 Per. 67. 332. 436. 5 Kel. 70. 1726. 34.

But if the devisor of land were thus described.
Query whether the above rule extends also, or whether the device to be paid for uncertainty. Rev. 352, tit. 3 last 278.

In con. I presume the St. R. as assigning devices to the last case, for our St. regulates succession as well to the real, as to the personal estate of indue. 1 St. 467.

If one devise to "a" part of his name, "it is a devise to a daughter, who by marriage has changed her name can take, according to some, this is by distinction; if she is unmarried both at the time of parents' death, she may take the devised estate when the devisee arises. (Rev. 352, tit. 3, last 574, 578.)" Succession of the devisee is married, either at the time of the devisee's death.

But S. St. 467, seems to be of opinion, that if a devise is immediate, or by way of rest in remainder, safe if she is unmarried at the time of the devise, if it is, upon a contingency, that her name at the time of the contingency happening, devolves in right. Rev. 353, tit. 3, last 388.

It is a general rule of construction, founded on feudal principles, that if an estate of freehold is devised to one with an immediate or intestate remainder to "his heirs" - the heirs of his body", or "his issue", it takes an intestate - in the first case, a fee simple, in the two latter, an estate for life. Rev. 353, tit. 2, 280, C. 41, tit. 33, 373. 2 H. 410, 323, 1 Bur. 48, 421, 401, 299, 57, 299, 325, 6 H. 36, 7 H. 563, 8 H. 16. Mr. Reeves's essay 2.

Heave 25, 4, 1 W. 574, Doug. 323, 3 L. 847, 437, Rev. 1125, 246, 1. Where the remainder is after an intestate limitation, the devisee takes an estate for life.
Of Devises.

The words "heir" do not convey, in such cases, as words of limitation, not of description, i.e., to ascertain the quantity of interest given to the first devisee, nor to designate the persons who are to take after him. Rev. St. p. 471. (Note, that no previous purchase is limited to an ancestor, or word "heir" is as apt a word of description as any other. (vide p. 2. & post.)

But as the reason of the rule has ceased with the abolition of feudal tenure, let us endeavor, as far as possible, to narrow the rule. (Pee. 55.) It almost always defeats the intention.

An heir may, therefore, at this day take a remainder as a purchaser under the description of "heir," if the a previous purchase is limited by some devise to his ancestors, if it appears from the devise that the word "heir" was intended as a descriptive person. (Pee. 55.) More 372. 6 Co. 64; 6 Co. 17. 6 St. 22. s. R. 203. 4 Bar. 271. Rowl's Essay. 18 Y. C. 2184. E.g. 6. & 7.

so, to A for life, to his eldest issue male. (Pee. 55.) 6 Co. 64; 6 Co. 17. A takes for life only. Hence if it had been limited to his eldest heir, Pee. 55. St. 11. 6 Co. 271. 6 St. 22. & 229. 5 R. 203.

So, to B for life, to C to his issue male, if his heir forever. Hence B taking for life only, if his issue male is a remainder in fee, Pee. 55. 6 St. 229. & 229. 5 R. 203.

"Issue" in its most proper sense, is descriptive, since it has been generally construed as a word of
Of Devises.

... continuation except where the intention to vest it or its pro-

per sense has been manifest. [Page reference: 360, 701, 160, 103]

Cas. 94, 44, 124, 299.

If an estate is devised "to A for life and after to "the next heir male of his body" to the heir male of "his body. "Heir" is a word of description. It takes for

life only, the next heir male a remainder by pur-

chase. Otherwise if not so the supra 1266 words are negatary. [Page reference: 363, 4, 366, 66. See 25th Treasury.

A description of the devisee may be special,

i.e. an absolute description of a particular person or a designation (as in 1 above case) of any person, whom happen to answer a description (Page 365.) e.g. To B, the
descendant of J. S. Then the description designates not one

by a name, but a particular son of J. S. (Page 357)

So, "To the heir male of the body of A, now living" etc. to the present heir apparent of J. S. (Page 365, 129x,

at 214, 10, 334, 26, 7211. Roy?, 338, 77, 56, 32, 56, 566. )

So, "To the second son of J. S." This is a special descrip-

tion of J. S. son in order of birth. (Page 365, 6, 7, 776. 666. )

General rule. Necessary that the devisee answer

in all respects, a description given him. Page 367.

Hence if devisee is described as heir of such a

person, he must show that he is heir in that sense. i.e. while

the word is used by testator. Page 367.

Thus: if one devisee "to the heir of B generally. All

is entitled to J. S. as eldest son. Can not take for

B. can have no heirs. [Page reference: 365, 6, 66, 1299, 1359, 149.

So if one devisees to the heir of B. generally, the in-

heritance...
Of Desires.

living B. 13. eldest son. cannot take. for "some estate us 21st. 7th. 64. 99. 166.

so if desires any particular heir, of his female. of B. (without more) if person to take most.

answer of description in both particulars. is, the must.

be heir as well as a female. i.e., if B. has a son. the.

Moore 365. 367. 21. 76. 22. 618. (rest p. go)

But if the desire shews by position words, pur.

pose, implications, that a person, not his general was.

intended to take. by the description of a particular.

heir, such person will take. i.e., to my heir theis.

my brother. i.e., heir. if B. will take. the rest being.

no.


so, if the intention is clear (at supposes) on may.

take under a description of heir, in the lifetime of his.

ancestor. as if desire takes notice that the ancestor.

is living. i.e., to the body male. of the body of A, by.

giving it also a legacy. Then construed heir.

possession. Poc. 376. 378. 60. 110. 68. 464.

indeed it is a general rule of construction. in.

all des' arising upon devise, that the intention.

of desire shall govern. if consistent with the rules.

San. Dow. 377. 9. 37. 376. 420. 340. 420. This is the first and.

great rule in opposition of desires.

But there has been much doubt wheth-

er an estate is given to one name. in the bond rule.

of heirs female of his body. words being very obscure.
it would be necessary that the person to take (i.e. by power of devise) should be heir, as well as male or female. And the

use is the same of our estate as limited to the heir male or

female of the body of a stranger, e.g. "To the issue female of the


(see last page.) Distinction between this case 4 that in last page. "His female" (without more,ผลงาน heigner.


66:4. n. 27. 76:35.B.

A person in no sense answering a description of an heir, may take under a will, in failing to constitute an heir, e.g. "I devise that my wife shall have heir of all my real estate." So of a mere stranger, unless the word "heir" does not designate the devisee, but the interest which he is to take. (Prov 39:3. 66:4. n. 27.)


But of one by devise, makes I share of his lands, he will take, only his chattels real. Prov 39:3. 66:4. n. 27.

Prov 4:3. 66:4. n. 27. 76:35. B.

After all, it is a general rule, that if the
description is so far certain, that the person intended
may be distinguished from every other person; a devise
shall not fail for tace limitation. (Prov 4:3. 66:4. n. 27.) For a devisee is not to be considered void for uncertainty, unless

Of devises.

E.g. To Margaret: a daughter of J. T., in our name being Margaret, (Rev. 4.20. 1558, 231, 263, Decr. 31.)

So to the wife of J. T., J. T. dies, his widow married J. B. her testator dies in the same lake, (Rev. 4.25. 4, 1655, 23, 1. Nov. 24.)

So where a sick man devise'd his posthumous child, then in ventre he, if the child was born before his death, it was adjudged to take under that description, (Rev. 4.26. 1655, 23, 1. Nov. 24.)

But if the description is false, that newly deliver'd devise is void, e.g. to the heir of J. T., (Rev. 4.27. 1552, 165.)

Then, if the person claiming under the devise is reputed to be a heir of J. T., (Rev. 4.28. 2, 1552, 165.)

Now a devise may fail of taking effect.

A devise may be invalid in either one defect apparent upon the face of it, or from something intrinsic. (Rev. 4.29.)

If the first kind is any uncertainty or inexpugnable process used, as to the thing devised or the interest in it, or to the grantee, or intent of the devisee. Such uncertainty is termed a latent antiquity, (Rev. 4.29.)

If limitations contrary to the policy of law fail under the defects apparent to. (Rev. 4.29.)

Intrinsic doubts to p. validity of devises are founded on: uncertainty or inexpugnable arising out of facts not appearing of face of p. instance. As where a doubt arises to whom of several persons, or bodies of such things respectively p. describing or describing, or under one extended to itself, uncertainty in inexpugnability of this kind, is called a latent antiquity. (Rev. 4.29, 10.)
1st. As to defeasance apparent upon the face of the devise or patent or litigation.

It is an universal rule of construction, that if there is a devise or uncertainty, which cannot be explained, or a deficiency which cannot be remedied, the devise is void, so far as the uncertainty is concerned; the heir at law shall be preferred. (Paw 411), he paid for.

Such uncertainty is apparent on the face of devise, may be either as to the subject-matter or thing devised, the quantity of interest meant to be devised, or the person devised.

2d. As to the subject-matter, e.g. I devise a part of my lands to A for 5 years, and devise a "messuage or house" with the appurtenances" carries no other land than is necessary to the enjoyment of the house, unless it appears, that the words were intended to be used in a more general sense. (Bost. 326, 324, 320, 1612, 304, 380, 292, 1791, 500.)

2d. As to the quantity of interest, e.g. I devise my freehold to my wife for 5 years; but if any of my 3 children before the 5 years are out of the freehold, they to be equally divided. "What is to be divided?" i.e. what subject of 5 years? (Paw 412, 417, 1802, 302, 544, 733. Paw 288, 332, 1802, 357.) (Part 2, 234, 302, 301.)

3d. As to the person described; if the person described as devisee is absolutely uncertain, devisee is void, e.g. To the oldest man in the house. (Paw 418, 420, 1752, 338.)

So, if one of the sons of A, he having sons, to B to 20 of the poorest of my relations. (Paw 418, 420, 1752, 338.)

Paw 418, 420, 1752, 338. (Paw 418, 420, 1752, 338.)
So to my wife for life, remainder to the heirs male of any of my sons. P. 290. P. 240. no precise evidence admitted in these cases. (Post.)

But a devise is mean construed void for uncertainty, but from necessity to be explained of itself. P. 222. 343. 9. P. 253. 260. 57. 2 L. Rop. 1312. Rop. 103. Rop. 102. Rop. 105. 2 L. Rop. 116.

2. As to uncertainty arising from something done. or latent ambiguity.

If from extrinsic facts the person of the devisee is considered absolutely uncertain, a devise is void. E.g. "To my son, the heir being John." So "to E.G. A.," there being two of that name there, P. 244. 56. 66.

So as from extrinsic circumstances, it is absolutely uncertain what land is meant. E.g. "my manor of X. having two of that name." P. 225.

But if the devisee were of one of my manors of X. a devise might relieve. Rop. 254. 101. P. 225.

How far precise evidence is admissible to explain ambiguities, post. P. 235. 45. P. 235. 67. P. 235. 67. P. 235. 74. 5.

4. A devise may fail of effect for divers other cases: examples. A devise may fail of effect because his devisee is contrary to the rules of law. Extraneous defect. P. 524. e.g. To A. in fee, if B. die without heirs to B. P. 426. 18. Bulst. 63. (Re. as 24 e.g.) 3 T. R. 165. 6. P. 165. 6. 6. P. 234.

So, if A. draught of the instrument, delivering it, directions are not followed, e.g. testified direct a devise of the whole for life, but if words can be a devise to A. for life for there was no devise in life. P. 226. 76. N. 356. Re. But
But of that which is agreeable to testator's intent, can be separated from that, which is contrary, the former is good, if latter void, e.g. testator directs an absolute devise, devisor annexes a condition, only void devise absolute. Per 427, 1 Sim. 103.

A devise may fail, because of failure it, but no more than the law of a gift without it. E.g. one devise to son, if to his own eldest son, so must heir devise to son's son, if son takes by descent. Per 427, 1 Sim. 121; 122, 2 Sim. 135. Abs. 54; 13, 2 Sim. 135. Abs. 545. 13, 2 Sim. 135.

2. Dev. 135, 4, 2 Sim. 210, 2 Rh. 185, 1 Gard. 121, 2 Sim. 135. Abs. 545.

2. 2 Sim. 135. Abs. 523, 527, 1 Gard. 135. Abs. 545. 13, 2 Sim. 135. Abs. 545. 13, 2 Sim. 135. Abs. 545.

And the rule is general, that one devises to a person, who is his heir by the male line, e.g. the same quantity by interest on the subject matter, as he had been taken by descent. Per 427, 30. 35. 36, 2 Sim. 135.

The reasons of this rule is, 1st. That the law was not to be deemed if the public interest of the community. Per 335, 430.

2. That devises before death may not be deemed of these debts. Per 430, 435, 1 Gard. 121, 2 Sim. 135. Abs. 545, as they are have been before the Statute of Frauds. Devises 36, 1 Gard. 121. 2 Sim. 135. Abs. 545.

These reasons have both existed. But point is, where of consequence in Eng. as affecting the course of descent from heir to heir. 2 Sim. 121. 2 Sim. 120. 2. 1 Gard. 121. 3. 1 Gard. 121.

In Con. not important, neither of the above considerations operate here. But suppose a person having two heirs A & B. devises half of his estate to A & devise to B as to the other half - will not the same, which is
Condemned as descending he just applied to $p$ payroll debts? This, but this does not seem to render the rule important here, or the sense contemplated, for the same is not with it. It is taken by swiss according to the distinction in...next page.

If one devise his heir by way of remainder, what would descend to him as a reversion still the case is either the general rule, for the estate is not altered. E.g. To my wife for life, remainder to A. If $A$ bequeaths of first heir devise to $C$. Con. 438. 435, 5. 114. 415. 515. 4. 106. 32. 2 A. 494. 2 A. 124. 4. 11. 15. 16. 234. 294. Con. 92. 23. 2. 8. 350. 7. 12. 1227.

So, a devise of an estate for life only, devise his heir at law, if no further disposition is made of the subject matter, for he takes all the interest which he had taken if there had been so devise, the legible which succeeds, merger of estates for life. Con. 431. 2. Con. 30. 26.

Changing debt, or paying on an estate, devise to the heir of devise, does not enable him to take by purchase, if quantity of debt is not altered, the property is only burdensome. Con. 403. 5. Con. 403. 419. 418. 424. 215. 183. 327. 72. 241. 121. 173. 2. 2494. 12. 222. 248. 228.

But it has been hitherto, that if the charge or debt is by way of debt, the heir to whom it is devolved takes by purchase. E.g. To my eldest son, the heir, when he that he pay "so as provided he pay" or Con. 436. 6. 561. 2. 298. 259. 3. Con. 298.

But the weight of authority is of the distinction...Con. 433. 4. 8. Con. 72. 227. 242. 674. 353. 919.
If there a devise is made (which falls within your rule) to the heir, who at the devisee's death happens to be a daughter, & birth of a posthumous son will divest her title. Prov. 13:8, 2100 & 228.

The devisee an inheritance by devisee as heir of the devisee's receiving, estate does not enable heir to take by purchase. (Prov. 13:9, 430, 31:6, 34, Rev. 143, Sal. 234, 241, Com. 732, 1st grantee just being the same).

Yet, if the limitation to the heir by devisee produces an inheritance in the course of descent, it takes by purchase, i.e., as devises. E.g., if one having two daughters, the one his heir, devises to third other heir, they take as devises; for the devisee makes them joint tenants; whereas if they take as heirs, they are co-tenants, each having a distinct moiety. This 43, Bet. 431, Duf. 123, 1st. 112, 113.

So, if one having two daughters, one his heir, devise all his estate to one, she takes the whole by purchase. For if she look only half by y. devisee, her sister is also co-tenant with her of the other half, to the intent of devisee, Prov. 44:1, Code 163, Sal. 242, Com. 238, A. May, 529.

And a devisee may, after the general principles, in general be good in part & void in part, as to one entire thing. E.g., tenant in fee devisee the half of D's estate to B his heir, & in fee, the other half, to heir in tail, void as to the former, good as to the latter. Prov. 442, 2100, 433, 312.

Lastly, a devisee may take of estate by will devisee testator living, e.g., the devisee. If this be so, devisee is heir of devisee testator living, e.g., the devisee. If this be so.
the devise is republish’d after the death, but if an
change is created in the estate as seisin or ligature, no change
remaining. 2 New R. 349, 2nd ab. tit. "change." 4 B. 641, Plow, 349,
345, 2 Vra. 722. Sir. 25, Doug. 323, 1 G. 207, Enq. 423, Roy. 405,
Mod. 207, 2 St. 313, Cow. 676, Pow. Chy. 439, Ref. 118.

By a late Stat. of C. if devises or legates being
children or grandchildren of testator die before testator, no
provision made of such contingency, the devise or devisee
shall like as he or have to him, Stat. c. 648.

Waiver. A devise may also fail of effect by
devisee waiving to the benefit of it. The waiver may be
express or implied, 2d 154, 292.

The waiver is express, when devisee actually
refuses to accept the devise, Pow. 442.

An implied waiver arises from some act of
devisee, from which it is inferred he does not accept, Pow. 466.

It is a general rule in Equity, that if a person has
a claim upon part of what is devised, independently of
devise, the claim to another part, under the devise, parts
and former, he waives the latter claim. Implied waiver, B.
Acre is settled on A for life remainder to his son B. B
devises before to a stranger life estate acre to B. If B occur
valid or having B acre under of settlement, he cannot
have white acre under devise. Pow. 443, 454, 2 N. 381, 252, 3.
Tabb, 176.

This doctrine of implied waiver is founded
idea of a legal case annexed to devise, if the devisee had
distinct of disposition of his latter has made, Pow. 456, 453, 4.
Tabb, 176, 2 5931. 14, 07.
It is not necessary to give effect to the devise in cases where the thing devised has the same nature, is of equal value with that to which the devisee had a claim independently of the devise. Tor. 450, 1285, 238, 426.

In said cases, e.g., where requires devisee to make his election, Tor. 450, 36, Ch. 176, 208, 14.

But, if the devisee is a creditor, it is not a mere volun-

teeor, in which case, it does not apply. E.g., if one devisees a part

of his estate for the payment of debts, and devisees the

other part to which a creditor has a higher title

than devisees, the creditor may defeat his title to the

latter. Tor. 450, 36, Ch. 176, 208, 14.

So, if land, to which it has a higher claim than

testator, is devised to B. by an instrument, not executed

do as to pass lands, at a legacy to C, he may claim the

legacy in land both. Here, the trust cord, does not apply.

for testator has not disposed of the land. Land, a legate,

reimbursement is no devise. Tor. 450, 36, Ch. 176, 208, 14.

But still, if there is an express clause, to

devise that a legatee disposing of the devisee, shall forfeit

his legacy, his claiming the land, devisees as in the

case will defeat his legacy, for there is no express condi-

tion attached to it. Legacy. Tor. 450, 462, 1285, 12.

If legatee gives a legacy to one, or satisfaction to

him, in a testator devising the latter as in this case, it is to

make the devisee contrary to the testator devise. Tor. 450.
A devise may fail of effect, by the tithe performed in his lifetime, which is the object of the devise to accomplish. E.g. A latter devised $400, to complete a building, afterwards before his death, expended more than that sum on the house. This lien shall not have the benefit of the devise. Pro 670; 113, 95.

So a devise may fail of effect, in consequence of the Stat. 354. W. & M. 40 years' devises. Under this Stat. all devises of land are void, as no devisors bona fide, &c. Creditors are entitled to satisfaction out of land, if a devise fail. Their devise must join on. Pro 671. 672. 673. 674. 2 F. & C. 372. 3. Bac. 27. 3. Atk. 434. 2. H. 125, 378. 18. W. 129.

This Statute is liberally construed. Pen. 373, 244, 266.


This English law affects the relative rights of surviving devisees only. It does not relate to those of heir or devise. Therefore, lands descended in trust to creditors, before land divided. Devise a purchaser. Pen. 474, 5, 24th, 435, 360, 12.

How far prior evidence may be admitted to control or explain a devise.

Every instrument consists of matter of fact, matter of law. The former may be proved or proved on is issue in fact. e.g. Whether the instrument was in writing before or after execution. It was allowed to. Pen. 477, 5, 155.

But matter of law is not the subject of an instrument not binding by a jury. e.g. not provable as a fact. (Pen. 477, 5, 155, 156.) e.g. Devise to A & his heirs. What estate is this? to be determined as a matter of legal construction. Pen. 477. 156. In uncertainty of the former hints is a latent ambiguity of the latter Patent. (note.)

Hence a great rule, that testamentary declarations cannot be given in evidence to control judgment of the instrument of his devise, or to give them an effect which upon the face of them they will not bear. This rule has obtained ever since devises were required to be written. before the Stat. 5, 108, 52.

Pen. 477, 5, 24th, 435, 360, 12, 146, 147, 141, 149, 279, 318.
of Devises.

Testamentary declarations may apply to the devisee to the person of the devisee. In both cases inadmissible. (P. 678. 6 Stu. 678.) i.e., when they relate to matter of law, viz. to matter of construction, upon the face of the deed.

As to the import of the devisee itself, e.g. Deviser to "A the heirs of his body, remaining to B the heirs male of his body, on condition that, he or they shall abide.

Parol evidence not admissible to prove who were meant by "he or they." Matter of legal construction of the face of the devisee. (P. 478. 478. 5 Co. 68. 2 Mcn. 98. 2 Mcn. 216.

So if one devises to his wife for life generally, parol evidence not admissible to prove that it was intended to be. Instead of devise, (P. 478. 478. 5 Co. 68. 2 Mcn. 98. 2 Mcn. 216.

So where a devise was to a wife, even letters written by testator, were not admissible to prove that the events which had happened were intended by him in amount to a breach of the condition. (P. 478. 12. 12 Mcn. 12.

So, where one having covenanted to sell his estate to his son-in-law for $1,500 less than it was worth, devised $1,500 to the son-in-law. Parol evidence not admissible to prove that the legacy was in satisfaction of the covenant. (P. 478. 2. 2 Mcn. 123. 2 Mcn. 216.

So in a devise to testator's daughter, parol evidence of his explanation, that the devise he did not be subject to his husband's will was included. (P. 478. 2 Mcn. 123. 2 Mcn. 216. 216. 216.)

2d. As to the person of the devisee. Testator's declarations as to matter of construction.
a cause. E.g., devise to A, who died, living, evidence not admitted to prove testators declaring that he did not have what A, we have taken, if he had died. There are ambiguities, patent or latent, to attempt to contradict the devise. Conv. 485. Plowd. 345. Exc. 422.

So, devise to the heirs of the body of A, if he die without issue to B. - bastard, valid, in living - his issue can not therefore take a parcel evidence of testators intention to give to A's children even during his life, and of his issue. Conv. 486. 2 Leon. 70. 2 Pec. 54. For whether or not his issue can take, he living is a bar of construction or the face of this devise. Conv. 487.

So the testator having mentioned two women devise to "his" parcel evidence not admitted to show who of the two were meant. Conv. 508. 203. 210. 217.

But as to what our called "ante" matters of fact, i.e. as to latent ambiguities, the rule is that parcel evidence is admissible to explain them, if the matter is consistent with the words of the devise. Conv. 487. 490. 2 Shaw. 69. 2 Rev. 246.

Thus the same as to E. L. concerning Exc. 487, but not to contradict the words. Conv. 525. 495. 512. 6 8 216. Tabl. 240.

Thus, if one devise a grant to his son, he having two sons of that name, parcel evidence is admissible to show that the younger son was intended. The evidence "stands with the words." Conv. 485. 56. 56a. 56b. 56c. 185. 204. 133. 135. 216. 252. - Latent ambiguity, E.g., that testator supposed if there be two, his declaration cannot be proved by T. 67. 7. 245.

