

scended. Also of such a Rent, as may be granted without a Deed, a Writ of Annuity doth Cro. El. 549.
not lie, though it be granted by Deed.

[a] And here is to be noted, That here is no Election given of two several Things: As if the Grant were of an Annuity, or a Roke yearly, &c. for there the Grantor hath Election at the Day to deliver which he would. But here are two Remedies given for one yearly Sum, and consequently the Grantee shall at any Time have Election to take which of the Remedies he will; for in all Cases where several Remedies be given, the Party to whom the Law giveth the Remedies, it giveth him, withal, Election, to take which of the Remedies he will.

[a] Sir Rowland Heyward's Case, lib. 2. fo. 36.
28 E. 3. 98. 41 E. 3. 10. a.
2 H. 4. 12.
36 H. 6. 10. 9 E. 4. 46.
21 E. 4. 55. b. 1 E. 5. 1.

Mes il ne poet faire ou aver ambideux ensemble. For then he should recover one Thing twice, which should be a double Charge to the Grantor.

Note; As to Elections these Diversities following:

First, When nothing passeth to the Feoffee or Grantee before Election to have the one Thing or the other, there the Election ought to be made in the Life of the Parties, and the Heir or Executor cannot make Election. But when an Estate or Interest passes immediately to the Feoffee, Donee, or Grantee, there Election may be made by them, or by their Heirs or Executors.

Secondly, When one and the same Thing passeth to the Donee or Grantee, and the Donee or Grantee hath Election in what Manner or Degree he will take this, there the Interest passeth immediately, and the Party, his Heirs, or Executors, may make Election when they will.

Thirdly, When Election is given to several Persons, there the first Election made by any of the Persons, shall stand.

Fourthly, In Case an Election be given of two several Things, always he which is the first Agent, and which ought to do the first Act, shall have the Election. As if a Man granteth a Rent of twenty Shillings, or a Roke to one and to his Heirs, the Grantor shall have the Election; for he is the first Agent by Payment of the one, or Delivery of the other. So if a Man maketh a Lease, rendering a Rent, or a Roke, the Lessee shall have the Election, *causa qua supra*; and with this agree the Books in the * Margent. [b] But if I give unto you one of my Horses in my Stable, there you shall have the Election, for you shall be the first Agent by Taking or Seizure of one of them. And if one grant to another 20 Loads of Haste or 20 Loads of Hay to be taken in his Wood of D. there the Grantee shall have Election, for he ought to do the first Act, viz. to fell and take the same.

Hob. 174.
* 9 E. 4. 36. b. 13 E. 4. 4. b.
5 E. 4. 6. b. 11 E. 3.
Annuity 27. 11 Aff. p. 8.
3 E. 3. tit. Aff. 175.
43 E. 3. tit. Barre 194.
[b] 2 H. 7. 23. a.

Fifthly, When the Thing granted is of Things annual, and are to have Continuance, there the Election remaineth to the Grantor, (in Case where the Law giveth to him Election,) as well after the Day, as before; otherwise it is when the Things are to be performed univacally: And therefore if I grant to another for Life, an Annuity or a Roke at the Feast of Easter, and both are behind, the Grantee ought to bring his Writ of Annuity in the Disjunctive; for if he bring his Writ of Annuity for the one only, and recover, this Judgment shall determine his Election for ever; for he shall never have a Writ of Annuity afterwards, but a Scire facias upon the said Judgment. Which Reason Fitzherbert in his Natura Brevium not observing, held an Opinion to the contrary. But if I contract with you to pay unto you twenty Shillings, or a Roke, at the Feast of Easter, after the Feast you may bring an Action of Debt for the one, or for the other.

Sixthly, The Feoffee by his Act and Wrong may lose his Election, and give the same to the Feoffor: As if one infeoff another of two Acres, to have and to hold the one for Life, and the other in Tail, and he before Election maketh a feoffment of both, in this Case the Feoffor shall enter into which of them he will, for the Act and Wrong of the Feoffee.

Plow. 60.

Sil recover en brief de Annuite donques est la terre discharge de distress. Here is to be observed, that this Determination of the Election of the Grantee must be by Action or Suit in Court of Record; [c] for albeit the Grantee distrain for the Rent, yet he may bring a Writ of Annuity and discharge the Land: And Littleton putteth his Case here surely upon a Recovery in a Writ of Annuity. [d] But if the Grantee doth bring a Writ of Annuity, and at the Return thereof appear and count, this is a Determination of his Election in Court of Record, albeit he never proceedeth any farther. [e] As if a Wife be endowed ex assensu patris, and the Husband dieth, the Wife hath Election either to have her Dowry at the Common Law, and count, albeit she recover not, yet shall she never after claim her Dowry ex assensu patris.

[c] 17 E. 1. Dyer 344. b.

[d] F. N. B. 152. b.
5 H. 7. 33. b.

[e] 12 E. 2. Dower 158.

[f] So if the Grantee bring an Assise for the Rent, and make his Plaint, he shall never after bring a Writ of Annuity. But the Purchasing of a Writ of Annuity, and Entry of it in Court of Record, or of an Assise, is no Determination of the Election, because an Estranger may purchase a Writ in the Name of the Grantee, and enter it of Record; but if the Grantee appear thereunto, &c. then this doth amount to a Determination of his Election, as hath been said.

[f] 10 E. 4. 17.