Index of Real Property

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Real Property

Things we call subjects of property, are by the law of 2 kinds. Real and Personal. 2 Bre. 16.

Things real are such as are permanent, fixed, immovable, tenements. But all other things are personal, as money, goods, and things of a corporeal nature. 2 Bre. 16. 384. 87. Co Lit. 118. 2 How 4. Things real are not only fixed and immovable, but permanent, and in this they differ from chattels real, for they are fixed but immovable, but not permanent.

Things Real consist of Land, Tenements et Hereditaments.

Land, in Law includes all things of a permanent, substantial or corporeal nature being a word of extreme signification.

Tenement is a word of still greater extent, being in its common acceptation, applied to houses or buildings, for it denotes in its original sense, every thing that can be holden of a permanent nature, an corporeal or incorporeal. Whereas land includes only corporeal things.

Tenement includes rents, lands, franchises, rights of common. Co Lit. 619. 20. 2 Bre. 7.

Hereditament is a still more comprehensive term, for it includes not only land et tenements, but whatever may be inherited. It includes all inheritable things, an real, personal or mixed. There are some things wh in their nature are strictly personal, et still inheritable. Thus an heirloom, is a hereditament, a family armor, a piece of ancient plate, or jewels, nests, all are hereditaments and go to y heir at Law.

So also a condition of wh y benefit may descend, is an hereditament. 3 Co L. 2 Bre. 17 as a condition annexed to a Mortgage.

Now these 3 things, Land, Tenements and hereditaments are merely y subject of property.
Hereditaments are of 2 kinds, corporeal, and incorporeal. Corporeal Hereditaments consist of substantial and permanent objects, all of which may be included under the general denomination of land.

Corporal Hereditaments then are all capable of being bought, within the denomination of Land, for land does not only comprehend earth, ground or soil, but water and buildings upon it. 2 18 17 P 2 18 18 4.

Hence a conveyance of land passes all buildings and structures standing upon it, as they are buildings or fixtures are reserved or excepted. A transfer of land without any agreement conveys all buildings and waters with it, and the bed of a River not navigable, as ponds, watercourses, 2 18 18 18.

But an action won't lie to recover a stream of water, "ex nomine." But an description shall be of so much land covered with water, for in water one can have only a transient and vicarious property. But he may describe 20 acres of land covered with water ibid.

Land has also an infinite extent, upwards as well as downwards, "cum est solium, eus est usque ad coelum," is a maxim of the Law. Upwards, not only the surface but the earth immediately below, to any extent, belongs to him. If a slot place a shade over y land of B, an action may lie. This right extends upwards indefinitely and downwards to y centre.

A conveyance carries all minerals and fossils under y land as well as woods, waters, buildings standing upon it.

Ibid. These particular subjects, however, wood, water, and buildings—may be conveyed by ye distinct names separate from y land— for this they belong to y land, they are not inseparable from it. The rule as to water, seems too broad, for—by a grant of water nothing passes, except y right of fishing, as the whole interest don't pass. Co Litt 456.
An incorporeal Hereditament: is a right issuing out of concerning, or annexed to, or exercisable within a thing corporeal, and this thing may be either real, personal or mixed. Thus rent is an incorporeal hereditament issuing out of Land. So an annuity, the issuing out of y person of y Grantor. Ibid. Co Litt 19.20.

There is however a difference between y incorporeal hereditament itself and y profits it produces — now rent is an incorporeal right, but y money or thing pd as rent is corporeal. 2 Bo 20.1. For y kinds of incorporeal hereditament of wh there are 10. see 2 Bo 21. There are several sorts unknown to our Law, as a dower — title — offices — dignities, and Conduits unless held of wh we know nothing. But a right of Common — right as a person of way, annuity, pensions, rent, it purchases are all incorporeal hereditament by our Law.

As to right of Common, ys is a right wh one has to a profit in or upon y land of another. As if A has a right to pasture beasts in his beasts upon y land of B by right of Common. If A has a right to fish in B's pond, ys is called a similar right. Now y owner of a right of way or Common has an interest in y soil. If A has a right to pasture his beasts on y land of B, he has not a sliver of interest in y soil or land — but a more right to herbage on y land — 2 Bo 32.

As to y right of fishing on another land — y rule is yt in case it is a navigable river or arm of y sea, y right of y soil or y bed of y river belongs to y king, "prima facie". But y right of fishing is common to all y citizens of y state, but in rivers not navigable the right of fishing is exclusively in y proprietors adjoining, or those who own soil y banks of y River. 4 Bov 67a. 4. Doug 425. Falke 357. 4 Bo 437. 2. Bet R 472. 1. Comri Rec 382. 514. 1. Comri Rec 382. 510.
All navigable rivers are called arms of y Sea, as well as harbours, bays, &c. In navigable rivers, y land belonged to y King or State. But y right of soil as well as exclusive right of fishing in certain sections of all our large rivers—But no person can have an exclusive right except by Grant. The fact that an individual owns y lands of a navigable river does not entitle him to the exclusive right of fishing. Nor of y Soil. It belongs to y State for y benefit of individuals. 5 Co. 107. 2 D. & C. 472. 1. Comm. 35, 7, 5, 10. Hardgrave Tract 12. Hale do jure of movos. 26. 7.

The same Rule exactly holds in relation to y Seashore, between y high and low water mark. I.e. y right of soil between y high and low water mark is "prima facie" in y King or State, but y right of fishing is in y citizen. In particular individuals have a grant exclusively to themselves. Individuals have not only a right to lie and pass in yr boats, but they have a right to dig on y Shore for Shell fish. 2 B. & C. 72, 72. 5 Co. 107. Grey 326. 4 Burn 116. 4 Burn 216. 4. Com Dig. navigation a. 5 Day Pech. 22 Lackwood. Ct of Error. Nov. 1811.

The Soil is "prima facie" in y State, but it may be granted to any individuals by y State, but y Soil that be granted and y Soil only of common right of fishing remains. If after y right of soil, "y right of soil of ye part of y shore" all persons have a right to fish, mi. y individual shows, yt he has a grant of an exclusive right of fishing. But both may be granted and then they become private rights.

All navigable rivers are regarded as arms of y Sea; y same rules, yt apply to arms of y Sea, apply to navigable rivers. They are not y property of individuals any more y Sea. A river is called navigable, as far as y tide ebbs and flows, and as y tide by rising affects y
water, and from ye point, it ceases to be called a
navigable river as ye River Thames is called navigable
as far as London, tho' it is navigable for ships of
100 hun. tons 100 miles above, but above London, it
is not called navigable.

natural and not navigable.

With regard to national watercourses. Every adjoining
proprietor up and down has a right to use ye water
within his own bounds, for culinary and other domestic
purposes, and watering his beasts and ye right is absolute.

He has also a qualified right to use ye water for
other purposes, as to move machinery, but ye right he
has not to such an extent as to exhaust ye stream as
to deprive those below him of ye water, for culinary
and domestic purposes, and watering cattle.

2 Comt 584.

An adjoining proprietor may raise what machinery he
please, but he can't deprive others of water for these
domestic purposes.

Again ye proprietor may divert ye channel of a watercourse
for irrigation and other purposes, provided he returns ye
stream to its original channel before it reaches ye line of
owner below, and ye diminution by absorption is regarded
as no legal injury.

But he can't divert it so far as turn from ye land
of ye proprietor below, if he does an action will lie:

The law with regard to these private water courses
is daily becoming more important.

But a person may by Grant or 20 yrs adverse possession,
or in Comt 15, acquire a special right to divert ye
whole watercourse. This Rule proceeds upon ye Law of
prescription, yr when one has enjoyed a right by adverse
possession, for 20 yrs in Eng. or 15, in Comt, he is presumed
to have come lawfully in possession, and any busy
believe yet it was a legal right or not; they are to presume it.
If an adjoining proprietor below may acquire a right of
a person upper stream—f for it makes no difference—
Suppose A is a proprietor above and B below. B diverts
the whole of his water from its channel & A acquires 20 or
15 yrs. he can never claim it again. Here

Estates in Lands, Tenements & Hereditaments

An estate in land, tenements and hereditaments, is y interest
a tenant has in ym. Thus if A convey all his estate
in land, to B, and his heirs, all y interest he can possibly
grant, passes to B. The subject of conveyance is not y
soil, but y interest grantor has in y estate, 2 Blc. 103,
C Lec. 34 S 5-1. Sbc 44.

The word estate, thn "Prima facie" signifies interest in ym land—but sometimes it is used to express y property in which one has
an interest. Thus if one uses y word "estate in a devise,
it is his intention to denote y land itself and not y whole
of his interest in y land. 2 Blc 609. 37 Blm 335. 3 Mil
414. 1 Sbc 413. 14.

The quantity of interest a tenant has is ascertained by
its duration and extent; and hence y primary distinction
of estates into those of freehold and those less yn freehold.
2 Blc 103.4.

A freehold estate is one to y conveyance of wh livery of
feud is necessary by y law. Now in tenants of an
incorporal nature, there can be no such thing as a
livery of feud. But as to things incorporeal, there
livery of feud must be what is deemed equivalent to livery of feud.
it is now denoted in y thing incorporeal. 2 Blc 104. C Lec 57. Section
in Eng. for feu.

And Estates to y transfer of wh livery of feud is
necessary, are Estates of Inheritance, for Life or
or Per auter, when y estate is for y life of another. An estate for Life means y life of y Tenant, when it is for y life another, he is called Per auter autre.

An Estate of Freehold is an Estate of Inheritance, or an estate not of Inheritance. The former are again divided into Estates of inheritance absolute, or Fee Simple, and Inheritance limited, one species of which is called Seelid. 2 Bk 104.

An absolute inheritance is what is called an Estate in Fee Simple, and yt is an Estate in Land, Tenants and Heirapparants, who are holder to him, and heirs forever, generally and absolutely, without respect to any particular heirs. 1 Bk 8. 1.

2 Bk 104. 6.

The term fee has originally y same meaning as fued or sief, and in its original sense is taken in contradistinction to Allodium. The latter term signifies an estate not one has in his right and holds of no superior, or who holds under no one, without paying or owing any rent or service to any superior or Landlord, but of which he has y absolute and direct dominion in his own demesne...

Fee in its original sense is an estate held of some superior, in whom y ultimate right of y estate is. So yt on his death, it reverts or escheats to his superior or landlord. It is held by performing service. But when land is held by an allodial title, there is no such thing as an Escheat or Reversion.

All lands in Fee are held by a title strictly feudal and by y feudal law, y King is deemed to be y ultimate proprietor of all y land in his kingdom. the subjects can only hold particular estates on certain conditions of rendering their service. On on y subjects death the heir is entitled to it; or if y successor cant be found or ascertained, y land reverts to y King. 1 Bk 104. 5. 2 Bk 48.

In Commt y title of land to one and his heirs is declared.
to be alodial. The St of Comt is, yt an Estate in fee simple shall be alodial, yt is a legal absurdity or incongruity. By another if y owner of land dies, and by another, if y owner of land dies and no other owner or heir can be found, it shall belong to y State.

A fee is y highest estate any Eng Subject can have, no Eng Subject can have an alodial term. He holds of a Ford. Hence y highest estate an Englishman can have, in these terms, "that he is seized in his demesne as of fee." But his demesne is not absolute, for he holds of a Superior. In pleading, y tenant alleges, yt he was seized in his demesne as of fee—1 Pkt 105.

But y word fee is now seldom used in its original sense. It is now usually used to denote a continuance of or duration of an estate, or quantity of interest. 2 Pkt 106.

The word fee then in its present acceptation signifies an estate of inheritance, without reference to y particular Tenure and when y term is used simply without any adjunct, or has y adjunct simple annexed to it, it is used in contradistinction to a fee conditional at law or a fee tail by y it.

The word fee denotes an absolute inheritance, with condition, restriction or limitation to particular heirs, but when words are added, they make a conditional estate. 2 Pkt 906.

A fee in yd sense may be held in a hereditament, corporeal, or incorporeal, but it can be held only in a hereditament, for there can be no such thing as a fee in mere chattels, nor in y case of an heirloom—it ned be an absurdity in way of a man has an fee in goods, moves, and merchandise—2 Pkt 10. 1 Pkt 106. 7.

The fee simple of lands is regularly and no doubt always vested in some person, 1.e. it cant for a moment be in abeyance, or expectation.

An estate may be so limited as to take effect in future, but y right cant be in no person and nowhere. 2 Pkt 105.
There are, however, some qualifications to ye Rule, several inferior estates may be carved out of ye fee simple—Thus if one devise ye fee simple, leases ye land to A for life, remainder to B, for life, ye fee simple remains in lessor and his heirs—So if an estate is granted to A for years, with remainder to B for life, with remainder to C in tail, ye fee simple remains in ye grantor, and his right of possession is to cease till ye estates carved out are expired—This—

According to ye law, and some others, an estate may be in abeyance—Thus if a grant is made to A for life, with remainder in abeyance to ye heirs of B, B being alive, ye estate is not vested but in abeyance till B dies—For until B dies, it can't be known who his heirs will be—The present presumptive heir may die before B, while B is living he has no heirs—and here according to ye law and others ye fee simple passes out of ye grantor, and remains in possession till B's death—2 Bk 107—

But ye law is not so law, for ye fee simple does not pass out of ye grantor, but remains in him, but remains in him till B has heirs, and if B dies leaving an heir, ye estate in Remainder vests in fee simple in ye heir—Fearn 275—65—67—513—Carlyle 262—

So also if a grant is made to a Sole Corporation, as to ye Parish of a Church and his successors—ye inheritance according to ye above authorities, is in abeyance—Litt 2 Bk 46—2 Bk 107—In I conceive ye to be incorrect, for what does rest in ye present grantee, remains in ye grantor till it vests in ye remainder man or successor, and so in each successor for life—

As successor after induction may recover all ye interest and rights not have accrued from ye death of A, till his induction—This can not be if ye estate was in abeyance—The estate is given in trust for next successor or incumbent—2 Bk 109—See Fearn's ye best treatise extant.
To pass a fee or heridiatant of any kind kind, y words, "heirs" is generally indispensable. the in a Grant to a Sole corporation, y word successor is substituted for "heirs", and answer y same purpose. Therefore if land or an estate is granted to A forever, he has an estate for life, and if granted to A and his assigns, he has only a life estate.

The word land signifies no quantity of interest, but y subject matter only. It is necessary to add y word, heirs to denote y quantity of interest; and y word heir alone is sufficient to pass a fee simple, witht any word of perpetuity as to his heirs forever. A grant to A and his heirs is as good as a grant to A and his heirs forever. 2 De 561, 101.

In creating a fee simple by a devise in will, it is not necessary to use y words, heirs. If devise are not to conveyance, but a more liberal rule prevails, for y law presumes, if a man in making his last will, can't have leisure to make a formal deliberate and technical conveyance, as is Law conveyance. For ye mode of conveyance is established by St. A devise of all one's estate is considered as a devise of all one's interest. Comp 657. 2 De 108.

So a devise to A forever, or to A and his assigns forever, carries a fee simple, but not so in a deed. In a deed, these words will convey an estate for life only.

In devises y intention governs when manifest, this not technically express. The words of perpetuity satisfy, y testator's intention. Doug 322. 1 De 672. 4 Sum 574. Exem 113. 2 De 381. 168.

But a devise to A and his assigns without y words forever, or any word of perpetuity, carries only an estate for life, for it don't appear yt y testator intended any more. Plead. If one devises thus: "I give to A all my estate," when y testator has a fee simple, y word estate passes a fee simple. Because y word estate denotes y interest, y testator has.
But if I say, I give all my land to 1, it passes only in Estate for life. Land is only descriptive of \( y \) Subject matter. Comp. 639 & 740 412 - 2 Sel. 637, 14 Do 923, 5 Do 522, 6 Sel. 24, 67, 502 - 1. (B. 376 323, Doug. 734

Some have taken a distinction between a devise of all my estates generally, and a devise of all my estates in such a place — holding the latter is only descriptive of \( y \) Subject matter and shows \( y \) Testator meant only his land — Comp. 366. But \( y \) is not supported by authority. Whether \( y \) form is either way, \( y \) whole interest passes and no real estate except for Simple, can be devised. Tenant can't be devised. Qua \( y \) testator has no further interest in it. 1 Th. 411 - 2 ALK 37 1. Res. 228, 2 Do 614 2 P. mil. 524, Comp. 355

It is immaterial what words are used in a devise, if \( y \) manifest intention is, to pass a fee simple. Thus a devise in \( y \) form, I give all my estate personal and real — it passes a fee simple in \( y \) real property and an absolute title to the personal property — Comp. 299, 1 East 33 8 3 Do 576, 2 Milb. 343. So where an owner in Fee Simple, says, I devise to A all I am worth, it passes a fee simple in \( y \) fee simple lands.

It has been held, by some, \( y \) fee word hereditament in a devise "et vice versam" carries a fee. But by \( y \) I suppose hereditament implies free inheritance — but \( y \) conveys only a life estate. 5 Th. 558, 3 Do 556 6. Do 175 - 8. Do 497, Ralk. 289, 1 Bret. P. 65.

"All my property," in a devise, passes prima facie a fee simple, also property means the same thing as interest or estate. 1 Milb. 231. And even the word legacy has been held to signify real property in a devise and convey a fee simple, when from other parts of \( y \) instrument, when from other parts of \( y \) instrument, an intention to convey a fee simple, appears. Doug. 37 - 1 Burr 268, 1. P. W. 182 - 5 Th. 576 - 1 East 37 - note 9 37 P 715.
and a devise of land, y devise paying a certain sum out of y profits, passes only an estate for life. Here y devise ceaseth to be a loser. For y condition doth oblige him to pay more yn y profits will enable him to pay. 6. Co 16. Ch. 187. 2 N R. 244

A devise of land of a given annual value, y devise paying an annuity less yn y annual value, passes an estate for life only.

Casa qua supera—Seems if y annuity was greater yn y value. 6. Co 16. 5 R 13. 3 Bur. 15 23. 1618. 23. 2 R 341.

a devise of rents and profits of land, is in effect y same as a devise of land itself. The rents and profits constituting y whole value of lands. 5 A 228. 1 Equity Cas. 322. 52 Va. 377.

How far introductory words in a devise operate to carry a fee as to all my worldly estate— I dispose of y same as follows. Such words are not "per dec. to carry a fee" 5 R 563. 13. 14. 3 Bur. 1625. Co 189. 297. 306. 669. 3 P 124. 294. 57 15 75a. 75 8. 7 R 64. 67. 1 R 10. T 563. 2. 1 R. 343. 4.

A will attested by 3 witnesses is void statutes to show an intention to pass a fee. 2 M R. 116. 1 East 97. 2 M R. 220.

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Operation of law. 2 Bc 105, 354.7

In grants of land to a sole corporation, the words "heirs" is not necessary or proper, for purpose of passing a fee. Successors supply the place of heirs. The word "heirs" may have the effect of depriving an estate from a corporation, and making it a private property of an individual. 2 Bc 105.

And in a grant to a corporation aggregate, neither "heirs" nor successors is necessary. For the such a grant is strictly a corporation only for life, it is equivalent to a grant of fee. Since an aggregate may die as a corporation, a sole corporation may die as a person.

So of a grant to y king, for in judgment of law, he never dies. Besides his prerogative depends on y gift. 2Bc 109, 1. So 249.

So doubtless of a grant of land to a Sovereign State. Independence of any sovereign prerogative is as an aggregate body politic - like a particular corporation aggregate. Can there be in such a grant any broader words of limitation? I now I conceive a grant to y heirs and successors of a State not be unlimited.

Heirs is generally a word of limitation, not of description - or purchase. 12. exposition of y quantity of interest - granted or given.

Heirs limited to A for life, remainder to his heirs. A takes a life interest.


So of to A for life, remainder to B for life - remainder to y heirs of A - A takes a fee subject to y intermediate remainder - Sew. 21 to 31. 42-6. 79. 52-90. a. 2. 101. 112. 1. 125.


The interest called a remainder in both cases, vest immediately. It has descent in y ancestor - in y former case it vests in possession at y creation. In y latter, it is not executed, or vested in possession. But y titles after y determination of y intermediate remainder - "Sew. 21-5." Eng 10 has decided same.

Raymo 33. 2

So of y word "heirs" of y body "mutatis mutandis" they are not used as description "person." But are descriptive of y quantity.
of my quantity of interest - They convey an Estate Tail - first
Heirs being regularly a word of limitation - a devise to y heirs of
A - conveys no estate, ni d dies before y testator, it is a
contingent executor, interest. It must take effect, if at all on
y testator's death. But if it is alive at y time, there is no heir
Rome est teres revertit - Cow 313, 4, 2 bent 313, Paym 332.

But of from other words, it appears yt y
word heirs' was used as a word of purchase or description - y heirs,
or heir apparent, will take as purchasers. As devise to y heirs of
A new living - Scamn 123 (Devises 81) Paym 330, 2 bent 313,
2. BCR. 1011. 2. Brom 1100 - The heir apparent takes a fee,
2 Bent 313 - 1 Pontaine 421.

So a devise to A for life, remainder to y heirs of B, here y word
heirs' is a word of purchase - and a fee simple passes to y heirs
of B. Where a limitation is to heirs, and it is construed as a word
of purchase, it contains a fee simple of course - In a deed, y
word, heirs is never regarded as a word of purchase. But
it is taken in its technical sense as a word of limitation.

Note y s distinction - yt of an Estate of tenchold is limited to an
ancestor for life, with remainder to his heirs, either directly or indirectly,
medically or immediately, the ancestor takes a fee simple, and y word
heirs is a word of limitation . But where y Estate is limited to
A for life, remainder to the heirs of B, it is a word of purchase
since y heirs of B cant inherit from A. as the first rule, some
authorities on y page - 2 Bent 313.

An Estate given to any one and his heirs can't be qualified
by an abridgment of any of its legal qualities - As yt it shall not
descend be devised - or aliened - Co Litt 13, 3 Tde 61 drag 329

I1. Limited fees are such estates of inheritance as are eloged
with condition or qualifications of any sort. 2 BC 102.
There are 2 kinds - 1°. qualified or base fee, 2. fees conditional at C.D., most of wh in consequence of St. "de donis" have become Estates tail - 2 Bc. 109.

II a base fee is one, not has a qualification annexed, and must determine when that qualification are at an end - 2 Bc. 209.

Base for as a Grant to a and his heirs, tenants of y Manor of Sale. Moreover are out of y heirs cease to be tenants of Sale, y grant is defeated. 2 Bc. of use - 109. Co. Litt. 27.

III a fee conditional at C.D. is a fee restrained to some particular heirs of y Grantor - as to y heir of his body, or y heirs male of his body - 2 Bc. 109. It is called conditional, not by reason of y condition exposed or inflicted in y Grant, yt yt y Donee die or act such heirs, y land shd revert to y Donor, 2 Bc. 109. Gow 241.

But if y Donee had any issue - y Estate was considered as absolute by y performance of y condition 1E for 3 purposes - 1. to enable him to alien 2. to subject y land to forfeiture for his treason - 3. to enable him to charge and enumber y land, so as to bind his issue - 2 Bc 3. Co. Litt 19. 2 Instor 338. 4.

But if y Donee did not alien, and his issue died before him, y land on his death reverted to y Donor. For it cd not by y terms of y Grant, descend to any other yt y "heirs" of his body. 2 Bc. 111. 110.

If he left issue, the fee become absolute in ym - 2 Bc. 110. In consequence of y fist on aforesaid construction of these grants, y St. Met title 2. (13. Ed. 1.) called y St. "de donis" conditionables - enacting yt yt y will of y Donor shall be observed - and yt y end tenants shall at all events go to y issue - if any - and yt not revert to y donor. 2 Bc. 112.

In y construction of yo St. y Judges held, yt yt caste of issue and was no performance of y condition. But they divided y Estate into 2 parts - viz a new kind of particular Estate called Seatal vesta in y Donee - and y ultimate fee simple expectant
In determination of fee tail, vested in ye donee, whose latter is called a donation, and thus ye title converted into fee tail, 2 Bk 112.

"There is no remainder after a fee conditional," is considered as a Tenancy in condition, if ye donee have issue — 2 Bk 117. 1 Bk 112, n. 1. Brown's Ch. 385.

New Estates in Tractate originated in y it is done, Lit. 6, 13, 2 Bk 112. The only words in y it doth designate y subjects of y species of Estates, is "tenancy," which includes all corporeal, hereditaments, and all incorporeal, not vannous of y reallty, as Rent...


But an annuity not charges y person only and not y land of y Grantor canst not be entailed — it is not a tenant, 2 Bk 113, Co Lit. 14. a. 1. Do of offices not regard'y personality only — 2 Bk 113.

An annuity then if granted to a one and y heirs of his body, is a fee conditional at C.Law 2 Bk 113, Co Lit. 19. 30., alienable post issue born and admitting of no remainder, as Grant of a sum of money annually to a and y heirs of his body — 2 Bk 170. 1 Bk Ch. 385.

A mere chattel canst not be entailed — nor can y grant of it to one and y heirs of his body, create a fee conditional — Such a grant vests y same unto entire with y entire and absolute interest — and admits of no remainder — Such things being moveable, transient, and of themselves perishable — are not fit subjects of inemboditated interest — Even a life Estate includes y whole interest in ye annuity at C.L. 2 Bk 113, notes 174. Co Lit. 19. 1. Bk Ch. 274. 2 Bk 378.

Bow Dec. 243. 10 C.76. Feni 304. 5. 342. 3 Ap Liff 257. 8 Co 95.

But by words, ork in y limitation of real Estate not create an Estate Tail by implication — a remainder in a personal chattel may be limited even after a life Estate, by way of Executory devise — provided y contingency on wht it depends, if upon any happen within y time prescribed by law — as to A. and if he 359 die without issue living — A. focus mot. 2 Bk Ch. 257. Feni 309.
1. Plow. 663. Executory Devises. 22. 1 Stbk. 873. 1 B 973. 375.

"The words "if he die without issue," are construed less strictly in

all limitation of personal or real estate, that used but once in a

some will and apliced to both kinds of property. 1 B1 115. 432.

5.36. 364.

And even express words of entail may by other words be so

obtained, if a subsequent limitation of a Chattel interest will be
good by way of executory devises, as Lease of a Term for yrs

to A and y heirs of his body, and if he die without issue living

then C. Sexne 365. 351. 350. Park 225. 1 B1 115. 432.

720 Sec. Devises. 332. Executory devises.

An estate tail, (at Supra) may in a devise be created by implication

as a devise to A. and if he die without issue - (not so in a deed. 9 B 973. 331.


"So of a devise to A and his heirs, forever, and if he die without

heirs of his body, to B. A takes an Estate Tail. Sexne 170

517. 12. 7 Pk 373.

So if y words were if he die without issue, heirs. Cro 324.

3 Pk 145. 6. 8 Pk 5. 211. 5 Pk 357. Devises 90. 92.

Proof of the remainder is to a collateral heir of first

devise. Cro 324. 2 Pk 357. 358.

For y species of an Estate Tail see Pk 115. 49.

General and Special, Tail Male - General Tail Male. General

Tail Male - Female - General Tail Male Special - General Tail

Male Special - Litt 8, 14, 56. 26. 89.

In case of Tail Male, y descent must be deduced wholly

by heirs male and e conversa. Thus in case of an Entail Male -

neither female issue nor their issue can inherit.

As the word "heirs" is necessary to create a fee by deed, so y word body, or some other word of procreation, is necessary to create a fealty by deed. 2 Kc. 115, 5. Le Litt. 20 2 Yk. 381. If then either words of inheritance or words of procreation are omitted in a grant, a fealty will not pass, as Grant to A and y issue of his body, or seed to A or children, or offspring, an estate for life only.

Po Litt. 20.

Contra. A grant to A and his heirs male or heirs female passes a fee simple, and not a fealty, than being no words of procreation to make it a fealty, and a limitation to one's general heirs, &c. 36, not by its terms create an Estate unknown to y law. Post 24 2 Pk. 115 Litt Dec. 81. Le Litt. 27 5 Yk 338.

The words are taken most strongly as y Grantor and y word Male is rejected. The limitation strictly as if it was male to A and his heirs 2 Pk. 121. Le Litt. 36.

But a grant in these words of y king is void, it creates no estate, for as vs him y word male cant be rejected. 2 Pk. 121. the reason male cant be neither fee simple nor fealty and y law dont allow no new species of Estate 5 Yk 338.

The same words in a devise create a fealty, y intention may be inferred from any words. Doug 322 2 Pk. 381. 5 Yk 338. 2 Pk 115 Kelly 175. And by devise an estate tail may be created without y word heirs, for even a fee simple limited descendant, may be created without y word heirs by devise to A and his descend to A and his posterity, such a limitation in a deed not give A but an estate for life for want of words of collateral inheritance 2 Pk 115. 381 1 Pk. 447.

Theobald.

So of a devise to A and his children, so to A and his issue, the having more (at first) for y intent is yt they shall take, but they cant take immediately quia non in esse
Nor by way of remainder; for ye may be so by intent, ye devise being in immediate - A ergo takes an estate tail accidible - on his linial heirs - 6 Co. 17. a - 2 Ch. 115. note - Doug 306. 9. 10. 1. 6 Ch. 456. 60. 1. Brul. 219. 1. Bent 227. 1. 31. vide 4. LBC 294. 2. Born 549. 5.

But under a devise to A and his children, he having at ye time, he and they take together as pointants for life - 6. Co. 16. 6. 17. 6. Co. 649. 5. - Only ye children then in case will take A. - Cow 314. 1. 114. 1.

Here there are no words of limitation, nor is there any necessity for considering you in your capacity of heirs, for they are by ye supposition in case and can take now, and ye construction completely satisfies your words. - But after borne children can take nothing, for ye devise is construed in reference to ye state of things at ye time of making ye instrument -

If one devise to A and after his death to his children, he then having children, he clearly takes an estate for life - and they a remainder for life - For ye intent is, ye they did not take immediately and they can take by way of remainder, and no words of limitation are used to create the tail - and therefore they cannot take by descent 6. Co. 16. 8. Mod 97. 9. Co. 177. a - 2. Born 549. 5. Doug 306.

And his after born children will take with ye others. Cow 309. 114. quia ye devise not being immediate, is not construed to be defined to those in being at ye time ye limitation was made -

So if ye words were ye same, and ye had no children - at ye time, (for ye reason supra) fed here - for some have supposed ye rule to be different, that there appears no other reason for such a distinction - nor any other authority for it - Doug 415. 7. 6. Co. 17. a - Mod 220. 2. 1. Brul. 543.

And ye ye case, every child A has or may have will take vi remainder. 6. Co. 17 - 6. Cow 314.
If an estate be limited to A and the heirs female of his body, his female issue will inherit, tho' he has a son and y females are not heirs general. Co Lit 24, b. 27, b. n. n. n. Crouse 36.

But it was often held yt if an estate was limited to y heirs female of A, as purchasers, and A had a son, y daughter cd not take not being his heirs. Co Lit 4, c. 6, 27, B. n. a. But yd seems not to be law. Co Lit 16, n. 2 Burr 216.

The incidents to a tenancy in tail are:- 1. the tenant is not liable for waste, 2. y wife shall have dower in y estate, 3. y husband of y tenant shall have courtesy 4. y estate may be barred by a fine or recovery or by lineal warranty descending with y assety to y heir. 2 Pemb 115, 16. Co Lit 22, 6.

For fine and common recovery. 2 Pemb 365, 366.

For lineal warranty. 2 Pemb 303, 367.

Estate s tail were held to be barred for y first time, for common recovery. 13 Eliz. 4, and made forfeitable for treason by St 26, Hen 8. They were declared to be barred by fine by St 32, Hen 8. 2 Pemb 116, 178.

The tenant's right to levy a fine or suffer a recovery, is inseparable from an estate tail, and hence a condition in restraint of a right is void. 4 Pemb, 613, 4. 6 Pemb, 61.

By St of Comt, estates tail become absolute, 12, (wth fee simple) on y immediate issue of y first donee in tail. St Comt 43. as did Feud conditional at 6 L, ante 16.
Real Property.

Freeholds not of inheritance.

Freeholds not of inheritance are estates for life - 2 Bc 120.

These are either conventional, i.e., created by contract or act of the parties - or legal, being created by operation of law. Conventionals are always created by some species of common assent, as by deed, devise - 2 Bc 120.

Conventionals:

Estates for life (i.e., such as are created by deed, or devise) may be for one's own life, for life of another, or for more lives, or one as devise to A for his own life, or during his life, or during his life of A, B & C, in which case it continues till the death of the last survivor among the number.

Legal are always for life of tenant only and can't be for life of another - 2 Bc 120.

An estate for life of another is usually called per

auter vie - 2 Bc 120. Lit. 1. See. If limited to one and his heirs, and if the tenant die living, Cestui que vie - his heir takes it as Special Occupant. If not thus limited, it was open at A Law to a first occupant. Now by Pt 29, Car 2 - et 14, Geo 3, it is devisable. It's not devisable it goes to his personal representative. 2 Bc 250, 61 Co Litt 41. It's not devisable under Comt. Pt.

A life estate can't be conferred at C.L. without Livery of

Seisin - It being a freehold - 2 Bc 120. Lit. 42174.

A general grant not defining any specific estate, passes an

Estate for life, as a Grant of Blackacre is a, it can't pass a fee for want of words of inheritance. But it must be continued to be as large an Estate as words will bear, i.e., an Estate for life. 2 Bc 121. Co Litt 42 ante 19.

And a grant not defining any specific estate, as a grant
for term of your life generally passed an Estate for ye life of ye Grantor (if ye Grantor had authority to make such a grant) as being more beneficial to any estate for another’s life—[29] Bc 121, Co Litt 42–3 35.

And any estate, except an estate of inheritance at will or a servitude, not having no determined duration may last during ye tenant’s life, or a life estate as to a woman during widowhood, ie one till he shall marry or leave ye realm. [29] Bc 121, Co Litt 42–3 35.

An estate for ye tenant’s life is usually granted for ye term of his natural life, quia any estate for his life may generally be determined at law by his civil death—by entering a monastery—When this granted his civil death don’t determine his estate—[29] Bc 121, 2 Co 48, Co Litt 132. 1 Bc 132.

The incidents to a life Estate, not are applicable to legal as well as conventional, are principally, ye following.

1. The tenant is not restrained by contract or covenant or agreement, may of common right take upon ye land reasonable services ye necessary wood for ye use of furniture, ye house or farm, as to repair barns—ye to make and repair implements of husbandry and to keep hedges and fences in repair. These rights being deemed necessary to ye complete enjoyment of ye Estate. So, they are allowed of course as rights, they may be taken away by express agreement—[29] Bc 35–120, Co Litt 44–53, Post-41.

But not to cut timber (for other purposes) or to do other waste, this not being necessary to ye enjoyment of ye Estate—[29] Bc 122, Co Litt 53.

11. The tenant is not to be injured by any sudden determination of his estate, ni by his own act, hence if after sowing and before harvest he dies, his Executors shall have ye effects or Co. quia abitias dei nemini facit injuriam; Embleem[s] are ye profits or crops produced by annual labour.
as Corn. Grain of all kinds, Exculent Vegetables— but grass
and forage roth grow year after year, neither cultur nor
emblems. 2 Bk. 122, 3. Co. Litt. 255 or 55.

So if a Cestui Que Vie's die between time of sowing and
harvest, for same reason. The tenant shal have y emblems.
2 Bk. 123. So if y estate is determined by operation of
law, as where a lease is made to a husband and wife
during coverture and between sowing and harvest— y husband
or wife dies— or they are divorced— a “bundle matrimonii”
y husband has y emblems. 2 Salk. 123. 6 Bk. 116.

So ease is determined by y act of y tenant, as by forfeiture for
maste, or if a tenant during widowhood marry. 2 Bk. 123.
Co Litt 55. Post 415.

III. The undertenent or lessee of a tenant for life have
y same and even greater indulgenies. Thus if a tenant during
widowhood lease her estate and marries between sowing and
harvest— her lessee shall have y emblems.
It is not his act, he can’t prevent it. 2 Bk. 123. 4. Co
Litt 55. Co. Eliz. 461. 1 Hall 127.

And at Bk. 124. undertenent might on his lessei's death,
leave y premises and avoid y paymnt of all rent accrued
after y last day assigned for paymnt. Thus if y original
tenant she die at end of Eleven moneths, y tenant might
abandon y land and escape for an y paymnt of rent for y year.
Because by y Bk. 124. rent is not apportionable. But now by
Act 11. George 11. he is obliged to pay y executor—
pro rata. 2 Bk. 124. 11. Coke. 127.

If any tenant for life undertet for yrs and dies during
y term. y lease is determined by his death, unless previously
confirmed by y e reveres. 2 Bk. 325. Litt 7, 570, 3 Bk.
An Estate for life is forfeited by alienation in fee—2 Bk 125. Co Litt 27.
So by waste as well as by comission of treason or felony—Thus if you tenant for life make a deed of land in fee—or for any greater estate, then he has himself he forfeits all his interest. This is by condition not by law annexed to every such estate—Nor is there any need of any express condition.

Life Estates created by operation of law are of 3 kinds—

I. A tenant in tail after possibility of issue attainder—One to whom an Estate in Special tail has been limited and whose person from whose body was to spring an issue, dies either without issue or leaving issue who becomes attainder. 2 Bk 124. Litt 9. 32. In that case, the estate thus was originally a fee tail cannot possibly extend descend. 2 Bk 124.

It can be created only in y manner stated above, not by grant or any mode of conveyance. 2 Bk 125.

Hence if an Estate was limited to one and his wife, and heirs of their bodies, and they are divorced a circulus matrimonii neither of you has ye estate, but they are merely tenants for life for when there is such a divorce, ye children are deemed illegitimate. 2 Bk 125. Co Litt 28.

The law supposes ye possibility of issue always to exist till extinguished by ye death of one of ye parties. 2 Bk 125. Litt 9. 34. Co Litt 28.

The estate is of a mixed nature; partaking partly of an Estate Tail and partly of an Estate for life. The tenants is like a tenant for life, in ye, if he forfeits his estate, for alienating ye in fee. Like in a Tenant in Tail, as not being punishable for waste. 2 Bk 125. Co Litt 27. 8.

But if the cuts down timber, ye property on it is not his—it belongs to ye person living at ye time, who has ye first estate of inheritance in ye land. Suppose ye immediate remainder
to a vie fee or tail - he being in case is entitled to it. 
But suppose the first remainder to a, on her death, unborn, 
at his time, vi tail, remainder to b. (in esse) vi tail or vi fee. 
it is construed - D P. Mill 240. 1 P. 126, note. 
But in General ye is regarded in law as an estate for life 
only - Hence ye tenant may exchange with a tenant for life. 
1 P. 126, 323.

Tenant by ye Curtesy of England, is where a man 
marris a woman seized of an estate of inheritance, and has 
by her issue born capable of inheriting such estate, he surviving 
her, is tenant for life of ye land by ye curtesy. 1 P. 126.

Litt 1.35. 52.

So ye estate, there are 4 requisites necessary.
Co Litt 30.

1. as to marriage, ye must be legal, or as expressed in English 
canonical and legal - Secus there can be no legal right 
in ye husband. 2 P. 127. The husband is not entitled if 
his own wife is an idiot, there is no lawful marriage. 

2. Seisin of ye wife - This must be actual seisin at her 
death - 2 P. 128. 2 Lev. 26. Rull 157, 9. a bare right of 
possession in not taken. for in such a case, ye issue ed not 
Hence a husband is entitled to ye curtesy in a wife's 
remainder or reversion. 2 P. 127, 8. & Co. Litt 11. a b. 24. Supra.

The meaning of ye rule is, ye heir of an ancestor deceased, canst 
inherit ye land, but derive his title from a prior ancestor. But how 
it may be asked, as ye heir to inherit at all, when land has 
bekn purchased by a deceased ancestor, he takes it by a fee of 
indefinite antiquity. 2 P. 52.

There is an exception in some cases of incorporeal heridants - 
where seisin is impossible. 1 P. 127. Co Litt 29.
To understand the nature of a husband's estate in inheritance, it is important to note the specific legal provisions that govern these matters. In many jurisdictions, a husband's estate may be divided into two categories: personal and real property. Personal property typically includes items such as money, stocks, and other assets that are not tied to real estate. Real property, on the other hand, includes land and any improvements made to it.

In the case of a husband's estate, it is crucial to determine the exact nature and extent of the property to be inherited. This can be done through legal documents such as wills, trust agreements, and property deeds. It is also important to consider any debts or liabilities that may be associated with the estate, as these can affect the distribution of the inheritance.

In cases where a husband's estate is divided among multiple beneficiaries, the process can become complex. It is advisable to consult with a legal professional to ensure that all aspects of the inheritance are handled correctly and in accordance with the relevant laws and regulations.
She might have had might by possibility have inherited.

She is called tenant in dower. 2 Bk. 139.tit. 1 pt. 36.

1. She must have been actual wife of ye as after at his death to entitle her to dower. If divorced a vincula matrimonii, she can't be endorsed. 2 Bk. 139.

Treas. if divorced a mensa et thoro, for ye don't dissolve y marriage—y relation of husband and wife still continues tho such divorce exists. This causes a separation of ye person not a determination of y marriage relation. 2 Bk. 139. (2) Brit. 32.

If ye husband was an idiot, ye wife has no dower for there was no marriage in law. 2 Bk. 139. (2) Brit. 31. Him Contra.

Dower by ancient law was forfeited by ye husband's for treason or felony. This Rule was abrogated by 31 Edw. 6th. But by 35 Edw. 3d. Edw. 6th. Ye murders of traitors are in general barred of dower, tho ye wives of felons are not—2 Bk. 139.1.

In case of treason such as are forbidden by ye Constitution of ye U. S. indeed none can be made extending ye effect of ye treason beyond y traitor, and therefore ye wife and heir of a traitor can't be ousted of ye right by ye husband or ancestor treason—and in no state does forfeiture with forfeiture of property—Cons. U. S. art. 3. sec. 3. 1/2. This section applies to all y States.

 treason is civil must be treason to all and not any one—as such an alien can't be endorsed. ni by special Pt for at Bk.

no alien can't hold land. tho ye may be act of Legislature—2 Bk. 131. (2) Brit. 30. ni y quan Consort—2 Bk. 131.

This Rule has been modified by some of ye new Pt of y Union—Eng. Corporation. Alien.

Incorporealis. Alien.

Independent of these local Pt. if a Americain marry a French woman she can't hold real estate by dower, unless made capable by special Pt of y legislature. at Edw.
By the law of Dower must be 7 yrs old at time of y husband's death or she can't be endowed. 2 B1. 131.

The estate in such Power may be had, must be one, in any case, as y wife might have had. might by possibility have inherited as a Man, vised in fee and hereditary by his first wife, marry a second, y latter shall have dower, for if y issue of y first had died, yet of y second might have inherited. 2 B1. 131. 2 Litt. 36. 32.

But if one holds lands to him and his heirs of his body by his wife a, his wife b3 can't have dower, for her issue cd by no possibility inherit it. 2 B1. 131. 2 Litt. 53.

In law, to entitle y wife to dower, a dower in tail is davis, i.e. the right of present possession of y freehold. The reason is, it's not to y wife's Power to bring his title to actual dower, as it is in y husband, to do nothwithstanding y wife's land. See in case of Courtyard ante. "The reason of distinction is at supra. " 2 B1. 131. 2 Litt. 131.

A dower of y husband for any period of time, however short, is davis. "Powers of y same, gives him his estate, transfers it to another, as when land is granted to d by a fine and rendered back by y same fine. 2 B1. 132. 2 Litt. 615.

And in Eng of y husband, his y land during coverture is still subject to dower of y wife. 2 Litt. 32. 2 B1. 132.

The husband can by no sale a lot of his exclude y wife's right of dower. So by Act of Parliament. 38 Geo. II. 2 Litt. 367.

In same time she has dower only in those lands of which husband dies seized in fact or law. St Com. 239.

In Eng y wife is not entitled to dower in y husband's estate of redemption or mortgage in fee. 18. An such a mortgage of her husband before marriage considered as analogous to y full trust. 2 Litt. 294.
alter if made after marriage. Then indeed the case
sinnest be said to have power in Equity of redemption.
The rule will hold to y exclusion to y mortgagee. A
power in Equity of redemption will entitle him to recover only post-
redeeming of lands. Bow 32, 3, 2 Bosc. 133, 5.tit. 468, 1.ack
666. 3 PRMS 197, 1. Saltot 138, 1 att. 545, 1. Bo. 138, 161,
1. Bosc. 826 Contra 2. PRMS 196. 4

and yet y husband is entitled to curtesy in a parallel
case, of a mortgage of wifes land. ante 32.
The rule was established when y wife of y mortgagee was
supposed to be entitled to power— Bow 335, 6. Bosc. 158,
Or & 190. Hard. 466.

In Corn. ant A. 8, she is entitled to dower in y husbands

And in Eng y wife of y Mortorger has dower in y seventeen
respectant, or her husbands mortgage for life offer y
made before marriage— Bow Mort. 329, 21. 2 Corn. 453, Index
62. Bosc. Ch. 133.

A dower by common law must be assigned to y widow.
by y husbands heir or guardian, for he becomes tenant-of
whole by entry and y widow is in y nature of undertenant-
to y heir. 2. Bosc. 155, 6. Co. Lit. 34. 5.

If y heir or y guardian don't assign or assign it unfairly,
she has her remedy at law and if Sheriff is appointed to
assign it. 2 Bosc. 156. Co. Lit. 34. 5.

Dower is barred in Eng. 1. by deportment with an adult, dowry
i. y husband be valuations recovered to her. By Pr. Westminster and
1. 6. 2. By att. decided 3 by being an alien 4th by
retaining 5. act. 3. by being an alien 4th by
retaining 6. act. 3.

So by joining a husband in levying a fine or suffering a
a recovery of his lands during assizes. 2 P&c 127. 1

First ye wife is not barred of dower by ye husband, because
in ye country, N P, cons. art 3. 4co. 3. and s. 4.
The may be barred here as well as in Eng by Joisture
vide 5 P&c 137. 1. 9. Baron et tenem-

All Estates for life an legal or conventional are for
not only by reason belong to 3e at 6 & 7 but also by
waive land by alienation in fee in tail or for ye life
of another. 2 P&c 154. Child notes-

Estate 1st ym freehold-

These are of 3 kinds - for yrs. at will and by inference
2 P&c 140

1. An Estate for yrs. is an Estate in lands 3e os or a contract for a possession of land 3e os for some
determinate period, as for 20 yrs. So for one year-
Even an estate for 3 mts. or weeks, is classed among
estate for yrs. a year being the shortest term of time
The who creates y estate is called Lessor - the tenant
y devisee. 2 P&c 140. 6ilt 5. 9?

By a year in law is meant a calendar or solar year,
By a month at 6. is meant 30 in a lunar month
7c in A month-
To invoke mts mean 4.8 weeks, but a thebomather mean
a calendar year. x P&c 141. 6c 61.

And in general law takes no notice of y fracturing a day-
A day is generally considered as a punctual and indivisible point of time. 2 P&c 141. 6c 61. 15

Anciently y lessors interest might be defeated by a common
recovery, suffered by y tenant of y freehold. 5ec new by
Every estate must expire by its limitation, at a fixed period. Hence, it is an estate for years. Hence it is frequently called a term, its duration being limited. 2 Pbs. 143. Citt. 45. It's said it must have a certain beginning and certain end. Citt. 45. 2 Pbs. 143. This is true. But it must have a certain beginning of course, for if no day is named for its commencement, it begins from making or delivery of a lease. Thid. et Citt. 46.

And as to its duration, "id certum est quod potest reddi certum." Hence a lease for so many yrs, as P'sh. shall name is a good lease for yrs. If P'sh. named 4 yrs, 2 Pbs. 143. Citt. 35.

But a lease for so many yrs as P'sh. shall time is void, for its duration is not certain, nor capable of being made certain, while a lease continues. Thid. is not an Estate for life—its not an Estate for life—for there is no delivery of Feisin, and besides, it is not intendent. 2 Pbs. 143. Citt. 45.

But a lease for 20 yrs, if I live so long, is good, for there is a certain fixed period beyond which I can't pass, the it may determine sooner. This is indeed a lease for 20 yrs—defeasible. Post. 41. 2 Pbs. 143. Citt. 45.

Every lease for yrs is but a chattel interest. A lease for 1000 yrs is but a personal estate and inferior in law. This in reality not more valuable in a freehold for life. 3 Pbs. 143. Citt. 46.

Hence Every of Feisin is not necessary to create a transfer it. Of course it may be made to come into future. Thid. of a freehold—of yrs can be created only by present delivery of Feisin. Thid. of delivery of Feisin operate in present and transfer y estate immediately. 5 Citt. 94. 2 Pbs. 143. 4.

Hence a lessee for yrs is not said to be seised.
for leases is possession of a freehold or land itself, but possession
12. of its term or chattel interest, but not of its land. 6 & 36 144
Co. Ill. 46. For a word term is used to signify not
only the time or duration of its lease, but an estate or interest
of the lessor. Hence a term is sometimes said to expire before
the expiration of its time fixed. 2 Bk. 144.

Thus if a lease is made to A for 3 yrs and after its expiration, if term to B and at its expiry, it at the end of 1 yr,
B's remainder takes effect immediately. Some if its remainder
was limited after its expiration of 3 yrs. 2 Bk. 144.

A tenant for yrs may restrained by special agrément.
has the same estate as a tenant for life. 2 Bk. 144, 125,
135, Co. Ill. 45, ante 26.

As to a remainder, if an estate determine at a certain time,
fixed between sowing and harvest, he is not entitled to year
of lease from June 8th 1802 to June 8th 1803, for, he knows when
the lease, year of time of its expiration. 2 Bk. 149, Co. Ill. 146.
6. Some of its lease is defeasible on a setting away before its
expiration of its period limited, as lease for 20 yrs by a tenant
for life, who dies within its period. lease by a husband in
right of his wife, and a husband dies before its expiration. 105
of yrs for no, by lease was made. 2 Bk. 145, Co. Ill. 55, ante 35.

But if determined by a act of Lessee, by rule, as by forfeiture. 2 Bk. 145, Co. Ill. 55, Post 42.

II. An Estate at will is defined to be
one held at will of lessee, 18. determinable at his pleasure.
2 Bk. 145, Co. Ill. 146.

It is, however determinable at lessee's pleasure of either party.
2 Bk. 145, Co. Ill. 55. 2d day, 16th Dec, 1808, 5, 63.

The Lessee has no certain indefeasible estate for any period,
as by lessee may determine it when he pleases. But if the lessee
determine before time of sowing and harvest, the lessee has
has ye emblems. 2 Bk. 146. 6. Co Litt 56.

Pecus if determined by ye Lessee's act. 2 Bk. 146. Co Litt 58

under 27. 41. The estate may be determined by ye express declaration of ye lessor. yt ye lessee shall hold no longer, soth must be made

on ye land, or notice of it must be given to ye lessee. 2 Bk. 146.

Co Litt 55. 1. Rent 248.

So by ye lessee exercising any act of ownership, as entering and
cutting timber or by any act inconsistent with ye lessee's possession
and quiet enjoyment. 2 Bk. 146. Co Litt 55.

So by taking a distress and impounding on ye land. 2 Bk. 146.

Co Litt 57. So by his making a firement or lease to commence

immediately. 2 Bk. 146. 1. Boll 860. 2 Bk. 88.

So by ye lessee assignning his interest or committing waste.

2 Bk. 146. Co Litt 55.

So by ye death or outlawry of either party. 2 Bk. 146. Co Litt 52.

If ye lessee determine ye estate, ye lessee has ye right of reasonable
egress and ingress, to take away his effects, and ye right is

absolute. 2 Bk. 147. Litt 67.

If rent is payable quarterly, and ye lessee determine ye estate,

he is bound to pay ye rent at ye end of ye current quarter.

So then if ye lessee determine. 2 Bk. 147. halk 144. 1. Bk. 339.

But of late what were olim called estates at will, have been construceed as tenancies from year to year, so long

as both ye parties please, especially if an annual rent is reserved.

2 Bk. 147. & 1 Bk. 3. Esp 460. 2 Bk. 1173.

These are now so considered, in all cases it seems.


Tenants at will, are not

Tenants at will, now Tenants

Tenants at will, from ye to

Tenants from ye to ye.

The case of a Mortgagor in possession may be considered as from ye to

an exception to ye general Rule. for ye mortgagor in possession for

is quit, ye right of possession, quasi tenant at will, to ye

Mortgagor. But ye can't properly be exception, for he seem

never was a tenant at will {Mort 17.
The difference between these and strict tenancies at will, is, y former can't determine at y pleasure of either party nor at y end of y 2 or 3 year nor than with reasonable notice to y other, wh is generally determined to be half a year- 2 P.R. 147, 159, 163, 2 Bro. Ch. 159, 183, 3 P.R. 3, Esp. 460, 4, 2 P.R. 1436, 1 i. ibid. 64, 85, 4 ibid. 361.

Now tho' either of y parties, notice is still necessary (as, lessor dies—his heir if he not determined, y lease, must give notice—
2 P.R. 147, 9, note. 2 P.R. 159, 3 M. 89, 5, P.R. 47.)
So notice to y heir of y lessor, or executor of lessor, if is necessary. (in y last case) if y other party not determine
y lease—3 M. 25. 2 P.R. 147, n.

By y Eng't of frauds and perjuries, it is enacted y' shall lease for a longer term y' shall ensue only as leases at will. 1 P.R. 46, 672.

But these are held now to be tenancies from year to year.
Estate at will therefore strictly speaking can be hardly said to exist- 8, P.R. 3, 2 P.R. 145, 5, 2 P.R. 1460.
Bur. 1699. Notice to quit at any other time y' end of y year is not good. 1 P.R. 15.

If notice is given during the year it will have no effect whatever.

But y' time intended for quitting ai y notice will be presumed to be y' end of y year, or y contrary appears, as when y notice is merely to quit- 2 P.R. 147, 5, 1 P.R. 157.

If after notice by a landlord he receives rent owed after y' years end, he waives y' notice and confirms y' tenancy- 2 P.R. 148, 5, 6 P.R. 219, 1, 4 B. 311.

Till he can't prove notice is not good, for y year in wh it is given, it is not for y notice, it being presumed as to y latter year. The Tenant is never obliged ai y time, his holding over for prenotice to quit, is a tenant, the formal notice- quia haec boot after form notice to quit, is a tenant. The reason is he is a Tenant.
If there be a lease for a yr and yr lessee continues in possession after yr, with yr lessor's consent, he is considered as tenant for another yr. The consent is a tacit agreement to renew yr lease on yr original terms. 1 St c. 162, 1 Bow C. 135-155, Contract 45.

In yrs case notice is necessary (act Delfor) 1 Stc. 162.

Estates at Sufficient

If one come into possession of land by lawful title, and afterwards keep it without any title, he is called tenant at sufficient. If lease be 6 for a year and after yr end of yr, A continues to hold with leave, 2 Rob 150, 6 & 7.

So plain if a lease at will was made to A and yr lessor's death, lessor's death, A continues in possession with leave, he was tenant - don't make yt tenant from yr to yr, a tenant at sufficient.

But now Estates at will being treated as tenancies from yr to yr, if yr lessor dies, yr lessee is entitled to half a year's notice (in Eng) to quit - 2 Rob 150.

This will be determined at any time by ye entry of ye true owner, but before entry he can't maintain possession.

If lessor dies ye tenant - for possession is presumed lawful, no lessee by some public act, as entry declares it to be unlawful Act 5 mod 384.

In Eng then ye landlord to recover possession, must actually enter and bring ejectment 2 Rob 157.

But 1 Geo 111. and 2 Geo 2 have nearly ended yr species of tenancy. If a lessee for a term certain hold over with leave, it is not necessary for ye landlord to give him any notice to quit - He is not a tenant from year to year, but in nature of a tenant for a term.
Estate in Possession, Reversion, and Remainder

Estate have been considered ante mithregard to y quantity of interest in y owner. They are now to be considered mithregard to y time of yr enjoyment. Estates under yr view of y subject are divided into Estates in possession and those in expectancy.

As between y disister and aunt, y divided is not reversion. II

Estate in possession. If Estate in possession there is no need of any definition, but as to all other. All y Estates before treated of are of yr character. By these a person is in possession, y divided here.

Expectancies are of 2 sorts. The created by y act of y person called a remainder and y other by act of law called a

These 2 particulars distinguish these from Estates in Expectancy.

II An Estate in remainder is one limited to take effect and after another estate in y same subject, is determined as Land granted by a tenant in fee to A for yrs and yrs of determination of y Estate to B & his heirs. Here takes a

An estate in remainder — A takes a particular estate for yrs after y expiration of yrs. B's estate in possession.

These interests are but one estate equal to one estate in fee only. They are only diff part of one whole, or of one inheritance, all yrs part being equal to yrs whole — 2 Pid. 241, 2 May 186.

Hence no remainder can be limited on a fee Simple — for a fee Simple absorbs yrs whole — interest yrs can exist in thing real. The tenant in fee has yr whole inheritance. The most proper word to create remainder, is y word remainder itself — Flow. 29.

Prid. has been very erroneous on yr Title. II To create a remainder there must be some particular need made with certain estate precedent to y estate in remainder. The former is
is called a particular estate. There may indeed be a future estate created without a particular estate proceeding, but it will not be a remainder, for a remainder is a relative term implying a final event of the thing is disposed of.

**Pll**. **PoW** 242.

An estate created to commence at a future time with any interest or estate, is then no remainder being not a vestige of any part of an interest disposed of. 

*But a freehold estate at **PoW** be created to commence hence, it is a future estate. It must take effect, i.e., vest immediately in possession, though not in remainder.* This is made necessary by **PoW**'s mode of not remainder possessing a freehold. For delivery of Seisin is necessary, and always operates in present.

**A freehold**

Exception in case of freehold rent. *Trac 434:* 18. if a rent can't begin. granted de novo. This a freehold is a rent in esse—can't vest at PoW, it must vest in future. be granted to commence in future.

The former being newly created, there can't be any present estate for right to bring any real action for it and delivery is not necessary.

**Another reason and yet another may be said.** Forms of object if pledge is to prevent freeholds being in abeyance (not void be to fetter inheritance) and yet there may always be a tenant to y spouse, in a real action, and one to answer feudal services.

A tenant to y spouse in a real action must be tenant to y freehold.

As if Tenant in fee cd grant it to commence 20 yrs hence with an intermediate freehold there need be no tenant to y spouse for yt period—ergo no such action cd be boot for it during yt period—for there can be no such thing as a real action for y freehold vested in possession and there was no mode of recovering a freehold at PoW.

Le ym by a real action, and But a real action can be boot (as no other, ym tenant of y freehold in possession. Of course if there is no present tenant of y freehold in
possessio there can be no action but during ut term to recover possession as a wrong done.

The meaning of y Rule as applied to y creation of estate in remainder is yt when a free hold remainder is to be created, y immediate free hold must pass & a free hold must pass immediately from y Grantor at y creation of this particular Estate.

Not yt y free hold remainder must necessarily pass at yr time, for in cases of contingent remainder, y free hold remainder don't pass at yr creation of y particular estate. Post yr.

Besides, Livy of Tisian witht a free hold cant pass, in its nature operates immediately or not at all, for it is act of giving present possession of a free hold.

This may be illustrated by 2 examples. Suppose a grant is made to A in fee, here Livy of Tisian necessarily gives immediate possession of free hold.

2. Suppose a grant is made to A for yr, remainder to B in fee, here present possession. For, Livy of Tisian must be given to A to support y remainder and yt is const. to be giving Tisian to B both being one estate & B is presently seized of his remainder.

It commences in Present, to be enjoyed in future.

He has a fee present forever night of future enjoyment.

But yt reason of y Rule has ceased to exist in a great measure.

Real actions being almost entirely cut of use, and in y Med remedy, ejectin, a tendt of y free hold not being necessary, and Livy of Tisian is now not necessary to pass a free hold.

A lease at will is not satis to support a remainder.

Ys is no thinner and precarious an Estate as not to be deemed part of y inheritance.

Besides, in y case of free hold, remainder, entry to make livy determins it—Live & how so, as y estate at will is to be created at y time of y livy.

If y particular estate is word in its creation, y remainder—
intended to be engrailed upon it, must fail; 18. remainder as such. If created by devise it may take effect as an executory devise. For there is no particular estate, Thus Suppose an Estate for life was limited to one not in Estee remainder in fee, the remainder in fee is void. 2 Nod. 415. 179. 2d. 2d. 167. 2d. 8. Post under a devise to one not in Estee, for life, remainder to another, y latit will make y land, the not as a remainder. Post 12. 3d. 6d. 2d. 167.

And in General if y particular estate, the good in its execution of devised poest, y remainder it is said, must fail, because as to poest remainder, we poested it in a way not avoids it by reason of volition. As an Estate limited to A for life, despicable on y breach of some condition, with remainder to B in fee, if A poests his estate by y non performance of y condition, and y Grantor enters for y breach of it, y remainder over is defeated and y estate vests in y Grantor, for post it is defeated, there is no particular estate. It takes y reason in poested remainder to be, yt if y Grantor enters for y breach of y condition avoids y particular estate ab initio and destroys y livery of Feier. Made 2 Nod. 180. 6d. Post. 155d. 171. 6d. 2d. 34. 44. 61. 241d.

The Rule seems to be laid down by Bk. too generally Post 18.

This Rule don't apply generally to poested remainder, it seems as Suppose an Estate limited to A for life with an conditional remainder in fee to B. and A poests y estate during life by an act of treason or surrenders it. There y forfeiture ensues to y remainder. It don't defeat but accelerates y remainder of B. and it takes effect immediately even during y life of A.

Tho as y remainder depends on y livery of Feier made to y particular tenant, A yft is defeated by y Grantor's entry for a condition broken, y remainder fails. Post 13. 2d. 7.
Sec. que, does not your rule suppose your particular estate to be avoided at initio?

The Rule as first laid down, was at first, perhaps, perhaps as

inherent. What then is true distinction? If, take one money by inference from acknowledged cases. In regard to vested

remainders, if your rule is, if your particular estate for life is defeated during your tenant life by any act which avoids it ab

initio; then your freeholder, limited when it, must fail, for it is then, as if it had never been any antecedent particular estate.

But when your life estate is defeated by any thing which does not avoid it ab initio, but merely terminates it from

your time of your act done, in such case your remainder is not

defeated but accelerated.

With regard to contingent remainders, your rule is.

II. Rule.

The Remainder must commence or pass out of your Grantor at your

time of creating your particular estate. Your absolute or contingent

right in remainder must be created at your time. As a

limitation is made for life, remainder unconditionally

in fee to B. Here A's remainder passes by warranty

of alienation to A - and is vested (in interest) immediately

I suppose a limitation to A for life, remainder to B in

fee on a certain contingency - as when he shall attain

age of 21. Here B's right to enjoy his estate, or your contingency

commences instantaneously. His his interest: don't vest till your

contingency happens - the interest thus limited to B in your last

case remains in your Grantor, enjoy till your contingency happens, and

don't lie in abeyance as Bob supposes - 2 Bob, 167...
Real Property. No. 3

A remainder cannot be limited on any estate already in existence before created. Such a limitation must be a grant of a remainder. Both must be created by the same instrument or act. Thus suppose A being seized in fee conveys to B an estate for life or use to C, and a month hence conveys all the residue of his estate to B. This limitation to C is not a remainder but a reversion. A remainder is a secondary interest limited on a particular estate created at the same time.

The remainder must vest in interest in the grantee during his continuance of the particular estate or co-tenant of the determinate interest. Thus it never takes effect as a remainder, quiet or particular estate determines at the time and the remainder cannot vest till another, then during the time, there is no particular estate but a remainder cannot exist one moment without a particular estate. As suppose a limitation to A for life, remainder to B in fee. The remainder vests in interest at the creation and in possession on the determination of the particular estate; again to A for life, remainder to the first-born son of B, or the birth of B's son (a living) it vests in interest and in possession on the expiration of A's life estate. To A and B for your joint lives, remainder in fee to y survivor, it vests in interest and possession on the death of either.

Contra. Suppose y remainder in fee is to B unborn and y particular tenant dies before B is born, it fails as a remainder. But such a limitation over by device may take effect as an executory devise. Post 30. 7. for being but an estate they must be in esse together. A support falters on his death, y particular estate ceases, ergo there can be no remainder. Post 27.

So if a grant is made to A for life remainder in fee to B to take effect 3 days after as death y remainder is void. In its creation. For during y interval there can be no particular estate from y very terms of y limitation. Post 25.anno 234.

On y last Rule chiefly y doctrine of contingent remainder is founded.
Remainders are of 2 kinds; vested and contingent.

A vested Estate is one of which there is a present fixed right of present or future enjoyment. An Estate vested in possession is one of which there is a right of present enjoyment. This is what is called an Estate in possession. An Estate vested in interest only is one of which there is a present fixed right of future enjoyment. If its description is a vested remainder.

Fearn 1.2.

A Contingent Estate is one not to accrue upon some future uncertain event, and of which there is no certain fixed right of present or future enjoyment, but only a contingent right of future enjoyment. Such is a contingent remainder. As to A for life remoter to B's unborn son or to B on his marriage.

If there is a contingent right, vested remainders are those by which a present interest passes in future enjoyment to a grantee to be enjoyed in future. The interest is vested.

A vested Estate is one which is vested in interest at the creation of the particular estate. It means an estate to be enjoyed.

By a vested Remainder then is meant one vested in interest, only for as soon as it vests in possession, it ceases to be a remainder and becomes an estate in possession.

Contingent or executory remainders are those by which no present, fixed interest passes to a remainder man, but which are to vest an interest upon a contingent or uncertain event. Fearn 2.38. As to A for life, remainder to B if he returns from Pindia before A's death, or remainder to A's first unborn son of A. 2 Co. 164; 1 T. 36 Co. 20; 3 T. 102 1712. 4. In each of these cases, your remainder vests in interest on B's return during A's life. In y former case it vests only subsequent birth of B's son during A's estate.

Walk 228.

4 Mod 282.
continuance of y particular Estate, it will rest in possession when yt Estate determines. But in each case if y remainder does not rest in interest, while y particular ESTATE continues, one as instanc yt it determines it can never rest in possession. if yt must fail, as if yt contingency does not happen til after yt determination of y particular Estate. And by y Estate, if y remainder were limited to y eldest son of even y particular tenant, his son's estate to y next at y time of his death, ed not take supposed not to be in estate. But yt estate is remedied in favour of posthumous children by y 11 15. And this enables children, in estate to y next at y time of y remainder, as of born in their father's lifetime. 2 Nokes 200. 2 Mod 282. 2 AB 9 174.

Talk 228.

A remainder to a person not in being must be limited to one, who may by common possibility be in estate at or before y determination of y particular ESTATE. Peace yt remainder is void unless yt is in its inception. If that an Estate is limited to A for life with B being himself in case, yt is a good contingent remainder, for B's dying before A is deemed but a common possibility. Potentia proungi-

Note: yt ys case, "heir" is a word of purchase & division, person, meaning a person who shall be y heir of B at his death.

But a remainder to y heirs of B, he being unborn, at Co. 84. 5 y time is void. The contingency is a remote possibility. & there must be 2 contingencies happen, first it suit a person 2 AB. 170 & B shall be born & secondly yt he shall also die during yt Robert 33, y continuance of y particular ESTATE, which makes it "potentia remotissima", a most improbable possibility.

So a remainder to A, y unborn son of B, is void, here are 2 possibilities, y one depending on yt other— for it ed never Co. 170. rest mi B shall have a son and thd name him A.

The remainder to y eldest son of A unborn is good. 2 AB. 170. Scarr. 77. 777.

A remainder limited upon y happening of something
unlawful in not good, of reason assigned why it is limited on a remote possibility. The reason's force is if it is opposed a good policy not prevents any person from acquiring a right through an unlawful act. Or as Prin. 1. a remainder to an unborn bastard, is void. The law bears hard on such children from consideration nearly public. Co. E. 309. & 2 Co. 51. Cases 195. Bk. 190.

A limitation on failure of limitation is not of course and necessarily contingent. Post 26. ante 6.

A Contingent remainder of freehold can't be limited on an estate last for freehold for to create a freeholds remainder a freehold must pass from the grantor at the creation of the estate, ante 41. and it must rest somewhere, but it can't rest in a remainder man, for no present interest passes to him, ante 4. ergo, it must rest in a particular tenant, hence by a limitation to A for his, remainder or contingency to B. For fee, y remainder to B is void. 2 Bk. 171. 1 Co. 130. Ray 101.

2 Vol. 149.

If a devise is made A to B for yr lives and y life of y survivor, but if B marries and has issue, then after A's death to B and his heirs and B dies without issue, to A and his heirs, A to B take a joint estate for life, with contingent remainders in fee to each by y alternation.

How defeated.

Contingent. Remainders may be defeated by determining y particular particular estate before y contingency, or y remainder rest is to happens. As death, alienation in fee, or surrender by y particular tenant before y contingency happens. 1 Co. 66. 135.

Laws 24 to 44. 48. 52. 54. 55. 62. 70. 72. 2 Law 39. 2 Bk. 11.

A Contingent remainder may be barred by fine or common recovery by y tenant for life, for as y particular estate is destroyed by y fine or recovery, y remainder depending upon it, being contingent, fails - ante 6.

As if y recovery is suffered to y use of himself. Park 334, for he hold y estate under y recovery, as not y estate he formerly held - that is annihilated. Focus of vestes.

1 Co. 66. Co E 630. Park 324. 2 Bk 171. n - 2 Mod. 186.
But determination of a particular tenant actual devis. before it expires, if he retains a right of entry, his remainder is future, for he is seized in law and his estate in course continues. As supposing a particular tenant is deceased and dies so, before his right of entry is barred, and the contingency happens between these events, the remainder is good. But if he was deceased before the contingency, the remainder is void. (16. 94. 12. Mod. 174. 9. 35. 3. 18. 66. 17.)

If the liability of contingent remainders to be defeated, arose solely from necessity of appointing trustees to preserve contingent remainders vested during a void and null to prevent destruction of the particular estate by forfeiture, as in any from a limitation to A for life, remainder to B during Y life of C, remainder to D. For, if a life forfeit, B's remainder could vest and continue till his death, when C of Born and take. (Bud. 318, 678, 68, 69, 70, 71. Stack 84, 87, 5, 96, 122, 62.)

The question as to remainder is vested or contingent depends upon the nature of the limitation. It is upon its being limited absolutely or on a contingency or on a probability or improbability of its actual taking effect in possessory. As suppose a grant is made to A. in tail, remainder to B for life, this is a vested remainder, not to be so the B at Y time when ever so old and the had a numerous posteriority, for it is limited absolutely on no contingency or condition. It is in A a present interest to be enjoyed in future.

So if a life is limited to A and the dies before heir of his body in B, y is a vested remainder, for if he dies B don't import a condition precedent to y arresting of B's remainder, but only of y quantity of y interest in A. It is paramount to limitation to A and y heir of his body.

It is a uncertainty an a remainder will ever vest (in interest) not an it will take effect in possessory, which renders a remainder contingent, thus tho' in a grant to A. (Bud. 14.)
The present capacity of taking effect in possession, if in possession were vacant, (y facts being deemed yu they are) as y universal opinion not distinguishes a vested remainder from a contingent one. Thus if a grant is made to A for life, remainder to B in tail, y remainder is vested (ut supra) quia if you suppose a forfeiture by A immediately after y grant, or yt his life were by any means determined during his own life, B or take possession of his remainder statim. But if y remainder was limited, in case B survives A, it is contingent quia that y particular State be forfeited, or determined in any manner during y life of A. B remainder cd not take effect in possession, since he is not to take, ni he survive A. Deeds 172.

If an Estate be limited A to 2 - with remainder in one event of yr 3 and in another Event to y other, these latter limitations are called cross remainders.

It has been sd yt cross remainders can't arise between more yr 2. The Rule is, yt when cross remainders are to be raised by implication between 2 only, y presumption is in favour of yr 1, y construction is in favour of yr 2. If there are more yr 1 more 2 - Ed. 665. Bacon 333.

But y presumption may be fore rebutted by circumstances of manifest intention either way.

I'd say d cross remainders can't be created by deed - this ant law. y Rule is, they can't be raised by implication in a deed, but must be expressly limited.

4 Bacon 333. 1 East 416.

In a devise they may be raised by implication as a devise to A et B for yr joint lives remainder to B in fee. It has been doubted if they both die without issue here A et B take cross remainder in tail by implication, for there is no such pass in future express limitation to yr issue. Seems if by deed.
There is a species of Expectancy not strictly a remainder, that of similar nature and not is called Executive Devise. 2 Bot. 172.

The Term Executive Devise is sometimes used to signify an interest limited, and sometimes to signify a disposition of manner, in which it is executed. 2 Bot. 172.

