Lib. 3.  
Cap. 4.  
Of Tenants in Common.  
Sect. 302.

**Sect. 302.**

I TEM * si deux juyentans en nice, etc. This needeth no explanation. 

Est sur ce cas, un question pour seder, etc. Here Littleton makes a question, and shows the reason on both sides, and concludes with a Querue. When Littleton makes a question, and shows the reason on both sides, the latter is ever his own, &c. and the better.

But time hath made this question without question; for now all agree, that the juyenture is forever for the time, according to the latter opinion here set down in Littleton, whose reasons are unanswerable: for many times the change of the freethold makes an alteration or change of the reverison. As if tenant in tail, or the husband seised in the right of his wife, or tenant for life, make a lease for life of the lease, in every of these causes the lessor doth gain a new reverison by wrong, as shall be said more at large in the chapter of Differences in tenur, and if the elder brother grant the reverison (expectant upon a freethold for life, it shall cause * juyon en foydis, as hath been fayd.*

Per misfune le rea- son le reverison que est dependant sur misfune le frankementemen ef fencer de la juytoue, etc.

If two jointants in fee be, and they both pay in a lease to an abbot and a feocall man for term of their lives, have the reverison that is dependant upon several freetholds is severed. And to it is it they join in a lease to two feocall men, to have and to hold the one moiety to the other. If there bee two jointants in fee, and the one letteth to him belongeth to another for term of his life, the tenant for term of life during his life, and the other jointant which did not let, are tenants in common. And upon this case a question may arise; as in such case admit that the lessor hath issue and die, living the other jointant his companion, and living the tenant for life, the question may be this, Whether the reverison of the moiety which the lessor hath shall descend to the issue of the lessor, or that the other jointant shall have this reverison by the survivor? Some have fayd in this case, that the other jointant shall have this reverison by the survivor; and their reason is this, jej. That when the jointants were jointly seised in fee simple, &c. although that the one of them make an esse of that to him belongeth for term of his life, and although he hath severed the affreist.

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* Si, doe not in Rob. not in L. and M.  
† It is not in L. and M. or Rob.  
‡ Gejreevous-ics in L. and M. and Rob.  
§ It is not in L. and M. or Rob.
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offert per le leaf, un-
core il n'ad feuer le fee
simple, mes le fee
finet le demart a eux
joyntement come il fuy
advancet. Est aijant
fonde a eux, que l'auter
joyntenant que
furcroyg, avera le
reversion per le sur-
voirour, Sc. Et auauters
ont dit la contrariete, Sc.

c est lor reoon, fei-
livet, que quant l'un
des joyntenants lefja
cero que a way offert
a un auter par terme
de sa vie, per tel
tele leaf le frantemenet
est fuyer de le joy-
ture. Et per mesme
le reason le reversion
que est dependant
per mesme le frant-
emenet, est feuer de
le jouyture. Auyx
le leffour n'et
reover a hoy un annu-
all rent fur le leas,
le leffor faiement
avover le rent, Sc. le
quel est un proseegue
reversion est faiement
en ley, et que l'auauter
n'ad vien en cel
reversion, Sc. Auyx
le tenant a term de
vie fuyit impleads, Sc.
n si le tenant for
fille defaut apres
termes de life were im-
default, donques le
pleaded, & makth de-
leffor ferro de cel
fault after default, the
folution recev a de
fender fon droit, et
ecevied forthis, to defend

one for life, and the other nothy
freehold of this which
to him belongs by the
leaf, yet he hath not
ferved the fee simple,
but the fee simple re-
uns to them jointly
as it was before. And
so it feemeth to them,
that the other joynt-
tenant which furviveth
shall have the reversion
by the surviour, &c.

And others have said
the contrary, and this
is their reason, feeliet,
that when one of the
joyn-tenants lefjhet
that to him belongeth,
to another for term of
his life, by such leaf the
freehold is ferved from
the jouyture. And by
the same reason the re-
version which is depen-
dning upon the same
freehold is ferved from
the joytoure. Alfo if
the leffor had refered
him to an annual rent
upon the leaf, the lef-
for onely should have
had the rent, &c. the
which is a proove, that
the reversion is onely
in him, and that the
other hath nothing in
the reversion, &c. Al-
nie fuit impleads, &c. so if the tenant for
fille defaut apres
termes of life were im-
default, donques le
pleaded, & makth de-
leffor ferro de cel
fault after default, the
folution recev a de
fender fon droit, et
ecevied forthis, to defend

if two joyntenants (Ant. 167 a.)
be, and one maketh a leaf for
life, this is a fererence of
the joytoure, as Lisitena here
taketh is, and several annuities
shall be made upon them (1)

Auyx li le leffor
n'et referve un annu-
all rent, le leffor faiement
avover le rent, &c. But
if two joyntenants make
a leaf for life, referring a rent
to one of them, the rent shall
be made upon them (Ant. 47 a.)
care to them both, because
the reversion remaines in joyn-
ture, unless the reversion be
by deed inducted, and then be
onely to whom it is refered
shall have it. But if they
make a leaf by deed in-
duced, referring or saving the
reversion to one of them, that
is void, because they had the
reverions before, but the rent
is newly created.

And so it is if soch a leffe
for life should forerender to
5. £. 4. 1. 1. one of them, it shall caus to
them both, for that they have
Patt. 47 a. a joyn reverison. But if the
leffe grant his estate to one
of them, no part of it shall ens-
ue to his companion, be-
cau se for the moyster belonging
to his companion, it is in of
in

(1) Upon the death of either of the leffors, one moiety of the estate goes to the surviving leffor or his assigns, and the re-
verisdiction may enter upon the other moiety. See Jdy. 67. 4 Sc W. Jones 45. 2. P. Will. 740. But this is to be
understood where the joyntenants are for life; for the jointenants are in 60. and the jouyture is ferved, the right of furi-
voirship is wholly taken away, and their shares go to their respective heirs. So if there be jointtenants of a term of years, and
the jointurer is ferved, their shares go to three respective personal representatives. See 64. 347. It should also be ob-
served, that the cafe put by Lisitena presupposes the jointentant to grant his estate for his own life only; for if he grants it for a
longer term than that of his own life, or for the life of any other person, it is a forfeiture. See 4th Levic. 178.
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in him to whom the grant is made, the reverstion to the other in fee.

If two jointtenants make a leafe for life, the remainder to his companion in fee, this is a good remainder of his moiety to his companion.

Donque la sevstor serra de ces folientem recevoir, &c.

Receivs, Revit, Receivs, is in many cased where a person, partie to a writ, or an eliernger thereunto, to whom a reverstion or remainder appertained, shall in default of another person be received to defend his or her freehold or inheritance, the how fifh, Descendent, &c. And this admission or receipt is given by sundry statutes (j) (and, this is that which the civilians call, Admissio personae per intercess.). It is to censure provisio that consequent actions & suos inter rentiones & tenentes, et alios inter se, &c. And such a receiptable, that none the issue aversa so moiety en demesne, et en fee per divers, purce que un frantement ne post not nature de jouirure est une annexee a un reverstion, &c. Et il est certaine, que celer que lefia his sefis de le moiety en son demesne come de fee, et nul avera afuen jouirure en son frantement, Ergo cee diercenda a son issue, &c. Sed quare.

* are added in L. and M. and Rob.

+ are not in L. and M. or Rob.

Section
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Sect. 303.

**Mes** si effat soit que la ley en cef cas se tielt, que si le leffor devie vivant le leffo, & vivant l'auter joytenant que de le franktenement de l'auter moitie, que le revercion descendra at esfe del leffor, domoque est le joytamente & title que afo de ceux qui pot aver per le survivour, & le droit de le joytamente amant, et tout ouftament defeant a toutes jours. En mesme le maner est, si celuy joytenant que ad le franktenement devie vi- vant le leffor & le leffo, si la ley fuit tielt que son franktenement & fee que il ad en le moitie dif- fercendra a son esfe, donques le joytamente serra defeant a toutes jours.

**BUT** if it be so that the law in this case be such, that if the lefior die living the lefser, and living the other joynte- nant which hath the free- hold of the other moiety, that the reversion shall descend to the issue of the lefser, then is the joynture and title which any of them may have by the survivour, and the right of the joynture taken away, and altogether defeated for ever. In the same manner it is, if that joytenant which hath the freehold dying living the lefser and the lefser, if the law be so as his freehold and fee which he hath in the moiety shall descend to his issue, then the joynture shall be defeated for ever.

And the reason of this is, for if the joynture be severed at the time of the death of him that first deceased, the benefit of surviv- or is utterly destroyed for ever, as hath beene said (1) above in (**3**) 302, sect. 303, the chapter of Joynte- nants. But in the case aforesaid, if tenant for life death in the surface of both the joynte- nants, they are joynte- nants againe as they were before.

If two joynte- nants be in fee, and the one letter his part to another for the life of the lefser and the lefser died, some fay that his part that surviveth to his companion, for by his death the lefser was determined. And oth- ers hold the contrary; and their reason is, first, for that at the time of his death the joynture was severed; for so long as he lived the lefser continued. And secondly, that notwithstanding the act of any one of the joynte- nants there must be equal benefit of survivour as to the freehold. But here it the other joytenant had first died, there had been no benefit of survivour to the lefser without question.

Sect. 304.

**ITEM,** si troist joyntenants font, & l'un relefsi per son fait a un de ses companions tout le droit que il- a- voit en le terre, don- ques ad celuy a que le relefs es fait le tierce part de les ter-

**AND if three joyntenants be,** & the one relefsi by his deed to one of his companions all the right which he had in the land, then hath he to whom the relefs is made the third part of

**UPON** this case there are two things to be ob- served (**1**). First, that (Poetry. 12s. 6. Rep. 28. 5. Act. 19. 5. & 38.) if there be no relefsi by way of relefsi, (**1** **) it will. Dyer 163. and not (**) by way of relefsi, (**2** ) for then the relefsi should esche to his companion afo, and he is in the poe by him that maketh the relefsi (**3**). But if hee had relefsed to the other two (**4**), then he brought no degree of

(1) Some observations on Sir Edward Coke's commentary upon this and the four succeeding Sections will be offered in the chapter of Relefses.

5 G
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but in supposition of law, for many purposes they to whom the releas is made (as hath beene said) shall be bounded in from the first foot, as they shall deserve the first warrantee for the whole. The second thing to be observed is, that he to whom the releas is made hath a fee simple without the words (here, as hath beene toucht in the first chapter of the first bookes; for that he be to whom the releas is, is signified per om, of per unam, of the fee and inheritance, as hath beene fayd in the chapter of Joynemates. And note, the like law is between coaparencers; and further, if there be two coaparencers, and the one hath issue twentie daughters and dieth, the other may releas to any one of the daughters her whole part, albeit the to whom the releas is, hath not an equall part: but for the privilige, and the indivizible, the releas is good. But if two joynemates be of twenty acres, and the one makest a feoffment of his part in eighteene acres, the other cannot releas his entire part; but only in two acres, for that the feoffment is severd for the releas.

THUS is evident upon that which hath beene said before. [1] In releas prenda effect, & semora par mitter l'eslat de celay que fiit le releas a celay a que le releas est fait, fiome en le cas avant dit, & auyr-y comme joyst eslate foy fait a le baron & sa feme, & a la tierce person, & la tierce person relefia tout son droit que il ad a le baron, adunque ad le baron la moitie que le tierce avoir, & la feme de cego n'ad riens. Est fi en tel cafe le tierce relefia s a la feme n'y demanant le baron en le releas, donques ad a la feme la moitie que le tierce avoir, & c. & le baron n'ad riens de cego forRare

ET est apercour, que a un fois a un releas prenda effect, & semora par mitter l'eslat de celay que fiit le releas a celay a que le releas est fait, fiome en le cas avant dit, & auyr-y comme joyst eslate foy fait a le baron & sa feme, & a la tierce person, & la tierce person relefia tout son droit que il ad a le baron, adunque ad le baron la moitie que le tierce avoir, & la feme de cego n'ad riens. Est fi en tel cafe le tierce relefia s a la feme n'y demanant le baron en le releas, donques ad a la feme la moitie que le tierce avoir, & c. & le baron n'ad riens de cego forRare

AND it is to be observd, that sometimes a deed of releas that take effect, & enure to put the eslate of him which makes the releas to him to whom the releas is made, as in the case aforesaid, and also, as if a joyst eslate be made to the husband and wife, and to a third person, and the third person releas all his right which he hath to the husband, then hath the husband the moitie which the third had, and the wife hath nothing of this. And if in such case the third releas to the wife not naming the husband in the releas, then hath the wife the moitie which the
Lib. 3. Of Tenants in Common. Sect. 306.

en droit sa femme, par ce que en tiel case le releafe eurera de faire eflate a celyn a que le releafe est fait, de tout 194 cto que eftire a celyn que fait le rele-

a

Sect. 306.

T en aefum cas a releaef wara de mister tout le droit que il que fa releaes ad a celyn a que le rele-

le releafe eurera de faire releafe a son de-

A

neur en some case a releaef thal enure to put all the right which he who maketh the releafe hath to him to whom the releafe is made. As if a man feiled of certaine tenements is defiide by two diiferiors, if the defiide by his deed releafe all his right, &c. to one of the diiferiors, then hee to whom the releafe is made shall have and hold al the tenements to him alone, and shall out his companion of every occupation of this. And the reason is, for that the two diiferiors were in against the law, and when one of them happeneth the releafe of him which hath right of entry, &c. this right in such case shall veift in him to whom the releafe is made, and he is in like plite, as hee which

third had, &c. And the husband hath nothing of this but in right of his wife, because that in this case the releafe shall enure to make an eflate to whom the releafe is made of all that which belongeth to him which maketh the releafe, &c.

was made was sided per my & per seos, whereunto when
thrt commenta is excluded the wrong (s) for right which is lawful, and wrong that
is contrary to law, cannot stand together.

En tiel ple, scone
il que avoit droit, avoit
sider i & e se en sef, etc.

This (or-) such imply that this is true factum quid, but not speculor; for as to the holding
one of the joint diffeis, it amounts to as much as if he had entered and inclosed him to
whom the releafe is made, but it does not amount to an entire and frontment speculor to al
purposes, as shall be said hereafter in his proper place in the chapter of Releases.

Sect. 307.

HERE Lieues free-

king of the third kind

of releas. And the rea-

son of this diversitie (includ-

ed in the (or-) in the end of this

section) between the diffe-

sors & their freeies, is for that

the freeies comming in by
title and purcharse, are inten-
dered in law to have a war-

ranty, which is much effect-

ued in law; and therefore

left the warranty should

be avoided, the releafe shall en-

ure to both the freeies in fa-

vour of purcharser, and to

the right and behoof of every

one foraid. (3) And in anci-

cent time if the diffeior had

made a frontment in fee, or a

gift in tail, or a lease for life,

and the freeies, devise, or

lease had continued in effect

quenly a yeare and a day, the

curate of the diffeior had not

been lawfull upon him; and

the reason was, for the benefi-

cient and safeguard of the war-

ranty (which was intended by

law) should have been de-

stroyed by the curate. But

hereof also much more shall be

said in his proper place in the

chapter of Releases.

ET en aseen cas

un releas oree-

ra per voy d’extin-
guishment, et en tiel

cafe tiel releas aydera

le joynant a que le

releas ne fait fait, au-

systen comme il est a

que le releas fait fait.

Siccome in a bene-

fait disfer, & le di-

sier est frontment a

duxhomsen fee, & fi

il disfer est frontment a

son fait a un de le

sefiere, donnes que ci

releas vora a ami-

dex les sefiere, par

ces que les sefiere ont

eflate per la ley, cili-

ceit, per frontment, et

nony per tort, fait a

nulhy, etc. (1)

AND in some case

a release shall in-

ure by way of extin-
guishment, and in such
case such release shall
side the joynant to whom
the release was not made,
and as well as to him
who the release was
made. As if a man
be disfied, and the
diffeior makes a

frontment to two men
in fee, if the disfi-

tee release by his deed to

one of the sefiere,

this release shall enure to

both the sefiere, for

that the sefiere have an

eflate by the law, sefiere,

by front-

ment, and not by wrong

done to any, etc.

Sect. 308.

EN mefie le maner ef, si le

disfier fait un leafe, a un

home per terme de sa vie, leremain-

* Sec. added in L. and M. and Roh.
In Roh. S not in L. and M. or Roh.

