

*intra*, and able to take by Virtue of the Grant presently upon the Grant made, it is merely void: But in customary Grants upon Surrenders the Law is otherwise: For though at the Time of the Surrender the Grantee is not *in esse*, or not capable of a Surrender; yet if he be *in esse* and capable at the Time of the Admittance, that is sufficient: And therefore if I surrender to the Use of him that shall be Heir to *J. S.* or to the Use of *J. S.*'s next Child, or to the Use of *J. S.*'s next Wife; though at the Time of the Surrender *J. S.* had no Heir, Child, or Wife; yet if afterwards he hath a Child, or taketh a Wife, his Heir, his Child, or his Wife, may come into the Court, and compel the Lord to admit according to the Surrender. So if I surrender to the Use of him that shall come next into *Paul's* after such an Hour; whose Fortune soever it is to come first, the Lord must admit him, and I shall never avoid it. The same Law is, if I surrender to the Use of him that *J. S.* shall nominate, or that I my self shall nominate to the Lord at the next Meeting.

The Reason of the Law is this: A Surrender is a Thing executory, which is executed by the subsequent Admittance, and nothing at all is invested in the Grantee before the Lord hath admitted him according to the Surrender; and therefore if at the Time of the Admittance the Grantee be *in rerum natura*, and able to take, that will serve.

Besides, in customary Grants the Intent of the Grantor is more respected than it should be by the strict Rules of the Law: Which appeareth by this, That if a Surrender be made of a Copyhold to the Use of a last Will, and the Surrender or deviseth it unto two, the one is admitted according to the Purport of the Will, this shall inure to both. But though the Surrender be a Thing executory, and the Intent of the Grantor so much favoured; yet if a Copyholder will surrender to the Use of the right Heirs of *J. S.* he being alive, this is void, because it cannot take Effect according to the Intent of the Grantor; for he would have the Grant to be executed presently, which cannot be, in Regard that *J. S.* can have no Heir till after his Death. So much of the Grantee: And I now come to the Grant it self.

Sect. 36. A Copyhold Interest cannot be transferred by any other Assurance than by Copy of Court-Roll, according to the Custom.

If I will exchange a Copyhold with another, I cannot do it by an ordinary Exchange at the Common Law, but we must surrender to each other's Use, and the Lord admit us accordingly.

If I will devise a Copyhold, I cannot do it by Will at the Common Law, but I must surrender to the Use of my Last Will and Testament, and in my Will I must declare my Intent.

Co. 4. fol. 25. If I am ousted by a Copyholder, a Release made to him is void, because it would be a Prejudice to the Lord; and besides there is no customary Right upon which the Release may inure: But a Release inuring by the Way of Extinguishing, where no Prejudice accrue to the Lord, will serve to drown a Copyhold Right; and therefore if I surrender out of Court upon Condition to the Use of *J. S.* and the Presentment is made absolute in Court, and the Admittance framed accordingly, this Admittance and Presentment differing from the Effect of the Surrender are both void. Yet because upon the Admittance the Lord is satisfied of his Fine, and so nothing at all prejudiced, and besides here is a customary Right upon which the Release may be grounded; I may by a Release at the Common Law sufficiently confirm this void Estate. And so upon the same Reason, if I am ousted of a Copyhold, and the Lord admit him according to the Custom, a Release made by me at the Common Law will extinguish my Right: But if I make a Lease for Years of a Copyhold, I cannot by my Release pass my Reversion, because this Release inureth by Way of Enlargement to transfer an Interest, and not by Way of Extinguishment to drown a Right; but my Way is to surrender my Reversion into the Hands of the Lord, and he to grant it over to the Lessee.

Sect. 37. If Copyhold Land come into that Plight that it cannot pass by Copy, it is become not alienable: And therefore if the Lord of a Manor will grant to me a Copyhold in Fee, and after will grant the Inheritance of this Copyhold to a Stranger, in Regard that now my Copyhold is become no Parcel of the Manor, and so I cannot surrender into the Hands of the Lord and the Grantee of the Inheritance, though I am to him a Tenant, and am tied to do unto him all Manner of Services which are due without keeping of Court, as to pay Rent, to discharge Heriots, and all other Duties of the same Nature; yet because the Grantee cannot keep a Court, and so is incapable of taking a Surrender, or making an Admittance, therefore I cannot by any Means alien; for no Conveyance at the Common Law will serve, because it remaineth still Copyhold notwithstanding; and what Customs soever were incident to the Land before Severance, do remain still undestroyed: As if the Land were Borough English or Gavelkind before, it so continueth; and a Decree in Chancery will serve no more than an ordinary Assurance at the Common Law; for that bindeth my Person only, not my Interest. Since therefore Copyhold Estates cannot be conveyed away otherwise than by Copy of Court-Roll, according to the Custom, let us examine the Nature of these customary Grants, wherein three Branches are to be considered.