EDMUND PLOWDEN Serjeant at LAW T.R. 27 Oct. 5 & 6 P. and M. A.D. 1558

T. Stayner Sculp.

Printed for J. Worrall at the Dove in Bell Yard Near Lincoln's Inn

John Adams 1769
John Quincy Adams 1800.
George Washington Adams 1825.

THE

COMMENTARIES,

OR

REPORTS

OF

EDMUND PLOWDEN,

Of the MIDDLE-TEMPLE, Esq;

An APPRENTICE of the COMMON LAW,

CONTAINING

Divers CASES upon Matters of LAW, argued and adjudged in the several Reigns of King EDWARD VI. Queen MARY, King and Queen PHILIP and MARY, and Queen ELIZABETH.

ORIGINALLY WRITTEN IN FRENCH,

And now faithfully translated into ENGLISH, and considerably improved by many marginal Notes and References to all the Books of the COMMON LAW, both ancient and modern.

TO WHICH ARE ADDED,

The QUÆRIES of Mr. PLOWDEN,

Now first rendered into ENGLISH at large, with References, and many useful Observations.

IN TWO PARTS.

With two new TABLES, more compleat than any yet published; the one, of the NAMES of the CASES, the other of the PRINCIPAL MATTERS.

Quid te vana juvant miseræ ludibria chartæ?
Hoc lege, quod possis dicere jure meum est.

MART.

Videte quod non mihi soli laboravi, sed omnibus exquirentibus scientiam.

ECCLESIASTICUS, Cap. 24.

In the SAVOY:

Printed by CATHARINE LINTOT, and SAMUEL RICHARDSON, Law Printers to the KING's MOST EXCELLENT MAJESTY, for the TRANSLATOR, and to be sold by the Booksellers in LONDON and WESTMINSTER. MDCCLXI.

3365

A Report of a Caſe argued and adjudged in the Common Bench *in* Michaelmas *Term in the* fourth *and* fifth *Years of the Reign of Queen* Elizabeth *upon Demurrer in Law in an Action of* Treſpaſs *brought by Lady* Margaret Hales, *late Wife of Sir* James Hales *late one of the Juſtices of the* Common Bench, *Plaintiff, againſt* Cyriack Petit *Defendant. And the Record appears amongſt the Records of* Trinity *Term* 3 Elizabeth. *Rot.* 921. *and was as follows.*

Trin. Term 3 Eliz. Rot. 921. *Kent.*

Cyriack Petit late of *Boughton under Blane* in the County aforeſaid Gentleman was attached to anſwer *Margaret Hales* Widow of a Plea, wherefore with Force and Arms the Cloſe of the ſaid *Margaret* at *Graveney* he broke, and her Graſs to the Value of 40 *l.* there lately growing with certain Cattle, eat up, trod down, and conſumed, and other Wrongs to her did, to the great Damage of the ſaid *Margaret*, and againſt the Peace of the Lady the Queen now, *&c.* And whereupon the ſame *Margaret* by *John Goldwell* her Attorney complains, that the aforeſaid *Cyriack* the *twentieth* Day of *November* in the *ſecond* Year of the Reign of the Lady the Queen now, with Force and Arms, *&c.* the Cloſe of the ſaid *Margaret* at *Graveney* broke, and her Graſs to the Value, *&c.* there lately growing, with certain Cattle, *viz.* Horſes, Oxen, Cows, Hogs, and Sheep, eat up, trod down, and conſumed: And other Wrongs, *&c.* to the great Damage, *&c.* and againſt the Peace, *&c.* Wherefore ſhe ſays that ſhe is damnified, and has Damage to the Value of 100 Marks, and therefore ſhe produces the Suit, *&c.*

Declaration.

Same Precedent Raſt. Entr. 608, a.

And the aforeſaid *Cyriack* by *Hugh Charnock* his Attorney comes and defends the Force and Injury when, *&c.* And as to the coming with Force and Arms, he ſays that he is not guilty thereof, and of this he puts himſelf upon the Country, and the aforeſaid *Margaret* likewiſe. And as to the reſt of the Treſpaſs aforeſaid above ſuppoſed to be done, the ſame *Cyriack* ſays that the aforeſaid *Margaret* her Action aforeſaid againſt him ought not to have, becauſe he ſays that the Cloſe aforeſaid, and alſo the Places in which the Treſpaſs aforeſaid is ſuppoſed to be done, are, and at the aforeſaid Time of the Treſpaſs aforeſaid above ſuppoſed to be done were, ſixteen Acres of Land with the Appurtenances called *Bentcloſe* in *Graveney* aforeſaid. Which ſaid ſixteen Acres of Land with the Appurtenances are, and at the aforeſaid Time of the Treſpaſs were, the Soil and Freehold of him the ſaid *Cyriack*, whereby the ſame *Cyriack*, the ſame Time when, *&c.* the Cloſe aforeſaid, as the proper Cloſe and Soil and Freehold of him the ſaid *Cyriack*, in the ſame ſixteen Acres of Land, as in the proper Soil and Freehold of him the ſaid *Cyriack*, broke, and the Graſs aforeſaid, as the proper Graſs of him the ſaid *Cyriack* there then growing, with the Cattle aforeſaid eat up, trod down, and conſumed, as it was lawful for him to do; and this he is ready to verify, Wherefore he prays Judgment if the aforeſaid *Margaret* her Action aforeſaid againſt him ought to have, *&c.*

Bar.

Juſtifies as his Freehold.

And the aforeſaid *Margaret* ſays, that by any thing before alledged ſhe ought not to be precluded from having her Action aforeſaid, becauſe ſhe ſays that the Cloſe aforeſaid, and alſo the Place in which the Treſpaſs aforeſaid, whereof ſhe above complains, was done, is, and at the aforeſaid Time of the ſaid Treſpaſs above ſuppoſed to be done, was, 200 Acres of Marſh with the Appurtenances lying in *Graveney* aforeſaid called *Graveney* Marſh, otherwiſe *Cliff* Marſh, that is to ſay, to the Lands of the late *James Hales* Knight deceaſed, and to the Lands of the College of *St. John* in *Oxford* towards the Eaſt, and to the Lands of the Lady the Queen towards the North, and to the Lands of the Manor of *Graveney* towards the Weſt, and to the Lands of one *Robert Colwell* towards the South and Eaſt, other than the aforeſaid ſixteen Acres of Land with the Appurtenances in *Graveney* aforeſaid called *Bentcloſe* in the Bar of the aforeſaid *Cyriack* ſpecified. And this ſhe is ready to verify, wherefore for that the aforeſaid *Cyriack* to the Treſpaſs aforeſaid in the aforeſaid 200 Acres of Marſh called *Graveney* Marſh, otherwiſe *Cliff* Marſh, of new Aſſignment done, does not anſwer, the ſame *Margaret* prays Judgment, and her Damages by Occaſion of that Treſpaſs to be adjudged to her, *&c.*

Replication by new Aſſignment. See P. 27. H. 8. 7. a. 1 Finch 310. Heath's Max. 11, 12.

And the aforeſaid *Cyriack*, as to the aforeſaid Treſpaſs in the aforeſaid 200 Acres of Marſh of new Aſſignment above ſuppoſed to be done, ſays that the aforeſaid *Margaret* her Action aforeſaid thereof againſt him ought not to have, becauſe he ſays that long before the aforeſaid Time when the Treſpaſs aforeſaid is ſuppoſed to be done, one *Thomas* then Archbiſhop of *Canterbury* was ſeized of the ſame 200 Acres of Marſh of new Aſſignment with the Appurtenances in his Demeſn as of Fee, in Right of his then Archbiſhopric aforeſaid. And the ſame Archbiſhop being ſo ſeized thereof, before the aforeſaid Time when, *&c. viz.* the *eighth* Day of *March* in the *twenty-ſixth* Year of the Reign of Lord *Henry* late King of *England* the *Eighth* from the Conqueſt, at *Thanington* in the County aforeſaid, by a certain Indenture made between the aforeſaid then Archbiſhop on the one Part, and one *John Hales*, and *James Hales* Knight, by the Names of *John Hales* one of the Barons of the Exchequer of the Lord the King, and *James Hales* Son and Heir apparent of the ſame *John* on the other Part, (one Part whereof, ſealed with the Seal of the aforeſaid then Archbiſhop, the ſame *Cyriack* produces here in Court, the Date whereof is the ſame Day and Year) granted, delivered, and demiſed to the ſame *John Hales* and *James* the Site of the Manor of *Boughton* in the County of *Kent*, with all Houſes, Edifices, Lands, Meadows, Leaſows, Paſtures, and Demeſns to the ſame Manor belonging, together with the Paſture of *Middlewood*, and the Paſture called *Bentley*; and alſo the Marſh called *Graveney* Marſh, with all and ſingular the Appurtenances of the ſame Marſh, whereof the aforeſaid 200 Acres of Marſh of new Aſſignment with the Appurtenances are, and at the aforeſaid Time when, *&c.* were Parcel, (all Rents, Cuſtoms, Works, Services of Tenants, and Perquiſites, View of Frankpledge, the Court there, and alſo Wards, Marriages, Reliefs, Eſcheats, Waifs, Eſtrays, and other Liberties and Franchiſes, and alſo the Advowſon of the Church, and ſixty Acres of arable Land there next adjoin-

Bar to the new Aſſignment, by Aſſignment of a Term forfeited.