4 Lay a relaq in L. and M. and Roh.

5 Et added in L. and M. and Roh.

6 St added in L. and M. but not

7 Sel-tied in L. and M. and Roh.

(1) In the 43d and 44th chapters of Bilton, is much curious learning on the efate of a disfier, and his different situa-
tions previous and subsequent to his acquiring an established possession, and previous and subsequent to his acquiring a titel to
his effect, and on the consequential differences of the situation and remedies of the disfier in those respects—These chapters throw great light upon the Edw. Coke's commentary on this section, and strongly confirm the observations made by Lord
Mansfield, in the famous case of Taylor v. Hurley, 6 Term 60.
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der ouster a un aturn en foz, si le
difficile releias a le tenant a terme
de vie tout fon droit, &c. cel releafs
vora auxibien a celuy en le re-
mainder come a la tenant a terme
de vie. Et la cause est, par ce que
le tenant a terme de vie vient a
son estate per courte de ley, & par
ceo cel releas vora, et prent ef-
sef per voy d'extinguisement de
droit de celuy que releias, &c. Et
per cel releas le tenant a terme de
vie n'ad plus ample ne greindre
eflets, que il avoit davant le rele-
sea fait a huy, et le droit celuy
que releias est tout souverain ex-
tinct. Et entant que cel releas
ne pot enlargir l'estate de le te-
nant a terme de vie, il est reasen
que cel releas vora a celuy en le
remainder, &c.

Plutzs ferra dit de releasen en le
chapitre de Releasas.

Cel releas vora auxibien a celuy en le remainder, come a la tenant a
term de vie, &c. Of this and the rest of this Sectio, for avoiding of repeti-
tion, notes shall be find in his proper place in the chapter of Releasas.

Text for droits, &c. Here by this (g.e.) is implied, title, demand, and other words
which may transter the right, &c. Also here is implied of in or to the land.

Sect. 309.

ITEM fi saient deux parce-
ners, & l'un alien esto que a huy
effier a un aturn, douxques l'auter
parcener & l'alienue font tenants en
common.

This is evident, and needeth no explication.

Sect. 310.

ITEM* note, que tenants en
common font effet per + title
.de prescripasion, jiseme l'un et ses
ancedurs, en ceux que effet il

Also note, that tenants in (Act. 146, 8)
common may bee by title
of prescription, as if the one and
his ancedurs, or they who

* Not as not in L. and M. or Roh.
† Title de not in Roh.
Cap. 4. Of Tenants in Common. Sect. 311.

Of this, besides Littler, there is good authority in law, as there is for all his other cases throughout his three books; but Joynets cannot be by precept, because there is

Sect. 311.

Also in some cases tenants in common ought to have of their possession several actions, and in some cases they shall join in one action. For if two tenants in common be, and they be disaffiled, they must have two actions, and not one; for each of them ought to have one of his moity, &c. & the reason is, for that the tenants in common were seised, &c. by several titles. But otherwise it is of joint tenants; for if twenty joint tenants be, and they be disaffiled, they shall have in all their names but one action, because they have not but one joint title.

This last thing here to be learned, is the difference between tenants in common and joint tenants, which both of it fertile, and upon which which hath been said, is apparent.

* See added in Rob.  + See not in Rob.  - Volvers al def added in Rob.
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Sect. 312.

ITEM si joint trois joyntenants, & un releasé a un de ses compagnous tout le droit que il ad, &c., et plus les autres deux font disjouis de l'entierité, &c. en ces cas les deux autres avoient plus sevrare affises, &c. en ces formes, &c., et il avoit en leur ambiance nonmex un affisle de les deux parts, &c. pur ce que les deux parts ils teintent jointement at temps de le disjusser.

ALSO if three joyntenants bee (Nay l. 13. An. 153) and one releasé to one of his fellows all the right which hee hath, &c., and after the other two be dispossessed of the whole, &c. in this case the two others shall have several affises, &c. in this manner, viz. they shall have in both their names an affisle of the two parts, &c. because the two parts they held joynely at the time of the disjusen. And as to the third part, he to whom the releasé was made, ought to have of that an affisle in his owne name, for that hee (as to the same third part) is thereof tenant in common, &c. because hee commeth to this third part by force of the releasé, and not only by force of the joynture.

This is put for an example (which ever dought illustrat the rule) and is evident of itself: and the (Gra) in this section needeth no further explication.

Sect. 313.

ITEM quant a fuer des actions qui touchant le realite, y sont diversities pour estre parereers que sont eus pour divers defcents, &c. tenants en common. Car si il home feisme de certaine terre en fee ad isue deux

ALSO to the suing of actions (An. 164. a.) which touch their reality, there bee diversities betwixt the parceners which are in by divers descents, and tenants in common: for if a man seised of a certain land in fee, hath issue two daughters and dyeth, and the daughters enter, &c. and each of them hath issue a sonne, and die without partition made between them, by which the one moiety descents to the sonne of the one parceller, and the other moiety descents to the

entreat

* Autres not in Rob.  † Ex. 32. added in Rob. ded in Rob.  qtr Home—tree parcenors in Rob.  c. et eis—tree ad isue non in Gra, not in Rob.

† II rue in Rob.  ¶ Three not in Rob.  ¶ Et eis—tree et les fils entrats.

†† Et mortify et les fils entrants.

entrent et occupient en common et font difficultes, en cefo ceste ils averyent en leur deux nomes un affe, et nemy deux affises. Et la cause est, que comme que ils voygent ens pour divers deffis, &c. encore ils font parcuers, et brieffe de Partitione faciendae gist entre eux. Et ils ne font parcuers, yant regarde au re-
pect tant solement a * le fein et possession de leur meres, mes ils font parcuers plus, yant respect a l’estate que descendent de leur ayel a leur meres, car ils ne payent esfre parcuers si leur meres ne fuerent parcuers ad-
vants, &c. Et iaffent a tiel respect et consideration, felicite, quant a le premier deffent que fuit a leur meres, ils ont une titre en parcu-
nearie, le quel fust eux parcuers. Et aussi ils ne font foiqme comme un biere a leur common unce-
stor, felicite, a leur ayel, de quoy la terre descendent a leur meres. Et par ces causez devant partition enter eux, &c ils averant un af-
fise, comen que ils voygvent ens per severals deffis.

This, upon which there has been fad in the chapter of Parcuers, is evident: where you may recede excellent points of learning, and diversities concerning this matter; all which are here either exprested or implied, as the studious and diligent reader will observe.

Sect. 314.

EN cefo ceste quant a le rent et livrer de pepper, ils averyent deux affises, &quim a l’ayserver ou le cibroval forique un affise.

* Le—ser in Rob.  † &c. not in Rob.  ‡ &c. added in Rob.
Lib. 3. Of Tenants in Common.

Sec. 134.

De vie, rendant a eux annuellement un certain rente, & un livrer de pepper, & un esperver ou un chival, & ils sont feites de ceff servife, & puis tout le rent en a derere, & ils difirsive rent pur ceo, & le tenant a eux fait refcos. En cef cas quant a le rent & livrer de pepper ils a veront deux affifes, & quant a l'esperver ou le chival forfque un affife. Et la caufe pur que ils a veront deux affifes, quant a le rent & livrer de pepper, est ceo, en tant que ils furent ten nants en commun en feverall titles, et quant ils furent un done en le toye au leas pur terme de vie, faissant a eux le reverfon, & rendant a eux certaine rente, &c. tel reverfon est inci dent a leur reverfon, & pur ceo que leur rever fon est en commun, & per ferverall titles, ficiente leur possiffion fuit de sant le rent & autres choses que poient eftre feu res, et furent a eux referves fur le done, ou fur le leas, queuen feu accident par le ley a leur reverfon, telles choses ifant referves furent de la nature del reverfon. Et entuent que le reverfon eft a eux dring to them yearly a certaine rent, & a pound of pepper, and a hawke or a horse, and they bee secied of this service, and afterwards the whole rent is behind, and they disstraine for this, and the tenant maketh recoue. In this case as to the rent and pound of pepper they shal have two affises, and as to the hawke or the horse but one affise. And the reason why then they shal have two affises as to the rent and pound of pepper is this, inasmuch as they were tenants in common in severall titles, and when they made a gift in taile or lease for life, saving to them the reverfon, and rendering to them a certaine rent, &c. such reverfon is incident to their reverfon, and for that their reverfon is in common, and by severall titles, as their possiffion was before the rent and other things which may be severed, and were reserued unto them upon the gift, or upon the lease, which are incidents by the law to their reverfon, such things & referred were of the nature of the reverfon. And in as much as the reverfon is to them in common by severall titles, it beho-

true or reason, as before it appeared by Litt. 19. Lex enim fiabilis natura ordinem. Also the law will never enforce a man to demand that which he cannot recover, and a man cannot recover the moiety of a hawke, horse, or of any other thing: Lex semium capiat ad vaca, sed insillus. But in that case they shall have joynce in affise, and the reason is, Ne cessiva Domini Rogati differential in justicia cabendar, or Lex non debet dehore conquisiti in justitia cabendam. And if they should not have joynce, they should have damnum & injuriam, and yet should have no remeoye(*) by law, which should be inconvenient, but the latter fiction of every case where a man is wronged, and enniongaged, that he shall have remeoye. 

Aliquid concedatur ut injuria remanatur, in qua quid quilibet non concederet.

(*) And tenants in common shall have joynce in a quare impeditis, because the presentment to the adversion is entire.

Ne alius in common be of a feignioy shall joynce in a writ of right of ward, and ravishment of ward for the bodie, because it is entire.

If two tenants in common be of the wardship of the bodie, and one doth ravish the ward, and the other tenant in common relates to the ravisher, this shall goe in benefic of the other tenant in common, and he shall recover the whole, and this relite shall not be any barre to him. And so it is if two tenants in common be of an advosion, and they bring a quare impeditis, and the one doth releafe, yet the other shall foe forth, and recover the whole prefectment.

Two tenants in common shall joynce in a destine of charters, and if the one be non-fuit, the other shall recover.

It is said that tenants in common shall joynce in a Fermentia Clarisc, but sever in voucher.

Mote de chival, &c. Here is implied any other entire rent or service.

Per divers titulis, &c. That is by severall titles, and not by one joynt title, as hath been said.

Veront tiels ac- ITEM, quant al ablons per flons perflons tiels jointement en tous lour tiels en common 

ITEM, &c. By this averunt tiels ablons have such action per-
Lib. 3. Of Tenants in Common. Sect. 316.

perfonsally joyntly in all their names as of trespasse, or of offences which concern their tenements in common, as for breaking their houres, breaking their clothes, feeding, waffing, and defowing their grasse, cutting their woods, fishing in their pichary, and such like. In this case tenants in common shall have one action joyntly, & shall recover jointly their damages, because the action is in the personalty, and not in the realty, &c.

action given unto them for the shortages upon the account was joined. So if it be two tenants in common how their land, and one doth eat the same with his cattle, although they have the common in common, yet the action given to them for trespass in the same is joyntly, and not in the realty; &c. For the trespass and damage done to them was joynt, all which here is implied in Littleton, who saith, that they shall have an action joyntly, and the same law is of coparceners.

But if two tenants in common be of goods, as of an horse or of any other goods personally, there if one dyeth, his executor shall be tenant in common with the survivor.

Ennysen en el realite, &c. If two tenants in common be of an advowson, and a stranger usurpeth, so as the right is taken to an action, and they bring a writ of Squer imperat, which concerns the realty, the five months paifie, and the one dyeth, but the survivor shall recover, otherwise there should be no remedie to redresse this wrong. And so it is of coparceners, and this is one exception out of our author's rule.

But if three coparceners recover land and damages in an affe of Mordeaffaire, albeit the judgement be joynt, that they shall recover the land and damages, yet the damages being sequestred, though they bee personall, doe in judgement of law depend upon the freehold, being the principal which is several. And though the words of the judgement be joint, yet shall it be taken for distributive. And therefore if two of them dyeth, the entire damages doe not survive, but the third shall have execution according to her portion, and this is another exception out of our author's rule. But if all three had paid execution by force of an Eloquent, and two of them had dyed, the third should have had the whole by survivor, till the whole damages be paid.

If the aunt and niece joyntly in an action of waste, for waste done in the life of the other, if the aunt shall recover the damages alone, because the same belongs not by law to the niece. And some hold the dammages in that case to be the principals.

Sect. 316.

IT E M si deux tenans en common font un leafe de

§ 1. De not in Roh.
§ 2. Fz added in Roh.
§ 3. De not in Roh.
§ 4. Fz added in Roh.
§ 5. Fz not in Roh.

PS - not in Roh.


Your tenements are the joint possession of the tenants, each tenant having an equal share. If a tenant does not pay rent, the other tenants can bring an action against the defaulting tenant. This action is known as an action in the realty. This being an addition to Littleton, albeit it is consonant to law yet I omit it.

Sect. 317:

But in an avowry for the said rent they ought to sever, for this is in the realty, as the affised is above.

Sect. 318:

Also, tenants in common may well make partition between them if they will, but they shall not be compelled to make partition by the law; but if they make partition between themselves by their agreement and consent, such partition is good enough, as is adjudged in the book of affises.

Sect. 319:

Also, as there bee tenants in common of lands and tenements, &c. as aforesaid, in the same manner there be of chattels real and personal. As if a leasee be made of certaine lands to two men for terme of 20 yeares, and when they be of this possessi, the
Lib. 3. Of Tenants in Common, Sect. 320, 321. 199

one of the lessees grant that which to him belongeth to another during the term, then he to whom the grant is made and the other shall hold and occupy in common.

Grant ce que a ley afferit. The same law it is if the one lessee in this case make a lease of part of the terms, the second lessee and the other are tenants in common, as hath been said in the chapter of Joyntennans. The (etc.) in this section, implyeth other joyntennans whereof men may be tenants in common, whereas sufficient hath been said before.

Sect. 320.

ITEM si deux ont joyntement le garde decors de detre d'un enfant deus ages et l'un de eux grant a un auter ce que a ley afferit de mefme le garde, done le graante, et l'auter que ne granta pas, a overent et tiendront ces en common, &c.

ALso if two have joyntly the wardship of the body & land of an infant within age, & the one of them grant to another that which to himself belongeth of the same ward, then the granter, and the other which did not grant, shall have and hold this in common, &c.

HERby it appeareth, that there may bee tenants in common as well of et c. tit. Aid. charthes reall entire, in wardship of the body, &c. as of chattells personal, as a horse or a horse. If two tenants in common be of a feignorie, and a ward fall, they are tenants in common of the wardship or well of the body or land. And so it is if the land it selfe sufficient to them, they shall be Tenants in common thereof, and so is it of parcens.

En common, &c. Vid. de sax. Selb. 345. Here (etc.) implyeth any other entire chattell.

Sect. 321. (x) see supra. 443-452.

IN the same manner it is of chattells personal. As if two have joyntly by gift or by buying a horse or an ox, &c. and the one grant that to him belongs of the same horse or ox to another, the granter, and the other which did not grant, shall have and poiffe such chattells personal in common. And in such cases where divers personal have chattells real or personal in common, by and divers titles, if the one of them dieth, the others which survive that not have this as survivor, but the execvator.

* Joignement added in L. and M. and Rob.
§ Joignement not in L. and M. and Rob.
| 4 etoile in L. and M. and Rob. |
| — de mefme le chival ou bofes not in L. and M. and Rob. |
| &c. added in L. and M. and Rob. |
| § Cr. added in L. |

voitur, mes les executors cely que morreu tiendront et occupierent ces
voitures que jurfoquant, fi
come leur tefratour fiul ou devuit en
fii, &c. par ce que leur tiel et
droit en ces fuuent seve-
rall, &c.

This is evident enough, and hereof sufficient hath been said before.

Sect. 322.

ITEM in le cafe
avantd, fiunc
deuo ont eflate en com-
mon par terme d'ans,
&c. l'us ocupi occu,
et mii l'autre hors de
poffefion et occu-
paition, &c. donques ce-
by je mife hors
de occupation usuru
envers l'autre brief
de ejictione firme
de la moite, &c.

ALSO in the cafe a-
foresaid, as if

Sect. 323.

IN the same manner
it is where two hold

the warpth of lands
or tenements during
the nonage of an
child, if the one or
the other of his po-

the which is out of
d hat have a act of ejec-
ment of garde de la
moitie, &c. because
that these things are
catts reals, and may be
apportioned and seve-
red, &c. but no acti-
on of trefpass (vide dict.)

* Tel added in L. and M. and Rob.

