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The LEARNED READING of
Sir Francis Bacon,
One of her Majesties learned Council at Law, upon the Statute of USES:
Being his double Reading to the Honourable Society of Graves Inne.

Published for the Common good.

LONDON:
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The Learned Reading
of Sir
FRANCIS BACON,
upon the Statute of Vtes.

Have chosen to Read upon the Law of Vtes made 27. Hen.8 a Law whereupon the Inheritances of this Realme are tossed at this day like a Ship upon the Sea, in such sort that it is hard to say which Bark will sinke, and which will get to the Haven, that is to say, what assurances will stand good, and what will not; whether is this any lack or default, in the Pilots their grave and learned Judges: but the Tydes and Currents of received errours, and unwarranted and abusive experience, have bin so strong, as they were not able to kepe a right course according to the Law, so as this Statute is in great part, as a Law made in the Parliament, held
(2) Held 35. Regina, for in 37. Regina, by the notable judgement upon solemn Arguments, of all the Judges assembled in the Exchequer Chamber, in the famous case betwixt Dillon and Frayne, concerning an assurance by Chudley: this Law began to be reduced to a true and sound Exposition, and the fall and perverted Exposition, which had continued for so many years, but never countenanced by any rule or authority of weight, but only intertained in a popular concept, & in practice at adventure grew to be controled, since which time (as it cometh to passe, always upon the first reforming of inveterate errors) many doubts, and perplexed Questions have risen, which are not yet resolved, nor the Law thereupon settled: The consideration whereof moved me to take the occasion of performing this particular duty to the House, to see if I could by my travell, bring to a more generall good of the Common wealth.

Herein though I could not be ignorant of the difficulty of matter, which he that taketh in hand shall soone find, or much less of my owne unablenss, which I had continuall fence and feeling of; yet because I had more means of absolution then the younger fort, and more leasure then the greater fort, I did thinke it not impossible to worke some profitable effect, the rather because where an inferior wit is bent, and conver- sant upon one Subject, he shall many times with patience and meditation dissolve, and undoe many of the knots which a greater wit, distracted with many matters would rather cut in two then unknit at the least if my intention or judgement be too barren, or too weake; yet by the benefit of other Arts, I did hope to dispose or digest, the authorities or Opinions which are in Cases of use in such order and method, as they should take light one from another, though they tooke no light from me, and like to the matter of my Reading shall my manner be, for my meaning is to revive and recontinue the antient forme of Reading, which you may see in Mr. Fro-

mickes, upon the Prerogative, and all other Readings of anci-

ent time, being of lesse ostentation and more fruit, then the manner lately accustomed, for the use then was substantially
to expound the Statutes, by grounds and diversities, as you
shall find the Readings still to run upon case of the like Law,
and contrary Law, whereof the one includes the learning of a
difference, and not to stir concise and subtle doubts, or to
contrive tedious and intricate Cases, whereof all saving one
are buried, and the greater part of that one case which is ta-
ten, is commonly nothing to the matter in hand, but my la-
bour shall be in the antient course, to open the Law upon
doubts, and not doubts upon the Law.

Expeditio Statuti.

The Expeditio of this Statute consists upon the matter,
without the Statutes, upon the matter within the
Statute.

Three things concerning these Statutes, and all other Sta-
tutes which are helps and inducements to the right un-
derstanding of my Statute, and yet are no part of the Sta-
tute in itself.

The consideration of the Statute at the Common Law.

The consideration of the mischief which the Statute inten-
deth to redresse, as any other mischief, which an Expedito
of the Statute this way or that way may breed.

Certaine Maximes of the common Law, touching Expositi-
on of Statutes: having therefore framed sixe divisions ac-
cording to the number of Readings upon the Statute it selfe, I
have likewise divided the matter, without the Statute into sixe
Introductions or Discourses, so that for every dayes Read-
ing I have made triple proposition.

1. In Preface, or Introduction.
2. In Division upon the Law it selfe,
3 A few brief Cases, for Exercise and Argument.

The last of which I would have forborne, and according to
the ancient manner, You should have taken some of my points upon my Divisions, one, two, or more as you should have thought good, sive that I had this regard, that the younger sort of the Barre were not so conversant, upon matters upon the Statutes, and for that Case I have interlaced some matters at the Common Law, that are more familiar within the books,

1. The first matter I will Discourse unto you, is the nature and definition of an use, and his Incension and Progression before the Statute.

2. The Second Discourse shall be of the second spring of this Tree of Uses since the Statute.

3. The Third Discourse shall be of the Estate of the assurance of this Realme at this day upon Uses, and what kind of them is convenient and reasonable, and not fit to be touched, as far as sense of Law and natural construction of the Statute will give leave, and what kind of them is convenient and meete to bee suppressed.

4. The Fourth Discourse shall be of certaine Rules and Expositions of Lawes applied to this present purpose.

5. The Fifth Discourse shall bee of the best course to remedy the same inconveniences now a foot, by construction of the Statute, without offering violence to the letter or sense.

6. The Sixth and last Discourse shall be of the best course to remedy the same inconveniences, and to declare the Law by Act of Parliament, which last I think good to reserve and not to publish.

The nature of a use is best discerned by considering what it is not, and then what it is, for it is the nature of all humane Science, and knowledge to proceed most safely by Negative and exclusive.

First, use is no right, title, or interest in Law, and therefore Master Attorney who read upon this Statute said well, that there are but two rights.

*Ins. in Re.*

*Ins ad Rem.*

The one is an Estate which is *Ins in Re*, the other a demand
mand which is *Im ad Rem*, but a use is neither, so that in 24. H. 8. it is said that the saving of the Statute of *I. R.* 3. which saveth any right or interest of Intayle, must be understood of Intayles of the possession, and not of the part of the use, because a use is no right nor interest; so againe, you see that Littletons concept, that an use should amount to a Tenancy at will, whereupon a release might well inure, because of pravity is controled by 4. Et 5. H. 7. and diverse other Bookes, which said that *Cesty que use* is punishable in an Action of Trespassle towards the Feoffees onely 5. H. 5. see meth to be at some discord with other Bookes where it is admitted for Law, that if there be *Cesty que use* of an Advowson, and hee bee out-lawed in a personall Action, the King should have the presentment, which Cale Master *Evans* in the argument of Chudleys Case did seeme to reconcile this where *Cesty que use* being utlaird, had presented in his owne name, there the King should remove his incumbent, and no such thing can be collected upon that Booke, and therefore I conceive the error grew upon this, that because it was generally thought, that a *use* was but a penancy of profits, and then againe because the Law is that upon Utlayers, upon personal Actions, the King shall have the penancy of profits, they tooke that to bee one, and the selfe same thing which *Cesty que use* had, and which the King was intituled unto which was not so, for the King had remedy in Law for his penancy of profits, but *Cesty que use* had none, the Bookes goe further and say, that a *use* is nothing, as in 2. H. 7. Dict *fut Port*, and counted *Sur lesa* for yeares rent &c. the Defendant pleaded in Barre, that the Plaintiffe *Nihil habuit tempore divisionis*, the Plaintiffe made a speciall replication, and shewed that he had no use and issue joynd upon that, wherefore it appeareth, that if hee had taken issue upon the defendants Plea, it shoule have bin found against him: So againe in 4. Regina, in the Case of the Lord Sands, the truth of the case was a Fine leaved by *Cesty que use* before the Statute, and this comming in question since the Statute upon an averment by the Plaintiffes *Quod partes finis nihil habuerint*,
it is said that the Defendant may shew the speciall matter of
the use, and it shall be no departure from the first pleading of
the same, and it is said further that the averment given in 4.
H. 7. Quod partes finis nihil habuerint, nec in possessione, nec
in usu went out upon this Statute of 27. Hen. 8. and was no
more now to be accepted; but yet it appears, that if issue had
been taken upon the generall averment, without the speciall
matter shewed, it should have been found, for him that tooke
the averment because a use is nothing, but these bookes are
not to be taken generally or grossly, for wee see in the same
bookes, when an use is specially allledged, the Law taketh
knowledge of it, but the sense of it is, that use is nothing for
which remedy is given by the course of the Common Law, so
as the Law knoweth it, but protesteth it not; and therefore
when the question commeth whether it hath any being in Na-
ture and Conscience the Law accepteth of it, and therefore
Littleton's Case is good Law, that he which hath but forty
shillings Free-hold in use, shall be sworn in an inquest, for it
is ruled Secundum dominium laterale, and not Secundum do-
minium legitimatum, nam natura dominus est quia fructum: ex
re percipit. And some doubt upon Subsidies and Taxes Cef-ty
que use should be valued as an owner: So likewise, if Cef-ty
que use had resolved his use unto the Feoffee for sixe pound,
or contracted with a stranger for the like sume, there is no
doubt but it is a good construction, whereon to ground an
Action upon the Case, for money for release of a Suite in the
Chancery is a good quid pro quo, therefore to conclude, though
a use be nothing in Law to yeeld remedy by course of Law,
yet it is somewhat in reputation of Law and Conscience, for
that may be somewhat in conscience which is nothing in Law,
like as that may be something in Law which is nothing in
Conscience; as if the Feoffees had made a feoffment over in
Fee, Bona fide, upon good consideration, and upon a Subpoen
brought against them, hee pleaded this matter in Chancery,
this had beene nothing in Conscience, not as to discharge them
of damages.

A second negative fit to be understood is, that a use is no
Covin,
Covin, nor it is no collusion, as the word is now used, for it is not to be noted, that where a man doth remove the state and possession of Land, or goods out of himself unto another upon trust, it is either a speciall trust, or a generrall trust.

The speciall trust is either

\[ \text{Lawfull,} \]
\[ \text{Or} \]
\[ \text{Unlawfull.} \]

The speciall trust Unlawfull, is according to the Case provided, for by ancient Statutes of the profits, as where it is to defraud Creditors, or to get men to maintaine suites, or to defeat the tenancy to the procure, or the Statute of Mortmaine, or the Lords of their wardships or the like, and those are termed Frauds, Covins, or Collusions.

The speciall trust Lawfull is, as when I infeoffice some of my friends, because I am to goe beyond the Seas, or because I would free the Land from some severall Statute, or Bond which I am to enter, into or upon intent to be infeoff'd, or intent to wouched, and so to suffer a common Recovery, or upon intent that the Feoffees shall infeoffice over a Stranger, and infinite the like intents and purposes, which fall out in mens dealings and occasions, and this we call Confidence, and the Bookes doe call them intents, but where the trust is not speciall, nor tranitory, but general and permanent, there it is a use; and therefore these three are to be distinguished, and not confounded by Covin Confidence, use.

So as now we are come by Negatives to the Affirmative, what a use is agreeable to the definition in Plowden, 52. De Lamos Case, where it is said:

\[ Vfoe \text{ is a trust reposed by any person in the Terre-tenant, that he may suffer him to take the profits, and hee that will performe his intent. But it is a shorter Speech to say, that} \]

\[ Vfus \text{ est dominum fiduciarium} : \]
\[ Vse \text{ is an owners life in trust :} \]

So that \[ Vfus \text{ est status, five possesso totius, differ, secun-} \]

\[ B2 \]

\[ dum \]
Fides est obligatio Conscientie unius ad intentionem alterius.
And they have a good division likewise of Rights.

