

B. acknowledgeth a Statute, and Execution is sued of the Seignior. A. dieth without Heir, and the Conusee entreteth, and is evicted by the Disseisee; he shall have the Aid of this Statute; and yet it is out of the Letter of the Law, for the Seignior was delivered in Execution, and not the Tenancy; but he was Tenant by Execution of those Lands, and therefore within the Statute. But the Perquisite of a Villein being evicted is out of the Statute; for he is Tenant in Fee-simple thereof, and not Tenant by Execution.

Seventhly, Where the Words be (delivered and taken in Execution) yet if after the Liberate the Conusee entreteth (as he may) so as the Land is never delivered, yet is he within the Remedy of this Statute, for he is Tenant by Execution.

Eighthly, Where the Statute saith, (then every such Recoveror, Obligee, and Recognizor, shall, &c.) and saith not, their Executors, Administrators or Assigns, but they are omitted in this material Place; yet by a benign Interpretation this Statute shall extend to them, because they are mentioned in the next precedent Clause of the Eviction; and the Remedy must by Construction be extended to all the Persons that appear by the Act to be grieved; a Point worthy the Observation.

Ninthly, Where the Statute giveth a Scire facias out of the same Court, &c. if the Record be removed by Writ of Error into another Court, and there affirmed, the Tenant by Execution that is evicted shall have a Scire facias by the Equity of this Statute out of that Court, because the Scire facias must be grounded upon the Record. Et sic de similibus.

Tenthly, Where the Statute giveth the Scire facias against such Person or Persons, &c. that were Parties to the first Execution, their Heirs, Executors or Assigns, &c. this must not be taken so generally as the Letter is; for if the first Execution were had against a Purchaser, &c. so as nothing was liable in his Hands but the Land recovered; if this Land be evicted from Tenant by Execution, no Scire facias shall be awarded against him, his Heirs, Executors or Assigns; but if he hath other Lands subject to the Execution, then a Scire facias lieth against him or his Assigns, but not against his Executors; neither in that Case can he have a Scire facias upon the Statute against the first Debtor or Recognizor, because it giveth it only against him, &c. that was Party to the first Execution, his Heirs, Executors or Assigns. But if there be several Assigns of several Parcels of Lands subject to the Execution, one Scire facias upon this Statute shall lie against all the Assigns. Sed est modus in rebus. This little Taste shall give a Light to the diligent Reader, not only to see into the Secrets of this Statute, but to others also of like Nature.

And by the Statute of 23 H. 8. cap. 6. it is provided, that the Obligee, &c. shall have in every Point against such Recognizor, &c. like Process, Execution, Commodity and Advantage in every Behalf, as hath been had or made upon the Statute-Staple, and under such Manner and Form, as is for the same Statute-Staple provided: By Force of which Branch, if the Tenant by Execution by Force of the Act of 23 H. 8. be evicted, he shall have the Remedy provided for Tenants by Execution upon a Statute-Staple, by the Act of 32 H. 8. In like manner by Force of that Clause, 32 H. 8. if the Extenders upon a Statute-Staple, &c. do extend the Lands, &c. at too high a Rate, the Obligee may pray that the Extenders themselves may take the Lands, &c. at that Rate, &c. by Force of the said Statutes of Aſton Burnel and De mercatoribus. Also no Execution shall be sued against the Heir within Age.

But note; That upon a Writ of Elegit the Plaintiff cannot make any such Prayer, because those ancient Statutes do extend to a Statute-Merchant, or a Statute-Staple only, and neither to a Recovery of Debt or Damages, nor to a Recognizance in Court; and so hath it been resolved. [a]

Nota; It appeareth by the Preamble of the said Act of 32 H. 8. and by divers [b] Books, that after a full and perfect Execution had by Extent returned, and of Record, there shall never be any Re-extent upon any Eviction: But if the Extent be insufficient in Law, there may go out a new Extent.

[c] If a Man have a Judgment given against him for Debt or Damages, or be bound in a Recognizance, and dieth, his Heir within Age; or having two Daughters, and the one within Age; no Execution shall be sued of the Lands by Elegit during the Minority, albeit the Heir is not specially bound, but charged as Terre-tenant; [d] and so against an Heir within Age no Execution shall be sued upon a Statute-Merchant or Staple, nor upon the Obligation or Recognizance upon the Statute of 32 H. 8. for it is excepted in the Process against the Heir. Neither if the Heir within Age endow his Mother, shall Execution be sued against her during his Minority.

Note, That by the Statute [e] of 27 E. 3. the Execution of Lands upon a Statute-Staple is referred to the Statute-Merchant; and by the Statute De mercatoribus no Execution shall be had against the Heir so long as he is within Age.

And since Littleton wrote, there is a right profitable Statute [f] made against fraudulent Frogments, Gifts, Grants, &c. Judgments and Executions, as well of Lands and Tenements, Cafe.

40 E. 3. 26. b. 44 E. 3. f. 10. 2 H. 4. 17. 15 H. 7. 15. [a] Mich. 4 & 5 Ph. & Mar. Bendloes, by all the Justices of the Common Pleas, 15 E. 3. Extent 7. Plowd. 82. b. 205. b. [b] 15 E. 3. Extent 7. 22 E. 3. Recovery in Value 22. 31 E. 3. Extent 13. 17 E. 3. 76. 15 E. 3. Scire fac. 115. 7 H. 4. 19. 22 Aff. 44. 22 E. 3. f. ult. 44 E. 3. 10. 9 H. 7. 9. 15 H. 7. 15. 13 El. Dyer 299. 29 H. 8. Stat. Merchant Br. 40. 2 Cro 13. [c] 11 E. 3. Age 4. 15 E. 3. Age 95. 24 E. 3. 28. 29 Aff. 37. 29 E. 3. 50. Brook Age 33. 2 Cro. 338. 694. Siderf. 134. [d] Temp. E. 1. Aff. 402. 417. 16 H. 7. 6. Lieure d'entre, 545. 1 Cro. 295. [e] 27 E. 3. cap 22. [f] 13 El. cap. 5. Lib. 3. fol. 80. b. Twine's Cafe. Lib. 5. f. 60. Gooche's