(1) But now, by the 31st of the 1st of An. chap. 16. of the 32. this stile of account may be maintained by one interest and tenancy in common, his executors and administrators, against the other, as before, for receiving more than comes to his share and pro-

portion, and against the executors and administrators of such possessor or tenant in common; and the auditors appointed by the court, where such action shall be depending, are empowered to administer an oath, and examine the parties touching the

matters in question, &c.  Sec also 1. Lex 179.
Lib. 3. Of Tenants in Common. Sect. 323.

chattels real that are a
purchase or fevorable, as
beasts for years, woods
of lands, interest of tenements
by dower, statute merchant,
chapel, etc., of lands and
tenements, and chattels real
entire, as wardship of the
body, a villein for years, etc.
for if one tenant in common
take away the ward, or the
villein, etc., the other hath
no remedy by action, but he
may take them again. Another
diversity is betweene chaff
chattels real and chaffels per
for all if one tenant in
common take all the chaff
chattels per, the other hath
no remedy by action, but he
may take them against; and
herein the like law is concern
ning chaff real entire,
and chaffels per for (Act.
5 H. 6. 176. 958.)
for
for, or any other entire
chaffel, real or personal, no survivour
shall be between them that
hold them in common: and
encumbrances in common shall
not give in an ejectment in
for or in a writ of sequestration,
for, for that telle actions concern the right of
lands which are several.
If two tenants in com
for be of a manner, to the
which unwife and unwife doth
belong, a fray doth happen,
they are tenants in common of
the same, and if the one
doeth take the fray, the other
hath no remedy by action,
but to take him again. But
if by prescription there is to
have the first hurt happenning
as a fray, and the other the
second, then an eject lion
if the one take that which
perpaines to the other.
If two tenants in common
be of a doce-house, and the
one defend the old doce
whereby the flight is wholly
hull, the other tenant in com
then shall have an action
of trespass, i.e., and every
columbar or place of
enemies of them for.

E. 5 B. 63
E. 5. 18. 73
E. 5. 20. 2
E. 5. 18. 5
E. 5. 15. 2
E. 5. 12. 5
E. 5. 11. 5
E. 5. 10. 2
E. 5. 9. 5
E. 5. 8. 7
E. 5. 7. 2
E. 5. 6. 7
E. 5. 5. 7
E. 5. 4. 7
E. 5. 3. 7
E. 5. 2. 7
E. 5. 1. 7

conculavit & cons
sumptus, &c. & hujo
modicationes, &c. un
ne post aver enebr
l'auler, pur cee que
ecluseus de eus post
entrer et occupier en com
&c. per my et per
tout, les terres & tenen
tments* quous ills tegn
ent en common. Mes
si deux font possid
chattels personnels en
common per divers
titles, fomme d'un chib
val, ou bof, ou croco,
&c. si l'un prend ces
tout a liy bors de
possessio d'auter, l'auter
n'ad nal auer re
medie mes de pender ces
de liy que ad
fait liy le tort par
occupier en common,
&c. quant il post
voir son temps, &c.
En meum le manner
est de chattels reales,
que ne povent efbr
feuors, fomme en le cafe
avantid, que deux
fount possid d'un gars de
corps d'infant deus age,
si l'un prend
l'infant bors de pos
fession d'auter, l'auter
ad aecuue remedie per
aefcuu action per la
ley, mes de prendre
l'infant bors de le pos
fession d'auter quant
il veit sau temps. 2.0

chattels real that are ap
portionable or fevorable, as
beasts for years, woods
of lands, interest of tenements
by dower, statute merchant,
chapel, etc., of lands and
tenements, and chattels real
entire, as wardship of the
body, a villein for years, etc.
for if one tenant in common
take away the ward, or the
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no remedy by action, but he
may take them again. Another
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one defend the old doce
whereby the flight is wholly
hull, the other tenant in com
then shall have an action
of trespass, i.e., and every
columbar or place of
enemies of them for.

* Cr. added in L. and M. and Rob.
+ if not in L. and M. or Rob.
1. 's added in L. and M. but not in Rob.
Cap. 4. Of Tenants in Common. Sect. 324.

But these tenants in common be of two sorts: first, of two tenants in common be of two sorts: first, of two tenants in common, and second, of more than two tenants in common.

[F] If two tenants in common be of two sorts: first, of two tenants in common, and second, of more than two tenants in common.

[G] If two tenants in common be of two sorts: first, of two tenants in common, and second, of more than two tenants in common.

**ITEM** eminent a house *vaile monster un-nosement fuit a hoy, un done en le tate, ou un lege par terme de vie d'aucun terres ou tenements, la il divr, per force de quel festoement, done on lez il faut fije, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, et, s'il en l'un vaile pleuse un loss en grant fait a hoy de chatel real au personnel, il il divr, per force de quel il faut gaffe, and jest for the pleasant tenement.

Also when a man will shou a festoement made to him, or a gift in tail, or a lease for life of any lands or tenements, ther he shall say, by force of which festoement, gift, or lease, he was seised, and where one will shou a lease or grant made to him of a chattel real or personal, then he shall say, by force of which he was seised, and where one will shou a lease or grant made to him of a chattel real or personal, then he shall say, by force of which he was seised.

More shall be said of tenants in common in the chapters of Re-leafes and Tenant by Eligit.

**IL fuit feite,** &c. *Seife is a word of art, and in pleading is only applied to a feoffed at lease, as paife for division fake is to a chattel real or personal.

As

* en piedemt added in L. and M. and Rob.

† et Confirmationes added in L. and M. and Rob.

(1) M. 26. 27. Edw. per cur. If one coparcener in tail leaves a fine to another for certaine de dead, &c. it does not esue by way of retrofit, but by way of grant, and it shall be an affirmans and alteration of the estate without execution, because one has not may assign another, and this is a fragment of record. And one may relates to another, and it causes per mile the abut.

Ld. Nottingh. MS.
Lib. 3. Of Tenants in Common. Sect. 325. 201

As if B. pleaded a lease in fee, he concludes, Virtus ejus prædestinatur: B. est fideicus, Sec. But if he pleaded a lease for years, he pleaded, Virtus ejus prædestinatur. B. introducit, et fide indifférentia; et si de chartellis personis, Virtus ejus fide indifférentia.

And this boldness not only in case of lands or tenements which lie in livestock, but also of rents, advowsons, commons, &c. and other things that lie in grant, whereas a man hath an effect for life or inheritance.

Also when a man pleads a lease for life, or any higher estate which passeth by brevity, he is not to plead any entry, for he is in actual servitute by the livestock it lies. Otherwise it is a lease for years, because there he is not actually possessed until an entry.


ESTATES que

E. on terre ou tenements * for condition font de

deux manières, fide-

icet, ou ils ont estat for condition en fey, ou for condition en ley, &c. Sur condition en fey est, fomme un home et sa fief; et sa fief est payable un an, as for condition que le rent foit adorer et accorde, &c. que bien luy al se-

foyer et a ses beares en meines les terres ou tenences de ent-

er, &c. Ou le terre foit alien a un bon en fer rendant a lui

certain rent, &c. & c'est bien le rent foit adorer et un fenomme apres aucuns

jour de payment de

ESTATES which

men have in lands or tenements upon

condition are of two

sorts, viz. either they have estate upon condition in deed, or upon condition in law, &c. Upon condition in deed is, as a man by deed indented en-

fofoss another in fee simple, referring to him and his heirs yearly a certain rent payable at one feast or divers feasts per annum, on condition that if the rent be behind, &c. that it shall be lawful for the fofoor and his heirs into the same lands or tenements of fee simple and condition (though not in express words) to enter and enjoy. And if it happen the rent to be due before a week after any day of payment of it, or by a moneth after any day of payment of it, or by half a yeare, &c. that then it shall be lawful to the fofo-

SUR Condition. Li-
teton having before fee

tes anon estat absoluto, now be

gnus ther to increase of estates

upon condition. And a con-
dition annexed to the real-
tiete whereby Littleton here

speaketh in the legal un-
derstandings of words, a quan-
tity annexed by him that he

hath estate, interef, or right, to

the fame, whereby an e-

state, &c. may either be de-

feated, or nullitated, or created upon an uncertain event. Condita dicta non quid in

causam interium qui perflu tendere ne est aut non est con-

scitio.

Sur condition en fey, que est fide, that is, upon a condition expressed by

the partie in legal terms of

law.

On for condition en

ley, & que est juris, that is, a condition by law, without any words used by the partie. Agimus, Littleton subdues both conditions in deed

(though not in express words) into conditions precedent (of which it is in Scops, et nobis debitis praediger jurantur) and conditions subsequent. Agimus, of conditions in deed, in express words, and some in the negative; and some in the affirmative, which are, if the estate, feftate, wheresomso they are

acquies, voidable by cestui

claye, and some make the

estate

* for condition not in L. M. or Roh. + deere in L. M. or Roh. &c. not in L. M. or Roh. § simple not in L. M. or Roh.

(3) The doctrine of condition is derived to us from the feudal law. The rents and services of the feudatory were considered, and are mentioned by the feudal writers as conditions annexed to his fee. If he neglected to pay his rent, or perform his service, the lord might refuse the fee. But the payment of rent and the performance of feudal service were for a long period of time, the only conditions that could be annexed to a fee; and whether they were expressed or not, they were always prefixed by the law—being incident to, and inseparable from, the estate of the feudatory. In this sense they are called conditions in law, or implied conditions. Afterwards, when other conditions were introduced, the estates to which they were annexed were ranked among improper fees. —See Sir Thomas Craig De Fide Feudali, 6th ed. ch. 4. sect. 1.

Conditions of this last sort were called express, or conventional conditions. By an application, in some respects very much forced, of the original principle of conditions, that on the non-performance of them the lord might refuse his fee, estates tail, or (rather conditional fees at common law), and some other modifications of landed property, were introduced as estates upon condition. They are often of such a nature, as to make it more natural that a stranger should have the estate on the non-performance of the condition, than the donor, and that the lord, instead of being confined to his right of re-

emption, should have it in his power to compel the performance of the condition, or recover from the donor a compensa-

tion, or satisfaction, for the breach of it. But as all these estates were introduced as estates upon condition, the

itself, and except where it has been altered by all of parliament, confirm the donor's remedy to the restitution of the estate, and gives that only to the donor and his heirs. Considered in this sense, the Word Condition has, in our law, a much more actual meaning than it has in the civil law, where it signifies generally all those provisions, or agreements, which regulate that which the co-estates have a mind should be done. If a case, which they foresee, should come to pass. This is the definition of Damnum, 6th ed. ch. 4. sect. 4. We shall afterwards have occasion to make some observations on the interference of courts of equity in cases of condition.
Cap. 5.

Of Estates

Sec. 325.

ee, ou per un mois après aucun jour de
joûment de ce, ou per

* un demi, &c., que
adonque bien brirat
un lefeffor et a les
heires d'entrer, &c.

En ceux cafs si le
rent ne foi paie a tiel
temps ou devant tiel
temps limit & spécifie
(la condition com-
prius en l'ende-
ture, donnez pois le
lefeffor ou fet beirres
entrer en tiels terrres
ou tenements, & eux
en son primer etat
avre & tenir, et de
ceo oute le lefeffor tout
not. Et 113 appelpe
estat fur condition,
per ceo que le lefeffor
doit char de la
lefeffor doit char de la
le condition ne soit
durcement.

Rend a leuy certame rent, &c.

Here by this (&c.) is implied for life, in taille, or in fee.

Et en eust cæ The rent ne moet pay a tiel temps, &c. donnez poist le
lefeffor ou fet beirres entrer, &c.

By this feiton, and by the (E.) therein con-
tained, these things are to be understood.

First, Where our authour faith, Je rende rent. veres., that though the rent be behind and not paid (y), yet if the tenant does not demand the same, &c. he shall never re-enter, because the land is the principal debtor; for the rent is forfeited out of the land, and in an addit for the rent the land shall be put into view; and if the land be evicted by a title paramount, the rent is irrecoverable, and after such eviction the possession of the tenant shall not be charged therewith, for the possession of the tenant was only charged with the rent in respect of the gross out of the land.

Secondly, The demand must be made upon the land, because the land is the debtor, and that is the place of demand appointed by law (z). If the kingmaketh a lease for years, rending a rent payable at his receipt at Weltginn
ter, and after the king granteth the revocation to another and his heirs, the grantee shall demand the rent upon the land, and not at the king's receipt in Weltginneter; for as the law without express words doth appoint the leeter in the King's cafe to pay it at the King's Receipt, so in case of a sublet, the law appoints the demand to be on the land.

If there be a house be under the same he must demand the rent at the house. And he cannot demand it at the backe door of the house but at the front door, because the demand must ever be made at the most notorious places. And it is no matter whether any person be there or no.

Allbeit the tenant be in the hall or other part of the house, yet the tenant needs not (a) but come to the front door, for that is the place appointed by law, although the door be open.

* un demi


(a) For the place of performing the condition, see Litt. fol. 350. and the commentary on that section.
Lib. 3: upon Condition. Sect. 325.

(1) If the foillomant were made of a wood only. the demand must be made at the gate of the wood, or at some high way leading through the wood or other most notorious place. And if the foillomant were made of more than one wood, the demand must be made at the gate of the wood which he will, and albeit the foillomant be in some other part of the wood heelee to pay the rent, yet that shall not availe him. Et de foillisam.

Thirdly. And if the foillomant demand it at the ground on a place which is not most notorious, as at the banke of one of a houte, &c. and in presenting the foillomant alledge a demand of the rent generallty at the houte, the foillomant may transfers the demand, and upon the evidence is shall be found for him, for that it was a well notorious place.

Fourthly, If the rent be referred to be paid at any place from the land, yet it is in law a rent, and the foillomant demand it at the place appointed by the parties, observing that which is said before concerning the most notorious place.

Fifthly, And all this is to be understood when the foillomant is absent, for if the foillomant cometh to the foillomant at any place upon any part of the ground at the day of payment, and offer his rent, and receive the same in a most notorious place, one at the last infformed the foillomant to bound to receive it, or else he shall not take any advantage of any demand of the rent for (Pol. 251. 2.)

Sixthly, Therefore the place of the land being now known, it is farther to be known what time the law hath appointed for the same. This partly approveth by that which hath beene Lut tid. For albeit the last time of demand of the rent is such a convenient time before the former letting of the last day of payment as the money may be number and received, notwithstanding, if the tender be made to him that is to receive it upon any part of the land at the last time of day of payment, and he refuseth, the condition is favorable for that time, for by the express reservation the money is to be paid on the day immediately, and convenient time before the last day indicated, is the convenient time appointed by law, to the intent that then both parties shal meet together, the one to demand and receive, and the other to pay, in such a manner, as the law preseret the other. But if the parties meet upon any part of the land whatsoever on the same day, the tender shall save the condition for ever for that time.

And if the reservation of the rent be (as here Luttidere puteth the cauf, at certaine feates, with condition that if it happen the rent to be behind by the space of a weeke after any day of the last time for payment, in that case the foillomant may demand it in the foillomant, which word is cut off the rent in the same time as the last day of the acre, whereas before the foillomant meet the foillomant upon the last day and read the rent as is stated above.

If a rent be granted payable at a certaine day, and if it be behinde and demanded that the grante shall dilate for it, in this case the grante need not demand it at the day, but if he demanded it at any time after he shall dilate for it, for the grante shall dilate in this case to demand it when he will to hinder him to dilate.

Et exa en far primer eflate everc, &c. Regularly it is true that he that the R. 7. 7. h. enthous for a condition shall be felied in his first estate, or of that estate which are laid at the time of the estate made upon condition, but yet this fastheth in many cases.

1. In respect of impossibility. As if a man be landed in the land of his right, the man he hath landed in, and the foillomant demand it in that land, he shall be selied of the land to the foillomant for his life, &c. the husband dith the condition is broken, in this case the heir of the husband shall enter for the condition broken, but it is impossible for him to have (see the condition that he had at the time of the estate made for the same) the estate in the right of his wife, which by the curtwer was disqualified. And therefore when the heir hath control for the condition broken and defeated the foillomant, his estate dith vaufly, and presently the state is velled in the wife.

2. In respect of stillness. If Gify yer afer after the stature of the B. 5. and before the stature of 27. R. 19. he had made a foillomant in for upon condition, and after had entered for the condition broken, and his caufe the he had but one acthe when the foillomant was made, but now he shall be selied of the whole of the land of the part. So that as in the former case, the aucauter had somewhat at the making of the condition, and the heire shal have nothing what he hath entered for, it is impossible for him to be selied of the same, for in this case the foillomant had no estate or interest in the land at the time of the condition made, but a bare use; for after his entry for the condition broken he shall be selied of the whole state in the land, and that also for necessitate, for by the foillomant in for of Gify yer af, the whole estate and right was devolved off the foillomant, &c. whereas now by the necessity of necessity the foillomant must give the state of the estate by his entry for the condition broken.

Tenent in special case hath office, and his wife dith, remitt in wife makes a foillomant in for upon condition, the whole dith, the condition is broken, the foillomant reverts, &c. he here have

(1) For the difference of the demand to be made in case of a re-enter to avoid an estate, as the forfeiture of a firm nonag party and of the demand to be made in case of an entry to withdraw see before 1892.