1. Ius procarium.
   Ius fiduciarium.
   Ius legitimum.

A right in court of Law, for which there is no remedy at all.
A right in trust for which there is a remedy, only but-in
Conscience.

2. A right in Law.
   So much of the nature and definition of an use.
   It followeth to consider the parts and properties of an use
   wherein by the consent of all Books, and it was distinctly
   delivered by Justice Walmley, in 36. Elizabeth.
   That a trust consisteth upon three parts.
   The First, that the Feoffee will suffer the Feoffor to take
   the profits.
   The Second, that the Feoffee upon request of the Feoffor,
   or notice of his Will, will execute the Estates to the Feoffor,
   or his Heires, or any other by his direction.
   The Third, that if the Feoffee be dispossessed, and so the Feoff-
   fer disturbed, the Feoffee will re-enter, or bring an action
to re-continue the possession, so that those three, permanency
of Profits, execution of Estates, and defence of the Land, are
the three points of trust.

3. The properties of an use they are exceeding well set forth,
   by former Justice in the same Case, and they be three,
   Uses ( faith he ) are created by Confidence.
   Pressed by privity, which is nothing else but a continuance.

Of
Of the Confidence without interruption and ordered and
guided by Confidence: either by the private Confidence of the
Feoffee; Or the generall Confidence of the Estate which
is Chancery.

The two former of which (because they bee matters more
throughly beaten, and wee shall have occasion to handle
them) we will not now debate upon.

But the third we will speake somewhat of both, because it
is a key to open many of true reasons, and termings of uses,
and because it tendeth to decide out great and principall
doubts at this day.

Cooke Soliciter entring into his Argument of Chudleys
Case, said sharply and fitly, I will put never a Case but shall
be of an use, for a use in Law hath no fellow; meaning that
the learning of uses is not to bee matched with other Learn-
ings: Anderson chief Justice in the Argument of the same
Case, did truely and profoundly controule the Vulgar opi-
nion collected upon the fift E. 4. that there might be Pos-
seffio fratris of a use, for he said that it was no more but that
the Chancelee would consult with the Rules of Law, where
the intention of the parties did not specially appeare, and
therefore the private concept which Glanvile Justice cited in
the 42. Regina in the case of Corbet, in the Common Plea of
one of Lincolnes Inne, whom he named not, but seemed to
allow is not found, which was, that a use was but a limi-
tation, and did entile the nature of a possession.

This very concept was set on foot in 27. H. 8. in the
Lord Darcies Case, in which time they began to heave at
uses, for there after the Realme had many ages together put
in use the passlage of uses by Will; they began to argue that
an use was not devisable, but that it did entile the nature of
the Land, and the same yeare after this Statute was made; so
that this opinion seemeth ever to bee, and for ever to an Act
of Parliament touching uses; and if it bee so meant, now
meant I like it well; but in the mean time the Opinion it
itself is to be recited, and because in the same Case of Corbet
3. reverent Judges of the Court of Common Pleas, did de-

B
hver and publish their Opinion, though not directly upon
the point adjudged, yet obiter as one of the Reasons of their
judgement, that an ufe of Inheritance could not be limited to
case, and againe, that the limitation of a new use could not
be to a Stranger, ruling uses meerely according to the ground
of possession, it is worth the labour to examine, that learning
by 3. Hen. 7. You may collect that if the Feoffees had bin
dispossed by the Common Law, and an Ancestor collateral of
Cefly que ufe had released unto the dispoifor, and his warran-
ty had attached upon Cefly que ufe, yet the Chancellour upon
this matter shewed, would have not respect unto it, to com-
pell the Feoffees to execute the Estate unto the dispoifor, for
there the case being, that Cefly que ufe Intayle, having made
an assurance by fine and recovery, and by warranty which
descended upon his issue, two of the Judges held that the ufe
is not extinct, and Bryan and Hussey that held the contrary
said, that the Common Law is altered by the new Statute,
whereby they admit, that by the Common Law that warran-
ty will not bind and extinct a right of a use, as it will doe a
right of possession, and the reason is, because the Law of
Collateral warrant is a hard Law, and not to be considered
in a Court of Conscience, in 5. Edw. 4. It is said that if Cefly
que ufe be attainted, quare, who shall have the Land, for the
Lord shall not have the Land, so as there the use doth not
imitate the possession, and the reason is, because the Lord hath
a Teney is by Title, for that is nothing to the Subprena, because
the Feoffees intent was never to advance the Lord, but onely
his owne bloud, and therefore the quare of the Booke arifeth
what the trust and confidence of the Feoffee did tye him to
do, as whether he should not fell the Land to the use of the
Feoffees Will, or in pious uses, so favourably they tooke the
intent in those dayes, as you find in 27. H. 6. that if a man
had appointed his ufe to one for life, the remainder in Fee to
another, and Cefly que ufe for life had refus'd, because the
intent appeared not to advance the Heire at all, nor him in
reversion, presently the Feoffee should have the Estate for life
of him that refus'd some waies to the behoofe of the Feoffer.

But
But to proceed in some better order, towards the disproofe of this Opinion of limitation, there be foure points wherein we will examine the nature of ules.

The raising of them.
The preserving of them.
The transferring of them.
The extinguishing of them.

In all these Foure, you shall see apparently that ules stand upon their owne reasons, utterly differing from Cases of possession, I would have one Case shewed by men learned by the Law, where there is a deed, and yet there need a consideration, as for paroll, the Law adjudgeth it too light to give a use without consideration, but a deed ever in Law imports a consideration, because of the deliberation and Ceremony in the confession of it, and therefore in 8. Regina it is solemnly agreed, that in the Queenses Case a false consideration if it bee of Record, will hurt the Patent, but want of consideration doth never hurt it, and yet they say that a Case is but a nimble and light thing, and now contrariwise it seemeth to bee weightier then any thing else, for you cannot weigh it up to raise it, neither by deed, nor deed inrolled without the weight of consideration, but you shall never find a reason of this, to the Worlds end, but in the Law, but it is a reason of Chancery, and it is this:

That no Court of Conscience will enforce Omnium gratiam, though the intent appeare never so clearly where it is not executed, or sufficiently pasted by Law, but if mony had beene paid, and so a person dammified, or that it was for the establishment of his House, then it is a good matter in the Chancery: so agaime I would see in the Lawes, a Case where a man shall take by a Conveyance, see it by Deed, Livery, or Word that is not party to the grant, I doe not say that the delivery must be to him that takes by the Deed, for a Deed may be delivered to one man to the use of another;
neither do I say that he must be party to the delivery of the Deed; for he in the remainder may take though hee be not party, but he must be party to the words of the grant; here againe the Case of the use goeth single, and the reason is, because a conveyance in use is nothing but a publication of the trust, and therefore so as the party trusted bee declared, it is materiall to whom the publication bee so much for the rayling of uses.

There is no Case in the Common Law, wherein notice simply and nakedly is materiall to make a Covin, or particeps Criminis, and therefore if the Heire which is in by different, in feoffee one which had notice of the different, if he were not a Diffeifeor de facto, it is nothing: so in 33. H. 6. if a Feeoffment be made upon collusion, and feoffe makes a feoffment over upon good consideration, the collusion is discharged, and it is not materiall if they had notice or no, so as it is put in 14. H. 8. if a sale be made in a Market over upon consideration, although it be to one that hath notice that they are stolen goods, yet the property of a Stranger is bound, though in the Booke before remembred. 35. Hen. 6. Some opinion to the contrary, which is clearely no Law, so in E. 3. if aftets descend to the Heire, and hée alien it upon good consideration, although it be to one that had notice of the Debt, or of the Warranty it is good enough. So if a man enter of purpose into my Lands, to the end that a Stranger which hath right, should bring his Præcipe and evict the Land, I may enter notwithstanding any such recovery, but if hee enter having notice that the Stranger hath right, and the Stranger likewise having notice of his entry, yet if it were not upon Confederacy or collusion betweene them it is nothing, and the reason of theie Cases is, because the Common Law looketh no further then to see whether the Act were meerely Actus fictus in fraudem legis, and where soever it findeth consideration given it dischargeth the covin.

But come now to the Case of use, and there it is otherwise, as it is in 14. H. 8. and 28. H. 8. and diverse other Bookes,
Bookes, which prove that if the Feoffee sell the Land for good consideration to one that hath notice, the Purchaser shall stand seized to the antient use, and the reason is because the Chancery looketh further then the Common Law, to the corrupt Conscience of him that will deal in the Land, knowing it in equity to bee anothers, and therefore if there were *Radix Amarundinis*, the consideration purgeth it not, but it is at the peril of him that giveth it, so that consideration, or no consideration is an issue at the Common Law, but notice or notice is an issue in the Chancery, and so much for the preserving of uses.

For the transferring of uses there is no case in Law whereby an Action is transferred but the *Subpoena*, in case of use was always assignable, nay further you find twice, 27. H. 8. *Fol. 10. Pla. 9. Fo. 36.* and *Pla. 21.* that a right of use may be transferred, for in the former case Montague makeneth the objection and faith, that a right of use cannot be given by Fine, but to him that hath the Possession, *Fitz. Herbert* answereoth, Yes well enough; quere the reason faith the booke.

...And in the latter Case where *Cest* que *use* was infeoffed by the Disleitor of the Feoffee, and made a Feoffment over: Englefield doubted whether the second Feoffee should have the use, *Fitz. Herbert* said, I mar-will you will make a doubt of it, for there is no doubt but the use passeth by the Feoffment to the Stranger, and therefore this Question needeth not to have beene made; to the great difficulty in 10. Regina, *Declamers Case*, where the case was in effect Tenant in tayle of an use, the remainder in Fee, Tenant in tayle made a Feoffment in Fee, Tenant, by the Statute of 1. R. 3. and the Feoffee infeoffed him in the remainder of the use, who made it over, and there question being made whether the second Feoffee should have the use in remainder, it is said that the second Feoffee must needs have the best right
right in Conscience, because the first Feoffee claimed nothing but in trust; and the rest que use cannot claim it against his face, but the reason is apparent (as was touched before) that a use in Effe was but a thing in action, or in suit to be brought in Court of Conscience, and where the Subpœna was to be brought against the Feoffee out of possession to recontinue the Estate, always the Subpœna might bee transferred, for still the Action at the Common Law was not third, but remained in the Feoffee, and so no mischief of main-tenance or transferring rights.

And if a use being but a right, may bee assigned, and pass'd over to a Stranger, a multio fortiori, it may bee limited to a Stranger upon the privy of the first conveyance, as shall bee handled in another place, and as Glanville Justice said, hee could never find by any booke, or evidence of antiquity, a contingent use limited over to a Stranger, I answer, First it is no marvcl that you find no Case before E. 4. time of contingent uses, where there bee not fixed of uses, in all, and the reason I doubt was, men did choose well whom they trusted, and trust was well observed, and at this day in Ireland, where uses be in practice, Cases of uses come seldom in question, except it bee sometimes upon the alienations of Tenants in tyle by Fine, that the Feoffees will not bee brought to execute Estates, to the dis-inherit-ance of antient bloud, but for experience, and the conveyance there was nothing more usual in Obysts, then to will the use of the Land to certaine persons and their heires, so long as they shall pay the Chancery Priests their Wages, and in default of payment to limit the use over to other persons and their Heires, and so in case of forfeiture, through many degrees, and such conveyances are as antient as R. 2. time.