ing to the Rectory of *Boughton* in the County aforeſaid on the ſouth Side, there lately demiſed to the Abbot and Convent of *Feverſham*, yearly to the aforeſaid then Archbiſhop and his Succeſſors excepted and reſerved) to have and to hold the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* (except as before excepted) to the aforeſaid *John Hales* and *James Hales*, and to their Aſſigns, from the Feaſt of *St. Michael* the Archangel which ſhould be in the Year 1540, unto the End of the Term of 20 Years from thence next following, and fully to be compleat, as by the ſame Indenture amongſt other Things more fully appears. Which ſaid Demiſe to the aforeſaid *John Hales* and *James Hales* by the aforeſaid then Archbiſhop in Form aforeſaid made, and all and ſingular the Things therein contained, one *Thomas* then Prior of the late Priory of *Chriſt's-Church* in *Canterbury*, and the then Chapter of the ſame Church, before the aforeſaid Time when, *&c. viz.* the *third* Day of *April* in the aboveſaid *twenty-ſixth* Year of the Reign of the aforeſaid late King *Henry* the *Eighth* by their certain Writing (which the ſame *Cyriack* likewiſe produces here in Court, ſealed with the common Seal of the ſame then Prior and Chapter, the Date whereof is in the Chapter-houſe the ſame Day and Year) ratified, approved, and confirmed, as by the ſaid Writing more fully appears. By virtue of which ſaid Grant, Demiſe, Ratification, and Confirmation, the aforeſaid *John* and *James* on the Morrow of the aforeſaid Feaſt of *St. Michael* the Archangel in the aboveſaid Year of our Lord 1540. into the aforeſaid Site and other the Premiſſes with the Appurtenances whereof, *&c.* entered, and were thereof poſſeſſed. And the ſaid *John* and *James* being ſo thereof poſſeſſed, the ſame *John Hales* afterwards died, and the aforeſaid *James* ſurvived, and held himſelf in the aforeſaid Site and other the Premiſſes with the Appurtenances whereof, *&c.* and was thereof ſole poſſeſſed by Right of Survivorſhip, *&c.* And the ſaid *James* being ſo thereof ſole poſſeſſed, the aforeſaid then Archbiſhop being ſeized of the Reverſion thereof in Form aforeſaid, before the aforeſaid Time when, *&c. viz.* the *twenty ſecond* Day of *April*, in the *fifth* Year of the Reign of Lord *Edward* late King of *England* the *ſixth* from the Conqueſt, at *Thanington* aforeſaid, by a certain other Indenture made between the aforeſaid then Archbiſhop of the one Part, and the aforeſaid *James Hales* Knight, and the aforeſaid *Margaret* then his Wife of the other Part, (one Part whereof ſealed with the Seal of the aforeſaid then Archbiſhop, the ſame *Cyriack* here likewiſe produces in Court, the Date whereof is the ſame Day and Year) reciting in the ſame Indenture, that whereas the ſame then Archbiſhop by a certain Indenture bearing Date the *eighth* Day of *March* in the *twenty-ſixth* Year of the Reign of Lord *Henry* late King of *England* the *eighth* from the Conqueſt, had granted and demiſed to *John Hales* then one of the Barons of the Exchequer of the Lord the King, deceaſed, and to the aforeſaid *James Hales*, the Site of the Manor of *Boughton* in the County of *Kent*, with all Houſes, Edifices, Lands, Meadows, Leaſows, Paſtures, and Demeſnes to the ſame Manor belonging, together with the Paſture of *Middlewood*, and the Paſture called *Bentley*; and alſo the Marſh called *Graveney* Marſh, with all and ſingular the Appurtenances of the ſame Marſh, (all Rents, Cuſtoms, Works, Services of Tenants, and Perquiſites, View of Frankpledge, the Court there, and alſo Wards, Marriages, Reliefs, Eſcheats, Waifs, Ferſtrays, and other Liberties and Franchiſes, and alſo the Advowſon of the Church, and ſixty Acres of arable Land there next adjoining to the Rectory of *Boughton* in the County aforeſaid on the ſouth Part, there lately demiſed to the Abbot and Convent of *Feverſham*, yearly to the aforeſaid late Archbiſhop and his Succeſſors excepted and reverſed) to have and to hold the aforeſaid Site of the Manor aforeſaid, and all and ſingular the Lands and Tenements aforeſaid with their Appurtenances whereof, *&c.* (except as before excepted) to the aforeſaid *John Hales* and *James Hales* and to their Aſſigns, from the Feaſt of *St. Michael* the Archangel, which ſhould be in the Year of our Lord 1540. unto the End and Term of 20 Years from thence next following, and fully to be compleat, as by the ſame Indenture amongſt other Things more fully appears, for certain Conſiderations him the ſaid Archbiſhop moving, ratified, approved, and confirmed to the aforeſaid *James Hales* his Title, Term, and Intereſt of and in the Premiſſes; and alſo the aforeſaid then Archbiſhop, by his Indenture aforeſaid to the aforeſaid *James* and *Margaret* made, granted, delivered, and to Farm-let to the aforeſaid *James Hales* and the aforeſaid *Margaret* then his Wife the aforeſaid Site of the Manor aforeſaid, and all and ſingular the Lands and Tenements aforeſaid with the Appurtenances whereof, *&c.* to the aforeſaid *John Hales* and *James Hales* by the aforeſaid former Indenture demiſed (except and to the aforeſaid then Archbiſhop and his Succeſſors wholly reſerved all and ſingular Things by the ſaid former Indenture excepted and reſerved) to have and to hold the aforeſaid Site of the Manor aforeſaid and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* (except as before excepted) to the aforeſaid *James Hales* and the aforeſaid *Margaret* then his Wife, and to their Aſſigns, from the Feaſt of *St. Michael* the Archangel which ſhould be in the Year of our Lord 1560. unto the End and Term of 12 Years from thence next following, and fully to be compleat, as in the ſame Indenture to the aforeſaid *James* and *Margaret* (as it is ſaid) made amongſt other Things is more fully contained. By reaſon of which ſaid Indenture the ſame *James* and *Margaret* were of the ſaid Indenture, and of the Intereſt therein contained poſſeſſed. And they being ſo thereof poſſeſſed, and the aforeſaid *James* of the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* (except as before excepted) being likewiſe poſſeſſed by virtue of the former Indenture to the aforeſaid *John Hales* and *James Hales*, as is aforeſaid, made, the ſame *James* before the aforeſaid Time when, *&c. viz.* the *fourth* Day of *Auguſt* in the *firſt* and *ſecond* Years of the Reign of Lord *Philip* and Lady *Mary* late King and Queen of *England*, in a certain common River or common Water-courſe of the ſame late King and Queen, in the Pariſh of *St. Mildred* the Virgin in the County of the City of *Canterbury*, feloniouſly and voluntarily drowned himſelf. And afterwards by a certain Inquiſition taken at the aforeſaid City of *Canterbury*, in the aforeſaid County of the City of *Canterbury*, the aforeſaid *fourth* Day of *Auguſt* in the aboveſaid *firſt* and *ſecond* Years, before *George Toſtes* then Coroner of the ſaid late King and

Queen

Queen in the aforeſaid County of the City aforeſaid, upon the View of the Body of the aforeſaid *James Hales* there lying dead upon the Ground, by the Oath of twelve, *&c.* it was preſented that the aforeſaid *James*, not having God before his Eyes, but ſeduced by the Art of the Devil, the ſame *fourth* Day of *Auguſt* in the aboveſaid *firſt* and *ſecond* Years, at the aforeſaid City of *Canterbury* in the Pariſh of the bleſſed *Mary* of *Bradne*, and in the Ward of *Redingate* in the ſame City, and in the County of the ſaid City, went out of the Manſion-houſe of him the ſaid *James Hales*, ſituate and being in the Pariſh and Ward aforeſaid, and in the aforeſaid County of the City aforeſaid, and paſſing through Ways and Streets in the ſame City unto the aforeſaid River or common Water-courſe in the aforeſaid Pariſh of *St. Mildred* the Virgin, and in the Ward of *Worgate* in the ſame City, and in the County of the City aforeſaid, voluntarily entered into the ſaid River, and himſelf therein then felonioufly and voluntarily drowned, againſt the Peace of the ſaid late King and Queen, as by the ſame Inquiſition before the aforeſaid Coroner remaining of Record more fully appears. By reaſon of which ſaid Felony of himſelf, and by Force of the aforeſaid Inquiſition before the aforeſaid Coroner taken, the aforeſaid *James Hales* forfeited to the aforeſaid late King and Queen as well the aforeſaid former Indenture to the aforeſaid *John* and *James*, as is aforeſaid, made, and all the Intereſt and Term therein contained, as the aforeſaid Indenture to the aforeſaid *James* and *Margaret*, as is aboveſaid, made, and all the Intereſt and Term of Years therein contained. And afterwards the aforeſaid late King and Queen, by their certain Commiſſion ſealed with their Seal of their Exchequer, and iſſuing out of their Court of Exchequer aforeſaid, bearing Date at *Weſtminſter* the *twenty-ſixth* Day of *October* in the aboveſaid *firſt* and *ſecond* Years, aſſigned *Martin Bowes* Knight, *William Roper*, *Chriſtopher Roper*, *Roger Appleton*, Eſquires, and *John Bear* Gentleman, four, three, or two of them, to enquire by the Oath of good and lawful Men of the aforeſaid County of *Kent*, as well within Liberties as without, by whom the Truth of the Matter might be better known, amongſt other Things, what and what Kind of Goods, Chattles, as well real as perſonal, or Demiſes whatever, of what Nature, Sort, or Kind ſoever they be, the aforeſaid *James* ſolely or jointly with any other Perſon or Perſons had in the aforeſaid County of *Kent*, as well within Liberties as without, at the Time when the ſame *James* killed and murdered himſelf, and alſo to whoſe Hands and Poſſeſſion the ſame Goods and Chattles and Demiſes aforeſaid after the Death of the ſame *James* came, or in whoſe Hands they then remained, and of what Value they were. And further the aforeſaid late King and Queen *Philip* and *Mary* by the ſame Commiſſion commanded the aforeſaid *Martin Bowes*, *William Roper*, *Chriſtopher Roper*, *Roger Appleton*, and *John Bear*, four, three, or two of them, that they ſhould not omit by reaſon of any Liberty of the aforeſaid County of *Kent*, but into the ſame ſhould enter, and at a certain Day or Days, and Place or Places which they ſhould appoint for that Purpoſe, they or four, three, or two of them ſhould perſonally go and enquire diligently, touching all and ſingular the Premiſſes, and Circumſtances thereof: So that the Inquiſition thereupon before them, four, three, or two of them taken they might have before the Barons of the Exchequer aforeſaid at *Weſtminſter* on the Morrow of *All Souls* then next coming, under the Seals of them five, four, three, or two of them, and under the Seals of thoſe by whom it was made, and the Commiſſion aforeſaid. Alſo the aforeſaid late King and Queen *Philip* and *Mary* commanded the aforeſaid *Martin*, *William*, *Chriſtopher*, *Roger*, and *John Bear*, four, three, or two of them, by the aforeſaid Commiſſion, that all and ſingular the ſame Goods and Chattles and Demiſes, in whoſeſoever Hands or Poſſeſſion they ſhould then be, they ſhould take into the Hands of the ſaid late King and Queen *Philip* and *Mary*, and them ſafely keep, ſo that they might anſwer to the ſame late King and Queen for the Goods, Chattles, and Demiſes aforeſaid, and that they five, or four, three, or two of them ſhould make appear to the Barons of the Exchequer aforeſaid, at the Day and Place aforeſaid, what and what Kind of Goods, Chattles and Demiſes they had taken into the Hands of the ſaid late King and Queen *Philip* and *Mary*, by reaſon of the Premiſſes, and where, together with the Day of taking the ſame into the Hands of the aforeſaid late King and Queen *Philip* and *Mary*. Alſo the aforeſaid late King and Queen *Philip* and *Mary* by the aforeſaid Commiſſion commanded the then Sheriff of the aforeſaid County of *Kent*, that at the Day or Days, and Place or Places, which the aforeſaid *Martin*, *William*, *Chriſtopher*, *Roger*, and *John*, or four, three, or two of them, on behalf of the ſame late King and Queen ſhould make known to him, he ſhould cauſe to come before them five, or four, three, or two of them, ſuch and ſo many good and lawful Men of his Bailiwick by whom the Truth of the Matter, touching the Premiſſes, might be better known and enquired, as by the ſame Commiſſion amongſt other Things more fully appears. By virtue of which ſaid Commiſſion the aforeſaid *Martin Bowes*, *William Roper*, *Chriſtopher Roper*, *Roger Appleton*, and *John Bear* afterwards, *viz.* the *twenty-ſeventh* Day of *October* in the *firſt* and *ſecond* Years aboveſaid, made their Precept in Writing ſealed with their Seals to one *Robert Southwel* Knight then Sheriff of the aforeſaid County of *Kent*, commanding the ſame then Sheriff on behalf of the aforeſaid late King and Queen, that he ſhould cauſe to come before them five, or four, three, or two of them, at *Deptford* in the aforeſaid County of *Kent*, the *thirtieth* Day of *October* then next following, twelve good and lawful Men of the aforeſaid County of *Kent*, to enquire of and upon all and ſingular the Premiſſes and Circumſtances thereof. At which ſaid *thirtieth* Day of *October*, before the aforeſaid *William Roper*, *Chriſtopher Roper*, and *Roger Appleton* at *Deptford* aforeſaid the aforeſaid Sheriff returned the Precept aforeſaid to him in Form and aforeſaid directed, together with a Panel of all the Jurors to the ſame Precept annexed, in all Things ſerved and executed, whereof certain of them ſo empannelled, and by the aforeſaid Sheriff returned, *viz.* *Thomas Hunt* Gentleman, *Thomas Hinde*, *Richard Clerk*, *Thomas Ward*, *William Clerk*, *John Batt*, *William Audley*, *John Brodhouſe*, *Alexander Patenſon*, *John Simonds*, *Thomas Ward*, and *Henry Buckley*, twelve, *&c.* then and there came, and were ſworn before the ſame Commiſſioners, to enquire of and upon the Premiſſes. Which ſaid Jurors be-