(3) Yet the rent is not due till the last month of a natural year; far if the leffer also after 5th. and before midnight, the rent shall go to the heir and not to the executors.

(3) For there is a material difference between a reservation of a rent payable at a certaine time, or within a certain time, and a reservation of a rent payable at a certain time, with a condition, that he be behind by the space of any given time, the leffer shall enter. In both caues, a tenderer on the first, or last, day of payment, or on any of the intermediate days, to the leffer himself, either upon or out of the land, is good, far in the former case, if the leffer after the reservation of the rent, be not behind at the time of such reservation, he cannot recover the reservation of the rent. But if the leffer does not attend there to receive the rent, the condition is void. In the latter case, to save the leesor, it is not sufficient that the leesor attends on the last day of payment, for he must equall attend before the last day of payment, and the caufe of Grapp 19. a. a. 5. there is a similar case, and Grapp 19. a. 9. a. 5. there is the same case, and Gify yer af it is to be observed that it was once doubted, whether proof of actual entry and order was necessary in such cases, brought on breach of a condition of re-enter— it was afterwards settled that it was not, but that, notwithstanding the condition of the re-enter, the demand was not void, &c. see also 19. a. 5. 9. 2. 5. 19. a. 6. 5. 19. a. 5. 5. 19. a. 5. 5. and see 19. a. 5. 5. 19. a. 5. 5.

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Lib. 3.  
(3. Rep. 45-44.)

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have but an estate for life, as tenant in tail, upon fee simple for life by the re-entry, and yet he has an estate at the time of the fee-tail, and that security is lost.

5. In some cases the feoffor by his re-entry shall be in his former estate, but not in respect of some collateral qualities. As it tenant by homage ancestor makes a feoffment in fee upon condition, and enthrall upon the condition broken, if it is ratified by him or his ancestor again. And so it is if a cohabit seisin and the lord make a feoffment in fee upon condition, and enthrall for the condition broken. And the reason in both these cases is for the same reason or prescription for the time for which the forfeiture is not purged.

(1) Lord and tenant by fealty and rent, the lord is in feisin of his rent, the lord seizes his feoff on another and to his heirs upon condition, the tenant attorneth and payeth his rent to the grantor, the condition is broken, the lord forfeits his rent, and feoffs without subject, he shall be in his former estate, and yet the former feoff shall not enable him to have an affrute without a new feoff.

If tenant in tail make a feoffment in fee upon condition, and dies, the feoff in tail within age doth enter for the condition broken, he shall be in the same tenancy as he was to his father, and consequently and instantly he shall be remitted. But if the heir be of full age, he shall not be remitted, because he might have had his foramen against the feoffor, and the estate being the condition is his own; but more likely he is in his proper place in the chapter of Restitutin.

If a man make a feoffment in fee of Blacke Acre and White Acre upon condition, &c. and for breach thereof that he shall enter into Blacke Acre, this is good.

If tenant for life make a feoffment in fee upon condition, and enthrall for the condition broken, he shall be tenant for life agaue, but subject to a forfeiture, for the stale is reduced, but the forfeiture is not purged. (2)

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EN meyne is manner ef fi terres sont dones en le taile, ou leffes a terme de vie ou * det ans, fur + condition, &c.

Sur condition, &c. This implyeth the severall kinds of conditions in deed before specified.

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ET la terre tener 
tangue il seign 
satifichet ou paix de le 
rent aderere, &c. By this it is implied, that if such a feoffment be made, referring (b) (for example) 5 marks rent at the feast of Easter, with such a condition as is above said, the feoffor at the feast day demands the rent, the feoffor paich upon him 6 marks parcel of the rent, the feoffor enthralls into the lands and taketh the profits thenceforth. Afterwards the feoffor deth ren-
d the two marks rebate of the rent to the seigneur upon the land, who refusat it. It

MES l'oei feoffement 
eff de certaine 
terres refervant cer-
tain rent, &c. sur 
tiel condition, que fi le 
rent fai aderere, & que 
bien ferrot au feoffeur, 
& fi est hoiced enterre, 
&; et la terre tener 
tangue il seign 
satifichet ou paix de le 
rent adere, &c. en 
cest cafe fi le rent fai 
adere, & le feoffor 
ou les biens enterre, le

* Or terms added in L. and M. and Rob.  
§ § added in L. and M.  
¶ added in L. and M.  
¶¶ not in L. and M.  
* en la terre tenet de ren in L. and M.

(1) This is seemingly contradicted by the authorities cited in the margin. In that takes from Lord Coke’s Report, it is said, that “if he lord grants his feoff to condition, and the tenant pays the rent to the grantor, and afterwards the condition is broken, and the lord seizes the feoff he still have office, for the fee tail is sufficient.”—The cite refers to the case in the book of Alther in the same effect; it is to be noticed that condition is not to cease, but the same estate in any lands cease as in one person, and remain as in the other, or cease for one time, and revive afterwards.  Rep. 45-46, b. 41. 47. That a condition annexed to land, cannot be annulled by any of the parties themselves, so as to be extinguished as part of the land, and to remain good as to the other. Thus in the case cited by lord Coke, 4 Rep. 120. b. a. a feoff was made for twenty-one years of three men, rendering rent for manor A. 1d. for manor B. 1. d. and for manor C. 10s. to be paid on a piece out of the land, with a condition of re-entry into all the three lands, for default of payment of the rents. The lord granted the recovery of the part of the manor A. to one and his heirs; and afterwards granted the receivers of another part to another and his heirs: it was adjudged that the second grantee should not enter for the condition broken, because the condition was entire, and by the agreement of part of the recovery was dismissed. But a condition may be annulled by all in law. See the inference put by lord Coke 4 Rep. 46, 47. That part of a condition may be good and another part of it may be void in law; if a person makes a gift in tail to the donor’s eldest son, and makes another to the youngest son in tail, with a condition that if the eldest enter he, or a fee tail should cease, and the land should remain to the second son in tail, that part of the condition which removes the alienation made by tenant in tail is good, but that part of it which says that upon alienation the lands fall to remain over in voids, and the donor may re-enter. See Litt. sections 750. 751. 752. 753. and the Commentary page 575. 471. 472. That if A. be tenant for life, remainder in contingent remainder, remainder in tail, and A. before the contingency happens, he enters his estate in b. his estate has the contingent remainder. But if he enters on condition, and before the contingency happens, the condition is broken, and A. enters on the estate, the contingent remainder is revived. See Thompson’s L. Rob. 1. 31.
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ne enter, the seoffee is not altogether excluded from the land, but the seoffee shall have and hold the land, and thereof take the profits, until he be satisfied of the rent behind; and when he is satisfied, then may the seoffee re-enter into the same land, and hold it as he held it before. For in this case the seoffee shall have the land but in manner as for a diffrrcute until he be satisfied of the rent, &c. though he take the profits in his owne ufe, &c.

And therefore if a man maketh a lease for life with a rent of a certain part of the profifs of the land given, &c. he shall not have an action of debt for the rent areas, for that the feoffee of the lease doth continue, and therefore the booke [2] that seemes to the contrary is false printed, and the true case was of a lease for years, as it appeareth afterwards in the same page of the booke.

But herein allo a diversify worthly the obligation is implied, &c. If a man make a lease for your term of a rent with a condition, if he enter the land, &c. the seoffee shall re-enter and take the profifs until thereof he be satisfied, there the profifs shall be accounted as part of the satisfacd satisfaction, and during the time that he so taketh the profifs he shall not have an action of debt for the rent, for the satisfaction whereof he taketh the profifs. And therefore if the condition be that he shall take the profifs until the seoffee be satisfied or paid the rent, without saying (thereof) or to the like effect, there the profifs be accounted no part of the satisfaction but to hathen the lease to pay it, and all Lutene free faith, until he be satisfied he shall taketh the profifs to the profit in his time to his owne ufe (3).

J T E M divers pat- (enter||||) etors |||, sunt quos per cessio- tue de eos meliores font estatae cur condition, un an de parel §§ sub conditions: |e- |e- c. inoffe. B. of con- |

ALSO divers words (amongst other) thence be which by virtue of themselves estates upon condition, one is the word (sub condition) as if H. inoffe. B. of con-

HERE in this and the next two sections Little. (Dyer 139 b.)

This is in the condition that be the seoffees, his heirs, or his assigns, may enter, and his internee goes to his executor. But he may maintain an action. 1 Sm. 314, 1 Sid. 342. 5. T. Ras. 315. 146.

But there must be a previous severall demand, in the same manner as where the condition is general. Hob. 34. 113. Hobart was of opinion, that the seoffee, to entitle himself to enter by way of penalty, should demand the rent not only on the day when it became due, but on the day after. Hob. 308.

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This (Ec.) implant, any other rent or furny in groves, or any colo-
teral condition what-
soever, either to be performed by the fe-
tee, (whereof our au-
thor here putth his cafe) or by the benefi-
tor, and extendeth to all kinds of condi-
tions in deed, before speci-
cified.

Proviso, femper, quod B. solvet, &c.

Our author putth his cafe where a provisio commeth alone.

De certaene terre, haben-
dum & tenendum cedem B. & heredibus suis, sub con-
tiones, quod idem B. & heredes sui solvant feu folivi faciant praefat A. & heredibus suis an-
numatum talern reddintum, &c. En ege cafe ofen

can plus dire le feoffe ad efate fur condition.

Sect. 329.

ALSO if the words were such, pro-
vided always that the aforesaid B. do pay or cause to be pay-
ed the aforesaid A. such a rent, &c. or their, so that the B. do pay or cause to be paid to the aforesaid A. & his heirs, yearly such a rent, &c. In this cafe without any more showing the feoffee hath but an efate upon condi-
tion; so if he doth not perform the condi-
tion, the feoffor and his heirs may enter, &c.

Proviso femper, quod B. solvet, &c.

De certaine terre, habendum & tenendum cedem B. & heredibus suis sub conditions, quod idem B. & heredes sui solvant seu folivi faciant praefat A. & heredibus suis annuatur talen reddintum, &c. En ege cafe ofen plus diri le feoffe ad efate fur condition.

Sect. 329.

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tion; so if he doth not perform the condi-
tion, the feoffor and his heirs may enter, &c.

Sect. 330.

ALSO there bee other words in a decree which cause the tenements to be conditioned as: If upon such feoffment

* jf added in L. and Rob. ¶ parvis conditions in L. and Rob. ¶ jf added in L. and M.

(1) Accl. R. Roll. Abr. 410. L. 30, the it stands indifferent whether it be the breaking of the grantor or grantee; for in that case it shall be referred to the grantor, as no condition can be referred or made, but on the part of the donor, lessee, or feoffor.

(2) Sect. 329.

This is the fourth condi-
tion in deed let down by our

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Lib. 3. 204

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A rent be referred to be the feoffor, &c., and afterward this word is put into the deed, that if it happen the aforseaid rent be to be held or fall in or in all, then shall it lawfully be lawful for the feoffor & his heirs to enter, &c. this is a deed upon condition.

Modus is in this day properly taken, condition, limitation, or qualification, for which also the law hath appointed apt words; and because Lib. 3. secth speaketh of this in the end of this chapter, I will refer this my name to his proper place, where the reader shall perceive excelling matter of learning touching this point.

Confus, the cause or condition of the grant. And herein there is a diversitie between a gift of lands, and a gift of an annuity or such like. For example, if a man grant an annuity pro se nobi vel terre, in this case this word pro the cause or gift, and the freewill is not to be estimated, nor anything annexed. And if it be an annuity be granted pro se nobi, &c., if the grantee be unjustly disturbed of the titius the annuitate easith. And so if it be an annuity be granted pro se nobi, &c., and the grantor give to coinlaw, the annuitate easith. So if an annuity be granted pro se nobi, &c., this makes the grant conditionale.

But if pro se nobi infelicis, &c., make a feoffment, or a lease for life, of an acre, or pro se nobi vell terra, &c., albeit he deheth coinlaw, or that the acre be erected, yet he shall not receive, for in this case there ought to be legal words of condition or qualification, for the cause or condition shall not adorn the glebe, and the rent of this diversitie is, that the estate of the land is executed, and the annuity easith.

And yet another case is, when the land or tenement (come) shall make condition. As if a woman give lands to a man and his heirs, causa matrimonii pro se nobi, in this case if he (or she) marry the man, or he refuse to marry her, she shall have the land againe to her and to her heirs. [But of the other side, if a man give land to a woman and to her heirs, causa matrimonii pro se nobi, though he marry her, or the woman refuse, he shall not have the land againe, for it stands not with the modelle of the woman in this kind, to take adviste of learned counsellors, as the man may and ought to, and the rather for that in the case of the woman flue may be worse than before, for the cause of condition, although it be not contained in the deed, yet though the condition be without deed.

If a man makes a feoffment in fee, ad faciendum, or faciendum, or ad intentionem, or ad affectum, or ad perpetuum, that the feoffee shall doe or not do such an act, none of these words shall make the estate in the land conditionally, for in judgement of law they are no words of condition; and so it was resolved, Ebr. 16. Et in Causa, in a cause of a common peron, but in the case of the king the fail or the like words doe create a condition, and so it is in the case of a will of a common person, which case I myselfe heard and observed.

But for the aver dog of a lease for yeares, such unclear words of condition are not to be strictly required as in case of feoffee and inheritance. [7] For if a man by deed make a lease of a manor for yeares, in which there is a clause (and the feoffeef shall continually dwell) upon the capitall moliage of the said manor, upon payment of forfeiture of the said termes this words amount to a condition.

And so it is if such a clause be in such a lease, &nd, on condition, to the lessee, dere, vnder, and according statute, &c., this amounts to make the lease for yeares detestabol, and so was it adjudged in the court of common pleases (in quaque hancae time) and the reason of the former was, that a lease for yeares was but a contract, which may be dissolved, by word and by word may be dissolved.

Sett.

* eff. parit not in L. and M. nor in Rh.

† eff. added in L. and in M. and in Rh.

in the incommensurability of the remainder man, to annex a condition to the estate of the bargainer or releasor, which is made to the principec, on the non-performance of which his estate is to become void. For if A. be tenant for B. on life, with remainder in ten to R. and H. executes lease, conditions, judgments, or otherwise incumbers his estate; and

[1/2] And, R. and H., in succumbing to a common recovery, all the incommensurabilities of B. are immediately cut in upon the fee by the recovery; and that fee, and every estate derived out of it, are subject to them. To avoid which, A. the tenant for life, by lease and release, or by bargain and sale, conveys the estate to the intended tenant to the principec, to hold to him and his assigns during the joint lives of him and the granteor or bargainer; with a declaration, that such grant or release, or bargain and sale, or bargain or grant to the freehold shall be in case of the former estate. The money is not paid at the day appointed; and then the bargainer and freewill, or principec, is void. For which reasons of A. his life-estate. But though the bargain and sale becomes void, yet, as at the time of signing the original writ and the purpose the bargainer or releasor was tenant of the freehold, the subsequent self or determination of his estate does not impeach the recovery. For if the principec against whom the principec is in esse, or at any time before judgment, or after tenant of the freehold, it is immateri-
BUT there is a diversity between this word & contingent, &c. and the words next aforesaid, &c. for these words, & contingent, &c. are not worth to such a condition, unless it hath these words following. That it shall be lawful for the feoffor and his heirs to enter, &c. But in the cases aforesaid, it is not necessary by the law to put such clause, felicet, that the feoffor and his heirs may enter, &c. because they may do this by force of the words aforesaid, for that they contain in themselves a condition, felicet, that the feoffor and his heirs may enter, &c. Yet it is commonly used in all such cases aforesaid, to put the clauses in the deeds, felicet, if the rent be behind, &c. that it shall be lawful to the feoffor and his heirs to enter, &c. And this is well done, for this intent, to declare and express to the common people, who are not learned in the law, of the manner and condition of the feoffment, &c. As if a man feied of land leteth the same land to another by deed indented for term of years, rendering to him a certain rent, it is used to be put into the deed, that if the rent be behind at the day of payment, or by the space of a week or a moneth, &c. that then it shall be lawful to the feoffor to distrain, &c. yet the lessee may disreynge of common right for the rent behind, &c. though such words were not put into the deed, &c.
Mortgage is derived [2] of two French words, mort, that is mortuum, and gage, that is qualvis, or pagan. It is called in Latin mortuum qualvis, or mortgagium. Now [3] called here mortgage, or mortuum qualvis, both for the reason here expressed by Littleton, as also to differ from it from that which is called coeval qualvis. From a qualvis de elas de mortibus, used in maketum moritum et alium fust ex pactis quibus fuit praebentibus societatis. As if a man borrow a hundred pounds of another, and makes an estate of lands unto him, until he hath paid the said sum of the rents and the profits of the land, as in this case neither money nor land death, or is lost, (wherefore Littleton hath spoken [4] before in this chapter) and therefore it is called qualvis qualvis.