Now for determining and extinguishing of uses, I put the case of collateral garrantry before, and so that the notable
notable case of 14. H. 8. Haunfemmes Case, where this very point was in the principall case, for a Rent out of Land, and the Land it selfe in case of possession cannot stand together, but the rent shall bee extinct, but there the case is, that the use of the Land, and the use of the Rent shall stand well enough together, for a Rent charge was granted by the Feoffee to one, that notice of the use, had and ruled, that the Rent was to the antient use, and both uses were in Esse simul et semel, and though Brudnell chiefe Justice urged the ground of possession to bee otherwise, yet he was over-ruled by the other three Justices, and Brooke said unto him, he thought he argued much for his pleasure; and to conclude, wee see the thing may be avoided and determined by the Ceremonies and Acts, like unto those by which are created and raised, that which passeth by Livery ought to be avoided by entry; that which passeth by Grant, by claim; that which passeth by way of charge, determined by way of discharge: and so a use which is raised but by a declaration or limitation, may cease by words of Declaration or Limitation, as the Civill Law faith, in his magis consentaneum est, quam ut ipsdem modis res dissolvantur a quibus constituantur: for the conception and progression of uses, I have for a president in them other Lawes, because States and Common-wealths have common accidents, and I find in the Civill Law, that that which commeth nearest in name to the use, is nothing like in matter, which is Vfus fructus, for Vfus fructus et dominium is with them, as with their particular tenancy and inheritance, but that which resembleth the use most is fidei Commissio, and therefore you shall finde in Ius Lib. 2. That they had a forme in Testaments, to give Inheritance to one to the use of another. Heredem constituo Cajum rogo antem te Cai, ut hereditatem restitas, and the Text of the Civilians faith, that for a great
Great time if the Heire did not as he was required, Chese or use, had no remedy at all, until about the time of Augustus Caesar, there grew in custome a flattering forme of trust, for they penned it thus: Rogo te per salve-
tem Augusti or, Per fortunam Augusti &c. Where-
upon Augustus tooke the breach of trust to ground in
derogation of himselfe, and made a Commission to the
Prator to give remedy in such Cases, whereupon
within the space of a hundred yeares, these trusts did
spring and speed so fast, as they were forced to have
a particular Chancellor onely for uses, who was cal-
led Prator siles Commissarium, and long after the incon-
venience of them being found, they resorted unto a Re-
medy much like unto this statute, for by two Decrees
of Senate, called Senatus consult. Prebesianum et Pegasia-
nun, they made Chest que use to be Heire in sub-
stance. I have sought likewise, whether there bee any thing
which maketh with them in our Law, and I finde
the Persian chiefe Barron in the Argument of Chud-
leyes Case, comparath them to Copyy-holders, and
aptly for many respects.

First, because an use seemeth to bee an heredi-
ament in the L. Court.

Secondly, this concept of Limitation hath bene
troublesome in Copyy-holders as well as in Vles, for it
bath bene of late days questioned, whether there
should be Tenancy by the Courtesie, dist-continuances,
and recoveries of Copyy-holders, in the nature of Inhe-
ritances at the Common Law, and still the judgements
have weighed, that you must have particular Custoymes
in Copyy-holds, as well as particular Reasons of Con-
science in use, and the limitation recited.

And Thirdly, because they both grew to no remedy
at all against the Lord, and were as tenancy at will,
afterwards it grew to have remedy in Chancery, &c after-
wards against their Lords by Trespass, at the Common-
Law,
Law, and now lastly the Law is taken by some, that they have remedy by *Ejectione firma* without a special custome of leasing, doe no doubt in uses, at the first the *Chancery* made question to give remedy, untill uses grew more generall, and the *Chancery* more eminent, and then they grew to have remedy in Conscience, but they could never obtaine any manner of Remedy at the Common Law, neither against the *Feoffee*, nor against Strangers, but the Remedy against the *Feoffee*, was best by *Subpœna*, and the remedy against Strangers to the *Feoffee*.

Now for the Cases whereupon uses were but in practice, Cooke in his Reading doth say well, that they were produced sometimes for feare, and many times for fraud; but I hold that neither of these Cases were so much the reasons of uses, as another reason in the beginning, which was, that Lands by the Common Law of *England* were not Testamentary, or devisable, and of late yeares since the Statute, the Case of the conveyance for sparing of Purchases, and Execution of Estates, and now last of all expresse liberty of Will in mens minds, affecting to have the assurance of their Estate, and Possession to be revokeable in their owne times, and irrevocable after their owne times.

Now for the Commencement and proceeding of them, I have considered what it hath beene in course of Common Law, and what it hath beene in course of Statute for the Common Law, the concept of *Shelly* in 24, *H. 8*. and of *Polard* in 27, *H. 8*. seemeth to me to be without ground, which was, that the use succeeded the Tenure, for that the Statute of *Quia emptores terrarum*, which was made 18. *E. 1*. had taken away the Tenure betweene the *Feoffer* and the *Feoffee*, and left it to the Lord *Paramount*, they said that the *Feoffment* being then meerely without consideration, should therefore intend an use to the *Feoffer*, which cannot be, for by that

C 3 reason
reason if the Feoffment before the Statute had beene made *Tenendum de Capitalibus Dominis*, as it must be; there should have beene an Use unto the Feoffer before that Statute. And againe, if a Grant had beene made of such things as consists not in Tenure, as Advowsons, Rents, Villeins and the like, there should have beene a Use of them, wherein the Law was quite contrary; for after the time that Uses grew common, it was nevertheless a great doubt whether things that did lye in Grant, did not carry a consideration in themselves because of the Deed.

And therefore I do judge that the intendement of a Use to the Feoffer where the Feoffment was made without consideration grew long after when Uses waxed general; and for this reason, because when Feoffments were made, and that it rested doubtfull whether it were in use or in Purchase, because Purchases were things notorious, and Uses were things secret. The Chancellor thought it more convenient to put the Purchasor to proue his consideration, then the Feoffer and his Heires to proue the trust, and so made the indentment towards the Use, and put the prooure upon the Purchasor.

And therefore as Uses were at the Common Law in reason, for whatsoever is not by Statute nor against Law may be said to be at the Common Law, and both the generall trust and the speciall, were things not prohibited by the Law, though they were not remedied by the Law; so the Experience and practice of Uses were not ancient, and my reasons why I think so, are these.

First, I cannot find in my Evidence before King R. 2. his time, the clause *ad opus et usum*, and the very Latin phrase was much purer, as you may see by Braftons Writing, and by ancient Patents and Deeds, and chiefly by the Register of Writs, which is good Latin; wherein this phrase (*ad opus & usum*) and the Words (*ad opus*) is a barbarous phrase, and like enough to be in the pennin
of some Chaplain that was not much past his Grammar, where he had found Opus & usus, coupled together, and that they did govern an Ablative case, as they do indeed since this Statute, for they take away the Land and put them into a conveyance.

Secondly, I find in no private Act of Attainder in the clause of Forfeiture of Lands (S) which he hath in possession or in Ufe, until Ed. 4. his Reigne.


Fourthly, I collect out of Cooke's speech in 8. Edw. 4. where he sayth that by the advice of all the Judges, it was thought that the Subpœna did not lye against the Heire of the Feoffee which was in by Law, but Cesby que use was driven to his Bill in Parliament, that Ufes even in that time were but in their infancy; for no doubt but at the first the Chancery made difficulty to give Remedy at all, but to leave it to the particular Conscience of the Feoffee: But after the Chancery grew absolute, as may appeare by the Statute of 15. Hen. 6. that complaints in Chancery should enter into Bond to prove their suggestions, which seemeth that the Chancery at that time began to embrace too farre, and was used for vexation; yet nevertheless it made scruple to give remedy against the Heire being in by Act in Law though he were privy, so that it cannot be that Ufes had beene of any great continuance when they made a question: As for the Case of Matrimony, Prelomtii, it hath no affinity with Ufes, for where-foever there was remedy at the Common-Law by Action, it cannot be intended to be of the nature of a Ufe.

And for the Booke commonly vouched of Aff, where the Earle calleth the possession of a Conizee upon a Fine levied by consent an entry in Anterdrost and 44. of E. 3. where.
where there is mention of the Feoffors that sued by petition to the King, they be but implications of no moment. So as it appeareth the first practice of Uses was about Richard 2. his time, and the great multiplying and over-spreading of them was partly during the Wars in France, which drew most of the Nobility to be absent from their Possessions, and partly during the time of the Trouble and Civill War betweene the two houses about the Title of the Crowne.

Now to conclude the Progression of Uses in course of Statutes, I do note three speciall points.

1. That a Use had never any force at all, at the Common-Law, but by Statute Law.

2. That there was never any Statute made directly for the benefit of Cefty que use, as that the Descenit of an Use should toll an Entry, or that a Release should be good to the partner of the profits or the like; but alwayes for the benefit of Strangers and other persons against Cefty que use, and his Feoffees: For though by the Statute of Richard 3. he might alter his Feoffees, yet that was not the scope of the Statute, but to make good his assurance to other persons, and the other came in Et oblique.

3. That the speciall intent unlawfull and covenous was the Originall of Uses, though after it induced to the lawfull intent generall and speciall; For 5. Edward 3. is the first Statute I finde, wherein mention is made of the taking of profits by one, where the Estate in Law is another.

For as to the opinion in 27. Henr. 8. that in case of the Statute of Marlebridge, the Feoffors took the profits, it is but a conceite; for the Law is this day, that if a man infeoffee his Eldest Sonne within age, and without consideration, although the profits be taken to the use of the Sonne; yet it is a Feoffment within the Statute of Religiosité; and as for 7. Edward 1. which prohi-
prohibits generally that Religious persons should not purchase Arte vel ingenio, yet it maketh no mention of gcfterally that Religious persons should not purchase Art or ingenio, yet it maketh no mention of a\n
\[\text{Prohibits generally that Religious persons should not purchase Arte vel ingenio, yet it maketh no mention of a.}
\]

\[\text{Ve, but it saith, Colore donationis termini vel aliquus tituli, reciting there three forms of conveyances, the gift, the long Lease, and faigned Recovery, which gift cannot be understood of a gift to a Stranger to their use, for that came to be holpen by 15: Richard 2. long after, but to proceed in 5. Edward 3. a Statute was made for the reliefe of Creditors against such as made covin gifts of their Lands, and goods, and conveyed their bodies into Sanctuaries, there living high upon others goods, and therefore that Statute made their Lands liable to their Creditors Executions in that particular Case, if they tooke the profits: In 5. Richard 2. a Statute was made for reliefe of those as had right of Action, against those as had renounced the tenancy of the Precept from them, sometimes by infeoffing great persons, for maintenance, and sometimes by secret Feoffments to others, whereof the Defendants could have no notice, and therefore the Statute maketh the recovery good in all Actions against the first Feoffees as they tooke the profits, and see that the Defendants bring their Action within a yeare at their expulsion 2. Richard 2. Cap. 3. Session 2. an imperfection of the Statute of 50. Edward 3. was holpen, for whereas the Statute tooke no place, but where the Defendant appeared, and so was frustrated, the Statute giveth upon Proclamation, made at the Gate of the place priviledged, that the Land should be liable without apperance, in 7. R. 2.
\[\text{A Statute was made for the restraint of Aliens, to take thy Benefices, or dignities Ecclesiasticall, or Farmes of Administration to them, without the Kings speciall Lyeence, upon paine of the Statute of Provisors, which being remedied by a former Statute, where the Alien tooke it to his owne use: it is by that Statute remedied, where the Alien tooke it to the use of another, as it is said.}
\]
said in the Booke, though I ghesse, that if the Record were searched, it should be if any other purchased to the use of an Alien, and that the words (or to the use of another) should be (or any other to his use) 15. Rich.