ing ſo charged, then and there ſaid upon their Oath, that the aforeſaid *Thomas* Archbiſhop of *Canterbury* aforeſaid, the *eighth* Day of *March* in the aboveſaid *twenty-ſixth* Year of the Reign of the aforeſaid late King *Henry* the *Eighth*, by the aforeſaid former Indenture above alledged, and then and there ſhewn to them in Evidence, granted, delivered, and to Farm let to the aforeſaid *John Hales* and *James Hales* the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* (except before excepted, as is aforeſaid), and that the aforeſaid *Thomas* then Prior of the late Priory of *Chriſt's-Church* in *Canterbury*, and the then Chapter of the ſame Church, by their Writing ſealed with their common Seal, bearing Date in their Chapter houſe the aforeſaid *third* Day of *April* in the aboveſaid *twenty-ſixth* Year of the Reign of the aforeſaid late King *Henry* the *Eighth*, and to the Jurors aforeſaid then and there likewiſe ſhewn in Evidence, the aforeſaid Demiſe to the aforeſaid *John* and *James Hales* (as is aforeſaid) made, ratified, approved, and confirmed. By virtue of which ſaid Grant, Demiſe, Ratification, and Confirmation, the aforeſaid *John Hales* and *James Hales* were of the aforeſaid Site and other the Premiſſes with the Appurtenances whereof, *&c.* (except as before excepted) poſſeſſed. And the ſaid *John Hales* and *James Hales* being ſo thereof poſſeſſed, the ſame *John Hales* afterwards died, and the aforeſaid *James Hales* ſurvived him, and held himſelf in the aforeſaid Site and other the Premiſſes with the Appurtences whereof, *&c.* and was thereof ſole poſſeſſed by Right of Survivorſhip, *&c.* And the ſaid *James Hales* being ſo thereof ſole poſſeſſed, the aforeſaid *Thomas* then Archbiſhop of *Canterbury*, by the aforeſaid other Indenture ſealed with his Seal, bearing Date the aforeſaid *twenty-ſecond* Day of *April* in the aboveſaid *fifth* Year of the Reign of the aforeſaid late King *Edward* the *Sixth*, and to the ſame Jurors then and there likewiſe ſhewn in Evidence, ratified and confirmed to the aforeſaid *James Hales* the aforeſaid Demiſe to the aforeſaid *John Hales* and *James Hales*, as is aforeſaid, made; and by the ſame other Indenture demiſed, granted, and to Farm-let to the aforeſaid *James Hales* and the aforeſaid *Margaret* then his Wife, the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* by the aforeſaid former Indenture demiſed (except as before excepted) in Manner and Form as is above alledged. And further the Jurors aforeſaid ſaid upon their Oath, that the whole Right, Title, Intereſt, and Term of Years which the ſame *James Hales* then had ſolely, by reaſon of the aforeſaid former Indenture, of and in the Premiſſes with the Appurtenances, as is aforeſaid, demiſed, as alſo the aforeſaid other Indenture to the aforeſaid *James* and *Margaret* made, and the Demiſe and Intereſt aforeſaid which the ſame *James* and the aforeſaid *Margaret* together or jointly had in the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, *&c.* (except as before excepted) the aforeſaid *fourth* Day of *Auguſt* in the *firſt* and *ſecond* Years aboveſaid, to the aforeſaid late King and Queen came and ought to come, belong, and appertain by reaſon of the Felony aforeſaid. Alſo the ſame Jurors ſaid, that the aforeſaid *James Hales* at the Time of his Death was poſſeſſed of ſeven Oxen, one Heifer, one Cow, five Geldings, and one thouſand Sheep and Lambs. And that the aforeſaid two ſeveral Indentures, *viz.* the aforeſaid former Indenture made to the aforeſaid *John Hales* and *James Hales*, and the aforeſaid other Indenture made to the aforeſaid *James Hales* and *Margaret*, at the Time of the Inquiſition aforeſaid taken, were in the Hands of one *John Webb* Gentleman; and that the Oxen, Heifer, Cow, Sheep, and Lambs, at the ſame Time of taking the ſaid Inquiſition were under the Care and Management of the ſaid *Cyriack*, by the Command of the honourable *William* Marqueſs of *Wincheſter*, Treaſurer of *England*. And that the aforeſaid ſeveral Demiſes, and the aforeſaid Oxen, Geldings, Heifer, Cow, Sheep, and Lambs were then worth 80*l.* in the whole to be ſold, beſides the aforeſaid annual Rent reſerved upon the ſame Demiſes: Which ſaid ſeveral Demiſes, and the aforeſaid Oxen, Geldings, Heifer, Cow, Sheep and Lambs the aforeſaid *William Roper*, *Chriſtopher Roper*, and *Roger Appleton* the laſt Day of *October* in the *firſt* and *ſecond* Years aboveſaid, by virtue of the Commiſſion aforeſaid at *Deptford* aforeſaid, took into the Hands of the ſaid late King and Queen, according to the Form and Effect of the ſaid Commiſſion. Which ſaid Inquiſition before the aforeſaid Commiſſioners in Form aforeſaid taken, together with the Commiſſion aforeſaid, the aforeſaid *William Roper*, *Chriſtopher Roper*, and *Roger Appleton*, on the aforeſaid Morrow of *All Souls*, before the Barons aforeſaid in the Exchequer aforeſaid, certified under their Seals, and the Seals of the aforeſaid twelve Jurors by whom the ſame Inquiſition was taken. And the ſame *Cyriack* further ſays, that by reaſon of the Premiſſes as well the Right, Title, Intereſt, Poſſeſſion, and Term of Years, which the aforeſaid *James Hales* at the aforeſaid Time of his Death had ſolely of and in the aforeſaid Site and other the Premiſſes with their Appurtenances above in Form aforeſaid demiſed, by virtue of the aforeſaid former Indenture, as the aforeſaid Right, Title, and Intereſt of and in the aforeſaid Site and other the Premiſſes with the Appurtenances, and of and in the aforeſaid other Indenture made to the ſame *James* and *Margaret*, which the ſame *James* and the aforeſaid *Margaret* together or jointly had in the ſame Premiſſes, by reaſon of the Felony aforeſaid by the aforeſaid *James Hales* in Form aforeſaid perpetrated and committed, were totally forfeited and loſt to the aforeſaid late King and Queen, and the whole Right and Intereſt of the aforeſaid *Margaret* of and in the ſame Premiſſes were ended and extinct; by Means whereof all and ſingular the Premiſſes juſtly came and belonged to the Hands and Poſſeſſion of the ſame late King and Queen. By reaſon of which ſaid Premiſſes the aforeſaid late King and Queen were as well of the aforeſaid Site of the Manor aforeſaid and other the Premiſſes with the Appurtenances whereof, *&c.* in Form aforeſaid above demiſed to the aforeſaid *John Hales* and *James Hales*, as of the aforeſaid ſeveral Indentures, poſſeſſed. And the ſame late King and Queen being ſo thereof poſſeſſed, afterwards, *viz.* the *twenty-firſt* Day of *November* in the *firſt* and *ſecond* Years aboveſaid, at *Weſtminſter* in the County of *Middleſex*, by their Letters-patent ſealed with their great Seal of *England* (which the ſame *Cyriack* here produces in Court, the Date whereof is the ſame Day and Year) by the Advice of their well beloved Couſin and Counſellor *William* Marqueſs of *Wincheſter*, Treaſurer of *England*, as well

well for the Sum of 80 *l.* of lawful Money of *England* at the Receipt of their Exchequer at *Weſtminſter* to the Uſe of the ſame late King and Queen then paid by the ſaid *Cyriack* and the aforeſaid *John Webb*, by the Names of their beloved and faithful Subjects *Cyriack Petit* Eſquire, and *John Webb* Gentleman, as for divers other Cauſes and Conſiderations the ſaid late King and Queen then ſpecially moving, gave, granted, and aſſigned to the ſame *Cyriack*, and to the aforeſaid *John Webb*, amongſt other Things, as well the aforeſaid Indenture made to the aforeſaid *John Hales* and *James Hales*, as is aforeſaid, and the aforeſaid Indenture in Form aforeſaid made to the ſaid *James Hales* and *Margaret* then his Wife, as the whole Right, Eſtate, Title, Term and Terms of Years, and Intereſt of them the ſaid late King and Queen, which the ſame late King and Queen then had or ought to have the aforeſaid *fourth* Day of *Auguſt*, or at any Time after had or ought to have, by Reaſon of the Premiſſes or any of them, of and in the ſame ſeveral Indentures, and of and in the aforeſaid Site of the Manor aforeſaid, and all and ſingular other the Premiſſes with the Appurtenances whereof, &c. (except as before excepted) to have, hold, and enjoy the aforeſaid two ſeveral Indentures, and all the aforeſaid Right, Title, Eſtate, Term and Terms of Years, and Intereſt aforeſaid, amongſt other Things, to the ſame *Cyriack* and the aforeſaid *John Webb*, their Executors and Aſſigns, from the aforeſaid *fourth* Day of *Auguſt* in the *firſt* and *ſecond* Years aboveſaid, during all the Reſidue of the Term, and during the Reſidue of the ſeveral Terms of Years in the ſame ſeveral Indentures and in both of them expreſſed and ſpecified, as fully, freely, and entirely, and in as ample Manner and Form, as all and ſingular the ſaid Premiſſes to the Hands of the ſaid late King and Queen by Reaſon or Force of the Felony aforeſaid, or by any other Right, Title, or Means came or ought to come, and as the ſame then were or ought to be in the Hands of the ſaid late King and Queen, as by the ſame Letters patent amongſt other Things more fully appears. By Reaſon of which ſaid Letters-patent the ſame *Cyriack* and the aforeſaid *John Webb* were poſſeſſed as well of the aforeſaid ſeveral Indentures, as of the aforeſaid Site and other the Premiſſes aforeſaid with the Appurtenances whereof, &c. (except as before excepted). And the ſaid *Cyriack* and *John Webb* being ſo thereof poſſeſſed, the aforeſaid *John Webb* afterwards and before the aforeſaid Time when &c. viz. the *firſt* Day of *January* in the *third* and *fourth* Years of the Reign of the aforeſaid late King and Queen *Philip* and *Mary*, at *London* in the Pariſh of *St. Ellen* within *Biſhopſgate* in the Ward of *Biſhopſgate*, died, and the ſame *Cyriack* ſurvived him, and held himſelf in the aforeſaid 200 Acres of Marſh with the Appurtenances newly aſſigned, amongſt other Things, and was and yet is thereof ſole poſſeſſed by Right of Survivorſhip, &c. by Reaſon of the Premiſſes; and the aforeſaid *Margaret* claiming the aforeſaid 200 Acres of Marſh with the Appurtenances newly aſſigned after the Death of the aforeſaid *James* by Right of Survivorſhip, &c. by Colour of the aforeſaid other Indenture to the aforeſaid *James* and the ſame *Margaret* in Form aforeſaid made (where nothing of the ſame 200 Acres of Marſh newly aſſigned by reaſon of the Felony aforeſaid by the ſaid *James* in Form aforeſaid committed, and of the aforeſaid Forfeiture thereon, ever paſſed by the ſaid Indenture into the Poſſeſſion of the aforeſaid *Margaret* after the Death of the aforeſaid *James*) into the aforeſaid 200 Acres of Marſh newly aſſigned with the Appurtenances before the aforeſaid Time when, &c. upon the Poſſeſſion of the ſaid *Cyriack* entered, upon the Poſſeſſion of which ſaid *Margaret* thereof the ſame *Cyriack* afterwards, viz. the ſame Time when, &c. into the aforeſaid 200 Acres of Marſh newly aſſigned with the Appurtenances re-entered, and the Cloſe aforeſaid in the ſame broke, and the Graſs aforeſaid there then growing with the Cattle aforeſaid eat up, trod down, and conſumed, as it was lawful for him to do; with this that the ſame *Cyriack* will aver that the aforeſaid 200 Acres of Marſh newly aſſigned with the Appurtenances are not parcel of the Tenements aforeſaid in the aforeſaid former Indenture, or in the aforeſaid other Indenture excepted: And this he is ready to verify, wherefore he prays Judgment if the aforeſaid *Margaret* her Action aforeſaid againſt him ought to have, &c.