It's generally defined to be a future devise of a future estate, not take effect on the testator's death, but on some future contingency. This as a definition is clearly illegal — for it plainly includes a null contingent remainder, as executive devises. It's true, if an executive devise will answer your description — but a contingent remainder will answer your same description. A Remainder may be created as well by devise as by deed. 2 Bot. 172. 1 Eq. 33, 188. Frame 299.

The description now adopted is that an executive devise or bequest is such a limitation of a future estate, by will as by law admits in wills, but not in law conveyances, as deeds. This however is a description referring only to a collateral test. It can't be said if it is a logical description it describes it only by its characteristics.

3 Bot. 487. Law 234. Frame 297, 7, 8, 303. 2 Law 338.

It follows from your description, it is such a limitation of future interest, not be good by way of contingent remainder by deed — it is not an Executive devise, but a contingent remainder for executory devises are allowed wholly for giving effect to uncertain interest, not can't be made to take effect at

6 Bot. 299, 302. 2d 310, Douglas, 29-4 Mod. 258. If one devise to A for life, with remainder to B or 2 mod 212, on any future contingency, a limitation to B is not an executive devise — quia it might have been made by deed and have been good.

Executive Devices are of comparatively

mod, origin, they originated in y reign of Eliz. and were never anted fen heard of
But it may be asked, how ye new species of estate or remainders
were more old ever have grown - They are allowed merely out of indulgence
long before a Man's last will and testament, an indulgence and necessity
of the Exekutor devises extends to Goods, Sec. 250, 2 Bc, 173. Sec. 277, 2 Mo 221
Sec. 43.5. As regards y mode of its creation, an executor devise is made
from a contingent remainder in these particulars.

II. That by an executor devise a freehold may pass or
policies be created to commence in future, might a precedent
particular support arising from a particular State.

III. That by an executor devise a free Simpole or any other
state may be limited after a prior remainder on an future con-
tracting - This is more correct to say, one bract may be substituted
for another, for no 2 fee-simpole can exist at y same time.
Neither of these things can be done by deed or other. By law
assurances

III. By such a devise a remainder may be limited of a
chattel interest after a life state in y same subject.
This is impossible at law all these limitation in law
assurances are utterly void ab initio.

Sec. 401.-

418, 19, 28.

Talbot 44.

Dox 325, 476

m. l.

Both Contrary

12. Mod 128.

Sec. 401.
On what principle? At y testator's death a being before dead, yd limitation to B's unborn son, or at y limitation of a future interest, to B's unborn son, now to y different head.

The first Rule is, yt by way of executory devise a freehold may be created to commence in future, witht any particular State to support. Thud B may devise an estate to A in fee, to commence in any day of her marriage. Tho A was an infant and is a good executory devise. Now w't everbe not to be good by deed at all, quo a freehold to commence in future, witht a particular State cant be transferred withl livery of seisin. Wh always operates in present.

So a devise in fee to A (not having heirs) when he shall have heirs, is good as an executory devise and even if A at y death of y testator, A has no heir on B's death his heir at law will take y State. Now in y example I have given y precedent on y death of testator descends to his heir at law—able to be directed on B's death in favour of devisee whenever y contingency happens. 2 Mod.

Fermi 3034. 2Bc. 177. Patte 306. 39. 1 Equity case 108. 2Bc. 2B5. When y devise to y first unborn son of A and y testator died before he has a son, y estate descends statum to y testators heir.

But y moment a son is born, y testator's heir is statum divestore. 2Nill.


Second Rule—Tha by an executory devise a fee or some other State may on some future contingency be limited after a Prior feesimple, or one feesimple may be substituted for another or one tenant in fee simple may be substituted for another. Such a devise may be made to A and his heir, but if A shall die before y age of 21 to B and his heir. Such a limitations fall. 2 Mod. 289.

Laed is impossible for y first fee limits absolutely y whole interest there can possibly be in y land. The first life must be defeated by y 2nd. Tho y substitution of one feesimple for another.

Again if one devise to A and y heir, suppose yt if B pay such a sum to A by such a time, yt y land shall go to
to B and his heirs, y last limitation is a good devise to B tho' ye may be void in a deed — in y case now supposed 10. Mod 4.20 y 2° estate is not to take effect after y first express'd, but as a substitution —

Rule 30. That by an executor devise y remainder in a chattel interest after a life estate may be limited. This at C. D. is impossible for a disposition of a chattel for life is an absolute interest in it forever and a term for 1000 yea is leased for life, it conveys y whole term at C. D. 1st if at C. D one shall give a bill of sale of a 1st mess or other chattel for life, it will convey an absolute title. But if C. D. having a transfer for use, devise it to A for life, remains to B 3d after ad death will take y whole reversion interest of y term, and hold it in heir and his heirs till A expires. 1st Mod. 2389, 2 26. 174. 3d C. 30.

And such a limitation may be made not only in a term for yea but in any chattel right is not assignable as plate, jewels —

Chattel a distinction was taken between a bequest of y use of a chattel with remainder over, and y chattel itself this limitation with remainder over in ye former times held and was in ye latter — But ye distinction is now done away and both are good 1st C. D. 26. 174, 393, 3rd Team 164, 5th C. D. 324, 3rd Will 1, 8 C. 95.

A chattel interest may be limited to any number of persons —

All y remainder man

of a chattel must be in being successively for life with remainder over. Thus a chattel be in one owning interest may be limited to A for life, remainder to B for life — y life of first and so on to Z. 3d. But they must be lives in being or those who may succeed y ultimate remainder man — must be lives in Being —

The necessity of ye arises from y Rule. 2 26. 174.

Now being begging

Apprene y distinction. Rather between contingent remainder and exec.

—story devises relate to y mode of yr creation, rather yr nature of y Estate when created. Now y essential distinction

between and contingent remainder and executor devises is yt y former may be barred or defeated by a fine or recovery lev'd or suffered by y particular tenant. y latter can't be —

E3
Suppose yt B devises an Estate to A, and his heir, provision of his wife, and provision of B. If the wife be at the age of 21 yrs. it shall go to B, and his heir, and before B arrives at the age of 21, a forfeiture. This limitation is good and is not affected by y disposition of y particular estate. 

2 Mod. 173. Corr. 573. 1656. 12. 2 Mod. 185. 

And a limitation after a dying right issue. 173. 4. 2 Mod. 227. 

A dying right issue generally to a person in Essa for life only may be good as an executor device. For it must be by y terms of it take effect during his life, or not at all.

If one devises to A for life, remainder to B and his wife, provision of his wife having a son, and of a son (not infant), devise to B of a son (not infant) defeasible by estate, not as particular estate, but as an executor device. And in Court y words, if he die without issue have been construed according to y ordinary signification. A limitation in such an event may end be good as an executor device, it seems. 2 Mod. 230. 31.

An executor device limited in one, and of his body or issue, are the words of Court. yt made absolute feign in y immediate issue of y devisee additional. The rule of avoidance may not be fully applicable to cases arising in this case, the rule depends upon a great many circumstances.

Any limitation of a future estate by executor devise, or remainder, lending its perpetuity is void, as of land is devised to A for life, remainder to his unborn children and so on. y third limitation is void and all void follows. No limitation in such a form can be enforced further up to y unborn children of a person in Essa, for secus land might be made forever unalienable ni for one life. 1, Rick 207. 2 Mod. 174. 1656. 2 Mod. 320.

By a perpetuity is meant a perpetual succession of estates, out of inheritance, excepting y ultimate fee forever in absolute. As will however sometimes be subject to general devise under circumstances limitation in cases of ye kind according to y doctrine. 2 Mod. 320, as near as may be by giving y first unborn devices. Estate estate fail.
Where a contingent or other estate is devised over on a condition annexed to a preceding limitation and a preceding estate never takes effect, y contingent limitation takes place.

As suppose a devise to A for yrs remainder to his eldest son if he takes y testator's name and if not remainder to B to B. C. If y son did not comply with the condition B will take. If no son living for 4 T. 420 420 420 420. 

And if y eldest son failed the last limitation is a substitute for y preceding estate. The B they buy condition annexed to it is not a condition precedent 18 one and must happen to give effect to y last it is merely a condition subsequent. 

The last limitation is a vested remainder the devisee to B B for yrs. remainder to son in tail if he takes y testator's name he shall take in fee or on termination of As estate for yrs.

So in devise to A in tail and for want of issue to B. if A dies living y tester, B takes estate on y testator's death, when (when y devisee is consumed) there is no preceding estate y devisee being absolutely for yrs.

But it is not so if there is a succeeding estate made void through y remoteness of y contingency and y devisee of personal property to A and if he dies before y estate to B. remainder in contingency to B. C. can't take on failure of B. S. remainder, for as y limitation to B is too remote, ye to C is necessarily do.

So if y subsequent limitation are so made as to depend on y prior and y prior remainder takes effect y subsequent one must fail for it is then a contingent remainder which can never take effect if there is no particular estate. Thus suppose land devised to A in tail remainder to B in fee, if he attain age of 21. yrs. A dies post y testator's death but before B attains age of 21 B's remainder fails for where y will goes into operation y limitation of B's remainder depending on y prior estate is over.
Contingent remainders and executory devises are not transferable at law by deed, while they remain contingent, since a grant must be of a present interest upon a person; but once it a man can’t grant what he hasn’t got—But as soon as they become vested in interest they become transferable at law.

But they may be passed away at law (being of freehold by estoppel—10 by fine or recovery). But an executory devise can’t be barred. The person entitled must be a party to it fine, E30, in the case of an executory devise. The record is then a bar—Not only to a party but all claiming under him and in general to all persons.
If not a deed of land as a present interest with event of death, being a Grant, or devise by his heirs.

Do they may be released at law to y part owner of y land as y heirs of y devisee, a release being in y nature of a waiver, or abandonment of a right, or condition rather in a Grant—

2 Mod. 213, 1 lea, 4th, 11 Mod 152—

An assignment of such an interest is good in Cpy. It will be enforced as an agreement with Ct, for if it be an express agreement binding in Equity conscience, Equity has to peculiar jurisdiction over Grants and conveyances as such—

But y assignee must be of a valuable consideration, as for y assignee of a child—It will be enforced if purely voluntary—It must be at least for y consideration in y second degree—

1 lea 409, 2 Mod 373, 4 Mod 10, 2 Pitt 508. 1 T.R. 440.42—

Events happening after y execution of a devise, and before y consumption of it by y death of y testator, may as before stated vary y limitation from a remainder to an executory devise—

But events happening after devisee’s death, and generally have such an effect, for y will, has its operation from y event—

1 T.R. 44. 1 T.R. 401, 12, 20. Doug 326. 5. 476. 11—

Events of happening may however have y same effect, it seems (18, an event happening after y testator’s death) if there is a double contingency including a proviso for such event—

So yt a limitation not in one event has not happened, nd have been a remainder, may in another, not does happen, be construed as an executory devise—3 lea 243. 47. 1 T.R. 450, Doug 470—

A limitation in such cases is called a limitation upon a double contingency—

Or upon a contingency witht a double aspect, for its operation as an executory devise in one event is provided for by y terms of y limitation and such a limitation may be implied—

If y first limitation is an executory devise, there yt follow are of course, y same, and it is said where y first vests in possession, those yt follow vest in interest and become valid remainders—
As limitation is made to A in tail on any day of his marriage, the remainder is in fee. By remainder rests in interest on any day of his marriage. Sect. 447. But you don't mean to extend to all estates, as whereby subsequent limitation depends upon an event which has not happened, when a person one is vested in possession.

Suppose a devise is made to A in tail, proviso he attain his age of 21, remainder to B in fee, proviso he shall marry and A attain 21 before B is married, B's remainder vests, and cannot vest interest, till he marries. It don't then rest in interest when A as rests in possession.

Or suppose y last limitation to a person not in error, wheny first rests in possession.

Suppose y first limitation to be in possession (as a term for years) y second of a future contingent freehold. On failure of y second, an absolute limitation over. As in Smith 222, is not a last vested, this defensible.

**Estate in Reversion**

An estate in reversion is an estate left in y grantor to commence in possession after y determination of some particular estate granted by him. As tenant in fee grants a lease for life or yrs in tail, the residue of interest continues in him for neither of these estates exhaust y fee. 2 Mod 172. 2 Bl. 176. C. Lit 28. 22. B.

The reversion rests in y grantor without any reservation by act of law, for what he don't transfer, remains with him of course. Ibid. 3 Liz 4087.

A remainder can be created by deed or device, a remainder only by operation of law. 2 Mod 172. Hobart 30. C. Lit 22. B. 2 Bl. 175. Both are transferable as well at law as in Equity, when vested being estates in present to take effect in possession in future. 2 Bl. 175.

It seems, yt a contingent reversionary interest, as one to commence on y determination of a base fee, is not transferable. An in vested interest besides there can be no attorney.
So if a Reversioner who devise his reversionary interest on contingency the devisee cd not transfer by deed before y contingency happened.

If one grant an Estate for life or yrs, or in tail with remainder to himself, what be thus limited to himself as a remainder is a Reversion.

So if he grant to A for life, B3. reversion to B and his heirs B has a remainder.

And if Rent is reserved out of y life Estate witht expression witht appropriating it to any one by name— it accords to

Grantor and not to B, quo Rent is incident to y reversion.

Now Rent is reserved on a lease, it is incident to y reversion.

So by a general grant of a reversion, y rent will pass.

3 4. 0. 0. 7. 1. 2 A. 1. 3. 1. 2. A. 1. 7. 2. M. 1. 7. 3. 2 M. 1. 7. 4.

But tis not inseparable incident, for by y words of Rent, may be granted without y reversion and y reversion will not pass under a general grant of y Rent— for y reversion is y principle of Rent is but y incident and y incident passes by a General grant of y principle, yet it don't hold.

Tis a Rule of C Law. yt if one makes a lease, y reversion can't be granted away till y lessee enters— This is founded on y Gen Doctrine of Attornment— and since y necessity of attornment has ceased— y rule must also cease. By B 4. 5.

of Am. 11. Geo. 2. — The doctrine of attornment never was in ys dictionary— tis of feudal origin—

By attornment is meant is y accepting a new landlord by y tenant, for y relation of landlord and tenant can never be dissolved by y feudal law, by y act of y Landlord alone, nay not of y Tenant alone. Neither can substitute another for himself without y consent of y other. Co Litt 46. 1 Litt 1st at 8. 5. and

A Reversion may be granted by y Landlord, as if y grant

is of such a piece of land of which Grantor had y reversion—

So Co 17. Plun. 433. 2 Mod. 114.

By y C L. a free hold vested reversion cd not be granted
A devise of a Reversion may always even before the death of the Grantor, be a devise of any estate in fee, not being necessary to convey or transfer it. - 2 Mod. 174.

Perkins 5% 1. 2. 11. 14. 15. 16. 17. 

Litt. 15. 17. 3.

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Perkins 5% 1. 2. 11. 14. 15. 16. 17. 

Litt. 15. 17. 3.
But they must meet in one and the same person, and in one and the same right. Since there is no merger, for if a person is tenant for years in one right and purchases in another, and y last estate merged, others not be injured.

Suppose A has a reversion in his own right and particular state as term for you, as Executor of B. If y Estate for you were to merge in y Estate wh to holds in his own right, so much and be taken from y State of B.

So if he has y particular state in right of his wife, as if A a foretle is tenant for years and B a reversion claims her, y Estate is not merged. For if it were only death of wife her executor could have no control over it, and her creditors could be deprived of so much estate.


And if an Estate Tail and a reversion of fee meet in one person in one and the same right, there is no merger for a tenant in tail cannot destroy an estate in fee by fine or recovery.

Nor can be surrender.

So allow a merger might defeat his issue by the means in those only law requires for a purpose of baring yr rights. 2 Co. 68. 8 Co. 74. Co. Litt. 322. 2 Bk. 1778.

Estates upon Condition.

An Estate upon condition is one wh dependence upon some uncertain event, by wh it may be created, enlarged, or limited or defeated. Co. Litt. 393. 9 Bk. 152.

Estates upon condition are of 2 kinds.

An Estate upon Condition implies an Estate upon condition expressed, under of last an Estates holden in pledge.

2 Bk. 152.

I Estates upon condition imply an those to wh some condition is annexed from y nature and essence of Estate imply the not expressed as Grant of an office then y condition imply is. y a Grantor shall duly execute it and sees.

So it is a condition annexed to every estate, yf y owner shall do nothing incompatible with y estate to which he holds. Thus of a tenant for life or yf enfeoff a stranger in fee, his estate is forfeited.

If an estate upon condition expressed, is one wit which is annexed an express qualification, by which y estate is to commence, be enlarged, or defeated. Conditions of y kind are either precedent or subsequent. Proceedent are such as must happen or be performed, before y estate can vest or be enlarged. Co liti 201 2 Plb. 154.

Subsequent are those by which an estate already vested can be defeated. As an estate is granted to A on a certain rent or condition, yt if it is not paid, y grantor may enter and avoid y estate. This condition is subsequent. Co liti 83 25. 2 Plb. 154.

So as this head may be refused base fees or fees conditional.

at Co 2 Plb. 1577.

In y last case if y rent is not paid, y grantor can recover y estate at C. D, or he demand y rent on y day, condition imposing forfeiture not being favoured by y law. Co liti 201. 7 Plb. 117.

Co 18. 5. 52 40. Co liti 138 38.

There is a distinction between a condition expressed in deed and a limitation, and is called a condition in law. "So long as," "while," "until," are words of limitation. "Upon condition," "to yt" provided, are words of condition in deed. 10 Co 41. Liti 53 80. 3 Plb. 21. 2 Plb 155.

If qualification annexed is a limitation, for contingency's happening, y estate ceases immediately and of course without any act done by him who is rest in expectancy.

But if an estate is strictly on condition in deed, y law permits it to endure beyond y contingency, ni y grantor has heirs or assigns take advantage of y breach of y condition by entry or claim. Liti 55 47. 2 Plb. 125.

If however strict words of condition are annexed, still if on a breach of y condition, y estate is limited over to a 3rd person.
qualification is called a limitation, for if y qualification were
concluded as a condition, y estate cd be avoided only by y grantor or
his representa-tives. So if it were declared as a condition, y
remainder- might be defeated by y neglect, as Grant told or condition, y
be marry, with remainder, on failure to y
So a devise by (tutors) heir or (y) on condition, remainder over,
On a case contain a clause of y heir, may enter for own
bounty & rent, actual entry is not necessary the entitle y heir to
possess. The fictitious entry confessed by y deed in ejectment is sale-

Doxing 169

An express condition y lease of a term shall not assign, is
good, tho formerly doubted 6. T. R. 60. 61. 8. 2 P. 166.
By a lease is made to y, his executors, with several y his
executors shall not assign, it is good, since executors take only
for y purpose of satisfying claims as y estate.

2 P. 140. 425.
If one holding an estate for life, or y, on condition, y shall
not assign, attempts to assign by a deed, &c., is absolute
void for want of necessity, y estate is not forfeited, for there is
no assignee, and y go no breach, by contain. 5 T. R. 64. 641.
A proviso, if it shall return to y lessor, if y lessor, prove
or become a bankrupt, is good as y assignee.

So a proviso, if it shall not be taken in execution by
lessor, is good—quid y lessor has a right to determine who shall
hold his estate.

If an express condition subsequent annulled as y estate, is
impossible at y creation, y estate is absolute, as y tenant, for y
estate is vested and y not is merely void, can have no
legal effect; at last of course devise y estate. As Grant—
to be void, ni lessee marry a dead person.

So if it become impossible, by act of God, or lessor, y estate
becomes absolute. As condition y grantor marry a woman—
up, a person who dies within y time, or where y for-
himself marry— as by y first case to sez actis dec, y Marcin
actus dei non iniuriet eminendi - as to y second y grantor cant take advantage of an impossibility created by himself.

So if y condition be no law or refugiant to y nature of y estate, y condition is void. y estate absolute, as a condition y y grantor shall kill y d or y grantee in feesimple shall not alien, the conditions in all these cases are absolutely void. 2 sev. 1st.

But if a condition precedent be unlawful or impossible, y condition being void, y estate is also void, for it depends on y condition and therefore y no title can rest till it is performed.

Co 206. 2 sev. 1st.

But an impossible act cant be performed and an unlawful act the performed can confer no right.

The performance of a condition is not matter in pais and eno provable by possil Eri - pain & o. pow 64. 56.

Barnes for 90.

Under y head of estates defeasible upon condition subsequent, fall estates in pledge - 2 sev. 1st.

they are of 2 kinds -

I. Vivum Vadium - a living pledge. on estate granted to a creditor to hold, till y grantor and forfeit shall satisfy y debt. Co 205. 2 sev. 1st. pow in Pow on m. 3. 4.

In ye case y grant becomes void and y estate determins as soon as y debt is thus satisfied.

Hence it is called living pledge, for y pledge survive y debt and on discharge of it, reverts to y grantor y debt.

II. Mortuum Vadium - dead pledge or mortgage. This is called dead pledge by reason of y forfeiture of y estate, pledged in case of non-payment of y debt at y day for as ye shall have ye possession of ye latter on default of payment y estate mortgaged is forever gone.
A mortgage is defined to be an estate granted by a debtor to his creditor, with condition, yt if y grantor pay y debt on or a certain day, he may receave, or y Grantee shall reconvey or yt grant shall become void— ibid 332. & ibid 250

This definition dont include all cases, for such a grant made by way of indemnity to y grantee, where there is no existing debt between y parties, is a mortgage as to a dummy or indorser.

Reconveyance is not necessary to arrest y mortgagors right—but is more safe— Seces his right and vest in parol Eqv—

Hence Ch. 116. decrees a reconveyance—

This called deed pledge, quiusf Y Mortgagor fait to pay at y day. His State is forever gone—at law withy possibility of recovery. Sec may have relief in Equity—

2 Rob 158— Poo m. 4, 12, 13. 153. Coa Ch. 1447, 19, 50.

A mortgage then is estate pledged by y debtor to y creditor as security for y debt. Mortgage in its original sense denotes—

Mortgage, means y estate pledged— It is sometimes used as synonymous with mortgage deed. The granter is called y mortgagor, y Grantee y Mortgagee. y condition is called y defeasance, qui is its object is to defeat y estate. It may be incorporated with or annexed to y Grantee or made a distinct instrument for 2 instruement made at y same time are relating to y same subject matter form but one contract—

This rule supposes one of y instruements to refer to y other.

If there is no deed to reconvey, trial amount to a del—

But if y Grantee gives a bond or aent to reconvey—y land to y Grantor on payment of a given sum, y bond not referring to y deed, dont make a mortgage—

As soon as y estate is created, y mortgagee may take possession this liable to be disposed upon y performance of y condition by payment at y day. For legal title vests in him immediately the defeasible— ibid 158. Poo 14, 16. 19, 50.

But y usual practice is for y mortgagor to remain in possession till payment or y day of payment.
There is a distinction at C. L. to secure a gift or grant, and one made to secure an antecedent debt, in y latter case, if y money at y day discharges y mortgagee’s lien only and redeems y mortgagor’s title, but it don’t discharge y debt, it discharges y lien, however, if y mortgagee retains y money in his hands. In y former case it discharges not only y lien but also y personal duty, y whole obligation, for as tenant discharges y Estate, y Mortgagee can have no claim except on grounds of a personal duty, but here is none.

The condition of a Mortgage deed was formerly considered as a condition precedent, quia its object is to restate y mortgagor in his inheritance. Now, in law, if a Mortgage in fee was forfeited, y estate being absolute, it was not subject to all his real charges.

To remedy y inconvenience, it became usual to grant a long term by way of mortgage. This practice is gen beneficial in Eng. now.

In Connt, it’s usual, the mortgagee in fee and y wife of y mortgagor has no power to sell after foreclosure.

If land be given to y mortgagor conditional for y performance of a certain agreement, vi y mortgage deed, non-payment at y day is a breach of condition of y mortgage, he is not left to his election to pay y penalty of y bond and thus discharge y mortgagor.

At C. L. if y condition was not strictly performed, y land vested absolutely in y Mortgagor, so yt an Estate of Great Value might be lost for a Trifling consideration.

In consequence of y hardships upon y mortgagor, there was a contest between C. L. of C. L. at Equity. The former considered y condition inyelicly, y latter considered y transaction as a mere collateral transaction contract, hence y mortgagor in Equity was held y real owner of y land, failure of payment notwithstanding.
The Act of Ch. finally provided, since &c. of jurisdiction of Mortgages has been exercised almost exclusively in Equity: when debt is deemed a principal and a mortgage, and merely as a contract, not amount.

Equitable right after forfeiture is called y Equity of redemption—

And is known only to y law of Eng. Pov. 15. 241. 14. mod. 196.

But title of redemption or satisfaction. y mortgagor interest continuing

core in Equity, so far as to enliven his to possession and take y

forfeits. Pov. 15.

It follows from ye view of y subject, if a mortgage is not such

as alienation, as alters any previous disposition, except so far as

such a disposition is necessarily affected by it

As A makes a voluntary

conveyance by way of family

settlement, and afterwards mortgage, y Estate, and y mortgage is

forfeited, still issue is entitled to y estates as Equity on paying


So if a devise is made to A of land afterwards mortgage to B, y mortgage is a revocation in Equity "pro tanto" only, the

total at C Law. Therefore a devisee may in Equity redeem—
Pov. 592-618. 1. atte 601. 738. Pov. 15. 17. 312. 768.

But a mortgage to y devisees of land devised, has been held

a total revocation even in Equity. y interest, being inconsistent

for under y devise he is held as Mortgagor and under y devise as Mortgagor—

And even a Mortgage in fee is no redemption


"contract" et

not condition.

Every "condition" for a loan of money or for payment of a debt

secured by a conveyance of real Estates and not intended as a

disposition of Estates, is in Equity deemed as "mortgage

And all "conditional" agreements made at y time, to prevent a

redemption, not y money is paid according to y contract, are

void. It original nature cont is thus altered. If enforced
Thus an agreement in a mortgage deed, yt yt y mortgagor does not redeem within a certain times, yt he shall not claim his equity of redemption. Nor shall the conveyance shall be deemed a sale. yt can make it void.

Nor shall an agreement in a mortgage deed, yt yt y mortgagor does not redeem, with a certain time. Nor shall an agreement at y time to make y conveyance absolute on failure of payment. yt y mortgagor shall advance an additional sum, after y case.

But an agreement in y case of sale of y equity of redemption. yt y mortgagor shall have y right of preemption, yt be good.

So a subsequent agreement for an absolute sale executed by

So of a subsequent release of y equity of redemption, with an agreement by y mortgagor to reconvey on certain conditions. Now y mortgagor is not bound to reconvey nre y mortgagor strictly performs y condition.

In some cases of family settlement, where y transaction is between men- mbers of y same family. Where a benefit or kindness is intended to a certain event. In a certain event of y mortgagor, an exception is admitted to y maxin. (See a Mortgage, Etc, as it makes a mortgage to y nieces for a valuable consideration by way of family provision redeemable during his life only. It is not redeemable after his
dei-

So a mortgage to his brother to secure a lease with an agreement, yt if he has no issue, y mortgagor shall have claim. There is no danger of extinguishment on y mortgagor. For a benefit is intended to y mortgagor.

An absolute deed can be qualified by proof of a moral condition. But an absolute deed it is said may be considered.
as a Mortgage, when an agreement to redeem is irreparable from circumstances, it is notorious, and as in all cases there is no danger of injury — for virtue — there is no such judicial decision — 2 Mandr. 19.


Carol. Eri. is allowed to prove payment of debt due to y Mortgagee — if course of mortgagee interest in y bond may be defeated by Carol. Eri., for where y debt is discharged, his interest is defeated, y Ct of frauds teaches —

And if he has forgiven y debt, Carol. Eri. of his declaration — facts is admitted to prove y fact — as take back your writing I freely forgive your debt, for y fact to be proved is not a contract or agreement for conveyance of an interest in land and is not within y Ct of frauds —

Banc. 18. Po. 3. 38. 36.

If land is devised to trustees to make money out of rents and profits for y payment of debt or portions, and there is no clause empowering you to mortgage, still y debt money can be thus raised, you trustees may mortgage and even sell —

Secures if debts can be raised or if debt 630 are ordered to be paid out of y rents only —

As soon as y State is created, y mortgagee may enter, y legal title is in him the defeasible in payment of debt —

Secures if there is an agreement, yet y mortgagor shall remain in possession for such a time. He is then tenant for you. But an agreement y't he shall continue in possession for no given period leaves quasi tenant at will —

A Mortgagor left in possession without any express agreement is so far as regards y right of possession, and even before the day of payment considered at law a quasi tenant at will —

And in some respects he differs from such tenant. Indeed, as to y right of possession, he is secured in y same light in equity. In y respect he must be regarded different by both Ct. Co. S. 680. Co. 46. 77 Co. S. 617.

Aug. 21. 2. 2774.
Hence he may be sued in Equity without Notice to quit.

18. 6. C. 9. 660. 3.

Common tenants at will being treated as tenants from yr. to yr., he must have 6. mon. notice. So in N. 4. 2 John. 70. 4. 29. 182.


This decision is a manifest violation of Principle.

But a Mortgagor in possession is not liable for rent as other tenants at will are, for he pays interest, but he is not entitled to re-entries, if his mortgagee turns him out for any rents and profits are liable for his debt and they are applied to discharge it.  Say 22. Nov. M. 67. 8. 70.

Again a Common Tenant at will can't lease or underlet. Such an act 1. 8. 2. 305. determines y. Estate. But a Mortgagor in possession may make a lease of will be valid, if y. mortgagee elects to defeat it. It don't itself determine y. Estate. The Mortgagee may at his election treat y. Lessee, as a wrongdoer or not. 18. as a Trespasser. or discretion.

So in N. 23. 6. 182. 6. 182. 6. 186. 22.

Hence y. Lessee is liable to ejectment without any notice and can't entitle to re-entries for y. mortgagee may at his election consider y. Lease as void, and y. Lessee as trespasser so, he may treat y. Lease as an act determining y. Mortgagee's estate at will and as is always y. effect of a lease by a common Tenant at will. 3. East 447. 4. John. 215. 22. 50. 82.

Such Mortgagee on other hand may treat y. Lessee as his tenant and by giving Notice may compel y. Lessee to pay him all rents. 1. Mt. 686. 2. 29. 66. Consider all due before as well as after notice, but not to pay what he has once paid to y. Mortgagee. Say 22. Nov. M. 67. 9.

So in N. 23. 6. 182. 29. 50.

The Mortgagee when sued in ejectment by y. mortgagee can't allege a title in a 3d person to defeat y. Mortgagee. y. mortgage operates as Estoppel. 1. TR 160. 950 480. 2. TR 270. 468. Com. M. 489.

So if y. Mortgagee's Lease is voided in ejectment, he can't deny y. mortgage right to lease.
Such Issue Title is good as to Mortgager and all strangers—
for Mortgager is estopped to deny Mortgagor's interest in as
be strangers a lawful possession as Sales, igo he may sue
strangers in Trespass and also redeem of y mortgage—
Geo Ch. 304. Poa. 76.

But as regards y interest in y subject, y mortgage is deemed
in Equity and to many purposes in Case y real owner of y land
mortgaged—
Long. b. 10. 2 Prem. 378.

The Mortgagee's right is considered merely as a chattel interest
in security or pledge for y debt. Hence if a free hold is mortgage
the reality remains in y Mortgagor, he may gain a settlent
by his possession of it as a freehold, and his interest descents
to his heir, and will stand in device under a description of land
or Real Estate—
B. d. infra authorities—

But if y Mortgagor in possession commits waste, chy will unable
be a color or an injunction in favour of y free and y mortgagee is
y slavt of hers for a term of yrs—only—
Geo 619. b. 3 Prem. 473. 36 b. 304.
redundant intestate 2 all 794. 2 P. 1158. sy.

The Interest of y Mortgagee in y premises mortgaged—

This interest is to be considered at 4 periods—
first between y execution of such deed and its forfeiture—
Second after y forfeiture and before he takes possession—
Third after he takes possession upon y eviction of y Mortgagor—
Fourth the foreclosure.

Before forfeiture y mortgagee's State continues as it was
at Cb before y interference of chy—The Legal Estate is in
him to y whole interest pledged defeasible as before stated—
He may take immediate possession—

Hence any conveyance, lease E3, by y Mortgagor during y period
of y same Land is said to be void as to y Mortgagor—The reason
is y Mortgagor has no vested interest, but a conditional right
to assert it in future—
Poa. 80—Aug. 22.

The Meaning is, yt he may defeat y purchaser of y possession

by treating you as wrongdoers. Hence also y Mortee may compel y Mortors lessee on notice to pay him on notice to pay him y rent even before forfeiture. 

This holds even if y lease is prior to y Mortgage, for y mortee has y legal title to y reversion and y rent is incident to y reversion 15. y rent due before y notice as well as post, but not y rent has been paid 

But he can't recover rent due before y mortgage was made for then he has not recovr'd. 

Where a term for yrs is mortgaged by lessee, y Mortee is in y nature of an Assignee of y term, if y whole term is mortgaged 

But in y case y Mortee was disir held not liable in y case he takes actual possession, for it is a mere security intered by a com assignee as a disposition. This Rule holds the y mortgage is defined forfeited 2 Balm. 374-389 438-441 

2 Sec. 8 92. He now holder Contro. Say Castle. 

But if y Mortee takes possession, he is by all y opinions liable in all y Courts not running with y land like other assignees 3 All 512- 

for he enjoys y profits 1 Balm. 235 3 106 166 4 724 21 12. The mortice has after forfeiture and even then he recovers in equity and take possession, only a chattel interest according to law of equity only a lien in security on a subject 3 4 All 605 1 Sec. 118 170. 

This interest will not regularly pass in a devisee under y world lands tenancy et hereditancy 

There is this qualification, To y Rule, yt if y devisee has no other property answering ye description his interest in y Mortgage will 

be then paid for such is evidently his intention 2 Balm. 621 1. Balm 357 1. Balm 32 12. He is considered in Equity then as having only a chattel interest till after foreclosure, or on his death it goes to his executors and not to his heir 1. Balm 367. 

Hence y assignee of debt on y land carries his interest, the he don't assign y interest mortgage debt, for y debt is y principal 

Hence also he can't before foreclosure, as any act of ownership
will injure or encumber y mortors right, as Mortor brings
a bill to redeem on paym-[t] its an insufficient defense to answer
y y mortot has leased y land and y y term has not yet
expired - 1. Equity Cas. 610 - Pow 95-

Sec 2. y mortee might forever prevent a redemption without
a foreclosure - The Ed Chetvert said in y last case y y mortgagor
might lease for yes before foreclosure as as to bind y Mortor
to avoid an apparent loss and from necessity -

So regularly in Equity a Mortor in fee can't before y foreclosure, justify
y waste - He is liable to an injunction, the not to an action but
Law. But if y security is defective, y mortor in fee will
not be restrained from doing waste before foreclosure - Equity
interposition being discretionary, but y timber when cut must be
be applied to y payment of y debt, and this go to Mortor's benefit -
Pow 95.

And in cases in which mortor actually commit waste, as cutting
timber y he is accountable to y mortor, for y value of what
he has taken from y free hold 14. 1/2 is to be applied to y discharge
of y debt - first of y interest - then of y principal -
3 alt. 723 - Pow 95-

But the y mortor can't encumber or commit waste on y
estate upon foreclosure to y injury of y Mortor, yet he is allowed
such expenses as he incurs in necessary repairs and other act-
for y preservation of y estate and may add yon to his principal

to carry interest. 3 alt. 578 - 4 - 1826

Mills 34 - 2 boll 80-
If a mortgage be made of an estate, to ask y mortor has no title,
and past y true owner conveys to y true owner of his representation
y mortor will have y benefit of y last conveyance. - 2 boll 11-
Indepentant of any rule of Equity - 6. 1/2 shares - Such ed y necessary
effect at Law - The mortor will be estopped by his mortgage
deed from denying y had title of y land at y time of
making y deed -
This Purchase is expressed to be a graft on y. old stock. Pow. 97. 2 Oct. 11. 1760. 1 Corresponds to his representatives be so considered as they are liable for y. mortgage debt. If Mortor's heir having assets by descent, 28. 39. 30.

If y. Mortor for a term of y. possesses a new one (a renewal) after y. expiration of y. old one, this will be a trust for y. mortor and redeemable, y. renewal being considered a consequence of y. old one. 7. 10. 19. 0. 13. 12. 32. 97. 8.

A Mortor in possession is not bound to expend money on for necessary repairs, the if he has expended any in defence of mortors' title, he may add it to y. debt and draw interest. Balby 518.

Pow. 17 M. 98.

The Mortor takes y. Estate subject to y. same incumbrances, to whom it is subject in y. Mortor's hands, - here a forfeiture of y. Estate by y. mortor - a rather destroys y. mortgage term. As a Tenant for life mortgaged in such a forfeiture, fea. y. is itself a forfeiture. 2 P. M. 146. Pow. 97. 100.

P. Ch. 89. 72. Contr. P. Chy 108. In favour by Agreement.

A Lessee for life or his mortor mortgaged his Estate to A & B, & then makes remainder a deed conveying y. Estate in fee to B, y. is a forfeiture of his whole interest and y. mortor loses his title - it goes with y. mortor. The mortor can't exempt his Estate from forfeiture for alienation by merging it in another.

So if a forfeiture best (in favour of a remainder man or reversioner) by mortor in possession. This is a particular Tenant having mortgaged remains in possession and commits waste best, y. forfeits y. whole Estate even of y. mortor.

Not so in case of forfeiture to y. Crown for treason. for y. king takes only what interest y. offender has - Pow. 11.

Of y. Equity of Redemption - who may claim it. If an equitable interest remaining in y. mortor after forfeiture, is called y. Equity of redemption. This interest is called a trust for y. whole legal.
Estate in Mesne who is considered a trustee of Estate for x mo.

As x mortg may at any time redeem by paying x debt and
interest. So may x person having an interest. 1. Born 715. 1. Epw 157
under him in x land. As A makes a voluntary deed to B -
and part mortgaged to C - B may redeem it of C. Pow 108.
So of y mortg. So of y advertis of y mortg. 1. By (167)
So after x mort's death his heir may redeem it if x
inhabitancy is mortgaged and not devise. As another - for x

And an Equity of redemption of redemption is governed by same rules
of descent as if it were a legal Estate. A P D. 2. Pow 109.
it will descend
of a fee to x eldest son - it is within x Custom by Engineers (167)

So of y youngest - according to x custom of Engineers to all x sons,
and by own. So all x children generally are equally.

So of y. Device of x equity of redemption may redeem 2 Born 169.

So a grantee of x heir. May redeem, for x judgment is a

But a judgment is paid in Court. Hence x last rule don't hold here.

But a mortg owner having caused an execution on x basis may
redeem - and I believe x same as N Eng generally. 3 Bl 440.

In Court by virtue of - x to x possession x pay an execution
on x equity of redemption as on a legal Estate and to apprim one sell
it to x mortg creditor - sheets at C. Law.

In Court there have been some deceases of x heir. x x
x execution. Creditor obtains only a lien on x security. But these
deceases are now osculated and it is settled x prior x x x
x heir x apprim x x execution x x x interest x
former is extinguished.

So in Eng x Grown may redeem where x mort's had perfected x
Estate by committing treason or x some cases of felony


If a mortgaged Estate descends to an infant, his guardian may
with direction of a Ct of Equity, apply its profits to discharge of debt.

The widow of y moor if she have a portion in y land may redeem and that y portion is in part of land only she may redeem y whole - This Rule relates to a portion made after y mortgage for if before it takes precedence of mortgage.

1. Yerm. 171.

2. 212. So tho it is settled upon her after marriage. 1 Yerm. 323. 171. 1 Eq. 249.

And wif y moor if she joined her husband in insuring it, her proportion of redemption money is 1/3 and if she pays for y law more in one 1/3 she and her representatives will hold as y moor heirs till reimbursed y excess.

in insuring her portion

If she did: not join she is not bound to bear eventually any part of y debt as between herself and y heirs - but will hold all y whole sum advanced by her to repay - 1 Yerm. 191. Pow. 313-17.

1. Cap. 171.

The husband of y moor may redeem as tenant by y Court as a free sole mortgages her Estate in fee and then marries

and after her death y husband is tenant by y Court of y equity of redemption. 1. Alis. 603. Pow. 112. 15.

But y moor wife is not an Eng tenant in dower of y equity of redemption of y mortgage in fee. Alis. in Cap.:

pow. 321.

But in order to entitle y husband to custody in an Equity of redemption or in any of her Court Estates, there must be a benefit of the fee hold by husband and wife during coverture, to an equitable Seisin or what is equivalent in Equity to an actual Possession of y legal Estate at Law. Pow. 114. 115. 1 Yerm. 298 - 307.

Actual possession with receipt of profits is estate - The moor possession is only of a tenant at will at law.

But y husband is not entitled when there is no equitable Seisin - As the devise is a free hold of inheritance its interest is y sole and separate use of a married woman and the trustees keep possession y husband has no control over it - The estate is a free Sole -
Hence y husband can't be said to be vested with in Equity

Suppose in y last case, yt y trust had not been for y separate use of y wife, but y tenant by y trustees have entitled y husband to

A subsequent encumbrance may redeem a former

As a mortgages to B and then to C, & may redeem of B for he has an interest under of own land. & he then acquires y right when first, he had in addition to his own, and may hold it all, till he is refunded what he has paid to y first one and his own debt besides

So in Eng. may a judgment creditor of y, for his judgment is a

if a me judgment creditor or lessee of y, redeems y mortgage, his heir devisee, or assignee may redeem of him, for he has not y whole equitable interest, but y Miss has y whole residuary interest

A Miss may redeem even after a release of y equity of redemption, if y release appears from y circumstances to have been made upon a secret trust for his benefit. - And where it appears, if y debt due was very small compared with y value of y Estate

If there are tenants for life with remainder or remainder in fee of an equity of redemption, they are to pay proportionally on redeeming y Tenant for life 1/3 and he is obliged to pay y whole, his representatives may hold over; all those in remainder on redemption contribute their proportion - Prov Chs 62. 1. Chs 151. Prov. 120

As a demise of y equity is it for life remainder Ebe - viz. a -

Chs. yt Tenant for life shall have 2/3d of y debt. But according to other opinions. Note yt distinction. If after redemption by tenant for life. y remainder man applies to him to redeem, during his life -

y Tenant for life bears 1/3. & use of y application be to redeem after y tenants death - Then y representatives allow towards y debt only so much as y imporpt of y Estate was worth, the it was ever but he
This qualification of a Rule appears equitable, and if y mortgage money
was payable on a contingency and has not arrived, he wi remainder
may exhibit a bill quasi tenant vs y tenant for life and compel
him to keep down y interest of y mortgage debt during his possession.
Till y tenant for might avoid any contribution, and yet hold
possession, for while y contingency is future, y remainder man can't
redeem 18 he can't enforce it. 201. 442. 444.

If a tenant for life, poor any debt in redemption and makes insufficient.
and dies, y remainder man 385 on recovery of his representatives and
may 3/6 of last will's important 2 Equity Cases 876. 1431. 444
But the interest is allowed for y money he renders for he is bound to keep
down y interest arising during his estate as he out of his more in
possession and y debt not paid.

And y remainder man in Equity may compel him to keep down
y interest.

An Equity of redemption on a mortgage in fee (or any other
Estate) is not assets at law for y Estate of y mort is gone at law.
Therefore to an action at law by a bond creditor vs y mort's heir, 2 act 494.
he may plead recover for descent. But in Equity its assets and
may, if necessary, order a sale of it for purposes of paying debt.

Note if y Estate is for life or for y's y remainder is asset at law
and if y heir release or alien it, he is liable in Chy for y money
not, or y value to y executor or creditor by amount of debt, but
these Rules suppose a deficiency of personal assets.
2 North 61. 128. 411. 2 act 294. 389. 831.

Being Equitable assets only, y creditors are paid out of it 2 Bk 511.
"Fure rate and harry possessus" with regard to y rank or quality of
of y debt. In Equity there is no such superiority as at C Law.

In Court all y Equities of redemption are like other real assets.
They are assets at law. If y Mort is dead, they may be sold
like other property to pay y debt.

And in Eng y morts remainder expectant on y determination of y
mortgage for yrs, is legal Asset, and y creditor may have y judgment as y heir, with a tenant in curtesy, till y reversion comes into possession. As a tenant in fee mortgages for 10 yrs, or a tenant for 100 yrs mortgages for 50. On y last case, however y debts are personal, and y executor, hence, y action must lie as in him, and not as y heir.

But if y judgment is in these cases of asset, granted to y creditor, of course cant by bill compel y heir to sell y reversion. They must wait till it fails.

An equity of redemption is devised for y payment of debt.

And y debts in y case are to be paid from personal Estate, being but an equity and so equitable debt. 2 P C 412. 2 Alb. 50. Pro 126. 9.

Formerly this dedication was taken. If land mortgaged was devised to one in fee, for payment of debt generally y debts were equitable, but if y devise was made to y executor, y debts were legal, being in essence, to take at executor.

Now settled executors. Executor is but a naked trustee in y case, and y equity of redemption that devised to him, is equitable asset, only.

As holden by Wright in Vacuum. y if lands are devised for y payment of a simple debt, and liens, y debt and liens have no preference, quick y will of y testator alone makes it, y land liable, and y devise expressed no preference. 2 Equi. Cas 37. 1770 117.

Fed. Queere et see cases contra. 1 Cly. Cas 25. 288 248.

The regularly debts have no priority, when y fund is an equitable one only, yet a second lien shall have his debt out of y equity of redemption, in preference to other creditors, the has interest y legal estate being y first. For his right is a special lien, wh equity will not take away.

There is no instance in Equity, in wh an equity of redemption has been held to be liable on execution of bond creditor, in y life time of y heir, and after y death, it is equitable asset, and good to pay all
...the creditors...  2 Sm. 292. Pw. 132...

There may be a possession of an estate of rent or redemption...  1 Sm. 604-5...

The 2 Sm. 8

In general the person is allowed in Equity to redeem, in his... to... by a legal estate: as it is called it, he has a vested title to... Equities of redemption, or a vested interest in it, entitling him to call for his plate or paying his debt...  Pw. 134. 2 Equit. Or 165. 1 Bern. 182.

As claiming under a deed by ye heir... brings a bill to redeem... The 2 Sm. 93.

...shows a deed of entail entitling another person as special... it is not permitted to redeem under his title. The 2 Sm. 94.

...of entail is docked...

But if the heir... whom y title... the equity of redemption is refused... to redeem, another in any other interest to... having a claim upon... 3 Sm. 30. Pw. 192.

y creditors... the majority of y... presented... 3 Sm. 31. Pw. 193.

...were allowed to redeem... they had no title to y equity of redemption... as it was a means... circumstances... y only means of obtaining payment...

So in common cases... ye heirs... will redeem, y general creditors cannot... Focus y... heir... 3 Sm. 32.

...the right of redemption being a creature of Equity, yt... will always... make it submit to its own rules, i.e., y ends of justice... 3 Sm. 33. Pw. 194.

...he who seeks... must... 3 Sm. 34. Pw. 195.

...a redemption in favour of... 3 Sm. 35. Pw. 196.

...or those claiming under... either absolutely... 3 Sm. 36. Pw. 197.

...on certain conditions... 3 Sm. 37. Pw. 198.

...y justice of y... may... 3 Sm. 38. Pw. 199.

...as it... applies to redeem on payment of debt... 3 Sm. 39. Pw. 200.

...Chy must... indulge... 3 Sm. 40. Pw. 201.

...he and have Equity... he must... 3 Sm. 41. Pw. 202.

...he must... proceed to redeem or abandon his bill, before he... 3 Sm. 42. Pw. 203.

...attempt an avoidance... of mortgage at Law... 3 Sm. 43. Pw. 204.

To add... if... having previously attempted to avoid y mortgage... 3 Sm. 44. Pw. 205.
These Rules as to heir holding by consent. 2, born 207. 1, 240.
2, Equity Cases, 325. 2, 1, 129. 140.
If y. This cannot compel y. nor to redeem before 5 days of payment yet in case of a hard bargain on y. y. it may be permitted in Equity to redeem before y. time. Ad fere by y. increase of value of land, y. rents and profits will satisfy y. debt, long before y. day of payment. 1, born 232, 183, 574. 2, 1, 137. 137.

No one seeks equity. If possession be obtained vs. y. by fraud pending a suit, it may be restored before there can be any degree of redemption. 2, Equity Cases, 592.

A Mortgage of 2. so to secure one loan, and post 2, White A. to secure another, one of y. securities is insufficient. y. other more y. any satisfy. it is not allowed in Equity to redeem y. one while y. other. The supposes y. loan to be from y. same person. 2, born 286, 1, 3029.

Pom. 139.

The intervention of a Ct in a case merely equitable is said to be discretionary, ego y. Ct may say, we will not debar. in favor of y. Plt, y. Ct will do ye. yt. They may not make a new contract for y. parties, but may withhold their interposition. y. Plt will comply with their terms as in y. last case. y. Plt has broke his bill, praying yt. y. Ct do the redeem. y. Ct did not grant such a decree for ye. and be to make a new contract between y. parties. In short y. discretion of Ct of Equity consists in withholding and not in extending its interposition.

So if one make 2 mortgages to one person and dies, and his heirs claiming by descent, endeavour to defeat one, and post apply to redeem. they shall redeem, both or neither.

He must do equity. From he claims by purchase under one title, he is then as to y. stranger to y. father's titles. As tenant in fee of 2, A. and tenant for life. remainder to his eldest son, to tail of White A. mortgages, both his heirs may
may redeem y former and avoid y latter.

A purchaser of Me shall hold y land in y Mo. and his heirs
for y whole sum, the he gave less.

But as no subsequent incumbrancers or creditors, he shall hold (of he
 gave less y n y debt) for what he gave only; for y creditor has no
high or equit. as to y amount or value, not paid for, as a
purchaser at taking y gain of y latter. He suply y loss of y former.
Is dealing equal justice to both, neither loses by y other.

So if there are several incumbrancers any heir of Me purchaser
first mortgage, ye first incumbrance shall not stand in y way of
Subsequent incumbrances for any more ye ye heir gave.

The reason is y same as in y last case.

May not y heir then redeem of y subsequent incumbrances
for y same sum together with his debt?!

It's a general Rule, yt if y heir - trustee - executor - or agent
of Me, purchase in Me's debt as in y last case - at
a discount, - Me's creditor and even his legatee, shall have y advantage
of discount. The heir and exec are subject to y same Equity
as Me, whom yey represent.

But if a stranger, or even an Mo's heir, or trustee, purchase
ought to protect others, not he himself holding, he shall be allowed
whole money due, that he bought it for less. The Equity being
equal to y legal title, formerly - He is but a mere voluntary
purchase for his own security -

If Mo is indebted to y Mo, secures ye upon a mortgage, he will
not be permitted to redeem it upon a bill for little redemption,
mi he pays both debt - Here must be Equity.

1 Corv 41. 344 - Salk. 34 - 2 Eq. Cas. 60 & - Bow. 143. 344.

Eq. 602 Secures it and sees on ye Mo's bill to foreclose & Bow. 511. 15.
This note ye Rule has lately been denied, mi where y Mo's heir appeals to redeem 3 R. Ch. 162
162.
80.

"If a man's heir and redeem, he must pay all debts due from y man to y man by bond, as well as if secured by mortgage, for heir after redemption will be in favor of descents, and y equity as assets for paying bond debts. Equity must be avoided, because he must do equity as his ancestor must have done."

Sec. 2. Com. 240. 1. Pr. 1725. 1. s. 1. 3. act. 626. Rov. 143. 4.

Sec. 3. I suppose on a bill to foreclose, for on such a bill, payment of a bond debt not be required, says yn a compulsory decree, for payment of it, not to be making a new contract for y parties, by y sentence not enforced it.

But on a bill to redeem, y be may refuse to interpose at all or on condition of y bond debt being paid.

This condition is not making a contract for y parties.

So if a lease for yrs is mortgaged, and then a new debt contracted by y heir or bond y executor if he not redeem must pay both for y execution is changed with simple contract debts as well as these are by specially.

But if there are several incumbrances, such as a bond debt also, it will postponed to all y subsequent incumbrances, either by mortgage, judgment, for a bond is no lien to a personal debt or charge only. A bond creditor has not y same equity as an incumbrance as rs y heir.

The incumbrance has higher equity to claim y property covered by incumbrance ym any general creditor can have.

And since if of fraudulent devise, devisee of an equity of a redemption, cannot redeem wthout paying y bond, but suppl.
If money due on bond be first and then a mortgage made, y Mee was have the same equity as above as to y debt.

Where y Mee or his representative is plot in Equity on a bill to redeem y et will carry y debt beyond y penalty, if y principals and interest exceed it.

She must do Equity on the will not interfere y et indeed will not alter y contract, but will refuse its interpretation interposition upon any other terms. 2 Eq. 611. 2 Rs. 57. 3. 146. 7. 157. 3. 482. 35.

Seems it seems of Mee if y Plot on a bill to foreclose 1467. 3 Rs. 432. 7. 157. 3. The reason of y redemption is same as yt before.

If at Mee, or his assigns, to whom any money is due on bond, countenances any fraud upon a 3rd person by concealing it, a mortgage may be redeemed by payment of y mortgage money only.

As Mee son being about to marry his intended wife father wrote a request of making arrangements for a settlement, apply to y Mee to know what is due on bond y letters denies yt there is any bond y settlement agreed on.

If a part of y mortgage money is paid, then a further sum borrowed. y Mor on redemption must pay y last as well as y first.

But y purchasers of y Equity for a valuable consideration may redeem without paying y bond, if in such cases, for having a direct interest in y bond like an incombosor, his claim is higher y a mortgage one growing out of a personal charge.

A Mee claim is good only as to y bond, is good only as his y Mee and his assigns.

A Mor may be defeated of redemption by lapse of time after forfeiture, y Mee being in possession. But a right of possession after forfeiture is not of itself and absolutely a bar to Mor's right of possession, nor being within y 8th of Dem 18 as between Mor et Mee, for y possession of y Mee is not adverse.
But Srly y Ot of Chn mil 30 for y Fit as to consider 20 yrs possession by y Mee after perjctn as favor faces a bar to y Mors rights as a presumption, yet y Mee has abandoned his right of redemption.


The difficulty of making up an account for so long time is an additional reason.

The presumption may be rebutted by such circumstances as account for delay of redemption, and these same in gen. gen. incl. prevent y Mee from running in a ease of local States 12 yrs. as being a case within a saving clause of y St. W. Infancy – Cuvette. Insanity. Insane ors. being beyond sect 339. at y time of y Mors accounting.

So also by facts showing y condition of y Mee and recognizing y Mee. It is evident above joined, as by paying interest.

Or by making up y account between y Mee and Mee. Money difficulty of taking y account is also removed

2.4th 339. 2. 34th 4. 3 Bem. 418. Cowr 149. 50. 53. 461.

To y time allowed for redemption after disability removed is said to be y same, as prevented in a. For making entry after y removal of disability in y saving clause of 12 yrs. in England. 3 P. W. 287. on Cowr. 149.

But if a fraud has been practiced upon y Mee to prevent his redemption within 12 yrs. the time allowed to him however great must operate as a bar to his redemption. As if an absolute mortgage deed is executed and falsely made to y Mee when the maker with condition y. y redemption shall be with Mee’s own money.

Tabl. 63. Cow 151.

But if y. 20 yrs have begun to run, y intestine of any of y. legal State disability exists. If y person having a right of redemption. must save y right of redemption. As foreclosing accross to y Mee and into possession, while y owner of Equity is under disability. Post y Equity descends to an infant.

2. after 333. - Cow 152.

Reasons of y disability exist when y Mee took possession.
But when it is agreed by y Mee shall take possession and hold it he is satisfied—length of time is no bar, the Mee's possession is not of y Mee's abandon—by law possession was held by bar at 4 Law there is no occasion for the aid of Equity—The Mor or his heirs may redeem even at Law in any yo—1. Nover. 418. 30 Geo.

Any act of y Mee by wh be has receiv'd y Mor's right of redemption within 20 yrs. will prevent y possession via bar—As deriving y money in case y Mortgage shall be redeemed having exhibited a bill to foreclose within y period—

So y Mee having within y time agreed to purchase y Mor's redemption 2. Eq. Cas. 396. 1. B. 30. 51. 174. 30 Geo. 158.

Time is no bar if y Mee submit to be redeemed—

The Mor if in possession is never barred by lapse of time—30 Geo. 4th. st 5. Mill et Morryy defines y Mor of his equity of redemption on certain conditions, when he is guilty of fraud—viis concealing (nor rumor) and gives an absolute Estate to y Mee.

A Second Mortgage of y same land is considered as a mortgage of y land itself—not of y equity of redemption—If it st wery Mor ad not redeem y first till he had redeemed y second

Of a devise of lands mortgagee

The interest of y Mee like y of y Mor, is deviable, and a devisee may have a decree of foreclosure--

On 1501. 480. 12 Pomer 971. Rom. 165. 20 Geo.

Thus if it was held, yt y whole y Mee interest in a mortgage in fee was forfeited, and not passed in a devise under y words "all my mortgagees", but y devisee not have at most but an Estate for life—For y Mor interest was then deemed a fee simple—and y words are not such as to carry a fee, indeed was questioned on they ad carry an Estate for life—Antonius Infra.
... But now undeniably, ye most interest being deemed a chattel only, y whole of it is passed under such words, as mo. vn a devise carry only an Estate for life.

E Contra, it will not pass vn a devise under y words, lands, and rents. — y ye testator had other property to which words might with propriety refer, y words not being proper to distinguish a chattel.

But if y mee had other property answering, y description of point of situation, and other circumstances, a mortgage may pass under these words — as all my land E3 & c. vn a. when he had no other interest in land there. — As intention governs and here his intention to pass his interest is manifest.

If y mee devise his interest, y devisee may have a devise of foreclosure to y testor or his heirs, y mee heir mee not be made a party, for he has no interest. — His devise is devised away.

A devise by mee of money due on y mortgage, don't, it is said carry y interest, due at y testator death. — As 1000 secured to me by mortgage. — The intention seems to be to convey a sum certain and not uncertain.

Suppose a devise was of all y money due to mee yo. on such a debt secured yo. and not y interest pass vn such a case E3

... Its, been extraordinarly contested on a mee interest will pass under a devise, not attested according to y testate of prone vn Eng. or Commit. It devicees. 2 Bum 978.

It seems yt. it will thet it has never been expressly passed being a mee chattel, lands and tenements are y words vn y Eng. St. Real Estate, vn y Commit St.
Priority of Incumbrances: Of Tacking

Prior and Subsequent Incumbrances

If there are several mortgages or incumbrances on the same estate, priority takes place according to the dates of their respective deeds.

The first is preferred to the second, and second to the third and so on. 3 P.M. 286. 1 M. 360. 1 M. 155.

It is also noted that mortgages stand on the same footing in England, Judgment and its order of recognisances. 2 P.P. 49. J. P. 324. 1 M. C. 222.

In the English, it is called tacking. 2 S. 10. 1 M. 360. 1 M. 155.

When a subsequent incumbrancer purchases a legal estate to protect his own or an intermediate incumbrancer, 2 S. 10. 2 P.M. 280. 1 M. 360. 1 M. 155.

The latter operation is called tacking. 2 S. 10.

If the first is guilty of fraud or negligence, affecting his interest of a subsequent incumbrancer, 3 P.M. 286. 2 atts. 49. P. 183. 5.

1 M. 155. 1 M. 360. 1 M. 155.

As there is present when the mortgagor agrees to give a second mortgage to the same subject to GL and makes no mention of his own. 2 S. 10.

1 M. 360. 1 M. 155.

So if the first is a witness to the second mortgage deed, and knowledge its contents, does not inform of his own, 3 P.M. 286. 1 M. 186.

And it has been said, if a witness is required to know its contents, and the first is a witness in said case, shall lose his priority, or he proves contrary. 2 S. 10. 1 M. 155. 1 M. 360. 1 M. 155.

Contents 1 M. 360. 1 M. 155.

If it is a mortgage of y deed — 1 M. 360. 1 M. 155.

So if the first is guilty of any neglect, in consequence of which another is encouraged to advance money on the same security, the first is 1 M. 360. 1 M. 155.
who makes a second more mortgage and delivers it to y second mortgagee. Then one of this present persons must suffer through negligence of one of you—he, by whose neglect y loss happens must bear it.

Note yr. Rule will not hold in such case. As thinks in Court for yr. town registers and not y little deeds are y highest. But of yr. Me. title, to the 3d person. In N.Y. there are county registers, and none cay of a more title to real property.

Pledging: Title deeds in Eng. create a lien on land, and it is enforced in Ciy by compelling a sale. 2 Br. 767, 768.

If one who is about to lend money on a mortgage security applies to a former Me. to know if he has a mortgage on y land, and y latter denies y fact, he loses his priority, provided y second Me. at y time of applying for information informs him yt he is about to lend money to y mortgagee. But not if yr. en enquiry is merely an act of curiosity.

III. The several interests affect y same estate, they have priority according to y period at which they commenced. Yet yr. Rule admits of exceptions, where one of y subsequent claimant obtains y legal estate, for he may make of its all y advantage yt y law admits of course he may protect his equity. For when y equity of 2 persons is equal, y law must presume yt y y great bond.

This is y General Principle of y doctrine of taking. Pro. 190-420.

As 3d men, y last having advanced a valuable consideration and with notice of y intermediate encumbrance, may by purchasing y first legal estate, obtain priority of y second.

1. 2d Vent. 3b 2d Ly. 119. 2 Lo. 147. 2d Lo. 172. 2d Lo. 243.

The legal and equitable title are on one side and only an equitable one on y other. The legal estate as to subsequent encumbrance "tabula in pagana." This proceeding is called taking.

Focus if he had notice at y time of lending or giving credit.
for he onl then have equal notice with y second, but notice at y time of taking y mortgage, is not material, for he has already made y loan.

A bation notice at y time of purchasing in y prior incumbrance does not affect his right to take — for if one of 2. persons must not lose, each has a right by all legal means to quare as it will, 1 Bom 188. 2 Bom 579. 2 Bom 382. 1 Bom 195. 212. 31. 82.

A Subsequent incumbrance may take in yd way not only for any first mortgage, but to any incumbrance or title, not saved by a legal Estate — We outstanding, term or judgment, or St. Pape — and thus he may obtain a performance even to y first mortgage.

Pom. 329.

Pom. 183.

In these y Subsequent incumbrance hold to y intermediate — till paid his own debt — as y money advanced on y purchase, is a one kind of whole and due on any first incumbrance. Right y appears not of interest on both.

Pom. 188.

To y rule yt equitable interests have priority according to y periods of their commencing — admits of excusing, when one of y parties has more equity to call for y legal Estate yr y other — is one not saved the legal Estate — a Jasmt satisfies.

1 E. where he has a title in Equity to y legal Estate — the not legal Estate actually vested in him. As a Subsequent incumbrance contracts for y legal Estate (as a Jasmt) and is actually bound to pay for it, the it is not actually assigned or paid for — he is preferred to a prior one — for Equity considers as done what ought to be done and wo itself comely performance of y contract — 1 Bom 486. 2 Bom 600. Pom. 194. 204. 12. 81.

But if y prior legal incumbrance attach upon a part only of y estate conferred in y latter mortgage, it will protect y latter to yt part only — As A seized of 50 acres mortgages 20. to B. then y whole to C. and then y whole to D., who purchased y first — D gains priority as to y 20 acres only. But C. shall never have y part mortgt. paying all yt is due on both y first and y later mortgage — for there can be no apportionment of debt.
But if y first encumbrance brought in, certainy more on y third mortgage—y 3rd shall hold y whole; till both debts are paid—As y 2 first mortgages are for sixty acres—y 3rd for 20—by
y third by buying in y first—shall hold y whole; till y first and
third are paid up.

So if a 3rd purchased a prior satisfied judgment,
mortgage 33c—i.e. he carried a legal estate, he gains as above—

By a satisfied mortgage is meant, one satisfied or paid off
after forfeiting and is also there is no other yn equitable relief.

For he has equal Equity and y legal Estate, the y latter is
but nominal in Equity—The last Rule holds, the no consideration
was paid for y prior incumbrance—Having possession of y
prior is satis—
So if it has been held, the y prior incumbrance has been obtained
by fraudulent means, as where y subsequent 3rd came onto a man's
study and took out a satisfied 33c—2 Bem. 182 1. 30. 52. 8.

(Third purchase.) But where any prior incumbrance is defect in conveying y estate
is deficient in legal requisite, it will give me priority to
a subsequent 3rd as judgment not documented—as required
by Fl 4 et 5. Met the—recongnizance not enrolled. 32c because
they do not attach upon y estate—The legal estate is not
purchased in y case—2 Bem. 284 1. 34a. 2 Et 490. 2

A subsequent 3rd cannot take me other yn legal estate for y
mortgage—As a 3rd purchased in y 3rd no priority is gained
for his own original incumbrance. The original mortgage
is preserved to y 3rd for y second mortgage don't convey y
legal estate—2 34. 490. 176. 775,

he can gain
no privity.

So if an subsequent incumbrance has not equal Equity with
an intermediate one—As a creditor can't by judgment or 3rd—
by purchasing mortgage, gain priority to y intermediate mortgagee, for he is in no sense a purchaser and has only a general lien, not having lent his money on y credit of y land, as a pledge and so has not equal equity — 2 Pom 494, 2 Bos 662.

Cor. 324, 26. 3 alki 327, 347.

A prior mortgagee purchased in, will give no priority ni it is forfeited — Ys date however, if is forfeited at y time of y suit both (I think) for a Ct of Equity has no concern with y estate till after forfeiture — Before yt time, y estate remains as at C. Law. So yt y legal estate may be derived on payment by y Mor — 2 Ben 126, Cor. 238, 87.

So yt yt Chy whs decease in favour of y 2d Mor vs y 2d Mor might defeat y decease equity don't interpose till after forfeiture —

So a prior incumbrancer having y legal estate may take a subsequent sum advanced by him upon y same security to his own mortgage, and gain priority as to y last sum vs y intermediate incumbrancer — if he has no notice of y subsequent incumbrancer, when he advanced y 2d sum —

As if mortgages to A. B. C. R unless notice of C's mortgage, lends more money on y same security, having bought A's mortgage. R shall hold for y last loan 25 C — 2 1st 662 for he has equal Equity, and y legal estate — 2 alki 323, 2 Pom 494.

So if there are 2 Mors and y 2d makes a subsequent loan — taking a judgment for security — he may take yt to his mortgage — 2 alki 323, 2 Pom 494, 2 Bos 662, Cor. 238.

But if y first Mor had notice of y intermediate mortgage at y time of lending y last mortgage money upon y same security — he can't take as y 2d Mor — Equity is unequal. —

Cor. 239, 31. 2 Pom 494.

The Same Rule holds when a subsequent re incumbrancer Mor purchases y legal estate to protect his own incumbrance —
There is an exception to the General Rule (as to a defect of notice) when a prior incumbrance is defective. A subsequent mortgagee will have priority over any, not indeed by looking for a legal estate is alienee vested in him

As mortgage to A by defective conveyance, then to B. who has notice, B has priority. Lead here as ye Rule, for ye 3d man with notice, certainly has not equal Equity with ye prior incumbrance. If not Equity devise a later conveyance from M to ye first incumbrancer E

But a defective mortgage will be enforced in Equity as a creditor, who has only general, not specific being, as judgment creditor. They did not originally take ye land as Security and they came in under ye M. who is bound in conscience, to make conveyance good. Ergo, they are bound, to ye 3d, the conveyance as defective. They had not equal Equity.

If ye first mortgage deed contain a clause making ye land a security for future loans, such loans will have relation to ye deed and be taken as a part of ye original condition and ergo will be subordained to an intervening mortgage of ye first M. at ye time of making ye subsequent loan, had no notice.

Thus ye incumbrances in Cont. will hold ye as other claims. If no one, in Cont. made notice of it, when he makes another loan, if ye second M. has notice, if clause in ye first. If he does not have notice, ye first will hold. If has equal Equity and ye legal estate.

In ye above cases when notice of ye interest of ye persons varied, rule of priority if notice is charged by one party, it must be positively be denied by ye other in his answer. Laws in presence he had notice.

So if special facts be charged amounting to notice, they must be denied.
Of notice is denied in your answer, and proved by one witness only your bill will be dismissed, there not being valid notice — but oath by oath.

Scuses if there are as many circumstances corroborating Evidence of your witness.

In your case, if your evidence and circumstances are not satisfactory — an issue is directed in a Ct of Law.

Scuses unless there are no such circumstances.

According to your proceeding Rules, your right of taking incumbrance, depends on your want of notice to him, who we protect his equity by your legal Estate — it is then necessary to consider what amounts to notice.

Notice
notice is of 3 kinds & actual, 2 presumptive.
first — is it is said to have actual notice, when he is party to a deed, or shows y fact in question or has notice regularly served upon him.

But a flying report is not considered as actual notice, as a being about to loan money on a mortgage, a stranger to y contract says to him — B has a mortgage of y same land.

Presumption is a conclusion of law, 1st one has had notice of a fact, then there is no proof of actual notice. Where one can't make a & can't say he title but by deed, and no absence a material fact, he is deemed to admit knowledge of fact as a conveyance to B. reserving a power of apportioning the whole to convey to C. C is presumed to have notice of a power of A. to recover.

So if B devise lands to A, subject to legacies, and a mortgage or encumbrance y land to B — B is presumed to have notice y land is charged of y land is charged with legacies — since it argues neglect, for he derives title under y devise.

There is an exception, in case of assignment of y estates, personal
property by an executor. The assignee is not deemed to have notice of contents of y will, in favour of creditors of residueary legatees. 

Roberts. 1 Ves. 173. 3 s. 386. 2 1718. 142 108. 2 Term. 444. 1. ch. 163. Chaff. 140.

The purchaser can't know y amount of y debt, and of y executry, he will ergo hold y property. A Purchaser of personal chattels relies only possession of y owner.

Sure as to specific legatees - it seems to be true.

The sworn or any declaration between creditor and purchaser to debar creditor. The purchaser must hold y property unencumbered.

If a deed creating a prior charge upon y estate, is delivered to y purchaser among other papers, he is deemed to have notice of prior charge as a mortgage made by endorser. The mortgagor is debarred of y subsequent Mortgage before he lends his money.

So a recital in one deed creating an inchoature, y there is an inchoature or land created by another deed, is deemed notice of inchoature to a person who had possession of y former deed containing such inchoature.

And whatever facts are stated to put y property changed with notice, upon inquiry are deemed notice in Equity. All Infants entitled to an estate, who found a person in possession, when they came of age and recd rent in y past - holder of y estate was notice of a lease by guardian and yt they had notice of it.

Hence it not seem y possession by a prior Mortgagee be date notice of an inchoature to a subsequent one.

Notice to the attorney, agent, counsel or notice to himself as an agent, with notice about to lend money to be in mortgage, has notice of a prior inchoature - his enforcer has notice.

The true holder may, when a person is agent for both parties, as is frequently case in marriage settlement, 1 Ves. 165. 2 Term. 394.

And one may make a person act under his agent by agreeing to convey money in his name by y latter with authority.

Notice of an act of bankruptcy by Mortgagor will not be presumed as notice to y Mortgagor.
from tacking y legal Estate - Tabet 65. 2 Rem 317.

A tacking by the matter of record, is not deemed notice to third persons, ify incumbent as it don't appear as y title deed, and is not a common ordinary assurance -

Hence a subsequent Mortg may tach, taker an intermediate jident; for tho, a judgment is matter of record, 3d persons are not supposed to be acquainted with it. To prevent tacking, notice must be proved as in other cases. Pow. 283. t. 85. 1. By Ch. 35. 174.

Due in Count a suit - y mee incumbrance being duly registered - St Count 417. 8. In other words, any town records of conveyance and mortgages are not constructive notice. It seems to be so on principle -

But suppose y 3d mortgage taken, with actual notice of y 2d and before y 2d is registered, that there has been no reasonable delay in y 2d, in procuring it to be recorded, yet not y doctrine be applied in Count in y 2d 45.

Yet in Eng'ts holding, y y register of intermediate mortgages in y registers county, is not constructive notice. As y first Mortg poor y 2d Mortg, registers, advances a loan, he may tack -

Sea due as to both Cases.

But a subsequent Mortg having actual notice of a prior mortgage, not registered, will not gain priority by registering, for he has all y notice why he intended.

But a subsequent mortgage registered is preferred to a prior one, not registered, if y subsequent Mortg has no notice. Pow. 112. Pray 64. 3 alm. 540. 556. 45.

A purchaser for a valuable consideration shall hold as a prior, on voluntary settlement, tho he had express notice by the 2d Party.


The rule has lately been complied off and rightly. 1. Eq. 61. 43. 453.

In case of a subsequent purchaser, or of a mortg, advancing money post-notice, when there is no actual frame in y first conveyance in settlement.
for ye first to be made void only on suspicion or presumption, yt y latter purchaser was deceived.

If one purchase without notice of an incumbrance, and then sells to one who has no notice, y latter is not affected by it.