Conv. 495. 6. 7. 2 Bos. 416. 218. 9. 15. 63. 64. 67. 69. 71. 72. No of a devise to two. If of two being two. Conv. 495. 69. 7. 18. 2. 21. 23. 24. 26. 32. 34. 40. 45. 108. 137. 70. 72.
So devise to A. of the manor of B. he having two parts of evidence admissible to prove which was need. Cow. 489. c. 660. 155. "Stang and law." c. 660. c. 672. 
So, part of evidence has been admissible to prove which
in an instrument was intended to be a deed or a devise.
Cow. 490. c. 14. I. 360. c. 316. I. 160. 347. Eg. that directions are given
to make a will.

So if a devise is made to A. thus being father
or of that name) evidence is admissible to prove that his
takes did not know the father. Cow. 492. Salk. 7. 50. 1149.

If devise is wrongly named, still if sufficiently de
scribed he may be proved by parent to be in person evidenced.
293. 37. 67. 67. 328. 328. 1 St. 30. 12. 30. 2 Ed. 4. 498. B. 3 May. 107.

So devise to A's 4 children, he having 6. 2 by B. 24
by C. - part of evidence good to show that the 4 by B. were
named. Cow. 494. 582. 12 vin. 216. - Carol. declaration of
his taken proved. Cow. 495. 7.

But a devise to one of the sons of A. he having devi
den is void. - part of evidence not admissible. - Patent an
57. E. 39. 2 b. 526. 6.

By the same given. a devise applicable exclusively to
one person, if the description exclusively to another it may be
proved by parent that is wrong names was inserted by mistake.
Still c. 54. Cow. 493. 1146. 440 - can any other proof
be admitted in such case.
So, where testator gave a legatee a name which
he knew to be a paucid evidence allowed to prove that
testator knew such a person, it is to be called by his nick-

So whereas devises was to the poor of A. in the county
of B. and A. was not in the county of B. Paucid evidence
admitted as a certain parish. *Paw 494 2ed. 64. 14.

But, of the person enough a name, it is not at all de-
scribed, no evidence admitted to show who was intended.
E.g. *Paw "as New" (Paw 300 2 bu 27 p. 11.) The evidence
is proof, to be�beld with the words. &c. It is not to be
proved that mention is was by mistake. *Paw 523.

If words of equivalent import are used, paucid evidence
admitted to direct of applicating them. This
is done not so much for the purpose of furnishing a
construction (i.e. an explanation of the effect 6. derivation
of words understood) as an interpretation of terms not
implied. Understanding. Therefore understood. However some of the cases
further post.

E.g. one devised to some persons piece, evidence admitted to
show the eldest child was intended, so that a daughter might
benefit. *Paw 340, 496, by 337, 520. 56. 64. 54. 52 (Tape)

So where a devise is to the lawful nearest relations,
paucid evidence admitted to show, that he knew certain
persons answering that description, but no further. His

But in other cases evidence is never admitted
to give words a sense, which they will not bear on the
face of the instrument. E.g. The word for is sometimes
sometimes construed to mean a grandson, but not if the

thus is a son living. (Page 675.) One of it appears from the face of the devise that the word was intended to apply to a son only, so parol evidence admitted to show that the word done was meant to apply to a grandson. This is to be considered the legal construction. (Page 673.)

1. Mod. 315. 12 Vin. 340. Ayl. 405. 2 Bos. 263. 2 Thow. 63. 2 Vin. 106.) as if there, to a legacy in the same instar.

tho. grandson. (Page 675.)

Parol evidence not admitted to supply anything not written. (Page 820.) to a Charity according to the will of Mr.

Evidence not admitted to show those were extended to fill the blanks. (Page 501. 2 Myl. 240. 2 Co. 523. 8 Vin. 195. 2 Eq. C. 341.)

So where testator gave directions to have all his personal estate given to his eldest, not was made by mistake, evidence of such mistake not admitted. (Page 523. 8 Vin. 195. 2 Eq. C. 341.)

66. Of Law & Equity have also admitted proof of extrinsic facts to explain words of equivocal import as to quantity of interest devise, i.e. where J. proof "John, with $200."

Page 672. 521.

1. Proof of testator's circumstantial has been admitted to ascertain the quantity of interest, if in part, of plural being equivocal. (E.g. devise of testator's whole estate to J. the saying he has two J's. Evidence admitted to prove that the personal estate was insufficient to pay them, & that they in, a few must pay. devise)
Of Devises.

...might well. Bow 582. 4,3, 1. Sirs 201. 220. 2. Rel. 69. 1. Deu.

States that "estate" carries a fee, unless restrained by another...1301. 412. 2. 114. 4. 4. 22. 5. 562. 6. 14. 8. 57. 832. 2. 137. 531?

So when the Deo. was..."estate" words, when a legal use of testator's personal estate took it absolutely or for life only, she being testator's wife, evi- dence admitted to prove that it was insufficient to support her, and if she used the principles in stock. Bow 5875. Pre. Ch. 71.

2. Proof has been admitted for same purpose as to the value of the property devised. Bow 518. 505. 7. 518.

E.g. Devise of all testator's land" to A. for paying to B, or $1,000 a year out of the land. Proof admitted that this sum exceeds common profits and that a fee was intended. Bow 516. 518. Pre. Ch. 479.

2. E.g. C. at 295. 197. 1898. Pre Ch. 71.


3. Proof admitted as to the condition of testator's family to ascertain the application of a term which may be void either of purchase or limitation. Bow 515. E.g. Devise to A. His children or his issue. Proof admitted as to the part of this having children or not at the time of the devise. If not possible, last is created. Bow 585.

6. 19. 17. 16. 30. 10. 9. 22. 23. 11. 13. 15. 11. 21. 48. 176. 36. 45. 6.

4. 16. 4. 22. 24.

4. Evidence was laid as to the value of estates.
Of Devises.

To ascertain the meaning of words set in their own equivoque, but which are connected with reference to the state of his property, will be some very different from that which they prima facie import. E.g. I devise the house called the Bee to A. The amount is $5,000. In order to show that an estate in fees was intended, 30th 

So in Trenchman v. Pointz 79,305, 62,254. Evidence admitted to create an ambiguity when there was none on the face of the instrument. 20th.

Then, the proof "stands as with its words," these not with any meaning which they prima facie convey.

But no evidence, that does not "stands as with its words," can be admitted. Thus insurance, to the children of A. (he having 6) evidence not admitted to show that only one was intended. 5th.

So when testator devised the residue of his estate to his wife, one of them being indebted to him $3,000. Evidence not admitted to show that his intention was to forgive the debt. For the residuary clause included it. 9th.

So when the residue of testator's property was not disposed of evidence not admitted to show that testator's intention was, that his wife did not have it. 12th.

Into partial evidence, even of testator's declarations.
is admitted to conclude an equity, must at implication, not to establish it. "The equity" means, in general, an equitable claim. But the meaning of the rule as here applied to the case of a devise is this:

That unless from the face of the devise, it follows an inference, which is contrary to the legal conclusion arising from it, parole evidence is admissible to control the former, which is in effect to establish the latter. \(\text{C} 526\).

E.g. If land is devised to an \(\text{E}\) for paying debts, the surplus belongs at \(\text{S}\) to the \(\text{E}\) to. In \(\text{E}\) this is a resulting trust, as to the surplus to the heir, \(\text{E}\) is trustee of it to the heir, \(\text{C}326\).\(526\).\(8\)

In this case evidence is admitted even of testator's declarations to show that the \(\text{E}\) was intended to have the surplus, \(\text{C}326.5\) \(\text{C}7\) 2 \(\text{E}\) 252.677\(\text{T}2\) \(\text{T}9\) 256.

\(\text{E}\)\(\text{S}\)\(1524\) 2 \(\text{E}\) 23 \(\text{E}\) 20 \(\text{E}\) 506.

So where testator began with \(\text{E}\) 257, a prize to 13 and afterward by a conveyance directs his estate to pay there \(\text{E}\) 258, each\(\text{E}\) to and admits to show that both sums were intended to be given, \(\text{C}526.2\) \(\text{E}\) 1524.

So where testator gave considerable legacy to his son, from which the inference is \(\text{E}\) to was that he was not to have the residue, evidence admitted (testate declarations) that he should have it. \(\text{C}527\) \(\text{C}7\) \(\text{C}7\) \(\text{C}7\).

\(\text{E}\) upon the ground that the evidence offered does not contradict prize; parole proof has not admitted to show, that a devise was intended to be a purchase.
of a previous agreement. E.g. Agreement by marriage articles to settle $100 per annum to the wife. 14th. devised to her $100 per annum. Evidence admits to prove that 1st devise was meant as a performance of the agreement. Pow. 532, 304, 12-15, 323.

Pardol evidence admits in all cases to counternot, e.g. for devise his real estate to his executor to charge the estate with an annuity. devised to it because the devise promised to pay it. Evidence admits. Pow. 538, 1, 2. Vaux 586.

Revocations

Wills and devises are "ambulatory" till the testator's death, i.e. not consummated, i.e. revocable by a later will. Pow. 536, 1, 2. Vaux. 2512.

Revocations may be considered under two general views, 1. As they stood at C.D., i.e. before the English Statute of frauds. 1670, as they stood until that Stat. Pow. 112, 627.


1. Express revocations at C.D. might be by writing or by parole. Firstly by writing as by a codicil, or subsequent will, expressly revoking a former. Pow. 1332.

Secondly, by parole of one, having made a devise or devisee declares I revoke my will, unless words similar to these: Pow. 632, 532, 633, 634, 1121. 1121, 19, 1131, 497.

But in this case, it must be shown that parole was spoken, and not revocation. Therefore where eldest said that because the devisee did not visit him, he
should not have his land; but making an express reference to his devise, devise not revoke.) Pow 533, Coq.

So, words importing an intention to revoke in future, do not work a revocation at all. E.g. "My wife shall not stand," or "I will alter it." Pow 533, Coq. 1447. Moore v. Gr. 387, 463. Same rule holds since the Stat. of a familiar intent expressed in writing to.

Somm. 2 East 488. 495.

2. Revocations at will may be express. An express revocation is by some declaration or act furnishing ground to presume that testator's intent to devise must be changed. Hence revocation is express or a revocation in law. Pow 533, 4, 9.

E.g. If one, having devised to a stranger says, "I am notaunch, "My law shall be my heir." Pow 535, 1 Fed. 73, 146: 12, 206.

Acts of devisee amounting to a revocation in law, may be by writing, or in words. Pow 535, 559.

First, by writing, as if one having made a devise afterward makes another inconsistent with, but not expressly revoking it. Revocation in law. E.g. One devises his land to A by a subsequent will to B. Or, he first devises all his estate to two of six trustees to one of them. Pow 535, 6, 1 Wilks 511, 12, 3 Mod. 206.

Said however that if one devise land to A, B & C, out of a subsisting joint tenancy of the same instrument, devise the same land to B & C. D takes jointly. (1 Fed. 464, 2 Mod. 374.) Yet so, as to a specific legacy, one may take the latter in this. (2 Mod. 75.)
Devises.

But a subsequent devise (not containing tvpe words of revocation) does not revoke a former one, upon inconsistent with it, e.g., a devise, not a grant, that a later devise exists, the power by a jury will not warrant a Ct. in deciding, that a former one is revoked by it, for the second may relate to a different subject matter, and may confine the power. Cow 536 541, Hare 379, Shawec 146, 3 Ald 203, Camp 690, Sir 572, 3 Saib 497, 2 Stc 50937, 3 Bro R. C. 344, Comp 27.

And the it is expressly found that the second is different from the first, yet if it is not ascertained in what the differences consist, the first is not revoked. Cow 533 541, 3 Ald 497, 2 Stc 50937, Comp 27, 3 Bro R. C. 344, Coats qua supra, 2 East 435.

But if it were found, that the second devise was inconsistent with the disposition made in the first, the 2d. c. 6 to a revocation, 616. Cow 540 4.

So a codicil, inconsistent with the preceding devise, to which it is annexed, works a revocation, e.g., devise of 30 acres to B. by a subsequent codicil giving White acres to C. Black acres, is given to D. Cow 541 542.

2 Poth. 22c. 169. 32.

But a distinction is to draw between the revoking effect of a Codicil, and that of a subsequent intent, viz., that a Codicil being part of the will, and not having nature, intimated at any instance or of a subsequent, does not revoke, except precisely in the degree of expression, Cow 543 9, Swift 13. e.g. devise of land to D and be to a charitable use, by a Codicil it is revoked, or the
Whereas, it is said by Porte, a subsequent will or devise varying a disposition made in a former one, is a total revocation. (Pon 545, 166, 313, 186, 1299.) Is it not, in proposition, true? Note the case where one devises land to his wife in fee simple, and gives to his son, by a subsequent, devise, grant, and lands to his wife in life. Pon 53, 15, 7, 540, 32, 267, 5, c. 2, 21, c. 19, 187, 2 P. 15, 3, 45, 2, 10. 102. 3. 32.

If one makes a second devise inconsistent with a former one, under a false impression as to a matter of fact, which furnishes ground to make his second the supposition fact is, after his death, found not to exist, the first is not revoked. E.g. one devises land to A, in fee simple, by another instrument, writing that it was to be devise; land to B. If A is alive he will take, Pon 536.

But, according to Porte, a false impression will not avoid a second devise, unless it be a consequence of a deed, practices upon the last letter. (Pon 546.) De. No actual deceit, i.e., no deliberate misrepresentation, suffices in his own examples. Nor, deems he, e.g., to mean by 'deceit,' nothing more than a misrepresentation of a misapprehension, as to matter of fact.

In the case which he distinguishes from a case of deceit is one where a misapprehension rests on matter of law only. E.g., it being objected whether according to the rules of law or equity one may devise my estate to the separate use of my wife, (Pon 536), and, in this case, can suppose a second devise good.
If a former devise is revoc'd by a subsequent one, on the principles that the latter is inconsistent with the former, the implicit revocation, as well as instantaneous, containing it, is unvalidating the last as effectual, the latter being revoc'd by former statutes. For 549, 4 Bina. 2512. Park 8, 479.

But, (sends) if the second devise expressly revokes the first, a revocation of the second, does not constrict or limit the first, if it remains in existence. For 551, 4 Bina. 373. 1 Bina. 400. Because the revocation is expressed independently, substantively out, by which the former comes immediately out. De Conf. 92, 4 Bina. 2512.

Secondly, acts amounting to an implicit revocation may be by matter in pais. For 554, 532, 535.

As 1. By a total alteration in the relative circumstances of the devisees. 2. By an actual or intended alteration in the estate devised. For 554, 535.

1. No alteration in the devises circumstances makes that of marriage or the birth of a child, has as yet, been decided to be a revocation of a devise previously made (if devised being a male). But such an alteration in circumstances is a revocation. For 554, 4 Bina. 214, 1511. 373. 186. 417, 385, 186. 592. 2 Bina. 41, 250. 376. 141, 243, 186. 191. For other special circumstances, 5 Bina. 583.

So, the child born in position owes. 577, 49.

A subsequent marriage only, or the birth of a child only, not sufficient, sed 6. 27, 253, to revoke a prior devise.

But, (sends) if a later statute of subsequent birth, 449.
This alone is a revocation of no provision is made by devise or for such a contingency. Dec. 548.

The reason of the rule is generally said to be that, for such a change of circumstances, the testator is presumed to have changed his intention, or for disposition of his property. Dec. 837, 837, 586, Doug. 31.

Hence any evidence, written or parole, is admitted to prove, that his intention was not altered, to rebut the presumption, e.g. his own declarations. Per 586, Doug. 31, 35; 1 C. Eng. 441; 2 D. 586, 488, 64; 2 D. 476, 1 Ch. 322, 2 East 330, 393, 9.) Hence Lestair devises his real estate to seem to the person whom he afterwards married, gave only a legacy to his brother, including homework not to be a revocation. Per 586, 1 C. Eng. 441.

But ques. whether this is the true reason? For in the case of a subsequent marriage, a birth of a post-nuptial child, the devise is revoked. (condit.) the execution was unknown to the testator. And C. Eng. 3. 1, if he knew of the execution, ate his death, our abolition short afterward happened, there was to be a revocation, yet his intention was not be influenced by the fact in the former case, but in the latter it might be (St. Tl. 53, 9.) And what legal effect can a mere intention to revoke have, if there is no actual revocation? 2 East 542.

That, then, is the principle? According to 586, Doug. 31.

Thus is a legal condition connected to every devise at least of naming it, that the testator does not think that it shall take effect, if such a legal change shall happen on his devolution to 2 East 58, 63. This principle is approved by 586, Doug. 31.
Of Devises.

Lord Ellenborough, 2 East 341. 2. This idea, at any rate, as
conceals the authorities.

But there has been no case, yet decided in this
marriage, to have been holden to be a revocation, or
right, when the disposition has been of less than whole state.
Pow 350. 556. 7. 2 East 341. 2.

And it seems, that if testators subsequent
wife or children are duly provided for, either by the devise
itself, or by his dying intestate in part, the presumption
of a choice of intention does not arise from marriage.
Yet, if the testator's devise is not amended. POW 556. 7. 566. 180.

En 36. 413. Doug 38. N. 10.

And marriage to will not revoke a devise
made in contemplation of such event, i. providing for a
future wife or children. 2 East 330. Doug 39.

But if the devise, having made a devise
marriage, it is a thing to principle, the devise suspended during
cureve, so that if the devise before it had it is revoked.
For it is of the essence of a will a devise, that it be a
testator's power to revoke a confirm it. But in Eng, a
woman during cureve, can do neither. Pow 353. 426.
1682. 3. 171. 1682. 27 N. 4. 1682. 180.

But if the wife survives 8. hus? it then comes
again the fact, will it revive of course? According
to the opinion of the wife, Pow. 364. Rel 362. 24. 4. 1856. Doug.

In Eng. it is clear that the devise is not affected in
these two cases any more than that of a man, for by
our Law, a woman may make a devise during cureve.
of Devises.

But an alteration in the present estate, after
labor to the work is done thereon and making or
enlarging a devise, does not in itself work a revoc-
ation. For upon that change, he has not the no!
purposes of reserving. Cor. 564, 5, 574, 460, 60, 577,
Cay. 65, 481, (Cor. 66, 68, 460.) Where the same, if
does not the same reasonings apply as are to cases
of Covenants? (Care pa.)

2. An act is paid, amounting to an in pais
vocation, may contest the interest of its alter-
tion in the estate devised. Cor. 565, 554, 582.

First of all, unalterable alteration.

In these cases, the invocant or acknowledged
as a positive rule of law, the intentions of testator
not regarded, nor found on as any presumptions
of intention. Cor. 66, 607, 582, 583, 577, 576, 574.
(Care in the case of invocations affected by an altered
alteration, Cor. 565, 607, 686, 1280, 574, 576, 576.
The positive rule, as principles, refers to this,
That as the devisee must be held to the incor-
poration of the devisee of the estate devised, so the estate
must remain in the same place, like to condemnation.
Cor. 564, 6, 566, 681, i.e. it must end contempla-
tion of lands have been in his devises it remains say,
at supra. 12Cor. 576, 12Nov. 587, 92.

Hence, any alteration in the estate (between
the exposition occasion made by the devisee) which acts
it in a different place works an in pais revocation.
Cor. 565, 666, 576, 583, 574, 276, 686, 683.

Such
Such allocation of the estate may be, by act of the deviser, by act of a stranger, or by act of he who devises.
First, by act of the deviser: e.g., where the land devised to a stranger, the devisee holds as to him.

So if testator having an absolute estate or tenant, makes an allocation to the legal estate only, obtaining the beneficial interest, or equitable soliciting, that so makes a possessive devise of the land. E.g., one having devise of land makes a settlement of it to a stranger, with use of himself or fee. So devisee receives for he holds as estate by the same instrument as a new purchase, Cons.Dist. 847, 86

Reed 253, 1 St. 5. 70. 3. 2d. will. 51. 3d. 899, 000. 109. St. 576.
7 F. 3G. 2 but. 247. 9 Bar. 1856.

So if one having devise of land conveys it to another, there is a reconveyance of the same land. 6 B. 51. 811, 82. 3d. 620. 109. 876

The rule is the same, the devisee is beneficiary, lease, or gift, in which case the actual gift, or devise, is not changed. 602, 2d. 876. 109. 876.

So when one, having devise of land, makes a marriage settlement, limiting it to himself, his children, or strict settlor, ent, remainder to his own right heirs. 664, 109. 460. 87, 7 G. 3d.

So a recovery of a gift of land, in the use, the testator to have received, a possessive devise of the same land. Cons. Dist. 87, 1d. 875. 97. 12th. 827.

The preceding rule applies as well to equitable as to legal estates, with more for having devise of land.
of Devises.

If executors, convey it is trust for himself, the devise is revoked. Pro 577. 5, 264, 741. 579, 188. Sioux, T. 2154, Reg. Co.

And an alteration in p. estate, devisee will operate as a revocation, even tho' the alteration made be necessary to give effect to p. devisee. e.g. tenant in tail having devisee, conveys to J. P. for the purpose of having a recovery subject to the use of himself, or fee. The recovery is subject, but the devise is revoc'd.


So if a man covenant to levy a fine to the use of such persons, as he shall name in his will, it make his will, r. then levy a fine in performance of his covenant, his will is revoked. Pro 581. 1 Rol. 614. 2 P. N. 770. Col. 341.

And the rule is p. name, the the alteration made, as expressly declared to be done, for the purpose of giving effect to the devisee provided the devisee is entitled as for a new purchase. Thus, when one made his devisee for manor, t. then made a feoffment to i. use of such persons as he had declared by his will, bearing date t. t. the feoffment was adjudged a revocation. Pro 582, 2 Hc. 374.

Moore 752. 1 Rol. 614. 2 Hc. 687. 7 Ves. 399. 1003. 1017. Pro 586. But the reference of the feoffment to p. devisee gave it effect, that operating as a reproduction.

Still further, if a man devise a fee, but supposing that he has only an estate too, suspects a recovery to confirm his will, it is revoked. Pro 583. 3 Bk. 503. Bk. 523.
Of Devises.

And a specific devise of a lease for lives is void by a subsequent surrender & renewal of it. Law 565. 10. 11. 265. 266. 283. 32. 17. 163.

And the rule is the same as to leases for years, which are renewable, e.g. the devise of a lease better for years and afterwards renewing takes a new lease of same term. Law 386. 2 Act 592. 3 483. 2 417. 46. 418.

But leases for years being chattel interests may be by devise, notwithstanding a subtenancy renewal. The proper words are used for that purpose. E.g. devise the Estate to B that I shall have in such a lease at my death. Subsequent renewal does not revive. Con 292. 7. Act 179. 27. 199. Sat 237. 2 57. 575.

So if the renewal is not complete at tenant's death, if devise is not revoked by the surrender, e.g. where life of rent was not affected after tenant's death. no revocation. Con 592. 7. Act 593.

And when the revocation depends on a single fact of an alteration in the estate (independent of any supposed intention to revoke) there must be an actual substantial alteration in no revocation. Thus former by holders, but if one devisee died in fee, it afterwards covenants to convey to a stranger, devise was not revoked by the covenant. Con 592. Act 618. 13. 4. 366.

But now, as Co. of Ey 9. Consider an executor agrees with deviser to convey land, as an actual covenant. Still a covenant in agreement with as to to have a revocation of covenant has a right to a specific performance. Con 324. 2 329. 329.
Devised.

But a devise of the equitable interest, in a trust estate, is not revocable by the devisee, or by a change of the trustees, by entry of the trust, having devised, except his trustees to enter, if the trustees to the same uses. No revocation of the real estate is the thing devised, e.g. an equitable estate. *Con 926.

So if one having contracts, by articles or the like, of trust, devises it, he then completes a new lease or renunciation of equitable interest, not altering it, is only taking the estate home. *Con 576. *Doug 691. 686.