Colour.

And the aforeſaid *Margaret* ſays that the aforeſaid Plea of the aforeſaid *Cyriack* above pleaded in Bar of the new Aſſignment aforeſaid is inſufficient in Law to preclude her the ſaid *Margaret* from having her Action aforeſaid againſt the ſame *Cyriack*, and that ſhe has no Neceſſity, nor is by the Law of the Land bound to anſwer that Plea in Manner and Form aforeſaid pleaded. And this ſhe is ready to verify, wherefore for Want of a ſufficient Anſwer in this Behalf, the ſame *Margaret* prays Judgment, and her Damages by Occaſion of the Treſpaſs aforeſaid to be adjudged to her &c.

Plaintiff demurs.

And the aforeſaid *Cyriack*, for that he has above alledged ſufficient Matter in Law to preclude the aforeſaid *Margaret* from having her Action aforeſaid againſt him, which he is ready to verify, which ſaid Matter the aforeſaid *Margaret* does not deny, nor thereunto in any wiſe anſwer, but the ſaid Averment wholly refuſes to admit, as before prays Judgment, and that the aforeſaid *Margaret* may be precluded from having her Action aforeſaid againſt him, &c. And becauſe the the Juſtices here will adviſe of and upon the Premiſſes before they give Judgment thereon, Day is given to the Parties aforeſaid here until the Octave of *St. Michael* to hear their Judgment thereon, becauſe the ſame Juſtices here thereof not yet, &c.

Joinder in Demurrer.

Continuance.

THE CASE.

It appears by the above Record that Lady *Margaret Hales* has brought a Writ of Treſpaſs againſt *Cyriack Petit* for a Treſpaſs done the 21ſt Day of *November* in the 2d Year of the Reign of the preſent Queen, at *Graveney* in the County of *Kent*, and upon new Aſſignment aſſigns the Treſpaſs certainly, viz. in 200 Acres of Marſh called *Graveney* Marſh. The Defendant pleads in Bar that *Thomas* Archbiſhop of *Canterbury* was ſeized of the ſaid Marſh in his Demeſn as of Fee, in Right of his Archbiſhopric. And being ſo ſeized, he the 8th Day of *March Anno* 26. *H.* 8. leaſed the ſame by Indenture to *John Hales*, and to Sir *James Hales* late Huſband of the

Huſband and Wife being Joint-tenants of a Term for Years, the Huſband becomes *felo de ſe*, and the Wife is in by Survivor, yet upon Office found the King ſhall have the whole Term. S. C. S. P. cited 9 Co. 129. b. W. Jones 21. Hardr. 24. Jenk. 65. pl. 22. 3 Inſt. 55. H. P. C. 30. 1 H. H. P. C. 413. 107. b. 1 Finch 230. 2 Finch 216. Godolph. Orph. Leg. 131, § 2. 4 Bac. Abr. 198. Vin. Abr. tit. Baron and Feme Z. 3. pl. 5. tit. Forfeiture R. pl. 10. in Margine.

Crompt. J. C.

Plaintiff for the Term of 20 Years next enſuing the Feaſt of *St. Michael* the Archangel which ſhould be in the Year of our Lord 1540, which was confirmed by the Prior of *Chriſt's-Church* in *Canterbury*, and by the Chapter of the ſame Church; and they entered after the ſaid Feaſt of *St. Michael*, and *John Hales* died, and Sir *James* had the whole Leaſe by Survivorſhip. And he being ſo poſſeſſed, the ſaid Archbiſhop the 22d Day of *April Anno* 5. *Edw.* 6. by his Indenture reciting the ſaid Leaſe, ratified and confirmed it; and further by the ſame Indenture leaſed the ſame Marſh to the ſaid Sir *James* and to the ſaid *Margaret* then his Wife, to have and to hold to them from the Feaſt of *St. Michael* which ſhould be in the Year of our Lord 1560, unto the End of 12 Years thence next enſuing. And they by virtue thereof being poſſeſſed, and the ſaid Sir *James* being alſo poſſeſſed of the Premiſſes by Force of the firſt Indenture, the ſaid Sir *James Hales* the 4th Day of *Auguſt Anno* 1 & 2 *Philip* and *Mary*, feloniouſly and voluntarily drowned himſelf in a River in the Pariſh of *St. Mildred* in the County of the City of *Canterbury*. And he ſhews alſo that the ſame Day all this Matter was found accordingly before the Coroner upon the View of the Body there lying dead. And afterwards by virtue of a Commiſſion out of the Exchequer directed to Sir *Martin Bowes* Knight and others, to enquire what Goods, Chattles, and Leaſes the ſaid Sir *James* had ſolely or jointly with others in the County of *Kent* at the ſame Time that he killed and murdered himſelf, the 30th Day of *October* in the ſaid 1 & 2 Years of *Philip* and *Mary* an Inqueſt found the ſaid Leaſes and Intereſts, and alſo found that the ſaid Title, Intereſt, and Term of Years which the ſaid Sir *James* had ſolely by the firſt Leaſe, and alſo the Leaſe and Intereſt which the ſaid Sir *James* and *Margaret* had by the ſecond Leaſe, the ſaid 4th Day of *Auguſt* came and ought to come to the ſaid late King and Queen by Reaſon of the Felony aforeſaid; and the ſaid Office was accordingly returned into the Exchequer, by Force whereof both the Leaſes and Intereſts were forfeited to the ſaid King and Queen, and came to their Hands, and they the 21ſt Day of *November* in the ſaid 1 & 2 Years of *Philip* and *Mary* by their Letters-patent granted their Eſtates in them to the Defendant, and to one *John Webb*, who afterwards died; and the ſaid Plaintiff claiming the ſaid Marſh as Survivor to her ſaid Huſband entered upon the Poſſeſſion of the Defendant, and the Defendant at the ſame Time of the Treſpaſs ſuppoſed to be done re-entered into the ſaid Marſh, and did the Treſpaſs, &c. And upon this the Plaintiff has demurred.

Mich. Term 4 & 5. *Eliz.* For the Plaintiff.

And *Southcote* and *Puttrel* Serjeants argued on the Part of the Plaintiff. And they ſaid that the Bar was not good, and that it does not diſcloſe ſufficient Matter to deveſt the Term out of the Plaintiff, and to put it in the King and Queen. For firſt, the Bar conveys the Term of 12 Years to the Plaintiff and to her Huſband jointly, and it has ſhewn the Death of the Huſband, which gives the Wife Title to have the whole Term as Survivor, and the Cauſe that ſeems to interrupt this Title (if there be any) is, for that the Huſband drowned himſelf, and ſo was a *felo de ſe*. But this Cauſe ſhall not take away her Title of Survivorſhip, for in this Manner of Felony two Things are to be conſidered. Firſt, the Cauſe of the Death; ſecondly, the Death enſuing the Cauſe, and theſe two make the Felony, and without both of them firſt done the Felony is not conſummate. And the Cauſe of the Death is the Act done in the Party's Lifetime, which makes the Death to follow. And the Act which brought on the Death here was the throwing himſelf voluntarily into the Water, for this was the Cauſe of his Death. And if a Man kills himſelf by a Wound which he gives himſelf with a Knife, or if he hangs himſelf, as the Wound or the Hanging, which is the Act done in the Party's Lifetime, is the Cauſe of his Death, ſo is the throwing himſelf into the Water here. And this Act which he has done to himſelf is to be conſidered in the ſame Light as if he had done it to another, and if he had given another a mortal Wound whereof he afterwards died, there altho' the Wound was the Cauſe of the Death, yet it ſhould not have Relation, as to the Forfeiture of his Goods, to the Time of the Wound given, for if he had given his Goods to another after the Wound, and before the Death, the Gift ſhould have been good. [a] And in 11. *H.* 4. one that had given a mortal Wound to another was arreſted by two Conſtables, and afterwards they voluntarily let him eſcape, and after that the Party wounded died, and there by the better Opinion this is not Felony in the Conſtables, for the Death has not Relation to the Cauſe of it, nor was he that gave the Wound a Felon before the Party wounded died. So here the Death has not Relation to the Cauſe of it, but for the Forfeiture it has Relation to the Death itſelf, and when the Death comes, then he ſhall be adjudged a Felon. And foraſmuch as he cannot be attainted of his own Death, becauſe he is dead before there is any Time to attaint him, the finding of his Death by the Coroner, or other Perſon authoriſed, is by Neceſſity of Law equivalent to an Attainder in Fact coming after his Death, as to his Goods. And therefore the King ſhall have all his Goods which ſhould have come to his Executors, or which he might have deviſed to another, if he had been a Perſon able, and had not done ſuch Act, and becauſe the King ſhall have them, the Party cannot [b] make his Executors, nor a Teſtament, where he is a *felo de ſe*. But the King ſhall have no more than the *felo de ſe* has in his own Right, or which ſhould have come to his Executors if he had not been a *felo de ſe*. For his Forfeiture ſhall only have Relation to the Time of the Death, and the Death precedes the Forfeiture, for until the Death is fully conſummate he is not a *felo de ſe*, for if he had killed another, he ſhould not have been a Felon until the other had been dead. And for the ſame Reaſon he cannot be a *felo de ſe* until the Death of himſelf be fully had and conſummate. For the Death precedes the Felony both in the one Caſe and in the other, and the Death precedes the Forfeiture. But nevertheleſs the Forfeiture comes at the ſame Inſtant that he dies, yet in Things of an Inſtant there is a Priority of Time in Conſideration of Law, and the one ſhall be ſaid to precede the other, altho' both ſhall be ſaid to happen at one Inſtant, [c] for every Inſtant contains the End of one Time, and the Commencement of another. And accordingly here the Death and the Forfeiture ſhall come together, and at one ſame Time, and yet there is a Priority, that is, the End of his Life makes the

[a] M. 11. H. 4. 12. pl. 26. Fitz. Coron 84. Bro. 28. Eſcape 8. Relation 7. S. P. C. 33. a. 1 H. H. P. C. 427, 501. H. P. C. 108. 2 Hawk. P. C. 126, 2 Inſt. 501. Ld. Raym. 827. 7 Mod. 158. 11 Mod. 11. 2 Bac. Abr. 636. Vin. Abr. tit. Relation K. pl. 1. Poſt 263 (g) 401.

[b] Godolph. Orph. Leg. 37, § 7. 302, § 3.