(1) Few parts of the law lead to the difficulty of more extensive or useful learning than the law of mortgages. The nature of the debts neither requires nor admits more than some few general observations upon the nature of mortgages;—what constitutes a mortgage?—the different classes of the mortgagee and mortgagor, and the nature of an equity of redemption.—As to the origin of mortgages—from what is said of them in this chapter, it appears, that they were introduced last upon the model of the Roman pignus, or hypotnia, than upon the common law doctrine of conditions. As to what constitutes a mortgage—no particular rules or forms of conveyance are necessary for this purpose. It may be laid down as a general rule, and subjoin, to very few exceptions, that wherever a conveyance or assignment of an estate, is originally intended as a security for money, whether this intention appears from the deed itself, or by any other instrument, it is always considered in equity as a mortgage, and redeemable: even though there is an express agreement of the parties, that it shall not be redeemable, on the right of redemption shall be confined to a particular time, or to a particular description of persons. See Newnham v. Bushman, 1 Vern. 726. 2 Ca. in Chanc. 370. Hurwol v. Harris, 1 Vern. 752. 2 Ca. in Chanc. 175. Talbot v. Bradfitt, 1 Vern. 235. 344. Bacel v. Salisbury, 1 Vern. 266. Mansfield v. Hell, 2 Vern. 44. Jennings v. Ward, ibid. 520. Price v. Perriam, 2 Fearn 285. Franklyn v. Fern, Kemb. Case 104. Chanc v. Wetherby, Chanc Temp. Finch, 376. Cudworth v. Cobbe, 1 Atk. 67. Meller v. Lay, 2 Atk. 499. Cotterell v. Purchace, Chanc Temp. Talbot, 41. As to the nature of the estate of the mortgagor and mortgagee, it was not, till lately, accurately settled. It was formerly considerable to hold the mortgagor, after forfeiture of the condition, had but a mere right to reduce the estate back to his own possession, by payment of the money. It is now well understood, that the mortgagor has an actual estate in equity, which may be devised, granted, and entitled to the extents of it. As above said, and recovery must be by the will or promise of the mortgagor, who may be by himself, without giving any notice, recover against the in his or her tenant. In this respect the estate of a mortgagee is inferior to that of a tenant at will. If the mortgagor is considered as holding the lands only as a pledge or security for payment of his money. Hence a mortgage in fee is considered only as personal estate in equity, though the legal estate vests in the heir in point of law. Hence also a mortgagee, though in possession, will, in case of a lease vacating, he compelled in equity to present the mortgagor to new, even though nothing but the advowson is mortgaged to him. On the same principle there is a part of the tenant in fee and tenancy by the curtesy, or an estate of redemption. Caldecote v. Scarfe, 1 Atk. 15age. 3 N. Doug.
MES it of diversitv pere- 

ter cett parol (si conting-
gat, &c.) et les paroles prochaine 
avvantidis. Car cett paroles (si 
contingat, &c.) ne salent rien a 
tiel condition, sinon qu'il ad 
cel ceut paroles subseqvent, qui bien 
fait al fegeofer et a los beires d'en-
trer, &c. Mes en les caftes avant-
didis, il ne defigne per la ley 
mister tel clauze, felicit cett le 
fegeofer et fes beires poyent en-
trer, &c. par cee que ils poyent 
faire cee per force des paroles a-
ivantidis, par cee que ils improie-
nonce a eux mèmes en ley un 
condition, felicit, que le fegeofer 
et fes beires poyent entrer, &c. 

Uncore il est communement siff 
en tous cett caftes avantidis de 
miter + les clauzes en les faits, 
selicit, il le rent fait adorer, &c. 

que bien larroar a le fegeofer et a 

fes beires d'entrer, &c. Et ceces 

Bien fait, a cel intent, par decla-

rer et expresser a celus gens, 

que non sont apprives $ en la ley, 

de le manner et le condition de 

le fegeofer, &c. Sicono bonne 

fejude terre, § lefja en la terre 

a un autor per fait indent per 
terme des ans, rendant a hay cer-
taint rent, il est siff de miter en la 

faits, que si le rent fait arre a 

jour de payement, ou per un fe-
malguer ou per un motif, &c. que 

adonque bien larroar a lefejuder, &c. 

** Uncore il est bien 

fait d'obtenir de common droit 

par le rent arre, &c. clement que 

cett paroles ne unique fuerent mises 

en le faits, &c.

* a — e in L. and M. and Rob. 

\* de la maniere — e noire in L. and M. and Rob. 

\* en la — de in L. and M. de la in Rob. 

\* en un — en un in L. and M. and Rob. 

\** Et added in L. and M. and Rob.

proving A. to be tenant for life, with the usual powers of bequeathing, jointure, and charging; remainder to trustees to preserve contingent; remainder to A's fish and other fish in that tale; remainder to his daughters at tenancy in common in tale, with cede remainder in tail between them if more than one, with remainder over; A. and his daughters may suffer a common recovery; and it will be good against A. and his daughter, and their vises in tale, and the remainders over. Not the eathen tail of the fons being prior to the estates of the daughters, and being supported by the estate of the trustees for preserving contingent remainders, are not. whether vested or contingent, at the time of the recovery offered by it. — But if A. granted his whole life estate to the tenant to the principle, it might be apprehended, that the powers relating to his estate, whether appendant or in gross, would be extinguished thereby (See Edwards v. Slater and Birchett, 4th. King v. Mellor, v. Ventris 146), and a limitation or grant of new powers would be void against the fons and the heirs male of their bodies. To prevent this question being made, A. the tenant for life, convey an estat to the intended tenant to the principle, only during his (the tenant) and the grantor or bargaine's joint lives. This contains the old reversion in the grant or bargaine, and preserves the powers relating to his original estate. — It is customary in these cases to declare, that the recovery shall ensue in the first place for consequent, breaking, and confining the estate for life of the grantor or bargaine, and all other estates precedent to the estate in tail meant to be declared, and all powers and privileges annexed to fish estate for life, and other precedents estates. — The mode of suffering economies on a conditional estate after held, was in use so early as the end of the last century.
Lib. 3. upon Condition. Sect. 332.

Ita ne beffigne per la ley de mitter tiel clausis, &c. Que dubitationis causa tollenda infortuniari, commone legem non laudent. Et exprimo tamen quae tacti iustiti, nihil operatur.

Per un modo, &c. Hic albebit a clausis diutius be addito, ut si in gesto se be held by the force of a weeks or a month, that the lessee may dislais, yet he may dislais within the weeks or month, because a diutius is incident of commone right to every rent service. And the words be in the affirmative, and therefore cannot refrain that which is incident of commone right. The other (sic) in this section upon that which hath beene fald are evident.

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ITEM, si * seffiment fait fait
+ fur tiel condition, qu[.] si le
feffoir paya al feffice a certaine
jaur, &c. 40 li. d'argent, que o-
donque le feffoir po[r]t recurrer, &c.
[.] en ce cas le feffoir est appell te-
ten a morte, et que est autant
a dire en Francois come mort-
gage, &c et Latin, mortuum va-
dium. Et il semble que le cause
pur qu'il est appelpe mortgage,
ef, pur ces que il est en ase-
nuall si le feffoir + vost payer al
jour limite tiel chamme ou non:
& si ser pas, donte le terre
que il mitter en gege fur condition
de payment de le money, est ale
de ley a tous jours, & si est mort
a fur condition, &c. Et
s'il se paya le money, doneque de le
gege mort quant a le tenant, &c.

ITEM, if'seoffment bermade upon
such condition, that if the fesoff
pay to the feoffee at a certain day,
&c. 40 ponds of money, that
then the feoffor may return, &c.
in this case the feoffor is called
tenant in mortgage, which is
much to say in French as mort-
gage, and in Latin mortuum va-
dium (1). And it seemeth that the
cause vwhy it is called mortgage
is, for that it is doubtful whether
the feoffor will pay at the day li-
mitied fuch chamme ornot: and if he
doeth not pay, then the land which
is put in pledge upon condition for the payment of the money,
is taken from him for ever, and so
death to him upon condition, &c.
And if he doeth pay the money,
then the pledge is deal as to the
tenant, &c.

Mortgage is derived [c] of two French words, vna. mort, that is moritium, and pager [c]. Exemplis, ib. cap. cl. 2, in
called in Latin mortuum vandium, or mortgagium. Now it is called here mortgage, or mortuum vandium, both for the reason here expressed by Lit-
tton, as able to disluish it from that which is called vandium vandium. Fuo[.] mortuum de-
cum vandium, quin mortuo mortuo ca algorit portu sunt, ut praeceptuales acquirerit. And if a
man borrow a hundred ponds of another, and marks an estate of lands upon him, until he
hath received the full damme of the fines and the profits of the land, so in this case nei-
ther money nor land dieth, or is lost, (whereas Littton hath spoken [c] before in this [a] Vol. sect. 357.
chapter) and therefore it is called vandium vandium.

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* offen added in Rob. but not in L. and M. + a offen haver added in Rob. but not in L. and M. f comit.
part, in L. and M. and Rob. || a leg fur condition, &c. Et si se paya le money dont de le gege mort, not in L. and M. nor Rob.

(1) Few parts of the law lead to the diffuseness of more esteem and useful learning than the law of mortgages. The nature
of these notes neither requires nor admits more than some few general observations upon the origin of mortgages; what condi-
tions a mortgage; the different estates of the mortgagee and mortgagee, and the nature of an equity of redemption.
As to the origin of mortgages—from what is said of them in this chapter, it appears, that they were introduced when upon
the model of the Roman iacuus, or hypoten, than upon the common law doctrine of conditions. As to what constitutes a
mortgage—a particular words, or form of conveyance, are necessary for this purpose. It may be laid down as a general
rule, and as well to very few exceptions, that whereby a conveyance or assignment of an estate, is originally intended
as a security for money, whether this intention appears from the deed itself, or by any other indication, it is always consid-
ered as equity in a mortgage, and redeemable; even though there be an express agreement of the parties, that it
shall not be redeemable, or that the right of redemption shall be confined to a particular time, or to a particular
ten. Fuch, 126. Molten v. Luce, 2. Arch. 204. Cocket v. Parchace, Col. temp. Talbot, 61. As to the nature of the estates of the mortgagee and mortgagee, it was not, till lately, accurately settled. It was formerly
contended, that the mortgagee, after forfeiture of the condition, had not a more right to reduce the debtor back to his own
possession, by payment of the money. It is now well understood, that the mortgagee has an absolute estate in equity, which may
be erected, granted, and created; that the estate of it may be mort, by li a and recovery 1 but that he only holds the pro-
fession of the land, and recives the rents of it, by the will or permit of the mortgagee, who may by consent, without
being any notice, recover against him or his tenant. In this respect the estate of a mortgagee is inferior to that of a tenant
with equity, the mortgagee is considered as holding the land as a pledge or security for payment of his money. If roe a
mortgage in fee is considered only as personal estate in equity, the legal estate vests in the heir in point of law.
Hence also a mortgagee, though in possession, will, in case of a living vacant, be compelled in equity to present the
morti-
aries of the mortgagee to it; even though nothing but the adventures of mortgagee to him. On the same principle there is a
pulito materias and tenancy by the courtesy, of an equity of redemption.
Cette image est un extrait d'un document juridique. Voici le texte naturalisé:

**Section 333:**

IT EM, siccome bone post faire foement in en mort- 
gage, *effit bone post faire done en taile en mortgage, & un les par terme de vie, ou par terme des ans en mortgage.* Et toutes tiels tenants sont appelles ten- 
nants en mortgage, solonque les estats que ils ont en la terre, &c.

ALSO, as a man may make a feoffment in fee in mort- 
gage, so a man may make a gift in taile in mortgage, and a lease for term of life, or for term of years in mortgage. And all such tenants are 
called tenants in mortgage, according to the estats which they have in the land, &c.

This section upon that which hath beene fald needeth no further explication.

**Section 334:**

QUE le foessor po- 
siera a tiel jour, &c.

Altho' conditions be not faovoured, yet they
are not always taken lit- 
erally, but in this case the 
law enables the heir that 
was not named to performe
the condition for foure cau- 
ses. (1)

First, Because there is a 
day limited, so as the heir 
commeth within the time limited by the condition, for 
otherwise he could not doe
it, as he shall be fald hereafter in this chapter.

Secondly, For that the 
condition depends upon 
the heir, and therefore the law 
that give him an interest 
in the condition, gives him
an able to performe it.

Thirdly, For that the feof- 
fed doth receive no damage 
or prejudice thereby, all these 
reasons are expressly to be 
collected out of the words of 
Littleton). And these 
therings being observed.

Fourthly, The intent and 
true meaning of the condi-
tion shall be performed. And
where it is here shew, that 
the heir mayplaisoirur. &c. 
Herein is implied, that

* ifoas bone post faire done en taile en mortgage, not in L. and M. or Rob.
† enter—perexir, L. and M. and Rob.
‡ de added in L. and M. and Rob.
§ de money not in L. and M. and Rob.

ALSO, if a feoffment be made in mort- 
gage upon condition, that the feoffor shall
pay such a summe at such a day, &c. as it is 
between them, by their deed indented 
agreed and limited, although the feoffor 
doth before the day of payment, &c. yet 
that the heir of the feoffor paye the same 
summe of money at the same day to the 
feoffee, or tender to 
him the money, and the feoffee refuse to 
receive it, then may 
the heir enter into 
the land; and yet the 
condition is, that if the 
feoffor shall pay such 
summe at such a day, &c. not making men-
daincun.
upon Condition.

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the executors or administrators of the mortgagee, or in default of them the ordinary may also tender, as shall be said [7] hereafter in this chapter. But what if the condition had been, if the mortgagee or his heirs did pay, &c. and be dead before the day without heirs, for as the condition became impossible, here it is to be observed, that where the condition became impossible to be performed by the act of God, as by death, &c. the estate of the foeseffor shall not be avoided, as shall be said hereafter in this chapter. And therefore the law herein inchoeth the heir (of whom no mention was made in the condition) to perform the condition, entail the inheritance shall be lost, wherein divers diversities are worthy of observation.

[7] First, between a condition annexed to a lease in lands or tenements upon a foeseffor, gift in tail, &c., and a condition of an obligation, recognition, or such like.

[8] For, if a condition annexed to lands be possible, at the making of the condition, and become impossible by the act of God, yet the estate of the foeseffor, &c. shall not be avoided. As if a man made a lease within one year gose to the cirle of Paris about the affairs of the foeseffor, and professed after the foeseffor dyeth, &c. as is impossible by the act of God that the condition should be performed, yet the estate of the foeseffor is become absolute; for though the condition be irresistible to the state, yet there is a precedency before the re-enter, &c. the performance of the condition. And if the land should be constructed by law be taken from the foeseffor, the state should make a damnage to the foeseffor, for that the condition is not performed which was made for his benefit. And it appears by Littelton, that it must not be to the damnage of the foeseffor; and so if it be, that the foeseffor shall appear in such a court the next terms, and before the day the foeseffor dyeth, the estate of the foeseffor is absolute. [9] But if a man be bound by recognition or bond with condition that he shall appear the next terms in such a court, and before the day the condition or obliger dyeth, the recognition or obligation is saved; and the reason of the diversity [50], because the estate of the land is executed andtested in the foeseffor, and cannot be resisted by bond again and by matter subficiente, &c. the performance of the condition. But the bond or recognition is a thing in action, and executory, whereof no advantage can be taken until there be a default in the obliger; and therefore in all cases where a condition of a bond, recognition, &c. is possible at the time of the making of the bond, and before the time can be performed, the condition becomes impossible by the act of God, or of the law, or of the obliger, &c. there the obligation, &c. is saved. But if the condition of a bond, &c. be impossible at the time of the making of the condition, the obligation, &c. is single. And it is in case of a foeseffor in fee with a condition subficiente that is impossible, the estate of the foeseffor is absolute; but if the condition precedent be impossible, no estate.