So if mortgagor, having devise, pays off the mortgage, conveying the legal estate to a trustee for mortgagee, there is no revocation. *Doug 686 at 910. *Con 577.

So laid down as a general rule, that if one having an equitable interest or fee, devise, it, then take a conveyance of the legal estate, devise is not revoked.

No alteration in the estate devised. *Con 579. *McCl. 511. 52. 57. 70. 72. 79.

When several instruments, taken together constitute but one conveyance, a devise made in the interval, in the execution of the first, and completion of the last, is not revoked, for all the parts take effect, by relation from the first instrument. E.g., conveyance made to suffer a recovery, the devise, after wards recovery complete. *Con 660. *266. 287. 251. 266. 471. 246. 1932. 36. 937. 266. 685.

A devotion between tenants in Common or coparceners, if conferred to that object, is no revocation of a previous devise, by one of them, not an alteration in devises.
Of Devices.

Estate, it merely ascertains that before belonged to him. 

One of the deeds of partition relates to any other subject than that of partition merely, it will revoked a previous device. E.g. If it contains any further disposition of the estate. Cor. 603. Test. 240°; 30. 1162. 742. 765. 785.

Note, when one has made an estate, alteration in an estate before devise, no proof evidences admissible to show that he did not intend to revoke. 276. 516. 3. 4th 741. 2. 646. 4. 417. 395. For the revocation is not found to or a sufficient intent to revoke, it is an arbitrary inclusion from positive law. preserving its juridical force.

Secondly, acts of parts, amounting to an implied revocation of a prior devisee, may be by an intent to alteration in the estate, devise, as if devisee attempts a disposition which is ineffectual, either for want of formality, or if capacity to take a the person to whom it ante. 276. 516. 3. 4th 741. 2. 646. 4. 417. 395. For the revocation is not found to or a sufficient intent to revoke, it is an arbitrary inclusion from positive law. preserving its juridical force.

E.g. one having devise land, makes a deed of payment of it; without lexis of devise. (Cor. 606. Test. 429. P. 105. Test. 121. 3. 72. 5. 182. 125. P. 139.) — or having devise a devise a rewor, makes a grant of it, but the land to revolve altered (Cor. 606. Test. 615.) — or having devise, conveying by deed of bargain & sale, not enrolled within 6 months. Cor. 606. 7. Test. 615. Test. 175. 180.

For such attempts to convey, often an intention to revoke. Cor. 606. 7.

Revocations thus affected, being found to be pre- 

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by parcel evidences. Con 607. 8, as where devises or
executing a deed of settlement to his own use and deduc
this intent, not to revoke. Con 628. 49. 74. 39. 40.
So by an intended alteration which becomes fuctual
this an incapacity to take in the person to
who it (ante) e.g. on having devises to it, after
devises to a Corporation, this a revocation, the the Cor
poration cannot take (ante) 1 B. 615. 2. Eq. 613. 413.
10 Eq. 625. 2. Mod. 140. 10 12. 237. 220.
So of a subs.1745. intestates grant to one who can
not take, e.g. Grant. of devises whole estate to his wife.
Con 612. 8. 74. 72.

So an alteration of p. estate, devises, working a
revocation, may be by p. side of a stranger (ante.) Con 612.
184. 6. 555. 674.) as if one having devises is disposed to it
before re-entry. Con 607. 184. 6. 555. 674. 1206. 616. 9. 74. 8.
11 Co. 516. 4. For the effect of disposis, to the distinction
the ante pages.

But a stranger cannot revoke a devise by tast
ing, or cancelling it, if it remains legitimate. Con 612. 652.

346.

Again, an alteration of the estate, devises amount
ning to a revocation may be by mere operation of law.
e.g. Devises made, but not consummated before p. that
if uses were revoked by that Stat. Con 612. by 142. 103.
1206. 2. 284. 419.

A devise may be revoked absolutely in a caision
ally, in whole or in part only. Con 612. 616.
Absolute, total, revocations, already consider.
Of Devises.

Conditional & Partial Revocations. A
mortgage in fee, the at saw an absolute revocation of a pri-
or devise, if now considered in Equity, as only a conditional
revocation pro tanto, i.e. to the amount of the debt secu-
red. So that if devisee will pay the debt, he may take
the land. Cow. 614. 1 Rolle. 617. 2 Dyer. 142. 2 S. 100. 339. 161, 300. 155. 5 R. 748. 305. 2 S. Ray. 968. 20. 18. 329. In
the case of disposal there are an absolute convey-
to a creditor, that he might sell the land, to satisfy the
account with the tenant, with the surplus. Cow. 619. 2 Rolle

But a mortgage for years only, is never at law, only
a revocation of a devise in fee, for the term, precision
ensues. In Equity it is only a conditional revocation pro-
tanto, so the devisee may take immediately on paying
the debt. Cow. 617. 2 Rolle. 136. 70. 7410. 7. 188. 1797.

But a Mortgage further in fee or for years, is an
absolute revocation as well in Equity as at Law for pri-
or devisee, if made to the devisee. Devisee to mortgage, or
consistent. Same person not for more. (Ca.s. 4
deemed next pa.) To add, 616. 756. that even a mort-
gage in fee is no revocation. 3 617. 600. "Mortgage." p.

Revocations pro tanto may operate, by diminish-
ing either the quantity of interest, or the subject matter thereof.
Cow. 623. 4.

1. Thus, if a devise in fee to Ann after a lease to a Stranger for
life, the devise is revoked only during the Estate for life i.e. during
the life of lessee, not as to the fee. Cow. 626. 5. 1 Rolle. 617. 100. 110. 20. 12. 22. 52.
of Dervis

As of the society of estate. A condition affecting
property doth exist, the estate only is vested, the estate
devise is absolute. Con 626.
So if the devise to the fee, afterwards by a sub-
sequent instrument, make a devise of the same land
to A in tail, the second devise is a revocation of the
former to the extent of the difference, between the two,
Con 624. 5. Cad. 99.

But the a lease to a stranger is only a revocation
pro lade of a former devise, supra, yet a lease to
diverse if the land devise to the tenant for dervis
death is a total revocation. Dervis' lease incurs
but one person to be at the same time, eject
diverse. Con 626. Co. 1. 49. Case of mortise supra jure
Dervis 666. 746. 417. contra. Last Page.

But a lease to Dervis to commence in deviser's
life time, is no revocation (Are not for the time?)
for it may be determined before Dervis' death, to stay
with the devise. Con 626. 7. Co. 1. 69.

2. As to revocation diminishing the subject mat-
er.
One devise 3 shares to A, other 2 to B. one of them, the devise remains good as to the other two.
The devise lands to his daughter, daughter of his mas-
rige, settles a part of the same land upon her. the
devise as to the residue remains. Con. 627. 8. 1 Rol. 617.
2 Mus. 726. 1 Eq. Cas. 410. 13 2 7712. 2 6th. 258.
II. Of Revocation under the Eng. Stat. of

This Stat. makes "that no devise of lands, strictly so called, but also to lysi
eris or sums of money charged upon land, both to be rev

It does not affect in fact, revocations, as are affected by a statute inconsistent disposition, marriage, &c. of a child. It relates to suppress revocations only. Pow 630, Earle 81.) The former remain as at Earl.

Revocations under the Stat. then, may be by some other will. (as prescribed in the first branch of clause by breuing the, or by some other will as prescribed in the 3d branch.) Pow 631.

In pointing the two first modes of revocation, the Stat seems to be only declaratory of the Earl. Except that the words "will or codicil," in the first branch of the revoking clause, are construed to mean such a will or codicil, as a be suff. to pafs lands within 3 years devising clause. (Pow 637.) For after the
devil's clause, a will of land, not complying with it, would be void, therefore not a will of land. P. 632.

Whereas the instrument contemplated by the last branch, not being referred in construction to the words "will," in the devising clause, is construed to be an instrument of revocation, merely-so-as not to

The former, i.e., one intended merely to revoke, a prior devise, does intend to make a new disposition of the same land, also to revoke:

The former, i.e., one intended merely to revoke, will be expressive, if it comply with the requisites prescribed either in the devising clause, or with those prescribed in the third branch of the revoking clause. (See the requisites.) P. 657. 8.

For if it comply with the requisites of a devising clause, it is expressive, according to the first branch of the revoking clause. P. 621. 678, 82.

And if it is attended with the requisites in the third branch of the revoking clause, it is good according to that clause. P. 647. 1 Ch. 463, 5. Pre. Ch. 463, 10. 467. 84. 467. 84.

But e. contra: If the latter instrument is intended to be both a disposing and revoking instrument, it will not be expressive, unless it conforms to the devising clause; i.e., attended with all the requisites prescribed. For the intention is, to give the second deviser what is left from
of Devises.

from a first a rather to take from first only what is given to the second. But nothing is given to second.

But a devise to his tenant heir at law, the devise

takes a former devise, if only executed. 1223-17.

But a disposing of the instrument need not

comply with the requisites of both clauses. If it composes

to p. devise, clause, the devising words are effective

within the first branch of p. devising clause. How good,

can a disposing instrument, if it be effectual

to revoke (implicitly) without words of revocation -

it being revoking as at C.S.

As to revocations by burning, cancelling, tear

ing delivering, revocations thus affect, remain

as at C.S. 1062.

To effect a revocation in either of these ways, it

is necessary that the burning to be by testator, or in

his presence, by his direction. 1062.3. Sears

no revocation - i.e. if it remain intelligible. 1062.

Suppose the devise destroyed - may the contents be proved?

No such case, I believe. Note the analogy to deeds,

lost or destroyed by time, & accident. 27 151, 27 176,

263. 190 16 Ch. 1186.

Revocations effects of these acts, are in the

nature of implied revocations at C.S. These acts

themselves, the done by testator, are not considered as

revoking intent. 1062. 1003. 1062. 1062. 1062.
or visible signs of such intent.

Of course they amount to revocations or not, as they are done or not, aims revo casc. Thus of devisor should throw away instead of said or his devise, or having done, so by mistake comet j. lattie instead of j. former then will be no revocation. Cow 634, Comp 32.

10. Tr 546. 84, 508, 4 Bar 2815.

But it is not necessary that the devise be lost by destruction, even the slightest thing is well a revocation if accompanied with a declared intent to revoke; as when one slightly tore his devise therein it on the fire, but it fell off, it was taken up but he declared, that it should not be his wife. Cow 635, 6.

232, P. 1093.

So, if there are duplicities of a devise, a testamentar; that is, one part, animo revocandi j. other is revoked. Cow 637, 10. Com 483. 19. Tr 398. 2 Bar 792. Comp 543, 594.

These acts, depending on their effect, testify intention, amount, as some instances, only to dependent relative revocations, to. when done with reference to another act, intended to effect a new disposition, their revoking effect depends upon efficiency of other act. Cow 637.

Thus where one, thinking that a new devise of his estate was complete, then it was not, lose off the scalp from his first one, do thereby inform, otherwise desire and said he was done, 5 to. known complete his subsequent devise. The first was not revoked. Cow 628, 28, 30, 36, 55, 124, 349, 2, 28, 770, 8, 186, 140, 467, 651, 4. 3 Bar 2510, 26.
of Devises.

the analogy to the case of a disposing residuary estate, and
will be admitted in part, by testator's name or
vocaci, may be good as to the part. Thus where an in
vogue devise to all his estate, except 1/3, afterwards
inserts out the exception, 1/3 part not solemn, remain
not good. 1st Ed. 643. Conf. 312.

The instrument, made under the revoking clause
of the Stat. not valid, the testator's signature is un
of the instrument, unless it was intended to authorize it
revoking part. 1st Ed. 649. 6. 2d Ed. 949.

As Stat. is Ed. or Ed. subject of revocations. The
rules of C.L. generally apply here. 2nd. as to revocations by
parol (ante.)

of Republication.

A devise, the revoked part, if not actually the
destroyed, be revoked by a subsequent republication
or having a conditional, the testator's death, it may
as well be confirmed or revived, as revoked. 1st Ed. 652.

And before the Stat. of frauds, as parol declara
tions were sufficient to revoke, so they were suff. to be
publish, a devise. 1st Ed. 652.

II. Of Republications at C.L. 11. As they state
since the Stat. of frauds or injuries.

And T. At C.L. republications were made from
it. Of course, any slight words to effect a republication
1st Ed. 652.

Thus if one, having, made a devise of his land to
purchase other lands, then deliver his wife, as his wife
or verbally declare, that it was his wife, it is to be said
that it to the land so purchased to be part by it. 2nd Ed.
1st Ed. 652. 6. 2d Ed. 652. 6. 1st Ed. 652. 6. 2nd Ed. 652. 6.

Of Devices.

So if one having devised all his lands to his son, afterward purchased other lands, shall be applied to tell the latter, & shall reply, "Do they chuse me with my other lands to my devise," the devise shall be republished. 2d. & 2d. half the lands thus purchased. Con. 655. 6. 6ol. 69. p. 4. 404.

And according to our report of the case cited from 2. Ch. 2. the testator saying, for an application at supra, "My will is in a box in my study." was held to sufficient. Con. 655. 2. 10. 229.

So these words, "My will is in the hands of A. B. Shew the box," have been held sufficient. Con. 655. 2. 10. 229. vid. 1. 6ol. 697. 2. 1.

So any act subsequent to the revocation of devise, shall have no effect that it shall remain. In amount to a republication. Con. 655. 6. 1. 6ol. 697. 2. 1. E.g. delivering it to one in token of such effect.

So the a subsequent grantment to the use of profits will, was held to be a revocation (ante.) yet the reference of a grantment to the devise was held to be a republication, thus to give it effect. Con. 582. 653. 6ol. 67. 3. 4. 10. 138.

But the subsequent appointment of new devise, giving of a legacy was held to be an republication of a devise of land. Con. 656. 6ol. 618. vid. post.

And it has been held, that the mere addition of a codicil taking no notice of the devise, to be an republication at C. in. Because the very act shows that the testator contemplated the devise, as in subsisting.
III. Of Reproduction since the Statute of Frauds.

 Neither the Statute of Frauds nor any other makes any express provision with respect to a reproduction of devises. But, as the effect of a reproduction is the same as of devise (postum, it is held, that no devise a writing...
can amount to a republication of a devise of land, &c. unless accompanied with the requisites of a devise. 

... Can not comply with forms prescribed by the Stat. Coll. 80. 2. 664. 6. 686. 1 Hen. 3. 282. 2 Edw. 129. 1 & 2 Edw. 162. 16 Edw. 4. 460. 7. Rd. 72. & 3 Wm. 192. -- Pascal republications then, are at 1123. 

Paw 664. 5. 686. 11 Hen. 129. Cont. 84.

"No Codicil" (says Powel) can amount to a pubpublication, unless it comply with the forms &c. Also to "publish" a devise, in the presence of 3 witnesses. Coll. 664 cites, 281. D. 1669. 9 Mart. 68. 7660. 74. 2. 33. Do not the testator sign in the presence of 3 witnesses? This not necessary, in a original devise, (ante.) The 3 cases cited from 2000 does not warrant the position. Here, the codicil was thus executed, therefore good, but
and 3rd, even in not adjudge necessary.

The Codicil sh. indeed be published in the presence of the witnesses. Coll. 664. ante.

Decide in Conn. that a Pascal republication is not good. (Sup. Ct. Aug. Term. 1800. &c. 118.) 1 & 2 Red. 352. cont. A.D. 1783.

But the operation of this Stat. does not extend to implied or constructive republications, as in writing. Likewise does not to implied revocations, (ante.) Coll. 666.

So, devises of leasehold estates are not affected by this Stat., i.e. terms for years. Coll. 667. 586. 7. 598. &c. 257. 

not "land," it -- not real estate, -- personal property.

Under the Stat. (as at 61. ante.) 3 witnesses of confirmation are necessary, it seems, to a codicil to republish a devise. Staff: if this devise is virtually con-
confirmed, e.g. I desire that this instrument may be a further part of the (ante) for 658, 663, 6, 1254, 469.

So also by the better opinion every devise to a devisee, the not actually appointed, revokes the disposal of personal property only, will amount to a republication of events according to 1 Pet. 2, 9. One devises his real estate, and the merely revokes a devisee, giving pecunary legacies, but events as before: 658, 665, 663. Causer ante. p. 3. 1 Pet. 3, 9. From 681, 7, Med. 46, 465, 488, 8, 9, 168, 169, 9, 486. 7, 96, 8, Opp. 3, 9, 2, 9, 2, 6, 69, 168, 621. Castled, 166, 489, 69, 69, 631, Ambl. 371.

If one having devised all his copper to purchase more, surrenders them to the one declared to be with this surrender is a republication; if the latter with part thereof. But here nothing is said of the Test. of power, its requisites I suppose, were not competent with. But this seems to be an implicit republication; it Dr. whether such republication is a section by the Test.

The effect of a republication is to give the devisee a new title, so that the devisee after publication will comprehend all such property as all such persons, as to have comprehended before, made at the times of re-publication (see 67, 682, Corp. 136, 137, 19, 193, 4, 6, 4, 289, Corp. 136, 138, whereas a devisee not re-published will extend to be limited, as the testator had not at a time of making it. 2 Th. 1, 282, 125, 289, 136, 138.

General rule, that all is to be construed according to the state of intention at the time of making it. 1 Th. 4, 6, 62, 182, 186, Med. 285, if re-published, at a time of republication.
Hence if one having devise all his lands in 1. purchase other lands lying in 2. then republish all latter will pay. Pro 676. 2: 593. Moore 404. Cow 331.


So if one devise to his son A who dies, his son B after. But another son of the same name, other republish. Pro 675. 2: 502. 3: 675. 879. 56068.

So if one devise lands to his daughter "not to be subject to any control of her husband." She having a husband after, her husband sells, republishes taking notice of her husband's death, the restriction returns to any subsequent husband. 1: 237. 393.

But the effect of a republish is not so far as to give the devisee the same operation as thou he have had, originally written at time of republish. Pro 676.

Hence if one devise lands called Blackacre & the purchaser lands called Whiteacre & republishes. Whiteacre will not pay. So if having devise all his land & A be purchaser then lands in B & republishes the latter will not pay. Pro 676. 566.

Hence also words inserted in original devise as words of limitation cannot be a republish in order to operate as a new provision of description. Pro 676.

Thus if one devise land which his devise lies within & afterwards
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So, when one having devis'd land to his son, to give a legacy to his grandson, it republished after the son's death, it was decided that the grandson &c. not take, but for the latter having used the word "grandson" she said, that he did not intend to designate his grandson by using the same. Con. 67. 318. 12 M. 346. 2 Ch. 40. 2. Ezr. 243. 2 Thess. 53.

Note. Testatory intention is to be considered, in general, from a reference to the state of things existing at the time of making the will, not at its death. Willy 297. Talbot 44. Ath. 297.

A codicil may republish a devise as to part of the subject matter only. Ex. One having devised his real estate to two, revised it as to part of the estate, by settling that part upon one of them, and by codicil confirmed it, subject to the settlement. Note that the other part should go to the two. Con. 974. 688. 217. 329.

But a codicil cannot give a devise or give more devise or any inherent validity which did not before belong to it. Its effect is to set it up, in the same condition as which it was at its inception. Con. 882. 2. 142. 10.

Hence of the devise itself is not executed according to the will, a codicil which it thus executeth, will not confirm it. Con. 882. 2. 142. 118. 2 Ezr. 270. 2 Ezr. 243. 2 Thess. 35. 2 Thess. 742. Con. 67. 992. 318. 2 M. 268. 2 Ezr. 395.

St. Thomas says, in its title, that if a man devises thus, "all the lands which I now have,"实实在在 to his lands, these remain to be not republished. Con. 872. 542. 872. 542. 0. Brit. 2352. Russell: in this case, the same fate as if the devise had been made at the time of publication. Con. 630. 15.
Of Devises.

A devise may be repudiated by more or less than
such repudiation may supply an original want of ca-
pacity in deviser. E.g. an infant may repudiate a full
full age repudiated it. 4 Ex. 186, 187, 188. 14 M. & P. 84.
An infant may repudiate on the very day on
which he comes of age—no portion of a day. 3 Ex. 166, 167, 168, 169.
11 M. & P. 84.

Nothing which does not amount to a repudia-
tion at law, will amount to it in equity. 4 Ex. 167, 168.
4 Ex. 167, 168.

The jurisdiction of Courts as to—Devises.

The Ecclesiastical Act 4 & 5 Will. have no jurisdiction.
On devises of land only (2 D. 353, 354.) and a prohibition to
prevent from proceeding in the probate of devises. 2 D. 353, 354.
5 Will. 31: 11 Ex. 207. 2 Ex. 207. 3 Ex. 353, 354. 2 East 357, 358.

But, now that the same instrument contains a devise of
land as legacies of the devisee, it may be proved in those suits
for it is necessary as to the personal estate. But the probate
out, as to the real estate. For, where an estate at law is
Conn. 353, 354. 2 East 357, 358. 11 Ex. 207. 3 Ex. 353, 354. 2 East 357, 358.
Conn. 353, 354. 11 Ex. 207. 3 Ex. 353, 354. 2 East 357, 358.

As to personal property, it is conclusive—A prohibi-
tion was formerly granted. 2 D. 353, 354. 2 East 357, 358.

In Edw. devises as well as wills, are proved by Edw.
of Probate. But an appeal to the Edw. is filed from that decic-
cent or all cases. If proceeding, probate is set aside, no
further proceedings are had. For the court is vested with
directions to the judge to sign form. 2 Edw. 353, 354. 2 East,
above. 2 Edw. 353, 354. 2 Edw.
Of Devises.

But there is no need of an appeal in any question of title to real estate; the evidence of the deed is not evidence of title in such a case. The heir of deviser may immediately sue at Eq. for an estate of devisee notwithstanding.

The devisee of an estate, testate or intestate, upon the order of Probate, settles the proportions of those into that to it, and if it is shown in a suit, to be erroneous but has no effect on the deed of title.

A test of this, with due deliberation, advice upon a suggestion of grant in the making of these for the sake of the suggestion is true, it is a devise. (Pn 376.) Whether it is a devise or not is a due of fact to be tried at law by jury.

Similar to the question of non est factum, plea is not a deed.

So, whether estate was conveyed or not, is a due of fact to be tried at law. (Pn 593.)

(Pn. if an issue devisavit, but was wanted out of a will or docket for the heir, does the fact of this, in these cases, the issue's title, thus found, proceed to be as good as if it was "true", and as if it was the proceeding in Eq. to assign? Pn 693. 2 Ath 324.

But there is a distinction between Chancellor's sitting aside as a devisee for fraud or title arising from the devisee's will or devisee's conveyance or a conveyance of a devisee, proceeding in a confession that binds the devisee; the latter may be done; for here the object is not questioned but the limitation of the devisee is not questioned, but the limited devisee.
Devises shall hold for the benefit of the party aggrieved.
The ground of jurisdiction is distinct from that over the devise itself: it is over the conscience of devises, Pantal., fol. 313.

Ex. If A. agree to give $1,000 in court bills in consideration of B's devising lands to heirs by bills of sale. It would be made a devisee for B's life, for the breach of confidence, which is equity as a fund. See 1 P. & P. 285.

2 Co. 923, 930.

On a common principle, it is notorious, on the other hand, that if one is about to provide, by devise, for his younger children, it is flawed from doing it, by the heir promising to make the same provision. It is compulsable on equity, to perform his agreement. See 20 Pl. 6th, 207.

See Ch. 6. — Friend.

And when one devised lands, to be exchanged for college lands for A. the college ass't not exchange, they declared that A. to have the lands intended to be exchanged. See 92 Eng. 245.

In general, questions arising in conveyance, etc., or of a devise, are to be decided at law. But the may not or more questions of this kind, if there are circumstances requiring equitable interposition. See 6 Cr. 479, 480.