[c] Co. Litt. 185. b. Vin. Abr. tit. Inſtant A. pl. 2.

the Commencement of the Forfeiture, tho' at the ſame Time the Forfeiture is ſo near to the Death that there is no mean Time between them, yet notwithſtanding that, in Conſideration of Law the one precedes the other, but by no Means has the Forfeiture Relation to any Time in his Life. Then here, if the Forfeiture has not Relation to any Time in the Life of Sir *James Hales*, but to the Time of his Death, (and to that only it has Relation) from thence it follows that every one who makes Title to his Goods or Chattles, which Title is accrued ſince his Death, whether he be Legatee, Executor, Adminiſtrator, or Ordinary, or other Perſon whatſoever, he comes too late to make it, for the Title of the King and Queen ſhall be adjudged in Law paramount it, which is the Reaſon that he cannot make Executors or a Teſtament of them, nor ſhall the Ordinary have them; and alſo from thence it follows that every one who can make Title to the Goods or Chattles which belonged to him, or were in his Poſſeſſion, which Title is elder than his Death, ſhall avoid the Title of the King and Queen. Then here, when Sir *James Hales* and his Wife were Jointenants of the Leaſe for 12 Years, there was no † Moities between them, but each of them took the whole. So that the Wife took the whole, and her Title to it was before the Death of her Huſband, viz. in his Life time, for ſhe claims by the firſt [a] Leſſor, and not by her Huſband. [b] And if the Huſband charges the Land, after his Death ſhe ſhall avoid it, as it is taken in 7. *H.* 6. for ſhe is remitted to the Term, and is upon Title paramount the Charge. [c] As if a Man aliens Trees growing in his Land which he has in Tail, [d] or in his Land which he has in Right of his Wife, and dies before they are cut down, the Alienee ſhall not cut them down, as *Southcote* ſaid, for the Iſſue in Tail is in upon Title paramount the Alienation, viz. by the Donor, and ſo is the Wife. [e] So, he ſaid, by 14. *H.* 4. the Lord ſhall take the Ward, who is an Apprentice, out of the Poſſeſſion of his Maſter, becauſe his Title to his Body accrues in reſpect of the Seigniory, which is more ancient than the Apprenticeſhip. In like Manner here the Plaintiff's Title to the Leaſe is by the firſt Leſſor, and ſhe claims no more than that which ſhe had in the Life of her Huſband; ſo that her Title is paramount the Death of her Huſband, and the Title of the King and Queen is paravail his Death, and therefore too late. But perhaps it may be objected, that as the whole Term without Moities was in the Wife in the Life of her Huſband, ſo was the whole Term without Moieties in the Huſband during his Life, and until the Death was conſummate, and then when after his Death the Title of the Wife to have the whole by Survivorſhip came, and the Title of the King and Queen to have the whole which the Huſband had, came alſo at the ſame Time, then the Title of the King, which comes all at one Time with the Title of another at an Inſtant, ſhall be preferred; Sir, as to this, it appears in 49. *Ed.* 3. [f] that the King's Tenant in *London*, who held of him in Burgage, deviſed the Land to his Wife for Life, and died without Heir; there it ſeems by the Book that the Deviſe is good, and yet the Deviſe did not take Effect but after the Death of the Deviſor, and then the Title by Eſcheat came to the King, ſo that the Title of the Wife by Demiſe, and of the King by Eſcheat came together at the ſame Inſtant, and yet the Wife was preferred, which is in reſpect that the Deviſe was made in the Life of the Tenant, altho' it took Effect after his Death; wherefore ſeeing that ſome Part of the Title of the Wife commenced in the Life of the Deviſor, it ſhall be adjudged *eigne* to the Title of the King; and this Caſe was put by *Puttrel*. *A fortiore*, he ſaid, is it in our Caſe, for the Title of the Wife now Plaintiff was altogether in the Life of the Huſband, and therefore ſhall be more *eigne* than the Title of the King and Queen. [g] And in 7 & 8. *Ed.* 4. an Obligation was made to two, and one of them became a *felo de ſe*, and by the better Opinion the Survivor ſhall ſue the Obligation, and not the King. The ſame Reaſon is there in our Caſe why the Wife ſhall have the Term, and Survivorſhip holds Place as much in this as in the other Caſe. Wherefore it ſeemed to them that the Term of 12 Years never came to King *Philip* and Queen *Mary*, and that their Grant of it to the Defendant and *Webb* was void. And as to the finding of the Jurors that the Term of 12 Years came and ought to come to the King and Queen by Reaſon of the ſaid Felony, to this *Southcote* ſaid [h] that their ſaying does not bind the Party, if the Law be otherwiſe, *quod Curia conceſſit*, for they are not Judges to adjudge Matter of Law, but Jurors to find the Matter of Fact. Wherefore it ſeemed to the ſaid *Southcote* and *Puttrel* that the Plaintiff ſhould recover.

† T. Raym. 122. See Ante 58(m).

[a] 2 Rol. R. 286.

[b] M. 7. H. 6. 2. a. *per Rolf.* Ibid. 2. b. *per Chaunt.* Fitz. Charge 1. Bro. 41. Litt. § 286.

[c] M. 11. H. 4. 32. pl. 59. *per Hill.* Fitz. Bar 180. Bro. Contract 11. Done 10. Waſt 67. 11 Co. 50. a. 1 Rol. R. 99, 101. 2 Bulſt. 7. Bridgm. 65. Perk. § 58. Cowel's Inſt. 112. Poſt 437. Sed Contra P. 27. 27. H. 8. 5. pl. 16. *per Fitz. et Shilley.* Bro. Contract 2. Done 2. Tayl 1. So if Tenant in Tail grants the Veſture of his Woods, and dies, the Grantee cannot cut the Wood afterwards, 1 Rol. Abr. 842 pl. 5, againſt the Opinion of *Belknap* M. 38 Ed. 3. 24. a.

[d] 18 Ed. 4. 6. a. 21 b. Bro. Contract 26. Dette 165. 1 Rol. R. 99. 2 Bulſt. 7.

[e] H. 14. H. 4. 32. pl. 45. Fitz. Gard 83. Bro. 79. De ſon tort demeſne 9. F. N. B. 143. i. Crompt. J. C. 123. a.

[f] H. 49. Ed. 3. 3 b. Fitz. Deviſe 7. 2 Co. 53. a. Hardr. 26.

[g] 8 Ed. 4. 4. a. 24. b. Bro. Corone 151. Jointenants 34. Obligation 50. Office devant Eſch. 43. Prerogative 67. Sed Contra 3 Inſt 55. 1 Hawk P.C. 68. § 7. T. Raym. 7. 121, 122. Ante 243 (f). Poſt 323 (e).

[h] See like Point Ante 114 (i).

On the contrary it was argued by *Walſh*, *Cholmley*, *Bendloe*, and *Carus* Serjeants, that the Forfeiture of the Goods and Chattles real and perſonal ſhall have Relation to the [i] Act done in the Party's Lifetime, which was the Cauſe of his Death; and upon this the Parts of the Act are to be conſidered. [k] And *Walſh* ſaid that the Act conſiſts of three Parts. The firſt is the Imagination, which is a Reflection or Meditation of the Mind, whether or no it is convenient for him to deſtroy himſelf, and what Way it can be done. The ſecond is the Reſolution, which is a Determination of the Mind to deſtroy himſelf, and to do it in this or that particular Way. The third is the Perfection, which is the Execution of what the Mind has reſolved to do. And this Perfection conſiſts of two Parts, viz. the Beginning and the End. The Beginning is the doing of the Act which cauſes the Death, and the End is the Death, which is only a Sequel to the Act. And of all the Parts the doing of the Act is the greateſt in the Judgment of our Law, and it is in Effect the whole, and the only Part that the Law looks upon to be material. For the Imagination of the Mind to do Wrong, without an Act done, is not puniſhable in our Law, neither is the Reſolution to do that Wrong, which he does not, puniſhable, but the doing of the Act is the only Point which the Law regards; for until the Act is done, it cannot be an Offence to the World, and when the Act is done it is puniſhable. Then here the Act done by Sir *James Hales*, which is evil and the Cauſe of his Death, is the throwing himſelf into the Water, and the Death is but a Sequel thereof, and this evil Act ought ſome Way to be puniſhed. And if the Forfeiture ſhall not have Relation to the doing of the Act, then the Act ſhall not be puniſhed at all, for inaſmuch as the Perſon who did the Act is dead, his Perſon cannot be puniſhed, and therefore there is no

E contra for the Defendant.

[i] 1 H. H. P. C. 413. 1 Finch 232. 2 Finch 216.

[k] See Crompt. J. C. 74. a. b.

Way

Way elſe to puniſh him but by the Forfeiture of thoſe Things which were his own at the Time of the Act done, and the Act was done in his Lifetime, and therefore the Forfeiture ſhall have Relation to his Lifetime, viz. to that Time of his Life in which he did the Act that took away his Life. And *Bendloe* ſaid, if the Forfeiture ſhall only have Relation to the Death, and the Death be taken to precede the Forfeiture, then he ſhall forfeit nothing; for when he is dead the Goods are not his own, for a dead Man can have no Property, and ſuch Forfeiture would be a Prejudice to others who ought to have the Goods then, and not to the Party himſelf; for which Reaſon it is inconſiſtent to ſay that his Act ſhall forfeit the Goods which are not his own, but it is more fit to ſay that his evil Act ſhall forfeit the Things which are his own, and that cannot be unleſs the Forfeiture ſhall have Relation to that Time of his Life when the Offence was committed, and when the Goods were his own. [a] And in every Act, as *Walſh* ſaid, the Law has Reſpect to the Beginning; [b] and therefore, he ſaid, in 22. *Ed.* 3. a Lunatic wounded himſelf mortally with a Knife, and afterwards he became of ſound Mind, and had the Rights of Holy Church, and after died of the ſaid Wound, and his Chattles were not forfeited; for the Law has Reſpect to the Beginning, and when he gave himſelf the Wound he was out of his Senſes, in which Caſe the killing of another ſhould not be adjudged Felony in him, nor ſhould he die for it, and by the ſame Reaſon he ſhall not be a Felon for killing himſelf, and yet when he died he was of ſound Mind, but the Law does not ſo much reſpect the Condition he was in when he died, as the Condition he was in when he did the Act which was the Cauſe of his Death. [c] So he cited the Caſe in 33. *Aſs. pl.* 7. where a Servant, a Year after he was out of his Service, killed his Maſter upon Malice which he had conceived againſt him when he was his Servant, and this Offence was adjudged Treaſon, and he had Judgment accordingly; and yet he was not his Servant when he killed him, but the Law has Regard to the Beginning and the Cauſe of killing him. So here the throwing himſelf into the Water is the Beginning and the Cauſe of the Death, which ought to be puniſhed for an Example to others, and foraſmuch as his Body cannot be puniſhed, the Puniſhment ought to be by his Goods, for the Puniſhment of this Felony varies from the Puniſhment of other Felonies. For Felonies done to others may be puniſhed in the Life of the Offenders by Indictment, Arraignment, Judgment, and Execution, in which Caſe the Offenders ſhall forfeit their Goods, Chattles, and Lands, and ſhall be put to Death beſides; but in this Offence, altho' for Example to others it deſerves as great Puniſhment as any other Felony does, yet the Offender himſelf has prevented a great Part of the Puniſhment, viz. the Death, and the Forfeiture of his Land. [d] For the Law has ſo great Regard to the Inheritance, that it ſhall not eſcheat without an Attainder in Fact, which cannot be here any more than Execution by Death, becauſe the Party has killed himſelf before, ſo that he cannot be brought to Arraignment, by Reaſon of his own Act, and therefore no Judgment can be given againſt him. So that there is no other Means to make him forfeit that which he ought to forfeit, viz. his Goods and Chattles, but by Inquiry and finding of it by the Oath of 12 Men before the Coroner, or other Perſon aſſigned, which Inquiry and Finding ought in all Reaſon to be equivalent, as to the Things that ſhall be forfeited, to a Judgment given upon Arraignment, if the Party had killed another Perſon, in which Caſe the Judgment is given in his Life time, and by the like Reaſon this Inquiry and Finding ſhall be equivalent to a Judgment given in his Lifetime, inaſmuch as his own Act is the Cauſe why Judgment could not be given againſt him in his Life time. And ſo in other Caſes when Judgment by Law cannot be given, the Law ſupplies it by other Means. [e] And hereupon *Bendloe* put the Caſe, that if the Defendant in an Appeal wages Battle, and the Appellor kills him, the Appellee ſhall forfeit his Goods and Chattles, and his Lands ſhall eſcheat, for Judgment cannot be given againſt him becauſe he is killed, and therefore the Law ſays that this killing is equivalent to a Judgment and Execution. [f] And upon this *Walſh* and *Carus* alſo cited the Caſe in 3. *Ed.* 3. *Itinere North.* where it appears that one who had taken Sanctuary in a Church was out in the Night, and the Town purſued him, and the Felon defended himſelf with Clubs and Stones, and would not render himſelf to the King's Peace, and one ſtruck off his Head, and the Goods of the Perſon killed were forfeited, for he could not be arraigned, becauſe he was killed by his own Fault, for which Reaſon upon the Truth of the Matter found his Goods were forfeited, and the King had Year, Day, and Wait. Wherefore when the Party, againſt whom Judgment ought to be given, is the Cauſe why Judgment cannot be given againſt him, an Inquiry of 12 Men ſhall be equivalent to it. So here this Inquiry before the Coroner *ſuper viſum corporis*, and the Inquiry of the Certainty of the Leaſe before the Commiſſioners, is equivalent, as to the Forfeiture of the Goods, to a Judgment given againſt him in his Lifetime, and to an Inquiry then had. And if the Forfeiture here has Relation to the Act which was the Cauſe of the Death, viz. to the throwing himſelf into the Water, then all the Goods and Chattles as well real as perſonal, which belonged to Sir *James Hales* at that Time, are forfeited. [g] As if my Horſe (as *Carus* ſaid) ſtrikes a Man, and afterwards I ſell my Horſe, and after that the Man dies, the Horſe ſhall be forfeited. [h] So, he ſaid, if a Villain voluntarily gives himſelf a Wound, and afterwards the Lord of the Villain ſeizes his Goods, and after that the Villain dies, and the Coroner finds the Matter as it is, the King ſhall have the Goods out of the Poſſeſſion of the Lord, becauſe the Forfeiture has Relation to the Wound given. And as it is of perſonal Things which were the Party's own, ſo, he ſaid, it ſhall be here with Regard to this Leaſe; for as an actual Gift [i] of this Leaſe made by Sir *James Hales* to another in his Life time ſhould have taken away the Right of the Wife now Plaintiff, ſo a Forfeiture made by Sir *James* in his Life time ſhould have taken it away, as if he had been outlawed or attainted in his Life time, for this is a Gift in Law of the Term. And as an Outlawry or Attainder in his Life time ſhould have taken away the Right of the Wife to the Term, ſo the Title to the Term which is given to the King by the Act done by Sir *James* in his Life time, and by the Inquiry

