Deviſe of a Term is made to *J. S.* and the Executors agree that *J. S.* and *J. N.* ſhall have this Term, this Conſent is void to *J. N.* for after the Conſent of the Executors *J. S.* is in by the Deviſe. Yet ſome are of Opinion, That if I ſurrender to the Uſe of *J. S.* in Fee, and the Lord admits *J. S.* together with his eldeſt Son and Heir apparent, that this is an Eſtate by Eſtoppel to *J. S.* and that he ſhall only claim jointly with his Son, becauſe he might have refuſed an Admittance in this Manner: But I can hardly be brought to think that this Admittance, giving a preſent Intereſt in the Son, who by Surrender was to have no Intereſt till the Death of his Father, ſhould be any ſuch Eſtoppel. Co. 4. fol. 28.

If I ſurrender to the Uſe of *J. S.* for Life, and the Lord admits him in Fee, an Eſtate for Life only paſſeth. So if I ſurrender without mentioning any certain Eſtate, becauſe by Implication of the Law, Eſtate for Life only paſſeth, though the Lord admit in Fee, no more doth paſs than the Implication of Law will warrant. If I ſurrender with the Reſervation of a Rent, and the Lord admits, not reſerving any Rent, or reſerving a leſs Rent than I reſerved upon the Surrender, this Admittance is wholly void: But if the Lord reſerveth a greater Rent, then is the Reſervation void only for the Surpluſage, and the Admittance ſo far currant as it agreeth with my Surrender. If I ſurrender upon Condition, and the Lord omits the Condition, the Admittance is wholly void: But if my Surrender be abſolute, and the Lord's Admittance be conditional, the Condition is void, but the Admittance in all Points elſe is good. Co. 4. fol. 29. Co. 4. fol. 25.

The Reaſons of theſe Diverſities are theſe. Where an Authority is given to any one to execute any Act, and he execu eth it contrary to the Effect of his Authority, this is utterly void: But if he executeth his Authority, and withal goeth beyond the Limits of his Warrant, this is void for that Part only wherein he exceedeth his Authority.

Theſe Admittances upon Surrender differ from Admittances upon Diſcents, in this, that in Admittances upon Surrender nothing is veſted in the Grantee before Admittance, no more than in the voluntary Admittances; but in Admittances upon Diſcents the Heir is Tenant by Copy immediately upon the Death of his Anceſtor, not to all Intents and Purpoſes; for peradventure he cannot be ſworn of the Homage before, neither can he maintain a Plaint in the Nature of an Aſſize in the Lord's Court before, becauſe till then he is not compleat Tenant to the Lord, no farther forth than the Lord pleaſeth to allow him for his Tenant. And therefore if there be Grandfather, Father and Son, and the Grandfather is admitted, and dieth, and the Father entreth, and dieth before Admittance, the Son ſhall have a Plaint in the Nature of a Writ of Ayel, and not an Aſſize of Mortdaunceſtor. So that to all Intents and Purpoſes, the Heir till Admittance, is not compleat Tenant; yet to moſt Intents, eſpecially as to Strangers, the Law taketh Notice of him as of a perfect Tenant of the Land inſtantly upon the Death of his Anceſtor; for he may enter into the Land before Admittance, take the Profits, puniſh any Treſpaſs done upon the Ground; ſurrender into the Hands of the Lord to whoſe Uſe he pleaſeth, ſatisfying the Lord his Fine due upon the Diſcent, and by Eſtoppel he may prejudice himſelf of his Inheritance: So if an Eſtranger come and ſurrender to the Uſe of him and his Wife before Admittance, he ſhall ever claim jointly with his Wife, and never be taken as ſole Tenant. And the Lord may avow upon him before Admittance for any Arrearages of Rent or other Services. Co. 4. fol. 23.

And laſt of all, upon an actual Poſſeſſion, there ſhall be *poſſeſſio Fratris* before Admittance: For if a Copyholder in Fee have Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and dieth ſeiſed, and his Son by the firſt Venter entreth in the Land, and dieth before Admittance, the Daughter ſhall inherit as Heir to her Brother; and not the Son by the ſecond Venter as Heir to his Father. And many Times the Poſſeſſion of a Guardian or a Termor, without an actual Entry, or any Claim made by the Heir, will make *poſſeſſio Fratris:* As if a Copyholder in Fee, having Iſſue a Son & a Daughter by one Venter, and a Son by another Venter, by Licence of the Lord maketh a Leaſe for Years, and dieth, and the Son of the firſt Venter dieth before the Expiration of the Term, being neither admitted, nor having made any actual Entry, or any Claim; yet this Poſſeſſion of the Leſſee is ſufficient, and the Reverſion ſhall deſcend to the Daughter of the firſt Venter, and not to the Son of the ſecond Venter. But if the Leaſe had been determined living the Son by the firſt Venter, and afterwards he had died before any actual Entry made, the Law would have fallen out otherwiſe, becauſe there was a Time when he might have lawfully entred. Therefore where ſome have imagined that nothing ſhould be inveſted in the Heir before Admittance, becauſe every Admittance of an Heir upon a Diſcent amounteth to a Grant, and ſo may be pleaded; they are in an Error: For tho' it be true, that after Admittance the Heir may in Pleading alledge this as a Grant, and that hath been allowed, to avoid the Inconveniencies that otherwiſe ſhould enſue; for if the Copyholder ſhould be driven in Pleading to ſhew the firſt Grant, either that was made before the Memory of Man, and ſo is not pleadable, or ſince the Memory of Man, and then Cuſtom fails; for this Reaſon the Law hath allowed a Copyholder in Pleading to alledge any Admittance, as well upon a Diſcent as upon a Surrender, as a Grant: And yet he may, if he will, alledge the Admittance of his Anceſtors, as a Grant, and ſhew the Diſcent to him, and that he entred, and well, without any Admittance. But the Heir cannot plead that his Anceſtor was ſeiſed in Fee at the Will of the Co. 4. fol. 22. b. Co. 4. fol. 22. b.