Where the issue, deviser's will was to devise one estate, that B. will not. The evidence & strict p. inquisitorial as it, so that a fair investigation may not be made. E.g. The B. may think that none of the parties shall produce certain declares writings. That he shall not set up such a such an unwarrantable fence, as that he shall admit, in evidence. See 92 Eng. 245.
Of giving a devise in Evidence, at Law.

The best proof of a devise, is the production of the instrument itself. And regularly the best evidence is required in all cases. Corp. 361; 210, 112, where the claimant had a devise, relied upon a bill or copy of a deed by the devisee. But, in receiving the devise, it was known to be no evidence. 1 Cor. 727. 2 Pet. 35, 71. 11 Pet. 147. Gen. 193.

So, a devise, even though it were the great seal, is no evidence to a jury, in Scotland. Corp. 727. Gen. 66.

So, the probate of a will or the probate in Scotland, is no evidence, as a will or deed is. Corp. 703. Gen. 293. 393. 356. Deed, the proceedings are bound upon evidence.

Then is the probate of a will of lands in that as is no evidence, even of the will is lost, for such probate is a nullity. Corp. 703. 2 Pet. 322. 740.

But if neither of the parties has a right to probate of the devise, a copy is admissible. Corp. 705. 6. 2 Pet. 322. Note 293. 25.

But yet it is said, that the probate of a devise at all is accompanied with other circumstantial evidence and incapable, if the devisee is proved to be lost. Corp. 706.

And it is said, that if a devise is made by the order of the court, a copy of it is admissible, for it is a vested effect, and used when the court is which it is lodged, has jurisdiction, etc. The subject matter, a copy, i.e., an official copy, of course, may be read. Corp. 707. 3 Pet. 11. 466. 124.

Do not then the constant practice of law?

But, if proof of the attestation of a devise is required, that must be proved by a subscribing witness of either of two styles:
If there has been a probate of the will or testa, is not that conclusive evidence as to fact? (By)

At law, however, one of the witnesses is sufficient to prove what all have attested. But he must be able to testify, not only that testator executed it, but that he signed it, and to do this, it must be read. Con p. 1269, 1274, 1281.

And tho' the will and testa are all present, it is not to be inferred that they all testify to the part of testator executing the devise, nor that the devise may be read. Con p. 1269, 1274, 1281.

And tho' the will and testa are all present, it is not to be inferred that they all testify to the part of testator executing the devise, nor that the devise may be read. Con p. 1269, 1274, 1281.

But if one of the witnesses refuses to swear, it was necessary to prove part of this attestation. Con p. 1269, 1274.

And the subscribing witnesses are allowed to deny the facts which bear the face of the instrument, and are prohibited to have attested. Con p. 1269-1272. Tho. 79, 1263, 1264. E.g. their own attestation, testator's insanity, etc. See Chaff. 3, 1264.
of Devises.

the validity of testators, where the subscribing witness proves that he was sure, unless the suggestion to the contrary is supported by some direct evidence. Co. 714, 210, 335.

of Proving a Devises in Chanry.

It is usual evidence when a devise is not to be depended upon a will, to prove it in chancery; especially, if the devise be modern date. Co. 714.

The probate of a devise is evidence, it is sufficient conclusive upon all person, if the devise is not put after the devise, attempt to contradict it. Why? if we are insufficient not his. Co. 718, 343, 216.

In Co. they have no concern with the probate of devises or wills, acts.

But they will not declare a devise proved, why the heir is forth coming, i.e. to be found. Co. 719, 210, 335.

It has been hord that such a probate of a devise is not necessary, however, to prove the devicer's particular heirs, under it, even in Co. Co. 715, 210, 335, 343, 216.

And the the heir voluntarily makes it not clear, the devise will not be declared to be void, unless proof must be made, as if it were contended. Co. 715, 343, 216.

The probate of a devise in chancery, being thus confirmed, it is an established practice in the court to prove a devise proved, and if all the subscribing witnesses are examined, for the heir has a right to demand that one of them to live, before he is distinguished. Co. 715, 343, 344, 216, 345.

The practice of one Co. of Probate is to declare a devise.
proved, or the oath of one of the witnesses. But the protest here
is no evidence of latter date.

And the rule is the same in Eng? the most credible
as is beyond the reach of the party claiming to obtain his evidence. Cow. 709. 3: 2 864, 150, 50th 627.

When a Commission issues from Eng. to take depositions to prove a devise, a devise itself is sometimes de
livered out of the proper office, a securite given in
some instances by the party, or the party who is to deliver it out a securite. Cow. 7219. Pron. 961. 14th 627.

2 9th 627, 64. 1 5th 667.

A Bill to perpetuate testimony of witnesses
to the devise of a lunatic, will not lie in his lifetime.
The lunatic may recover. Cow. 7234. 15th 655.

15th 624. 9th 184.
This subject depends upon the adjudication of
lots, or the construction of wills.

This species of alienation was known to our
Saxon ancestors previous to the Norman conquest:
the it is not probable they took the custom from
the Roman people.

The general principles which preceded this
the realm, prevented this, as well as all other spe-
cies of alienation, for a great length of time.

Personal property was first devisable. It was
sable in the first place by patent. It became
more however to commit the will to writing.

The restraint on alienation by will lasted
longer than the restraint on other species of ali-
 nation, as by deed. By the Stat. 32. Hen. 3. aliene-
tion by will was allowed as to real property. I made
it necessary that the will be a writing. Tindal
made that James Court. infants, idiots, 1 persons of
non sane memory should not have the right of
alienating their property by will. I think on the same
principle that idiots, 1 persons of non sane memory
should be excluded on the as well infants they were
presumably in the age of 21, but was thought necessary to prohibit
them from devising their real property. Some courts were
also excluded from devising by the same statutes.
This Stat. was the Law of Eng' at the time of the emigration of our ancestors. The Stat. of ear, was made after the commencement of the Settlement in some of the Colonies. This Stat. has been copied & adopted to its construction with it, as the Law of all most every State in U. S., it not originally breaking upon us.

The term "Devise" as strictly means, the disposition of real property, a will is strictly a devise of real property & the disposition of personal property by will is strictly called a testament. But these terms are used by noavously.

The Stat. allowing Devises gives the privilege to all kinds of property except such as is held in joint tenancy, which cannot be devised in Eng' so this is the ground why this species of property can't in general be devised in U. S.; Some States however have expressly made all joint tenancies deviseable like other property, though they are included.

Some statutes are included in the Eng' Stat. for devise. Some of the States have abolished the provisions of joint tenancy, the devisees can devise real property.

There is a great difference in the construction of words used in Wills of the same words used in Eng'. If an Estate in a Stat. is given to P. he gives him an Estate for life. So any other words would fail to give him a few or all of the good things used. Everything knows to the Superior house of solicitors. But in S. they such words will
Devises.

An act for the intention to hold a fee can be collected from the instrument. The reason of the difference is that the rules of construction as to wills were established at a much later period than those by which deeds were construed. The rule, in the intention of the testator is to govern. This rule holds when there is an attempt to create an estate known to the law.

If the attempt to create an estate of which the law is ignorant, his intention will not be followed. As if e.g. the testator attempts to create an estate tail in pure professe the devise will take an absolute estate in fee. Or if he attempts to create a fee simple which will descend only to male heirs, this is a vain attempt, it will be disregarded, for the law knows of nothing of an estate in fee descendible only to male heirs.

If the testator's intention is not consistent with the rules of law you see his intention will not prevail. But by this you are to understand his intention as to the thing done, not as to the consequence the he is not permitted to do what is unknown to law. If State had endowed no new power on the latter to create a new estate, but merely gave him the power to create an estate before known at C.B.,

At C.B., an estate in future, p. not to be created, it must be common as to estate. But by devise you may an estate may be made to commence 100 years hence. To be sure an estate at C.B. may be created to commence in future, if there is an intervening estate to support it. But a devise makes such intervening estate.

Whether the words create an estate in fee.


for life, is a fee, which depends entirely upon the continuance of the
life of the testator. Thus if A. B. owns a fee in B. and gives to
C. A. an estate in fee for the testator's life as a present. So if he uses the words "all my property," the will
takes the real and personal property of which the testator did dispose. This rule is generally adopted in U.S.

The operation of a will upon Real property is very different from the operation in case of personal estate. Suppose the testator devises to A. all my real estate, what is it worth? B. acres— But afterwards he acquires valuable real estate, what is the value of his intestate? But in such cases with respect to personal property the whole will pass, which he owned at the time of his death. For when property is of so fluctuating a nature that it may be uncertain to ascertain what property he held at the time of the will, made. But in case of Real estate, given by will or by another estate is acquired afterwards, to be then published his will, the latter estate will pass by virtue of the republication. But if the words of the will are "all my estate in B." or "all the after acquired real estate is situated in B. the will will be republished; the latter estate will not pass under the force of the republication.

The instrument called a will, contains entry till the testator's death, i.e. liable to revoke either expressly or implicitly. This is an important subject to consider, which some cases on it have established which will be considered hereafter. Keep it in mind.
Before the Stat. of Can. wills were revocable by
code—but now by Stat. it is necessary, that the
revocation to be express, should be by writing. This
Stat. is only adopted in U. E., the in U. S.,
doctrine prevails, 6th & 7th muster.

No particular form of expression is needed
any to be used in a will; the words particular
words are made necessary, they must be followed.
No case arises, whether an estate or contingency
can be devised by will, while the contingency
remains unexpired. Formally it was held
such estate or not to be alienated in any way;
but it is now settled that they may be devised as
well as any other estate. Pro privato in Eng.
Be devised except such as the person was fecund
This was an objection to the decision of the above
answer; the answer is that the devisee was as well
subject as the tenant of the estate. In the
That depends upon the Stat. in U. S. That provision
see 180, 2351, 1 Mod. 27, 13, 13 R. 1131, 971
182, 123, 30, 18, 235, 24.

Is it a real point, that what profit is devised
the what profit, there is devised with the Stat?
Now it is apparent, that in Eng. more but a few
simple is devised. But it is not necessary that
be in fact, he should be a right of the parcel is devised.
There is no exception to this rule except the devisee
was the consequence of grains. The grain blocks out the
existence, the thing done under it. An estate
Devises.

Joint tenancy is not divisible. How is it when the words "all jointly" are used, as they are in some of the States? Doubtless they may be divided. A life or an estate for the life of another is divisible. But in Eng. it was not so till a Statute was made expressly for this purpose. On principles of C. E. it is not to be divided. An estate tail or for life is not divisible as it first converted into a fee simple by feme sole and confirmation. Bell. 94. Co. E. 58. Co. E. 91.

I found a case in the Year Books where there was a grant of such estate to be divided. It was where it was by Custom, and the Custom was to divide all estates - the lot here they were divisible, subject to the Custom.

A number of cases were decided under this Statute 12 Hen 3, 1 before that of 18 Car. II. Some of which are the same as are not now good. It was settled under the Statute 12 Hen. that the whole estate to be made at the same time, but this is not now law, see Bow. 24. 12. 533. 1 Bow. 545.

Suppose a man has 3 or 4 wills on different pieces of paper, devising different kinds of property, consistent with each other. It was formerly contended that the last one made was the only one. But it is now settled that these wills, if consistent, may all be cons. as his will. 1 Bow. 145. 553.

There is a case in the Book where the last will seems inconsistent with the first, p. 721. It was held that both wills were good, though (see 21. 725). It is secondary intention of the Testator, without a decision, which...
Another point settled during that period, which is now law, was that a reference in the will to another instrument was good as when he devised to a certain person whose name was written on a certain piece of paper such reference to that paper was allowed. (Laws 144, 1818.)

It was taken as a part of the will, the same as if the referred to had been declarator of the will. — Lecture 228

So, if a will is made inconsistent with a former one, the former is revoked — but a codicil is not a revocation. It may be added to it, or explanatory of it. The codicil may not be annulled, but refers to it; then it is a codicil only.

Another point settled during that period, that where a man mentions a letter to a friend that he disposed of his property, it is effective as a will. This is of course to us. It was a loose and easy way of writing, but probably one among other causes which occasioned that.

Again, when the devisee was in such a situation as to be unable absolutely to write or direct his will, that was a time when he was unable to direct, he did direct it. And, interesting, the ancients drew his distinguished to sign it, it was a good will, or the presumption that it was, followed his instructions. But this has not always been done away by statute, but what here prescribed certain requisites which must be followed, else the same will die intestate, but his intention to carry so evident.
The requisites of the State, is that all devises of lands which are divisible by land, are also all devisable by Custom, &c. to be in writing. The latter clause is good left out of our Statute of Wills. The 2d requisite is that the devise be

The 3d is that the will be attested by a certain \\n
The next is that this be done by three or more credible witnesses, these are all requisites. There is no form or technicality which must be used. The attestation of the testate to must appear, that will be followed in cases consistent with the rules of law.

The locality where the lands lie must prevail. If the lands are situated out of the County, the Land of the place where (C. N. 782) they are not to be followed in the devise of those lands.

It is not an uncommon thing for a man to give another power to transfer his property. Now the transfer or Transferee may transfer it by deed only will, but if he transfer it by will, it must have all the requisites of a will. This you perceive is a power in the owner of land that he may not only devise his estate, but also in powers in other to dispose.

Of the requisites. The first is 2

10. N. 240. 2 258. 2 755. 2 755. 799.

Of the requisites. The first is 2.

25 20.
Illustration. It is necessary the devise be written that will

As to the Second. I am not as to what was a signing. Had the ordinary ideas of man, we have been following estates that is generally stood by a signing, viz., writing his name at the bottom, much difficulty I had been saved. I do not think you can infer from the testator when the signing, "I, A.T.," he that he actually meant to devise. But it is settled by the law that it matters not where the name is situated. Whether at the top, middle, or bottom, provided his intention was apparent.

Another case, wherein the will was not written by the testator, nor signed by him, but sealed by him which could be proved. The law was whether sealing was signing. It is settled that it is not signing, but that the name itself must appear.

Another case. The man wrote the will in his own hand, I believed that it might be best him to sign, but was incapable to do it. The lot decided the will was not signed. The rule laid down by the lot was that if you have evidence the testator meant to sign but did not, it is not a good will. Creating this requisite, but that where he had signed at the top, it manifests he wish to sign any further, it is a good will. 1 Will 219, 200, 784. 12 Will 6312.
There is no necessity to seal a will according to the latter, but still it is an universal custom to seal it. Universal practice may make it necessary.

As to the third question—The first doubt is what does the person attest? One thing is clear that he attests to the corporal act of signing that the testator did sign—but this does not preclude the other parties from contesting the evidence inquiring into the fact. But it is also said that the witness attests to the part of sanity in the testator. This I think is incorrect, for were it so the same witness who attests the will would have been sufficient to come into the issue to prove insanity of the testator—but this is the constant practice. The attestation supports the presumption that he was sane, & throws the proof on the opposite party that he was not so—& this forms the proof in insane. [Ch. 14] Parsons' Book 2 T. W. 586.

What was the witness able to swear to? One witness saw the testator sign it, & then the testator sealed it in another, will it not be sufficient for the testator enjoining the witness that the signing is his? It is—when this done the three witnesses did not see him sign, yet can attest to the corporal act of signing. It is no established rule that an act known to be this kind is sufficient to enable the witness to swear to the fact. But any thing done of this kind will not invalidate p.
(20th. 45th. 39th. 26th. 18th.) the will. As when the testator is in his own will, not signed, notwithstanding the will.

It must be subscribed in the presence of the testator. It is settled that if the witnesses subscribe in the presence of the testator, it is sufficent. But if he do not see them, it will not validate the will. It may be in an adjoining room if the testator do see them there, then it will he did not. But if they went from him, out of his presence, it is not a good signing.

Leathr. 61. i. 12th. 395 Brown. الخليج.

Supposing he could have, if he would, the he did not, there is a case where the lot recognised that such a signing was good. It was claimed that the signing was not good on account of fraud. But it turned out, there was no fraud. 1 P. 50, 740.

In the case of Doneg. Wright v. Price, arose another case. The witnesses subscribed in the corporal presence of the testator, and he had become destitute before their subscription. It was held that such was not good signing. That he must have a mind capable of rejecting till the last moment.

If two of the witnesses are paid or one of the jurisdiction of the lot, the will may be proved by one witness, who can recite to all the parties the signing of the testators as well as that of the other witnesses. If the other two may be heard, they must be produced, as being the best evidence. But suf
Devises.

pose they are all dead to you then may introduce testimony that the signature is the handwriting of the testator or the testator. But does this prove that the testator signs in the presence? No. Unless then you must presume the fact of its being done in the presence for it the best of the only evidence which can be had. 2 Sam. 1109, 1098, 1736, 12, 385.

Suppose one witness comes in & swears to all the requisites necessary & another witness swears to the contrary. But can he swear to the contrary certain, i.e. if the witness swore was perjured. But if he acknowledges he signed he will not be permitted to swear that testator did not sign. So this is inconsistent with the attestation. If a thing believe that the testator who swore that his name was forged swore falsely, they believe of other they may consider the rule good to establish it. So they may establish the rule when there are 2 or more who swear to it done for it, if the letter one is believed, the other not.

Sect. 3.

As to the No. of witnesses—three or more are required by the law. This has been a subject of contention. a man made a will & had testified improperly in them answered a coroner with two witnesses—was it sufficiently witnessed? Such a will has been held good. The ground on which the decision was, when it was held bad, that the witnesses did not have nothing of evidence
Dear Sirs,

The first case was when there were no witnesses to the will, but there was a codicil which codicil recognized the will, the codicil was not present at the execution of the will. It was holographic. I have no doubt but that the will here present the decision.

The next case was when there were no witnesses to the will, but a suffrage number to the codicil, which codicil was annexed to the will. This was holographic. I have no doubt but that the presence of the will at the time of witnessing the codicil. Now I have no doubt but that this, and all consistent, is the governing principle to be that the will must be present. The other case was when the will was written in a blank piece of paper, the witness signed every sheet, of the witnesses saw his sign the last sheet only, it alters it. Now if there are distinct original wills, it is made a difference, but it was not so, they were all parts of the same will, it present at all times, and only signed.

A fifth case, when the will was made by a man ignorant of the art of writing regarded. His will was not witnessed at all, he afterwards appended another writing, sufficiently witnessed, which writing he wrapped up in the will, the writing referred to the will. It was present at all times. All of the writing, it was considered good, as part of this will. The amount then is, that there must be these three things, to the will, the sufficient of the testamentary another piece of paper of the will is present it at some
Three or more credible witnesses. There is a De. arising out of this branch which has agitated the Cot. of Wills. There are more than any other concerning wills. The great De. is whether any person e. the witnesses are true who had legacies in the will, whether their attestation was any thing, and the De. was, whether they can be matters of post factum, become juries, or by releasing their legacies become good witnesses. Now some contend that the witnesses are incapable of attesting, that for the will is void at iniuria. If they were not witnesses at the time, so subsequent facts cannot prove them, or say they e.g. it was and is injurious at the time of attestation. Now can this man after a removal of his disability be a good witness to prove j. will. They say no. Or if other heirs it is contended that there were not witnesses, but if they were, they may release their estates. B. Means is Cumber and the great combatants. Means is does not enter into j. issue, it says they may be juries, but Cumber says he was incapable of attesting in account of interest, or cannot be jurors so as to prove what Cumber. I think is correct, if his premises are false. I conceive he has not interest, it is contingent, whether he can receive or not and if j. will or not. But the rule of evidence is that a witness to be included must have a
real and a contingent interest. If the contract
attorney excluded, a son could not have a writhe for
the fact any other purpose. If the writer lived,
father or their heirs. The certainly a principle
is a contingent interest, the the objection (i.e. any
case of a son testifying for the father) goes to
his credibility. The witnesses to a will this attest
of corporal act of signing a contingent interest
under a will will not include him from doing
this. An insane person cannot attest to this
or any other fact. The witness's interest or not
biuinary. it is contingent. the will may be never
has the first day it be executed nothing. Of thin
there is nothing more in the State. While other rules
of evidence, they are certainly complete witnesses more
lease of their interest.

But it is contended, there is something
in the Sec... by which the legislature meant to point
out certain A matter into the not testimony. Now,
if by the word credible they intended to include
legates from testifying, it is certainly a very awk
said obscure manner of expressing this inter
tion. It appears to me that it is only a word thrown
without reflection, which was not intended
to introduce any new principle of evidence.

But the we have been more careful to express
themselves. Suppose they had used the word comp
but... I conceive it is the same thing. By this
they meant to exclude legates, regardless to they want
consider this not credible, when it says that...
Judge that the objection to such persons is to their
credibility, not to their competency. These very per-
sons, had one of them had been the heir of Sam or
Dover, he would have been a good witness.

The next is whether if these were not
instrumental witnesses, they can be brought
to prove p. will. I have no doubt, but if the thing
is void at once, it can never afterwards re-
gain strength — on the death of the testator, p.
will unattorned — they are invalid — but cant they
release that interest? It has always been p. cases
then the interest arises subsequently, or releasing
that interest, be will become a good witness.

This then is whether to beg of case — the testimony
found upon the former — if I am wrong there.

Suppose then one witness is interests — cannot
the other witness procure p. will — which is certain
by, for had he been dead at the time of the testa-
ment — becomes infamous after attestation, his hand
writing cannot be proved. It to in this case, as is
inuscultic from testifying in p. but his evidence,
be supplied by other witnesses, as if he were dead
infamous, as one of the precluding p. 67 that
1255. — This decision went on p. ground that they could not
(2 Bea. 377) instrumental at witnesses. This decision is accept-
ing to produce p. Act. 28 D. 2 declaring all loges to
witnesses, void. This State has been said to be some
of the Puritans. But from this tunder no inference

Devised

can be drawn, indicating that the doctrines have turned down. Morely, "lending the Doe in Day," A. C. Cambretton.

The case in point of authority. Why a person can present a will on a clear day. Rose of New York. Ch. J. Lee of New York, with him. Q: Cambern in the company? Answer: For that they were not good witnesses. Witnessed there was no. Q: By the other hand. Q: Almanda is it to Young Judges that in this case. Q: That Almanda decided equally. So it seems not fully settled. This Doe has twelve children in Can... The first decree was that they were witnesses. The next was that they were witnesses by the casting vote of the Ch. J. Lee. It went up to the C. J. Lee was stricken over the latter decision of the Sup. Ch. J. Lee adopted the idea of Almanda. It is consent. Impossible. This was another case in Can. Which I mention because it may seem the Ch. J. E. contradicted themselves but not so. It is among our local law. It was a large legacy given to the Academy in 1849. The inhabitants of this town were witnesses to the will. They were bad as good witnesses because we have a law allowing such attestation.

The will must be published. It said. Now the State of Can. requires no such thing. I think was the law to be said. It is to be accepted and necessary. If the will has all requisites of the state. It is a good will. Concerning that of those which required only writing. It was necessary that there will be a publication. But this is not required by a will of Can. So other requisites are points out. Shall be
think publication not necessary, but if it is necessary, doing what is required by 17th Stat. 36, is a publication. 36th 15th.

There are cases where it is necessary that some one be present at the time of attestation. This a due, which often arises, it is to be determined by a judge. It is a question of fact for them to decide, not admissible. 3, 6, 60, 260. 10, 6, 60, 620, 454, 3, 6, 60, 177.

The proof of the devising signing, if the will opposes are admitted by them, if not by their handwriting. It is then preserving this done it in the presence of the testator, I have the four mentioned.

Sect. 16.

Of the Revocation of Wills.

