

Plea of Suit; and this Maintenance is twofold, general Maintenance, and special Maintenance; whereof you shall read at large in our Books, which were too long here to be inserted.

The Third is when [a] one laboureth the Jury, if it be but to appear, or if he instruct them, or put them in fear, or the like, he is a Maintainer, and he is in Law called an Embrazor, and an Action of Maintenance lieth against him, and if he take Honey, a Decies tantum may be brought against him. And whether the Jury pass for his Side, or no, or whether the Jury give any Verdict at all, yet shall he be punished as a Maintainer or Embrazor, either at the Suit of the King or Party.

Here in this Case that Littleton putteth, the Feoffment is void by the Statute [b] of 1 R. 2. for thereby it is enacted, That Feoffments made for Maintenance shall be holden for none, and of no Value; so as Littleton putteth his Case at the Common Law; for he seemeth to allow the Feoffment, where he saith, *tel feoffment fuit le caule, &c.* but some have said that the Feoffment is not void between the Feoffor and Feoffee, but to him that Right hath.

Now since Littleton wrote, there is a notable Statute [c] made in Suppression of the Causes of unlawful Maintenance (which is the most dangerous Enemy that Justice hath) the Effect of which Statute is:

First, That no Person shall bargain, buy, or sell, or obtain any pretended Rights or Titles.

Secondly, Or take, promise, grant, or covenant to have any Right, or Title of any Person, in or to any Lands, Tenements, or Hereditaments; but if such Person who so shall bargain, &c. their Ancestors, or they by whom he or they claim the same have been in Possession of the same, or of the Reversion or Remainder thereof, or taken the Rents or Profits thereof by the Space of one whole Year, &c. upon Pain to forfeit the whole Value of the Lands, and the Buyer or Taker knowing the same, to forfeit also the Value.

Thirdly, Provided, that it shall be lawful for any Person being in lawful Possession, by taking of the yearly Farm-rents or Profits, to obtain, and get the pretended Right or Title, &c. of any Lands, whereof he or they shall be in lawful Possession.

For the better Understanding of which Statute, you must observe, that Title or Right may be pretended two Manner of Ways:

First, When it is merely in Pretence or Supposition, and nothing in Verity.

Secondly, When it is a good Right or Title in Verity, and made pretended by the Act of the Party, and both these are within the said Statute; for Example, If A. be lawful Owner of Land, and is in Possession, B. that hath no Right thereunto, granteth to, or contracteth for the Land with another; the Grantor and the Grantee, (albeit the Grant be merely void) are within the Danger of the Statute: For B. hath no Right at all, but only in Pretence. If A. be disseised in this Case, A. hath a good lawful Right, yet if A. being out of Possession granteth to, or contracteth for the Land with another, he hath now made his good Right of Entry pretended within the Statute, and both the Grantor and Grantee within the Danger thereof. A fortiori, of a Right in Action, Quod nota.

It is further to be known, that a Right or Title may be considered three Manner of Ways. First, As it is naked and without Possession. Secondly, When the absolute Right cometh, by Release, or otherwise, to a wrongful Possession, and no third Person hath either Jus proprietatis, or Jus possessionis. The Third, when he hath a good Right, and a wrongful Possession. As to the first, somewhat hath been said, and more shall be said hereafter. As to the second, taking the former Example, if A. be disseised, and the Disseisee release unto him, he may presently sell, grant, or contract for the Land, and need not tarry for a Year; for it is a Rule upon this Statute, that whosoever hath the absolute Ownership of any Lands, Tenements, or Hereditaments (as in this Case the Disseisor hath) there such Owner may at his Pleasure bargain, grant, or contract for the Land, for no Person can thereby be prejudiced or grieved. And so if a Man mortgage his Land, and after redeem the same, or if a Man recover Land upon a former Title, or be remitted to an ancient Right, he may at any Time bargain, grant, or contract for the Land, for the Reason aforesaid. As to the Third, if in the Case aforesaid the Disseisor dieth seised, and A. the Disseisee entreth, and disseise the Heir of the Disseisor, albeit he hath an ancient Right, yet seeing the Possession is unlawful, if he bargain or contract for the Land, before he hath been in Possession by the Space of a Year, he is within the Danger of the Statute, because the Heir of the Disseisor hath Right to the Possession, and he is thereby grieved; & sic de similibus; and albeit he that hath a pretended Right (and none in Verity) getteth the Possession wrongfully, yet the Statute extendeth unto him as well as where he is out of Possession.

Note; The Words of the Statute be (any pretended Right) therefore a Lease for Years is within the Statute; for the Statute saith not (the Right, but any Right) and the Offender shall forfeit the whole Value of the Land. And where the Statute speaketh of Rights in the plural Number, yet any one Right is within the Statute. [d] But yet if a Man make a Lease for Years to another, to the Intent to try the Title in an Ejectione firmæ, that is out of the

A a a a

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30 Aff. 5. 19 E. 4. 3.
20 H. 6. 12. 34 H. 6. 2.
11 H. 6. 11. 8 H. 6. 8.
10 E. 4. 19. W. 1. ca. 2.
28. W. 2. c. 49. Arti.
super Chart. cap. 11.
F. N. B. 171, 172. Mir.
101, cap. 1. sect. 5.
Mo. 6. Anre 157.
Hob. 294.
[a] 13 H. 4. 16. b.
F. N. B. 171, 11 H. 6. 10.
37 H. 6. 31.
[b] 1 R. 2. cap. 9. Vide
27 H. 8. fol. 23.

[c] 32 H. 8. cap. 9.
Plowd. 79. a.

2 Roll. 113, 114.
Hob. 115.

1 Leon. 167, 208.
Plowd. 89. a.

1 Cro. 232, 233.
Pl. Com. fo. 80, &c.
Partridge's Case.

Pl. Com. Partridge's Case
ubi sup. 6 E. 6. Brook
tit. Maintenance 38.
Cro. Car. 388.
Plowd. 89. a.

23 Eliz. Dyer 374.
Pl. Com. Partridge's
Case, fol. 87.
[d] Mich. 30 & 31 Eliz.
2811. inter Finch &
Cockham in Com. Banc.
Mo. 266.