So of a person purchase for a valuable consideration, and with notice of an incumbrance, from one who bought with notice, y last purchaser, the with notice, is not affected by it as sells to B, who is with notice, who sells to C with notice - C is not affected, for the interest in B's place. P Chy 51. Sessib 127. 1. Clar. 69. 1. G. 281. to whom interest in an forfeited mortgage belongs on his death.

Here, there excieted great doubt, an y money due shall be paid to y heirs or executor, y Mortgage being forfeited.

And this distinction was taken, if a bond was given, and if y condition of y money, redemption was paid, to y heirs, y executor, or heirs or executors.

Here y money was decreed to y heirs - Pow. 297. 1. G. 226. 1. S. 171.

But since CS of Equity have considered y contract merely personal, this a rule in all cases, yt y money belongs to y executor or administrator, y interest being personal, mi y latter has manifested a contrary intention - as if he has foreclosed, or alienated, or released, Equity of redemption.

As he takes actual possession. By these acts, he shows an intention to consider his interest as real - Post 80. 132. 2 Bent. 548. Harw. 467.

The principle, For as y loan or debt came from xxl personal fund, so payout the acconame to ye fund - Pow. 297. 301.

Hence on a forfeited mortgage, y debt must be paid to y latter or executor, till y y money is not payable to y heir or executor. y Nor is not at liberty, on y day of payout, to pay either of yom, ye his election, for ye is a strict performance of y dontion, and also Equity has nothing to do with mortgage.

After ye paid after ye day, he has then not strictly performed, and must love, pray, etc., to whom y debt belongs, an y executor or administrator - Pow. 299. 1. G. 283.
The money being paid on a perfected mortgage to y executor, y heir of y
Mee must receive, to y heir - y heir being only a trustee - and
such y trustee in satisfaction - Ford - Row 304. 2. Bodle. 49. 50
But in Common Law, if in y Mee death, y legal title becomes
vested in infants heirs, y executors or administrators is empowered to release 3 Ann 1801 -
y heir - But infants themselves may still release, 15 Conn. as in Eng - B. 1801 - H. Const. O. 2, p. 120 -
The same power is extended to Guardians

And if in a perfected mortgage, y money has been paid to y heir,
he is respectable in Chy to pay it over to y executor - 2 Rec. 346. Row 202 -
And thery Mee that die before forfeiture, in such case y Mee
may pay y money he elks at y day - yet y money will in Chy
belong to y executor - 2 Rec. 357. Row 312 -
And if there are several Executors, any one of ym may receive
y money and his discharge will be good -

The bequest of a specific legacy by y Mee to y Executor, dont
bear his right to y money -
So if a Mee die intestate, y interest belongs to y administrator
and he may release it and y heir in possession may be compelled
to convey y land to him - This Rule holds, thery there are
no said debts -

If after Mee death, y Mee releases to y heir of y Mee, y mortgage
being perfected, yet y administrator is entitled to y interest of Mee -

So then, y Mee has foreclosed, in he has taken actual possession - id ibid -
Row 304 - 2 Term 19. 152. 170 - J. Term 4 -
But if y owner of y incumbance intended to hold it as real - 2 Term 27. Bodle.
Estate, it will be so considered on his death - As in y case
of purchase under a mortgage by an absolute deed, & as redemption
of y mortgage on his death will go to as y Estate intended
to be purchased not have gone (ie to y heir) for his intention
was to realise, & to invest his personal property in y purchase of real estate.
So if ye mee devise his mortgage, as real estate, ye heir and not ye executor of ye devisee, will he entitled - as devise to
Rs. 760. A and his heirs - for his intention goven - 2 Bn. 360. 2 Bn. 881.

So if money secured by mortgage, is attached, by ye Mess, to be laid out in land, its bound by ye articles and goes by law - according to ye articles not have gone - the executor is excluded.

Of 2 persons make a loan with their several monies and take a joint mortgage, they are not joint tenants, as common purchase, will be in such a case - but tenants in common, there is no survivorship, for ye is ye presumed interest - so if they foreclose, ye mortgage, and one dies, ye same interest is presumed.

2 Rs. 268 - 3 Ch. 115. 3 Bn. 133 - 1. 55 467.

They are not considered as purchasers of ye estate, but as creditors taking security together for ye several debts.

The Interest of Mortgagor's Wife.

Vide Husband and Wife. As ye wife by joining with her husband in a fine, may buy ye dower, so in ye same way, she may incumber it with a mortgage - 1. Bn. 24. Pr. 280.

But her right of dower is precedent to ye of ye mee under a mortgage made by ye husband alone during coverture - for her interest right of dower, begins with marriage.
A joint tenant of land mortgaged may redeem, and she shall hold over till she or her representatives shall be repaid y whole with interest - for she has a right to hold y land incumbered 1c. when she has not joined in incumbering it.

This rule applies to cases in not ye jointure is after ye mortgage for if ye jointure is before, it will exclude y mortgage.

The same rule holds as to a settlent on ye wife, vested
in articles not executed—E. G. after articles made before marriage, y husband mortgages y land, and then marries in possession of y articles and dies—the widow may redeem it atxford
Pow 314—3 Bae. 326—2 bent 343—If articles after marriage—wide info

But if y jointres joint post marriage in a feise, mortgaging y land, she shall pay her proportion on redeeming 1£. 13 of y property—
and tho she dont redeem, the must keep down y interest during estate—1£. 13 enforced, if the is in possession—

If first the land more money on his old security, without notice—
of y intermediate jointres, he shall hold it as y jointres, y legal estate being in him & he having equal Equity—

A jointres settles on mortgaged lands after marriage, if newly voluntary is void as y 2nd meer, tho she had no notice—
a hard rule and unfair disapprov'd of the not denied. Jointres may redeem G. trusts—

If y husband before marriage gives a bond to y wife condition to lease him a certain sum, if the survives him—The surviving may redeem, as a creditor, & the may redeem under these circumstances not entitled bond creditors to redeem—Pro by 387
2 benc 480. Pow 316.

If y husband lends his own money and takes a mortgage in his name of himself and wife and dies—she is entitled to it by survivorship—and if there are assets, same to pay y debt with it—Poss she is not. Mortgage as to her being voluntary—

So now settled y wedding of a wife is not entitled in Equity or Pow—
to dower in y equity of redemption of a mortgage in fee, ergo the estate as dowerer, redeem. It is considered as analogous to a sure trust, if no dower, can't be predicated—


The Rule was settled, when y wife of m['s] was subject to be entitled to drawer.

The Rule contemplated y case of a mortgage in fee before marriage, for a mortgage by y husband after marriage, will not affect y wife's right of dower— L. 119 Eliz. 3. 3 P. 89. Add. to 138. 2 K. 5-25-1.

And in Eq. as well as in Comt., a wife is entitled to dower in y receiver consequent— on y determination of a mortgage for life or for yrs. If y mortgage is satisfied— Equity will remove it out of her way.

As husband before marriage mortgaged for 500 yrs to raise planting, and they are paid— Proc. 319. 21. Pro Ch. 132. 3 Tom. 418-

Mortgaged by husband and wife of her free hold and interest in y mortgage money due her.

The husband by marriage obtains no other interest in y wife's intestate, in a freehold during point lives, or at most for her own life after her death by y dower— The ergo can't make a mortgage of it, binding upon her, and her for a longer period— y

as he mortgages for 500 yrs and dies, y mortgage is determined by y death— So the she joined, secures y by future recovery.

Secs of the joint in leaving a joint, on y may her land may be mortgaged or aliened, 2 as to bind her and her heirs— L. 25. 35-

1 P. 5-25. 39. 2 B. 61. 1. 59. 61.

But acts of y wife after coverture determine amounting in law to a new grant or reexecution will give validity to a mortgage made by both— or by y husband only. As directing tenant in possession to allot to y Mrs. and y deed being in his hand's settling y balance of rent, styling him Mrs. or acquitting in his possession several yrs.

These acts together are equivalent to a conveyance of a deed.

If y wife join in a joint, to secure a mortgage on her estate— y estate will be held, not only for original sum, but if part of y
be paid y a further sum is borrowed for yt als - for y three has y legal title and as much equity to have his money, as y wife or her heir has, to have y land.

If y wife's land is mortgaged to secure y husband's debts, his personal estate shall on his death, be applied to y discharge of it - the y wife lends a fine and exclusion of y legatees, her equity being partly hidden yo theirs.

Paw 243. 15 May 264. 2 Bern. 604-87-

The y wife inumber her portion by a fine to secure his debt, yet she does not by y act absolutely part with it - I. Bern. 213.

Paw 348-

Where y inmumberance is paid off by y husband, there results for her a trust in Chy to her portion -

If y wife joins in inmumbering her own estate to inmumber her husband, and he dies she is considered in Chy as to his heirs as standing in place of Mes and is entitled to satisfaction of his assets.

2 all. 284. Paw. 3 346-

If a same title marries and upon marriage, her husband makes a settlemen upon her in consideration of her fortune, ye is considered as a purchase of her mortgage, and if he dies, she is considered as to his heirs as standing in place of Mes and is entitled to satisfaction out of his assets.

Paw. 346-

If he dies, the living, y mortgage will go to y executors.

The rule was not hold, it seems, in case of a voluntary settlement post-marriage - is then regarded as a purchase.

So a settlement post-marriage in consider of an addition to y wife's fortune, is not a purchase of y ascension - There is no contract on y wife's - she can't send her fortune -

And if y settlemen is made before marriage, expressed to her in consideration of part of y wife's fortune, is not a purchase of y rest -

So an executary agreement to settle a jointure in consider of y wife's fortune, is a purchase of y wife's fortune, (at fiction) that she dies before it is made.
provided, he is in no default, 

A settlement by y husband is not a purchase of y wife's mortgage, if it falls short of y value agreed on, and she will hold y mortgage property to serve his creditors.

But y husband is entitled to y wife's mortgage, as long as in action, if he reduces ym into possession during coverture, he shall make no settlement, as if he collect y debt. — 1. Eq. 116.

But an alienation or assignment of y mortgage by y husband, is not reducing it into possession within y Rule, nor it is for a valuable consideration. — 2. Eq. 116. 3. V. 401. Pro Civ. 118.

If y husband's creditors get possession of y wife's mortgage, so y she is obliged to apply to equity for relief. If Ct will not interfere, take yr advantage from ym.

The interest is assigned to y husband as much (be being a bankrupt) and all writings, lettered to ym.

But if the husband, and y creditors were obliged to apply to Equity, y Ct nor not interfere on yr favour for y same reason. But if y made a reasonable provision for her, since y Ct no interfere in favour of y husband on yr condition. — 1. Eq. 116. 3. 382. 439.

But Equity will interfere in y wife in favour of a valuable assignee, y husband for valuable consideration. Y wife's mortgage, he gives credit to y party, not to y person and to have a higher claim in Equity on y husband or assignee's under a commitment of bankruptcy and a higher equity in y wife. — 2. Eq. 270. Pro. 369, 462.

Out of what funds mortgages are to be redeemed all.

As a general rule of y fund, wh has been invested by contracting y debt, shall be charged in y first instance with y payment.
Ergo on ye Testator's death, his personal property is to be first appli

ced to ye discharge of ye mortgage. The Executor then of ye Testator's es-
petty, is compelled to advance ye redemption money for ye benefit of y
his heirs. In case of y Testator's death, he may, with ye testator's per-
sonal estate, pay ye debts of y Testator.[285]

And the y Testator's estate must be applied to ye Testator's estate, and ye
executor must pay ye Testator's estate in accordance with y Testator's
intention. [286]

The same Rule exists in favour of theTestator's estate as in the Testator's
estate. [287]

If y Testator's estate is to be applied to ye Testator's estate, the executor
must pay ye Testator's estate in accordance with y Testator's intenti

Where does y rule extend to any other cases? [288]

In case of y Testator's death, ye executor must apply ye Testator's per-
sonal estate to pay ye Testator's estate. [289]

And the y Testator's estate is charged with ye Testator's personal estate
but, ye Testator's estate is only liable for ye Testator's personal estate.

But if y Testator's estate is devised to be sold, ye Testator's personal estate
is not applied in case of y Testator's death. [290]

Here y Testator's estate is subject to be sold. [291]

And the rule of y personal estate shall be applied to ye Testator's per-
sonal estate, in case of y Testator's death, to ye personal estate as y
executor of ye Testator's estate. [292]

The Testator's estate is held in favour of y Testator's estate, ye executor
and ye Testator's estate, to ye Testator's estate. [293]

The Testator's estate is held in favour of ye personal estate, ye executor
and ye Testator's estate, to ye Testator's estate. [294]

And ye executor's estate shall be applied to ye Testator's estate, in case of
ye Testator's death. [295]
And if a residuary devisee resort to his personal funds and exhaust it, the same rule holds in favour of simple contract creditors and general legatees. They may resort in Equity to the Real Estate "pro tanta" to satisfy a simple contract creditor and general legatee are preferred to devisees. The same rule holds in favour of simple contract creditors and general legatees. They may resort to the residuary devisees. Som. infra.

It holds in all cases in favour of creditors and general legatees. If a devisee is specific, if the devisee is general or residuary, they may resort to the Real Estate, "pro tanta" or residuary devisees.

But if one devise his real Estate as an Equity of Redemption, specifically and dies, leaving debts and legacies, and if specially creditors exhaust his personal funds. If a devisee is specific he may attempt to satisfy his devisees, "pro tanta." For a devisee is specific and such a devise seems to distinguish from a residuary devisee.

All my real Estate is specific, the rest of my Real Estate residuary.

When a devisee is specific, and a devisee is residuary, and dies, leaving debts and legacies, and if specifically creditors exhaust his personal funds, the devisee may attempt to satisfy his devisees, "pro tanta." For a devisee is specific and such a devise seems to distinguish from a residuary devisee.

On the other hand, if he devises his personal property, specifically, bequeathed.

Money may be a subject of a specific bequest, but it must be so circumstances of it may be identified. It may be distinguished from all other money of the devisee. Ex. 100. dollars, due on 10. bond.

Thus if a devisee devise his equity of redemption to A and 100. dollars to B, or a certain bequest to B, A is not entitled to his legacy to disincline the devisee.

But to render a bequest of personal property specific, it must be certain, and defined - as 100. dol. nothing more is general.
out 10s. in such a box, or due on such a bond is specific——

Tho a Moir devise his Estate with y usuance thereupon, yet

if there are no other words showing an intention, y devise shall
take som onee — y personal funds is first to be applied, according
to y above distinctions, to disinumber it——

And if there appears on y face of y Moir mill, a clear, positive intention
y devise the hold y Estate, disinumbered, even y Real Estate in y hands
of y heir shall be applied to disinumber it — Ad Moir devise an Estate
an Estate in fee, and an Estate to it, for 3 lives (ye being all his landed
interest) then purchases y resurrection of y latter, not is a resurrection as
to ye. There is a clear intention to disinherit y heir——

If a Moir sell or assign his interest, y heir of y assignee has no claim
on y assignee's death, to his personal assets—— to disinumber y funds
for y personal Estate of y assignee is not increased, but diminished——
by y purchase——

Same rule holds as to y assignee's devisee——

To if y money due on mortgage is not properly y debt of y owner of
Equity of Redemption, y Estate mortgagee shall, shall on his death, bear y burden.
His personal assets are liable, for his personal fund has not been benefited.
As Moir's heir pledges his own lands as personal security and then devises
y land to a, y devisee shall not have aid of y personal funds——

**The Interest of money desired by mortgage**——

Convivial interest in Eng by 4½ 12. ann. 10% per ct. In Eq. 6. 1½

**IF: Georgia**#1 The General Rule is, reserving more, makes y contract
void — recovering means y penalty——

As y reservation of illegal interest avoids y contract for y repayment of
y loan—— So it makes void a mortgage given to secure it—— This said
by La Harwrench, yt if a mortgage is drawn for 5 per ct, and y33
receives 6 — y mortgage is void——

3 4ths 4.421——

This must mean reserving in pursuance of a private original agreement——

or a receiving at y time of y loan, amounting to an illegal reservation——
There is a distinction in Chy between an agreement to pay 4 per Ct. with a clause of increase to 5 per Ct. if your debt is not punctually paid and an agreement to pay 5 per Ct. with a clause of deduction 3rd. The latter is enforceable. If former not - a penalty is not enforced in Equity.

There is a distinction in no practical use of the parties to evade it, as they may always by the form of your contract 3d. Term 247. 316. Or. Chy 162. 3 and 520.

But a covenant or agreement after interest has accrued to pay an additional one per c.t. is good in Equity.

being considered them as assessed damages not as a penalty.

Chy 161. 57. 2 Term. 134. 424. Or. Chy 151. 57. 1 Term. 2 Term. 449.

So an agreement but laden to make interest from 4 to 5 on non-payment will be good in Chy. in consideration of it is an indulgence by way of forbearance, be actually given to the Mor. It is not a penalty in any case but a liquidated satisfaction if there on non-payment your rent and accounting to the Mor. who admitted it and desired forbearance which was granted on your agreement to pay y condition.

Interest upon interest in arrear is not regularly allowed.

But if your Mor assign with y concurrence of y Mor, all y money paid by y assignee, and wh was due to y assignee, will be considered as principal and drawn interest. True interest on y original interest is allowed. It is in y nature of a contract, between y Mor and assignee, y Mor latter to pay his debt and in meantime y assignee actually paid interest on y original interest, or does what is equivalent parts with his own money in paying y interest due, as well as y principal.

Alliter of ye assignee is with ye mortgagee consent, or seunsance, it will be allowing me alone to convert interest into principal.

Save if ye assignee has not paid ye money, ye assignee is only allowable to load ye mortgagor with compound interest.

The account between ye mortgagor and assignee, as to ye amount of ye debt is not conclusive on ye mortgagor. He is no party to it.

It was once held, ye mortgage being foreclosed, the have interest upon interest.

This rule was soon exploded.

The report of a master of Cth. computing interest, makes ye interest principal, from ye time of ye report being confirmed, did a judgment.

But a master's account vs an infant in a bill to foreclose, don't regularly carry interest on interest; for one reason for allowing interest on interest, in common cases of ye time is ye mortgagor is guilty of neglect, which cannot be imputed to an infant.

But if ye infant is in Cth. on a bill, to redeem, ye account taken by ye master carries interest on interest. If ye infant in such cases is allowed a full benefit of proceedings in which he is forced by ye infant.

So of an infant entitled to an equity of redemption; agrees to pay interest on interest and then proceeds. It is allowed.

But ye mortgagor merely signing an account, no demand of so much is due as interest, don't turn into principal. Don't amount to an agreement for ye purpose. 1 P 1177 652. 1 P 1137.

So an agreement at ye time of ye mortgage, to turn interest into principal. E. to pay compound interest, is not binding, it is oppressive. But post interest has become due, such an agreement is good.

If ye mortgagor has expended money in defense of his title.
when impeached, he may add it to ye principal, and it will doe interest.

A Tenant for Life of a Equity of redemption, is compellable by ye remainder man to keep down y interest during his estate, and by verifying y mortgage ye latter may compel ye tenant for life to redeem by paying 1/3 of y debt or quit possession.

But a Tenant in tail in possession of lands mortgaged, is not compellable by y remainder man, or remainder, or issue in tail, to keep down y interest—For they are in y power of y tenants in tail, and may be barred by fine or recovery.

The same Rule holds in favour of issue in tail to y remainder man, and remainder and for ye same reason.

But if a tenant in tail of mortgaged lands, is an infant, and his guardian in possession, he is compellable to keep down y interest, for such a purpose. Pown. 444. Talbe 367. 2 ad. 427. 1 ad. 417. 460.

If y tenant in tail does keep down y interest, y remainder man shall have y benefit of it. 13. is not compellable to reimburse y tenant in tail or his representatives. 1. bis. 477. 1 Bis. 218. Pown. 446.

For y remainder man's interest is so remote, quo ad y probability of enjoyment, yt it is deemed of very little, or no value. The ought not to be compellable to contribute, where y probability is, yt he never will be actually benefitted.

If y lease enters and then permits y heir to take y profits without paying y interest—Still in favour of y 2d man, y profits shall be applied to y first lease's interest, so yt y first lease interest shall not keep out y 2d man any longer, yt if y interest has been duly paid—y profits—otherwise y 2d man suffers.

For he is prevented from availing himself of y lease profits by y first lease's act. 15. Pown. Cl. 30. 1 bis. 270. 3 Pown. 628.

Pown. 43. 453. 68.

Where a bond is given to yee, y holder of it, being fairly possessed of it, has of course a right to receive y whole principal and interest—For he has y control of y debt, so yt he may extinguish.
But y holder of y mortgage deed has not by possession of it, authority to receive money or interest. This he may receive, because, he may command y possession. But giving up y deed to y Mor and not renew y estate, y debt is y principal. As y mortgage deed pledged by y Mor and debt by y borrower. At y mor. 154, 1. Term. 150.

1. Eq. 207.

If y Mor refuse to receive his money, court foreclose on tender made he loses y interest in y debt from y tender provision y Mor give notice of his intention to try 6. calendar month before hand and tenders y money on y very day when he appoints. Unless y interest will be allowed.

1. Eq. 208. 19. Pow. 454.5.

This notice is required quite y day of payment is past. Such tender will also bar y Mor's executor or devisee of y interest.

But in these cases y Mor must make oath, yf y money has been always ready, for y Mor since y tender, and no profit made of it. Terms y interest will run on. This oath may be contracuted.

Pow. 456. 2 P. P. 376. 2 Ch. 206.
And in general there must be a strict legal tender, to stop y interest.

2. Eq. 608. 2. Inc. 372. 676. 3. ad 90.

But tender of a banknote has been held good, where y Mor made no objection to y legality of tender, and y Mor offers to exchange it for money of y Mor, wishes it.

The money (being a sum in gross) is regularly to be tendered to y person of y Mor, if no place is appointed in y contract (tendering upon y land, y Mor being absent) is not valid. Co Litt. 210. B. 2 Eq. 610. Kent.

But if y time and place are appointed by y parties, tender must be made at y time and place.

So if no place is appointed in y condition, and Mor gives notice where he will pay, tender at y place is good, if y appointee is a reasonable one, and no objection made to it by y Mor, when y notice is given.

And in some cases tender at y Mor's house in his absence will be satis.
when me place is expressly appointed, as if y Mee mightily keep out of y way

But if y Mee has doubts as to any legal question arising out of y transaction, he ought to have time to consult counsel, before y interest shall stop on tender mone. As Mor present, a deed of conveyance to be signed by y Mee, and containing county of £30.

So if there is a question as to wh y equity of redemption belongs, the recovery ought to be made, till y point is settled.

The interest reserved upon a mortgage may be altered by a pinal y and of the agreement subsequent. As interest reduced from 6 to 5 by Lt - of y Mee. Else in y case decided y Mee was Plg - it may rebutting on being a liable equity. So such an agreement be allowed in favour of Mor, to foreclose, y when Plg.

This rule is necessitated. 6 Prog. 650. P. 460.2 Mor may rebut and not an agreement to increase y interest be good as nor rather may hen: when Plg -

y method of accounting

The method of accounting

The mortgage being a pledge, not an alienation, y Mee has no right to y rent. till he takes possession. The more, therefore, is not bound to account for y rents during y own possession. The is to pay interest on his debt and uses y profits during his possession.

2 alke 100. Dovy 266. P. 260.466

But if y Mee must account for y interest during his possession, they are to be applied to discharge y debt. He is an nature of a baily give y profits, he is made. So yt ultimately y Mord. 2 alke 534. h. benn 470.

Pown. 464. moon.

This means, if y Mee in possession manages y estate himself, he has no allowance, he can have for his care or time and labour an to be taken into y account. He trusts for y purpose of administering y estate, profits of y estate. The same rule holds, the more is an agreement he y must try to prevent affection. 2 alke 120. Pown. 466

Dow sw 318. 3 alke 518. Pown. 466.
But ye account between ye Mez and assignd. will not conclude ye Mez.
for ye profit are his. He is a debtor, and she a party to ye account.

Paw. 472 1. Chy II 68

...An assignee after several assignants, is not bound to account for
his profit before his own times, i.e. the former profits shall not be taken
into ye account to him. They shall be set off by ye receiving interest.
And ye reason is, ye difficulty of stating an account of all ye profits.
In such cases—
Paw. 472 3. Chy 9102 2 Chy R 392

If ye Mez, after having attempt'd to defeat ye Mez's title at law—
exhibiting a bill to redeem, all ye Mez suspended at law in
defending his title, shall be allowed him in ye account—

2 Ber. II 356

There are 2 modes of taking yer account between Mez and Mez.
One by making annual rents, &c by applying an annual surplus
of ye rents and profits over ye rent of ye interest—to sink ye principal.

The other mode is, by bringing ye all ye profits in one aggregate sum
and all ye interest into another.

Where there is a surplus of rents and profits, ye former mode is y
best for ye Mez as it leaves ye rent of ye receiving interest.
Each yr by annually redeeming ye sum and draws interest.

The Rule is, ye if ye yearly rents greatly exceed ye interest of ye debt,
y annual rents are to be made—Dec. 1st
at a faster rate, and not bound to apply every small sum
as excess to ye principal. 2 Wh. 554. Paw. 474

...at ye will after perfection shall be in favour of ye Mez, devise a redemption
To ye advantage of Mez, ye same to be void devises a redemption, if wil orders
of ye Mez pay ye debt within a limited time, he shall be forever
foreclosed or barred of his right of redemption, with order is irreconcilable,
in under special circumstances, if he is

T'tract of a redemption, a devise may have in favour of ye Mez,
for ye sake of ye estate (if not redeemed) to pay ye debt—gives in such
cases y Mee can't avail himself of any present profit of y lands.

Alter where an Estate in possession is mortgaged.

If a mortgage is made to several, all must be made parties in a bill for foreclosure to prevent a multiplicity of suits and a lot of Equity suits which Equity will never decree a foreclosure till a forfeiture of mortgage — or title then y Equity of redemption don't exist — y Estate is reducible at Law

1 King 2:57. 1. Term. 2:32.

On a bill for foreclosure y title of y Mee can't be investigated — 12. Chy on such a bill won't aid his legal title, but will leave it, as it is, to be settled at Law — The decree only destroys y Equity of redemption

Cow. 4:76. 2 Chy Ct Y 2:44.

If y mortgage deed is defective, y Mee may compel y Mee to make it good on bill for y forsena, but not on a bill for foreclosure — y Mee may pursue all his remedies at y same time — Be one for y debt on y bond &c. for possession in ejectment — and for foreclosure by his bill in Chy

2 Aber 3:84. 387 4:01. Cow. 4:77.

But under special circumstances, y Ct will grant an injunction to stay y proceeding on y ejectment —

Chy may refuse to decree foreclosure, when injustice wil be done thereby — as Mee having notice of a voluntary family settlement, prosecutes to convey y legal Estate to heir to protect his mortgage — Left to his remedy at Law — Unfairness — Breach of Trust in y Trustee

2 Amer. 27:1. Lett. 68. Cow. 237 4:73.

She Mee praying relief as y Mee, as equivalent to paying a & redemption — for redemption is y Mee relief —

If upon reference to a Master, its taken y account on Mee's bill —

to redeem — he does not redeem by paying y money according to y order and y Ct on y Mee application dismisses y bill — on y account y Mee dismissal is equivalent to a decree for foreclosure —

2 Mee 2:67. Cow. 4:79.

If y Mee's heir bring a bill for foreclosure, it's good cause of demurrer, y & y Mee executor is not a party — he being entitled to y money —

So if it appears on hearing of y Mee's doom or estate is not party —
y Pff (y-mortgage heyr) can't proceed, for there is no tenant.

Paw. 479. 2 Ch. C. 27.

But y Mo's executor need not be made a party to y bill for foreclosure. He has not y Equity of redemption. Sec. 12 on a mortgage of a freehold. 3 0n 23. 355. 11. Paw. 479. 80.

But if y Mo's heir had obtained a foreclosure, it will be good. The executor now is in party. For y heir may obtain y land, on paying y debt to y Executor or adm. 1 Rom. 357. 2 Th. 6.

Paw. 479.

But if y heir don't pay y mortgage money to y Executor, y Executor may compel y heir to convey y land to him. 2 Rom. 379. 193. 26.

Paw. 303. 485. 1 Eq. C. 238.

In a decree to foreclose within a certain number of mo's, y term is computed by calendare mo's not lunars. 2 Eq. C. 215. Paw. 481.

This is a rule of Equity.

A decree to foreclose a tenant in tail of an Equity of redemption, will bind y issue in tail, and all those in remainder, that they are not made parties.

The Mo's that acquires all y right of y tenant in tail, and y remainders were all in his power. Paw. 481. 1 Ch. C. 217.

But if there is a tenant for life of an Equity of redemption, with remainders over, y remainder man ought to be made a party to y bill for foreclosure. He is not in y power of y tenant for life.

2 Ch. 215. Paw. 481.

If there are several remainders, some of whom are not made parties to y bill, still y Pff may foreclose, such as are made parties. As y heirs. The Pff makes only y 3d party. He is bound by y decree.

Paw. 482. 2 Rom. 318. 365-182. Paw. 492.

But those who are not parties to y suit are not bound by y decree, and of course have still a right to redeem. y Mo's

Where all y Mo's interest is devised away, y devisee may bring a bill to foreclose right making y Mo's heir a party.

He has no interest. 1 Eq. C. 318. Paw. 485.
And an infant may be foreclosed, but a day is given to
him to show cause why decree—when he comes of age—16. within
6 months afterward. The 6th is called a day—

The words of y decree are, "ye decree is to be binding on ye
and a Be mi be shall within 6 monst. & y being served with
process for y purpose, shew good cause to y Court by—

Plea Ch. 185. 2 Bed. 23—

If y infant shew no cause within 6. monst. y decree is made
absolute upon him—But where he shows a cause, he may on
motion, put in a new answer and make a new defense—

2 Rot. 52. 1 P. 54. 564. 2. 364 401. 3 P. 54. Ch. 301—
The process is to be served on y infant. Upon coming of age, he is not
allowed to go into y account anew—of course, nor is he allowed
or entitled to redeem of course or pay mnt. he can throw only y
y decree is erroneous—or unjust—16 he may take advantage of

of any reasons of excusing at ye time of y foreclosure.Summary if they
had been then urged and have presented y decree—and
ni y air may he may open y foreclosure—3 Rot. 369. 3 Bac. 188. 3. Rot. 486—

3 P. 54. Ch. 128. 492. 489—

But it is said, yt where an infant owns y Equity of redemption,
y (nee) proper remedy is a decree yt y Estate be sold for y
payment of y debt. This binds him without a day after age.

For there is no forfeiture, y surplus, being his. But even then

If he is desired to join in y conveyance, he must have a day—

But if a feme sole or her ancestor mortgages land and y
Equity of redemption rests in her during coverture, a deed or bill
to foreclose is presumptive. She has no day given her to show
cause why it, as an infant has—She is under no natural incapacity
to act for herself and has voluntarily delegated y right of
acting for her to her husband—3 Rot. 252. 1 Bac. 325. 348 1212—10. 30. 829

433—

But thi no day is given her by ye terms of ye decree,
yet it seems, yt after coverture, she may avoid y decree,
if there is just cause—as quo then real fraud or plain mistake

2 Rot. 450. 332. 235—
If y Mee is guilty of any unfair conduct in obtaining a foreclosure, y Deed upon it, 12. rehearsal y right of redemption, as Mee obtaining a foreclosure, pending a suit by Mor creditors to have y land sold, for y payment of debts, opened in their favour.

2 Eq. Ch. 684-400. 2 Wm. 684. 491-99. 2 B. & 4. C. 244.

So if y Mee obtains foreclosure after y judgment creditors of Mor have given notice of their demands and tendered them payment.

2 born. 185. Pow. 491.

Secus if y Mee had no notice. Deuce.

Where a foreclosure is opened in favour of a subsequent incumbrance, y first Mee shall be allowed all his expenses in obtaining y foreclosure.

2 born. 185. Pow. 492.

This Rule holds, if y foreclosure was obtained by unfair means. The time limited for payment on a decree for foreclosure, may be enlarged upon special circumstances. As if y Estate is of much greater value or y amount of y debt — may be enlarged several times — y reasons continuing — by has y power of opening it in all cases.


1. Eq. Ch. 66-26. Where y Mor was prevented from paying by y rebellion, y time was enlarged. 1. E. Ch. 53. Pow. 494.

A foreclosure is not opened in favour of a mere volunteer as devise.

y Mee has at least equal Equity, and an absolute Estate at Law.


On Mort. Mort. mortgages, there can be no foreclosure, there is no forfeiture. 1. Eq. Ch. 406. Pow. Ch. 423-1. 1 M. & 29.

If y first Mee having obtained a foreclosure by y devise y land to y Mor, y foreclosure millipede fact will be opened in favour of y second to y Mor. 2 born. 283. 281. 146. 38 & 276.

The 2 mo. Mee's claim on y land is thus renewed.

The 2 mo. mortgage deed is an estoppel to y Mor who now has y legal Estate. For y legal title is now vested in y Mor and as such, y 2 mo. Mee has a plain equity of to claim his original lien — y debt being unpaid.

And if y Mee having obtained a decree to foreclose, uses on his counter security (as his bond) ye is a warier of y foreclosure.
for he can't collect y debt and still hold y pledge

1 Eq. 377. P. 528. 472. 2. Dorrus 3. 149

A Foreclosure is not regularly opened when y Mor has acquired
for several yrs. wi y Mc's possession under y foreclosure.

2. B. C. 111. 1 Stmt. 808. 7. Conn. 808. P. P. 479. 502. 1. 10. 1. 18 Chy 14

2 Eq. C. 177. 294.

In Eng, y practice is, if y Mor don't pay y debt at y time limited
- to make y decree absolute by a further order. P. 479. 502. 2.

Chy vii Eng is always open. Issue in Court.

If y tenant in title of an Equity of redemption, suffer a recovery
and sell part of y land on a bill to foreclose, or compel a sale
y part sold shall not be affected, if y 2 vendee is satis to
satisfy y debt.

Mortgaged

Mortgaged 62. Interest of All in the
mortgaged Premises 63. Equity of Relem (who may) claim it 71. If a devise of
Land(s) mortgaged 63. Priority of
Profess, unmortgag ed and of Sacking 83.
Noticed 91. To whom All's interest in
an (forfeited All) (mortgage) belonged
on my death; 64. Interest of Mortgagee
and Wife of her Husband and
Wife of (her Freehold) and (her Interest
in the Mortgage) money due her 83.
Out of what funds Mortgagees are to
be redeemed 100. The Interest of
Money secured by Mortgage 103.
Method of Accounting 108. Foreclosure
110.
Estate, in Joint Tenancy 1874
Estate, in Coparcenary 1885
Estate, in Common 1899
Estates in Severalty - Pointenancy - Coparcenary and Common - Those under former titles are considered with respect to y quantity of interest - in y owners and y time of y enjoyment - Now to create em in relation to y number and connections of y owners -

It an Estate held in severalty, is one of thair is only one owner - during y continuance of his interest - 2 Mose 112. 2 Ab 179 - all estates are supposed to be in severalty (when rules are laid down respecting y) ni they are declared to be secure - Then -

Estates in Pointenancy -

This is an Estate in land or tenents, granted to two or more - and it may be in fee simple - fee tail, for life, or for yrs. or at
will - 2 Litt 2 Beo 277. 2 Ab 179. 2 Mose 124. 2 Beo 182. Title A - Vermont -

1st - as to its creation - It is always created by purchase 16. by act of parties, never by descent or act of y law - As, it may be created by devise - deed - fine - or any other common assurance - 2 Mose 124. 2 Beo 180 -

2d - If an Estate is given to two or more, with the words denoting any intention, if it she not be a pointenancy, it will be such - as Grant to B, A's, and yd their heirs - They are Pointenancy in fee -

But if land is granted to two, to be held 1 half to 1. 3d. -

they are not pointenancy - but tenants in Common -

Litt 2 Beo 298. 2 Beo 192 -

Because, as 1st point, there are estates from its unity, that is sufficient - unity of interest - Title time - it possession - 16. rentenants have one and a same interest, according by one and a same conveyance, at one and a same time, and held by one undivided possession -

Litt 311-12. 2 Beo 180. 2 Mose 124 -

1st. Unity of Interest - The can't have one quantity of interest, another - and one for life and yrs. - If so they are not rentenants - To y

y Estate of one is in possession, and yt of yt's other in conveyance - 2 Beo 180. 1. 2 Mose 124 -

132. 1 -

Litt 186. 172 -

2d. Beo 2. 171 -

Litt 186. 172 -

Litt 186. 172 -

Litt 186. 172 -
Of a grant is to A and B, for their lives they are co-tenant of the whole, and each has an estate in his own lifetime and for his own life. If it not be correct to day, if each has an estate for joint lives and survivor for his own life, after death of his companion—2 Meas. 181. 187.
If to A and B, and yo heirs, they are co-tenants in fee and y inheritance goes entire to y heir of y survivor—Lett Sec. 2. 80—2 Meas. 187.
and y heirs of A
If a grant is made to A and B for yr lives, they are co-tenants for yo respective lives, and A has y fee in severaly.
Sec. 2. 88. 2 Meas. 187. they are tenants for yr it lives.

So if a grant is made to 2 men and y heirs of yr bodies, or 2 women etc. or to a man and a woman who can’t intermarry, a brother and sister, and y heirs of yr bodies, they have a joint estate for life, but from necessity evelent inheritance. For no person can in either y cases be heir of bodies of both. On y 2 former it is physically impossible, i.e. y latter legally so—2 Meas. 121. 6. Cite 184. a.
The issue of each will therefore have a moiety after death of
both and hold as tenants in common from—

And if either of y donors die without issue, his moiety reverts on
dearth of y survivor to y donor—

Same rule holds, when an estate is given to one man and two
women, and y heirs of yr bodies, one "vice versa"—Cite 184. a.

Of to a man and woman who can’t intermarry, y heirs of yr bodies
The inheritance therefore goes entire to y heirs of y body of survivor (as in y case of co-tenant) in fee to his heir in general—Cite 182. a. Cite Sec. 2. 88.

See 312. n. 2. Meas. 188. 9. same act, and same consequnce of disposing—
Lett Sec. 2. 88. Sec. 2. 187. see sec. they not have difficulty, or no destroy y inheritance al initio
Perkinds is best of all editions.

Unity of Time: the estate must begin at one and the same time. As if an undivided part of an estate is devised to A, to take effect at one time, and another to B, to take effect at another, they are not joint tenants.

21 Mod. 129. 13 Co. 55. Litt sec. 283.

But if a remainder is limited to the heirs of A and B, and a at different times (as it is morally certain they will) for respective heirs are tenants in common.

Co Litt 182. 2 PCC 281-181.

2 Mod. 129. 13 Co. 55. Litt sec. 283.

But it seems, if A may hold an use as joint tenants, the it may be at different times. As feoffment to A, to use of himself and his future wife. For y use growing out of y feoffment has relation to it.

thus both are deemed to begin at same time. 1 Co 101-150. 36.

2 PCC. 181. 2.

4th Unity of Possession. They are seised per "my et per te." Each is seised of an undivided half of the whole, and not y whole of an undivided half.

2 PCC 182. Litt sec. 283 5 Co 10 2 Mod 180.

Ergo, "part in strictness envyeth y other. (for each is already seised of every part) that he may release to him; and a feoffment in form will ensure as a release.

Cro. Jamel. 695. Per Re. 193. 07. 1 Vent 16.

sec. 1 95-97.

But if a fee is granted to husband and wife, they are not strictly joint tenants, nor tenants in common. Being seised as one, they are seised have fee simple per " te;" only, and take by intuitions and not by moieties. Hence the husband only by his own sole act, dispose of any part of it, not of a moiety, nor can y wife. But y whole must remain to y survivor, nor disposed of by fine and recovery, in which both join.

T Coca 40. 2 PCC 182.

Co Litt 187. 327. 2 PCC 291. 56.

So each is seised of a whole only, and not of any undivided part.

So of y husband of ym alone, can be said to hold any part, nor dispose of any part without disposing of y others interest.

The last Rule does not hold as to choses in action, nor chattels real.
which are vested jointly in y husband and wife, as a bond, note, or
term for yor bequeathals to yor both——

of this he may dispose at pleasure during coverture and for valuable
consideration — for ye he might do, if ye had married in her sole
right—of course he may do it, when they rest in both jointly——

Co Lit 357. Pr. 516. 3 Will 65 — 3lobe 96.

Personal chattels given to husband and wife in possession must
be absolutely in him——

Co Mod. 128——

Note — a wife is not entitled to dower in an inheritance held
jointly by y husband and another — the other tenant has a higher title

Quere is husband & contr. entitled to dower——

2 Mods. 128——

What is y difference —

Co Lit 30. a——

2 Prus. 183——

This accords not forever in America

Upon y intimate union of interest and possession, depend y principal
incidents of jointure — the rent is y act by one or to one and
regularly operative as to both——

If both make a verbal lease, reserving rent for one only — it
will ensue to both — by reason of y joint possession.

So if y or lessee surrender to one — it ensue to both by reason of
y priority of estate——

Indeed acts done to, or for or generally by one in relation to y
joint estate — are in legal contemplation, done to, or for, or by both——

2 Mods. 130. 2 ROC. 182 — Co Soc. 214. 182——

Every of these to one is in legal effect, made to both — for y
possession of one in law is y possession of both——

So entry by one is effectual for both——

Co Soc. 130——

So in actions relating to y joint estate, they must, according to y
old rule — due on be sued jointly——

Co Lit 188. B. 195 — 2 Roc. 182——

1 B. 57. 12——

Secus in Covert and according, and according to late opinions, y rule
2 Dures. 16 — is relaxed in Eng — and now they may join in suits in actions, relating to y
1. Con. No. 35. 4——

One cannot have trespass as y other, in respect of y joint estate——

Co Soc.
For each has a right to inter in every part. 3 Sam. 262. 2 Pet. 183.

But regularly one can't do any act, which gives what's estate of others. As he can't release what's what others' estate, if no enables one to defect what interest of others. 2 Pet. 183. 1 Sam. 234.

One may have an action of waste by another by construction of 16 of Westminster. 2 Pet. 183.

Says at C.R. y act being deemed y act of both and for both. One may make y other battle of his mortise, and so have account of him for y profits but not deemed by C. Law.

But by 11th Am. one may of common right have account of y others for receiving more in his share of y profits the not made battle.

Worn ye intimate union of interest and possession, depends also y Grand intimation viz. y of Tenancy.

The Right of Survivalship - This accrescends is a right of survivor among Tenancy to y whole remaining interest in y joint

Tenancy after y death of this companion. So if A. B. C are jointly seized and A. dies

g others hold y whole by survivorship. 2 Pet. 183. St. 262.

For y survival, interest of all is same 18. an interest in all ye every part

and y survivor is not divested of his original interest by y death of his

companion. He has then a higher claim to y whole, whatever has to

any part. 2 Pet. 184.

For y succession of another to y interest of y deceased tenant, no action y

survivor's original seizure for my at his land. No other ad hold ad

Tenantant with him.

This right of survivorship is paramount to y claims of y owner of a
decedent tenant, even of slender estates - ni Execution be made out at his
death. The survivor's right of succession is necessarily prior to their

and of course paramount. 2 Pet. 262. Co. St. 184 B.

3 Pet. 262. 289. 10.

Hime Rule holds generally as to chattels personal holder in jointure - 299. 282, 3.

Hence as to Joint Stock in Trade. As to ye, there is no survivorship.

It no issue survives one y other merchant gove and to yt Law. Mat. 49. 146

y But accrescends is a stranger to it. St. 281. Co. St. 182. 2 Mod. 125.

Mat. 146.
Partners in trade are not therefore in Tenants at all purposes.

Chiefly these

and for your encouragement of husbandry — there is no survivorship —

A B C

and y this consequence ought to be equal — mutual — 2 Bic. 184.

But Temple y reason is not ye — for 2 corporations can't be in Tenants

the y chance of survivorship be equal. An sole or aggregate

Parties to not necessary, y chance of survivorship who be equal — mutual — For A and B may be in Tenants for y life of A. For A

has no possible chance of survivorship, the A has —

The right of survivorship don't exist in Count —

In Tenants may be destroy by destroying any of its units —

Unity of time it being past can't be destroy — 2 Bic. 187.

Secon by destroying its unity of possession. As if they part y land

and hold in Severalty. They are not then called per lost and y

and so possesses are destroyed — Co. Litt. 183 — 193 — 2 Bic. 185.

Division. By y etc one or more may compel a division by a

Hene 8th earl may compel a division by a

First — By destroying its unity of title — As one alien or conveys his
his part to a stranger — have ye other and ye Grantee hold by difft titlate.

The unit of possession remains —

2 Mod. 130 — 2 Bk. 185

Of course they hold as Tenants in Common. Litt. sec. 2, 292. Litt. 286. 3 Mod. 45.

But a devise by one. It Tenant don't sever ye Estate, for it don't take effect — The Survivor has a preferable title occurring at ye creation of ye Estate —

2 Bk. 185. Co Litt 185. Litt. sec. 2. 87.

1. By destroying ye unit of Interest. Thus if there are 2 joint Tenants for life, and ye inheritance is purchased by, or descends to one of you — it is severed. His life Estate being merged — Merger is caused by some superior estate —

Since if an Estate is originally granted to 2 for life and ye heirs of one of you. For these being created by one and ye same consequence, are not separate Estates, but branches of one Estate, and e therefore not merged —

2 Co 60. Co Litt 182 — 2 Bk. 185.

If a Tenant for life make a lease for life of his share, it destroys ye Jointure — It's a severance of ye freehold —

2 Bk. 185.

If one of 3 Jointants alien his share — y 2 others hold yr share as before — as do you there is no severance — So if one of 3 release his part to one of ye other 2 — The Jointure as to ye other 2 parts remains — So ye a Partible holds, whole of an undivided third, as in Common — and is a joint tenant with ye companions as to ye 2 others.

2 Bk. 185. Litt. sec. 2. 294. 305. 2 Bk. 185.

Whenever ye Jointure ceases, ye "just ascendance" ceases with it —

Co Litt 188 — 2 Bk. 185.

In general this advantages to dissolve ye Jointure — for ye just ascendance being taken away — each may transmit his part to his representatives.

Secondly, if 2 are Jointants for life —

Co Litt 188 — 2 Bk. 185.

187 — 2 Bk. 187.

If 2 are joint tenants for life, and one of ye alienators for life ye other — he forfeits his interest — The first by ye severance, he has in his own half — only an estate for his own life — and his grant of it for ye life of another, is a forfeiture —


2 Bk. 187.
but he don't remove. If one of 2 jointtenants exists y other, y latter may have ejectment.

his self from his own's estate possessor. - But there must be an actual Eject. Title

of he recover, but possession and y receipt of y whole profit by one, is not sale. - To

he take without y stat y action. - Title is an absolute hearing-out, or what is equivalent.

- 3 Boc. 212. Co Sitt. 147-200

For these alone do not amount to an eject. And where there

is no eject, y possession of one is y possession of both and y receipt of y profit by y one is considered to be for both.

So one may have an action of Waste on his cotenant by constraining

or Neaton. 2. - but not by o Law. 2 Bc. 188.

For as y o no there ed be no confusion from possession

y inheritance ed not hence be protected by y Waste or wrongful acts of either.

Estate in Coparsonery

An Estate in Coparsonery is one - no heir has descends to 2 or more persons.

As when at o Law - y next heirs of a deced person are 2. or more females.

in y case they all inherit as heirs - and are called Coparsoners

or partners.

By y custom of Guelph kind all y sons are Coparsoners.

In Count all y children of a person deced are his heirs

at law and inherit as Coparsoners. 2 Bc. 187. Sitt. 142. 211-212

All y children are considered as but one heir, they having but one

and y same estate. 2 Bc. 184. 2 Bc. 118. 117-18

The properties are in same rights, like those of Jointtenancy.

- 3 Essential Unities. 147. 2 of Interest. Title - possession.

and as y conscience. They may sue and be sued jointly in cases relating to y estate

they must be jointly and y entry of one as in general y entry of all. 2 Bc. 188

- 168.

Late opinions say they may sue and

were generally

To entry of y Guardian of one coarsoner ensues to y other.


One can't have title pass as y other, nor can one. Like Jointtenant,

maintain an action of Waste to y other - for one coarsoner co
always present haste, by compelling partition, or in the 31st part of a year. The 8th tenant may not do so. R. 174 a b 2. Mod. 119-120-2. Bob. 188-56.

They differ materially from the tenant in other points. First, they always claim by descent. The tenant by purchase. Hence no other but States of Inheritance can be held in Fiduciary.

and in general whatever may be held may be to be held.


Second, the unity of time is necessary. As if one of 2 persons dies, the survivor and the heir of the deceased are still Parrancas—the yr. states vest at different times. Co. Litt. 117. Co. Litt. 174. 2. Mod. 114-115. 2. Bob. 188-

Third, the unity of time, they have no entirety of interest. Each (there being 2) is vested of a distinct unrepresented moiety, not of a moiety of the whole. Hence no jus accrescendi, y share of each descends. Co. Litt. 163. 4 to y heir or heirs. Co. Litt. 163. 2 Mod. 114-115. 2 Bob. 188.

The moiety descends is 'per capita' if y claiming are interested or related in equal degree, and are entitled to yr own right. As y ancestor leaves 2 daughters or sisters. Each takes a moiety. Co. Litt. 164. a b. 2 Mod. 114-115.

Because if they are not in equal degree related, or entitled by right of representation—then their take "per stirpes" as y ancestor had 2 daughters, one of whom dies leaving 2 sisters. 2 daughters—living y ancestor. The Issue takes 'per stirpes.' 18. y share, their mother, if alive, not have taken. So if y heirs are all grandchildren. y Issue 2 daughters. The issue of each, whether one or many, will take her share. For the in equal degree, they are entitled by right of representation.

In descent, from Co-parceners, males are at 8 law, preferred to females, as in other cases of descent.

As long as y lane continues as a course of descent, (y possession not being diminished) it is held in Co-parcenary. Hence if y possession is covered, by partition, so if y lane his share, the no partition.
for y title is divided & y descent broken—3 Oct. 188

As one of 2 parsons alius his share to y 2, now y other and y other, y coparcenary is at an end, for y possession is severer. There is y Tenancy any more destroyed, y n in y case of Frank lorn to take yet, not to be law.

So if 2 Parsoners marry and die leaving husbands entitled to coyeity—y husbands dont hold as Parsoner—but as Tenants in Common—for they do or not claim by descent—

Ct. 167. 3. 2 Mod. 116

As a husband may have Curtesy in an Estate held by wife in Coparcenary—so y wife may have dower (dosome) in lands so held by y husband—there is no survivorship—

2 Mod. 116. 3. Ct. 167. 264

Partition may be made among Parsoners—by descent or
by different ways—by

1st—Where they agree as to y division, and y part each shall have.
2nd—Where they chose a 3rd person to make y division—
3rd—Where y eldest divide and y youngest choose first—
4th—Where they cast lots for yr shares—

2 Oct. 189. Ct. 167. 241

They are also compellable to make partition at law—

Compulsory partition is by writ of partition at 6. Law, only

bill in chy—Ct. 167. 241. 2 Oct. 189. 2 Mod. 120. 1. Pout. 15. 18—
On a writ of partition there are 2 judgments—The former is of a partition he made on y writ issues to y Sheriff to cause partition to be made by Jury—On y return of y Jury's inquisition or verdict—y second judgment is given here—y y partition so made, be satisfied, and forever confirmed—2 Mod. 120. 21—

and y youngest divides infant as well as adults—

Ct. 167. 3. 2. 1. Pout. 18.

The common practice formerly was to apply to Jury to make partition and it is now y practice where y title is complicated and there is any incumbrance—2 Mod. 120. 1. Pout. 15. 19—Ct. 167. 2. 3—

Where an Incorssible thing is held in Coparcenary—y common practice
is for ye eldest sister, or tenant to have it (as the please), making ye others a reasonable compensation, in other parts of ye inheritance, or they all have ye profits, or use of it by turns. As a Mile. 2 Mils.

Co. Lit. 184, 5. 2 Bk. 192.

**Estate in Common**

Tenants in Common—as 86 days, are those who hold by several and distinct titles, but by unity of possession, undivided possession. 3 Bk. 191. yo is incorrect.

By yo must be understood ye no other unity, but yo of possession is necessary to constitute a Tenancy in Common, for they may hold ye same quantity of interest, resting at ye same time, and under ye same title or conveyance, if ye proper terms are used to create a Tenancy in Common.

But if ye interest and ye title are ye same, and do commence at ye same time and ye possession is united, ye Estate is "prima facie" a St. Tenancy. 17. ye owners will be St. Tenants, mi there are at

words to create a Tenancy in Common. In St. Tenancy, ye possession is also mine, and not for rent.

And if there is ye other unity yo of possession, they are of course a Tenancy in Common.

Coke defines Tenants in Common, those who hold land by several titles, by several rights, distinct rights, and interest, and not by joint right.

Co. Lit. 189 a. 2 Bk. 183 - 3 Bk. 188-194. 194.

Hence one may hold in fee and ye other in tail, or for life, for there is no unity of interest. One by purchase from 2, another from 3 or one by purchase, ye other by descent. For unity of title is not necessary. The Estate of one may rest at 1 times, yo of ye other at another. For unity of Simia is unnecessary.

2 Mod. 134

The only necessary unity is yo of possession, yo yo neither can know what part is his. yo is correct.

Tenancy in Common may be created either by such a distinction of an Estate into 2 Tenancies or Simples, as does not divide y
y possession or by special limitation in a deed or a devise.

In 1 of 2 tenants, claims the part to A. B., and y other A. Tenant are Tenants in Common, for they have several titles commencing at different times.

So if one claim to A. y other to B. y Grantee, an tenant in Common for ye same reason.

So if one of 2 parsons conveys his part to A. he and y other parsons are Tenants in Common. Causa Quam Visum. 20 Gia 309.

So if an Estate is granted to man or 2 women and y heirs of yr bodies, tho for life they are 1 tenant, yet they have distinct inheritancy. But as y possession is undivided, yr issue shall be Tenants in Common. 520 fio 283. 2 Fio 182.

For yr titles are different, one holds as heir of A. and y other of B. Indeed where ever ft Tenantry or Co-tenant is divided with a partition, so yt unity of possession remains, it's converted into a tenant in Common. 2 Fio 183. 3 Boc 184.

Second. It may be created by express limitation in a deed or devise.

But care is necessary not to use words creating ft Tenantry.

And if by deed or devise there is given or granted to 2 or more an Estate which is not a ft Tenantry, it must be ft Tenantry in Common. It can't be a ft Tenantry being created by purchase.

2 Fio 183.

The Rules of construction favour ft Tenantry, rather ye Tenantry in Common.

For by y latter ye feudal services arising from tenure as devised.

2 Fio 183. 2 Ali 184. 3 Boc 184.

The most usual and safest way where a Tenantry in Common is to be created by deed or devise, is to limit y estate to A. and B. expressly, to have as Tenants in Common and not as ft Tenants.

2 Fio 183. 4. 3 Boc 185.

But other modes of expression will answer ye purpose as well.

As a Grant of land to A. and B. to be one half, to A. and y other half to B. for ft Tenantry don't take in court meeting, and here a generality of interest is clearly expressed. 520 fio 290.

3 Boc 190. 2 Fio 190. 3-3 Boc 184.
So if one grants an undue half of his land to A and B are tenants in Common for they have different titles accruing at different times.

- 184, 3 R. 499.
- 3 B. 190.

A Deed or devise of land to two to hold jointly and severally, creates a Joint Tenancy - for a joint estate is implied in it and jointly and severally implies several only a power of partition.

- 2 84, 332.

But an estate devised to 2 or more to be equally devised between them is an Estate in Common. For, by intent, is plain, if they are to hold by concurrence only - and A and B equally.

- 3 B. 349, 2 84, 193.
- 1 W. 672.
- 1, Eq. 345.
- 1 B. 193.
- 1, Eq. 241.
- 3 B. 195.
- 1, Eq. 629.
- 1, Eq. 175.
- 1, Eq. 332.

Now in a modern case, such words in a deed have been held to create a Joint Tenancy in Common and I presume correctly.

- 1 W. 341.
- 1 W. 650.
- 2 84, 135.

Tenant in Common may subsist in Estates of Freehold.

- 2 84, 135.
- 2 84, 330.

Wife of a tenant in Common (if on inheritance) is entitled to dower, as it seems, her husband by courtesy, where her wife.

- 2 84, 135.

There being no joint assurance.

As Tenants in Common have distinct right or interest, one may directly convey his share to another, and Tenant, can't do this, they may release.

- 2 84, 135.

As to its Incidents. Tenants in Common are not compelled by law to make partition, the by 1st Hen E. 3, 84, they are.

- 2 84, 194, 2 84, 136.

By law consent of all is necessary as in Joint Tenancy.

- 2 84, 194.

There is no survivorship between you, for they take distinct modes.

18. in point of interest.

They can't according to former opinions, join in actions relating.
to y reality, for their title and interest are severall.

But act your Rule exploded. 12 K. 67. 2 Stane 149. Yet if an endeavours thing (as a horse is to be due'd for) all ought to join.

The right of action in ye case survives to ye survivor. So in trespass and all other personal actions founded on ye interest in Common, they ought to join. For the ye estates are several, ye damages to be recovered, are not so. Besides, they'd be impolitic to admit several actions for y same trespass.

Indeed these actions survives to ye survivor and furnishes an additional reason for ye joinder of all. Is not ye principle of ye Rule?

If they make a lease rendering, reserving rent, y reservation will be impatient reversed, or y nature of ye reservation, th is several.

Ergo they can't join in an avowry for rent arrear. ye title to it, being several. So Que may they met join under y Mode Rule? 3 Boc. 216. Boc. 119. Met an action Co Lit. 177. 3. 2. 47. 2 K. 86.

If they are disseised, they can't it be said, join in an action to recover ye land. For ye title are distinct. 2 Vent. 214.

Indeed for y same reason. they can't make a joint demise to found an ejectment. Hence y desse in such cases, can't recover.

Seales of Co-tenants. as well as ye Tenant. Their titles and interests are y same.

Dare as to these distinction, for according to some late authorities, ye Tenant. Co-tenants. one Tenant in Common may either join or sever, as they chose, in ejectment.

At ye Law. one can't sue his companions, in account for recovering more ye his share of ye profits of ye Estate, as where ye latter is made.
But by St 4th Ann. y action lies between ym, as these tennant
in Common Go by St Westm P. One may have an action of
Naste as another 2 Boc 183. 194-

If one Tennial in Common die decease or come 2d y other, y latter may
have ejectme to regain possession Co Litt 199 B 200 a-
2 Boc 194 1 East 568 3 Milly 118-

Same Rule as to St Tennial

But these must be an actual Asser, dasy possession of one
is y possession of both Come in St Tenants Hobert 120. Latk 392-
1 East 568 7 Mod 39 For 53 960 180-
Sole possession by one or receipt of all y profits are not into-

As to what am't be dats, Esm of actual Asser, thane can't be Cov 217-
an actual possesse possesse, for the sole possession by one as
Tennant in Commt can never am't be Esm of actual Asser,
yet a sole and adverse possession by one is dat's. As possession
by one who denies y other title-

These y jury may presume actual Asser-
So great length of sole one quiet possessiin (as 35. yrs)
By one (no account being demanded by y other) is dat's Esm 12. Mod 658-
to a jury, yf y possessiin is adverse and in such cases, St 6 Pay 312-
of limitations may run between ym Cov 217 3 Burr 1894-

But confusion by dat in yeald of lease entry and order under
y Commt Rule is valid to prevent a homit. So yt y case may
go to y Jury Bull Ruxl Raw 109 and is cited as to y point of assessor-
3 Boc 219 650 345-

After such recovery in yeald of y tenant deceased may have treas for
y Medec purpos for this is incident to recovery and is virtually
only an accounts action of account.

The St of Limitations dont run as a tenant in common, out of possession, where his compony is in possession, as in case of actual ousted. If there is no ousted, his possession is not adverse to, or go to possession of both.

How far ye Tenant out of possession may elect to consider himself ousted or not. See Burn 11. 14.

The Judicial Remedies between Tenants in Common extend only to tenancies in common, in things Real or Favoring of a Realty, as Estate in Land.

If a Chattle Personal is owned in common, and one takes y sole possession, ye others only remedy is by recovering it when he can. There is no action, or reclaim it.

Tenancies in common may be destroyed.

1st. By Partition.

Second. By writing all y title and interest in one.

2d邱. 124 Tenants by purchase or otherwise. In such an Estate or Estates in Severalts.

If one of 2 St Tenants, Co-partners, or Tenants in Common, who are deceased, is under a disability, does y St of Limitations run by y other??
Title by Deed—Requisites. 1st. Who may be Grantor 152.
4th. 162. 5th. 170. 6th. 171. 7th. 173.
Attestation 182. How may a deed be avoided 184. Construction 185.

1st. Requisite: Parties able to contract and subject matter to be contracted about. 152
2nd. Requisite: Consideration 154. 3rd. to be written on paper or Parchment 101
4th. Requisite: Substantiation to be legally and properly set forth 162. The 8 formal parts of a deed. 162.
5th. Requisite: Reading the deed before Execution 170.
No. 1.

Model of acquiring Real Property

It hath been said that the nature of things real - 
the tenure by which they may be holden - and the several kinds 
of estates, or interest, y' may be had in them - we are now to 
consider the manner of acquiring and losing th' title to things 
real, and y' title to things Real, is y' mean, whereby th' 
owner of lands hath y' just protection of his property.

The first mode of acquiring property of which I shall treat 
is Purchase, not includes every mode of acquiring an estate 
except by descent, the it is sometimes used in a more 
limited sense - this an estate acquired by forfeiture, by 
escheat, by occupancy, by prescription, or by alienation - 
I shall treat only of alienation for deed, for others vide Bok. 2 Bok. 241. 
58. 263. 67.

Alienation comprehends every mode of transmitting Real Property 
from one to another, by mutual agreements - this the most usual 
mode of acquiring a title to Real Estate - to do it by purchase, 
and is equivalent to y' meaning of the word purchase in its 
limited sense - 2 Bok. 241. 44. 67. 87.

During the early periods of ye feudal government, a tenant 
ed not alien to increaser his estate without y consent of his 
lord and his own heir apparent, Co Bitt 94. 2. Bok. 87. 
287. 8. Nor ed the lord alien his seignory without 
consent of y tenant at will, wh' consent was called 
Alienation to the decline of y lord.

This restraint of alienation was main mutual, and in y reign 
of William y conqueror, and his sons, the lands were absolutely 
unalienable 4. Cruise 34. - and even some times after y right of 
alienation was introduced, y highest estate ye ed be granted 
was for ye life of ye Grantee.
These restrictions however have been gradually abolished, the first of which made ye greatest invades on ye restriction of alienation, was ye of "Quia Emptores" in Edw. I. & the 1st of Edward 5th. Still ye right of alienation was transmitted with first till ye 15th Ch. 2 who abolished fees for alienation of freehold estates, as also ye Military Tenures, and confined ye in sequestration. This last or abolished all ye restraint on alienation, ni ye arising from attornment 4. Cruise 472. 2. Qb. 71. 9-299. and at length 10. necessity of attornment by 74. Anne 2 Qb. 290. This as a very general account of ye course of alienation, or ye right of alienation.

The legal evidences of alienation of Real property, are called in law "common assurance" quia lie by those of every man's estates is annexed to him. These assurances are of 4 kinds—First, Deeds, or as they are called matters in Pais, as distinguished from matters of record—

2. Matters of Record or Judicial assurance transferred only in things at of Record

3. Assurance founded on Special Custom, if not our law has nothing to do, for we have no local customs—

Fourth—Deeds which are not 6. Sealed, are not a. assured, but more introduced by St of the Sealed and there, I say nothing, as these modes are extremely rare, both in ye country and in England.

6. Cruise 49. 2 Qb. 299.

Alienation by Deed

A deed is a writing sealed and delivered, writing and sealing constitute instrument, but without delivering, it cannot take effect, and such delivery is the essence of a deed—Ch. 171. 2. Qb. 295. Co. Tilt 35. B. 6 Cruise 16.

It seems doubtful, an in ye law of Corn, sealing is necessary to a deed, for our 6. impressible writing. signing, delivery, acknowledgment, and recording are requisites, for a deed, and says nothing about Sealing—
The making a deed, is y most solemn disposition, wh a man can make of his property, hence it is said, yt a man shall be satisfied by his own deed. 2 Pd. 975. 1 R. 3. 227 a. The meaning of ye maxim is, yt no one man be allowed to aver or prove any thing in contradiction to his deed, wh he acknowledges to be his own. 2 Pd. 308.

and hence if A makes a lease to B of land, wi rh a how no interest whatever, and a post gains y title, it will scribe Ao B for a is not allowed to deny y Covenant in y deed, by wh he has allowed, yt he owned y land. The fact then yt A had no interest in y land at y time of making y conveyance, yet as A is estopped by his deed, it yd y way as to y same thing as if he only had 1. Talb. 296. 3 Pd. 438. 441. 371. Pow. Con. 100. 2 T. Re 171. Corp. 572. Pow. 1495. 6. Ed. Ray 729. 1048. 1552. Co Litt. 47. 180. Esp 103. 233.

In ye State however, it has been decided yt a false in y consideration of a deed, might be alleged to defeat it, but ye is professedly a departure from the principles of C Law, whose remedy shd be an action on y Covenant in y deed 3 stray 529.

But thos at C Law, a person might not aver a fraud in y consideration, yet yt a man might at C Law, aver a fraud in y execution, for such an answer amts to a plea of "non est factum." In y deed of conveyance or lease, the Estoppel is created by y Covenant expressed or implied.

Words of ye kind. "Dedi at Concedi", imply a Covenant of y Grantor has a right to convey. But a deed of "Quit Claim", is an Estoppel to y Party making it, may deny yt he had any title or time of making it. If he may just puish y land and hold wh y releaser in y Quit Claim deed, if he had no interest in y deed land at y time of making y deed, for y Quit Claim deed contains neither expressly nor implicitly any covenant, yt y releaser has any title to y
to y land, at y time of making of y last Claudi deed, or release as it is called in Eng. Co Litt. 265. Litt Sec. 446. 3 Th. 370.

Any bond or covenant is as much an estoppel as a deed of conveyance, thus y obligor in a bond can't deny y there was a consideration, which he has acknowledged in his bond.

A deed executed by one of y contracting parties only, is called a 'Deed Poll'. If executed by all of y parties to a contract, it is called a 'deed underlaid'. Litt Sec. 370. 1. 2. 2 Ro. 376. 4. Co Litt 220. 4 Censive 11. 12.

Where each part of an indenture is executed by one of y parties only 3 delivered to y other, 3 different parts are said to be interchangeably executed, and in y case, 3 part executed by y Grantor is called y original, 3 pt by y Grantee 3 counterpart. But when every part is executed by all of y parties, 3 several parts are called originals. 2 Ro. 296. 4. Censive 11. 12.

This distinction has a material effect in y law of Evi, for where y deed is interchangeably executed, y original part is y better Evi. Pree Chy 11b. 57 Ro. 460.

Requisites of a deed

First, there must be parties able to contract, for a purpose interest, and a subject matter to be contracted about. 2 Ro. 296. Co Litt 36. 4 Cruise 14. 33.

If y whole interest in y subject is to be granted, all those who have any interest, shd be parties to y deed. So as a part only will be conveyed, all those intending y conveyance take any immediate interest under a deed, shd be parties to it. But a remainderman need not be a party, the he must be mentioned. The reason is, y investiture of y particular tenant, vests in y remainderman—both interest being created by y same deed or act. Co Litt. 231. a. 4. Cruise 14. 4. 26.
All persons under no legal disability, may convey by deed.

2 Bacon 290. 4. Cas. 14. This disability contemplates only
y disability of persons, but there may be something like y
disability of estates to be conveyed, thus a person disabled,
y rightful owner of y estate, may not convey it, while out of
possession to any other person ym him who is in possession
for y same reason yt above in action may not be conveyed.

In Court, thare is a Penal yt prohibiting y Sale of Lands
under these circumstances, the conveyance is not only declared
void, but it subjects y Grantees to a penalty, amounting to
half the value of y land. 1. 1.1. 2. 1. 2. 3. 4. 5.

In Court, there is a Penal yt prohibiting y Sale of Lands
under these circumstances, the conveyance is not only declared
void, but it subjects y Grantees to a penalty, amounting to
half the value of y land.
1. 1. 2. 3. 4. 5.

But a conveyance of y diseased owner of y land to y diseased
is not within y Court Law, or within our Sr, for yd is not
selling a lawsuit and dont encourage maintenance.

But y owner of land is not prevented from conveying his interest
by tne possession of another, nly y possession is adverse, for such
conveyance does not contribute to maintenance, and hence y
owner of a Lett. Remainder, residuary may sell his interest;
the y particular tenant is in possession, it not being adverse.
2 Bacon 290.

And whenever another is in y possession of land but claiming
under y owner, which is a tacit acknowledgment of his title,
y owner may convey all his interest in y land.

But it has been held, in y Sale, y owner making said
conveyance to y tenant of land by a 3d person, dont extend to
those made by y owner. 1. 1. 2. 3. 4. 5.

Nor does it extend to Sales made by administrators, and under
y order of a Ct of Probate, for payment of debts, so for yd is
Of a person non Compos / purchase an Estate, he may then by suffering
he recover his understanding, either ratify or annul y contract, a recovery
if he does ratify it, it then becomes unavoidable
if he dies without recovering his understanding, or having
recovered it, if he dies without ratifying y contract -
his heir may avoid it - 2 Co. 292. 2 Rob. 292.

4. Excuse co. onward

If a deed is obtained from one by duress, he may on being
released from duress, either ratify or avoid - Co. y such
deed is merely voidable - The Rule is y same where one
purchases an Estate while under duress - 5 Co. 119 - 2 Rob. 292.

If a deed is made by 2 persons, of whom one is capable, and
other is not, y deed will operate as the deed of y former
only.

If one person having an interest in land, joins with
another person, in making a conveyance of y lands, who has
no interest in ym, ys deed as to holding y interest will
nure as y sole deed of y former. But y C. thinks as y
it will be binding on both - for y latter is in y
character of a surety.

On y other hand, if one only of 2 grantees, is capable of
of taking under y deed, it will only be held to have alone - ad lands
granted to C. and a Monk forfeited, who is deemed in law
similiter mortuos - 2 Rob. 612. 4 Co. 429.

If a person legally capable of conveying, joints
with a Term Covert, making a conveyance, y deed is regarded
as y sole deed of A, for y deed of a Term Covert is absolutely
void. and y deed may be pleaded as y sole deed of A.
Who May be Granted?

By will, all persons in general may take an interest under the deed of another. Thus, besides, تعالى، فناء،قاص، and an infant may take by deed, for it is presumed to be beneficial to him, and no one is law dispensed with his consent, which is generally necessary to make a contract valid. 1. Cruise 22. Co Lit 2. 62 8 a. 112 a.

But in these cases you purchased are voidable, if a donees, may, if the survivor has heirs, or an infant may on attaining his age, ratify or avoid his estate purchased.

An alien may at law, purchase an estate by deed to his lands will pass from my grantor, but he cannot hold it as his Crown after office found. 12. 1. land passed from my grantor and continues in my grantee, till office found.

A grantee however may hold a lease for years of a house or building, for an encouragement of commerce, but he cannot for your purpose hold real property, nor he is authorized to do so by special act, or license from the Crown 2. 18. 288.

This rule holds in your country, our law is, yet an alien may not purchase lands. There is an exception in our law as to lands purchased by British subjects before your revolution. So also in favor of French Subjects, under the treaty of Louis 15th. Those who are naturalized under your law by

We are not within this rule, for they are most people have the same rights and privileges, as natural born citizens.

In Kentucky, aliens may inherit real estate, and in Penn., aliens may take by devise or descent. But in neither of the states can he take by deed, nor he is domiciled.

In England, alien, at all.

By certain Eng. 76, alienations in Shortman, are in some
cases prohibitive & in others much restrained 19. an alienation to any ecclesiastical or other corporation or any corporation.

2 36, 256, 1.601 448. 4 Civi 23.

We have no such Acts with us. Ecclesiastical Corporations and many others may hold lands, but banks, and insurance companies are in several prohibitive in yr charters, to hold lands ni so far as is necessary for genration of houses, and what is necessary to be taken to secure debts due to you.

We have a St providing, yt all lands granted for y support of yr Christian ministry, of school, and for charitable uses, shall forever remain in those uses. But yo It is frequently evaded by long leases.

II Consideration.

The land down in y books, of a deed must be founded in legal and sufficient consideration. 2 36, 256. 4 Civi 24.

It seems however not to have been originally necessary at law for a consideration sha be expressed in a deed, as a deed was supposed to supply an consideration. 4 Plow, 318. 4 Civi 24.