(1) Lord Coke here considers the effect of impossible conditions. 18. Where they are possible at the time of their creation, but afterwards become impossible; and he distinguishes that impossibility which is produced by the act of God, and that which is produced by the act of the party. 20. When they are impossible at the time of their creation. 21. When they are against law, either as such prohibitions, or made in p. 22. When they are repugnant to the grant by which they are created, or to the estate to which they are annexed. It should be observed, that a condition is then only condition when the cause of the law is impossible at the time of the creation, if it cannot by any means take effect. Such is the case put by lord Coke, that the obliger shall go from the church of St. Peter at Rome, within three years. But if it be only to an high degree improbable, and such as is beyond the power of the obliger to effect, it is not then considered as impossible. See the cases of the nature in 1. Rol. Abr. 419. 420. — It is said, that the condition of a bond be to pay a certain sum, or to do any other act, out of his Majesty's own bond is single, because the performance of it cannot be tried. See 11. Eliz. 4:10. — It was upon a similar principle, that if a man professed himself a monk in a religious house beyond seas, it was not disallowable, because the fact could not be tried. For the only method that the law had to know if a man was professed, was to file a writ in the king's name to the bishop of the diocese, commanding him to certify if it be true or false, without going there to prosecute. For this reason no notice was taken in our law of foreign professions. — Thus 1. Rolle, 2. Abr. 42. says, "If an Englishman goes into France, and there becomes a monk, he is, notwithstanding, capable of a grant in England: for that such profession is not irredeemable and irrepealable, that all profission is taken away by the statute 3 Edw. 3d, by our law, now received, such vows and professions are held void. I have heard, says he, that this was in q. 43. Eliz. In one Ley's case, revived accordingly by all the justices in Chancery latter."
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[Text not legible]

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state or interest shall grow thereupon. And to illustrate these by examples you shall understand.

If a man be bound in an obligation, &c., with condition that it the obligor do goe from the church of St. Peter in Westminster to the church of St. Peter in Rome within three hours, that then the obligation shall be void. The condition is voidly and impudently, and the obligation standeth good.

And so it is if a feoffment be made upon condition that the feoffee goe as aforesaid, the state of the feoffor is absolute, and the condition impudently and voidly.

If a man make a lease for life upon condition that if the lessee goe to Rome, as is aforesaid, then he shall have a fee, the condition precedent is impossible and voidy, and therefore no fee simple can grow to the lease.

If a man make a feoffment in fee upon condition that the feoffee shall re-sell that before such a day, and before the day the feoffor disfalle the feoffee and hold him out by force until the day be past, the state of the feoffor is absolute, but the feoffee is the cause wherefore the condition cannot be performed, and therefore shall never take advantage for non-performance thereof. And so if it be bound to B. that B. shall marry Jane G. before such a day, and before the day B marry with Jane, he shall never take advantage of the bond, for the same is voidly and the condition cannot be performed. And this is regularly true in all cases.

But it is commonly held [27] that if the condition of a bond, &c., be against law, that the bond itself is voidy.

But herein the law distinguishes between a condition against law for the doing of any act that is not in &c., and a condition against law (that concerneth not any thing that is not in &c.) but is therefore against law, because it is either repugnant to the duty or a gainst some maxim or rule in law. And therefore the common opinion is to be understood of the case under which the condition is void and not is use, and is void and not is use. And therefore the common opinion is to be understood of the case under which the condition is void and not is use.

Video sent. 1745.

As a man may be bound to a condition that the feoffor shall not be voidy, if a man make a feoffment in fee upon condition that the feoffee shall not be voidy, this is good, for he may notwithstanding alien it if he will forfeit his bond that he himself does two such bonds.

So it is if a man make a feoffment in fee upon condition that the feoffee shall not take the profits of the land, this condition is repugnant and against law, and the state of the feoffor is absolute (which otherwise shall be paid in his proper place). But if the feoffor be bound in a bond, that the feoffee's heirs shall not alien it, this is good, for he may notwithstanding alien it if he will forfeit his bond that he himself does two such bonds.

Tender their deniers al jour affiles. &c. Note, hereby, is implied, that albeit a convenient time before sun be the full time given to the feoffor to tender, yet if he tender it in the proper time, the mortgagee at any time of the day of payment, and free refusal to the condition is saved for that time.

Il pour enter, &c. And so may his heire after his death.

Mes f's estranger de se telle demeure, que n'ad'auc interresse, &c. Voile tender les avantagez deniers al feaffez al jour affile, le feaffez n'est pas tenus de eco receiver. Now, by this period and the ( &c.) it is implied, that if the mortgagee dyes, his heire within age of 14 years (the land being held in foage), the next heire to whom the land came, doing of being his condition in foage, may tender in the name of the heir, because he hath an interest as aforesaid in foage. Also if the heire be within in age of 15 years, and the land is held by knights servitors, the lord of whom the lord shall hold may make upon the renter for his interest which he shall have when the condition is performed, for thefts in respect of their interest are not accounted estrangers.

Le jeaffez n'est pas tenus de eco receiver. And note that Linstead faith, that hee is not bound to receive it at a stranger's hand. But if any stranger in the name of

("Note")

1. It is observed in 1. P. W. 1849, that "all conditions of obligations against law, in a legal sense, are reducible under one of these three heads, either to do nothing in &c., or to make provision of the same, to cause such crimes and offenses, and against the conditions as they stand, the law will always, and without notice or regard to the circumstances, 'defend.' It is not within the plan of these notes to enumerate, or discuss, the various instances in which the conditions of bonds have been held invalid as law, or in equity. These which chiefly deserve consideration are such as relate to, &c., Bondes given for procuring false papers, or what is usually called making a forgery. See Hall v. Poste, 3. Leves. 627. Shows the Par. Cas. 76. Brown's Par. Cas. 69. Scribesville v. Burt, Brown's Parl. Cases 57. Hunt v. Allen, 3. Term. 487. Calve v. Gibbon, v. Tith. 593. Fads retraining the obliger from a free exercise of a trade. Here, if the obliger be qualified, &c., as only to take in a particular place, and the breach of the condition tends apparently to the detriment of the obliger, a consideration is given by the obligee to the obligor for executing the bond, the condition then be impertinent either at law or in equity. See 1. P. W. 190, 190th Mass. 514. The condition of marrying. The validity of such bonds, and the propriety of their being supported, considered as a matter of policy, was more elaborately and fully discussed in the great cause of the bishop of London &c., heard in the Court of Chancery in May 1735. A state of facts, and of the arguments and speeches of the learned justices, and judges who spoke when this bond was held before the Lord Chancellor, &c., seems to be settled, that if a bond is given with a condition to the several things, and only some of them are against law, the bond shall be good as to the doing the things agreeing to law, and only void as to the things which are against law. Now, in Hin. 146. Maddox v. Midleton 273. Pearson v. Huntley 279. Chetnut v. Naylor, lord Raymond 115."

("Note")
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of the mortgagor or his heir (without his consent or priuity) the tender the money, and the
mortgagor accepteth it, this is a good satisfaction, and the mortgagor or his heir agreeing thereto may re-enter into the land, mutus resubstitutis euch trecedil & manumit a perpurtur.
But the mortgagor or his heir may dilugre thereto if he will.

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AND be it remembered that in such case, where such tender of the money is made, &c. and the feoffor refuse to receive it, by which the feoffor or his heirs enter, &c. then the feoffor hath no remedy by the common law to have this money, because it shall be accounted his own folly that he refused the money, when a lawful tender of it was made unto him. (1)

if the defendant plead the tender and refusall, he must also plead that he is yet ready to pay the money, and tender the same in court. But if the plaintiff will not then receive it, but take it off the tender, and the same be found against him, he hath lost all his money ever.

TENDER de le money eft fait, &c.

Sec. 335:

Here is implied at the due time and place according to the condition.

Entrent, &c. viz. into the lands or tenements.

Donque le feoffor n'ad aucun remende d'aver le money per le common ley, &c. And the reason is, because the money is collateral to the land, and the feoffor hath no remedy therefore.

If an obligation of an hundred pounds be made with condition for the payment of fifty pound at a day, and at the day the obligeor tender the money, and the obligeor refuseth the same, yet in action of debt upon the obligation

18. H. 6. 39. 21. E. 4. 25. 3. 3. 2. 4. 5. 9. 25. 6. 25. 4. 5. 6. 25. 15. 3. 2. 16. H. 7. 3. 19. E. 1. 14. 2. 3. 2. 4. 6. 25. 19. H. 11. 10.


Money, moneta, legales moneta Anglice, lawfull money of England, either in gold or silver, is at two furtis, et seq. the English money coined by the king's authority.

Money, moneta, legales moneta Anglice, lawfull money of England, either in gold or silver, is at two furtis, et seq. the English money coined by the king's authority.

[1] Here the performance of the condition is ratific'd by the default of the feoffor or obligeo, viz. by tender and refusall. It is so expressly 1. By his absence in those cases where his presence is necessary for the performance of the condition. 2. By his abstaining or preventing the performance. And 3. By his neglecting to do the full act, if it is in his hands to perform it. See the cases in 1. Rob. Abr. 437. 141. It is also express'd, in some cases, by his not giving notice to the feoffor or obligeo.

[2] In the 10th, 11th, and 12th editions, there is in the margin a reference to 1. Com. 774. 2 but there is no such page in that volume of 1745. More probably it is misprint for 1. Com. 774. 1. Cotton v. Clowen, where it was held, "that where an obligation 'is made, and afterwards a defeasance is made thereof, if he pays a fettlme' there; if he pleads the defeasance and the 'tender of the latter sum, he need not pay any term of money but, by the tender, he was discharged of all but otherwise it is an obligation with a condition to pay a letter sum.'"

[3] None of the authorities in the margin go to this point. In Pies. 106. It is laid down that a lease and release may be pleaded as a tenant in title and a.f. Finch. 1. 48. It is said that a lease and release amounts to a defeasance. But this must be understood with some qualifications, as the operation of a defeasance is, in some respects, much more fertile, and of course may be much more beneficent to the person entitled to the benefit of the condition, than the operation of a lease and release. The nature of a defeasance will be fully considered in one of the notes to the chapter of Incumbr.
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authority, or foraine cawne by proclamation made current within the realm. Cawne, cana
dicttor à cawne, of coying of money. In French, cana ligiliseth a corner, because in an
time of money was figgure with corners, as in some countries at this day. Some lay
that cana dicttor à cawne, id d'cawne, and defi.murs nae cawns. Maunere dicttor à
murras, not only because he hath it, is to be warned providently to use it, but also be-
cauise non illa de armbres & andre adwan. Prochain ater à preus, beaus, cana cana veur
myn, defi.murs nae cawne; and it appeareth that in Honor's time, there was no money
but exchange of catell, &c. (1)

Nawman, am 70 40, quin bre fyn no nature. Vide 1 the fixture of 37, &c. of the noble, halle
mynble, and forching of gold, which is the fourth part of a noble, and that is twenty pence.

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ET s'il faisse de payer les dextiers, &c.

If ill man make a feoffment of land, to have and to hold to him and his heirs, upon condition, that
if the feoffor pay to the feoffee at such a day twenty pounds, that then the feoffee shall have the lands to
him and his heirs, if the condition had not proceeded further, it had been void, for that the
feoffee had a lien simple by the said words, and by virtue of the words subsequent are
materially failed, and (if he fail to pay the money, &c.)

Le second feoffee voit tendre le jonme des dextiers, &c.

Albeit the second feoffee be not named in the condition, yet shall he tendre the
feoffment because he is private in estate, and in judgment of law hath an estate in
and interest in the condition, (as Justinian here faith) for the satisfaction of his
interest. Vide Sect. 334. And more.

He hath interest in the condition and none
fail, or the land on
the other, may tender.

And it is to be ob-

ITEM si feoffment fait par tiel condition, que si le
feoffee paya al feoffor a tiel pour inter eux
limit seal. * adeunde le
feoffor ater la terre a ley et a fe beers; et
ts'il faisse de payer les dextiers a
le jour affesse, et adeunde
que la feoffor on a les beers d'enter, &c. et puis
devont le jour affesse, le
feoffee vendra la
terre a un autre, et de ce fait feoffment a
ley, en c estoit fi le
second feoffee voit ten-
dre le jonme des dextiers a
le jour affesse a
le feoffor, et le feoffor
ce rejouit, &c. desque
le second feoffe ad
estat en la terre etre
ment sans condition.

Et la cause n'y, par eau
que le second feoffee a
voit inter on en la condi-
tion pour satisfaction de
son tenancie. Et en
cest case il faa que si
le premier feoffor apris
tiel tendre de la terre,
voile tendre le money a

ALSO if a feoffment be made on this condition, that if the feoffor pay to the feoffee at such a day between them limited, twenty pounds, then the feoffee shall have the land to him and to his heirs; and if he fail to pay the money at the day appointed, that then it shall be lawful for the feoffor or his heirs to enter, &c. and afterwards before the day appointed the feoffee shall the land to another, and of this maketh a feoffment to him, in this case if the second feoffor will tender the sum of money at the day appointed to the feoffor, and the feoffor refuse the same, &c. then the second feoffee hath an estate in the land cleerly without condition, And the reason is, for that the second feoffee hath an interest in the condition for the safeguard of his tenancie. And in this case it seems that if the first feoffor after such sale of the land, will tender the

* que added in L. M. and Rob. 1 affe=2 c. I. and M. 2 que added in Rob. but not in L. and M. 3 See the account given in Bla. Com. vol. I. ch. 3. of his majesty's prerogative respecting the coin of the kingdom of Ireland. Vide Sect. 406. For the etymology of the wordある程度, see Dr. Carington and Bishop Gibbon's dictionary, under the word Edendoigne 1 Mr. Locke's Historical Account of English Money, page 20. Guinea took their name from the gold brought from Guinea by the African Company, who, as an encouragement to bring over gold to be coined, were permitted, by their charter, to have their stamp of a leopold upon the coin made of the African gold.—By a proclamation of the 26th of Dec. 1741, the Guinea, which till then had been current for 21 shillings and pence, was reduced to 16 shillings and halfpence, double guineas, and five pound pieces in proportion.
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upon Condition.

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The law affords, &c. a leesf or, cea serra
tion bene pur futu-
lation of estate of the sec-

cond fesfer, &c. so que
the pinner fesfer
fuit priva to a condi-
tion, et ijn the ten-
der of a few of ex-
deusserfessbons.

money at the day apoin-
ted, &c. to the fesfer, this
shall be good enough for the efate of the efate of the second fesfer, be-
cause the first fesfer was priva to the condition, and fo the tenderer of ei-
ther of them two is good en-
ough, &c. (1)

Here it appeares, that the first fesfer may, nonwithstanding
his fesfer, pay the money to the fesfer, because he is priva to
the condition, and by his tenderer may have the estate of his fesfer, which is in all good dealing he ought to do.

A primer fesfer.

ITEM if fesferment fuit fait on con-
dition, que if the fe-
sfer paya certaine
summe d'argent al
fesfer, adonque bien
raro a fesfer et
a ses beves al en-
ter : en eft cafe if
le fesfer devre deu-
ant le payment fait, et le beve voile ten-
der al fesfer les de-
niers, tiet tender eft
royt, per ces que le
temp dans quel ceo
droit eft fait et paige.

Car quant le condi-
tion est, que if le fes-
sfer paya ses des-
fers a fesfer &c. con-
tant a eure, que if le
fesfer durant sa vie
paya les desiers a le
fesfer, &c. est quant le
fesfer mortu, don-

(14). 11. 7. 31. 15. 17. 7. 1.

Tende la summe.
The fesfer may tender
the money in partes or
buggers, without thev-

TING this dierisse is plaine
and evidente, and agree-
with our (a) books, and
yet somewhat shall be ob-
erved hereabout: for here
it appeares, that fecting
no time is limited, the law
doth alnt the time, and
that 15. during the life of
the fesfer. Wherein divers
dierisese are worthy the ob-
servation:

Firs. Betweene this cafe
that Licenten here parles
of the condition of a fefment in
foe, for the payment of mo-
ney where no time is limited,
and the condition of a bond
for the payment of a summe
of money where no time is li-
mited: for in such a condition
of a bond the money is to be
payd prelency, that 15. in
convenient time. 

(2) And yet
in caeso a condition of a bond
there is a dierisese betweene
a condition of an obligation
which concerns the doing of
a transforine act without li-
mination of any time.

(a) Book. 56. 20. 16. 47. 48.

(b) Book. 7. 148. 25.

(c) Book. 7. 148. 25.

(d) Book. 7. 148. 25.

(e) Book. 7. 148. 25.

(f) Book. 7. 148. 25.

(g) Book. 7. 148. 25.

(h) Book. 7. 148. 25.

(i) Book. 7. 148. 25.

(j) Book. 7. 148. 25.

(k) Book. 7. 148. 25.

(l) Book. 7. 148. 25.

(m) Book. 7. 148. 25.

(n) Book. 7. 148. 25.

(o) Book. 7. 148. 25.

(p) Book. 7. 148. 25.

(q) Book. 7. 148. 25.