[a] 3 Bulſt. 8.

[b] Fitz. Corone 241. Abridgment of Aſſizes 73. b. Theol. Dig. lib. 1. cap. 8. § 14. Moor 140. 1 Co. 99. b. 4 Co. 42. a. 3 Inſt. 54. S. P. C. 19. d. 1 H. H. P. C. 412. Ld. Raym. 826.

[c] 33 Aſs. pl. 7. Fitz. Corone 210. Bro. 116. Treaſon 15. 1 Co. 99. b. 3 Bulſt. 257. 2 Brownl. 116. Poph. 147. Ld. Raym. 826. 3 Inſt. 20. S. P. C. 10. m. H. P. C. 23. 1 H. H. P. C. 380. 1 Hawk. P. C. 88 § 4. Dalt. Juſt. cap. 147. § 2. 1 Finch 9. 2 Finch. 10. Wentw. Off. of Exec. 246. Wing. Max. reg. 25. pl. 11.

[d] 3 Inſt, 55.

[e] See Contra Poſt 261, 262 *per Wilſon, et per Dyer.* But the Opinion of *Brown* Poſt 262 agrees herewith.

[f] 3 Ed. 3. *Itin. North.* Fitz. Corone 290. and ſee L. P. Ibid. 289, 312. 5 Co. 109. b. 3 Inſt. 222. S. P. C. 184. c. 191. b. 1 H. H. P. C. 343. 2 Hawk. P. C. 451. § 16. 2 Bac. Abr. 578. But Stamf. Prerog. 40. a. makes a Doubt whether the Law be not altered in this Point by Statute of 34 *Ed.* 3. *cap.* 12.

[g] Vin. Abr. tit. Deodand A. pl. 8.

[h] 3 Inſt. 55. H. P. C. 29. 1 H. H. P. C. 414.

[i] S. P. Co. Litt. 351. a. 1 Finch 232. 2 Finch 212.

ſuggeſtive words, which has Relation to the Act, ſhall take away the Right of the Wife, and the Law ſhall be remitted in the mean time to deſtroy that Title. For if Title is once given to the King, *nullum tempus occurrit Regi*, ſo that if the King has once a Title, it remains for ever. And upon this Reaſon put the Caſe in 50 *Aſſ.* where Huſband and Wife had a joint Eſtate for thirty Years in certain Land, and the Huſband died, and the Wife held herſelf in, and it was found by Office that the Huſband had received certain Money of Sir *Hugh Spencer* who was attainted, whereby the Money belonged to the King, and the ſaid Leaſe was found *ut ſupra*, out of which Office a *Scire facias* iſſued againſt the ſaid Wife; and it was adjudged that the King ſhould have the Term in Execution, for if this had been found in the Huſband's Lifetime, the King ſhould have had Execution of the Term in the Life of the Huſband, and now this Title found by Office ſhall have Relation to the Life of the Huſband, and as he ſhould have had the Term in Execution in the Huſband's Life, ſo ſhall he have it now, *quia nullum tempus occurrit Regi*. So is it in the Caſe here. For which Reaſons it ſeemed to them that the Forfeiture has Relation to the Act done in the Life of the Huſband, *viz.* the throwing himſelf into the Water, and that this ſhall take away the Term from the Wife now Plaintiff, and conſequently that ſhe ſhall be barred.

[a] 50 Aſſ. pl. 5. Fitz. Execution 113. Bro. 148. Charge 34. Jointenants 30. Prerogative 54. Moor 193. 8 Co. 171. a. Hardr. 24 Crompt. J. C. 107. b. Poſt 263 (1).

And afterwards this ſame Term the Juſtices argued, *viz. Weſton*, *Anthony Brown*, and the Lord *Dyer*. But I only heard the Lord *Dyer*, and therefore what I ſay concerning the other two, I deliver only upon credible Report. And all the Juſtices argued that the Forfeiture of the Goods and Chattles real and perſonal ſhall have Relation to the Act done by Sir *James Hales* in his Lifetime, which was the Cauſe of his Death, *viz.* [b] the throwing himſelf into the Water. And upon this the Lord *Dyer* ſaid that five Things are to be conſidered in this Caſe. Firſt, the Quality of the Offence of Sir *James Hales*; ſecondly, to whom the Offence is committed; thirdly, what he ſhall forfeit; fourthly, from what Time the Forfeiture ſhall commence; and fifthly, if the Term here ſhall be taken from the Wife. And as to the Quality of the Offence which Sir *James* has here committed, he ſaid, it is in a Degree of Murder, and not of Homicide or Manſlaughter, for Homicide is the killing a Man felonioufly without Malice prepenſe, [c] but Murder is the killing a Man with Malice perpenſe. And here the killing of himſelf was prepenſed and reſolved in his Mind before the Act was done. And alſo it agrees in another Point with the ancient Definition of Murder, *viz.* [d] that *murdrum eſt occulta hominum occiſio, nullo præſente, nullo ſciente*; ſo that always he who determines to kill himſelf, determines by the Inſtigation of the Devil to do it ſecretly, *nullo præſente, nullo ſciente*, leſt he ſhould elſe be prevented from doing it. Wherefore the Quality of the Offence is Murder.

Curia.

[b] 1 Finch 232. 2 Finch 216.

1 Point. The Quality of the Offence of a *felo de ſe*.

[c] S. P. C. 18. b.

[d] Bract. 134. b. Britt. cap. 6. S. P. C. 12. c. 17. e.

As to the ſecond Point, it is an Offence againſt Nature, againſt God, and againſt the King. Againſt Nature, becauſe it is contrary to the Rules of Self-preſervation, which is the Principle of Nature, for every thing living does by Inſtinct of Nature defend itſelf from Deſtruction, and and then to deſtroy one's ſelf is contrary to Nature, and a Thing moſt horrible. Againſt God, in that it is a Breach of his Commandment, *thou ſhalt not kill*; and to kill himſelf, by which Act he kills in Preſumption his own Soul, is a greater Offence than to kill another. Againſt the King, in that hereby he has loſt a Subject, and (as *Brown* termed it) he being the Head has loſt one of his myſtical Members. Alſo he has offended the King, in giving ſuch an Example to his Subjects, and it belongs to the King, who has the Government of the People, to take Care that no evil Example be given them, and an evil Example is an Offence againſt him.

2 Point. Againſt whom the Offence is committed.

As to the third Point, what he ſhall forfeit. It was agreed by all the Juſtices, that he ſhall forfeit all his [e] Goods, Debts, and Chattles, real and perſonal, by reaſon of the Offence aforeſaid. For *Brown* ſaid, the Reaſon why the King ſhall have the Goods and Chattles of a *felo de ſe*, and that he cannot make [f] his Executors of them, is not becauſe he is out of [g] holy Church, ſo that for that Reaſon the Biſhop will not meddle with them, and therefore the King ſhall have them as Goods with which no other will meddle, [h] but the King ſhall have them as forfeited to him for the ſaid Offence, *viz.* for the Loſs of his Subject, and for the Breach of his Peace, and for the evil Example given to his People, and not in reſpect that holy Church will not meddle with them, for he is adjudged none of the Members of holy Church. And if this ſhould be the Reaſon, then, (he ſaid) put the Caſe [i] that a Man voluntarily gives himſelf a mortal Wound, and afterwards he repents, and is reconciled to holy Church, and has the Rights of holy Church, and after that dies, now the ſaid Reaſon that he is out of holy Church will not hold Place, but yet notwithſtanding holy Church ſuppoſes him capable of making his Executors, will any one ſay that the King ſhall not have all his Goods? Certainly he ſhall, and the Biſhop ſhall not have them, nor can the Party make his Executors, or have Adminiſtrators, for he cannot have Executors or Adminiſtrators where he has nothing to leave, and all the Goods that he had are the King's, and forfeited to him for the Cauſe aforeſaid. But all the Juſtices agreed [k] that he ſhall not forfeit his Land, [l] nor the Wife her Dower, [m] nor ſhall the Blood be corrupted, for the Eſcheat of the Land, the Loſs of the Wife's Dower, and the Corruption of the Blood cannot be without an Attainder in Deed. And therefore *Weſton* ſaid, that in an Appeal if the Appellee wages Battle, and the Appellor kills him, the Appellee ſhall forfeit all his Goods and Chattles, but his

3 Point. What a *felo de ſe* ſhall forfeit.

[e] Bract. 150. a. Britt. cap. 7. fo. 15. b. 8 Ed. 2. Fitz. Corone 426. 3 Ed. 3. Fitz. Ibid. 301, 562. T. 22 Ed. 3. Fitz. Ibid. 259. M. 8. H. 4 2. a. *Per Tillesley*. S. P. C. 19. d. 188. i. H. P. C. 30. 1 H. H. P. C. 413. 1 Hawk. P. C. 68, § 7. 3 Inſt. 55. Stamf. Prerog. 46. a. Bac. Law Tracts 110, 139. 1 Finch 231, 232, 2 Finch 216. Cowel's Inſt. 124, § 4. 261, § 16. 2 Bac. Abr. 482.

[f] Godol. Orph. Leg. 37, § 7. 302, § 3.

[g] As were the Opinions in P. 19 H. 6. 63. a. *Per Paſton*. P. 8 Ed. 4. 4. a. *Per Nedham*. P. 27. H. 8. 9. b. *Per Mountague*.

[h] Herewith agrees the Opinion of *Littleton*. P. 8. H. 4 4 a.

[i] Ibid.