The necessity of expressing a consideration arose out of y doctrine of New Yor under yt doctrine, the said yt a deed expressing no consideration was deemed to raise a resulting trust, not be y Grantor, ni an use so limited to some third person, now.

Therefore it became necessary to express a consideration in a deed of conveyance.


Since what is called It of uses 27. for 27. has executed y use 18. transferred y use to y legal estate, yo y Civi 23. 26, a 2 36, 256, 1.601 448. 4 Civi 23.

A deed expressing no consideration transfers an use to y Grantor at law, before it ceased to his use at Equity only.

Pky see, 5 33

1 Mod. 363.

Under y doctrine of uses of an Estate, mas limited to a, for a use of 27. y legal estate was vested in a and y Beneficial interest in 27. now since y 27. not executed y use, y legal estate as well.
as y beneficial interest is vested in B. this it didn't have y effect intended, and c'ty of boy devise'd trust estates, not on
honestly what use, formally mere-

It has been lately doubted an y Rule yt a deed expressing
no consideration, creating a resulting use in y grantor, applies
for any other ye a deed of bargain & sale, as ye deed was
created by y ft of Deed - F G - thinks ye doubt very reasonable

A consideration either good or valuable is valid to raise
an use-

And by y Eng law at ye day a deed declaring no rise

Some troublesome uses in ye State

It has also been a question in ye State pn a deed not
expressing not expressing a consideration, shall ensue to y
Grantor under law. this quest has not been judically
contested - here y doctrine of uses has never prevailed -

The Necessity of consideration arose from y doctrine of uses - as
for existing agreements valuable consideration is necessity, but
a good consideration is valid as a deed of conveyance, a

Valuable consideration is one of some pecuniary value - 4 arise

A Good consideration, as yt of kindness or natural affection -

24.57

No person who don't come within ye description, is more
distantly related to y Granter yt nephew or niece, is not
heir at law by y Granter, is not a near relative - a Conveyance

Ergo to y heir of my reversion, in consideration of hundreds is void,

Marriage is always deemed a valuable consideration - a dower
ego settled on my wife before marriage will be good as to my prospective grantor and all his creditors, but marriage is a good consideration, only when prospective.

But there is no material difference in effect between a conveyance for a good and a valuable consideration. Both will make a conveyance valid as to the grantor and his heirs, but a good consideration will not support a deed of conveyance to a creditor of the grantor or to a subsequent bona fide purchaser for value under the grantor.

The consideration expressed to have been received in a deed cannot be denied by the grantor, or his representatives for any purpose of defeating a title of the Grantee, even by an averment of fraud - at law, but he may at equity - 1. Pow. B. 340, 2036 B. C. 235- 7. Co. 40 - Ch. 434, 1. Solt. 479 - 464.

Acts 3 Q. P., 433, not at first view seems to contradict Ch. 944. ye position, but an averment of fraud will not contradict anything ye deed imports on yr part of yr self, but merely a rectification on yr part of some part.

But if Grantor may impute such consideration for any illegality and yet he is allowed to do more for his benefit if public or for himself, but ye don't show there was no consideration - 2. Beat. 109, 2 Hild. 344, 2 H. C. 236. Third persons as creditors of the Grantor and bona fide purchasers, under him, may deny existence of consideration, for they are not stopped by ye Ruler.

A deed expressed to be for divers good considerations, or for good and valid considerations, is regarded as expressing more at all, for ye Ct can't determine what ye consideration was, and ye parties are not supposed to know what constitutes a good consideration or being a matter of law, for ye Ct to determine - 1. Co. 176, 36 Eliz. 394, 2 Hot. 151, 2 Co. 15, 2 Ark. ab. 783.

But a deed of conveyance for "value received" has been held to express a valid consideration - for ye parties are supposed to know what value is, for it is a matter of fact, and as
and as he y amt of ye consideration, it is immaterial as to third persons, for they may investigate it at any rate.

But where a deed is expressed to be for divers good consid., ye Grantor may aver and prove a specific consideration either valuable or good, for in ye case ye deed stand as it be considered, in which Rule is ye consideration may be.


A deed expressing no consideration in terms, if it appears to make a child or other near relatives, ye deed imports to be for good consideration, the ye relation is not exprest, as y consideration. If no avermt in ye case is necessary, yt y consid. was "Kindevt."

The particular theories of Corn Amov. to make a good consideration is adopted is yt of a contract to "Hilte serce." There in consideration of 78 Pounds, the was exprest to be receivd from A. Lands were limited to A for yr. with remainder to B. YC it was held yt an avermt yt y deed was given as well in consideration of a marriage between B & C. as well as in consideration of ye 78 Pounds by A, was good. For in ye case that anconsideration yt to B was "Hilte serce," quit ye funds came from A, and must else be applied to his estate for ye. But yt held yt it might be found, or proved yt y consideration of y Nilly was a marriage between B & C. for proving such consideration, was consistent with ye deed and in respect to B and C. ye case was same, as if ye deed did not express any consideration.

There are some Cases, wht at first sight appear to contradict ye Rule. There there held. yt where a consid was expressed in a deed, no avermt of any other consideration was admissible. But yt Rule applies only to ye parties to ye deed.
It is a Rule yet where there is a specific consideration expressed, or between those parties no other consideration can be proved — so yet if y (C. P. 1803, 1 Nov 187) "Further where there is a specific consideration expressed, no other can be implied, from the face of y deed, even the one might, hence implied, if none had been expressed.

The only proper reason for a court to stand seized, is a good consideration. A promise without any consideration is not adapted fit y sort of conveyance — so yet if a y father enters into y sort of conveyance with his son, in consideration of 100 to him 100, in y sort of consideration of 100. Hundred cannot be implied or proved — for the it appears yt y grantee was y son of y Grantor on y face of y deed yet as it imports to be for money, it appears y y contention of y parties wasn't y consideration of y deed. Co Litt 186 Co 39 B.

Contr 1 John 81 Incog. incoerent says the other.

Hence if a deed is made by neither to son or no consideration expressed and if it appears on y face of y deed, yt y parties were thus related — y contention of hundred or natural affection will be implied.

The acknowledgment in a deed(s) of y receipt of consideration is not conclusive as y Grantor in a collateral action, In y case it is only presumptive if or formis facies evi of y receipt.

Hence if y Grantor acknowledges y receipt of y consideration, and y Grantor gives y Grantor for y consideration, y Grantor may still Count Rec (receiver on y note) — For y acknowledgment is inserted for form. Prace do only and for y sole purpose of protecting y Grantor's title.

I II. Requisites —

is yt it be written or printed on paper or parchmet.

2 B 299 Co Litt 229 4 Crum 25.
It seems a written on any other substance is not good.

The deed may be in any language or character. This

By y p & t writing is not necessary for y conveyance of land.

A lease for y s at p & t may be created by pard, and a freehold

transferred by lease of Tevesi with any written Evn

2 Bl. 310. 13.

But now By y Eng Lt 29. Ch. 20. no interest in lands,

Tenents &c, can be created for a longer term than 3 yrs ni

it be in writing and y made for a longer term ym 3 yrs

it will ensure only as an Estate at will, or now as a Tenancy

t from g to g.

2 Bl. 287. 306. Rob St 1. 240. 47.

1. Bacon 72.

Writing is required in ye conveyance for y conveyance of Estates,

&c, it presumes in all cases.

And y deed must be written before it is sealed or delivered,

If one seals & delivers a piece of blank paper to another with

direction to fill it up as a deed, it will never ensure as a

deed— for a deed if it takes effect at all, must take effect


The rule is different in ye case of bills of exchange, and Promisory

notes. These are simple contracts, and y formal delivery of ym

is not necessary

Source Requisite—

The subject matter must be legally and properly set forth. It—
is not however indisposition, yt what are called caduceus or other

parts of a deed, shd be set in one regular order, tho' it is

usually done— 2 Bl. 227. 8. Co Litt. 6. 223. 4 Cut. 323.

There are 8 formal parts in a deed—

1. The premises— These contain y name of y Parties and yr
addition, y necessary recitals, 12. y clauses beginning with a "Whereas" y consideration, y description of y subject matter to be conveyed and y exceptions, if any, out of y subject matter described.

4 Cruise 33. 2 Oct 298.

The omission of y grantor's name, or y premises, dont vitiate y deed, provide he is named in y habendum, as to have and to hold to A. B. and his heirs, forever. 4 Cruise 418.

A wrong name in y premises may be corrected in y habendum and rejected as void in usage.

And where y name of y grantor was omitted in y operative words of y grant, only y consideration was expressed to have been paid to him, y deed would hold to be good. Beginning

"in witness whereof I do vouchsafe to make and do set forth, doth teach and will to y above ab" (not named before) doth bargain, sell yc. 4 Cruise 419. Vol. 341.

Any mistake in y description in y parties to y deed, has y same effect, as if y mistake was in a devise.

If y deed gives y grantee a description with applies to one person only, the y name be wrong y deed will be good.

But if y former name is mistaken if an addition or description given, which is applicable to more ye one, then y deed will be void for its uncertainty.

As if a grant is made to George, Earl of A and his name is John. Still y deed will cause to y Earl of A, for there is but one person answering ye description.

Co Lit 3. a. 4 Cruise 34.

So, if a grant is made to Sandie ye wife of P. H. when his wife's name is in fact Mary, still y deed will be good, for y description is applicable to only one person. Indeed a deed to y wife of P. H. with more.
But in ordinary cases, a grant to one by his surname or Christian name only will be void.

And a surname acquired by reputation, is as good as one acquired by descent, or inheritance, as a grant to an illegitimate child.

And a party may in many cases be described with any name as y wife, eldest son, issue of T, and a deed limited in ye manner will be good—

The habendum and tenendum follow next in order, the former title of y habendum is, to designate y quantity of interest conveyed by y deed; the ye may be eftectually expressed in y promises, y actual move is y former, as to a a to be held to him and his heirs—

But where y quantity of interest is expressed in y promises it may be restrained, enlarged, or qualified in y habendum. Ergo a conveyance is made to A and his heirs of his body in y promises—habendum to A and his heirs, in ye case he takes an Estade Tail with a fee simple contingent; he an Estade Tail—descendible to his Junior heirs, with a fee simple contingent, on its determination—

But suppose y last example to be reversed as to A and his heirs, to have and hold to him and the heirs of his body, now according to some he takes as before, he an Estade Tail, he an Estade Tail with a fee simple contingent, he an Estade Tail only, for y Case sake is, if y expressions in y promises are to be restrained by y habendum, and y habendum is to considered as an expression of y promises—

But y case is, if y expressions in y promises are to be restrained by y habendum, and y habendum is to considered as an expression of y promises—

If however y habendum is totally repugnant to y promises, it is void.
for'the it may enlarge, restrain, or explain, yet it may not totally contradict a foregoing. For'tis a general rule, if y construction of a deed, or 2 clauses in a deed, if first will govern y construction.

In maker's, y Rule is directly reversed. If a grant is no wise to a and his heirs, he is bound to him for life, y habendum to him for life is void. 2 Bc. 276. Co Lit. 239. a.

Touch. 88. 1. torn. 30.

The tenendum was soon used to express a tenure by which land was to be held. This was formerly necessary. 2 Bc. 279. 4. Com. 347.

as all y military tenures were abolished by St. Ch. 28 and turned into one common tenure, the tenendum is now of no practical use, yet it is still preserved in all y forms.

Addendum

This reference is to be completed with y Grantor or lessee as paying or rendering 100 £ pounds rent. 

Condition

This requires no explanation, as it have treated of condition, note already 2. Bc. 279.

Warranty

comes next, by no y Grantor for himself and his warrant y estate to y Grantee. 2 Bc. 360. 4 Com. 49. 56.

In ye case, if y Grantee is express and y title fails, y Grantor is bound to convey other lands to y Grantee of equal value—and ye he may be obliged to do, either upon y Grantee or by virtue of warranty. Charta.

This is to be by claiming lands of equal value—

As to lineal and collateral, note Bc. 2, 360.

Warranties are either express or implied.

in modern practice, however, warranties are understood—by what are called counts, or ye in modern conveyances. A clause of conveyances count is inserted, in y place of y ancient warranty.
On ye ancient deed, ye count follows warranty and makes a distinct or securth part. Now counts are used in ye place of warranties.

The counts in a deed of conveyance, are covenants, by only one party thereto beneficial to ye other, as in a lease or part of ye grantor, if he has good right to convey, and if ye Grantee shall quietly enjoy ye same, and on ye part of ye Grantee, if he will quietly pay rent.

2 Bl. 304 & Cruise 64

Plowd 138.

The usual counts in all deeds of conveyance, are deeds of release or quit claiming are first, if ye Grantor is well suited in ye case of a freehold grant and has good right to convey, or if he has good title where ye estate is less ye freehold. This is called a count of Tidwin in Count.

...cond, are what are called counts of warranty. 16. yt ye Grant or covenant to warrant to defend ye title for all persons, or in ye case of ye Heir, yt ye devise shall quietly enjoy.

Bac Cor. C Kirby 1.

By ye Count, however, is only meant, yt ye Grantor counts as warrant and defend ye title for all persons, or in ye case of a lease shall defend for all higher titles, but it don't extend to terrors claiming.

2 Bl. 304 & Cruise 49 50 66

1. Nis. 54 & John 11.

The principal difference in effect between a warranty and a count, yt in ye former, ye Grantor is bound, and as ye case may be, his heirs, to assure to ye Grantee other lands of equal value, in case of eviction by higher title. This is a real contract and binds ye heirs, where they have asset by descent, but don't bind his executor.

2 Bl. 304

A count on ye other hand, entitles ye Grantor in case of eviction to recoup ye damages only and not in other lands, and always binds ye personal relationship and not ye heir, in ye lives expressly named, nor even then if he has assets from ye ancestor. This count is then strictly personal, these are ye
county mh in modern practice, have superseded y ancient
warranty. There is a variety of Rules under y head, for wh. see
Co Litt 378 2 Bl 364

But intregard to y effect of a description of land conveyed
to observe, yt if y land is described with its abuttals or bounds
or by courses & distance. However
y grantor in ye case is not liable on his counts/provided
promise y lands answer y description, even the ye deed, the mention
table y number of acres, not in fact it contains.

For y description by abuttals, or by courses and distance always
governs in preference to said description by quantity.

One of these modes is usually pursued in ye country. As first
I grant 110 acres of land bounded with 1st. E. East on

Second. I grant lands commencing at such an monument
thence running north so many chains, to such a monument

108.

The Rule is y same, if y deed refers to another deed, or
document for y like description, for y description then becomes
a part of y deed containing y reference, if y lands correspond
with y description.

When y metes, distances Eto, don't correspond with y boundaries
or monuments mentioned in y deed, y latter will govern
rather yn y length of lines distances, courses etc, at beginning
at such a point, thence running Ye-

6 Metton 580

Now if y Grantee has a title but intensionally deceives y
Grantee as to y quantity, will an action for fraud lie?
And it not be an answer to y action, yt y Grantee might
have insisted on a count in y deed as to y quantity
or have y land measured - the action has been maintained.
See etc 2. Day 128 2 John 52.
If however land is described by quantity within abutalts, or courses, as y grantor is, it seems, liable in the case of a deficiency— for he y principal description is ye of quantity.

It appears always to have been conceded, y y Grantor is liable on his extent, if he qualifies ye quantity by y clause "more or less," or other expression to ye same effect— as in grant 100 hundred acres, as if ye "more or less," or so much "by estimation." If either of these restrictive clauses is added, then y Grantor is not added liable in case of a deficiency.

On y other hand, where y abutalt, y description is by abutalts or by rates, y words, "more or less," superseded, and it seems have no effect, as these words out of abundant caution, are added to every deed, where y quantity is mentioned.
The Conclusion

This contains y date and execution of y instant—It may either express y date or refer to y promised for it. 2 Bk 304. 4 Cruise 39.

But a date is vi strictness no part of y contract—It is merely a written memorandum of y time when y contract is executed.

Our books say it is no part of y deed, but it is in fact a part of y deed or document, tho no part of y contract.

Pluri deeds were not dated—they (dates) became customary in y time of Edw. 2. 4 Cruise 33. Co Litt 60. 4 P 327. 1 Lebr. 123. Ch. P 48. 3 Bk 304. Co 57.

The date is not then necessary at ys date to y validity and when inserted is only forma brevi and may be contradicted because it is no part of y contract—but in ys case y usu bordlist upon y party objecting—anciently no dates were used no conveyance. Tho 52. 2. 5 3 4.

If then an impossible date is inserted in a deed as y 30th of y time when executed may be proved by proof. So if there be no date. Co Litt 46. 4 Cruise 36. 2 Bk 304. 4 Bkth 46. 3.

These are all y orderly parts of a deed.

If 2 deeds bear one date and manifestly contain but one agreement yet not best supports y intention of y parties shall be presumed to be first executed. 4 Cruise 36. 1. Burr 106.7.

Fifth. Requisite

As y reading of y deed before y execution of it and ys case may be potential to its validity—If either party before its execution desires it to be read, and it is not read to him, y deed will be void as to him, provided he is unable to read it himself and in ys case, the y deed do be such, as he ordered.
to be made, will make no difference, for y more fact y reading was refused, will make it void—Touch 70.1
2 Bc. 574—4 Om. 27—2 Co. 3.9—11 Co. 37

If on y other hand, a party is able to read, he then can read it himself, and in such case his request to have it read and refusal will not vitiate y deed.

Now a man may be unable to read y deed from various causes as he may be illiterate, blind &c.
In such a case, if he don't request, yt it may be read, he will be bound by his sealing, but if he was unable to read it—2 Co. 29—2

These Rules however, don't suppose actual fraud, the party objecting need not aver actual fraud.

If y deed is falsely read to a party according to it, it will be void as to him, at least for a part read falsely or it may falsely read to him by extension between him and a witness, for he shall not be allowed to take advantage of his mistake or fraud—2 Co. 9.3 Touch 76.1—2 Bc. 534—4 Om. 27

When will y deed be totally void? When only in part?
If y heart falsely read is so connected with y other, yt both forms this take effect, if either, then y whole must be void, 12. where they relate to one entire subject—

If one deed contains several distinct contracts, there y deed may in fact wrong be void as to part, while it remains good as to y residue—11. Co. 27.8—Th. 70.1

6 Th. Sealing

is necessary at G Law as every deed of conveyance and by y 7 To etc. 50 signing is now also necessary in most cases—
Signing is not, at G L. necessary, to any deed. Th. 50
57—m—4 Om. 27—2 Bc. 26—2 Bc. 30—2 Com. 5 Th. 57
a. 1. It seems to me, as being necessary in point.

On ye State, signing is not only necessary by y St of France, but by a provision of y St relating to conveyance.

A deed may be executed by an attorney or agent, appointed for ye purpose, but in such case, it must be executed in y name of Principal. The proper mode of signing, is a 6. by B, d. his atty. 4. Cronie 28. 705. 2 East 142. 3 B. 76. 36. 10. 17. 1418. 5. 70. 17. Edm. Raymond 1418. There is however no particular

form of it is indispensable.

If an atty signs a deed, he does in iv name of his atty, principal.

It binds himself and not his principal. 3. 116. 247. 1. 76. 181. 1. 4. 247. 9. B 75.

But an atty, cannot bind his principal by deed, nor can one

partner bind his co-partner by deed, without an authority by deed.

The partner in trade may bind his co-partner, however, by bill

of exchange, or promissory note, and with such authority. 6. 218. a 4. 10. 9. 20. 1. 15. 76. 38. 313.

The reason of ye Rule is to be sought in y doctrine of Estoppel. One man cannot be affected by any of Estoppel, through y act of another.

He has subjected himself by matter of Estoppel.

But ye Rule must contemplate y execution of a deed in y

presence of y principal, for it has been determined, ye whose one

executed a deed for another in y presence of y principal and by

his verbal direction, ye deed will bind him. This exception,

is founded in y necessity of y case; for were it not

for ye exception, a person physically unable to sign a deed

will be excluded from making one. 4. 10. 318. altt the

218. 1. 306.

And persons are made to deed as Gracees, and one one

of ye real y instrument, the y sole deed of a party; sealing it for ye
Every deed to be operative, must be delivered, hence arises
y clause at y foot of y deed, "Sealed and delivered" and y deed
takes effect by y delivery, whatever may be y date._
It never takes effect, til delivery and in general from delivery
2 Pet 306-7. 4 Cran. 28- 2 Co 84._ The 16. 72 - Nov 481-

If a deed is made and dated during y Grantor's minority
but sealed and delivered by himself, post he attains full age—it
will bind him. Touch 72-

So also with doubt, if written, dated and sealed during
minority but delivered by himself, after he attains full age—it
will bind him. Conv 281-

And that a deed shall be sealed by a stranger, yet if delivered by
y proper party, trule bind him, for by delivery he adopts y signing
and sealing of y stranger as his own. Pant 130- 4 Cran. 28-
1 Pet 106. 2 Pet 106. 1: 30. 4 Cran 38-

But if an instrument is delivered before sealing it, it is no deed—
for a deed neither effects from delivery and as delivered, Touch 58-

The act of delivery with any words spoken will constitute
a valid delivery. 9 Co 137 Touch 58 C. Dig 1111. 1117. Conv. 12-
80. Co 117 22. 1256-

So on other hand, there may be an effectual delivery in
how by words alone (without any act done) as where y Grantor
said, "Here is my deed, take it" and he did take it._
4 Cran 28. Co 12 56. 1111. Conv. 1117. 1117. Touchstone 58-

But if y Grantor takes y deed (without either y actual
delivery or express consent of y Grantor), there is no legal
delivery, as if he takes it from y table without being directed
However if it be found by y Jury yt y deed was put there.
with y intent of y Grantee and take it it shall be a good delivery Touch 58 m 3 1. Eaton 40 3 Corn Sig a 3

As y simple act of delivery is apt to be soon forgotten by y parties direct proof of y fact is not required Presumptive proof of delivery will arise from possesion either of y deed or y subject matter, if it shall be stronger for y union of both The acknowledgegment is here horno one face evy of delivery

A deed may be delivered to a grantee in person, or to an agent authorized to receive it, or to any stranger in behalf or for y sake of y Grantee, a deed delivered to an agent is regarded as being delivered to y Grantee himself Touch 58 7 4 Grain 28 9 Prank Parks 2 1 87

There is yet difference however between a delivery to a grantee or his agent, and a delivery to a stranger In y first case it does fact take effect but unless in y second where it may or may not take circumstances, as shall be presently explained

It must be here observed yt a deed cant be delivered to any effect more y once 12 only one delivery can operate at such, for y first one of any effect, y second shall be void, y second shall be void and of no effect as a delivery Touch 60 Parks 187 2 Grain 20 89 This rule may appear arbitrary but it is founded on y reason, yt a deed cant begin to operate times But if a first delivery is absolutely void, a second may be effect

at wi y case of a femme covert Cwop 201 4 Grain 24 29 Touch 60 3 Burr 1805 Cwop 201

And wi y case above citzd y redelivery operates precisely as if it were written sealed, and delivered at y time of y second delivery 1t cant take effect from y time of y first delivery, yt being a legal nullity, to wit of course no subsequent act can have reference or relation
Again if a deed once good, becomes void, from any cause
as by loss of seal - a second delivery, sealing &e. will make
it good, but in ye case ye deed cannot be said to begin before
y revealing and delivery make it entirely a new deed.

Sawyers 60.

But if an infant, or a person under diurest make a deed,
and post full age in y one case, and restoration to liberty
in y other, it be delivered again, y second delivery is void
for y first delivery being only voidable and not absolutely
void, was of course if some effect. There is not a legal nullity
for it we have remained good, if it had not been avoided.

Park 154. Touch 60. 1 Roll and Tait 24 4 O. 29 5 C. 119.

The Bookes however leave ye last question in an unsatisfactorily
degree - for may not an infant make a valid delivery, as well
as a Time Court. It may be explained thus - the deliverer, the
void as a deliverer, operate as a modification of a former action,
is at ye least y letter and retroactive - The second null age have
relation to y first.

A delivery again may be either absolute or conditional -
and ye leads to a doctrine of Esrows.

A delivery is absolute, when it is made to y Grantee, or when
y deed is delivered over to a stranger to be delivered over uncon-
ditionally to y Grantee.

But if it be delivered over to a stranger to be delivered to
y Grantee upon y performance of some condition - or happening of
some contingency, y delivery is conditional, and in ye last case,
till y condition is performed, or ye contingency happens, it is called
an Esrow and not a Deed. 2 Ab 307. 4 O. 29. C. 119. 36 a.

To second - y second is void as a deliverer as an Esrow.
To Grantees myself, it is then necessarily absolute, for y
Grantor may not aver any thing as his own delivery and y
And a bond delivered to arbitrators, as is often y case, to be delivered over to y succeeding party, as an Assure, for there is here a condition.

The Rule holds the promissory note not negotiable, wh are here considered as deeds. 

If y grantor upon delivering a writing to a stranger, to be delivered over upon condition, says, "I deliver ye at my deed, to be delivered over upon certain condition, the writing takes effect, the y consideration had never been paid. The Rule is founded on y words of y Grantor, "my deed," and y condition is sufficient and also repeated. This is good law, but harsh justice. 9. C. 137 a. 2 Touch 59 4 Cruise 30 6 8. 36. a. Com Big Tal 1 a. 3. Perkins. I Q think it unjust.

But where a deed is properly delivered to a stranger, as an Execus, to if no force till y condition is performed, y stranger that delivers it before performance; of y condition, it will be void and will be rejected precisely as if y stranger had stole y deed and ye delivered it to y Grantor. 4 Cruise 28. 30. Touch 59. Park 1. 108 a. 137 42. 44. Touch 57.

So if y grantee had by force, or fraud obtain possession of y instrument without having performed y condition, it will be void. Perkins 1. 137 42. 44.

When the performance of y condition, however, is delivered over to y grantee, it is absolutely delivered, and even the ye stranger that refuses the deliver or that destroys y deed, still, y condition being performed, y writing shall take effect. Touch 59. 3 35. B.
In ordinary cases, where a deed is delivered to a stranger, to be delivered over upon condition; y deed takes y effect, from and by y second delivery, and by relation, to y first.

But in cases of necessity (and these only) there are exceptions to y rule. Thus in y case in Cowp 201, where y deed was y title, from y first delivery, there being no delivery over, y deed took effect by relation. Parks 5/38.

Hence where there is no necessity, y title shall rest from y second delivery, but where there is a necessity, it shall take effect, by relation to y first delivery, or not as y case may require, "but add magic valeat" quam beneat.

In other cases, where there is a disability or impediment to y effectual operation of y deed, y doctrine of relation will be applied to y case, if it will remove y disability or prejudice, y deed will be defeated by such application of it.

Thus if a woman sells a writing, as an escrow, and then marries and during her coverture, y condition is performed, and y deed delivered over, y deed shall take effect by relation, for such y deed not fail. This is a case of disability at y time of y second delivery. 3 Co 53. B. Park S. 9. 140.1. Touch 72. Cro Eliz. 427.

In all cases however of escrows, y second delivery is but a consummating act, which may always operate by relation, not so of an original act. There is nothing to make it can bear relation. It is both y indicator and consummatum act.
The delivery to y depositary is executory—to be executed when delivered over to y grantee.

Again if one delivers an escrow and die, y deed on performance of y condition, be delivered over, it shall take effect by relation.
to y first delivery, for y death of y Grantor close facts, rendering y authority of y Assignor, to impossible, it shd be void, nix by relation to y first delivery. 3 Co. 3 35. 3 Co. Clive 447

And in both these cases, y deed not be void, were it not for application of ys doctrine. But y rules of justice require yt they shd be valid, and hence y fiction. And in y case of Grantor's death before performance of y condition, y deed shall take effect by relation, an delivered over or not, for y performance of y condition renders y first delivery absolute, "ex necessitate seii," 5 Co. 84 3 B. Touch 59

Hence if one delivers a writing as an evidence to be delivered upon happening of y contingency of y grantor's death, y deed rest. y title at his death, from y time of y first delivery--Lit. 1. 66

It has been contended, yt an act of yo hand not be an mile. But it is not, for it purports to be not a decree, but a deed "in present." 1. Root. 3, 160. 2 do. 383. 4. Day 66. Lit. 1. 66. Co. 3 Lit. 32. B. 30. Arb. C.

In all these cases, provided y condition is performed, y second delivery is not essential. The only use of it, is, yt will be higher Evii.

If one of sound mind makes a deed of feoffment, and give a letter of atty to a 3rd person to make delivery upon it, and yo become "non Compos", y subsequent deliver, he continuing "non Compos mentis" will be good, and rest y title from y time of y first delivery. This is a consummate act. The power is not revoked by y Grantor's insanity. The grantor od not deliver, if he did, it not be voidable. If he remedy even yo difficulty, it will take effect by relation to y first delivery. He was then Compos, and consequently bound by his deed, and y Grantor upon performance of y condition is entitled to y benefit of it. 2 Co. 3 Lit. 310. 42. 5 Co. Clive 447. 1. Co. 25. B. 3d 30 Ep. 1. Day 71-a. Day 269.

When there is a an indicato act to be consummated by a subjunct act,
...
under a legal disability at ye time of ye first delivery.

Thus if A an infant, make a deed of conveyance, and deliver it to B. B shall be delivered on ye performance of some certain condition, and if B deliver it, post A attains full age, a stake not to be bound.

And also if a person conveys by a deed, and ye depository delivers it over post ye death of ye husband, ye deed shall be void for ye authority was quater under legal incapacity and void-able and by strictness void, and here ye doctrine of relation is applied for ye purpose of defeating ye deed, and protecting ye grantor. If it were not applied, ye deed would not affect it, but it is a maxim, yt legal privilages shall not be affected by a fiction of law.- Park 139. 154. Corn 3. Tart G. 64. Cro Elr. 3. 

The Rule with its qualifications, not stand this-Where a deed is delivered as an esrow, if ye doctrine of relation do tend to defeat it, then it shall be rejected-but where ye grantor is under a legal disability at ye time of ye first delivery, there is an exception in his favour. In such case, ye doctrine shall be applied, this to defeat ye deed, and in fact for ye very purpose of defeating ye deed and ye object of ye exception is to protect ye privilege of ye disabled person.

But a deed never takes effect by relation, so as to effect, or be affected by any collateral act.-1. A deed may operate retroactively or by relation, only to vest ye right or title, yt it intends to create or transfer. But as to non interposing collateral acts, it can have no effect whatever. Touch 73. 3 Co 36 a.-2 Roll 14. 410. Park 2. 26

Thus if a bond is delivered as an esrow, and post delivered over to ye obligee, under circumstances not will give it effect, by relation, a release of all demands from ye obligor to ye obligee, don't discharge ye bond.-3 Co 36. a. Touch 73.
So if a femes sole of full age make a complete bond, to be delivered over to y obligees on performance of certain conditions & then marry, post marriage, of course, she is incapable of making delivery, but y delivery is made, and takes effect by relation to y former delivery, for usage it not be void. Therefore she shall be considered bound by her first delivery.

But stile if between y first and subsequent delivery by y obligees that have given a release of all hands, ye bond don't be affected, for when he made ye release, ye bond was not her deed—nor did it ever become so ni for y purpose of creating y deed y taint ni for any collateral act.

Again if makes a deed of conveyance to B and delivers it to A as an Esrow—A becomes non-compos y condition is performed, and ye deed is delivered. Now y deed will take effect by relation, at A's law, and suppose y time between ye delivery to have been one yr, during not a remnant in possession, ye question is shall A be compelled to account for y make profits with B—The shall not, for the y title passes from y beginning of y yr—yet B's title didn't accrue till y end, 3 yr '39, 3 yr 29 a B—Con Sig D. S.

If a deed is made by B for y use of B, to be delivered right condition, yet it shall be good, when delivered, the B knew nothing of y deed, ni B the dissent. Thus if A a merchant here owes B in N Y, and y thing to secure him in preference to other creditors, makes a deed of conveyance to him, and B don't hear of it, till a week post, ni y meaning another creditor attends. Now all's wanting to y completion of y deed, is B's assent, and as y deed is manifestly beneficial to him—he shall be presumed to have assented, and will consequently hold during y intermediate time, to y exclusion
If a deed is delivered over to a stranger, to be delivered to a grantee. If a grantee upon tender refuses to accept, he can never repudiate claim it, and if he shall not obtain it with or without consent, it will not help him.

The grantor must declare, non est factum. He can doubt as to the jointure. Contrary. Co. 3 A. 5. C. 119, c. 6. 32b, a 36 b. 122. 2. 7. 56 b. 2. 20. 56 a. 76. 3. Co. 3 a. 56 b. 8.

The reason of the rule is this. For a sound and original principle of law, that an offer on one side, accepted on the other, is a good contract, or forms a good one. But acceptance is necessary. An offer is revocable, if still accepted, a portion of rejected.

**Attestation**

There is another requisite, or rather formal part of a deed, "for at law, it is not necessary," viz. attestation by witnesses.

2 Rom. 8. 7. 4. Corin. 3. 18. Phil.

In ancient times there was no subscribing witness to a deed, and after the formal part, his testimonio et factum. They did not sign it merely named, but mere merely called, as signatories of the fact.

Co. 216 b. 2.

The subscription by witnesses, as necessary, is now usual, and is at law is a requisite prescribed by St. Law.

Bl. 24. 8.

So also by St. If a deed for more than one year, is subscribed, by witnesses, it will be valid between the parties, and not as to persons. See Little Town Clerk or Witnesses.

There are certain other St. requisites, not are not confined to ye
State, but prevail through y'r Act.

This acknowledgment before a Judge or Justice of Peace, is essential
to mortgages— all conveyances of land for more than one year, or
they will not be valid in law.

Recording or Registering a mortgage or deed of conveyance
is also required— this is to be done at length in y' own or
country, in y' own land lies, by y' clerk of said town or county,
unless it shall name only y' grantor, his heirs and executors, and
subsequent bona fide purchasers or creditors.

The object is to give public notice, and certainty, to all
persons may know to whom all lands belong— hence y' deed
must be recorded and notice by y' town Clerk, will operate
to y' exclusion, if y' deed, 16. It will operate from y' own
and generally in fact.

In NY, y' registering is generally kept by y' county clerks.

In some counties, however, it is kept by y' town clerks.

This last Rule, don't exclude y' prior grantor, if he has used
due diligence in lodging it with y' clerk, for a man shall
be allowed a reasonable time to record a deed—

Thus if P, T, make a deed to A, and ten minutes
post make another to B, same person, and B sends it post
and has it to be recorded, it shall not be excluded. It is not
bound to run to have had time recorded.

2, 8, 500, 2, 500, 2, 500, 2, 500.

On these rules it is supposed, not to have notice of all deeds, and
that the grantor, deed shall include the grantor, if it has necessarily
been delayed from being recorded. Clark, 112. The 500, 2, 500, 2, 500.

2, 8, 500, 2, 500, 2, 500, 2, 500, 2, 500.

This Rule may be law, but it has no Equity, and there is no
reason why y' different CT did not have made y' distinction.

The Rule itself is a mere combination of y' CT. The Act of Law admit
its inequitable. Any then that they change y' consideration, and thus

1 Eq, Cases 168. 2, 500.
not adopt a Rule of Equity? it depends on y construction of y St Ann. and wi:

On M y t be have done yet. This is if in wh case y Rule is laid down. A subsequent purchaser that he read his deed shall not exclude y prior in any case, mi y prior practice has been guilty of neglect nor even then if he have notice of y prior conveyance, for what difference can a mere lapse of time have upon y Equity, if y subsequent purchaser acts?

If a towns Clerk having need a deed to be recorded, deliver it back unrecorded at y request of either party, he is liable to any one, who may be affected by such surrender. The Clerk must in all cases record y deed. 2 Port 85— as a Creditor of Grantor.

In Comt y Clerk must write upon y deed y time of delivery into his hands, and y date of y record must correspond with it.

**How may a deed be avoided**

If an instrument wanting any of y requisites of a deed, it is void as a deed. 2 Bc 508— or in law, it isn't a deed— it may be void of an agreement in a Ct of Equity. A deed may also be destroyed by matter in fact, as by intestation, erasure, or other material alteration. 11 Co 27— 2 Bc 808— 4 Cruik 26.

But if an alteration be made before delivery, be noted at y foot of y instrument at y time of y execution or delivery, y deed shall remain good. 4 Co 58— Touch 65— 2 Bc 808— 5 secus bar. 4

This was y ancient Lath Rule, but now y jury is to inquire into y fact, an y alteration was made before or post y execution of y deed, it will be void or not as y case may be— 16 Co 92— Gill Bri 14— 2 Bc 808—

There is a difference in effect between an alteration made post-delivery by y Grantor, and an alteration made by a Stranger if made by y Grantor, y alteration, however trivial, y deed will be void. 1. Co 27— a Touch 234— 2 Bull 29.
This Rule is doubted, intended to deter Grantee from tampering with his deed, for he has every opportunity to alter it, if he chooses. Further if y deed contains several distinct contracts, and any one of ym is altered by y Grantee in a trivial point, y whole deed is void.


But an alteration by a Stranger, don't destroy y deed, ni it be made in a material part, for y Grantee is not in any fault. 11. Co 27. a. Cro Eliz 620.  2 Roll 80.

2. Bulle 247. Cro Eliz 626. 27.

If however a Stranger alters y deed in a material part without y concurrence of y Grantee, yet y deed will be void, for in such case y deed as it stands, is not in law y deed of y Grantee.

But is y Grantee to lose y benefit of y deed?

G. thinks y Grantee may claim as for a deed lost or destroyed by time or casualty.

In these cases y Grantee may plead "Non est factum" for it is not his deed as it stands. 5 Co 119. 11. Glid 37. a.

Cro Eliz 620.

If in a writing intended for a deed, a blank is left in a material part to be filled up before delivery, will not operate as a deed, but if a Blank is left in an immaterial part, to be post filled up, y deed will have been good, so yt when it is filled up, it need not have any effect in order to make y deed valid. 2. Bulle 672. 81.


2. Dunc 25.

If a stranger that alters a deed in a material point, he not he liable to y Grantee, for in ys case y Stranger has destroyed y deed of Litter, and it is as consequent in ys action as y Stranger an y Grantee can prove y contents of y deed. or no Cro Eliz 628.
A deed may also be destroyed by breaking off the seal, even tho' it were broken off by casualty. This notion of seal was broken off by a mortise, or deed was held to be void.

If 2 are jointly or severally bound, or jointly bound in a bond, and ye seal of only one is broken off, it is void as to both.


In such a case however no alteration is made in y body of y deed, a Ct of Equity will regard it as an agerant to convey and will compel Grantee to execute another deed - and y s might doubt not be y case, if altered, provis preff ed be obtained of y original contents, this they may do under y general powers to relieve at casualty, to enforce executory agerants - 1. Ect. 14. 5.

Third, a deed may be destroyed by y grantee's delivering it up to y Grantor to be cancelled - 2 Bk 308 9.

Fourth, a deed may be destroyed or avoided by a subsequent assent of those, whose consents are necessary to its legal execution - Thus if a deed for goods is made to a Jane Covert, her husband by his dissent may avoid y deed - and so of an infant - 1. Ect. 16. 3 Bk 309.

By y subsequent assent is here meant y refusal of an assent, not was originally necessary to make y instrument valid, yet dont mean y subsequent dissent of one or both parties will avoid a deed originally valid, for in such cases there must be a reason yeware - Co Ligamini quae eligatur - 1. Ect. 68. 2 Bk 310.

Lastly a deed may be destroyed by a judgmt of a Ct of Law or a decree of a Ct of Equity - as for fraud - 1. Ect 348 - 2 Bk 309 - 2 Pow 149 - 51 103 - 2 Pow 149 -

By y Eng system of conveyances was adopted here, it was be necessary 2 it be present a view of an in y present title, but they don't prevail here - 369 - 63 - 343.
Construction

Deeds are to be construed as near y apparent intention of y Parties as y Rule of Law will allow— 4 Comin 415. Bost 36. a Nov. 154.

Or verbal meaning, Read English or false Grammar never enters a deed when y intention of y Parties is plain— 6 Comin 416. Shel 174. 8 Comin 418. a Nov. 154. 184. 170.

The construction of every Instrumt is to be made upon y whole instrumt, and not upon any distinct part, nowhere a deed— and y construction must be so made, if possible, yt every part may take effect— and tis a strong objection to a construction yt it dont give effect to every part of y instrumt—

To a general Rule yt y words of an instrumt are to be taken as yt party or y Grantor, whose words they are— If y conscience yt y Rule applies only to those cases of ambiguity— for in ye case be the base explained himself— 6 Comin 418.

If 2 clauses are irreconcilably repugnant, y former will take effect, yt latter— 4 Comin 418.

In confounding releases or deeds of acquittance, there is a rule peculiar to yt species of deed, viz where general words of release stand alone— 4 Comin 417. they are to be construed to give yon full effect, but if they are

preceded by words of recital, they are then to be construed by y recital— Read of a B. 5 F in full of all demands, in which

3 mod 277. D of a B. 5 F in full of a certain sum and all demands— in ye case, y words, all demands are held, words of form and use


Where words in a deed will bear two constructions, one of which is agreeable 4 Comin 417. to Law and Justice— and y other not so, y former will be preferred—

6 Comin 412. 244. 183. 5. Words repugnt yt y gen tenor of a deed and yt evident intention of y Parties, are to be rejected— 2 Acts 135. 1 Comin 418. Hence an exception in a deed indicating yt whole subject contained void beyond, for either yt y deed must be necessarily void— 6 Prynne P C 352. 4 Comin 418.
Where a subject or principal is granted, all y necessary incidents will
pass with y grant. If y Principal with y words, "affirmavit," to y
grant is actually added, thus if one grants a house, he of course,
the grant with it, a right of way to y house. If he grants a mill, he of
course, grants with it, y privileges of water. When one grants y
right subject, all y means necessary to y enjoyment of it, go also. 2 Poc. 36
2 Poc. 36. 11. Co 72.

In a very important Rule in y construction of deeds, one other instance
of a writing drawn vi a form, <nop> by law, it can't take effect, many yet
operate as another instrument, "it is magic value, quam sequit." If one
makes a deed of bargain and sale vi consideration of hundred, <nop>
entire. As a Direct transcript, and a Converse, and a Converse never to sue a
debt, is in effect, a discharge of y debt, and may be pleaded as such.

The area, might still sue, but y debtor can remove back to a covert.
There y terms of a deed are so uncertain, yt y mention can't be discovered
y deed will be void, as a Grant to A or B or one of y sons of C or
or y best man in a village = Hobt 313. 4 Crut 425.

In some cases where a deed is void in part originally, the necessity
is in toto, and in other cases, the void in part, will be good for y

If a deed contains several Covert, one of yt are illegible,
by y C Law, and some Legal, y deed is good as to y legally void as to
y illegal.

11. Co 27. B.

But <nop> any one stipulation or covert is void in a deed, 

The General Rule, yt, y whole is void. 2 Holts 350. Holts 14.
The precedent of C Law, renders y whole void, for y it always
decides, y whole deed, contract, void. 2 Holts 357. Hobt 14.
1. Poc. C. 198. 207.

If there are several distinct clauses in a deed, some of yt are truly
read to y party, others not, y deed is said to be good for y part truly
read, and void only as to y part falsely read, but neither yt, nor
11. Co 27. B.

If y former Rule, as Fornecoe, can apply where y two are (one
of yt is illegal, y others legal) are mutual consideration of each other,
for ye no be in effect to make a new contract between y parties,
Or if yt ye terms, one clause depends on y other, or is a condition.
If two distinct obligations are written on one paper, one
of which is falsely, y other truly read to y other party, and y
contract is duly executed, in y case, y one is void, y other good.

If y deed is void in part, as to an entire sum of money,
or any other any entire thing, it's necessarily void in toto.
If A agrees to give B. a bond for 20 shillings, and y
vouches doeer draws it bond for 20 f. and reads it as a
bond for 20 shill., yet it won't be binding even for y
Twenty Shillings, for yt was not named in y bond.

If a conveyance is made to two persons, one of whom
dissents, y part intended for y party dissenting, remains
in y Granter. 2 Bag. 395. 5 Co 258. Com. Dig. Bacon and
Book 1. 1 Roll 348.

This is different from y case of a deed made to two persons,
one of whom is legally incapable of taking under it, in
y case y deed is in legal effect, a deed made to one
person only, but in y case, y deed in its creation, a
deed to both, the voidable to either of them in case they
dissent.

Conclusion of Title

By  

Deed - Midnight - vel somnis decepit.
Title by Execution

By y c Law, and by our law, an interest in things Real may be acquired by execution, by wh term is meant y last performance of an act, as of a judgment, and is y obtaining y satisfaction of any thing recovered by judgment of Law.

By our Dr Law, yt has become a very common mode of acquiring a title to an estate in land. It's also frequent in Eng, but y laws of y two countries are very different on y subject.

By y c Law, y only executions yt cd be vy rarely originally - qui tie is usually liable in personal actions more y "per se" and later "ad satisfaciendum", with y law as y act has noot added y Capias ad satisfaciendum, the Rule was different with respect to y heir. 3 Co 11. 12. 3 Bkt. 414-18. Com Sig Co 6 & 7 Con. 3. 9. 3. 3. 9. 1 Bac. 1. &. 4. 3. 1.

I speak of executions in Personal actions only, for in Real actions they are not y mode of acquiring originally property, but of enforcing Seisin or possession of a title already executed.

Upon y first of these notes, y goods and chattels of y deft Real as well as Personal may be taken 3 Co 171. Com Sig Co 6 & 6. 4. 9. and auct. 3 Bkt. 417. Bac. 6. &. 3. 3. Co 128. 104.

And yt y property thus taken is to be sold by y Sheriff for y Satisfication of y Judgment or execution. 3 Bkt. 414. 6. Co 171. 6. Sig Co 6 & 6. 4.

Upon y second of these executions, y Sheriff may take y goods, and profits of y deft land, not only chattels, but growing emblems. This can't be done on a facias for, y terms not authorizing it. 3 Co 11. & Cumber. 410; 3 Bkt. 417 ibid. Com Sig Co 6 & 3. 3. Co 128. Bac. 6. &. 4.

On yt execution may also be taken debt due to y deft. The debtor may be compelled to pay y debt to y deft in y execution. 3 Bkt. 417. Bac. 6. &. 4. or creditor for y deft. Bac. & 4. 3.

On these 2 executions, then, y whole personal estate, ni necessary meaning apparel, is liable to be taken for y satisfaction of y Judgment. 2 Bac Co 6. &. 3. Co 128. Comb 356. Bac. 6. &. 4. Ex.
But on neither of these can ye safely land, they extend by ye terms only to ye personal property of ye debtor; there is indeed, at ye Law, no execution ye would ye land of ye debtor in his lifetime, ye land in ye hands of ye debtor's heir now he has by descent may be taken; The Rule is founded upon reason purely feudal; for in ye same manner, as a man cd not alien his land directly - he was restrained from doing it indirectly by charging it with his debts.

3 Co 418;

Nor at ye Law does any execution reach fixtures belonging to ye debtor, such as forests, meadows, doors, with the strictly personal yet being annexed to ye Freehold, are deemed part of it.

1. 2 Jac 3. 1 Pott 895. Com Dig. Ex. C. 4.
   There has been a vast deal of dispute as to what articles, are fixtures, and what are not. See B. & A. 3 Ed. 3d.

The third species of ye Law execution is ye Law under wh body and body only may be taken. At ye Law, ye right remaint in all cases allowed. There restrained to these cases in which injury, for why y Judgment was obtained, was forcible. It was allowed in ye class of cases by reason of ye breach of peace involved in every such injury. 3. Co 12. Co Litt 887. 90. B. Com Dig B. 3 & C. 2. 9 - B. 2. 63. It was allowed as a sort of penalty to ye offender for having broken ye peace.
   At ye Law then on a judgment recovered on any action than the in ye assize, y Plaintiff had choice of only first to auth.
   By 3. 152. 152. 3. Mar. 1 3 Ed. 1. 295. 3. co. 6 of Co Litt was extended to actions in any civil case with some few remaining excepting, 3 Co 12. 6 & 2. 88 Co Litt & Co Litt 89. B. 2 B. 63.

and in other cases execution at ye Law issue to the land of any man, ye heir at Law.

But on a judgment go an heir "at Law" as such, on an obligation of his ancestor, y Plaintiff might have an execution, on ye lands he inherited from such ancestor. 3 Co 12. 9. Com Dig B. 2. 2. Please 2. 6. 4 - Powl 440. 41 - 2. 2. 2. 1450. 3 Bae. 2. 328.

This Rule was founded on necessity of ye case, for ye heir is
able to his ancestors’ specialties, in consequence of assets by descent.
But y property derived from y ancestor is to be liable—it must be 3 Eo 12. a
Real property it cannot be any other. If this were not y case, y Plf
we have a legal right, ninti any coercive remedy to enforce it—
But it cant issue in land, th y heir has by purchase. Thens
y right dont extend to such property. 3 Pnce 12 a Cor dig Exc C 2—
Cor Title Pleas 2 c b. Prov 446. 41 note
And in all cases, its only extending—y land as a common medium,
to be held till y rents and profits pay y debt—Th Plf dont acquire
y Fee—Th execution can never have y effect—Prov 489—

But in virtue of certain Eng St, real estate may now be taken
on execution in y original own, ye owners. 1 Inst 2 13. 20m 1. By th
y Plf is entitled to an Execq, extending to one half of the land
of y debtor, and half y goods and chattels. They are to be appraised and
delivered by y Plf, but not sold as under an execution at y St Law—
The half only of y land is extended; till y rents and profits have
satisfied y judgment—Th Fee dont pass by Execq 2 Fb 167 4 citd—
3 30 418 Cor dig Exc C 14—
3 Fb 419—

There are 2 other Eng Sts wh subject y land of y debtor somewhat
further. Th St de mercantile of 13. Edw 1 s 27. Edw 2 subject
all land as well as y person, and goods of y debtor, to an execution
on y forfeiture of y surety, ordering, on a St Morgan, on St Ralph—
But in these cases, y land is only extended—Ther is no Eng St—
under wh an execution will pass a Fee 2 Fb 420 2 it 168 289—
3 Fb 420—

Hex 13. 1
But in y country y fee simple of land will pass by execution
and so of un lost interest—(Not in Virginia). In Conn. there
is but 2 Species of execution in personal actions, and y goods,
y goods, land and person of y def—The Eng distinction are abolished—
By our law, when goods are taken upon execution, they are to be
sold at y end of 20 days and a sale made or not y time is illegal—
There is also provision in our Sts, ye if there is personal property
satis to satisfy y execution, granted to y def, y def can’t take
y land—
Of late, long discussion, an money can be taken, in some cases, it has been denied— But by Credences, bonds, notes, bills, can or any can be taken.

The Eng Acts are rather in favour of selling money, and it and seem to be the most proper of all property to be curved. 2 How 166. 3 C 11. Long 219. 230— Armbat. 1st Philpot. Hard 48— (End 48— Cotton—)

In Court money may be seized in execution—
1 Bert 216— and ye is in accordance with y Informe Ct. 14 41. 1 Cranch. 41— 134. 1. 1 Cranch. there may seem to be a little difficulty—
Yet it arises from ye circumstance— y money was in y hand of an atty or Theirs in favour of A, and on an execution not it was held y it had not become y property of A, Issue it not have been liable—

So in y Eng C Law, if y Thir is doubtful on y goods sought to be seized belong to y Thir, or not, he may summon a jury to ascerten y fact, and if he dont, he acts at his peril—
But notwithstanding y verdict, of he wrongfully seizure, he is liable to y Real owner— 1 Burr. 29— 9— 1 Bl. C. 65— 2 H. Bl. 48— 4 So. 143. 48—

What then is y effect of y inquisition? So this. If y jury find you not the belong to y Thir, y jury shall not be sued for not—
Taking you, and ye is y Book use of y verdict— It’s no Evi for—
or no third persons— 2 Thr. Bl. 43— Pea Evi 85— 1 Thr. 68— 3—
Macle at Pelvo 175—

And if y Thir make a wilful false return of multa bona—
ye inquisition must certify him, it can’t be evi in his favour—
But if y Thir is guilty of no fraud, he is not obliged to seve ym past y verdict— By ye State, it have no such exquerly— The multa in our Ct., is ye. If it appear, y Thir Thay—
had reasonable ground to doubt y ownership, he is excused from—

Takyn ym.
Where an officer seizes goods in execution, if they prove insufficient to satisfy the debt, he may make a & or third seizure.

Bac. Ab. 46. Ex. 1. Com Dig. sec. 6. 1. Bell. 91.

Under our St. y whole interest of y debtor vi y land, may be taken in execution 18. if land held vi his own right, vi wh he has a 18. not as beneficial interest, but not a mere nominal title. At y C Law. trustee, it need imply y legal Estate, but by our St. it is described of a Trustee. This y interest of a husband vi an Estate of his wife is an interest held vi right of his wife. But yet his life estate vi. it may be taken. To y't not to hold vi ones own right, is meant to hold as a trustee.

Virtue extends to all Wales, vi lands and tenements whatever, and by construction to Equity of redemption and all equitable interests. 1. Day 93. 2 Root 461. This is not y case at C Law. 8 East 467.


and y mode of settling of an interest, y Rule is, y't y Trusts must make demands of y debt at y place of y debt abode, vi within his present or desire y security is not violated.

1. Root 241. 6th Comt. action Civil.

And if Real Estate is taken without such previous demand, y levy of execution is illegal & confer no title.

So also if satis money or personal property is levied, and y Trustee replete to make either, no title shall vest. This present demand must appear upon y Trustee's return, or no title will be acquired.

demands made before 1809, all cases &. 1. must mention present demand.

The second step. vi y proceeding is, y't y property desired is appropriated of personal by 3. indifferent person, freeholders of y land, and under y State personal. 2 Root 434. 1. Day 189. The mode of indifferent is continual. They are to choose one a heir, an affinity, or consanguinity. 1. Day 189.

The Sheriff is bound to endorse all proceedings, as demand to y 3. approval fo y execution, and to have it recorded vi y town.
and also to deliver to the Clerk of ye Court, from wh th ye writ issued, the same of ye true return of such execution as is recorded, and ye execution thus recorded complete ye title
1. Root 489-557

If the same under our law, there is no such thing as executing land.
The whole interest must be set off in yt part not is derived.
There has been much dispute in this regard, as to taking growing
complaints. The practice has been to take y growing crops.
It may be consent where it may be tenant for a short lease, then to set and
sell it at ye sign part. This is not justified by our law.
the it is by y Eng. the regular mode by our law, nor be

It has been determined, under our law, a levy of execution
upon land, poost y time when y execution by its terms is made
returnable, is void, to ye effect, poost such time.
3 Day 1 Root 101

Our executions are all made returnable at 60 days posts
date, or at y next term of y Ct, and if y time has elapsed,
y judgment cannot be enforced except by praying out an alias.
However a levy is begun before y day of return, it may be consumed poost it has elapsed, and y judgment proceedings
have effect by relation to y day of return. 1 & 94. B. 3 ibid
29. a. 4. ibid 71 a. Doug 269. a. 1 Root 101-3 Day 16

The levy of an execution on land dont void y if of this possession,
it merely vests his title in y Plf and if y def. refuse to deliver up
possession, y Plf must have recourse to his action of ejectment.
for y def shall not be ousted withe any of opportunity of enquiring
into y justice of y proceedings, and if he can show they are irregular
or yt judgment ge and void, he may do it. 3 T.B. 273 7. 6-
Bac. Abr. 6a c. 32 How 887

An alien execution is in general issued as a matter of course, but
there has been an unreasonable lapse of time, there is no need.
of applying to y Co, y Clerk may issue of course.

Where y execution is wrongfully endorsed, Satisfied, y Pllf may obtain another to enforce y judgment by Sei Faicas. But not on motion. Suppose y Owner has sold y land of a Stranger, y Pllf of course can't hold. Now to prevent inconsistency on y Recod, a Sei Faicas is issued, for there no record appear so he be Satisfied executions & no explanation given. The Sei Faicas may reconcile these apparent inconsistencies.

Here are many cases, in wh a new execution may be obtained, on Sei Faicas as if y Def die in Prison.

In yo State, there is no time limited within wh a new execution can issue as a matter of course without a Sei Faicas.

In Eng. it may be within 60 days of y execution of a year and a day, and the reason is, yt by a lapse of time, y presumption is raised, yt y judgment is satisfied—tho y once probandi is on y Def. Roe. Ab. Ex. 4. Chart 30. Ox Jam. 36. Com Dig. Reader 3. C. 1 of 2. Ex. J. 14. 1. Salmon 380. Court 236.


In a real action, if y Pllf die after plamts. rendered, but before execution issued, it may be sued out by his heir at Law by Sei Faicas.

If y action be personal, y same is true of y Ecc or Adm., but Sei Fa is in both cases necessary. Com Dig. Ex. 3.

Read. 3, C. 5, 13. Roe. Ab. Sei Fa. C. 5. 1. Roll 889, and y reason why y Sei Faicas is necessary, is yt y heir or Ecc is not y original Party, and y Et don't know. nor make it enquire on motion, so they are y true heirs or Ecc. The Sei Fa remedies these difficulties.
But in either case, if y Plff's death happened after execution is issued, but before satisfied, there will be no necessity of it to be 3228.

O A judgment is rendered on two persons and one died before execution issued, it cannot issue to y heir(s) alone without a Dei fac - for y fact of y Plff's death does not appear on y record - it no seem yt judgment has been rendered of two persons, and execution issued vis one only. Ray Es. Bac. Abr. cc. g. 1. 1. Bible ex. 123c. 1. Le 130v. Com Sig Plas x. 6. 15. The same Rule holds where one of 2 Plffs died before execution.

If judgment has been rendered vis one, who died before execution, leaving land in the dower to his heir. An execution may by a Dei fac be obtained vis y land vis in y hands of y heir, and yt also to prevent in consis y ncis y of y heir. Bac. Ex 2. 3. 180. c. 2. 290.

This however, is one of those cases in wht y heir, at law, isentitled to have y proceedings stayed, till he is of age. Bls. 1. 104.

In y same case, however, y Plff may at his election, sue out an execution vis y personal representatives. Comb. Bac. cc. 3. 6. Bac. cc. 9. 2.

But if an execution has issued before defq's death, there is no need of issuing a new one. Comb. cc. 1. 2. 1. 6. Bac. Ebot's 181. 2. Bent. 218. Bac. cc. 1. 164.

But these 3 last rules can't obtain in ye state, if a man die before judgment rendered, and before execution issued, or after execution, and before it is satisfied, yj judgment can't be enforced - a new execution can't be obtained, neither can y old one take effect. This nd defeat y genius of our average law, or processa or System - or Meshalline adollect.
The creditor is in a some situation, yet he moi be he, had he a note of hand, he must present his claim to a Ct of Probate who will treat kata his desire.

If judgment is given to husband and wife, and your husband died before your execution is issued, it may be prayed out to your wife alone by Sai Fa. Cro Ch 578.26. Com at Supra. 
Rae abr. Baron Home. And the same rule is true of your husband in case of his wife’s death, for your reasons before mentioned. Rae. At w.g. 4.
Dened.

Requests 20%. It must be in writing 1/2.

2. Signed by the Testator, or by some one in his presence, and by his executor, attorney-in-fact, or attornied, in his presence by three or more credible witnesses, and the witnesses must attend to three things: 1st. Sanity of the Testator; 2nd. Signing; 3rd. The Publishing.

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Things declared under St. of Hen. 8th.

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Title by Devise.

This is my last mode of alienation, not I propose to consider: as you will see. See 56 c. This is a title not comprehends a great variety of learning - more so in deed. The Law is not so technical.

A devise is a mode of alienation, not may be defined a testamentary disposition of Real property. To take effect effect on y death of y owner. Cow Sec 13. Bac Alb 4, 97. Mill.

There is a distinction to be observed between y modes. Devise. Mill.

I. Testament - A devise is confined to y alienation of Real property.

A will in its proper and limited sense, implies merely y appointment of an executor. This is not essential to a will, yet property she be disposed of. If one says, "I appoint y executor," this constitutes a will.

If he superadd a disposition of personal property, then is also a testament: and as they usually go together, y writing is called a will and testament. The true, the term Mill includes y dispositions of all property, both Real and Personal. The St of devises is as frequently called y St of wills, as of any thing.

But yet there is a distinction in terms. Lord else, 1 and 2. Bac. Mill.

The right of devising Real property, is said, to have existed among y Anglo Saxons. But it was abolished in Lota upon introduction of trouble. See a few Law. There is no consistent with y system on y same principles, of an Moses. As alienation into estate. See 2 Bac 58, 178. 4 Post. on Sec. 15 3.

1. Levison. 79. 6. 237.

But terms for y all and chattels real were generally devisable under y Tudal system, as well as personal chattels. See 2 Bac 37 3. 10. 678. Post 348 3.

The suspension of y right of devising Real property, continued for several centuries, from y reign of Hen 11, to y latter part of y reign of Hen 12. But during y period, y restraint were made in a great measure by y doctrine of hides. See 47. 2. 22. 6. 10. 678. 1. 3. 3. 3.

The ecclesiastical chancellors adopted y principle, y to y legal
title ed not be devise d, yet y beneficial interest might be so devise

2 6c 375- Pow. 2. 8-

A case was what This practice was checked by y St. ifituted, and transfere by legal

estate by y side, that abolishing y distinction between y a estate,

and consolidating ym into one, and hence it became impossible

to devise Real property. 2 6c 375 Pow. 2 613- 236.8. Co Litt. 11. met,

in person as

sub.

legal title. The Public soon became discontents with these restrains,

was in writ, and only y ye of devise was enacted, providing y

all persons having a Fast Estate, or one in Coheon, or in Common

in Federation of Manors, Lands, and Tenants, they have power
to dispose of 2/3 of those holden in Chivalry and of all those in Scotia

by writing and ye it was explained by 32 Hen 8th, 2 6c 375- Pow. 140-1.

And as all Eng Tenures, ne those of Copyhold were converted wi

te these cases by St. Cha. 2. by St. 12. Ch. 2., it folloes ye all

lands ne Copyhold, became demiseable. Pow. 21. 2 6c 71-72-

Pow. 11-12-

Certain regulations were also made to y mode of making y instrum,

by y St. of frauds and requier. 29. Ch. 2. prescrib ing requisite or

serenity to y devising instrum, wh has been followed throughout y

Country.

Our St. of devise is simular to y St. of the exte nds to

Feasible Estate only, but to all estates whatere. We have also

a St. simular in effect to y devising clause of y Eng St. of frauds

and serenity make in England as to those St. are forma-

Face Law here.

The power of devising in Andere Thn in England upon y St. 32. Hen

8th explained by 32. Hen 8th. Ch. 5. Then mode is prescribed

by 29. Ch. 2-6-

The first subject of consideration is y St. 32. Hen 8th, A devise

of y nature is called an Invaluable instrum, only solemnity as y

form not y presens. is y it be essential in writing. Hence y

any Invaluable devise of y Realty was a good devise provided
An instrument in y form of a deed, and actually delivered. Prov. y
as such, may operate as a devise, where y intent was manifest in y
indiscretion. But where an estate is delivered as a deed in present, it be
the devise in present, delivered on y death, it is not a devise. Ch. Ca. 25.
Estate host's 76. 3 Hild. 310. Judges R. 190. 1. Mod. 117. 4 May 66.
Testator's death.

A devise may be written at different times, on different sheets
of paper, or may not be connected if y shall constitute but
one devise. But suppose S makes a devise to day and another
y, some Estate tomorrow if y shall be his last will. Pov. 17.
1. Shaw 545-553. 1. Burr 548. Pov. 16-16 682.3.

And one may make several separate depositions of y same subject
as to interest, estate, etc. If devise lands to a and his heir,
and by a subsequent writing he devises y same land to his wife for
life, both writings constitute one devise. y second is a revocation
by y first per tertio. 15. during y life of y testator's wife. As if he
had said to my wife for life, remainder to b.

And where there are two instruments, y latter may modify y former.
The last of two wills is to take effect. 2 ates 264. Pov. 19. 20.

And a devise referring to another instrument, makes y a bit of
itself, for y purpose of explaining y devise's intension.
1. 17. 2 ates 273. 1. Piv. 530. 2. 6. 339. Thus y devise
to & all y rents expressed in a certain date. So of a direction
by a testator to an executor to dispose of a certain thing, as he
shall by deed dispose. If he makes y appointee. Pov. 22-3. Pov. 18-117.

So after a devise or will is made and published, y testator may make
a Codiceil or codicils - explaining altering and varying y disposition ante made Pow 24.

The law summarizes Codicil & y devise, and considers both as one instrument Pow 23. 543 2 BC 242 1 BC 387

By a codicil is meant an appendage to a will or devise - explaining ye (at ye before) A Codicil presupposes a previous will complete in itself and already executed - Part 26.7

It seems then yt a Codicil always in strictness relates or whole or at least in part, to y some subject matter as y original instrument. For a subsequent disposition of a distinct subject, seems rather a coordinate Part of y dispositive instrument, ym an appendage to it.

But a mere recital in a devise of something contained in another instrument, is not itself a devise - Part 36.7 1st 427 2nd 383

By ye construction of y St of Hen 8th, it was held, yt any devise of land &c must be entirely in writing - Pow 25 2nd 345

But the judge took y word writing &c, most vague and extensive sense, as in including loose notes Memorandum, and even letters expressing y own's intention - Pow 25.6 2 BC 376 Med 177 Ayer 72 Cro Eliz 110 Part 16

Indeed it was held unnecessary yt y writing shd be made or notified by y deviser - A devise written by an Aty in presence of instructions by y deviser, but in his absence and not ever read to him, was held good - Pow 26 Ayer 12 2 BC 376 Cro Eliz 100 1. Leav 79 113

So it was held yt if any one in extremis, had by parcel declared his intent to devise, and another, with any direction or authority reduced it to writing in y former's lifetime, it wld be good devise - But these 2 last opinions were soon overruled - Pow 26 Cro Eliz 106 Ayer 12 2 Table 545 2. Leav 113

And it was held yt y devise must be completely reduced to writing, during y deviser's lifetime, Sreea to be void - Thus if a devise was to be made in 5y, and his heir upon condition, and before
y condition was written, y devisee died, it was utterly void—


But whereas devisee directed several distinct devises, and for one was confirmed, but before the other was written, died, y former was adjudged good—Paw 28. 9. 2 Sam 31.

So it was held, y a devise might be good in part and void in part, that where a devisee annexed a condition to y devisee, without authority, y condition was void, the devisee was good—Paw 30. 29. Dyer 72. n. 2.

Secus vide y devisee was to write a devisee on condition, and y devise was written without condition—Here y devise is not written y. y testator's lifetime—Paw 30. 2 2. Feb 880.

Med 256.

Signifying by a devisee was held unnecessary under this St., there was not necessary by his name that appear on y devisee—Paw 30. 1. 1. Dyer 362. 2 Sam 35. 3 ch. 9. 1. See 362.

Indeed there held y any writing, the matter signed or sealed and the it more y hand of a 3. person, with y assent of one witness was a devisee satis established—Paw 31. 2 Feb 125. 1. See Schin 315.

A devisee to ye effect probably occasioned y clause relating to devises viz y St. of Soundes 29. Ch. 2.

It was held, yt contingent interest resting mainly on possession, ed not be devised under y St. of will, as a contingent remainder—Paw 34. 3 Sam 427. 3. Schin 291.

Sec is now settled, yt they may be (12 possibilities) coupled with an interest, are devisable before y instrument (Acts. 18. Contingent remainder and executory devise.) Thus a devisee to a in fee, but if be die before 21. yrs. of age—then B in fee—B may devise his contingent interest, and make naked effect, if it dies—before 21—

Sec is of a naked possibility 18. a contingency not coupled with an interest, thus a bare authority (not coupled with a contingency)

15. a contingent authority
nothing but an
interest can
be devised.

But an estate may be devised to a mere right, not
within y int. of Hen 8th as a Recessor as discontinued.
Thus suppose Tenant in tail; if a recessor join in a lease
for life, y recessor can't devise y recessor, to dis-
continued. Pow. 35, 611. Cro Ch. 281-293. 387. 405-3. 6.

The lands of wh. wh. owner is deceased. estates per
actus rei are not devisable under it of Hen 8th, for they are confined to persons
having land in fee simple. Pow. 36, 218. 1 Rop. 32. Cro Chir. 68.
Co Litt. 41. 3 Rop. 156. Palm. 66. 32. 3 kilo 400.

So of an estate for several lives and for a some season.
Pow. 7. 3 Rop. 256. 1. Rot. 428.

So of a freehold as described. per actus rei. This of Tenant
in tail, granted to a of his heirs. A can't devise his interest.
Pow. 36. 218. 311. Poph. 91. 2. By 253.

But now by 29th. Ch. 2d estates per actus rei are devisable.
mi there is a special occupant. It is limited to y heirs
of y original tenant. 2 Rop. 257. Pow. 32. 40. Frank. Ch. 1.

Signities, offices, and franchises, th. they may be devisable in
England, are not devisables; they are not within y int. of Hen
6th. Pow. 10. 45. 6. Ford. 125. But they may be surrendered
to y one of y tenants, miller, and may then pass by y successor
to y one named in y mill. Pow. 45. 20. 3 Co. 32. Rop. 11. Co. 81.

Of Copyhold estates, they are not devisable in Eng. th. they are
not within y int. of Hen 8th. Pow. 10. 45. 6. Ford. 195.

The right of reversion in y lands depending on y non-performance.
of your non-performance of a condition by your Grantee is not devolesible
for your Grantor had not your land, till your breach of condition. Prov 26.183
1. Ed. 223. 471.

And your benefit of your condition is personal to your Grantor and
his heirs, so if a devisee, as such, can't take your benefit of it if

The clause relating to your subject, viz. Eng. St. unless all
divided of land, shall be in writing, and signed by your Party, deciding
or some other person in his presence, and by his express direction,
3 subscribed in his presence by 3 or more respectable witnesses.
Pro 147. 6. 2. B. C. 274.

The object of these provisions is to guard against those
"in extremis" and to protect heirs at law. 

all these (not being prescribed "other than St. know") in
any writing which ed have been good, as a devise under St Hen 8th
will now be valid, if your solemnity prescribed by your St of frauds
were observed. it signed and witnessed as your latter St required.
Pro 148.

Hence as under your St of Hen 5th, a devise executed late
by St, may be refered to another instrument, and make you a part
of itself - this instrument refered to, is not this execution - thus
A by devise duly executed under your St, changes his land with
his legacies, and then by another instrument met this executed gives
legacies these legacies will change y land. Pro 149. 18. 20.
2. All. 128. 1. Mod. 223. 2. All. 274. 3. Bur. 275.

Lands and tenents are y descriptive words of y subject matter.
Colonists carry with yun as much
when y creating St is to operate. If was decided, y g
should extend to such Eng. Colonies, as were planted before y St
was passed - laws as to more settled post - Pro 150. 2. P. 194. 20.
Municipal Law.

53 before Hen 8th are prison from Hen 6th.
The words above cited don't extend to Copylands. 

Those are not desirable, nor do they extend to a chattel interest.

A trust of inheritance is within a will and cannot be devised. 

An appointee of land under a power, if made by will, must be executed by the will.

By a will, a writing importing to be a will, if void as such, for want of the prescribed requisites, don't operate as an appointee. 

It's a general Rule that a writing importing to be a will, if void as such, for want of the prescribed requisites, don't operate as an appointee.
And if a legacy is originally given out of land, y will creating y charge, must be created kata y Sr. such a charge is to affect a disposition by devise - Row 59. 2 Abd 268- 269.

This is different from a legacy referred to in y devise. In y case y charge is created by y devise

Rents arising out of lands are within y provisions of y Sr. for they pertain to y nature of y land and follows it as an Incident does its principal.

So a will giving powers to execute to sale lands must be executed kata y Sr. for y is directly disposing of y land - & enabling others to do it - Row 59. 3 Abd 1ff.

The Eng Sr of frauds extends in terms to all lands, and Tenants desirable either by y Sr of Mills or by itself y Sr of Fraud or by any custom - Row 59. 60-

Requisites

If y solemnities required by y Eng Sr vi devises - y frauds, yt it be in writing. This requisite obtained under y Sr of Mills. This rule needs no farther illustration, ym has already been given respecting y instrument under y Sr of Mills

Second - it must be signed by y legatee, or by some one in his presence & by his express direction.

Sealing is usual in Comit, but not necessary here or in Eng.

Sealing in y case of deeds is a feudal solemnity, a mark of distinction between families. But y Sr relating to devises don't require it - Row 61. 61. 4 Abd 360- 1. 4 Abd 326- Conn 264.