2. Cap. 5. A Statute was made for the relieve of Lords against Mortmayne, where Feoffments were made to the use of Corporations, and an Ordinance made that for Feoffments past, the Feoffees should before a day, either purchase Lycence to amortise them, or alien them to some other use, or other Feoffments to come; they should bee within the Statute of Mortmayne, 4. Hen.

4. Cap. 7. the Statute of 17. Richard 2. is enlarged in the limitation of time, for whereas the statute did limit the Action to be brought within the yeare of the Feoffment: This Statute in Case of a Disseisin extends the time to the life of the Disseisor, and in all other Actions, leaves it to the yeares, from the time of the Action drawne 11. Henry 6. Cap. 3. that Statute of 4. Henry 4, is declared, because the concept was upon the Statute, that in Case of Disseisin the limitation of the life of the Disseisor went only to the assise of Non et disseisin, and to no other Action, and therefore that Statute declareth the former Law to extend to all other Actions, grounded upon Novel disseisin 11. Henry 6. Cap. 5. A Statute was made for relieve of him in remainder against particular Tenants, for Lives, or yeares, that Assigned over their Estates, and tooke the profits, and then committed, wast against them, therefore this Statute giveth an Action of wast, being provisors of the profits, in all this course of Statutes no relieve is given to Purchasors, that come in by the party, but to such as come in by Law, as Defendants in Precipes, whether they be Creditors, Disseisors, or Lessors, and that onely of Mortmayne, and note also that they be all in Cases of speciall Covenant intents, as to defeat Executions, tenancy to the Precipe, and the Statute of Mortmayne,
as Provilers from 11. Henry 6. to 1. R. 3. being the space of fifty yeares, there is a silence of Vles in the Statute Booke, which was at that time when no question they were favoured most, in 1. Richard 3. Cap. 1. com-
meth the great Statute for reliefe of those that come in by the party, and at that time an use appeareth in his likenessle, for there is not a word spoken of taking the profits, to describe a use by, but of clayming to a use, and this Statute ordayned that all Gifts, Feoffments, Grants, &c. shall be good against the Feoffsors, Dowers and Grantors, and all other persons clayming onely to their use, so as here the Purchasor was fully relieved, and Cesy que use was obiter enabled to charge his Fe-
offees, because there were no words in the Statute of Feoffments, Grants, &c. upon good consideration, but generally in Henry 7. time, new Statutes were made for further helpe and remedy to those that came in by Act in Law, as first 11. Henry 7. Cap. 1. a Formedon is given without limitation of time against Cesy que use, and obiter, because they make him a Tenent, they give him advantage of a Tenant, as of age, and voucher, que-
te 4. Henry 7. 17. the Ward-ship of the Heire of Cesy que use, is dying, and no Will declared is given to the Lord, as if he had dyed seised in Demesne, and Action of waft given to the Heire against the Gardian, and dammages, if the Lord were barr’d in his writ of Ward, and reliefe is likewise given unto the Lord, if the heire holding the Knights service, be of full age 19. Henry 7. Cap. 5. there is reliefe given in three Cases, first to the Creditors upon matters of Record, as upon Recogni-
zance, Statute, or Judgement, whereof the two former were not ayded at all by any Statute, and the last was ayded by a Statute of 50. E. 3. and 2. Richard 2. one-
ly in Case of Sanctuary men. Secondly, to the Lords in loccage for their reliefe, and Herriots upon death, which was omitted in the 4. Henry 7. and lastly to the Lords
of Villeyns, upon a purchase of their Villeyns in use.,

13. Henry 8. Cap. 10. a further Remedy was given in a Case, like unto the case of Mortmayne, for in the Statute of 15. Richard 2. remedy was given where the use came, Ad manum mortuam, which was when it came to some Corporation: now when uses were limited to a thing, Act, or worke, and to a body, as to the reparati-
on of a Church, or an Abbot, or to a guild, or Fraterni-
ties, as are onely in reputation, but not incorporate, as to Parishes, or such guilds or Fraternities as are onely in reputation, but not incorporate that Case was omitted, which by this Statute is remedied, not by way of giving entry unto the Lord, but by way of making the use utterly void, neither doth the Statute expresse to whose benefit the use shall be made void, either the Feoffor, or Feoffee, but leaveth it to Law, and added a Provifion, that uses may bee limited twenty yeares from the gift, and no longer.

This is the whole course of Statute Law before this Statute, touching Uses, thus have I set forth unto you the nature and definition of an Use, the differences and trust of an Use and the parts and qualities of it, and by what Rules and termings Uses shall bee guided and ordered, by a President of them in our Lawes, the causes of the springing and spreading of Uses, the continuance of them, and the proceedings that they have had both in Common Law, and Statute Law, whereby it may appeare, that a Use is no more but a generall trust, when any one will trust the Conscience of another; better then his owne Estate and Possession, which is accident or e-
vent of humane Society, which hath bin, and will be in all Lawes, and therefore was at the Common Law, which is common reason. Fitz. Herbert faith in the 14. Henry 8. common reason is Common Law, and not Conscience; but common reasons doth define that Uses should be remedied in Conscience, and not in Courts of Law,
Law, and ordered by Rules in Conscience, and not by straight Rules of Law; for the Common Law hath a kind of a Rule and survey over the Chancery, and therefore we may truely conclude, that the force and strength that a Use had or hath in Conscience, is by Common Law, and the force that it had or hath by Common Law is only by Statutes.

Now followeth in time and matter, the consideration of this Statute of principal labour, for those former considerations, which wee have handled serve but for introduction.

This Statute (as it is the Statute which of all other hath the greatest power and operation over the Heritages of the Realme, so howsoever it hath beene by the humour of the time perverted in exposition, yet in it selfe is most perfectly and exactly conceived and penned of any Law in the Booke, induced with the most declaring and perswading Preamble, consisting and standing upon the wisest and fittest Ordinances, and qualified with the most fore-seeing and circumjacent savings and promises, and lastly the pondred in all the words and clauses of it of any Statute that I find, but before I come to the Statute it selfe, I will note unto you three matters of Circumstance.

The time of the Statute.
The Title of it.
The President or patterne of it.

For the time of it was in 27. Henry 8. when the King was in full peace, and a wealthy and flourishing Estate, in which nature of time men are most carefull of their Possessions, as well because Purchases are most stirring, as againe because the Purchasor when hee is full, is no lesse carefull of his assurance to his Children, and
of disposing that which he hath gotten, then hee was of his bargain for the compassing thereof.

About that time the Realme likewise began to be infranchised from the Tributes of Rome; and the Possessions that had beene in Mor. mayne began to stirre abroad, for this yeare was the supprestion of the inpler Houses of Religion, all tending to plenty, and purchasing, and this Statute came in comfort with divers excellent Statutes, made for the Kingdome in the same Parliament, as the reduction of Wales to a more civil Government, the re-edifying of diverse Cities and Townes, the suppressting of depopulation and incloures.

For the Title, it hath one Title in the Role, and another in course of Pleading, the Title in the Role is no solemne Title, but an Act title (§) an Act expressing an Order for Uses and Will, the Title in course of Pleading is, Statutarum de usibus, in Possessionem transferendis, wherein Wallersly Justice noted well 4. Regna, that if a man looke to the working of the Statute, hee would thinke that it should be turned the other way, De possessionibus ad usus transferendis, for that is the course of the Statute, to bring Possession to the Use, but the Title is framed not according to the worke of the Statute, but according to the scope and intention of the Statute, Nam quod primum est in intentione, ultimum est in operatione, the intention of the Statute by carrying the Possession to the use, is to turne the use to a Possession, for the words are not De possessionibus ad usus transferendis, and as the Grammarian saith, Prapositio ad, denotat notam actionis, sed prepositio (in) cum Accusativo denotat notam alterations, and therefore Kingsmill Justice in the same Case saith, that the meaning of the Statute was, to make a transsubstantiation of the use unto a Possession; but it is to be noted, that Titles of Acts of Parliament, severally came in, but in the §. Henry 8. for before that time that was but one Title of all the Acts made
made in one Parliament, and that was no Title neither, but a generall Preface of the good intent of the King, but now it is parcell of the Record.

For the President of this Statute upon which it is drawne, I doe finde by the first Richard 3, whereupon you may see the very mould whereon this Statute was made, that the said King having beene infeoffed (before he usurped) to Uses, as it was ordained that the Land whereof he was joyntly infeoffed as if hee had not beene named, and where he was solely infeoffed, it should bee in Cesty que use, in Estate as he had the use.

Now to come to the Statute it selfe, the Statute consisteth as other Lawes doe upon a Preamble, the Body of the Law, and certaine saving, and Premisses. The Preamble setteth forth the inconveniences, the Body of the Law giveth the Remedy, and the savings and Provisoes take away the inconveniences of the remedy; for new Lands are like the Apothecaries Druggs, though they remedy the Disease, yet they trouble the body, and therefore they use to correct with Spices, so it is not possible to find a Remedy for any mischiefe in the Common Wealth, but it will beget some new mischiefe, and therefore they spice their Lawes with Provisoes to correct and qualifie them.

The Preamble of the Law was justly commended by Popham chiefe Justice in 36. Regina, where hee faith, that there is little need to search and collect out of Cases before the statute, what the mischiefe was, which the scope of the Statute was to redresse, because there is a shorter way offered us, by the sufficiency and fulnesse of the Preamble, and therefore it is good to consider it, and ponder it throughly.

The Preamble hath three parts.
First a recital of the principall inconveniences, which is the root of all the rest.
Secondly,
Secondly, an enumeration of diverse particular inconveniences as branches of the former.

Thirdly, a taste or briefe note of the remedy that the Statute meaneth to apply; the principall inconvenience which is Radix omnium malorum, is the directing from the grounds and principalls of the Common-Law, by inventing a meane to transfer Lands, and Inheritances without any solemnity, or Act notorious, so as the whole Statute is to be expounded strongly towards the extinguishment of all conveyances, whereby the Free hold, or Inheritance may passe without any new confections of Deeds, Executions of Estate or entryes, except it bee where the Estate is of privity and dependance one towards the other, in which Cases Mutatis mutandis, they might passe by the Rules of the Common Law.