[k] Britt. 150. a. Britt. cap. 7. fo. 15. b, 16. a. 3 Ed. 3. Fitz. Corone 362. T. 22 Ed. 3. Fitz Ibid. 259. S. P. C. 19. c. H. P. C. 30. 1 H. H. P. C. 413. 1 Hawk. P. C. 68, § 8. 3 Inſt. 55. 1 Finch 231, 232. 2 Finch 216. Bac. Law Tracts 110, 139. Cowel's Inſt. 124, § 4. 2 Bac. Abr. 482.

[l] 3 Ed. 3. Fitz. Corone 362. And ſee the Books next before cited.

[m] Vin. Abr. tit. Blood corrupted A. pl. 2. and the Books above cited.

* 8 Ed. 3. Bro. Appeal 115, 145. Eſcheat 24. But Fitz. Judgment 225 is that he was ſlain in the Field, and ſuch Judgment was given, and ſo is it cited Co. Litt. 390. b. 2 Hawk. P. C. 447, § 25.

† Herewith agrees Ante 260 (c). *Per Londlee.*

Lands ſhall not eſcheat, for the Inheritance is ſo greatly favoured that it ſhall not be forfeited without an expreſs Attainder by Judgment; but if the Appeller overcomes the Appellee, then his Land ſhall be forfeited, for when he is overcome and not killed, * Judgment ſhall afterwards be given againſt him that he ſhall be hanged, and therefore in that Caſe his Land ſhall eſcheat, but not in the other Caſe, becauſe no Judgment is given; but *Brown* denied this Opinion, for he ſaid, † when the Appellee is killed, this is the Trial and End of the Matter in this Point, and foraſmuch as the Matter is ended by a Trial conſonant to Law, this is ſufficient to convict him of the Fact imputed to him, and to attaint him, in which Caſe his Land ſhall eſcheat. [a] For in 8. *Ed.* 3. a Woman brought a Writ of Dower, and the Tenant ſaid that her Huſband went into *Scotland*, and there adhered to the King's Enemies, and came into this Realm with the King's Enemies, and afterwards died in *Scotland*, and it ſeems a good Bar by [b] Averment, for other Law could not be had againſt him. [c] For if a Man is ſlain in the Field in War againſt the King, this is an Attainder in Law without any thing further, by the ancient Law of the Land, for he himſelf is the Cauſe why the Courſe of Law could not proceed againſt him. But *Dyer* denied the Law to be with *Brown* in the Caſe of an Appeal, for he ſaid there are but three [d] Writs of Eſcheat concerning Attainders for Felony, one is, *pro qua ſuſpenſus eſt*, another *pro qua abjuravit regnum*, the third, *pro qua utlagatus eſt*, and this Caſe is none of them. [e] And if there be no Writ in the *Regiſter* in ſuch Caſe, it is a good Cauſe to ſay that the Land ſhall eſcheat therein. But in our principal Caſe they agreed *ut ſupra*, that his Goods, Debts, Chattles real and perſonal ſhall be forfeited for killing himſelf, but that the Land ſhall eſcheat, nor is Wife forfeit her Dower, nor the Blood be corrupted between him and his [illegible].

a P. 8. Ed. 3. 20. pl. 6. Fitz. Dower 166. N. Bendl. 57.

b But *Note*, the Rule of the Book is againſt this, and ſo it is cited in 1 H. H. P. C. 343, that the Judges would not allow an Averment that the Party died in Rebellion, or adhering, &c. without a Record of his Conviction, for he might be there againſt his Will.

c Poſt 263 (a). And 1 H. H. P. C. 342 agrees that the Law was ſo anciently, but if at this Day, ſee the Books cited Poſt 263 (b).

d Regiſt. 164. b. Co. Litt. 13. a.

e 2 Leon. 3.

4 Point.

To what Time the Forfeiture ſhall have Relation.

f 1 Finch 232. 2 Finch 216.

As to the fourth Point, *viz.* to what Time the Forfeiture ſhall have Relation; they ſaid that the Forfeiture here ſhall have Relation to the Time of the original Offence committed which was the Cauſe of the Death, and that was the [f] throwing himſelf into the Water, which was done in his Lifetime, and this Act was Felony. And the Indictment ſays, and may ſay, that he feloniouſly threw himſelf into the Water; for that which cauſed the Death may be ſaid to be feloniouſly done. And therefore if one ſtrikes another, ſo that afterwards he dies of it, the Indictment ought to ſay that he ſtruck him feloniouſly. So that the Felony is attributed to the Act, which Act is always done by a living Man, and in his Lifetime, as *Brown* ſaid; for, he ſaid, Sir *James Hales* was dead, and how came he to his Death? It may be anſwered, by drowning; and who drowned him? Sir *James Hales*; and when did he drown him? In his Lifetime. So that Sir *James Hales* being alive cauſed Sir *James Hales* to die; and the Act of the living Man was the Death of the dead Man. And then for this Offence it is reaſonable to puniſh the living Man who committed the Offence, and not the dead Man. But how can he be ſaid to be puniſhed alive when the Puniſhment comes after his Death? Sir, this can be done no other Way but by deveſting out of him, from the Time of the Act done in his Life which was the Cauſe of his Death, the Title and Property of thoſe Things which he had in his Lifetime. As if a Man gives himſelf a mortal Wound, the Property of his Goods, Debts, and Chattles continues in him ſtill, but that is only conditionally, for if he dies within the Year, the whole is veſted in the King by the very Act done in his Lifetime; ſo that the Act reſtrains him from meddling with them afterwards, which is as great a Puniſhment to him for the Offence whilſt he is alive, as it reaſonably can be before the Death is conſummate. Wherefore in that the Law ordains that after his Death the Goods and Chattles, which were his own at the Time of the Act done which cauſed the Death, ſhall not be his own, but ſhall belong to the King, therein it puniſhes him whilſt he lives, by depriving him of the Power of diſpoſing of the Property of his Goods as long as he lives after the Act done, if the Death enſues within a Year after. So that by this Relation of the Forfeiture which has a Retroſpect to the Act done, the Law inflicts a Puniſhment upon the living Man for the Act done in his Lifetime, which was the Cauſe of his Death afterwards. And this is more reaſonable than it is for the Forfeiture to have relation only to the Time of his Death, for to give the Property of the Goods to the King, and to take them from thoſe who ought to have them at his Death, is no Puniſhment to the Party, for he is dead before. But it is moſt reaſonable to refer the Forfeiture to his Lifetime, that is, to ſuch Time of his Life wherein the Act, which cauſed the Death, was done, and to adjudge him a Felon from thenceforth, eſpecially when it is conſidered that by the Act he has prevented and eſcaped the actual Judgment which the Law would have given againſt him. For by the Act, *viz.* by the throwing himſelf into the Water, he has done two Things, firſt, he has killed one of the King's Subjects; ſecondly, he has thereby avoided the Arraignment and the Judgment of the Law which ſhould have been given againſt him, and ſo he has fled from the Law, and has eſcaped its Judgment. [g] And if a Man commits Felony, and afterwards flies for it, by the Act of flying he ſhall forfeit his Goods, becauſe by that Act he does all he can to eſcape the Sentence of the Law, as *Weſton* ſaid. [h] So, he ſaid, if a Man arraigned for Felony had challenged peremptorily above the Number of 35. by the common Law he ſhould forfeit his Goods and Chattles, becauſe thereby he refuſed the Trial of the Law. [i] So, he ſaid, if he that is found guilty of Felony takes his Clergy, he ſhall forfeit his Goods, for when he betakes himſelf to his Clergy, therein he refuſes the Judgment of the Law. [k] So, he ſaid, if one arraigned for Felony ſtands mute of Malice, and will not anſwer, he ſhall forfeit

g 3 Ed. 3. Fitz. Corone 296. 3 H. 13. H. 4. 13. b. Fitz. Forfeiture 32. M. 4. H. 7. 18. pl. 14. Fitz. Ibid. 10. Bro. Corone 199. Forfeiture de terres 52. S. P. C. 183. C.

h Stamf. Prerog. 46. a. 3 Inſt. 227. 2 H. H. P. C. 268. Bac. Law Tracts 173.

i Vide M. 40 Ed. 3. 42. pl. 23. Fitz Corone 97. Bro. Forfeiture de terres 5. T. 20 Ed. 4. 5. pl. 3. Bro. Corone 166. Forfeiture 65.

k T. 14 Ed. 4. 7. a. Bro. Forfeiture de terres 64. Dr. & Stud. lib. 2. cap. 1. fo. 248. Stamf. Prerog. 46. a. 3 Inſt. 227. Bac. Law Tracts 173.

5 Ed. 6. Bro. Ibid. 113. S. P. C. 185. b. Ste Co. Litt. 391. a. 2 H. A. P. C. 384. 2 Hawk. P. C. 358, § 110.

forfeit his Goods, and the Reaſon is, becauſe he refuſes to be tried by the Law. Then if in theſe Caſes, he ſaid, thoſe that fly from the Law, or that by their Acts refuſe to be tried by the Law, ſhall forfeit their Goods and Chattles, for the ſame Reaſon in our Caſe he ſhall forfeit his Goods and Chattles, for here he has committed a Felony in killing himſelf, whereby he has exempted himſelf from the Trial of the Law, for by his Death he has prevented his being arraigned and tried by Law, and ſo he has fled from the Law, and by Cunning has eſcaped the Sentence and Judgment of the Law, which is more odious in the Eye of the Law than if he had fled indeed, or had challenged above the Number of 35. or had betaken himſelf to his Clergy before Judgment, or had kept himſelf mute and ſilent. And therefore if they ſhall forfeit their Goods by ſuch Evaſions or Refuſals of the Law, by the ſame Reaſon, and *a fortiore* he ſhall forfeit his Goods and Chattles here by this his Evaſion and Refuſal of the Law. But from what Time ſhall they forfeit their Goods? Sir, from the Time when the Act of ſuch Evaſion in the ſaid Caſes appears of Record, *viz.* * from the Time of the Flight found, as *Brown* ſaid, and not before, and from the Time of the Challenge of above 35. or of taking his Clergy, or of ſtanding mute, for theſe are the Acts of Refuſal of the Law, and the Time of them appears of Record. So here, the throwing himſelf into the Water was the Act that made the Felony, and by which he exempted himſelf from and evaded the actual Trial and Sentence of the Law, and from that Time the Goods and Chattles ſhall be forfeited, and to that Time, being in his Life, the Forfeiture ſhall have relation. And although the Act, by which he has avoided the Trial and Judgment of the Law, does not appear of Record in his Lifetime, as it does in the other Caſes above, the Reaſon thereof is, becauſe there is no Poſſibility of its being found in his Lifetime, for until the Death there is no Cauſe of Forfeiture. And he himſelf is the Cauſe why he cannot be arraigned for the Offence, and why the Offence cannot be otherwiſe inquired in his Lifetime. And in ſuch Caſes where Puniſhment for Offences cannot be had in the Life of him that deſerves it, an Inquiry of the Forfeiture, if it be found afterwards, ſhall ſerve, and ſhall be of the ſame Force as if done in his Lifetime. [a] And hereupon *Brown* ſaid, if a Subject joins the King's Enemies in Battle againſt the King within the Realm, and is killed in the Field, by the ancient Law of the Realm he ſhall forfeit his Goods, Chattles, [b] and Lands, and his Blood ſhall be corrupted without other Judgment, for he himſelf is the Cauſe why he could not be tried by the Law in his Lifetime. But whether this ſhall be found by Inquiſition, or ſhall be tried *per pais*, is Matter of Conſideration. [c] And, as *Brown* ſaid, it ſhall be tried *per pais* upon Iſſue joined; and ſo, he ſaid, it is taken in 3. *Ed.* 3. and in 9. *Ed.* 3. And *Dyer* ſaid that there is ſuch a Caſe in [d] 8. *Ed.* 3. in a Writ of Dower, but it is not there adjudged. And ſo in the Caſe before put where the Appellee is killed. And ſo here the finding of this after his Death is all that can be done, and ſhall ſerve ſufficiently. Wherefore all the Juſtices agreed, that the Forfeiture of the Goods and Chattles real and perſonal of Sir *James Hales* ſhall have relation to the Act done in his Lifetime which was the Cauſe of his Death, *viz.* [e] the throwing himſelf into the Water.