It has been held, yt Sealing alone amends the signing within y Sr - Row 62. 3 Abd 1. 3 Med. 219. The Ct was divided - 3. to 1. The same point was held by Ed Eyre - 12. 464. Row 66. 7. Turn's list held contra - 1. Abd. Pr. 13. 5. Row 17. 1. Pr. 1. 76. 67. 74. 1. Mills 313. The latter seems y better opinion - The former
But y name of y Testator written by himself
written by himself in any part of y Instrument, is construed a signing
nor it appears that it was so intended—(Bowes 6: 3 Esq. 186 - 3

But if it appear yt y name written in y body of y Instrument
wasnt intended as signing, it wont operate as such— as if
t here was an express intention to sign formally, and y intention
was defeated. Thus where y devise was in 3 sheets, y Testator
signed y 2 first, and tried to sign y others, but failed.
y be held, yt there was not satisf for signing within y Instrument
Bowd 249: 1 229: 1 Point 180- 

The cases heretofore in these cases, lies upon y person, who opposed
y devise. The presumption of law (y intent no devise being certain)
is yt y name written but Supplied in y body of y Instrument, was
intended to be a signing — Bowes 6:05.

A devise subscribed by 3 witnesses, and declared by y Testator
in yr presence to be honest and true, not signed by him,
was held to be well-executed.—but why, there want y Testator
name written by himself in y body of y Instrument— if not, how
can it be law?

Third. y devise must be attested and subscribed in his presence
by 3 or more credible witnesses — the very object of y clauses was
to prevent fraud, consent upon y secret execution of devise—

The attesting witnesses are to attend to three things
First: y sanity of y Testator— 2d the fact of signing—
Third y fact of publicat [ation Bow 80—6—

First they are to judge of his sanity, for y signing wh they are
to attest, includes in law, not only y physical act of writing y testator's name, but also y mental power or capacity of making a legal signature. An idest may write his name, but can't make a legal signature. 

Pro. 6:17-18. DM 36. 80% & liner 169:12-13

And when y devise is offered for probate, y testator's sanity must be proved, this y owns lies on y devisee. Proving y execution to have been formal would suffice. Pro. 64:100. 3 All 38. Bull 264-1. RC 2 385.

Hence, a Ct of Chy won't establish a will, ni all y attending are examined, for y heir has a right to require proof of y testator's sanity from each of ym. Pro 100-3. DM 30.

As to giving it in Eciv, at Law. See 203.

But y testimony of y witnesses as to y testator's sanity, is not conclusive as to his signing - or even as to y own subscription. They may be contradicted in either of these points by y other witnesses. Bull 264-1. Pro 100.

To Secondly - They are to attest y fact of y testator's signing.

It is not necessary however, of y witnesses that have actually seen y testator sign. An acknowledgment by him to you, of his name appearing on y instrument was written by himself - is satis as to yr point. Pro. 4:78.

2 Ch 126. 3 P.168. 2 All 30. 3. Pro. 492.

Bolg. 492. 3 244 - and to as usual to sign in y usual way as you.

But y testator's saying, "ye is my will" is not satis but it seems of y fact of signing, for to an acknowledgment of y fact, y will may have been drawn without his seeing it, and yet he might have said so in confidence. 2 All 38. Pro. 15.

It seems however, yf a written declaration in y handwriting of y deviser, yf his name was written by himself, is satis as to a fact of y fact of signing as Sign ye "as my last will." Pro 100. Pro 297. Pro 100.

Com. 267. For there is an actual acknowledgment unto receiving. How can yf y written declaration be better Ev'n yf y signature itself. Pro 80. DM 252.
The third fact why witnesses are expected to attest, is y
Publication: as y was necessary before y & of treaties, and
as y is silent in y subject, to y titles held necessary - Pow 81. 82.
8c. att. 176. This is required at y Law to y disposal of personal
property and if course of real property - if have been devised at
all, it may have been necessary in y case also. This requisite
is tantamount to y delivery of a deed. Delivery has no effect
on a title - 8c. att. 176. - Pow. 80. 1-

Only a publication of a title, is meant some declaration of y
tested or some act of y amending. As a declaration, y Instrument
is y title. A particular form of publication is proscripted -
Pow 81. any act or declaration importing a solemn intent in y
tested to dispose of his Estates by y Instrument, is satis - Pow 81. 9.

And hence y delivery of y title, as an act, into y hands of y
depositary, has been held a satis publication - So held, even not y
witnesses are mere depositions, and supposed y instrument to have been
done - Pow 81. 2. 4 Burns Eq. Law 117-

It is not necessary for y witnesses to know of what nature, y Instrument
may be - it is often even desirable, they do not know. The f-
is intended to guard y tested, or deception, and so long as he
is not deceived, this is matter about y witnesses-

So declaring to y witnesses, "yes is my last title" is said to be a
satis publication Pow 82. 8c publication may be enforced, as
where y form of y attestation was in y tested's hand - printing &
in y name of u. - signed - sealed - published and declared - Eg.
in presence of us. y he said to use, take notice. This was held
a satis publication Pow 82. 6. 4 Burns Eq. Law 114. 117-

But y publication must be in y presence of 3 witnesses - yt
prove front has not been adjudicated, but it had been held or
a republication, not is y same thing - Pow. 62. - 8c. Com. Pow. 88.
It is essential to y validity of a devise, yt y whole instrument be present at y time of attestation. If it is on several pieces of paper, one of wh is attested by y notaries, wh never saies yt other y will is not attested in a proper manner. Pov 87. 3 Mod. 260. 3. 3. 1 Eqy 21 403.

But ni there is positive proof, yt y whole instrument present y deviser may prove y circumstances of y case, presume it present, to a mere question of fact for yr consid. - Pov 97. 8 Burr 1173. 1. BC. 407. 22. 54.

As to y subscription of y witnesses, tis held, yt if devise is made on 3 sheets of paper, not joined - Each signs one sheet. y subscription is valid. All are supposed to be present, and it can be of no consequence, where y names are placed. 2 BC E Com. 377. 1. Burr. 546. 3 ibid. 1775. Pov Ch 185. 8. 276. 1. Com. 378. 1. Pov. 89. 101. 682. 3 Mod. 263.

Browell says, yt if y devise sheets are wrapped up on a blank paper, y subscription on yt, will be valid. Pov 90. 682. 5.

This is an improper Rule: yt blank paper is not part of y will - and they might as well subscribe on a box or chest containing it. It leads to uncertainty and impudence, as much as to y identity of y will.

The St prescribes, yt y witnesses the subscribe in y presence of y devisee; these words are literally construed to mean within this possible space vicin - Thus, if they subscribe in y same room, 3 he turn his back, yt also where he might have been into a Gallery through a close window or door.

So where he was in bed with y curtains drawn, 3 where y deviser (a lady) roode to y office of an Att'y - and sat in y carriage with y windows down. Pov. Ch 99. 2 BC B 477. Lath 377. 5. 688. Comp. 3. Eqy 1. 403. Doug 222. 1. Pov 93. 329.

This provision is intended not only to prevent fraud, as in subscribing a false instrument, but also to prevent mistake as to y identity.
as if ye testator shall have prepared 2 wills, he might have mistaken one for another.

But ye subscription that in a contiguous apartment is not good, ye testator might have seen it—Paw. 32. 4. Cath. 11.

And if ye witnesses that receive ye subscription, this at ye testator's request, ye subscription will not be valid—Paw. 34. 2. Show. 268.

By 'present' is meantt mental, as well as bodily presence.
y testator must be sensible of what ye witnesses are doing—at ye times of attestation, ye execution must be completed, while
he is compos—Paw. 96. Song 339. 41. 9.

From these rules, it is clear ye testator is in ye same
room, with ye testator, is he be of disposing mind, yet if they subscribe clandestinely or impose any impression to his 
right—it is not valid within ye meaning of ye law—Paw. 96. 1. P.Mat 140.

The ye witnesses must subscribe ye testator's presence, yet ye
facts need not appear on ye face of ye instrument, tho' it is usually
ye common form being "signed, sealed, and published" in ye presence of us, who subscribe in presence of ye testator.
To subscribe in presence of ye testator is a fact for ye consideration of ye jury, and this stated in con
viction, must still be proved, ni ye witnesses are dead—
or where ye jury may presume it—Paw. 98. 9. Com Bo. 53.

By ye Eng Law, ye attestation must be by 3 or more credible
witnesses, under these words, it has been decided, yt if a devise
has been subscribed by A and B, and after a codicil by C and
A, ye devise is not signed by 3 witnesses under ye law—
262. Pat Clu 370.

And if a devise is not duly witnessed, a codicil with 3, witness
won't make it do - 2 kern $97. - Prow. 650.

If don't appear, ni in one of these cases - Cow. Prow. 684. - Prow. 104.

A ye device now present, which ye codicil was executed.

The decision appears plainly to have proceeded upon y distinction between a devise and codicil on y one hand. and a devise made at several times, and in several distinct parts on y other.

Prow. 138. 668. 688. 688. - Brown 454. 1 Burr. 554. 5.

In wh last case y attestation of one part (y rest not being present) is valid. The reason of y difference is. y a codicil is considered as intended only to affect an instrument, already completed, not to consummate y instrument or to give it validity. Its effect is merely to qualify, enlarge or alter y original instrument and hence y due attestation of y Codicil is not capable of giving validity to y original devise.

But an attestation of one part of y original devise is not intended to quie authenticity to y whole - Prow. 681. - Prow Chy. 270. 2 kern 677.

But where there is a will and Codicil on one piece of paper - y question & subscription belongs to one or both, is a fact to be determined by y jury. - Prow. 106. - Com. Ch. 197.

And to y question - a subsequent devise is a codicil, or a distinct part of y original devise - it seems y a subsequent devise relates to personalty only, and is executed according to y It. y circumstances furnishes presumpt. - yt it was not intended as a Codicil, but a component part of y will. - y obtains only when y subsequent devise relates to personalty only. - 1. Burr. 67. 5 - Prow. 554. 5.

The reason is. y a yt (require) subscription by 3 witnesses, was wholly unnecessary to y disposal of personalty. If it be so subscribed, it shall warrant y presumpt. yt it was intended as a part.

It is not necessary. yt y witness subscribe in each others presence, or at y same time. For terms of yt don't require it.

Prow. 110. 2 Chy. Ch. 109. 3 Burr. 1755. 2 kern 129. - Prow Chy. 184. 2 att. 177.
But it's altogether y safest way by not to be shown ur y mode of proving it, for none can swear it & y subscription of y others, wh might be done in an action at law, and no espress y same purpose, as if all were present. — Bull 774, 1 P. May 141. 1 Sect 184. 1 Bk 365. 4 Burr 2324.

But if one is living, y handwriting of y next of kin seems to be proved. — P. 769.

In such case, though yt others signed in y testator's presence, can't be made by oath of one — nor perhaps expressly forced at all, ni all were together. — P. 113—720.

Note, the difference between y execution and attestation of y devise in a particular suit at law, wh may be done by one witness. P. 708—1 P. May 171. and y establishmt or formal probate of it in Ch. — for yt purpose all must be examined. — P. 707, 718. 1 Mill 216—1. Bk. 177. In Cont, y practice is, to call but one to prove it.

The only, if required, yt y witness be credible, yt word is omitted in our Gr. and is wholly unnecessary — if it mean to establish a pr word is implied in y word. Mitford. 1 Burr 477. — P. 183.

If it mean entitled to credit, it seems reasonable, for y credibility of y witness is no part of y essence of y devise; nor at all necessary to yt validity; it can never be ascertained till witnesses appear in Ct. to swear. Then credibility is near a subject of enquiry to ascertain now, for their testimony is entitled to belief. — P. Bacon 417—1. Burr 417.

It has been decided, yt a devise is not such, as yt intends by testament, he is already met to as to y property devised in him, being directly intended in y event, for one who is 2 witness can't be a credible witness. — Thus suppose a devise signed by A and B and D and B is interested, y devise would not be good as to him, the his signature won't affect it as to any else. The Rule exclude interested witnesses generally. — P. 114. 16. Cour. Rec. 91. Card 574.

And a person legally insane, is not a competent subscribing witness; for witnesses are intended to testify respecting it in a court of justice. But if he have been before convicted of felony his attestation is void. - 4 Brown Ecc Law 98. - P. 161, 136.

But suppose one of 3 subscribing witnesses to be a devisee, and assuming it he is for some reason rendered incompetent to testify in support of any part of the will, can a release given by him (or any part thereof) of his interest in the will, qualify him to testify in support of any other disposition? In other words, if y witnesses, this interested at y time of attestation, is competent to testify at y time of examination, can y devisee be established?

Do it well attested? - P. 113. This is one of y greatest questions ever argued in Westminster Hall, and called for more talent than any one in it. It was held false by the Ch Jus. - i.e., y witnesses must be competent - i.e., disinterested at y time of attestation. - 1653. - P. 113, 119.

The witnesses were had an annuity charged on y land, and not released, interest, subscribing. - So in Hackett vs Jennings. This case was carried to y chancery chamber, where there was a difference of opinion and y case compromised. - P. 120. - 1 Term. 673. - 2d How. 277. - Bing. 91.

The question was decided directly in favour of y devisee, under y circumstances of Minsham vs Thurnham. - 1 Burr. 414. - P. 124.

The witnesses were all creditors, y debts were charged on y land, but paid before y examination. - The devisee was held to be fully attested. - The same principle was manifested by Ed Harman vs Crowe vs Boyd. - 1 Term. 613. - 2 Term. 374. - P. 120. - The case of Ed Aglesbury is in point in y same instance. - 1 Brown 297. - P. 155. - 6.

The witnesses all had legacies charged on y land by 2 wills, it was undoubted at y time of testator's death (not before) y will was established. - The same principle was decided in Kirby vs Pinsey. - P. 130. - Ch Jus. Centra. - Lee Ch Jus. Poor's argument. - wh is false. 1 day 41. - on cumb. Note.
In Court y case of Madasworth v. Camus was decided in favour of demerit by y Supreme Ct - reversed by y Ct of Errors 1779 - the weight of Eng authority is, yt y competency of y witnesses is restored by y release - Powell makes y balance  
Pow. 122 - 2nd, 3rd, and Chetham -

As to y second question, tis a gen knoledge of y Ed. - a release of an interested witness restores his competency - Pow. 121 - Song 134 - Le Ray 130 - Section, there is a compellation to frauds at y time of attestation -

PG. thinks y will attested.

What then, there is y same objection to any case at Ct Law. 

The Pt of frauds is intended only to prescribe Rules of Eng ci - objection, y practice furnishes biases in evry case - objection, suppose 2000 Lanciest in infanty, they not judge of y execution - suppose y same at Ct Law - objection, suppose 3 or 4 Englishmen required -

First, y qualification is intelligible as referring to attestation - but incompetent witnesses are not -

Secondly, if competency relates to y time of attestation, then a competent witness means only competent witness - one of capacity to judge and attest y execution of y Instrument - Not a competent disinterested witness at y time of testifying, ye is absurd -

Thirdly, its questionable indeed by authority, an y resort to y witness is not at once obinient - To yt he might testify as to y others - without a release - 1 Burr 428 - 4 Mer 557 - Cart. 154 - 2d, 1258 -

Law not positively settled - decided contra in Court, Madasworth  

as Camp. Ct of Errors 1779 -

The St 2d. Geo 3d provides yt devises and legacies to altering intestes shall be void, and they admitted to testify, and yt creditors whose debts are charges on y testator's land - and who are subscribing witnesses shall be admitted as witnesses to y execution of y will - Such charge tames - Pow. 122 - 3
The law 25. Geo 2° (being declaratory merely of y C Law) is an authority in support of y opinion, yet a devise to a witness is absolutely void "at first" and y case he is a competent witness with a release. See Evi. 136 – Pow 122 – That it is declaratory – Pow 129-33. 5 Bac. 316 (133 Pow) where he attempts to over y proctor’s objections, as a declaratory act, yet a devise incompetent or interested at y time of attestation cannot become competent by a release.

Because y it declares, y he is not incompetent at y time of attestation, or rather y a devise is not competent under y it of Made, even after a release (for yt is y present point under discussion) quod he is competent without it. See Comm. 317.

It tells devise.

But a devise or legatee is a witness as y will, for y is as his own interest. Pow 135 – Talk 591.

And it a legatee or devisee is indifferent on y will stands or not, as when he has y same legacy given him by a former will, to mk he was not a witness, and mk must be valid of y other act, he is a competent witness to support yt. Antl. 314.

Burr. 427. Pow 180. Evi. 120.

Where there is a disposition of Real and Personal property in a same instrument, and is not coterminous with y it, is ad to treat it Real estate, it may yet be good as to y Personal property. Pow 135 – Talk 594.

2 ( Pow 286 – 317. 1692-7 332) – Pow 118 – The void ad to Real

329-337.

Which may devise.

The Rule seems to be under y it of wills, yt all persons capable of conveying Real Estate at L.T. by deed, and who are not disqualified by express words of y it, may devise.

The words of y it, are all persons, but yt term doen’t include corporations or bodies politie, but only natural persons. Corporations they may make able or aggregate cunt devise under yt it – 1. Ad 608 – 1. Ad 608 – a Grant.

Pow 139.

And as to natural persons, there are four disqualification these.
Infancy is considered in the end of ye day succeeding ye anniversary of ye birth — admitted are all enunciated in ye explanatory act of 34 & 5 Hen 8.

Infancy, infancy,― Monsane Memory, and coverture are disqualification at law. Those who before ye act are not conveying lands during ye lives, cannot convey ym. Dyer 354, 382, ibid. 310 — Post: Perks 331 —

A person deaf, dumb, and blind has been held not competent to devise, for such persons were formerly presumed to want understanding. Co Litt 42. 1. 661. 2. 1. 145 —

However, at ye day a person deaf and dumb may devise, proves it can be shown he had valid intelligence; for modern experience has shown yet ym may have as much intelligence as others, although presumption of law is still ym are insensible. Co Litt 42. "Dyer 145, 1. 661. 304 — Such a person may be punished. — It is not satis, then ym last to can remember common events, he must also have a desiring memory. In understanding satis he make a reasonable disposition of his property. — 6 Co 233. "Dyer 146 — Dyer 321 —

In short is one who has no understanding from his infancy to a natural fool. An insensate is not competent to devise, but who has lost it from some disputation causes. Blackstone.

Dyer 141 —

What is a sane and desiring memory, is a question of law, to be determined by ym: but ye being explained by ym is a question on it exists in a given instance is a question if fact to be left — Dyer 148. 32. —

In ye case of coverture, ym act of ym wife are considered, are considered as done by ym exercise of ym husband, but ye is not ym principal reason of her disqualification. The rule is founded on ym legal unity and policy of law. Post: 363, 375 — 374. — 6 Co 61 — Co Litt 112. 4. 146 —

And it has been held in Eng, ym a local custom ym a wife may devise is void, as being contrary to ym policy of ym law. —

In ye State, that ym decided many ym actions, ym wife might devise. But ye decision was overruled in another case by ym Co of Errors: not held ym the ye not devise. But in ye year 1819 — a Co now made
Exprestly enabling y wife to devise - This rule however peculiar is ye State - Harby 155 - 2 Day 163 - 21st 136-

But when y wife can't devise so as to deprive y husband being tenant by curtesy, any more ye wife husband ed by his will deprive his wife of her right to devise, for y act of devising is merely placing another in y place of y heir at Law.

But when y husband is bannished for life, y wife may devise his real property, for she is a Homme Sole, and may act as such in all things. 2 kern 114 - Prov. 14.9.

Even in Eng. there are modes in which y wife may either obtain or preserve y same power over real property of a Homme Sole. In both cases, however, her act is in y nature of a declaration of Trust, or an appointent - In legal Theory, she acts in such case as an agent executing an authority - Her act in either case is not a disposing act in Law - How at Misy 24 5 - 410 - Prov. 148.

Commentary

An Extraordinary to make a sellelment for either of these estate purposes, will be date, and y sellelment is not actually made - As y heir will be compulsable in Equity to make an conveyance in pursuance of her appointent - 2 Thc 695 - 6. B. P.C 195 - 6.

First by way of Trust.  2nd. by way of a power over an estate

First. by way of trust. This if a woman while sole, conveys her estate to trustees in trust for her separate use during y coverture and post in trust for such persons, as she shall by writing in y nature of a mill appoint. In ye case her devise or appointent while coverture, is called a declaration of trust and of Equity, while carry yt into effect, do as to Trust y Estate in y appointees - 2 B. 612 - 2 Pov. 168. 50 - 2 Thc 695.

3 a.m. 707 - 2 Eq. 107 - 108 - Pow. 80

The same thing may be effected by a fine or recovery post marriage

No one can assert himself of his allegiance
The same thing may be done by power over a lieu. Thus if a man sole being then under no legal disability conveys his Estate to A - B at C, in trust for herself for life, and to her own separate use, if she first marry and then to y issue of such persons, as the same by any writing in y nature of a will appoint. A devise making y appoint will be supported in Chir. to now supported in Act of Law it seems, for y St. 2 acts y rule - Not to in y case of Misset - 9. 10 673
Page 162 - 150 - 2 612. 2 642. 3 704. 2 Ely Cases 15. 63. Powel on Powers. 50.

But it must be kept continually in mind, y conveyance to Trustees is y disposing act, and y naming y person is merely executing a naked authority; nor a sono covert may always do it of full age. The execution of y power must be according to it of power. - Pov. 489 - 53. 150 - ante 11.


A sono covert while an infant can not execute such power for it is considered as a general discretionary power, and an infant is supposed to want discretion. - 3 acts 877.

1. Nev. 288 - Pow. 23. 43. 3 acts 695 - 710 - 714. 15.
Co. Litt. 52. a. 837.

Restrants, aureous and mensajes of imprisonment disqualify any person to devise property. In short, an executor must to execute a devise, a devise, will make yt devise invalid. This is y Rule at C. Law

Page 334 - Pov. 170 - by or 143. B. 1

This is said by Powel, yt it is implied by y words. "Free will and pleasure," in y St. with y devises, y devises not be void. It has been said, indeed, where a man has been induced by excessive importunity, to make a will, y will was void, as being a Species of Restrants. Pov. 167 - 427 - 1. Chy. Po. 661.

Here Conyn dig y Rule. Where y Rule seems to be contradicted is at least a very vague Rule, and to avoid a devise on
On ye ground, your case must be a very clear and strong one—

If either of these disabilities exist at ye inception of ye devise, 
Pr. at its execution, ye devise will be void, the y disability the incapabi
shd be removed before its consummation by y death of ye Testator—
for y consummation has relation to y inception not to y void— 
destroy—

Patt 246  Pow 172:3— 11 Mod. 157— Royd 84— Pale 238— y consumm
Cam 84— Ante 11— Hus at Adet 35—

The messtn supports or 
destroy y consummation.

Tenant. A jointtenant can't devise in England, ye joint
rule as to devises by custom before y 29 Hen 8th—
Henry Surrieu claiming
g whole by title paramount. He claims by death of his companion.
The devier does his death— "Per et Post"—

Co Lit 185 a, Parks 185— POST. REE. 58—

The same rule holds under y 40 of Hen 9th— They are not expressly
disqualifed under these Acts, but tacitly by 34 Hen 8th nth expressly
empowers persons vested in sequestr, Cofarsonny and Common—

Expressions added et Exclusive others—

And there can't be a joint devise for yt Tenants can't
devise at all— They are not... within y 40, and other Tenancy Cow. 269—

have not a joint estate. Co 269— So if a St Tenant makes
a devise of his part, and survives his companion, he then— Sis— 1. Egby 91 77
void "as void." He does nothing more wth he as devisee—

Parks 185 a— 3 Co 81— 3 Burr. 1482— 1. Chro. 180 278— Sec 570

If however one St Tenant having survived his Coterian then makes
a devise, it is good— for he is then vested in Generally—

"General Rule"— a man can't devise land, wth he hadn't
or is not seized of at y inception of y devise— 18. y time of its
execution and publication— This indeed is y Law rule as applicable
to devises by Custom—

As a Testator devises all his lands and purchases more, yt latter
don't count—

A Devise is in nature of a conveyance in Ionante, it takes effect Co Lit 111—
in future— "Hence in general one can't give by devise, what he cd Pow. 183. 189—
not convey by deed— This don't relate to Persons— Co Lit 111— REE. 246—

753— 759— Sec 570—

1501
The owner then must have a present interest. Every thing
Cox 185. 35.) Some opinions are opposed the ye rule, but they
are not considered as law. Cox 185.

So as the an after purchased lease for ye ye being only
a chattel--

For a mill of Personality is not considered at 8 Law, as a
gift of a specific thing, but as y appointment of on heir he and

Personal Estate--

Diversion-- So in devises by custom, its necessary of y devisor
that die deviser, for y conveyance is not considered consummated till
y testator's death. Ego if y owner of land, yd devising it, is
diseased, and continues so till his death, y devise is void
for y estate is connected to (with) a right of heir in nature
of a cause of action (ante VI) and ygo so not be conveyed by
deal ante 358

Dowl. 346. 666. 611. 1. Moop. 217.


Seced of a devisee for by fraud and covin for y purpose of
defeating a devise, y devise is good in Chy.
The same rules obtain under y 8. Hor 8 1. Equity Co 174

1. Roll 278. Dowl. 611.

But if y owner being diseased post y devise is made, rente.
and dies deviser y devise is good. For he is considered as having
been diseased continually, being actually at y inception and consummation
of devise.

Sulk 238. 11. Co 51 a. B--Palmer 208

Dowl 185 6--Holt 1748.

So if y owner is diseased at y time of making y devise, and
post-enters, and continues diseased till his death, y devise is good.
For he is supposed to have been diseased at initi-- he is diseas.
"By relation.-- Sulk 238. Dowl. 185 6. 2 Boc. Ab 62--Dowl B--

It has been very much doubted on a devise of lands not
owned by y deviser at y time, but specially described and post
purchased, is good-- decided not to be. (Centra domino)

within y same reason as if not so described.-- Annom. 498.
4 Phl. 408--

and argues.
This intention however clear, to devise or after purchased land couldn’t be effected consistently with the Rules of Law.

Upon the same principle, a devise by a mortgagee of lands mortgaged might not pass: Equity of redemption, first purchased by him.

P. 212. 2d Ch. 6a.

In Connit actual seisin by a devisee, and necessary, having or seized, is not void; in a Connit. Ownership is valid in descent by Law—3d Ch. 188.

Right of possession then is equivalent, for most purposes, to actual possession.

Cited: The Trust. and in England, a person having an equitable estate in lands, e. a claim to them in Equity only, may in Equity devise these lands as executory agreements, by a to sell lands to B before conveyances B devises, and dies, this good in Equity, for Equity does “considers as done, what ought to be done.”

2d P. 23. 03. 1762. G. 64. 0. 3d. 1762. P. 2d Ch. 290. 0. 21 Ch. P. 20d, 0. 7.

For y vendor is a Trustee in Equity for y vendee, and on a bill by y latter, y to and devise a specified performance: This and vendee as a devisee of future Estates. The land belongs to y vendee from y agreeement in Equity. Post 33.

But y land will not pass by a devise, executed before y executory agreeement is made. Ante 45. The devisee has no personal interest in Equity. P. 212. 2d P. 25d 699.

Accord it is said by Ed. Chancellor, if y devise is uncovenanted and y vendee pays debt. But it was an older opinion.

P. 215.

Things devisible under P. 7th Ch. 87. Inc. P. 9. 11.

First, as a strict matter, all lands not devisible—by custom—are devisible under y. P. 20d. 39.

All lands here denote a subject matter, not y tenants estates, for all estates are not devisible; the all lands are, if y tenant has a devisible interest in them. Ante 8. 11.

Tenents & hereditants must be valuable; are not devisible under y.

So, as personal promises, may. P. 3. This rule is founded on y. 11.

Franchises.
in my words "of annual value" in y 8th Hen 8th.

Things personal - But rents are devisable under y 8th Hen 8th.

2 Co 35. 3. 226. 14. if y owner has a devisable interest in ym - 3d sect. 5. 65

An annuity in fee is also devisable. It's different from a rent on ye, & it is a yearly sum charged on y owner of y Grantor. 2 Co 229. 1d sect. 14. a rent on land.

Secondly 1E Estates 18. what interest y deviser must have in y thing to be deviser under y 8th Hen 8th.

In England, no other y tenant in fee simple can devise under y 8th Hen 8th. The words "estates of inheritance" in y 32. Hen 8th. been devised by y 8th Hen 8th. To include estates in fee simple only ante 1E. 3d sect. 347. The words, tenants in fee simple, are used in y most comprehensive sense, as a necessary remainder vested. 3 Build. 184. We now contingent and executory devises 219-229.

Charter interests are devisable at C. law, as terms for yrs. 14. 18.

No provision for fee simple interest, is therefore made by y 8th Hen 8th.

There are several estates of inheritance in lands called in fee simple - Fee simple absolute, 2 Fee simple determinable.


To fee conditional have succeeded fee tails.

No one may have a fee conditional in personal heritable.

Since y 8th Hen 8th, fee conditional are confined to personal heritable. - An annuity is devisable to lineal heirs only. 226. 7th. 1. 320. 180.

All these are devisable by y 8th Hen 8th. Fee simple is used in its most general sense, as distinguished from estates tail and.
Alas, expectancy.
Do estates in reversion may be in possession, or not in possession
as to y former there has been no constancy of opinion they
have always been held desirable. P. 232.5

Tresnufol in not in possession may be devised, first into Reversions.
2d vested remainders, Executory Devized in Estates subject and contingent
to a condition of Ricentry. P. 232.4 - P. 232.6 - gent. remainders -

These estates are all desirable, except y benefit of y condition of - estate itself
y last. P. 233.4. 2. Br. 184

The slow held or those clare mat. not - P. 24. 600 - 2 Br. 182
1. Hen Br. 83 - C. Ch. 281-293. a 394, 8% 405 - ante 411
See of estates in possession 38

As to a devise of reversion. Bidly P. 234. 18 6% -
1 Ber 621 - 2 bent 285 - ante 9

A Reversion in fee expectant, even an Estate tail is desirable
under y 8th of Hen 8th - P. 235. 11 Br. 181 - R. C. 173

So a remainder expectant or an estate tail is devisable
P. 235. 1. Br. 669 - C. L. 111 - Indeed ye is a remainder

Estates in reversion may be equidivable or legal. Both are
divisable under H of Hen 8th as an equity of redemption
P. 109. 2 Br. 178 -

So if an Estate is granted to A in Trust for B and
his heirs - it may devise it like wise as before y 17 27. Hen 8th
P. 205-6. 1. Br. 25. 1. ante 48 -

Thirds. What estates created by Devise?
A Tenant in fee simple absolute may devise an absolute fee simple
and of course any other fee simple, yh can be created in y subject
by act of y party. 3 Br. 216 - P. 237
So one having an absolute fee simple in possession, remainder or possession, may by devise create a fee tail, or any other estate as for life, per stirpes, or for a term. E.g., 10 C. 78. P. 2380; 240. 43. Co. Litt. 111. 1. Part. 349. 34.

But a devise of a fee after a certain fee is not good. As e. g. a ven fee 

This point however relates to devises, considered as depending on the person "in possession" not to executory devise. By statute it is now greatly modified.

But, y case stated by way of example may be voided by way of executory devise, the contingency being the remote, see estates in possession.

So a tenant in fee may devise to one for his life, or per stirpes — The revocation in these cases descends to the heir of the devisee. 

So a tenant in fee after having devised his fee, yet in tail may devise other interests out of his estate remaining in him — 12. out of his reversion title his whole fee is completely extinguished. The latter to take effect upon the expiration of his former — as to A for his life, then to B in tail, then to C in fee.

And a limitation of y residuary estate remaining in y devisee (not before) may be either by way of remainder or by devise of y reversion — see estates in possession.

So a term for yes may be created by devise — "de novo." 

Estate created by devise may be absolute or conditional as to a for life generally, or to a for life, he paying a certain rent to y heirs. 

And these conditions may be precedent or subjunctive. P. 246. 


There are no technical words necessary to distinguish y 2 species of condition. Every condition is to be construed as
But a condition describing y apparennt intention of y devisee to take, is in its nature precedent. As to A prove she marry with y consent of y testator's executor. Marriage with yr consent is a condition precedent.

But a devise to A and her heirs upon condition yt in 5 yrs post y testator's death, he execute a release of all demands

Estate created by devise may be either legal or equitable.

Ante 53. A devise of lands when y devisee has y legal estate. No use of any.

Paw 270. For y devisee executes y use. 12. Transfers y legal estate is a legal to it. Ante 2


Uses, and Trusts — But y devise of y use before y St of use was of an equitable estate only as at yt day is y devise of a trust — un equitable in Equity.

Paw 51 or 58.

Property is said to be holden in trust, when y legal title is vested in one, in trust for another.

Uses were devisable at 8 Law before y St of Uses. Ante 1

If land is devised to one, no use being limited upon it — it can’t be assent. To be for y use of any other — y devisee — for yt not be contrary to y intent upon y face of y instrument.

Deeds 18.

But now if a use is devised, it will ensue to y法定

One (66) and yt will be executed by y St of uses.

If land is devised to A and her heirs, to y use of A for life only — y use of y use is in y devisee’s heir.

So an equitable estate may be devised through y medium of a Trust, as if lands are devised to A and his heirs in trust, to pay over y benefits to B. These y equitable or beneficial interest.
intend to vest in the trustee. Indeed such cases as are not executed by the testator are now called "trusts." See Pow. 285.

As to original trusts, see Plow. 2, vol. 3, p. 6, Pow. 283, 9.

The difference between an act and trust is, that a former is a performance of duties, whereas a trust is the vesting of legal estate. The latter demand the execution of the former. The distinction between a trust and executory trust is well illustrated. When the trustee is directed to execute a conveyance of the legal estate, the conveyance is executory. When no further conveyance is directed, it is executed. But if the executor is directed to execute a trust, it is not executory; it is still an equitable interest. A devise for a conveyance of the legal estate, is as necessary in one case as in another.

Powers. The may create a devise, not only deviseable interest, but an authority over such interests. At. Pow. 287 shall have the power disposing or devising, letting, or ordering of the testator's lands. Such a devise however gives a devisee a power to manage the land as he pleases, and to leave it at will, not to sell or lease for the testator, for he has no interest. Ante 14, 40.

C. Rob. 2, 3, 441, Pleyd. 3, 7, 8, Pow. 287, 290, 324.

But if one devisee, by his executor, shall sell his lands or order his land shall be sold by him or by your appointee, constable, and empower you to sell, they have authority to sell.

Decease, if my personal estate is insufficient, I devise my land to A and B as trustees to sell for my payment of debts, and all residue of my real estate, this is if my personal estate is insuffi- cient.

Naked authorities are those coupled with an interest. Authorities devised over lands are of two kinds: trust, naked authority. Powers were unknown at C. Pow. before yr. 2, of 1662. Yf. Pow. 285, 9.

They were recognized in that only modification of these.
First, a naked authority, is a bare power to sell—see
no interest being devised, as in y last example supra.

Poy 290. 3. 34— Co Litt 286—
In these cases, y freehold descends to y heir, till y heir sale, till y power is executed
and a release of such authority by y person empowered is made—
As an executor empowered to sell, released to y heir. The release
passes no interest, for y executor has none— Co Litt 476.

Poy 290. 3. 34—
Such an authority must be strictly preceded, and y execution of y
power, como, must be construed with reference to y person itself— 1. Nils 176—
2 Lce. 646— Chas 267— 2 Lce 241 2 East 376— 1. Poyr 120—
So y authority is strictly personal, not transferable, being founded reed on
personal confidence. Of course, y person to whom it is given, taketh
can't devise it. If there be 2 and 1 dies, other can't
execute it. Be even the both are executors, for they take not
as executors, but as trustees.

Of course y power don't survive to y executor of y original
executor— in y last case— 2 Lce 177— Poy 294. 5. 1 Ross 67—
So if y devise is, yt his land shall be sold by his executors—
or y executors of his executor, and y surviving executor appoints
executor, and dies— they can't sell for they are not executor
to both y original 1 executor— Cro Eliz 524. 76— Co Litt 113. a—

Poy 296—
But a sale under y power satisfying y words of y devise— will
be good in y respect. As. One appoints 2 executors and devises
y lands to be sold by his executors— If one dies, a sale by
y other two, is good—

Of y testator devises, yt his land shall be sold, with naming
y person by whom— his executor are y proper persons to sell
it, if they are to distribute or administers y goods— as to pay
debt—

And in ge case, y surviving executor may sell alone, for
1. Lovell 30— they take as executors "vested office—" 2 Lce 220— 1. Ross 50. 1. Abe. 420—
Upon y same form of act, it seems, upon who y executors, y executors must sell
without.
The executorship being deemed an office and between such executors as such a right of action in office, survives to the executor. This principle of survivorship holds also as between co-admons.

Where 2 executors receive a debt absolutely, and the heir is a person to sell. But if the executors have no concern with y. avails of y. sale, y. heir is y. person to sell. The heir is y. person to sell.


If y. person thus empowered to sell, refuses to do it, those for y. whose benefit y. sale was intended, may y. persuad to sell. If y. person did die, y. one of y. heir.

Generally y. can't be compelled.

Secondly: Powers coupled with an interest.

Co. Lit. 36. a 2. 64. Pow. 361-362-342.

This is if one devises his land to y. executor to sell-
or any other person to sell.

Co. Lit. 112. 181. 221. Pow. 302.

So if one devises y. profits of lands to A, tile y. son be becomes of age, for y. purpose of educating his son, for y. is receiving y. profits. 3. Leon. 178. Pow. 301.

And in these cases, y. devise and not y. estate mile.

2. Leon. 221. Hold y. estate, tile y. expiration of y. term— and if he die, his Co. Lit. 252. representative mile succeed to y. same power, and subject to y. same duties. Tile y. interest, y. is deemed y. principal.

And y. power is y. incident. This is denied in C.Pr.

And y. rate of devise mile continues, till y. object of y. devise is accomplished, till y. expiration of y. term— as in y. case above, y. son died before 21— yet y. devise held just as long as he was, had y. child lived till 21. yrs.

Thus y. power follows y. interest. 21. a 202.

Dray. 620. Power 202

In a make authority, y. reverse holds. for there is no interest, but only y. managem of y. estate, till y. heir be maj.
or to express it better, The Rule is exact as to naked authorities. They are only incidents to y trust, to wch they are annexed and cano receive mine it — as a devise y 6th Sect of Fl. shall have the management of y Testator’s land, till his son attains full age to execute him; y son die under age, y authority and devise pass to his or y wifes death.

Under a limitation to such a child or children of y 7th 8th will appoint, an exclusivis appointee of the one of MV children, is a good execution of power.

A Power to appoint by devise is not executed by a mere necessary devise. As A having a legal estate in trust with a power to devise the which of his sons, devised all his estate to his son B, and payment of debts, y trust estate don’t pass, no intent to have, appears. No allowance to B power or B trust estate.

The inference is, yt he intended to have only his own prenate estate, such as he might charge with his debt.

An appointee by will is no execution of a power to appoint by deed — Comp 261 — (who make or rather take by devise)

In general all persons not incorporated by statute positive law, may be devises — Under 7th 32. Hen.6.

as explained by 34th 8th Hen.1 st. Devises in mortmain are 1 K.6. 472. 2 not allowed. 18. devises to corporations or bodies politic — The 1 P. 314. Hob. &c.

43. Eliz. authorises by way of exception devise to corporations for charitable uses, but y exception is much narrowed by 1st 9 Geo 2.

In Comp. corporations are not incorporated by any general law. to take by devise — There them all corporations wh can purchase and hold lands, may be general be devises, except so far as they are prohibited by yr own incorporation.

Devises then, may be natural or civil persons, ni so far as y latter are disqualified in Eng. by y above 1st, or by yr counters, or
or acts of incorporation. Pow 315.

First, natural persons capable of taking by devise, may be either in esse or not in esse, & e. born or not born at y time of y devisor's death. Pow 315.

First, Those in esse may be devisees unless prevented by some evil disqualification.

Coverture is no disability to take by devise. The husband may indeed by Law defeat y devise, by disagreeing to it. But Chy will interpose to prevent his injuring y wife. Pow 423. Pow 315.

If y wife may be devisee to y husband, that she can't be granted for a devise don't take effect, till his death. at which time y legal union of y parties ceases. 1. Roll 810. Pow 315. 16.

An alien may take as devisee but he can't hold, only till office found, unless called inquest of office. The estate then vests in y king. Here in y State, he dey title by deed. 14.

3 Per 258. 9. as to office found. Is an inquest or verdict of a particular kind finding some fact, as in ye case of fact of aliens.

An illegitimate child can't be a devisee. till he has acquired a name by reputation, but he may then take by ye name.

As devisee to y sons of a is not good, he being a bastard. till he has acquired ye reputation of being as son and devisee to A. B. he having acquired ye name. He a bastard— is good—

But if a devise is made to y children of a, his legitimate will exclude his unlawful children, "simple" for y former only are regarded as his lawful children, or as legally his, and ye words are satisfied by adjudging y whole to ym. A bastard is nullius filius. 

An if such a devise is made by y mother of y bastard, it's y same—
Second, as to natural Persons not in Ese, as children in ventur on marua at y deviser's death. Parent and child shift estates in possession 38.

A distinction was demi taken between a devise to an infant or more and devise by way of remainder. The latter was held good, if y infant was born when y particular estate determined. See now not. Prov 320, 21 Skep. 228.

But if y devise was immediate, and y devise not born at y deviser's death, it did not take effect, because y freehold it was supposed and be in abeyance, till y devise's birth.

But now by 39. 3. and 3. s. 3. that if an estate is limited to one for life, with a contingent remainder to his unborn child, a posthumous child shall take, as if born in y father's lifetime. It is regarded as in being for y purpose at his father's death.

Led Quean on ye if extends to devises. C. 226. it seems not in terms, y freehold being by any marriage or other settlement. 3. Read infancy and age.

So a distinction has been taken between a devise to such a child, for serba in present, and a devise to such a one her serba de futuro. In y latter case, to mele settled y y person may take it. As an unborn child, when it shall be born.

60. 60. 61. Serm. 429.

The latter is good by way of coextant devise and y freehold descends to y heir in y mean time.

The last distinction dont contemplete remainders but direct or rather immediate devises to infant or infant in present. See now without any particular estate proceeding.

So under a devise to such children, as I shall have living at his death, a posthumous child will take. 5. 32. 3.

1. Prov. 243.

But an a devise to an unborn infant for serba in present is good, being unborn at y time of y deviser's death, is not kata C. 322. 32.
settled in England. As I devise to y clearest son, if a male, he having no son born at y time of y deviser's death—then y words don't import a future or executory disposition, as they be in y former disposing or cases, but are in y common form of an immediate devise to take effect at y testator's death. The opinion are conflicting. The weight of authority is in favor of y devise. 4. Burr. 2177. 1. S. R. 655. 2. Mills. 220.

The objection is y infant, taking on such case, is yt as he has no capacity to take, when y will takes effect, y freehold must be in abeyance, till he is born. If he takes at all.

But why don't y objection, if it am't to anything, hold in y case of an executory devise to such an infant, which is clearly good? But y ground of y objection itself fails, for it is now fully settled, yt where a valid devise is made to an unborn child, y freehold descends to y heir of y deviser, till y infant is born. 2. Mills. 229. 5. T. R. 57. 6. B. L. & P. note 4. 8. Mills. 525.

And y heir is not accountable for intermediate profits. Miles. 229.

At any rate, if there are adverse words used, or facts adopted in y devise affecting an infant, yt y testator was aware of y deviser's incapacity to take immediately, he shall take as by a future devise. As to y unborn child, if a. u. he shall be born. So if a child be born to Y. P devise to him as heir.

According to y more modern and better opinion, every devise to an unborn child, declared as such in y devise, does afford such an inference, for y intent is clear, y y limitation shall take effect on y future birth of such a child. So yt y disposition is intended as executory.


The question stated ante 140. to be unsettled, seems now then to be nearly at least, if not at rest.

If a devise is to an infant in interest so mean with a conditional limitation over and no child is born, y limitation over
Secondly Civil Persons: may be devisees, as executor, or administrator, as Devisor by executor or administrator if T.G. is good — Pow 336. 7-

So civil persons not in cases if intention is clear, as in End of T.G. see 152.

But parishioners of a parish are not such civil persons, as can make wi'yt character. They are not individual parishioners, a corporation, not evidently intended as such — Pow 609. 330. 1 Roll 674.

But a parish, if a corporation, may take in its corporate capacity.

Nor by Cont. Law. can a church, meaning a body of communicants, non-corporate, take as such, for same reason — The law regards a church as a voluntary association C 11.

**Description of Devises:**

Every devise must be properly designated or it can't take. The devisee may be either by naming or describing him. And this his name be mistaken, still if he is later designated by description, he may take. Tittle by deed S 55.


Not so if a whole name appears to some other person. 8 Co 73-a. —

So to y son of cbsch an one, if has but one son — Pow 340 —

This position requires to be taken with qualification, for under certain restrictions, personal done may be allowed to call any ambiguity.

Bede God.

The rule supposes no explanatory personal done offered — Bastard — and y description the not strictly applicable may be good by reputation. To A y son of T.G. it being a Bastard — in ye ease if he acquired y reputation of being y son of T.G. he may take — 1. Allen 410 — Pow 338 —

But ye Rule don't hold in favour of a bastard born post a devise made, for he must be capable of taking by such a description if at all.
by being reputed as son of B, but he can't gain y reputation of being y child, but by a continuance of time, 12. lape of time, sith ye devise made in y case supposed,—

Besides y future birth of such a child, is potestas residendi—vide clause vii. post privin § 11.

Hence also a devise to any natural children of A, not not come to y benefit in centre de mea, for those whom are not his children by reputation, and y possibility yt he may have unlawful children, is too remote.

A woman may take by devise under description of wife of A, if she is reputed wife of A, she sith be not his lawful wife—

So a devise may be constituted by an equivocal or inaccurate designation—As under a devise Seniori beare of y devise, a daughter may take, if such appear to have been y intent, the forma facit y words designate a son & a son and take under y description to y exclusion of an elder daughter—

So a daughter may take under y description proxima sanguinis by devise, the y adjective is masculine, as if there is no son, for y adjective as applied to a female is only a verbal masculinity—Hobert 32. Co. Litt. 10. B. 2 Blc. 102. 73—

So y eldest daughter in y last case excludes y younger—

The word child or children is a sake description, as to a for life and host his children—His children take a life estate in remainder—descriptive personam y words child being descriptive personae—6. Co. 17. a. Doro 344—

The word children, is generall used as a description personam, or a word of description, in nob case y persons described take as purchasers—as Last Case—

So if an estate is devised to A and his children, he thin having children, he and they take a joint estate as purchasers—
Real property, 20— or is y same thing a word of purchase as contra distinguished from words of limitation or inheritance.

Corol Evr is allowed to show on these mere children at y

time of devise.

But if a wi y last case had at y time of making y devise
me children, children is a word of limitation denoting y quantity
of interest devise— ie. y children beke as Special heirs—

They can't take in remainder as purchasers, for there are no
words of remainder, and they can't take a present estate
as purchasers, for they are not y estate. Therefore a take
an Estate Tail, and they of course as arise in tail per

formam doni—

And note as a gen rule, yt y testatores intention is to be
collected from a reference to y state of things at y time
of making y devise, not at y time of his death—

As f't y wife—means, to her, who was his wife at y
time of making y will, and not a subsequent wife—

The description of devices may be general or special, By a general
description is meant a designation of any person, who may happen
for unspoken y description—

As if A devise to B in tail, remainder to y next hei
male of y devisor, the who happens to be next hei male is devisee—

2 Eqly & 298, Pow 347—

So a devisee may be constituted by a devise to such a sloke—
or house. It will ensue to y heir, substance of y devise or

stick—

If a devise is made to y footentry of a lineal heir, if he
has any other than, in not his collateral line of y blood—

If a devise is made for y name of y name of y testator, a next
relation of his name, an male or female shull take—

So a devisee may be designated by y devisors words, most of him
in y testator, in no case y person answering yt description, by y rule of consist—
y degree of kindred will take - 3 Est 218-4 BreCh 2678 26710 2671 2672.
In ye case of only those answering y description under yt degree of distribution will take, y legal computation of those degrees under y St, always relate to y time of y testators death - such being y rule under y or of distribution -

And if a particular estate be another is interposed, still y words "next of kin" are construed to include, those and more only who answer y description at y time of y testator's death - these words are construed as they are in y St -

To y words, "nearest relation of my name" is a good description. But in ye case, relation is human collectiveness & includes all y testator's nearest relations in y degree mentioned - as all his brothers, sisters of y same name, if he has no nearer relation. Thus sisters, if married, and of a different name not be excluded in ye event.

And when one devises lands to y "next of his name", it has been a question how far a daughter, not being married has changed her name, can take - 

But some ye is y distinction - If she is unmarried, both at y time of y devise and at y time of y testator's death.
She may take, the married when y question when y question arises - Secue if married, either at y time of y devise, or by testator's death - 1 Est 338. Coz Est 576 32. Peo 330 24.

But let it be marked, seems to min, yt if y devise is unmeasurer by way of nearest remainder, his estate if she is unmarried at y time of y devise - If limited upon a contingency, yt y marry at y time of writing one's testament - decides her right.

This seems reasonable and conforms y general rule -

By testator's testament, whom he means by nearest relation.
persons not falling within y description may take - as to my nearest relations in my fether and brethren, the y latter, the
not so near as y former, shall take with ym -

If one devise to his nearest relations, &c.,

8. Acts 75. 51. 86. 84 - Prov 350. 81 -

If one bequeaths personal property to his nearest relations,

Note relating to text and place under y &c., of distribution,

are legates. So G. supposed, if y words were my relation,

But Parol Est may limit y words - Post 112 -

But if y devises of land are thus described, above an

above rule & hold, any devise & be void for uncertainty.

In convict & other States, Sg. presumes y
to no ascertain y devises in y last case as well as y
first - For convict Est regulates y succession as to Real
and personal Estate of Indefinity -

It is a general rule of construction founded in feudal principles

y of an estate is devised to one with an immediate or intermediate

remander to his heirs, y "heir of his body," or "his issue," he takes an

estate of inheritance in y first case, and in y last an estate tali -
The object of y rule is y preservation of y claim of feudal lord

upon an heir succeeding the lands by descent, red, and not be partitioned

on one coming in by purchase -

1. C. 592. 39. 290. 412. 291. 333 -

Rule 82. 340. Berr 487 - 3 Burr 88. 8. 90. 16. 190. 583. 6. 30. 290. 9. 35. 290-320

Then y remainders is hold an intermediate limitation, y devise takes
on estates for life & y remainders in y remainders y former is not merged,

The word "heir" be are description of y interest limited to y ancestor
and y sense of these words has now become intermixed with y words former
and structure of y law of Real proper -
The words, "heir" in such case are construed as words of limitation, not of description, to ascertain y interest given by first devise, and not to designate who are to take after him.

And where no express freehold is limited to y ancestor, y word "heir" is as apt as words of description, as any other—

And where no express freehold is limited to y ancestor 830—

But as y reason of a rule has ceased with y abolition of feudal Tenure, it is endeavoured as far as possible in y construction of y devise to narrow y application of it—It is allowed, almost always to defeat y intention, by y application of Rule in affinity 832—

An heir may evo by devise at ye day, take a remainder as a purchase under y description of heir 830 tho a future freehold is limited by y same devise to his ancestor, if it appear from y devise, y word "heir" was intended as a description, not as a limitation of estates in possession. 834—Ex. E to A for life, remainder to his heirs for life only. 836—So to A for life (remainder to his heirs for life only) Y to his eldest issue male, a remainder for life only. 838—

Sec. 14. Ex. as to 41. Sec. 14. To A for life, remainder to his eldest heirs.

Here B takes an estate for life only, and his issue male, a remainder in fee, for of A look in tail, & last of y limitation and be nugatory or inopulent—Salk. 324. 824. Ex. 59. 319.

Where in its most proper sense is a description per se, but it has been generally construed a word of limitation, as when y intention to use it in its proper sense, has been manifest—

If an Estate is devised for life and past to ye next heir male (in singular number) and to y heirs male of his body, heir is a word of description—A takes for life only, and y next heir male a remainder by purchase—Sec. y word "next" and y

superseded words are wholly nugatory.
Teres generally if y limitation were to B for life, and post to y heirs of B’s body (in y natural number) of heir, male, y descendant limitation being more nearly in y lical form of words of inheritance.

Special Description

Second a description of y devise may be special.

By y devise is meant a description of a particular person, not a designation of any other person who may happen to answer y description, as if y devise were, "He or she y devise designates not merely a son, but a particular son of A." Dyer 567, p. 365, 4-8.

So if y devise male of B’s body of B, now living is to y present heir apparent of B: for y word "heir" when y devise intent, must be used in y technical sense. A being alive at y time of y death of y Testator.

If it is to a second son of A, this is a special description of y son in y order of birth.

Gene Rule: To y devise answer in all respects.

y devise give heir to B. It is not universally so. Dyer 367.

Hence if y devise is described as y heir of such a person, he must show y devise as heir, in y same sense in which y word is used by y Testator.

Thus if one devise to y heir of B generally, and B is entitled to felony.

(3) Oldest son can’t take, for B can have no heir.


Note y devise is general. If, any one, who is to be B’s heir at Law at y death.

So if devise to y heir of B, and dies, living B 2, Dyer 106.

B’s oldest son can’t take, for "menos est heres ventris".

This description is general, as in y last case. Dyer 367, 1, Dyer 193, 203, Dyer 206, 367.

So y Testator describe any particular heir, as y heir female of B’s natural name, y person to take, must answer y description.

In y particulars, 1. She shall be heir, as well as female. Ergo if B has a son, his daughter can’t take.
There's no rule don't seem to be law at ye day - wise Estate
in possession 16 21 - 160 34. Co Litt 29. B. 24 a. 2 Mil 1
Pew 370. 380. 385.

But of ye devise itself shows by positive words, or necessary implication, yt a person not his heir general was intendia to take
under y description of a particular heir, in other words if a special
description is added to yt heir, a person who ante heir may take
under y description - as to any heir who is ky A B
A B will take, the next heir general - 160 34. 1 bent 372
1. Ed Raymo 160. Per 186. 168. 450. 450. 450. 610

So if yt intention is clear (not Ynten) one may take under
description of heir in ye lifetime of his ancestor, as if yt Testator take
notice yt y ancestor is living - As to y heir male of y body of A
giving A also a legacy - Here heir is construed, heir apparent
for it is y manifest intention of yt Testator, yt yt issue of A shall
take, while A himself is living - He ed not eny mean at heir
in y testamentary sense of y word - 1. P. Noy 229
Pew 370. 375
1. Br P. C. 482. 2.08 2.08 2.08 2.10

Gen Rule.  
Universal

And it is general rule of construction in all questions arising
upon devise - yt yt intention of y Testator shall govern, yt consistent
with y rules of law 16. yt nature of y limitation is such as
y law as y allows - Dugs 29. 329. 2.00 2.00 2.00

This is y great rule of the exposition of devise -
But there has been much doubt, as if an Estate is given
in A, remainder to y heirs female, or male, of y body of B -
it not be necessary, yt y person to take must be heir, as male
female or male, as y heirs female of y body of C -
Bilt his daughter take, he having a son -
The distinction between yt case and yt in y last place, is
yt heir female with more denotes heir general.  
To course a person to take under yt description, must bey
shortly heir at Law -

But heir female of one's body, denotes his female relative
in heir gen or not, for y law recognizes a special heir of
one's body - but no special heir of y body -
A person, who in no sense, answers y description of an heir, may take under words constituting an heir or importing to be constitute an heir.


For a general Rule, yt if y description of y devisee be so certain yt a person intends cannot be mistaken, y devisee shall fail for a small inaccuracy.

Iow 335. 16 to 37 B. Col Eliz 146. Hobart 32. Pow 348, 411.

As where a devisee was made to Margery daughter of P S he having only a daughter, named margaret, she shall have

To lett 3. n. Pow 305. 17.

Where a man devised property to y wife of P S and she died, and he married another wife, y wife's first representatives shall take. 10. Mod 371. Pow 344. Pow 405. 6.

Where a man in his illness, devised to his posthumous son—y son was born before he died, and he lived, quia he meant—yt son, then in ubero. Proc. Ch 170. Pow 406.

But where y description is entirely false, yt party intended, shall not take, the certainly known. 1. Eliz 193. Pow 407.

How a devise may fail of taking effect:

If devise is vice versa, either from defect appearing on y face of it or from some thing extrinsic.

If y devise be, any uncerainty, or repugnancy of y words used as to y thing devised, or y interest in it.

As to y general intent of y devisee, such a repugnancy or uncertainty is called a Patent Ambiguity. Pow 341.

So a limitation contrary to y policy of y law will fall under defects apparent upon y face of y devise as Perfection.
Intrinsic objections to the validity of deeds are founded on some uncertainty, or repugnancy arising out of facts not appearing on the face of the instrument. As where a doubt arises as to the suit of several persons, or as to the suit of several things respectively answering the description noted, if words were intended to apply. Uncertainty or repugnancy of this kind is called a Patent ambiguity.

**Patent Ambiguity**

As to defects apparent on the face of a deed—This is an universal rule of construction, yet if there is on a deed an uncertainty, which cannot be explained, or a repugnancy which cannot be reconciled, the deed is void, so far as uncertainty extends, and y law at law shall be preferred. No Parol Evi is on yon admitted.

**Paw 411**

Such an uncertainty apparent on the face of a deed, may be either: 1st As to the subject matter, or thing devised. 2nd—The quantity of interest meant to be conveyed. 3rd The person described as devisee. 4th, as to the devise.

1st, as to the subject matter, or thing devised, as I devise a part of my land to BF—1. Plat Bill 53. 2. Co. Eliz. 16. 113. 704—The devise of a messuage or house with appurtenances, it carries no other land yon is necessary to the enjoyment of y house, unless it appears, y y words were intended to be used in a more general sense. 2nd, as to y devise.

Parol Evi is not allowed to explain y intent.

2nd, as to y quantity of interest—As I devise my freehold to my wife for five yrs. And if any of my sons die, before five yrs are run of y freehold, then to be devised legally. 3rd—What is to be devised y freehold, or term for 5 yrs—**Paw 412**

Parol Evi not admitted. Post 120. 9.
3° As to y person described—If y person described as devisee is absolutely uncertain, y devise is void—As to y best man 3 cast in y hand of A—So to one of y sons of B. He having Pau 42. Rom 621, severall. Post 109—l. v. Rom 624. 5. Raymo 82. 1. 3.. 629—
1. 7. 103. Post 103—So to 20 of y poorest of my relations—Post 103—11.
1. 240—Ch. 1. 3. 422—There can be no inquiry about it quia it ensis. 
106—But a devise is never construed void from uncertainty, mi quae it ensis. 
422—from necessity—So to be explained, if possible, ante 17—
1. 3. 348—Latent ambiguity.

Person 0f from extrinsic facts, y person of y devisee is rendered absolutely uncertain, y devise is void—As to my son, there being severall, it may be as in
1. 3. 348—Latent ambiguity.

Person 0f from extrinsic facts, y person of y devisee is rendered absolutely uncertain, y devise is void—As to my son, there being severall, it may be as in
1. 3. 348—Latent ambiguity.

The meaning is, these 2 cases of devise are void, if there is no proof of circumstances to ascertain y person or subject intended.

Now from parcel C a is admissible in such case, Vide 106—
ante 73. But if, y devise is void of any one of my manors,
A y devisee might elect—Cow 425. Bacon Anu 180—

A devise may fail of effect for divers causes, viz because y testator's intent is contrary to y rules of law, this is an intrinsic defect, as to A in some cases, y devise might have, to B a limitation by B is void, it cannot carry a remainder, for y other limitation is void, for a conditional fee by way of contingent devise, quia, y contingent is too remote. Estates in lands—

So if in y draught of y Instrument, y testator's intent is not followed, for y Instrument, and y testator's act in law,

As when a testator devisea a devise of lands to A for life. More 356. But y words carry a fee, it is void in both. It is not good devise for life, nor will it pass a fee, for y was contrary to y intent (Cow 426—
42. 5. 48.)
But if yr will is agruable to yr testator's intent, can be separated from yr will is contrary, y former is good, y latter void.

As testator directed an absolute devise, y devisee arrives a condition, y condition only is void, y devise is absolute.

1. Corp: 112 - Poow 427

A devise may fail, because of statute; it had effect on more, yn y law, no with it - As tenant in fee devises y land to fee to his own eldest son or nearest heir. The devise is void. The son takes by descent. Poet 161 - Robert 27: 100 8: 17 Poo 427 - 62 alks 572 - 2 Bur 880 - Poet Rs 187 - 2 Po 57 - Poow 427.

As in what acts will break y line of descent. Co Lit 126.

1. Show 93 - Poth 237 - Cart 141.

Gen Rule -

And y rule is y same general yt y devise is made to a perso. who is his heir, of y same estate, & y same quantity of interest in y subject matter, as he now have taken by descent. y devise is void. He shall be in by descent, and not by purchase - as heir and not as devisee - or purchaser. 1. Ed 38 248 - Poow 428 430 - 35.

The reason of y rule is, fist yt yr lord may not be defrauded of y fruits of y tenure. 16. Of his devises upon heir succeeding to y land by descent - Poow 333 432 - 2 Po 323 - 39. yt y devisors creditors may not be defrauded of y debts. Poow 430 38 - 1 View 248 - as they now have been fore yt y devised conveyances - or rather yt those conveyances or devises, for fore y Deed.

Poow 471 73 - 3. 4 - Will et Mary Poow 425 430 38 - 2 Po 323 37 9.
These reasons have been eased, but y rule is of consequence in England, as affecting y course of descent from y heir, for y line of descent in y case of land purchased may be different, man from y case of yt acquire by descent. In y latter case.

2. No. 220. 22. 3 Leavis. 127. 24. 135-36.

In general, y Rule of Comm is to most parties, not important, neither of y above considerations Obevated here, for y line of descent is y same, as tis lands acquired by devise, deed, or gift, nce does it affect exciters, quin y devisees cante take till y debts are paid.

But suppose a person having 2 heirs A and B, devise his half estate to A and his undivided, and as tis other half y half, considere as descending will be first applied to y payment of debts. But y doesn't seem to render y rule important here, in y sense contemplated, for y case cant within it. A no take by devise according to y distinction in Poc. 409-411.

Wright it not be important, in y case of a posthumous heirs?

If one devise to his heir by way of remainder, what and descend to him as a remainder, still y case is within y general Rule, for y estate is not altered. As to my wife for life, remainder to P. P. P. being the devisors next heir, y devise to P. P. is void. He takes y remainder after y life estate, by descent.

1. Poc. 23-1. 24. 25; 1. 1. 626-4. 2. 491-1. 2. 234-3. 3. 127-8. 8.

So of a devise of an estate for life only, for y devisors heir at law, if no further disposition of y devisee, for he takes all y interest, he not have taken, if there been no devise, and y devisee not descends, merged y estate for life.

Alter of a less quantity than devised to him, and y residue deviseed to another.


Chasing debts or portions on an estate deviseed, dont enable him to take by purchase, for y quantity of interest art altered, y property is only encumbered. This is when a man devise a fee simple to his heir at law. Yoc. 833. 819. 179. 179-72.

But it has been held, yt y change on y land, is by
of condition, y heir to whom it is devised, takes by purchase.
As to my eldest son and his heirs upon condition, provided
he say, The weight of fault as yu Rule.

Of then a devise is made, wh falls within yu Rule, the
testator's heir, who at y devise be holden to be a
daughter, y birth of a posthumous son will defeat her title
for she takes by descent, as heir, quia at y testator's death
she is heir, and of course her estate is liable to be devested
by y birth of y posthumous son, as if no devise had been
made.

An alteration of a devise as to y time of y heir receiving y
Estate, dont enable him to take by purchase, y quantity
of interest is y same.

Yet if y limitation to y devise's heir by devise, renders
an alteration in y devise of descent; he takes by purchase.
18. as devisee — As if one having 3 daughters, who are his
heirs, devise to ym and their heirs, they take as devisees;
for y devise makes ym to Tenant. Means if they take
as heirs, they are coheir and each having a distinct interest.

So if one having 2 daughters who are all his heirs, devise all
his estates to one, she takes y whole by purchase, for if
she took only by y devise, her sister, nd be coheir
with her of y other half — and y interest defeated.

And a devise may upon y general form, in question,
be good in part, and void in part, as to on entire thing,
as tenant in fee devises one half of B's estate to B his heir
in fee — y other to him in tail — the void as to y former
and good as to y latter — for as to y latter, y devise limits
to him y same interest, as y rule of descents nd gives him,
as to y latter, a gives a different — Estate.
A devise may fail of taking effect by y death of y devisee, y settlor living, as to A and his heir, A dies, living in ye case of y settlor. As heirs cant take, for y estate is devised to A only and his heirs are added to show what estate, he takes—called a and ys is y case, this y devise is republished after A's death, for y limitation being considered as made at y time of y republication, is to a dead man. 4 T. R. 61, Plow. 540, 45. 2 Term 722. Range 25. 1. 0 Maw 387. Court 373. R. 601. 36. 17.

But if a change is created on y estate, as debts or legacies, a change remains, for ys is not affected by y devisee's death. It dont depend upon his taking. 2 N. B. 349.

A devise may also fail of effect, by y devisee waiving y benefit of it.

The waiver may be express or implied.

Tis express when y devisee actually refuses to accept y devisee. Pow. 443. 442. 3.

An implied waiver arises from some act of y devisee, from which it is implied, yet he dont accept.

Tis a general rule in Equity; yet if a devisee having a right to part of a devisee, independently of y devisee, and a claim to another part by y devisee, asserts y former in opposition to y devisee, he waives y devisee. Tis an implied waiver.

As Bl Acre is settled on a for life, remainder to his younger son. Bl white acre is as in fee.

A devisee B A to a stranger, and white acre to y son of B. If B marries, and having B A. under y settlor, he cant have white acre under y devisee. 2 Term. 561. 252. 3.

Salute 176. Pow. 443. 454.

The same Rule when y settlor's widow claims dower in opposition to his will, and also an estate under it.

This doctrine of implied waiver is founded on idea of a his a rule. Tis it condition connected to y devisee, yet if y devisee dont disturb y disposition, yt y settlor has made. If then he
Another Rule. But as the debtor, and not a mere volunteer, is liable for a payment, and as the former is not liable for a voluntary payment, the latter is in the proper sense, the true debtor, and must answer to him for the debt, and the creditor has, in the concurrence of the above principles, a clear right to recover the debt, and to seek it in the Court of Equity, where he may obtain a judgment for the debt, and have it executed, if necessary, by the execution of a writ, and in the meantime, the debtor may be imprisoned or otherwise subjected to the same consequences as if the debt were a judgment.

On such cases, Equity will make a claim for the debt, and it is not necessary to bring the action in opposition to the demand.
a condition why settator has a right to make, and to
support y legatee's claim to y bequest, nd be to defeat
y express intention of y settator-

If y settator give a legacy to one in satisfaction, or instead
do a particular thing expressed, yt shall not exclude him from
another benefit. The y legatee claiming y latter may be contrary
to y testator's will. As Testator's wife is entitled under a
marriage settlement to a portion in lands and another in money.
He gives her legacy in satisfaction of money portion and devises
y lands to yt. She may claim both land & legacy, that she can't
claim both y land and y money portion, for y legacy is expressed to
be in lieu of yt, the rest of y land-

What Colles y case of out of y General rule is, yt y operation
of y legacy as a satisfaction is expressly confined to y money portion,
and was already y legatated, and her claim to y land, being also
as debits justiceworthy. Equity ought to not to exclude y satisfaction
as yt by way of construction - or by construction.

And in all cases in order to oblige y devise to deist (not to)
it must be clearly expressed yt y devise, taking both interest,
will defeat y general intent of y devise. As Testator having devise
the acre to his wife, immediately devised to her. More by way of
remainder. This dont prevent her from claiming devise in
whichever.

So a wife may claim her marriage settlement, the not devised
to her, and a residuary legacy, for in neither of these cases are y claims
clearly sufficient. As y testator's intention.

A devise may fail of effect, by y testator's performing in his
time, what it made y direct of y devise to accomplish. As Testator
devised 800 $ to complete a building, and post before his death.
defended more vn of demon y house. The heri shall not have y benefit of y devise. 1 Coyn. 25. Pae. 410-11.

So a devise may fail of effect in consequence of y defea of advent debt. If a devise may be fraudulent devices. Under y advent debt, all devises of lands are void as y devises bond creditors. The creditors are entitled to satisfaction out of y land, by y other assets fail. The heir and devisee must be sold jointly. 2 Pae Com. 378. 3 alde. 434. 2 to 125. 1 Pae. 119.

Before y devi of devisee selling or aliening before action last, "day's pow" excluded y testators creditors. 2 Pae. 378. Pae. 413-14. This it is liberally construed.

In court y devisee cant have y benefit of devisee. 1 She. 17, 17a. The devisee always takes y devise on trust. The devisee is a purchaser. 2 alde 485. 3 to 125. 2 Pae. 414-5.

How far parcel evidence may be allowed to control or explain a devise. Every instrument consists of matter of fact and matter of law. The former may be averred and formed on an issue in fact. As whether y instrument was executed? An host execution? If it was altered?

But matter of law is not subject of averment, for it is triable by a jury, ygo not receivable as a fact.

An uncertainty of y former kind is a latent ambiguity. Of y latter, patent. Evi 91. 5.

Hence y gen-rule, yt y settled declaration cant be given in Evie. To control y operation of y words used in y devise, or to give ym an import, not on y face of ym, they cant bear.
This rule has obtained, ever since devices were required to be wrought and before y’ Prv of frauds. It holds in y’ case of Mills at C’law. Pov 613. Pov 345. 5 G 63 2 Co km 140 2 DPP 138 4141

The more so 61

Indeed no parcel c’vi is admissible regularly to give y’ words such a meaning, the sometimes allowed to vary y’ “Ima face” meaning of words used all still it must give y’ a meaning, they can beon.

The testator’s declaration may apply to y’ devise or y’ device or y’ heircon rather of y’ devise. In both cases, they are admissible when they relate to matters of Law 16. to matters of construction. y’ face of y’ devise.

So as y’ import of y’ devise itself, is devise to a and y’ heir of his body, remainder to Ed and y’ heir male of his body on condition yet he or they shall not alien, here parcel c’vi is admissible to show who are meant by he or they.

It is a matter of legal construction up on y’ face of y’ devise.

Pov 67 87. 8 C

So if one devise to his mate generally parcel c’vi and it is admissible to prove it was meant to be instead of tenant for y’ intention ought to have been expressed. 4. Co 4. et 5. Ed Ray 438. 1 Egty 518.

So when a devise was on condition, even letters by y’ testator were not admissible to prove y’ event not has a happened, were intended by him to amount to a breach of y’ condition for y’ letters were not accompanied with y’ requisites to a devise as prescribed by y’ St of frauds.

So where one having covenanted to sell his estate to his son in law, for 1000. $1 less y’ it was worth. Devised the 1500.$ to his son in law parcel c’vi not admitted to prove y’ legacy was in satisfaction of y’ contract.
So devise to ye heirs of ye body of A. and if he die without issue, to B. The testator dies, a living, his issue therefore can't take, for 'name est heres ventris'; and parol evi of ye testator's intention to give to A's children, during A's life, can't be admitted. For an or no his issue was intended to take, he living, now is a question of construction on y face of y devise.

So where y testator mentioned two women, and devised to her, parol evi was admitted to show, who of y two was meant, for y ambiguity arose on y face of y instruction and was ergo matter of more construction.

But on to what are called matter of fact, i.e. as to latent ambiguity, y rule is, y Parol evi is admissible to explain ym, if matter required same words, y words of y devise.

But not to contradict y words.

The rule as in 1 Cl 34 is same.

Thus if one devise or grant to his son A. to have 2 ends of his name, Parol evi to the younger son was intended, is admissible.
In ye case of elder and younger—borne by same name—
as where by testator intended ye elder son to be dead, and
his declarations in such cases can be proved—
for ye evi stands with ye words of ye devisee, i.e. is consistent with 8. Co. 165-
yet, and an ambiguity created by parol evi, i.e. by proof of execution 166a 284-
facts, may be removed by ye same kind of evi—S. Co. 68, 69.
2 Brev. 216, 218, 1 P. 2 111

So if ye devisee were to P.S. of D., more being 2 of ye place—
parol evi is admissible he there the same rich was meant—

If no man's name—

parol evi not allowed, at thou an instrument was intended in 2 co. 242
as a deed or a devise—so that directions were given to make
a will, tor ye evi goes to ye execution of ye devisee, i.e. to ye
point, an ye testator made ye writing in question as his will—
1. Mod. 111, 3 Feb. 210—Rev. 14—418

So if there is a devisee made to a (i.e. being father and son
of ye name) parol evi admissible (ye prove testator didn't know
ye father—)

If ye devisee is wrongfully named, still if said described,
he may be proved by parol, to be ye person intended—
C. Litt. 3—x—

The rule in case of devisee, is said to be different—
C. Litt. 3—x—Title deeds 251. Co. 214, 4 Eras. 35

So a devisee to 2 by ye children, the having 2 to live by 2
and is by 2, parol evi admissible to show ye 2 more
by 2 were meant, and even ye declaration of ye testator may
be proved—

But a devisee to one of ye sons of 2 (i.e. having several) is
void, parol evi not admissible, for ye a patent ambiguity
in matter of legal construction—Co. 135.