(r) Book. 7. 148. 25.

(s) Book. 7. 148. 25.

(t) Book. 7. 148. 25.

(u) Book. 7. 148. 25.

(v) Book. 7. 148. 25.

(w) Book. 7. 148. 25.

(x) Book. 7. 148. 25.

(y) Book. 7. 148. 25.

(z) Book. 7. 148. 25.

(a) Book. 7. 148. 25.
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one to the obligee is of his own nature local, for that the obligee (a time being limited) hath time during his life, to perform it, as to make a feoffment, &c. if the obligee doth not happen the same by request. in case where the condition of the obligee is local, there is also a divers.

 seks 337.

Of Estates
done to the obligee is of his own nature local, for that the obligee (a time being limited) hath time during his life, to perform it, as to make a feoffment, &c. if the obligee doth not happen the same by request. in case where the condition of the obligee is local, there is also a divers.

This is the time of the tender is part. But otherwize it is where there is a day of payment, the feoffor die before the day, then may the heir tender the money as is aforesaid, for that the time of the tender was not paid by the death of the feoffor. Alfo it seemeth, that in such case where the feoffor dieth before the day of payment, if the executors of the feoffor tender the money to the feoffee as the day of payment, this tender is good enough; and if the feoffee refuse it, the heires of the feoffor may enter, &c. And the reason is, for that the executors represent the person of their turltor, &c. (1)

(1) For dyeth, then the time of the tender is part. But otherwize it is where there is a day of payment, the feoffor die before the day, then may the heir tender the money as is aforesaid, for that the time of the tender was not paid by the death of the feoffor. Alfo it seemeth, that in such case where the feoffor dieth before the day of payment, if the executors of the feoffor tender the money to the feoffee as the day of payment, this tender is good enough; and if the feoffee refuse it, the heires of the feoffor may enter, &c. And the reason is, for that the executors represent the person of their turltor, &c. (1)

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So as now it appeareth that either the heir of the feoffor, or his executors, may, when a day is limited, pay the money; and he may appoint the administrator of the feoffor, if the feoffor die intestate [-f-], and this may the ordinary due if there be neither executor nor administrator, as hath been said.

Et le feoffor relève, les biens del feoffor point enter, &c. Nam a tender by the executor or administrators, and a relève, such give the heir of the feoffor a title of estate. And here by this (-f-) is a derivative implied, when a tender and relève shall give a third person title of entry.

If a man be bound to A., in an obligation with condition to enfeoff B., (who is a minor feignor) before a day, the obligor doth offer to enfeoff B., and he relève, the obligation is forfeit, because the obligor hath taken upon him to undo him, and his relève cannot satisfy the condition, because no feoffment is made: but if the feoffment had been by condition to be made to the obligee, or to any other for his benefit or behoove, a tender and relève shall satisfy the condition, because he himselfe upon the matter is the case wherefore the condition could not be performed, and therefore shall not give himselfe-cause of action. But if A. be bound to B., with condition that C. shall enfeoff D., in this case if C. tender, and D. relève, the obligation is void, for the obligee himselfe understands to do noe act, but that a stranger shall enfeoff a stranger. And it is holden in bookes, (5) that in this case it shall be intended, that the feoffment should be made for the benefit of the obligee. Some to recollect the books frame to make a difference between an express relève of the stranger, and a relève of the obligee at the day and place to make performance, and the absence of the stranger: but other suppose the contrary. Take it rather to be the error of the reports, and the reportes them selves are necessary to be so called, for the law herein, as it hath beene before declared.

If enfeoffment in fee upon condition to enfeoff E. S. and his heirs, the feoffor tendereth the feoffment to E. S. and he refuseth it, the feoffor may re-enter, for the condition of the oblation, the condition the feoffee should not have and retain any benefic estate in the land, but as it was an instrument to convey over the land.

But in that case if the condition were made to make a gift in fee to E. S. and he refuseth it, and a tender and relève is made, there the feoffor shall not re-enter, for that it was intended that the feoffee should have an estate over the land. So do it is if a feoffment be made upon condition that the feoffor shall grant a rent charge to a stranger, if the stranger doth not grant the tenant and he refuseth, the feoffor shall not re-enter, because the feoffee was to retain the land, which points are worthy of due observation.

Here is the case of Linez, when the executors make the tender, and the feoffee relève, albeit the heir be a third person, yet is he no stranger, but he and the executors also are privies in law.

Le perfon del teflatator, &c. This is to bee understands concerning goods and chattels either in possesion or in action, and in action the doth more actually represent the perfon of the teflatator, than the heir doth the perfon of the ancestor. For if a man bindeth himselfe, his executors are bound but though they be not named, for so is it not of the heir: furthermore, here the administrators and the ordinary also are implied, as before hath been said.

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ET nota, que en tout case of condition of payment of a certaine funde or grosfe toucher terres ou tenements, si laffoyt tendre faire un

AND note, that in all cases of condition of payment of a certaine summe in grosse touching lands or tenements, if lawfully tendre shall be once re

This is to be understood, that he that ought to tender the money is of this discharged for ever to make any other tender; but if it were a dative before, though the feoffor tendered by force of the condition, yet the debt or dative remaineth. As if A. borroughed a hundred

...
hundred pound of B. and after mortgageth land to B. upon condition for payment thereof; if A. tender the money to B. and be refuseth it, A. may enter into the land, and the land is freed for ever of the condition, but yet the debt remaineth, and may be recovered by action of debt. But if B. without any losse, debt, or duty preceding insuffice B. of land upon condition for the payment of a hundred pounds to B. in nature of a gratuitie or gift: in that case if he tender the hundred pound to him according to the condition and be refuseth it, B. hath no remedy therefore; and so is our author in this and his other cafes of like nature to be understood.

Also if the feoffee in mortgage before the day of payment which should be made to him, makes his executors and die, and his heire entret into the land as he ought, &c. it feemeth in that case that the feoffour ought to pay the money at the day appointed to the executors, and not to the heire of the feoffee, because the money at the beginning trenched to the feoffee in manner as a dutie, and shall beintended that the estate was made by reason of the lending of the money by the feoffee, or for some other dutie; and therefore the payment shall not be made to the heire, as it feemeth, but the words of the condition may be such, as the payment shall be made to the heire. As if the condition were, that if the feoffor pay to the feoffee, or to his heirs such a summe at the
Section 340.

Upon Condition

Law recognizes a condition precedent, which is a condition that must be fulfilled before the main condition or event in the contract occurs. If the condition precedent is not met, the main condition or event does not occur, and thus, the agreement or transaction is not binding. This legal provision is crucial in commercial contracts, insurance policies, and other legal documents, ensuring that parties are safeguarded against entering into agreements that may not be beneficial due to unforeseen circumstances or the failure to meet certain preconditions.
money is a summe in gross and collateral to the title of the land, that the feoffor must tender the money to the percon of the feoffee according to the latter opinion, and it is not sufficient for him to tender it upon the land; otherwise it is of a cent that infects out of the land. But if the condition of a bond or feoffment be to deliver twenty quarters of wheat or twenty load of timber or such like, the oblicer or feoffor is not bound to carry the same about and feeke the feoffee, but the oblicer or feoffor before the day must goe to the feoffee and know where he will appoint to receive it, and there it must be delivered. And so note a diversitie between money and things ponderous, or of great weight.

If the condition of a bond or feoffment be to make a feoffment, there it is sufficient [1] for him to tender it upon the land, because the due must pass by liverie.

Dein le roialm d'Engelterre[1]. For he be out of the realm of England, hee is not bound to feeke him, or to give out of the realm unto him. And for that the feoffee is the cause that the feoffor cannot tender the money, the feoffor shall enter into the land, as he had duly tendered it according to the condition.

Un speciall corporel service al feoffement. This is a diversitie between a real lifting out of land, and a corporall service lifting out of land, for it no thicketh (as hath been * si le feoffor fait sur le terre la prele a payer la money al feoffee a le jour offett, & si le feoffor adonde que ne fait pas la, & adonde le feoffor est offett, & excede de payment de le money, pur cto que sunt default efft en ley. Met il semble a aucuns que la ley est contrary, & que default est en ley; car il est teus de querer le feoffe s'il fait adonc en & aucun autre lieu dans le roialm de Engletre. Come bi home fait oblige en un obligation de 20 li. sur condition endore en faire en la obligation, que'il n'a ceulx a que l'obligation est fait a tiel jour 20 li. § adoncque l'obligation de 20 li. perdra sa force, & ferre tuor pur nul; est en cas coit roiver a que son obligation de querer ciuyo a que l'obligation est fait, s'il est deux Engletre, & a jour offett a tender le ray les diz 20 h. autrement il forfera la summe de 20 li. compript deux l'obligation, § c. Et si il sefle en l'autr cas, c. Et coment que auzuns ont dts que le condition est dependant sur la terre, encore ce ne prov que have said that if the feoffor be upon the land there ready to pay the money to the feoffee at the day fet, and the feoffee be not there then, then the feoffor is quit and excused of the payment of the money, for that no default is in him. But it seemeth to some that the law is contrary, and that default is in him; for he is bound to feeke the feoffor if hee bee then in any other place within the realm of England. As if a man be bound in an obligation of 20 pound upon condition endorset upon the same obligation, that if he pay to whom the obligation is made at such a day 10 pounds, then the obligation of 20 pound shall lose his force, and be holden for nothing. In this case it behoveth him that made the obligation to feeke him to whom the obligation is made if he be in England, & at the dayyet to tender unto him the said pound, otherwise he shall forfeit the summe of 20 pounds comprised within the obligation, &c. And so it feemeth in the other case, &c. And albeit that some have de
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upon Condition.

said that the condition is depending upon the land, yet this proves not that the making of the condition to bee performed, ought to be made upon the land, &c. no more then if the condition were that the foefor at such a day shall do some speciall corporall service to the foefor, in that place where such corporall service shall be done. In this case the foefor ought to do such corporall service at the day limited to the foefor, in what place soever of England that the foefor bee, if he will have advantage of the condition, &c. So fitethmefth in the other case. And it feemes to them that it shall bee more properly said, that in the estate of the land is depending upon the land, &c. &c.

give notice to the foefor when he will pay in, for without such notice as is aforesaid, the tenant will not be sufficient. But in both these cases if at any time the obilgator or foefor meet the obligator or foefor at the place, he may tender the money. If A. be bound to B. with condition that C. shall enfaale D. on such a day, C. must give notice to D. thereof, and request him to be on the land at the day to receive the foefor, and in that case he is bound to ferke D. and to give him notice.

De tender, or tender, is a word common both to the English and French, in Latin (c. E. 6. 3. & 4) esserum, and in that sense, and with that Latyn word it is always used in the common law.

Fut. sect. 314, the tender of the half of marke. And before sect. 313-324.

* * & added L. and M. and Rob.
† of a tenor, added L. and M. and Rob.

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said that the rent be tendered upon the land, (1) out of which it flows. As for bond for any other special corporall service must be done to the person of the lord, and the tenant ought by the law of conveniency to ferke him to whom the service is to be done, in any place within England. If a man be bound to pay twenty pound at any time during his life at a place certain, the obligator cannot tender the money at the place when he will, for then the obligor should bee bound to perpetual attendance, and therefore the obligor in respect of the insecurity of the time must give the obligee notice that on such a day at the place limited, he will pay the money, and then the obligee must attend there to receive it: for if the obligor then and there tender the money, he thereby gains the penalty of the bond for ever.

The same law is if a man make a foefoment in fee upon condition, if the foefor at any time during his life pay the foefor twenty pound at such a place certain, when then, &c. In this case the foefor must tender to the place certain, and then, &c. sect. 314.
HERE the diversities appear between a summe in gross, and a rent infiuing out of the land, as hath bene touched before.

Uncore il po et effier, flicilicet, derelinquifher for entry, ou de aver un affife.

Here it appeareth, that if the condition be broken for non payment of the rent, yet if the feoffor bringeth an affife for the rent due at that time, he shall never enter for the condition broken, because hee affirmeth the rent to have a continuance, and thereby wayveth the condition. And so is it if the rent had had a clause of difhelle annexed unto it, if the feoffor had deftrained for the rent, for non payment whereof the condition was broken, he should never enter for the condition broken, but he may receive that rent and acquite the same, and yet enter for the condition broken. But if he accept a rent due at a day after, he shall not enter for the condition broken, because hee thereby affirmeth the lease to have a continuance.

MES fi feoffment en fee fort fait, refervant al feoffor un annuat rent, et pur default de paymenture-en-re, &c., en cef cafe il ne bojigne * le tenant a tender le rent, quant il ef arer, forfque fur le terre, pur eco que cef ef rent iffiant hors de la terre, que † ef rent fecke. Car si le feoffor fait cette un faits de cef rent, et puis il vient sur la terre, &c., et le rent hoy fefit denis, il po affieren affife de Novel Difeifion. Car comen que il po enter pour cause de le condition enfreint, &c., uncere il po effier, flicilis, de derelinquifher for entry, ou aver un af affe, &c., &c. Et iffent ef disverfite, qnant al tender de le rent que ef iffiant hors de la terre, et del tender d'auter summef en grosses, que ne poaffe iffiant hors d'aucune terre.

BUT if a feoffment in fee bee made, referring to the feoffor a yere-ly rent, &c, for default of payment a re-entrie, &c. in this case the tenant needeth not to tender the rent, when it is behind, but upon the land, because this is a rent infiuing out of the land, which is a rent fecke. For if the feoffor bee feited once of this rent, and after hee commeth upon the land, &c., and the rent is denied him, he may have an affife of Novel Difeife. For albeit he may enter by reason of the condition broken, &c., yet hee may choose either to relinquish his entrie, or to have an affife, &c., and so there is a diversifie as to the tender of a rent which is infiuing out of the land, &c, of the tender of another summe in gross, which is not infiuing out of any land.

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ET pur eco il ferra bone et faire tiel feoffment en mort-gage, de mitter un efpicial lieu pour les deniers feront payer, et le plus efpicial que eft mis, the money shall be paid, and the more especial that it bee put, the

* a added L. and M. and Robs.
† cf added L. and M. and Robs.

(1) Upon the marriage of lord Anglesea with a daughter of lady Donegell, a term of years was limited in his lordship's Irish Estates, for railling 1500l. for the portions of the daughters. There was but one daughter of the marriage, it was made a question, whether the portion was to be paid in England, without any deduction or allowance for the exchange from Ireland to England? It was determined in Chancery, that the parties ought to be paid in England, where the contract was made and the parties resided, and not in Ireland; because it was a sum in gross, and not a rent infiuing out of land. Vin. Abr. vol. 5. 265.
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le meilleur est par le feeoffor. Si-come A. inoffe B. a auer a lay et a ses beires, sur tel condition, que si A. paya a B. en le Feaft de Saint Michael L'Archangell prochebe a tener, en eslibre ca-thedral de Paules en Londres, deins quater heures prochebe devant le heure de noone de mesme le Feaft, a le Rood loft de * le Rood de le North doore deins mesme le eslife, ou le tombe de S. Erkewald, au al huis de tiel chap-pell, ou a tiel pilier, deins mesme le eslife, que adonque bien est al avautait A. et a ses beieres d'enter, &c. en tel cafe il ne be-jogne de querer le feoffe en au-ter lieu, ne d'etre en au-ter lieu, forque en le lieu compris en l'indenture, ne d'etre la plus longe temps que le temps specifie en mesme l'indenture, par tender en payer le money a le feoffe, &c.

HERE is good counsel and advice given, to set downe in conveyances everything in certaintie and particularitie, for certaintie it is the mother of quietscence and repose, and uncertainitie the cause of variance and contentions: and for obtaining of the one, and avoyding of the other, the best means is, in all affurances, to take counsel of learned and well-experienced men, and not to trust only without advice to a presbyter. For as the rule is concerning the state of a man's bodie, Nulnon medicamento off idem animam, so in the state and assurance of a man's lands, Nulnon exemplari off idem annalibus. Al tombe de Saint Erkenwald, &c. This Erkenwald was a younger sonne of Anes, king of the East Saxons, and was fift abbe of Cherfray in Surry which hee had founded, misunderstood, after bishop of London, a holy and devout man, and lieth buried in the south side, above the quire in Saint Paul's church, where the tombe yet remaineth, that Lustrum spescol of in this place: be nourished about the years of our Lord 690. The reasons of this section and the ( SCC ) are evident.

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 ITEM en tel cafe l'ou le lieu + de pay ment est limite, le feoffe ne s'est % oblige de receuoir le payment en mul aufer lieu forque en mesme le lieu s'eft

ALSO in such cafe, where the place of payment is limited, the fooffice is not bound to receive the payment in any other place but in the same place fo limited.

