

9 Co. 77.

of B. and after mortgageth the Land to B. upon Condition for Payment thereof. If A. tender the Money to B. and he refuseth it, A. may enter into the Land, and the Land is freed for ever of the Condition, but yet the Debt remaineth, and may be recovered by Action of Debt. But if A. without any Loan, Debt or Duty preceding, infeoff B. of Land, upon Condition for the Payment of a hundred Pounds to B. in Nature of a Gratuity or Gift: In that Case, if he tender the hundred Pound to him according to the Condition, and he refuseth it, B. hath no Remedy therefore; and so is our Author in this and his other Cases of like Nature to be understood.

faits refuse, celui que dussit tender le money est de ceo assouth, & pleinment discharge p tous temps apres.

fused, he which ought to tender the Money, is of this quit and fully discharged for ever after.

Sect. 339.

PAiera tiel somme a tiel jour, &c.

18 E. 4. fol. 8. lib. 5. fol. 96.
Goodale's Case,
19 H. 6. 54.
Account Pl. 7.
5 Co. 117.

Here is implied that this Payment ought to be real, and not in Shew or Appearance. For if it be agreed between the Feoffor and the Feoffee, that the Feoffor shall pay to the Executors but part of the Money, and that yet in Appearance the whole Sum shall be paid, and that the Residue shall be repaid, and accordingly at the Day and Place, the whole Sum is paid, and after the Residue is repaid, this is no Performance of the Condition; for the State shall not be de-vested out of the Heir which is a third Person, without a true and effectual Payment, and not by a Shadow or Colour of Payment; and the Agreement precedent doth guide the Payment subsequent.

5 Co. 96.

9 Co. 39.

And by this Section also it appeareth, that the Executors do more represent the Person of the Testator, than the Heir doth the Ancestor; for tho' the Executors be not named, yet

Item si le feoffee en mortgage, devant le jour de payment que seroit fait a luy face les Executors & devie, & son heire enter en le terre come il devoit, &c. il semble en cest cas que le Feoffor doit payer le money al jour assesse al Executors, & nemy al heire le Feoffee, pur ceo que le money al commencement trenchast al Feoffee en manner come un dutie, & serra entendue que l'estate fuit fait pur cause de le prompter de le money per le Feoffee, ou pur cause dauter dutie. Et pur ce le paymit ne serra fait al heire, come il semble. Mes les parols del condition poyent estre tiels, que le payment serra fait al heire, come si le condition fuit, que si le Feoffor paya al Feoffee, ou a ses heires, tiel somme a tiel jour, &c. la apres

Also if the Feoffee in Mortgage, before the Day of Payment which should be made to him, makes his Executors and die, and his Heir entred into the Land as he ought, &c. It seemeth in this Case, that the Feoffor ought to pay the Money at the Day appointed to the Executors, and not the Heir of the Feoffee, because the Money at the Beginning trenced to the Feoffee in Manner as a Duty, and shall be intended that the Estate was made by Reason of the lending of the Money by the Feoffee, or for some other Duty; and therefore the Payment shall not be made to the Heir, as it seemeth; but the Words of the Condition may be such, as the Payment shall be made to the Heir. As if the Condition were, that if the Feoffor pay to the Feoffee, or to his Heirs, such a Sum at la