If ye name given to ye devisee, applies exclusively to one person
and ye description to another—It may be proved by parol, if
y name was inserted by mistake. Sent. 12 & 13. By son of
Tom Jones, there being a & by, who is not y son of Tom Jones.
Can any other Paul Evi be allowed in such case? 

So when y legatee was described by y testator with
a name the never bore — and y devise made to her
by yt name & Paul Evi was admitted to prove, yt y
testator knew such a person and used to call her
by yt name — 2 att 40 - Pro 479 - 2 890 - 13 415 — ther

and where a devise was to y hisor of y Parish of A.
in y County of B, and A was not in yt county, Paul Evi
not admitted to ascertain y Parish. "By poor is meant
Pamper"

But if y person wrongly name as devisee, is not all
12 not identified by any other designation) no Evi is allowed
to show who was intended. The Evi was not stand with
y words.

Where y devise was to & (with yt more), there being no such
person, but there being a Tom Jones, Que the it not be proved
yt insertion was by mistake, and & Evi be allowed to show
yt y testator knew, and called & by y name of &. This
declaration at not be proved, as & thinks — not standing
with y miller.

If a term in itself unequivocal is used, Paul Evi is admitted
for of in Latin
The direct application of it, (This is done not for y purpose of
or a foreign - furnishing a construction (12. an explanation explanation of
it must be.
explained, qui
y Sydgy decayed
unreasonable.
Robert 32
Ley 397
Pro 340 - 403 — 4 y a daughter might lattee
So where a devise is to y testators nearest relations, parol evidence may be allowed to show, yt he meant certain persons other than those, but no further, but his declaration shewing yt he meant y word in an improper sense, can't be proved, evne of y former kind standing well with y words, declaring of y latter sort dont.

In these cases indeed evne is never admitted, to give words a sense, they will not bear, on y face of y instrunt. Thus the y word son is sometimes used to mean grandson, if then be no son living (yet if it appear of y words was meant, to mean son, no parol evidence is admissable.)

But if it appear from y devise, yt y word was intended to apply to a son only, no parol evidence will be allowed, to shew yt y word son was meant to apply to grandson — this mod be to contradict y legal construction — as where there is a legacy in y same instrunt to y grandson —

Parol evidence not admitted for supply y place of any thing not written, as where 2 hundred pounds were devided to a charity: according to y will of Mr — evne is not admitted to supply y name, 18 to shew whose name was intended. To fill up y blanks — This must be to add to y will by Parol — and y ambiguity is patent —

So when y testator gave directions to have all his personal estate given to his executors, and it was omitted by mistake, evne of y mistake was not allowed "Robuit sed non duit", dont make a will — yt me be making a will, or part of one by parol —
The following are exceptions.

Provided law and Equity have also permitted proof of extrinsic facts, or of extrinsic terms, or of extrinsic intent, to explain equivocal terms or terms of equivocal import, as to quantity of interest divided, when a will stands with a word.

First.

First. Proof of a testator's circumstances has been allowed to

3st 449
s. 281-99:

ascertain quantity of interest, the interest of a testator being

3d 244. 7. 6.

to pay a debt of the testator. 

The word "estate," being considered equivocal, as denoting either a subject matter only, or quantity of interest.

It is now settled, that "an estate, or a term or terminus" carries a

fee: (if the testator had a fee) and restrained by other words.

The word "herein" does not, of itself, carry a fee, being rather

a description of a subjection of a testator's interest in it.

So where a question was upon equivocal words, an act to legislate. 

Of person's personal estate, take it absolutely, or for life only.

The being a testator's wife, Evi may be allowed to prove of it, was not entitled to support her, in the need of principal or stock.

Second. Proof has only been admitted (for some purpose) as to the value of the interest, divided.

Thus in a devise of all a testator's land to A, initial words...
In the context of inheritance, a lessee paying $150 in a year for the use of a lease, which was admitted, of a sum exceeding the annual profits of the land, no lessee was interested.

But it seems more settled as a General Rule, of a devisee of lands charged with the payment of a gross sum, or an annuity, or debts carries a fee of course — even the words of inheritance are not added. 2 Ten 363 & 56 18 292. 3 So 356. or 4 3 Add 38. 2 Nbr 343.

So with the word "land."

And in the case of a devisee of land, no paying $150, of any debts the devisee instead of being benefited by a devisee might be a loser, for he might die next day and devisee, and yet by such clauses he is personally bound to pay charges at all events, if he takes his estate.

And the value of the estate compared with a charge, is not material.

But there is an established distinction between estate like land, in which the charge binds the tenant of the devisee, and those on which it attaches on the land, and where it is bound. In the former, his profit are crossed, so if he can't be a loser, ergo he shall take a life estate.

If there are no words of inheritance —

Under a devisee of "land," my debts my being paid, whereon a devisee was held to take a fee. 3 Ten 353. If ye consistent with ye last case.

"Thereout" and "out of ye yearly profit" may happen to be substantially the same. But "thereout" seems to mean out of land, not out of yer profit. In most cases, ye devisee is bound to pay ye yearly charge, if ye devisee is of a residuary interest, 1/2 of land remaining after sale of part, for ye payment of debts. In the case ye devisee and have nothing to pay out of ye land he take. But if ye sale and so take a fee, in a later case, ye devisee paying. "thereout" was held to carry a fee. 2 East 389-390. 1 Nbr 179-77. 8 95. Contra 2 Nbr 249. Queu ant y former y better of error.

2 Nbr 343. 50.
But a devise of all ye rest of ye lands and tenements and hereditaments, after ye payment of debts, carries only a life estate. 3 Rep 558-64. 1. B. 175- 5 East 33- 2 alb. 341- 4 East 429- 2 B. et P. 247- Contag 1. B. et P. 558-

But ye is only a residuary devise. 12. A limitation of what remains after ye debts 356 are paid. Not of an interest subject to ye debt. So ye devisee is not bound to pay anything. After doubtles ye word Estate had been subsituted for lands.

Exception:

Thirde. Proof may be allowed as to ye condition of ye testator's family, to ascertain ye application of a term, whi may be a life, or may be a word either of purchase or of limitation. As in a devise to A and his children, or his issue, proof is admitted as to ye fact of his having children, or not at ye time of ye devise made. If he has children at ye time, he and they take an estate as joint tenant (for ye lives). If not, an estate in tail in A is created. Ibid. Estate in tail.

Exception:

Second. Proof may be admitted as to ye estate of ye testator's property for a similar purpose, 12. To ascertain ye meaning of words, not in themselves equivocal, but where considered in reference to his property, will bear and require a construction different from ye. Whi they "Prime Face", here in ye case of a devise of a house called 'Bell Tavern' to A. Proof was allowed to shos ye devisee himself. Tenant in tail of ye house. And ye deviseor had only ye reversion, in order to show ye what estate in fee was intended. No such testimony was ever read of, unless, as to any other extrinsic facts.

Sowe as Pauls. So in one case, wri was admitted as to ye estate of ye testator's property. 1. B. et P. 472- 473. 2. Alb. 472- or to direct ye application of ye term, or ye word, as referred to ye dividends or stocks themselves.
In these cases, y proof stands with y words, but not with y meaning, n y they "prima facie" convey. These constitute all y exceptions to y General rule excluding parcel Ever having for y purpose of rebutting an Equity.

But no avermt of y words, can be admitted—Thus where one devised 2 y children of A (he having 6)

2. Dec. 216.

Eve want admitted, to shew y fourth only was intended, because yt contradicts y words

To where y testator devised y residuary of his estate to his executors.

one of ym being indebted to have 3000 $, Eve want admitted.Tabl 240—
to shew, yt it was his intention to forgive y debt—The residuary clause included it, y Eve ergo, contradictory to residuary clause.

To where y residuary of y testator’s property was not disposed of.

Eve want admitted, to shew y testator’s intention was, yt y residuary should have it, for it must be directly at legal implication

But in Civ and not in only, parcel Eve of y testator’s declaration. This rule is admitted to rebut an Equity. For implication (ie. an equitable appoplicable implication or inference) not to establish it. An equity means to all intents, in general, an equitable claim, but y meaning of y rule, as here applied. To a case of a devise is yt, when from y face of y devise. Equity raises an inference. yt is contrary to y legal conclusion—arising from it. parcel Eve is admissible to rebut or control y former, (equitable interest) nyt is in effect to establish y latter, (legal conclusion) See y reasons on title Powers of Sky.

As if land is devised to an executor for payment of debt, y surplus belongs at Law, to y executor. In Equity, there is a resulting Trust, as to y surplus, to y heir. (Pow 324. 325)

On yt Eve is admitted, (on a bill by y heir) even of y Testator’s declaration, to show, yt y executor was intended to have a surplus.
The principal of y declaration is, yt equitable interposition of deceased relf., being discontentory, can only admit Evi alnume, (even in favor Evi) to direct y Chancellor's conscience, as to an he ought to interfere, or allow y & Law to take its course.

The evi is then allowed not to vary or qualify y legal effects, but to ascertain an Equity shall interfere vs it, not to enable Salve 79.240, or induce him to interfere, but to prevent him from interposition. 2" Equity 850, at all, by showing yt it wold be inequitable to decree in possession of y Interets of y will, as y actual interest of y Testator.

So where y Testator bequeathed 250 to a freee to A and B. and post by a currie, directed here Executor to pay 250 to each. Evi is allowed to show yt both sums were intended to be given for ys rent in y support of y letter of y Instrument. And therefore vs y construction of it in Equity.

So upon y same principle, where y Testator gave considerable legacies to a testator Executor, from who y inherence in Equity was yt he was not to have a residuum, Evi was admitted of y Testator's declaration, yt y Executor shall have it.

And upon y ground of y Evi offered dont contradict y will parcel has been admitted. As they yt a devise was intended as a performance of a former agreement. As an agreement by marriage articles he settle 100 yrs heriament in my wife. The husband desired the her one hundred d to. Evi was admitted to these yt devise was meant, as a performance of y agreement. Here y Evi is allowed not to affect y will, but to prevent a double satisfaction of an agreement.
What distinguishes ye case from those before me it be, not provisions for ye wife in both instances, gesture y same, and made for y same benevolent object, but a solatium on her, for her maintenance? But an it rather y principle of retarding an Equity-

Parol Evi is admitted in all cases to counteract fraud. Thus when one devised his Real Estate to his creditors, I omitted to charge y Estate with an annuity devised to A, quia y Executors promised to pay it—Evi of y Executors' promise was allowed—2: born. 50. 6. Per 532-

Revocation of Wills

Wills and devises are ambulatory till ye testator's death. If, they are not consummated, and ensue recumbent by ye testator. 4: Borr. 3512. Per 532-

Revocations may be considered under 2 general heads—First as they stood at C Law, &c, and ye English of frauds, and Second, as they stand under ye Statute.

Revocations at C Law are express or implied.

Express revocation at C Law might be by writing or by Parol. Per 532-

In writing, as by a codicil or subsequent will expressly revoking a former. As By Parol, as one having made a devise, says, "I will revoke my will" or uses words of similar import.

But in these cases it must be clear, ye words, were made known revocando, e.g. where ye devisee "aid, quia y devisee did not insist, but by not having ye land, making no express reference to ye devisee, ye devisee was not revoked—Cor Ch. 51. Cor. 115-

So words implying an intention to revoke in future, don't Cor. 497-

work a revocation at C Law—As my "will shall not stand" Cor. Eliz. 366.
or "I will alter it"—They don't now by St., Per 533. 34.
Secondly, an implied revocation, is by some declaration (not expressly revoking) or some act furnishing a ground to presume of an Intent to devise is changed, there revocation is termed implied or a revocation in law — Bow 532.34.35.

As to a declaration by devise, a devise to an implied revocation, it may be such, a having devise to B, a stranger, says "anne testando" "my son shall be my heir".

As to acts of accrual amounting to an implied revocation, they may be by writing (implied by manifesting an intention to revoke) or in Pais. 12. by acts contra distinguished from written revocation —

By matter in Pais, is sometimes meant any matter not of record.

And first by writing — as if one having made a devise, post makes another inconsistent with, but not expressly revoking, it is a revocation. Thus if one devise his land to A and by a subsequent devise to B, or if he first devise his estate to two, and post to one of them —

It is said however ye if one devise land to A, and in a subsequent part of ye same instrument, devise ye same land to B, A and B take jointly.

If a give a Chattel to one in one mile, and to another in another, the latter will take ye whole.
But a subsequent devise (not containing express words of revocation) does not revoke a former one, ni inconsistent with it. Therefore y man fact yt a later devise exist, (the found by a Jury) will not warrant a Ct in deciding yt y former one is revoked. By yt. For y latter may be relate to a different subject matter, or it may confirm y former

And that yt is expressly found yt y second is different from y first, yet if yt is not ascertaind in what y difference consist, in wh case no renunciation can appear, y first is not revoked +

But if yt were found yt y second devise was inconsistent with y first or y disposition made in y first, y second, it appears, not be a revocation—

There me as y case may be, y difference was found to be total for how ey yt seems know, yt y difference extended to any one part of y devise, yt was made first? And also is such a general conclusion found by y Jury of any effect—It may consist entirely of matters of law, it must also necessarily involve some matter of legal construction, and yt et cant know y grounds of y conclusion—I could think ye rule incorrect—

To a codicil inconsistent with a proceeding devise to yt it is annexed, works a revocation—as in a devise of B A ore 2 asks 552 to B, and by a subsequent codicil giving white were to A B A is given to B.

But a distinction is taken between ye revoking effect of a codicil and yt of a subsequent will, but yt a codicil being part of 1 Cks 187 by will and not in its own nature intended as an instrument, Pws. 543 of revocation, does not revoc yt specifictly in y degree
Thus in a devise of lands to 3 trustees, to charitable uses, by a codicil it is devised on y same trust to 3. 1E to y same 3. and 2 others. The trust aint revoked, as to y only effect of y codicil was to modify y authority orignially given y three, by vesting it in 3.

Whereas it is said by Powell, if a subsequent will or devise, having a disposition made in a former one, is a total revocation, thus if in y last case, y provisions in y codicil had been an a separate will, y former was have been revoked, and y whole trust no have depended on y last instument.

Case 1. Total is to a intestat or rather y interest is not y alteration interests - not necessary the whole instument, in y case where one devisees land in fee to a tenant, and by a subsequent devise gives same land to his wife - for life.

The distinction however arises only if ye. That a subsequent will revokes a former one by substituting a new disposition for y former one. Whereas a codicil regularly only qualifies y original one. The practical difference, then it seems, consists in y latter case, chiefly in y mode of stating y devise. - It may be, in y first case, it will be titled vested, of 3. claims under y will and y two other 2 under y Codicil.

Now 346.

So if a second devise is to 3, called in y instument, y devisees wife, and it is found yt she then had a former husband living (by exalter being ignorant of y facts) y first devise not be revoked this.
A false impression will not avoid y deceit, ne it is y consequence of deceit practiced upon ye Tistor, Powl 545.

There for no actual deceit, is no fool's misrepresentation is suspected in his first exampel. He seems from ye example to mean no fool's misrepresentation: by deceit meaning no ye misinformation and consequent misapprehension as to y matter of fact. He seems to have used deceit, for deceit may exist without fraud. Y ease he distinguishes from y ease of deceit is one, where y misapprehension is a matter of law only. It being doubtful hasta y rules of law or Equity & may devise my estate to y desperate rate and ergo ye, Powl 547, and in y ease, Powl supposed y second devise good.

If a former devise is revoked by a subsequent one, mindly Powl 344, y principle of y latter is inconsistent with y former, 4 Burr, 3572, y revocation itself, 12, ye revoking effect of y latter instrument, Powl 549, as well as y instrument itself is ambulatory till y Tistor's death. Therefore y latter being revoked, y former stands.

But it seems if y second devise is revoked the first devise, y revocation of y second dont suspend y first, even if Powl 534, y first remains in existence Powl 557, 547, because Powl 40, y revocation being executed is an independent act, not depending for its effect on y continuance or consumation of y second instrument, 12, & y former becomes immediately void. Yo operation becomes analogous to yt of a release of a bond or of an instrument revoking a power.

4 Burr 182 3572, Chof 32 3, Duce 4, Bur 512.
Secondly—Acts amounting to an implied revocation, may be by matter in Puis. Cow 534-532-562
As first, by a total subsequent alteration in y relative 18 circumstances of y Devisor—

Second by a subsequent actual, or intended (rather alleged) alteration in y Estate devoted.

Cow 554-65—

First no alteration in y Devisor's relative circumstances
in ye of a subsequent marriage, and y birth of a child
has as yet been decided, to be a revocation of a
divorce previously made—y Devisor being a male,
such an alteration of circumstances is prima facie
a revocation—Quez under Special Circumstances.

5 Bed 663—Cow 554—2 Ann 2171-2182—
1. P. 194-1. Q. 194—1. E. 413—Song 85—
Sul. 202—Ed Pyman 441-2. Bc 376—

To the y child born posthumous 5 B. 5749—
5564-49.
15. y Devisor marries, and dies, and host a child
is born—

Every presumption de facts may be rebutted—
Tho y presumptions of law cannot—
A subsequent marriage only, or y subsequent birth of a child only is not valid to revoke a devise.

The rule however holds in favour of a posthumous child

Ld. Trench 5 TCB 49.

In y case by a late St, y subsequent birth of a child, as a

novation of a prior devise, if y will dont provide for

such a contingency.

The reason of y rule, Rule, is said to be, yt from such a

change in his domestic circumstances, y devisee is presumed to have

changed his mind. - Doug 31 - Pow 556 - 7 - Doug 31.

But yt question, anyone written or parole

as admissible. It shows yt y devisee havnt changed his mind.


S. Res 2 448 - 664 - 664 -

This presumption of a change of intention, dont appear to satisfy

any cases, for in y case of a subsequent marriage and birth

and birth of a posthumous child, y wife is revoked. - 5 TCB 356 - 9,

This rule has been doubted. 2 Res 448 - 664 - Carol

Cui is not admitted to qualify y wife, but to give effect to it,

and he rebut a presumption arising from evidence facts.

Ld. Trench, says y spouse ground, is yt there is a legal

condition annexed to y mind of y devisee. In every devise, yt

in such cases, y devise shall not take effect. - 2 TCB 58 - 63 -

2 East 551 - 2 East 542 - 5 TCB 538 - 59 -

where there is a change in circumstances.

There has been no case decided, where y two subsequent events

marriage and birth of a child have allotted to a reversionary

yt whole estate of y devisee was devised away. - 2 East

541 - 2 Pow 346 - 567 - 1. Eqy 01413 - 1. Eqy 0413 -

It seems also yt if y wife and child are duly provided for

either by y devisee itself, or by his dying intestate as to part of

his estate, y devise is not revoked. - Doug 38 - Pow 556 - 7

Eqy 550.
And clearly, y subseuent marriage and birth of a child, will not revoke a devise made in contemplation of those events and making provision for ym — 4 Co 64 2 East 530

All these rules contemplate a devise made by a Male.

But if a Feame sole having made a devise of her estate, butt married, y act of marriage is clearly a suspension of y devise during coverture, so yt if she die before her husband, y devise cant take effect, for it is an essential requisite, yt it be in y cisters power to confer or revoke it at his death — 1 Co 61 1 Rae 291

But if y wife in yr case survive her husband, and she remarries, it is a new and different marriage, her estate being subject to y devise or don't it? Vide some statutes on subject, if not it is waived — 4 Co 323 4 Co 34 2 Rae 281

But it seems to be sound to me, see below. In yr case, yo question can never arise, for under our law, the marriage during coverture cant.

Fed. Sure now, for it has been decided, yt a Feame sole cant devise, think so Brainerd

An alteration in yr natural capacity of yr testator, as it be such as renders him incapable of either making a revoking, and in such a manner, for there can be no presumed change of intention, nor is there ground to apply yr original condition — 4 Co 61 2 East 234

In all these cases, yr intention shall govern —

Que recut yr same reasoning apply in yr case of coverture? For yr devise cant revoked on yr ground of a change in yr personal circumstances, of want of legal capacity.

Secondly

Alteration in yr estate devised

In yr estate devised

1st, of an actual alteration, in yr case, yr revocation is yr consequence of a positive rule of law, yr intention of yr testator
not regarded, not founded on any presumed change of intention.


Deeds of a reversion arising by an intended alteration

1. Roll 613.

The positive rule or principle tender to, is ye, That any devise must be suised (at ye inception of ye devise) of ye estate devised, or ye estate must remain in ye same plight, like its consumption. If, it must--in contemplation of law, have been in his seisin, and remained so at Tupper.

1. Nov 491.

There is an alteration in ye estate, between ye inception and consumption of ye devise, not but it in a different plight, works an implied reversion. Such alteration in ye estate may be by deviser's or act of a stranger, or by ye act of ye law—1. Bess Roll 576. 399.

2. Nov 613.

Twist by act of ye deviser—As sale of land devised to a 3d person could revoke ye devise.

So if ye Testator having an absolute estate in lands, makes an alteration in ye legal estate only, retaining ye beneficial interest, or equitable estate, it revokes a former devise of ye land. As one having devised land, makes a present gift to a stranger, to ye use of himself or fee, Devise revoked—For he holds ye estate by a new limitation, as a new purchase—1. Roll 515—1. Nov 647—1. Nov 311—576.

1. Nov 323.

So if one having devised land, conveyed it, in fee, and then takes

143.

Deed a reconveyance of ye same land, it is revoked—A devise can't operate on lands from burthened—1. Bess 576—8. Co 30—1. Roll 613.

The rule is ye same, the ye conveyance is by lease, and release in such case ye actual possession, or seisin is not charged.

So where one having devised land, made a marriage settlent, remainder to his own right heir, 1. Bess 440—7. Flb 399.

So a recovery of land, suffered at ye use of ye testator, will revoke a
a tenant devise of y same land , for he takes by a new
limitation.

The proceeding rule applies as well as to equitable as to legal estates,
As of y devise having devised his Equity of redemption, conveys it
in trust for himself, y devise is revoked, for he holds
under a new limitation. 1. Eq 3 411. F. Barn. 1861. 110 072. 3-
Contra 292, 572.

An Alteration in y estate devised, will operate as a revocation,
the y alteration made be necessary to give effect to y devise.

A tenant in tail having devised, conveys it to T, for y purpose
of having a recovery suffered to y use of himself in the. The recovery
is rejected, and y devise is revoked.

So if a man covenants to levy a fine to y use of other persons
as he shall name in his will, and makes a will, and then levy
a fine in performance of his covert, y will is revoked.

So in ye cases, y fine can't relate to y covenant, y latter being
no part of y conveyance, but a mere covert to convey in future,
y devise is made not by any person claiming y equitable interest
under y covert, but of y legal estate by y covenantor himself.

So notice the difference between ye case, and yt of a conveyance to
suffer a recovery.

And y rule is y same, the y alteration made is expressly declared
to be done for y purpose of giving effect to y devise, provided y
devise is intended as of a new purchase, thus where one made his
devise of a Manor, and then made feoffment to y use of such benory
as he did declare by his will bearing date. The feoffment was
adjudged a revocation.

Reference of y feoffment to y devise gave it effect, yt operating as
a repudiation.

Still further if a man devise in fee, but afterwards he has only
an Estate Tail, suffers a recovery to conform his will, it is
revoked.
And a specific devise of a lease for lives, is revoked by a sub-tenant.

1. Pemb. 575. 2. 20. 163. 3. 20. 163. Psa 375.

2. a.s. 593. Pr 131. 319. 2. Bern 269.

Can there be as to the point of revocation, any difference between a specific and general devise, where the interest is a freehold?

And y rule is as same as to leases for yrs, wh are not revocable—As one devise a lease holden of A, and soot surrenders, and takes a new lease of y same land.

For y interest, specifically devised is annihilated by y surrender, and y terms of a specific devise dont include y new interest. Ys case however dont depend upony same principle with y preceding one.

But on y ground yt a new lease ant within y terms of y will.

But leases for yrs being chattel interest, may last by devise, tenant, a subsequent renewal, if proper words are used for yt purpose. As I devise all y estate &c I have in such a lease, at my death, subsequent renewal dont revoke.

Bull 387. 1. Pemb 375. Psa 586—

So if y renewa'ble lease is not complete at y testator's death, y devise is not revoked by y surrender, as where testator's will was not affected till after y testator's death, no revocation.

But y rule holds only in Chy—P G says—

And where y revocation depends on y simple fact of an alteration in y estate (independantly of any express intention to revoke), there must be an actual and substantial alteration, or no revocation. Ys duty holder, if one devised land in fee and went accorded to convey to a stranger, devise was not revoked by y stranger—

1. Psa 315.

So now at Law—

But Cy now considers an executory agreement to convey lands, as an actual conveyance, such a covenant or agreement, made in Equity, be deemed a revocation, if covenantee has a right to specific performance—

2. Pemb 329. Psa 494—
But a devise of an equitable interest in a trust estate is not revoked by a change of trustee. As Easier One Trust having devised, donor his trustee, in self other Trustees by y same week no recreation in equity - the alteration of a thing devotes y equitable estate, the y legal interest is changed.

See Page 127 - This not parte at law.

If one having conveyed by devise to a future purchase of land, devised it, and then conveyed, y purchase, giving in Equity, re conversion - The equitable interest unt altered - viz only taking y estate home. For both y above cases, Equity will enforced and subject y devise.

So if there having devised devise to y real, 3 me convey y legal estate to a trustee for moi, want no recreation.

The laid down as a general rule, yt if one having an equitable interest in fee, devised it and then takes a conversion of y legal estate, y devise not revoked - The alteration in y estate devised, is y equitable estate.

When several instruents taken together, constitute but one devise all things conveyances, a devise made in y execution time between y secondant of y lost and conversion of y devis is not revoked for all y parties have relation take effect by relation from y first iny contract. A conveyance to y original made to suffer a recovery and then a devise not a recovery is completed. 1. PCh & 351. 2. Burr. 1134- 4. 1952 - 1. PCh & 706. 655.

P. 600-

A bastard between tenants in Common or Charge sees, if confirmed by y object, is no recreation of y previous devise by y deviser was not an alteration in y Devisor's estate, it merely ascertain what before belonged to him. Con 3. PCh 357. 1. Selw. 50. 

But if y deed of bastard extend to any other object, yt if of partition merely, it will revoke a previous devise. As if
contains any further disposition of the estate.

Note where one has made an actual alteration in an estate before devised, no parcel o'er is admissible to show, if he didn't 2 4th. 57
intends to revoke - for y revocation ante founded on a supposed intent to revoke, is an arbitrary conclusion from positive law. 2 4th. 36

Presumption juris de jure - and a conclusion of law can't be. 41 56
reluctly.

Secondly - acts in pais amounting to an implied revocation
of a prior devise may be by the intended alteration in y estate. 41 56
intended, as by devisee attempts a dispositio or is ineffectual 605
either for want of formalities, or of capacity to take in y person
who devised. 36 66 62 565
is subject under y receiving classes of Act 2 8 Ch. 2. 36 66 62
For y don't. 10 36 108 6
attempt a change in y estate to take place between y inception
and consummation of y devise. 36 108 6
The intention to revoke is revocable conditional. 1 8 36 depending upon y substituted condition disposition of Act 6 108 6
altering. Place or effect. As one having devised land, makes a
deed of foederal of it with living of devisee, or having made
a revocation, make a grant of it, but y tenant never alters. 50 36
or having devised, convey by deed of bargain and sale
not enrolled within 6 months.

Because it shows y taker did not intend y will to stand.

But only formal devise revoked

So such attempts to convey, visibly an intent to revoke.

Revocabls thus effected being founded upon a presumed intent to
revoke, y inference may be rebutted by parcel o'er. 1 4th 41 4th devisee
on executing a deed of foederal to his own devisee 36 declares his intent
not to revoke.

So by an intended alteration, wh becomes ineffectual, and an incapacity
for y devisee to take in y person. As where one having devised to a, best.

2 4th. 35 35 9

desires it to a corporation, y's is a revocation, the corporation can't

1. Rill 615
So of a subsort indefeasible grant in one, who can't take
its grant of devised whole estate to his wife, who by law can't
take by grant from her husband. At law, it will make no
difference, any grant more of it whole or part merely, but in
Equity a grant of a reasonable portion of husband's estate by way
of corporation for wife, will be supported. In such case, there
will be an absolute revocation grade of part.

So an alteration in y estate devised, working a revocation, may
be by y act of a stranger, as if one having devised is deceased.
Before entry he dies    1. Roll 618-416. Pov 184. 666. 611-
Pov 674-

But a stranger can't revoke a devise by leaving or cancelling
it, if it remains legible, suppose it was not legible, but y
estate known and inviolable. Ruled in Cright. Mort y estate-
destroyed y miles being insane, Portal Eric might be allowed
to prove it content. 2 Pov 441. Pov 412. 642-
3 Barnell and Politon 168-

An alteration in y estate devised amounting to a revocation, may
be by mere operation of law. no devise made but not consumated,
before y. It if lives was revoked by y D-

A devise may be revoked absolutely or conditionally in whole
or in part only. Absolute and total revocation have been already
considered.

Conditional & partial revocation-

A mortgage in fee, and at law, an absolute revocation of a prior
devise, is now considered in Equity as only a conditional revocation

Roll 617-1 pro bono, 18 if y grant of y debt descends. So if y devise not
induced.
1.<dim>338</dim> y debt, he may take y land for a mortgage is regarded in Equity
1. Talk 158 a more pledge for y legal title by way of security for a debt, outstanding
3. dim 748 most interest (even under a mortgage in fee) as personal estate

Talk Mer 12. 60. 54. 23-

It is no alteration of a freehold
So if a subsequent disposituone were an absolute conveyance to a creditor of the mortgagor's land to satisfy his debt, and account with 2 debtors, the creditor for the surpluse, Revocation in Equity not be only for lands. 272.

For his conveyance, after absolute in form is substantially, but a pledge, for his debt. And y interest of y creditor is regarded in Equity as personal, y revoking beneficial interest in y fee, remains therefore in y devisee, 344.

So if in y case also, y freehold was to y beneficial interest is not 2 been changed, it substantially like a more power to sell and account—344.

But if y land was actually sold by y Grantor before y later's death, it was doubts to a revocation, and y devisee be entitled to y surplus of y proceeds.

But a mortgage for yor only, is even at law only a revocation of the devisee in fee, for by y term "yor recover possession." In Equity, it is only a conditional revocation, "yor lands" so yor devisee may take immediately on paying y debt. Pou 619.

But a mortgage, an in fee of yor is an absolute revocation as well at law as Equity at law, of a prior devise to y devisee, devisee and mortgage are inconsistent, some person Moir and Riel. Pou 618.19.

Queer and y latter y better opinion, y former seems quite artificial, and lenes, I P. thinks to defeat y intention of y devisee.

Revocations contento, may operate by diminution, either quantity of interest, or y subject matter deceased.

First Thus if one devise to fee and forel later to a stranger for life, new devise is revoked only great, etc., etc., for life, etc., mortgaging y life of y devisee, met as to y life. So yor only is y later devise and inconsistent with y former.

1, Roll 619.

So if one devise an estate in condition, and forel by a subsequent indenture, make a devise of y same land to a in tail, a second devise is a revocation, of y former, to y extent of y difference between y two.

But the a lease be a change is only a revocation pro tanto of a former devise (but before) yet lease to devise of land devised to commence from y devisee death is a total revocation of devise and lease inconsistent. For 62.6. c. 11. s. 7. be 15 c. 16. 3 do. 41. 100. Conta, y lease is no revocation, to a y term made under y lease to y exclusion of devisee, and y revocation under y devise subject to special execution debts. The first rule now reversed by 22. 12. Elder.

A Lease is no revocation, kata to Elder.

But a lease to devisee to commence in devisee's life time is no revocation, for it may determine for y devisee death, and do stand by y devisee, and if it does not, it will only provide y devisee unexpired residue of y term at y devisee's death. Not it acccording to y cases 3 & 4. being to be any revocation? will not y unexpired residue of y revocation be held as in y last case.

Second, as to revocations extinguishing y subject matter, if one devise 3 manors to Y and then revoke as to one of y

Then devise remains good as to y other two.

The devisee's land to his daughter, afterwards on her marriage settle a part of y same land when her. The devise as y residue remains.

Revolutions under y Eng St of France,

29. Charles 2.

This It enacts yt no devise shall be revoked succes yan by some other will or devisee or mining, on other mining declaring y same (by burning, tearing, caving, or obliterating y same) or any man made by some other will or devisee, or by other mining, signed in y presence of three witnesses, declaring y same E30. not y requires or y devising clause

Holden yt ye clause of y St-estates not only ye devisee's hand

鹌鹑 pecking, but also ye legacies or none of money charged after y

land, both to be revoked in y same may.
It don't affect violated revocations. ye it, such as are affected by a
subject inconsistent disposition, manage and birth of a child, &c. It
relate, it respects revocation only. The former remains as at 6 Law
and it don't abrogate y rule of 6 Law, as to subsequent, inadvertent
attempts to affect an alteration in y Estate devised.

Revocations under y 7 other, may be by some other will, &c
(as forensed in y first branch of y revoking clause,') by beginning other
writing (as forensed in y 15 branch.)

In inspecting unt y 2 first modes of revocation, it seems to
be only declaratory as 6 Law. mi y words, 'wills or codicils
in y first branch of y revoking clause, are construed to mean such
a will or codicil, as no be said to pass lands within y prior
devising clause. (Coo 46-7)

For after y devising clause, a will of land not complying with it,
not be void, and erge met a will of land. Law 132.

Whereas y Instrument complained on y last branch, not being
referred in either construction to y words "will." Ce in y devising
clause, is construed to mean an instrument of revocation merely.
erge not requiring y solemnity required in y devising clause;
y y last branch of y revoking clause not only don't prescribe y
tone regnents 8 y devising clause does
but don't expressly prescribe diff regnents and different
ones in only, ye, for y reason, it can't contemplate a devising
instrument (or one conforming to y devising clause) and must
of course contemplate a revoking instrument only. 18, ye notarize
the to subscribe in y testator's presence, ye y testator the sign
y presence of notarized.

Hence a distinction between an instrument, intended merely to revoke
a prior devise, and one intended to make a new disposition of zame
land and also to revoke.
The former, 16. one intended merely to revoke, will be effectual
if it comply with y requisites prescribed, either in y devising
clause, or with those prescribed in y 30th branch of y revoking
clause, i.e. note y requisites

or if it comply with y requisites in y devising clause, it is
effectual according to y first branch of y revoking clause.

And if it is attended with y requisites in y 30th branch of
y revoking clause, it is good both to yt clause.

But e Contra if yt later instrument is intended to be a disposing
and revoking instrument, it will not be affect, ni it comform
by devising clause. 12. attested in y testator's presence, for y
intention is to give to y second devisee, what is taken from y first.
or rather to take from y first only what is given to y second.

But nothing is given to y second, ni y devising clause is complied
with, therefore nothing is taken from y first, y first devisee remain
in force. 3. Mon. 253. Part 70. 7. 13th, 348. 3. 16 Ch.
615. 2. 141. 1. 145. 240.

The result then of y preceding rule is, yt devisee intends
a new revoking instrument, he may make it effectual, by complying
with y requisites prescribed either in y first or three branch of y
revoking clause. But yt he need not make both 3 devising and revoking
instrument (or if he do revolve it by making a new and different
disposition of y property before devise) he can't affect his object until
complying with y requisites implicitly prescribed in y first branch of y
revoking clause, i.e. with those of y devising clause.

But a devisee by y testator's heir at law, that void as a disposing
instrument (as he takes by descent) rule of duly executed as each
revoke a former devisee. For yt requisites of y devisee being complied with
y revoking effect of yt instrument must prevail.

1. Deo 11. 
But a disposing and revoking instrument need not comply with
y requisites of both clauses, if it conforms to y devising clause, y
revoking words are effectual within y first branch of y revoking
clause—Unless it goe as a disposing instrument, it must be effectual to
revoke (implicitly) without words of revocation. 18. it must not revoke at
6 law, as a subsequent disposition inconsistent with y former one.

Secondly way is not within y act & brands, 18. misled, not abstr-
act for revocations by burning, canceling, erasing and obliterate:
Revocations thus effect are removed at 6 law. To effect a revocation
in either of these ways, it is necessary y burning be by y testator,
or in his presence, or by his direction, - Lees no revocation.
18. if it is removed unintelligible (intelligible, intelligible)
Suppose y devise destroy'd, may y content be proved in such
case. Bibulous, not y analogy to deeds, lost or destroy'd by time
or accident.

Revocations affected by these acts, are in y nature of implicit
revocations, at 6 law— These y acts, themselves (act done by y testator)
are not considered as revocations, but as furnishing
evi of a revoking intent — outward or visible signs of such intent.

6 course they are not revocations, or not, as they are done or not,
"a viso revocandus." Thus by devoction the throw with instead of stone, 106
on his devise, or having 2. ch. by mistake, cancel y other instead
by former, there must be no revocation — Rov 52. 1. 577 Th4 346.
3. Mils 388. 4 Burr 2015. Pov 63. 4-

But it art necessary yt y devise be totally destroy'd, y slightest
throw will be a revocation if accompanied with a declared intent, 2 Ch. No. 164.
To revoke, as when one slightly throw his devise and throw it into
y fire, but it fell off and was taken up, but he declare yt it is for 686.
not be his mile.

So if there are duplicate of a devise, and testator leaves one part
"a viso revocandus," yt other is revoked, for both parts constitute
but one devise.

Pre Chy 460. 61-
Canyons Ch. 263. 1. 577 Th4 346. 2 Lem. 142. 2 Cov 48.
where acts for yr effect upon y testator's intention, and in some instance, only the dependant relative, revoking, 12. when done with reference to another act intended to effect a new disposition, yr revoking effect depends on y efficacy of y act to be done.

Thus where one thinking a new devise of his estate, was completed, when it was not, the act stands from yr first devise, and on being informed seeks, "desired", and said, "he was sorry" and never completed his subsequent devise - yr first was not revoked -

Note y analogy to y case of a disposition and revoking will, where y Carol 42d, went only to rebut y presumption arising from y extrinsic fact of leaving of deeds.

A will obliterato in part by y testator "anime revocandi" may be good as it is rest, thus where one having devised all his estate to A. in 33d, afterwardly strikes out y exception, y will not obliterato remained good.

An instrument made under y revoking clause of y it is not valid, the testator's signature is on y face of y instrument, so it was intended to authenticate y revoking part.

Parol revocation

In Ed in Comt on y subject. The rules of Ed law generally apply here - Ex. as in revocation by hand, ante 121, and it must be proper to apply y rule of Ed law - [Then being no r. regulations on y subject], in relation to deeds, That every instrument must be destroyed with y same solemnity, with which it was created.

Republication

A devise thus revoked, if not actually destroyed, be revived by a subsequent republication, for being ambulatory till testator's death, it may as well be revived as revoked - Pow. 652.
II of Republication as in C Law. If I as my hand sign,

St of frauds and beyonds -

At C Law, republication were much favoured, I once very

right next me that a republication

Thus if one having married a deceased, the land she purchased

other land, and then declare his will in this word or verbal

decree it was his will, it not be for republication, any land

so purchased and made by it — 1. Roll 618.

1 Roll 617 — Croll Chri 493. 2 Ben. 299. i. Penn. 264 —

To if one having devised all he land to his executor, and

ever purchase other lands, that be applied to, at sell y latter

I ask reply "no" — they shall go with my other estate lands

so my executor, y devise not be republication, and no then half

y lands thus purchased —

and hea the one report. Iy case cited from 2 Cy repub,

y executor saying (on y application, at Fafra) "My will in

a box in my study." was holden later.

So those words, "my will in your hands of J. shall stand,

have been holden later —

So any act subsequent to y revocation of a devise and having

an intent of it shall remain, not amount to a republication —

As delivering it no one in token of such intent —

So this a subsequent feoffor to y use of before will, was

Penn. 582. 586 —

holden to be a revocation, yet y difference of feoffor to y devise — 1. Roll 617

was holden to be a revocation, and thus to give it effect to y devise —

(See Page 142 ante) PROB. REPUBLICATION Cost. 180 —

But y subsequent assignment of executor, and giving of a legacy

was holden to be no republication of a devise of land — 171 —

Yet it has been holden, y a mere addition of a codicil — 1. Roll 618 —

taking no notice of y devise, to be a republication at C Law — Penn. 586 —

3. Acts 186. 2. B. 229. 1. Penn. 634. 607 —

Contrary Croll Chri 493. 1. Roll 618. 1. Cy 533. 306 —
Because y very act shows yt y Testator contemplated y devise as thern subsisting -

But yt better Opinion seems, yt yt mere addition of a codicil or yt execution of one not actually annointed & thre to relate the personal property, only will amount to a republication of a devise - for it is a further part of y last will an express to be so or not, and also furnishes conclusion on y Testator's considering his will as existing - and being made in addition to yt, is of course confirmatory of yt, so far as it does not revoke

At any rate, yt annointing of a codicil, or yt execution of one not annointed, if yt expressly confirm y devise, will be a republication

"As I ratify and confirm y bequeathing will".

If it seems any words in yt codicil showing an intention to confirm, will amount to a republication as Judge yet yt ye witness may be a further part of my last will and testament

"Republications since y St of Fraud -

172
Pown 80.82.664.66
Benedict 192
1 Ver. 329
Felicini 162
1 Dec. 440
9 Mod. 77
1 Bern 329
Com. 334

173

Republications since y St of Fraud -

172
Pown 80.82.664.66
Benedict 192
1 Ver. 329
Felicini 162
1 Dec. 440
9 Mod. 77
1 Bern 329
Com. 334

173

Pown 664
Comyn 381. 9 Mod. 68
Coss. 161
Hart 748-2.42
1 Bst. 466
172

Pown 664
Comyn 381. 9 Mod. 68
Coss. 161
Hart 748-2.42
1 Bst. 466
172

One must Testate sign in y presence of 3 witnese?
ye is not necessary in y original devise. The case cited from
Com dont warrant y position; then y devisee was thus executed,
and holds good, but much execution was not at all necessary.

The devisee shall indeed be publised in y presence of y witnesses
Row 664 - for caution sake at least. God Bless it ys strictly
necessary at Law & is not a publication in y presence of
other witnesses, he sate. But why shud it be signed in y
presence, ye not being required in y devising clause of y Ht-

It has been accede in Comty, yt a parol republication is not 174-
good. Supreme Ct Aug 1810 - Superior Ct - Contra Rest 82.33-

But y operation of y 8 St. does not extend to implied or
constative republication - as y reading clause does not extend
to implied revocation - as if a subseqent devise implies, revoking
a prior one, is itself revoked. If prior one if remaining, is good-
Powell says, yt it ts a republication. Quee does y revocation
qui y will in effect, as a new date or republication does-

So devisee of household estate are not affected by y St. 15-
of terms for yse. Not "land" do nor real estate" under y St. as 1.82.45-
at 8 Law - one exposes words of confirmation are necessary, it seem, Row 663.64-
in a codicil. To republication a devisee, dates if y devise is virtuall-
confirried - As 8 devise yt ye witness may be a further point 83-

So also by y better domin, every devisee to a devisee, that not 175-
actually annexed, and even thou it dispose of personal property
only, will amounts to a republication, if executed kata y St-
As if one devisee has real Estate and then newly executes a
codicil giving pecuniary legacy, but executed Adopson y reason
is y same at case. Row 664- 1 Rev 485- 1 Barn. 554- Conm 381-
9 Med 78, 7, TB 484- 3 Prem 168- 1 Rev 486- 7 78-
Contra 3, Sky Ref 140. 0. C. 2 Barn. 621- 1 Rev 489-
Row. 679. 81- 668. 68- Ambler 571- - Page 171-
One having devised all his real estate, purchased more and
expanded his estate, and invested in a much greater degree in a
republication and y latter will made.
But here nothing is done of y. if it is, and the relitigation
is disposed were not completed with, but it seems to be an
implied revocation. To have an such republication is affected
by y. et.

The effect of such republication is to give y devise a new date,
to y devise in one such publication, to include all
such property and all such number, as it and have concern
had it been originally made at y time of republication.

Whereas a devise not republished will extend to the estate
of y testator had not at y time of making it.

Done 176-84.

General Rule, wills are to be construed with kate y testator's
intention at y time of making y devise.

Where is one having devised in his life time, or are the
lands yearly in 2. and then republished, y later will will.
so if one having devise "all" his real estate, he purchased
more lands and then republished, y whole will pass. Cong. Eq. 351.
1. Red. 442. 2. 390. 7. 204.

So if one having devised to his sons a, who dies, and y testator
boast has another son of y same name, and then republish, y latter
will take.

So if one devises land to his daughter, "not to be subject
to any control of her husband," (an having a husband)
and boast y husband's y husband's death republished, taking notice
of y husband's death, a restriction extends to any subsequent
husband.
But y affect of a republication extends no further ye to give y
words of y devise, y same operation, as they no hare had,
originally written at y time of republication - Pryn 676.
Hence if one devise land called B more, and then purchasers
land called White more, and republished, White more must have
Pryn 676, 84.

So if having devise all his land in A he purchasers other land
in B republishes, y latter will not have

Hence also words used in y original devise, as words of limitation, or
cant by republication, he made to operate as words of purchase
or description - Thus if one devise to A and y heir of his body,
and boot no death republished, as boot he cant these. The republication here
is of a devise in fee tail a. (who is dead) So a lesser devise - in Pryn

2 Do 319

2 Do 397 - Ryn. 337 - 1. 105 219 - a

so where one having devise land to his son B and gives a
legacy to his grandson C. B republished boot no death makes
it was devise to his grandson B and not take as not take
land - for testament having added y word "grandson" showed yt he
didnt intend to designate his grandson by y word "son"

Note Testament's intention to be collected in general from a
reference ye of state of things existing at y time of making
y will - not of his death

A codicil may republish a devise as to part of y subject
matter only. As one having devise his real estate, he then,
revised it as to part of y estate by setting y part of upon
one of you - and then by codicil confirmed it subject
to y settlement. Hidden yt y other part shd go to y two -
But a devise can't give a original devise any interest
validly, wh. did not before belong to it. The fact is, is sett
it when it same condition, or with it was at its inception a

Here a devise itself will execute itself if it, a codicil
with it, will execute, will not void it or confirm it.

Id. Hutchins once said "false" yf of a man devise any
"all y leases wh. I new hold" and most renew y leases
there renewed, won't hold by a republication.

A devise may be republication by more reexecution, and such
republication may imply an original want of capacity in y
devisee, as an infant makes a devise and not full age,

an infant may republish on y day in wh. he comes of age
and on y first moment of y day, have being no fraction of
one on law.

nothing wh. don't unit be a republication at law, will unit
be it in Equity

Jurisdiction of Co's as to devises

The executors of Co's long have no jurisdiction over devises
land only - P. 688. and a prohibition has to prevent them
from possessing in y probate of devises

But now if y some sufficient contain a devise plan, or a legist
omn. sceand a Chastises, it may be given in like Co's - last 537, 58- 6.C. 23-
P. 688-9. For it is necessary as in Personal. But a probate is as to
real Waste of no avail - not even at C Law

as in personal property it is conclusive, a
prohibition was done granted for y land
But there is no right of appeal in any question of title to real estate, nor question of a debt or of the title in such case, in the hands of devisees may immediately be at law, any sentence of Probate having.

The decision of an estate's estate or testamentary under the order of Probate settles the proportion of those entitled to it, unless it is shown on appeal to be erroneous, but has no effect upon any question of title.

If the devisees are not yet seized, when a question of fraud in the making of it is shown, to be unproved, the issue is or not, is a question of fact to be tried by a jury, on y issue, "Soveraign x vel non." Vide infra.

Contrary, 1 C. Ch. 408. 2. 30. 421. 1.

Thus, in a deed, a fraud in the execution being shown, can be pleaded.

This is similar to y. "Non est factum pleaded to a deed," 3. 698. 7.

Go an "Estates in usu, empress, mentibus," or not is a question. 1. P. 408.


Thus, in a deed, a fraud in the execution being shown, can be pleaded to a deed, and a question for y to decide, and y to decide, or not is a question. 1. P. 408.

D. 3. 698. 7.

On y issue, "Soverain x vel non," is sent out by a jury and a jury being sent out, proceed to sit aside y decide (y being sent out for y purpose) or do y proceeding in Equity Case.

But there is a distinction between y setting aside a deed for fraud, and its being from y devisee y benefit.
of ye devise proceed on a confidence, with binds his conscience.

The latter may be done, for hire, or existence of ye devise is not questioned, but ye devise, and ye devise, shall hold for ye benefit of ye party aggrieved. The ground of ye jurisdiction is distinct from ye devise itself. It is over ye conscience of ye devise.

As if a agree to give B £1000, on condition of B's devising land to him, and ye devise are forged, A may be made a trustee for B's heir, for ye breach of confidence not in equity is a fraud.

In a similar promise, it is shown on ye devise, ye devise, if one being about to promise for his younger children by devise, is discharged from doing it on ye devise, as meaning to make ye same provision for ye devise, ye devise is compelable on equity to perform his promise.

And where one devise lands to be exchanged for college lands for A, ye College do not exchange, they agree, ye devise, that these have ye lands intended to be exchanged.

In general questions arising within ye words of a devise are to be decided at law. But B may decide questions of ye kind, if there are circumstances requiring ye intervention of B.

Giving a devise in Eqvi at Law

The best proof of a devise is by production of the instrument, attended with and regularly by the devisee recognized in all cases. In cases where one claiming under a devisee is held upon the basis of depiction by the devisee, it was held to be no devise. 2. Rel. 35. 71. 1. 28. 70. 117.

Cumb 395. Pow. 792.

So a devisee exemplified under a great seal is no devisee. Cumber. 46. Pow. 792. 189.

"As to land, y proceeding y are" Coram non judice." Cumb. 248. Pow. 708.

Somo a probate of y will in a spiritual Ct. is no Evi as he a title to land.

Hence a probate of a will of land in y Ct. is not Evi, even if y will is lost. For such probate is a nullity. Pow 708. La Reyna. 732. 744. But yet it "sawd y probate of a devisee (et subvena) accompanied with other circumstances of Evi is admissible if y devise is forced to be lost. Pow 706. Y. But if neither of y parties has a right to y possession of a devisee, aCopy is admissible.

Pow 705. 6. La Reyna. 735. Hol. 298. 82.

And it seems if a devise remained in Evi by order of y Ct. 120. a copy of it is admissible. for it is a rule of y Ct.

Indeed where y Ct. in y Ct it is lodged, has jurisdiction over y subject matter, a copy of it (13a an official Copy may be read.

But if proof of y attestation is required, y must be proved by a subscribing witness, if either of ym is living. (Pow. 708) 131 y is a fact not provable in its nature by a copy. if there
has been a probate of your will in Chy, is not yet conclusive of your fact?

At law, however, one of your witnesses is to be prove, what all have attested. But he must be able to testify, not only of your testator executed, and yet he signed in your testator's presence. But also of others did you same: Sees he don't fully prove your execution. On his thus testifying, your venue may be read. 1. Pow 709. 712. 714. 1. P. 709. 714. 2. Tho 1284. and so on. And your witnesses are all present, it is not necessary for them all to testify. As your fact of testator's executing and publishing. If it were an obstinate witness, he might defeat your venue. Pow 709. Tho 714. 1. B. 714. But if one of your witnesses refused to swear, it seems necessary to prove your fact of his attestation.

Any subscribing witnesses are allowed to deny your fact, and from your face of your instrument. They appear to have attested as their own attestation. Testator's sanity, signing. Gate once held Contra. Pow 709. 12. Tho 79. 1. B. 265. 4 Burr 2224.

But your testimony of your subscribing witnesses, can be conclusive, by your devise. If they did deny your own subscription, then devise might contradict it by other witnesses. Same as to your testator's sanity: 265.

B. 20-20.

For your devise requires your attestation of witnesses merely as a solemnity, and must attend your execution and publication of your instrument.

In your hand if your devise is in favor of your devise, it is not conclusive as your hears. He may contradict you. A Ct of Equity would direct an issue to try your devise of your testator, where your subscribing witnesses swear, if he was sane, or not.
Proving a devise in Chancery

It is usual in Eng. when a little to Real Estate depends when a will, to prove it in Chy., especially if y. will be of modern date. Pow. 714. The probate of a devise in Chy. is in effect conclusive upon all persons. It prevents its being disputed post even vi a. Ct. of Law. For if y. have or any other

The devise y. desire, attempt to contest it, Chy. will issue an injunction vs him. Pow. 718. 1. Mils. 218.

In Comt, Chy. has no concern with y. probate of devises and Wills.

But Chy. won't decree a devise a devise proved, ni y. heir is forthcoming 18. As to be formed. Pow. 714. 2. Mills. 120.

It has been determined yt such a probate of a devise is not necessary in order to establish a particular claim, under it even vi Equity. Pow. 715.

And this y. heir voluntary makes default, yet y. devise - in Chy. won't be declared to be well proved. Of course, Proof must be made, as if it were contested.

The probate of a devise vi Chy. being thus conclusive, it is an immovable, established practice in Chy. never to declare a devise proved, ni all y. subscribing witnesses are examined. For y. heir has a right to claim yt all of you testify & his heir is his inheritor. 1. Mills 216. 1. Mils. 177. vice Evvi 64

Pow. 718. 18.

And y. Heir is y. same in Eng. the one of y. witnesses be beyond 1. Mills 218. 1. Mils 177. Sec. 2. Mils. 455. And pronounced to be out of y. power of y. party claiming to obtain this. 174.

His Evidence

D. 28
Where a commissioner issues from Chy to take depositions, to prove a devise, y devise itself is sometime delivered out of y proper offide, or security given, and in some instances Chy has ordered y Prerogative Ct to deliver it out on security.

A bill to perambulate y testimony of witnesses, the y devise of a lunatic, might not be in his lifetime. The lunatic may recover or revoke.

In Court, an appeal lies from y Ct of probate to y Supreme Ct. It is y practice of our Ct of probate to devise a devise or will proved on y oath of one witness, but an appeal lies from y probate and there is another process in our Ct - y witnesses swear before a private magistrate at y time of making y will and he enforces yr abatement on y lack of y will or devise.

A. 28. - Evi 84.
Fundamental Conveyances.
Settlement after Marriage 315.
When agreement by Parol 316.
Settlement after Marriage without any former agreement 317. Purchaser with notice of Settlement 317.
Disposition of property by women 320.
Who can take advantage of the Act of Eliz 322. Voluntary Bonds 333.
Badges of fraud 337.
Fraudulent Conveyance

By y. St. 13 of Eliz. and a like. St. vii. Comt. all conveyances, false, fraud & bonds, suits and judgments, executions & contracts made to defraud. Bode. y. creditors of y. grantor, and no those only who are intended to be defrauded, and y. repositors, successors and assignees, are utterly void.

Proviso in y. Eng. St. yet it shall not extend to any conveyance to any bona fide purchaser, having no notice of y. fraud.

The proviso contemplates a conveyance by y. debtor to such a purchaser and by consequence only a conveyance by y. fraud of y. grantor to a similar purchaser – no such proviso in Comt. y. proviso don’t seem at all to alter y. construction, but was inserted out of abundant caution – Sup. Rob. 4.6.

The St. 17. 1244 grants, all conveyances E&c made to defraud a purchaser bona fide, shall be void as de such bona fide purchaser, with a similar proviso. Sup. Nor. Inf. 2. 8.

We have on such St. as y. 27 of Eliz. and don’t need it.

The construction given to these Sts are in general y. same.

These Sts are both in affinity of y. C. Law. and y. C. Law. 2 and be y. same or y. same. Sup. C. Law. 434. 3. 56. 346.

Roberts says, no make such a conveyance void at C. Law. fraud must be positively proved. Sed Bucelin. 80. 116. 526. 28. 73.
But ye practice has been long established. Ed. Mansfield says, y & c law not have afforded a remedy in both cases, and it is now well settled, yt a conveyance to defraud creditors, as no prior creditors, by y c law.

It is no as well as to subsequent creditors or purchasers, as no prior creditors, by y c law.

But such conveyances are void as between y parties themselves, that are so valid by y words of &c. It is for y words are, as they are void only as to creditors, since if y fraudulent Grantee gives his obligation for y consideration of y conveyance, can it be enforced? Cro. Eliz. 194. 5.

The principle of y c law not be y same. Such conveyances, not be y same as between y parties.

But a fraudulent conveyance within y c law, is void as to subsequent purchasers, even the the time of y honor conveyance, at time of effecting y conveyance y purchase. Now when actual fraud is intended by y honor conveyance, y rule is further, but where y only objection is, of y honor conveyance is voluntary, y rule is harsh but well established.

J G - Contra - to ye rule.


Some Rule in Equity, where y subsequent conveyance (for value) is executed, 14. where it is of y legal estate. The rule is very harsh in some cases.

But y propriety of ye rule has been doubted.
There is no danger of defrauding one who tends to defraud those who have notice. Those persons are not deceived, they are voluntary with graces done.

And a subsequent purchaser for value under an entry agreement with notice, cannot in Equity set aside such settlement, for, so far, he has not; legal title and he has no equity.  

The rule in Equity is contrary even to that at Law. In 1. Ch. 21. 287. such purchaser had no legal title, Equity can not take it from him. As A makes a gift of land, and B, he agrees with C to convey to him for valuable consideration, but does not do it, Equity will not enforce it. 2 Br. Ch. 48. 9 - Ab. 233.

And a conveyance, upon valuable and adequate consideration, is made with intent to defraud creditors, will ad to ym be fraudulent and void. 2. Ves. 10. 2 alt 520 - Ab. 23. 35 - 494 - 671 - 8 - 27.

Sale of a judgment suffered for such purpose. But fraudulent conveyances are usually voluntary. Ab. 490.

In some cases arising under y. Being fraud is actual not is intended by y conveyance for others only conclusive; or legal.

First y Parties combine.  
Second, no fraud is intended. 
Thus a voluntary conveyance, the no fraud is intended, is constructively fraudulent.

But when y fraud is actual, it is not necessary of y party contracting that have been deceived. It is; intent to defraud, in such cases, not necessity y instrument. Ab. 33.
This intent may be inferred from various circumstances, where it can't be directly proved. The most common circumstance in such cases is if the conveyance is merely voluntary. Yet in fact, if the conveyance was not fraud, and there was a second conveyance for value, this one for y first conveyance was fraudulent, so far as regards y second.

It was thin supposed, yet if a conveyance was made for y purpose of defrauding a particular person, or creditor, yet no other creditor can take advantage of it, But y rule has been long espoused, and it is now held, yt such conveyance is void not only as to y party and 

2. Bac. Tom. 2.

such a construction as y former having been given to other 


2 Rop. 605. 53. 58. 60. their yt tendency is to defeat all...

Cow. 7. 11. Rop. 53. 59.

4. Rop. 261. 150. 334.

2 Rop. 1019. 194.

2 Rop. 261. 150. 334.

1. E. 152. 93. 237.

1. mid. 19.

1. Mid. 19.

2. Thos. 1019.

The grantor's being insolvent at time of conveyance, is a badge of fraud under y 18th of Eliz. But so under 27th of Eliz.

2 Rop. 261. 150. 334.

2 Rop. 1019. 194.

2 Rop. 261. 150. 334.

2 Rop. 1019. 194.

2 Rop. 261. 150. 334.

1. E. 152. 93. 237.

1. mid. 19.

2. Thos. 1019.

According as many weighty opinions, y want of valuable consideration, is only presumptive Evi of fraud not under 18th, and 27th of Eliz. It is not per ee fraudulent.

1 Rop. 486. 1. Buck. 268. 69. 4th. 44. Cow. 434. 705. 1. Rop. 13. 15. 395. 66.

But it has lately been decided, that a voluntary conveyance as such is fraudulent within 27th of Eliz, any conveyance not founded on valuable consideration is fraudulent and void in law as us subseq. purchase by

In ye case, is for y Ct and not y Jury to decide ye fraudulent.

Dare any last Rule holds under y 1/3 of Eliz as the conveyance?

It seems, ye it and not, where y Grantor was not indebted at y time of conveying. The last class of cases is then explained to y 2/3 of Eliz. The mere want of a consideration dont exc.
O cons. under a conveyance absolutely voids under 1/3 of Eliz.

Bell. 21/2
Gruh 383. 34. 1. atty 34. 6. 28. 52.

Consider it has been settled, ye reasonable family settlements and advancements to children are good as ad creditors, where y Grantor was not indebted at y time, and they are no badge of fraud.

Suppose A makes a reasonable settlement on his son (voluntary) when he is not embarrassed. But post becomes, (15. A does) in debt, and y creditor claims y property he has given to his son.

And y rule has not been judicially decided, ni in Johns & 3. John Equity R. to be void, yet if A make a reasonable settlement and post become embarrassed, his creditors can take y property from his son. A was indebted to a small amt. I held to he indebted within y 15. & Cotor. to y Rule—

Mr. Kent in favour of it.

What is meant by y grantor being in debt? Don't it mean embarrassed with debt? 15. involved.

See 3. Johns Equity R. yt it is immaterial how small y amt. of debt.

But amt. y case of a family settlement y only one in not a voluntary conveyance is not for ye fraudulent? Abo. 451. 383. 447 as ye creditors ad will subsist as prior? Yembre it is. 1. atty 152.

2. cem 431—1. Bo Ch 23. amd. 387. 95—
Marriage is in law a valuable consideration

4 Cruise 288- (Deed 82) Sugd. 434 § 86, 29%
To ye if a man makes a settleme when his future wife and children and last marry, it is valid, as for money 39
1. Comt. R. 528

Hence a conveyance in consideration of marriage is good, as vs subsequent bona fide purchasers under it 17 of Eliz.

And such a conveyance is also entitled to y benefit of yt-

But there is a difference to be observed, in one respect, between marriage and othr valuable considerations.
If a conveyance is made to A. & B. for a jnmary consideration never of a only all y Grants are protected by a valuable consideration.

But if in consideration of marriage a conveyance is made to A, a party to y marriage and his issue & to y collateral relatives, it is void, as a valuable consideration only protect those only who are within y object of y Settlement 15 y original or original parties & yr issue, not to others collateral.
(Deed 21) Eg. says yt is correct.

Contra 40. 711-
It is said yt yt limitation to y collateral relations in y last case are good as vs Creditors.

Cruise 711
4 Cruise 319- 2, Lev. 185, 2 P. 178
Lawe on they are good as vs purchasers under y 37 of Eliz. - Similar note.

Those latter limitations are good as with doubt as between y parties by y enforce words of y Dea
When executory they may be decreed in Chy.

Settlement after Marriage —

But a settlement made post-marriage, if not in hennance of an agreement made before marriage, & not upon a new and valuable consideration, is considered voluntary or fraudulent as bona fide purchasers. 3 Rev'd 67, 1. 624, 1. 294.

But such settlements, if settled not being embarrassed at any time have been usually supported by creditors. 2 Rev'd 39, 2. 526.

If he was involved in debt at y time of conveyance, & be void as to prior and subsequent creditors, say I could.

But such settlements are fraudulent as to subsequent bona fide purchasers. Roberts 18, 17, 94, 2. 327.

For they advance ye money for y bespoke, it self, not on y personal credit of y grantor or owner, as creditors did — As Ex. on Mortg. of a tenant to General Creditors, or one such creditor. 2834. 1. 2834.

The former case is like a special lien; y latter like a general one.

Now a voluntary fine or recovery is affected by y to 2% of Eliz.

But a settlement made post-marriage in hennance of an agreement or contract made before marriage, is not not regarded as voluntary, s is ergo supported by creditors and purchasers. Rob. 4, 43, 237.

Secudl y settlement varies substantially from y prior agreement. 2 Rev'd 240.
But if agreement may be good so far as it conform to y
original agreement. & fraudulent as to y residue.

For in such cases y original agreement is in consideration
of marriage wh a valuable consideration and y settlent
being in execution of y agreement, is supported by y same
consideration. So y case stands, as if y article had
been executed before marriage and Equity considers as done
what ought to be done, or what is lawfully and fairly
agreed to be done.

When Agreement by Pard

The rule is y same, even if y agreement before marriage
were by Pard.

For y Pard of Trano has no manner of concern with y question
between y settlers, creditors, and purchasers under y agreement.

But if y settlent is not executed after marriage, but
rests in articles only, and recourse is had to a ct of Equity
to compel a specific performance, yt ct will enforce it
only as to creditors and creditor, not as to purchasers
and Made might notice.

For y interposition of y Ct being discretionary, and y Equity being
equal (for both partie are bona fide purchasers) yt Ct will
not deprive purchaser and Made if might notice of y
legal title.

They have y legal estate, qui at law, such a settlent is deemed
voluntary, as y Executing agreement dont bind y property at law.
Settlement after marriage without any former agreement.

But a settlement after marriage without any agreement before marriage, and without any other consideration yet of providing for children, is supported both in Law and Equity as subsequent creditors. This Rule supposes yt y settler was not indemnity at ye time of making y conveyance.

Provided it is reasonable and unaccompanied with any badges of fraud.

Purchase with notice of Settlement.

But when application is made to a Ct of Equity to restore settlement made before marriage (in pursuance of prior agreement) yet Ct wont extend its relief so far as defeat a purchaser for valuable consideration even with notice.

Because says Robert, he is supposed ignorant of y rules of Equity.

Seces where articles made before marriage in pursuance of an agreement require no execution. In such cases Equity will enforce articles to a purchaser for value with notice. Here he has notice of y real Equity, not so in y last case.

Purchase under articles.

On y other hand, if a purchaser under articles, and for valuable consideration, but with notice of a prior voluntary settlement, applies to Equity for a specific execution, his bill will be dismissed for he has not y legal title and has no Equity.

Seces at Law, when he has a conveyance executed.

A recital in an agreement, made marriage of it, being in pursuance of y made before, is with any right concomitant, facts etc. of y prior agreement.
A settlement made not marriage upon a new and valuable consideration, is not considered as voluntary to creditors and purchasers.

So if made in consideration of a portion made by a friend of a wife.

Nor is it a ground of objection to a settlement in such a case, yet the settled portion has not been paid. The agreement itself is a valuable consideration.

If a husband being obliged to apply to a Ct of Equity to obtain his wife's portion, is required by y Ct to make on her, a settlement that made boot, such marriage is not considered as voluntary.

So ego good to creditors and purchasers.

The settlement in such case, is y means by wh he is obliged to purchase y enjoyment of y wife's property. Ego not voluntary. The boot marriage, as done under direction of a Ct of Justice.

And 'tis a trust of y will's portion require a reasonable settlement on her, as y condition of giving it up to y husband.

y Rule is y same, that there is no decree in chy for y husband.

For Equity wu have time written y same condition.

But if y trustees voluntarily and with condition, resign y wife's property to y husband, and y latter in condition of it, make a settlement on y wife during eon. It is voluntary and will not stand as os bona fide purchasers under Art 3, of Eliz. In y case, Equity do have no chance.
to present ye condition ante mencionem.

The above settlement will be good as to creditors of ye settler were he not in debt at ye time.

In such cases, ye settle is void as to purchasers for value, lice ant it so as to creditors, & ye husband were involved at issue. It seems not.

But if ye settle is required by ye trustee greatly exceeded what a Ct of Equity may deem reasonable, it seems yt as to that a Ct may exceed it not be void, even as to creditors.

What is and ant reasonable, is to be settled by ye Chancellor.

Nor even as to subsequent creditors. Semble.

These Rules apply to ye wife's father or executor as such. He is a trustee for her. But if there is an executor in whose leg. hands there is a legacy belonging to ye wife, requires a reasonable settlement on her, as a condition of paying it.

To ye husband, ye settlement ant voluntary. 269 2 sea. 18.

Chy no have done y same. 549.

If a wife has an equitable title to a chattel real, ye husband may dispose of it free from any claim in law or equity, for a reasonable settlement on her. 299 662 3.

My heart is happy. 1 sea. 34.

Hence if a chattel Real is in ye hands of a Trustee, as a lease for yrs, and ye Trustee insists on ye husband making a settlement on ye wife as a condition it will be voluntary and not good.

This Equity strictly follows y law. It no seem then ye.
This a voluntarily settlement on your wife during coverture in consideration of such chattel interest, and be voluntary, as well in Equity as at Law.

Disposition of Property by Women.

In some cases, a disposition of property by a woman to a 3rd person to her own use on ye eve of marriage is vi Equity fraudulent and void as ye subsequent husband.

Not so at Law. For under such circumstances, ye claim of ye husband to set aside ye conveyance, is not such as ye law con recognize. He is neither purchaser nor creditor within a meaning of ye Cpe 13. 27. Ely. nor within y Rule of Law.

Distrinctions.

First, if a woman before any treaty of marriage reserved an exclusive dominion over her property, with a general view to future possible coverture, her husband having made no settlement upon her, can’t set it aside even in Equity.

She he has no notice of it at ye time of marriage.

There must be fraud.
Not de minimis.

Secund, if one is dead. YG concludes.
And y Rule is y same vi Equity, the one of y deceased be beyond sea. His handwriting cant in yt case be proved. For it is not presumed to be out of y power of y party claiming to obtain his evi.
Second. But if he has made a further settle upon her, of wh. a Ct of Equity is y judge, he may in y first case supposed, be relieved by y reservation on y ground of fraud, inferable from his want of notice. 2 Pn 383. 2 Sw. 389-392.

Third. If a woman in contemplation and pending a manage treaty, make a settle for y support of her children by a void manage, y settle may be valid as y husband. And he has no notice. Such settle has been held valid yrs creditors & subseguent purchasers.

This is an act of justice. There can be no fraud.

Due to purchasers.

So if he has made a settle on y wife. 2 Sw. 389-392, C Ch 142.

Fourth. But if y hus. has made a settle, wh was induced by an intended contrivance of y provision for y wife children 2 P 389-383. and by false appearances obviously holden by y wife, y settle do

for y children may be set aside in Equity, as fraudulent upon y husband. In these cases, then is actual fraud.
In all these and similar cases, actual fraud seems necessary to entitle y husband to relief.

If thinking y settlement ought to be set aside, instead of y conveyance to y children, the no such thing has been done.

Fifth. If a woman on y eve of marriage makes a voluntary conveyance of her property to a stranger without y husband's notice, it is void in equity as os y husband's trust is implicated, he has no equity.

The husband is necessary, an fraud was intended or not.

So a wife has in some cases been relieved on slanderous agreements in Equity of her intended husband with third persons prior to marriage in fraud of her expectations.

Who can take advantage of y St. of Eliz.

No other y in a purchaser bona fide and for valuable consideration, can avoid a prior voluntary conveyance made under y St. Eliz. - 3 C. 81. 1. 396. 1. 396. 1. 396.

But marriage is a valuable consideration within y Rule.

Can a Trustee to whom a bona fide conveyance is made for payment of Grantor's debt, take advantage of y St. to be no such case.

This seems to be at least an artificial objection in equity, for at Law, and he has y nominal title. He seems to be strictly not y party intended to be defrauded, and in Equity there is y additional objection, yt he has no interest.
Of these objections are valid, the remedy must be sought by y creditors themselves in Equity - Lord Denman

"A purchaser, under a family settlement made in consideration 20-
or natural affection can't set aside a prior voluntary conveyance -
the same rule as to a woman claiming a payment made after y marriage - She can't take advantage of it and Rob. 371-
the settlement and the jointure being itself voluntary - a being not y cause
of marriage and ergo no valuable consideration.

But if one purchaser for valuable consideration, mere
inadequacy of price, is no objection to his taking advantage
of y jointure.

That is, he may set aside a more a prior voluntary conveyance
this he gave only half price - But inadequacy of price Cor. 105. 13.
attending with circumstances indicating collusion between y parties for y purpose of overturning y prior voluntary
conveyance, may be a valid objection to avail himself 27-
see Rob. 10. 59-

"Scens a purchaser makes free might take advantage
of it and y binding force of y prior voluntary
conveyance he defeated -

But a gross inadequacy of price amounting only to a 26. 66. 618-
reasonable consideration, is itself a valid objection - for
reasons Robert 573-

So if a subsequent purchaser for valuable consideration 3 Co. 83. 3-
bere inadequate appears to have been overreached or defrauded
his Grantor, he can't avoid a prior voluntary conveyance -
He and a bona fide purchaser—

1. The def. purchaser within the time may expect the advantage of it. If a mortgage is bona fide made for valuable consideration.
2. Vern. 272, Holt 477, Camp. 713. 2 Rob. 373, 2 Rob. 58. 462.

He is of a dignitie of a tractable and reasonable

But a free being in Equity, a purchaser only for the duration of security, and by intent of his debt, a voluntary conveyance upon bond or indenture, is void, so that the only "voir dire" and engrossed may be considered to hold his Equity of Estoppel, and to have a right to redeem his Mortgage, and upon returning the land out of his hands, the same held it. This don't interfere with the Mortgage's claim. 60. Title 81° 12°.