The particular inconveniences by the Law rehearsed may be reduced into foure heads:

1. First, that these conveyances in use are weake for consideration.
2. Secondly, that they are obscure and doubtfull for tryall.
3. Thirdly, that they are dangerous for want of notice and publication.
4. Fourthly, that they are exempted from all such Titles as the Law subjecteth Possessions unto.

The first inconvenience lighteth upon Heires.
The second upon Jurors and Wimesses. The third upon Purchasers. The fourth upon such as come in by gift in Law. All which are persons that the Law doth principally respect and favour.

For the first of these are three impediments (to the judgement of man) in disposing justly and advisedly of his Estate. (5)
First, trouble of mind.
Secondly, want of time.
Thirdly, of wife and faithful Counsel about him.

And all these three the Statute did finde to bee in the disposition of an Ufe by Will, whereof followed the unjust dis-inh eresin of Heires, now the favour of Law unto Heires appeareth in many parts of the Law, as the Law of descent priviledgeth the Possession of the Heire, against the entry of him that hath right by the Law, no man shall warrant against his Heire, except he warrant against himselfe, and diverse other Cases too long to stand upon, and wee see the antient Law in Glanvills time was, that the Ancestor could not dis-inherit his Heire by Grant, or other Act executed in time of sickness, neither could he alien Land which had descended unto him, except it were for consideration of mony or service, but not to advance any younger Brother without the consent of the Heire.

For tryalls, no Law ever tooke a straighefter course, that Evidence should not be perplexed, nor Juries inveigled, then the Common Law of England, as on the other side, never Law tooke a more precife and straight course with Juries, that they should give a direct verdict, for whereas in manner all Lawes doe give the Tryers, or Jurors (which in other Lawes are called Judges De facto) to give no liquet, that is, to give no verdict at all, and so the Case to stand abated; our Law enforce them to a direct verdict, generall or speciall, and whereas other Lawes except of Plurality of voyces, to make a verdict, our Law enforce them all to agree in one, and whereas other Lawes leave them to their owne time and case, and to part, and to meete againe; our Law dureste and imprison them in the hardeft manner, without light or comfort, untill they bee agreed, in consideration of straigheftesse and coheriton; it
is consonant, that the Law doe require in all matters brought to issue, that there be full proofe and evidence, and therefore if the matter in it selfe bee of that surety as in simple Contracts, which are made by paroll, without writing, it alloweth wager of Law.

In issue upon the meere right (which is a thing hardly to discerne (it alloweth wager of Battle to spare Jurors, if time have wore out the markes and badges of truth: from time to time there have beene Statutes of limitation, where you shall find this mischief of Perjuries often recited; and lastly which is the matter in hand, all Inheritances could not passe but by Acts overt and notorious, as by Deeds, Livery, and Records.

For Purchasers (Bona fide) it may appeare that they were ever favoured in our Law, as first by the great favour of Warranties, which were ever for the helpe of Purchasers, as whereby the Law in 5. Edw. 3. time, the Diffeisor could not enter upon the Feoffee in regard of the Warranty; so againe the Collaterall gar-

ranty which otherwise as a hard Law, grew in doubt onely upon favour of Purchasers; so was the binding of Fines at the Common Law, the invention and practice of Recoveries, to defeate the Statute of intayles, and many more grounds and learnings are to bee found, respect the quiet of the Pofsession of Purchasers, and therefore though the Statute of 1 Richard 3. had provided for the Purchasor in some sort; by enabling the Acts and conveyances of Cefty que use, yet nevertheless the State did not at all disable the Acts or charges of the Feoffees, and so as Walmsely Justice said 42. Regno, they played at double hand, for Cefty que use might sell, and the Feoffee might sell, which was a very great uncertainty to the Purchasor.

For the fourth Inconvenience towards those that come in by Law, conveyances in Uses were like privi-

ledge
ledge places or liberties, for as there the Law doth no run, so upon such conveyances the Law could take no hold, but they were exempted from all Titles in Law, no man is so absolute Owner of his Possessions, but that the wisedome of the Law doth reserve certaine Titles unto others, and such persons come not in by the pleasure and disposition of the party, but by the Justice and consideration of Law, and therefore of all others they are most favour'd, and also they are principally three.

The Kings and Lords who lost the benefit of Attainders, Fines for alienations, Escheats, Aydes, Herreots, Relifes, &c.

The Defendants in Pracipes either real or personall, for Debt and Damages, who lost the benefit of their Recoveries and Executions.

Tenants in Dower, and by the Curtefie, who lost their Estates and Tythes.

First for the King, no Law doth endow the King or Soveraigne with more from Suites and Actions, his Possessions from interuption and disturbance, his Right from limitation of time, his Patents and Gifts from all deceites and false suggestions: Next the King is the Lord, whose duties and rights the Law doth much favour, because the Law supposeth the Land did Originally come from him, for untill the Statute of Quia emptores terrarum, the Lords was not forced to distract or dismember his Signiory or service, &c. until 15. Henry 7. the Law was taken that the Lord upon his Title of Wardship should be put to a conizee of a Statute, or a Termor, so againe we see, that the Statute of Mortmaine was made to preserve the Lords Escheats and Wards: the Tenant in Dower is so much favoured, as that it is the common by word in the Law, that the Law favoureth three things.

E 2

1. Life.
1. Life.
2. Liberty.
3. Dower.

So in Case of Voucher, the Feme shall not be delayed, but shall recover against the Heire incontinent; so likewise of Tenant by course it is called Tenancy by the Law of England, and therefore specially favoured, as a proper concept and invention of our Law, so as againe the Law doth favour such, as have antient Rights, and therefore it telleth us it is commonly said, that a Right cannot dye: and that ground of Law, that a Free hold cannot bee in suspense sheweth it well, inasmuch that the Law will rather give the Land to the first commer, which we call an Occupant, then want a Tenant to a Strangers Action.

And againe, the other ancient ground of Law of Remitter, sheweth that where the Tenant faileth without folly in the Defendant, the Law executeth the antient Right: To conclude therefore this point, when this practice of Feoffments in use did prejudice and damnsifie all those persons that the antient Common Law favour'd, and did absolutely cross the wisdome of the Law, to have conveyances considerate, and not odious, and to have Tryall thereupon clear and not inveighed, it is no marvel that the Statute concludeth, that their subtle imaginations and abuses, tended to the utter subversion of the ancient Common Lawes of this Realme.

The third part of the Preamble giveth a touch of the Remedy, which the Statute intendeth to minister, consisting in two parts,

First, the expiration of Feoffments.
Secondly, the taking away of the hurt, damage, and deceit of the Uses, out of which have bin gathered two extremities of opinions.

The
The first Opinion is, that the intention of the Statute was to discontinue, and banish all conveyances in Use, grounding themselves both upon the words, that the Statute doth not speake of the extinguishment or extirpation of the Use viz. by an unity of Possession, but of an extinguishment or extirpation of the Feoffment &c. which is the conveyance it selfe.

Secondly, out of the words (abuse and errors) heretofore used and accustomed, as if Uses had not beene at the Common Law, but had onely an erroneous device or practice.

To both which I answer.

To the former, that the extirpation which the Statute meant was plaine, to bee of the Feoffees Estate, and not to the forme of conveyances.

To the latter I say, that for words (Abuse) that may bee an abuse of the Law which is not against Law, as the taking long Leales at this day of Land in Capite, to defraud Wardships is an abuse of the Law, which is not against Law, and by the words (Error) the Statute meant by it, not a mistaking of the Law, but wandering or going astray or digressing from the antient practice of the Law unto a buy course, as when we say (Erravimus cum paucibus juris) it is not meant of ignorance onely, but of perversity, but to prove that the Statute meant not to suppress the forme of conveyances, there be 3 Reasons which are not answerable.

The first is, that the Statute in the very Branch thereof hath words, De futuro (s.) (that are seifed, or hereafter shall be seifed) and whereas it may be said that these words were put in, in regard of Uses suspended, by dissensions, and to no present seif to the use,
untill a regresse of the Feoffees, that intendment is very particular, for commonly such Cases are brought in by Provisoes, or special Branches, and not intermixed in the body of a Statute, and it had beene easie for the Statute to have, or hereafter shall be lected upon any Feoffinent &c. heretofore had or made.

The second Reason is upon the words of the Statute of Inrollements, which faith, that no hereditaments shall passe, &c. of any Ule thereof, &c. whereby it is manifest, that the Statute meant to leave the forme of conveyance with the addition of a further Ceremony.

The third Reason I make is out of the words of the Provisor, where it is said, that no primer Seisin, Livery, no Fine, nor Alienation, shall bee taken for any Estate executed, by force of the Statute of 27. before the first of May 1536. but they shall be paid for Uses, made and executed in Possession for the time after, where the word (made) directly goeth to conveyances in use, made after the Statute, and can have no other understanding for the words (executed in Possession) would have served for the Case of regresse; and lastly which is more then all, if they have had any such intent, the Case being so generall and so plaine, they would have had words express, that every limitation of use made after the Statute, should have beene void, and this was the Exposition, as tradition goeth, that a Reader of Grayes Inne, which Read soone after the Statute, was in trouble for, and worthily, who as I suppose was Boy, whose Reading I could never see; but I doe now insist upon it, because now againe some in an immoderate inventie against Uses, doe relaps to the same opinion.

The second Opinion which I called a contrary extremity is, that the Statute meant onely to remedy the mischieues in the Preamble, recited as they grew by reason of divided Uses; and although the like mischieue may grow upon the contingent Uses, yet the Statute had no fore-
fore-sight of them at that time, and so it was merely a new Case not comprised. Whereunto I answer, that it is the work of the Statute to execute the divided Use, and therefore to make an Use void by this Statute which was good before, though it doth partake of the mischief recited in the Statute, where to make a Law upon a Preamble without a perview, which were grossly absurd. But upon the question what Uses are executed, and what not; and whether out of Possessions of a different, or other Possessions out of privity or not, there you shall guide your Explication according to the Preamble, as shall be handled in my next dayes Discourse, and so much touching the Preamble of this Law.

For the Body of the Law, I would wish all Readers that expound Statutes, to doe as Schollers are willed to doe, that is, first to seek out the principal Verbe, that is to note and single out the materiall words, whereupon the Statute is framed, for there are in every Statute certaine words, which are as veins where the life and blood of the Statute commeth, and where all doubts doe arise, and the rest are litterae mortuæ fulfilling words.

The Body of the Statute consisteth upon two Parts.

First, a Supposition, or Case put, as Anderson 361. Regna calleth it.

Secondly, a Perview or Ordinance thereupon.

The Cases of the Statute are three and every one hath his purview.

The generall Case.

The Case of Coheoffees to the use of some of them.

And the generall Case of Feoffees to the Use or percemans of Rents or profits.

The generall Case is built upon Eight materiall words.

Four on the part of the Feoffees.
Three on the part of Cefty que use, and one common to them both.

The first materiall word on the part of the Feoffees is the word ( Person ) This excludes all aliances, for there can be no trust repos'd but in a person certaine, it excludes againe all Corporations, for they are evallled to a Use certaine, for note on the part of the Feoffer over the Statute insists upon the word ( Person ) and in the part of Cefty que use, that added body Politique.