HEREBY it is + ( SCC. Rep. 46 b. 47. Plo. 69 b. + Rep. 117.) the prawth that the place is but a cir-cumstance; and therefore if the obligor re-ceiueneth it at any o-ther place, it is suffi-cient, though he be not bound to receive it at any other place. And

* le rood de 6, not in L. and M. nor Rob. + de payment, not in L. and M. nor Rob. \[p\] pas added in L. and M. and Rob.
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HE REUPON are many diversities worthy of observation.

First, there is a diversitie, when the condition is for payment of money; and when for the delivery of a horse, a robe, a ring, or the like: for where it is for payment of money, then is the feoffor or oblige accept an horfe, &c. in satisfaction, this is good: but if the condition were for the deliverie of a robe, or robe, there albeit the oblige or feoffee accept money or any other thing for the robe, &c. it is no performance of the condition. The like law is, if the condition be to acknowledg a recognizance of twenty pounds, &c. if the oblige or feoffee accept twenty pounds in satisfaction of the condition, it is not sufficient in law, but notwithstanding such acceptance, the condition is broken. And so it is of all other collateral conditions, though the oblige or feoffee himself accept it.

Secondly, in case when the condition is for payment of money, there is a diversitie when the money is to be paid to the party, and when to an another: for when it is to be paid to an another, there is no performance of the condition, because the condition in that case is strictly to be performed. But if the condition be, that a Druger shall pay to the oblige or feoffee a sum of money, then the oblige or feoffee may receive a horse, &c. in satisfaction.

Thirdly, where the condition is for payment of twenty pounds, the oblige or feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole, because it is apparent that a lesser summe of money cannot be a satisfaction of a greater. But if the oblige or feoffor due to the day receive part, and thereof make an acquittance under his seal in full satisfaction of the whole, it is sufficient, by reason the deed amounteth to an acquittance of the whole. If the oblige or feoffor pay a lesser summe either before the day, or at another place that is limited by the condition, and the oblige or feoffee receives it, this is a good satisfaction.

Fourthly, not only things in poiffession may be given in satisfaction, (whereof Licenio putther his cauf) but also if the oblige or feoffee accept a statute or a bond in satisfaction of the money, it is a good satisfaction.

If the oblige or seoffor be bound by condition to pay an hundred marks at a certain day,

(1) It is added in L. and M. and Roh.

§ 20. added in L. and M. and Roh.

But yet if he doe receive the payment in another place, this is good enough & as strong for the feoffor as if the receipt had beene in the same place so limited, &c.

ITEM ou tier cafe de foiffement en mortgages, b le soiffor paye au soiffee un horfe, ou un cup de silver, ou un ring of gold, or any such other thing in ful satisfaction of the money, and the other receiveth it, this is good enough, and as strong as if he had receivèd the summe of money, though the horfe or the other thing were not of the twentieth part of the value of the summe of money, because that the other hath accepted it in full satisfaction.
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day, and at the day the parties doe account together, and for that the one twenty pound to the obligor or seffor, this summe is allowed, and death makes paid, this is a good satisfaction, and yet the twenty pound was a choise in action, and no payment was made thereof, but by way of restainer or discharge (1).

En pleine satisfaction. Note, in satisfaction and in full satisfaction is all one.

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ITEM, jame enfeoff'd to a stranger, an other upon condition, that hee and his heires shall render to a stranger and to his heires a yearly rent of 20 shillings, and if hee or his heires fail of payment thereof, that then it shall bee lawfull to the seffor and his heires to enter, this is a good condition: and yet in this case, albeit such annual payment be called in the indenture a yearly rent, this is not properly a rent. For if it should bee a rent, it must bee rent service, rent charge, or a rent fecke, and it is not any of thefe. For if the stranger were felled of this, and after it were defi'd, hee shall never have an advantage of this, because that it is not infuing out of any tenements; and so the stranger hath not any remedy, if such yearly rent be behind in this case, but that the seffor or his heires may enter, &e. And yet if the seffor or his heires enter for default of pay-

En pleine satisfaction. Note, in satisfaction and in full satisfaction is all one.

Rendront a un estrange home un annuel rent, &c.

This reservation is merely void (2) for the reasons heretofore in this fellows alleged by Litchem, and also for that no estate moveth from the stranger, and that he is not partie to the deed. And albeit it bee a voyde reservation, and can be no rent, and the words of the condition be, that the seffor or his heires fail of payment of the rent, that is, of the annual rent, that then, &c. yet it appeareth that the condition is good, and annual rent shall bee taken for an annual summe of money in groffe, and not in the proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significucion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of land, which is to bee obtained, that words in a condition shall bee taken out of their proper significacion thereof, to bee a rent infuing out of

* res for added L. and M. and Roh.
† quo added L. and M. and Roh.
‡ pro not in L. and M.
§ hora not in L. and M.

(1) In Roll. Rep. 191. It is said, that the reason why a collateral thing cannot be satisfied with money, or other collateral things, is, because the collateral thing is not due, and in no contract can be made of it till the day of payment; and that the reason why money may be satisfied by a collateral thing is, because it is of certain value.
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The rent of any kind of estate, is a good grant of a rent to them both, because it is part of the deed, and the clause of disadvantages is a grant of the rent to A. and B. as it appears before in the chapter of rents. But if B. had been a stranger to the deed, then B. had taken nothing. And upon this diversitie are all the books, which pass. 

Car s'il ferra rent, il covient fois rendre servitude rent ferme, ou rente, coûte que coûte, de tous, de tous, de tous.

This is a good legal argument, a disadvantage, & argumentum a disadvantage of servitude in leges. 

[L. L. X. xxv. 38.] Littore with this argument elsewhere, where its more of this man.

Il faut devenu le serviteur in folie, &c. 

Par defaut de payment. Note here, it is not in a femme in grosshe, there need no demand of the rent; for Littore here finds, that the feudal ought to be the person of the stranger to pay him the summe of money, because it is a femme in grosshe and not inflating out of the land.

A Le seffor, donor, &c. ou a leurs bières. Hereby it may seem that if a man make a feoffment, gift, or lease, that (assuming himselfe) he may re-serve a rent to his heirs (i.e.), but Littore is not to be understood; his meaning is, that either the feoffor, i.e. may reserve the rent to himselfe only, or to himselfe and his heirs. And yet it is hidden [in our books,] that a man may make a feoffment in reserving a rent of forty hillings to the feoffor for the summe of his life, and ET hic nota depicta thing:

AND here note two things: one is, that no rent (which is properly paid for a service) may be reserved upon any feoffment, gift, or lease, but only to the seffor, or to the donor, or to the leessor, or to their heirs, and in no manner it may be reserved to any stranger. But if perchance it were reserved to any stranger...
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perfon. Mes dieux joynantes font un
leurs per fait endent, refervant a un de eux
un certaine annuel rent, ces eft aijjes
bon a que le rent eft reseu, parceque
il eft privy a le fef
event effranger a le
fes, &c.

If two jointees make a
lease by deed inden
ted, referring to
one of them a certain
yearly rent, this
is good enough to
him to whom the
rent is refered, for
that hee
is privy to the
lease and not
a stranger
to the leasee, &c. (1)

This case being by deed
indented, is evident, and it
has been touched before; but
nother is the tenant, if any
of them shal enter to them both in respet of the joyce revision.
And so it is of a fur
render to one of them, it shall ensue to them both.
If two jointees, the one for life, and the other in fees, joues in a lease for life, or a gift
in tailue, referring a rent, the rent shall ensue to them both; for if the particular estate deter
mines, they shall be jointees againe in possessioin.
If it concern for life, and he in the re
vision joys in a lease for life, or a gift in tailue by deed, referring a rent, this shall ensue to
the tenant for life only, during his life, and after to him in the revision, for every one
grants that he may lawfully grant, and if in the common law they had made a fef
ment in the generation of fee, they should have holden of the tenant for life during his life,
and after of him in revision, and so it was holden [2] in the King's Bench.

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L'E second efe eft,
que mel entre et re
entrie (que tout un) t
est droit referve de no
ne a aucun perfon, forfue
tantoftenent al fef
or, ou al donor, ou al lefer,
or a leur heires : & t tel
renter ne peut ejfer
grant a un auter perfon.
Car il hom lefer terre a
un auter per terme de vie
per indenter, rendet
al lefer et a ses
heires certaine rente, &
pur defaut de payment
un recievre, Ec. si apres
le lefer per un fait grante
la reversion de la terre a
un auter en fee, et cel
tenant de terme de vie
atturne, &c. si le rent a

Le second thing is,
that no entry nor en
try (which is all one)
can be referred or give
n to any person, but only
to the feffor, or to the do
nor, or to the lefer, or
to their heirs: and such
reversion cannot be given
to any other person.
For if a man letth land to anoth
er for term of life by
indenture, rendering to the
lefer and to his heirs a
certain rent, and for de
fault of payment a recei
vre, &c. If afterward the
lefer by a deed granteth
the reversion of the land
to another in fee, and the
tenant for term of life
attourns, &c. if the rent be

* of all in Rob. but in L. and M.
+ as added in L. and M. and Rob.
\[ certain added in L. and M. and Rob.\]

(1) The principle which gave rite to this rule, is that rent is considered as a consideration for the land, and is therefore payable to the one who would otherwise have had the land. It is to be observed, that remainder-men in a settlement, being at first
view, neither feffors, donors, lessees, nor heirs of the seffors, donors, or lessees, have to have been, for some time after the
third generation, able to recover the rents of leases made by virtue of powers contained in wills and indentures, in private little
cases, could be referred to them.

In Chittleck v. Glee, 2 Rep. 197, it is positively said, that if a feffment in fee be made to the use of one for life, remainder to ano
ther in tail, with return and remainder over, with a power to the tenant for life to make leases, referring the rent to the remaindermen, and not appear. 32. H. 7, R. 86. 2 Cuth. that the lessee, rendering rent to the beneficiary, and dies, the heir shall have the rent.

It is in 5. H. 7, t. 7, b. the rent, with the reversion, part to the seffors, this refer to the cuth. that we use; yet in law the seffors
are donors; and in its effect, the seffors lethe, rendering rent to the cuth. that use it, it is good for their benefic, which is se
venger, Sir Geo. Wedderburn, and William Hunter is his son and heir apparent and his heirs: Sir Geo. Wedderburn, and
William join in a lease for years, rendering rent to Sir Geo. his heirs and assigns: Sir Geo. Wedderburn, referred, that the re
version and the rent are determined; for William is not in his heir, and therefore he cannot have the rent. Hunter's case,

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pres,roit adorer, le
granite de le rever-
son peut differer par
le rent, par ce que le
rent estoit incident a le
reversion; mais il ne
roit entrer en la terre,
& ouille le tenant, si
come le lofer puisfit
ou les heires, si le re-
verison yf eft conti-
nue en eux, &c. Et en
cette cafe, l'entrie est
telle a tous temps;
car le grantee de le
reversion ne peut en-
ter, caufli qulupr&
Est le lofer ne fes
heires ne povent en-
ter; car si le lofer
puisfit entrer, don-
ques il couvint que il
feroit * en fon pri-
mer esfate, &c. et coe
ne poft efpre, pur cew
que il ad alien de
lay le reverison.

For if a man make a gift in tail or a lease for life upon condition, that if the donee or
lessee poth not in Rome before such a day the gift or lease shall cease or be void, the grant-
er of the reversion shall never take advantage of this condition, because the estate cannot
continue before an entry; but if the leases had been for years, then the grantee should have
advantage of the like condition, because the lease for years * is good by the breach of the
condition without any entry was void; for a lease for years may begin without cer-
emony, and so may end without ceremony; but an estate of freehold cannot begin nor end
without ceremony.

And of a voided thing an enlumber may take benefit, but not a voidable
esfate by entry.

Al faffor, ou al donor, &c. ou a four heires, &c. Here is to be observed a
divisive between a reversion of a rent and a re-entry; for (as it hath beenfaid) a rent
cannot be referred to the heirs of the faffor, but the heirs may take advantage of a condi-
tion, which the faffor could never do. As if I inoffoci another of a ser of ground upon
condition that if mine brevis pay to the faffor, * 20 shillings, that he and his heirs shall
return, this condition is good: and if after my decease my heir pay the 20 shillings, he
shall re-enter, for he is privy in blood, and enjoy the land as heir to me.

For suche tonteminent al faffor, &c. ou a four heires. Our author
speakes here of natural perfons for an example, for if a bishop, archdeacon, parson, pre-
bend, or any other body publicke or corporate, ecclesiastical or temporal, make a lease, be
upon condition, his successor may enter for the condition broken, for they are privy in right,
And so if a man have a lease for years and demise or grant the same upon condition, &c.
and die, his executors or administrators shall enter for the condition broken, for they are
privy in right, and represent the person of the dead.

* a-a in L. and M. and Roh.
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(7) If any one made a lease for years, sec. upon condition, the lessee should not (3) st. H. 4. enter for the condition broken, for they are privy in equity, but not privy in blood.

Another distinction is in cases of a lease for years, where the condition is that the lessor shall vacate the land, as is alfo laid, and where the condition is, that the lessor shall receive for the same the grantee, as Littledoe, which shall never take benefit of the condition.

And it is to be observed, that where the lease or lease is void under the condition or limitation, no acceptance of the rent after can make it to have a consequence; otherwise it is of an effect or lease voidable by entry, ent or by the lessee.

Another distinction is between conditions in deed, whereof sufficient hath been said before, and conditions in law. As if a man make a lease for life, there is a condition in law annexed unto it, that if the lessee doe make a greater estate, sec. that then the lessor may enter. Of this and the like conditions in law, which doe give an entry to the lessee, the lessee himselfe and his heirs shall not only take benefit of it, but also his allience and the lord by echol, every one for the time being, a condition in law broken in their own times. Additional there is the judgement of the common law, whereof Littledoe wrote, and the law at this day by force of the statutes (7) of 32. H. 8. cap. 34. (8) For the common law, no grantee or assignee of the reversion could (4) hath be or not) take advantage of a re-strictly strict condition of force. For any condition, at the common law, if a man made a lease for life for life, it is provided, that as well every person who hath any grant of the king of any reversion, sec. of any kind, which is vested in a tenant for life, sec., of all other persons being grantors or assignees, to or by any other person or persons, and their heirs, executors, assignees, and their heirs that have advantage against the lessee, sec. by entry for non-payment of the rent, or for doing of waste or other offenses, sec., as the said lessees or grantors themselves ought or might have or ought to have. Upon this divers refusals and judgements have been given, which are necessary to be known.

1. That the said statute is generally, sec. (8) that the grantee of the reversion of every common person as well as of the king shall take advantage of conditions.

2. That the statute doth extend to grants made by the executors of the king, albeit the king be only named in the act.

3. That where the statute speaks of leases and assignees of the reversion, (8) that an act in cases of the statute of the lease may not extend to the advantage of the common law for life, etc., and that the statute is good for life, etc., etc. So if lease for years, sec. be, and the reversion is granted for years, the grantee for years shall take benefit of the condition in respect of this word (executes) in the act.

4. That a gratuitous act of the execution shall not (9) take advantage of the condition, as if a grant of three acres, one of the nature of Barrow in English, the other as the common law, and the lessor having issue two sons, dieth, each of them shall enter for the condition broken, and likewise a condition shall be apportioned by the act and wrong of the lessee, as hath been fai in the chapter of Rents.

5. If a lease for life be made, referring a rent upon condition, sec. the lessee levies a fine of the reversion, he is grantee or assignee of the reversion, but without suchment he might not take advantage of the condition, for the makers of the statute intended to have all necessary incidents observed, otherwise it might be mischievous to the lessor.

6. There is a diversify between a condition that is compulsory, and a power of revocation voluntarily, for a man that hath a power of revocation, may by his own act extinguish his power of revocation in part, as by levying of a fine of part; and yet the power shall remain for the recovour, because it is in nature of a condition, and not of a condition; and so it was resolved (1) in the case of Sherburne's in the court of wards, Petyg, 33f. Else. and Mich. 30f. 31. Else. (10) In Putnam's case, the reversion was in the cur of the court of wards, Psyg. 30f. Else. and Mich. 40f. 31. Else. (11)

7. If the lessor bargain and sell the reversion by deed indented and inviolate, the bargain is not in the life by the bargainee, and yet he is an assignee within the statute, if any.

(1) The acceptance of certain cannot make a new lease, and the old one was determined, but the acceptance of the rent is a sufficient declaration, that it is the lessors will to continue the lease, for he is not entitled to the rent but by the lease.


(2) Assignment being taken away sec. 2. 6. Ann. c. 6. the law seems to be otherwise now. Note to the 11th edit. 5. 9