There is a deed in which I am unable to find any decisions, but only the propositions of elementary writers. It is this, that a will may be good as to personal, not as to real property. In a devise of personal property, there is no need of any witnesses, but in a devise of real, there is. Now the case is this. The testator devised the house, and a good estate he had provided for his family by devising to some the house and to others to read. Now if the will is not good as to personal, the intent of the testator is defeated. It's either the personal devise his real estate to his younger son and the personal devise to the eldest. Now if it fails as to personal estate, it's good as to real. But if the eldest son will take all the estate, then private devise, the real, by descent. I think it is a due one for describing it appears to me it is...
une implicit revocation from power to that subject.

Revocations are expressed or implied.

An implicit revocation are the same as they are in any other law as there is not allowed by Stat. 1747.

But the revoking clauses of the Stat. vary a little from the C.S. revocation. Of course, when there is no such Stat. as the States, the C.S. revocation prevails. Of course it is important to ascertain both these species of revocation.

This Stat. requires certain declarations to be made to the C.S. revocation, but at C.S. power are given, at C.S. nothing but evidence of an intention to retire thereto is necessary. I am now thinking of such revocations. Without the Stat. words might be as well by parties as by writing. None of the States follow the Stat. regulations some are not. And it may be made by parole, it may be proved parole.

The revocation however, before the Stat. the allowed to be by parole, must be made in such a manner, as that it appears clear such was his intention. To wit: under the Stat. there must be an obvious revocation. As when it is lawful, cancelled his new will, when intending to cancel another one, the new will, as he knew well, was wanting. The case of Moll et al. 61: 115, 417, 1315, 733, is a revocation.

Any thing in revocation of an intention to revoke will be sufficient, but words used in revocation to make it not sufficient, the revocation must be clear.
Devises.

Of Implied Revocations.

This revocation may arise from a collateral act of the testator, some other act than that which absolutely implies an intention to revoke.

It may be revoked too by some act of his proving grounds to preclude an intention to revoke. The 2d is, the revocation impliedly by the


Par. C. 349.

This imputed revocation from a collateral act of the testator, is to be found in a will, which is inconsistent with a former one. The rule is that if a will is inconsistent with a collateral act, it is revoked. But I think the principle which makes it good must be not entirely but must be established at supra.

A Codicil will not extend the will any further than there are words injurious to intention (Sums. 178. 181) to revoke. Not so as to nullify your words.

There is a case at supra, supra, which made a great figure. The jury found there was a will, still made inconsistent with a former will, which was not an improper way of what in difference consists, but they did not know. The court, said the court, the statute was not revoked. The Statute was revoked by a finding of the jury. The court of K.B. reversed the decision at the House of Lords confirm'd the latter decision on the principle that such was no finding, except by jury.

There is one case where aRev. will may be made inconsistent, & yet if former has not settled
This is where the 2d will is made under a false impression of a fact. As where the devisee in a will, not made for years it was supposed to be lost, was the father mentioned as having a will in a 2d. Why is all the ground of his devoting it on the 2d return. Was this a revocation? It is 8 days. It is 8 days or 8 days.

I was decided in Illinois, not to be a revocation. There is another case where the 2d was made under a false impression. In this case, is this revocation of former one? The testimony in this case is so much the same in many as it is in this. In a principle of policy it was decided to be a revocation. It was a case arising under a Statute. Statute made. He had his will devised properly to a corporation. It was held that on account of the Statute it did not take effect. The statute it but it turned out that the corporation was incapable which was an exception in 2d Statute. We have nothing to do with the Statute. If we have nothing to do with the Statute of Frauds in this country. The decision was in favor of the statute. In favor of the statute. "Ignorantia legis non excusat" of such was not the case. Then the devisee in the former case not, his devise not, his intention to give...
respective, but upon certain circumstances, which the principles, the courts, the

But it is not the birth of a child, merely, which furnishes a presumption; this must be connected with the circumstances of the case which lead to furnish a presumption, if it is worth. $10,000, if it gives away $500 of it, it has a child; is this a reasonable presumption? It must be such a thing as a reasonable man would do; a reasonable man would not disinherit his wife, children, etc., if he gives it all, the principle operates, this furnishes a presumption. Some say nothing short of the birth of a child, a total disinherited suffices; but this unqualified meaning, the being of a proposition, I do not believe to be correct. 

Douglas v. Clark, 1813, 1 S. F. 242, 10 Cow. 214. 1813, 1 S. F. 242, 10 Cow. 214.

The proposition is, that if it is this, there is a presumptive intention to another, there comes up this case — a man had devised to. Suppose

I will without having a child, or supposing he had even have one. But a child was born after. The argument above fails here; but if a person to

So殿下, I may not end a way to provide for a child, by saying the testamentian made a will on an entirely different

Suppose a man makes a will and after

insurer the property changes before his death, so that if the wise is established, it will thwart his intention, etc. If he was in sound mind. How the authorities are all that this situation in his
Devises.

Section 35. Another species of implied revocations arises from an intention to revoke, e.g., by an instrument insufficient in requisites so that it cannot be in effect a will as such. If it is an implied revocation of the last will, being bad as a will, will it amount to revocation? The rule of C & D is that it is a revocation if there is property which is described by heir at law, or if ground that it appears to be in intention of the testator to take, and property from the last devise. But it appears to me that is uncertain. How is it doubtful? The title of the testator intends to give property to his heir. But the rule must be settled some other way. Moore 379; Cyp. 108; 182; 389; 420. 613; 176. Brown 32; 140; 107, 239; 7; 72.

This rule likewise applies to all cases where some person don't take by devise, as if the testator gives the corporation who cannot by law take the heir at law will take, unless otherwise. So far of implied revocation by intention of testator. But,
There is a controversy which arises from an alteration of the testator's estate. Thus if inter

testam is wholly disregarded, e.g. A devises the estate to B & C; this sells it & afterwards re-purchases it,

now is the sale revoked? It is with declared intention. This is an exception to a rule generally held

(Wills 618, 6 Co. R. 418) the alteration is not revoked by some words used in the

Again, A devises 1/3 to A, in fee simple; he afterwards marries & wishes to make

provisions for his wife. For this convey the estate to trustees for his own life, & on his death remain

down to the wife for life. Now under the Statute of

Wills & such alteration is not to be undone & revocation of 1/3 devise.

But here there is no alteration in the nature of the estate; it was holders a revocation (Wills 618,

(Same, 418) so it is evident he did not intend to defeat the devise.

Again, A being devise of an estate in

Talt, devises it, which he cannot do but to give validity to his devise, the devise suffers a revocation

if while learns it into a fee. This being an alteration of 1/3 estate, it was held to be a revocation.

(Dev. 108, 3 P. W. Mortwood & Turner). Hence the dis-

tinction was expressly declared to be of this way.

Further. A man devise of an estate in

fee simple, devises it but the estate being

entangled, it is doubtful about his estate. The

opinion of some lawyers being that if estate was an entail, it is subject to a common remedy. But it turns out to have been a fee simple

by lot, but the devise revoked on 1/3 ground of alter-

tation. This is abjured 30th 303.
Devises.

In Chy, the word 'devise' signifies such alteration to be a revocable of the estate, if the devisee's intention is the revocation. But in higher estates, and if the devisee is a lot of Law, then it is strictly by presage. If the estate devise is afterwards mortgaged, the devisee may take the estate. He takes it as common as is allowed to redeem. See 122 Knt. 219, 359. 10 Eliz. 158, 1 Cth. 740805. 2 Sc. 968.

But there is a distinction between a mortgage of years against a devisee. In the latter case it is a revocable free tenancy. If the devisee stands on the same ground for which the owner stood he may redeem at any time in Chy, but otherwise it is a revocable in toto. If the estate is absolute in the mortgage. See 39 Chy. 359. But this is not confined to mortgages for an estate over which the devisee has cognizance, an alteration is only a revocable free tenancy.

The act of a stranger may cause a revocation. E.g. In Eng. in some of the States, the tenant in chief dies, the estate of the devisee is inoperative. Now if a stranger dispossesses him, it will be revoked. 14 Ch. 172.

But if there is fraud in the devisee, it will cease to have effect. In a case (Roll 379) where the son devised the father, that the lands might descend to him (being devisee to another). A lot of lands were devised in such manner as to be disposed as to devisee at all. A lot of the lands lay his lands in a parish to convey to devisee as if the lands had actually descended to him. 379.
Devises.

The question arises whether a will is tenant to produce it is a revocation? It is certain it was not the case, as a rule, if not legible. I know of no
reason why proof of its contents may not be adduced; but it being a very complex instrument it will be difficult to find out its contents. If it is torn to pieces, with intent to destroy it, it will be
revocative. But here by accident it becomes (c. 1st. 10th. 20th. 21st.)

There is a rule to come, conformable to the doctrine under 32. Hmz. I. It is this, that if
the alteration operates merely as an abridgment of the estate, it is only a revocation pro tenero.
This is in very reasonable rule. E.g., an estate is
devised in fee, afterwards an estate for life to
some person. Now under this rule it would be a revocation only pro tenero, being only an abridgment of the estate. This is not inconsistent with but
one of the former e.g.'s, where the testator conveyed away the estate for his own use or that for life
of his wife. I e. Suppose that a case continued under this (c. 30. 4. 21.) principle.

If the express revocation of wills

This rule says nothing of implied revocation. They remain as at 2. Q.D.

Parol proof may always be adduced, out
of which implicit revocation may arise. But in
implied revocations it is not so. Thus on the edge
of 25th. 26th. 27th. 28th. 29th. 30th.
1. A devisee shall be revocable only by some other will or codicil in writing, declaring the same or....

2. It must be revoked by some other will signed by himself in the presence of 2 or more witnesses. Before I mention the 3d I will consider these two cases.

1. Thus it may be revoked by a 2d will. If B.D. a 2d will in clear and unmistakable form, if they are consistent, how does the statute mean to alter the B.D. in this respect? No. It is intended that there shall be no repeal or revocation by

2. But 2dly it may be revoked by a writing signed in the presence of 2 witnesses. In 2d wills the witnesses must sign in presence of testator and testator must sign in their presence. If not in accordance to this requirement, the writing is no

3d. The 3d case is by leaving, cancelling, blotting, or destroying, which I will consider in a future date.
This clause of the statute has made no material difference in the law; for it is, we suppose, because the putting of the hand to the paper is an act of intention to destroy it. The only difference the statute makes is, that a more strict adherence is observed to the words than at t.s. For it is said, the smallest tearing of the paper must be as destroying the will, but how the paper must be, an anxious revocation. I think the distinction is nothing, the will is revoked at t.s., with the same degree of tearing as if the intention is to destroy the will, found 50.

It is clear, that if the tearing is done by accident, it is no revocation, or if done under a false pretense of a fact, it has no effect. Pure revocation must be shown to prove the intention of the testator in such case. Common sense is to be resorted to the circumstances of the case to be considered.

10 W. 346, 2 M. A. Davies.

If the intention was to destroy it is not to be done by tearing the tearing it, it is a revocation. E.g. a man made a will it was not satisfied with it, it was, known he intended to make another. He directed a person in his family to bring it to him, the sleeping tore it, threw it on the fire, but it fell off, he preserved it. It was slightly burned, the Rev. was whether this was a revocation? It was decided it was, as the intention was evident. He also intended not to die residuary, he was allowed to get this out of t...
Devises.

There is an inconsiderable case in the Books of this kind. I mention made some deliberations in his will, such as the lot said, page no material difference in the devise. The legacy of goods he intended to his daughters he allotted to daughters because he had another child. Now the difficulty arises that the will and not express that they had witnessed the execution of the will, as it was altered subsequent to the execution. But the lot established the will. He might have made, not an alteration by a codicil. There this object is easy. Sutton to Sutton, in Bong's 1072.

Republication of Wills

A will may be revoked as we have seen, but a republication of the same will, will sit it up again. I have no doubt but an express revocation may be done away by a re-publication of the will established. The law in Eng. as to re-publication is the same as in U. S. Go to stand upon the devising clause of the Test. As there are certain requisites necessary to a good will, so there are requisites to be observed if in a re-publication. The re-publication must be attended with the same requisites as it was in the original will, be necessary to make real estate of will statute. And property purchased subsequently to the will, will not purchase it, but personal property of all kinds will. Except leaseholds, estates in lands. This is the personal property, houses, or persons.
Devises.

footing as lands, if such property withstands after a will made, it will not pass, except it be reprotected.

This reprotected will operate precisely as if made at the time of reprotected. If J.T. reprotected his will, which gave all his real estate to A., all he has here value, in reprotected, to land and an amount expressed in his will, but a farm out of the town, will not pass.


Before the state, if persons to persons in the state of devises, any lands taken out of the state, and if a reprotected were to land, as a good reprotected of the will. But since the state, no reprotected reprotected can be made by parcel. Lands can be made by parcel, the ground taken in that the reprotected is good as a new will. But I do not see that the state has made any difference in the land, for another state of land, the land to be reprotected reprotected.

A reprotected then must be made in writing to execute according to state, friends. But if will need not be reprotected, the former execution is good, but that is reprotected, so that the reprotected to duly execute.

Rev. 96. 66. 70. 1 St. 589. 1024. 440. 9. Mod. 74.

But there is no case about which there has been much contention. The rule is whether a reprotected of a codicil will operate as a reprotected of the will of reprotected according to state of friends. It is not to doubt that a codicil to execute will reprotected a will. But a doubt,
know whether it was not necessary that the bequest of publication in the will, to codicil. It was once before my turn.
I know of no rule to be applied in such cases, as it is.

It was devised to be. Whether a codicil legally exists without such a clause was not a publication. Dr. Hardw. said that such a codicil was that it was a republication, on the ground that the codicil conformed to the will. 3 Bl. 139.

Another law avoids whether it is necessary to make any difference whether the codicil conformed to a personal property if duly executed according to the law. If Dr. Hardw. premises is correct, it is a republication, for it was duly executed, and incorporated with the will. In this case, the codicil was annexed to the will.

But suppose the codicil is not annexed to the will, the legally executed, does this alter the case? Does not a new as well contemplate his will, that a codicil is not annexed as when it is? Certainly, I think, that I suppose it makes no difference whether the codicil is annexed or not, or whether it refers real or a personal property, if duly executed. There are contrary decisions. 1 Bl. 109. 10 Bl. 169. 11 Bl. 514. Com. R. 381. 10 W. 637.

Conf. 159. And this that p. codicil must [and 3 Bl. 621. 10 W. 989. the same of authors. p. other way.

The the codicil republishes the will; yet copies it as new as qualities. If the will turns out to be defective, it turns the codicil does not and it. It repub.

1 Bl. 109; 3 Bl. 621. the 3 Bl. 989, 18 Bl. 176. as to republish.
You will find a single case in some treatise that if a minor makes a will of real property and the court after the age of 21, it is good. (1 S. & M. 182.) The objection was, the will was revocable for a minor could change real property. But the decision was at variance. I shall not treat of admission of parol evidence to explain a will.

With regard to the admission of parol to explain titles, there is but little difference in the law when applied to a case of deeds. The rules are very nearly the same as to both. They differ in the circumstances which their application.

It may be laid down as a general rule, that no parol declarations of the testator of his intention at the time the will was made are admissible to explain the words of or to write a different operation than the words used as in写作. But the declarations of the testator of the reason in which he meant to dispose of his estates made before the execution of the will are admissible. E.g., if a bequest is given to Betty, no parol evidence will be admitted by her to show he meant Sally at first. But that he had always said he left that house to Sally, that his declarations to the donees was that it was to give it to Sally, are admissible. (5 Co. 68; 2 Am. 96. 9 B. W. 316. 12 El. 156. 2 Atk. 216. 4 B. 372. 3 Cow. 134.)

Again. The following rule applies as well to deeds as to wills: viz. That parol evidence to explain the terms of a contract, which contract is required by law to be in writing, is not one.
may prove the contract in another way, viz. by existing facts. As if A. B. give B. an absolute
of Bl. one for 100£. now he can't show by parole that there was a contract that this Bl. has not yet
paid. It is a case where a one room for paid
in it is dangerous to trust to one memory, any
one as to such a contract. But you may prove
this a mortgage deed by proving quantum has always
been at profit. Received 20 cents of profits of "P. Sand
does not reed to P. quantum the quantum has a note
as P. grantor, the consideration of P. date, P. grantor
has P. the interest. Now from these circumstances,
cos it is evident the deed is a mortgage. This same
doctrine applies as well to wills, as to deeds, upon
proof in the same way.

Where a part testimony is admitted, it is
a rule (as found to be universal by elementary
writers), that no fact can be proved by parole unless
it stands well with the will. As where the testator
gave a legacy to "P. 6 children of E. B."
but E. B. had 6 children. 4 by one hus. 2 by another. Now part
oral evidence was admitted to prove the meant to
give it to the 6 by the same father. 2 not left two
by another hus. This story well with fact. If
he says "to the children of E. B. there is one two
wise in the property given to all of children" for
to prove the meant the 4, is not there will with
will. It is an agreed point that when you met
with an ambiguity on P. face of the will, you are
Deviges

not to resort to parcel evidence to prove the intention. If an ambiguous words, the will must fail before this can be done. This
is called a patent ambiguity. But if the ambiguity arises from something extrinsic, the rule is different: parcel may be admitted. This is what is called a latent ambiguity. As if the testator gives 100 to his son Tom, but he says has two sons of the same
name, parcel 50 may be admitted to show which he meant to give or deny, or to the charity school or to those living there. But if the testator gives 100 to the chil
der, as he having a dozen, and you cannot prove which child he was meant. But if the testator tells the child, it does appear to me, that this is a latent ambiguity, for it does not arise till it appears that he has more than one child. 1 Dec. 1765, 19. 674.

So where the testator gave to "A B," and there were two persons of that name, parcel was admitted to show which of them he meant. 1 Feb. 1808, 199.

The general rule is that you cannot interrogate the intention of the testator, as when he gives a legacy to "D," parcel cannot be admitted to show whose name was intended to give the legacy to.

The testator gave "parcelling" to his children: to equally to A 100 to B, 100, but there was one whom he did not name, but who was a favorite child. The case was whether parcel or he should be known. He had a child whom he had not named. If it be true, we shall know the existence of this child; if not (Coo. 11, 185) or Dec. 12, 182, 2, 10, 13, 17) he must have testimony.
But let us admit the proof, as it stands, with greater respect, although we admit the above to take equally as if some other had been said.

But suppose the ambiguity is patent. According to the double Theses of need--No Bona Estate can be introduced to explain it; if intent in fact be called for, the will must fail.

2 Makk. 18.

If the ambiguity arises from a word of equivocal meaning (Canc., 112) as may be its nature. But if the ambiguity arises from a word of the same meaning, it can be explained by Parol.

There are cases of false description, where the testator has been admitted to prove the is meant (how he is said Billes differ from dollars) as the test can be (in Bide) in such cases admission if this is so, it is the only difference. E.g., when the testator was to call a person by a nickname, it gave a dignity to his use by that nickname. The testator in Bide, to them that he was accustomed to call him by a nickname.

1 North 240; 1 North 610.

In the last authority (§ 291), the description had forgotten the name of the testator. He gave it to a Charles, my son, now serving with P. Duke of Savoy. This name was Wellcome. The testator's Bona Estate to be explained. The description was not used, but the name was explained. Said Parol.

But let us admit this case of Bidd as good any one in 2 Makk. 18.
...Devised.

...Devised.

I observed, indeed, might be admitted when an equivoque word was used, but not when the doubt arises from equivocated senses. There is a case where the word parent was used in a sense to Latin it meant a boy, classically used in Iambus, it meant either a son or daughter. It became doubtful whether he intended to use it in its classical or a larger sense. The &c. admits parent to show his own intention.

The circumstances of a family may affect the meaning of a word. In such cases parent must be admitted. E.g. testator devised to "all his children".

Now what are the circumstances? If A has children, it is an estate in him & his children. But if he has no children, it is an estate in him. The circumstances of A's property is of his family.

A word of purchase, in p. letter of limitation.

The circumstances of a man's estate may alter entirely the course of the word. A word must be admitted. The word estate for a long time did not pass a few, but now it does. E.g. testator gives to E. & C. "all my estates" or corp. of his property, including legacies. How did p. testator intend to give it an estate for life or for years? According to the circumstances of the word estate, it is given only a life estate. But the intention doubtless was to give a few simple, the no words of inheritance are used. For it might be a hard bargain for the devisee to take only
Life Estate, a have an interest in it, not more than a week or a day, to be obliged to pay the legacies.

38th. 49. 3 Nov. 1843. Part was admitted from one of estate.

It now appears to be settled that public

Evidence of the circumstances of a free estate may be admitted, then, from it the intention may be collected. But you are not to contradict

terms or apparent import of the will by public

evidence. (18th. just page.) Here you will see the word

"Estate" is in small letters and few simple.

But the doctrine has been carried further.

There was no ambiguity in the words, but the fact

is of the will takes effect according to the plainest

of the words, it will reason the devisee ridiculous.

the will placing contrary to the testator's intention

which can be proved from certain facts if they

can be admitted. E.g. J. S. gives to T. H. "my house

called the Mill Tavern." What estate did T. H. take?

According to a settled rule, if the object is first described the grantor takes an estate for life, and

it happened that T. S. had already an Estate for Life;

i.e. Mill Tavern, T. H. is to have the reversion if from

now from these circumstances it is apparent

the testator intended to give a free estate and

was admitted to prove the devisee had a life estate.

The law saves between the heir at law & devisee.

The only difficulty was as to introducing part estate

as to the estate. If T. H. takes had in the property

The following cases will corroborate this principle:

1. The creditor makes his debt due to his sure, according to the general principles of law, the debt is collectible. But this debt is subject to pay legacies. All this was meant by the rule is that, after a man had paid all debts to the debt due from him, if sagacious. The case was this: Paroë was wishes to Introduce the debt. The creditor intended to release the debt due from the sure. It was not for the construction of whom it had to be paid, of whom it had not to be paid entirely.

Again, the creditor desired his land for the payment of debt. What is meant? Now it is supposed he meant to save his part propriety; but this is not the construction. It is, that it is to be sold or paid to the part prop. A part prop. to satisfy creditors. It was intended that Paroë ought to be introduced that he meant to save his part profit. But the general construction of the sure. This was to save the part profit. But before that.
be admitted, as it is contradicted to the rule of the law. 

[Handwritten note: Sect. 346.]

Again. It is a clear case, about which there is no contention at law or equity, that where the 2nd has no legacy giving her a right, that he is residuary legatee. This is the legal operation. It was contended that Paro ought to be admitted to prove the testament intention otherwise, as he had given his property independently of the will. But it is not so admitted, because the fact witness 2dnd. 6th. 486.

[Handwritten note: Sect. 8th.]

First testimony is such as is constant in equity. Great part of the business of equity is to enforce contracts, of which a lot of law are ignorant. A lot of law goes to a certain extent as to how they take up the principles of equity, to cases which they consider as falling within reason of that. The construction of an act is often very different from what it is in a lot of cases. But of this arises an equity, as in cases of a person goes after the day of pay. This happens there is no part payment at law, but a lot of money given, not given in 100, 120, then in the case past proof may be introduced to balance this equity. But the person was directed to pay debt. Now if there is a surplus off of 100 comes under the last to pay it over. But a very little note to balance him to pay the surplus of 150 to where the land it be more given that was equity.
But you may introduce prior testimony to prove that the intention of the testator was to give the surplus to the trustee after performance of the trust. In other words, proof may be introduced to restore a legal construction - for this purpose his declarations may be proved by parol.

Judge Blackstone says, courts of law and of equity have given different constructions to the same instrument. This is certainly correct.