The second word materiall is the word ( Seis'd ) this excludes Chattells, the reason is, that the Statute meant to remit the Common Law, and not the Chattells might ever passe by Testament or by paroll, therefore the Use did not pervert them, it excludes Rights; for it is against the Rules of the Common Law to Grant, or Transferre Rights, and therefore the Statute would execute them.

Thirdly, it excludes contingent Uses, because the seisin cannot be but to a Fee-simple of a Use, and when that is limited, the seisin of the Feoffee is spent, for Littleton tells us that there are but two seisins, one in Dominio ut de feodo, the other Vit de feodo et jure, and the Feoffee by the Common Law could execute, but the Fee-simple to Uses present, and not Post Uses, and therefore the Statute meant not to execute them.

The third materiall word is ( Hereafter ) that bringeth in Conveyances made after the Statute, it brings in againe conveyances made before, and disturbed by disfeisin, and recontinued after, for it is not said infeoffed to Use hereafter seis'd.

The fourth word is ( Hereditament ) which is to be understood of those things whereof an Inheritance is in Effe, for if I grant a Rent charge de novo for life to a Use, this is good enough, yet there is no Inheritance in being of this Rent, this word likewise excludes Annuitities and Uses themselves so that a Use cannot be to a Use.

The
The first word on the part of Cesly que use, is the word (Use, Confidence or Trust) whereby it is plaine that the Statute meant to remedy the matter, and not words, and in all the Clauses it still carrieth the words.

The second word is the word (Person) againe which excludeth all alliances; it excludeth also alllent Uses which are not to Bodies, lively and naturall, as the building of a Church, the making of a Bridge, but here (as noted before) it is ever coupled with body Politicke.

The third word is the word (Other) for the Statute meant not to crossethe Common Law, now at this time Uses were growne to such a familiarity, as men could not thinke of Possession, but in course of Use, and so every man was seised to his owne Use, as well as to the Use of others; therefore because Statutes would not stirre nor turmoyle possessions setled at the Common Law, it putteth in precisely this word (Other) meaning the divided Use, and not the communed Use, and this causeth the Clause of joynt Feoffees to follow in a branch by it selfe, for else that Case had beene doubtfull upon this word (Other.)

The words that are common to both, are words expressing the conveyance whereby the Use ariseth, of which words, those that bred any question are (Agreement, Will, otherwise) whereby some have inferred that Uses might be raised by agreement paroll, so there were a consideration of mony, or other matter valuable, for it is expressd in the words before (Bar-games, Sale, and Contract) but of bloud, or linnen; the error of which Collection appeareth in the word immediately following (s. Will) whereby they might as well include, that a man seised of Land might raise an Use by Will, especially to any of his Sonnes or Kindred, where there is a reall consideration, and by that reason meane betwixt this Statute, and the Statute of 32.
of Wills, Lands, were deviseable, especially to any man Kindred, which was clearly otherwise, and therefore those words were put in, not in regard of Uses raised by those conveniences, or without, or likewise by Will might be transferred, and there was a person seised to a Use, by force of that agreement or Will (s.) to the Use of the Assignee, and for the word (Otherwise) it should by the generality of the word, include a Disleisin to a Use, but the whole scope of the Statute crosseth that which was to execute such Uses as were confidences and trust, which could not be in Cafe of Disleisin, for if there were a commandment precedent, then the Land was vested in Cesty que us, upon the entry, and if the Disleisin were of the Disleisors owne head then no trust, and thus much for the case of Supposition of this Statute, here follow the ordinance and purview thereupon.

The Purview hath two parts, the first Operatio Statuti, the effect that the Statute worketh, and there is Modus operandi, a fiction, or explanation how the Statute doth worketh that effect. The effect is, that Cesty que us shall be in possession of like Estate as he hath in the Use, the fiction quomodo is, that the Statute will have the Possession of Cesty que us, as a new body compounded of matter and forme, and that the Feoffees shall give matter and substance, and the Use shall give forme and quality, the materiall words in the first part of the purview are foure.

The first words are (Remainder) and Reverture, the Statute having spoken before of Uses in Fee-simply, in Tayle, for life, or yeares addeth, or otherwise (in Remainder revertere) whereby it is manifest, that the first words are to be understood of Uses in Possession, for there are two substantiall and essentiall differences of Estates, the one limiting the times, (for all Estates are but times of their continuances) the former maketh little difference of Fee-simply, Fee Tayle for life or yeares, and the
the other maketh difference of Possession as remainder, all other differences of Estate are but accidents, as shall be said hereafter, these two the Statute meant to take hold of, and at the words, Remainder, and Reversion it stopps, it addes not words, (Right, Title, or possibility) nor it hath not generall words (or otherwise) it is most plaine, that the Statute meant to execute no inferior Uses to Remainder or Reversion, that is to say, no possibility or contingences, but Estates, onely, such as the Feoffees might have executed by Conscience made: note also the very Letter of the Statute doth take notice of a difference betweene an Use in Remainder, and an Use in Reversion, which though it cannot properly, because it doth not depend upon particular Estates, as Remainders doe, neither did then before the Statute, draw any Tenures as Reversions doe, yet the Statute intends that there is a difference when the particular Use, and the Use limited upon the particular Use are both new Uses, in which Case it is an Use in Remainder, and where the particular Use is a new Use, and the remainder of the use is the old use, in which Case it is a use in Reversion.

The next materiall word is (from henceforth) which doth exclude all concept of relation that Cesty que use shall not come in, as from the time of the first Feoffments, to use as Bradwells concept was in 14. Henry 8. that is, the Feoffee had granted a Rent charge, and Cesty que use had made a Feoffment in Fee, by the Statute of 1. Richard 3. the Feoffee should have held it discharged, because the Act of Cesty que use shall put the Feoffee in, as if Cesty que use had beene seilid in from the time of the first Use limited, and therefore the Statute doth take away all such ambiguities, and expresseth that Cesty que use shall bee in Possession from henceforth,
that is, from the time of the Parliament for Uses then in being, and from the time of the execution for Uses limited after the Parliament:

The third materiall words are (Lawfull seisin state and Possession) not a Possession in Law onely, but a seisin in Tayle, not a Title to enter into the Land, but an actual estate.

The fourth words are of and in such Estates as they had in the Use, that is to say, little Estates, Fee-simple, Fee Tayle, life for yeares at Will and Possession and Reversion, which are the substantiall differences of Estates, as was said before, but both their latter Clauses are more fully perfected and expounded, by the branch of the fiction of the Statute which follows.

This branch of Fiction hath three materiall words or Clauses: the first materiall Clause is, that the Estate, Right, Title, and Possession that was in such person &c. shall bee in Cesty que use, for that the matter and substance of the Estate of Cesty que use is the Estate of the Feoffee, and more hee cannot have, so as if the Use were limited to Cesty que use and his Heires, and the Estate out of which it was limited was but an Estate for life, Cesty que use can have no Inheritance, so if when the Statute came the Heire of the Feoffee had not entred after the death of his Ancestor, but had onely a Possession in Law, Cesty que use in that Case should not bring an Action before entry, because the Heire of the Feoffee could not, so that the matter whereupon the Use must work is the Feoffees Estate: but note here, whereas before when the Statute speaks of the Uses, it spake onely of Uses in Possession, Remainder and Treverter, but not in Title or Right, now when the Statute speaks what shall bee taken from the Feoffee, it speaks of Title and Right, so that the Statute takes more
more from the Feoffee then it executes presently in Case, where there are uses in contingency which are but Titles.

The second word is (Cleerely) which seemes properly and directly to meet with the concept of Somtilla Iuris as well as the words in the Preamble of extirping and extingukishing such Feoffments, so is their Estates clearly extinct.

The third materiall Clause is after such quality, manners, forme and condition as they had in the Vse; so as now as the Feoffees Estate gives matter, so the Vse gives forme; and as in the first Clause the Vse was indowed with the Possession in points of Estate, so there it is indowed with the Possession in all accidents and Circumstances of Estate, wherein first note that it is grosse and absurd to expound the forme of the Vse any whit to destroy the substance of the Estate as to make a doubt, (because the use gave no Dower or Tenancy by the curtesy) that therefore the Possession when it is transferred would doe so likewise no, but the Statute meant such quality, manner, forme and condition, as it is not repugnant to the corporall presence and possession of the Estate.

Next for the word (Condition) I doe not hold it to be put in for Uses upon condition, though it be also comprized within the generall words, but because I would have things stood upon learnedly, and according to the true sense, I hold it but for an explaining or word of the effect, as it is in the Statute of 26. of Treasons, where it is said, that the Offender shall be attainted of the evert Fact by men of their condition (in this place) that is to say, of their degree or fort, and so the word Condition in this place is no more, but in like quality, manner, forme, and degree or fort, so as all these words amount, but to (modo et forma.) Hence therefore all circumstances of Estate are comprehended as sole feisin, or
joyntly feisin, by interties, or by moynes, a circumstance of Estate to have age as coming in by Descendent, or not age as Purchasor, or circumstance of Estate desendable to the Heire of the part of the Father, or of the part of the Mother. A circumstance of Estate conditionall or absolute, remitted or not remitted with a condition of inter-marriage, or without all these are accidents and circumstances of Estate, in all which the Possession shall ensue the nature and quality of the Use, and this much of the first Case which is the general case.

The second Case of the joynt Feoffees needs no Explication, for it peruseth the penning of the generall case, onely thus I will note, that although it had beene omitted, yet the Law upon the first Case would have beene taken as the case provided, so that it rather in explanation than an addition, for turne that Case the other way, that one were infeoffed to the Use of himselfe, I hold the Law to bee, that in the former Case they shall bee seised joyntly, and so in the latter Case Cesy que use shall be seised solely; for the word (Other) it shall bee qualified by the construction of Cases, as shall appeare when I come to my Division; but because this Case of Cofeoffees to the use of one of them was a generall Case in the Realme, therefore they fore-law it, oppress'd it precisely, and pass'd over the case E converso, which was but especiall; and care, and they were loth to bring in this Case, by inserting the word onely unto the first Case (S) to have penned it to the use onely of other persons, for they had experience what doubt the word onely bred upon the Statute of R. Richard 3. after this third Case, and before the third Case of Rents comes in the second saving, and the reason of it is worth the noting, why the savings are interlaced before the third Case, the reason of it is, because the third case needeth no saving, and the first two Cases did
did need savings, and that is the reason of that again.