23. It seems however Equity will never be a forecloser in favour of a subsistent voluntary purchaser, he being entitled to no favour.

2. 2 Le 75. 5 Co. 244. 6. Hutton 84. Rob. 374, 455, 489. 2 Rob. 499.

The opinions are not agreed on a mere vacancy to whom a lease is made, for his indemnification is a purchaser within y. It. The weight of authority appears to be however in his favour. Contra 25. 2 Rob. 783. 2 Rob. 374. 2 Rob. 10-

But ye time is past it be questionable.

if it is an absolute lease it seems to be void on kindness to a third benefic, quia titi an absolute transfer & property, when y bargain is any consideration for it is altogether contingent. Indeed it is a plain descent from between y parties on both grounds our Life, Et and CT, of errors have adjudged of conveyance fraudulent as os creditors.
To constitute a purchase within y $t$ of Eliz. y purchase must be of y identical thing or subject to fraudulent conveyance, becaus he cant take advantage of y $t$.

Thus when A had a lease for 60 yrs on condition forged an absolute lease of y same land for 60 yrs and for value sold y forged lease (rejecting it) and alll his interest in y land to B, it was resolved it was not a purchase within y $t$. For he didn't contract for y true interest of it, and y interest passed, as between y parties by y General words—Yet y valuable consideration didn't extend to it.

But if y valuable consideration is said, it is immaterial; it seems, what kind of interest or right is purchased, Whether y subject purchased is an actual positive interest, or y mere extinguishment of an interest. As 'Lease for yrs made Nov. 3/6', a fraudulent sale of his lease and then for value surrenders y possession, y latter may avoid y sale.

If lease for yrs for valuable consideration, is a purchase within y $t$, and y reservation of rent is a sales valuable consideration—He may set aside a prior voluntary conveyance—1013.

Cro D 1/91. Nov. 3/6.

It is said yt to render a conveyance fraudulent within y 27. of Eliz. yt he who makes it, must be y same person who post sells as y bona fide purchaser and yt if it is so, A. y latter cant take advantage of y $t$. This seems to be true in those cases only in wh y person making y latter conveyance, has not y estate in himself at y time. Or rather where he is a stranger to y estate at y time.
To Grandfather, Father and Son.

Grandfather made a voluntary conveyance to his Grandson, I died. The father, by receiving land for a valuable consideration, and by purchasing it at a low price, had a voluntary conveyance, and it had been done. If Grandfather had made a last conveyance, for a small estate at a low price, it having been sold to a stranger.

But if the person making a subsequent conveyance, had not the same or a higher voluntary conveyance, he had estate in being, at the time, a subsequent purchaser may take advantage of it.

As Father made fraudulent conveyance, his father post-Grandfather died, Father assigned by fraud to his son. Held by both lease and assignment were both bona fide, as is the purchase.

For y Father had y lesseeable by descent, not a stranger.

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But if he makes a fraudulent conveyance to B, and then makes a voluntary conveyance to C, and C sells to A for valuable consideration, I can't avoid my first fraudulent conveyance, for C took me estate even as between A and himself.

Hence his sale to D was a sale of a stranger his estate. And in such a case, it is immaterial, an the party knew of a fraudulent lease or not.

A Trustee under a voluntary settlement can't become a bona fide purchaser within y law, so as to defeat y settlent in equity. For he can't acquire a right in equity, by a breach of trust. He don't act bona fide.

And if a Trustee by direction of his Cestui Que Trust.
makes a voluntary conveyance, he can't insist in a direction of his Cestui Que Trust, defeat it in Equity by a subsequent sale to a purchaser, even without notice. Moore 787. Sur. 402.

For a conveyance is in Equity, a conveyance by y Cestui Que Trust. y latter being a breach of trust is disannulled with it, y thus as regarded in Equity, made by a stranger to y Estate.

But a person who makes a purchase in his own name, and puts y money, for y ease of another is a purchaser within y Trust, for he acts in precedence of y trust y takes advantage for y benefit of y Cestui Que Trust.

A purchaser purchasing any rent or profits out of land, may be a purchaser within y Trust, as purchasers of trees growing. 1 Am. 301.

Same rule in favour of all mourners' cases.

When there is a voluntary gift of money due or other personal estate, if it be consumed or has passed away by fraud, if done anta y Creditor can't take it in execution, or is not to be found, his remedy is to y property is gone in England, y only may in general in wh he can set aside y gift, is by securing y property on his execution.

And it seems Equity in such a case can't possibly a remedy. In Court y execution can become a lien when it by an attachment on messes proceed. But if it be consumed or gone before attachment, y remedy here also is gone, for no action for damages will lie for these.
Both here and in England creators may prosecute for a penalty by an act and there is a similar penalty provided for purchases by St. 29. Eliz.

Rob. 3. n. 424.

Title Fraud Convey. Sold.

And it seems by some opinions yet a voluntary gift of money is not within St. 13 of Eliz.

is appears to be supposed, yet it must be on execution, where if a specifie money can be found in y hands of y donee what is y objection to its being taken on execution.

Ecc. 2. 8. Ever and Ams. 78.

Rob. 424.

Rulled in Ponch. 116. 34. yt money of y execution debtor, if in his possession may be taken on execution. alter if it is only in y hands of y soleriy who has collected it for hims. but has not hand it over. It has not then become y debtors property.

Money may be taken in Execution. at 6 L. 6 S.

In a case of execution, if y debtors by way of separation, raise a cause it is suits in Equity as the soler is willing creator, not good between parties. I. Eqv. 63. Rob. 428-437.

In matter of Equity. Contrary 43. P. 93. if ye debtor be in law. base on a.

The soleriy can not hold as a executor of good consideration. more private donee and hence it wld. seem y: a conveyance when-usually condition will be void at law under 13. st 27. Eliz. as to creditors and bona fide purchaser for value.

A conveyance he Trustees for payment of debt (no creditor being a party to it) is said to be void as to disinterested creditors and bona fide purchasers. 4th Proclears.

1 St. 185. 4. Say 146. 393.

Rob. 26. 2. tramit 56.

2. Leon 233.
It is deemed voluntary, Semble, Act 429. quay truste
is a stranger to y valuable consideration, sice are not y credite
consumed to assent till y contrary appeares, 4 Ky. 146. 375

But if a creditor is a party to such a conveyance to Trustees,
it is supported by valuable consideration – 3 Co. 51. 5 Th. 46.

And as good as to a creditor not included in y trust.

Now is y conveyance good no as to y creditor who is a party
to it, if y former rule is correct.

A Conveyance or assignment to Trustees for y payday of debt,
made in a neigbouring State by y laws of not it is good,
ns dissenting creditors, mill be so in ys State – The law loci
governs – 3. Bell. 3. 2. Bell. 3. 2. Bell. 3. 1. Bell. 3. 1. Bell. 3.

But suppose ys y effed and creditors are in ys State,
and ys conveyance is by y positive Pt of ys State declared
void, y rule then, says 2. We, mill be seen. There is a case
of ys kind now pending in Georgia.

And such a conveyance for y payday of debt as is valid
according to y foregoing rule, is valid as it seems, tho
ys debt, (for payday of noh. y conveyance was made)
are barred by y Pt of Limitations.

By our Pt, it is valid, that there be no creditor
joined in y assignment

And such a property is not to be made
unlawful.
For a remedy may be gotten away by y Mr -
The debt remains & template y conveyance is to pass. Names
y remedy. 18 removes y It bar - Doug 629. 2 Sum 1689
269. 152. 54. 6. 43. 44. 2. 36 H. 540

And if not y conveyance to a trustee or other索尼
of any creditor, y creditors includes in y trust - bring a bill
in Equity as Trustee for y performance of y Trust (whether
general will be granted of course) y decree validated
y conveyance ab initio

This is still on Eng Rule -
For a conveyance must receive g sanction of a Ct of
competent jurisdiction, and to set aside a conveyance
and be to impugn y decree -

Donation be charitable uses are void as to creditor,
y donor was indebted at y time -
1. Bem 230. Rob 438

There are they avoid, if y donor was not indebted at y time?
Template not.
The rule is founded on y Honorable, yt a man must be just
be for he is liberal, and a purchaser for valuable consideration
might notice can't set ym aside, as he may common
voluntary conveyances -

A donation "causa mortis" must on Honorable be void
as us donor's creditor, it being Testamentary - Here we
have me Fr. - and hath Honorable before laid down, y
voluntary conveyances, even if y donor was not indebted
at y time of y donation, no be void as even us
subsequent Creditors - quoce should it not be purchased!
It has been determined in Eng. yt a conveyance to

Equity

trustees for y

by an action arising "ex delicto". He made

bonds y suit, and with y confessed object of defending

Ply of his charges.

For there is no debt nor ascertained duty existing at

time in y Ply's favour, as in y case of slander, trespass.

He is neither purchase, nor creditor - at y time of conveyance -

views of made between judgment and execution - at home even

also at close. Th is from y moment a creditor - and

highest kinds - 1. Deut 27:17 se

It some however as a conveyance for another or a valuable one,

but not in such a case be good in Ply's -

But it needs yt a voluntary will insol 568 made between yt debt

and yt made at a certainty, being a right to demand only, is

not vested in covenanter, as in actual human affairs -

for there is no personal debt or duty - duty must doubt

if y covenant be for y payment of a sum certain. The

claim must then be a debt, and y debtent must be seen -

The covenant in such a case creates a debt in prudence -

If one as presents an estate to be conveyed to another original -

(as is a con) instead of to himself - it is not used as in

his estate to be purchased under him, being conveyance appears 21

to have been in trust for him - for here there is no conveyance

of his own property by the person presenting as purchase -
38-

In general if one person has a mere power over another's property, or in another's right, a conveyance by proxy can't in any case be fraudulent, as to his creditors. This land in right of his wife as executee. In such case his conveyance of any chattel interest, not being out of his hands, is not fraudulent as regards his creditors. Quee as to bona fide purchasers.

But if one having a power over another's property, conveys it in trust for himself, or conveys it to another in trust for such persons as he shall appoint as his creditors, it seems, may set aside conveyance, for by this conveyance to himself or in trust to himself, he has a complete control over beneficial interest, and any subsequent voluntary settlement is fraudulent as to creditors.

And whenever one having a general power over property, makes a voluntary appointment, it is void in Equity as to his creditors, it is a device if he shall have a power
Voluntary Bonds

By y 13 of Eliz, not only all conveyances do, but all voluntary bonds are void. The validity of such conveyances is to be tried in a Ct of Law. But if of a voluntary bond, is to be tried in a Ct of Equity. In Ct of law, every bond imports a sale, consid-

But in Equity bonds resting solely on contract may be disputed. But should be held perfectly valid. But post y obligor's death, the question of validity of y bond may in many cases arise in Law. As y executors pleading a bond outstanding as assecutor. As in y mode of y executors doing so were Rob. 470 – 1419 – 30 – 80.

But usually when claimant not money in contract, y question is tried in Equity. Being imposed upon mistake arising and account.

A bond remaining unliquidated, y obligor's a very strong badge of fraud.

Where x forbids, executed a bond to his daughter and x putt it in his executors possession of it till his death; y bond was set aside even on presumption of fraud. But if x forbids, as x daughter, as x executors, as x executors in possession, x executors or persons claiming under x executors.

A voluntary bond is regularly void, and fraudulent as a bona fide creditor. So a judgment creditor obtained by confession is also void, if it be voluntary.

To also if a judgment be obtained by due course of law yet if it be upon a fraudulent bond, so it will be void.

But as to the burden of proof no distinction prevails in any two cases.

If a judgment obtained is fraudulent, the obtained by confession, y Hf in y Judgment, takes y true probando. But whereas verdict has been obtained by trial and verdict y true probando lies upon y party imbroaching y Judgment, quasi y confession unless confessed.

The mere transference of one credit to another don't render a conveyance void; for at a law, a debtor has a right to pass over one creditor to another.

This rule however has been restrained to a certain extent by y feeling of y Bankrupt Law.

And when a voluntary bond has been delivered rdfs to be suspected, a lot of equity has under special circumstances, declared permanency of it as vs volunteers. As voluntary bond best marriage to settle a jointure, y jointure being settled, y bond was given rdfs, y jointure best failed.

In a rule in Equity of one vns a bond for money has
A conveyance void in its creation may become good in favour of a bona fide purchaser, no matter "at what price."

As it makes a fraudulent conveyance to A, A being honestly and fraudulently, A conveys y property to B, a bona fide purchaser, and B hereafter holds y property to y exclusion of C, some one of 18, and 17 of Eliz. 128; 3. Lev. 38.


If it is original Grantor Y as between y parties y conveyance is binding, so y't. A under y'F, come in y' place and has all y' rights of Y. It follows y' a conveyance by F to a bona fide purchaser would be valid, so of course such conveyance of all will also be valid.

If it is worth noting to make a fraudulent conveyance to A, who is acting y fraud, and he makes a bona fide conveyance to B, who has no notice of y fraud, B will have and hold y land as an existing conveyance of Y, and for y same reasons. Let Holt says, that B, 3d M. 57, doth.

3. Medd 54. 11. 3d 125; 3. R. may 54.
18. 38. 7. 15. 15. 3d 471; 1. Purit. 53; 527, note.

Saman y's weight of authority it was held by a decision of 55.

So it was fraudulent.

3. Parker 12.

Under y' F, 522, a valuable consideration bona fide, whatever it appeared, entirely obliterated y fraud, so y't. it never again can affect y transaction. Thus a purchaser for value of a fraudulent Grantor, will hold as a subsequent bona fide purchaser,

from y original Grantor.
to hold a voluntary grantee of a freeholder for value, and he may
avoid a prior voluntary conveyance of a original grantor
for he has y come right, wh his grantor had.

In some cases of marriage settlment, a constructive consideration
in post facto has been held to defeat a conveyance
originally voluntary as a bona fide purchaser for value.
Thus where one having been long in possession under a
voluntary conveyance enters into a treaty of marriage, by
other party to y marriage willing to his appearance of
ownership, is wanted to consent to y marriage, and acquires
a settlment of y property, the settlment has been adjudged
good to y creditor and purchase of y grantor.
For an honest purchaser confiding in such complete title,
A conveyance originally good, and before fraudulent, by matter
of post facto de y mortage permit, this to remain in possession
for a great length of time, while y mortage was valid at first,
it will remain so.

I have always doubted y wording of y rule, yt a fraudulent
conveyance may become good by matter of post facto. The fact
is, yt a conveyance is not made value, but it is made
a channel through wh a good title may pass.

A fraudulent conveyance can never become legitimate in favor of
conveyance

fradulent grantee, by any length of possession, if he
remains in possession 10 years, by not possession a mercurial
order no obtain title, still y fraudulent grantee does not
obtai title.
They dont y fraudulent Grantor acquire title by y possession.

First, y possession is fraudulent. y continued possession is a continued fraud upon y Grantor's creditors.

Second. The possession must be adverse. But y creditors of y Grantor never had a right of entry, like y leg was made, and no one is blamed, ni he had a right of possession during yt periods.

The st 13. 4. 18. out. y act to be made to witnesses 3 Co 82 [3 Co 82] -

1. 3d 131 [1. 3d 131] -

5. 3d 77. a.

fraudulent transaction. Rob 75. Plow. 627 78

But 2d as they inflict damages upon grantor, they are construed strictly like all other words, "humankind" law 19 to 22 of yt title.

In construction igo, these st to have been held to exclude transactions not are not within yt letter.

Thus where a Tenant for life committed an act of forfeiture of his estate, in order yt y receiver or he was possy to y legin right enter for yt forfeiture, so as to defeat y creditors of y Tenant for life. This has been held to be a fraudulent transaction as regards y creditor.

In y construction of these yt there are several enumenated. 47

badges of fraud, 7th follow 3 Co 81

I. The fact of y grantor's being general 18. including all y granted property in general terms. - This can't concluded, but a strong badge of fraud.

II. The fact of y grantor's remaining in possession to yt execution of y grant, is a strong badge of fraud. It is said to indicate a trust in his posses
The fact of grants being made in secret is a badge of fraud, for such grants are usually made in secret.

That it was made, sending a suit on action of debt vs. Grantor.

5. The fact if there is an absolute trust, and wages is by
for y must be important of y date.

6. That there is a vendue made in y absence of a Grantor is a badge of fraud.

7. A conveyance made in y absence of a Grantor is a badge of fraud.

8. The Grantsor retaining y deed or his own possession
is a badge of fraud.

9. The Grantor being involved in debt, yd is specially a badge of fraud under 15 of Eliz.

10. A clause of revocation, is also a badge of fraud.

These are y most general badges of fraud. There may be many others, they may be infinitely various.

But best all y badges are important, only as they convey the know of y fraud.

But yd are unnecessary, for yd are not, when y conveyance is fraudulent, is for a valuable consideration, and intended as a real disposition between y parties, and not merely colorable.

Possession of y property after an absolute conveyance by a lendor, is a strong badge of fraud. But possession of real property
by y vendor, after an absolute sale is not de strung a
a badge of fraud as in y case of Personal Property. For
Title of former, is to be sought in Title deed to y latter
in possessor. Rob 197 to 202 1. R. 44. 7. Mod 37. 1. R. 252
548. 555. 71

Where y Grantor or vendor not only continues in possession
but accompanies yt possesston with acts of ownership,
yo fact renders yt presumption still stronger

Presumably y sale of conveyance is itself a badge of fraud,
but renders that stronger when accompanied with possession
of property. Such possession is almost uncontrollable Edit.
uncontrovertible 48

Therby land as y subject of y conveyance, yt continued possession
of y Grantor is an assumption Edit of fraud, and yt presumption
may be rebutted by other acts. of one having suspended to
sustain for y payment y debt, or left in possession as Bailiff

But yt has been held, yt yt possession of goods by vendor
after yt absolute sale, makes yt sale fraudulent per se, and 2 R 587. 95
independent of any proof. yt yt any kind however strong,
is not admissible. For other yt sale was yt bona fide,
why yt yt be fraudulent per se, yt yt consideration,
I suppose, enters into yt

But on yt other hand, these are numerous authorities, yt
yt possession of goods by yt vendor perst an absolute Sale,
is merely a badge of fraud, and may be rebutted by other
circumstances. Bradlyt 92 1. Rob 159. 2 Rob 7. 52 25
3 Rob 7. 83

3 Co 81. 9
Cow 43. 2
1. Rich 44
Bull 28
3 Esp 38 1
32 52
But however y State may be, it is clear, yt if immediate delivery of y goods to y vendee is impossible, y want of possession of y vendee rather makes y sale fraudulent.

I have always thought yt possession of goods by y vendee, is only a badge of fraud, so yt if y vendee can hence yt y sale was "bona fide", y sale will not be void, and in ordinary cases, yt last is y most rational rule by far.

As y Case of a country merchant buying goods in NY, and leaving ym in y hands of y vendee, a short time, till he can send for ym.

Further yt where immediate manual delivery must be very inconvenient, y want of delivery may be supplied by a symbolical delivery, but yt term "symbolical", is imperfectly used, for it is in fact actual delivery. As in where goods in wharehouse are sold, y delivery of y key is satis:

Where y Grantee's or vendee's possession is consistent with a deed of conveyance, or y terms of sale, such possession is no badge of fraud. Thus if a man makes a deed of conveyance to take effect on y performance of a condition precedent, his retaining possession till yt condition is performed, is no badge of fraud.

And yt must be yt same, if goods are sold on a condition precedent, so far as regards yt 13 of Eliz.
A mortgager remaining in possession of lands mortgaged is no badge of fraud for fraud and a purchaser of such lands, but merely has a lien upon you by way of security.

But a mortgage of goods is void under y St. 21. Eliz as by y Mor, if while in possession he becomes bankrupt. The provisions of y st are intended to remedy y evils of a false credit without any reference to y fraud.

1. John 228. 2. John 556. 7. 52. 

Of a person becoming insolvent is allowed to remain in possession and disposition of another's goods, y creditors of y bankrupt may take y goods as his, for it gives him a false credit.

If a creditor having seized goods in execution, suffers ym to remain long in y debtor's hands, they are liable to be taken on execution by other creditors for it gives him a false credit and y other creditors are not presumed to know of his secret lien on y goods.

That y conveyance was made pending a suit for y recovery of a debt to y grantor, is also another badge of fraud. But as conceiv'd, it is a badge of fraud under y 13 of Eliz. only 12. in fav' of creditors merely, and not as to subsequent purchasers under 27. of Eliz. Same Rule if y suit is pending in Equity.

And a conveyance after judgment has been had, and before satisfaction, has always been regarded as a badge of fraud, and y suit is somewhat stronger in y former, for while 1. Vern 460 y suit continues, it is uncertain at least in contemplation.
1. From 460 of law, it is uncertain what may be a proof of guilt.
   Not so in this present case.

   The case, in which badges of fraud operate to establish
   inference of fraud, are chiefly those where grantor
   has become insolvent, or yet other property cannot be
   found to satisfy his debts.

   But if one purchases for full price and bona fide,
   this notice, yet grantor is indebted by bond
   or other contract, his title ain't affected by y notice
   even in Equity, for property is not to be made unassurable
   quity grantor is in debt.

   Under y 13 of Eliz, if one conveyed land under an intent
   to commit forfeiture by an act of felony, and then commits
   y felony, y conveyance will be void, as y crown or State,
   even the not within y terms of y ct, as within y previous
   of y General Law and y it is in appearance of y Camp Law.

   And if one makes a warranty grant and whereas grant
   commits a felony, it will generally be presumed, it he made
   a conveyance with intent to avoid y forfeiture.

   Mode of taking advantage of these lts.
   The buyer taking advantage of these lts., does it, by treating
   y conveyance as not utterly void.

   'Twas y creditor, or y question of y grantor, if y creditors
   have acquired title, they bring equity as y grantor.
Sometimes recourse is had to try to set aside y fraudulent conveyance.

Where y question is raised by special pleading, y fraudulent conveyance is treated by y party pleading to set it aside as if it were no conveyance. If y debtor makes a fraudulent conveyance & dies, & his creditors bring an action agst y Co Eliz heir, & he pleads no assets by descent, y creditors may reply, if he had assets by descent, viz y property Rob. 555. 52 fraudulently conveyed and prove y fraud.

Rule y same, where y conveyance is of personal chattels.

The first and direct step then, is to y property to be taken by y creditor, and then the question an conveyance fraudulently, or not, may arise.

Ad Ad, one having made a fraudulent conveyance is indebted, y estate is y same as if he had died in possession, nothing going to his creditor, & y property is considered assets for y payment of his debt, and in this may be taken on execution upon judgment recovered as heir.

The real property of a person deceased, is never in y manner taken possession of on execution in y Hebb's for his debts, but y property must be sold by executors on an order of sale. Hence eno y executor must possess y remedy for y creditor — for if y rules were allowed one execution, no defeat our average law. Hence eno y creditor may claim yt y conveyance
So if a debtor having fraudulently conveyed a estate, it can’t be seized in execution, unless it can be found.

In any of the cases after a fraudulent conveyance of his real property, his whole contract creditors can’t take the property in any, because it is liable only to debt of a higher nature, 18. Specialties—2 Boe. 243. 378. 3 Do 430
Rid. 392. Lovelace on Will 93.

Under 13 of Eliz. y fraudulent purchasers of goods, if he took possession before death of a donor or vendor, may in some cases be charged as holders "De Jure Tert" by y Creditors. So ye in such cases, ye Creditors have 2 remedies either as y lender, or he may bring his action as y rightful Executor, and seize y property fraudulently conveyed—2 Tho. 589

2 Leon. 223—Cro Sam 271. Gen. 197

It is a rule, if a purchaser obtains y goods by y permission of a rightful Executor or administrator, he may be charged as "Executor De Jure Tert." In any case where y fraudulent purchaser has possession of y goods by y delivery or permission of a rightful executor & so y he can’t set it aside as fraudulent & bona fide creditors, therefore as he can’t reclaim ym. y law allows y creditors.

2 Tho. 587—

So ye if y fraudulent bendes takes possession of y goods after y bendes death, but before probate of y will, or before administration granted, y Creditors may treat him as Executor De Jure Tert. For ye is a wrongful intermediary, and as y Creditor are y only persons injured, they may pursue y remedy.
There can have been nothing de novo in Comt. y where very insolvent. It is doubtful: one of them can
not be defended.

But it is said ye if: their deeds take of goods past y bender's Co. Eliz. 810 41, and
death but with permission of rightful executors, after probar
or administration granted y bender's creditors can't treat
him as executor. De Jon Fort: quic his he then a benefactor. I. 2. 313-
to y executor or administrator, and may be held as such.

This last rule however is contradicted by better opinions, and according to ye, y bender's creditors may in ye last case
may treat him as executor. De Jon Fort: and ye last
appears to y y correct rule. Ect. question possece.

A fraudulent sale requests renate by bender, and his representatives.
18. it lands in executors. But yet ye bender may claim to Co. Eliz. 810-
such a sale in favour of creditors. 18. they may obtain, ye have
an hist asset due. A Sale to satisfy some other creditor of
bender. This was then decided in Comt. and has often
been recognized by ye P. C. 4.

From here makes a fraudulent sale of an estate declared
to him to defeat ye creditors of his ancestors, ye conveyance. Flow. 441-
a word under y 5 of the 15. This is't within ye letter P. C. 55-
bout y spirit of 5. 30.

The same rule holds as to fraudulent sales of personal
assets made by executor. Etc.

It may be asked, what red be their remedy, if ye property
was consumed or destroyed? Their remedy is in Equity.
That it will become properly unto y house & bende, and shall hunt as a husband for y creditors.

But a bona fide purchaser of y assets from y executor will hold y same as all y creditors & y executor. Their remedy is only execution only and if he becomes insolvent or absconds, so yt he can't able to respond, it is yr loss, and not yr bona fide purchasers under him.

and if creditors or most of them can prove collusion between executors and debtors the demnity y assets, they may by bill in Equity forevert Payment of debt, to y executor.

A fraudulent conveyance is binding not only upon Grantor and his representatives, but also all persons claiming voluntary under him. So yt it binds not only his heirs, executors, but also his devisees, legatees, and persons claiming under y Act of distribution.

Same Rule in Equity, as to voluntary executed conveyances.

But voluntary executed agreements are not in general enforced in Equity, for it and not in y own bind y Grantor himself. Bob 660-

and when on y death of a, administration was granted to B, who pending a suit for y refusal of his letters of administration, sold y assets, y sale was held void, as y adm. hole appointed.
Therefore where a Grantor attempts by a voluntary act to defeat a voluntary conveyance of his own Equity, in some cases enforce a conveyance by him. 1 Law 373, 3 Bown 59, 1 Eq 61.

No one can defeat his own actually fraudulent conveyance by his last will and testament, even tho' he did devise it for a payment of debts, for as between him and his Grantor, his devise is not fraudulent, and what he devises it for a matrimonial purpose, it makes no difference. Still his creditors, if a tender and 264 might set it aside.

A made a voluntary settlement on his wife, and afterward cancelled his deed, it was held to bind him in Equity.

But any equitable interest remaining in a fraudulent Grantor will pass by a subsequent voluntary conveyance, or yt 373, 60.

If a man makes a fraudulent mortgage and then essay a voluntary conveyance of his Equity of redemption, it is good.

For y take grant being only of y Equity of redemption, is not inconcistent with y existing mortgage. Each is valid quoad y other. Neither can set y other aside.

So if y voluntary conveyance had been before or fast a bona fide mortgage.

And if a deed has been unduly obtained, relief may be had as it in Equity by a person claiming under y will of y Grantor.

And a voluntary bond is good in Equity (for a sum certain) if it don't interfere with y claims of bona fide creditors.

Neither y obligor nor y representative in gen. can set it aside.

As to y specific execution of a executory agreement see 373 661.
Fines for fraudulent conveyance.
2. Who can maintain this action §56.
3. Tenants in Common and Joint Tenancy §52. Against whom the action lies §56.
4. Evidence. §58.
Trusspads dueor claudum fragit.

Trusspad in its most consonant sense signifies any
transgression of law.

As considered under present title: it means, entering
in another land for want lawful authority & doing some
damage.

Every unwarrantable entry on another's land, is called a
"Trusspad by breaking his Close" and implies some damage
as: leaving down hedges, and yet application of law can't
be rebutted even if no damage is incurred.

Even the one who enter on land covered with snow.

In certain cases however an entry on another's land might
license is allowed by law thus to execute legal process—6.Ca.146-
for demand or pay money payable there—to dislodge goods—3.Ca.212-
by a reversioner to see an waste be committed—4.got
refreshment at an inn—bide 1.20.21.

So if one have land, coveting y breed, he may enter to fell
ym and take ym away—Deed 398-

So hunt ravens beasts, why bubble goods require—
This right is allowed not for y good of y invalid, but for
y Public—Contr. Com. 2. 2. Roll 358—Eps 294 89, 178 88

But y hunter must not dig for ym in another's land—

Foes of divine animals. now and ravens not a bird, Sall 576-
but he may a Fox—a bear, E30,
...When a tenant in his own land, he may harvest it in any lands of the Lord there.

Note: If an animal 'Fero Naturae' is started on my land and killed there, it is mine. 'Secus si duxerit in another ground, and killed there, it is then g. hunter.'

Previous License - Subsequent Unlawful Use, and Doctrine of Relation -

*The right to glean on another's land -

Contra -

Gill, Ev. 253 - 3 BC 212. Exp. 218.

...But when the law gives such license, any subsequent unlawful use by authority as given, made or transferred "ab initio" for it is eradicating legal presumption arising from a subsequent act is, yet he originally entered for the purpose of committing Waste or other unlawful acts, or in other words, yet he did not enter under any license.

There is yet another reason. See R. 162 - is it not rather yet there is a tacit condition annexed to a license and is then broken?

...The law next suffer any one to be injured by its license - is a Traveller having entered on farm - steals any thing - and may be sued in go action.

But in general a "use nonleasance" can't make one a trespassor by relation but supposed no act - but is a mere omission. Trespass is a tortious act; there must be a "misfeasance -

Thus a traveller at an inn fails to pay for entertainment - ye is only a breach of contract. So if he commits slander, or writes a Slibel. The subsequent act must itself be a trespass in order to have relation back, to make a Trespass "ab initio."
So if a distrainer refuses to deliver back anything detained on tender of rent. The remedy is esse.

The last general rule it is said, won't hold of a thief, who having made his arrest on mesne process, omit to return it writ. For distinction, vide Pomerium.

The reason is, yet writ, return, it can't be given in Evin.

Baen. Abs. Sec. 18.

In the above view, ye can't strictly a trespass by relation, for ye arrest can't appear to have been originally lawful.

Besides when a further act is necessary to complete ye writ, it is already begun by licence or licence of law—ye omission of it must leave ye original act unjustified.

There one enters on ye land of another under a licence or fact from ye latter, ye subsequent abuse of ye licence don't make mind a trespasser by relation.

The entry being legalized by ye licence, and ye law annexed no condition to a licence given by a party.

To constitute trespass, it is said ye act causing ye injury, must be voluntary, for if done unvoluntarily, and with fault, no action lies.

But ye rule an't true in cases, in which ye act complained of is not committed by self himself, for ye law don't regard ye intent, but it not tend to mitigates damages.

Hence an infant, idiot, lunatic are liable creditor in trespass at any rate, it can't be true, yet ye wrong must be voluntary.

Sack 13. 110-119.

Esc D. 383-

Phryn. 161-

Brougham

The rule then only applies in cases in which it is not committed by the defendant, but by some other agent, to whom he stands in a responsible relation, and which must be voluntary, and not in the course of his action. The action must lie — "not between two men of equal rank, but be liable in all and similar cases only ground of negligence in a different form of action, such as trespass on land, etc. where the injury was caused by the defendant's cattle.

Such cases are analogous to injuries done by servants. As at But. 36—

This action won't lie for an injury committed on land, in a foreign country, y. action being local —

The action for a trespass committed on land, is called "trespass, quære clausum fremit: from the words of y. Wit—vide Pud. 36-54— 3 Pet. 109—Con. 2. 3. 1.—

In a house, quærere domum fremitu—

Who can maintain ye. action—

No person but he who had actual possession or land. At a time of using same, can maintain it. But. 114, 3g—

The remainder man or receiver can nit—

For trespass is an injury to another's possession, and an action of trespass is adopted only in such cases. Another in possession, and if it was adapted to ye. case exclusively.

The right of possession will be valid to support an action neither of equity in Court, if no other construction is had—
And it is said, yt y possessor must also be lawful, and yt an intruder cant maintain y action—2 Len. 147-
4 Len. 184—Plow. 546—Bae. f. C. 3—6

But it seems, yt y Rule holds only between yt monскор in possession and him who had yt right of possession—
For it has lately been held, yt any actual possession is datum, &c 1238—Lev. 223—
For support y action as a wrongdoer, but not as a person having yt right of possession, ibid.—11. Co. 51. B—

Case 403—

The person in whom y possession is, cant generally maintain y action for injuries to it, while in y actual possession of another—actual possession, in y self being necessary—

Thus if land trespassed on, is in y possession of y tanner for yore, he and not possesser must bring y action—
So Jan he is he has entered—Bae. Abr. f. B. 3—

Case 404—

If y party in possession is a wrongdoer (see distinction Post and case of Tenant at will) according to y theory of y law he cant a wrongdoer, yt y possession of y 3d person was unlawful, but in y case he may bring regaining possession maintain y action by fiction of law—And not possessed in fact at y time of y injury—Post 52—

An heir cant maintain y action, ni he has acquired y actual possession by entry, he he may make a lease there—

G. R. Rule—In yt a person dispossessed of land cant & before reentry maintain y action for an injury done to it betwixt y time of discession & reentry—quod he was not in possession at y time of y Injury—Gestmt 81—

P. 58—
But suppose the estate determined in my meantime, do ye d—
Com. J.B. 2.
2. Rell 350—
2.

But after ye diseress has recovered, he may maintain an action as ye disessor for such injury, for as between yo,
y disesess or asafter rentny considered by relation, as
having been constantly in possession, ad nil y action for
these brents after a revery in effectum—
Please assistant 502—

It is not usual in y present practice of Midamonore Wall,
to lay a brevise or to a continuand when he may
lay it, but to lay it with Co. Litt 257 a 2 Rell 554
and a continuand, this will be proper— In Ray 957.
Guefin Please assistant 502—

ye disessor on y whole case may state. Specialy—

But an action as a Stranger for injurys committed between y
disessor and rentny— For y above fristn, obtains only
Co. Litt 150— between disessor and disesess—
11. Co. 51. 81— B-
Co. Litt 540
2. Rell 554. 79— DP. is not liable to him, but y disessor is liable post
Com. J. B. 2. rentny for y whole time—
11. Co. 51. a B. Bae. Ab. J. G. 2— 2. East 244— 46—

The reason of y Rule is said to be, if y purchasers under
y disessor is supposed to have paid him a Consideration,
and neither of ym ought to be twice charged—

The last rule however holds, only "quaequ. actionem—
not present prioritam," hence y disessor may after
rentny takes y fruits of y land whc grew during y second
y 2 discover as ye first. Whenever he may find you, as grass, com— 11. Co 51. 52. Co Lib 55. A. Hel 152. 5 Co 85. 2 Co Elc 61. 464.

On claim he may bring oner for property remanent, to y second property discover.

The discoverer may before entry have an action to discover for want of discover, & for want entry, for he may then be discoverer.

2. Roll 553. Bac Ab 166. 3. C. 3.

The person in y possession either of a freehold or a term for life, or an estate at will, or by surtenance, may maintain y3 action. Com 8. F. 1. 2. 2 Roll 551. Bac Ab 8. C. 3—

1. East 3. 47. 46— and 2. 5.

So if any person in actual possession go discover.

But a Tenant at will or at surtenance for a discover, 10— can maintain it only as a stranger and not as landlord— for ye latter in every case can enter, when he pleases and 2. Roll 158. 175.

Destroy y Tenancy so discover— Co Lib 7. 1. Selini 387—

2. Roll 551. Bac Ab 8. C. 3—

After now as Tenants at will, who are regarded as.

Tenants from ye to ye— 20. Estates at will.

Trespass of an Estate for ye, if a tenant may subject y lesser 12. Bat 138—

in ye case— Bac Ab 8. F. 8. 2—

If ye lesser invade y lesser's emblems, y lesser may have trespass on him— Bac Ab 8. C. 3— Comyn Sig. 8. 8. 1— Co Elc 143—

1. Sig. 40—

It is said, ye Tenant at will can't maintain ye action.

as any one, who enters under colour of right— Selini 387. Bac Ab 8. C.

This can't be law now. 12. doubts an it ever was.

God Queer, if ye defendant was actually a wrong doer, for no such an one any procession is valid.
If a lessee at will at will is said, may may maintain ye action as a stranger. for to ye trespassor or injurer of y land, quit ye possession of. In lessee at will is y possession of y lessor, what I presume were a rule for y change of tenancies at will, but it isn't now law.

Sure ye tenancies at ye time, IE, at will are convertible to tenancies from yr to yr.

If a lessor—for ye reason of tree, he may bring. 

Be at 16.3. term, for by ye reservation, ye land on wha tree are is reserved, and now he retains y possession, and y lessor may doe not only for cutting a tree, but for making his plea, (The foresee of a lease ant. possessor of lessor, no y lease can determine.)

24. 25—

If y lessor at will commits politory waste, y lessee may have ye action as heir, for such an act determines y estate and makes ye lessee a stranger.

A lessor entitled to a heritage or possession of y land, may have an action. Of ye law. for a trespass amounts to it, but he must be in possession of y lessee at ye time of ye Injury. 3 Leon. 213—

6. East 502

And he may have ye action, they def entered by y permission of y owner of ye land, and he may have ye action poss. y owner himself.

Com. B. F. C. 2—
2. Roll 569—
Flowe 431—
Bar. 24. F.C. 3—

Note: If in any case need not be in possession of y land at ye time of bringing an action, ye might of action assumes either in any other time. That.

The owner of soil in a highway may have the "Exit" for an injury done to it.


It must be by a town surveyor, and not his.

In Common law, highways are too abstruse for More Innocent.

If land in y possession of is done by B and is is to have one half of y Crop. B. it is said, can't be joind with is in a Tract. It said he can't in possession go. This before y Crop is. (for an injury done to it)

But it is held at the might own for injury done to y crops. 9. Chit 148. Tho not in Tract. An Col. Fro' not should be hurt by a alien and there.

for it has since been held, yet if A agrees with B Agree of y Soil to plough, sow and give y owner half of y crops, it may have Tr. In Col. For' for treading down y corn and y owner and jointly interest in y crops growing. It is to have part by way of rent after.

Indeed possession of y land belongs to it, till y crops are gathered (at Col). This is a later opinion and y best.

Husband and wife may join in ye action for an injury done to y land, for such injuries y action survives to y wife. Bar and Stone.
Tenants in Common and their tenants

Tenants in Common as well as the tenants who join in taking up land held in Common. The latter being in personality, yet y damaged by so monkeys as

2 194. D 387 - 16 D 404

see Tenants in Common

To the Commission

A commission to Bankr. has issued to one, who has met an object of bankr. that land, and y assigned toxk possession of his land, having its extent, that he go action lies as ym y commission being there.

In what Injuries it lies

Every person is answerable not only for his own trespass, but those of his own cattle, and if any by his negligent keeping, stay upon another's land, if he permit them, or carries them on, he is liable in an action of trespass.

2 ROLL 365
Bae 2 F 1

15

Thפש may enter through y fraud and negligence of y owner, of y land, as for want of dale fences, he it was his duty to maintain.

3 ROLL 211
D 367 - 16 D 386
Bae 2 F 1

But for fresh past, by cattle, y party injured has his election of this remedies. He may either distress y cattle at damage,

Tenants shall hold ym impounded till satisfaction made, or Bring yd action.

For what Injuries, y action lies and et cetera.

This action lies as y agaisr of cattle, and kala some of theirs, hunt only and kala others, it lies to y either y agaisr or owner.
But he can't regularly pursue both remedies. Thus, if he disposses, he can't maintain Trespass; and if converso, Trespass. He can have only one satisfaction, an election being once made, it is binding.

For ye distinction see Alphéron.

It has been held of 1. 57 Trespass act, but B's cattle, in y land of C, to may disposses for damage servant, see Alphéron.


For he can't maintain Trespass to B, the cattle are mere instrument of mischief in B's hands, still as they are actually doing damage, C may have a lien upon them. If B has the remedy for A.

If a tree of A is blown down on y land of B, and A has to take it away, ye action don't lie; for it's only the falling of a tree. But if it's his fault, it is by inevitable accident, and as he is not divested of his property by ye accident, he has a right to take it away.

Pieces of y limbsings of a tree, that fell on another's land, if y falling might have been avoided or prevented by proper caution. The falling of y tree an't y act of A, like y lepping and consequent falling over. The former is unavoidable, y latter not so.

If a timber float on B's land and does damage, it is said is liable there no negligence, if there liable, the Trespass on y case.

In case, I presume on neglect, and not Presumption of neglect ant chargeable upon A, how does y case differ from y last?
If a beast be so stolen, is put into or close to A's land, it is justified in going after it and no action lies against him.

If y' fruit of a tree falls on y' land of B and A goes after it, he ani liable to losing ed. not be prevented.

This rule contradicts a popular error, viz. if A's tree overhang B's land, y' fruit of such bough belongs to B. This not so, y' fruit belongs to A

This seems correct.

But if y' roots of a tree standing in A's land extend into y' land of B, they are tenants in common, it is said of y' tree and fruit. Substituted

When y' roots of y' tree dont extend into B's land, their boughs shade it. In y' case, y' whole is A, where as to y' first proprietor?

How can it know when and how far y' roots extend into B's land? Suppose y' tree extremity of a root so to extend, what is B's proprietor? This rule leads to uncertainty and controversy. Besides it seems to contradict y' last rule.

As an elm. kata y' rule, y' roots of noh extent infringe may be planted in a 5 acre let, and y' roots reach into a neighbours land, and he not then be tenant in common. So of Lombardy poplars.

If A's cattle pass into B's land and thence into C's, C may have y' action ed., even if they pass through C's fence, wh was out of repair. For C is bound to fence vs such cattle only, as his his adjoining owners
only may put into his dore.

If a man bound to repair a bridge, can't do it nearly going into his land, he is justified in going upon it from necessity. It is y knowledge of y Public.

If a has sold trees growing upon his own land to B, B latter is justified in going upon y land, to cut and take ym away. This right is implied or y Sale.

Ante 1. Title by deed.

It was held, yt if one goes upon another's lands, adjoining a navigable river he trow a boat, y entry is justifiable. it is for y public good.

But ym. can't law it can't allowed ni by special and ne have ni special custom. Public Highways.

But it seems agreed, yt if a public highway is impossible, travellers may go on y adjoining ground. This is required by public convenience.

Beware if y adjoining land is enclosed. Ed Ray 125.

But B doubt an ym can't be considered an exception. B Ctrs, but yt question has been decided since yime.

Bt wrote by y B R.

Favor ye Whitehead.

Drury.

Bc. He said as to break ways, Day 716. A Person can't maintain yu action for an injury to grass growing on land, ni wha has a base right of Commons. For are, he has a right to take it by fee of his cattle, he can't y possession or property (y right is incorporeal). It is a right to feed his cattle on another's herbage.

2. Role 552. 2 (Bc. 38).
But if a neighbour has been in your habit of entering, frequency of that occurrence might be construed as a licence.

If your owner has unlawfully taken another's goods into his house, you latter may go in after them, the door being open. The law gives you licence.

So if one enters to suppress a riot or affray or other disturbance of your peace, causa pulbi.

Contrary by §13, the law allows one to enter a house of another, your door being open, to pay or demand money payable there. (at ante) So to enforce process of law.

And a house may be broken on a breach of executing eminent process, because of their past demand, admitted and declared, your ease of demand. But then he will be a trespasser, see Thing §6.

But a third can't generally justify your breaking of an outer door or windows of another's dwelling house, for a purpose of entering his body, or taking his property on civil process. 12 C. 18 s. 30.

This house is his castle.

But no privilige of castle is construed very strictly. It extends to no other your outer doors, or windows. Not your inner doors, chests, trunks, etc. These after demand made and refused, may be broken open.
The action can't hold as a writ of quiet possesseion.

Further discussion see "Theft and Frauds".

In efficacy in making a house to execute a legal search warrant.

But all such search warrants are illegal and furnish no justification, they are strictly void as a warrant to search for goods in any suspected places.

But as y law is now settled, no such warrant is legal, as it issued under y following restrictions. First, The party applying for it must make oath of y fact or why application is founded, and state his belief, y goods are concealed in such a place—2d. It must be executed in y daytime and by a known officer. 3d. It must be executed in presence of an informer.

The warrant being legal, a party who obtained it is justified or not by y event of y affair. 4th. Magistrate are justified, whatever y event may be.

The party assumes y danger.

This action won't lie as y Master or Seamen of a Public ship or master of any ship taking property as prize or not. Any property may have been adjudged not lawful prize. Every question of prize or not belongs exclusively to a Ct of Admiralty.

Note ye relates to personal property.

Against whom y action lies and e converso.

It lies not as a basis for y right for cutting timber, nor for cutting and carrying away. The basis is in possession of y Robber. The remedy is by writ of _waste_.

4. & 9 P. 11-
But if after being cut, they are suffered to remain a time, and then carried away—trespassed on by lessee will lie not indeed for cutting, but for carrying away. This is not however. Ser. Harris. 11. 19. The property is then a chattel personal, and if lessee has a possession in law—In a case where it is tenant in possession, trespass. Inside trespass, taking of cutting and carrying away are one continued act.

If one lease land, 

his lessee is liable in trespass for cutting. The lessee does not entitle him to his possession of ym. He is to ym he is a stranger. See p. 11.

To ym action lies for ym lessee at will on ym lessee for cutting timber trees upon ym land—The very act determines his estate, and his possession as lessee.

So if he do other positive inquiry to ym subject—

Sure do these rules hold of tenancies from ye to ye? And in modern construction are substituted for tenancies at will?

But it lies not in such cause as a tenant by sufferance—

In ym lease has interest. The act does not determine ym estate. Of course before entry, he acts a lessee, or stranger, but a tenant in possession—

The ym trees are excepted in a lease for ye. (cut above)

But if injured or destroyed by lessee’s cattle, ye action—

does lie—lessee has a right of ym soil—and a right he put his cattle upon it—

This action will lie as a lunatic 

The intention not regarded—Bae 1. 3. 2.

Every person concerned in ym trespass is liable to ym action.
As aider, abettor &c, these are no accessories — all
Principals. 3. Bae. 185. 2. 1. 124. 4. Hol 155. 1. Hol 623. As if A command or request B to commit a trespass
and B does it — & as well as B is guilty of a trespass — Bae. 48.
and liable —

If A agrees to a trespass committed for his benefit by
B, he, A, is liable, &c. if he didn't command or request
B to commit it — & Bae. 185. 4. — The word "agree" was
gnomous with a word "assent". Inc non prohibet, sed

How far a master is liable for a servant's trespass, see
master and servant —

If several join in a trespass, a party injured may bring 27 —
y action & one or more or all of them — P. 31.
Bae. 26. 1.2. Bae. 152 — 5 Th. 648

It is said by Bacon, yt yt party injured has lit of action
in one of ym he can't bring a second action vs another, Bae. 420 —
for y same trespass, & yt y tendency of y former is a
good plea in abatement — Bae. 46. 9. 185. — Bae. 46. 9. 10. 1.

This isn't law, he may sue each in a separate action —

It is said also by Bacon, yt an acquittance of y defendant, 12 where
in y first action, is a good bar to y second — 5, Bae. 185.
185. 7. cites Cor Plur. 66. 8. wh don't support y composition —
If as cattle being injured by B, break into C's close, B is liable, and which to some opinion B only.

If as cattle have the y defect of B, fence into y close of B,
and thence th' y defect of C's fence, C may have trespasses of A, for B was bound to fence as such cattle only, as B had put into his close. But A may then have case as B.

Pleading...

Wheel y trespasses consist of an abuse of authority given by law.
It is sate to state y trespasses generally in y declaration, and if y def. justify in his plea, y particular injury or abuse of authority comes out in a replication.

As trespass for breaking a house, and taking goods, breaking furniture for. Certification of y entry - Replication stating a subsequent wrong by new assigner.

The Pltf may include several distinct trespasses in one declaration, as cutting trees, breaking his house, destroying his goods. But in different counts, not whole was one continued trespass.

and to show how aggregated y trespasses was, and thus to aggravate y damages, y Pltf may join in y declaration, and in y same count, a wrong for which he did not maintain an action - as breaking and entering his house, and beating his servant. In y case y beating is not a substantive ground of recovery but mere aggravation.
There, can the beating, &c., with a "per quod" be joined in both cases?

Undoubtedly, it may where y whole injury (hit and damage) is one continued wrong - after an int. In beating a
was a distinct act done at a different time or place. It
and must be as to y matter a separate wrong, and of a different

2 Ch. 666. Le Raym 1032

It has been ruled so y it may be joined, when it can be;
be treated as a part of y transaction, if y same transaction;
as in y case of a house broker and Tenant beaten - "per quod" &c.
It is only a continuance of y same trespass or wrong,
accompanied with beating. It is a trespass on y Case.

And if in "per quod" is laid, there can be no recovery for loss of service, I am sure, it will be admitted, because it woul
allowed.

2 East 137. 1 Chit. 836. 1. Saunders 346. a. b.

In Eng, however, y form of action for beating Tenant's per
person has by a palette confusion y breach of a trespass,
vene trespass vi et armis, even where y beating is an
independent act. It may seem that y such a wrong might
be joined with "In & T. Wr. it" or dom Tre. But it can
be vindicated only by precedent.

The day laid in y declaration isn't mentioned; y trespass may be
proved, on y any day before y commencement of y suit.- Ed 8. 1407.

To y action may be brought as usual for a joint trespass or
each separately in a separate action.

But it is said, if it appears on y face of y declaration
y certain known party or person is not sued, same party to y trespass
with y def. y declaration as ill — 1. Leon 81. 41.

1. Sam. 28. 2. & 32. 6. 1. K. 1. 56.

There as to y principal — not cause (sense) for y law certainly allows a separate action for each of y trespassers — and what is y objection to y’s appearing in y declaration?

It is allowed by all, yet if y declaration charge y wrong to have been committed by y def together with another, to y Vol, unknown — it is good.

But it makes no difference in principle, an those not joined, are alleging to be known or not —

Page 53.

But y must be a fact to arrive with some "force and some" "proof" and y issue — these at 31. are matters of substance and a verdict and not aid yr omission —

The reason of y rule is, on commission of a wrong committed with force, y def was at 0 law faulty — The plaintiff a "Capitator" knew if y wrong was not proceeded — as in actions on contract. 6-1 y case — for y judgment was a "nuovacreda" 85 y def amended —

But by 16. 17. Charles. & y omission of these words may be amended after judgment or rather verdict — 3. Soc. 192.

...
It was once held by Wil Holt, &c. since y 60, y words "in ille armis" are not necessary.

In Court these words are not on principal matter of substance, there is no fine, no Capias ad, no difference in y indictment, no such "it as yt of 7th Hill and many"

The Sup. Ct of Court once decided, yt a declaration omitting both sets of words was good on special demurror. 2 Cowa 1786. At 1st of term was brought out, but not preserved. Such a rule tends to compound forms of actions.

It's a general rule, yt a party for action trespass is brt. must be specially and specially alleged in y declaration. For Ex. 1. Selv. 235 can't be said of any particular wrong but it is specially charged in trespass for breaking in y house. 3 Coo. 1. c. 2d 2d.

The rule is relaxed, when y action arises ex causa to avoid indecency.

The declaration must state y value of y thing, for taking or injuring ything is brt. As greatly troubled down y cause isn't necessary. But y party won't give more ye as laid in y declaration.

But it any necessary in the case to state any quantity called eating bread, destroying his age. 1. Selvin 39. 2. 230. 3. Co. 2. 2. 4. 147. 3. 18. 18. 18. 18. 18. 18. 18. 18.

But y omission of y allegation of value is united by verdict. In princible it is clearly ascertained y verdict must be intended to have found y value. 3 Co. 185. 2455. 4. Co. 410.

Integrity of y Jury.
In this case, the injury is such as to be capable of renewal or continuance. If where it is renewed or continued on different days, y Plt may recover for y whole, in one action laid wit a continuance or continuance on one given day being consummated without the

2. 2d. 12
Exp. Dig. 447

Examples usually given, are may be laid without a continuance. Consuming or treading down grass or foliage of any kind,

These are capable of continuance or renewal (at Toffa.) The principle is this, when y particular injury done by each of severall trespassing acts, can't be easily distinguished from y rest, all may be laid with a continuance. After where several acts are easily distinguished or distinguishable—

2. 2d. 12
Lilly's Cases 448

Form of continuance.

2. 3d. 2d. 12
Lilly's Cases 448

But in these cases, y trespasses may be laid to have been done on different days and times, between such a day and such a day.

2. 3d. 2d. 12
Lilly's Cases 448

But if severall trespasses are charged on one and the same declaration, no one can be given mi y acts done on one day—Ex. Dig. 638. 68. Dig. 408.

Bac. Atr. Dig. 2. 2.

There are two ways of declarin as with a continuance—

Bac. Atr. Dig. 2. 2.

First y trespasses may be laid with a continuance for a whole time from such a day to such a day; and y

mode was perfect, when the trespass was continued with
intermission — for a longer time than one day — as the cattle continue on his land several days.

Second. When several acts are not committed in continuity but by intervals and on different days, they may be laid by continuance on diverse days and at diverse times from such a day.

But if between intervening days need laid — as dressing harvest or different days, but not continously, there is no diminution attended to in practice.

When there has been an utter possession and renting, y aster and act acts done under & may be laid with a "continuance" in the case & P't is considered by legal fiction as having been in a continued possession.

The deft trespassing possession having been continued and if after rent, y P't has been again ousted & again rented, he may lay y whole with a continuance.

Or y P't may set forth y aster as y whole case specially.

If trespasses can't be laid with a "continuance" are so laid, y declaration is ill, even after verdict — for allegations made in yt form, cannot be true and are ergo not alleged by verdict — 1. Levites 2:10 Salt 638 — Beo Abr. I. 1. 2. 2.

But if some of y trespasses laid with a "continuance" may be so laid and others not, y declaration is good after verdict — "the y damages are entire", for it shall be intended at 1. Levites 2:4.

y damages were assessed only for y former.

Salt 638 — Beo Dig 4:08 — 1. Levites 3:35. 3 Lev. 84.

There is ye intention correct in principle & it don't seem so.
The general issue in ye action, is "not guilty."
And in almost all actions sounding in tort,
And if a person indicted for a trespass has confessed,
And ye entry of his confession has been made upon record,
he is forever after adjudged to plead not guilty for an action but on ye same trespass.

At 1 Law, a special justification must be pleaded especially.
Not given in Evid under y General issue for y Gen consists
in denying ye facts and a justification admits and affirms ym-
y Evi is not consistent with y plea. Ad legal Process.

But y Def may give in Evd under y General issue,
a lease for yrs from y Plft to himself, for ye disposed y
material allegation in y deed. Yr or y Def broke
y Plft close.

So on a general issue, ye Def may prove ye he is tenant
in Common with y Plft, for y action don't lie between
Tenants in Common.—But if y Plft is tenant in Common
with a stranger to y suit, she be pleaded in abatement.

A Sheriff may justify under final process without pleading
y Judgment. The must obey y writ, and y original Def
is bound to y Judgment, and need not be informed respecting
it. But if y action is hot rey Plft in a former action,
or a stranger, he must show y judgment as well as
execution. For y judgment may be reversed if he take
execution afterwards, he is at his peril.
The Plaintiff in his former action is bound to your judgment, ergo he must shew and a stranger being a volunteer he act at his peril.

Any person acting in aid of an officer at his request, may justify as officer may do, but your request is traversable.

The action is lost by a stranger to your original judgment, as your officer acting under your execution, he must shew your judgment—Sum of lost by your self in your execution—
as your breaks your house of A. To arrest B. A brings trespass.

Accord and satisfaction is a good plea in trespass, but an accord alone is not a defense in yo nor in any other.

For Fig. 415. Doctrina placitandi 10.

So an award of arbitrators. Cro Eliz. 66.

A release is also a good plea in bar, but if release before action lost is pleaded, there must be a traverse, yf he is guilty afterwards and before suing out your writ.

And if your action is lost for a joint trespass, a release to one is a discharge to all, each is answerable for your act of y other. Hence a release if y trespass no one, operated Brok. 444—4 Mod 372.

But if your action is lost by two who never in pleading, and one is found guilty and damages assessed, y officer may enter a Nolle Prossequi as to y other. 1. Saunders 201. a——

It is no discharge or y damages, y suit as y former, is at an end—According has been had.

It is now settled ye Nolle prossequi may be entered as d above in yo earliest stage of yo action, and yo other def.
we not discharged; it any in a nation of a Rector.

So if y Plt has sued only one of several t trespasses and recovered judgment as him. This is plad in bar to an action about both as y others. For there can be but one recovery.

By St 21 James 1 y Def may plead in bar a disclaimer, and if y trespass was by negligence and involuntary, and a tender of oaths is made before action brt, but he must plead what sum he tendered.

(St. in Right Real)
It extends only to cases of involuntary trespasses, and disclaimer.

There is no St in Comt and such a defense is unknown by y C law.

The St of Limitation is a good plea in bar. See yrs in Eng by St 21 James 1. It must be specially pleaded in Eng. (Pr. R. 4 297.)

The plea of title in trespass amounts to y Gen issue and is also not allowed. Still it may be specially pleaded by giving colour. See Pleading.

In Comt a special plea of title is warranted by St. If it may be given in Eng. under y Gen issue.

In y County Ct. y Def must abide by his plea of title - he can't change it.

It has been determined in Comt, yt if a judgment on y plea of title, is no bar to an action of ejectment by y unsuccessful party, and dont conclude y plea of
Title (Rory 385) Greatnt being of a higher nature & y
red cause, for it is conclusiv as to y same
fact or title (wh mas first in Issue) in any
future action as an Estoppel—

Title may be given in Evi and tried under y Gen
Issue before a single minister in Court. The D
dout impot to decede y Title. (See P1, R7)

As to a new assignent—see Readings.

A verdict or judgment when given in Evi under y Gen
issue, is no Estoppel, the good Evidence.

Evidence

The Evi. must follow y issue, & noe matter go to y merits—
Not embraced by y issue, can be given in Evi.

But under y general allegation of alia“enormia” y Pltf
may give in Evi. y Gen Issue of any matter of aggravation
wh wil not itself support an action— as beating
y Pltf’s family, but no evi can be given of a substantia
fact, wh not itself support an action for y Pltf ni
it is alledged. As breaking house, destroying furniture—
and beating y Pltf.

If y Pltf set out y abuttals of his close, he must aim
us laid— But if on abuttal is laid to y” East “
proof y t it is “ East “ is satd—

When y action is laid with a “contemast” y Pltf must
confine his evi to y time laid, quess it enters into
of the original

Or he may give 

The reason, I suppose, is, that laying with a

When it is thus laid, in case of an action of 

If a Plt make a new assignent and a general issue

If they were how ed one or made a Trespasser by relation,

If on a plea of justification, y Def. prove so much as
When y action is by a stranger as an execution as a Thief who acting under it has committed a Trespass, the plaintiff must shew in blee a copy of y Judgment Seuus if by a party to y execution as y Def in it.

As to severing damages, where there are several def's, see Wantt and Battery. Cip 420

for Cost ord to Count 677.
Justice and the Remedies.

Geitment and Dilection

For What Things Geitment lies 393.
Who may have the Action 394.
Pleading 402. Evidence 404.
Verdict Judgment 406.
The Recovery of Men's Profits 408.
busties and the Remedies for it. Ejectment and Distress-
real actions
For y recovery at y Law. said 3 B.C. 251.
Distress is an injury by wh a tenant in possession of land he
is wrongfully removed out of it. 3 B.C. 107.

The word distress" means an ulde of a freehold - the word
"distress" an ouster of an estate Two for Freehold - bid-

For y different threads of y B.C. 3. B.C. 167. 6. 6.

Ejectment is in form an action by wh a Land for ylosy, who
is a tis of his time, recovers it from y wrong-doer together with
damaged. 9 Eliz. 2 B.C. 457. 3 B.C. 138. 3. B.C. 133.

The action of distress in Comt. is an action by wh a
person. distressed or ouster of his freehold, recovers it
from y ouster together with damaged.

The terms of y Comt actions of distress and ejectment are y same
one alledged y ouster of a tenant, y ouster of a freehold.

The Comt action of distress is strictly a mixed action. Comb. 68.

In y action of ejectment is called. sun it don't strictly denominate Comt. 267.

Anciently y Ejectment recovered damaged only, Com. 6 B.C. 130.
was no restriction, if of existid by y Land, he might
recover y possessid by an action on y Leventy for quiet enjoyment.

But if y ouster was committed by a stranger, y lessee had
no other remedy ym by ejectment, in wh he recovers damaged.

Note y lessee might in a real action might
recover possessid of y freeholder.
Post however when yéré'y of Equity began to compel y
executor to make specifé reconstruction y ét' of law also adopted
y same mode of doing justice rendering plaintiff for yr
recovery of y Tenem and issuing a Writ of possession Tho.
y declaration still demands damages only y

In Con't y land is demanded and y demand is held
necessary

This practice of y Con't seems to have been adopted
as early as y reign of Edward 4th Since then y remédé has been specified

And for a long time past, Tho founded nominally upon
y order of a term only has been in Eng. y common and
almost y only method of practice of trying y possessor's
title to Real Estate It has been usual for ye purpose
ever since y time of Hen 7th

This is now done by a string of legal fiction, wh are
delineated 3 Bk. 202.5 Bae. Inst yest. 4.
They have no such fiction in Con't The Freehold
is recovered entirely by action of Distress

3. Bk 205 Since ye action has been thus used to try ye possessor's title
Bae. T. 8 y damages are recovered are usually but nominal

6. Lorp. 3 Bk. 137 In real actions mi in aside, no damages are recovered
Co. Litt 207 Bae. Ab. yest. 4.

For what things operation lies?

This action will not regularly lie for any thing of th
y sheriff cannot deliver possession any executory or which
is y same thing for any thing on wh an entry in fact,
can't be made
In general usage it won't lie as recovery incorporeal hereditams, or things lying in Grant merely, as contrariwise distinguished from Bull. N. B. 42.

But it will lie for land laid out as a highway, in favor of y crier of ytithe. For laying out as a highway cannot divest y right of tithe. But y land is recovered. Titlegale highway, subject to y easement.

So it lies in favour of y grantee or owner of y heritage of land, if y still belong he another, for possession belongs only furnish, untilly it and is taken. In Co. 11. 13. 28.

But it don't lie for a watercourse or a stream of water, "ie monnie", for it is fluctuating and possessin can't be given of it. And be for so land moves with water, the action need not be for a whole of an entire thing, it will lie for an entire part of a fence or building. For 685. Co. 3. 438.

Who may have y action?

As a general rule, if no person can maintain y action, ni he has at y time a right of Entry (y action being founded on a right of possession) for y lessor of y tithe is supposed to have entered and made a lease (by fiction) yet y fiction won't aid him nor will an actual Entry, if he has, no right to enter.

The ultimate right of property on y lessor is tried in Eng by a Real action, as tenant in tail above in fee, and dies, its a discontinuance, and y heir can't enter, and of course.
2. Poc. 171:72. 31:32. he can't maintain it at all. the remedy is by action

3 Poc. 286.
Est 1543. 2.
Bac. Ab. 502.
Bull 102.

So if the lessor of the l.t. or those under whom he claims, have been out of the possession 20 yrs in Eng, while having- of possession, he is barred of any action by y st- of limitations. 21 James 2, will take away his right of entry— and y l.t. must prove possession in himself or those under whom he claims.

3 Bac. Limitations. This it has y usual savings in favour of infants, some persons insane, imprisoned, and beyond law.

On Eng 10, yst are allowed about yst disabilities are removed.

64. 6. East 83. 4. 300.

If y st has begun to run, 12, if y person claiming was under no legal disability, when his right of entry first accrued—a subsequent disability won't save y st.
The disability in y Provision being only such as exist when y right of entry first accrued.

It has been decided in England, y successive disabilities can't be joined within y saving clause, so as to prevent it from attaching. For y only disabilities contemplated in y Provision, are those existing when y right of entry accrued— 18. first accrued. 6. East 80. 4. Mass B 182. In Court.

Rush vs Broady Co. of Errors. 4. Day 298. Contra.

But a majority of y st post were in favour of y Rules.

In addition to entry of st, neither within 20 yrs from action nor, under y st, must be on actual possession and not just circumstances. To get the case, prove possession in fact, within 20 yrs, he must be sustained.
surer of no other person had been in possession during ye time? To that there can have been no order to a. Point's original right of entry. So much even in respect however no person will be let in to claim.

The Court, a right of possession, is deemed equivalent to an actual possession, for there is no order of a. Point in such a case during a vacancy of possession, and so his possession by right is not interrupted, as often happens in a case of ease. Lands, so as to right of possession is a valid ground on not to found ye right action. (Treatise of) There is no need of an actual or fictitious entry by a, Point before action but.

So y heir may have ye action, never in actual possession, with proving actual Entry within 25 yrs. y term limited by Court &c.

If y owner bring encomt within 25 yrs after y order, 1. Sanders 318 &c and is not sued, ye don't prevent y. &c from running. Exh. D. 432.

To prevent ye bar, there must be an actual Entry within 25 yrs. before y action but.

An uninterupted possession 15 yrs in Eng. is not only a good defence to ejectment, but a valid ground on which to support it as y real owner. Exh. C. 432. Poore v. Child. 421. Burm. 187. Exh. 432.

The possession title is then acquired by y. [s]hant. - Exh. 741. Poore 421.

It was resolved in N. Yt a peaceable possession for 3 yrs. 2. Johns. 2. 24 by discreet entitled men to ejectment, as a wrongdoer. The Plys claim being prior, and do preferable to y. &c.

In Eng. possession 15 yrs confers a possession title. &c. A don't affect y. actual right of property. Exh. 62.
On Count a possessor for 20 yrs, carries a complete absolute title. This is because, in the absence of a present title, has right, entry, and possession in law. When a legal possession is lost, the title is lost with it.

Properly, actions continually for 15 yrs bar ejectment. Filed in Court, for if they must have been possessed within 15 yrs, Bull 132. Non est -

Does ye possessor title on ye last ejectment, so ye he can maintain ye action? These cases are in N. and it does.

But, where possession, with bars, in ejectment, a persona title must be.

2. A. 210 -

But adverse possessor is one Tenant in Common, so as Butler enough. It is for one Tenant or Tenant in Common endeavors to hold ye estate by possessor, or sorter ye whole of it, he must prove an adverse possession for 20 yrs. Indeed, his possession in law is 1st of his company. He deemed to hold possession as well for his companions, as for himself.
But what shall be deemed an adverse possession? In such a case, it is a proper to be left to the jury, who may, Coop. 216, presume an inquest from great length of possession.

If the party in possession claim under the party out, there is no title acquired by the possession, for it is not adverse, of course the owner is not barred. As tenant at will or for years, remains in possession for 21 yrs. the latter is not bound. Some of your Count cases are on all principle. Bost. 68. 3. 222, 1801, 3 Day 1811.

To possession by a particular tenant don't run as by remainder man or receiver, for the possession of a former as tenant is not adverse. Besides, the remainderman has no right during the term to take possession, ergo, he can't run to him.

And when adverse possession is relied upon by tenant at will, there shall be some proof of actual notice, that possession is adverse. In fact arising from circumstances, may go to the jury. As tenant's declaring he held under a stranger.

But it has been held, if a tenant at will having taken a lease from a stranger, is no title of adverse possession, nor the latter has made an actual entry.

Possession by a stranger under a claim of a right. 3. East 237

If your action is founded on a claim in a base, giving your labor a right of recovery for non-payment of rent, an actual entry isn't necessary to maintain the action.
Act. 2. 455, 457—

Confession of debt, entry, and ouster, as usual, the same, as near opinions seem to have been y other way.

Dug. 21—

Cap. 2. 458—
Table 245—

...active...

The person only who can maintain is he who has a legal right of possession. Thus mee may maintain an action either before or after y day of payment, not only as lessee but y lessor's subsequentlessor also as well as as a stranger...

Dug. 23. 26—

Cam 2. 455—
Sec 2.

Mortgage 22—

...the same rules holds in favour of mee's assignee...

...But if lands leased are forst mortgaged, y mee can't evict y lessee, for mee's title...
And is a General Rule, if y person has any legal Estate (in legat possesion title) shall recover in quiet title, Comp. 319. c.

most equitable interest may be in another, any y def. himself, as Trustee, or bearer the Trust, so if a credit

is de all a house to B, and neglects to execute y contract,

A. And in execution under y contract, is liable to execution.

at Law. 7 FR. 547. 663 - 7. East 23 Cl. Adon 5, 112.
2 S. R. 556 - 340. 314 - Confr. 473. 518 - Doug. 22 - 285 - 747 - 12 St. 534. 441 -
Cl. Bills 5 - 112.

and in some Modern cases, Coys of law have somewhat

relaxed to taken notice of Trusts or equitable Rights under

special circumstances. The priciple of these guidlines has

however been questioned.

2. Ejector

Of y Diff. must recover by y straight to his own title

not y weakness of y Def. & cause a recovery may be defeated by proving title in Ed. defor.

But ye cant be done when y title is visierd since

y Def. or when y Def. helds under a title derived being of the

in both cases, a rule analogous to y doctrine in Estates that

applies as Much vs Mor. The vs his own设备 dont

inforation of y hearer. In former cases, y Mor. and in y all

y hearer cant have title to a third person.

Upon y same principles if B claiming under A, lease to

B. in ejectment by A vs B. About his lease is determined,
y hearer cant substitute title.
The devisee for a term of yrs, may maintain Executrix, but not in Eng, till y executor has assented to it, (The legal title being in y executor) If y Executors assent necessary in Connec., Seems not clearly. Since actions for legacies are supported in a Ct of Law, in y Prate. Tho. if y legacy is not Specifie, declarution is just necessary.

But when a freehold is devised, devisee may recover immediately on y testator's death. He assent from any one is necessary. The later has no concern with it, and y heir's title is void. The devisee has immediately y legal title - on y testator's death.

The assignees of a bankrupt may maintain y action for lands not belonging to him. y title is vested in ym by y Ct of Bankruptcy.

Committee of a lunatic can't maintain assignmt for lands not belonging to him. It shd be in y Lunatic's name for Robert. y title is his, and y Committee can't make y necessary. 

The lease is made of a Lunatic's land by his Committee, under an order of Cty.

In some cases, y action must be in y name of y lunatic, suing by his Conservator, as an infant by his Guardian.

An Executor may have y action, either for y niece of his testator, or himself. When y legatee or testator was a devisee for yrs. It being a Chattel interest.
So of an Administrator
If one is deceased of an estate of inheritance and dies, the
remedy belongs to ye heir.

But he can't derive his title from an ancestor, who was
never seised.

In Conty ye heir may support ye action, the ye ancestor was
never seised. The maxim "Sevendi factit stipitem
unt adoptit Mem".

An alien can't in general maintain ye action, for he
can't in general hold lands.

For all some of ye law varying ye rules vide Encyclopedi-
Alien-Davis 67. 290 14-

Secus when naturalized by ye laws of ye C P or its Laws.

A Law. vol 7. 136- 4. 133-

An Alien being a Tenant in a house, may at C Law, maintain Equity for it. This is allowed for ye
couragement of trade.

7. Co 16. Co 158 8- 129-

A Lessee for yrs. may maintain by ye Lease & former
having y right or rather ye present right of enjoymt.

Pleadings

The declaration shd state ye Plaintiff title as it is, and shd
show a substantial title at ye time of ye action. But if he had
not title at ye time, he has regularly no rights of recovery
es. for ye time.

But it ani necessary in ye Eng practice to state ye Plaintiff's
entry on a day certain. The rules to set out his title, es y
degree, and ye's he lost entry. For ye are ye Bromage
Besides ye entry ani traversable. The 3d must confess, lease, entry and certificate
lease, entry and wont
1. The master shall be bound subsequent to his title, but y declaration shows no cause of action.

2. The particular day of y master, it is said, need not be proved, or rather stated, ie, no particular day need be stated.

3. It is said, if y master appeared in y declaration, to have happened first y title assumed y before writ was torn. But it is usual to allege a day certain.

4. There is y issue fatal to Special Demurrer: Is y declaration good on y ground of y facts being not traversable.

5. The master being confessed under y Commt rule.

6. The land or subject sued for must be described in y declaration, yt y Shref may know of what he may or is to deliver possession, or y writ. Shref's possession - Secus y declaration is ill.

7. Great freedom was aurally necessary but rule is now greatly relaxed.

8. For y issue of y Pltf is to show y land to y Shref at his peril. 

9. In en y boundaries are usually given, but y Parish in wh it lies, y kind of land, as arable, or meadow, and y quantity.