This trust is called in some language 'settling Trust.' It may be exemplified by a notable distinction between the lots of land by Eq. The rule of land is that where a man is appositive Esq., he has no legal title until he is appositive residuary Legatee, the Esq. is entitled to the surplus of the property after payment of all debts. The question is, what a lot of Esq. say that if the testator has given the Esq. a legacy, it shall be deemed the intention of the testator was to deprive him of the residuum, to the same distributions according to the will. Now this is a rule, but Esq. will suppose probate evidence to be introduced to them, that, notwithstanding the legacy, the testator intended him as a residuary legatee. If this is the rule, whenever the equity arises in a lot of Esq., it may also arise to see that it be by probate evidence.

But it is a rule in Eq. that whenever a man passes goods, lands, etc. the heir at law has a right to redeem, but this equity is rebuttable by showing there was no intention that the heir at law have...
The privilege of redemption.

So also, it is a rule in equity that when the
next for dower, his heir has a right to call upon the
widow for money to remove thereby, deeds of his an-
cestor, on the ground that the widow, if she has
paid the estate, has been increased by the murder. This is
an equity in favor of the heir, but it is to be proved
that it was the intention of the ancestor that his
heir should not have the use of the estoppel to pay
property debts, but that he should take the real estate
in possession. — 1 Sc. 32, 352. 6 W. 30. 203, 567.

Dall. 3d 79.

There are some cases, however, where there seems
to be no necessity for the introduction of probate
will, but it is common that a man gives a last legacy of
one in the same will as in a separate will, the same legacy
is not to be given. Now the rule of law is that
it was the intention of the testator to give the last
legacy but if they give in a distinct instrument
he is entitled to both. Now I see no reason why
probate testimony should be introduced to prove in the
latter case that the testator intended the legacy should
receive both, for being in a separate instrument the con-
struction of law is that the legacy is entitled to both.

But, Pearce, is often admitted. 2 Sc. 320. 2 W. 306.

Probate proof may also be admitted to show that
the devise or a devise is intended as a substitute for a
promise of a covenant or other obligation in the esta-
tate. As to how a new covenant to settle and
his wife $1,000 I owe 1 above what by law she was to be made a reciever of her $1,000. This was whether the legacy was given in satisfaction of the covenant of panels proof is admissible to show that fact. Prov. 29. 26. 32. 33.

Parol may admit of all cases of fraud.

How more can introduce parol evidence but a legal construction as in cases of legacies the legal construction is to be considered secondary legatee under circumstances more you cannot introduce parol in a case of law to rebut this construction.

Again. Parol evidence can amount to admission which it stands with the instrument.

Of the conferring a power to another to the possession of property.

This power they empower is a trustee that may execute the trust. If pact a by cite. An inten usually has this power.

There is a distinction between the cases when the person has a mere naked authority, whereby the authority is coupled with an interest. In both cases the person is a trustee. In the former cases the legal title is in the heir. In the latter is the trustee. When the n has authority to sell merely, the trust, it is said, is a naked one of the fee. In the heir. So too when there is a power given to sell, the authority is a naked one, as ip.
Deeds.

But I have no doubt but the power may be so given as to vest the title in the trustee, and he gives him the power to sell it also a right to take the rents arising, this settles the point.

If the devise is to the A to B to sell, it is an authority coupled with an interest, if it is that trustee shall not assign his power to sell, it is a naked authority only, and with distinction.

When there is a mere naked authority, it is considered only as a power of attorney. If the authority is given to two, one cannot sell for a power of attorney must be executed jointly by the trustees in the instrument. The says in such a case does not act as by 'or', but as appointed.

But the doctrine has been relaxed for since Am. 39, 39. one 'or' or of the estates is 'or' one expects and to execute a trust, one being dead the other two trustees holding to satisfy the direction which was that his 'or' was to. But when the direc
tion was to my Lord to such and then B to by execute the trust (Lord C 26) the one was dead. So if the word 'or' was with another one but two one dies, the other cannot perform the trust.

It is a principle, established in Ch. 7, that the

own her, this power may be consigned to perform the trust, if they once undertake to act. Can cannot con

Energy to accept, 'so if they refuse they may appoint persons to supply their places to execute the trust. The

First, appoint the ture to sell a such case as a materi
Of course, if he refuse some one who will not will to appear. 2 Sam. 20.

All the differences between a vested power on a contract with an interest of that in the latter case, the trustee has the legal estate till the sale or the forced sale. He has not.

It has been determined that when an estate is given to users to educate children, they had an interest as well as a power; it is an authority coupled with an interest.

**Lecture 9th**

**The Stat. of Uses.**

Now a few of the States which have adopted the Engl. Stat. of Uses, others have not. Those who have adopted it, have adopted also the Engl. construction. Those who have not adopted the Stat. are governed by the law, as it was in Eng. previous to the Stat. if used.

Now recollect that I have formerly observed, observed that it was customary formerly to make trust estates, so that a Test. was a Stat. which diverts the legal title to be immediately vested in the estate given as use, on the moment it was conveyed to another for his use. Before this Stat. the law of

...compels the person to whom the land was conveyed to give the estate given on the real estate, so as directly to convey the free simple to him.

In those States, however, where the Stat. of uses is of no force, this doctrine must be prevented, the trustee will not to the legal title, so the estate given...
be resided on only by the beneficial estate. It is often very useful to create a trust estate for beneficial purposes, as when a man has a spendthrift son, he can create a trust estate for his benefit, and the title in a 3rd person. But this does not alter the doctrine of by the roots, apparently where it is a defect. Now this does it happen that where it is adopted, trusts estates still exist and are very common. The Stat is evaded. It was seen in this way. A conveys an estate to B, to hold for C, and the Stat. Speaks of the legal title rests in A. But if A was the person into B to receive the trust it could be conveyed to him (i.e., by beneficial interest) by adding another person. And if conveyed to B. So to hold a trust for D. Later, A's son said this was a good trust estate. As for the reason (which is) of giving rise to trust estates again. 

1834, May 30, 26th.

These estates are altogether under a Comprise ware of a lot of City. If they have been so managed that they have become a noble system of jurisprudence, so no injurys results from them. By a jurisprudence, it is prefab with the done.

The several cases where a devisee becomes a defendant. The first case (I have mentioned) is by unwritten. A devisee may also be in the situation by uncertainty. Morel, 360. E.g. A devised to the right heirs of my nameipes by posterity, post partum. The lot could not determine his meaning do also.
Devises.

Here he gave all my goods to my wife for fines, t of any of it is out of good title. In the last clause he was uncertain if he not take effect. So a devise by the "best man is it," or the "most in it," to it.

But a wife may become indispensable by some thing that enters the title if it can be proved that his intention was, it may be proved (by the proof) but the rule suppose no proof can be obtained. As if he gives Bl. anco. to it. The he has two parts of the name, how if there can be no proof thereof, which was meant, the devise must fail.

If the devise is contrary to law it is ineffective, as above he attempts to create an estate unknown to the law. E.g. A devises Bl. anco. to his heirs forever. As Co. that he never allows it. Now it is clear whether this estate devise is void or not. The ground, on which they lay it is void is that if the devise be a free crown of the alienation the intention is that the title. But it is still that the devise as to the considered is ineffective to B. will take a fee. So if he devises an estate to his heirs make forever. Now there is no estate descendable to his heirs male (or female) of the body. This is an attempt to create an estate of which I had no intention. What estate entitled? The bad part of it is the word "male."

this will be rejected if the devisees take a freehold (Don D. "repressive") they there are decisions which may be, will take only an estate for life. I think it does
Devises

consonant with the intention of the testator to consider it a fee simple for it is evident he intended to create an inheritance a descendible estate. In Case it has been decided that such estate words do not in fact make substitution of the word "of his body." It has been held whether it is an estate in fees or for life.

A devise of a man devises (as above precisely) it creates a fee tail. The lot of men decided it was, "as given to the opinion of the first lots above."

In the same case the law of the first lot always returns, etc. in fee simple the same jointly.

There has been an attempt to devise in this way: "an estate for life from generation to generation."

The intention of the testator was evident to create an estate tail but it was supposed to be contrary to good policy it declared void.

Again, it is a rule that if a devisee devises to it a whole by itself but he has taken the devise is indigent. As if he devised his real estate to his eldest son he devise the estate as heir to not as devise. This is not of much importance.

This was found after great consequences. The rule is founded on the principle that of real estate was leased in the devises which were created by devising, follow:

A devise may becomes indigent but by the devise refusing to accept the devise, as if it is charged with debts. The cannot be compelled to accept. It is said that a part of the devise is necessary to vest the property. But this cannot be done
Devises.

contract. Syntax will bind the grantor, and dispose to the grantee, distinct of conveyances to an infant, or a day oth is binding. What is present.

When it is evident, that the testator has done that is his life time, which he desired to be done, the instrumentality is a satisfaction of the devise, the life as to that, and operation. As if he devises good to his son to build him a house; afterwards, as it builds the house for the son, and conveys the art of the legacy as a man, the legacy is voided.

A devise may also become ineffectual by operation of law, where the devisee is liable for the payment of debts. In such cases a man cannot by devising place the devisee beyond the reach of creditors, if necessary it may be taken by devisee fail.

Who are incapable of devising.

Before the Title Act, all men being were incapable to devise except to where they afterwards devise. The Title Act says "all persons," to. In alibis arose from these words, adding some one included the heir, the devisee not power to devise. But the alibis was grounded to devise or not devise because they could not contest. The intention of the legislatures was to give the devisee the power of devising that property to all; who desired devise personal from them, The only difference was to devise. where a devisee first has the right. A devisee, the devisee devise, and he is free to set up, or a good of great advantage.
Devises.

The devise must be of sound mind and memory. The devise, say arise from this requirement, and if of age to be left to jury. It has been the rule generally laid down that if devisee can take ordinary cases, his proof of devise is on the part of devisee can be laid down. It is a subject to be regarded into, 3, 1st, when the circumstances of partial case. They may be of deliberation as to many circumstances, but if sound mind as to his property, in such case the devise will be good.

With respect to wills the law is not scrupulous to prevent. Since there is case of contract. If he makes a will to prosecute same may be put from the solicitation of those around him, the will is void. You are only to prove in ordinary cases, that the will is the fact - let it will be set aside. But still if such is the fact that the latter becomes if afterwards agrees to a will it is good.

Sect. 10º.

There has been a due, much contented, whether a married woman can devise. The Stat. 34. § 8 declares she shall not devise realty. But the devise is whether it is disabled at 6. 5 by coming to devise realty. This devise arising when the Stat. 14 above is not adopted. The objection to her devising is that the land is entitled to the survivor of her estate, it to a lease by the County. But it is not contemplated that the estate of the wife with her lands to devise.
claims of the 1st. The certainly cannot devise to us to effect his marital rights. The clause in the 2d article of devises allows it to all persons "legally capable," which brings up the 1st. And as the 2d. reference is had to the 3d. to ascertain who are "legally capable," it is implied that in those states where they have enacted the 2d. of 6. to enunciate the persons disabled it omitted the 2d. of 5. As, that it was in terms to extend the privilege to those states. But I think, it is meant only that the idea of the 2d. reference was to leave the privilege as it was at 9. It. What has privilege in this respect was at 9. is open for discussion.

What construction is to be given to the clause "legally capable"? The subject of the 2d. is to put 1st. People upon the same footing as 3d. People. It means that all persons (legally capable) of devising 1st. may now devise 2d. People. This is the obvious 2d. clause. Construction of the clause of the 2d. The whole of these turns on this. Could a married woman ever devise 1st. People. If this is the 2d. way devise that 2d. is not allowed to devise 2d. People. for the 1st. clause of 13. People. I think the truth of the case is this. In the 1st. place, 2d. we never to consider, whether Jones can't was allowed to devise. It to 3d. People. by the 1st. system of 13. People. (two words)
Devises.

Because whatever notion the ancients had of devises and devises, formerly had been derived from the Romans. It is probable from this that a devisee, on the death of the devisee, did not devise. But there were some laws which allowed of devises. There are two cases where the devisee was allowed to devise, and the devisee was allowed to devise, and it was decided that the devisee was the only case.

But we can collect an argument from this, that the devisee did not devise. What was allowed to devise? If the devisee was allowed to devise, then it was allowed to devise the devisee. These are the only cases.

We find it laid down in the law that a devisee cannot devise the devisee, but sometimes, therefore, the devisee gave the devisee liberty to devise, the devisee was good. But in all those cases you will observe that the devisee was permitted to devise the devisee, and the devisee was the devisee, and the devisee was the devisee. This does not engage the idea that the devisee was deviser of the devisee, without his consent. And this is one case where, to this day, the devisee, without his assent, devises the devisee, and it is certain. There is no question that it is certain. This is one case where, to this day, the devisee, without his consent, devises the devisee. This was laid down in the ancient law. Then there is another instance when the devisee devises the devisee. This is one case where, to this day, the devisee, without his consent, devises the devisee. This was laid down in the ancient law.
Arch Bishop Stafford at Sionwood was
two eminent lawyers of the day in which they
lived. It they lay it down unequivocally that
she is entitled to the privilege of devising all
the property which she owns independent of
her husband, (This without his consent, ceding
that that is dexterous; just the contrary).
It then appears established that she can
device first property if the right of the hus-
band is not infringed. It is intimated to you the
wife to make a will during the life of the
husband if she is in earnest the above laws
which she has married by death, (ager to this devise). The two then can be
down that
whether the wife can devise in real property
for her (said above point) of the lot, her she could
not devise for she was disqualified by some
law declared to be such by that, just the thing
of making the devise at nothing to remove this
disqualification. For it was a positive no. The
constit. of the husband, is here no effect.
But this point I conceive to be settled by
writ, can settle it. It is settled that Simp.
and Mills in the way owns separate property.
Observe this point, these are numerous cases.
It is not one contradicting the rule that she may
device her real property, so owned separately.
But the objection to this is that this is done only
by Chy. This is no objection for a lot of cases
never given the law, allow in this privilege
of positively devise her real estate. They have
Devises.

have cognizance on this as in some other cases of

The case where a joint Court did
not accept proof, which the had to the separate
real estate, i.e. the lots of land divided the devise into
the real property not good, on account of the St.
Then, had not this been in the way the de-
session and have been otherwise.

There was another case where the H.
did not extend into articles of separation of
the covenants to give up his right to the use
of the real estate, so also that if the wife to
fill this preset, he was to lose his name
in the conveyance. She afterwards told the 3rd
the deed was not joint. The deed at the 2nd. while
the conveyance was good, more between the
Grants. The heir at law at the 3rd. decided
the conveyance good, for no marital rights of his
was effected for he has released all his right
to interest in the real estate by covenant.

So, on principles of law, the designation
of the wife does not his, the husband to prove by the
H. if he be the devise before this is done the
he can prove claim the fact properly. Now
suppose during course the devisees a bold to say
that this deed before is done it
the devisees take the under the devise. If conviction
is disability it is never been done.

So if the devisees properly claim the deed as Etc.
the devise is good, & the donee which she appoints will administer the property.

These cases appear to me to be well settled. But it is also said as an objection that the devise is made for the life of the donee. And one person. But for a thousand purposes they are considered as two. T. she is allowed to act. This is figurative language. Judges say the devisee is merged in that of the husband during coverture. If this were true in all respects the idea is wrong, it is not possible for her to devise. But the devisee is allowed to execute a power of attorney. By this she is allowed to convey her real estate by uniting with the husband in a joint tenancy. But cannot she convey it without the uniting with him? If not, if she does not divide it the reasons that his agent is necessary, it is because otherwise his rights are defeated. From this it appears she is allowed to do many acts, it is not actually merged in the husband. Another objection is that Jones court house no title. But this is not true, for under it true she could never be made guilty of a crime. So in cases of adultery with her, the act from of action was against Battey or his person, committed by her will. So no truth is this fictitious marriage.

But the great objection is this: it is urged as a far from the reason for not allowing her to devise that she is under the coercion of her hus. Her wishes will be frequently thwarted by his companions. This argument has some plausibility,
at first view but like many others it goes to prove too much. It goes to prove that she can convey but this she may do. Why s.t. devise a convey & stand on a deft footing in this case there is no reason for it. She is as much under the conveyance of the 17th of a case of conveyances as if of deeding the in the former case it is s. she is granted by a private grantor. She dies it purely in 1st. And this is as true in fact as it is in form by 3d. To convey she may also be compelled to acknowledge by statute again. Say why if this devise of the two last good men made without his consent if no marital right of his are effects, why can she not convey her lands, the interest to commence, after his use. first is done is it? The maxin is that a present interest in presents cannot be created to commence in future. this is a longgivding maxin. It provis insusans to the objectin - but they ask why cant she make a will it limit a remainder after the life estate is determined? This is another maxin which prevents her doing this, which is that the remainder in the particular estate on which it is limited must he created at the same time. this cannot be for the end of the life coninues in the moment of marriage. 1. while of the rem. 2. Man not till his death.

[Handwritten notes and references]
Almost any person may be a devisee. This may be the qualification. They may be in the State where you reside. For, under this Act, the devisee is never an object. As in Court, so it may be a devisee. Devisees or such cases, so the devisee like a donee, may receive the gift.

Prop. (Deal) Devisee becomes immediately in the devisee. I imagine it is different from property vested in the devisee, or for the devisee, held by the devisee, be it by the devisee, or in the devisee, the devisee, or in the devisee. If a devisee is coextensible or a devisee, the devisee must bring the action, not the devisee.

Ownership is no disability in a devisee. So the devisee may disagree to the devisee's defect. If there is good reason for his so doing, he can dispute, for such cases. If a devisee is coextensible with, as to the devisee, it is no defect on the ground, that his marriage, his rights may be affected. Therefore, when the devisee to the devisee's interest, so the devisee was to have, her, to commence after his death, he was not allowed, to the devisee.

It was once a case, whether the devisee to the devisee's wife, on the principle, that he and the devisee was to be allowed to devise to his
to his wife, because it will be devised to himself.

But it is capable of taking as devisee, for

he can not take a propriety, this is always with

the sovereign, or he has not an estate, properly a devisee. He can't take part property because

it is absolutely the heir. On the moment,

it vests in her. But the case takes place in a devisee.

Neither is there any thing which prevents a bare from conveying real est. to his wife by

dead. This it must be done by the heir conveying to A. or A.'s wife, at it will be good.

Now it is not of law to convey to a wife for

if it were the law, it was not be defended by

allowing such a conveyance, this is the medium of

a 3d person. The may in preventing the 3d from

carrying directly to her, i.e. that both are

one person. But is for under the Stat. 29 Geo

3rd will vest the legal title in her. The

covenants are made to A. the Stat. then says if

is the moment of creating the case the legal

title vests instantly in the wife person. Now

the moment the deed is made too. If just

so, that moment she is seized of the title which

is conveyed to such 3d person.

It has been loosely said that Aliens

cannot be devisees, but the conveyance is not statute

by void, for once is, the title is not go out of

the possession. The alien wife, the heir, but on office

found, the estate of be perfected to the king.
Devises.

Illegitimate Children may be devising, as they laboured under some difficulties in copy, of the reason that they are filius nullius. This is a foolish maxim: it might as easily be said they were never born, as to say they are the children of no body. They cannot take by the name of children or sons to, but they may take upon such a name as they have acquired by reputation. If a man devises to his clerk, to an illegitimate child, and this morning this cannot take. (P. 123.) But the devise is made to an illegitimate child by their names, if they will take. They never can take under the word son, the it is evident the intention of the testator was to give it to him. The maxim above proves his, there is one case in Moore R. where he was allowed to take it with case, the thrust of bar is as above.

A man made a will to devise to his three children (who were illegitimate) on his death he had also 3 legitimate children, yet the devise was not to them of these were to take. The objection was, if under the term of children they were not described but it was deemed a good devise to the illegitimate children, that they were will described. 12th 110.
Devised.

An estate cannot certainly be devised except to an illegitimate child unless all the cases where they have been allowed to take was on the ground of a sufficient description given there.

It is no objection that the person to take in the devise is uncertain so that it is not an
say that some thing happen to render it conti-
tent ... for a devise may be made to common
future as to the effects of his who shall first
become married ... This can't be so a great
because it can't be created to common wealth.

Thus has how much contentious respecting
devises made to persons not in ones. I shall
not enter into this thing, for it is now settled 
(see the whole of Francis 334, 442.) It is settled that
the person the rest is with at time of the devise
may take, as if made to a child residing. The only
raison is that words to used which will vest just
such as the person comes in. But if you
are words which vest it (if possible) before born
the devise is void, this is the universal princi-
elle in every case. This great rule then is hui
is not in the principles above.

If words are used which signify the devise
intends to take either by name or title, christ;
or use names it is good - as "to the child of
County," the Executor of the "Deviser of the Parish,"
all good.

When a man devises to "his relations", "his
Devises.

Let restrained the words to give the proper to such as it takes unison of. Stat. of Distributors. So also they have rejected words as when the testo divers to his poorest relations. 1648. 84. 16th. 789. 761.

Words are to receive their technical import if not contrary to the evident intention. The word heir is to be understood as a word of limitation. But it may be understood as a word of purchase, if it is apparent from circons. stories he used to the word inaptly. Thus when the testo. had a nephew & daughter, the gave to "my make heir," &. now he had no make heir. But the lot. to give effect to & devise under stood it as a word of purchase. So if the devise is to the heir of I. S. (I. S. living) at the time of the devise he had a son, the words used will be understood to mean that son; therefore if he leaves his great uncle his heir, that person will not come. 1648. 84. 16th. 789. 772. 248. 311. 311. 789. 761.

The construction of the word heir is still un settled, & it promises to give rise to much contra tion litigation.
Of Executory Devises or Remainders.

To understand what it is which constitutes an Executory Device or must be done by the devisee of Remainders. I have mentioned the difference between the construction of Gifts of Wills, that the testator cannot create an Estate unknown to the Law.

The intention of the testator is to be regarded as not contrary to the rules of Law, the technical lands are not used. The cases of Executory Devises to be a departure from the principles because by Law you can create an Estate to commence in futuro without a particular Estate to support it. It then is a solitary exception.

It is a rule, that if what is given in a will was given in a Gift it is a Remainder. Remainders to as duties agree in this, that they are Estates to commence hereafter at Rem. * It is not by Devise by will only, but a Remainder may also be created by devise.

There are cases where the lats will give if put in a will when if such were to be a Gift it would be void. The Gift cannot be done upon an Estate to commence 20 years hence, but he cannot be done by Devise. Every conveyance of a will while the testator is a real. If not good at an Devise it will be an Executory, the it may not have good by Devise.
A estate in remainder is subject to the same rules as the intention of the greater must go to the superior power of those. But it very rarely that the intention is consulted in cases.

It is necessary to consider a case that there be a particular estate to support it. For the class kinds of these see "estat in postera." When the subject is treated at length, all the rules applicable to the subject are then laid down.

Time does not give limits upon a future estate in a deed, but in a will it may in the latter case it is an Epp. Devises, because it is not good in a deed.

So neither can an estate be made to commence in future in a deed but in a devise.

Again, By Deed no man can create as long as he is able to live, because an estate for life is greater than an estate for years, but in a devise they may be done. These are the three cases of Devises.

The estate in an estate to be enjoyed after the determination of the particular estate, there is no contingency in which it depends. Where an estate in greater than one for years living or devise is made, in this Country delivery of the Deed is equivalent to it, it cannot exist without this delivery.
The rent must be created at the same time as the particular estate as creates the kind of rent, unless the rent passed to B, and he is not entitled to it. There may be a rents in case of certain persons at the birth of the estate, and not at an uncertain time. Therefore a rent to the heir of A if good. But it must be limited upon a person with a special interest or property by birth, coming to the enjoyment of it. Again if the particular estate is lost a contingent rent is dependent, the rent also goes as if the particular estate were forfeit or surrender of his estate.