It is a general ground, that where an Act of Parliament is Donor, if it be penned with an (ac fí) it is not a saving, for it is a special gift, and not a general gift, which includes all Rights, and therefore in 11 Henry 7. whereupon the alienation of Women, the Statute entitles the Heir of him in remainder to enter, you finde never a Stranger, because the Statute gives entry not (Simplici-tor) but within an (ac fí) as if no Alienation had beene made, or if the feme had beene naturally dead, Strangers that had right might have entred, and therefore no saving needs, so in the Statute of 32. of Leases, the Statute enacts, that the Leases shall be good and effectual in Law, as if the lessor had beene seised of a good and perfect Estate in Fee-simple, and therefore you finde no saving in the Statute, and so likewise of divers other Statutes doe likewise, where a Statute doth make a gift or Title good, specially against certaine persons there needs no saving, except it bee to exempt some of those persons, as in the Statute of 1. R. 3. now to apply this to case of Rents, which is penned with an (ac fí) (s.) as if a sufficient grant, or lawfull conveyance had beene made, or executed by such as were seised, why if such a grant of a Rent had beene made, one that had an ancient Right might have entred and have avoyded the charge, and therefore no saving needeth; but the second first Cases are not penned with an (ac fí) but absolute, that Cesby que use shall be adjudged in Estate and Possession, which is a Judgement of Parliament stronger then any Fine, to bind all Rights, nay it hath further words (s.) in lawfull Estate and Possession, which maketh it the stronger then any in the first Clause; for if the words onely had stood upon the second Clause (s.) that the Estate of the Feoffee should bee in Cesby que use, then perhaps the gift should have beene speciall, and so the saving superfluous, and this note is materiall in re-

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gard of the great question, whether the Feoffees may make any regresse, which Opinion (I meane that no regresse is left unto them) is principally to bee argued out of the saving; as shall be now declared: for the savings are two in number, the first saveth all Strangers Rights, with an exception of the Feoffees: the second is a saving out of the exception of the first saving (s.) of the Feoffees in case where they claime to their own proper use: it had beeene caufed in the first saving out of the Statute) other then such persons as are feised, or hereafter should bee feised to any use) to have added to these words (executed by this Statute) or in the second saving to have added unto the words (clayming to their proper use) these words (or to the use of any other, and executed by this Statute, but the regresse of the Feoffee is shut out betwene the two savings, for it is the right of a Person clayming to an Use, and not unto his owne proper use, but it is to bee added, that the first saving is not to bee understood as the letter implyeth, that Feoffees to use shall bee barr'd of their regresse, in case that it bee of another Feoffment then that whereupon the Statute hath wrought, but upon the same Feoffment, as if the Feoffee before the Statute had beeene disseised, and the disseised had made a Feoffment in Fee to I. D. his use, and then the Statute came, this executeth the Use of the second Feoffment, but the first Feoffees may make a regresse, and they yet claime to an Use, but not by that Feoffment upon which the Statute hath wrought.

(44)

Now
Now followeth the third Case of the Statute touching execution of Rents, wherein the materiall words are foure:

First, whereas divers persons are seised, which hath bred a doubt that it should onely goe to Rents in Use, at the time of the Statute; but it is Explained in the Clause following (S) as if a grant had beene made to them by such as, are, or shall be seised.

The second word is (Profit) for in the putting of the Case, the Statute speaketh of a Rent; but after in the Purview is added these words (or profit.)

The third word is (ac fi) (S) that they shall have the (S) as if a sufficient grant or lawfull conveyance had bin made and Executed unto them.

The fourth words are the words of Liberty and Remedies attending upon such Rent (S) that hee shall di-straine, &c. and have such Suits, Entries; and Remedies relying againe with an (ac fi) as if the grant had beene made with such collaterall penalties and advantages.

Now for the Provisoes, the Makers of this Law did so abound with policy and discerning, as they did not onely fore-fee such mischieses as were incident to this new Law immediately, but likewise such as were consequent in a remote degree, and therefore besides the expresse Provisoes, they did adde three new Provisoes which are in themselves Substractive Lawes, for foreseeing that by the Execution of Uses, Wills formerly made should be over-thrown: They made an ordinance for Wills, foreseeing likewise, that by execution of Uses, women should be doubly advanced: They made an ordinance for Dowers and Jointures, foreseeing againe, that the execution of Uses would make
franktenement passe by Contracts parcel. They made an ordinance for enrollments of Bargaines and Sales, the two former they inferred into this Law, and the third they distinguished into a Law apart, but without any preamble as may appeare, being but a Proviso to this Statute: besides all these provisionall Lawes; and besides five Provisors, whereof three attend upon the Law of Jointure, and two borne in Wales, which are not materiall to the purpose in hand. There are sixe provisions which are naturall and true members and limbs of the Statute, whereof foure concerne the part of Cesty que use, and two concerne the part of the Feoffees: The foure which concerne the part of Cesty que use, tend all to save him from prejudice by the execution of the estate.

The first saveth him from the extinguishiment of any Statute or Recognizance, as if a man had an Extent of a hundred Acres, and an Use of the inheritance of one. Now the Statute executing the possession to that one, would have extinguish'd his Extent being intire in all the rest: or as if the Commissioner of a Statute having ten Acres lyable to the Statute had made a Feoffment in Fee to a Stranger of two, and after had made a Feoffment in Fee to the use of the Cestuze and his Heires: And upon this Proviso there arise three Questions: First, whether this Proviso were not superfluous, in regard that Cesty que use was comprehended in the generall, laying though the Feoffees be excluded.

Secondly, whether this Proviso doth save Statutes or Executions, with an apportionment and Entire.

Thirdly, because it is penned indefinitely, in point of time, whether it shall goe to Uses limitted after the Statute, as well as to those that were in being all the time of the Statute, which doubt is rather inforced by this Reason, because there was for Uses at the time of the Statute, for that the Execution of the Statute might be
be wayved, but both possession and use since the Statute, may be wayved.

The second proviso saveth *Cesty que use* from the charge of *primer Seisin liveries Ouster le maines*, and such other duties to the King, with an express limitation of Time that he shall be discharged for the time past, and charged for the time to come in a King's *May 1536.* to be *communis terminis*.

The third proviso doth the like for Fines, Reliefs, and Herriots, discharging them for the time past, and speaking nothing of the Time to come.

The fourth proviso giveth to *Cesty que use* all collateral benefits of Vouchers, Aides, priers, Actions of wai, Trespass, conditions broken, and which the Feoffees might have had; and this is expressly limited for Estates executed before *1 May 1536.* and this proviso giveth occasion to intend that none of these benefits would have beene carried to *Cesty que use* by the general words in the body of the Law (S) that the Feoffees estate, right, Title, and possession, &c.

For the two provisoes on the part of the Tenant, they both concerne the saving of strangers from prejudice, &c.

The first saves *Actions* depending against the Feoffees, that they shall not abate.

The second saves Wardships, Liveries, and *Ouster Le maines*, whereof Title was vested in regard of the Heire of the Feoffee, and this in case of the King only.
What Persons may be seised to an Use, and what not.
What persons may be Cesty que use, and what not.
What Persons may declare an use, and what not.

Though I have opened the Statute in order of words, yet I will make my Division in order of matter, viz.

1. The rayfing of Uses.
2. The interruption of Uses.
3. The Executing of Uses.

Againe, The raising of Uses doth easily divide it selfe into three parts.

The persons that are Actors to the Conveyance to Use.

The Use it selfe.
The forme of the Conveyance.

Then it is first to be seene what persons may be seised to an Use, and what not, and what persons may be Cesty que use, and what not.

The King cannot be seised to an Use; no, not where he taketh in his naturall body and to some purpose as a common person, and therefore if Land be given to the King, and I. D. per terme de lour vies, this Use is void for a moiety.

Like Law is, if the King be seised of Land in the right of his Dutchy of Lancaster, and covenanteth by his letters Pattents under the Dutchy Seale to stand seised to the use of his Sonne,nothing passeth.

Like Law, if King R. 3. who was Fcoffer to divers uses before he took upon him the Crowne, had after hee was King, by his Letters pattents granted the Land over, the uses had not bin renewed.

The Queene (speaking not of an Imperiall Queene by
by marriage) cannot be seised to an use, though she be a body inable to grant and purchase without the King: Yet in regard of the government and interest the King hath in her possession she cannot be seised to an use.

A Corporation cannot be seised to an use, because their capacity is to a use certaine; againe, because they cannot Execute an Estate without doing wrong to their Corporation or Founder; but chiefly because of the letter of this Statute which (in any clause when it spea-keth of the Feoffee) refeth only upon the word (person,) but when it speaketh of Cestey que use, it addeth person, or body politicke.

If a Bishop bargaine or sell Lands whereof hee is seised in the right of his Sea; this is good during his life; otherwise it is where a Bishop is intocoffed to him and his Successors to the use of I. D. and his heires, that is not good, no not for the Bishops life, but the use is meere vold.

Contrary Law, of Tenant in Taille, for if I give Land in Taille by Deed since the Statute to A. to the use of B. and his heires; B. hath a fee-simple determinable upon the death of A without issue. And like Law, though doubtfull before the Statute was, for the chiefe reasone which bred the doubt before the Statute was, because Tenant in Taille could not Execute an Estate without wrong; but that since the Statute is quite taken away, because the Statute faveth no right of intayle; as the Statute of R. 3. did, and that reason likewise might have bin answered before the Statute, in regard of the common recovery.

A twin Covert and an Infant, though under yeares of discretion, may be seised to an use; for aswell as Land might descend unto them from a Feoffee to use; so may they originally be intocoffed to an use; yet if it be before the Statute, and they had (upon a Subpœna brought) executed their Estate during the coverture or infancy
they might have defeated the same, and when they should have beene seized againe to the Use, and not to their owne use, but since the Statute, no right is saved unto them.

If a feeme Covert or an Infant be enfeoffed to an Use precedent since the Statute, the Infant or Baron come too late to discharge or route up the Feoffment; but if an Infant be enfeoffed to the Use of himselfe and his Heires, and I. D. pay such a summe of money to the Use of I. G. and his Heires, the Infant may disagree and overthrow the contingent Use.

Contrary Law, if an Infant be enfeoffed to the Use of himselfe for life, the remainder to the Use of I. S. and his Heires, he may disagree to the feoffment, as to his owne Estate, but not to devote the remainder, but it shall remaine to the benefit of him in remainder.

And yet if an Attainded person be enfeoffed to an Use, the Kings Title after Office found, shall prevent the Use, and Relate above it but untill office the Cestey que use is seised of the Land.

Like Law of an Alien, for if Land be given to an Alien to an Use, the Use is not voyd ab initio: Yet neither Alien or Attainded person can maintaine an Action to defend the Land.

The Kings Villeine if he be enfeoffed to an Use, the Kings Title shall relate above the Use, otherwise in Case of a common person.

But if the Lord be enfeoffed to the Use of his Villeine, the Use neither riseth, but the Lord is in by the Common Law, & not by the Statute discharged of the use.

But if the husband be enfeoffed to the use of his wife for yeares, if he die, the wife shall have the Terme, and it shall not inure by way of discharge, although the Husband may dispose of the wives Terme.

So if the Lord of whom the Land is held be enfeoffed to the Use of a person Attainded, the Lord shall not hold by
by way of discharge of the Use, because of the Kings Title, *An. diem & vastum.*

A person uncertain is not within the Statute, nor any Estate in *mutibus* or suspense executed, as if I give Land to I. S. the remainder to the right Heires of I. D. to the use of I. N. and his Heire; I. N. is not seised of the Fee-simple of an Estate *per vit.* of I. S. till I. D. be dead, and then in Fee-simple.

Like Law if before the Statute, I give Land to I. S. *per ater vit.* to an Use, and I. S. dyeth, leaving *Cestui que use,* whereby the free-hold is in Suspence, the Statute commeth, and no occupant entereth; the Use is not executed out of the free-hold in suspence. For the occupant the Diffeisfor the Lord by Escheate: The Feoffice upon consideration, not having notice, and all other persons which shallbe seised to Use, not in regard of their persons but of their Title. I referre them to my division touching disturbance and interruption of Uses.

