

here yielded by our Author is worthy of Observation. And in this Case if the Feoffee infeof J. N. of Intent and Purpose that he shall infeof J. S. some hold that this is a Breach of the Condition; for quando aliquid prohibetur fieri ex directo prohibetur & per obliquum.

If a Feoffment be made, upon Condition that the Feoffee shall not alien in Mortmain, this is good, because such Alienation is prohibited by Law; and regularly whatsoever is prohibited by the Law, may be prohibited by Condition, be it malum prohibitum, or malum in se. In ancient Deeds of Feoffment in Fee there was most commonly a Clause, Quod licitum sit donatori rem datam dare vel vendere cui voluerit, exceptis viris religiosis & Judæis.

a aucun d ses heires ou d issues d un tiel, &c. ou hujusmodi, les que conditions ne tollent tout la power d alienation del feoffee, &c. donqz tiel condition est bone.

Heirs, or of the Issues of such a one, &c. or the like, which Conditions do not take away all Power of Alienation from the Feoffee, &c. then such Condition is good.

Sect. 362.

37 Aff. 11. li. 6. 40, 41. Mildmay's Case.
21 H. 6. 33. 13 H. 7. 23.
21 H. 7. 11.
Vide Sect. 220.
Ante 146. b.

C Note here, the double Negative in legal Construction shall not hinder the Negative, viz. Sub conditione quod ipsi nec hæredes sui non alienarent. And therefore the Grammatical Construction is not always in Judgment of Law to be followed.

C Forsque pur lour vies demesne, &c. And yet if a Man make a Gift in Tail, upon Condition that he shall not make a Lease for his own Life, albeit the Estate be lawful, yet the Condition is good, because the Reversion is in the Donor. As if a Man make a Lease for Life or Years, upon Condition, that they shall not grant over their Estate, or let the Land to others; this is good, and yet the Grant or Lease should be lawful.

21 H. 6. 23. 13 H. 7. 23, 24. 27 H. 8. 17, 19.

* Perk. 277.

* If a Man make a Gift in Tail, upon Condition that he shall not make a Lease for three Lives, or twenty-one Years, according to the Statute of 33 H. 8. the Condition is good, for the Statute doth give him Power to make such Leases, which may be restrained by Condition, and by his own Agreement; for this Power is not incident to the Estate, but given to him collaterally by the Act, according to that Rule of Law, Quilibet potest renunciare juri pro se introducto.

Hob. 170. 1 Co. 84.

C Quant il fist tiel alienation & discontinuance del estate taile. And therefore if a Gift in Tail be made upon Condition, That the Donee, &c. shall not alien, this Condition is good to some Intents, and void to some: For as to all those Alienations which amount to any Discontinuance of the Estate-tail, (as Littleton here speaketh) or is against the Statute of Westminster 2. the Condition is good without Question. But as to a Common Recoyer, the Condition is void, because this is no Discontinuance, but a War; and

Item si Cene-ments soient donez en le tail sur tiel condition, que le tenant en le tail ne ses heires ne alienerot en fee, ne en le tail, ne pur term dauter vie, forsque pur lour vies demesne, &c. tiel condition est bone. Et la cause est, pur ceo que quant il fist tiel alienation & discontinuance d l tail, il fait le contrary a l entet del donez, pur que lestatute de W. 2. cap. 1. fuit fait, per quel estatute les estates en le tail sont ordeines.

Also if Lands be given in Tail, upon Condition, that the Tenant in Tail nor his Heirs shall not alien in Fee, nor in Tail, nor for Term of another's Life, but only for their own Lives, &c. such Condition is good. And the Reason is, for that when he maketh such Alienation and Discontinuance of the Entail, he doth contrary to the Intent of the Donor, for which the Statute of W. 2. cap. 1. was made, by which Statute the Estates in Tail are ordained.