Suppose an estate is given to A for life of B, over to C. to preserve contingent rent to C. what is meant by preserving contingent rent? It is that if A. looses his particular estate the rent is vested in B. and not lost as it is in the case of a lease. It is called the trustee to support it. If a contingent rent is this office as trustee continues during the life of A. and C. of E. of B. of D. This is an estate created by the testator to be enjoyed in future. It must be a dower estate as a remainder.

No particular estate need be devised to support it. As if it be a free to A to commingle any of his or her marriage goods. This has the interest of rent in the estate. If it is not vested, allowing it does not become a lease.
Devises.

Another diff. is that the right limits of a devise, as after a life, cannot be of 21 years or a fraction of years afterwards. If it goes beyond this the devise is void. Originally the devise must have been a living but it was extended to the person allowed to take the 21 years or after the time elapsed before 21 years. And this is now the established rule. 2 B. 171.

Again an estate may be created in a life for years by devise, this it cannot by deed. As if A has an estate in 100 acres for 100 years. Now an estate may be created in B for life with an over to C. for life of all that is enjoyed, this is how the life of 100 years has to begin at the time it is created. But in such cases the life est. or B. would be void of created by deed, because the life est. is a form. Consist of a higher species than one for years. 2 B. 172.

So some of the State Statutes have laws regulating this thing. I e. the Stel. Placentia Devises 100 acres on the same footing. This proves I believe to be uncertain to our Stel. The words of our Stat. are "all kinds of States," which may be made either in a life or devise to
Devised.

Jesu, &c. to their immediate descendant to
commences in future when they shall be able to
take - as when the immediate issue come into being.

Suppose an estate is given to "A & B if he died
without issue, ruin" &c. issue to F & G. This is not
good to by dying without issue is meant the
failure of his issue 1000 years hence. Thus if
his issue died, even fail, it was decided was with
in the meaning of the words. & therefore are not
limited to this contingency was not good, being
too remote. There are numerous authorities to this
document, the it is contrary to common sense.

This doctrine is France. But of such words
were used in a treaty of wills died without issue
it would have taken effect. The feelings from
words as at this decision, later are constantly bearing
for circumstances to take place out of the rule,
10 Mod 520, leading cases, Geo. 590, Salo 226, Co. 2
878. Cases exemplifying the nature of rev. 3. &c. &c.

1st. A devises an estate to B. his wife, for life, over
over to C. C. good. rev. 920 and.

2d. A devises to B. his wife, for life, over, to a man
of his eldest son his son then having no heirs. Now
this is a good contingency. How the rev. 3. &c. for it had
the properties of a rev. 3.

3d. A devises an estate to B. for life, over to his
son to C. & this being forever but if my son D pays
my sum to $3000 &c. this $20 after his death, then to E. & his heirs. This will be a good by devise.
Devised.

Upon his death after a few, or other super-

65. This case is a leading one. A. devised to

B. This heirs forever. But if B. dies without issue

leaving A. then to C. or his heirs forever. Cor. 1760.

This was an Ex. 3, devise.

55. A devise to the heirs of A. I. at 1833, death

Ex. 7, devise. 1 Sam. 226. Coro 319.

The word used with respect to the distinction

between a contingent devise and a devise

continuing because it may mean and forever

vested or interest may never vest in life. Another

tenure may be declared in this way: If there is no

capacity in the reversion (i.e. of the is in effect)
taken at the time of the execution of the devise it will

be a vestis reversion. But if he is not in effect, he will

not have capacity to take. Therefore it will be a

contingent reversion. (c)

(3) This distinction arises only when the

heirship is uncertain, does it? I.T.
Purchase includes every mode of acquiring an estate, except that of descent. 2 Bl. 246, 269.

Introductory Remarks. The most usual mode of acquiring title to Real estate, is that of alienation of purchase in the limited sense of the word. 2 Bl. 287.

The word alienation comprehends every mode of conveying title, by which estates are voluntarily transferred from one party to another, e.g. every mode of transmitting property, by the mutual consent of the parties. 2 Bl. 287.

During the early period of the præcoxian law, tenants of lands did not alienate, without consent of the Lord. Now, o. he subject, there for his debts can devise them. Now, unless the consent of the alienor, without a consent of the heir apparent, or presumptive. 2 Bl. 278, 279. Lord 94, 4. Chinn. 9.

Now, o. the Lord alienates his property without consent of his successor, which is called allowing. There is a doctrine of allotment (2 Bl. 288) which gives afterwords alienation to all lessees for life six years. It is said during the time of it, the conqueror that of his sons, lands was absolutely unalienable. With the said law, as Lord 123, center alienate at all. 4. Chinn. 94, Wright 106.

As for some time after the right of alienation was introduced, the highest estate that even. Lord 22, great.
Selle by Deed

was an estate for the life of a quarter. 21 B.C. 56. 128.

But these feudal possessions have been gradually abolished.

In the reign of Henry I., a man was allowed to alienate in fee, a part of the land which he had purchased, but not the whole, so as totally to disinherit his children. 21 B.C. 58.

239. 4. (Con. 5.)

But he was not permitted, at that time, thus to alienate his ancestral estate, devised by gift. 21 B.C. 59.

Afterwards he was allowed to dispose of all his personal estate, if he had purchased it himself. (Con. 5.) 2141/4 of his ancestral estate without his heir's consent. 21 B.C. 289.

But by the Stat. 4 Eliz. 1. all persons except the kings tenant in capite were prevented from alienating all their lands. 21 B.C. 297. 6. (Con. 5.)

The land alienated by a tenant (unless the Stat. was not known to be a holder of land, but of the right in a minor's land.) 4. (Con. 5.) 21 B.C. 299.

By Stat. 13 Eliz. 3. the kings tenant in capite was also permitted to alienate on paying a fine. And by Stat. 13 Eliz. 3. the fines, incurred by the said Stat., were abolished in the case of prebendal tenures. 21 B.C. 284. 6. (Con. 5.)

By this last Stat., the military tenures in capite were all abolished, and all the ancient feudal tenures were converted into free or common socage. (Con. 5.) 21 B.C. 299.

The power of charging fines was introduced by Stat. 41 Eliz. 1., which subjected half of his land to execution. (21 B.C. 284. 107. 6.)
Title by Deed.

elegit, upon which the contractor loses all the rents properly satisty the debt.

This power was unknown by C. 23 Edw. 3. 51. 6.

By the 28. de mercatoribus (13 Edw. 1) he was enabled to pledge all his lands, by a Stat. Merchant. 5 by a Stat. spee. by Stat. 27 Edw. 3, 5 by other recognizances by Stat. 23. 24.

2. 46. 14. 38. 290 & 46. 6. 30. 35.

The necessity of allotment was abolished by Stat.

46. 5. 19. 2. 12. 29.

Nature of Deeds.

The legal evidence of the alienation of real property are called deeds, in the Law. Common assurances being the

means by which a man's estate is conveyed to his 29. 30. 20. 9.

These assurances are of four kinds: 1st. Deeds

or manner of places. 2nd. Manner of Record is precise assurances, made in a book of record. 3rd. Assurance founded on Special Custom. 4th. Deeds. 20. 28. 29. 34. 45.

For alienation by manner of record, or by special cus-
tom, see 26. 24. 30. 5. Of these estates not land.

A deed is a writing, signed, delivered. Book 17.

20. 29. 29. 28. 35. 45 & 48. 10.

Writing, sealing constitute the instrument, but it does not take effect till delivery. Deed sealing an

company in Penn. 19. 30. 5. post.

The making of a deed is the most solemn act that a man can perform in the disposition of his property. Thus

the rule that every new deed is effective by his own hand.

20. 29. 29. 28. 35. 45.

flow. 43
Of Title by Deed.

The meaning of the rule is, that no lessor shall be permitted to swear or prove any thing in contradiction of his deed. 2 H. 295. 3 T. 288.

Thus if A makes a lease to B of lands on which he has no interest, and afterwards purchases the lands, his title is stopped by his covenants to deny that he has title, at the time of making the lease. 1 Bl. 287. 4 H. 505. 5 T. 572. 5 T. 412. 2 H. 364. 1 L. Ray. 729. 1 L. 164. 2 P. 556. 3 T. 271. 2 P. 202. 2 P. 186. 2 Bl. 285. 2 C. 266. 5 T. 246. 4 Bl. 271. 2 Bl. 322. 2 Bl. 171. 1 Bl. 156. 2 C. 166. 8 T. 266. 8 T. 398. 1 Bl. 271. 2 Bl. 171. 1 Bl. 156.

But if another of title, instead of being proved as such, is relied upon merely as evidence, it is not conclusive, as good evidence. 7 T. 440. 396.

If a lessor's title is waivered, and joined upon, as such? 3 T. 379. 2 C. 372.

A deed claim deed is no stopped (Comp. 2) for grantor does not covenant that he has title. 3 T. 379. 2 C. 372. 3 C. 372. 2 C. 122. 2 C. 126.

Mortgage cannot be stopped, any mortgagor, the same rule between a lien on a lease. 3 T. 379. 2 C. 372. If a lease is made by indenture, covenants cannot be relied on covenant for rent, denying lessor title, the indenture being the seal of both parties. Terms of the lease must be stopped. 3 T. 379. 2 C. 372. 3 C. 372. 3 C. 372. 3 C. 372.

Rule is, that a lien by 2d pot, 1st pot, 1st pot cannot be stopped, denying lessor title. 3 T. 379. 2 C. 372. 3 C. 372. 3 C. 372. 3 C. 372.

Add: 2d pot, of 1st pot, is stopped, by 2d pot, barring it, 2d pot, 1st pot, 1st pot, 1st pot, 1st pot, 1st pot, 1st pot.
 interns to the author, are interchanging grants, in each part by one party only, that which is executed by grantor is called the original, & the others counterpart. But each part is usually executed by each of which case all the parts are originals. 24C. 296. 4 Ern. 12.

A counter-part alone has been held, in Ry. 58, & 575, as if the existence of a deed for a conveyance, derives according by 4 Ern. 12. 3 Co. 116. 375 & 465.

For its destructions at last see Pech. 98. 575 & 375. 465. 522. 27.

Requisites.

1. Parties. The first requisite to a deed is that there Parties able to contract, for the purpose intended, be the subject matter to be contracted for: Hence in every grant the grantor, a grantee, a thing granted.

296. 3 Co. 33. 4 Ern. 13. 14.

2. Parties.

If the whole interest in any subject is to be granted, all those who have any right or interest in it, should join. Hence, their interest remains in them. 6 Ern. 13. 14. 3 Co. 76.

All those interest to take any inequitable interest in the subject granted, are parties for those who are not parties cannot take an inequitable interest at law. 4 Ern. 10. 276. 281. 30. 313.

But one may take an estate in tenancy in a Deced & he is not a party. 4 Ern. 14. 3 Co. 231.

3. Who may Convey by Deed. Whether General Title.

All persons with no legal disabilities may convey, 215. 276. 4 Ern. 14.

4. Disjunct. But a person lacks of party, the having the age.
Title by Deed.

right of poss. Cannot convey to another who is also out of poss.
228. 290. Com. 214, 290.

This rule is intended to prevent the sale of fraudulent titles, & to discourage maintenance. Com. 214, 283, 290.

In cases of such titles, are prohibited by the Com. conveyances declared "null & void," by the party making or receiving the conveyance, for half of the value of the land to be divided between the State & the person prosecuting. St. 486. 1 Kit. 100. 399, 402 Kit. 221.

But a conveyance by p. owner out of poss. to the person or poss. is not within the Stat. or the U.S. prohibition. 1 Sw. 200. Pt. 446.

But the owner is not deprived of his right to convey by the poss. of another, unless that poss. is adverse to owner's title. This must be "definite or actual," as our Stat. requires it. Pt. 466. 1 Sw. 200.

Where a possession is void or an abusive occupancy, like the land is in poss. of the particular owner, his poss. being that of the right over a possession. 2 Kit. 499, 500. Sec. 30. Secs. 30. Where one is in poss. of another land, but claiming under p. owner, that latter may convey land poss. 1 Sw. 265.

It has been decided in Com. that p. State, making all sales by disf. to persons out of poss. does not extend to sales made by the State. Kit. 221. St. 489, 490; 2 Kit. 221, 222. It has been decided in various cases in the State, that the State, in order to convey the State, does not have to "condition" the poss. to the State, that is, not to poss. the State.
Some rules of Guardians, who sell their wards
in pursuance of a decree of Chancery. 

As of Collectors of taxes, who sell for taxes. It is by 
order of Lord Chancellor, Stat. 4 Geo. 3. c. 66, sect. 57.
See 11 Geo. 3. sect. 81. This is because a tax is due, but the last 
sale is good, because it cannot claim its own warranty.

Most of these titles are denied by mortis causa out 
of post. may carry its interest. Tint. 40. & Wall. 50. &c.
of mortis.

Infants. As to conveyances by Infants, see Parent.

Idiots. Idiots and Lunatics are not totally disabled
by reason of their defect of will, for by the law no other
person may contract, nor be bound by the act of an idiot, nor
lunatic can recover his own debt, or make
settled by himself. 21 St. 29. and 45. Geo. 4. 

Because he cannot know what he does, while insane. See 
St. 15. sect. Contr. Comb. 668. Tit. 147.

But the king or in behalf of an infant idiot,
may avoid his deed, during the lifetime of the 
éstate, only. See 13 St. 29. 
14 & 20. sect. 14. The objection does not apply in this

case. The committee of a lunatic may do the same. 
Tit. 23. sect. 12. & 73. sect. 17. 
6 Geo. 29. sect. 16. & 7 Geo. 20. sect. 16. & 11 Geo. 

After the death of an idiot, his heir (as the case may be) 
has 14 & 20. may avoid his deed. Sales 
may the 23. sect. 16. Lunatic. But an idiot cannot have no title. See 
14 & 20. sect. 16. & 7 Geo. 29. sect. 16. & 18 Geo. 30. sect. 16.
Title by Deed.

those only, who are capable (Pr. 2:8, 11, 12, 4:13, 4:22) or, of or only has any interest in the subject. So, in cases of
one only of the grantees is capable of taking it since
more to have only. 4:24, 7:21. If grant to be made.

Sec. 8, 4:23, 4:72, 176, 176, 176, 2114

Whose may be Trustees. By the C.S. all persons
may be Grantees as a gift, as James Court, infants,
idiots, lunatics, as well as persons of sound mind. 4:22.
Sec. 8, 4:23, 4:72, 176, 176, 2114. Supposed to be for their benefit.

But in the cases of James Court, infants, idiots, lunatics, the
purchases are voidable. 4:23, 4:23, 4:72, 176, 176,

"Trusts." 4:23, 4:23, 4:72

So an alien may at C.S. purchase by Deed.

But if he cannot hold of lands, go on office found it grants
the King. 4:22, 4:23, 4:23, 4:72, 176, 176, 2114. The alien
An alien, however, may hold a lease for
years of a house, for the convenience of merchandise.

Sec. 292, 4:23, 4:72.

Sec. 292, 4:23, 4:72.

In Con. Aliens are by Stat. disabled to hold or pass
any lands without special license from legislature

Sec. 292, 4:23, 4:72.

Except, in favor of British subjects, who own
lands here before the late war; or in favor to British
subjects, the rights to which they are entitled under our
Treaty of Amity with the French King Louis the 14th, 3516.

French licenses are usually granted, who apply for

Those who are naturalized, under the laws of 3516.
are not within the prohibitions. 3516.

By certain of the States admission is not made to
Title by Deed.

to any ecclesiastical or other corporation, and in some cases prohibited, in others much restrained. 2 B. & C. 256 & 479. 6 Cr. 223.

No such State. In fact, true ecclesiastical to any other corpo. may purchase lands.

But we have a Stat. enacting that all lands are granted for the support of our gospel ministry, or schools or for the relief of the poor, or for any other public and charitable use. Shall forever remain to the uses to which it is set making these unalienable. St. C. 333.

This Stat. has been evaded by very long leases for a sum in gross or our Cts. have sanctioned their creation.

Consideration.

A deed must be founded on lawful & suff. consideration. 2 B. & C. 276. 6 Cr. 226.

Said not to be necessary at C. & L. (i.e. before the doctrine of uses. I suppose.) But any consideration, be it express or in the deed (2 Cr. 24, Mon. 328) for 499. did amount.

But under the law of uses a deed will contain as to lands devoted to a charitable use, for the legal estate, to be held by the grantor, 2 B. & C. 366, 372, 373, 503. (Rob. Truss, c. 95.) unless expressly declared to be to another. 2 116. 530.

And now since J. State of use. (27. N. 518.) has equity, (13. 329.) to transfer a legal estate. If held for any use, a deed without consideration is said to amount to a sale of grantor. Laws. 2 B. & C. 270. (Bec. 8, 538. 142. 37. (28. 4. Cr. 16.) 106. 36.) as to assignment of uses.

But in consideration either good or valuable.

But see, within the rule, that a will, without consideration, causes the use of greater affinities to any other, and that in "permanant sale." 2 Bl. 296. 6th. Ser. 21. 1 E. 3, 394. 1 Ch. 41. 337. 1 Ch. 74. 252. The deed having the operation by Stat. 40 & 41, having now found no any other than a valuable consideration. 2 B.B. 327. 333. 206 f. 346.

And in eqg. a will, declaring as use, causes to the grantor, benefit.

But see, whether the rule that a will, without consideration, causes to pur. 4 of the grantees, can apply in this State, since. 1. Jellicoe's case was more peculiar here than has the practice of conveying in the State now obtained here. 2. Considering the considerations are either good or valuable. A good consideration is that of his will or natural affinities toward a near relative, as a child, parent, brother, sister, nephews or nieces, a heir at law. 6th. Ser. 24. 2 B.B. 399. 6th. Ser. 129. A valuable one is one in which there is pecuniary value. 2 B.B. 437. 444. 4 Ch. 6, 2 B.B. 39, 6th. Ser. 26. 1 Con. 36. 1 Con. 367. (Author's)

No conveyance is always deemed a valuable consideration. 2 B.B. 327. 333. 206 f. 346. 2 B.B. 344. 2 B.B. 399. 6th. Ser. 129.

A conveyance, good or valuable, will support a deed of conveyance. 2 B.B. 297.

The a conveyee, a good consideration, and is as a provision of grantor if been for purchase, grantor, or 2 B.B. 327. 349. 6th. Ser. 349. (Post Fraud. Conveyee)

The cause of a conveyee, a good consideration cannot be denied by grantor or his heirs for 3 purposes of disposing of the, they are disposed of by 2 B.B. 297. 349. 6th. Ser. 349. 6th. Ser. 285. 2 B.B. 349. 6th. Ser. 679.
Title by Deed.

But they may impeach it for illegality, as
usury. 2 Ch. 42. 2106. 2 Vict. 249. 2Units 346. Contracts.

33. Wherein, as Caudill of grantor, it purchases bona fide, may deny the existence of the "FRAUD CONSIDERATION." 2 Dill. supra, at 221. 3 Rob. 223, 224. 2 Co. 15. 6 Co. 394.

But in such a case the grantee may annex prove the actual consideration as money received for the deed not contained in the deed. 16 Co. 176. 3 Co. 24. 4 Co. 233. 8 Co. 85. 9 Co. 39. 4 Com. 32.

So where for the consideration specified of $700 and $5
A lease was limited to 15 years, and a bond to 15
b. t. An attorney was admitted that $700 was given to a
confirm of a marriage between Bt. 6 and Bt. 840.
16 Co. 178. 6 Co. 39. 1407. 2 Han. 74. 7 Ed. 4 Com. 33.

Hence it seems that if a 700 makes no mention of the consideration of a consideration, the true consideration may be proved by other evidence.

If it appears in a deed, expressing no consideration, the conveyance is to the grantee to a"chose of other" persons, relation the
the instrument a sufficient consideration. In other relation in which the
party's estate. No amount of consideration is necessary. 16 Co. 39.
1407. Pown. 244. 10 Wirt. 28. 44 Co. 15. Underhill.

But in such case of a specific contract, it being as
can be implied in the deed, for 100. 4 Co. 287. 10 Wirt. 23. 1407. 10 Co. 100. 2 by 4, 215. 1407. 1407. 1407. 1407. 1407. 1407. 1407. 1407.
Acknowledgement in a Deed of the receipt of the con-
duct is not conclusive or the grantor only presumptive
evidence: more going to secure the title, I prevent a re-

IN WRITING.

III. Every deed must be written or printed on
paper or parchment. 2 H. 297. 4 Beas. 35. 61. 222.

But it may be in any language or character. Exem-
From that, writing was not necessary for the convey-
cance of lands. 215 d. 310. 515. But now by 2 H. 297.
section 2 no interest in lands for a longer term than 3
years can be created without writing. And any lease or
grant, for a longer term, not written, operates only as
a lease at will. 215 d. 297. 306. Rob. &c. 72. 2407. 11 Beas. 72.

Now as a tenancy from year to year (see "Estate at will.

The deed must be written, before the seal is
putting, for if one seals it delivering a blank paper with
directions for filling it up, it will not be his deed.
It takes effect from delivery, not as delivered. 4 Beas. 26
4 Beas. 34. C. B. S. 118. See "Bill of Exchange".

IV. The subject matter must be legally set forth;
the it is not indispensable that the different parts be
be in the order usually prescribed: 2 H. 297. 10. 61. 223.
6. 5. 4 Beas. 32. 3.

The present conveyance fails are eight, viz.
1. The Premises. Containing the names of the
parties, or their additions, the necessary recitals, if any, to
consideration, the description of the thing granted, (to be
encompassed by metes and bounds, generally 60 rods, etc.) and the
Title by Deed.

exceptions of any, i.e. all that precedes the Labordeur.

2 Me. 298. 4 Cruise 73.

And the omission of grantor's names in the premises does not vitiate the deed, if the name is in the labordeur for such can a wrong name in the former may be rejected as surplusage, East 116. Body, 7th
73. Miss 41. 4 Cruise 119.

So when the name of the (bargainer) grantor was omitted in the operative part of the grant, but the consed. was expressed to have been paid to her, deed was botan good. E. witness that a consed. be paid to the S. A. sale bargain 60. 4 Cruise 119. 1st 341. 10th 340.

And if the grant is to George 1st of A. en Bishop
of A. when his assignee is John, the grant will be good no danger from uncertainty, as only one person can have such a dignity. 4 Cruise 38. Ch. 3.

And in general, a mere clerical mistake will not destroy a deed. It may be explained. E. mistake for figure in the receipt, 4 Me. 100, (ante b.) 4 Cruise 119. 1st 341. 10th 340.

The wife of A. without her christian name, is a sufficient description of the grantor. So if a wrong christian name is inserted for the per in title. 4 Cruise 35. Ch. 3. 119.

And in ordinary cases a grant by one Sarname'o, without
name only is void for uncertainty. 4 Cruise 25. Ch. 3.

A name acquired by reputation is a sufficient description of a person. E. Pseudo described by the name of which he is usually known. 4 Cruise 25. Ch. 3. 119.
So a party may be describ'd without either of his names, by "grant to the first son of E. Smith, E. Smith's son," &c.

So, the word "issue" is a good description of grant to the issue of E. The term being equivalent to "children," &c. E. Smith 35. Co. 3. 252.

For the rules as to exceptions to deed, see by Plantiff 90.

Script. 1777, Co. 3. 6.

2o. The habendum & tenendum. The office
of the habendum is to designate the quantity of interest conveyed, that this may be seen in the premises. E. grant to A. the

black acre to be held in herb. A. his heir, a grant of B.

to A. his heirs, 2. 26. 298. 4. 30. 5. 185. 320.