It followeth now to see what person may be a *Cestui que use,* the King may be *Cestui que use,* but it behoveth both the declaration of the Use and the conveyance it selfe, to be matter of Record, because the Kings Title is compounded of both, I say, not appearing of Record, but by conveyance of Record. And therefore if I covenant with I. S. to leavy a Fine to him to the Kings use, which I do accordingly: And this deed of Covenant be not inrol'd, and the Deed be found by office, the use vesteth not, *Econverso inrol'd.* If I covenant with I. S. to infeoffe him to the Kings use, and the Deed be inrol'd and the feoffment also be found by office, the use vesteth.

But if I leavy a fine, or suffer a Recovery to the Kings use, and declare the use by Deede of Covenant *Enrol'd,* though the King be not party, yet it is good enough.

A Corporation may take an Use, & yet it is not material whether the feoffment or the Declaration be by deed; but I may infeoffe I. S. to the use of a Corporation and this use may be averred.
A Use to a person incertaine is not void in the first limitation, but executeth not till the person be in (esse,) so that this is positive, than an Use shall never be in Obeyance, as a Remainder may be, but ever in a person certaine upon the words of the Statute, and the Estate of the Feeoffees shall be in him or them which have the Use. The reason is, because no confidence can be reposed in a person unknowne and uncertaine; and therefore if I make a Feoffment to the use of I. S. for life, and then to the use of the right Heires of I. D. the remainder is not in Obeyance, but the Reversion is in the Feoffer, (quo-sque.) So that upon the matter all persons uncertaine in Use are like conditions or limitations precedent.

Like Law, if I Enfeoffee one to the use of I. S. for yeares, the remainder to the right Heires of I. D. This is not executed Obeyance, and therefore not void.

Like Law, if I make a Feoffment to the use of my wife that shall be, or to such persons as I shall maintain, though I limit no particular Estate at all; yet the use is good, and shall in the interim returne to the Feoffer.

Contrary Law, if I once limit the whole Fee-simple of the Use out of Land, and part thereof to a person incertaine, it shall never returne to the Feoffer by way of fraction of the Use; but looke how it should have gone unto the Feoffer; if I begin with a contingent Use, so it shall go to the remainder; if I intaile a contingent Use, both Estates are alike subject to the contingent Use when it falleth; as when I make a Feoffment in Fee to the use of my wife for life, the remainder to my first begotten son; I having no Sonne at that time, the remainder to my brother and his heires if my wife dye before I have any son, the Use shall not be in me, but in my brother. And yet if I marry againe and have a Sonne, it shall devest from my brother, and be in my Sonne, which is the skipping they talke so much of.
So if I limit an Use joyntly to two persons; not in (Esse) and the one commeth to bee in Esse, hee shall take the intire Use, and yet if the other afterward come in Esse, hee shall take joyntly with the former, as if I make a Feoffment to the Use of my Wife that shall bee, and my first begotten Sonne for their Lives, and I marry my Wife taketh the whole Use, and if I afterward have a Sonne, hee taketh joyntly with my Wife.

But yet where words of obedience worke to an Estate, executed in course of Possession, it shall doe the like in Use, as if I enfeoffe A. to the use of B. for life, the remainder to C. for life, the remainder to the right Heires of B. this is a good remainder executed.

So if I enfeoffe A. to the use of his right Heires A. is in the Fee-simple, not by the Statute, but by the Common Law.

Now are wee to examine a special point of the disability of persons as to take by the Statute, and that upon the words of the Statute, where divers persons are seised to the use of other persons, so that by the letter of the Statute, no use is conteyned, but where the Feoffor is one, and Cesdy que use is another.

Therefore it is to bee seen in what Cases the same persons shall be both seised to the use and Cesdy a que use, and yet in by the Statute, and in what Cases they shall be diverse persons, and yet in by the Common Law, wherein I observe unto you three things: First, that the letter is full in the point. Secondly, that it is strongly urged by the Clause of joynt Estates following. Thirdly, that the whole scope of the Statute was to remit the Common Law, and never to intermeddle where the Common Law executed an Estate, therefore the Statute ought to bee expounded, that where the party seised to the use, and the Cesdy que use is one person,
on, hee never taketh by the Statute except there bee a
direct impossibilitie or impertinency for the use, to take
effect by the Common Law.

And if I give Land to I. S. to the use of himselfe
and his Heires, and if I. D. pay a summe of mony,
then to the use of I. D. and his Heires, I. S. is in of
an Estate for life, or for yeares, by way of abridgment
of Estate in course of Possession, and I. D. in of the
Fee-simle by the Statute.

So if I bargain and sell my Land after seven yeares,
the Inheritance of the Use onely passteth, and there re-
maines an Estate for yeares by a kind of subtraction of
the Inheritance or occuppyer of my Estate, but meerely at
the Common Law.

But if I enfeoffe I. S. to the use of himselfe intayle,
and then to the use of I. D. in Fee, or Covenant to
stand feild to the use of my selfe in tayle, and to the use
of my Wife in Fee, in both these Cases the Estate tayle
is executed by this Statute, because an Estate tayle can-
not be reoccupied out of aFee-simle being a new Estate,
and not like a particular Estate for life or yeares, which
are but portions of the absolute Fee, and therefore if I
bargaine and sell my Land to I. S. after my death
without Issue, it doth not leave an Estate tayle in mee,
nor vesteth any present Fee in the bargainees, but is an
use expendant.

So if I enfeoffe I. S. to the use of I. D. for life,
and then to the use of himselfe and his Heires, he is in of
the Fee-simle meerely in course of Possession, and as of
a Reversion, and not of a remainder.

Contrary Law, if I enfeoffe, I. S. to the use of
I. D. for life, then to the use of himselfe for life, the re-
mainder to the use of I. N. in Fee, now the Law will
not admit fraction of Estates, but I. S. is in-with the
rest by the Statute.

So if I enfeoffe I. S. to the use of himselfe, and a
Stranger,
Stranger, they shall be both in by the Statute, because they could not take joyntly taking by severall Titles.

Like Law if I infeoffe a Bishop and his Heires to the use of himselfe, and his successors, he is in by the Statute in the right of his Sea.

And as I cannot raise a present use to one out of his owne seisin, so if I limit a contingent or future use to one being at the time of limitation not seised, but after become seised at the time of the execution of contingent use, there is the same reason and the same Law, and upon the same difference which I have put before.

As if I covenant with my Sonne, that after his Marriage I will stand seised of Land to the use of himselfe and his Heires, and before Marriage I infeoffe him to the use of himselfe and his Heires, and then hee marryeth, hee is in by the Common Law, and not by the Statute, like Law of a bargain, and sale.

But if I had let to him for life onely, then hee should have beene in for life onely by the Common Law, and of the Fee-simple by Statute. Now mee advise you of this, that it is not a matter of sutilty or conceipt to take the Law right, when a man commeth in by the Law in course of Possession, and where hee commeth in by the Statute in course of Possession, but it is materiall for the deciding of many Causes and Questions, as for Warranties, Actions, Conditions, Wayners, Suspetions, and divers other Provistues.

For example, a mans Farmer committed wasst H 2 after
after he in the Reversion covenanted to stand feised to the use of his Wife for life, and after to the use of himselfe and his Heires, his Wife dyes, if hee bee in his Fee untouch'd he shall punish the wast, if he be in by the Statute he shall not punish it.

So if I bee infeoffed with Warranty, and I covenant with my Sonne to stand feised to the use of my selfe for life, and after to him and his Heires; if I bee in by the Statute, it is cleare my Warranty is gone, but if I be in by the Common Law it is doubtfull.

So if I have an eigne Right, and be infeoffed to the use of I. S. for life, then to the use of my selfe for life, then to the use of I. D. in Fee, I. S. dyeth, if I be in by the Common Law, I cannot wayve my Estate having agreed to the Feoffment; but if I am in by the Statute, yet I am not remitted, because I come in by my owne Act, but I may wayve my Use, and bring an Action presentlie, for my Right is saved unto me by one of the savings in the Statute. Now on the other side it is to bee seene, where there is a seisin to the use of another person, and yet it is out of the Statute, which is in speciall Cases upon the ground wherefore every case that we had remedy, for the Possession by course of Common Law, there the Statute never worketh, and therefore if a seisin were committed to an Use, it is in him by the Common Law upon agreement, so if one enter as occupant to the Use of another, it is in him till the disagreement.

So if a seisin infeoff a man (Charter matrimonii pro locuta) he hath remedy for the Land againe by course of the Law, and therefore in those speciall Cases the Statute worketh not, and yet the words of the Statute are generall, (where any person stands seised by force
of any Fine, Recovery, Feoffment, bargain and sale, agreement or otherwise.) but yet the same is to be restrained for the reason aforesaid.

It remaineth to shew what persons may limit and declare an Use, wherein we must distinguish, for there are two kinds of Declarations of Uses, the one of a present Use upon the first conveyance, the other upon a power of revocation or new declaration, the latter of which I referre to the division of revocation, now for the former.

The King upon his Letters Patents may declare an Use, though the Patent it selfe implyeth an Use, if none be declared.

If the King gives Lands by his Letters to I. S. and his Heires to the use of I. S. for life, the King hath the Inheritance of the use by implication of the Patent, and no Office needeth for implication out of matter of Record, amounteth ever to matter of Record.

If the Queene give Land to I. S. and his Heires to the use of all the Church-wardens of the Church of Dale, the Patenteere is feised to his owne use, upon that confidence or intent, but if a common person had given Land in that manner, the use had bin void by the Stat. of 23. H.8. and the use had returned to the feoffor & his heires, A Corporation may take an Use without deed as hath bin said before, but can limit no Use without Deed.

An Infant may limit an Use upon a Feoffment, Fine, or Recovery, and he cannot Countermand or avoyd the Use, except hee avoyd the conveyance, contrary if an Infant covenant in consideration of bloud or Marriage to stand seised to an Use, the Use is meereley void.
If an infant baragine and sell his land for mony, for Commons, or Teaching, it is good with averment, if for mony otherwise, if it be proved it is avoydable, if for mony recited and not paid it is voyd, and yet in the case of a man of full age the recital sufficeth.

If Barron and feme be seised in the right of the feme, or by joynct Purchase during the Coverture, and they joyn in a Fine, the Barron cannot declare the Use for longer time then the Coverture, and the feme cannot declare alone, but the Use goeth according to the limitation of Law, unto the feme and her Heires, but they may both joyn in Declaration of the Use in Fee, and if they sever, then it is good for so much of the Inheritance as they concur'd in, for the Law avoucheth all one as if they joyn'd, as if the Baron declare an Use to I. S. and his Heires, and the Feme another to I. D. for life, and then to I. S. and his Heires, the Use is good to I. S. in Fee.

And if upon examination the Feme will declare the Use to the Judge, and her Husband agree not to it, it is voyd, and the Barons Use is onely good, the rest of the Use goeth according to the limitation of Law.

FINIS.