

without Issue, this shall bar the second Son; for the Remainder descended to the eldest.

If Tenant in Tail be disseised, or have Right of Action, and the Tenant of the Land levy a Fine with Proclamations, and five Years pass, the Right of the Estate-tail is barred.

[a] If Tenant in Tail in Possession, or that hath a Right of Entry, be attainted of High Treason, the Estate-tail is barred, and the Land is forfeited to the King; and none of these were Bars when Littleton wrote. A lineal Warranty and Assizes was a Bar to the Estate-tail when Littleton wrote, whereof more shall be said hereafter.

[b] A Common Recovery with a Voucher over, and a Judgment to recover in Value, was a Bar of the Estate-tail when Littleton wrote. [c] And of Common Recoveries there be two Sorts, viz. one with a single Voucher, and another with a double Voucher, and that is more common and more safe; there may be more Vouchers over.

[d] If the King had made a Gift in Tail, and the Donee had suffered a Common Recovery, this should have barred the Estate-tail in Littleton's Time, but not the Reversion or Remainder in the King. And so if such Donee had levied a Fine with Proclamations after the Statute of 4 H. 7. this had barred the Estate-tail, although the Reversion was in the King.

[e] But since Littleton wrote, a Common Recovery had against Tenant in Tail of the King's Gift, or such a Fine levied by him, the Reversion continuing in the Crown, is no Bar to the Estate-tail by the Statute of 34 H. 8. And where the Words of the Statute be (whereof the Reversion or Remainder, at the Time of such Recovery had, shall be in the King,) these ten Things are to be observed upon the Construction of that Act.

First, That the Estate-tail must be created by a King, and not by any Subject, albeit the King be his Heir to the Reversion; for the Preamble speaks of Gifts made to Subjects, and none can have Subjects but the King; and also in the Preamble it is said (for Service done to the Kings of the Realm) and the Body of the Act referreth to the Preamble. [f] And therefore if the Duke of Lancaster had made a Gift in Tail, and the Reversion descended to the King, yet was not the Estate-tail restrained by that Statute; and so of the like.

Secondly, If the King grant over the Reversion, then a Recovery suffered will bar the Estate-tail, because the King had no Reversion at the Time of the Recovery.

Thirdly, If the King make a Gift in Tail, the Remainder in Tail, or grant the Reversion in Tail, keeping the Reversion in the Crown, a Recovery against Tenant in Tail in Possession, shall neither bar the Estate-tail in Possession by the express Purview of the Statute, nor by Consequence the Estate in Remainder or Reversion; for that the Reversion or Remainder cannot be barred, but where the Estate-tail in Possession is barred.

Fourthly, If a Subject make a Gift in Tail, the Remainder to the King in Fee, albeit the Words of the Statute be (whereof the Reversion or Remainder of the same, &c.) yet seeing the Estate in Tail was not created by a King, as hath been said, the Estate-tail may be barred by a Common Recovery.

Fifthly, If Prince Henry, Son of Henry the Seventh, had made a Gift in Tail, the Remainder to Henry the Seventh in Fee, which Remainder by the Death of Henry the Seventh had descended to Henry the Eighth, so as he had the Remainder by Descent; yet might Tenant in Tail, for the Cause aforesaid, bar the Estate-tail by a Common Recovery.

Sixthly, The Word (Remainder) in the Statute is no vain Word, for the Words of the Preamble be, The King hath given or granted, or otherwise provided to his Servants and Subjects. The Word (Reversion) in the Body of the Act, hath reference to these Words (given or granted;) and (Remainder) hath reference to these Words (otherwise provided.) As if the King in Consideration of Money, or of Assurance of Land, or for other Consideration by Way of Provision, procure a Subject by Deed indented and inrolled, to make a Gift in Tail to one of his Servants and Subjects for Recompence of Service, or other Consideration, the Remainder to the King in Fee, and all this appear of Record; this is a good Provision within the Statute, and the Tenant in Tail cannot by a Common Recovery bar the Estate-tail. So it is if the Remainder be limited to the King in Tail; but if the Remainder be limited to the King for Years or for Life, that is no such Remainder as is intended by the Statute, because it is of no Remainder of Continuance, as it ought to be, as it appeareth by the Preamble, and it ought to have some Affinity with a Reversion, wherewith it is joined.

Seventhly, Where a Common Recovery cannot bar the Estate-tail by Force of the said Statute, there a Fine levied in Fee, in Tail, for Lives, or Years, with Proclamations according to the Statutes, shall not bar the Estate-tail, or the Issue in Tail, where the Reversion or Remainder

Ante 120. b. 9 Co. 104.  
Plowd. 374. a. 375. a.  
Cro. El. 896. Noy 45.  
Dyer 3. b. 133. a.

[a] 26 H. 8. cap. 13.  
33 H. 8. ca. 20. 5 E. 6.  
cap. 11. Staundr. Pl.  
Coron. 18.

[b] 12 E. 4. 19. Talra-  
rum's Case.

[c] Vide devant, Sect.  
690. Vide l. 3. fol. c.  
Cuppelick's Case & fo.

94. 97. 106. Li. 1. f. 62.

Capel's Case, li. 2. fo. 16.

52. 74. 77. Lib. 6. fo. 41.

42. li. 10. fo. 37. Mary  
Portington's Case.

[d] 18 H. 8. Taile Br. 41.  
Pl. Com. fol. 555.

29 H. 8. Dyer 52.

[e] 34 H. 8. cap. 10.

[f] Trin. 23 Eliz. inter  
Dively & Ashton resol-  
ved in the Court of  
Wards.

Lib. 2. fol. 15, & 16. in  
Wiseman's Case.

Lib. 8. fol. 77, 78. the  
Lord Stafford's Case.

Lib. 2. fo. 15, 16. Wise-  
man's Case, li. 2. fo. 52.  
Holmley's Case.

Mo. 115. 2 Co. 15. b.  
1 Cro. 430.

Lib. 2. fo. 16. Wiseman's  
Case.