10. Some certain quantity is required to be designated.

11. (The town, y lands, y boundaries, y quantity - in Commt)

12. But y Parish in which y Pltf cant maintain y action, y Parish is part of y description, of y subject matter and cant land as a mere venue.

13. But y Pltf cant bound to declare for y exact quantity, yt he is entitled to recover. He may sue for such a quantity and recover so much of it as he proves title to.
For a mistake of quantity is no variance. In Pleading.


But he can recover no more than he declares for; he
may recover less. 1. Burr 326. 1st 2, 447.

So if he declares for a longer term, by he has, he
can declare for such a term, as he has. For a question in Plead.
and he has a possessory might be yet sued for. 1st 447. 448.
ante 575.

The y. Def in Eng confused lease, entry and tenant,
he may still deny, yet he is in possession. If y. Def
can't prove it, or rather if he can't prove the possession
was, in Def at a time of y. action, not.) he must be
non-suited.

The General Issues in y. action of Distress is No
Wrong: No Distress. In Plead, not guilty. 3rd 305. 3rd 9. 10.

Special Pleas in bar are, very unusual in y. action Plead.
In Plead, Indeed y. common rule in y. Eng practice, 1st 130.

requires y. Def to plead y. General Issue. 2. 428.
3rd 156. 3rd 190. 238. 1st 261.

But such Pleas are sometimes allowed. Ymble.

evidence.
The Plf must in general recover by y. strength of his
own title, not by y. weakness of y. Def's. It's a good defence

2. Easy 227. 2nd 72. 2nd 455. 455.

But y. title proved in a 3rd person must be a good and
subsisting title, or it is no good defense.
Rule No. 110

When a lease from Plff to Def is void or voidable, possession may be recovered by y lessor in y action. But y Plff may destroy his right of recovery by some act affirming y lease, or waiving his right.

The rule is, If y lease is void, no act of y Plff can affect it. As lease by some covert, no subsequent act necessary to set it aside or reverse his title. The title continues here, and y lessor may be sued immediately.

So if a Tenant in life aliens in fee, it is void. Hence acceptance of rent by y remainder man don't set it up.

But if y lease is only voidable, there may be an implied confirmation of it by y act of y lessee, by y Plff. As lease on condition yt yt lessee assign with lessee consent, y latter may renue. This is only voidable, not ipso facto void, for y terms of y condition only enable y lessee to avoid. Hence acceptance of rent by y heir of y lessor, after notice of forfeiture, is a confirmation of y assignmt, and a waiver of y condition.

If y Plff sets out y abuttals of his close, he must prove ym as substantially as land. But if an abuttal, is laid Fast, proof yt, is N.E. is satis.

Ante 63

The S of limitations is a good defence under y Gen Dice.
Verdict: Judgment

The Plaintiff may recover what title or interest he averred in his declaration. As when having title for 5 yrs only, he declares for seven.

So if he declared for a certain number of acres and improves title to a less number only, he shall recover such lesser unto 50.

So if he declares for several things, as for a house, and barn, he may recover in one and not on other, and the judgment may be ill as to one, it may be good and judgment may be awarded for other.

If the Plaintiff declared for land only, he will recover with all buildings upon it. They being included in the words "land".

If the Plaintiff recover judgment he has a right of habeas corpus over the possessor, under which sheriff binds him for possession and turns all others out.

In the execution of the writ, if tenant may break his outward doors of his dwelling house, if necessary. For if not can't he be seized executed, if admittance be denied him, if he can't do as in executing any other civil process.

In Court, if Plaintiff having taken possession, pending his suit, don't prevent his recovery. He may still have damages for damage to damages and cost.
In Eng. it may be pleaded in bar, but post issue joined, it is discretionary with Judges to admit
your Plea or not.

So if y action is lost, before verdict, &
y Plt has judgment for damaged goods & costs for
reversal remains, but he can't recover possession.

If lost & Plt is put in possession by Def turn him out,
former may have a new writ. Between legal possession
or attachment to land for contempt. Cases of certain
by a stranger.

It was often held at a new trial, or not be granted
in any case of ejected.

In y Eng. action of ejected, if y verdict is for y Def,
will seldom, if ever grant a new trial. For no
Plt may bring a 2d action, there is no necessity for
a new trial.

The Judge in y first action is no bar, for by y action
on wh y action is founded, a new casual ejectment
as well as a new lease and cases may be laid
in each successive declaration.

Civ 49-52. Prov. Chy 47.

Out if y verdict is for y Plt a new trial may
easily be obtained, as in y other actions to prevent
a change of possession, and possibly y Def possessing
may be his only title. In wh case his bringing
a new action, might be of no avail to restore
The Recovery of Mesne Profits

The verdict in ejectment, when in Plt's favour, having established his title, it follows yt from y time of y oth's, yt Def. had been a Trepassor.

For y Plt. having proved possession, yt possession was relative to y time of y oth's according, and yt given him a right of action for y intermediate profits.

After a recovery in ejectment case, y Plt. may have an action of Trepass on y Def's possession, for y latter's unjust possession.

This is called Trepass, in Mesne Profits.

The damages recovered are in General y value of y use, 3 Mils 121.

Of land during y Def's possession. 3 Mils 121.


It may be laid with a continuing or supposed Gen.

If Plt. is have been in y continued possession during y time of y oth's, or y oth's and y whole case may be Special-stated. This action is incident to a recovery in ejectment. 3 Mils 121.

It is said y Plt. may, if he choose, bring a bill in the for y amount of y profits. But ye ant actual.

Bac. Ab. Geo. 1st. 2 Nov. 165.

The necessity of ye action arises from ye circumstance of the ejectment, y damages are nominal. 3 BC. 206. 3 Mils 121.
But it has been held, yet Pltf may recover his actual damage in Gestnt. D.R. Ab. 62, #.

But it appears seem, ante 59, for expection at y time of y Def's wrongful entry, y Pltf has been out of possession, and is so at y time of obtaining this verdict in y Gestnt. Anciently full damage was recovered (ante 59). But ye must have been prior actual reentry, before bringing y suit—ante 76. Contra 15. Tresspass 13.

It seems ye whole damages cant be recovered in Gestnt, because y action cant laid with a "continuando."

And if by laying it with a "continuando" ye Pltf might recover ye whole damages, he must be obliged to prove an actual Entry. Tresspass 740. 7. 40.

In ye second action, it cant necessary for Pltf to prove by witnesses y wrongful entry of y Def—y recovery in Gestnt is concluded of y fact in his proofs.

The Pltf however cant confined to ye time of y lease, and ouwer is laid in y declaration in Gestnt. He may recover antecedent profits, if he can prove antecedent title and antecedent possession of y Def—by

But ye distinction must be noted, it the one only for ye profits accrued since y lease laid in y declaration in Gestnt. The record is in yet action concluded in his favour. But if ye go over antecedent forfeits y Def may in own controvert his title, or any other fact in y declaration. The Rec and dont prove it.
In your former case, where a judgment in ejectment, by execution and waste of possession was 6. x. 6. proof of his right, he recover for a profit accrued under his devise.

To be a Diddo Groot, & record in no Eri. Pt. is 1Scrib 239.

This action however is within your Jurisdiction, & to be heard. The defendant may not defend himself, as to all the damage profits, or what have accrued within 6. yr. in Eng and 3. in Count.

In England, an action may be had either in a name of the nominal Plaintiff or of the Tenant of his. 1. Barr 665. Bull 89.

And if the nominal Plaintiff release an action (in an action being in his name) he is guilty of contempt.

Where's not yet forbid. But if to plead it, you release.

The in common cases, one Tenant in common cannot maintain trespass as his companion, yet may have a recovery in ejectment he may have yet action, it being incident to y' former. But in ejectment, he may have yet action for Insane Profits. Estates in Leu. 3. Mills 118.
Waste

What amounts to Waste and what
not? 412. In houses, 412. In lands,
414. In trees, 415. Rules applying
to Waste in general 417. Who
may maintain the Action 418
Against whom the Action lies 420.
Recovery in the Action 424.
Waste

Waste is any spoil or destruction of houses, lands, trees or other corporeal improvements. To its destruction by house or house's has remainder or reversion in premises or parts, be tending to diminish. Co. Litt. 53 - 3 H. 6.

There seems to have been a distinction between waste and despolience, not now attended to now.


Yet no is caused by positive acts of spoil or destruction.

It is an offence of commission. Permutation is yet no happens in negligence and is an offence of omission.

What amounts to Waste, and what Not?

In general what works a lasting injury to a building, is Waste; definition Tindal. It can be done only during an estate for life or year.

First. In houses or buildings, demolishing or burning a house, is voluntary. Co. Litt. 3 a. 4 M. N. 2. 2. 2 B. 23/4.

Ba. Abr. N. C. 5.

4. 64.

By removing beams, timber, floors, or any thing fixed to any freehold of a house, is Waste.

As a door, window, shelf or hearth. etc.

It is voluntary waste.

The removal of things by a Lessee of things annexed to a freehold by himself, is waste. As Tindal. For it is parcel of a building.

Co. Litt. 53 a. 4. 64. Ba. Abr. N. C. 5.

The injury nothing is Waste, in what works an injury. 3.

By freehold, yet changing, situation and use of a building by a Lessee, the advantageous to a Lessee,
As converting a Corn Mill into a fulling mile, and converting a Freehold to some other case, the more profitable.

Building a new house in land demised, where there was none before, is not Waste. But y Leesee may not take y Leesee's timber or other materials to build or repair it - it must be altogether at his own charge - cutting timber will be Waste.

But if y Leesee having built a new house, at y Leesee's cost it is decay, he is guilty of waste. For it becomes part of y Freehold.

A house must be recovered at y commencement of y Lease.

At & in burning of a house, third negligence or accident, was made in y Tenant, he is now excepted in Eng. in case of accidental burning by y Tenant 6th of May.
The destruction or house by y act of God, Cat by lightning. By
b hostile enemys, and waste in y Tenant.

But if y house in y last case be left standing and capable
of repairs, y Tenant must repair it in a reasonable time.

Said if it suffer only lasting injury, it is waste.


If y Tenant commit or suffer waste on houses, yet if he
repair ym before action 1st, no recovery can be had
vs him. But he may not take y Loose lumber to repair
after actually suffering waste. Temple

2d In Lands Digging ups and carrying away y soil
is waste.

If ym suffer or waste to be removed, in consequence of y
land or injured by y influence of water. 2 Rol 81A. Co Litt 53. b.


Waste husbandry and waste. If y Tenant suffer
Arable land to be overgrown with waste. More this neglect,
it is waste. Bac M. E. 1- 2 Rol 814.

But generally converting one Species of land into another,
is waste. As arable into Broodland and e Conces.

Meaning into arable and e Cones, for it changes not
not only course of husbandry but it loses of y Identity of
y Estate. But y change is waste mi it is detrimental.

If Tenant for life espends new money on land, he is guilty of
of waste, mi y Lands themselves were damaged, he take
y land to cultivate.

But digging in mines officer at y time of y demise, is not
waste, as y lease dont mention mines. Co Litt 53. B.

5 Co 12- 2 Mod 133. Bac Ab M. E.

Rol. 24- 2 Rol. 282.
Third In Tree—A tenant for life, so cut down timber trees, (not in Special cases) infra he is guilty of waste, timber being part of y inheritance.

So if he do any act in consequence of not y timber decay—let depending on tapping—

So if destroyed it be negligence.

By timber trees, are meant those bit to be used in building, as if all trees are not timber.

Cutting down shade trees, as many place the not timber is waste—this called by x the destruction.

As to what particular tree stands within ye description—see f 36. 281. 397 to a Coke lib 53. 2 Rolls 817. 485.

3. 3. 458. Calm. Ash and elm. after y age of 40 yrs are sun timber. in Eng though y custom and where there are beams other are such by custom. Com 3. 2. 6.

But what trees are in other countries to be considered timber, must doubtless depend upon y usage of each country, and ye must be regulated by y species of Trees fit for building, not y country produces.


Renter Tenant may cut at pleasure, if it be at worthy season— f 2. 36. 281. 82. 2 Rolls 817. 485.

A tenant is entitled as of common right, ni restrained by express consent to such wood growing on y land, as is necessary for building, for repairing house, & fences, and making and repairing implements of husbandry.
cutting go at Waste.

get, he, if, for a house to become ruinous for want of repairs, he can't take the tenant's timber to repair.

this would be equitable waste. 


He is guilty of waste if he cut timber to make houses

fences, where there were none before. 

Com. Dig. M. D. S. Co Litt 53. B.

2. Rolle 822.

T. if he cut for repairs not at necessity, or y want of

woe is occasioned by his fault. 

Phia.

so if he cut timber for necessary repairs, even and that he had

covered it repair at his own charge. The right can't

be taken away me by express covenant.

in many Co. y tenant may cut timber and not compulsive obria

to repair it. Tho' y labor covenent to repair, for y pays the

of y law tenant's support y building and appurtenance

so the y lease be worth impregnent for waste.

so tho' y house were ruinous, when y tenant entres in such case he aint liable for its decay. Phia. 2. Rolle 822. 828.

Destroying fruit trees in an orchard or garden is Waste. 

Bae. M. C. 4.

Secus if they grow upon other grounds called by color.

destruction. It same as Waste

it has been decided in Court yt a tenant in sower

in wild land, who had cut timber for sale, built a Hay mill

was not Guilty of Waste. But y Supo. Co as a lot of

Chy mill prevents unreasonable waste in such case by injunction.

if tenant cut timber, and sell it and use y money

in repairs. Its Master. He has no right to speculate.

(Seeus & Philis)

Bae. M. 8.

Com. Dig. 2. 4. 80. 

2. M. 8.
Rules applying to Waste in General

Breakeing down a wood fence is not itself Waste, 
but is conduct which may cease. The injury from 
any sort except is not "per se" permanent.

Bac. Abr. 46. C. 4.

2. Com. 883. 2. Role 835. 
But destroying a fence or a Park or suffering it to decay, 
ought y tree to be, is Waste. Co. Litt. 52 a. 3. Com. 240.


A tenant can't liable for waste, ni y value amounted to 
yt wounding. "De man mi non Curat Sex"


No person can be guilty of Waste, if a fence or any thing 
is done, is no part of y land demised, or held by y tenant 
or life or year. In lease of a farm, ni a piece of woodland, 
y tenant cuts y wood, he ain't guilty of waste. 
He is a trespasser, like any other stranger.

Waste lies only between those in tenorcy of estate. Go Else 290.

E. 3.

2. Role 883. 
Co. Litt. 216. 
2. Role 283.

And if y tenant assigns, excepting y wood and trees, 
y tenant is not liable for waste, for as they lessor, it is parcel of y tenorcy. 
If y exception is voided, y lessee has no interest in trees. 
The exception has no effect.

2. Role 883. 
Com. 2. K. E. 3.

If a lease is made with y clause, "without imprisonment, 
y tenant can't liable for waste, but if y may interpose, 
to prevent excessive waste.

But y exception can be created only by deed.

1. Role 183. 
Com. 2. K. E. 3.

And to constitute a bar to y action of y waste, it must 
be by y same deed not contains y lease.
Aliter tie a Covert only.

If a Tenant in Tail leaves with unlawful intent, and a sale is made, he may and conform y lease or accepting of the rent, for it not operate the dishonour of y livery in Tail. 1. Rell 183.

Com. D. 23.

Tenant not guilty of waste, if y injury is caused directly or indirectly by y lessee, as if he destroy a fibre or consequence of wch trees are destroyed.

So if y lessee eat y timber, not leaving enough for repair, and y buildings decay for want of repairs. Tenant not liable for want of repairs.

So if y injury was occasioned by y act of God or y king's enemy, and in y case he must repair in convenient time, if y owner will not remain and be capable of repair.

'Who may maintain y action?'

The old & law not of prohibition to restrain waste is taken away by y St. Helton 2d.

Waste being tie. dishonour of y party injured, y action must be brought by him, who has y immediate reversion of inheritance in fee simple or for tail. 2. Rell 53 B. 285 a. 3 Rell 927.

Com. 1. B. 2. 2. Rell 525.

The reversion or remainder of y Party must be immediate 1.

There must be no intervening freehold remainder. If there be, y reversion or remainderman cannot maintain, or if he ed.

Y recovery not destroy y intermediate estate. 2. Rell 107.

Y remainder to B for life, remainder to B in fee. Here, if C ed recover as a during B's life, C entry for y possession not divest B's remainder, it being freehold.

But if y intermediate remainder in B, my last case. 2 Rell 166.
more for his only, he might maintain y petition of a during B's life; for B's remainder being a chattel interest does not require yet continuance of a post particular estate to support it, but may take effect after A's entry on it's death - determining y living made to it will not destroy B's term for yds.

After commencement of y lease for life, y reversioner cannot have y action of trust during y second term.

If an intermediate remainder for life is limited on a precedent contingency, y reversioner se may have y action during y first term. For here y reversioner does not invest y remainder, but prevents it from vesting, as limitation to A for life. Remainder to B for life, if he shall attain y age of 21, remainder to C in fee.

So if y or a lease for life or yrs is made to A for B's life, y reversioner se may have y action during y first term. For both estates are in A and he is y wrongdoer.

If A saith, if y Riff had y immediate inheritance at y time of action last, and he had not at y time of y waste committed the lease to A for life and remainder to B for life. A committed waste, post B dies or surrenders. Y reversioner may have y action in A, for B can't now be injured by a recovery.

If a tenant in Com. in fee se lease his part to his tenant for life in yrs, he may have y action and
recover a moiety of his place and damages—Com. 3. 113.

By y de hat. 1st one tenant in Common of inheritance may have ye action as his fellow for waste committed on y estate. 2nd no lease "at Supra." The Equity of it extends to 1st Tenants, not to 2nd tenants, for they might compel partition at 8 Law.

In 8 Leg. at 21. 65. 1st tenants in Common.

He who has y inheritance, may join in y action, one who has a smaller interest, as heir at thir. when y remainder is to ym and y heirs of y husband. 1st if y remainder is to d and y and y heirs of D. The wife may join in 1st case, in y second she s only recover and give a lile to y husband.

If y act for ye commit waste and he dies whom ye — 21.
fore action but yet ye latter may have an action of Haste Rec. 9.
for ye damages (Wemble) and he can't recover y place wasted.
for yt is clearly out of him.

The 8th cant maintain y action, me he has y same interest continuing in him, wh he had when y waste was committed. As Receivers. In ye after waste committed, grantee receives it another and then latter back y same estate. The action is gone, for his right of action has devolved by y grant. So purchasing don't recast it. The property of estate is destroyed.

At 8 Law y grantee of a reversion in fee ye 8th cant maintain ye action, y noncompliance of waste being a condition to wh cele neither party, or party—By 8th 32. Hen 8th he may after notice of y grant—

Co. 9. 145. 2. B. 1. 175. 3. 80. 109.

Co. Set. 215.
Against whom y action lies.

2. B.2, 282, 3. At C law waste lay to guardian on chancery, tenant in 3. Do 224.

Contr. 2. M. C. 4, doner, tenant to y burtey only.

Contr. 2. M. C. 4.

But a lesssee for life or yrs was not - hemb. 6.

Contra 1. Reese his of C law 386. 2. Do 290.

A tenant by y burtey is held liable on Count.

The reason of y diversity at C law between Guardians, and ye lesssee and lesssee for life - he was yt y estate of y former being created by law. y law gives ye remedy to him.

But as y estates of y latter were created by y owners of y inheritance, he might have provided ye waste -

But by y St of Marlbridge (52. Hen III I) y action is extended vs all tenants for life or yrs - to him yt held by y law of Eng or secs for term

of life or for term of yrs.

Note y action is founded on priority of estate between y parties, not between y resevees and remainderman of y particular tenant.

It lies ergo ye lesssee for life or yrs since these yrs -

So vs y assignee of a lesssee for life or yrs, for waste done after y assignee.

The action in ye case (when y waste is done by y assignee) can't be supported vs y original tenant for life or yrs.

For first, its a general Rule, y action must be vs him

who committed (or his negligence suffered) y waste.

Besides, second, y priority of estate is gone as between lessor

print
But if Tenant be in power or by Curtesy assign, and y Assignee commit Waste, action lies for heirs as Tenant in Power De. For they were liable for waste by C Law. But as no action of waste at C Law lay vs y assignee, it lay of necessity vs you, host they had assigned. Boy liability at C Law can't removed by y De. (L. 240.)


But if Tenant by y Curtesy, and y assignee commit Waste, same is and y heir grant away his possession, y Grantor of y successor Tenant can sue y assignee in Waste. Hinni only for there is in Power of estate between you. But y Tenant by y Curtesy as such can hold of none but y heir, here is no property of estate between hinni and y Grantor of y heir. *Co. Litt. 54. A. 34.*

*P. 56.*

This action lies vs an occupant, common or special for he is Tenant for life. *Co. 2st. B. 11.*

So vs an Exe or land, who takes a term of assets and vs an Exerc. De son fort, for waste committed by themselves, they are in effect, assignees of y term.

If y Tenant for life commit Waste, then assing, he remains Com. 2st. B. 34. liable, y right of action is complete before assignate. *2d. Bell 828.*

If Waste is committed by a stranger, in land in possession of lessee for life or for yrs, y lessee is liable to y action on y ground of negligence in not preventing it. So if y Tenant in Power, or by y Curtesy if y tenant be he had trespass v vs y stranger. This holds, an y estate is consensual, or legal.

3d. C. 2st. 205.

For y wrong of being a stranger, can't be guilty of waste by action so wants due in trespass, not having possession.

But he may sue v Case, it seems. 1st. Litt. 55. See, action v case. See

*Deb. Abr. 15. S. 9. 3.*
The same rule holds. mey y tenant be an infant, or some court — 1 — 619. 61.w5.

2. Role 821.

So is a stranger auyer alle y lessee and mee commit waste — y tenant is liable for that waste —

P. 26 —

2. Role 828.

So of a tenant for life having committed waste, dies, his ex or adm is not liable to y action — So of a Tenant in Dower or by y curtesy — it being one of those toys wh dies with y mony good — Con 2. Mr. C. 5.

2. Mr. C. 5.

So of lessee for yrs — this y term goes to y ex or adm —

2. 2625 283 —

Co. 2. Mr. C. 5.

2. Role 826 —

2. Role 829 —

It hawe not be a tenant in tail after possibility of issue extinct, for his estate being in to creation an inheritance is not within y Co, wh give a action to y lessee, the may however be restrained from excessive waste by injunction in Chy or Equity —

2. Mr. C. 5.

For does it lie vs a lessee at will, for a commision of waste upon facts determines y estate & makes him a stranger — Besides he ant within y Co, being neither a Tenant for life or yrs —

2. Mr. C. 5.

146 —

2. 2625 283 —

2. Role 833 —

Nor vs a Tenant for life be within unprofited for waste, he is exempted by y deed — not must contain y lease —

2. Mr. C. 5.
Recovery in the action.

The punishment or rather redress for waste at law by [illegible] of Harbridge. 52. Hen 8th was only single damages (In R I double) ye go on.

But now by St. Gloucester (by Edw.) y tenant perfect, treble damages 

This being ancient, for an "prima facie" a law of ye country, or at least of what may be originally Eng colonies.

At C 2 ye was not a mixed action.

Since ye St. y action is a mixed action in Eng, both reaily and Personally being recovered.

If ye land demanded be 3 acres and waste is committed on one only, only one is recovered.

Only y particular parts on wh waste is committed, are recovered. if they are easily separated from y others.

As a particular Close or a particular part of it.

Doods if committed Ehain im in a wood, or field.

If committed in several rooms of a house, y whole is recovered by Pll.

Doods if in one room, ych is easily separated from y rest.

In ye State, Single damages are only demanded and eng more more recovered. The same tenants are liable here as in Eng but they never recover y place wasted but y St of Gloucester is y law of ye matter doubt.

Title Sover of y Count.
Powers of Chancery.
Powers of Chancery -


A power to relieve by penalty - A power to enforce trust - To enforce justice, when positive law is silent - To abate the morrow and enjoin the defect of the common law.

Rule

The subject matter or parties to be found must be within the jurisdiction of the Ct. 444. Damage Settlement Agreement 445. General Rule. There must be damage at Law. 447. General Rule.

The agreement must relate to the reality. General Rule. He who asks specific relief must show in his case, that he is ready to perform his part. 452. Exception 454. Equity considers an agreement as executed from the time it was made. 456. Hence liability of lender of c.


FINIS
Powers of Attorney

First. A power to abate a mortgage under the power of sale.

Second. A power to determine estates quiet and not a letter of office.

Third. A peculiar jurisdiction over matters of fraud, accident, and trust.

Fourth. That they are not bound by rules and precedents. This description could be found to be very erroneous.

1. 3 H. 175, 512. Plessey, Pleas, 5.

First. As to a first there, is a power to abate a mortgage of equal to a law, such a power has never occurred or claimed by the laws of equity.

It was a hard case above former, where 62 and 4, 11 and many of bond creditors, whose debts were paid away or real estate, by which their creditors might be benefited of their debts. Beyond and unjust rules, would benefit because in better condition for them, and yet in the power had no power to inquire.

Half blood executed from infirmities — can't change agreements and hands.

Second. To determine estates quiet and not a letter of office.

See Municipal Law.
Third. Fraud, Accident and Trust, but fraud of
perhaps every kind is in some way or other cognizable
in Law, and sometimes exclusively, in obtaining a
new device.

For many accidents also, as loss of deed, mistake in
account, Contingent by reason of performance
of a condition impossible

Some not relivable in Equity, as where it executed,
contingent remainder destroyed.

Trusts. It is true are gen cognizable in Law of Equity
only, but not always. As Easements, money had and
received to another side.

Will y action on y case ever lie for breach of a Trust,
in Equity? There is certainly no General rule to go effect.

But case lies in Court for aegregio of a note in Promissor
for taking releas. boot notice & assignor. For in such case
y wrong consists in merely y violation of merely an Equity.
See 4th Ser 6. This case taken seems anomalous.
Chy will in some cases decree a title, defective at C. Law

In such cases, there is a necessity for Equitable Reconsider-
for at Law, y instrument must take effect & if at all, at Law. 288.
It is. But Equity can adjust its relief to y Equity of case
in eitherjustice of y case.

R. 38. 135. 1. 2. 138. 2. 3. 4. 367. 2 after 31. 203. 393. 892. 1. 381.
2. 20. 1. 75. 465. 88.
... suppose a bond intended for $1,000 but drawn by mistake for $1,000. Also if a deed be given for 1,000 acres of land, where 100 were intended, a 10 of 1,000 miles being a s excess, mistaken at law, he gets a whole or whole.

1st President. 22d. They are bound by precedent --

As refusing wife, widow, or trust estate, yet allowing husband, curtesy, distinction between a mortgage of 5 per cent., with a clause of reduction to 4 per cent. bona vista. These are positive rules founded in precedent.

2. P. Min. 690. 1. 88. 482.


Indeed ye Powers of Chy are to be learned rather from a detail of particulars, or from any gen description or definition --

Blackstone: Distinctions. The difference between ets of law.


Hence the jurisdiction concurrent in matters of account.

First of Proof. Compelling discovery from a Party under oath. It appeals to Party's conscience for facts resting in his knowledge.

Hence the jurisdiction concurrent in matters of account and as incident to ye, in ye concern of administration, inquiries, distribution, partnerships concerns -- will, etc. 1. 88. 487.

Beliefs, as ver, fraud and facts thus asserted, y judgment is y same as it would be at law --

2. 88. 146. 8 3d 148. 1. 88. 487.

2d Trial. In England is by interrogating on oath by deposition.

are taken out of ed. and when witnesses are about to leave y kingdom, aged or inform. Depositions, "De bene. Case," may be taken by a commission granted to peremptary testimony.

This unit y usual practice in Count.
In consequence of no power to take depositions, they exerise a power to be exercised at law or by the witnesses.

3. Relief. Specific as in case of executory agreements.

The principle is as follows:

Equity considers as done what ought to be done. Equity considers a right of property. Subject contracted for as transferred by executory agreements. And ergo will compel a specific performance of such agreements. A conveyance of legal title to the vendor under a agreement as trustee to the vendee.

The want of specific remedy at law gives Chy a concurrent jurisdiction in many cases, when damages only are recoverable at law. Conveyance and Lease. Decree to prevent a multiplicity of suits. Vacating contracts for fraud.

A lot of Chy can give specific relief in many cases, where a lot of law can't, and so is one of y means by which a lot of equity claims its authority, precedent in a lot of law. Is power of a lot of equity to vacate deed or contracts for fraud or consideration. As if y person in a bond had deceased, y debtor for 12 y consider as y bond.

A lot of law will enforce y contract, but gives y person defunct an action in y case for found. But on a bill in equity it lot will decree y deed nor a lot will decree and rem. The lot of equity is justified entitled to something. The lot of equity will decree y to have, y can never be done by a lot of law. For their jurisdiction must be absolute and not condition as.

But y lot of law and Chy do differ in these three respects, and the these are y principal differences, yet there are other cases, in wh they do differ.

As they differ in ye rules of a descent, as well as
as well as in their modes of proceedings—sometimes particularly in relation to penalties—

**Penalties**—In all acts of law, a violation of a St or a penal bond subject to Ex. xxv. 15:30, sum of y Penalty. Page 20—(To be seen in 37 E.)

A ct of Equity always considers y Penalty as a thing "in Territorium," it never regards y Penalty as a debt, and relieves yr Penalty.

The case is y same in y instance of mortgage. If y mortgage isn't paid on y day appointed at Law, y Yr loses all his interest, and y mortgagor is absolutely ivy Me. but a ct of Equity will relieve yr forfeitures for yr ct considers yr loss of yr Mor. a Penalty, as a such odious to a ct of Equity. Mortgage 11.12.

Relief vs Penalties has been considered. This forms a very comprehensive class of cases. The next head is:

1. **Trusts**—At law, yr trustee has yr whole estate, and can hold it forever, but in Equity, yr Trustee has yr whole estate, and a ct of Equity will declare yr whole estate to yr Trustee. Trust.

You will perceive then, yt there are three grounds mentioned by Pt. 6, are not only grounds. But besides these distinctions by Pt. 6. There are others as follows:

First: That a ct of Equity may enforce Trustee, whereas a ct of Law is silent. 16. When positive Law is silent.
Second. A Ct of Equity (it is said) may abate, modify, and suspend defeats of C & L, where such is an unforeseen consequence of C & L Law. Milford 3.4.103.

Example of 1st. A Ct of Equity does and always has interfered by injunction to prevent Maste. How is ye acquired? Certainly not by ye different modes of administering Justice in these 3 Ct. It is acquired from ye rule yet a Ct of Equity.
Powers of Chancery.

may enforce justice when law is silent, for y one cant be supposed to lay by in silence, when offence is committed on his property.

As by y second rule a ct of Equity enforced marriage settlements, agreements. - The rule of law is, ye all contracts made by persons before intermarriage are voided by marriage but a ct of Equity holds ye marriage agreements were not contemplated by ye rule, or in other words, ye was an unforeseen case. - Will. Black. 3. 4. 103- 1. Tenn. 370-

There are all y enumerated heads of Equity Jurisdiction:

1st. A difference in y mode or administering justice in y same case, 2nd in y mode of proof, trial and relief and 3rd are treated of by 86.

2d. A Power to relieve in cases.

3d. A Power to enforce certain suits.

4th. The Power of Ct to enforce justice when positive law is silent, or to abate a rigor and supply a defect of y law. Pot.

5th. In abating a rigor and supplying a defect in y law.

But where any hardship is a necessary, direct and obvious consequence of y law - however unjust it may be, a ct of Equity wont relieve yr it. This 3rd to be a power in a ct of Equity to make and repeal all law. The ct in ye case proceed on ye principles, of ye law, ye law, ye law, ye law.

Sources of Jurisdiction have been considered.

The power of a ct of Equity to decree y execution of specific agreements is one of y most important powers yt, ye ct, possess. This power of Equity commenced under Ed 11th.
In what cases then will a Ct of Equity derive a specific performance of agreements? This is a rule laid down by Equitable Jurisdiction in all contracts extends to all cases in which subject of contract or parties to it are within its jurisdiction or power of Ct i.e. for ye Ct acts as well "in Rem" as "in Personam".

The ye rule when its application is understood, is very correct, yet it is very perplexing when suggested. This rule is a description rather of circumstances under which agreements may be enforced in Equity, than nature of those agreements may be enforced. The meaning is ye.

That when the matter in dispute is such as to require intervention of Equity, a Ct of Equity will take cognizance of it, if subject or party bound be within its jurisdiction or power of a Ct of Equity.

But when y subject is in a foreign country, ye process must act "in Personam" and not "in Rem".

A bill of Equity has been maintained in Eng at a Court in Phila.

So in y case of Lt. Baltimore and Penn to adjust y boundary line between ye respective Grants, a bill in Equity was brought before Lt. Hardinwyck. Then y def. was in y Realm, here y decree was "in Personam".

In y case, a Ct of Law cd have no jurisdiction.

So if y subject of y suit is in Eng and y person abroad a Ct of Equity has jurisdiction of Property located in England after having given y person abroad due notice of his intention to demand of intervention of Equity. Here y decree is in "Rem and act in "Personam", and y decree of Ct acts...
To of a mortgage be made of property of Eng, and a
or more lives here, y mee may foreclose either here or in Eng.
In Eng, y desire wil act in "personam" here in "personam"
and converses as to lights and duties of thee.

Anciently a Ct of Equity cd decree only in "personam",
now it can decree in "Rem". When y desire is in "Rem",
as question of title to land, it advises a writ of injunction
and another of assistance. Y injunction is by y Self to
deliver possession to Obly, y assistance is y same as
a writ habeas facias possessionem.

But where y desire is in "personam" it is enforced
by a process of contempt and sequestration - of all y self's
property and y self's property is so held "title of self obeyes y
order of y self". This can only advice when y self is within
jurisdiction of y self.

The practice of decreeing in "Rem" began in a regim of
James 1st.

Marrige Settlement agreeant, as a very important
law of case, is an interest of Equity.

1. Font 292. 30. 33. 34. 35. 36. 37. 38. 39. 40 41.

Y CT held yt y gener rule of y law never contemplated
marrige settlement. Y ct if an instrument in y form of a bond
is made during coverture conditioned to make a settlement, a
ct of Equity wil enforce y condition of y bond, for that it
considers y consideration er rather condition as a coverture and
not as a defance, when y condition is y most prominent
feature of y bond. Yct something pertaining to a compulsion
in performance of y agreeant stipulated - It is content
as Evy of an agreeant to convey, yt meets that, if y obligor
shall convey, y condition is void.

1. Font 33-4. 2. Prmry 243. 2 Sam 486. 2 Alth 47.
445. For a Ct of Equity adverts to y substantial object of y Instrumt, it lastly asks itself what was y object of y agremnt and acts on accordance with y answer. It considers y Instrumt as lice of an intention to convey. It-Post-

If a settlmt is made and executed during coverture, a Ct of Equity will protect and enforce yt settlmt.-

To when a settlmt is actually made and executed, as a deed during coverture, a Ct of Equity will consider it as a marriage settlmt and treat it accordingly, for such consequences purpose to transfer y property at Law yet as it is void in Law, a Ct of Equity will consider it as an agremnt binding in conseuence and enforce it.-

Formerly where agrents were made between husband and wife during coverture, they could not be enforced in this way, in matter of trust- But new y rule is deed- By agremnt will be enforced in Equity- with y intension of trust- 2 aos. 308-


There was a decision in Comt. In 1823- Ct of Equity, in which it was held yt y agremnt was not binding. The import of y language is clear yt such marriage agremnts are not binding. But y intension of y Ct was different and recent decisions of our Lt. shows yt determination to follow y Eng. Bri-rd.- The decision in y 1st of D. 22d. was adapted to y particular circumstances of y case.

The rule given (Subera) shows not what particular class of & a Ct of Equity will specifically enforce.-

12 12.

What sorts of agrents are enforced by Equity remains to be considered-

So proceed then, 3 Gen. Principle is, yt Chancellors
will decree a specific performance of agreements falling within the jurisdiction and requiring equitable interference in those cases only generally, viz. all acts of law not giving damages for non-performance. Hence if cases will not support a recovery of damages at law, equity will not intervene.

Now there certainly ought to be some reason for ye distinction, I take it to be a ye plain place is more easy on parties in general only a substitute for a remedy not might be had, that less adequate in law. The greater in general demand a performance, the adequate damages can be claimed at law, nor can ye at times if there is some remedy at law, and inadequate at law. Hence it is ye equity will not enforce a voluntary contract, even under that in a voluntary contract will not support an action at law.

The example of a voluntary contract may present some embarrassment. A ct of law cannot know how and on there is a consideration, ni it appear on y laces if it.

If a case is tried in equity to enforce a contract, it will on equity may introduce. First, let there be a contract and consideration, and ye be done before a transaction of it, and parts may demand it void and have it to be null and void at law.

The distinction of cases, and in another hypot. is a general and not universal rule. There are conditions to both examples of distinction.

First equity wont always decree a due to performance of an agreement and damages all be recovered at law and rules when such an interference not be certainly to continue. This is a comprehensive rule and will apply in all cases.

Suppose a bill lost, it have a due of specific performance of an execution against the thing, in a trade or purchase. 1. 11. 34.

For sales, and might notice to y purchaser. But if y person any have had notice of any agent, when he made his purchase, equity will decree to have the deed.

Yours etc. C. S.
But if an agreement to convey on valuable consideration is good at law, and will be enforced, specifically by a judgment creditor, for your debt, it is only a good law, but a conveyance to convey a specific thing, which is always required to a specific leg, as in the case of a tree, and judgment creditors. In both these cases, damages might be recovered at law.

So again, when a bill is tried to compel a thief to restore the conveys, and pay the consideration. Equity will not decree the performance of the contract, if the thief be under an interrogatory law, and can not be readily removed; yet a covenantor can recover damages at law for the damages not be given at law, yet in yes case of Intersession of equity it will be unreasonable.

So also if one lend money to an infant, and the infant repays the money in the presence of necessaries, a bill of equity will compel the infant to pay the money lent. The lender, then a bill of law considers the lender as lender to the infant and not only to goods purchased by the infant.

Again, when y obligor in an assigned bond, clothes a discharge from y obligor with notice; and after assignment, y obligor can compel y obligor to pay y debt. He is assigned, this a bill of law will not interfere at all. Here y principle is, yt it is as in action a legal interest can not be assigned, yet yt assignment of an equitable interest will be enforceable in Chy.

Again: where an agreement is made under or by act of y lot of Chy itself; yt it will enforce an agreement.
In no action can lie at all, as where there is a judicial
sale of lands under an order of May, yt at once decease
a specific performance of y contract. 2. Pow. B. 144.
In yt of law cannot give damages, for it is y act of another.
In this agreement, as if it had been a common case of contract,
and besides, y enforcing of y agreement, is necessary to preserve
obedience to y et.

16. A legal right.

When y condition of a bond is destroy'd by law by an annui
ty of right and obligation in y same person, all of Equity
will enforce y agreement for y benefit of bona fide purchasers
creditors, and so of all cases of contracts. (Contracts 141)

As y debtor becomes executor or assign, if y debtor is
visible, he becomes both debtors and creditors, and so in cases
of y debtor, the equity will enforce agreement of bond.
The former is against law, Equity, of moral justice, manners
required, so interfere, for in ye no mortals can maintain
an action at Law

Such are y exceptions to both branches of y General Rule. 18-

To proceed.

If a recovery of damages at Law must be an adequate remedy
and such cd be obtained, as a gen Rule, Equity will not
desire a specific performance, for gen jurisdiction and remedy,
the rule admits of no exceptions, neither. Modern rules
of law give an adequate remedy in a case, in our ancient
rules do not, for y Rule see 1. Tint. 28, 169, 2 Town. 314.

But y question still remains, what are these particular
contract, in wch there can be no adequate remedy at Law.
This depends a great deal on y subject matter of contract,
as being real or Personal, and I add, as y_rule.

yet so far as equitable jurisdiction depends on y subject matter
of y contract, y General rule is yt, yt a ct of Gen. rule

The Distinction between Real and Personal

A party to a contract may have a claim for specific performance, under certain circumstances. Such a claim is not always afforded, depending on the nature of the contract and the parties involved. In some cases, a recovery of damages may be considered an adequate remedy, whereas in other cases, specific performance may be granted.

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1. 1 Ves. 447
2. 2 Pryn. 215
3. 2 Eliz. 137

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The reason why specific performance is not always available in cases involving personal property is because damages are often considered an adequate remedy. However, in cases involving real property, specific performance may be required.

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2. 2 Pryn. 305
3. 2 Eliz. 383
4. 1 Dem. 189
5. 2 Pryn. 315

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But there are cases where equity requires specific performance of contracts relating to personal property, and when such a claim appears to be just, specific performance may be granted.

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1. G. & C. 383
2. 1 Dem. 189
3. 3 atk. 388

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A agreed to deliver 800 tons of iron in different installments and in any case, there was a similar undertaking as before. In any case, there will be an average of 8 magnitudes of sand, and in consequence of the fact...
Another exception to a General Rule, is, where fraud is
made with y damages, a ib: Equity will decree a specific 2. Pew. 2.
performance of contract, of which is y remedy is by an 1. G. 217
action at Law or S, and 8 brings a civil or Equity, along with fraud, of denying y fraud, may bring his remedy 1.206.
and for y Equity will decree a specific performance of contract, and if y alleged fraud is disproved, is not credited.
A bid of Equity will compel y bid to perform y contract. And it related to Personality.
(Covent Brother. 1. 2)

The reason of y Rule is, yt as y bid at Law is driven
into Equity on a groundless charge of fraud, yt finding
yt charge groundless, gives yt his remedy, when he is
reluctantly lost.

---merely Personality---

So if a bid is lost in a contract, and yt bid dont demur 17
yt jurisdiction, yt will not dismiss y bid— for if
he devotes not demur, he tacitly admits y jurisdiction—
2. Pew. 215—
and submits y decision of y merits, to y bid of Equity—
G. 217—
his answer is substantially a plea to y merits of y case—

If an agreement respects an interest in land, or determines
y performance of some choses act, a bit of Equity will decree
a specific execution, because damages are deemed an
inadequate remedy.

---merely Personality---

If an agreement concerns y Personality on one side, and the
realty on y other, y bit will decree a specific performance
by an application of either; for a specific execution in Equity
is moral—

2. Pew. 528—
for its a Gen Rule, relief must be the Mutual—
So if A, in an agreement to convey land to B, on a certain consideration, equity made decree a specific performance of his contract, and compel B to pay a purchase money, as well as compel A to convey.

If for contract to convey lands of certain value, not identified, will not be deemed in equity, for such a contract creates no lien, and a decree compelling conveyance of particular lands, will be making a contract. Relief however to be obtained at Law.

Generally he who demands specific execution of an agreement, must show in his bill, yt he is ready and willing to perform his part, for if he will not, or cannot from his own neglect perform his part, y et will not decree specific execution, y et is founded on doctrine of mutuality. At Law it would be difficult - The diversity don't result from a different construction of y contract in two Cts, but here y power of Equity is discretionary and they act in accordance with y principles of Equity, whereas a C of Law is compelled to act in conformity to certain prescribed rules.

It is therefore a general rule, yt when y party has performed, even in part, but is prevented by subsequent events, from performing his part, he can not, however a decree for an entire specific execution - if y Del for y execution must be mutual.

Thus, Agreed to buy me 1000$ to B within 10. pr. B promising it by daughter and settling a certain portion on her, within 10. time, y marriage was held, but y wife died before y celebration of ten years, here B lost a bill in Equity is necessary for 1000$, but y et held yet yt he had not performed y condition on his part, y et could not compel a performance by y Del without any compensation on his part.
But in Gen. rule, there is an exception, where &lt;BT having
performed in part, &lt;by pro vincial of his, &lt;is prevented
from performing &lt;in sole, he is not lef; in solus, &lt;and
here a Ct of Equity will decree in his favour. 1. Eqty 34 70 19

And when self had been willing to perform on &lt;its part
but has been prevented &lt;by self, equity will decree on his part;
for the equity and &lt;is also of law &lt;to do, for its willingness
of which, &lt;is considered an equivalent to actual performance.
Rel 88 2. Apl 1312 4. Ptb 701

But a Ct of Equity &lt;will not decree a written agreement. 1. Pimb 240 1. Apl 68 220
Part of an &lt;even under seal, not has been discharged even by Part. Here can rebut
part of an &lt;is introduced to rebut an Equity. But it is not&lt;the introduction to compel a performance. 1. Borm 240 2. Apl 68 220
in an agreement, otherwise forecloses. 1. Borm 240 2. Apl 68 220

At law, the &lt;self discharged, not have no effect whatever,
and in the part of an &lt;admitted not to control y contract,
but merely to restrict y Chancellor an, in consequence he
ought to enforce y contract after such a part discharged,

Again, when a party claiming y execution of an agreement &lt;20
has permitted it to lie dormant for a length of times,
and then &lt;prays in Equity, a specific performance. A Ct of Equity
will not decree in his favour, &lt;it he can explain his
delay by special circumstances, for y delay is a &lt;bar to
him not to y decree of specific performance.

1. Borm where there was a marriage agreement he purchased
and settle lands within 3 yrs on y part of his husband, 2. Borm 276 484
and y party if y wife didn't insist on y performance 2. Pimb 280
but suffered delay, y delay was explained by y wife, 1. Borm 321 384
and showing of he was constantly engaged in active business,
and required all y funds and y performance prant. 2. Pimb 610
2. Pimb 82
It has been several times held, that if the party having failed to perform his promise by stipulation at a specified time, he can obtain a decree of specific execution, if he is ready and willing to perform on his part, in a reasonable time, but is prevented by a non-performance of y Def.

But in a late case at Law, it is said, that in Rule in Equity has been lately altered.

When a Party seeking a specific performance, has himself failed with y contract or shown an unwillingness to perform, he can in Gen obtain a decree for, by acting thus he has given y Def every reason to believe yt he never will be called upon.

To y General Rule, yt y Plf can't compel a specific performance.

When he has not performed himself or is willing and ready to perform. There is a Gen exception in favor of children by those under a marriage settlement, and the general marriage agreements differ from all others; now y general Gen of governance in y case is a General one, as is any duty to be performed, those children are third persons but non-performance might be injurious to these children, and ygs Equity decrees a performance.

In various cases Chy will decree performance, "as near as may be." If post an agreement made, a Chy intervenes rendering complete performance unattainable, part performance if consistent with y Def will be decreed, if desired by y Party claiming.

As an agreement to leave for 40 yrs, and a Chy prohibits longer leases by 10 yrs decreed.

Lease for 10 yrs, desired.

Municipal Law 28.

So if complete performance be prevented by insurable accident or act of God.


The doctrine of equity at present obtains in some cases at Law—

This doctrine seem at first to contradict y Rule of Law—Co Litt. (in Law 100) That when a party renders y performance of a contract unlawful, y contract is repealed. But y Rule 100 says, contemplated in y last rule, makes y contract void only so far as performance nd be unlawful— 2 Tnns An 163; 2 St 84; 381.

So where one has a power to lease for 10 yrs and leased for 22 yrs, y lease will be good in Equity for 10 yrs. AmBr 7; 2 Tnns 212.

AmBr 7; 2 Tnns 82 T R 232.

Rule of Law—Where one conveys by grant or even (by devise) gives to a for life, remaining in y heirs of his body or issue, he takes an estate tail—amBr 7; 2 Tnns 212.

Bk 99; 3 T R 293-320, Estates in Lands 14; 2 T R 573; 7 230.

Where there are articles of agreement to settle lands on a for life, 4 20; 82; 215.

Lest Same—She will devise a settlement on A for life only—remainder in strict and after his first and other children in tail—1 231; 2 82; 2 592; 3 316.

Thus making a a mere tenant for life and his children tenants in tail in succession, for in yrs. they, y several interests of tenants, is better affected, and y LLC will bound to take y technical rules relating to estate tail executed—1 Tnns 390; 1 38; 232.

L 622; 2 Tnns 641.

She will devise y same, altho a settlement is actually made (after marriage) giving to A an estate tail—Deese rule 2 Tnns 42; go kala y articles—3 ate 231; Tnns 776; 2 B. Mm 56; note.

So if y settlent is made before marriage, but expressed to be in favour of y articles—2 Tnns 549; 2 Tnns 55; 3 P C. 97.

2 Tnns 396; 2 Tnns 46; Tnns 267; 1 B Mm 129; 1 685; 287.

Note: These rules in favour of issue are said not to extend in favour of female issue.
A Ct of Equity considers an executory agreement as if it were executed, and from y time when it ought to be executed, and yt time as yt time of making y agreement, as one some, but it may be asked: But the weight of authority consi-dered yt agree-ment as executed when it was made and yt time only—well all agree yt when yt time is fixed, it is executed from yt time of making yt. It is not taken from them, and is not a valid title.

All Law, yt principle is a comprehensive one, and its effects most important, and it follows from it, yt yt of money is articulated or divided to be laid out or land. Equity considers yt money as land from yt time, yt devise was made—

If yt covenants to vest 1000L to be vested in Land.
be limited to himself and his heirs of his body and he died before purchase, will be considered as land and will go as land and have gone, had it been purchased according to agreement.

Hence money thus advanced to be laid out in land, is subject to curtesy in y husband of y person, whose land it is, he will be entitled to curtesy in y money, because he can be entitled to curtesy of or in y land, had y purchase been made.

But it is not subject to dower of y wife, for distinction between Dower and curtesy is manifestly arbitrary and unjust and it is exploded in Comt, and Widow is entitled to Dower. See Hus et Wife and Estates for life.

In Comt and N.Y., y wife not be entitled to dower, as has been decided in an analogous case. In y same principle where there has been a sum of money devised for purchase of land, that money will pass by devise under y description of land. The not in Gen under y description of personal property, there is one exception infra.

Suppose A, has entered into a contract to purchase a tract of land by paying $1000 and before conveyance is executed, he dies, devising all his real property to B. Property, B will take his money under y devise, and so is y case any y money is of a Gen or of a particular fund, all or any money is bound by y transaction.

But Equity don't money to lands within these rules as 3. all 235.

y agreement to vest it lands, is positive. Hence if one advances 2. Prov. C. 532, at money shall we left in y hands of a trustee, till a purchase of land can be made, y agreement will be positive.
3. money to aggree to be invested in lands or securities at y election of y Party to y election must be made etc as y money must remain as money and not as money generally good.

The effect of y rule is, if it dont make an election, is not benefitted by y agreement.

And y rule ye money may be considered as land held "in tenure" as if he agreed to sell land, but before receiving 2. 59. 58.

Talk 15s. 54s. 1 for it had been paid in, and Equity will decide yt y purchasers must take y land and pay y money to y rightful fair. The land here is considered as so much personal property in y hands of y executor.

Another very important consequence of ye former rule is, yt y property agreed to be conveyed, being considered as transferred is at y risk of y Grantor or vendee — See infra

Marginal note:

There are some passages differently opposed to 2 P. 70 in 2 2. 660. 1. Rent 43. — yt y property contracted for was mere bubble and in nothing, a South Sea Speculation: 2 Bern. 280. — yt having a plantation in Jamaica, agreed to convey it, but between y agreement and conveyance, a great earthquake of 1582. sunk y land, y vendee had to bear 200.

But why shoule y property be considered as transferred, or why shoule y vendee be liable to all contingencies happening to y property before y time appointed for y conveyance? I suppose Equity regards future transfer of y legal title as a mere formality, for y property is bound in Equity from y moment y conveyance agreed upon — 2. Bern 280. 2. Pow E. 61. 68.

1.r.

There are some opinions contra 1. 2. P. 532. 2. 523. 520.

But I regard in corporation or many instances as fully established 1. reason 250. 2. 523. 480 1. 532. 2. 523.

220.
But when no future day is appointed for y conveyance, all agree yt y vendee is liable for all contingencies, yt may happen yt y proﾎ看出

In pursuance of yt gen doctrine, where y ease read, it it agreed to purchase from B a lease for 3 lives, but before y day of executing y contract, one of y lives was extinguished by 1.23. by C's death. A y vendee was liable for y loss.

I agreed to sell to B, and B to purchase certain stock, 2.23. in a certain company, y transfer to be made on a given day, but before yt day arrived, y charter of y company was taken away— B refused to pay y purchase money, but C uy compelled him.

But where y contract is not of sale strictly, but money 2.12. a sale of y right of possession, y doctrine dont apply. Buy lays down y rule different: 2.12. yt he, yt he who is tenant in fee simple of y money or not, be tenant in fee simple of y land. If it were purchased, may at his election, treat it as money and 2.12. have it retained as such. There are no three persons, 1.23.413. who are purchasers under y articles, of course, no right of others can be violated by such an election. 2.23. 205. 64.

Suppose yt A agrees to purchase a certain piece of land, to be settled on B in fee simple and mes ues, now B is yt only person interested in y ease. B after yt deed can’t be compelled to purchase a land. It’s true, yt yt other party may insist on a purchase, but yt is not y ease here supposed. But if y land were to be settled in B and y heirs of his body; in one ease and B in another, A may compel B to make a purchase of y land.
But in such a case, when land is to be settled by a grantee in fee simple, a change will take place, if land is money and money for land, and if the grantor has a devisee, he dies in a contrary

But if the money is declared to go to a successor, it will go to heirs as Personal Property, and it will pass by a will

If a tenant in fee simple does not make his purchase, and if his will is admissible to show what he did in his lifetime, he is still to treat the money as personal property, for it is only rebutting an Equity, which can be done in all cases by Proving Error, and if it can be done, either by proving by formal Error, his declaration of his acts, showing his intention to effect elect a money or yet he did not purchase the land.

I have remarked already, of want of Equity on the side of the

Then in Equity, if a decree of a decree in his favour, in a decree of a suit is entertained by the

Since want of mutuality in an agreement is a decisive objection to a decree in his favour, in a suit is entertained by the

If an agreement is uncertain, a suit of Equity is not decreed.

But if an agreement is originally mutual, no subsequent want of mutuality will prevent a decree of specific performance

Again, if A agreed to sell an estate to B, for an annuity to himself and heirs, but a y annuitant died before the first payment, A ed never receive any thing for his annuity, yet the agreement was originally mutual and certain—All,
Note. In case of an Annuitant, no money is ever due till expiration of first year. In all these cases, no benefit intended by agreement was originally mutual.

Relief vs Penalties

Penalties vs penalties. Sometimes a distinct head of equitable jurisdiction. Penalties, where one might enforce at law, he must waive. If the suer in equity, the bill seems to be damnable, 100. 1st. 60. 1st. 60. 204. 207. 2d. Law Co. and B. 204. and avoid himself of answers to enforce penalty. This a'lt of equity won't allow. Penalties being considered in equity as unreasonable. Maddox 31. 32. 43.

And Gen Chy won't suffer advantage to be taken of a penalty or forfeiture, where the substance of the contract may be obtained without it, but will relieve as it on a bill for that purpose. As Interest on a mortgage of S. 5 per C. with a clause of increase, common case of a mortgage. Relief 1st. 73. 2d. 57. 1st. 57. 2d. 54. 1341.

Page 7 of 96 Title. 1st. Bur. 2282. 2d. 204. 38. 288. 33.

When e g o combination can be made here a clear case of damages. Equity will in Gen relieve vs penalties, for in such case, the substance of the agreement can be obtained without the penalty. 2d. 206. 2d. As Penal bond to secure a debt, relief vs penalty depends on payment of the debt.

So if a bond or covenant, for an amount incapable of being ascertained, with a penalty annexed. 2d. 206. As for so much stock is for so much wheat, for a market price is a valid standard of its value. A certain est. goods certain real estate.

But when there is no rule of damages, Chy can't relieve.
So that there is a rule of damages, yet if by reason of
intervening events, no compensation or damages can be made
as a substitute for a penalty, there can be no relief at all.

As it is in his marriage articles, covenants, y t if he died
before such a bouncing on his wife in 2 yrs, he shd leave
all his wife's portion, or interest, y wife dead before
bouncing settled, within 3 yrs, so bouncing must ensue, the
amount of a bouncing is known: for wife being dead,
no compensation can be made. a bouncing is a settling for
life, and wife was now dead.

Whenever one party to an agreement voluntarily defrauds
the other in certain conditions, y

But y condition in such a case, can in strictness hardly be
decided a penalty, since y thing forfeited is lost, is a
true gratuity, and y debtor is no event have more

Gen Rule: When Equity will relieve as a Penalty in
an agreement on one side, it will on y other, enforce performane
of agreement itself and be done versa.
It was then ordered, that there was a penalty in the amount of the principal bond and the obligations in the case to the thing. It was ordered as penalty for not fulfilling the bond for with a penalty conditioned to performance, it was to be as a penalty, the bond. Mortgage, if performance, no penalty. 177,248, 32.

And now, there's penalty, but in no instance any performance of something, but the 23rd. And the enjoyment of the collateral object. Second bond, but if the bond is not obtained or if it is not obtained, it would take the money to get the thing on the other. 177,248, 32.

When money to be paid for non-performance is any notice of failure done! It will not receive it. The loss is a rule of damages, vide infra magna.

For here, the stipulated sum of $5,000 is not intended as a mere penalty for another thing, but a rule of damages, for failure to pay it. A stipulation to pay by 20th. April 177,248, 32.

And if the contract does not stipulate for damages in the case of non-performance, 177,248, 32.

Also, if damages are not recoverable for non-performance, 177,248, 32.
It shall be lawful to a man who has, for a substantial thing, assented to a compensation for it by obligation, to recover it in the court of the place where the injury is done. If the creditor, in the course of the application of the compensation, assents to the conveyance of land, or to the conveyance of personal goods, he may be recovered at the place where the conveyance is made. If the conveyance is made at the place where the creditor has the property, it shall be an application of goods or property to any state (at the place where the creditor has the property) to the extent where the property is in a state of applying to the use of any compensation or such case.

Whether the case to be paid is strictly a penalty or a liquidated compensation depends on the condition itself of the whole instrument. It is a part of which.


When the party renews a contract to Bonds for a performance of debt, it frequently occurs that it does not cover the consideration of the contract. Quantum, as such, is not a part of the consideration of the contract, according to the bond. D. 12 Bev. 200. 142. 2 Shaw. 142. 16. 81. 37. 30. 39.

Parting with a benefit: Agreement.

Let the same considerations to which the facts relating are similar, be applied to the fact of the act. For more unreasonable relief acts a dote ground. If it acts at the Carolina C.

2 Bev. 145. 232. 2 Shaw. 193. 2 Shaw. p. 92. 2 Shaw. 193. 2 Shaw. 193. 3 Shaw. 216. 5 Shaw. 394. 2 12 Bev. 137. 1 2 Shaw. 193. 2 Shaw. 193. 2 Shaw. 193. 2 Shaw. 193.
It was clear, however, that when there was a Penalty in an agreement, the party bound had his election in all cases, to do or thing stipulated or pay Penalty. A Bond with a Penalty conditioned for conveyance of land, might refuse to convey, if he had paid a Penalty. This will make a great deal of injustice.

But now where a Penalty of a bond seems to be merely a security for performance of something collateral, and the enjoyment of such collateral object seems to have been intended to be obtained, he will relieve his Penalty. As Bond, Mortgage, and more agreement, Jacob L. Lee, are Penalties.

This is done generally by injunction to Penalty on payment of his interest, principal, etc., as he may be. Case 16 on performance of condition or covenant secured by Penalty. For every party has not in such cases, his election to do one thing or another. It is obliged (if other party claims it) to do the collateral act or thing specifically.

When a sum to be paid for non-performance is in a nature of assessed damages, he must relieve it. This raises a nice question vis à vis infra.

For here a stipulated sum is not intended as a mere security for another thing (as above) but as a stipulated compensation for his loss of it — a webo satisfaction substituted for performance of agreement.

In this case, therefore, he will not derive performance of covenant, nor generally restrain its violation. For he has his election to do it, or to pay damages assessed.

As Lessee covenant to pay $5 for every acre of meadow, ploughed. See of a Covenant not to plough under Penalty 4 Burr. 2223, 2521 2d, case 32.
But when y penalty is a more security for a collateral thing and not a compensation for it y obligor has no election in Chy (ut Sup) the election is after breach in y obligee (1 Fortun. 142. 2 Ves. 528) Ex. (at Paphia) Chancellors will decree performance on his application -

As y case before stated of a Penal Bond for a

penance of land or y penalty may be recovered at t Law -

at his election me Chancellors shall award it (as it

and in y application of a obligor before y in Paphia) since

those t's there is no need of appealing t Chy for any

sitution in each case -

whether y case be said in truly a penal or a

penanced consideration depends on y constrution -

white wistren -

And now by y 18. and 17. Will 3, 4 and 5 Anne,

it's of yse are enabled to change penalities in bonds

in certain cases 2. Ch. Blae 153, Laws C. 256, 2. Ch. 641,


Ch. 125

When Chy relieves vs. Penalties in Bond for y performance of covenant it frequently ascertains y damages by direct-

ing ym an issue of quantum deminimus at Law and decrees kata y verdict -

Setting aside setting aside agreements - Chy will sometimes arise a

some binding without an agreement no id it it not

part valid and an agreement unreasonable the will set -

it's upon a men unreasonable and id a delin-

pound to id inside contracts -

2. 68. Brut. 221, 2. 68. 528. 15. 68. 1. 38. 68. - Cow 20.
The contract need not be enforced to carry things into effect. Equitable interference in such cases being done strictly extraordinary. 2 bomb. 174. § 221 235.

So in all cases where there are grounds on which I can rebut y equity claimed by y bill—ante 19—

But fraud in y transaction is a good ground, not only for refusing to decree an agreement, but also for setting it aside and rendering it void. And if there be no fraud, no circumstances among 2. sec. 627. these affording any ground of fraud, gross inadequateness of price—consider may very well furnish one of fraud. But ye alone will not conclusive—

1. 2. 3. Chy. 176. 2. Corp. 402. 1. Corp. 465. 2d of negro, 77 note—

Agreements, obtained by imposed hardness or oppression, are void. 2. Corp. 148. 188. 3d. 427. 447. 447. 41. fractional, 184. 2d. 2. Corp. 163.

But such agreements must ratify by ye debtors, 184 after ye interest has accrued. Freely with his eyes open and not not set aside—


Of those obtained by fear, I think it doth amount to y legal idea of fraud. 185

2. Corp. 155—

When y subsequent agreement is unfruitful, the court will be governed as if y agreed to go away. The judgment is considered 2. corp. 155. as the parties term. But it shall not, in y cases of interest, one debt may be part of principal and lawful interest—

But when y Parties are equally guilty, Chy is neutral, and the losses at y gambling and say y money—Chy wont relieve
Agreement.

Any unfairness of a party will prevent a decree in his favour, as representation as to its value of the subject matter. To whose party pretended to be a purchaser for Dr. Borden, when he was not, and then obtained an agreement for a sale at an under value.

is as bad as Suggester frauds—

So in some cases, where there is a misrepresentation with any deceit or untruth, as where there is an agreement to sell for a sum, and the parties void at an under value, the estate being delivered, and with no respite, and in many other particulars, the question

raised—

in law merely

For a mistake can a contract be ever set aside in law merely, i.e. an mistake in law? Yes—no—

So mistake in some cases is ground for setting aside an agreement. Rule, yet if as mistake, or fact misrepresent was cause of the agreement, it is not as in. Because so mistake was not a line, qua then be an agreement.

In the case of Pte. was misused and accused in point of law—

For in deception was intended—See Rule—(ante)—If voluntary agreements or contract under deal are not desired in Chy on sale is only nominal damages are recovered at law. There can any damages be recovered if it appear on a face of an instrument, yet there was no consideration—
But if, for instance, of a doubtful right 2, a suit were entered... 

This differs from the case of mistake, where a false description of agreement, where parties are aware of doubt and make agreement, a contract of hazard intentionally. 1 P.M. 172. 2 P.C. 200. 201 4-2. 

1. P. W. 87. 92. 1. P. 142. Title Contracts 17. 18- C.R. First contracts respecting lands decreed in Ch. 15 partly cancelled (explained under y d of fraud.)

It is necessary in cases of Private trusts provable from circumstantial facts:

Agreements obtained by extortion, not amounting to undue use - not deemed, but set aside - to from undue influence - 

...as in a child towards its parent, if agreement be reasonable. 


In all cases, a just ground for vacating an agreement, in Ch. no effect by other party, or no some unfair advantage is taken. 

It must be a just cause. See Contracts 6.

So mental weakness, if a party be legally "lunatic minor," is her sole ground for setting aside an agreement. 

If the party attended with fraud or any indiscreet circumstances - 3 P. M. 182. 

Case of a young man, entrusts his money to a servant, who was to guard him, was imposed upon and yet received a bond of him for a 1000 3. 36- 

Title Contracts 70- 

Contracts are sometimes enforced in Ch. so are minor, not valid at law. Ch. acts as guardian. Any money borrowed by infant and actually expended in necessaries, see Par et Child ante. 13-4.


So in other cases, where a contract is clearly for an infant's benefit -

Agreements operating as fraud upon a minor's consent, are never deemed but void - 1. T Tales 366. 2. T Tales 3321. 3. T Tales 3354. 4. T Tales 3424. 5. T Tales 3456. 6. T Tales 3506.

And they are void at law -


They cannot be ratified by the parties, being void -

As a clandestine agreement for the benefit of a minor to be bound on one side, in a marriage settlement, contract - These contracts are unlawful - (Title Contracts 340) 1. T Tales 174. 2. T Tales 330.

Title 340.

Upon the same principle, marriage bequests, bonds are universally set aside in the - as being radically vicious, and unlawful, being 120.

1. T Tales 470. 2. T Tales 474. 3. T Tales 478. 4. T Tales 480. 5. T Tales 484. 6. T Tales 488.

Such agreements have been set aside, the afterwards executed in some cases, and the executed in obedience to a former decree, in favour of y agreement see 3 T Tales 441. Yet a deed of conveyance by an heir apparent may be void at law, by way of estoppel.

Deeds 37 - 1. T Tales 441. 2. T Tales 445. 3. T Tales 449. 4. T Tales 453. 5. T Tales 457. 6. T Tales 461.

But now y rule, if y original contract is shown to have been fair, and is ratified freely upon full information by y heir, comes into possession - it is good - Thus y ratification and good - There are numerous cases, contracts void at law -

1. T Tales 180. 184. 188. 2. T Tales 182. 186. 190. 1. T Tales 194. 198.
One of title decrees to be delivered up—

Agreed to be a thing not to tend to oppression, extension or immorality, and decreed—2. Co. 258. 1. 93 183—2. Co. 258.

Sec of N are decrees in the, when Justice requires it to be 3 Bl. 394.

To allow who like the law in Eng. under St. 2 et 3 Geo. 2.

There was no Rule of the Sup. at the Law—(6d. of Impropt.)

2. Co. 258. 440—q. 5 Bl. 128 & 6. 92 456. Co. 56. 2. 110. 440—

By Court Law. If, original petition in Equity are to be

be put by the Supreme Ct. if it exceed $335. 0 0 0 or if be for

relief no any judgment is cause pending before the Court—

St. Court. 130—

If y subject dont exceed in value $335 to the Court—

To appeals from decrees of the but writ of error, as from

judgments at Law—St. in Court—

When y subject matter is of uncertain value, if alleged value
determines y jurisdiction—

Of the Power of the Ct to issue Injunctions—

An injunction is a prohibitory decree restraining a person doing

a thing who appears to be to Equity and Convenience—

They issue in various cases—viz. an Attorney, a Party at Law—

or a Guardian. 3 Bl. 172. Title Injunction—

The most usual injunction is to stay proceeding at Law. 3. Bl. 178—

on ground of 1. circumstances, not adverse to entice of law—

3 Bl. 2. If a declaration is filed, execution is regularly stayed. 44—

like answer, or further order—June false?

3 Bl. 2. If a winner at illegal gaming, brings a suit at Law—

for y recovery of y money won, it having been in winner’s

hands, but forcibly taken away by y loser—Ct. will

issue an injunction.
Injunctions may issue to stay waste, as cutting timber, trees, staking ancient meadows, to favour of remainder man.

1. Title Ch. 57, 3 Bl. 432. 1. Salk. 29, 30, 3 Bl. 227.

Injunctions to stay waste, will lie in all cases in relation of waste. We lie at 6' vac., and many others.


Injunctions to stay waste, will lie in all cases in relation of waste. We lie at 5' vac., and many others.

1. Salk. 29, 30, 3 Bl. 227.

So it goes to me, even in fee in possession, for cutting timber. If he don't apply & sensibly do his duty, me, has legal title, therefore can't be sued at law.

1. Salk. 29, 30, 3 Bl. 227.

To us, 'lbs, in possession, venue he might diminish Mrs. B's security, before recovery 10 be had 1. Salk. 29, 30, 3 Bl. 227.

If Tenant for life with improvement for waste, pull down y buildings, injunction issues, the suit for cutting timber. 1. Salk. 29, 30, 3 Bl. 227.

7. Salk. 29, 30, 3 Bl. 227.

To us, in y last case, Tenant may be ordered to repair. 1. Salk. 29, 30, 3 Bl. 227.

Injunctions will issue as such a Tenant in some other cases, as to restrain cutting trees intended for ornament. 1. Salk. 29, 30, 3 Bl. 227.

4.6. Sometimes it issues as one having a remainder as a Trustee, for y beneficial interest is in y. 1. Salk. 29, 30, 3 Bl. 227.

Waste lies not as Tenant in Trify. 1. Salk. 29, 30, 3 Bl. 227.
Injunction may issue to restrain nuisance as to stop Injunction if raising of a building obstructing amount light. But right must be founded on prescription or (of course) on a contract.

1. 1 Boc 423 4. 1 23 543.

It goes to stop a building on another's ground.

1. Forb. 28.

But if nuisance must be such as by law deems a nuisance, e.g., it goes not vs building of a house for inclosure of a small piece.

3. 6 Ch 750. 2. 8 138 140.

It is no common trespass, for no remedy afforded at law, is deemed adequate. But if a trespass is so continued as to become a nuisance, it may issue.

3 6Ch 211.

It issues in certain cases as a penalty at law or on count. Laws of Law Chancellor. So now in Eng.

by 22. 34. 3 6Boc. 65. 33 34. 3 g-olds.

Injunctions sometimes issue to stay trials at law; so when appears at law. In Equity, must arise out of law's answer. 3 6Boc. 172, 2. Ch 65 76 65.

To establish a prevailing party's title, must harass the defendant in action of ejectment, but in no other case of ejectment. A recovery of one action is no bar to another.

Bungton 12. 5 6Boc. 21 1 1. Ch 265.

This is a Perpetual Injunction — don't use provisional —

some temporary. 4 424. 1. May 67 1. 5 318 3. 85 482. 3.

To quiet a person in poss. is an equitable estate, be a naked legal title and has been in possession.

6 188 several yrs, Bacon says, it is now very often granted. 4 8 174 2 atk 282. The Trustee agreed to sell to 1 and to 2. The Trustee then agreed to sell to 3. Then the Trustee resold to 3. The Trustee agrees to sell to 4. Then the Trustee resold to 5. The Trustee issues to Trustee.
Injunctions issue (in other cases) in those of (Tenancy) to prevent a multiplicity of suits, so where many suits are pending, or are likely to happen from the same cause. As several Tenants of a Manor claim profits of a fair to settle boundaries of land between a number of Tenants: one suit at law & settle the question—only as between 2—Milford 104. 4. 125. 8. 1 Dem. 22. 308-266—
Pre Chy 261. 1 at the 282. 2 Sq. 484—
3 R & 485. 69.
So. "pendente lite" between different persons claiming. 1. Hell. 483. to be executors, injunction issue to restrain acting as such.
2. 1 Sch. 177, 2. R & 410—
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-49—
As Chy will relieve as fraud, so it will issue injunction on suggestions of fraud to stay proceedings provisionally, and upon a subsequent hearing of its merits, its provisionally injunction is either made perpetual or dissolved—

Injunctions in favour of authors, restraining others from publishing yr works, were frequent before yr Act of Amne. It secures yr enjoy right to yr author at law, under certain restrictions or limitations—4 R & 2803. 2417.

Decisions 2303-2417. Miller vs Tabor.
First. yt at 8 Law authors had yr sole right of first printing and might maintain action. By B. Judges and Lord Mansfield with yr. and 3. 88 it—

2. That printing one edition, didn't take away his common law right. Seven to Four. Lord Mansfield with yr. Seven—

3. That yr 8 Law action is taken away by yr of Amne. So the B. Lord Mansfield, who was with yr & didn't vote in.
The weight of authority is then n-yo last decision real.
How far Equity will interfere as a Judge at Law. see Corn B. Chy. 3. 3 App. v. Atks 223.

Laws of Powers of Chancery.

Where a judgment at Law is rendered inequitable by some enforcement. cause, Equity will relieve on it by
Injunction. 3 Atks 223. Corn B. Chy 3. v. 3.