And alſo they all agreed in the Argument of this Caſe, [f] that if one gives another a mortal Wound, and he dies of this Wound, and he that killed him is attainted by Verdict, the Eſcheat of his Land ſhall have relation to the Time of the Wound given; [g] but if meſne between the Wound given and the Death he is ſuffered voluntarily to eſcape, ſuch Permiſſion to eſcape ſhall not be Felony. For although as to the Forfeiture it has relation to the Time of the Wound given, againſt the Party himſelf, yet it ſhall not be ſo againſt a Stranger, for if the Eſcape ſhould be Felony, he that eſcaped muſt of Neceſſity be a Felon at the Time of the Eſcape.

As to the fifth Point, the Juſtices held that if the Forfeiture has relation to the felonious Act done in the Party's Lifetime, then although the Wife now Plaintiff ſhould, before the Office found, be adjudged in the Term by Right of Survivorſhip, and ſhould be remitted to the Term as to others, yet after the Office found the Term ſhall be adjudged in the King and Queen, becauſe the Office has relation prior to her Title of Survivorſhip, *viz.* to his Lifetime, and to the doing of the Act by which a Title in Law to the Term is given to the King, which is equivalent to a Grant in Deed made by the ſame Perſon in his Lifetime to the King. For a Title may be as firmly attached in the King by the Act of Law as by the expreſs Grant of the Party. [h] And hereupon *Brown* ſaid, if there are two Jointenants of a Leaſe for Years, and one of them grants to *J. S.* that if he pays him 10 *l.* before *Michaelmas*, then he ſhall have his Term, and the Jointenant who ſo grants dies before *Michaelmas*, and afterwards *J. S.* pays the Money to his Executors, yet he ſhall not have the Term, for there the Condition precedes the Grant, as [i] 14. *H.* 8. is, and until the Money is paid the Jointure continues, and it is only a bare Communication, and then the Survivor ſhall have the whole, and ſhall avoid the Condition or Communication: [k] But if he had granted or leaſed it from *Michaelmas* next following during the Term, and he had died before the ſaid Feaſt, there he to whom it was demiſed ſhould have had it againſt the Survivor, for in this Caſe the Title in the Eſtate is granted in Deed in his Lifetime. So here by this Act Sir *James* has granted to the King and Queen a Title to the Eſtate, and the Office found has relation to the Time of the Act, and executes the Title, and ſo ſurmounts the Title of Survivorſhip. And inaſmuch as a Title is once given to the King and Queen by this Act, the Survivorſhip ſhall never diſplace it. [l] As in the ſaid Caſe of 50. *Aſſ.* where the Leaſe which the Wife had as Survivor was liable to the Debt of the Huſband, as the Lord *Dyer* ſaid. So, he ſaid, if the King's Villain and his Wife take jointly a Leaſe for 40 Years, and the Villain dies, and the Wife has the Leaſe as Survivor, the King upon Office finding this Matter ſhall have the

* 3 Ed. 3. Fitz. Corone 291. Dier. Explication 6. Fenner's Caſe 9. Relation 31. S. P. C. 192. a.

[a] Ante 261 (c).

[b] 2. 7. H. 4. 46. b. *Per Markham* 4. 10. 5. b. Cromp. J. C. 84. a. Dyer 140. pl. 143. § 4. But the contrary Opinion ſeems to be held in Co. Litt 13. a. S. P. C. 19. H. P. C. 17. 1 H. H. P. C. 342. 345. 2 Hawk. P. C. 447. § 25.

[c] See 18. 5 R. 2. Fitz. Trial 54. where *Belknap* ſays, if an Engliſhman be adherent in *Scotland* to the Enemies of the King of *England*, he ſhall forfeit his Land, and his Acherency ſhall be tried in *England* where the Land is. Cromp. J. C. 84. a.

[d] P. 8 Ed. 3. 20. pl. 6.

[e] 1 H. H. P. C. 413 1 Inſtitutes 232.

[f] S. P. 1 H. H. P. C. 426. 1 Vent. 371.

[g] See Ante 258 (a). and the Books there cited.

5 Point.

If the Term ſhall be deveſted out of the Plaintiff by the Relation of the Office to the felonious Act done in the Huſband's Lifetime.

[h] S. P. Co. Litt. 184. b. 185. a. Bridgm. 43. 1 Show. 382. 1 Finch 85. 2 Finch 97.

[i] H. 14 H. 8. 22. b. *Per Brudnel.*

[k] See the Books above cited at (h). And S. P. reſolved, Cro. J. 91, 92. 2 Rol. Abr. 89 pl. 4. for though it is to commence at a future Day, yet the Leſſee has a preſent Intereſt in it.

[l] Ante 261 (a).

[m] P. 8. Ed. 4. 4. a *Per Choke.* Dy. 344. a. pl. 56. in marg. Dal. 8. pl. 6. Co. Litt. 30. b 4 Co. 55. a. 9 Co. 129. b. 3 Leon. 251. W. Jones 21. Palm. 352. Hardr. 24, 26. 2 Vent, 268. 4 Bac. Abr. 198.

[n] 9 Co. 129. b. Hardr. 24.

[o] Co Litt. 30. b. 2 Rol. R. 322. 1 Vern. 10. 3 Danv. Abr. 241. pl. 5. 1 Bac. Abr. 665. 4 Bac. Abr. 198. Vin. Abr. tit. Curtesy H. pl. 3. But *Quære* of this Case, for the King's Title to the Custody of the Inheritance cannot continue longer than for the Life of the Ideot, and therefore there does not seem to be any Colour of Reason why the Husband should not be Tenant by the Curtesy, seeing that his Title, though initiate by the Seizin of the Wife, is not consummate nor begins to any Effect until her Death, at which time the King's Title is at an End. So that upon the Matter the Husband has no perfect Title at the Time when the King's Title commences, and therefore it cannot be strictly said that there is a Concourse of Titles in this Case, and the Husband's Title stands in no more Opposition to the King's Prerogative than the Title of the Issue does, neither of which look for the Land as long as the King can have any Interest in it.

the Lease, and shall oust the Wife; for, he said, if the King had entered in the Life of the Villain, this had taken away the Interest of the Wife, and his delaying to enter shall not destroy his Title once vested, *quia nullum tempus occurrit Regi.* Wherefore all the Justices agreed that the Interest of the Wife now Plaintiff is taken away by the Relation of the Forfeiture. And *Weston* said that although the Forfeiture should only have relation to the Death, at which Time the Title of the Wife accrued, yet in this [m] Concourse of Titles the King's Title by Prerogative shall be preferred. [n] As if one is a Villain by Birth, and Land descends to him, and his Lord enters, and afterwards he is found an Ideot, and the Descent is also found, the King shall have the Land; for the Title of the Lord to the Body of the Villain commenced by the Birth of the Villain, and at that Time, by relation of the Office, the King's Title to his Body commenced in respect of Ideocy, in which Case the King shall have the Land, notwithstanding his Latches to suffer the Lord of the Villain to enter first, for Latches of Entry shall never hurt the King. [o] So, he said, if a Woman takes Husband, and has Issue, and Land descends to the Wife, and the Husband enters, so that he is intitled to be Tenant by the Curtesy, and afterwards the Wife is found an Ideot, and her Estate in the Land is also found, the King shall have the Land, and if the Wife dies the Husband shall never have the Land by Curtesy; for by the first Possession of the Wife the Husband was intitled to be Tenant by the Curtesy, and when the Office is found, the Title of the King shall have relation to the first Possession of the Wife also. So that both the Titles commence at one same Time, but the King's shall have the Pre-eminence; and forasmuch as the Title of the King in this Case is to the Freehold of the Land, in that he shall have the Custody of it during the Life of the Wife, this shall utterly take away the Title of the Husband, which was vested in him before the Office found, and therefore after the Death of the Wife he shall not be Tenant by the Curtesy, but the Issue shall have the Land out of the King's Hands, if it be not held of the King, and if it be, the King shall have it by the Wardship of him during his Nonage. So that in Things of an Instant the King shall be preferred. But he and the rest of the Justices agreed that the Forfeiture shall have relation to the Lifetime of the said Sir *James Hales*, and so this last Point is out of Doubt. Wherefore upon the Matter in Law all the Justices agreed that the Title of the Wife to the Lease is taken away.

Exceptions to the Bar.

But *note*, *Brown* at the End of his Argument said, that the Bar was insufficient for three Causes. First, for that it is not found that the Archbishop is alive. For the Lease for 12 Years is not pleaded to be confirmed, and therefore it is not good longer than for his Life, for which reason his Life ought to be averred. Secondly, for that although the Office finds both the Leases, yet it does not find precisely that the said Sir *James* was possessed of them at the Time of drowning himself, for which reason the Office is not sufficient therein to entitle the King and Queen. Thirdly, that the Day of the Trespass is assigned the 21st Day of *November* in the *second* Year of the Reign of the present Queen, which Day is *in anno Domini* 1559. and the new Lease made to the Plaintiff and her Husband did not commence until *Michaelmas* 1560. which is the *Michaelmas* after the Trespass assigned, so that the Plaintiff has assigned the Trespass before the Commencement of the new Lease, and yet the Defendant has not given her any Colour, for the new Lease which was not then commenced is no Colour to her, and therefore they had no Cause to argue the Matter in Law which they had argued. For which three Causes the Plaintiff ought to recover for the Insufficiency of the Bar.

[p] Co. Litt. 45. b. Watf. Compl. Incumb. 489. 3 Bac. Abr. 392.

[q] See Ante 30 (l) and the Books there cited.

[r] See like Matter Ante 66 (k). (l) (m). and (n).

To which it was answered by the Lord *Dyer*, that for any thing shewn in the Record it might be that the Bishop was alive. And if he was not, a Lease made by him who has the [p] Fee simple is not determined by his Death, as a Lease of Tenant [q] for Life is, but it is only voidable, and until it be avoided it is good, for which reason it shall be intended to continue until the Avoidance be shewn. As to the second Point, it is pleaded in Fact that Sir *James* was possessed of both the Estates at the Time of drowning himself. And if the Plea and the Office, which finds both the Leases, be put together, it will appear manifestly to the Court that he was possessed of them at the Time of drowning himself. As to the third Point, he said that if the Plaintiff's Lease was not commenced at the Time of the Trespass supposed, from thence it follows that she had no Title, and was not able to punish this or any other Trespass. And tho' Colour is not given by the Defendant, yet if it appears to the Court [r] that the Plaintiff has no Title, it would be hard that she should have Judgment. And at last, notwithstanding the said three Exceptions, Judgment was given the same Term, as follows.

The rest of the Record.

At which Day here came as well the aforesaid *Margaret* as the aforesaid *Cyriack* by their Attornies aforesaid. And thereupon the Premisses being seen, and by the Justices here fully understood, it seems to the same Justices here that the aforesaid Plea of the aforesaid *Cyriack* above in Bar pleaded is sufficient in Law to preclude the aforesaid *Margaret* from having her Action aforesaid against the aforesaid *Cyriack*, as the aforesaid *Cyriack* has above alledged. Therefore it is considered, that the aforesaid *Margaret* take nothing by her Writ aforesaid, but be in Mercy for her false Claim. And the aforesaid *Cyriack* may go thereof without Day, *&c.*

Judgment.