

Lib. I. Cap. III. Of Tenant in Tail, &c. Sect. 34.

2 Rolls 841. Hob. 332.

the Death of either Party without Issue, they are not Tenants in Tail after Possibility of Issue extinct. Lands are given to the Husband and Wife, and to the Heirs of the Body of the Husband, the Remainder to the Husband and Wife, and to the Heirs of their two Bodies begotten; the Husband dies without Issue, the Wife shall not be Tenant in Tail after Possibility, for the Remainder in special Tail was utterly void, for that it could never take Effect; for so long as the Husband should have Issue, it should inherit by force of the general Tail; and if the Husband die without Issue, then the special Estate-Tail cannot take Effect, inasmuch as the Issue which should inherit the Especial, must be begotten by the Husband; and so the General, which is larger and greater, hath frustrated the Special, which is lesser. And the Wife in that Case shall be punished for Waste.

Sect. 34.

Ante 26. b.

**I**f Lands be given to a Man, with a Woman in Frankmarriage, albeit the Woman (which was the Cause of the Gift) dieth without Issue, yet the Husband shall be Tenant in Tail apres possibility, &c. for that he and his Wife were Donees in especial Tail, and so within the Words of Littleton. The Residue of this Section is evident.

**E**t nota que nul poit estre tenant en le taile apres possibilitie d'issue extincte, forsqu'un des donees, ou le donee en le special taile. Car le donee in general taile ne poit estre unqz dit tenant en taile apres possibilitie d'issue extincte, pur ceo q' tous temps durant sa vie, il poit per possibilitie aver issue que poit inheriter per force de mesme le taill. Et issint en mesme le maner, l'issue que est heire a les donees en un especial taill, ne poit estre dit tenant in taile apres possibilitie d'issue extincte, causa qua supra.

**A**ND note, that none can be Tenant in Tail after Possibility of Issue extinct, but one of the Donees, or Donee in especial Tail. For the Donee in general Tail cannot be said to be Tenant in Tail after Possibility of Issue extinct, because always, during his Life, he may by Possibility have Issue, which may inherit by Force of the same Entail. And so in the same manner the Issue, which is Heir to the Donees in especial Tail, cannot be Tenant in Tail after Possibility of Issue extinct, for the Reason abovesaid.

\* This and that which follows, is not in the first Edition (which I have.) And therefore (that I may speak it once for all) it was wrong to the Author to add any Thing, (especially in one Context) to his Work.

\* Et nota, que tenant en taill apres possibilitie d'issue extincte ne serra unqz puny de waste, pur l'inheritance que fust un foits en luy, 10 Hen. 6. 1. Mes cestuy en le reversion poit entrer sil alien en fee. 45 E. 3. 22.

And note, That Tenant in Tail after Possibility of Issue extinct, shall not be punished of Waste, for the Inheritance that once was in him. 10 H. 6. 1. But he in the Reversion may enter if he alien in Fee. 45 E. 3. 22.