When the quantity of interest is specified in the premises, it may be restricted, enlarged, explained or qualified in the habendum. 4. grant to A. the heirs of his body, &c., to be held in herb. A. his heir, forever. A has an estate in


The rule is said to be the same. 3. the grant to A. to A. his heirs forever, habendum to be held in herb. of his body. 2. 36. 298. 4. 26. 476. 2 Dall. 470. 4. 25. But see 86a. 154. 5. Co. 8. 21. 3. 183. 4. 97. Moore 26. 4. 3. Ariz. 139. 4. &c, that it takes a fee tail only. It is a fee simple in all cases. See Sir.

General rules that, generally of description, &c.,

But the habendum is totally inconsistent with a tenancy to the premises is void, as the terms of the

classes are inconsistent, the first must govern 2. 36. 298.
Title by Deed.

The Senendum was formerly used to express the tenure by which the estate was to be held. Now it means all feuhold tenures being converted into free tenures by the

Stat. 29 Cap. 2. 2B. 299. 4 Cruise 497.

2d. The Senendum expressing the terms of

any grant in fee, is called the period

Stat. 29 Cap. 2. 2B. 299. 4 Cruise 497.

5d. The Condition of any 2B. 299. for which

fee simple on condition.

6d. The Warranty, by which the Grantor for him

self his heirs, warrants the estate by grant. 2B. 300. 849.

In this case if the Grantor is wrong, the Grantor is

liable to give the lessee other lands of equal value, and this

he may be obliged to do, either upon demand by grantee, or by suit of warrantee. 4 Cruise 499. 54. 2B. 300.

As to warranty leases of collative see for the

difference 2B. 300. 849. 514. 514. 1801.

Warranty may be expressed in a deed. 4 Cruise

49. 54. 2B. 304. a. 2B. 300. 1 Pa. 305.

In modern practice warranties are disapproved being

superseded by covenants. 2B. 304. 1 Pa. 305.

yet the covenants, which are agreements of both

parties.
Selle by Deed.

Neither of the parties stipulates something in favor of the other, or that grantor has right to convey that grantor shall quietly enjoy that grantee will pay rent, or repair rent, 2 Bl. 305. 6 Co. 65. by .

The usual covenants of quiet possession (often by

Dullain) are three. 1. That grantor is will and had

good right to convey. 2. To warrant to defend the title of

all claims. 1 Peth. 1. See 6 Co. 65.

The principal difference of effect, between a

Deed, a Covenant, is, that the former brings the grantor

as the case may be, his heir (2 Bl. 305) to all other lands

in case of deviation, but does not bind his heirs (2 Bl. 305).

4 Co. 37. 38. 39. 44. 54. 55. 6 Co. 6. 7 Co.

A Covenant, on the other hand, entitles grantee to

a compensation or damages only, if the tenant fails to

pay. But not the land, unless named. 2 Bl. 305. 62. 63.

Co. 79. 80. 81. 121. 122. 123. 124. 125. 126.

6 Co. 37. 38. 39. 44. 54. 55. 6 Co. 6. 7 Co.

As to the different kinds of Covenants, a convey,
Title by Deed.

not correspond with the bounds or monuments, the latter govern. By reciting 100 rods to such a monument, the distance proves to be greater or less, should there be an error.

Deeds which lie in these cases upon the intentionally deceiving grantees. Would it not be an answer to the action, that grantees might have insisted on a grantee to the deed, as to the quantity. 2 day 128.

But if the description is by quantity, without riots or bounds, the grantee is liable in case of deficiency—doubt by grant of one hundred acres called Black-ace.

Sec. 305.

Since, it is said, of the description as the last case, qualified by the word "more or less." The quantity is, then, supposed to be inserted by way of estimation, 1 sec. 305.

But when the description is by miles it bounds, the word "more or less" have no operation, also. The description by miles, governs.

8th conclusion, which mentions the execution of the deed. 2 BC 304, 4 Cum. 49. The date may come in, either by insertion in the conclusion, or by reference to a day before mentioned.

The date is included as part of the deed itself, but merely a memorandum of the time of its execution. And formerly dates were not dates, dates became customary at the time of Sec. 2, 123, 4 Cum. 39, 60 Bộ 57, 60 Bộ 59, 43, 4 Int. 37, 60 Bộ 193, 2 BC. 304, 4th note.

But a date is not necessary, 2 BC. 306, 4 Cum. 39. And when inserted it is only given a space midway of the time of execution, 11th 172, 2 BC. 39. Thus if there is one.
Title by Deed.

As possible, the date, a wrong one, or none at all. The line for
execution may be proved by Sect. 13Bl. 384, 20S. 465, 84.
Vol. 462. 7. 4655. 7.

If two deeds in one date, or manifestly con-
form but one agreement, that which best supports the
true intention of the parties shall be presumed to have
been first executed. 4 Cruise. 34. 1106. 106.

V. The next requisite is a deed is the reading fit.

This is necessary if either party desires it. If not
done, it is as to him. Voit. 218. 304. 6 Cruise. 27, alone 189. Sect. 491.

If he is able, and, in debt, he shou’d read it himself. If
not another shall read it to him. 218. 319. 1106. 260. 284.

If he is blind, or unable to read, or if the
language is unknown to him. But if he does not request
that it may be read, he is bound by it. 106. 189. 160.

And if it is read falsely, it will be void; (at least as
to the part falsely read) unless it is so read by collusion be-
tween him and the other, or by force to defeat it, in which
case, it will be void, the presentment party. 218. 304.
4 Cruise. 27, 2 to 1. 116. 306. 52. 12.

When a deed being void in part, is so in toto,
then no, see Ph1. 110. 111. 27. 13.

VI. Reading is necessary to a deed, at C.S. by the
Stat. of frauds to engaging also in most cases. 218. 305. 8. 84.
8. 4 Cruise. 27. Th1. 00. 37. 00. Reading necessary to C8. 22.

Signing was not necessary at C.S. but recently set in
sec. 218. 305. 8. Th1. 00. Com. 25. Fact. 12. 00. 1 sign. 205.

In C.S. Signing is necessary not only by the Stat. of
frauds, but by a distinct Stat relating to conveyances of lands.
11. C. 553. 1255.
VII. Delivery. Every deed to be operative, must be delivered. Hence the form of illustration, "Plate of Deed in 1 Bl. 300, 314, 321, 327, 330, 332.

From the delivery it takes effect, whatever may be the date. 2 Bl. 307, 3 Do. 253, 260. 3 Bl. 307, 3 Do. 253.

If a deed be made & dated during grantees minority, & sealed & delivered after full age, it will be void. 3 Bl. 307, 3 Do. 253.

And the a person declared to be fit by the party delivering it is bound to accept at sealing & signing. 2 Bl. 307, 3 Do. 253; 254; 255, 260.
Selle by Deed.

But if delivered before sealing, it is no deed. 255.

The act of delivery without words may be effectual. 256.

257. 258. 259. 260. 261. 262. 263.

264. 265.

So delivery may be by words only, without any act of the grantor. 266. Practice says the deed being sealed there

is my deed. Take it. 267. 268. 269. 270. 271. 272. 273.

But if the grantor takes it without actual delivery

(as from the table above it is taken without grantor's

intent, without words, there is no legal delivery, and it is

found that the deed was later there, with intent to be deli-

ered, i.e., with intent that grantor take it. 274. 275. 276.


As to the mode of proving the delivery, 284.

Presumption of delivery arises from the pleadable

proof of the deed, or of 285. 286. 287. 288. 289. 290.

According

A deed may be delivered to the party in person, to any other having authority to receive it, to any stran-

ger in behalf of, for the use of the grantee. 291. 292. 293.

294. 295. 296. 297. 298. 299.

299. 300. 301. 302. 303. 304.

A deed cannot be delivered so as to have any

effect, more than once, for if the first delivery has any

effect, i.e., is not strictly void, the second will be void.

305. 306. 307. 308. 309. 310. 311.

312. 313. 314. 315. 316. 317. 318.

319. 320. 321. 322. 323. 324. 325.

But, if the first delivery is merely void, the second may

be effective. 326. 327. 328. 329. 330. 331. 332.


340. 341. 342. 343. 344. 345. 346.

So if a deed once void, becomes void as by law.
The law on absolute and conditional delivery is as follows:

Section 66: "A delivery may be absolute or conditional."

When delivered to a person, it is absolute; without consideration, the delivery is absolute; but if delivered to a stranger to be delivered to him or to some other person on a condition or contingency, the delivery is conditional. 200. 207, 9, C. 29. 60, 2. 282.

In the latter case, the writing, till delivery occurs, is called an antecedent deed. It is not the deed of grantor till the time it is delivered.

It seems agreed that a writing cannot be delivered as an antecedent deed, if delivered to him, the delivery is absolute; for the grantee is not permitted to require delivery. 200. 207, 9, 839, 7, 137. 4, 137, 4, 137, 4, 137.

If a deed be delivered to a stranger by the prevailing party, it is absolute. 200. 207, 137.
Title by Deed.

It be delivered over as a condition says, "I deliver this writing to be delivered over as a condition.

But when properly delivered, as an instrument, it is by no means, not always be performed. The condition is performed, the delivery is performed. The gift is delivered over, it comes effect also absolutely. Deut. 21:35.

And if as performance of the condition the defendant refuses to deliver it over, the title is still vested in the first delivery, by condition, subject to the performance of the condition. Deut. 21:35. 36. 37. 38. 39. Ex. 22. 27. 28. 29. except in case of defendant's refusal to deliver it over. 41. 42.

In ordinary cases where there is no disability in the grantor, or improvement in the grant, either at the first or second delivery, the title vests defeasible from the time of the second delivery. See 36. 38. 39. 40. 41. 42. 43. 44.

But in case of necessity, as where there exists disability at first delivery, or improvement at first delivery, or that as the case may require. Where may is implied. Ex. Deut. 22. 38. 39. 40.

Thus a vendor of land delivers a mortgage to another, who married and performs. Or a transfer of the same.
is delivered over, during his copartnership; the deed taken for by relation to the first delivery, it becomes invalid from the first delivery, "it is magna legis sed" to say, it is part of effect. 360353 65 Hus. 492. 38672, 669 497. 476.

As if one delivers a writing as an escrow, the deliverer of the same, but this is delivered over, it takes effect by relation, for the reason supra 360353 668 497.

In such cases if the deed is performed, the deed not delivered over, it will take effect from the first delivery by relation. 360385 876 748 479.

The indicia of delivery being consummated by performance of the condition

Hence also, if one delivers a writing as an escrow to be delivered to a grante, on the grantees death, it takes effect by relation, it is magna legis sed. 360325 668 497. 76 Ed. 2, 809. 1006 88 27 583.

So if one of power makes a deed of jeffreys, to a letter of atty. or a person to make living apart, it then becomes non compos, the living will be good by relation to the deed: it is a consummating act. 360354 667. 796 79, 792 476.

And if one makes a power of atty., to another to execute a deed of convey after his death, or to make living whereby there is no deed of jeffreys, it falls; the execution of the deed in one case, or the living in the other will be void. 668 56. 71 Mace. Authority 796 582. 497 792 476. 56 705. 795 71 [795]. For there is no indicia of convey to effect the act of the atty. can relate: the power of the living or having authority, not a conveyance.
Title by Deed.

Put of the application of the doctrine of relations to defeat the deed, where it is first delivered as an error, this title rests from the second delivery only; it has no effect at all to 7th of 72.

Thus if a person deputized makes a lease, and out of sight, and while out of sight, himself believes it to be a stranger to be delivered to the lessee, or the landlord will take effect only from the second delivery; for if the doctrine of relation were applied to it, it would be void. 36th, 16th, 8th, 3rd Balita, 14th, 8th of 79.

This rule, however, cannot operate, so as to vest the privilege of a person, who is under a legal disability at the time of the first delivery. Thus if an infant by some Court makes a deed, if it delivers it to a stranger, to be delivered to the grantee, it is delivered over, after coming to full age, this deed does not bind. 36th, 16th, 1st of 85, 8th of 67.

A deed never takes effect by relation, so as to vest "collateral title." 7th of 73, 36th, 36th, 8th of 72, 16th, 35th, 125; in it operates retroactively, I conceive, when it does not act, only to the purpose of vesting the right of title at last, 36th, 16th, 8th of 67.

Thus if a deed is delivered as an error, deeded delivery was to oblige, and in circumstances which give it effect, by relation, a release between the first and second delivery, does not discharge it. 36th, 36th, 7th of 73.

For it has not become the obligation, but at time of release.

Nor, I conceive, can this retroactive operation make one a trespasser by relation. 36th, If grantee remains a vendor, delivery the first or second delivery he cannot, surely, after
Title by Deed.

After the form of delivery is liable for this purpose. A fiction of law never works an injury, or makes the transaction lawful. Boe. 38. b. 221. 9 & 10. N. 35. 302. 36. 29. Cot. 31. Con. 4. 23.

If A. is delivered to B. for the use of B. it is delivered over to B. is deemed good, until B. delivers. 2 Rob. 26.

If A. is delivered to a stranger to be delivered over, the grantee, or tendor refuses to accept it, he can never afterwards claim it. The first delivery has lost its force, & the grantee may plead non est factum to it. 3 Rob. 16.

Dub. 1. 20. 26. & 27. Dc. 16. 6. 26. 16. 27. 34. 37. 60.

VIIIth Attestation. In the Act 7th. The last requisite to a deed is the attestation of it. In the execution of it, in the presence of witnesses. 2 Rob. 22. 4 & 5. 34. 11.

VIIIth Attestation. In the Act 7th. The last requisite to a deed is the attestation of it. In the presence of witnesses. 2 Rob. 22. 4 & 5. 34. 11.

This however is not at C. 3. an essential part of the deed, but mere evidence of its authenticity. Ibid.

Formerly the attesting to a deed did not usually subscribe their names to it, the now the practice is otherwise, it has been since the reign of Queen 3. (27. 38. 20. 8. 6.) but it is not necessary or long in it now. 25. 27. 8.

In Con. all grants of mortgages of houses lands, must be attested by two witnesses, who must subscribe their names or marks. Stat. 2. 653. 1. 228. 306.

In Con. certain requisites, unknown to C. 3. are prescribed by Stat. 32. 206.

IX. That all grants & mortgages of houses lands shall be acknowledged before an assiduous commissioner or justice of the peace since they are not complete. 25. 27. 8. 207.

Note. The Officer exercising the power of a justice of peace...
was before the year 1648 called "a commissioner." 1643, note.

If a grant of a title or a deed of sale, as the case may be, is received by the Town Clerk, he is to enter it in the "register of the Town," and the Town Clerk is to register it as a "legal title," and the deed (if in favor of the grantee) delivered to the receiver, will authorize him to record the grant. 1653.

And a copy of the grant, authenticated as the Act requires (i.e., by the registry of an assistant or a justice of the peace, or a public officer), shall be a sufficient evidence of the title. 1653. 1659, Sec. 307.

X. Title. By our Act, no deed of sale or grant of a title to a house or land, is effective in law, except if the grantee is of his heirs, only recorded at length or in form of the Town. 1653. 1659, Sec. 307.

The Town Clerk is to enter, if a deed, it to note the day on which it is drawn, signed, dated, 1659, Sec. 307. He is to give notice to those persons who derive titles to certainty. 1659, Sec. 307.

The title, as to persons in general complete, is effective from the date of the record. 1659, Sec. 72. 1659, Sec. 61.

So that as in other deeds, the first deed, whether by the grantee or by the assignee of the grantee, has to be recorded first. But the date of the deed from the grantee, is due diligence to prove, his deed recorded in the book kept by the Clerk, under reasonable time. 1659, Sec. 307. 1659, Sec. 308.
The grantees is always allowed a reasonable time for recording, even at law. (Tiv. 303.)

But if prior grantees delayed an unreasonable time, a subsequent purchaser, at the time of the first recording, had the right to have the record of the deed of the prior grantee entered, in the book of deeds of the county. (Tiv. 308, Tiv. 309, Tiv. 310.)

What is a reasonable time, is not settled by any definite rule, it must be determined by the circumstances of the case. (Tiv. 308, Tiv. 309.)

And if a prior grantee, having lodged his deed in season, prevents it from being recorded at length, the subsequent recording of it, will not have relation to the time of lodging it, as to an intermediate purchaser whose deed is first recorded. (Tiv. 311.)

Suppose the prior deed is, being reasonably long to be recorded, before the subsequent deed is lodged, the after the lapse of a reasonable time, who will have it? The prior grantee, I conceive, at law, on the old.

Suppose the prior deed is, being reasonably long to be first recorded, the after the lapse of a reasonable time, but if the subsequent deed is recorded, the subsequent purchaser, I apprehend, will have it as at law, according to the analogy of other cases decided here, as he is entitled to the benefit of relation. If the other, not, as Tiv. 311, I do.

But if the prior deed is being long to be recorded, if prevented from being recorded, by the subsequent purchaser, by the grantee, it will then afterwards recorded, but as a subsequent purchaser, his deed is first recorded (Tiv. 312, Tiv. 313, Tiv. 314, Tiv. 315, Tiv. 316.) So if the

record is delayed by the negligence of Tiv. (which, Tiv. 317.)
Title by Deed.

And it is said to have been determined by our Courts, that a subsisting deed, first recorded, shall lOt to the exclusion of a prior one (the execution of which has been unreasonably delayed by the prior grantees) the subsequent purchaser had actual notice of the prior deed, etc.

(Root 61, 81, 83, etc., 152, 289.)

And such is the rule adopted in lands in England in the construction of the Register act, 1794. 1 Sweet's 1st. 128, 186, 278, 712.

But if it is settled in England, that if a party first registering, knew of the prior conveyance, and, at the time of purchasing, the prior grantee shall lose his copy, 2 Tuck 128, 186, Con. 712, 139, 173, 278, 373, 576, 578, 579, 580, 712, 816, 818, 819.

The subsequent purchaser is, in this case, considered as a trustee for the former.

The rule must be the same here, I conclude, to does the delay of the prior grantee make any difference? By

If the owner of the former did not record his conveyance, are the subsequent purchasers bound to record it, or is he liable to any party injured by the concealment, 2 Tuck 128, 186, Con. 712, 139, 173, 278, 373, 576, 578, 579, 580, 712, 816, 818, 819.

So it is his duty to keep the deed till recorded. If he conceals it, he is liable to anyone who is injured by the concealment, 2 Tuck 128, 186, Con. 712, 139, 173, 278, 373, 576, 578, 579, 580, 712, 816, 818, 819.

Thus, destroyed or avoided. If another wants any of these requisites, a grant is void as a deed. 2 Tuck 208, (etc.) it is no deed.
A Deed may also be destroyed by
1. By resurts, interlination, or other alteration in
a material part. 2 M. 308. 11 Co. 27.

But these, if made before delivery, do not inval-
ciate the deed. 2 M. 308. 4 Cr. 36. 2b. shelf. 85.

Since they destroy the deed in Eng. 2 M. 308. not so here.

An alteration by grantee after delivery destroys the
deed. Whether the alteration is in a material or in a
material part. 11 Co. 37. 2 Rolle 29. shelf. 26.

But an alteration by a stranger does not destroy
the deed, unless it is in a part material. 11 Co. 27. 2 Rolle 29.
2 Dub. 217. Ebr. 626.

In these cases (i.e., where the Deed is destroyed), no new
factum may be pleaded to it. L. 16. 27. 626. Ebr.
and if a stranger thus destroys a deed, he is liable
in case to the grantee. Ebr. 624.

2d. By breaking off or destroying a seal. 2 M. 308. 5 Co. 23.

3d. By delivering up the deed to be cancelled. 2 M. 308.

4th. By the statute, disaffirmance of those whose concurrence
is necessary. 2d. of Hants. to his wife, purchaser of property.

Agreement. 2d. 2 M. 308. Shelf. 53. 176.

5th. By the gift of a decree of a Ct. of Justice. Ebr. 532. 36.

by fraud. 3d. 581. 53 as above. Ebr. 2d. 308. 536, 2d. 13, 139.

For the different kinds of Deeds see 2 M. 308. 343.
Construction of Deeds.

Deeds are to be construed as near the apparent intention of the parties, as the rules of law will permit. (Ecclesiastes 4:10) 116, 4:10, 10:1, 10:10, 12:10.

False grammar and vice versa. (Ecclesiastes 4:10).

Sheep 15: 15:1, 15:10, 15:10, 10:15.

The construction should be after the whole deed, not in any part only; and so made, if possible, that every part may take place. (Ecclesiastes 4:10).

The words are to be taken most strongly of the grantee, or party to whose words they are. (Ecclesiastes 4:10).

The words are to be taken most favorably of the grantor, or parties whose words they are. (Ecclesiastes 4:10).

The words are to be taken most favorably of the grantor, or parties whose words they are. (Ecclesiastes 4:10).

If two clauses are repugnant, the first is to be rejected, and if there is no reason to the contrary, the second clause to be adopted. (Ecclesiastes 4:10).

Words of general reference, when standing alone, are to be construed generally, unless preceded by a particular clause. (Ecclesiastes 4:10).

If the words will bear two constructions, or able to mean justice or the other, then the former is to be preferred. (Ecclesiastes 4:10).

Words which are repugnant to the general term, are the deed of the writer, intention, and the objects. (Ecclesiastes 4:10).

When any subject is granted, all the means necessary to the attainment of the same, with it, to. (A grantor, lease.
Title by Deed.

of ground on the middle of his feet to be. This implicitly gives B. a right of way to it. 2 B. 36 Texn. 62, 60, 36, Ch. 39.

So if A grants trees growing on his land, grantee has the right of entering on the land to cut & carry them away. Ship. 39, 168, 52. "Footpath", 31, 26.

So if one grants a mine on his land, grantee has a right to dig it. Ship. 39.

So if one grants fish in his pond, grantee may go upon the banks to take them. Ship. 39, Texn. 8, 63.

Hence also the grant of the princi. of subject generally carries with it the incident, as necessary with out the words "with the appurtenances" or by a grant of the invasion, the rent is free. Ship. 39, 168, 527, 628, Con. 367, 2 Col. 76, 76, 76, 140, "Estates in joinder." 2

So by the grant of a house, the ways belonging to it, will pass. Ship. 39.

By the grant of a mill, the water necessary to the use of it will pass. Ship. 39.

A deed drawn in a form in which by law it cannot take effect, may operate as a deed in another form, for the purposes of effecting the intention at its true meaning. 1

Thus a deed in the hands of a grant between joint tenants may operate as a release. If made by p. particular tenant to p. another man, as a surrender. If add. without valuable cove. to a him as an, as a covenant to stand, etc., etc., 4, 12, 4, 12, 2, 12, 4, 12, 2, 12, 4, 12.

So also a deed by 3 owners of a thing in which one of them
Title by Deed.

has the whole interest, is in lone effect, his sole deed.

If the terms of a deed are so uncertain, that its intention cannot be discovered, it has no effect, eg. grant to the children of J. P. the having received... (Quin. 25. Roll 46.)

When a deed, being void in part, is so, of course it, too, is

So in these are several distinct clauses, some of which are truly void to p. party, p. others not, the deed is good as to p. former, p. void as to p. latter. (Co 27. 38.)

But these rules cannot apply, because if lawful

Rules: If a deed contains several covenants, some of which are lawful, others not, the deed is void as to p. former, p. void as to p. latter. (Co 27. 38.)

If two are jointly bound in a deed, by p. sealed two, is broken off, the whole becomes void as to both. (Co 27. 38. Roll 40. 2. Dec. 20. 52. 1 Reg. 257. 200. 2 Co 57. 54. 8.)

If a deed containing several distinct absolute covenants is all void of them, the whole deed becomes void. (Co 27. Roll 20. 7.)

If two distinct obligations are written on one paper, only one is void truly, the other is sealed and delivered, it is p. deed of p. party as to p. latter as to p. former. (Co 27. 38. 30. 57. 54. 8.)

But if a deed is void, as to part of an interest, it is necessarily so in toto. (eg. deed for 20 & 23 as for 20. 7.)